



## Toward an Islamic Functional Theory of Marital Assets: Bridging Classical Fiqh and Modern Legal Needs

Suprihatin<sup>1</sup>, Karimuddin Abdullah Lawang<sup>2</sup>, Ayi Yunus Rusyana<sup>3</sup>, Nandang Najmudin<sup>4</sup>

<sup>1</sup>Universitas Islam 45 Bekasi, Indonesia

<sup>2</sup>Universitas Islam Al-Aziziyah Indonesia (UNISAI), Indonesia

<sup>3,4</sup>Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia

\*Email: [shatin421@gmail.com](mailto:shatin421@gmail.com)

\*Corresponding Author

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### Abstract

This study originates from the absence of a functional theory that systematically explains the legal status of joint marital property within the framework of Islamic law. Previous studies have predominantly focused on normative aspects such as partnership (*shirkah*), maintenance (*nafaqah*), and gifts (*hibah*), without conceptualizing joint property as an instrument for protecting the reciprocal rights of spouses. This theoretical gap raises critical questions regarding how Islamic jurisprudence can respond to the demands of modern legal systems that emphasize legal certainty, economic justice, and mutual protection within marriage. Accordingly, this research aims to formulate a Functional Theory of Joint Marital Property from an Islamic perspective through the integration of classical fiqh principles, social functionalist theory, and the local wisdom of the Indonesian archipelago (Nusantara). The study employs a library-based research method with normative analysis, utilizing approaches from *usul al-fiqh*, legal hermeneutics, and social systems theory. This multidimensional approach enables the identification of principles of reciprocity, public interest (*maslahah*), and rights protection embedded in classical fiqh texts, as well as their relevance to the Indonesian legal system. The findings indicate that joint marital property serves three primary functions: a protective function safeguarding the rights of both spouses; a stabilizing function ensuring the continuity and resilience of the household; and an integrative function that harmonizes Islamic jurisprudence with the requirements of modern legal frameworks. This functional theory of joint marital property constitutes a novel contribution to the development of Islamic family law in Indonesia and may serve as a foundational framework for regulatory reform, the formulation of jurisprudential guidelines, and the strengthening of rights-based protection mechanisms within marriage.

**Keywords:** Islamic Family Law, Islamic Jurisprudence, Local Wisdom, Marriage Law



### **Abstrak**

Penelitian ini berangkat dari ketiadaan teori fungsional yang secara sistematis menjelaskan kedudukan hukum harta bersama dalam perkawinan dalam kerangka hukum Islam. Penelitian-penelitian sebelumnya cenderung berfokus pada aspek normatif seperti shirkah (persekutuan), nafaqah (nafkah), dan hibah (pemberian), tanpa mengonseptualisasikan harta bersama sebagai instrumen perlindungan atas hak dan kewajiban timbal balik suami dan istri. Kesenjangan teoretis ini menimbulkan pertanyaan mendasar mengenai bagaimana fikih Islam dapat merespons tuntutan sistem hukum modern yang menekankan kepastian hukum, keadilan ekonomi, dan perlindungan timbal balik dalam perkawinan. Oleh karena itu, penelitian ini bertujuan untuk merumuskan Teori Fungsional Harta Bersama dalam Perkawinan dari perspektif Islam melalui integrasi prinsip-prinsip fikih klasik, teori fungsionalisme sosial, serta kearifan lokal Nusantara. Penelitian ini menggunakan metode penelitian kepustakaan dengan analisis normatif, melalui pendekatan ushul al-fiqh, hermeneutika hukum, dan teori sistem sosial. Pendekatan multidimensional ini memungkinkan identifikasi prinsip-prinsip resiprositas, kemaslahatan (masalah), dan perlindungan hak yang terkandung dalam teks-teks fikih klasik, serta relevansinya terhadap sistem hukum Indonesia. Hasil penelitian menunjukkan bahwa harta bersama dalam perkawinan memiliki tiga fungsi utama, yaitu fungsi protektif dalam melindungi hak-hak kedua pasangan; fungsi stabilisasi dalam menjaga keberlangsungan dan ketahanan rumah tangga; serta fungsi integratif yang mengharmoniskan fikih Islam dengan kebutuhan kerangka hukum modern. Teori fungsional harta bersama ini merupakan kontribusi baru dalam pengembangan hukum keluarga Islam di Indonesia dan dapat menjadi kerangka dasar bagi reformasi regulasi, perumusan pedoman yurisprudensi, serta penguatan mekanisme perlindungan hak berbasis keadilan dalam perkawinan.

**Kata Kunci:** Hukum Keluarga Islam, Fikih Islam, Kearifan Lokal, Hukum Perkawinan

### **Introduction**

This introduction opens a central debate on the legal status of joint marital property in Indonesia, an issue that intertwines historical, normative, and sociological dimensions. From the perspective of positive law, the concept of joint property emerged with the implementation of the Indonesian Civil Code (*Burgerlijk Wetboek*) in the nineteenth century, which introduced provisions concerning the shared utilization of property within marriage.<sup>1</sup> Conceptually, these provisions reflect a legislative effort to accommodate social realities of family life through the principle of jointness and have been regarded as a response to the need for collective responsibility within the domestic sphere.<sup>2</sup> However, within the realm of Islamic jurisprudence, the normative question of whether and how joint marital property can be situated within the classical fiqh tradition remains contested: some scholars reject the concept unless it is framed through the mechanism of shirkah, while others argue that the

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<sup>1</sup> Mesraini, "Konsep Harta Bersama Dan Implementasinya Di Pengadilan Agama," *Ahkam: Jurnal Ilmu Syariah* XII, no. 1 (2012): 59–70, <https://doi.org/10.15408/ajis.v12i1.980>.

