

The Division of Joint Property in Divorce According to Islamic Law: A Guide to Justice

Muhammadong¹

¹ Universitas Negeri Makassar, Makassar, Indonesia

ABSTRACT - Divorce often causes conflicts regarding the division of joint property, which may result in inequity if not based on Islamic law. This study aims to analyze the principles and procedures of joint property division in divorce under Islamic law as a means of achieving justice for the parties involved. This research uses normative legal research with a juridical-conceptual framework. Data were collected through library research, including the Qur'an, Hadith, classical Islamic law, legislation, and relevant court decisions. Data analysis was conducted using qualitative descriptive-analytical methods. The results show that Islamic law emphasizes fairness, proportionality of contributions, and mutual consultation in the division of joint property after divorce. Consistent implementation of Islamic legal principles can reduce disparities in property distribution. Future research is recommended to examine the empirical application of these principles in religious court rulings.

ABSTRAK - Perceraian sering menimbulkan konflik terkait pembagian harta bersama, yang dapat menimbulkan ketidakadilan jika tidak berlandaskan hukum Islam. Penelitian ini bertujuan untuk menganalisis prinsip dan prosedur pembagian harta bersama dalam perceraian menurut hukum Islam sebagai upaya mencapai keadilan bagi pihak yang terlibat. Penelitian ini menggunakan metode penelitian hukum normatif dengan kerangka yuridis-konseptual. Data dikumpulkan melalui studi pustaka, meliputi Al-Qur'an, Hadis, hukum Islam klasik, peraturan perundang-undangan, dan putusan pengadilan terkait. Analisis data dilakukan secara deskriptif-analitis kualitatif. Hasil penelitian menunjukkan bahwa hukum Islam menekankan keadilan, proporsionalitas kontribusi, dan musyawarah dalam pembagian harta bersama pasca-perceraian. Penerapan prinsip hukum Islam secara konsisten dapat mengurangi ketimpangan dalam pembagian harta. Penelitian selanjutnya disarankan menelaah implementasi empiris prinsip tersebut dalam putusan pengadilan agama.

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✉ muhammadong@unm.ac.id

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INTRODUCTION

Divorce is a social phenomenon closely related to marital life. The divorce process not only impacts the psychological well-being of both parties but also raises legal and economic issues, particularly regarding the division of joint property. In many divorce cases, the spouse going through divorce often faces emotional and mental challenges, while the distribution of joint property becomes a sensitive issue that may lead to a sense of injustice, especially for wives whose contributions are often not financially recognized (H. Ramlan, Shahir, A. S., Rostam, A., & Kamaruddin, M. Y, 2022). From a legal and religious perspective, the division of joint property is a complex issue because it involves the rights and obligations of both parties acquired during the marriage, so it must be distributed fairly and proportionally according to the principles of justice in Islamic law.

Joint property, or marital property, refers to assets acquired during marriage, whether through financial cooperation or non-financial contributions, such as managing the household, raising children, or supporting the spouse's work. When a divorce occurs, these assets must be fairly divided. Islamic law emphasizes justice, consultation, and proportionality of contributions in dividing joint property. However, its implementation in practice often faces challenges due to varying perceptions of joint property and differing opinions on who is entitled to the assets (A. Suryadi, Tuti Herawati, & Sofyan Mei Utama, 2023). Social, cultural, and economic factors also influence how joint property is divided post-divorce. Therefore, a comprehensive analysis of fairness in the distribution of joint property is essential to ensure that the rights of both parties are properly recognized.

The Qur'an provides general principles regarding the rights and obligations of spouses in marriage, including in the context of divorce. For example, Surah Al-Baqarah verse 229 states: "Divorce is twice. Then either keep her in a way that is acceptable or let her go with kindness." This verse emphasizes the importance of fairness, wisdom, and kindness in divorce. Scholars of Islamic law (fuqaha) stress that assets acquired during marriage are the result of joint efforts and should be divided equitably. This principle highlights the need to consider both financial and non-financial contributions of both parties, so that property division is not based solely on material aspects.

