

THE VIEWS OF RELIGIOUS COURT JUDGES IN NORTH SUMATRA REGARDING INTELLECTUAL PROPERTY ROYALTIES REMAINING JOINT PROPERTY AFTER DIVORCE

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ABSTRACT

The status of Intellectual Property Rights (IPR) royalties as part of joint assets after divorce continues to generate normative debate and judicial practice in Indonesia, due to the lack of explicit regulations in positive law and the Compilation of Islamic Law. This study aims to analyze the perspectives of Religious Court judges in North Sumatra regarding the status of IPR royalties after divorce, as well as the legal considerations used in deciding their distribution. The study uses an empirical juridical method through a statutory approach, a conceptual approach, and case studies, with data collected through in-depth interviews with judges and a study of legal documents related to IPR and marriage. The results show a diversity of judges' views, ranging from a moderate approach that stipulates a 50:50 division with flexibility based on the spouse's contribution, a progressive approach that recognizes non-financial contributions, to a restrictive view that rejects the distribution of royalties without a prenuptial agreement. This study confirms that the lack of standard standards encourages judges to apply the principles of substantive justice and the principle of *syirkah* in determining the distribution of royalties. This research contributes to strengthening the theoretical basis and the urgency of establishing specific regulations regarding the status of IPR royalties in marriage to provide legal certainty and justice.

Keywords: royalties, intellectual property rights, joint property, divorce, Religious Courts

1. INTRODUCTION

Marriage in Indonesia is understood not only as a religious and social bond, but also as a legal and economic entity that has consequences for the management of the couple's assets (Rizquallah & Fuad, 2024). Law Number 1 of 1974 and the Compilation of Islamic Law (KHI) emphasize that all assets acquired during a marriage constitute joint property, unless otherwise stipulated in a prenuptial agreement (Yunita, 2024). In the modern economic context, joint property is not limited to material assets such as property or

savings, but also encompasses intangible assets, including Intellectual Property Rights (IPR) in the form of royalties from creative works (Dewi Rinjani & Cahyaningsih, 2024).

The development of the creative and digital economy in Indonesia further reinforces the urgency of this issue, as IPR royalties are now a significant source of income for creative actors in various fields (Atsar, 2023). However, the status of IPR royalties after divorce is not explicitly regulated in Indonesian positive law, creating wide room for interpretation in judicial practice (Sri Astuti Agustina & Hakim, 2025). This legal vacuum has resulted in diverse interpretations among judges regarding the status of royalties as community property and the mechanism for their distribution upon the dissolution of a marriage (Kudus et al., 2024).

Some court decisions establish that royalties earned during a marriage are community property that must be divided fairly between the parties, as reflected in decisions concerning public figures that have become a reference for the public and academics on this issue (Puspadewi, 2024). However, other practices demonstrate a more restrictive approach, rejecting the distribution of royalties without a prenuptial agreement explicitly regulating such rights, based on the principles of copyright exclusivity and creator autonomy (Hasyim & Aprita, 2023). This diversity of practices demonstrates the tension between the principle of protecting the economic rights of creators, the principle of distributive justice for families, and the absence of specific legal norms.

Academically, this issue is relevant to the study of Islamic family law and intellectual property law because it examines the conceptual boundaries between *shirk* (community partnership) within a household and personal economic rights over intellectual works (Nasution et al., 2023). Furthermore, this discourse is closely related to the principles of *maqasid sharia*, particularly the protection of property (*ḥifẓ al-māl*) and the protection of the family (*ḥifẓ al-nasl*), which place distributive justice as the basis for legal determination in joint property disputes (Manurung & Syahputra, 2024).

However, empirical studies regarding the perspectives of Religious Court judges on IPR royalties in divorce are still limited, necessitating research that explores the normative and jurisprudential considerations underlying their decisions. Therefore, this study aims to analyze the views of Religious Court judges in North Sumatra regarding the status of IPR royalties after divorce and to examine the legal arguments used in assessing and deciding their distribution. The research results are expected to contribute to strengthening academic discourse, judicial practice, and policy recommendations for the formation of clearer and fairer regulations.

