

## **Juridical Analysis of the Division of Joint Property in Divorce Cases in Indonesia: Study of Decision No. 308/Pdt.G/2025/PA.Plk**

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**Abstract:** This study aims to provide a juridical analysis of the division of joint property in divorce cases based on Decision Number 308/Pdt.G/2025/PA.Plk of the Palangka Raya Religious Court. The research focuses on the legal basis applied by the judge, the juridical considerations underlying the decision, and its conformity with the Marriage Law and the Compilation of Islamic Law (KHI). The method used is normative legal research with a case study approach, analyzing court decisions, legislation, Islamic legal doctrines, and family law literature. The findings reveal that the division of joint property is generally based on the principle of fairness, granting equal shares to husband and wife. In this case, however, the dispute arose because the defendant retained control over the property after the divorce, prompting the plaintiff to file a lawsuit with a request for a conservatoir beslag (security seizure). The proceedings led to mediation, which resulted in a peaceful settlement, and the lawsuit was subsequently withdrawn. Although the case ended amicably, the settlement lacks legal strength because the agreement was not formalized through a deed of settlement (akta perdamaian). The conclusion emphasizes that the mechanism of joint

property distribution is not only governed by statutory law but also shaped by mediation as a dispute resolution tool that prioritizes fairness and consensus. Therefore, formal legitimacy through a deed of settlement is essential to ensure that a peacefully resolved case still carries binding legal force.

**Keywords:** Joint Property, Divorce, Deed of Settlement, Conservatoir Beslag, Mediation

**Abstrak:** Penelitian ini bertujuan untuk menganalisis secara yuridis pembagian harta bersama dalam perkara perceraian berdasarkan Putusan Nomor 308/Pdt.G/2025/PA.Plk di Pengadilan Agama Palangka Raya. Fokus penelitian meliputi dasar hukum yang digunakan hakim, pertimbangan yuridis yang melatarbelakangi putusan, serta kesesuaiannya dengan ketentuan Undang-Undang Perkawinan dan Kompilasi Hukum Islam (KHI). Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan studi kasus, melalui analisis terhadap putusan pengadilan, peraturan perundang-undangan, doktrin hukum Islam, dan literatur hukum keluarga. Hasil penelitian menunjukkan bahwa pembagian harta bersama pada dasarnya mengacu pada asas keadilan dengan memberikan bagian yang sama antara suami dan istri. Namun dalam perkara ini, sengketa muncul karena pihak tergugat tetap menguasai harta bersama pasca perceraian, sehingga penggugat mengajukan gugatan dengan permohonan sita jaminan (conservatoir beslag). Proses persidangan kemudian ditempuh melalui mediasi yang menghasilkan kesepakatan damai, sehingga perkara berakhir dengan pencabutan gugatan. Meski berakhir damai, perkara ini memiliki kelemahan hukum karena perdamaian tersebut tidak disahkan melalui akta perdamaian. Kesimpulan penelitian ini menegaskan bahwa

mekanisme pembagian harta bersama tidak hanya ditentukan oleh peraturan perundang-undangan, tetapi juga dipengaruhi oleh proses mediasi sebagai instrumen penyelesaian sengketa yang mengedepankan musyawarah dan keadilan. Serta perlunya ada legitimasi pada penyelesaian perkara meski berakhir damai.

**Kata kunci:** Harta Bersama, Perceraian, Akta Perdamaian, Sita Jaminan, Mediasi

## Introduction

Marriage is an agreement or contract between two people, namely a man and a woman, to love and cherish each other and to commit to a relationship together for the sake of mutual well-being and their children, as stipulated by law. Marriage is entered into by a couple to build a family or household. From marriage, the couple makes an agreement to live together and start a family until they have children. The purpose of marriage is to form a lasting and harmonious family, so that husband and wife can complement and help each other and continue their lineage.<sup>1</sup>

However, the beauty of marriage does not hide the fact that separation may occur. Whether due to incompatibility or other reasons, a husband and wife may end their marriage through divorce.<sup>2</sup> Divorce has many legal consequences, one of which is related to the division of joint property.<sup>3</sup> Article 37 of Law Number 1 of 1974 concerning Marriage states, *“If a marriage is terminated due to divorce, joint property shall be regulated according to their respective laws.”* The meaning of *“according to their respective laws”* is the law chosen by the parties in the marriage. This could be religious law, customary law, or other laws. Therefore, the

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<sup>1</sup> Meraj Ahmad Meraj, “The Importance of Marriage in Islam,” *International Journal of Research - Granthaalayah* 6, no. 11 (2018), <https://doi.org/10.29121/granthaalayah.v6.i11.2018.1082>.

