



Comparison of Division of Joint Property after Divorce in Indonesia and Malaysia

Afrijal¹, Nuryasinta Kharisma Radhityas²

^{1,2} Faculty of Law, Universitas Muhammadiyah Malang, Indonesia.

Correspondence Email: andiswjrr123@gmail.com

Abstract: This study compares the legal and regulatory frameworks for the division of joint property after divorce in Indonesia and Malaysia, and analyzes the social and economic factors that influence the process. In Indonesia, the division of joint property is regulated by Law No. 1 of 1974 on Marriage and Law No. 23 of 2004 on the Elimination of Domestic Violence, which accommodate the diversity of customary law and secular approaches. Meanwhile, in Malaysia, the division of joint property is more influenced by Sharia law integrated with the common law system, providing a more structured and consistent procedure for Muslims. The study also identifies social and economic factors such as gender roles, education level, economic conditions, employment status, cultural norms, and power dynamics in the marital relationship as key determinants of the division of joint property. The results show that although both countries have similar cultures and are predominantly Muslim, differences in the integration of Sharia and secular law as well as socio-economic factors create significant variations in the implementation of the division of joint property. To improve fairness and efficiency, it is recommended that Indonesia adopt Malaysia's more structured procedures, while Malaysia can take advantage of the flexibility of Indonesia's mixed legal system. This collaboration is expected to produce a system for the distribution of joint assets that is fairer, more consistent and more responsive to evolving social and economic needs.

Keywords : Division of Joint Property; Divorce; Indonesia; Malaysia.

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1. Introduction

Divorce is a social phenomenon that is not foreign in modern society, both in Indonesia and Malaysia. The divorce process not only affects the emotional relationship between the divorcing couples, but also brings legal consequences, especially in terms of the division of joint property. The joint property in question includes all assets and liabilities acquired during the marriage, which need to be divided fairly between both parties after the divorce. The division of joint property is one of the crucial aspects in the divorce settlement, because it can affect the economic welfare of both former partners and any children who may be involved.

In Indonesia, regulations regarding the division of joint property after divorce are regulated in Law No. 1 of 1974 concerning Marriage and Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Both laws provide a legal framework for the regulation of joint property, including the principles of justice and balance in its distribution. In addition, the customary law system that applies in various regions in Indonesia also influences the practice of dividing joint property, adding complexity to its implementation. On the other hand, Malaysia has a similar approach but with significant differences, especially related to the influence of Sharia law in the country's legal system. Sharia law in Malaysia regulates certain aspects of divorce and division of joint property, especially for Muslim citizens, who are the majority of the population of Malaysia. This creates a different legal dynamic compared to Indonesia, which, although predominantly Muslim, has more secular regulations governing divorce and division of joint property.¹

Comparing the division of marital property after divorce in Indonesia and Malaysia is important to study because the two countries share many cultural and religious similarities, but differ in the legal approaches used. Indonesia adopts a mixed legal system that combines customary law, Islamic law, and secular law, while Malaysia is more influenced by English law and Sharia law. These differences can affect how marital property is divided, who is entitled to it, and the legal procedures that must be followed in the divorce process. By understanding these differences and similarities, it is possible to identify best practices that can be adopted by both countries to improve fairness and efficiency in the division of marital property after divorce.

In addition to legal aspects, social and economic factors also play an important role in the division of joint property. In Indonesia and Malaysia, gender roles in the household are still quite dominant, with men often considered the main breadwinners and women as the homemakers. This can influence court decisions in the division of joint property, especially in the context of financial support for the ex-wife and children. Changes in modern family dynamics, such as increased participation of women in the workforce and changes in traditional roles in the household, also have a significant impact on the division of joint property. Therefore, this comparative study should also consider how

¹ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal USM Law Review* 6, no. 1 (2023): 433–47.

these social changes influence legal decisions in the division of joint property after divorce.²

In addition, differences in the judicial systems and dispute resolution mechanisms between Indonesia and Malaysia also need to be analyzed. In Indonesia, divorce and division of joint property are often processed through religious courts for Muslim couples, while non-Muslim couples follow the district courts. In Malaysia, the Sharia legal system is more integrated with the common law system, and there are clear differences in the handling of divorce cases based on religion. These differences can affect the speed, cost, and final outcome of the division of joint property process. For example, more formal and bureaucratic procedures in one country compared to more flexible procedures in another country can have implications for the satisfaction of the parties involved in the divorce.