<sup>2</sup> Adhitya Prayogi, "Paradigma Positivisme Dan Idealisme Dalam Ilmu Sejarah: Tinjauan Reflektif Terhadap Posisi Sejarah Sebagai Ilmu," *Tamaddun Jurnal Kebudayaan Dan Sastra Islam* 21, no. 1 (2021): 75–90; Dwanda Julisa Sistyawan et al., "The Position of the Van Dading Deed in the Settlement of Joint Property Disputes: Study of Decision 901/Pdt.G/2023/PA. Tmg," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 49–67, <https://doi.org/10.32505/qadha.v11i1.8811>.

practice of joint property may be interpreted as part of Islamic teachings that remain relevant to contemporary family life.<sup>3</sup>

A review of previous studies indicates that academic literature tends to discuss joint marital property through existing fiqh categories such as *shirkah*, *hibah*, or *nafāqah*, without formulating a theoretical framework that positions joint property as an institution with an independent legal function. Critiques of the regulation of joint property within the Compilation of Islamic Law (Kompilasi Hukum Islam) have also emerged from both academics and practitioners; several studies highlight the automatic formation of joint property and the potential for legal uncertainty resulting from such provisions.<sup>4</sup> At the institutional level, fatwas and decisions issued by Islamic organizations reveal diverse positions: for instance, the decision of the Nahdlatul Ulama Grand Conference (1960) requires the consent of heirs for inherited property to be treated as joint property,<sup>5</sup> while Persis emphasizes that marriage does not automatically transfer ownership except under specific conditions resembling *shirkah* or a mutual agreement.<sup>6</sup>

From an empirical perspective, field studies demonstrate public apathy and a lack of understanding regarding joint property regulations; cases observed in communities such as Samalanga–Bireuen indicate a low level of post-divorce or post-mortem property distribution due to limited public information<sup>7</sup>. In addition, litigation experiences related to access to banking evidence and prenuptial agreements in joint property disputes reveal the practical complexity of such regulations. These challenges have prompted juridical responses in the form of Constitutional Court Decisions No. 64/PUU-X/2012 and No. 69/PUU/XIII/2015, addressing issues of evidentiary access and contractual freedom within marriage.<sup>8</sup> Public cases involving disputes over marital assets among public figures further illustrate the tension between the doctrine of separate property ownership and social practices that necessitate legal mechanisms for protecting spousal rights.<sup>9</sup>

Based on this body of scholarship, a clear research gap can be identified: existing literature has not yet provided a systematic and normative theoretical framework for understanding joint marital property as an instrument for protecting the rights of spouses, a

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<sup>3</sup> Linda Firdawaty, "Filosofi Pembagian Harta Bersama," *Asas: Jurnal Hukum Ekonomi Syariah* 8, no. 1 (2016): 88–96; Bakti Ritonga et al., "Islamic Family Law Reform in Indonesia: A Review of the Supreme Court's Decision on the Postponement of the Distribution of Joint Property," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 292–311, <https://doi.org/10.32505/qadha.v11i2.9667>.

<sup>4</sup> Elifia Elimartati, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *JURIS: Jurnal Ilmu Syariah* 19, no. 2 (2020): 231–43. Widyasari & Muhammad Arif, "Rekonstruksi Hukum Harta Bersama Dalam Perkawinan," *Unes Law Review* 6, no. 1 (2023): 593–601, <https://doi.org/10.31933/unesrev.v6i1.745>.

<sup>5</sup> Tim Penyelaras Lembaga Ta'lif wan nasyr PBNU, *Solusi Problematika Aktual Hukum Islam: Keputusan Mukhtar, Munas Dan Konbes NU 1926-2015* (Surabaya: Khalista, 2011), 253.

<sup>6</sup> Happy Susanto, *Pembagian Harta Gono-Gini Saat Terjadi Perceraian* (Jakarta: Visi Media, 2008), 23.

<sup>7</sup> Zaiyad Zubaidi, "Problematika Pembagian Harta Bersama Di Daerah Samalanga Bireuen," *Jurnal Al-Ijtima'iyah* 5, no. 2 (2019): 55–74, <https://doi.org/10.22373/al-ijtimaiyyah.v5i2.4779>.

<sup>8</sup> Sri Harini Dwiyatmi Dan Indirani Wauran, "Menembus Rahasia Bank Terkait Harta Bersama Dalam Perkawinan," *Refleksi Hukum, Jurnal Ilmu Hukum* 2, no. 1 (2017): 97–108, <https://doi.org/10.24246/jrh.2017.v2.i1.p97-108>.

<sup>9</sup> Mesraini, "Konsep Harta Bersama Dan Implementasinya Di Pengadilan Agama," *Ahkam: Jurnal Ilmu Syariah* XII, no. 1 (2012): 59–70, <https://doi.org/10.15408/ajis.v12i1.980>.

theory that distinguishes the legal functions of joint property from classical fiqh institutions (*shirkah, hibah, nafāqah*) while integrating both normative–constitutional and sociocultural legitimacy. This gap is significant because, in the absence of an explicit theoretical framework, legal implementation and policy development are prone to fragmented interpretations and the risk of legal uncertainty.

This study occupies a normative–sociological theoretical position by proposing a new formulation, namely the Functional Theory of Joint Marital Property, which conceptualizes property controlled by the husband and/or wife as capable of performing joint functions through a benefit-transfer contract under specific conditions, without automatically altering ownership status as occurs in *hibah* or *shirkah*. This theoretical stance is constructed through an interpretive approach to Islamic legal texts, employing *mafḥūm muwāfaqah* to assess the coherence of fiqh principles with the demands of modern family justice.

The significance of this research lies in both its theoretical and practical contributions. Theoretically, it seeks to address a conceptual void within the study of *fiqh mu‘āmalāt* and Islamic family law. Practically, the proposed formulation is intended to provide a foundation for policy options, ranging from the development of jurisprudential guidelines to regulatory recommendations, that are more responsive to social realities and aligned with the constitutional principles of Pancasila and the 1945 Constitution of the Republic of Indonesia. By clarifying the research objectives at the outset and thematically synthesizing relevant literature, this introduction positions the study as a systematic effort to bridge classical fiqh discourse, local cultural practices, and the requirements of modern legal systems.