<sup>2</sup> Ibnu Akbar Maliki et al., “Rekonsepsi Amicable Divorce (Cerai-Damai) Berbasis Paradigma Mubadalah: Upaya Mewujudkan Keadilan Gender dalam Hukum Perceraian Indonesia,” *Syakshiyah Jurnal Hukum Keluarga Islam* 5, no. 2 (2025): 191–216, <https://doi.org/10.32332/n3tg7n90>.

<sup>3</sup> Ibnu Elmi AS Pelu and Ahmad Dakhoir, “Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications,” *Al-Jami’ah: Journal of Islamic Studies* 59, no. 2 (2021): 287–316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

mechanism and determination of the division of joint property is carried out based on the legal principles adopted by the parties to the marriage.<sup>4</sup>

However, in reality, the division of joint property after divorce often causes disputes. When this happens, the case can be brought before the Religious Court to reach an agreement and settlement between the two parties, as stipulated in Article 88 of the Compilation of Islamic Law (KHI), which reads, "*If there is a dispute between husband and wife regarding joint property, the dispute shall be submitted to the religious court.*"<sup>5</sup> This provision is in line with the provisions in the Civil Code, namely that the division is usually done equally, with each party receiving half of the joint property. This is similar to what is stated in Article 128 of the Civil Code, which states that, "*After the dissolution of the union, the joint property shall be divided equally between the husband and wife, or between their respective heirs, regardless of which party acquired the items.*"<sup>6</sup>

In cases involving the division of joint property, the judge must divide the property fairly and reconcile the two parties so that there is no further dispute.<sup>7</sup> In decision No. 308/Pdt.G/2025/PA.Plk registered at the Palangka Raya Religious Court, the plaintiff filed a lawsuit because from the time of the divorce until the lawsuit was filed, the joint property was still in the possession of the defendant. The plaintiff had already invited the defendant to settle the case amicably. However, the defendant refused. Therefore, the plaintiff chose to file a lawsuit. The plaintiff requested a conservatory attachment (*conceratoir beslaag*) on all joint property, because the plaintiff wanted to prevent the defendant from embezzling the joint property, as the defendant had been hiding correspondence and wanted to take control of the joint property

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<sup>4</sup> Rosalina Limbong, "A Legal Perspective on Inheritance of Joint Property: A Comparative Analysis of Various Legal Systems," *Legal Frontier* 1, no. 1 (2025): 11-18.

<sup>5</sup> Desy Triyana, "The Distribution System of Joint Property in Polygamous Families from the Perspective of Islamic Law Compilation and Civil Code.," *Eduvest: Journal Of Universal Studies* 5, no. 12 (2025): 14444.

<sup>6</sup> Esti Royani et al., "The Essence of Sharing Joint Property as a Result of Divorce," *Awang Long Law Review* 1, no. 2 (2019): 131-39, <https://doi.org/10.56301/awl.v1i2.64>.

<sup>7</sup> Yulius Oktober, "The Implementation of National Regulations on The Division of Joint Property During Divorce," *Indonesia Private Law Review* 4, no. 1 (2023): 19-28, <https://doi.org/10.25041/iplr.v4i1.2945>.

unilaterally. The considerations of the judge and how they were implemented in deciding the case will be discussed in this article.

Joint property has been the subject of previous studies that provide a diverse picture of disputes over joint property. Research discussing the settlement of disputes and the division of joint property has been conducted by Faujiah, but it focuses more on the context of inheritance disputes between biological children and stepmothers.<sup>8</sup> Ariani et al. have also examined the issue of joint property distribution from a criminal law perspective, focusing on the embezzlement of joint property.<sup>9</sup> A study from the perspective of mediation was also conducted by Zahid et al., which focused on the role of mediators in mediating between the parties to reach an amicable settlement of joint property disputes.<sup>10</sup> Based on existing research, this study attempts to fill the gap in the literature by focusing on the juridical analysis of the division of joint property due to divorce, such as requests for seizure of collateral and the involvement of third parties in the court proceedings. This study also shows the role of the Religious Court in protecting the rights of the wife when the joint property is controlled by the ex-husband.

The research method used in this article is a normative legal research method with a case study approach. This approach was chosen because the object of study is court decisions, which will be analyzed in depth from the perspective of legal processes and the application of rules regarding the division of joint property after divorce. The primary data in this study is Decision Number 308/Pdt. G/2025/PA.Plk of the Palangka Raya Religious Court. In addition, the Compilation of Islamic Law and Law No. 1 on Marriage also serve as complementary primary data in this study. Meanwhile, the secondary data in this study consists of books,

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<sup>8</sup> Silva fawijah Tanjung, "Penyelesaian Sengketa Harta Gono Gini Pada Pengadilan Agama Kotamobagu (Studi Kasus Putusan No. 738/Pdt.G/2014/Pa.Ktg)," *Lex Et Societatis* VI, no. 7 (2018): 90–97.

