

## Property toward Husband Doesn't Provide Children and Wife in the Overview of the Compilation of Islamic Law

DOI: <https://doi.org/10.47175/rissj.v2i3.263>

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### ABSTRACT

*The study was conducted to find out Compilation of Islamic Law governing the distribution of joint property, the application of the principle of partnership and the legal considerations of judges in the Supreme Court Decision of the Republic of Indonesia on Case Number 266K/AG/2010 in terms of the Compilation of Islamic Law against husband doesn't provide for his children and his wife. This research uses normative juridical research methods that use secondary data consisting of primary, secondary, and tertiary legal materials with descriptive analysis and data collection tools are carried out by library research supported by data obtained through field research at Bantul Religious Courts. The results of this research is known that the regulation regarding the distribution of joint property to husbands who do not provide for their children and wives is not detailed in the Compilation of Islamic Law. This partnership causes the position of husband and wife to be the same in some respects, in other respects to be different, the husband becomes the head of the family, the wife becomes the head in charge of household regulation, each has a role, position, rights, obligations, and responsibilities, all of which complement and perfect each other, every role has rights and every position has obligations, whoever has more obligations or who bears greater obligations, he is the one who has more rights than the others. The judge to resolve the conflict must be able to resolve it objectively based on the applicable law, determine the facts in the trial including the relevant facts and the choice of which legal rules will be used as the basis for resolving the case.*

### KEYWORDS

*Partnership Principle, Joint Property, Islamic Law; Case Number*

### INTRODUCTION

Marriage is an institution that binds two people of different genders, characters and habits in one noble goal, realizing a happy household. Both have an obligation to love, respect, be loyal, and provide physical and spiritual assistance to each other. The husband acts as the head of the family who has the obligation to protect his wife and provide all the necessities of household life according to his abilities, while the wife acts as a housewife who has the obligation to manage household affairs as well as possible (Sembiring, 2016).

The existence of rights and obligations between husband and wife in domestic life can be seen in several verses of the Qur'an and several hadiths of the Prophet. The husband's right is an obligation for the wife, the basis of the obligation of a wife is related to the leadership role in the family given to the husband based on the word of Allah SWT. In the Qur'an Surah an-Nisa 4:34. On the other hand, the husband's obligation is the right of the wife, the wife has rights relating to property, namely dowry and maintenance. Subsistence is the right of a

wife, this is based on the word of Allah SWT in the Qur'an Surah al-Baqarah 2:233 (Syarifuddin, 2007).

Likewise, the rights and obligations of husband and wife have been regulated in the Marriage Law article 34 paragraph (1) which states that:

"The husband is obliged to protect his wife and provide all the necessities of household life according to his ability".

This is also regulated in the Compilation of Islamic Law (hereinafter referred to as KHI) article 80 paragraph (1) to paragraph (4).

There are often incidents of violations of the wife's rights in the household, so that the wife feels that her household is no longer *bayti jannati* (my house is my heaven) (Al-Husin, 1992), but *bayti nar* (my house is like hell). If he deliberately neglects and oppresses his wife and children by not providing a living, then it is a mistake and he is sinful because he has neglected his obligations as a husband and father to his children. The wife can claim her rights by filing a lawsuit to the Religious Court. This lawsuit can result in divorce which can be called *tafriq qadha'i* (divorce through the Religious Court).

Shared assets will become the arena for disputes and the judiciary will be a medium for disputing husband and wife to express all their arguments, especially in order to realize their respective desires to control the property. Joint assets acquired during the marriage will be divided between the two spouses. This is also clearly regulated in Article 97 of the KHI, in which a divorced husband and wife each gets half a share. Equal distribution will be a fair distribution if husband and wife apply an equal partnership during marriage. Husbands carry out their obligations by earning a living and wives carry out their obligations by taking care of the household. However, not a few in a household, one of the parties does not carry out its obligations, causing an unequal partnership between husband and wife, because not a few wives are denied their rights so that she must try hard to meet the needs of herself and her children because her husband does not provide a living. This means that the wife contributes more in the process of creating joint property, while the husband is only a burden to the wife. The phenomenon of unequal husband and wife partnerships in the collection of joint assets can be found in real life. This can be seen in the decision of the Supreme Court of the Republic of Indonesia on case No. 266K/AG/2010, in this decision the provisions of Article 97 of the KHI, are not fully applied by judges as a way to resolve the problem of the distribution of joint assets. This case began when the THN lawsuit stated that SB had never provided a living for 11 years, so that THN had to pay for their children's daily needs and education costs. THN also assumes that the collection of the joint assets mentioned above is his hard work. In the trial, the THN was able to prove that during the marriage, the THN that met the household needs and joint property was the result of his hard work. On August 20, 2009 the Panel of Judges of the Bantul Religious Court decided, as long as the joint property of the marital property between the THN and SB stipulates the distribution of of the joint property is the THN's share and of the joint property is the SB's share.