This study employs a normative–qualitative research design based on library research,<sup>10</sup> utilizing an *uṣūl al-fiqh* approach that focuses on the examination of authoritative texts to construct conceptual legal arguments. As a normative study, the object of analysis is not directed toward empirical data, but rather toward sources of Islamic law, relevant national regulations, and academic literature addressing joint marital property.<sup>11</sup> The research model follows a textual–doctrinal analytical framework, examining the structure of arguments, evidentiary bases (*dalīl*), and normative rationales within fiqh and *uṣūl al-fiqh* literature in order to generate a new theoretical construction.

The application of the *uṣūl al-fiqh* approach in this study specifically refers to the theory of *dalālah al-alfāz* within the framework of *mafḥūm muwāfaqah*, as developed in the classical *uṣūl al-fiqh* tradition by al-Ghazali.<sup>12</sup> This theory is selected due to its analytical capacity to extract legal meanings that are not explicitly stated in the textual sources (*nash*), yet are substantively consistent with, and even stronger than, the meanings explicitly articulated. The choice of *mafḥūm muwāfaqah* is considered more appropriate than other *uṣūl al-fiqh* approaches, such as *qiyās* or *istiṣlāḥ*, because the objective of this research is not to establish new legal rulings for different cases, but rather to uncover the inherent normative functions embedded within the sharia texts governing spousal relations and the utilization of property within marriage.

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<sup>10</sup> Endah Marendah Ratnaningtyas et al., *Metodologi Penelitian Kualitatif* (Sigli: Yayasan Penerbit Muhammad Zaini, 2023), 41.

<sup>11</sup> Mestika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Indonesia, 2008), 54.

<sup>12</sup> Abu Hamid Al-Ghazali, *Al-Mushtashfa Min Ilmi Al-Ushul* (Beirut: Dar al-Kutub al-Ilmiyah, 2010), 286.

Operationally, the theory of *mafḥūm muwāfaqah* is applied through several analytical stages, namely: the identification of key Qur'anic verses and prophetic traditions regulating maintenance obligations (*naḥāqah*), the use of property, and principles of family justice; the classification of legal themes related to the function of property within marriage; the analysis of the relationship between explicit meaning (*manṭūq*) and implicit meaning (*mafḥūm*); and the formulation of normative conclusions regarding the applicability of joint property functions without altering individual ownership status. This approach enables a systematic integration of classical fiqh with the demands of modern legal systems, while simultaneously serving as the conceptual foundation for the formulation of the Functional Theory of Joint Marital Property from an Islamic perspective.

Data collection procedures were conducted through the systematic selection of classical and contemporary fiqh and *uṣūl al-fiqh* texts, national and international academic journals, statutory regulations, court decisions, and relevant non-fiqh academic literature. Source selection was guided by criteria of scholarly authority, thematic relevance, and direct connection to issues of ownership and the function of property within marriage. Data analysis was carried out using content analysis techniques by constructing conceptual categories such as ownership, benefit (*manfa'ah*), contract (*'aqd*), and property functions. To explore implicit meanings within the texts, this study employs the *dalālah* of *mafḥūm muwāfaqah*, namely the attribution of legal rulings to matters not explicitly mentioned but possessing equivalent meaning to those that are explicitly stated.<sup>13</sup> Through this method, the research interprets textual sources to uncover both legal and extra-legal knowledge, which is subsequently formulated into a theory of joint property functions as the analytical foundation of this study.

### **The Foundations for Formulating the Theory of the Function of Joint Marital Property in Marriage Based on Fiqh**

The formulation of a theory on the function of joint marital property in marriage based on fiqh requires a robust conceptual foundation to ensure its academic accountability. The philosophical underpinnings, encompassing ontological, epistemological, and axiological dimensions, must not merely serve as theoretical exposition but function as an analytical framework explaining how these dimensions construct the proposed theory. Ontologically, this theory departs from the fundamental understanding of fiqh as a discipline directly concerned with *af'āl al-mukallaḥīn*, namely human actions and relations in managing, using, and benefiting from objects (*al-ashyā'*) within social life. The ontological manifestation of the function of joint property lies not merely in the material object itself, but in the relationship between humans as moral subjects and property as an object that acquires utility value through action. Accordingly, the function of joint property emerges from social relations involving the husband as the owner of property and family members as beneficiaries. When the Qur'an, in Sūrat al-Naḥl verse 5, explains that property possesses *manāfi'* (benefits) for humankind, the verse does not merely describe material existence but indicates an ontological foundation that property inherently carries both *sharī'ah*-based and social functions. This ontology directly animates the theory of the function of joint property,

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<sup>13</sup> Wahbah Al-Zuhaili, *Al-Wajiz Fi Usul Al-Fiqh* (Beirut: Dar al-Fiqr, 1995), 212.

as the theory is constructed upon the principle that property controlled by an individual may transform into “joint property” when it functions to sustainably fulfill family needs.

The epistemological aspect of this theory is constructed from the body of knowledge within *fiqh* and *uṣūl al-fiqh*. Primary sources, such as Qur’anic verses concerning the obligation of maintenance (*nafāqah*), including Sūrat al-Baqarah verse 233 and Sūrat al-Ṭalāq verses 6–7, provide a foundation for understanding that marriage entails a requirement for the husband to operationalize his property to ensure the continuity of family life. The hadith concerning Ra’ithah, the wife of Ibn Mas’ūd, as narrated by Shu’ayb al-Arna’ūṭ, further expands this epistemological basis by introducing the possibility of property contributions from the wife, albeit still within the functional framework of maintenance and benevolence. Through these texts, the theory of the function of joint property is grounded in the *dalālah* of *mafḥūm muwāfaqah*, namely the attribution of legal meaning to matters not explicitly stated but substantively aligned with the explicit meaning. The use of *mafḥūm muwāfaqah* is not merely a method of *istidlāl*, but an epistemological mechanism that explains how knowledge regarding the function of property is analyzed, derived, and formulated into a coherent theory. This principle ensures that the formulation of the theory does not constitute arbitrary interpretation, but adheres to the established methodological framework of *uṣūl al-fiqh*, as articulated by al-Ghazali and al-Zuhaili.<sup>14</sup> Accordingly, the epistemology of this theory demonstrates a direct relationship between methodological approach and the resulting theoretical outcomes.

