

Economic contribution as the basis for claiming joint marital property in unregistered marriages: A progressive law perspective

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Abstract

Unregistered marriages remain a significant legal issue in Indonesia because they create legal uncertainty regarding the status of property acquired during the marital relationship, particularly when disputes arise. Indonesian positive law recognizes joint marital property as a legal consequence of a valid marriage; consequently, the failure to register a marriage limits legal protection for parties who have made economic contributions in acquiring, maintaining, or developing such property. This study aims to analyze the legal status of property arising from unregistered marriages under Indonesian positive law and to examine the legal protection afforded to parties who have made economic contributions from the perspective of Progressive Law. This research employs a normative legal method using statutory, conceptual, and case approaches. The legal materials consist of primary, secondary, and tertiary legal sources, which are analyzed qualitatively through a prescriptive method based on Gustav Radbruch's Theory of Legal Certainty and Satjipto Rahardjo's Theory of Progressive Law. The findings indicate that, under Indonesian positive law, property acquired during an unregistered marriage is not automatically recognized as joint marital property because such recognition depends on the legal validity of the marriage and the ability to prove the origin and acquisition of the property. An analysis of judicial decisions further demonstrates a growing tendency among judges to consider the economic contributions made by the parties when determining the protection of their civil rights. Accordingly, the Progressive Law perspective regards economic contribution as a legal fact that deserves judicial consideration in order to achieve a balance between legal certainty and substantive justice in resolving property disputes arising from unregistered marriages.

Keywords: Economic contribution, joint marital property, unregistered marriage, progressive law

Introduction

Unregistered marriages remain one of the persistent legal phenomena in Indonesian society. Although Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, requires every marriage to be officially registered as a form of administrative recognition by the state, the practice of unregistered marriage continues to be widespread. This situation gives rise to various legal issues, particularly concerning the legal certainty of the marital status of spouses and the legal consequences arising from the marriage, including the status of property acquired during the marital relationship (Law Number 1 of 1974 on Marriage, Article 2 paragraphs (1) and (2); Neng Djubaedah, 2012) ^[2]. This phenomenon reflects a gap between the prevailing legal norms and the social realities that continue to develop within Indonesian society.

One of the most significant legal issues arising from unregistered marriages concerns the legal status of property acquired during the marital relationship. In practice, couples whose marriages are not officially registered generally live together as husband and wife in the same manner as couples whose marriages are legally registered. They jointly earn income, establish and develop businesses, and contribute to meeting the economic needs of the family. However, when divorce or property disputes occur, Indonesian positive law does not provide the same legal recognition for property acquired during an unregistered marriage as it does for joint marital property arising from a registered marriage. Consequently, parties who have made substantial economic

contributions frequently encounter difficulties in obtaining legal protection for their proprietary rights.

Normatively, Article 35 paragraph (1) of Law Number 1 of 1974 on Marriage stipulates that property acquired during a marriage constitutes joint marital property. Furthermore, Articles 85–97 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) regulate the ownership, management, and distribution of joint marital property. Nevertheless, these legal provisions do not comprehensively resolve the legal status of property acquired in unregistered marriages because Indonesian positive law primarily emphasizes marriage registration as the legal basis for the emergence of legal consequences. As a result, legal protection for parties who have contributed economically remains inadequate when the marriage has not received formal administrative recognition from the state.

Judicial practice demonstrates considerable variation in resolving disputes concerning property acquired during unregistered marriages. On the one hand, several court decisions strictly adhere to the provisions of positive law by emphasizing marriage registration as the prerequisite for recognizing joint marital property. On the other hand, more recent judicial decisions reveal a developing tendency among judges to consider the protection of the parties' civil rights based on the factual legal relationship that existed between them. This development indicates that the issue involves not only legal certainty but also substantive justice, which should be realized through judicial decision-making. Therefore, an examination of Bangil Religious Court Decision No. 1961/Pdt.G/2015/PA.Bgl, Supreme Court Decision No. 111 K/Ag/2010, Constitutional Court Decision

No. 46/PUU-VIII/2010, and Manado High Court Decision No. 18/PDT/2022/PT MDO is essential to understand the evolution of judicial reasoning in addressing this legal issue. This study employs Gustav Radbruch's Theory of Legal Certainty to analyze the legal status of property acquired during unregistered marriages under Indonesian positive law, while Satjipto Rahardjo's Progressive Law Theory is used to evaluate the legal protection afforded to parties who have made economic contributions. The Theory of Legal Certainty emphasizes that the law must provide clear, consistent, and predictable rules capable of protecting the rights of individuals. In contrast, Progressive Law views law as an instrument oriented toward substantive justice and social welfare. By integrating these two theoretical perspectives, this study aims to analyze the legal status of property arising from unregistered marriages while formulating a more equitable model of legal protection for parties who have made economic contributions throughout the marital relationship.