2. RESEARCH METHOD

This study uses an empirical juridical approach to understand the views of Religious Court judges in North Sumatra regarding the status of Intellectual Property Rights (IPR) royalties as joint property after divorce. This approach was chosen because the legal issues studied require not only an examination of written norms but also observation of law enforcement practices and judicial interpretations in the field (Butarbutar, 2023). Therefore, this study combines analysis of statutory norms with the empirical reality of religious court practice.

This research combines statutory approaches, case studies, and conceptual approaches. The statutory approach is used to examine relevant legal provisions, such as

Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law (KHI), Law Number 28 of 2014 concerning Copyright and Law Number 13 of 2016 concerning Patents, as the normative basis for determining the status of IPR royalties. The case approach is used through the identification and analysis of relevant court decisions regarding the division of royalties as joint property in divorce. Meanwhile, a conceptual approach was used to understand the principles of *syirkah*, distributive justice, and the concept of exclusive rights of creators in IPR as an analytical framework (Muttaqin & Usqak, 2020).

Primary data collection was conducted through in-depth interviews with five Religious Court judges selected through purposive sampling based on their experience in handling joint property cases and their understanding of IPR issues in marriage. Interviews were conducted both in person and online, with an average duration of 45–90 minutes, and all conversations were recorded with the informants' consent to ensure data accuracy (Nurbaya et al., 2021). Furthermore, this study utilized secondary data in the form of primary and secondary legal materials, including legislation, legal journals, textbooks, and publications related to family law and intellectual property (Hosen et al., 2024).

Data were analyzed using Miles and Huberman's interactive qualitative analysis model, which consisted of three stages: data reduction, data presentation, and conclusion drawing (Martupa & Marune, 2023). The coding process was conducted to identify judges' thinking patterns regarding the legal basis, the value of justice, and the concept of joint property in IPR royalties. To enhance the validity of the findings, source and method triangulation were conducted by comparing interview results, court decisions, and the normative basis in relevant regulations (Hasan et al., 2022). Furthermore, member checking was conducted by requesting clarification from informants to ensure alignment between the researcher's interpretation and the intent of the informant's statement (Mujibur Rohman et al., 2023).

With this methodological design, this study is expected to provide a comprehensive overview of judges' legal considerations in determining the status of IPR royalties after a divorce, while simultaneously filling regulatory gaps at the normative level through empirical findings relevant to the development of family law in Indonesia.

3. RESULT AND ANALYSIS

Research findings indicate diverse views among Religious Court judges in North Sumatra regarding the status of Intellectual Property Rights (IPR) royalties as joint property after divorce. This diversity reflects the dynamics of *ijtihad* arising from the absence of clear regulatory standards in positive law, both at the statutory level and in the Compilation of Islamic Law (KHI). In legal theory, this phenomenon illustrates a shift in judges' orientation in determining justice, from a legal-positivist approach to a substantive justice approach that considers the social structure of modern families (Rahman & Harahap, 2022). Fieldwork findings reveal five constructs of judges' thinking: the paradigms of moderate, progressive, restrictive, casuistic, and temporal justice, which cumulatively demonstrate a fairly broad legal hermeneutical scope on this issue.

The first judge's view emphasizes the principle of proportional justice, with a starting point of a 50:50 division that can change depending on the contributions of each party. This approach aligns with the principle of *syirkah abdan* in Islamic jurisprudence, which

recognizes that the work of each party can complement each other to produce joint property (Lestari et al., 2023). Judges in this category link the principle of legal certainty with the principle of utility, so that the application of justice is not always numerical but rather functional. This position also reflects the equitable distribution approach developing in American and European family law jurisprudence (Cahyo, 2023), emphasizing that sociologically, Indonesia is beginning to adopt a global perspective regarding the protection of the economic rights of the less dominant party in marital relations.

The second judge takes a more progressive position, considering non-financial contributions such as emotional support, household management, and participation in the creative process. This approach academically represents the application of the gender-responsive judicial approach, a legal reasoning framework that places egalitarian values within the modern family structure (Rizqullah & Fuad, 2024). Judges in this perspective essentially interpret the concept of invisible labor as a relevant socio-economic asset that influences the productivity of creators. This aligns with the *maqasid* of sharia, which prioritizes the protection of family and property (Manurung & Syahputra, 2024). Thus, this view is not only sociologically progressive but also has normative legitimacy rooted in Islamic legal tradition.