The axiological dimension of the theory of the function of joint property provides value-based justification for its formulation. This theory does not merely explain the *sharī’ah*-based function of property, but offers values of *maṣlahah* in the form of justice, relational balance, and certainty of rights within marriage. This axiological construction aligns with al-Ghazali’s concept of *‘adl*, which defines justice as the fulfillment of obligations in accordance with the provisions set by Allah SWT.<sup>15</sup> By operationalizing the function of joint property in line with *sharī’ah* principles, a harmonious relationship is formed between humans and God, as well as among husbands, wives, and family members. This perspective resonates with the concept of objectification advanced by Kuntowijoyo and Abdul Rokhim, which posits that internal Islamic values must be articulated within an objective domain so that they may be accepted as scientific knowledge and social practice.<sup>16</sup> Thus, the axiology of this theory extends beyond religious values toward the formation of a just and balanced social system.

The juridical foundation of this theory is developed by linking *fiqh* principles with the national legal system. Within the context of Indonesia as a state governed by law, the formation of legal norms must not infringe upon citizens’ rights as guaranteed by the 1945 Constitution and Law No. 39 of 1999 on Human Rights. Criticism of the automatic establishment of joint property under Law No. 1 of 1974 must be positioned academically rather than as a normative accusation. The statutory construction of joint property

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<sup>14</sup> Abu Hamid Al-Ghazali, *Al-Mushtashfa Min Ilmi Al-Ushul*, 286.

<sup>15</sup> Abū Hāmid Muhammad Al-Ghazali, *Ihya Ulum Al-Din*, Juz 2 (Mesir: Dar al-Qahirah, 2004), 85.

<sup>16</sup> Kuntowijoyo, *Islam Sebagai Ilmu: Epistemologi, Metodologi Dan Etika* (Tiara Wacana, 2006). Abdul Rokhim et al., “Islamic Legal Principles and National Reform: A Study of the 2023 Indonesian Penal Code,” *Kanun: Jurnal Ilmu Hukum* 27, no. 1 (2025): 133–51, <https://doi.org/10.24815/kanun.v27i1.41348>.

potentially raises theoretical issues concerning ownership authority, as it does not sufficiently consider elements of consent (*riḍā*) or transfer (*taslīm*), which constitute fundamental principles of fiqh regarding the transfer of rights. This academic critique has been discussed in Indonesian family law literature, including by Cammack, who explains that certain norms governing marital property in Indonesia continue to exhibit tensions among fiqh, customary law, and the civil law system.<sup>17</sup> Therefore, the theory of the function of joint property is proposed not as a challenge to the state, but as a theoretical framework for assessing whether marital law norms align with principles of substantive justice, legal certainty, and the protection of property rights as understood within Islamic law.

From the perspective of legal theory, the application of Hans Kelsen's Stufenbau Theory,<sup>18</sup> as elaborated by Ashshiddiqie and Safa'at, strengthens the analysis that every norm within the Indonesian legal system must be hierarchically accountable. When the state regulates joint marital property, such regulation must conform to constitutional norms, particularly Article 29 paragraphs 1 and 2 of the 1945 Constitution, which guarantees the religious practices of citizens.<sup>19</sup> Accordingly, the theory of the function of joint property based on fiqh may serve as an academic argument underscoring the need for regulations that are sensitive to shari'ah principles, especially for Muslim citizens. This approach is consistent with the views of Moh Khasan and Agung Wibowo, who assert that synchronization between religious norms and state norms constitutes an essential element of reconstructing national family law.<sup>20</sup>

From a sociological standpoint, this theory seeks to respond to the needs of Indonesian society, which is predominantly Muslim and exhibits a strong reliance on shari'ah teachings as a guide for daily life. The Credo Theory proposed by Mahir Amin posits that religious teachings function as a value system shaping social behavior.<sup>21</sup> In this context, the obligation of maintenance (*nafāqah*) serves as both a normative foundation and a social practice that determines how property is utilized within marriage. Studies by Khoiruddin Nasution have revealed concerns among some women regarding the lack of

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<sup>17</sup> Mark E Cammack, "Marital Property in California and Indonesia : Community Property and Harta Bersama," *Washington and Lee Law Review* 64, no. 4 (2007): 1417–60. Hafidz Taqiyuddin, "Konsep Islam Tentang Keadilan (Kajian Interdisipliner)," *Aqlania: Jurnal Filsafat Dan Teologi Islam* 10, no. 2 (2019): 157–170.

<sup>17</sup> Kasjim Salenda, "Hukum Islam Indonesia Sebagai Role Model Islam Nusantara," *Al-Ulum* 16, no. 1 (2016): 229–245.

<sup>18</sup> Hans Kelsen, *General Theory of Law and State*, *General Theory of Law and State* (Russel, 2017), <https://doi.org/10.4324/9780203790960>.

<sup>19</sup> Jimly Ashshiddiqi dan M. Ali Safa'at, *Teori Hukum Hans Kelsen*, Pertama (Jakarta: Setjen Dan Kepaniteraan MK RI, 2006), 63.

<sup>20</sup> Moh Khasan, "Prinsip-Prinsip Keadilan Hukum Dalam Asas Legalitas Hukum Pidana Islam," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 21, <https://doi.org/10.33331/rechtsvinding.v6i1.133>. Agung Wibowo and Arif Sugitanata, "Teori Peningkatan Norma Dan Penemuan Hukum Islam (Pendalaman Dan Rekonstruksi Konsep)," *Jurnal Darussalam: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 3, no. 1 (2023): 79–96, <https://doi.org/10.59259/jd.v3i1.50>.