Research Method

This study employs a normative legal research method to examine the legal status of property arising from unregistered marriages and the legal protection afforded to parties who have made economic contributions. The research adopts three approaches: the statutory approach, the conceptual approach, and the case approach. The primary legal materials include Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, the Compilation of Islamic Law (KHI), the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/KUHPerdata), and judicial decisions concerning the legal status of property in unregistered marriages. Secondary legal materials consist of scholarly books, academic journal articles, and relevant legal doctrines, while tertiary legal materials are utilized to support the legal analysis. As a normative legal study, this research focuses on examining existing legal norms to develop legal arguments capable of resolving the legal issues under investigation.

Legal materials were collected through library research and subsequently analyzed qualitatively using a prescriptive analytical method. The analysis applies Gustav Radbruch's Theory of Legal Certainty to examine the legal status of property arising from unregistered marriages under Indonesian positive law and Satjipto Rahardjo's Progressive Law Theory to evaluate the legal protection available to parties who have made economic contributions. Through this analytical framework, the study seeks to formulate legal arguments that not only strengthen legal certainty but also promote substantive justice in accordance with the evolving needs of society.

Results and Discussion

1. The Legal Status of Property Arising from Unregistered Marriages under Indonesian Positive Law

Indonesian positive law recognizes marital property as one of the legal consequences arising from the existence of a marital relationship. The legal framework governing joint marital property is set forth in Article 35 paragraph (1) of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, which provides that property acquired during marriage constitutes joint marital property. This

provision indicates that the time of acquisition serves as one of the principal criteria for determining whether a particular asset qualifies as joint marital property. Conversely, property owned by each spouse prior to the marriage, as well as property acquired through gifts or inheritance, remains under the ownership and control of the respective spouse unless otherwise agreed by the parties. These provisions demonstrate that Indonesian marriage law distinguishes between joint marital property and the separate property of each spouse.

The regulation of joint marital property is further elaborated in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). Articles 85–97 of the KHI regulate property rights within marriage, including premarital property, joint marital property, each spouse's authority over marital assets, and the distribution of joint property upon the dissolution of marriage. These provisions demonstrate that joint marital property constitutes one of the legal consequences arising from a marital relationship. Consequently, determining whether a particular asset qualifies as joint marital property requires more than merely establishing that it was acquired while two individuals lived together; it also requires an examination of the legal relationship that forms the juridical basis for the existence of such property.

This issue becomes particularly significant when property is acquired during an unregistered marriage. An unregistered marriage refers to a marriage that has been factually entered into by the parties but has not been officially registered within the state's administrative system in accordance with the applicable statutory provisions. In practice, couples in unregistered marriages may establish households, reside together, satisfy family needs, earn income, conduct business activities, and accumulate assets throughout the course of their relationship. Nevertheless, these factual circumstances must be distinguished from the legal recognition of the marital relationship and the legal consequences arising therefrom.

Article 2 of Law Number 1 of 1974 on Marriage occupies a central position in resolving this issue. Article 2 paragraph (1) provides that a marriage is legally valid if it is conducted in accordance with the laws of the parties' respective religions and beliefs, whereas Article 2 paragraph (2) stipulates that every marriage must be officially registered in accordance with the prevailing statutory regulations. These provisions demonstrate that Indonesian marriage law recognizes two interrelated dimensions of marriage, namely its substantive validity and its administrative registration. Marriage registration constitutes an administrative mechanism through which the state provides legal certainty regarding the existence of a marital relationship and facilitates proof of the spouses' legal status.

Marriage registration plays a fundamental role because a legal relationship requires not only substantive legal norms but also an evidentiary mechanism through which the parties may establish their rights and obligations when disputes arise. In the event of litigation, a marriage certificate serves as official evidence of the legal relationship between the spouses. Conversely, where a marriage has not been registered, evidentiary issues become considerably more complex because the parties lack official administrative documentation directly establishing the existence of the marital relationship. This evidentiary deficiency may affect the parties' ability to prove the legal

consequences arising from the relationship, particularly when one of the parties asserts a claim to joint marital property.

