

Gender Justice in the Regulation of Joint Marital Property Following Divorce in Indonesia

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Abstract

This study examines gender justice in the regulation of marital property following divorce in Indonesia by conceptualising the issue not merely as a matter of asset division, but as a broader problem of fragmented legal regimes, the redistribution of economic power, and the governance of post-divorce rights protection. Employing a normative legal methodology, the study adopts a qualitative analytical approach to examine the interaction between Indonesia's plural legal system and the protection of women's economic rights after marital dissolution. The findings reveal that Indonesia's legal pluralism generates inconsistent standards of protection, whereby individuals with comparable socio-economic circumstances may receive substantially different legal outcomes depending on the applicable normative regime and the interpretative approach adopted by the courts. Within this framework, marital property should be reconceptualised as an instrument for redistributing economic power, capable of addressing structural inequalities accumulated throughout marriage, including by recognising unpaid domestic labour and caregiving responsibilities as economically valuable contributions. The study further argues that gender justice cannot be achieved through normative reform alone, but requires a comprehensive reconstruction of family law governance based on a gender-responsive governance approach that integrates regulatory design, institutional capacity, judicial practice, access to justice, legal empowerment, evidentiary mechanisms, and the effective enforcement of judicial decisions. These findings underscore the need to harmonise Indonesia's plural legal regimes and strengthen judicial governance to ensure a more coherent, substantively just, and constitutionally grounded framework for the protection of post-divorce economic rights.

Keywords: *Common property, Divorce, Gender justice, Legal pluralism, Redistribution of economic power*



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INTRODUCTION

Developments in Indonesian society over the past few decades have shown significant changes in family relationship patterns, household economic structures, and the division of roles between husbands and wives (Mas'udah, 2023). The increasing participation of women in both the formal and informal sectors has transformed the traditional paradigm regarding the primary breadwinner in the family. Women no longer merely perform domestic functions, but also make a tangible contribution to the creation, maintenance, and even the growth of family wealth (Fattah et al., 2025). These contributions are not always realised in the form of financially measurable income, but also through reproductive labour, child-rearing, household management, support for their partner's career, and informal economic activities that are often not recorded within the legal system (Karimullah & Sugitanata, 2024).

This situation raises fundamental issues when divorce occurs, as the mechanisms for dividing joint property are still better suited to accommodating direct economic contributions than unpaid domestic contributions. From the perspective of modern family economics and feminist theories on reproductive labour, both forms of contribution hold equally important economic value in the creation of family well-being (Karimullah, 2024a).

Normatively, Indonesia already possesses various legal instruments governing joint property, including the Civil Code, Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law for the Muslim community, and various Supreme Court rulings that have evolved through judicial practice. In principle, all these instruments recognise the existence of joint property acquired during the marriage, unless otherwise specified in a marriage contract. However, the existence of these normative provisions has not yet fully addressed the implementation issues arising in practice.

In various court rulings, there are still variations in judges' reasoning regarding the basis for the division of joint property, ranging from the application of equal division, division based on economic contribution, to considerations regarding the fault of one of the parties in the divorce (Bukido et al., 2025; Karimullah, 2024b; Malik et al., 2025). These variations indicate that the available legal norms have not yet fully provided consistent parameters for translating the concept of gender justice into the practice of resolving disputes over joint property.

This issue has become increasingly relevant in light of Indonesia's rising divorce rate in recent years. The increase in divorce cases not only reflects changing social dynamics within Indonesian families but also leads to a growing number of joint property division cases brought before the courts. In practice, many women suffer economic loss following a divorce due to limited access to legal information, a weak bargaining position in the dispute resolution process, difficulties in proving their contribution to the acquisition of joint property, or the former spouse's dominance over the assets (Akbaba, 2025). On the other hand, there are situations where men face legal uncertainty due to the absence of clear criteria for the division of assets, for example, when one party has made a significantly greater economic contribution than the other.