<sup>21</sup> Mahir Amin, "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 2 (2014): 323–342.

clarity in property protection within classical fiqh.<sup>22</sup> The theory of the function of joint property offers a solution by explaining how property used for family interests may acquire legitimacy as joint property through functional mechanisms, rather than through the automatic unification of ownership. This approach is more consistent with the principles of consent, justice, and the needs of modern society.

Through this interconnected philosophical, juridical, and sociological framework, the theory of the function of joint property based on fiqh attains a strong, operational, and contextually relevant scholarly foundation within the Indonesian legal landscape. This theory not only reinforces existing norms but also offers refinement in pursuit of justice and *maṣlaḥah* for Muslim families in Indonesia.

### Formulation of the Theory of the Function of Joint Marital Property in Marriage Based on Fiqh

The formulation of a theory concerning the function of joint marital property from a fiqh perspective necessitates a rigorous and structured application of *uṣūl al-fiqh* as a theoretical framework, rather than a purely descriptive engagement with normative texts. This approach requires not only extracting legal principles from the *sharīʿah* sources but also systematically operationalizing *uṣūl al-fiqh* methodologies, such as *taʿlīl al-aḥkām*, *qawāʿid fiqhiyyah*, and *maqāṣid al-sharīʿah*, to respond to contemporary socio-legal realities. In classical fiqh, marital property is fundamentally grounded in the principles of *iktisāb* (acquisition), *milkiyyah* (ownership), and *shirkah* (partnership). Although the explicit term “joint marital property,” as understood in modern legal systems, does not appear in classical sources, *uṣūl al-fiqh* provides a legitimate epistemological pathway for reconstructing its functional meaning. Accordingly, the formulation of this theory begins with a comprehensive reading of the *naṣṣ*, juristic reasoning, and *uṣūl* maxims, which are then analytically projected onto the functional dynamics of contemporary family life.<sup>23</sup>

Within the Shāfiʿī school of fiqh, property acquired by each spouse is, in principle, classified as individual ownership and does not automatically transform into joint property. However, from an *uṣūl al-fiqh* perspective, this doctrinal position does not preclude functional reinterpretation when social practice reveals a different legal reality. Empirically, family financial practices frequently exhibit patterns of *musyāʿah* (undivided cooperation), particularly in households sustained by dual economic contributions.<sup>24</sup> Through the lens of *taʿlīl al-aḥkām*, such cooperation constitutes a relevant *ʿillah* that justifies the construction of joint property as a legal consequence. Where explicit regulation is absent, *uṣūl al-fiqh* legitimizes *ijtihād* through *istiṣlāḥ*, *maḥḥūm muwāfaqah*, and contextual legal reasoning to bridge the gap between normative doctrine and lived legal realities.<sup>25</sup>

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<sup>22</sup> Khoiruddin Nasution, “Pengaruh Gerakan Wanita Terhadap Wacana Hukum Islam: Studi Hukum Perkawinan Indonesia,” *Al-Mawarid* 14, no. 1 (2015): 255-266, 10.20885/https://doi.org/almawarid.vol14.art6.

<sup>23</sup> Muhammad Ibn Idris Asy-Syafiʿi, *Al-Umm* (Yaman: Dār Al-Ḥādīṣ, 2008), 178.

<sup>24</sup> K. A. Abdullah, A., & Lawang, “Legalitas Hak Guna Istri Terhadap Harta Suami Menurut Fiqh Syafiʿiyah Dan Hubungannya Dengan Sistem Kekeluargaan Di Indonesia,” *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 8, no. 2 (2022): 284-299.

<sup>25</sup> Wahbah Al-Zuhaili, *Al-Wajiz Fi Usul Al-Fiqh* (Beirut: Dar al-Fiqr, 1995), 212.

The first analytical stage in this formulation is the identification of foundational *uṣūl*-based values governing ownership and family justice in Islamic law. Principles such as *muqābalah* (reciprocity) and the categorical prohibition of *ẓulm* (injustice) are not merely ethical imperatives but function as normative legal objectives consistently affirmed by *sharī'ah* texts.<sup>26</sup> When operationalized within an *uṣūl al-fiqh* framework, these principles require that the distribution of economic benefits within marriage must not generate structural inequality between spouses. Consequently, a functional theory grounded in *uṣūl al-fiqh* reconceptualizes joint property not as a neutral material asset but as an institutional mechanism for realizing distributive justice and family welfare.<sup>27</sup>

The second stage involves an analytical reconstruction of *qawā'id uṣūl al-fiqh* to delineate the legal logic underlying joint property. The maxim *al-ḥukmu yadūru ma'a 'illatihi wujūdan wa 'adaman* operates as a central analytical tool, enabling joint property to be framed as a legal instrument when the operative *'illah*, namely, the realization of family *maṣlahah*, is present. This is particularly relevant in anticipating post-divorce economic vulnerability experienced by wives.<sup>28</sup> Within this methodological construction, joint property emerges as a *lāzim* (necessary implication) of sustained economic cooperation, where contributions, both material and non-material, are functionally integrated within household production. This reasoning is consistent with contemporary *fiqh al-mu'āmalāt* approaches that emphasize legal adaptability in response to changes in custom (*'urf*), economic organization, and gender relations.<sup>29</sup>

Furthermore, the method of *mafḥūm muwāfaqah* is employed to extract the implicit normative implications of *sharī'ah* texts addressing maintenance (*naḥāqah*), cooperation, and family protection. From an *uṣūl al-fiqh* standpoint, if the obligation of maintenance is prescribed as a mechanism for ensuring justice, then any legal structure that more effectively secures justice within marital relations logically falls within the objectives of the law. On this basis, joint property, understood as formal legal recognition of shared economic participation, constitutes a stronger realization of justice than a narrow, literal interpretation of maintenance obligations alone.<sup>30</sup> *Mafḥūm muwāfaqah* thus provides a normative justification for prioritizing substantive alignment with *maqāṣid* over strict textual literalism.<sup>31</sup>

