



Interconnection between Structural-Functional Families as *Nafkah* Provider and Common Property Concept under Indonesian Family Law Regulations

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Abstract

This study aims to examine the structural-functional family as *nafkah* provider normatively and empirically. Empirically and interconnect it with common property concept under Indonesian family law regulations, in this case Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. This topic is interesting to discuss because in the reality of society there are structural-functional variations of the family that are not in harmony with family law regulations in Indonesia and as a means of providing knowledge about the implications of common property in such cases. The research method used was a field study by interviewing several families with length of marriage over 10 years serving as a *nafkah* provider. As a result, there are three variations of *nafkah* provider, namely the husband as a provider, the wife as a provider, the husband and wife collaborate as providers. The structural-functional interconnection of *nafkah* provider normatively and empirically has been polemical because there are facts in society that are regarded that it is not relevant to Indonesian family law regulations. However, in the common property concept, which is property acquired during marriage, structural-functional interconnection in family does not affect the status of common property. Thus, common property remains a common right regardless of who works and acts as provider in family unless there is a court verdict that considers it in a fair context.

Keywords: *Nafkah* Provider; Family Law Regulations ; Common Property.

Abstrak

Penelitian ini bertujuan untuk mengkaji struktur keluarga fungsional sebagai pemberi nafkah secara normatif dan empiris. Secara empiris dan menghubungkannya dengan konsep harta bersama dalam peraturan hukum keluarga Indonesia, dalam hal ini Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam. Topik ini menarik untuk dibahas karena dalam realitas masyarakat terdapat variasi struktural-fungsional keluarga yang tidak selaras dengan peraturan hukum keluarga di Indonesia dan sebagai sarana untuk memberikan pengetahuan tentang implikasi harta bersama dalam kasus tersebut. Metode penelitian yang digunakan adalah studi lapangan dengan mewawancarai beberapa keluarga dengan lama pernikahan di atas 10 tahun yang menjadi pemberi nafkah. Oleh

karena itu, terdapat tiga variasi pemberi nafkah, yaitu suami sebagai pemberi nafkah, istri sebagai pemberi nafkah, dan suami istri bekerjasama sebagai pemberi nafkah. Keterkaitan struktural-fungsional penyedia nafkah secara normatif dan empiris masih menjadi polemik karena terdapat fakta di masyarakat yang dianggap tidak relevan dengan peraturan hukum keluarga Indonesia. Namun dalam konsep harta bersama, yaitu harta yang diperoleh selama perkawinan, keterkaitan struktural-fungsional dalam keluarga tidak mempengaruhi status harta bersama. Dengan demikian, harta bersama tetap menjadi hak bersama tanpa memandang siapa pun yang bekerja dan bertindak sebagai pencari nafkah dalam keluarga, kecuali ada putusan pengadilan yang mempertimbangkannya dalam konteks yang adil.

Kata Kunci: Penyedia Nafkah; Peraturan Hukum Keluarga; Milik Bersama.

INTRODUCTION

Indonesia has made family law as implied in the instrument of Law Number 1 of 1974 concerning Marriage and specifically for Indonesian citizens who are Muslim in the Compilation of Islamic Law. Both regulations contain the rights and obligations of husband and wife in marriage, one of which is related to *nafkah*, namely costs incurred for clothing, food, house, household needs, and children's education. These regulations denote the structural-functional family in which the husband plays the role of the person in charge of providing and the wife plays a role in taking care of the household.

Based on the Marriage Law, in general, the rights and obligations of husband and wife are regulated in Chapter VI and contained in Articles 30-34 and specifically regulate the issue of *nafkah* in Article 34 verse 1. The substances contained in these articles include:¹

1. Article 30 contains the obligations of husband and wife in upholding the household in the family which is a unit of society;
2. Article 31 mentions that the rights and position of husband and wife are balanced in the household and in the community. Husband and wife have the right to do legal acts equally. In the division of roles, the husband as the head of the family and the wife as the housewife;
3. Article 32 contains the necessity for husband and wife to have a common residence. The common residence is determined and agreed upon by the husband and wife;
4. Article 33 contains the obligation for husband and wife to love, respect, be loyal, and help each other both physically and mentally;
5. Article 34 specifically contains the husband's obligation to protect and provide (*nafkah*) for his wife and meet household needs in accordance with the husband's financial capacity. While the wife has a role to manage the household as well as possible. In the context of a husband or wife dereliction of obligation, the spouse has the right to file for divorce in Court.

