

## Conflict between Customary Law and Islamic Law in the Postponement of Joint Property Distribution After Divorce

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### Abstract

*The postponement of the distribution of joint property after divorce is still an ongoing socio-judicial problem and has an impact on weak legal certainty and the fulfillment of economic rights after divorce, especially for women. Although Indonesian positive law and Islamic law normatively regulate the division of common property, there is still a gap between legal norms and the practice of their implementation in a society based on customary law. This research fills the research gap in the form of a lack of empirical juridical studies on the postponement of the distribution of common property in the interaction between customary law, Islamic law, and state law in traditional societies. The purpose of this study is to analyze the causal factors, patterns, and legal implications of post-divorce joint property distribution, with an emphasis on the protection of economic rights. The method used is empirical juridical with a socio-legal approach, which is carried out through field research in Katimaju Village, Ketambe District, Southeast Aceh Regency, with in-depth interview techniques and document analysis. The results of the study show that the delay in the distribution of joint property is influenced by the strong customary norms, the dominance of the role of extended families and traditional leaders, and the prevalence of unregistered marriages, which has implications for legal uncertainty and weak economic protection for women. The novelty of this research lies in an integrative analysis between normative legal frameworks and local social practices that reveal structural injustices in customary dispute resolution mechanisms. Based on these findings, this study recommends that the settlement of the distribution of joint property after divorce be required through a legal mechanism that has binding power by involving the Religious Court as the main authority, accompanied by the reformulation of customary dispute resolution mechanisms to be in harmony with Islamic law and state law, increasing the legalization of marriage through marriage registration, and strengthening community-based legal education to ensure legal certainty, protect women's economic rights, and realize substantive justice in indigenous peoples.*

**Keywords:** Marital Property; Divorce; Islamic Law; Customary Law; Women's Economic Rights.

### Abstrak

Penundaan pembagian harta bersama pasca perceraian masih menjadi persoalan sosio-yuridis yang berkelanjutan dan berdampak pada lemahnya kepastian hukum serta pemenuhan hak ekonomi setelah perceraian, khususnya bagi perempuan. Meskipun hukum positif Indonesia dan hukum Islam secara normatif telah mengatur pembagian harta bersama, masih terdapat kesenjangan antara norma hukum dan praktik pelaksanaannya di masyarakat yang berlandaskan hukum adat. Penelitian ini mengisi celah penelitian berupa minimnya kajian yuridis empiris mengenai penundaan pembagian harta bersama dalam interaksi antara hukum adat, hukum Islam, dan hukum negara di masyarakat tradisional. Tujuan penelitian ini adalah untuk menganalisis



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faktor penyebab, pola, dan implikasi hukum dari penundaan pembagian harta bersama pasca perceraian, dengan penekanan pada perlindungan hak ekonomi. Metode yang digunakan adalah yuridis empiris dengan pendekatan sosio-legal, yang dilaksanakan melalui penelitian lapangan di Desa Katimaju, Kecamatan Ketambe, Kabupaten Aceh Tenggara, dengan teknik wawancara mendalam dan analisis dokumen. Hasil penelitian menunjukkan bahwa penundaan pembagian harta bersama dipengaruhi oleh kuatnya norma adat, dominasi peran keluarga besar dan tokoh adat, serta masih maraknya perkawinan tidak tercatat, yang berimplikasi pada ketidakpastian hukum dan lemahnya perlindungan ekonomi bagi perempuan. Kebaruan penelitian ini terletak pada analisis integratif antara kerangka hukum normatif dan praktik sosial lokal yang mengungkap adanya ketidakadilan struktural dalam mekanisme penyelesaian sengketa adat. Berdasarkan temuan tersebut, penelitian ini merekomendasikan agar penyelesaian pembagian harta bersama pasca perceraian diwajibkan melalui mekanisme hukum yang memiliki kekuatan mengikat dengan melibatkan Pengadilan Agama sebagai otoritas utama, disertai reformulasi mekanisme penyelesaian sengketa adat agar selaras dengan hukum Islam dan hukum negara, peningkatan legalisasi perkawinan melalui pencatatan nikah, serta penguatan edukasi hukum berbasis komunitas untuk menjamin kepastian hukum, melindungi hak ekonomi perempuan, dan mewujudkan keadilan substantif dalam masyarakat adat.