Accordingly, Article 35 paragraph (1) of the Marriage Law concerning joint marital property must be interpreted in conjunction with Article 2 governing the legal validity and registration of marriage. The legal concept of joint marital property cannot be separated from the existence of a legally recognized marital relationship, which constitutes the juridical basis for the legal consequences attached to marital property. Therefore, in determining the legal status of property acquired during an unregistered marriage, it is first necessary to examine the legal status of the parties' relationship and the legal basis upon which rights and obligations relating to such property may arise.

In this context, it is essential to distinguish between property that is jointly acquired in fact and joint marital property as defined under Indonesian marriage law. Individuals who cohabit may jointly use their income to purchase assets, construct a house, establish a business, or acquire other forms of property. Nevertheless, the mere fact that such property is acquired through shared economic activities does not automatically confer upon it the legal status of joint marital property within the meaning of the Marriage Law. Rather, the juridical status of the property must be determined by reference to the legal relationship between the parties and the statutory provisions governing property ownership.

Consequently, determining the legal status of property in unregistered marriages is considerably more complex. Where disputes arise, the court must examine the relationship between the parties' marital status and the disputed property. The court must also consider when the property was acquired, the source of its acquisition, the person in whose name it is registered, the party exercising possession and control over the property, and any other evidence relevant to the disputed asset. Such an examination is necessary to determine whether the property may legally be classified as joint marital property or whether it should instead be assigned a different legal status.

These circumstances demonstrate that the failure to register a marriage may significantly affect legal certainty regarding property rights. In a registered marriage, the existence of the marital relationship can be readily established through official documentation, making it comparatively easier to determine the legal consequences arising from the marriage. By contrast, in an unregistered marriage, no equivalent administrative evidence exists to substantiate the marital relationship. Consequently, when disputes concerning property arise, evidentiary issues become central to determining both the legal status of the disputed property and the respective rights of the parties.

The importance of marriage registration is also closely linked to Indonesia's population administration system. Minister of Home Affairs Regulation Number 108 of 2019 governs the implementation of population registration and civil registration, while Minister of Home Affairs Regulation Number 109 of 2019 regulates the administrative forms and official registers used within the population administration system. These regulations demonstrate that civil registration constitutes an integral component of the state's administrative framework by providing official documentary evidence of significant legal events in an individual's life. In the context of marriage, registration

functions as an essential legal instrument for ensuring certainty regarding an individual's marital status and the legal relationship between spouses.

Accordingly, marriage registration should not be regarded merely as an administrative formality without legal consequences. Rather, it performs essential evidentiary and legal certainty functions by establishing the existence and legal status of a marital relationship. Such legal certainty becomes particularly significant when the parties are involved in disputes arising from the marriage, including disputes concerning marital property. Nevertheless, the legal status of property in a particular case should ultimately be determined on the basis of the legal facts established during judicial proceedings and not solely by the existence or absence of specific administrative documents.

The application of these legal principles can be observed in Bangil Religious Court Decision No. 1961/Pdt.G/2015/PA.Bgl. This decision provides an illustration of how Indonesian courts determine the legal consequences of property claims in relation to the parties' marital relationship. In this case, the panel of judges rejected the claim for joint marital property because the legal basis of the parties' marriage was found to be insufficient. The court's reasoning demonstrates that, before determining whether particular property constitutes joint marital property, the court must first establish whether the parties' relationship possesses a valid legal foundation capable of giving rise to the legal consequences associated with joint marital property.

The court's refusal further indicates that the mere existence of property acquired while the parties were living together is insufficient to establish that such property constitutes joint marital property. Before recognizing property as jointly owned under marriage law, the court must first determine whether a legally recognized marital relationship existed that could serve as the juridical basis for the creation of joint marital property rights. Accordingly, the rejection of the claim resulted from the absence of the legal foundation required to confer the legal status of joint marital property upon the disputed assets. This approach reflects the court's adherence to the principles of Indonesian positive law in determining the legal status of marital property.

The Bangil Religious Court decision also demonstrates that the legal status of the marriage constitutes a preliminary issue that must be resolved before the legal status of property can be determined. Where the marital relationship lacks a sufficient legal basis to produce the legal consequences associated with joint marital property, a claim to such property cannot be granted solely because the assets were acquired while the parties cohabited. Accordingly, there is a close legal relationship between establishing the validity of the marital relationship and determining the legal status of the disputed property.

For comparative purposes, Supreme Court Decision No. 111 K/Ag/2010 further illustrates the importance of marital status in determining the legal consequences relating to property. The decision confirms that the legal status of joint marital property cannot be separated from the marital relationship that constitutes its juridical foundation. Consequently, the legal validity of the marriage remains one of the fundamental considerations in determining whether particular property may legally be classified as joint marital property.

