

MARITAL PROPERTY REGIMES IN ISLAMIC LAW: A COMPARATIVE MADHHAB ANALYSIS AND ITS INTEGRATION INTO MODERN ISLAMIC ECONOMIC GOVERNANCE

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Abstract: The economic transformation of contemporary Muslim families has reshaped the ownership, management, and distribution of marital property. This shift creates legal tension between classical fiqh, which generally maintains separate spousal ownership, and modern realities marked by dual-income households, women's economic participation, domestic contribution, and stronger state intervention for family justice. This article examines marital property as an issue situated at the intersection of Islamic family law, Islamic economic law, comparative madhhab discourse, and state legal governance. Using qualitative legal research with a doctrinal-comparative approach and a limited socio-legal perspective, the study draws on library and documentary legal research. The data are analysed through qualitative content analysis, comparative legal analysis, and normative-constructive analysis. The findings indicate that classical Islamic law does not recognise automatic fusion of property through marriage, yet it contains important normative resources through milkiyyah, shirkah, 'urf, nafaqah, and maqāṣid al-sharī'ah to recognise rights arising from both direct and indirect contributions. The main problem lies not in the absence of Islamic norms, but in their weak translation into adjudicative methods and state policy. The article proposes a maqāṣid-based relational marital property regime that balances individual ownership, contribution, family welfare, child protection, and equitable adjustment.

Keywords: marital property, Islamic family law, comparative madhhab, Islamic economic law, state governance

Abstrak: Transformasi ekonomi keluarga Muslim kontemporer telah membentuk ulang kepemilikan, pengelolaan, dan distribusi harta dalam perkawinan. Perubahan ini menimbulkan ketegangan hukum antara fikih klasik, yang pada umumnya mempertahankan pemisahan kepemilikan suami dan istri, dengan realitas modern berupa rumah tangga berpenghasilan ganda, partisipasi ekonomi perempuan, kontribusi domestik, serta meningkatnya intervensi negara demi keadilan keluarga. Artikel ini mengkaji harta perkawinan sebagai isu yang berada pada persilangan hukum keluarga Islam, hukum ekonomi Islam, perbandingan mazhab, dan tata kelola hukum negara. Penelitian ini menggunakan metode hukum kualitatif dengan pendekatan doktrinal-komparatif yang dilengkapi perspektif sosio-legal terbatas. Data diperoleh melalui studi kepustakaan sistematis dan penelitian dokumen hukum, kemudian dianalisis melalui analisis isi kualitatif, analisis hukum komparatif, dan analisis normatif-konstruktif. Temuan menunjukkan bahwa hukum Islam klasik tidak mengenal peleburan otomatis harta karena perkawinan, tetapi menyediakan sumber normatif melalui milkiyyah, shirkah, 'urf, nafaqah, dan maqāṣid al-sharī'ah untuk mengakui hak yang lahir dari kontribusi langsung maupun tidak langsung. Persoalan utama bukan ketiadaan norma Islam, melainkan lemahnya penerjemahan norma tersebut ke dalam metode adjudikasi dan kebijakan negara. Artikel ini menawarkan rezim harta perkawinan relasional berbasis maqāṣid yang



menyeimbangkan kepemilikan individual, kontribusi, kesejahteraan keluarga, perlindungan anak, dan penyesuaian yang berkeadilan.

Kata kunci: harta perkawinan, hukum keluarga Islam, perbandingan mazhab, hukum ekonomi syariah, tata kelola negara

INTRODUCTION

Over the past two decades, Muslim family economies have shifted from the traditional male-breadwinner model towards dual-income and shared household asset arrangements. This transformation challenges classical fiqh's separate-ownership framework and supports greater legal recognition of shared economic interests in modern Muslim family law.¹ The tension between classical juristic construction, contemporary socio-economic realities, and claim of gender justice has therefore made marital property a critical issue in current Islamic legal studies.²

The urgency of this issue lies in its direct implications for the protection of economic rights within the family, particularly in cases of divorce, asset disputes, household debt, and post-marital welfare. In Indonesia, marital property has been formally recognized under the Marriage Law and the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), and Article 97 KHI is commonly read as providing the basis for an equal division of joint assets after divorce.³ This formal model is increasingly challenged for failing to reflect actual spousal contributions, particularly when wives are main earners while bearing domestic burdens. Although the half-share rule provides legal certainty, it may not ensure substantive justice, making marital property a wider issue of social justice, legal protection, and family policy in Islamic economic governance.⁴

At the global level, the literature on Islamic family law reform has focused primarily on marriage, divorce, maintenance, women's rights, and the relationship between Muslim family law and state authority. Mulki Al-Sharmani, for example, has shown that patriarchal constructions of marriage and spousal rights in Islamic interpretive tradition are increasingly unsustainable in the lived realities of contemporary Muslims. Comparative scholarship on

¹ Yulius Oktaber, "The Implementation of National Regulations on the Division of Joint Property During Divorce," *Indonesian Private Law Review*, 2023, <https://doi.org/10.25041/iplr.v4i1.2945>.

² Abd Rouf, Mufidah Cholil, and Zaenul Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint," *De Jure: Jurnal Hukum Dan Syari'ah* 15, no. 2 (2023): 230–50.

³ Ibnu Elmi A S Pelu and Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (2021): 287–316.

⁴ Bani Syarif Maula, Muhammad Fuad Zain, and Syifaun Nada, "Marital Property in Marriages of Different Nationalities in Indonesia According to National Law and Islamic Law," *El-Aqwal: Journal of Sharia and Comparative Law*, 2024, 1–16.