The discourse on gender justice in family law at the international level has evolved from an approach of formal equality to one of substantive equality. The formal approach holds that justice is fulfilled when the law treats everyone equally, without gender-based distinctions. Conversely, the substantive equality approach emphasises that equal treatment does not necessarily result in justice when structural inequalities affect the parties' positions. In the context of the division of joint property, the substantive approach demands that domestic contributions, care work, reproductive burdens, and various forms of unpaid labour be recognised as part of the family's economic investment. This perspective is supported by developments in feminist theory, distributive justice theory, the capability approach, and developments in human rights law, which position gender equality as an integral part of the protection of economic rights.

From an international legal perspective, various instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), have emphasised the importance of eliminating discrimination against women in all aspects of family life, including the rights to ownership, control, and the division of assets following divorce. Indonesia's ratification of CEDAW demonstrates the state's commitment to harmonising the national legal system with the principle of gender equality (Siregar et al., 2026). However, normative harmonisation is not always followed by practical harmonisation.

Various case-handling practices show that the interpretation of the concept of economic contribution, the recognition of domestic work, and the application of the principle of justice still depend heavily on the judge's interpretation, the characteristics of each case, and the social constructs that have developed within society (Van Uffelen, 2022). This indicates considerable scope for research to assess the extent to which national legal provisions truly reflect the principles of gender justice as developed in international law.

A wide range of literature on joint property in Indonesia has developed extensively. Most previous studies have focused on a normative analysis of the regulation of joint property in the Marriage Act and the Compilation of Islamic Law, including discussions of the status of separate and joint property, marriage contracts, and the legal consequences of divorce for asset ownership. Other studies have highlighted comparisons of the regulation of joint property between the national legal system, customary law and Islamic law, emphasising the pluralism of family law in Indonesia (Alhaq et al., 2025; Anggraeni, 2023). Several empirical studies have also identified obstacles in the enforcement of court rulings regarding the division of joint property, particularly concerning the execution of rulings, the proof of assets, and disputes over third-party ownership (Sobardi et al., 2025; Turatmiyah, 2025). Generally, these studies make an important contribution to the understanding of the legal framework governing joint property, but they still tend to focus on normative and procedural aspects.

Recent developments in research have begun to broaden the discussion towards the protection of women's rights following divorce, access to justice, and the implementation of a gender perspective in the rulings of both religious and district

courts. Several studies have found that judges are beginning to consider a wife's indirect contributions to the family's economic well-being as a basis for the division of joint property (Hayatullah et al., 2026; Sakinah et al., 2026). Other studies indicate a paradigm shift through the application of the principle of substantive justice in the resolution of family disputes. On the other hand, several studies reveal that the application of a gender perspective remains inconsistent, as clear legal parameters regarding the form, extent or proof of domestic contributions do not yet support it. These studies demonstrate significant progress towards better protection of women's economic rights, yet they still raise questions about the consistency of the application of the concept of gender justice within the Indonesian legal system.

Comparative studies conducted across various jurisdictions also reveal a growing trend towards recognising the economic value of domestic labour in the division of assets following divorce. Countries with both common law and civil law systems are beginning to develop an 'equitable distribution' approach that takes into account not only formal ownership of assets but also the direct and indirect contributions of each spouse during the marriage. This approach signifies a shift from the concept of ownership to that of contribution to family welfare. Nevertheless, the application of this approach is heavily influenced by the social, cultural and legal contexts of each country; consequently, it cannot be directly adopted into the Indonesian legal system without taking into account the prevailing legal pluralism.

Although the available literature has provided a sufficiently broad theoretical and empirical foundation, several limitations indicate that there is still scope for further academic development. Most previous studies have analysed the division of joint property through a normative approach that emphasises interpreting statutory provisions without linking them in depth to developments in contemporary gender justice theory. Other studies have been more oriented towards protecting women's rights and have therefore not comprehensively evaluated how the concept of substantive justice can be applied in a balanced manner to both parties in the context of post-divorce legal relationships.

Furthermore, studies on pluralism in family law often stop at identifying differences in norms without offering a conceptual framework capable of integrating national law, Islamic law, customary law, and human rights principles into a single, coherent paradigm of gender justice (Karimullah, Mukhid, et al., 2024). Most studies have also failed to provide a systematic analysis of the relationship between normative constructs, judicial practice and the ever-changing socio-economic dynamics of the modern family.