The *uṣūl*-based formulation of this theory is further reinforced by sociological considerations that serve as empirical indicators of *maṣlahah*. In modern society, the

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<sup>26</sup> al-Imam Abdullah Muhammad Ib Ismail Al-Bukhori, *Sahih Al-Bukhori, al-Jami' al-Musnadi al-Sahih al-Mukhtashor*, (Yaman: Dar al-Hadits, 2011).202 Abi Al-Husaini Muslim bin al-Hijaj al-Qusyairi al-Naisaburi, *Mukhtashor Sahih Muslim* (Mesir: al-Maktabu al-Islami, 1987).203

<sup>27</sup> Mesraini, "Konsep Harta Bersama Dan Implementasinya Di Pengadilan Agama," *Ahkam: Jurnal Ilmu Syariah* XII, no. 1 (2012): 59–70, <https://doi.org/10.15408/ajis.v12i1.980>.

<sup>28</sup> Abu Hamid Al-Ghazali, *Al-Mushtashfa Min Ilmi Al-Ushul* (Beirut: Dar al-Kutub al-Ilmiyah, 2010), 286.

<sup>29</sup> Muhammad Usman Tsabih, *Al-Madkhol Ila Fiqh al-Mu'amalah al-Maliyah* (Amman: Dar al-Nafa'is, 2018), 72. Muhammad Hasbi Ash-Shiddieqi, *Pengantar Fiqih Muamalah* (Semarang: Pustaka Rizki Putra, 1975), 38.

<sup>30</sup> A. Karimuddin, K., Abbas, S., Sarong, A. H., & Afrizal, "Standardisasi Nafkah Istri: Studi Perbandingan Mazhab Maliki Dan Mazhab Syafi'i," *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial*, 23, no. 1 (2021): 83–89.

<sup>31</sup> Wahbah Al-Zuhaili, *Al-Wajiz Fi Usul Al-Fiqh* (Beirut: Dar al-Fiqr, 1995), 212.

economic structure of the family is no longer exclusively dependent on the husband's income. The increasing participation of wives in formal and informal economic activities has produced de facto patterns of shared ownership and responsibility.<sup>32</sup> Moreover, Indonesian customary law traditions have long institutionalized joint property as a protective legal mechanism, particularly in cases of divorce or the death of a spouse.<sup>33</sup> From an *uṣūl al-fiqh* perspective, such practices qualify as valid *'urf ṣaḥīḥ* that may be incorporated into legal reasoning when they align with *sharī'ah* objectives.

Within this *uṣūl*-oriented framework, the function of joint property may be systematized into three interrelated dimensions. First, the protective function, which safeguards wives from economic vulnerability by legally recognizing the economic value of financial input, domestic labor, and moral support. This function is firmly grounded in the doctrine of *maṣlaḥah mursalah* as a legitimate basis for legal innovation in response to social necessity.<sup>34</sup> Second, the cognitive function, which conceptualizes marital economic cooperation as a valid form of *shirkah* under Islamic law, thereby justifying collective entitlement to its outcomes.<sup>35</sup> Third, the distributive function, which operationalizes justice by ensuring that post-marital property division reflects actual contributions, both material and non-material.<sup>36</sup>

Finally, the formulation of this theory incorporates the normative dimension of modern law as an extension of *uṣūl al-fiqh*'s concern with legal effectiveness (*taḥqīq al-manāṭ*). Although the Civil Code and the Compilation of Islamic Law regulate joint property, existing critiques indicate that these frameworks have not fully internalized relational justice within the family.<sup>37</sup> In this regard, a *fiqh*-based functional theory offers an *uṣūl*-grounded alternative for strengthening positive law, consistent with the principles of responsive law and law-and-development theory, which emphasize adaptability to social change.<sup>38</sup>

Based on the foregoing analysis, the theory of the function of joint marital property from a *fiqh* perspective can be formulated as an *uṣūl*-driven legal construct that conceptualizes joint property not merely as an economic asset, but as an institutional mechanism for protection, recognition of contribution, and the realization of justice within the family. By integrating classical *fiqh* doctrine, *uṣūl al-fiqh* methodology, local wisdom, and contemporary socio-legal needs, this theory offers a comprehensive and adaptive framework for addressing the evolving challenges of family law in Indonesia.

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<sup>32</sup> Widyasari & Muhammad Arif, "Rekonstruksi Hukum Harta Bersama Dalam Perkawinan," *Unes Law Review* 6, no. 1 (2023): 593–601, <https://doi.org/10.31933/unesrev.v6i1.745>.

<sup>33</sup> Elifia Elimartati, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *JURIS: Jurnal Ilmu Syariah* 19, no. 2 (2020): 231–43

<sup>34</sup> Juhaya Setya Pradja, *Filsafat Hukum Islam* (Lathifah Press dan Fakultas Syari'ah IAILM, 2009), 149.

<sup>35</sup> Al-Syamsu Al-Din Al-Sarakhsi, *Al-Mabsut* (Beirut: Dar al-Ma'rifah, n.d.), 36.

<sup>36</sup> Happy Susanto, *Pembagian Harta Gono-Gini Saat Terjadi Perceraian* (Jakarta: Visi Media, 2008), 23.

<sup>37</sup> Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Legislasi Indonesia* Vol: 16, no. No 3 (2020), 305–320. M Febrianto Rika Aryati, Hamzah Vensuri, "Sejarah Berlakunya BW Dan KUHPerduta Di Indonesia," *Journal Of Criminologi Of Justice* 2, no. 1 (2022), 1-15.