Muslim family law reform has also demonstrated that both Muslim-majority and Muslim-minority states have formally integrated Muslim family laws into their legal systems and have pursued legislative reform to improve the status of women and children and to strengthen the rule of law.⁵ Yet the scholarship specifically addressing marital property regimes remains fragmented: some studies emphasize separate ownership, others focus on women's post-divorce protection, and still others examine family-law reform more generally, without systematically linking comparative madhhab analysis, changing household economies, and the integration of marital property into modern Islamic economic governance. That unresolved intersection constitutes the central global research gap this article seeks to address.

In the Indonesian context, studies on joint marital property are relatively developed, but they still tend to follow three dominant trajectories: first, doctrinal explanation of the legal status of marital property under the Marriage Law and the KHI; second, analysis of Religious Court decisions on the division of joint assets; and third, gender-oriented critiques of post-divorce asset distribution.⁶ Pelu and Dakhoir, writing in *Al-Jami'ab*, demonstrate that marital property already has a clear legal position in Indonesian marriage law and is applied nationally, but they also note that actual adjudication often turns on qualitative contribution rather than purely formal entitlement.⁷ Recent scholarship shows that Article 97 KHI's one-half formula offers legal certainty but may overlook diverse household roles, especially when wives are income earners or bear disproportionate economic burdens, as seen among female migrant workers. However, Indonesian studies have rarely combined comparative madhhab analysis with modern Islamic economic governance, leaving significant room for originality.

This article examines how Islamic law conceptualises marital property, how Sunni madhhabs differ on ownership, contribution, maintenance, and spousal economic rights, and how these doctrines may inform modern Islamic economic governance. It addresses the integration of marital property regimes into contemporary family-law policy, legal certainty, and substantive justice..

Recent studies show that Article 97 KHI ensures legal certainty but may ignore unequal spousal roles and women's economic burdens. Yet few Indonesian studies link this issue to

⁵ Mulki Al-Sharmani, "Marriage in Islamic Interpretive Tradition: Revisiting the Legal and the Ethical," *Journal of Islamic Ethics* 2, no. 1 (2018): 76–96, <https://doi.org/https://doi.org/10.1163/24685542-12340017>.

⁶ Helmy Ziaul Fuad et al., "Application of Contra Legem Principles in Judicial Rulings on Joint Property Characteristics," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 3, no. 2 (2023): 128–40.

⁷ Pelu and Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications."

comparative madhhab analysis and modern Islamic economic governance, creating clear originality.⁸

This study aims to compare Sunni madhhab views on marital property, examine how individual ownership, *shirkah*, *'urf*, and *maqāṣid* support a renewed understanding of joint marital property, and develop a model integrating Islamic and positive law in response to changing Muslim family economies. It bridges classical fiqh, family-law reform, and contemporary Islamic economic policy.

The article contributes by bridging Islamic family law, comparative madhhab analysis, and modern Islamic economic governance. It argues that marital property should be reconstructed as an instrument of family economic justice, not merely as a post-divorce issue or a concept opposed to classical fiqh. Through madhhab comparison, *'urf*, actual economic contribution, and maqāṣid-based justice, the study offers both theoretical value for Islamic legal studies and practical relevance for family-law reform and Islamic economic governance.

LITERATURE REVIEW

Scholarship on marital property in Islamic law follows three main trajectories: socio-economic change and shifting gender roles; the juridification of classical concepts such as ownership, maintenance, partnership, and custom into modern legal systems; and the impact of marital property regimes on gender justice, women's protection, child welfare, and family economic governance. However, these strands often remain disconnected, as global studies focus broadly on family-law reform, while Indonesian studies are mostly doctrinal and descriptive, with limited attention to comparative madhhab analysis and modern Islamic economic governance.

The first trend shows that marital property has become a contested issue in contemporary Islamic legal studies due not only to doctrinal reinterpretation, but also to socio-structural change, state formation, legal pluralism, women's activism, and equality-based discourses.⁹ Mulki Al-Sharmani shows that patriarchal interpretations of marriage and spousal rights are increasingly challenged by contemporary Muslim realities and demands for reciprocal marital

⁸ Abd Rouf, "Jurimetrics in the Reconstruction of the Joint Property Division Model for Wage-Earner Wives in Indonesia," *Al-Abkam* 34, no. 1 (2024): 1–32.

⁹ Rajnaara C Akhtar and Faizal Ahmad Manjoo, "Matrimonial Property in Islamic Law," 2024, <https://doi.org/10.4337/9781802204681.00012>.

relations. Comparative studies similarly indicate that Muslim family-law reform is shaped by political history, colonial legacies, socio-religious diversity, and pressures to improve the status of women and children.¹⁰ In Indonesia, debates on marital property arise from the interaction between state law, Islamic legal discourse, and demands for legal certainty amid changing household structures. Thus, marital property is not merely a private fiqh issue, but part of broader shifts in family economies, women's mobility, and the state institutionalisation of Islamic norms.¹¹