The compilation of Islamic Law regulates the rights and obligations of husband and wife who are Muslims specifically. This is regulated in Chapter XII and regulated in Articles 77-84 which discusses the rights and obligations of husband and wife in general. Meanwhile, related to *nafkah* is discussed in Article 80 specifically. The substance of the rights and obligations of husband and wife contained in the Compilation of Islamic Law includes:²

¹ Pemerintah Pusat Indonesia, "Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (1974), <https://peraturan.bpk.go.id/Details/47406/uu-no-1-tahun-1974>.

² Departemen Agama RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta: Direktorat Bina KUA dan Keluarga Sakinah, 2018), <https://simbi.kemenag.go.id/eliterasi/storage/perpustakaan/slims/repository/b5c07c0ce34195adb3cd15ad059b33f2.pdf>.

1. Article 77 regulates the obligations of husband and wife in general, namely the realization of a family that is *sakinah* (peaceful), *mawaddah* (full of love), and *rahmah* (full of affection). In addition, it also regulates the obligation of husband and wife to love each other, respect each other, be loyal to each other and help each other. This article also regulates the obligations of husband and wife in parenting children, namely by striving for children's physical and mental health and providing education to children in the form of general education and religious education so that children grow into intelligent Muslims. In addition, this article contains an obligation for husband and wife to maintain honor, namely by being loyal to the spouse and not having an affair. If the husband or wife neglects their obligations, the spouse can file for divorce in the Religious Court;
2. Article 78 contains the obligation for husband and wife to have a permanent residence and such residence is determined by the husband and wife;
3. Article 79 contains the position of husband and wife, namely the husband as the head of the family and the wife as the housewife. The position of both is balanced in the family, society, and in doing legal deeds;
4. Article 80 regulates the obligations of the husband, especially as the provider. This article contains the obligation of the husband to guide the wife and decide the affairs of the household democratically between husband and wife, the husband is obliged to protect his wife and fully support the needs of the household in accordance with his financial capacity, the husband is obliged to provide religious education to his wife and give the wife the flexibility to learn general knowledge. The husband in providing *nafkah* according to his financial ability includes money for shopping, clothing, wife's residence, household expenses, wife and child care costs, and children's education costs. The husband's obligation becomes invalid for two reasons, namely the wife releases the husband from the obligation or the wife does not carry out her obligations to the husband;
5. Article 81 regulates about family residence provided by the husband. The husband is responsible for providing proper housing for his wife and children, his divorced wife who is still in the *iddah* period (waiting to reconcile with her husband), and the wife left behind when the husband dies. The criteria for the residence are appropriate, can protect wife and children from interference / danger to ensure family peace and security, and serves to store property and manage household appliances. In addition to providing a house, the husband is also obliged to complete the contents of the house according to his financial ability including household appliances, and others;
6. Article 82 discusses the obligation for husbands with more than one wife, namely that the husband is fairly obliged to provide houses and living expenses for wives. The houses that mentioned are a separate house unless the wives are willing to be housed in one house;
7. Article 83 discusses the wife's obligation to fulfill her husband's rights physically and psychologically and not violate religious rules. As well as discussing the wife's obligation to manage household affairs as well as possible;
8. Article 84 explains specifically about the consequences of a wife who does not carry out her obligations as a wife, namely the loss of the husband's obligation to provide *nafkah* for his wife.