**Kata Kunci:** Harta Bersama; Perceraian; Hukum Islam; Hukum Adat; Hak Ekonomi Perempuan.

## INTRODUCTION

Marriage is a bond of birth and mind between a man and a woman that aims to form a family that is *sakinah, mawaddah, and rahmah*. From the perspective of Islamic law, the bond is known as *nikah*, which is a contract that legitimizes the relationship between husband and wife and gives birth to legal rights and obligations for each party. In Indonesia, marriage is not only seen as a religious institution, but also as a legal event whose regulation is subject to positive legal provisions, especially Law Number 1 of 1974 concerning Marriage.<sup>1</sup>

Nevertheless, social reality shows that not all marriages can be maintained, so divorce becomes an inevitable legal phenomenon. Divorce not only has implications for the breakdown of the marital relationship, but also has complex follow-up legal consequences, especially with regard to the division of joint property acquired during the marital period. Therefore, the issue of joint property after divorce is a national issue that touches on aspects of legal certainty, justice, and protection of the economic rights of the parties.<sup>2</sup>

Normatively, Indonesia's positive law has clearly stipulated that property acquired during marriage is joint property as affirmed in Article 35 paragraph (1) of Law Number 1 of 1974. In the event of a divorce, the division of joint property becomes an inseparable legal consequence as stipulated in Article 37 of the Law. For Muslims, the provisions for the distribution of joint property are emphasized in the Compilation of Islamic Law (KHI), especially Article 97, which gives the right of a second part to each party.

Although normative arrangements are available, practice on the ground shows that the division of joint property is not always done immediately after a divorce has

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<sup>1</sup> Moh. Rifa'i, "Ilmu Fiqih Lengkap", (Semarang: CV. Toha Putra, 1978), hlm. 453.

<sup>2</sup> Gema Rahmadani, Faisar Ananda Arfa, dan Muhammad Syukri Albani Nasution, "Konsep Pernikahan *Sakinah Mawaddah dan Warahmah* Menurut Ulama Tafsir," *Jurnal Darma Agung* 32, no. 1 (2024): 220–230; Miswar, Nabila, Ida Friatna, Riza Afrian Mustaqim, Maryna Chernysh, and Munkh-Erdene Batdulam. 2026. "Beyond Formal Courts: The Role of Customary Institutions in Resolving Divorce Disputes in East Aceh, Indonesia". *An-Nisa: Journal of Islamic Family Law* 3 (1): 50-64. <https://doi.org/10.63142/an-nisa.v3i1.489>

permanent legal force. In Katimaju Village, Ketambe District, Southeast Aceh Regency, the practice of postponing the distribution of joint property was found for the reason of maintaining family harmony, the interests of children, or waiting for a settlement through customary deliberations. This practice has the potential to cause legal uncertainty and economic vulnerability, especially for women and children.

A number of previous studies have examined divorce and the division of joint property from a normative legal perspective, both based on Law Number 1 of 1974 and the Compilation of Islamic Law. These studies generally focus on the analysis of the articles that govern common property and the principle of justice in its distribution.<sup>3</sup>

Other research also highlights the role of religious courts in resolving joint property disputes, including procedural barriers and low legal awareness of the community in filing a lawsuit for the division of joint property after divorce. However, most of the research still focuses on formal juridical aspects and has not in-depth examined the social dynamics that affect the implementation of legal norms. In addition, studies that integrate legal perspectives with local social and cultural realities are still relatively limited. In fact, in societies with strong customary structures, legal practices are often influenced by non-formal values that live and develop in society.

Based on the search for previous research, there is a gap between the normative regulation of the distribution of common property and the practice of its implementation at the community level. Previous research has not comprehensively revealed the sociological factors behind the post-divorce joint property distribution. In addition, there have not been many studies that specifically examine the legal and social impact of the delay in the distribution of common property on the fulfillment of the economic rights of women and children. The absence of in-depth empirical analysis causes this problem to be often understood as a normative violation, without looking at the complexity of social relations and the legal culture of society.