This case continued to the level of cassation. On July 12, 2010, the Supreme Court handed down a decision against the cassation filed by the Petitioner for Cassation, formerly the Defendant/Appellate, Number 266K/AG/2010 which decided, as long as the distribution of joint assets stipulates that the Petitioner for Cassation is first the Plaintiff/Appeal has the right to own of the joint property and the Defendant/Appellant first has the right to own of the share based on the facts at trial that the husband does not provide a living from the results of his work and all the joint assets are obtained by the wife from the results of his work.

Based on the background of the problem regarding the distribution of joint property which is different from the provisions stipulated in the KHI described above, this research was formulated with the title "Implementation of the Principles of Partnership for the Distribution

of Joint Assets to Husbands Who Do not Provide Support to Children and Wives Judging from the Compilation of Islamic Law (Study on the Decision of the Supreme Court of the Republic of Indonesia on Case Number 266K/AG/2010)".

## REVIEW OF LITERATURE

### *Legal certainty theory*

Certainty has a meaning that in concrete terms both parties in dispute can determine their position. In this sense, it means that legal security contains the protection of the two disputing parties against arbitrary judges' actions. Meanwhile, because of the law of ownership, that the law guarantees certainty to one party with another (E. Utrecht, 1959).

The theory of certainty of Roscoe Pound says that the existence of law allows for "predictability" (Marzuki 2009). While Van Kant said that the law aims to protect the interests of every human being so that those interests are not disturbed. The law has a duty to ensure legal certainty in society (Kansil, 2002). The theory of certainty by Gustav Radbruch states that something made must have a goal or purpose (Erwin, 2011). So, the law is made even the value of its purpose, this goal is something that humans want to realize, the three goals of the law are: justice for the main balance, there is a provision for determination and benefit for happiness.

One of the problems that arise with the uncertainty of the provisions governing joint property in post-divorce marriages is the possibility of injustice in a court decision. For example, according to the times, the women also work to earn a living while the husband does not work, so if there is a divorce then the joint property is divided into two parts for each husband and wife, this will cause injustice.

### *Theory of Justice*

According to Ahmad Azhar Basyir, justice is:

"Putting something in its proper place or putting something in its proper proportions and giving someone what is due." (Basyir, 2000)

M. Quraish Shihab argues that the word fair was originally defined with equal or equality, that's what makes the perpetrators do not take sides or side with the right. Justice is demanded from him and against himself, namely by putting his lust and anger as a prisoner who must follow the orders of reason and religion, not making him the master who directs reason and religious demands. Because if so, he is not doing justice, that is, putting something in its proper place. This meaning shows that justice involves several parties, who sometimes face each other, namely two or more, each party has rights that should be obtained, and vice versa, each party has obligations that must be fulfilled (Shihab, 2003).

Murtadha Muthahhari suggests that the concept of fairness is known in 4 (four) ways:

- a. Fair means balance in the sense of a society that wants to survive and be established, then that society must be in a state of balance, where everything in it must exist to the proper degree and not to the same degree.
- b. Fair is equality disclaimer of any difference. Justice is meant to maintain equality when the rights to have it are the same, because justice requires such equality and requires it.
- c. Fair is maintaining individual rights and giving rights to everyone who is entitled to receive them. Justice like this is social justice that must be respected in human law and every individual is commanded to enforce it.
- d. Fair is maintaining the right to continued existence (Muthahhari, 1995).
- e. The distribution of joint property needs to be based on the aspect of justice for all parties involved. The justice in question includes the understanding that the

distribution does not discriminate against one party. The interests of each party need to be accommodated as long as they are in accordance with the actual reality.

## **RESEARCH METHODS**

The type of research used in this thesis research is normative juridical research or normative legal research or doctrinal legal research to research and discuss legal issues in this thesis research as a legal research method based on the research focus. The use of this normative legal research is based on the suitability of the theory and research methods needed to obtain answers to the legal problems studied, namely the Juridical Analysis of the Distribution of Joint Assets to Husbands Who Do not Provide Support for Children and Wives Judging from the Compilation of Islamic Law (study of the Supreme Court of the Republic of Indonesia on Case Number 266K/AG/2010).