In addition to legal and social aspects, economic factors are also important in the division of joint assets. The differences in the level of economic development between Indonesia and Malaysia, as well as economic inequality within each country, can affect how joint assets are divided. In Malaysia, the higher per capita income level compared to Indonesia may provide a greater opportunity for a fairer and more balanced division of joint assets. However, the economic inequality that exists in both countries can also cause injustice in the division of assets, especially if one party has more resources or access to divisible assets.³

This comparative study also aims to identify challenges and opportunities in the division of joint property after divorce in both countries. For example, in Indonesia, the application of diverse customary laws can be a challenge in achieving consistency and fairness in the division of joint property. In Malaysia, the integration of Sharia law and common law can also cause confusion and inconsistency in legal practice. By comparing the two countries, it is hoped that better solutions can be found to overcome these challenges, as well as utilizing existing opportunities to improve the system of division of joint property after divorce.

In addition, it is important to consider the aspect of protecting children's rights in the context of dividing joint property. In both countries, the presence of children in a divorce adds complexity to the division of property, because the property is not only used for the benefit of the former spouse, but also for the benefit of the children. Legal regulations governing children's rights in dividing joint property must ensure that the needs of

² Wahyudi Umar and Andi Hikmawanti, "Pembagian Harta Bersama Dalam Perspektif Hukum Islam: Implementasi Moral Justice Dan Social Justice," *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 5, no. 1 (2023): 11-17.

³ Nita Suryani, "Persepsi Masyarakat Desa Batu Sondat Kecamatan Batahan Tentang Pembagian Harta Bersama Yang Dihasilkan Isteri Ditinjau Dari Kompilasi Hukum Islam" (PhD Thesis, IAIN Padangsidempuan, 2013), <http://etd.uinsyahada.ac.id/id/eprint/4984>.

children are met and not neglected in the process of dividing property. This study will discuss how both countries regulate this aspect and how effective it is in practice.

Recent legal and policy changes should also be part of this analysis. In Indonesia, the reform of marriage and divorce laws continues to develop, with efforts to improve the protection of individual rights in marriage and divorce. In Malaysia, there are legal dynamics that also change along with social and political developments, including in terms of the division of joint property. By taking these changes into account, this study can provide a more actual and relevant picture of the situation of the division of joint property after divorce in both countries.⁴

In addition to the legal and policy aspects, it is also important to look at the perceptions and experiences of individuals who have experienced divorce in the context of division of joint property. This study can include a review of existing literature, interviews with legal practitioners, and analysis of relevant divorce cases in Indonesia and Malaysia. Thus, not only theoretical aspects are discussed, but also practical experiences that can provide deeper insights into the effectiveness and fairness of division of joint property after divorce.

Overall, the comparison of the division of joint property after divorce in Indonesia and Malaysia is a complex and multidimensional topic, involving various legal, social, economic, and cultural aspects. This study is expected to make a significant contribution in understanding how the two countries handle the division of joint property after divorce, as well as identifying areas that require further improvement and development. Thus, the results of this study will not only be useful for academics and legal practitioners, but also for couples facing divorce and needing guidance in the process of dividing joint property.⁵

In the context of globalization and increasing mobility between countries, understanding the differences and similarities in the division of joint property after divorce is also important for couples who may have property in both countries or who come from different cultural and legal backgrounds. Thus, this study also has international relevance and can serve as a reference for other countries that wish to develop or reform their legal systems in terms of the division of joint property after divorce.