Therefore, research is needed that examines the gap between legal norms and the reality of the practice of sharing common property, especially in the context of local communities with customary characteristics and certain socio-economic conditions such as in Katimaju Village, Ketambe District, Southeast Aceh Regency.<sup>4</sup> The novelty of this research lies in the juridical-empirical approach used to analyze the practice of postponing the division of joint property after divorce by considering the interaction between state law, Islamic law, and customary law. This research not only captures normative aspects, but also reveals the social realities that affect the effectiveness of law enforcement in society.

The purpose of this study is to analyze the factors that cause the delay in the distribution of joint property after divorce and to examine its juridical and sociological implications on legal certainty and the fulfillment of economic rights of the parties, especially women and children. Through this research, it is hoped that conceptual and practical recommendations can be formulated that are oriented towards strengthening substantive justice and legal protection after divorce.

## **RESEARCH METHODS**

This research is an empirical juridical legal research with a socio-legal approach, which aims to examine legal provisions regarding the distribution of joint property after

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<sup>3</sup> Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 35 ayat (1) dan Pasal 37.

<sup>4</sup> Junedi Hermanto Sihombing and July Eshter, "Juridical Analysis of the Division of Joint Property in Divorce According to Marriage and Islamic Law," *Law and Civil Society* 15, no. 2 (2025): 309–323.

divorce and its implementation in social practices of the community.<sup>5</sup> The research was carried out through field research with a research location in Katimaju Village, Ketambe District, Southeast Aceh Regency, which was chosen purposively because the practice of customary-based family dispute resolution is still strong. The research informants amounted to 6 (six) people, consisting of ex-husbands and wives who had experienced divorce, traditional leaders, community leaders, and village officials who understood the practice of postponing the distribution of joint property. The determination of informants is carried out by purposive sampling technique, which is to select subjects that are considered the most relevant, competent, and have direct experience with the problems being researched.

The data sources in this study consist of primary, secondary, and tertiary data. Primary data were obtained directly from the results of in-depth interviews with informants and field observations of social practices that took place in the community. Secondary data includes legal materials in the form of laws and regulations, Compilation of Islamic Law, legal textbooks, scientific journal articles, and relevant previous research results. The tertiary data is used as supporting material, such as legal dictionaries, encyclopedias, and sources of explanation of legal terms. Data collection techniques are carried out through semi-structured interviews, documentation studies, and literature studies to obtain comprehensive and complementary data.<sup>6</sup>

Data analysis is carried out qualitatively with the stages of data reduction, coding, and thematic analysis to identify patterns, themes, and substantive meanings of the empirical data obtained. The coding process is carried out by grouping data based on the main issues of the research, such as the factors causing the delay, the role of customs, and legal implications on the fulfillment of post-divorce economic rights. To ensure the validity and validity of the data, this study uses source triangulation techniques and triangulation methods, namely comparing the data from interviews between informants and matching them with documentation data and written legal materials. With a descriptive-analytical approach, this study is expected to be able to provide a systematic, objective, and in-depth picture of the gap between legal norms and social practices in the distribution of joint property after divorce.

## **RESULTS AND DISCUSSION**

### **Post-Divorce Joint Property Arrangement in a Positive Legal Perspective**

Joint property is wealth obtained during the course of the marriage bond, either through joint efforts or the efforts of each party, with the exception of property derived from inheritance and gifts. Thus, any property generated during the marriage period is legally categorized as joint property. This provision is in line with Article 119 of the Civil Code (KUHPercivil) which states that since the occurrence of marriage, there is automatically a mixture of property between husband and wife, unless otherwise stipulated through a marriage agreement. The union of property is valid throughout the marriage and cannot be changed or deleted without the agreement of both parties. If the married couple wishes to manage property separately, it must be stated in the marriage

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<sup>5</sup> Soerjono Soekanto, "Normative Law Research: A Brief Review", (Jakarta: Raja Grafindo, 2001), p. 26.

<sup>6</sup> Nanan Syaodin Sukmadita, "Educational Research Methods" (Bandung: PT Remaja Rosdakarya, 2009), p. 60.

agreement as stipulated in Articles 139 to 145 of the Civil Code, which is made at or before the marriage and stated in the form of a notary deed.<sup>7</sup>

Furthermore, Article 128 and Article 129 of the Civil Code stipulate that if the marriage ends, the joint property is divided equally between the husband and wife regardless of the origin of the acquisition of the property. Laws and regulations also provide space for the making of marriage agreements as long as they do not conflict with the law, morality, and agreement of the parties.<sup>8</sup> The fundamental difference between common property and inherited property lies in the time of its acquisition, where inherited property is property that has been owned before the marriage took place. Gifts or inheritances received during marriage are still categorized as inherited property as affirmed in Article 35 paragraph (2) of the Marriage Law, so that control remains with the recipient. Therefore, each party does not have the legal authority to act on the personal property of his or her spouse.