The research gap in this study lies in the absence of a study that integrally analyses gender justice in the regulation of joint property following divorce, synthesising substantive justice theory, Indonesian family law pluralism, developments in judicial rulings, and the transformation of men's and women's economic roles within contemporary families. Previous studies have tended to address these aspects separately and therefore have not produced an analytical framework capable of explaining why inconsistencies in the application of gender justice persist despite the

availability of normative frameworks. Furthermore, there remains a limited number of studies evaluating whether the current application of the division of joint property truly reflects recognition of all forms of economic and non-economic contributions within marriage as the basis for the distribution of rights following divorce.

In light of these gaps, this study aims to develop a more comprehensive analytical perspective on gender justice in the regulation of joint property following divorce in Indonesia by reconstructing the relationship between legal norms, judicial practice, values of gender equality, and the social realities of the modern family. This approach enables a more holistic understanding of how the principle of substantive justice can be consistently implemented within the national legal system without disregarding the pluralistic nature of Indonesian family law.

This study aims to critically analyse how legal provisions regarding joint property following divorce in Indonesia reflect the principle of gender justice, to identify various normative and implementational factors that influence the achievement of substantive justice in the division of joint property, and to formulate a conceptual framework capable of strengthening the equal protection of the parties' economic rights within the framework of the Indonesian legal system. The significance of this study lies in its contribution to enriching the development of family law through the integration of theories of gender justice, legal pluralism and contemporary judicial practice, whilst also providing conceptual recommendations for policymakers, judicial institutions and legal practitioners in realising a system of joint property regulation that is more consistent, inclusive and just.

METHODS

This study employs a normative legal approach, utilising conceptual, statutory, case-law and comparative research designs, as it aims to critically analyse the construction of gender justice in the regulation of joint property following divorce in Indonesia, and to evaluate its alignment with the principles of substantive justice and contemporary developments in family law. The focus of the study includes the normative framework governing joint property, the implementation of the principle of gender justice in court rulings, and the conceptual reconstruction of a regulatory model that is more responsive to economic equality following divorce, with an operational definition that views gender justice as the fulfilment of substantive equality through the recognition of both the economic and non-economic contributions of husbands and wives during marriage as the basis for the distribution of rights to joint property.

The data sources consist of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, the Compilation of Islamic Law, decisions of the Constitutional Court, decisions of the Supreme Court, and relevant court rulings, supplemented by secondary legal materials such as articles from reputable journals, academic books, research findings, documents from international organisations, and tertiary legal materials to support interpretation. The selection of rulings was carried out purposively

based on their relevance to the issue of the division of joint property and legal considerations incorporating dimensions of gender justice.

The research instruments comprised a document analysis matrix and data extraction sheets, developed from indicators of gender justice theory, distributive justice, and the protection of economic rights in family law. These were subsequently tested through source triangulation, adequacy of references, consistency of interpretation, and peer debriefing to ensure the credibility and reliability of the analysis. Data collection was carried out in stages, including an inventory of legislation, the search for and selection of court rulings, the identification of up-to-date academic literature, the classification of data according to research themes, and vertical and horizontal synchronisation of legal norms (Negara, 2023). Data analysis utilised qualitative legal analysis employing grammatical, systematic, historical, teleological and comparative interpretation techniques, combined with content analysis of judges' reasoning to identify patterns in the application of gender justice, uncover normative and implementation inconsistencies, and formulate a conceptual framework for the regulation of joint property that is more oriented towards substantive justice, thereby ensuring that this method is deemed most suitable for producing legal arguments that are comprehensive, reflective, and offer both theoretical and practical contributions to the reform of family law in Indonesia.

RESULTS AND DISCUSSION

Fragmentation of the Legal System and Incoherence in Gender Justice in the Regulation of Joint Property Following Divorce

From the perspective of modern family law, the issue of the division of joint property following divorce is no longer viewed merely as a legal consequence of the dissolution of marriage, but rather as an arena for the distribution of economic rights that reflects the quality of the state's protection of the principles of equality and gender justice (Kobko-Odarii et al., 2025). However, any discussion of justice in the regulation of joint property in Indonesia would be reductionist if it focused solely on the size of each party's share. The far more fundamental problem lies in the configuration of Indonesia's pluralistic legal system, in which various legal regimes coexist and apply simultaneously in regulating family relations.