The second trend concerns the processes through which classical Islamic legal concepts are converted into operative rules within contemporary legal systems. Here the focus falls on codification, judicial interpretation, mediation, standards of evidencing contribution, and the techniques by which courts operationalise joint ownership claims.¹² In Indonesia, Pelu and Dakhoir show that marital property acquired its positive legal form through the Marriage Law and the Compilation of Islamic Law, but that its application in practice still leaves room for debate between formal certainty and the parties' actual contribution.¹³ Rouf, Mufidah, and Mahmudi argue that the KHI's equal-division formula offers predictability but becomes problematic when spouses perform more fluid economic roles. Rouf's jurimetric study further proposes a reconstructed model for wage-earning wives, requiring courts to assess contribution through objective and empirical criteria rather than merely applying textual formulas.¹⁴ Similar developments appear in Malaysia, where *harta sepencarian* disputes are shaped by Syariah Court structures, *sulh* mechanisms, and judicial assessment of both financial and non-financial contributions. These studies show that the key issue lies not only in doctrine, but also in how it is institutionally interpreted, negotiated, and implemented by the state.¹⁵

The third trend evaluates the impact of marital property regimes on substantive justice, especially for women who bear dual burdens or function as the principal economic providers

¹⁰ Faridatus Syuhadak et al., "Reformulation of Joint Marital Property Regimes for the Protection of Female Migrant Workers: Empirical Evidence from Malang Regency," *PALASTREN: Jurnal Studi Gender* 18, no. 2 (2026): 153–76.

¹¹ Cut Linda Muhammad and Adis Duderija, "Understanding the Context and Concept of Islam Nusantara," *Icr Journal*, 2022, <https://doi.org/10.52282/icr.v13i1.912>.

¹² Razaana Denson, "A Comparative Exposition of the Law of Husband and Wife in Terms of Islamic Law, South African Law and the Law of England and Wales," *Obiter*, 2021, <https://doi.org/10.17159/obiter.v41i4.10485>.

¹³ Pelu and Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications."

¹⁴ Rouf, Cholil, and Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint."

¹⁵ Zanariah Noor, Muhammad Akramin Kamarul Zaman, and Husna Husain, "An Analysis of Harta Sepencarian Cases in the Syariah High Court of Ipoh," *UMRAN-Journal of Islamic and Civilizational Studies* 10, no. 3 (2023): 87–102.

within the family.¹⁶ Recent Indonesian studies show that a uniform division model does not always ensure equity. Rouf and colleagues argue that equal half-share distribution may ignore shifting household responsibilities, especially when productive and domestic roles no longer follow the classical male-breadwinner model.¹⁷ This concern becomes more acute in the case of female migrant workers. Syuhadak and colleagues demonstrate that the current regime may generate structural disadvantage when assets predominantly generated by women's labour abroad are nonetheless divided according to a formal rule that does not adequately reflect disproportional economic contribution.¹⁸ Malaysian studies on *harta sepencarian* show that wives' and children's financial protection depends on courts recognising indirect and non-monetary contributions and providing effective settlement mechanisms. Thus, marital property regimes affect not only post-divorce disputes, but also family welfare, economic risk distribution, and social justice in Muslim societies.¹⁹

Existing studies have several limitations: they often treat Islamic law as a uniform system, give limited attention to comparative madhhab analysis, focus mainly on positive law, and do not sufficiently link gender inequities in marital property to Islamic economic governance. Cross-jurisdictional studies also tend to discuss family-law reform broadly rather than marital property as a distinct legal-economic institution. Thus, the field still lacks an integrated model connecting madhhab diversity, contemporary legal institutions, and family economic justice.

The novelty of this study lies in constructing an integrative framework that views marital property not merely as post-divorce asset division, but as a family ownership regime shaped by madhhab jurisprudence, family-law reform, and modern Islamic economic governance. It examines how Sunni legal concepts such as *milkiyyah*, *shirkah*, *'urf*, maintenance, and *maqāṣid al-shari'ah* can support a just and context-sensitive model of distribution. Using Indonesia as the main case and Malaysia as a limited comparison, the study offers a normative-institutional reconstruction of marital property to advance family economic justice in contemporary Muslim societies.

¹⁶ Daniela M Behr and Julia C Braunmiller, "Changing Laws, Changing Lives: Family Law Reform as a Catalyst for Economic Prosperity," *Global Indicators Brief*, no. 30 (2025).

¹⁷ Rouf, Cholil, and Mahmudi, "Joint Property Division in Indonesia: A Gender Equality Viewpoint."

¹⁸ Syuhadak et al., "Reformulation of Joint Marital Property Regimes for the Protection of Female Migrant Workers: Empirical Evidence from Malang Regency."

¹⁹ Noor, Zaman, and Husain, "An Analysis of Harta Sepencarian Cases in the Syariah High Court of Ipoh."

METHOD

This study employs a qualitative legal research design using a doctrinal-comparative approach, supported by a limited socio-legal perspective. It examines marital property regimes in Islamic law through the views of the major Sunni madhhabs and assesses their relevance to modern Islamic economic governance and state policy. By comparing issues of ownership, partnership, maintenance, domestic economic contribution, and asset distribution, the study situates classical doctrines within contemporary family-law reform and changing Muslim household economies. It therefore moves beyond merely cataloguing juristic opinions and offers a normative-institutional analysis of marital property regimes in modern Islamic economic governance.²⁰

The study examines marital property through doctrinal, regulatory, and conceptual-institutional levels, covering Sunni madhhab views, Islamic family-law regulation in Indonesia with limited reference to Malaysia, and its role in modern Islamic economic governance. It treats marital property not merely as a post-divorce issue, but as a legal-economic family institution shaped by doctrine, state regulation, and social justice.²¹

The study uses primary sources, including Sunni fiqh texts, positive legal instruments, judicial materials, and state policy documents, alongside secondary sources such as reputable journal articles, books, dissertations, and research reports on Islamic family law, madhhab comparison, gender justice, and Islamic economic governance.²² Primary sources provide the doctrinal foundation, while secondary sources support the analysis by mapping scholarly debates, identifying research gaps, and clarifying the relationship between Islamic law and positive law.

