



Legal Issues Regarding Marital Property After Divorce: An Islamic Family Law Perspective

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Abstract

Marital property is one of the crucial aspects that requires serious attention when divorce occurs. This study aims to examine the issues surrounding the division of marital property from the perspective of Islamic family law, highlighting the normative and practical challenges that arise after divorce. The research method used is qualitative with a content analysis approach, analyzing the contents of *fiqh* books, legislation, and related jurisprudence documents. The results of the study indicate that the division of joint property often faces obstacles, such as unclear ownership status, undocumented contributions from spouses, and differences in interpretation of Islamic legal norms. Additionally, social and cultural factors also influence the implementation of justice in this division process. The implications of these findings emphasize the importance of developing a more comprehensive family law approach that is responsive to gender justice and aligned with the principles of *maqashid syariah* to protect the rights of both parties fairly.

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INTRODUCTION

Marriage is a sacred institution that forms the foundation of the family in society, not only as a spiritual and emotional bond, but also as a complex economic unit. One of the crucial aspects of marital dynamics is the management of joint property, which serves as an important tool in ensuring fairness and well-being for both parties (Farid & Sururie, 2024; Nurhasanah, 2024). In the context of Islamic family law, the concept of joint property has profound significance, transcending the mere division of material assets and touching on the philosophical realm of rights, responsibilities, and gender justice (Cahyani, 2020).

Social realities in Indonesia show that the complexity of joint property issues after divorce often becomes a source of prolonged conflict (Saputra et al., 2024; Soleh, 2024). Although there are regulations in place, such as the Compilation of Islamic Law and various Supreme Court precedents, the practice of joint property division still faces a number of fundamental problems. This issue is not merely related to legal normative aspects but also intersects with social construction, religious interpretation, and power dynamics within family structures (Aibak, 2022).

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Historically, the concept of joint property in Islamic family law has undergone significant developments. From the perspective of classical *fiqh*, discussions about property in marriage were relatively limited and partial. However, with social transformation and demands for gender equality, the paradigm of understanding joint property has also shifted (Pratisiya et al., 2024; Hasanah et al., 2025). This necessitates a comprehensive study that not only looks at the issue from a normative perspective but also considers the sociological and anthropological contexts surrounding it.

The complexity of the legal issues surrounding joint property after divorce can be seen from several critical dimensions. First, the unclear status of ownership of property acquired during marriage. In many cases, the assets formed are the result of the couple's collective work, but are often not formally documented. This creates difficulties in the division process, especially when there is a divorce accompanied by prolonged conflict (Siringoringo, 2023).

Second, differences in the interpretation of Islamic legal norms relating to joint property. Although there is a relatively clear regulatory framework, its implementation is highly dependent on the interpretation of the parties, whether through litigation or non-litigation channels. Religious courts often face challenges in delivering comprehensive and fair decisions, given that each case has unique and complex characteristics (Wahyudi, 2020).

Third, socio-cultural factors that influence perceptions and practices of joint property distribution. The patriarchal structure that is still strong in society often disadvantages women, even though normatively they have equal rights to property acquired during marriage. This inequality does not only occur at the level of legal implementation but also at the stage of constructing society's understanding of justice in property division (Sirri, 2024).

This study seeks to explore the legal issues surrounding joint property after divorce using a multidisciplinary approach. The study does not merely stop at a normative analysis of legislation, but also integrates sociological, anthropological, and philosophical perspectives. The aim is to produce a comprehensive understanding that can contribute theoretically and practically to the resolution of joint property disputes.

Some of the key questions that are the focus of this research include: How does Islamic law view joint property in the context of divorce, what factors influence the complexity of property division after divorce, and what dispute resolution models can guarantee fairness and protect the rights of both parties? The significance of this research lies in its attempt to deconstruct the conventional paradigm in understanding joint property. By exploring legal issues in depth, it is hoped that conceptual and practical recommendations can be formulated that can bridge the gap between legal norms, social practices, and demands for gender justice.

METHODS

This study uses a qualitative approach with a normative juridical method, combined with content analysis techniques to examine the issue of joint property distribution after divorce from the perspective of Islamic family law (Fadli, 2021). This approach aims to explore Islamic legal norms and relevant legislation in depth and interpretively. Data collection was conducted through a literature review by examining primary legal sources such as the Compilation of Islamic Law, Law Number 1 of 1974 concerning Marriage, and relevant court decisions. Secondary data was obtained from law books, scientific journals, academic articles, and other publications discussing similar topics (Efendi, 2022; Zed, 2008).