The Supreme Court decision serves as an important point of comparison because it demonstrates that the determination of joint marital property cannot be based solely on the existence of property acquired while the parties were living together. Rather, the legal relationship that constitutes the juridical foundation for the creation of joint marital property must also be established. Accordingly, this approach is consistent with the principle that the legal consequences of marriage must rest upon a clear legal basis, thereby ensuring that the legal status of property arising from the marital relationship can be determined with certainty.

In addition to the Supreme Court decision, Constitutional Court Decision No. 46/PUU-VIII/2010 is also relevant to the discussion concerning the relationship between legal status and the protection of civil rights. The decision principally concerns the legal status of children born outside marriage and their civil relationship with their biological father, which may be established through scientific and technological evidence and/or other legally admissible evidence. However, the decision does not directly regulate the legal status of joint marital property in unregistered marriages. Consequently, it cannot be interpreted as providing a legal basis for concluding that property acquired during an unregistered marriage automatically constitutes joint marital property.

Nevertheless, Constitutional Court Decision No. 46/PUU-VIII/2010 remains significant as a comparative reference for understanding the evolution of Indonesian law concerning the recognition of civil rights based on provable factual relationships. The decision demonstrates that legal protection is not confined solely to administrative formalities but also extends to legal relationships and civil rights that can be established through legally admissible evidence. In the context of this study, the decision serves as an analytical reference for examining the development of legal reasoning concerning the recognition of civil legal relationships without extending its legal effect beyond the scope of its actual holding.

Furthermore, Manado High Court Decision No. 18/PDT/2022/PT MDO represents another important judicial reference in understanding the development of dispute resolution relating to property rights. The decision illustrates that judicial examination of property disputes is not limited to the legal status of the parties' relationship but also encompasses factual issues concerning the disputed property, including the origin of its acquisition, its possession and control, and the relationship between the parties and the disputed asset. This demonstrates that evidentiary assessment relating to the property itself remains an essential component of judicial proceedings.

The Manado High Court decision also provides a useful comparison to a more formalistic approach in determining the legal status of property. In adjudicating property disputes, judges must carefully assess the concrete facts relating to the disputed assets rather than relying exclusively on formal legal status. Accordingly, although the legal validity of the marriage constitutes one of the principal foundations for determining the legal consequences relating to property, factual issues concerning the disputed asset and the manner in which it was acquired remain integral elements that must be thoroughly examined by the court.

When these legal provisions are analyzed through the lens of Gustav Radbruch's Theory of Legal Certainty, it becomes evident that Indonesian positive law provides a sufficiently

clear legal framework governing the relationship between marriage and joint marital property. The Marriage Law establishes the legal requirements and procedures for marriage, while Article 35 regulates property acquired during the marriage. Furthermore, the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI) provides more detailed provisions concerning marital property for Muslim couples. Collectively, these legal instruments enable individuals to ascertain the legal status of property acquired during marriage with a reasonable degree of certainty.

The principle of legal certainty requires legal rules to provide clarity regarding the rights and obligations of individuals. Within the context of marriage, registration ensures legal certainty concerning the marital status of the spouses and serves as an essential means of proof should legal disputes subsequently arise. Accordingly, the statutory obligation to register marriages is closely connected to the state's responsibility to establish legal certainty for the parties concerned. Where a marriage is not officially registered, one of the principal legal consequences is the increased difficulty in proving both the existence of the marital relationship and the legal consequences arising from it.

From the perspective of legal certainty, therefore, property acquired during an unregistered marriage cannot automatically be equated with joint marital property arising from a registered marriage. The legal status of such property must instead be determined in accordance with the applicable legal provisions and the legal facts established through admissible evidence. In resolving property disputes, courts must examine the legal status of the parties' relationship, the nature of the disputed property, the time and manner of its acquisition, its origin, and the evidence presented during judicial proceedings. Through such an approach, the legal status of the disputed property can be determined on the basis of both an established legal framework and objectively verified facts.

Accordingly, under Indonesian positive law, property acquired during an unregistered marriage does not automatically acquire the legal status of joint marital property. Article 35 paragraph (1) of the Marriage Law must be interpreted systematically together with the provisions governing the legal validity and registration of marriage contained in Article 2. Marriage registration provides legal certainty and serves as official evidence of the marital relationship, whereas the legal status of property must ultimately be determined on the basis of that legal relationship and the facts established during judicial proceedings concerning the disputed assets.