Data were collected through systematic library and documentary legal research. Relevant fiqh literature, comparative madhhab studies, and legal-policy documents were selected, screened, and classified into key analytical themes, including ownership, economic

²⁰ Ahmad Imam Mawardi and Achmad Kemal Riza, "WHY DID KOMPILASI HUKUM ISLAM SUCCEED WHILE ITS COUNTER LEGAL DRAFT FAILED? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia," *Journal of Indonesian Islam*, 2019, <https://doi.org/10.15642/jiis.2019.13.2.421-453>.

²¹ Sabil Mokodenseho et al., "Analysis of the Influence of Fiqh and Maqasid Al-Syariah in the Formation of Islamic Legal Policy in Indonesia," *West Science Islamic Studies*, 2024, <https://doi.org/10.58812/wsiss.v2i01.590>.

²² Alex Kusmardani et al., "The Development of Ideas on the Reform and Transformation of Islamic Family Law Into Legislation in Islamic Countries," *Jurnal Syntax Imperatif Jurnal Ilmu Sosial Dan Pendidikan*, 2023, <https://doi.org/10.36418/syntax-imperatif.v4i5.296>.

contribution, ‘urf, state regulation, and distributive justice, to support a coherent and publishable argument.

Data were analysed through qualitative content, comparative legal, and normative-constructive analysis. These techniques were used to identify doctrinal patterns, compare Sunni madhhab positions with modern legal frameworks, and formulate an integrative model for reconstructing marital property regimes within shari‘ah principles, contemporary household realities, and substantive justice.

RESULTS

Normative Structure and Positive Practice of Marital Property Regimes

The study finds that Islamic marital property regulation begins with the recognition of each spouse’s independent legal and proprietary capacity, not an automatic merger of assets upon marriage. While classical Islamic law treats husbands’ and wives’ property as separate, modern debates increasingly question how jointly acquired marital wealth should be recognised within Islamic property jurisprudence.²³ In Malaysia, *barta sepencarian* is not explicitly found in classical fiqh but has gained recognition through ‘urf and *maṣlahah*. This shows that modern marital property regimes are not direct reproductions of a single madhhab, but normative reconstructions using broader juristic resources to support contemporary claims of justice.²⁴

Restated more precisely, the descriptive finding of this study is as follows: classical Islamic law does not recognise the automatic fusion of spouses’ assets by virtue of marriage alone, yet neither does it foreclose the possibility of shared economic entitlements where there is real contribution, a living custom, or a valid claim of public benefit.²⁵ One study on the authority of ‘urf in establishing matrimonial property rights in Malaysia makes this dual position especially clear. On the one hand, it reaffirms that a woman in Islamic law retains full ownership over property earned through her own labour and that her husband has no inherent control over those assets. On the other hand, it also argues that where a wife has made an actual contribution to the acquisition of a house, a business, or another asset, she may legitimately

²³ Susanne Dahlgren and Monika Lindbekk, “Introduction,” *Hanwa*, 2020, <https://doi.org/10.1163/15692086-12341374>.

²⁴ Azizah Mohd, “An Appraisal of the Application of Fiqh Al-Hanafi Under Islamic Family Law (Federal Territories) Act 1984,” *Iium Law Journal*, 2019, <https://doi.org/10.31436/iiumlj.v27i2.459>.

²⁵ Anis Mashdurohatun and Ahmad Busro, “Settlement of Joint Property Disputes Resulting From Divorce in the Religious Courts,” 2024, <https://doi.org/10.7176/jlpg/141-01>.

claim a proportionate share corresponding to that contribution.²⁶ It is precisely at this point that comparative madhhab analysis becomes analytically fruitful.²⁷ The principal divergence among the madhhabs lies not so much in whether women possess independent proprietary rights, since that point is relatively well established, but in the juristic pathways used to translate domestic and economic contribution into enforceable claims over family assets. Marital property should therefore be understood as a field of transition from *separate ownership* to relational entitlement, that is, entitlement generated by the cooperative structure of family life rather than by the marriage contract alone.²⁸

In Indonesia and Malaysia, modern legal practice increasingly recognises marital property through contribution-based reasoning. Indonesia's Marriage Law and KHI treat assets acquired during marriage as joint property, with Article 97 commonly supporting equal division, though courts may consider qualitative contributions. Similarly, Malaysia's *barta sepencarian* framework explicitly allows Syariah Courts to assess direct, indirect, financial, and non-financial contributions. Thus, state practice has moved from formal ownership towards contribution and legal protection.²⁹

Critical Factors Shaping Divergence and Injustice

The second major finding is that the divergence between classical fiqh constructions and contemporary legal practice on marital property is shaped by at least five critical factors: the changing economic structure of the household, women's expanding participation in income generation, the role of *'urf* in family-law development, family-law reform activism, and the expansion of state intervention through legislation and judicial policy.³⁰ Al-Sharmani argues that patriarchal constructions of marital rights and obligations in the Islamic interpretive tradition become increasingly difficult to sustain once confronted with the lived realities of contemporary Muslims.³¹ Indonesian scholarship likewise indicates that debate over joint

²⁶ Atikullah Abdullah, "The Dynamism of Fiqh of Property in Malaysia," 2019, <https://doi.org/10.15405/epsbs.2019.09.45>.