The source of data are from three places namely;

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions (Marzuki, 2014). The primary legal materials used in this thesis research are the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law, and the Decision of the Supreme Court of the Republic of Indonesia Number 266K/AG/e.
- b. Secondary Legal Materials, (Rony Hanitijo Soemitro, 1990) namely legal materials that are closely related to existing primary legal materials and can help analyze and understand primary legal materials such as books written by legal experts, doctrines/opinions/teachings of legal experts, results of seminars, journals -legal journals, scientific works, magazine articles, and newspapers as well as source articles from cyberspace/internet which are closely related to the problems that are the object of research and others.
- c. Tertiary Legal Materials, (Soekanto, 2001) namely materials that provide instructions and explanations of primary legal materials and secondary legal materials. The materials used in this research are general dictionaries and legal dictionaries, encyclopedias and others related to the object of research.

The technique of collecting data is through library research which is carried out by taking inventory, studying, and exploring legal materials in the form of laws and regulations, books, scientific writings, legal documents and scientific works related to this research. In addition, this study also uses data collection techniques through field research (field research) with informant interviews.

The data collection tool in this research is to study documents and interview guidelines in depth (in-depth interview). In this study, the informant was 1 (one) Judge of the Bantul Religious Court.

## **RESULTS AND DISCUSSION**

### ***Arrangements Regarding the Distribution of Joint Assets to Husbands Who Do not Provide Support to Children and Wives according to the Compilation of Islamic Law***

Judging from the division of joint property and the method of distribution, when a divorce occurs, the distribution of the assets is returned to their respective laws. Based on Article 37 of Law no. 1 of 1974 concerning Marriage which states that:

"If the marriage breaks up due to divorce, the joint property is regulated according to their respective laws."

In the explanation of Article 37 of the Marriage Law, what is meant by "the law" is religious law, customary law and other laws. The explanation of Article 37 of the Marriage Law is related to the provisions of Articles 96 and 97 of the KHI, the application of Islamic law in the matter of the distribution of joint assets in both divorce and divorce has obtained legal certainty, namely that the husband and wife each get half of the property they have acquired during their marriage takes place (Manan, 2006). The division of joint property is divided according to the provisions as referred to in articles 96 and 97 of the KHI.

Article 96 of the KHI explains that the marriage bond is broken because one of the husband and wife dies so that the distribution of joint property is carried out by the heirs based on proportions, including the share of the surviving spouse. The division of the joint property is carried out by the heirs if the property exists. However, if the joint property does not exist because the continuity of the marriage bond is very short, then the surviving party does not get a share. Meanwhile, for divorced couples, it is regulated in Article 97 of the KHI which states that the divorced spouses share the joint property in two as long as it is not specified otherwise in the marriage agreement.

There is no provision in the legislation that states in detail and in writing how many parts of the joint property will be received by the wife and husband if during the marriage the husband has neglected his obligations. Only in article 229 of the KHI (concluding provisions) states that:

"Judges in resolving cases that are submitted to them must pay serious attention to the legal values that live in society, so that their decisions are in accordance with a sense of justice".

The provisions regarding the distribution of joint assets to husbands who do not provide for their children and wives do not exist in the KHI, only when a divorce occurs and the wife files a lawsuit/application for the distribution of joint assets, the wife has the right to demand the assets she acquired during the marriage, if the wife is more dominantly seeking more or the joint property of the marriage is entirely the wife who obtained it and this can be proven at trial, then the judge is obliged to look at and pay close attention to the conditions and facts that are proven in the trial so that the decisions taken by the panel of judges are in accordance with a sense of justice.

### ***Application of the Partnership Principle on the Distribution of Joint Assets if the Husband Does Not Provide Support to the Children and Wives***

Partnership in the family is an attitude of mutual respect, mutual assistance, mutual respect, and complementarity on the basis of mutual love, honing, and nurturing between husband and wife. Thus, partnership in the family implies the existence of a harmonious relationship between husband and wife with the dimension of equality (Umar, 2010)

In essence, the relationship between husband and wife, man and woman is a partnership relationship. From this it can be understood why the verses of the Qur'an describe the relationship of man and woman, husband and wife as a mutually perfect relationship that cannot be fulfilled except on the basis of partnership. This is expressed in the Holy Qur'an with the term "ba'd Hukum min ba'dhihi" (some of you (men) are part of the others (women)). the context of his description of the origin of the occurrence of men and women (QS Ali Imran (3): 195), as well as in the context of husband and wife relations (QS al-Nisa (4): 21) and social activities (QS al-Taubah (9) : 71) It is also explained in the letter al-Baqarah verse 187 that the husband and wife partnership relationship is a reciprocal relationship which means as follows:

"... they (your wives) are clothes for you, and you are clothes for them..."