In a single divorce case, a judge may be confronted with the Marriage Act, the Compilation of Islamic Law, the Civil Code, customary law still practised within communities, as well as developments in Supreme Court case law which do not always move in the same direction. The existence of these various sources of law is, on the one hand, a manifestation of the state's recognition of the social, cultural and religious diversity of Indonesian society. On the other hand, it gives rise to legal fragmentation, resulting in inconsistent standards of protection for the economic rights of both women and men.

Comparative legal literature identifies this condition as 'legal fragmentation', namely a situation in which various legal regimes governing the same legal subject matter develop in parallel without adequate harmonisation mechanisms, resulting in

differing standards of legal protection. Legal fragmentation is not always synonymous with explicit conflict of norms often manifests as a lack of alignment in principles, differences in philosophical orientation, or inconsistencies in implementation, resulting in a case outcome that depends on the legal regime applied (Ikhsan et al., 2025).

In the development of comparative family law studies, this phenomenon is regarded as one of the greatest challenges facing pluralistic states, as the coexistence of multiple legal systems often undermines the principle of equality before the law. Individuals with relatively identical social and economic circumstances, as well as legal facts, may receive different judgements simply because the legal mechanisms applied stem from different normative regimes. It is this situation that various recent studies refer to as 'normative incoherence', that is, a lack of harmony between sets of norms that are formally equally valid but, in substance, yield inconsistent directions for legal protection. The debate over this normative incoherence has intensified in the discourse on family law, as the division of matrimonial property is directly linked to the distribution of wealth, power relations within the family, and the protection of groups that have historically experienced subordination.

The pluralism of Indonesian family law has a distinct character compared to many other countries, as it has been constructed through a combination of state law, religious law, customary law, and colonial legal legacies that have been retained within the national system. Law No. 1 of 1974 on Marriage was intended as an instrument for the unification of family law. In practice, it has not abolished the applicability of the Compilation of Islamic Law for Muslims, nor the existence of various customary laws that are still recognised under the principle of living law. On the other hand, certain provisions of the Civil Code continue to be applied, particularly to specific social groups or to matters not explicitly regulated by national legislation (Turisno et al., 2025).

This complexity is further compounded by the evolving case law of the Supreme Court, which progressively reinterprets various provisions of family law to align with societal developments. Consequently, the Indonesian family law system does not function as a single normative framework, but rather as a network of various legal regimes with orientations, methods of interpretation and philosophical foundations that are not always identical. Conceptually, this situation demonstrates that legal pluralism is not merely a matter of the diversity of legal sources, but also a matter of how that diversity affects the consistency of the protection of citizens' rights.

Upon closer analysis, each legal regime has a different conception of the relationship between marriage, property ownership and the economic contributions of spouses. The Marriage Act recognises the existence of joint property acquired during marriage without providing operational parameters on how each party's contribution should be assessed (Fahmi et al., 2025). The Compilation of Islamic Law recognises joint property as an institution grounded in Indonesian social practice. However, its application remains subject to judges' interpretations of the principles of justice, public interest, and the reciprocal relationship between husband and wife.

The Civil Code still retains the characteristics of the colonial-era community property regime, which has a distinct orientation towards the separation or

consolidation of property. Meanwhile, various customary laws exhibit a wide range of variations, from bilateral and patrilineal to matrilineal systems, each with different consequences for the status of family property (Muttaqin et al., 2025). These philosophical differences mean that the concept of justice does not have a single meaning but varies according to the legal regime used to resolve cases.

These differing orientations become increasingly problematic when linked to the concept of gender justice. Within the paradigm of formal equality, the equal division of assets is often regarded as fulfilling the principle of equality because each party receives an identical share. However, from the perspective of substantive equality, justice is not determined solely by mathematical equality, but by the legal system's ability to recognise all forms of contribution that enable the creation of family well-being. It is here that Indonesia's legal pluralism reveals a rather serious inconsistency.