<sup>9</sup> Inda Ariani et al., "Penegakan Hukum Terhadap Pelaku Tindak Pidana Penggelapan Harta Gono Gini Setelah Perceraian ( Studi Kasus No . 2230k / Pdt / 2019 Di Pengadilan Tinggi Bangka Belitung )," *Jurnal Hukum Doctrinal* Vol 7, no. 1 (2022): 73–94.

<sup>10</sup> Ahmad Badi Reza Ahmad Zahid, "Peranan Mediator Dalam Penyelesaian Sengketa Harta Gono-Gini Akibat Kasus Perceraian (Studi Kasus Di Pengadilan Agama Kab. Kediri)," *Legitima: Jurnal Hukum Keluarga Islam* 2, no. 2 (2020): 274.

journal articles and proceedings, theses, and dissertations relevant to the research theme. Then, data analysis was carried out using descriptive-analytical methods. Thus, the researcher can describe the facts in the decision, then assess them using positive legal norms and Islamic legal principles related to joint property.

This article aims to analyze the legal division of joint property in divorce cases based on Decision Number 308/Pdt.G/2025/PA.Plk. This article also examines the legal basis used by judges in deciding cases, reviews the legal considerations behind the decision, and assesses the conformity of the decision with the provisions of applicable laws and regulations, particularly the Marriage Law and the Compilation of Islamic Law (KHI). In addition, it aims to identify problems that arise in the process of resolving joint property disputes at the Palangka Raya Religious Court, while also providing an academic contribution in the form of legal analysis that can be used as a reference for the development of Islamic family law and religious court practices in Indonesia.

## Discussion

### Positive Law Regulations on the Division of Joint Property (*Gono Gini*) After Divorce

The Marriage Law does not explicitly regulate the respective shares of each party in joint property. The Marriage Law only covers three articles on joint property regarding the scope of joint property and exceptions, authority, and division of joint property. Article 37 states, "*If the marriage is terminated due to divorce, joint property shall be governed by their respective laws.*" This means that there is no clarity regarding the division of joint property between former spouses, and the explanation is still general in nature. Article 37 states that "*the respective laws referred to are religious laws, customary laws, and other laws.*" This indicates that through the Marriage Law, religious and customary laws have room to play a role in further regulation..<sup>11</sup> This means that the settlement of

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<sup>11</sup> Arif Abdi and Faisal Santiago, "Analysis Of the Legal Impact Before and After the Making of a Post Marriage Agreement on Joint Property (Case Study of Marriage Agreement Deed Dated February 8, 2021 Number 25)," *ICLSSEE 2022: Proceedings of the 2nd International Conference on Law, Social Economics, and Education* (Semarang), 2022.

disputes over joint property, both in court and within the community, depends on the religious or customary rules adopted by the disputing parties.<sup>12</sup>

The religious law that applies and is recognized in Indonesia is the KHI. The Compilation of Islamic Law stipulates that in the event of separation due to divorce, joint property must be divided equally between the husband and wife. If there is a dispute over joint property, the solution is to submit it to the Religious Court. Islamic scholars argue that the discussion of joint property is not explicitly mentioned in the verses of the Qur'an and hadith.<sup>13</sup> As Islamic law developed, joint property was recognized as legitimate through qiyas or analogy from the joint venture or syirkah of husband and wife. Islam identifies a conceptual equivalence between joint property in marriage and the form of syirkah between husband and wife. Similar to the concept of syirkah abdan, husband and wife receive an equal share of the profits from their business. Therefore, the KHI divides joint property into two equal parts for each party.<sup>14</sup>

The Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUH Perdata) contains more than 60 articles discussing joint property. These provisions cover various aspects, ranging from the definition and classification of joint property, the rights and obligations of the parties, exceptions, to the dissolution of joint property institutions and agreements related to the division of property. The Civil Code divides the share of joint property for widowers and widows into half of the joint property. This is very different from the division of joint property in

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<sup>12</sup> Ariel Alvi Zahry et al., "Post-Divorce Copyright Legal Status: An Indonesian Legal Perspective," *Jurnal Mahkamah : Kajian Ilmu Hukum Dan Hukum Islam*, December 24, 2024, 213–30, <https://doi.org/10.25217/jm.v9i2.4978>.