<sup>38</sup> Vallencia Nandya Paramitha and Universitas Airlangga, "Peran Hukum Islam Dalam Harmonisasi Hak Dan Kewajiban Asasi Manusia Dalam Perspektif Pancasila," *IMTIYAZ: Jurnal Ilmu Keislaman* 8, no. 1 (2024): 263–280. Sidharta, ed., *Mochtar Kusumaatmaja Dan Teori Hukum Pembangunan, Eksistensi Dan 2012 Implikasi* (Jakarta: Epistema Institute, 2012), 78.

## The Relevance of the Functional Theory of Joint Marital Property for the Reform of Modern Marriage Law in Indonesia

The reform of marriage law in Indonesia cannot be separated from social dynamics, the development of family economics, and the changing paradigm of husband–wife relations in modern society. In this context, the functional theory of joint marital property, constructed upon the foundations of Islamic jurisprudence (*fiqh*) and local wisdom, provides an important pathway for formulating a legal model that is not merely normative, but also operational, contextual, and responsive to contemporary needs. As emphasized by Kuntowijoyo, legal reform must originate from an epistemology capable of connecting classical intellectual traditions with contemporary social realities.<sup>39</sup> The functionalistic theory of joint property offers such an epistemological foundation, as it views property not merely as an object of ownership, but as an instrument of household stability, relational justice, and the protection of vulnerable parties' rights within marriage.

Within Indonesia's positive legal system, the concept of joint marital property has evolved gradually, influenced by the Burgerlijk Wetboek (BW), the Compilation of Islamic Law (KHI), and Constitutional Court Decision No. 69/PUU-XIII/2015 concerning prenuptial agreements.<sup>40</sup> However, existing regulations have not fully addressed the social-justice function of joint property, particularly regarding equitable access, control, and distribution between husbands and wives. Criticism of the KHI, for instance, indicates that its formulation of joint property remains generally normative and lacks an operational model capable of responding to modern challenges such as financial information asymmetry, disparities in domestic contributions, and unequal access to household resources.<sup>41</sup> Therefore, a *fiqh*-based functional theory of joint property can serve as a valuable reference for legal reform by offering a more comprehensive philosophical, historical, and methodological framework.

From the perspective of classical *fiqh*, joint marital property is not recognized as a formal terminological concept. Nevertheless, scholars of the Shafi'i school and other madhhab provide normative frameworks that protect a wife's ownership rights over assets acquired through labor, work, and domestic roles that functionally contribute to family sustainability.<sup>42</sup> This demonstrates that *fiqh* inherently accommodates the construction of joint property, even without employing modern legal nomenclature. Within *usul al-fiqh*, the methods of *istihsan* and *maslahah mursalah* legitimize the formulation of new legal norms as long as they are grounded in public benefit and do not contradict textual sources.<sup>43</sup>

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<sup>39</sup> Kuntowijoyo, *Islam Sebagai Ilmu: Epistemologi, Metodologi Dan Etika* (Tiara Wacana, 2006). Abdul Rokhim et al., "Islamic Legal Principles and National Reform: A Study of the 2023 Indonesian Penal Code," *Kanun: Jurnal Ilmu Hukum* 27, no. 1 (2025): 133–51, <https://doi.org/10.24815/kanun.v27i1.41348>.

<sup>40</sup> Damian Agata Yuvens, "Analisis Kritis Terhadap Perjanjian Perkawinan Dalam Putusan MK No 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2017): 799–819, <https://doi.org/10.31078/jk1445>.

<sup>41</sup> Elifia Elimartati, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *JURIS: Jurnal Ilmu Syariah* 19, no. 2 (2020): 231–43.

<sup>42</sup> K. A. Abdullah, A., & Lawang, "Legalitas Hak Guna Istri Terhadap Harta Suami Menurut Fiqh Syafi'iyah Dan Hubungannya Dengan Sistem Kekeluargaan Di Indonesia.," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 8, no. 2 (2022): 284–299.

<sup>43</sup> Abdul Wahab Kholaf, *Ilmu Usul Al-Fiqh* (Kairo: Maktabah Dar Al-Turats, 2009), 35.

Accordingly, the functional theory of joint property may be positioned as an actualization of the principle of *maslahah* within Indonesia's socio-legal context.

The relevance of this theory becomes even more pronounced when examined in light of modern social realities. Social modernization has transformed family structures from patriarchal-communal models into more egalitarian and individually oriented forms<sup>44</sup>. Women increasingly perform dual roles as participants in the public workforce and managers of domestic responsibilities. In many cases, however, this dual burden is not accompanied by equal access to the management of family assets. Studies on maintenance (*nafkah*), domestic contributions, and wives' rights reveal asymmetries that potentially generate relational injustice,<sup>45</sup> Consequently, the functional theory of joint property emerges as a theoretical solution that recognizes non-material contributions long neglected by traditional legal paradigms.

Modern legal reform also demands legal theories oriented toward function and utility, as developed by Mochtar Kusumatmadja in his theory of law as a means of development.<sup>46</sup> Marriage law should not merely regulate the formal relationship between husband and wife, but must also provide legal certainty regarding how joint property should be managed and utilized to support household welfare. By adopting a functionalistic approach as elaborated by Edy Wahyono and Wirawan, joint property can be understood as an interconnected social system, not merely a material object, but a mechanism for strengthening the family institution.<sup>47</sup>

In this regard, the functional theory of joint property is relevant to three main aspects of marriage law reform in Indonesia. First is the aspect of substantive justice. Through a fiqh-based approach that places *maqasid al-shari'ah* as its foundation,<sup>48</sup> the distribution and utilization of joint property are directed toward safeguarding justice for wives, particularly in cases of divorce or economic inequality within the family. Research by Mesraini indicates that disputes over joint property are often triggered by regulatory ambiguity and unequal bargaining positions of wives.<sup>49</sup> The functional theory of joint property can mitigate such issues by providing standards of justice based on functional contributions. Second is the aspect of legal protection. Judicial decisions frequently demonstrate divergent interpretations regarding what constitutes joint property and how it should be proportionally distributed. This problem is exacerbated by banking practices that restrict

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<sup>44</sup> Yunita Andriyani, "Pengaruh Modernisasi Terhadap Perilaku Siswa Sekolah Dasar," *Didaktik* Volume VII, no. 2 (2021), 12-124.