Normatively, based on family law regulations in Indonesia, structural-functional family includes the husband as the person in charge of providing *nafkah* for the family and the wife as the person in charge of household affairs. Nevertheless, empirical facts that occur in society are more varied. This is influenced by the context of the times where men and women have equal opportunities in education, work, and other fields. This affects the paradigm shift so that the functionality in the family also changes. Wives no longer have a single role as housewives but also have the opportunity to have a career. In the context of casuistic family structure, there is

the fact that the wife also plays a role in fulfilling the family's *nafkah* both fully and partially. This variation is caused by economic factors that encourage wives to play a role in fulfilling family's *nafkah* and agreement factors, namely husband and wife work together in fulfilling *nafkah* for family. The topic of wives as Providers has been researched by several researchers including: Imaro Sidqi,³ Nadya Syafitri, et al.,⁴ and Yusuf Mulyadin.⁵ The focus of previous researchers has been to focus more on the specific wife who plays the role of being responsible for providing *nafkah* for the family. In general, the topic of normative and empirical relevance of structural-functional family has been discussed by Nurholis.⁶

In this study, the author focuses on discussing empirical and normative facts related to the structural-functional family as provider in Indonesia then interconnects it with the concept of common property contained in family law regulations in Indonesia. The author's consideration is due to empirical variations related to structural-functional families that are diverse and not in accordance with the regulations stipulated in the Marriage Law and the Compilation of Islamic Law in Indonesia. This has implications for raising questions related to the concept of common property, which is property acquired during marriage. Therefore, it needs to be explored. This research certainly has the aims by discussing concept of *nafkah* according to family law regulations in Indonesia and then elaborate it in the context of the structural and functional family that is regarded as the *nafkah* provider and in terms of the common property.

RESEARCH METHODS

This research uses a qualitative approach. Data sources were obtained from six families with a minimum marriage age criterion of 10 years as a response in answering the structural and functional families as *nafkah* provider. The author's consideration in choosing interviewees with these criteria is because according to the author, the age of marriage of 10 years and over is more stable and more structured in dividing family functions. Data collection techniques are carried out using semi-structured interview methods and are carried out directly.

This research is a normative-empirical legal research,⁷ namely by elaborating family law regulations in Indonesia and the facts implemented by the community in regulating the structural and functional family as *nafkah* provider. Regulations related to Indonesian family law carried out in this study include the Marriage Law No. 1 of 1974 and the Compilation of Islamic Law as regulations governing the person responsible for *nafkah* in the family and common property.

ANALYSIS AND DISCUSSION

Concept of *Nafkah* According to Family Law Regulations in Indonesia

Nafkah is a form of responsibility towards certain people including three things in the form of house, food, and clothing.⁸ The term *nafkah* comes from the Arabic word *nafaqa* which textually means expense or shopping.⁹ The word *nafkah* becomes a loanword and is found in the

³ Imaro Sidqi, "Istri Sebagai Penanggung Jawab Nafkah Keluarga: Kajian Sosiologi Hukum Di Tengah Masyarakat Muslim Desa Sikayu Kecamatan Comal Kabupaten Pematang," *Al-'Adalah* 8, no. 1 (2023): 83–106, <https://doi.org/https://doi.org/10.31538/adlh.v8i1.3334>.

⁴ Nadya Syafitri, Hamdani, and Ramziati, "Tanggung Jawab Nafkah Keluarga Dari Istri Yang Bekerja Menurut Kompilasi Hukum Islam (KHI) Dan Hukum Adat (Studi Penelitian Di Kota Lhokseumawe)," *Suloh* 10, no. 2 (2022): 313–37.

⁵ Yusuf Mulyadin, "Hak Dan Kewajiban Istri Sebagai Tulang Punggung Keluarga: Tinjauan Madzhab Syafi'i Dan Kompilasi Hukum Islam," *At-Ta'dil* 1, no. 1 (2021): 74–88.

⁶ Nurholis, "Substansi Dan Relevansi Dari Konsep Nafkah Dalam Berbagai Perundang-Undangan Hukum Keluarga Islam Kontemporer; Analisis Struktural-Fungsional," *Al-Qadlaya* 1, no. 2 (2022): 1–14.