²⁷ Agus Moh. Najib, "Reestablishing Indonesian Madhhab: 'Urf and the Contribution of Intellectualism," *Al-Jami'ah Journal of Islamic Studies*, 2020, <https://doi.org/10.14421/ajis.2020.581.171-208>.

²⁸ Muhammad Azani, "The Development of Islamic Law in Indonesia Through Traditional Theory and Legal Changes," *Jurnal Mahkamah Kajian Ilmu Hukum Dan Hukum Islam*, 2021, <https://doi.org/10.25217/jm.v6i2.1626>.

²⁹ Isnawati Rais, "The Settlement of Joint Property in Religious Courts of Indonesia (A Case in the Religious Court of South Jakarta)," *Al-Adalah*, 2019, <https://doi.org/10.24042/adalah.v15i2.2484>.

³⁰ Ahmad Hussein Abdul Shakoor Siraji and Muhamad Mustakim Abdul Halim, "Matrimonial Property," *Linguistics and Culture Review*, 2021, <https://doi.org/10.21744/lingcure.v5ns4.1912>.

³¹ Al-Sharmani, "Marriage in Islamic Interpretive Tradition: Revisiting the Legal and the Ethical."

property has emerged from the interaction of state law, Islamic legal discourse, and demands for legal certainty amidst changing household arrangements. What is therefore at stake is not simply a clash between “classical texts” and “modern law”, but a deeper restructuring of the family economy that has compelled Islamic family law to reconsider the legal significance of domestic labour, wives’ earnings, and the accumulation of family assets.³²

Restated more sharply, the central problem identified by this study is not the absence of norms in Islamic law, but the absence of a consistent and just method of translation from fiqh norms into adjudicative technique. In Indonesia, a number of studies show that Religious Court judges do not always apply the rule on joint property in a rigid or mechanical manner.³³ Judges often adopt a flexible, contextual approach by considering contribution, household responsibilities, and the origin of disputed assets. This shift towards substantive justice is reinforced by SEMA No. 1 of 2022, which allows division of the sole family home to be postponed when it remains the child’s only residence.³⁴ Accordingly, the decisive issue is no longer whether Islamic law is capable of accommodating joint property, but how the state and the courts develop a method of translation from juristic doctrine into a legal policy that is sufficiently flexible to deliver justice while remaining sufficiently structured to ensure consistency.³⁵

However, this study also demonstrates that two opposite models are equally problematic. The first is the model of formal equal division, which imposes a fifty-fifty split without adequately reading the social and economic context of the family.³⁶ Rouf’s gender-equality analysis suggests that this model may disadvantage wage-earning wives who shoulder both productive and domestic responsibilities, because legal certainty is achieved at the expense of recognising actual contribution.³⁷ A more acute version of the same problem appears in the

³² Nur Hidayah, “Gender, Economy, and the Law: Women Entrepreneurs in Indonesian and Islamic Legal Perspectives,” *Samarah Jurnal Hukum Keluarga Dan Hukum Islam*, 2023, <https://doi.org/10.22373/sjhk.v7i2.17944>.

³³ Kamarusdiana Kamarusdiana, “Disparity in the Judge’s Ruling About Community Property Disputes After Divorce (An Analysis of the Verdict in the South Jakarta Religious Court, Religious Court of Jakarta and Supreme Court),” *Jurnal Cita Hukum*, 2018, <https://doi.org/10.15408/jch.v6i1.8266>.

³⁴ Fauzan Arrasyid, Pagar Pagar, and Dhiauddin Tanjung, “Islamic Family Law Reform in Indonesia Through Supreme Court Circulars: A Maqasid Sharia Perspective,” *Ulul Albab Jurnal Studi Dan Penelitian Hukum Islam*, 2024, <https://doi.org/10.30659/jua.v6i2.29236>.

³⁵ Rachel Rinaldo, Eva F Nisa, and Nina Nurmila, “Divorce Narratives and Class Inequalities in Indonesia,” *Journal of Family Issues*, 2023, <https://doi.org/10.1177/0192513x231155657>.

³⁶ Eka Ristianawati, “Joint Property Distribution Upon Divorce Reviewed From the Contribution of Husband and Wife in the Household,” *Walisono Law Review (Walrev)*, 2021, <https://doi.org/10.21580/walrev.2021.3.1.8078>.

³⁷ Rouf, Cholil, and Mahmudi, “Joint Property Division in Indonesia: A Gender Equality Viewpoint.”

case of female migrant workers. Syuhadak and colleagues show that the current regime may produce structural disadvantage where household assets are predominantly generated through women's labour abroad but are still divided according to a formal equal share rule.³⁸ A division model based solely on measurable financial contribution is also inadequate because it overlooks domestic work, caregiving, and non-monetary support that enable family wealth. Malaysian Syariah Courts offer a better direction by recognising both direct and indirect contributions, though outcomes vary. Thus, marital property justice requires a broader framework that values family labour beyond equal shares or financial input alone.³⁹

An Integrative Model For Contemporary Islamic Family Economic Governance

The study's third major finding is the need for a maqāṣid-based integrative model of marital property. This model rejects both total asset fusion and strict separation, instead proposing relational entitlement to assets acquired during marriage through direct or indirect spousal contribution.⁴⁰ This model rests on four foundations: first, recognition of each spouse's independent ownership; secondly, recognition of economic and domestic contribution as a basis for entitlement; thirdly, the legitimacy of *'urf* and *maṣlahah* as juristic resources in the development of family law; and fourthly, a *maqāṣid al-sharī'ah* orientation towards the protection of property, dignity, and family welfare.⁴¹ Malaysian scholarship on *harta sepencarian* demonstrates that the recognition of jointly acquired property through *'urf* and *maṣlahah* already possesses an operational shari'ah justification. This means that the proposed model should not be read as a deviation from Islamic law, but as a renewed juristic articulation of Islamic legal resources in response to the economic structure of the modern family.⁴²

³⁸ Syuhadak et al., "Reformulation of Joint Marital Property Regimes for the Protection of Female Migrant Workers: Empirical Evidence from Malang Regency."