In addition, the importance of gender equality and individual rights in the context of division of joint property is also a major focus of this study. In the modern era, where gender roles are increasingly flexible and dynamic, the legal system must be able to adapt to ensure that the division of joint property is carried out fairly and equally, without discrimination based on gender or other factors. This study will evaluate the extent to

⁴ Ita Purnamasari, "Sistem Pembagian Harta Bersama Pasca Cerai Mati Pasangan Poligami Pada Masyarakat Bonto Kabupaten Sinjai Perspektif Al-Urf" (PhD Thesis, IAIN Parepare, 2024), <https://repository.iainpare.ac.id/id/eprint/6454/>.

⁵ Nia Januari, "Menggali Akar Masalah: Analisis Kasus Perceraian Di Indonesia," *AKADEMIK: Jurnal Mahasiswa Humanis* 3, no. 3 (2023): 120–30.

which the legal systems in Indonesia and Malaysia have succeeded in achieving this goal, as well as provide recommendations for future improvements.⁶

Overall, this background is based on the need to understand and compare how two countries with many similarities but also differences in their legal systems handle the division of joint property after divorce. By exploring various aspects involved, ranging from legal, social, economic, to individual experiences, this study is expected to provide a comprehensive and in-depth picture of the practice of division of joint property in Indonesia and Malaysia. The results of this study will not only enrich the academic literature, but also provide practical insights for policy makers, legal practitioners, and the general public in an effort to create a fairer and more effective system of division of joint property after divorce.

2. Method

The research method used in this paper is a literature study with a comparative approach method.⁷ Comparative research is a type of descriptive research that seeks to find fundamental answers about cause-and-effect relationships, by analyzing the factors that cause or emerge a particular phenomenon. This study also does not present the data results in the form of numbers, but qualitative descriptive, but the data sources in this study are scientific journals on the concept of joint property after divorce in Indonesia and Malaysia.

3. Comparison of Legal Framework and Regulations for Division of Joint Property

The division of joint property after divorce is a crucial aspect regulated by the legal framework of each country. In Indonesia and Malaysia, despite both countries having Muslim majority populations and cultural similarities, the legal approaches used to regulate the division of joint property have significant differences that affect its implementation. This comparison not only provides a deeper understanding of the practice of division of joint property in both countries, but also opens up opportunities for legal reform that can improve fairness and efficiency in the divorce process.

In Indonesia, regulations on the division of joint assets after divorce are regulated in several main laws. Law No. 1 of 1974 concerning Marriage is the main basis that regulates the rights and obligations of husband and wife, including the division of joint assets. This law establishes the principle of fairness and balance in the division of assets, taking into account the contribution of each party during the marriage. This principle seeks to ensure

⁶ Indi Asqia Az-zahra, "Dinamika Penyelesaian Harta Bersama: Perbedaan Pandangan Tokoh Agama Di Kecamatan Bagan Sinembah," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (2024): 394–407.

⁷ Zainuddin Ali, *Metode Penelitian Hukum* (Sinar Grafika, 2021).

that both parties receive a fair share based on their contributions, both financially and non-financially, such as roles in childcare and household management.⁸

In addition, Law No. 23 of 2004 on the Elimination of Domestic Violence also provides additional protection for vulnerable parties, such as wives and children, in the context of divorce and division of property. This law ensures that the process of dividing property does not only focus on the financial aspect, but also considers the emotional and physical well-being of the parties involved. Thus, this regulation creates a more holistic legal framework in dealing with divorce and division of joint property.

In addition to national laws, Indonesia also recognizes the existence of customary laws that apply in various regions. These customary laws can influence the practice of dividing joint property, especially in communities that still maintain local traditions. The diversity of customary laws adds complexity to the implementation of dividing joint property, because each region may have different rules and norms in dealing with divorce and dividing property. For example, in some regions, the division of property may be more influenced by hereditary traditions that emphasize division based on lineage or gender roles in the family.