⁷ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: PT Citra Aditya Bakti, 2004).

⁸ Yayah Abdullah Al-Khatib, *Fikih Wanita Hamil* (Jakarta: Qisthi Press, 2005).

⁹ Atabik Ali and Ahmad Zuhdi Mudhlor, *Kamus Kontemporer Arab-Indonesia* (Yogyakarta: Multi Karya Grafika, 1999).

big dictionary of Indonesian which means spending money to live.¹⁰ *Nafkah* is an obligation for Muslim men as husbands and fathers in supporting their wives and children. This is regulated in the holy book of al-Qur'an, first in al-Qur'an surah al-Baqarah [2]: 233,

﴿ وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۗ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تُسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا اتَّيْتُمْ بِالْمَعْرُوفِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ۝﴾

The translation: Mothers may breastfeed their children two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do.¹¹

The second explanation, in al-Qur'an surah al-Nisa [4]: 34,

﴿ الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ ۚ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا ۝﴾

The translation: Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand.¹²

In al-Qur'an surah al-Baqarah [2]: 233 explains about the obligation of men as husbands to guarantee the needs of the wife both in the form of clothing and food according to the needs of the wife. The verse also analogizes the mother as the container for the child (who breastfeeds the child) and the father as the owner of the container. In this case, the father is obliged to provide *nafkah*, maintain, and care for the people he is responsible for, namely his wife and children. Whereas in surah al-Nisa [4]: 34 mentions that men play the role of leaders, maintainers, and *nafkah* providers who are responsible for wives.¹³ Based on those verses, in Islam, the husband is responsible as the person in charge of providing *nafkah* for the family.

The concept of *nafkah* contained in the holy book of al-Qur'an was adopted by Indonesia and regulated in the Marriage Law of 1974 which applies to all Indonesian citizens. In addition to the Marriage Law, the concept of *nafkah* is also regulated in the Compilation of Islamic Law

¹⁰ Badan Pengembangan dan Pembinaan Bahasa, "Nafkah," KBBI, accessed October 29, 2023, <https://kbbi.web.id/nafkah>.

¹¹ Kementerian Agama RI, *Al-Qur'an in Word* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an, 2023).

¹² Kementerian Agama RI.

¹³ Kementerian Agama RI.

which is a reference for judges in deciding cases of Indonesian citizens who are Muslims in the Religious Court.¹⁴

The concept of *nafkah* in more detail is discussed in Law Number 1 of 1974 concerning Marriage Article 34 verse 1 and the Compilation of Islamic Law Article 80 verse 2, namely about husbands who play a role in providing *nafkah* to wives. The scope of *nafkah* regulated in the Compilation of Islamic Law Article 80 verse 4 includes money for shopping, clothing, housing, household expenses, maintenance costs and medical expenses for wives and children, as well as children's education costs. Based on Indonesian family law regulations, *nafkah* is a cost that is the responsibility of the husband for the needs of his wife and children.

Structural and Functional Family as the *Nafkah* Provider in Indonesia

The structural and functional of the family based on the social reality in Indonesian society as the *nafkah* provider is very diverse. Based on research on six families, the family structure regarding the person in charge of providing *nafkah* is classified into three, namely the husband as the *nafkah* provider, the wife as the *nafkah* provider, then the husband and wife collaborate in fulfilling the family's *nafkah*. In the functional context of the family, it is classified into three, namely working husband, working wife, and working husband-wife. Specifically, summarized in the following table:

Table 1: Structural and Functional of Family

| No | Respondents | Length of Marriage | Structural | | Functional | |
|----|-------------|--------------------|------------|----------|--------------|-----------|
| | | | Husband | Wife | Husband | Wife |
| 1 | Family-1 | 19 years | Provider | Receiver | Worker | Housewife |
| 2 | Family-2 | 20 years | Provider | Receiver | Worker | Housewife |
| 3 | Family-3 | 28 years | Receiver | Provider | Househusband | Worker |
| 4 | Family-4 | 35 years | Provider | Provider | Worker | Worker |
| 5 | Family-5 | 22 years | Provider | Receiver | Worker | Worker |
| 6 | Family-6 | 11 years | Provider | Receiver | Worker | Worker |

Source: Interview with interviewees on Wednesday, October 18, 2023

In general, here is a narrative of the important questions and answers related to the table above:¹⁵

What are the occupations of interviewees and spouses?