Data analysis techniques were carried out descriptively and analytically, covering the stages of identifying legal issues, interpreting doctrines and norms, and constructing context-based conclusions. By applying content analysis, this study highlights the legal narratives that emerge in *fiqh* discourse, state regulations, and

jurisprudential practices, in order to produce a comprehensive and critical understanding of the legal issues surrounding joint property after divorce in the context of Islamic family law (Patonah et al., 2023; Subhaktiyasa et al., 2025).

RESULT AND DISCUSSION

The Legal Construction of Marital Property in the Perspective of Islamic Family Law

Marital property in Islamic family law is a complex concept that has undergone significant development in line with social transformation and contemporary legal thinking (Az-zahra, 2024; Amanda, 2025). Historically, the concept of property in classical fiqh was relatively limited, with a primary focus on inheritance distribution and individual rights within the family structure. However, contemporary interpretations have expanded to reflect demands for justice and gender equality within the institution of marriage (Afdhal, 2023).

The Compilation of Islamic Law in Indonesia is an important milestone in providing a comprehensive legal framework regarding joint property. Articles 35 to 37 of the Compilation of Islamic Law explicitly regulate the status of property acquired during marriage. According to these provisions, joint property is defined as property acquired during the marriage, whether from the husband's income, the wife's income, or other legitimate sources. This legal construct provides a fundamental basis for understanding the rights of each party to the property generated during the marriage (Widyatama, 2004).

The Islamic family law perspective views joint property not merely as an economic instrument, but as a manifestation of the principles of cooperation and mutual support within the marital bond (Ibrahim, 2024). This concept is rooted in the Islamic philosophy of the family as a social unit with shared responsibility for achieving prosperity. In this context, the contributions of each spouse are not evaluated solely from a material perspective but also include non-material roles such as child-rearing and household management (Rajafi, 2020).

Theoretically, the legal construction of joint property in the perspective of Islamic family law is built on several fundamental principles (Safira & Rachmawati, 2022). First, the principle of justice, which emphasizes the proportional distribution of property based on the contributions of each party. Second, the principle of consultation, which encourages couples to reach agreements through dialogue in managing and dividing property. Third, the principle of protection of individual rights, which guarantees that each party has equal access and standing in the ownership of property (Wahyudi, 2020).

The complexity of the legal construction of joint property lies in the inconsistent interpretation between classical fiqh norms and the contemporary social context. Traditional fiqh tends to position the husband as the main breadwinner, while the wife is placed in a domestic role (Syahrizan & Siregar, 2024; Habib et al., 2025). However, modern social realities reveal the increasing complexity of gender roles within family structures. Many women make significant contributions to the economic sphere, leading to a reinterpretation of the concept of joint property (Effendi, 2017).

Jurisprudence in Indonesia shows a tendency to adopt a progressive interpretation in understanding marital property. Court decisions are increasingly taking into account women's contributions, both in terms of income and domestic work. This reflects a growing legal awareness to provide more comprehensive protection for women's rights in the institution of marriage (Syarifuddin, 2014). Sociocultural factors play a significant role in the legal construction of joint property. Although Islamic family law normatively guarantees equality, social practices are often still influenced by patriarchal constructs. Research shows that education level, access

to legal information, and social capital influence an individual's ability to fight for their rights to marital property (Syarifuddin, 2015).

In a global context, the legal construction of joint property in the perspective of Islamic family law continues to undergo dynamics. Issues such as gender equality, women's rights, and social justice are factors that encourage the reinterpretation of the concept of joint property (Kharismawati, 2021; Yusup, 2024). Several countries with Muslim-majority populations have reformed their family laws to be more responsive to contemporary social complexities.

The future construction of joint property law from the perspective of Islamic family law requires a more holistic approach. Systematic efforts are needed to synergize religious norms, social contexts, and principles of justice. Legal education, strengthening the capacity of judicial institutions, and openness to progressive interpretations are key to developing a more responsive and equitable legal construction.