The existence of customary law reflects legal pluralism in Indonesia, where various legal systems coexist with national law. This allows for flexibility in handling unique and contextual divorce cases, but also poses challenges in achieving consistency and uniform justice across the country. Therefore, judges and parties involved in the divorce process must have a deep understanding of local customary law as well as national regulations in order to make decisions that are fair and in accordance with the cultural and social context of each couple.⁹

Meanwhile, in Malaysia, the legal system used to regulate the division of joint property after divorce is more influenced by Sharia law, especially for Muslim citizens who make up the majority of the Malaysian population. Sharia law in Malaysia provides specific guidelines regarding the rights and obligations of husband and wife, including the division of joint property. The divorce process in Malaysia for Muslim couples is usually through the Sharia courts, which have their own procedures and rules that are different from the general courts. These Sharia courts operate under Islamic jurisdiction and apply Sharia principles in every decision they make.

The main difference between Indonesia and Malaysia lies in the degree of integration between Sharia law and secular law. In Indonesia, although Sharia law is recognized, the national legal system is more secular and accommodates various religions and cultures. This allows for variations in the division of joint property based on the prevailing religion

⁸ Sridepi Sridepi and Nurcahaya Nurcahaya, "Rekonstruksi Regulasi Harta Bersama Dalam Perkawinan Berbasis Nilai Keadilan Gender," *JAWI: Journal of Ahkam Wa Iqtishad* 2, no. 3 (2024): 433–46.

⁹ Umar Rizqullah and Fokky Fuad, "Perbandingan Hukum Dalam Pembagian Royalti Sebagai Harta Bersama Dalam Perkawinan: Indonesia, Malaysia, Dan Amerika Serikat," *UNES Law Review* 7, no. 1 (2024): 158–68.

and customary law. For example, in addition to Islamic law, Catholic law or Hindu law can also be applied in divorce cases, depending on the religion and background of the divorcing couple. This looser integration between Sharia law and secular law creates a legal system that is more inclusive, but also more complex in its implementation.

In contrast, in Malaysia, Sharia law is more integrated with the common law system, so that the division of joint property for Muslims is more consistent with established Sharia principles. The Sharia courts in Malaysia have clear authority to handle divorce cases and division of property for Muslims, without direct interference from the common law courts. This creates a more structured and consistent procedure in handling divorce cases, as Sharia law is implemented more comprehensively and coordinated with the national legal system.¹⁰

In addition to the influence of Sharia law, Malaysia also adopted some aspects of British law inherited from the colonial period, especially in the common law court system. This influence of British law provided the basis for more formal and bureaucratic legal procedures in dealing with divorce and division of joint property. This system emphasizes the application of clear and detailed legal rules, as well as a more administrative and well-documented judicial process. This is in contrast to the Indonesian legal system which combines elements of customary law and Islamic law with secular law, creating a unique but complex hybrid legal system.

These differences in legal approaches reflect differences in the legal and cultural values held by each country. In Indonesia, cultural and religious diversity encourages the development of a more flexible and contextual legal system, but also poses challenges in creating consistency and uniform justice. In Malaysia, a stronger integration of Sharia law and common law creates more structured and consistent procedures, but may be less flexible in dealing with complex and diverse cases that require a more contextual approach.¹¹

In addition to the differences in the integration of Sharia law and secular law, there are also differences in the approach to the division of joint property itself. In Indonesia, the principle of division of joint property focuses on fairness and balance, taking into account the contributions of each party during the marriage. This includes financial contributions, but also non-financial contributions such as childcare and household management. On the other hand, in Malaysia, the division of joint property tends to be more tied to

¹⁰ Yayan Nurhayanto, "Pertimbangan Hakim Dalam Pembagian Harta Bersama Pasca Perceraian (Studi Perbandingan Putusan Nomor 470/Pdt. G/2020/Pa. Tg Dengan Putusan Nomor 90/Pdt. G/2021/Pta. Smg)" (PhD Thesis, UIN. KH Abdurrahman Wahid Pekalongan, 2023), <http://etheses.uingusdur.ac.id/8300/>.