In the first family, the husband worked as a farmer and the wife worked as a housewife. In the second family, the husband works as a security guard and the wife works as a housewife. In the third family, the husband worked as a househusband and the wife worked as a merchant. In the fourth family, the husband worked as a farmer and the wife worked as a merchant. In the fifth family, the husband works as an online taxibike driver and the wife works as a merchant. Then in the sixth family, the husband and wife worked as lecturers.

How is the concept of *nafkah* according to interviewees?

The interviewees agreed that income includes three basic things: clothing, food, and housing. It also covers household needs and children's education.

Who is responsible for providing family's *nafkah*?

Normatively, the interviewees agreed that the person responsible for providing *nafkah* for the family is the husband. However, in practice, the interviewees implemented it differently. In

¹⁴ Muhammad Yasin, "Ikhtisar Pandangan Para Ahli Tentang Kedudukan Kompilasi Hukum Islam," Hukumonline.com, 2023, <https://www.hukumonline.com/stories/article/lt6460cfa524714/ikhtisar-pandangan-para-ahli-tentang-kedudukan-kompilasi-hukum-islam>.

¹⁵ Six Families, interview by author, Yogyakarta, October 18, 2023.

the first and second families, the person in charge of *nafkah* is entirely the husband and wife in charge of the house. In household affairs, the husband collaborates with the wife in taking care of the household and educating children. In the third family, initially the husband is responsible for the family's *nafkah* and the wife as a housewife. However, due to internal reasons, structural and functional of the third family changed. The husband focuses on taking care of the household as a househusband, and the wife as the person in charge of family's *nafkah* including household needs, clothing, and children's education costs. In the fourth family, initially the husband was fully responsible for the family's *nafkah*, but due to economic problems the wife also became the person in charge of *nafkah*. In the fifth and sixth families, husbands are fully responsible for providing *nafkah* even though their wives also work. According to the fifth and sixth families, in the husband's property there is the wife's right to provide while in the wife's property is the wife's full property and the husband has no right to the wife's property while the wife is alive.

It can be concluded that the conditions and situations of a family affect the structural-functional responsible for providing *nafkah* for the family. The vast majority, four out of six families, make the husband as *nafkah* provider for the wife and children, according to them it is indeed an obligation for the husband to be responsible for the family's *nafkah*. While the other two families have different structural-functional responsibilities for *nafkah*, although both families believe that the responsibility of providing *nafkah* is the husband's obligation. There is family where the wife acts as the person in charge of the full *nafkah* because of internal family reasons so that the husband takes the role of a househusband. In addition, there is family whose wife is partially responsible for *nafkah*, namely collaborating with her husband in providing *nafkah* for the family due to economic problems.

Relevance of the *Nafkah* Provider in Indonesia and Indonesian Family Law Regulations

Basically, the person in charge of providing *nafkah* for the family in Indonesia is the husband. This is one part of the husband's obligations and wife's rights as stipulated in the 1974 marriage law Article 34 verse 1, namely: The husband is obliged to protect his wife and provide everything necessary for married life in accordance with his ability.¹⁶ More specifically, the Compilation of Islamic Law Article 80 verse 2 is explained that the husband is obliged to protect his wife and provide everything necessary for married life according to his ability. Then in Article 80 verse 4 it is explained in more detail about the husband's responsibility for *nafkah*, namely in accordance with his income the husband bears: a. *nafkah*, clothes, and residence for the wife, b. household costs, maintenance costs and medical expenses for the wife and children, c. education costs for children.¹⁷