Based on the foregoing analysis, it may be concluded that, under Indonesian positive law, the legal status of property arising from an unregistered marriage differs fundamentally from that of joint marital property arising from a registered marriage. Property acquired during the parties' cohabitation cannot automatically be classified as joint marital property solely because it was obtained while the parties were living together. Rather, its legal status must be determined by considering the legal basis of the marital relationship, the applicable statutory framework, the origin and time of acquisition of the property, and the evidence presented before the court. Bangil Religious Court Decision No. 1961/Pdt.G/2015/PA.Bgl, Supreme Court Decision No. 111 K/Ag/2010, Constitutional Court Decision No. 46/PUU-VIII/2010, and Manado High Court Decision No.

18/PDT/2022/PT MDO serve as important comparative judicial authorities illustrating how Indonesian courts evaluate both the legal status of the parties' relationship and the factual circumstances surrounding disputed property. Consequently, under Indonesian positive law, the determination of property rights in unregistered marriages ultimately depends upon the legal foundation of the parties' relationship and the legal facts concerning the disputed property that can be established through judicial proceedings.

2. Equitable Legal Protection for Claims to Joint Marital Property in Unregistered Marriages: A Progressive Law Perspective

Legal protection for parties asserting claims to property ownership arising from unregistered marriages cannot be assessed solely on the basis of whether the marriage has been officially registered. The issue also concerns the factual reality that, throughout the course of their relationship, the parties may establish a shared economic life by earning income, meeting household needs, operating businesses, and acquiring various forms of property. Under such circumstances, one or both parties may have made substantial economic contributions to the acquisition, maintenance, or development of particular assets despite the absence of formal administrative recognition of the marriage. Consequently, when disputes arise, the legal system should provide a mechanism through which such contributions can be objectively evaluated on the basis of legally admissible evidence presented during judicial proceedings.

Indonesian positive law undoubtedly provides legal certainty regarding the importance of marriage registration and the legal status of joint marital property. Nevertheless, an overly formalistic application of the principle of legal certainty may produce inequitable outcomes if it relies exclusively on the existence of a marriage certificate while disregarding the legal facts surrounding the acquisition of property. Within unregistered marriages, a party who has contributed for many years to the family's economic welfare may be placed in a significantly disadvantaged position when the relationship ends and a dispute over property arises. This situation illustrates the tension between formal legal certainty and the need to achieve substantive justice for individuals who have demonstrably contributed to the creation and accumulation of marital assets.

Economic contribution within a household may take many different forms. Such contribution should not be measured solely by the amount of income directly used to purchase particular assets. It may also include the provision of business capital, payment of mortgage or loan installments, financing household expenses, managing a family business, maintaining and developing existing assets, or participating in economic activities that enhance the value of property. Accordingly, in adjudicating disputes concerning marital property, economic contribution should not be interpreted narrowly by reference only to the individual whose name appears as the registered owner of the disputed asset. Instead, courts should undertake a comprehensive assessment of the respective contributions made by each party in acquiring, preserving, and increasing the value of the property throughout the duration of their relationship. Economic contribution may also arise through the division of roles within the household. One party may engage in

income-generating employment, while the other manages domestic responsibilities and supports the economic activities of the spouse. Under certain circumstances, such support may have a direct impact on the other party's ability to acquire, preserve, or develop property. Accordingly, the assessment of economic contribution should be conducted comprehensively on the basis of the concrete facts established during judicial proceedings. This assessment does not imply that every asset acquired during the relationship automatically constitutes jointly owned property. Rather, it recognizes that the respective contributions of the parties represent one of the relevant legal facts that should be considered by the court in determining the parties' civil legal relationship to the disputed property.

Within the context of unregistered marriages, the law of evidence assumes a particularly significant role. A party asserting a claim to property must establish the legal basis of that claim through legally admissible evidence. Such evidence may include proof relating to the source of funds, purchase transactions, ownership or possession of the property, repayment of loans or mortgage installments, business records, financial transfers, witness testimony, or any other evidence capable of demonstrating the relationship between the claimant and the disputed asset. Consequently, an approach that considers economic contribution remains firmly grounded within the framework of the law of evidence and should not be interpreted as conferring property rights solely on the basis of unilateral assertions.