¹¹ MAHDIANUR MAHDIANUR, "Rekonstruksi Regulasi Penyelesaian Sengketa Harta Bersama Akibat Perceraian Di Peradilan Agama Yang Berbasis Nilai Keadilan" (PhD Thesis, Universitas Islam Sultan Agung Semarang, 2024), <http://repository.unissula.ac.id/33476/>.

establish Sharia principles, which may place more emphasis on division based on existing laws without considering the contextual flexibility that may be required in some cases.

However, both legal systems have their own advantages and disadvantages. In Indonesia, the flexibility resulting from the diversity of customary law and secular approaches allows for better adaptation to the needs and context of each divorcing couple. This can increase fairness in the division of joint property, especially in cases involving complex family dynamics. However, this flexibility can also create legal inconsistencies and uncertainties, which can prolong the divorce process and increase legal costs.

In Malaysia, the strong integration of Shariah law and common law creates a more structured and consistent system in dealing with divorce and division of joint property. This can increase efficiency and legal certainty, as clear procedures and consistent rules are applied in each case. However, this system may be less flexible in dealing with cases that require a more contextual and adaptive approach, especially in situations where Shariah principles may not fully cover all relevant aspects of the division of joint property.¹²

To improve fairness and efficiency in the division of joint property after divorce, both countries can learn from each other's legal practices. Indonesia, with its more flexible and contextual legal system, can consider implementing more formal and structured procedures like those in Malaysia. This can help improve consistency and legal certainty in the division of joint property, as well as reduce the complexity resulting from the diversity of customary laws. Implementing more structured procedures can also help speed up the divorce process and reduce legal costs for divorcing couples.

Meanwhile, Malaysia can leverage the flexibility of Indonesia's mixed legal system to handle cases that require a more contextual approach. By adopting elements of customary law or a more contextual approach, Malaysia can improve its ability to handle complex and diverse divorce cases. This can improve fairness in the division of joint property, especially in situations where Sharia principles may not fully cover all relevant aspects of the division of joint property.¹³

In addition, both countries can work together in developing legal reforms aimed at improving fairness and efficiency in divorce and property division processes. This could include exchanging knowledge and experiences in managing different legal systems, as well as collaborating in drafting laws and regulations that are more responsive to the needs of the community. Thus, this comparison of legal frameworks not only provides a deeper understanding of the practice of property division in both countries, but also

¹² Ricky Dwiandi and Annalisa Yahanan, "Status Hukum Harta Bersama Akibat Putusnya Perkawinan Karena Perceraian," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 6, no. 2 (2016): 170-79.

¹³ Az-zahra, "Dinamika Penyelesaian Harta Bersama."

opens up opportunities for the development of better and fairer legal systems in the future.

In the context of globalization and increasing mobility across borders, this comparison of legal frameworks also becomes increasingly relevant. Divorcing couples often have diverse cultural and legal backgrounds, which can complicate the process of dividing joint property in the absence of a harmonious and consistent legal framework. By studying legal practices in Indonesia and Malaysia, other countries can learn valuable lessons in developing legal systems that are able to accommodate cultural and religious diversity, while maintaining the principles of justice and balance in the division of joint property.¹⁴

In addition, technological developments and easier access to information can also contribute to legal reform in both countries. With wider access to legal information and best practices from other countries, policymakers in Indonesia and Malaysia can more easily identify areas that require improvement and development in their legal systems. This can accelerate the process of legal reform and ensure that the regulations implemented remain relevant and effective in facing new challenges that arise in modern society.

In conclusion, a comparison of the legal and regulatory frameworks for division of joint property in Indonesia and Malaysia shows that while the two countries share many cultural and religious similarities, differences in legal approaches can affect how division of joint property is carried out. In Indonesia, the diversity of customary law and a more secular approach allows for flexibility but also poses challenges in achieving consistency and fairness. In Malaysia, a stronger integration of Sharia law and common law creates more structured procedures but may be less flexible in dealing with complex and diverse cases. To improve fairness and efficiency in division of joint property after divorce, both countries can learn from each other's legal practices, resulting in a legal system that is fairer, more consistent and more responsive to the evolving needs of society.¹⁵