³⁹ Mohamed Shafei Mofteh Boshaya, "Matrimonial Property and Legality of Claiming It Between Fiqh and the Laws of Malaysia, Morocco and Tunisia," *Linguistics and Culture Review*, 2021, <https://doi.org/10.21744/lingcure.v5ns4.1918>.

⁴⁰ Nur Khoirin, "Marriage Treasure Ownership in Arabic and Nusantara Fiqh Perspectives," *Addin*, 2018, <https://doi.org/10.21043/addin.v12i2.4543>.

⁴¹ Akhtar and Manjoo, "Matrimonial Property in Islamic Law."

⁴² Noorwahidah Haisyi, "Examining the Application of Al-'Urf in Islamic Financial Contracts: Insights and Implications for Modern Banking Products," *At-Taradhi Jurnal Studi Ekonomi*, 2023, <https://doi.org/10.18592/at-taradhi.v14i1.10246>.

This study proposes a four-layer marital property regime: individual property; marital accumulative property based on financial, domestic, productive, or supportive contributions; social-function family assets whose division may be limited or postponed to protect children; and an equitable adjustment zone allowing deviation from equal division where unequal contribution or vulnerability is proven. The final two layers reflect recent developments in Indonesian law and judicial practice.⁴³ SEMA No. 1 of 2022 postpones the division of the sole residence occupied by the child until the child reaches adulthood or marries, while recent Indonesian scholarship has argued for more contribution sensitive and data informed approaches to judicial distribution.

The implications of this model are both theoretical and practical. Theoretically, it shifts the debate away from a binary opposition between “classical fiqh” and “modern law” towards a framework of normative institutional reconstruction: Islamic law provides the ethical and methodological foundations, while the state supplies the mechanisms of implementation, evidentiary assessment, and protection.⁴⁴ Practically, the findings of this study point towards three reform agendas.⁴⁵ First, the Compilation of Islamic Law should be revised or reinterpreted so that the distribution of joint property does not stop at a mechanical half-share formula, but incorporates direct contribution, indirect contribution, and the best interests of the child.⁴⁶ Secondly, judicial guidance should be strengthened so that judges have consistent indicators for evaluating domestic labour, wives’ earnings, productive assets, and the social function of the family home. Thirdly, marital property regimes should be integrated into the broader framework of modern Islamic economic governance, including the regulation of multi-income households, family enterprises, retirement savings, insurance, and other productive assets that increasingly become the subject of dispute.⁴⁷ In this way, the article proposes a maqāṣid-based

⁴³ Iffatin Nur, Syahrul A’dam, and M Ngizzul Muttaqien, “Maqāṣid Al-Sharī’at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law,” *Abkam Jurnal Ilmu Syariah*, 2020, <https://doi.org/10.15408/ajis.v20i2.18333>.

⁴⁴ Rüdiger Lohlker, “Fiqh Reconsidered: Indigenization and Universalization of Islamic Law in Indonesia,” *Interdisciplinary Journal for Religion and Transformation in Contemporary Society*, 2021, <https://doi.org/10.30965/23642807-bja10011>.

⁴⁵ Anugrah Reskiani et al., “Konstruksi Pemikiran Pembaharuan Hukum Kewarisan Islam Di Indonesia (Studi Yurisprudensi Mahkamah Agung),” *Juris (Jurnal Ilmiah Syariah)*, 2022, <https://doi.org/10.31958/juris.v21i1.5564>.

⁴⁶ Muhammad Ali Murtadlo, “Islamic Family Law Reform in Indonesia,” 2020, <https://doi.org/10.31219/osf.io/3n57z>.

⁴⁷ Muhammad Shahrul Ifwat Ishak and Fathullah Asni, “The Role of *Maqasid Al-Shari’ah* in Applying *Fiqh Muamalat* Into Modern Islamic Banking in Malaysia,” *Journal of Islamic Accounting and Business Research*, 2020, <https://doi.org/10.1108/jiabr-12-2019-0224>.

relational marital property regime as a bridge between madhhab jurisprudence, family-law reform, and contemporary Islamic economic governance.

DISCUSSION

The findings show that Islamic marital property is neither automatic joint ownership nor absolute separation. While Sunni madhhabs protect each spouse's independent ownership, they also provide doctrinal resources such as *shirkah*, *'urf*, *nafaqah*, and reciprocal fairness to recognise relational entitlements based on direct and indirect contribution.⁴⁸ When read alongside modern state practice in Indonesia and Malaysia, these doctrinal resources show that the main legal problem is not the absence of Islamic norms on jointly acquired wealth, but the challenge of translating them into consistent judicial methods and clear legal standards. Marital property is therefore not merely a family-law issue, but also a matter of Islamic economic governance, as it concerns the distribution of value, labour, risk, and welfare within the household, as well as the state's role in securing justice through legislation and adjudication.