Legal Issues in the Division of Marital Property After Divorce

The division of marital property after divorce is one of the most complex aspects of family law in Indonesia. The legal issues that arise are not merely related to normative legal aspects, but also encompass highly complex social, economic, and cultural dimensions (Rayyahun & Sabbar, 2025; Makatita & Islamy, 2022). Each process of dividing joint property presents unique challenges that require a comprehensive and sensitive approach. One of the fundamental issues is the unclear status of ownership of property acquired during marriage. Most couples do not formally document each party's contribution to the accumulation of assets. This creates significant difficulties in the event of divorce, where each party claims rights to jointly generated assets. This complexity is further compounded when there are assets acquired through inheritance, gifts, or other special sources (Syarifuddin, 2015).

Existing legal regulations, particularly the Compilation of Islamic Law, provide a basic framework for the division of joint property. However, its implementation often faces challenges of interpretation. Articles 35 to 37 of the Compilation of Islamic Law stipulate that joint property is property acquired during marriage, but these limitations still require interpretation that takes into account the dynamic social context (Widyatama, 2004). Socio-economic factors play a crucial role in the issue of joint property division. Economic inequality between husbands and wives often affects bargaining power in the division process (Yurike & Syafruddin, 2025; Handayani, 2025). Women who contribute to domestic work during marriage often have their economic contributions overlooked. The valuation of household work that has no financial value is one of the fundamental issues in the division of joint property (Satrio, 1991).

The judicial system faces complex challenges in resolving disputes over shared property. Court rulings show significant variation in the handling of cases, due to differences in judges' interpretations of legal norms. Some judges tend to use a textual approach, while others prefer a contextual approach that considers aspects of social justice. The patriarchal gender construct remains a major obstacle in the division of joint property (Sarif & Rajab, 2023; Manalu et al., 2024). Although the law nominally guarantees equality, social practices often do not align with this principle. Women are often in a weaker position, both in terms of legal knowledge and access to resources to fight for their rights (Mardani, 2024).

The complex legal aspects are further complicated by the variety of forms of property owned. Property is not only in the form of fixed assets such as houses or land, but also includes investments, stocks, savings, and increasingly developing digital assets (Maulana & Satibi, 2024). Each type of asset has different legal characteristics, adding to the complexity of the distribution process. Legal issues in the distribution of joint assets are also closely related to the dispute resolution model. Litigation through

the courts is often time-consuming and costly. Alternative resolutions such as mediation are being developed, but they require the parties to negotiate proportionally and fairly.

Psychological factors are no less important in the legal issues surrounding the division of joint property (Bukhari, 2021). The emotional process of divorce often affects a couple's ability to engage in rational dialogue regarding the division of property. The interests of children, social status, and family dignity are also complex considerations. Going forward, a comprehensive approach is needed to address the legal issues surrounding the division of joint property. This requires systematic work, ranging from regulatory reform and strengthening the capacity of judicial institutions to educating the public about legal rights in marriage. Only with this holistic approach can substantive justice in the division of marital property be achieved.

Interpretation of Legal Norms and Disparities in Court Decisions in Marital Property Cases

The interpretation of legal norms in joint property cases is a crucial aspect that determines the fairness and consistency of court decisions. The complexity of legal issues surrounding the division of joint property after divorce presents significant challenges for law enforcement officials in implementing existing legal norms (Ridwan, 2024). Every court decision is not merely a matter of applying articles, but rather a process of interpretation that considers various social, economic, and substantive justice dimensions (Efendi, 2022). The Compilation of Islamic Law is the main foundation for the interpretation of laws related to joint property. Articles 35 to 37 of the Compilation of Islamic Law provide a relatively general normative framework, opening up broad room for interpretation by judges. This is what often causes disparities in decisions in various courts. Each judge brings a different personal and contextual perspective in interpreting existing legal norms (Widyatama, 2004).

Variations in the interpretation of legal norms can be observed from several fundamental aspects. First, there are differences in views on the definition of joint property. Although it has been normatively stipulated that joint property is property acquired during marriage, these limitations still require contextual interpretation. Some judges tend to use a strict textual approach, while others use a more flexible approach and consider the social context (Batubara, 2024).

Legal schools of thought and religious backgrounds also influence the interpretation of legal norms. Judges with different fiqh backgrounds will have different perspectives in interpreting the concept of joint property. The approaches of the Shafi'i, Hanafi, Maliki, or Hambali schools of thought bring their own nuances to the process of legal interpretation (Yanto, 2021). The complexity of interpretation becomes even more apparent in cases involving assets with special status. For example, inherited assets, gifts, or assets acquired before marriage. It is not uncommon to find different rulings for similar cases, which indicate fundamental differences in the interpretation of existing legal norms.