The characteristics of the place of residence for wife and children are specifically regulated in Article 81 that (1) the husband must provide a place of residence for his wife and children or a former wife who is still in *iddah*. (2) Residence means a suitable residence for the wife while in the marriage bond, or in the *iddah talaq* or *iddah* of death. (3) A place of residence is provided to protect his wife and children from interference by others, so that they feel safe and feel peace. The residence also functions as a place to store wealth, as a place to arrange property and arrange household tools. (4) The husband must complete the residence in accordance with his ability and adapted to the conditions of his living environment, both in the form of household equipment and other supporting facilities.¹⁸

Based on field facts, the reality of the family in dividing the role as the person in charge of the *nafkah* is more varied. There are families that are still in line with the corridors of family law regulations in Indonesia, namely the husband as the person in charge of providing *nafkah* for

¹⁶ Pemerintah Pusat Indonesia, Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

¹⁷ Departemen Agama RI, *Kompilasi Hukum Islam Di Indonesia*.

¹⁸ Departemen Agama RI.

the family. In the context of working wife, the husband remains fully responsible for the family's *nafkah*. However, there are different variations in structural-functional families. There are families that collaborate with each other between husband and wife as the person in charge of providing *nafkah* for the family. There is also a wife who acts as the person in charge of providing *nafkah* while the husband acts as a househusband. The variation occurred due to complex family situations and conditions. This form of variation is not relevant to family law regulations in Indonesia.

In the context of the wife also acting as the person in charge of the *nafkah*, as long as the wife sincerely participates in contributing to fulfilling the family's *nafkah*, it does not become a problem in the family. However, if the context of a wife is not sincere, then in this case, the husband has failed to fulfill his obligations as a husband and the wife has the right to file for divorce as stated in Marriage Law number 1 of 1974 Article 34 verse 3, namely if the husband or wife neglects their obligations, each can file a divorce lawsuit in the court.¹⁹ In addition, it is also specifically regulated in the Compilation of Islamic Law Article 77 verse 5, namely if a husband or wife neglects his obligations, each can file a divorce lawsuit in the Religious Court.²⁰ Based on these articles, in Indonesia, civil dispute resolution for Muslim families is done in the Religious Court and for families of other religions is done in the State Court.

Interconnection of Structural and Functional of the *Nafkah* Provider to the Common Property

According to family law regulations in Indonesia, there is a concept of common property, which is property acquired during marriage. In this case, property acquired during marriage becomes a common right of husband and wife, except inheritance or gifts. The concept of common property becomes invalid if the husband and wife have entered into a written prenuptial agreement that regulates the separation of property. Regulations related to the concept of common property are regulated in Law No. 1 of 1974 concerning Marriage Article 35 verses 1 and 2, namely: (1) Property acquired during marriage becomes common property; (2) The property of each husband and wife and the property acquired by each as a gift or inheritance shall be under the control of each so long as the parties do not specify otherwise.²¹

The property referred to in Article 35 verse 2 is property obtained before marriage.²² In this case, the husband and wife have authority over the personal property acquired before the marriage and have full title to the inheritance and gifts he/she gets without intervention from the spouse except with the permission of the spouse who owns the property. Meanwhile, in the concept of common property, husband and wife have common rights to the property and can use the property by mutual consent as stipulated in Article 36 verse 1 of the Marriage Law, namely: Regarding common property, the husband or wife can act with the consent of both parties.²³ In more detail, the scope of common property is regulated in the compilation of Islamic law Article 91, which includes immovable objects (land, houses, buildings, etc.), movable objects (livestock, jewelry, etc.), and securities (bonds, stocks, etc.).²⁴

Based on Indonesian family law regulations, common property acquired in marriage is common property regardless of who works and who is responsible for the *nafkah*. Thus, the varied structural-functional context of the family, such as only the husband working, only the wife working, or both working does not affect the provision of common property. In the context

¹⁹ Pemerintah Pusat Indonesia, Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

²⁰ Departemen Agama RI, *Kompilasi Hukum Islam Di Indonesia*.