This principle of partnership explains the different duties and functions due to differences in nature (nature, origin, nature) which are mentioned in the Qur'an Surah An-Nisa verse 34 which means as follows:

"Men are the leaders of women, because Allah has made some of them (men) superior to others (women), and because they (men) have spent part of their wealth. Therefore, a godly woman is one who is obedient to God and takes care of herself when her husband is not around, because God has taken care of them..."

This partnership causes the position of husband and wife to be the same in some respects, in other respects to be different, the husband becomes the head of the family, the wife becomes the head of the household in charge of regulation. This is contained in article 79 of the KHI. The principle of partnership is the principle of kinship or equality of rights and obligations of husband and wife, this is in accordance with article 77 of the KHI.

In Indonesian legislation, the role of husband and wife in the family is regulated in Marriage Law no. 1 of 1974. What is meant here is the rights that should be obtained and the obligations that must be carried out by husband and wife. The rights and obligations between husband and wife must be in the form of parallel relationships and partners who need and love each other, because without being a relationship, the purpose of marriage itself will be difficult to achieve.

The husband's obligation to provide for his wife arises since the implementation of a valid marriage contract between husband and wife (Al-Jaauziyyah, 1994). The obligation to provide for the family still applies even if the wife is a rich woman or has her own income. The wife has the right to earn a living from her husband, and the wife can demand her husband to provide for her.

The wife's economic income is also not just an additional or side economic source, it can even be the main or main source. Especially in urban areas, nowadays more and more wife's income becomes the economic foundation of the family, including the family. That way the wife has a double burden as a housewife and breadwinner. This makes the contribution gap between husband and wife in a household.

A husband who refuses to give his wife the right to support can be sued in court. According to Imam Malik, a husband who does not provide support for his wife can be brought to court, and the court has the authority to give advice to the husband. If the advice is not heeded by the husband, then the court is obliged to order the husband to provide maintenance for the wife. If this method does not change the husband's attitude, then the court may sanction the husband by hitting him with a stick. The opinion is more assertive from the Hanafi School, that if a husband does not want to provide a living for his wife, while the husband is capable and has money, then the state has the right to sell his property forcibly and hand over the proceeds of the sale to his wife. If there is no property, the state has the right to hold it at the request of the wife. The husband in this condition can be categorized as a wrongdoer. The husband may be punished, until the husband surrenders his living.

Partners cannot be understood with the same, exact and similar meaning, but the partnership referred to here is a relationship based on justice. Justice according to Islam is the fulfillment of rights for those who have legally, which if seen from the perspective of others is an obligation. Therefore, whoever performs more obligations or who bears greater obligations, he is the one who has more rights than others.

In the case that occurred in the Supreme Court Decision No. 266K/AG/2010, the household of the SB (husband) and THN (wife) couple who were intertwined for 13 years,

SB (husband) neglected his role, position and responsibility as husband and father of the child. his children, this is stated in the lawsuit filed by THN (wife) which states that for 11 years SB has never made a living for himself and his children, besides that the income of SB (husband) has never been given to his wife

The evidence presented during the trial showed that SB (husband) neglected his role, position and responsibility as husband and father to their children. For 11 years he neglected his obligation to fulfill his living expenses, so that the wife's responsibility for fulfilling household expenses, both children's education and daily necessities, was borne by the wife. In terms of evidence in the trial, it was proven that SB (husband) never gave money to fulfill household needs.

THN (wife) demands that the joint property be divided. The panel of judges considered that during the marriage, the SB (husband) neglected his role, position and responsibility as a husband, especially in terms of fulfilling a living, then according to the judge it was deemed appropriate and fair if the amount of the distribution of joint assets was determined by the size of the share/shares and the effort of each party. in an attempt to acquire these assets. Therefore, it is deemed appropriate and fair, the panel determines the share of each party in the amount of part for SB (husband/Defendant) and part for THN (wife/Plaintiff).

The maintenance obligations borne by the husband to the wife cannot be canceled or simply erased by the situation of her husband's poverty. The husband's obligation to provide for his wife takes place both in the field and in the narrow. Even though the wife's economic situation is spacious, the husband is still obliged to provide for her.