<sup>13</sup> Sudirman A. Dg Mataro et al., "Marriage Properties Sharing Based on Islamic Law," *International Journal of Contemporary Islamic Law and Society* 3, no. 1 (2021): 68–92, <https://doi.org/10.24239/ijcils.Vol3.Iss1.29>.

<sup>14</sup> Ahdiyatul Hidayah, "Implementation of The Principle of Justice in The Division of Joint Property After Divorce According to Islamic Family Law," *Ijtihad* 40, no. 1 (2024): 57–67.

customary law. Differences in the concept of joint property and the division of shares.<sup>15</sup>

Implicitly, the rules in the Compilation of Islamic Law mention in Article 97 the percentage of the division of joint property. Each party is entitled to half of the joint property. This is because the teachings of Islam emphasize the aspect of justice in resolving life's problems.<sup>16</sup> Meanwhile, in the Civil Code, the judge's consideration in dividing joint property is evidence. That is, based on valid evidence and reaching the minimum limit of evidence, and the truth must be believed by the judge. Article 1866 of the Civil Code regulates the types of evidence in civil cases, namely written evidence, witness evidence, presumption, confession, and oath.<sup>17</sup>

The term joint property in the family, or known as *gono-gini*, is not explicitly found in the Qur'an or Hadith, because this concept originates from customary law (*'urf*) in societies that recognize the mixing of property in the household, including in Indonesia.<sup>18</sup> In customary law itself, there are differences regarding the concept of joint property and the procedures for its distribution. The kinship system adopted greatly influences the form of distribution. In a matrilineal system, widows receive a larger share than widowers, while in a patrilineal system, widowers receive a larger share than widows.<sup>19</sup>

In a parental system, the shares given to widows and widowers are generally equal. Not only are there differences in the distribution

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<sup>15</sup> I. Gede Gunanta et al., "Formulation of Joint Property Agreement: Civil Code, Balinese Customary Law, and Transcendental Justice," *Journal of Transcendental Law* 7, no. 1 (2025): 40–56, <https://doi.org/10.23917/jtl.v7i1.11327>.

<sup>16</sup> Nurunnisa et al., "Implications of Annulment of Marriage on the Distribution of Joint Assets According to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 1 (2023): 1–23, <https://doi.org/10.18592/sjhp.v23i1.9523>.

<sup>17</sup> Khairina et al., "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 193–204, <https://doi.org/10.31958/juris.v23i1.11565>.

<sup>18</sup> Kholil Nawawi, "Harta Bersama Menurut Hukum Islam Dan Perundang-Undangan Di Indonesia," *Mizan: Journal of Islamic Law* 1, no. 1 (2018): 1–16, <https://doi.org/10.32507/mizan.v1i1.104>.

<sup>19</sup> Abd Rouf et al., "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Jurnal Hukum Dan Syari'ah* 15, no. 2 (2023): 230–50.

procedures, but customary law also differs in its concept of joint property. They consider joint property to be all property controlled by the husband and wife during their marriage, including personal property derived from inheritance, gifts, personal income, joint income earned by the husband and wife, and gifts. They do not separate inherited property as stated in the KHI.<sup>20</sup> Communities that still strongly adhere to customs will prioritize customary norms in resolving joint property issues.

### **Settlement of Joint Property Disputes in Decision No. 308/Pdt.G/2025/PA.Plk**

The settlement of joint property disputes in KHI covers two aspects, namely: 1) Adjudication, which is the process of examining a case in court by a judge, which includes a question and answer session and evidence from the parties involved in the case, and ultimately results in a decision made by the judge. 2) Seizure of collateral. As a preventive measure, seizure of collateral in the context of joint property is purely a preventive measure against actions that could potentially threaten the integrity of the joint property.<sup>21</sup>

The chronology and facts of case No. 308/Pdt.G/2025/PA.Plk are that the plaintiff had officially divorced the defendant with Divorce Deed Number 0074/AC/2025/PA.Plk on Tuesday, February 18, 2025. The joint property acquired by both parties during the marriage consisted of a boarding house with four rooms, electronic appliances such as a refrigerator and washing machine, household appliances such as cabinets, sinks, tableware, and kitchen utensils, as well as a number of small items such as carpets and dolls. The joint property owned by the plaintiff and the defendant has a total value of IDR 158,000,000, and all of it is under the control of the defendant after the divorce. Therefore, the plaintiff filed a lawsuit containing a demand for a conservatory attachment (*conservatoir beslaag*) on all joint property and demanded

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<sup>20</sup> Mutmainna e.tc., "Simplifikasi Pembagian Harta Gono-Gini Akibat Perceraian," *Jurnal Litigasi Amsir* 9, no. November (2021): 1–12.