In the practice of domestic life, property management can be done separately or jointly according to the type of property owned. This provision is also in line with Article 36 paragraph (1) of Law Number 1 of 1999 concerning Human Rights which emphasizes that everyone has the right to own property personally or jointly for the benefit of themselves, their families, and the community as long as it does not conflict with the law.<sup>9</sup>

Law Number 1 of 1974 concerning Marriage regulates the provisions regarding property in Chapter VII which includes Articles 35 to 37. Article 35 paragraph (1) stipulates that property acquired during marriage is joint property, while paragraph (2) emphasizes that inherited property and property obtained through gifts and inheritance remain under the control of each party unless otherwise agreed. Article 36 paragraph (1) stipulates that legal action against common property must be carried out with the consent of both parties, while paragraph (2) provides freedom for each party to act on its inherited property. Article 37 states that if the marriage ends due to divorce, then the division of joint property is carried out in accordance with the law applicable to each party.

In the Compilation of Islamic Law (KHI), it is emphasized that the existence of joint property does not negate the possibility of personal property owned by husband and wife. This provision emphasizes that even if there is joint property during the marriage, each party can still own property separately. The Qur'an and Hadith do not provide strict provisions regarding the status of property ownership obtained during marriage, so the arrangement is left to the *ijtihad* of the scholars based on the principles of Islamic law and rational considerations. Therefore, in Islamic jurisprudence, there is no detailed explanation of the division of common property, which then gives rise to various views and interpretations.<sup>10</sup>

The arrangements regarding marital property in the KHI are regulated in more detail in Chapter XIII which covers Articles 85 to 97. Article 85 states that the existence of joint property does not prevent the ownership of personal property of each party. Article 86 emphasizes that marriage does not cause the automatic mixing of property between

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<sup>7</sup> Elfirda Ade Putri and Windy Sri Wahyuni, "Joint Property Dispute Resolution after Divorce in Positive Law in Indonesia," *Mercatoria Journal* 14, no. 2 (2021): 94–106.

<sup>8</sup> Ni Kadek Ani, I. Nyoman Putu Budiarta, and Ida Ayu Putu Widiati, "Marriage Agreements as Legal Protection of Joint Property Due to Divorce," *Journal of Legal Analogy* 3, no. 1 (2021): 17–21.

<sup>9</sup> Siringoringo, P., P. Saragi, and I. Januar. "Results of Inherited Property, Gifts and Inheritance in Law Number 1 of 1974 concerning Marriage." *\_Honeste Vivere\_* 33, no. 2 (2023): 142-150.

<sup>10</sup> "Come on, K." *Joint Property According to Islamic Law and Legislation in Indonesia.* Mizan: Journal of Islamic Law 1, no. 1 (2018).

husband and wife, so that each still has full authority over his property. Article 87 stipulates that the inherited property, including gifts and inheritances, remains under the control of the recipient unless otherwise specified in the marriage agreement, and gives the husband and wife the right to carry out legal acts on their property.

Article 88 stipulates that disputes regarding common property are resolved through the Religious Court. Article 89 and Article 90 regulate the obligations of husband and wife in safeguarding joint property and the property of the couple under their control. Article 91 explains that common property can be in the form of tangible or intangible objects, including rights and obligations, and can be used as collateral for the common good. Article 92 prohibits the sale or transfer of joint property without the consent of the spouse. Article 93 regulates responsibility for debt, where personal debt is the responsibility of each individual, while debt for the benefit of the family is a shared responsibility. Article 95 gives the right to the husband or wife to apply for the confiscation of security for the joint property if there is an adverse action. Articles 96 and 97 regulate the division of joint property due to death or divorce, which in principle gives half of the share to each party unless otherwise stipulated in the marriage agreement.<sup>11</sup>