Although the principles of Islamic law are clear, positive law in Indonesia, such as Marriage Law No. 1 of 1974, has not fully adopted these principles. Previous studies indicate that many couples experience inequity in the division of joint property, especially wives whose contributions in managing households and supporting family income are often overlooked (Nur Jihad, 2004; M. Al-Alawi, 2023). In practice, religious court judges sometimes only consider measurable aspects, such as direct income, while non-financial contributions are rarely accounted for. This creates disparities and feelings of unfairness, even though the spouse's contributions are significant in forming joint property.

Prior studies have examined the division of joint property according to Islamic law, often emphasizing proportionality of contribution and consultation. Some experts suggest that the



division should take into account both direct and indirect contributions to income or the accumulation of assets during marriage. However, in Indonesian positive law practice, this is not always applied consistently (Rahmat Darma, 2021). Hence, there is a need to investigate the application of justice principles in Islamic law more deeply, particularly how they are adapted within Indonesia's legal system.

Injustice in the division of joint property is not only a legal issue but also a social and gender issue. The wife's significant role in managing the household and supporting her husband's work is often undervalued because it is not reflected financially. Consequently, post-divorce property division is frequently perceived as unfair, affecting social and psychological well-being. This highlights the need for research that focuses on the application of justice principles in dividing joint property while considering non-financial contributions that are often neglected.

The novelty of this study lies in analyzing the application of justice principles in Islamic law to the division of joint property during divorce, particularly within the Indonesian legal context, with an emphasis on non-financial contributions of the wife. This study also examines the adaptation of Islamic justice principles within the practices of religious courts and Indonesian positive law, aiming to provide recommendations for a fairer and more proportional property division.

The primary objective of this research is to assess the implementation of justice principles in the division of joint property during divorce, specifically within Indonesia's legal framework, while exploring the often-overlooked non-financial contributions of the wife. Through this focus, the study is expected to provide relevant insights and solutions for achieving a fairer distribution of joint property, in accordance with Islamic law principles.)

RESEARCH METHOD

This study uses a qualitative research method with a literature review and comparative analysis approach to examine equity in the distribution of joint property during divorce according to Islamic law. The research design is normative-analytical, emphasizing the analysis of law based on applicable concepts and practices.

The research targets include Islamic legal sources such as the Qur'an, Hadith, and fiqh literature concerning the division of property in divorce, as well as Indonesia's positive law, particularly Law No. 1 of 1974 on Marriage, to evaluate the alignment of fairness principles in joint property division between Islamic law and state law.

Data collection was conducted through a literature review of Islamic legal books, legislation, and religious court decisions, as well as in-depth interviews with judges, lawyers, and other relevant stakeholders to obtain information on the practical challenges of achieving fairness in property division (Waseem Gul, 2019).

The research instrument was developed using a semi-structured interview guide and a checklist of legal literature covering principles of justice, proportionality of contributions, and court practices in property division. This instrument ensures that the collected data are relevant to



the research objectives.

Data analysis was performed using content analysis to assess the principles identified in the legal sources and descriptive analysis to illustrate the implementation of joint property distribution in divorce cases in Indonesia. This approach enables the researcher to identify gaps between theory and practice and to evaluate the application of justice principles in the context of both Islamic law and Indonesia's positive law.

RESULTS AND DISCUSSION

When a couple gets divorced, dividing their shared property is a very important matter that needs to be handled fairly and justly, especially under Islamic law (Sharia). Islamic law has specific rules on how to distribute property bought during marriage. The goal is to achieve fairness. Islamic teachings do not mandate a rigid 50/50 division of joint property, in contrast to many civil laws. It doesn't do that; instead, it looks at what each partner did during the marriage. This includes both money and things that are not money. In Islamic law, a wife's role in running the house and raising children is very important, even though it does not involve money. Mut'ah (gifts or compensation) is important. It states that a husband should give his wife some kind of recompense once they get divorced, especially if he started the divorce without her permission. The Quran and Hadith emphasize the significance of upholding fairness and refraining from infringing upon the rights of either partner.