Some legal regimes still tend to regard economic contributions as the primary indicator for establishing rights to joint property, whilst domestic contributions, reproductive labour, child-rearing, and support for a partner's career often receive only implicit recognition (Gaddis et al., 2022). Consequently, women who have carried out domestic work for many years may face difficulties in obtaining equal recognition if the parameters of proof are based solely on formal ownership or documented financial contributions (Karimullah, Basuki, et al., 2024). Conversely, in other judgements, judges may adopt a more progressive approach by recognising non-economic contributions as part of the family's investment. Such variations indicate that the outcomes of legal protection are not determined by a uniform principle, but rather by interpretations that evolve within each legal regime.

This phenomenon demonstrates that the main issue is not discrimination explicitly legalised by specific norms, but rather uncertainty regarding the justice regime applied. Two women with identical levels of education, duration of marriage, number of children, domestic contributions and economic circumstances may receive different legal protection simply because one is subject to a specific customary law framework, whilst the other is subject to a different interpretation within the Compilation of Islamic Law or civil law (Karimullah, 2023; Karimullah, Efendi, et al., 2023). These differing outcomes are not a logical consequence of differences in legal facts, but rather a consequence of the fragmentation of the legal system. From the perspective of constitutional justice theory, such a situation contravenes the principle of equality before the law, as citizens' equality should not depend on variations in the normative regimes that govern them.

The perspective of legal pluralism does not, in fact, view legal diversity as something that must be eliminated. On the contrary, pluralism is recognised as a natural characteristic of a multicultural society. However, modern legal pluralism theory emphasises that the existence of various legal regimes must be bound by a common set of constitutional principles so that differences in norms do not develop into differences in the protection of rights. In the Indonesian context, these principles should be rooted in constitutional guarantees of equality before the law, prohibition of discrimination, protection of human rights, and respect for human dignity. Consequently, the existence

of customary law, Islamic law and civil law should be understood as variations of normative instruments that are all subject to the same constitutional parameters, rather than as regimes free to establish their own standards of justice (Kurniawan et al., 2025). Such an approach allows legal pluralism to remain an integral part of the Indonesian legal system's identity without compromising the consistency in protecting the rights of both women and men.

From the perspective of constitutional equality, the issue of joint property is, in fact, a matter of the distribution of economic rights as part of the constitutional rights of citizens. Consequently, an evaluation of the regulations governing joint property cannot be limited to an analysis of legislative harmonisation; rather, it must be situated within the framework of whether the legal system as a whole has provided equal protection for all citizens, regardless of gender, religion or cultural background. This perspective shifts the focus of analysis from individual norms to the system level. In other words, this study does not question whether the Marriage Law or the Compilation of Islamic Law, taken individually, has fulfilled the principle of gender justice, but rather whether the overall configuration of Indonesia's legal pluralism produces a system capable of collectively guaranteeing a fair distribution of economic rights. It is this shift in focus that distinguishes this study from the majority of previous studies, which still treat norms as the primary unit of analysis, rather than the pluralistic system as the source of structural injustice.

Joint Property as an Instrument for the Redistribution of Economic Power Following Divorce

In the development of contemporary family law, joint property is no longer understood merely as a collection of assets to be divided following divorce, but rather as a legal mechanism that determines the redistribution of economic power following the dissolution of a marital relationship. This paradigm shift is rooted in the feminist political economy approach, which views the family as an economic institution that produces, manages and distributes resources through social relations that are often unequal (Karimullah & Aliyah, 2023; Lenggono, 2025). Consequently, family law serves not only to resolve disputes but also to determine whether the economic inequalities formed during marriage will be corrected or, conversely, legitimised (Karimullah, Sugitanata, et al., 2023). The central issue in the regulation of joint property is no longer who receives the largest share, but rather whether the law can restore the balance in the distribution of economic power that was previously established by asymmetrical gender relations.