<sup>21</sup> Muhamad Amin et al., "The Role Of Contribution In The Determination Of Joint Property By Religious Court Judges," *GIC Proceeding* 2 (June 2024): 285–91.

that the defendant hand over the plaintiff's share of the joint property in accordance with his rights.

Seizure or beslag is a special legal action taken by a judge against the disputing parties in an effort to secure the disputed items from the possibility of being transferred, damaged, or destroyed by the party holding the disputed items so that the judge's decision can be guaranteed as it should be.<sup>22</sup> This seizure or attachment is compulsory and can only be carried out by a judge at the request of the plaintiff. A security seizure or conservatoir beslaag is a seizure carried out on disputed assets, both movable and immovable, so that the seizure provides security for the plaintiff so that their lawsuit is not rendered meaningless when the decision is enforced.<sup>23</sup> In this decision, the plaintiff requested that the judge impose a security seizure or *conservatoir beslaag* on all joint assets totaling Rp 158,000,000 (one hundred fifty-eight million rupiah).

The plaintiff had previously settled the joint property case amicably, but the defendant rejected it. Because the defendant refused, the plaintiff sent a mediation invitation through the customary institution in the Pahandut district. However, the mediation did not result in an agreement between the two parties. Therefore, the plaintiff filed a lawsuit with the Religious Court in Palangka Raya, which is the place of domicile of both parties. The judge tried to advise and reconcile the two parties, but was unsuccessful. With the consent of the plaintiff and the defendant, the judge appointed a mediator to conduct mediation so that this joint property issue could be resolved peacefully.

Mediation is the resolution of a dispute by appointing a neutral third party as a mediator to help the parties resolve the dispute. Mediation is the optimization of the judge's role in reconciling the two parties.<sup>24</sup> This is in accordance with PERMA No. 1 of 2016, which contains

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<sup>22</sup> Moh Rafli Darussalam et al., "Judicial Considerations in the Rejection of Conservatoir Beslag in Land Disputes," *Compendium of Judge Made Law* 1, no. 2 (2025), <https://doi.org/10.56087/8xmzbs80>.

<sup>23</sup> N. Siregar, "Analisis Pemeriksaan Permohonan Sita Jaminan Di Pengadilan Agama Kota Padangsidempuan (Study Kasus Perkara Nomor: 98/Pdt. G/2017/Pa. Pspk)," preprint, 2019.

<sup>24</sup> M. Rafirsa Agung Pratama et al., "Legal Aid for the Poor in the Perspective of Fiqh Tanfiziyyah: Implementation of North Lampung Regency Regional Regulation

the procedures for mediation in court.<sup>25</sup> There are two stages in mediation, namely pre-mediation and mediation implementation. Pre-mediation is when the judge offers both parties mediation and appoints a mediator as a third party to resolve the case. The judge gives the parties one day after the hearing to consider this. Then, if both parties agree, the mediation is carried out. If the judge provides the mediator, the mediation will be carried out within 22 working days. Meanwhile, if the mediator is from outside the court, the mediation will be carried out within a maximum of 30 working days.<sup>26</sup>

In this decision, mediation was successfully carried out on July 8, 2025. According to the mediator's report, the plaintiff reached an agreement to settle and decided to withdraw the case. Due to the withdrawal of the lawsuit, the case was considered closed and there was no need to continue the proceedings. Thus, the division of joint property was returned to the agreement between the two parties.

Normatively, the legal basis for mediation in Indonesia is found in the following regulations: First, HIR Article 130 HIR and Rbg Article 154 regulate the institution of reconciliation. Judges are required to prioritize reconciliation between the parties to the case before the case is examined. Second, SEMA No. 1 of 2002 concerning the Empowerment of the Institution of Reconciliation. Third, PERMA No. 2 of 2003 concerning Mediation Procedures in Court. Fourth, PERMA No. 1 of 2016 concerning Mediation Procedures in Court. Fifth, PERMA No. 1 of 2008 concerning Mediation Procedures in Court.<sup>27</sup>

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Number 4 of 2013 Concerning Legal Aid for the Poor at LBH Menang Jagad Kotabumi North Lampung," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 15, no. 1 (2023): 174–85, <https://doi.org/10.32505/jurisprudensi.v15i1.5630>.

<sup>25</sup> Muhammad Juni Beddu et al., "Urgency of Mediator (Mediation) in Resolving Divorce Cases in Religious Courts," *Turkish Journal of Computer and Mathematics Education* 12, no. 4 (2021).

<sup>26</sup> Bunyamin Alamsyah and Ulil Amri, "Meeting Points in the Middle of Disputes: The Urgency of Mediation in Realizing Effective and Equitable Religious Courts," *International Journal of Intersectionality: Law and Gender* 1, no. 1 (2024): 62–78.