### **Postponement of the Distribution of Joint Property After Divorce in the Perspective of Islamic Law**

In Islamic law, marriage is seen as a valid and strong contract (*mīṣāqan ghalīẓan*) that gives birth to legal consequences in the form of mutual rights and obligations between husband and wife, both in personal, social, and economic aspects. One of the important consequences of the marriage bond is the management of the wealth acquired during the course of the household. Although classical jurisprudence does not explicitly recognize the term "shared property" as stipulated in Indonesia's positive law, the principles of justice, trust, and protection of property rights are the main foundations in the regulation of property in Islam.<sup>12</sup>

Islamic law basically recognizes that every individual, both male and female, has the legal capacity (*ahliyyah*) to own, control, and manage wealth independently. Property ownership does not automatically mix as a result of marriage, unless there is an agreement, cooperation, or custom that is socially acceptable and does not contradict the principles of sharia. Therefore, the arrangement regarding property acquired during marriage in Islam is flexible and open to *ijtihad*, while still adhering to the main purpose of the sharia, which is to realize justice and benefits and prevent the occurrence of tyranny.

The principle of recognition of the economic rights of each party is affirmed in the Qur'an, as Allah SWT. says in Surah An-Nisā' verse 32:

وَلَا تَتَمَنَّوْا مَا فَضَّلَ اللَّهُ بِهِ بَعْضَكُمْ عَلَى بَعْضٍ لِلرِّجَالِ نَصِيبٌ مِّمَّا كَتَبْنَا لِلنِّسَاءِ نَصِيبٌ مِّمَّا كَتَبْنَا لَكُمْ وَأَسْأَلُوا  
اللَّهُ مِنْ فَضْلِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا ﴿٣٢﴾

*"For men there is a part of what they are trying to do, and for women there is a part of what they are trying to do."*

<sup>11</sup> Yusriana, "Legal Analysis of Joint Property Dispute Resolution According to the Compilation of Islamic Law," *Juripol (Journal of the Ganesha Polytechnic Institution Medan)* 5, no. 2 (2022): 68–78.

<sup>12</sup> Moh. Jalaluddin, "Analisis Konseptual Pernikahan dalam Islam: Perspektif Hukum, Rukun, serta Hak dan Kewajiban Pasangan," *HUKAGI: Jurnal Hukum Keluarga Islam* 1, no. 2 (2025): 156–173.

This verse affirms that Islam gives equal recognition to the results of each individual's efforts and economic contributions, regardless of gender. The mufasir explained that the verse contains the principle of distributive justice, namely giving rights to everyone according to their efforts and contributions.<sup>13</sup> Thus, women have full rights to the property they acquire, either directly or indirectly during the marriage period. This principle is the normative basis that women's economic rights should not be ignored or postponed, including in the context of the division of joint property after divorce.

In the context of divorce, Islam teaches that all legal consequences that arise are resolved fairly and do not cause harm to one of the parties. Divorce is indeed allowed as a last resort, but Islam strongly emphasizes that the process and its consequences do not give birth to tyranny. Therefore, postponement of the distribution of joint property after divorce must be placed within the framework of justice and benefits. Delays made without a clear reason, without an equal agreement, or without definite time limits have the potential to violate the basic principles of Islamic law.<sup>14</sup>

The prohibition of doing wrongdoing and withholding the rights of others is also affirmed in the hadith of the Prophet Muhammad (peace be upon him) narrated by Imam Muslim: "*Indeed, Allah has forbidden tyranny against Himself and made it unlawful among you, so do not mistreat one another.*" (HR. Muslim)

The hadith emphasizes that all forms of tyranny, including delaying or withholding the economic rights of other parties, are prohibited acts in Islam. In the context of the distribution of joint property after divorce, delays that cause one party, especially women, to lose access to their economic rights, can be categorized as a form of structural tyranny, especially if it is done by taking advantage of inequality in power relations or social reasons that are not accompanied by guarantees of rights protection.<sup>15</sup>

Delays in the distribution of joint property are often justified on the grounds of maintaining family harmony, waiting for customary agreements, or considering the interests of children. However, from the perspective of Islamic law, these reasons cannot be used as justification if they lead to the abandonment of the normative rights of the rightful party. Islam does not reject deliberation as a dispute resolution mechanism, but deliberation must be based on the principles of justice, equality, and do not cause harm to either party.