This approach is significant because the principal legal issue extends beyond the mere existence or absence of marriage registration. It also concerns the manner in which the law recognizes and evaluates civil legal relationships that have developed in practice. Where a party is able to demonstrate that he or she made a substantial contribution to the acquisition, preservation, or development of particular property, such factual circumstances become legally relevant in determining the legal relationship between that party and the disputed asset. Accordingly, judges should conduct a comprehensive and objective examination of all relevant facts so that judicial decisions are based not only on formal legal requirements but also on the actual legal circumstances established in the proceedings.

This evolving legal approach may be viewed in light of Constitutional Court Decision No. 46/PUU-VIII/2010. The decision primarily concerns the civil legal relationship between children born outside marriage and their biological fathers. Although the decision does not directly address the legal status of joint marital property, the Constitutional Court's reasoning is relevant in illustrating the development of Indonesian law regarding the recognition of civil rights based on provable factual relationships. The decision demonstrates that the existence of a legal relationship should not always be assessed exclusively through administrative formalities but may also be established by reference to legally proven facts supported by admissible evidence.

Accordingly, Constitutional Court Decision No. 46/PUU-VIII/2010 provides an important analytical point of departure for discussing the protection of civil rights in the context of unregistered marriages. Nevertheless, the decision should not be construed as establishing a direct legal basis for concluding that property acquired during an

unregistered marriage automatically constitutes joint marital property. Its relevance lies in the broader development of a legal paradigm that recognizes civil legal relationships on the basis of objectively verifiable factual circumstances. Therefore, any application of this reasoning to disputes concerning marital property must be undertaken cautiously and consistently with the specific statutory provisions governing marital property under Indonesian law.

Furthermore, Supreme Court Decision No. 111 K/Ag/2010 serves as an important comparative authority in examining the relationship between the legal status of marriage and the legal consequences relating to marital property. The decision underscores the importance of establishing the legal validity of the marital relationship before determining the legal consequences attached to property rights. This approach reflects the fundamental principle of legal certainty, under which the legal status of property cannot be separated from the legal relationship that gives rise to it. Nevertheless, within the context of the present study, the decision is equally significant because it illustrates that determining the legal status of the marriage constitutes only the initial stage of judicial analysis before the court proceeds to assess the parties' respective legal relationship to the disputed property.

Similarly, Bangil Religious Court Decision No. 1961/Pdt.G/2015/PA.Bgl demonstrates the legal consequences of an approach that regards the validity of the marital relationship as the primary basis for adjudicating claims to joint marital property. In that case, the claim concerning joint marital property was dismissed because the court found that the legal foundation of the parties' marital relationship was insufficient to give rise to the legal consequences associated with joint marital property. The court's reasoning illustrates that judges cannot automatically recognize property as joint marital property merely because it was acquired while the parties were living together. Instead, the existence of a legally recognized marital relationship remains an essential prerequisite for determining the legal consequences attached to the disputed assets.

The decision also highlights the limitations of applying the legal concept of joint marital property to unregistered marriages. Where the marital relationship does not provide an adequate legal basis for the creation of joint marital property rights, claims relating to disputed assets cannot be treated in the same manner as claims arising from legally registered marriages. Consequently, protecting the rights of parties who have made substantial economic contributions in such circumstances requires a legal approach capable of distinguishing between the formal legal recognition of joint marital property and the establishment of civil property rights based on legally proven facts.

Likewise, Manado High Court Decision No. 18/PDT/2022/PT MDO provides an important comparative perspective by demonstrating that the adjudication of property disputes requires more than an examination of the parties' marital status alone. The court must also evaluate the factual circumstances surrounding the disputed property, including its origin, acquisition, possession, and the relationship between each party and the property itself. This approach confirms that judicial examination extends beyond formal legal requirements and requires a careful assessment of the concrete facts established during the proceedings.

Taken together, these four judicial decisions reveal that the resolution of property disputes arising from unregistered marriages requires a careful balance between two fundamental legal considerations. The first is legal certainty, which emphasizes the legal status of marriage and its official registration as the foundation for determining the legal consequences of marital property. The second is the need to evaluate the concrete factual circumstances surrounding the disputed assets and the respective relationship of each party to those assets. Achieving an appropriate balance between these two considerations is essential to ensure that judicial decisions uphold the requirements of positive law while simultaneously recognizing the factual legal relationships established through the evidence presented before the court. Such a balanced approach promotes not only legal certainty but also substantive justice in resolving disputes concerning property acquired during unregistered marriages.