These findings become more intelligible when placed within the socio-legal landscapes of Dayak, Banjar, and Malay Muslim communities, where marital property has long been shaped by living social practice rather than by abstract doctrinal formulae alone. In the Banjar context, *harta perpantangan* has been described as a concept of joint ownership between husband and wife that continues to function as a living law even though it is not expressly codified in formal regulation or elaborated in the mainstream classical fiqh corpus.⁴⁹ In the Dayak Ngaju context, marital property is not treated purely as the private estate of either spouse but is viewed as family property closely tied to the continuity of marriage and the future security of children.⁵⁰ In the Malay context, *harta sepencarian* has historically developed through *Adat Perpatih* and *Adat Temenggung* and later obtained recognition within Islamic family law and judicial practice; contemporary Malaysian scholarship even describes it as a hybrid legal model in which statutory Islamic family law and indigenous custom mutually reinforce one another. What is striking across these local settings is that custom does not simply resist Islamic law; rather, it mediates

⁴⁸ Theresia Dyah Wirastri and Stijn Cornelis Van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32.

⁴⁹ Devi Kasumawati and Ahmad Manfaluti, "HARTA PERPANTANGAN SEBAGAI LIVING LAW MASYARAKAT BANJAR (Analisis Normatif-Empiris Terhadap Asal-Usul Dan Praktik Pembagiannya)," *Hakam: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam* 10, no. 1 (2026).

⁵⁰ Wahyu Akbar and Rahmat Kurniawan, "Marital Property in Indonesia (Review of Dayak Ngaju Customary Law)," *Jurnal Ilmu Hukum Tambun Bungai* 8, no. 1 (2023): 228–44, <https://journal.stihtb.ac.id/index.php/jihtb/article/download/250/94/>.

how Islamic legal principles are made socially workable in contexts where wives have long participated in agriculture, trade, household management, and the production of family wealth. Thus, local context is not peripheral to the marital property debate. It is the very terrain in which Islamic family law, customary normativity, and state law encounter one another and produce the operative meaning of justice.⁵¹

Theoretically, these patterns may be interpreted as a form of hybrid modernity in Muslim family law: a condition in which modern legal institutions do not simply replace classical fiqh or local custom, but reorganise them into new normative assemblages. Indonesia's post 1974 and post 1991 family law development illustrates this especially well. The Marriage Law and the Compilation of Islamic Law did not abolish juristic diversity or customary influence; instead, they transformed them into a state-administered legal order, while later judicial reforms continued that process through activist judgments and annual Supreme Court circulars. The same dynamic is visible in Malaysia, where *harta sepencarian* moved from customary practice to recognised Syariah-court doctrine without losing its adat genealogy. This is why the concept of living law is analytically useful here: Banjar *harta perpentangan*, Dayak understandings of family property, and Malay *harta sepencarian* show that family property norms derive authority not only from texts and statutes but also from their sustained social acceptance and problem-solving capacity. At the same time, legal pluralism remains indispensable as a theoretical lens, because these regimes are produced through the interaction of state law, Islamic law, and customary law rather than through any single normative source. Understood in this way, marital property is a site of negotiated legality in which Islamic jurisprudence is neither static nor wholly absorbed by the state, but is continually reconstructed through judicial practice, local moral economy, and public claims to justice.⁵²

The deeper insight generated by this study is that marital property should be analysed as a distributional institution rather than merely as a post divorce remedy.⁵³ Once it is framed in

⁵¹ Mohd Norhusairi Mat Hussin and Mohd Zaidi Daud, "SEJARAH DAN PERKEMBANGAN AMALAN PEMBAHAGIAN HARTA SEPENCARIAN DALAM MASYARAKAT ISLAM DI MALAYSIA (History and Development of Harta Sepencarian Distribution Practice in Muslims Society in Malaysia)," *Journal of Al-Tamaddun* 15, no. 2 (2020): 95–113.

⁵² Mohd Norhusairi Mat Hussin et al., "Local Wisdom and Gender Equality in Joint Property Division: An Islamic Legal Perspective from Malaysia," *De Jure: Jurnal Hukum Dan Syaria'iah* 17, no. 2 (2025): 394–416.

⁵³ J M Muslimin and Yulia Fatma, "The Actualization of Justice in the Settlement of Joint Assets Due to Divorce: Comparative Analysis of Decisions of the Religious Courts," *De Jure Jurnal Hukum Dan Syar Iah*, 2020, <https://doi.org/10.18860/j-fsh.v12i2.9064>.

that way, the question changes from “how should assets be divided at the end of marriage?” to “how does Islamic law recognise and value the multiple forms of labour that generate family wealth?”. This shift is scientifically important because it reveals the inadequacy of both dominant simplifications. The first simplification is formal equal division, which promises certainty but may ignore asymmetrical contribution and vulnerability. The second is a narrow economic model, which values only quantifiable financial input and therefore risks erasing domestic labour, care work, and non-monetary support. The literature from Indonesia and Malaysia shows that neither approach is sufficient: Indonesian scholarship has criticised rigid half-share division for failing to reflect flexible spousal roles, while Malaysian scholarship has highlighted the need to recognise indirect contributions and local wisdom in the adjudication of *harta sepencarian*.⁵⁴ The wisdom that follows is that Islamic family law must be read not only through the vocabulary of ownership, but also through the vocabulary of contribution, dependency, welfare, and social function. That interpretive move aligns family law with Islamic economic ethics, because it places household justice at the centre of wealth governance rather than treating the family as a legally invisible economic unit.⁵⁵