### ***Legal Considerations of Judges in the Decision of the Supreme Court of the Republic of Indonesia on Case 266K/AG/2010***

Legal considerations are one of the important components of a judicial body product, clarity for litigants regarding decisions taken either in the form of acceptance, rejection or other forms of decisions (Moedjono, 2008).

Judges in resolving conflicts faced by them must be able to resolve them objectively based on applicable law, so in the decision-making process, judges must be independent and free from the influence of any party, including the executive. In making decisions, judges are only bound by relevant facts and legal rules that become or are the legal basis for their decisions. However, the determination of the facts including the relevant facts and the choice of which legal rules will be used as the basis for resolving the case he is facing is decided by the judge concerned himself.

In a copy of the Decision of the Supreme Court of the Republic of Indonesia No. 266K/AG/2010 on the distribution of joint assets, there are several considerations by the judge, including the household of the Cassation Respondent and the Cassation Petitioner has broken up, with the fact that various efforts have been made to prevent divorce, but the Cassation Respondent still wishes to divorce because the defendant has never provided a living and The petitioner for cassation does not obey religion such as prayer, fasting and others, so that the Plaintiff is stressed and requires psychiatric treatment. The broken household is not effectively maintained to achieve the goal of marriage to form a harmonious household.

Then based on the evidence and facts at the trial, it turned out that the husband did not provide a living from his work and all the joint assets were obtained by the wife from the results of his work, so for the sake of justice, it is appropriate for the Cassation Respondent to obtain joint assets of  $\frac{3}{4}$  share and the Cassation Applicant share Decision of the Supreme Court of the Republic of Indonesia No. 266K/AG/2010 as long as the joint property stipulates that part of the joint property belongs to the Cassation Petitioner and part of the

joint property belongs to the Cassation Respondent, the assets obtained during the marriage are the result of the hard work of the Cassation Respondent where the Cassation Respondent is more dominant and has an active role in meeting the needs of their household. This can be seen from the wife's persistence in fulfilling her household life, while the cassation applicant is not known where she works and how much her income is, because her income has never been given to the cassation respondent. A wife should work in the household only to lighten the burden of her husband, not as the backbone to fulfill household life, because it is the husband who should be obliged to earn a living as regulated in Article 80 paragraph (4) letters a and b of the Compilation of Islamic Law which states that the obligations of a husband to his wife are (1) sustenance, *kiswah* and residence for the wife, (2) household expenses, treatment costs and medical expenses for the wife and children.

In addition, it is known that in the trial it was proven that after the marriage contract the Cassation Petitioner said *sighat taklik-talak*. *Taklik-talak* is an agreement that is pronounced by the prospective groom after the marriage contract which is included in the Marriage Certificate in the form of a promise of divorce which is hung on a certain condition that may occur in the future, this is stated in Article 1 letter e. In *sighat taklik-talak*, if the husband intentionally abandons his wife by not providing for her for 3 consecutive months and the wife object to it so that she complains about it to the Court, then the husband's divorce falls on the wife.

The principle of partnership is implied in 79 KHI which states that the husband is the head of the family and the wife is a housewife, each of which carries out their respective obligations and rights, if the principle of partnership is unequal in the household or one of the parties does not carry out its obligations to its role, and the other party emphasizes its role and even carries out a double role in the family, while the other party is only a burden in the household without carrying out its obligations, then it is appropriate that based on justice the rights obtained are in accordance with the obligations they carry out.

In the Judge's Decision in Case Number 266K/AG/2010, the panel of judges determined that the share of the Cassation Petitioner/Defendant was part and the Cassation Respondent/Plaintiff part of the joint property. Besides, the panel of judges decided in accordance with distributive justice because in the income of joint property there were more wives than husbands. The Panel of Judges decides or determines the case based on facts in court and evidence. Then regarding the law, the panel of judges determines based on the rule of law, but to consider the sense of justice. The Panel of Judges can perform *counter legem* or *ijtihad* in determining the law.

The judge adjudicates a case, he carries out his own juridical activities or activities, not merely performing a syllogism. It participates in forming laws, not objectivity laws as created by legislators, which are abstract in nature, but concrete laws created by their decisions (judge made law). The judge's decision is law, so it must be appropriate and acceptable by or within the community.