From the perspective of Satjipto Rahardjo's Progressive Law Theory, the law should not be regarded merely as a set of rules to be applied mechanically, but rather as an instrument for achieving the fundamental objectives of law, namely justice and social utility. Progressive Law is founded on the principle that the law exists for human beings, not human beings for the law. Accordingly, the application of legal rules should take into account the social context and the realities experienced by members of society. In disputes concerning property arising from unregistered marriages, this theoretical perspective provides a normative basis for examining the issue from a more substantive standpoint without undermining the authority of Indonesian positive law.

A progressive approach does not imply that judges may disregard Articles 2 and 35 of the Marriage Law or freely recognize property acquired during an unregistered marriage as joint marital property. Rather, Progressive Law requires that statutory provisions be interpreted and applied in light of their underlying objectives and the factual circumstances of each case. Judicial examination must therefore begin with the applicable provisions of positive law. However, when determining the parties' civil legal relationship to the disputed property, judges should also examine how the property was acquired, which party contributed to its acquisition or development, how it was managed, and what evidence demonstrates the existence of an economic relationship between the parties.

This approach is consistent with Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power, which requires judges to explore, follow, and understand the legal values and sense of justice prevailing within society. This statutory obligation authorizes judges not only to interpret legal provisions textually but also to consider the social realities underlying a particular dispute. In cases involving property arising from unregistered marriages, this obligation may be fulfilled through a comprehensive examination of both the parties' relationship and the factual circumstances relating to the disputed property.

The concept of *rechtsvinding* (judicial law-finding) is particularly relevant in this context. Judges are not confined to mechanically applying existing legal provisions; they also have the responsibility to identify and interpret the applicable law when statutory provisions do not provide a direct or comprehensive solution to a concrete legal dispute. Such judicial law-finding must nevertheless remain within

the limits of judicial authority and be firmly grounded in the prevailing legal framework. Accordingly, adopting a progressive approach does not authorize judges to create new legal rights without a legal basis. Rather, it requires judges to interpret existing legal provisions in light of the proven facts of the case and the principles of justice that the law seeks to realize.

In disputes concerning property arising from unregistered marriages, this progressive approach may be implemented by evaluating several concrete factors. First, judges may consider the duration and continuity of the parties' domestic relationship. Second, they should examine the origin of the disputed property and the time at which it was acquired. Third, they should assess the nature and extent of each party's economic contribution to the acquisition, preservation, or development of the property. Fourth, they should evaluate evidence relating to the possession, use, management, and maintenance of the disputed assets. Finally, judges should take into account any other legally relevant facts that have been established through the evidentiary process.

The duration of the parties' relationship should not be regarded as an automatic basis for recognizing joint marital property. Rather, it constitutes one of the factual circumstances capable of explaining the process through which property was accumulated during the relationship. Likewise, economic contribution should not automatically be equated with legal ownership. Instead, it represents an important evidentiary factor capable of establishing the legal relationship between the claimant and the disputed property. Consequently, the application of a progressive approach continues to require concrete evidence and remains consistent with the fundamental legal principle that every asserted right must be supported by both a valid legal basis and sufficient proof.

Equitable legal protection must also be guided by the principle of proportionality. Where the evidence demonstrates that both parties made meaningful contributions to the acquisition or development of particular property, the respective rights of each party should be determined proportionately in light of those contributions and the legal facts established during the proceedings. Conversely, where only one party is able to establish a legally recognizable connection to the disputed property, rights over that property cannot be granted merely because the parties previously lived together. Such an approach prevents Progressive Law from being applied in a manner that undermines legal certainty or disregards the fundamental principles governing proof and judicial reasoning.

Accordingly, within the framework of this study, substantive justice should not be understood as requiring that all disputed property be awarded to the party asserting the claim. Rather, it requires that the factual circumstances surrounding the parties' relationship and the acquisition, maintenance, and development of the disputed property be fully considered in the judicial decision-making process. Justice is achieved through a comprehensive examination of the facts, an objective assessment of the evidence, and judicial reasoning capable of demonstrating the legal relationship between the parties' respective economic contributions and the disputed property. Through such an approach, the objectives of legal certainty, substantive justice, and legal utility—as emphasized by Progressive

Law can be harmoniously realized in resolving property disputes arising from unregistered marriages.

The perspective of Progressive Law further provides a normative foundation for the proposition that the law must be capable of responding to social developments. Social realities do not always conform to the administrative framework established by the state. Unregistered marriage represents one such social reality, giving rise to economic and civil legal relationships between the parties. Where such relationships result in the acquisition of property and subsequently give rise to legal disputes, the legal system should provide mechanisms for dispute resolution that adequately recognize these factual circumstances without undermining the statutory requirement of marriage registration.