Contemporary perspectives in gender and political economy even position the law as a distributive architecture that shapes the allocation of benefits, burdens and access to resources, both within the family and in society. This paradigm shifts the orientation of Indonesian law from an approach centred on property ownership towards one centred on the distribution of economic capacity. Until now, discussions on joint property have largely focused on ownership status, the timing of asset acquisition, or the division of assets. From a feminist political economy perspective, asset ownership

is a manifestation of the distribution of power (Tansel & Tilley, 2024). Homes, land, savings, investments and productive assets determine who has the capacity to make decisions, access capital, maintain a standard of living, and rebuild their lives following a divorce.

The feminist political economy approach explains that family economic relations are shaped by a division of labour that is often asymmetrical (Wiranti et al., 2025). One partner gains the opportunity to develop a career and accumulate wealth whilst the other carries out domestic work, child-rearing and social reproduction. Although domestic work enables the household to function as a productive economic unit, its value is not reflected in market mechanisms or in asset records. When divorce occurs, the party who has carried out reproductive labour for years risks losing access to the economic resources they have, in fact, built up. Recent literature emphasises that family law must be understood as part of the political-economic system that determines how the economic benefits and risks arising from divorce are reallocated.

In the Indonesian context, this issue is exacerbated by a social structure that still assigns women the primary burden of domestic work, even as their participation in the labour market continues to rise. The phenomenon of the 'double burden' means that women contribute through both productive and reproductive work, yet these contributions often do not result in formal ownership of family assets (Sianipar et al., 2025). Many productive assets are registered in the name of one party, whilst domestic contributions are difficult to prove through conventional legal mechanisms. Consequently, divorce can exacerbate economic inequality if the law fails to recognise the economic value of unpaid care work. Socio-legal studies in Indonesia also indicate that patriarchal culture, power relations and unequal access to legal information continue to influence the outcome of the division of joint property (Mahfiana et al., 2025).

From an economic justice perspective, the division of joint property serves as a corrective mechanism for the distribution of economic benefits accrued during the marriage. Justice is determined not only by formal ownership of assets, but also by how those assets were generated, who sacrificed their economic opportunities, who benefited from the division of labour within the family, and how post-divorce economic risks are distributed. Family assets are the result of the interaction between paid work, domestic work, child-rearing, and support for a partner's career development. Therefore, the division of joint assets must be understood as a redistribution of the total economic benefits generated by the family institution.

This perspective also challenges the assumption that an equal division is always synonymous with justice. The theory of distributive justice demonstrates that mathematical equality does not necessarily result in substantive justice. Two parties may receive equal shares, yet possess vastly different economic capacities following divorce. One party may retain employment, professional networks and business experience, whilst the other may have lost opportunities to develop their career due to years spent performing domestic duties. In such situations, an identical division perpetuates the inequalities that have accumulated during the marriage. Therefore, the

measure of justice must be directed towards the law's ability to rectify structural inequalities, rather than merely dividing assets proportionally.

This approach is consistent with the theory of wealth redistribution, which views wealth distribution as an instrument for correcting the concentration of economic power. In family law, redistribution is not intended as a punishment for either party, but rather as a mechanism to ensure that each has a relatively equal opportunity to rebuild their lives following divorce. Modern family law literature indicates that the division of assets, post-divorce maintenance, and the protection of a spouse's economic rights constitute a single system of redistribution aimed at reducing the economic vulnerability resulting from the dissolution of marriage (Hesti et al., 2025). The shift in family structure towards dual-earner families further underscores that family law must move away from a paradigm of ownership towards a paradigm of redistribution of economic capacity.

From a human rights perspective, the redistribution of economic power through the regulation of joint property relates to the protection of the right to ownership, a decent standard of living, equality, and freedom from discrimination. Divorce must not deprive either party of the ability to maintain a life of dignity simply because, during the marriage, they performed reproductive functions without receiving direct economic compensation. Therefore, the protection of economic rights following divorce forms part of the state's obligation to ensure that the legal system does not exacerbate the vulnerability of groups that have historically faced structural barriers to accessing economic resources. The focus of legal protection has shifted from merely assets to the protection of the parties' capabilities following divorce.