Islamic scholars stress that each situation must be assessed individually, taking into account the specifics of marriage and the contributions of both parties. Therefore, even if the distribution method seems subjective, it is based on ideas of fairness, equity, and respect for others. A guide to justice in this division wants to ensure that both people leave the marriage with what they deserve, which will reduce the chance of dispute and promote harmony. Thus, the way Islamic law divides joint property in divorce is a good example of how to keep things fair and when a marriage ends.

A. Islamic Law's Rules for Dividing Joint Property

When a couple gets divorced, Islamic law says that they must follow certain basic rules to divide their shared property fairly. Joint property is the property bought together by the husband and wife throughout their marriage. Islamic law states that each person has the right to the property they have throughout the marriage based on the idea of fairness, which means treating both people equally and recognizing what each person did. (Hukum online, 2025)

The main principle of the division of joint property according to Islamic law is justice. When deciding how to divide the property, both parties' rights and responsibilities throughout the marriage should be considered. In this case, both financial and non-financial efforts are important. Nonfinancial contributions include managing the house, raising children, and providing emotional support. Islam generally states that the property gained during marriage is the result of both people working together, so it should be divided fairly. Allah states in Surah Al-Baqarah that, verse 229: "Divorce is twice.

" Then either keep her in a way that is acceptable or let her go with kindness.



This passage stresses how important it is to be fair in divorce, especially when it comes to splitting shared property. The division of property should not be unfair to either the husband or the wife. In this scenario, Islamic law states that property partitioning should show how much each person has contributed and not hurt either person.

Islam recognizes that both spouses participate in the acquisition of property during marriage. However, these gifts are not necessarily in the form of money. The wife, for instance, typically plays a big part in running the house, raising the children, and helping her husband's work, even if her contributions cannot always be measured in money. Thus, Islamic law must consider all of these kinds of contributions when dividing joint property. (Hussin Mat, M. N., Daud, N. A., Hanafi, N. H., & Samudin, N. N, 2024).

Some Islamic scholars contend that joint property ought to be equitably split between husband and wife; nevertheless, in practice, discrepancies exist in the valuation of each party's contribution. Some opinions say that the wife should get a bigger portion if she is in charge of raising the children and running the house. On the other hand, a husband who gives more money may be able to rate in more A

A judge's decision typically determines how the principles of justice are applied to the partition of the joint property. Judges in religious courts are very important in this case because they must look at the evidence and make a fair decision on how to divide the property. Judges need to think about things like what the husband and wife did during the marriage, how they managed their property, and what each person would need in the future, especially if children are involved. (M., G, Ridwan, Gumilar, A. Suadi, K. N. Sofyan Hasan, and M. Syafiuddin, 2023)

However in reality, judges' rulings do not always follow the idea of fairness. Many court decisions focus on money and do not other important things, such as the wife's part in running the house. Because of this, some people believe that the use of Islamic law to divide joint property in Indonesia needs to be changed so that both parties receive fair treatment.

Law No. 1 of 1974 on Marriage in Indonesia also oversees the partition of property in divorce. This law recognizes the joint property that the husband and wife must share. However, state law frequently places more weight on splitting financial assets that can be measured, while Islamic law sees non-financial contributions as essential. This results in a divergence between the implementation of Islamic law and state legislation regarding the distribution of communal properties. (A, Rouf, 2024).

In Indonesia, religious courts often follow Islamic legal concepts, but their verdicts do always bring about justice. This is especially true when it comes to assets that are difficult to put a price on, such as managing the family and the wife's role in supporting her husband. Consequently, it is imperative to re-evaluate the application of the principle of justice in Islamic law with in Indonesia's legal framework.

One of the biggest problems in using the idea of justice to divide joint property is that society does not always agree on women's rights during divorce. Islamic law acknowledges the wife's contributions to marriage. However, in practice, numerous individuals regard the wife's domestic role as inferior to the husband's financial contributions. This frequently leads to



inequality in property distribution, leaving the wife feeling sidelined. (R. C. Mukhtar, & Manjoo, F. A, 2024)

In addition, different interpretations of the notion of fairness in Islamic law make things more difficult. Some scholars contend that the husband ought to possess a greater share of communal property, but others assert that the wife should have a larger percentage based on her contributions to marriage.