In contrast, the third judge takes a restrictive approach, placing royalties entirely as the creator's personal right, unless a prenuptial agreement is in place. This is based on Article 16 of the Copyright Law, which affirms the exclusive nature of the creator's economic rights, so that without a transfer agreement, no transfer occurs (Haq, 2023). From a *fiqh* perspective, this view draws on the Shafi'i and Hanbali schools of thought, which view intellectual property as a special property right (Sri Astuti Agustina & Hakim, 2025). This approach is normatively sound, but it is vulnerable to ignoring the social realities of women or couples who contribute domestically but are not formally recognized. Therefore, while this view falls within the bounds of normative texts, it is weak in addressing the needs of modern social justice.

The fourth judge adopted a *casuistic* approach. He ruled based on concrete evidence, the duration of the marriage, socioeconomic dynamics, and factual contributions. This approach recognizes that each case has unique characteristics and therefore does not merit absolute formulation (Suharto, 2025). While this approach reflects the principle of *ta'zir* and the doctrine of judicial discretion in judicial theory, its drawback lies in the potential for disparity in decisions between regions, which can undermine the principle of predictability in the legal system (Kudus et al., 2024).

The final judge emphasized the temporal approach, where royalties generated during the marriage constitute joint property, while royalties after divorce become the exclusive right of the creator. This model follows the cut-off period doctrine common in marital property laws in various countries (Imran, 2020). From a *maqasid* sharia perspective, this approach balances intergenerational justice and the protection of rights after the severance of family ties (Manurung & Syahputra, 2024).

These varying interpretations emphasize that the regulation of intellectual property rights (IPR) royalties in the context of divorce in Indonesia lacks a standard framework and requires harmonization between the Copyright Law, the Marriage Law, and the Compilation of Indonesian Intellectual Property Rights (KHI). This situation also indicates

that current judicial decisions rely heavily on each judge's philosophical inclinations and orientation toward justice, rather than on firm positive norms. Therefore, this research supports the urgent academic recommendation that the Supreme Court develop technical guidelines for royalty disputes in divorce, to ensure uniformity of interpretation, legal benefit, and protection for vulnerable parties within the digital creative family structure.

4. CONCLUSION

This study confirms that the status of Intellectual Property Rights (IPR) royalties as part of marital property after divorce remains subject to wide interpretation within the Indonesian legal system. The absence of explicit provisions in the Marriage Law and the Compilation of Islamic Law (KHI) has opened up significant scope for *ijtihad* (judicial *ijtihad*) among Religious Court judges in North Sumatra. The research findings reveal five distinct strands of judicial thought: a moderate paradigm oriented toward proportional justice; a progressive paradigm recognizing non-financial contributions and domestic reproductive labor; a restrictive paradigm affirming the exclusivity of the creator's moral-economic rights; a casuistic approach prioritizing the concrete circumstances of the parties; and a temporal approach distinguishing royalties based on the period in which the economic gain occurred. These varying views indicate the absence of a uniform jurisprudential standard regarding royalties as an object of marital property.

This study contributes theoretically by expanding the study of Islamic family law and IPR law through mapping judicial thought, integrating the principles of *maqasid sharia* and the theory of distributive justice, and strengthening arguments regarding the recognition of non-financial work in marriage as part of the economic contribution. Practically, the research findings provide a rationale for formulating technical legal guidelines for judges and the urgency of developing regulations or official interpretations through the Supreme Court to ensure uniformity of decisions, legal certainty, and protection for vulnerable parties in modern creative family structures.

Therefore, this study recommends the need for legislation and judicial guidelines regarding the distribution of intellectual property royalties in divorce, strengthening the capacity of judges through intellectual property law education, and integrating the principle of justice based on non-financial contributions into the family law framework. Further research could be directed at cross-national comparative studies, in-depth jurisprudential analysis of appellate court and Supreme Court decisions, and expanding research by involving the views of academics and advocates to enrich theoretical and practical perspectives.

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