Proposed legal reforms could include the development of more structured and consistent procedures in Indonesia, as well as increased flexibility in the Malaysian legal system. Both countries could also leverage technology and access to information to expedite the reform process and ensure that the regulations implemented remain relevant and effective. Thus, this comparison of legal frameworks not only provides a deeper understanding of the practice of division of joint property in both countries, but also

¹⁴ Wiwin Sutini and Putu Eka Trisna Dewi, "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Isteri Sebagai Pencari Nafkah (Studi Komparasi Di Australia, Malaysia Dan Jepang)," *Jurnal Aktual Justice* 6, no. 2 (2021): 121-39.

¹⁵ Zakiyah Salsabila, "Harta Bersama Akibat Perceraian Di Indonesia Dan Malaysia Dalam Perspektif Gender" (B.S. thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta), accessed January 19, 2025, <https://repository.uinjkt.ac.id/dspace/handle/123456789/55700>.

opens up opportunities for collaboration and the development of better legal systems in the future.

In addition, it is important to consider the education and training aspects for legal professionals in both countries. Lawyers, judges and legal counselors need to have a deep understanding of the differences and similarities in the legal systems of Indonesia and Malaysia in order to provide effective and fair legal services to their clients. A knowledge and experience exchange program between the two countries can be an important step in improving the competence of legal professionals and ensuring that the practice of dividing joint property can be carried out with high standards of fairness and efficiency.

Finally, international dialogue and cooperation in the field of family law can enrich the perspectives and legal practices in Indonesia and Malaysia. By being open to best practices from other countries and participating in international forums, both countries can continue to improve and develop their legal systems to meet the new challenges in the division of joint property after divorce. This will not only improve fairness for individuals involved in the divorce process, but also strengthen the legal system as a whole in the face of changing social and cultural dynamics.¹⁶

Thus, a comparison of the legal and regulatory frameworks for division of joint property in Indonesia and Malaysia provides valuable insights into how two countries with similar cultural and religious backgrounds can develop different legal systems to deal with the same issues. Through deeper understanding and constructive collaboration, both countries can improve the fairness and efficiency of division of joint property after divorce, and make positive contributions to the development of family law at the regional and international levels.¹⁷

4. Social and Economic Factors Affecting the Division of Joint Property

The division of marital property after divorce is one of the most complex and sensitive aspects of the divorce process. Decisions regarding this division are influenced not only by the applicable legal framework, but also by various social and economic factors that play a significant role in determining the fairness and balance of the distribution of property. These factors include social dynamics, economic conditions, employment status, education, and cultural norms and traditions prevailing in the community. Understanding these factors is essential to ensure that the division of marital property is carried out fairly and takes into account the needs and contributions of each party during the marriage.

One significant social factor is the gender roles and cultural norms that underlie marital relationships in society. In many cultures, including Indonesia and Malaysia, there is still

¹⁶ Rizqullah and Fuad, "Perbandingan Hukum Dalam Pembagian Royalti Sebagai Harta Bersama Dalam Perkawinan."

¹⁷ MBK MOKHTAR BIN SENIK, "Harta Bersama Setelah Terjadi Perceraian Di Malaysia.(Studi Kasus Pada Mahkamah Syari'ah Di Negeri Malaka)" (PhD Thesis, UIN SUSKA RIAU, 2022), <https://repository.uin-suska.ac.id/61888/>.

a traditional perception of the role of men as the primary breadwinner and women as the manager of the household. These roles often influence court decisions on the division of joint property, where the husband may be considered to have a greater right to joint property due to his role as the primary provider. However, changing social dynamics, where women are increasingly active in the workforce and contribute significantly to the family income, have also influenced the way joint property is divided. Courts now take into account the financial and non-financial contributions of both parties, including the role of women in childcare and household management, to achieve a fairer and more balanced division.¹⁸

In addition, education level also plays an important role in the process of dividing joint assets. Couples with higher levels of education tend to have a better understanding of their legal rights and are better able to manage their assets and income effectively. Higher education also often correlates with higher income, which can affect the proportion of assets divided. On the other hand, couples with lower levels of education may be less aware of the legal implications of dividing joint assets, making them more vulnerable to unfair divisions. Therefore, education not only affects the economic capabilities of couples but also their ability to navigate the divorce process more effectively.