<sup>27</sup> Mardalena Hanifah, "Mediation Implementation in the Settlement of Divorce Cases in the Religious Courts," May 29, 2020, 81–83, <https://doi.org/10.2991/assehr.k.200529.273>.

Based on the verdict and mediation process in case No. 308/Pdt.G/2025/PA.Plk, the author considers that the settlement of joint property disputes in court does not always have to be through adjudication but can also be through a mediation process conducted through deliberation between the two parties to obtain a peaceful outcome and mutual agreement. It is mentioned that in this case, the plaintiff also requested the judge to impose a conservatory attachment (concernatoir beslaag) due to the imbalance in the control of joint property after marriage and to prevent the transfer of joint property by the defendant.

However, as the case was settled through mediation, the seizure ordered by the judge was intended to encourage the defendant to cooperate in the settlement of the case. In addition, if the mediation is successful, the lawsuit will be withdrawn. The withdrawal of the lawsuit does not mean that the essence of the case examination is eliminated, but rather proves that mediation can provide an easier and fairer settlement.

The author also considers that decision No. 308/Pdt.G/2025/PA.Plk ended with the plaintiff's withdrawal of the case, not with the ratification of a settlement agreement. This shows that peace was indeed achieved, but it was done outside the formal court mechanism, because it was not set out in a settlement agreement. A settlement agreement is a written document drawn up by mutual agreement between both parties, which is then submitted to the chief judge and ratified by the judge. Once ratified, the settlement agreement has executory power, which is equivalent to a final and binding court decision.<sup>28</sup> Therefore, a settlement agreement cannot be appealed or cassated.<sup>29</sup>

If one of the parties violates the agreement, the court can directly enforce the contents of the deed. Thus, a settlement agreement can provide legal certainty and strong legal protection for the disputing

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<sup>28</sup> Jumra et al., "The Role of Mediation in Land Dispute Resolution: Effectiveness and Challenges," *Journal of Indonesian Scholars for Social Research* 4, no. 2 (2024): 89–93, <https://doi.org/10.59065/jissr.v4i2.157>.

<sup>29</sup> Jasmaniar Jasmaniar and Nurhaedah Nurhaedah, "Principle of Good Faith in Peace Agreements via Mediation," *Journal of Law, Politic and Humanities* 4, no. 2 (2024): 64–71, <https://doi.org/10.38035/jlph.v4i2.316>.

parties. In decision No. 308/Pdt.G/2025/PA.Plk, there is no ruling that states “*ratifying the settlement agreement*”. Instead, the judge only granted the request to withdraw the case, which terminated the court proceedings in this case. As a consequence, this case did not result in an enforceable decision, and the plaintiff still has the legal possibility to file a new lawsuit with the same case to the court.

### **Legal Implications of Decision No. 308/Pdt.G/2025/PA.Plk**

Decision No. 308/Pdt.G/2025/PA.Plk presents an interesting dynamic in the settlement of joint property disputes in the religious court system. Although this case was filed through litigation with a request for a security attachment, it was ultimately settled through mediation, resulting in the plaintiff withdrawing the lawsuit. This situation raises a number of legal implications that are not only related to the legal status of the agreement between the parties, but also concern the function of seizure of collateral, the binding force of the settlement, and the normative construction of joint property in the Islamic family law system in Indonesia.<sup>30</sup> The following analysis focuses on three main aspects, namely the implications for the mediation mechanism and the withdrawal of the lawsuit, the implications for the use of seizure of collateral, and the implications for the concept of joint property within the framework of positive law.

**First**, the legal implications for the mediation mechanism and the withdrawal of the lawsuit. The success of mediation in this case demonstrates a strengthening of the orientation of dispute resolution from an adjudicative model towards a consensual approach as stipulated in Supreme Court Regulation Number 1 of 2016.<sup>31</sup> Judges do not merely

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<sup>30</sup> Muhammad Shofwan Taufiq and Adhimas Kondang Pribadi, “Progressive Legal Justice Paradigm in the Division of Joint Property,” *SMART: Journal of Sharia, Traditon, and Modernity*, July 30, 2023, 41–54, <https://doi.org/10.24042/smart.v3i1.17984>.