Compared with previous studies, the present research both confirms and extends the existing literature. It confirms Pelu and Dakhoir’s argument that, in Indonesian Religious Courts, the legal position of marital property is formally clear while the actual settlement of disputes is often determined by qualitative contribution rather than by mechanical application of statutory language. It also confirms Rouf and colleagues’ conclusion that a literal fifty-fifty division is increasingly difficult to justify where husbands and wives occupy changing and overlapping household roles. Likewise, it is consistent with Malaysian studies showing that *harta sepencarian* is historically rooted in Malay custom, doctrinally sustained through *urf*, and normatively defended in terms of justice and women’s rights.⁵⁶ Yet this study goes further in three respects. First, it reconstructs the problem through comparative madhhab analysis rather than beginning and ending with positive law. Secondly, it links marital property not only to family dispute resolution but also to Islamic economic governance, thereby showing that joint property is part of a wider architecture of household welfare and distributive justice. Thirdly, it

⁵⁴ Zuraidah Ali et al., “Law of Trust and the Beneficial Interest in Matrimonial Property,” *Pertanika Journal of Social Sciences and Humanities*, 2021, <https://doi.org/10.47836/pjssh.29.s2.08>.

⁵⁵ H Visser, “The Islamic Economy: Its Origin, Its World View and Its Claims,” *The Central European Review of Economics and Management*, 2019, <https://doi.org/10.29015/cerem.765>.

⁵⁶ Abdullah, “The Dynamism of Fiqh of Property in Malaysia.”

places Indonesian and Malaysian developments within a broader comparative discussion of Muslim family law reform, in which state intervention, women's rights, legal pluralism, and judicial activism reshape the operative meaning of shari'ah in different jurisdictions. In that sense, this article moves beyond descriptive doctrinalism and beyond case specific litigation studies towards a regime-based theory of marital property in Islamic law.⁵⁷

The implications of this discussion are theoretical, practical, and constitutional-institutional at once. Theoretically, the study supports a maqāsid oriented and pluralist understanding of Islamic family law in which ownership doctrine must be reconciled with justice, welfare, and the social reality of cooperative marital labour.⁵⁸ Practically, it suggests that judges should adopt a structured contribution analysis that recognises direct, indirect, domestic, reproductive, and care-based forms of contribution instead of relying exclusively either on a rigid half-share presumption or on narrow financial tracing. From the perspective of Islamic economic law, the findings imply that marital property should be treated as part of household economic governance, with consequences for family businesses, productive assets, savings, pensions, insurance claims, and the principal family residence.⁵⁹ From the standpoint of state law and public policy, the research strengthens the case for revising or at least reinterpreting Article 97 of the Compilation of Islamic Law so that it better accommodates differentiated contribution, vulnerability, and the best interests of children. It also lends support to the continuing role of the Supreme Court and other state institutions in developing family law through judicial guidance, since Indonesian experience over the last fifty years shows that courts have become important sites of non-statutory reform.⁶⁰ For a journal concerned with Islamic jurisprudence in Indonesian and global contexts, the broader message is clear: marital property is not a marginal doctrinal question, but a strategic point at which Islamic family law, Islamic economic justice, comparative madhhab reasoning, and state constitutional ordering meet.

⁵⁷ Mohd Hafiz Jamaludin and Ahmad Hidayat Buang, "Syariah Courts in Malaysia and the Development of Islamic Jurisprudence: The Study of Istihsan," *International Journal of Nusantara Islam*, 2014, <https://doi.org/10.15575/ijni.v1i1.33>.

⁵⁸ Ali et al., "Law of Trust and the Beneficial Interest in Matrimonial Property."

⁵⁹ Miftahur Rahman, Fathudin Fathudin, and Abdul W Basit, "Transformation of Sharia Economy in the Populist System," *International Journal of Economics Business and Accounting Research (Ijebar)*, 2022, <https://doi.org/10.29040/ijebar.v6i1.4390>.

⁶⁰ Haji Mohd Na'im Haji Mokhtar, "Achieving Justice Through Implementation of Shariah: Challenges and the Way Forward," *Iium Law Journal*, 2023, <https://doi.org/10.31436/iiumlj.v31i2.900>.

CONCLUSION

This article concludes that marital property regimes in Islamic law should not be understood through a rigid binary between full joint ownership and absolute separate ownership. A comparative reading of the Sunni madhhabs shows that while Islamic law recognises each spouse's independent proprietary capacity, it also provides doctrinal foundations for shared entitlement through *shirkah*, *'urf*, fairness in maintenance, welfare reasoning, and direct or indirect contribution within marriage. By relating these doctrines to contemporary practices in Indonesia and Malaysia, the study proposes a maqāṣid-based relational model in which individual ownership remains protected, but marital cooperation, domestic labour, household contribution, and the social function of family assets may justify equitable claims. Thus, marital property is better understood as a legal-economic institution located at the intersection of Islamic family law, madhhab diversity, living law, legal pluralism, state regulation, and modern Islamic economic governance.

Future research should expand the comparative scope beyond Indonesia and Malaysia to examine how other Muslim jurisdictions reconstruct marital property within their legal systems. Further studies are also needed on how Religious Courts and Syariah Courts assess direct and indirect spousal contributions in concrete judgments, particularly in cases involving women's paid labour, domestic care work, family businesses, pensions, insurance, and jointly accumulated assets. Empirical research on the interaction between customary norms, women's economic roles, and legally recognised marital property claims would further strengthen the reform of Islamic family law as a juristic, socio-economic, and constitutional field.

CREDIT AUTHOR STATEMENT

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