Disparities in court rulings are a logical consequence of diverse interpretation processes. A case involving joint property with similar characteristics may result in different rulings in different courts. This not only creates legal uncertainty but also calls into question the consistency of the judicial system in handling joint property cases (Soemadipradja, 2010).

Several factors contributing to disparity in rulings include: judges' educational backgrounds, individual experience in handling cases, gender perspectives, local socio-economic contexts, and the ability of the parties to present evidence. A contextual approach to interpreting legal norms is increasingly important in addressing the complexity of joint property cases. Law cannot be understood as a rigid instrument, but must be responsive to social developments and demands for substantive justice (Iskandar et al., 2025; Saragih et al., 2024). Judges are required not only to be

mouthpieces for the law, but also active interpreters in realizing justice. Efforts to minimize disparity in decisions have been made through various mechanisms. The Supreme Court regularly conducts guidance and harmonization of legal understanding through training, legal discussions, and publication of jurisprudence. However, challenges in interpreting legal norms remain, given the complexity of each unique joint property case.

Models for Resolving Disputes over Joint Property

Resolving disputes over joint property is a complex process that requires a comprehensive and sensitive approach. In the context of Islamic family law in Indonesia, there are various models that can be used to resolve conflicts related to the division of property after divorce. Each model has its own characteristics, advantages, and limitations that need to be thoroughly understood (Arya et al., 2020).

Litigation through Religious Courts

The model of dispute resolution through litigation is the most common conventional method. Religious courts are the official institutions authorized to resolve joint property cases within the scope of Islamic marriage (Halimi, 2024). This process begins with the filing of a lawsuit by one of the parties, followed by the examination of evidence, a hearing, and finally a judge's decision. The advantage of the litigation model lies in its binding legal force. Court decisions are final and have executory power, meaning that they can be enforced (Suhendriyatno, 2020; Aurellia & Nisa, 2024). However, this model also has significant drawbacks, including: relatively high costs, a lengthy and time-consuming process, a tendency to create adversarial relationships, and solutions that do not always satisfy both parties.

Mediation: A Dialogical and Cooperative Approach

Mediation has emerged as a more humane and constructive alternative to dispute resolution. This model involves a neutral third party who helps divorcing couples reach an agreement on the division of joint property through deliberation (Amerta, 2022). The mediator acts as a facilitator, not a decision maker. The advantages of mediation include: lower costs, faster processes, maintaining good relations between parties, producing mutually agreed solutions, and greater flexibility in finding creative solutions.

Sharia Arbitration

Sharia arbitration is an alternative model that combines the Islamic legal approach with out-of-court dispute resolution mechanisms. Sharia arbitration institutions have the authority to resolve disputes based on Islamic legal principles, with decisions that have legally binding force (Siregar et al., 2024). This model has advantages in: a deep understanding of Islamic family law, simpler procedures, faster resolution, and maintaining the privacy of the parties.

Legal Consultation and Assistance

The consultation-based resolution model provides space for parties to obtain legal advocacy and guidance before pursuing formal channels. Legal consultants or family advisors can assist (Wibowo, 2021) by providing legal understanding, analyzing potential disputes, formulating resolution strategies, and preparing the necessary legal documents.

Family Deliberation

The traditional approach through family deliberation is still effective in Indonesian society. This model involves family members, religious leaders, or community leaders as mediators (Sudiyono, 2016). The strengths of this approach lie in: emotional closeness, understanding of the social context, maintaining family harmony, and avoiding prolonged conflict.

CONCLUSION

The legal issues surrounding joint property after divorce from the perspective of Islamic family law are complex, as they involve intertwined normative, social, and cultural dimensions. This study shows that the division of joint property cannot be resolved simply, but requires a multidimensional and contextual understanding, taking into account gender dynamics, substantive justice, and diverse social realities. Factors such as unclear ownership status, differing interpretations of legal norms, patriarchal dominance, and limited access to legal information pose significant obstacles to the implementation of justice. Therefore, a comprehensive approach is needed that goes beyond textual interpretation alone and is able to accommodate the principle of justice within the framework of Islamic family law that is adaptive to the demands of the times. The recommendations from this study emphasize the importance of systemic transformation through regulatory reform, strengthening the capacity of judicial institutions, and public education, in order to promote the resolution of joint property disputes that are fair, responsive to gender issues, and relevant to contemporary social complexities.

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