In addition, Islamic law also recognizes the rules of fiqh which states that harm must be eliminated and must not be maintained. Prolonged delays in the distribution of common assets have the potential to cause legal uncertainty, further conflicts, and economic dependence that is detrimental to certain parties. Therefore, the practice is contrary to the purpose of the Shari'ah (*maqāsid al-syarī'ah*), especially in the aspects of the protection of property (*hifz al-māl*) and the protection of the soul and dignity of the human being.<sup>16</sup>

Thus, from the perspective of Islamic law, the post-divorce joint property distribution can only be justified if it is done on the basis of a mutual agreement that is

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<sup>13</sup> Sridepi and Nurcahaya, "Reconstructing Joint Property Regulation in Marriage Based on Gender Justice Values," *JAWI: Journal of Ahkam wa Iqtishad* 2, no. 3 (2024): 433–446.

<sup>14</sup> Hasani Ahmad Said, Moh Mukri, Jum Anggriani, and Ali Abdul Wakhid, "Maqashid Based Qur'anic Interpretation: An Inclusive Approach for the Millennial Generation," *Samarah: Journal of Family Law and Islamic Law* 9, no. 2 (2025): 758–777, <https://doi.org/10.22373/pdjqc552>

<sup>15</sup> Rina Mulyani dan Tajul Arifin, "Larangan Berbuat Zalim dalam Hadis, Implikasi Hukum Pidana dan Perdata," *Jurnal Hukum, Administrasi Publik dan Negara* 2, no. 3 (2025): 97–106.

<sup>16</sup> Helim, A. (2025). The Rule of Harm Must Be Eliminated: Theoretical and Applicative Analysis in Contemporary Islamic Law. *At-Taklim: Journal of Multidisciplinary Education*, 2(6), 767-776.

fair, transparent, and has a clear time limit, and does not eliminate or diminish the rights of either party. If the delay actually causes injustice and harm, then the practice is contrary to the basic principles of Islamic law and is not in line with the value of justice which is the spirit of the sharia.

### **The Practice of Postponing the Distribution of Common Property in Katimaju Village**

Based on the results of field research conducted in Katimaju Village, Ketambe District, Southeast Aceh Regency, it was found that the practice of postponing the distribution of joint property after divorce is a phenomenon that still occurs frequently and is considered commonplace by the local community. The delay is not seen as a violation, but as part of the mechanism for resolving family problems that are customary and kinship.

The results of interviews with the informants showed that most divorces in Katimaju Village were not directly followed by the division of joint property. The distribution of property is generally postponed until an unspecified time for the reason of waiting for an agreement between the ex-husband and wife, as well as waiting for the decision of traditional leaders and extended families. In some cases, delays last for years without any legal certainty.

One of the female informants with the initials HM (35 years old), who has been divorced for more than three years, revealed that until now she has not received a share of the joint property. He stated that at the time of the divorce, the distribution of assets was postponed for the reason of waiting for family deliberation, but there was never any further clarity. A similar situation was also experienced by another female informant, DN (42 years old), who admitted to experiencing post-divorce economic difficulties because she had not received a share of the joint property, while the responsibility of childcare was on her side and she did not have a steady income.

This study also found that the practice of elopement or marriage that is not officially recorded is still going on in Katimaju Village. This condition causes that when a divorce occurs, the parties do not submit a settlement to the Religious Court. This was confirmed by AT (55 years old) as a community leader, who stated that divorces due to unrecorded marriages are generally resolved through customary mechanisms, including in terms of the division of common property.

In addition to the fact that marriage is not recorded, the results of the study show that the role of traditional leaders and extended families is very dominant in determining the implementation or postponement of the distribution of common property. S (60 years old) as a traditional leader explained that the approach used is more persuasive and prioritizes the harmony of kinship relations. Therefore, the division of joint property does not have a clear time limit and is highly dependent on the agreement of the parties and the extended family.

From the side of her ex-husband, RM (38 years old) stated that the postponement of the distribution of joint property was carried out to avoid conflicts and maintain good relations between families. The postponement is considered a temporary solution until conditions are considered conducive to re-deliberation.