²¹ Pemerintah Pusat Indonesia, Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

²² Lukman et al., "Penyelesaian Pembagian Harta Akibat Perceraian Di Pengadilan Agama Maros," *Journal of Lex Generalis* 2, no. 2 (2021): 740.

²³ Pemerintah Pusat Indonesia, Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan.

²⁴ Departemen Agama RI, *Kompilasi Hukum Islam Di Indonesia*.

of the person in charge of *nafkah*, the property obtained during the marriage will become the common right of husband and wife regardless of who is responsible for the *nafkah* unless there is a court decision in a divorce case that considers the case by prioritizing the concept of justice. In this case, even though based on the Indonesian marriage law and the Compilation of Islamic Law, the husband is responsible for providing *nafkah* for the family. In this context, the property acquired during marriage will become the common right of husband and wife. In the context of the wife as the person in charge of *nafkah* in whole or partially, in accordance with the regulations this does not affect the status of common property. In the context of an estate document in the name of one of the spouses or purchased with the money of one of the spouses, as long as the property is acquired in marriage then the husband and wife are equally entitled to the property.

However, in casuistic cases, judges in the Court can decide cases with different results and do not refer to family law regulations in Indonesia. This is based on jurisprudence Number 266 K / AG / 2010 which is a legal guideline that the division of common property is not absolutely divided equally between husband and wife. The panel of judges has the authority to judge and consider fairly, namely by weighing the facts that occurred during the marriage, especially related to the collection of common property which will affect the amount of the share of common property for each party. The jurisprudence was born out of a case in which the husband did not provide *nafkah* for his wife and children, and committed violence against the wife. Regarding financial contributions, wife has greater contributions than husband. Based on in this case, the panel of judges decided the case of common property of the two with unequal proportions, namely $\frac{3}{4}$ for the wife and $\frac{1}{4}$ for the husband. The verdict was upheld to the level of cassation, giving rise to the fact that the division of common property is not always absolutely divided equally.²⁵

CONCLUSION

The structure and function of the family acting as the person in charge of the *nafkah* include the house, clothing, food, family care, and education of children empirically and normatively there are discrepancies. Normatively, based on family law regulations in Indonesia, the husband acts as the person in charge of providing *nafkah* for the family. Based on empirical facts, there are wives who act as responsible for *nafkah* both fully and partially. However, in the concept of common property as long as there is no separation of property before marriage, property acquired in marriage becomes a common right regardless of who works and does not work. The wife and husband have equal rights to common property. In the case of divorced husbands and wives, the division of common property is not absolutely divided equally. The judge of the Court shall weigh the equitable apportionment with considerations so that the common property can be divided equally or of different values.

Based on this conclusion, the author suggests that there should be research that discusses the reform of family law regulations and expresses an idea regarding the responsible *nafkah* and its implications for the division of common property. The author suggests that there will be more specific family law regulations governing the division of common property relatively in accordance with the context so that it can be understood that the division of common property is completely not absolutely divided by the same value. In addition, action is needed by the government in socializing the concept of common property and the concept of separation of property among the community so that it can be understood that even if only one spouse works and bears a *nafkah*, the non-working spouse still has the right to common property unless there

²⁵ Wahita Damayanti, "Tanya Hukum: Pembagian Harta Gono Gini Ketika Istri Yang Paling Berkontribusi Dalam Keluarga," Pengadilan Agama Pangkalan Kerinci, 2022, <https://www.papangkalanerinci.go.id/berita/arsip-artikel/1356-tanya-hukum-pembagian-harta-gono-gini-ketika-istri-yang-paling-berkontribusi-dalam-keluarga-oleh-wahita-damayanti-s-h>.

is separation of property. The goal is that the community wisely chooses to apply the concept of common property or separate property in anticipation of future conflicts.

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