<sup>31</sup> Ibnu Akbar Maliki et al., “The Mediation Existence and Opportunities of State Administrative Court in Supreme Court Regulation,” *As-Siyasi: Journal of Constitutional Law* 4, no. 1 (2024): 1–18, <https://doi.org/10.24042/as-siyasi.v4i1.21667>.

act as adjudicators, but as facilitators of peaceful resolution.<sup>32</sup> This is in line with the principles of simple, fast, and low-cost justice, while also demonstrating the effectiveness of mediation as an instrument for resolving family disputes that is more adaptive to the personal relationships of the parties.<sup>33</sup>

However, the settlement in this case was not formalized in the form of a settlement agreement (*akte van dading*), but rather ended with the plaintiff withdrawing the lawsuit. Legally, this situation has important consequences. First, the agreement between the parties does not have the same executive power as a final and binding court decision.<sup>34</sup> Second, the absence of an enforcement title means that legal protection for the implementation of the agreement depends entirely on the good faith of the parties. In the event of a breach of the agreement, the aggrieved party must file a new lawsuit to claim their rights.<sup>35</sup>

In addition, the withdrawal of the lawsuit before a final decision is made means that there is no binding force of *res judicata*. Thus, the principle of *ne bis in idem* does not apply, and it is legally possible for the plaintiff to file another lawsuit with the same subject matter. This situation shows the tension between the flexibility of amicable settlement and the need for legal certainty. Although mediation succeeded in reaching an agreement, the absence of ratification in the form of a settlement deed actually weakens the aspect of certainty and long-term legal protection.

**Second**, the legal implications of a conservatory attachment (*Conservatoir Beslag*). The request for a conservatory attachment in this case was initially intended as a preventive measure to secure joint assets

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<sup>32</sup> M. Akmal Marzuqin et al., "The Judge Mediator in Contemporary Divorce Cases in Indonesian Religious Courts," *USRATY: Journal of Islamic Family Law* 3, no. 2 (2025): 199–211, <https://doi.org/10.30983/usraty.v3i2.10222>.

<sup>33</sup> Fathan Fadhlullah, "The Future of Mediation in Religious Courts," *IJTIHAD* 39, no. 2 (2023): 42–53.

<sup>34</sup> Oksana Melenko, "Mediation as an Alternative Form of Dispute Resolution: Comparative-Legal Analysis," *European Journal of Law and Public Administration* 7, no. 2 (2020): 46–63.

<sup>35</sup> Daniel Alfaruqi et al., "Legal Analysis of the Legal Basis for Mediation in Dispute Resolution Efforts in Religious Courts," *Riwayat: Educational Journal of History and Humanities* 9, no. 1 (2026): 1436–44, <https://doi.org/10.24815/riwayat.v9i1.376>.

that were entirely under the control of the defendant. From a civil procedure law perspective, a seizure serves to ensure that the object of the dispute is not transferred, damaged, or disposed of so that the execution of the decision does not become illusory.<sup>36</sup> Thus, the seizure request reflects an objective concern about the potential for abuse of unilateral control over joint property.<sup>37</sup>

However, because the case ended with the withdrawal of the lawsuit due to the achievement of a settlement, the function of the seizure in this context shifted. The seizure was no longer oriented towards ensuring the enforcement of the decision, but rather served as a protective instrument and legal pressure to ensure that the defendant was willing to cooperate in the dispute resolution process. Implicitly, the seizure of collateral serves as leverage in the mediation negotiation process.

The legal implications of this condition show that the seizure of collateral in religious court practice is not merely technical and procedural in nature, but also has a strategic dimension in promoting a balance of bargaining power between the parties.<sup>38</sup> Especially in situations where all assets are under the control of one party, seizure of collateral can be seen as a mechanism to protect against potential inequality and as a manifestation of the court's protective function regarding rights to joint property. However, the use of seizure as a negotiation tool must remain within the corridor of proportionality so that it does not become an instrument of excessive pressure.<sup>39</sup>

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<sup>36</sup> Annisa Nurmalasari Hutapea and Sidi Ahyar Wiraguna, "Peranan Sita Jaminan (Conservatoir Beslag) Dalam Menjamin Efektivitas Eksekusi: (Suatu Analisis Yuridis Atas Teori Keadilan)," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 446–54, <https://doi.org/10.61104/alz.v4i1.3141>.

<sup>37</sup> Arif Alvarindo and Sidi Ahyar Wiraguna, "Rekonstruksi Kedudukan Hukum Sita Jaminan Dalam Sistem Hukum Acara Perdata Indonesia," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 5, no. 1 (2025): 173–80, <https://doi.org/10.54443/sibatik.v5i1.4132>.

<sup>38</sup> Muhammad Imam Samodra and Niken Wahyuning Retno Mumpuni, "Analisis Sita Jaminan dalam Sengketa Waris dan Penyelesaiannya," *Jurnal Hukum Lex Generalis* 6, no. 6 (2025), <https://doi.org/10.56370/jhlg.v6i6.1424>.