<sup>45</sup> Karimuddin, K., Abbas, S., Sarong, A. H., & Afrizal, "Standardisasi Nafkah Istri: Studi Perbandingan Mazhab Maliki Dan Mazhab Syafi'i."; Karimuddin, "Nafkah Anak Pasca Perceraian Orang Tua Menurut Fiqh Al-Syafi'iyah," *Jurnal Al-Fikrah* 20, no. 1 (2019): 105-132.

<sup>46</sup> Mochtar Kusumatmadja, *Konsep-Konsep Hukum Dalam Pembangunan, Kumpulan Tulisan Mochtar Kusumatmadja*, ed. Otje Salman (PT.Alumni, 2013).

<sup>47</sup> Edy Wahyono, "Penerapan Teori Fungsi Untuk Menganalisa Kehidupan Masyarakat," *Gelasr* 4, no. 2 (2006): 112-118.

<sup>48</sup> Abū Hāmid Muhammad Al-Ghazali, *Ihya Ulum Al-Din*, Juz 2 (Mesir: Dar al-Qahirah, 2004), 85.

<sup>49</sup> Mesraini, "Konsep Harta Bersama Dan Implementasinya Di Pengadilan Agama," *Ahkam: Jurnal Ilmu Syariah* XII, no. 1 (2012): 59-70, <https://doi.org/10.15408/ajis.v12i1.980>.

spouses' access to financial data.<sup>50</sup> Through a functional framework, legal reform can offer a functional definition of joint property along with objective parameters for assessing wives' domestic and economic contributions, thereby strengthening their legal standing. Third is the aspect of social utility. From a maqasid perspective, the objectives of marriage are to achieve tranquility (*sakinah*), stability (*istiqrar*), and family welfare (*maslahah*). Joint property, as a family asset, should be directed toward supporting these objectives rather than merely becoming an object of dispute. *Fiqh al-mu'amalat* has long established fundamental principles that regard property as a trust (*amanah*) and a productive means.<sup>51</sup> Therefore, legal reform must incorporate the socio-economic functions of joint property, including transparent management, protection against misuse, and family economic empowerment.

Furthermore, the functional theory of joint property also demonstrates relevance in terms of legal flexibility. Modernity introduces various new family forms, including dual-income households, dynamically distributed domestic roles, and the increasing practice of prenuptial agreements following Constitutional Court Decision No. 69/2015.<sup>52</sup> In fiqh, such flexibility can be elaborated through the concepts of 'urf and *maslahah mursalah*.<sup>53</sup> Thus, the functional theory of joint property serves as a bridge between sharia principles and modern socio-economic structures.

Based on the foregoing arguments, it can be affirmed that the functional theory of joint marital property holds strategic relevance for the reform of modern marriage law in Indonesia. It is not only deeply rooted in fiqh and local wisdom, but also aligned with international human rights principles, theories of legal development, and the demands of social modernization. Accordingly, this theoretical framework deserves to serve as a foundation for reforming the Compilation of Islamic Law, strengthening regulations on family asset management, and enhancing legal protection for women and children within marriage.

## Conclusion

This study affirms that joint marital property within marriage, as reflected in classical fiqh and Indonesian legal practice, serves functions far more complex than merely an object of economic division. Through a reconstruction grounded in *maqāsid al-sharī'ah*, functional social theory, and Nusantara local wisdom, this research formulates that joint property should be understood as a protective institution that sustains husband-wife relations, ensures family stability, and guarantees post-marital welfare. Accordingly, the existence of joint property is not merely an administrative consequence of marriage, but constitutes an integral and dynamic mechanism for the protection of rights. This reformulation simultaneously critiques the limitations of classical fiqh, which tends to conceptualize

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<sup>50</sup> Sri Harini Dwiyatmi Dan Indirani Wauran, "Menembus Rahasia Bank Terkait Harta Bersama Dalam Perkawinan," *Refleksi Hukum, Jurnal Ilmu Hukum* 2, no. 1 (2017): 97–108, <https://doi.org/10.24246/jrh.2017.v2.i1.p97-108>.

<sup>51</sup> Muhammad Usman Tsabih, *Al-Madkhol Ila Fiqh al-Mu'amalah al-Maliyah* (Amman: Dar al-Nafa'is, 2018), 72.

<sup>52</sup> Damian Agata Yuvens, "Analisis Kritis Terhadap Perjanjian Perkawinan Dalam Putusan MK No 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2017): 799–819, <https://doi.org/10.31078/jk1445>.

<sup>53</sup> Abi Bakri Utsman Bin Muhammad Syato Ad-Dimyati, *I'anatu al-Talibin* (Beirut: Dar Ihya'i al-Kitabi al-Arabiyyah, n.d.), Juz. II, 52.

ownership in purely individual terms, and highlights the ambiguity of national regulations that continue to generate legal uncertainty in the resolution of joint property disputes.

The primary scholarly contribution (novelty) of this research lies in the formulation of the “Functional Theory of Joint Marital Property from an Islamic Perspective,” which offers three core propositions as a theoretical advancement. First is the protective function, whereby joint property operates as an instrument of reciprocal protection for both husband and wife through the integration of justice, reciprocity, and *maslahah*. Second is the stabilizing function, in which joint property serves as a buffer that reinforces family stability and mitigates socio-economic vulnerability, both during marriage and following divorce. Third is the integrative function, namely the harmonization of classical *fiqh* principles with the demands of modern legal systems through principles of equality of authority, accountability, and non-discriminatory rights protection. Collectively, these three functions constitute a new conceptual structure that has not yet been systematically articulated in either classical *fiqh* or existing Indonesian regulations, and thus may serve as a normative foundation for the reform of national marriage law and the strengthening of family rights protection in Indonesia.

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