Based on the overall results of the interviews and field observations, it can be concluded that the practice of postponing the distribution of joint property in Katimaju Village is influenced by the strong customary norms, the existence of unrecorded marriages, and the dominance of the role of traditional leaders and extended families in

resolving divorces. This practice has a direct impact on the delay in fulfilling economic rights after divorce, which in practice is more detrimental to women.

Thus, the results of this study show that the practice of postponing the distribution of common property in Katimaju Village is influenced by the strong customary norms, the existence of unrecorded marriages, and the dominance of the role of traditional leaders and extended families. This practice has a direct impact on the delay in fulfilling economic rights after divorce, especially for women.

### **Analysis and Legal Solutions to the Postponement of Joint Property Distribution After Divorce in Katimaju Village**

Based on the results of the study, the practice of postponing the distribution of joint property after divorce in Katimaju Village shows that there is a discrepancy between the customary norms that apply in the community with the provisions of Islamic law and positive law. Although the customary approach aims to maintain social harmony, delays that do not have time certainty have the potential to cause injustice and legal uncertainty for the rightful parties.

In the perspective of Islamic law, the division of property after divorce must be done fairly and must not cause harm. The principle of justice and the prohibition of wronging other parties require that the economic rights of ex-husbands and wives be fulfilled immediately. Therefore, delaying the distribution of common property that causes one party to lose access to its economic rights is contrary to the goals of Islamic law, especially in the protection of property and social justice.

From a positive legal point of view, the provisions in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law have provided certainty regarding the status and distribution of joint property after divorce. However, the results of the study show that low legal awareness and strong customary influence cause these provisions to not be implemented optimally in Katimaju Village.

Therefore, efforts to harmonize customary law, Islamic law, and positive law are needed. One of the solutions that can be taken is to strengthen the role of the Religious Court as an institution that is authorized to resolve joint property disputes fairly and has binding legal force. Settlement through customary mechanisms can still be carried out as long as it does not delay the fulfillment of rights and does not contradict the principle of justice.

In addition, it is necessary to increase legal socialization to the public, especially related to the importance of marriage registration and post-divorce legal rights. The socialization is expected to increase public awareness that the distribution of joint property is not just a family issue, but also a legal right that must be protected.

Thus, the solution to the practice of postponing the distribution of joint property after divorce in Katimaju Village must be directed at strengthening legal certainty, protecting women's rights, and aligning customary values with the principles of justice in Islamic law and national law.

### **CONCLUSION**

The results of this study expressly answer the purpose of the study by showing that the practice of postponing the distribution of joint property after divorce in Katimaju Village is not just a technical problem of property distribution, but a socio-juridical phenomenon influenced by the strength of customary norms, the dominance of power relations in the extended family, and the weak legal position due to unrecorded marriages. These findings show a real gap between positive legal norms and Islamic law that emphasizes certainty and justice, and the reality of social practice at the local level. The

novelty of this research lies in the empirical mapping that shows how the postponement of the distribution of shared property operates as an informal mechanism that perpetuates legal uncertainty and women's economic vulnerability, while showing the limitations of the effectiveness of written law when dealing with the dominant customary structure.

By theoretical implication, this study enriches the study of Islamic family law and marriage law by emphasizing that substantive justice cannot be achieved only through the existence of written norms, but requires an understanding of the social and cultural context in which the law is implemented. These findings strengthen the juridical-empirical approach in the study of law, particularly in reading the relationship between Islamic law, customary law, and state law as interinteracting systems, rather than standing alone. Meanwhile, the practical implications of this study show the urgency of strengthening the role of formal legal institutions, especially Religious Courts, in ensuring certainty and protection of post-divorce economic rights, without ignoring customary mechanisms as long as they do not conflict with the principles of justice, equality, and benefits.

Based on these findings, this study recommends the need for an integrative policy strategy through increasing family law literacy, strengthening marriage registration obligations, and legal assistance for post-divorce women so that they are not trapped in the detrimental delay of the distribution of common property. In addition, a normative dialogue is needed between law officials, traditional leaders, and the community to formulate fair and legally binding limits on delay. Follow-up research recommendations are directed at comparative studies between regions with different customary characteristics, as well as interdisciplinary research that links legal, gender, and economic aspects of households, in order to formulate a more responsive, fair, and sustainable model for resolving common property disputes in the context of legal pluralism in Indonesia.

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