Sudikno Mertokusumo further explained that there are two basics in classifying interpretation methods (interpretation), namely based on the reasons or considerations used by judges and grouping based on the results of their legal findings. The grouping of interpretation methods based on the judge's reasons or considerations is divided into 6 (six) interpretation methods, namely:

1. The method of interpretation according to language (grammatical), namely by describing the meaning of the provisions of the law according to common everyday language;
2. The method of teleological or sociological interpretation, namely the meaning of the laws and regulations adapted to new social relationships and situations (for example:



cases of theft of power (electricity) which are interpreted to have independent characteristics and have certain values);

3. Systematic or logical interpretation method, namely by interpreting the law by connecting it with other laws because the law is considered as part of one system of legislation;
4. The historical interpretation method, namely according to the history/occurrence of the law;
5. The method of interpretation of comparative law (comparative), namely by way of comparative law and;
6. The futuristic interpretation method is based on laws that do not yet have legal force.

The panel of judges considers the sense of justice in making decisions regarding the amount of the distribution of the joint property, if seen from the decision decided by the panel of judges in case 266K/AG/2010 as long as the joint property stipulates for THN (Respondent for Cassation) and share for SB (Applicant Cassation) does not mean setting aside Article 97 of the KHI. In article 97 of the KHI, it is stated that the widow and widower are separated by half. The meaning of "half" in the article is subject to extensive interpretation.

Extensive interpretation grouping is included in the teleological or sociological interpretation method because in the extensive interpretation method the judge should not only be fixated on what the law says but by still basing his understanding on the law, he expands the meaning of one of the words in the law. Laws that are adapted to the conditions of today's society.

The judge's attitude can be legally justified because the judge has the freedom to make decisions and has the right to autonomy in the concept of "For the sake of Justice" to interpret articles that are deemed not in accordance with the sense of justice and truth. As affirmed in Article 229 of the KHI which states that judges in resolving cases submitted to them must pay serious attention to the legal values that live in society, so that their decisions are in accordance with a sense of justice. And this article which expressly shows an absolute that is coercive for judges to hold fast and make the article a moral basis in making decisions.

## **CONCLUSION**

The division of joint property with husbands who do not provide for their children and wives, the Compilation of Islamic Law does not regulate these provisions in detail. In the Compilation of Islamic Law, it only regulates the distribution of joint property for those who are divorced and the distribution of joint property with widows or widowers due to divorce.

The principle of partnership is the principle of equality of rights and obligations of husband and wife, in carrying out duties and functions that are adapted to the differences in nature between husband and wife. Application of the principle of partnership in the Marriage Law no. 1 of 1974, namely Article 34 *jo*. Articles 77 and 79 of the KHI. The application of the Partnership Principle in marriage is to carry out the role of getting rights and understanding the position of carrying out the obligations of each husband and wife in marriage, partners cannot be understood with the same, exact and similar meaning, but the partnership referred to here is a relationship based on Justice. Justice according to Islam, whoever performs more obligations or assumes greater obligations, he is the one who has more rights than others. So the application of the principle of partnership to the distribution of joint property if the husband does not provide for the children and wife will affect the distribution of the joint property if the wife does not accept the husband who neglects his

obligations and responsibilities as husband and father of his children and demands his rights in accordance with the number of obligations imposed on him do in marriage.

The judge's legal considerations in the Decision of the Supreme Court of the Republic of Indonesia on Case Number 266K/AG/2010 in terms of the Compilation of Islamic Law is that based on evidence and facts at trial it turns out that the husband does not provide a living from his work and all joint assets are obtained by the wife from the results of his work, then For the sake of a sense of justice, it is appropriate for the Cassation Respondent to obtain part of the joint property and for the Cassation Applicant to obtain memperoleh share of the joint property. The panel of judges considers the sense of justice in making decisions regarding the amount of the distribution of the joint property, if seen from the decision decided by the panel of judges in case 266K/AG/2010 as long as the joint property stipulates for THN (Respondent for Cassation) and share for SB (Applicant Cassation) does not mean setting aside Article 97 of the KHI. In article 97 of the KHI, it is stated that the widow and widower are separated by half. The meaning of "half" in the article is subject to extensive interpretation. Judges are legally justified because judges have the freedom to make decisions and have the right to autonomy in the concept of "For the sake of Justice" by interpreting articles that are deemed inconsistent with a sense of justice and truth. The judge's extensive interpretation should not only be fixed on what the law says, but by still basing his understanding on the law, he expands the meaning of one of the words in the law that is adapted to the conditions of today's society. As affirmed in Article 229 of the KHI which states that judges in resolving cases submitted to them must pay serious attention to the legal values that live in society, so that their decisions are in accordance with a sense of justice.

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