Reconstructing the Regulation of Joint Property Based on Gender-Responsive Governance

Reconstructing the regulation of joint property from the perspective of gender-responsive governance requires a more fundamental paradigm shift than merely revising legislative norms. Until now, most studies of family law have stopped at normative recommendations that provisions regarding joint property need to be refined to better reflect the principle of gender justice (Brandt, 2023; Kobko-Odari et al., 2025). Whilst such an approach is indeed important, it has not yet addressed the root causes of the persistent inequalities in the protection of economic rights following divorce. Experience in various countries shows that the success of protecting women's economic rights is determined not only by the quality of regulations, but by the entire governance ecosystem, which encompasses the design of legal norms, institutional capacity, the behaviour of law enforcement officials, access to justice, the legal culture of society, evidentiary mechanisms, and the effectiveness of the enforcement of court decisions.

From the perspective of gender-responsive governance, the law is viewed as part of the public administration system aimed at achieving equitable outcomes, rather than merely ensuring compliance with procedures (Karimullah, Nugraha, et al., 2023). Therefore, the success of the regulation of joint property is not measured solely by the existence of provisions regarding the division of assets, but also by the legal system's

ability to deliver effective, equitable and accessible economic protection to all citizens without discrimination. This approach has evolved within the literature on law and governance, which positions regulation as one policy instrument among others, such as institutional strengthening, inter-agency coordination, legal services, oversight mechanisms, and community empowerment. In the context of the division of joint property, the effectiveness of the protection of economic rights following divorce depends on a mutually reinforcing relationship between clear regulations, competent institutions, an inclusive legal culture, and consistent implementation mechanisms.

This framework constitutes regulatory design. Gender-responsive regulations not only include provisions regarding the existence of joint property, but also provide clear parameters for the recognition of both economic and non-economic contributions during marriage, non-discriminatory evidentiary mechanisms, protection against assets at risk of being transferred during divorce proceedings, and consistent guidelines for judges in applying the principle of substantive justice (Karimullah, Ruchiat Nugraha, et al., 2023). To date, Indonesia's legal pluralism has led to the development of various normative regimes, the Marriage Act, the Compilation of Islamic Law, the Civil Code, customary law, and case law, with orientations that are not always harmonious, thereby creating scope for inconsistencies in protection.

Progressive norms will not bring about change if the institutions responsible for implementing them lack adequate resources, expertise or procedures. In cases involving joint property, such capacity encompasses the courts' ability to manage evidence relating to assets, utilise information technology to trace asset ownership, coordinate with land agencies, financial institutions, and tax authorities, and ensure the availability of a transparent and efficient case management system. Institutional capacity also encompasses the provision of effective legal aid, integrated services for vulnerable groups, and mechanisms for enforcing judgments, ensuring that the economic rights awarded by the courts can actually be enjoyed by those entitled to them. Numerous studies indicate that failures in implementing court decisions are often not caused by weaknesses in the law, but rather by limited institutional capacity to enforce legally recognised rights.

Within the Indonesian legal system, judges have considerable discretion in applying the principle of justice in cases involving joint property (Bariyah et al., 2025). This discretion can serve as a protective mechanism if used to accommodate domestic contributions, care work, or forms of reproductive labour not reflected in financial documents. Conversely, discretion not underpinned by a gender perspective may reinforce a formalistic approach that recognises only economic contributions that can be administratively proven. Therefore, restructuring the system of governance is not sufficient through changes to legal norms alone; it also requires strengthening judges' capacity through continuous education on gender justice, human rights, family economics, and comparative legal developments (Karimullah, 2022; Suwarni et al., 2024; Wati et al., 2022). Consistency in case law is crucial because court rulings not only resolve individual disputes but also establish standards of protection that influence subsequent judicial practice.

The right to the division of joint property is meaningful only if everyone has a genuine opportunity to access dispute resolution mechanisms. In practice, various barriers remain, ranging from legal costs and transport costs to limited access to legal information, low levels of legal literacy, social pressure and economic dependence on a partner. These barriers lead many women to forgo filing claims to divide joint property, even though they are legally entitled to do so. Research on access to religious courts in Indonesia indicates that waiving court fees, holding mobile court sessions, and collaborating with civil society organisations can improve vulnerable groups' access to the resolution of family disputes. This demonstrates that gender justice is shaped not only by the content of court rulings but also by the legal system's ability to remove the structural barriers that prevent people from utilising the available legal mechanisms (Fathony et al., 2024).