The economic circumstances of a couple are also a major factor affecting the division of marital property. Differences in income and economic status between husband and wife can affect the court's decision on how to divide property. Couples with significant income differences may look to divide property more favorably to the lesser earner to ensure that they can continue to make ends meet after the divorce. In addition, the overall state of the economy, including job market conditions and inflation rates, can also affect the value of marital property and the ability of a couple to start over after a divorce.

Employment status and career stability also play a role in determining how much property is divided. A spouse who has a stable job and a thriving career may have greater access to economic resources, which can affect the amount and type of property divided. Conversely, a spouse who faces job instability or a job that does not provide a steady income may be more reliant on the property as their primary source of income after a divorce. In such cases, the court may award a larger share of the property to the spouse who needs the economic stability to ensure that they can meet their basic needs.¹⁹

In addition to internal factors relating to the couple, external factors such as government policies and national economic conditions also have a significant impact on the division of joint property. Tax policies, property market regulations, and employment laws can affect the value of joint property and the ability of couples to divide their assets fairly.

¹⁸ Siti Marlina, "Pengaturan Harta Bersama Dalam Perkawinan Poligami Pasca Perceraian Studi Komparatif Indonesia Dan Malaysia" (PhD Thesis, Doktor Ilmu Hukum, 2022), <https://repository.unja.ac.id/35038/>.

¹⁹ Fatin Nabillah Binti Harris, "Pembagian Harta Bersama Pasca Perceraian (Studi Kasus Di Mahkamah Tinggi Syariah Negeri Melaka, Malaysia)" (PhD Thesis, UIN Ar-Raniry Banda Aceh, 2018), <https://repository.ar-raniry.ac.id/id/eprint/3600/>.

For example, regulations governing joint ownership of property or taxes on the transfer of assets can affect how joint property is divided and redistributed after a divorce. National economic conditions, such as a recession or economic growth, can also affect the value of assets owned jointly by a couple, thus impacting the amount of property that can be divided.

Social norms and societal pressures also play a significant role in the division of marital property. In societies that place a high emphasis on family values and honor, divorce and division of marital property are often viewed as sensitive matters and can carry social stigma. Couples may feel pressured to reach a fair and peaceful agreement to avoid open conflict that could damage their reputation in the eyes of the community. This social pressure can influence the way couples negotiate and reach agreements on the division of marital property, often leading to compromises that are more favorable to one party in order to maintain their social image.²⁰

Power dynamics in a marriage are also a social factor that can affect the division of marital property. Couples who have an unequal distribution of power in their marriage, with one party having more control over financial decisions and family assets, may see the division of marital property favor the less powerful party. Courts must take these power dynamics into account to ensure that the division of marital property is equitable and does not reinforce the inequalities that existed in the marriage.

In addition to social factors, broader economic factors also affect the division of marital property. Inflation rates, currency exchange rates and property market conditions are examples of macroeconomic factors that can affect the value of marital property and decisions about how to divide property. For example, if the value of the property increases significantly during the marriage, the court may consider each party's contribution to that increase when determining how to divide property. Similarly, currency fluctuations can affect the value of assets owned jointly by a couple, particularly if those assets consist of different types of investments or properties in different locations.

The involvement of children in a divorce is also an important factor affecting the division of marital property. The welfare of the children is often the top priority in property division decisions, and the court will likely consider the needs of the children in determining an equitable distribution. This includes ensuring that children remain in stable housing, have access to a good education, and have their emotional needs met. Therefore, the expenses necessary to support the needs of the children can affect the amount of property divided between each party, especially the party responsible for primary care.²¹

²⁰ Beni Arya Dwinanto, "Pembagian Harta Bersama Setelah Perceraian (Studi Banding Hukum Di Indonesia Dengan Malaysia, Jepang, Australia Dan Maroko)," *Journal of Innovation Research and Knowledge* 4, no. 1 (2024): 377-90.