<sup>39</sup> Yustia Okta Pradini et al., "Tantangan Pelaksanaan Sita Jaminan Dalam Praktik Peradilan Di Indonesia Serta Perlindungan Hukum Bagi Kreditur," *Jurnal Ilmiah Nusantara* 1, no. 4 (2024): 341–54, <https://doi.org/10.61722/jinu.v1i4.1777>.

**Third**, implications for the concept of joint property within the framework of positive law. Normatively, the provisions regarding joint property in the Compilation of Islamic Law emphasize that property acquired during marriage becomes joint property, unless otherwise specified in the marriage agreement. The general principle of division is that each party is entitled to half after divorce.<sup>40</sup> Although this case did not result in a  $\frac{1}{2} : \frac{1}{2}$  division ruling, the plaintiff's claim shows that this principle remains a normative reference in practice.

Interestingly, settlement through mediation opens up flexibility in the division of joint property. The agreement between the parties does not have to be identical to a mathematical half-and-half division, as long as it is agreed upon consciously and without coercion. This shows that the provisions on division in positive law are more appropriately understood as a default rule, which can be set aside by agreement as long as it does not violate the law and the principles of justice.<sup>41</sup>

Thus, this case illustrates that the concept of joint property in practice is not solely enforced through adjudicative decisions, but also through the mechanism of party autonomy.<sup>42</sup> Mediation provides space for the realization of more contextual substantive justice, although at the same time it has the potential to reduce the jurisprudential contribution to the development of substantive law on joint property.<sup>43</sup> The absence of substantive legal considerations in the verdict means that this case does not produce a normative precedent that can be used as a reference for similar cases in the future.

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<sup>40</sup> Pardan Syafrudin, "Comparative Study on Gono Gini's Assets Due to a Death According to the Islamic Law and Positive Law," *Journal of Islamicate Studies* 1, no. 1 (2018): 11–29, <https://doi.org/10.32506/jois.v1i1.438>.

<sup>41</sup> Agil Nur Qulubi, "Marriage Agreement Regarding Joint Property Cases from an Islamic Legal Perspective," *Contemporary Islamic Law Journal* 1, no. 01 (2024): 21–29.

<sup>42</sup> Nataliia Ryzhenko, "Peculiarities of Proof in Cases of Division of Joint Marital Property," *European Scientific E-Journal*, no. 35 (March 2025): 81–86, <https://doi.org/10.47451/jur2025-01-01>.

<sup>43</sup> Khoirunnisa Khoirunnisa and Rahmi Hidayati, "The Jurimetri Formulation of Court Decisions in the Division of Joint Property," *SMART: Journal of Sharia, Traditon, and Modernity*, July 30, 2023, 28–40, <https://doi.org/10.24042/smart.v3i1.16978>.

## Conclusion

The division of joint property is mentioned in several regulations, namely Law Number 1 of 1974 article 37 concerning Marriage “*If the marriage is terminated due to divorce, joint property shall be regulated according to their respective laws.*” This means “Their respective laws refer to religious law, customary law, and other laws.” This is what has led to the existence of many regulations discussing joint property. The Civil Code and the Islamic Family Law Code both provide for the equal division of joint property based on the principle of fairness. In the compilation of Islamic law, joint property is equated with the proceeds of a syirkah or partnership between husband and wife. It is different if it is based on customary law, because customary law has its own system of marriage, kinship, and other matters.

In decision No. 308/Pdt.G/2025/PA.Plk, the plaintiff filed a lawsuit with the Religious Court in Palangka Raya to settle a dispute over joint property with the defendant. This lawsuit was filed because the defendant was unwilling to settle the matter amicably. In the lawsuit, the plaintiff requested that the judge issue a seizure order so that the joint property would not be damaged or transferred. The request for seizure of collateral was valid as a measure to ensure that the disputed property was secure and that the court proceedings were conducted in accordance with the rules. In addition, the plaintiff also requested that the defendant be ordered to return his rights to the joint property. The settlement of this case was carried out through mediation assisted by a third-party mediator. After the mediation was successful, the plaintiff withdrew the lawsuit and the case was considered closed.

The withdrawal of case No. 308/Pdt.G/2025/PA.Plk does indeed indicate that the parties reached an agreement, but the settlement does not have legal force because it was not recorded in a deed of settlement. In fact, when mediation is successful, PERMA No. 1 of 2016 Chapter VIII gives the parties the authority to submit the peace agreement to be ratified as a peace deed. A settlement agreement is binding and has permanent force, even equivalent to a court decision, so that it can be enforced in the event of a violation. Because this case was settled through

withdrawal without a settlement agreement, this dispute opens up the possibility for the plaintiff to file again with the same object.

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