The legal empowerment perspective positions people as active agents capable of understanding, exercising and defending their rights through the law. In the context of joint property, legal empowerment involves improving literacy regarding economic rights within marriage, understanding the importance of asset registration, access to legal aid, the ability to utilise mediation mechanisms, and support from civil society organisations that accompany women throughout the dispute resolution process (Nisa et al., 2022). This approach is crucial because gender inequality is often reinforced by information asymmetry. Many women do not lose their rights because the legal provisions do not exist, but rather because they are unaware that these rights can be asserted through legal mechanisms (Ayu et al., 2026). Therefore, legal empowerment strategies must be positioned as an integral part of governance reform, rather than merely as supplementary programmes. Recent literature indicates that legal empowerment significantly enhances vulnerable groups' ability to access justice and reduces the impact of poverty resulting from legal exclusion.

One fundamental shortcoming in the protection of economic rights following divorce is the assumption that justice has been served once the judgement is handed down. In reality, tangible benefits are only realised when the judgement can be effectively enforced. Obstacles to the enforcement of asset orders, the transfer of assets before a judgement becomes final and binding, difficulties in identifying ownership, and weak inter-agency coordination often result in recognised rights never being fully realised by the entitled parties. Therefore, a gender-responsive governance system must include asset protection mechanisms, standards of proof that are more adaptable to information asymmetries, wealth tracing mechanisms, and institutional coordination that enables the swift, transparent, and accountable enforcement of judgments (Rifa'i et al., 2026). The existence of mechanisms such as marital attachment demonstrates that procedural safeguards play a vital role in preventing the loss of assets during legal proceedings. However, their application still requires standardisation and a more gender-sensitive approach.

The restructuring of the regime governing joint property should not be directed solely at updating substantive legal provisions, but rather at building a gender-responsive legal governance ecosystem. This model treats regulation, institutions,

judicial conduct, access to justice, the legal empowerment of the public, and the effectiveness of implementation as interdependent components that form a comprehensive protection system. Within this framework, the success of the law is no longer measured solely by the certainty of legal norms, but also by its ability to deliver substantive justice, strengthen the protection of economic rights following divorce, and eliminate the structural barriers that have long caused women and vulnerable groups to suffer disproportionate losses.

CONCLUSION

The main issue of gender justice in the regulation of joint property following divorce in Indonesia does not lie solely in the mechanism for the division of assets, but rather in the fragmentation of the legal regime and the weakness of legal governance, which result in the protection of the economic rights of the parties, particularly women, being inconsistent and failing to fully reflect the principle of substantive justice. This finding broadens the discourse on family law by shifting the paradigm from a normative, asset-oriented approach towards a perspective that views joint property as an instrument for the redistribution of economic power within the framework of gender-responsive governance, thereby enriching the development of the theories of legal pluralism, family law, gender justice, and access to justice through the integration of regulatory, institutional and judicial behaviour dimensions, legal empowerment, and the implementation of judgements as a holistic protection ecosystem.

The implications of this study underscore the need for the harmonisation of legal regimes, the strengthening of the capacity of judicial institutions, the standardisation of a gender perspective in judicial reasoning, the expansion of access to legal aid, and the establishment of effective mechanisms for the implementation of court decisions as prerequisites for the realisation of constitutional and sustainable post-divorce economic justice. Nevertheless, this study remains limited to normative legal analysis and conceptual synthesis; consequently, it has not yet tested the effectiveness of the proposed model through empirical or comparative cross-jurisdictional approaches. Consequently, future research should develop socio-legal designs, studies of judicial behaviour, and policy implementation evaluations to test the validity of the gender-responsive governance model in practice, whilst strengthening the direction of Indonesian family law reform towards a system that not only provides legal certainty but also tangibly transforms economic power relations to be more equal, inclusive and just.

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