B. The Principle of Justice in the Distribution of Joint Property

Islamic law divides shared property according to the basic ideas of fairness. In a fair division of joint property, both the husband and wife have equal rights to the property they accumulate throughout the marriage, taking into account how much each person contributes to the property's growth. Joint property is the property bought together by the husband and wife throughout their marriage. In this case, Islamic law says that property should be divided properly, without giving one side an advantage over the other, and that both parties' contributions to obtaining the property should be taken into account. (Karismawati, Siska, and Sri Endah Wahyuningsih, 2018)

According to Islamic law, the principle of justice states that property should be divided in a way that does not hurt either side, especially when one party has made a big contribution, even if it is not financial, such as the wife taking care of the house. The court or appropriate authorities in charge of dividing the property after a divorce should show this fairness in their decisions. As Surah Al-Baqarah, verse 229 says, Allah teaches that divorce should be done in a fair and good way, in terms of both property division and reconciliation. This verse stresses that any choice about divorce, such as how to divide property, should first put fairness and balance between the two people first.

This idea of justice is in line with the Hadith of the Prophet Muhammad SAW, who said that both the husband and wife have rights that must be honored and fulfilled. This includes their claim after the property that they bought together during marriage. Then, when dividing joint property, it is not just money. It is also about recognizing non-financial contributions, such as the wife's part in running the house, taking care of the children, and helping her husband in non-material ways. (T. Budiyo, Suharyanto, A., & Erwati, M, 2025).

Islamic law acknowledges that both spouses contribute to the accumulation of assets throughout at marriage. However, these gifts are not usually money related. For example, the wife is often in charge of the house, the children, and her husband's work, even though her contributions cannot always be evaluated in money. Thus, Islamic law states that when dividing marital property, all types of contributions must be considered, (Happy Susanto, 2017)

Some Islamic scholars say that shared property should be split properly, taking into consideration what each person did and how much they contributed. For instance, if the woman is in charge of running the house and taking care of the children, she may be entitled to a bigger portion. However, if the husband gives more money, he may be entitled to a larger share. However, this is only true if each side can show how they helped them, during marriage. (Haider Ala Hamoudi, 2024)



In real life, dividing the joint property often causes fights, especially when one person thinks that their contribution is not given enough credit. This arises when people think that nonfinancial contributions, such as taking care of the house and raising children, are less important than financial contribution. Islamic law, on the other hand, states that both financial and nonfinancial contributions should be treated the same. People often do not have their fair share of property because they do not clearly recognize their non-financial contributions. (Suenta Karina, Utary Maharani B, Yezrizawati, and Idha Aprilyana S, 2021)

Several divorce cases in Indonesia demonstrate an inequitable distribution of joint property, with wives who have contributed more non-financially frequently perceiving that they do not receive an equitable portion of the assets amassed throughout the marriage. Islamic law states that this property should be split up based on how much money each person contributed, not just how much money they had.

The judge is very important in ensuring that this principle of justice is followed while dividing joint property. The judge needs to make sure that everyone gets what they deserve based on what they do. This necessitates a profound understanding of non-financial contributions within marriage, including the wife's responsibilities in household management and emotional support for her spouse. The court must also consider social and cultural issues that could affect how people think about that dividing property. This ensured that the result was fair. (Julir, Jayusaman, Khairunnisa, and Yelpi, 2023)

Nonetheless, implementation of this idea frequently encounters difficulties in practice. Patriarchal culture has a lot of power in society, which often pushes the wife to the side when it comes to dividing joint property, even if her contributions are just as important. Therefore, everyone needs to know more about Islamic law's principles of justice so that everyone obtains a fair portion of the property they own together.