From this perspective, legal protection for claims to property ownership arising from unregistered marriages should be directed toward the recognition of provable civil property rights rather than the automatic classification of disputed assets as joint marital property. This distinction is of fundamental importance because not every proprietary right arising from an unregistered relationship should be forced into the legal framework of joint marital property under the Marriage Law. Instead, rights relating to disputed property should be assessed by reference to the legal basis of ownership, the parties' respective economic contributions, the origin of the property's acquisition, and the legally admissible evidence presented before the court.

Accordingly, economic contribution should be regarded as one of the legally relevant facts in the adjudication of property disputes. Such contribution does not automatically give rise to proprietary rights. Rather, it constitutes an important evidentiary factor enabling the court to determine the claimant's civil legal relationship to the disputed property. This approach better reflects the principle of substantive justice because it ensures that a party who has made genuine and substantial economic contributions is not deprived of the opportunity to establish his or her legal rights solely because the marriage was not formally registered.

Ultimately, achieving equitable legal protection for claims to property ownership arising from unregistered marriages requires an appropriate balance between legal certainty and substantive justice. Legal certainty remains indispensable in preserving the legal function of marriage registration and the statutory framework governing joint marital property. However, legal certainty should not be applied in a rigid or mechanical manner that renders the factual circumstances surrounding the parties' economic contributions and the acquisition of property legally irrelevant. Within the framework of Progressive Law, judges are therefore encouraged to undertake a more substantive evaluation of the proven facts while remaining faithful to the applicable statutory provisions.

Based on the foregoing analysis, legal protection for parties asserting property claims in the context of unregistered marriages should be achieved through a comprehensive judicial examination of the legal status of the parties' relationship, the origin and timing of the acquisition of the disputed property, the nature and extent of each party's economic contribution, the possession and management of the property, and the evidence presented during the proceedings. Economic contribution may therefore serve as

one of the principal considerations in determining a party's civil legal relationship to disputed property, provided that such contribution is established through legally admissible evidence. This approach neither abolishes the statutory requirement of marriage registration nor automatically transforms property acquired during an unregistered marriage into joint marital property. Instead, it provides judges with the interpretative space to identify legal relationships that more accurately reflect the factual circumstances of each case. Consequently, Satjipto Rahardjo's Progressive Law Theory offers an appropriate theoretical framework for developing a more equitable model of legal protection while maintaining a balanced relationship between legal certainty, substantive justice, and legal utility, the three fundamental values that should guide judicial decision-making.

Conclusion

Based on the findings of this study, it can be concluded that, under Indonesian positive law, property acquired during an unregistered marriage is not automatically recognized as joint marital property as provided under Article 35 paragraph (1) of Law Number 1 of 1974 on Marriage, as amended by Law Number 16 of 2019, and Articles 85–97 of the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). The legal recognition of joint marital property remains dependent upon the legal validity of the marriage, which is evidenced through official marriage registration as an instrument of legal certainty. An analysis of Bangil Religious Court Decision No. 1961/Pdt.G/2015/PA. Bgl, Supreme Court Decision No. 111 K/Ag/2010, and Manado High Court Decision No. 18/PDT/2022/PT MDO demonstrates that judges generally continue to regard the legal validity of marriage as the primary basis for determining the legal status of property. While this approach reflects the principle of legal certainty as articulated by Gustav Radbruch, it has not fully provided legal protection for parties who have demonstrably made economic contributions throughout the duration of an unregistered marriage.

Furthermore, legal protection for claims to property ownership arising from unregistered marriages should be directed toward an approach that places greater emphasis on substantive justice. Economic contributions made by either or both parties—including earned income, capital investment, business management, or other forms of contribution that significantly influence the acquisition, maintenance, or development of property—constitute legal facts that should be taken into account in the resolution of property disputes. Satjipto Rahardjo's Progressive Law Theory provides the normative foundation for this approach by emphasizing that the law should not merely enforce legal rules in a formalistic manner but should also protect the rights of individuals based on the principles of justice and social benefit. Accordingly, when adjudicating property disputes arising from unregistered marriages, judges should not rely solely on the administrative requirement of marriage registration. Instead, they should also evaluate the factual evidence concerning the parties' economic contributions, the origin and acquisition of the property, the duration of the marital relationship, and the evidence

presented during judicial proceedings. Such an approach is expected to establish a more balanced relationship between legal certainty, substantive justice, and legal utility, thereby ensuring more equitable protection of the parties' civil property rights.

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