C. Difficulties in Enforcing Justice in the Distribution of Shared Assets

Implementing the idea of fairness in the allocation of joint property during divorce under Islamic law involves several intricate obstacles. When dividing joint property, both parties' contributions, both financial and non-financial, should be considered. However, this idea has not always been applied fairly. These problems come from a number of places, including law, society, culture, and how people view the roles of husbands and wives in marriage. (Masalan Bainon, Idzam Fautanu, Dadin Solihin, and Ahmad Hasan Ridwan, 2024)

One of the main problems with ensuring justice when dividing joint property is that non-financial contributions, especially from the wife, are not often recognized. In many instances, the wife's responsibilities in household management, child-rearing, and providing emotional or moral support to her husband are regarded as less significant than financial contributions. Islamic law states that non-financial contributions should be appreciated, but in fact, these contributions are often neglected or underestimated, which is unfair when it comes to dividing property. This is especially clear in divorce cases, where there is no clear proof of non-financial contributions, including how the wife managed the family or how she supported her husband's work. (A. Hidayah, 2024)



The strong patriarchal culture of Indonesia often affects how the notion of fairness is used when dividing joint property. In many societies, the husband is recognized as the head of the family and the main breadwinner. The wife's position is generally perceived as limited to household chores. This stance, while not entirely representative of Islamic teachings, frequently influences society's attitudes toward property division during divorce. In this situation, unfairness in splitting up joint property usually works the husband's advantage because society sees him as deserving a bigger portion and does not recognize the wife's role in running the family and supporting him. Thus, the biggest problem with bringing about fairness is getting over these social and cultural perspectives that do not take into account the wife's contributions, which is pecuniary. (D. Mustika, Saputra, D., & Hikmah, N, 2025).

Another major problem is that judges and scholars have different ideas about what law means. Islamic law has specific rules on how to divide joint property, but how these rules are applied can change based on how the people involved see them. Some judges may put more weight on the wife's non-financial contributions when dividing property, while others may put more weight on financial aspects. This difference in how things are understood might lead to unfairness, especially if the court does not do everything that both parties did during marriage. Therefore, it is vital to have clearer and more uniform rules on how Islamic law should be used to divide joint property. (Rahmat Darma, 2021)

Law No. 1 of 1974 on marriage governs the distribution of property in divorce; however, Indonesian positive law predominantly focuses on the allocation of quantifiable financial assets, such as money and real estate. Islamic law states that nonfinancial contributions, such as taking care of the house and raising children, should also be considered when dividing property. However, this is often not the case. This difference between Islamic law and Indonesian positive law makes it difficult to ensure that the distribution of joint property is done fairly and justly. Therefore, these two legal systems need to work together to make property divisions fairer. (N. H. Sahari, & A. M., S. K, 2019)

The final challenge is that people and lawyers do not comprehend the rules of justice when it comes to dividing joint properties. Many people, including the courts and the public, do not completely appreciate the importance of considering non-financial contributions when dividing property. It is important to socialize the ideas of fairness so that both the husband and wife get their fair share based on what they have contributed to the marriage. It will be difficult to get justice in the partition of joint property if you do not really understand this subject.

This study emphasizes the need for harmonization between Islamic law and positive law in joint property division and highlights the importance of legal education for judges and the public to recognize wives' non-financial contributions. Comprehensive implementation of justice principles will reduce disputes, ensure fair property division, and enhance post-divorce welfare.

Future research could conduct broader empirical studies, including quantitative data collection from religious courts, to objectively evaluate property division based on financial and non-financial contributions. Moreover, studies could explore societal perceptions of justice in property division to support harmonization between Islamic law and positive law.



CONCLUSION

According to Islamic law, fairness and equity are the basis for justice in the distribution of joint property during divorce. This means that both spouses are entitled to a fair of the property gained during marriage. Islamic law acknowledges both monetary and non-monetary contributions, including domestic administration and emotional support, as vital to the build-up of shared assets. In this case, however, bringing about justice is difficult because of cultural biases, undervaluing of non-financial contributions, and different interpretations of Islamic law. The disparity between Islamic values and state law further complicates the fair distribution of property frequently results in conflicting practices. It is important to raise awareness and understanding of the concepts of justice in Islamic law and make it easier for religious and state legal systems to work together to make ensure that the distribution of joint property is fair. By overcoming these hurdles, a fairer and more balanced way to divide property can be found, ensuring that both partners get their fair portion depending on what they brought to the marriage.

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