²¹ M. Natsir Asnawi and MH SHI, *Hukum Harta Bersama: Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi, Dan Pembaruan Hukum* (Prenada Media, 2022),

In addition, the health of a spouse can also affect the division of marital property. A spouse who is facing serious health problems or disabilities may need greater financial support to meet their living expenses. The court may take these health conditions into account when determining the division of marital property to ensure that the spouse who needs additional support can continue to live adequately after the divorce. This may include allocating more assets to the spouse with health difficulties or providing access to necessary medical care.

Psychological and emotional factors are also important in the division of joint property. Divorce processes are often accompanied by high emotional stress, which can affect the ability of couples to make rational decisions about the division of property. The court may need to consider the psychological impact of the division of joint property and ensure that the decisions taken do not worsen the emotional condition of the partners involved. In some cases, counseling or mediation may be needed to help couples reach a fair agreement and reduce emotional tension during the division of property process.²²

Global economic conditions and economic trends can also affect the division of marital property. Changes in the global economy, such as a financial crisis or a major shift in a particular industry, can affect the value of assets and a couple's ability to maintain or increase the value of their assets. In an unstable economic climate, the court may need to adjust the division of marital property to reflect changing economic realities and ensure that the division remains fair and realistic. This may include reviewing the value of assets or adjusting the division based on current economic conditions.

Advances in technology and access to information also play a role in influencing the division of marital property. With increased access to legal and financial information, couples have a better chance of understanding their rights and making more informed decisions about the division of property. Technology also makes the process of dividing property easier by providing tools and platforms to manage assets, calculate the value of marital property, and facilitate negotiations between spouses. This can increase transparency and efficiency in the process of dividing marital property, as well as reduce the potential for conflict and uncertainty that often occurs during divorce proceedings.

In addition, changes in modern family structures also affect the division of joint property. With the increasing number of couples choosing to marry without children, or couples who have children from previous relationships, the dynamics of dividing property have become more complex. Courts must consider additional factors, such as the needs of children from previous relationships or the rights of partners in new relationships, when

<https://books.google.com/books?hl=id&lr=&id=9ZVdEAAQBAJ&oi=fnd&pg=PA1&dq=Pembagian+Harta+Bersama,+Perceraian,+Indonesia,+Malaysia,+Hukum+Syariah,&ots=KPXbxF3ULj&sig=nYyea5-3M-ye-2wY0MwEWKOE2EQ>.

²² Daniel Alfaruqi, "Pembagian Harta Bersama Menurut Kompilasi Hukum Islam Dan Implementasinya Di Pengadilan Agama Jakarta Selatan Perspektif Keadilan Jender" (Master's Thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri (UIN) Syarif ..., 2019), <https://repository.uinjkt.ac.id/dspace/handle/123456789/45991>.

determining the division of joint property. This complexity requires a more holistic and contextual approach to the division of joint property, which takes into account all aspects of the relationships and family circumstances involved.²³

Having assets spread across multiple geographic locations also adds complexity to the division of marital property. Couples who have assets in multiple countries or regions face the challenge of valuing and dividing those assets in accordance with the laws of each location. Factors such as different currency values, tax regulations, and property laws can affect how assets are divided. The court may need to work with jurisdictions in multiple jurisdictions to ensure that the division of marital property is fair and in accordance with the laws of each location.

In addition, the dynamics of power and control over assets also affect the division of marital property. In some cases, one spouse may have greater control over family assets, such as property or investments, while the other spouse may not have the same access or knowledge of those assets. This can create an imbalance in the division of marital property, where the spouse with less control over the assets may not receive their fair share. The court must ensure that control and access to assets are taken into account fairly when determining the division of marital property, to prevent unfairness and ensure that both parties receive their due.²⁴

The role of a third party, such as a financial advisor or mediator, can also affect the division of marital property. A financial advisor can help couples assess the value of assets and make recommendations regarding a fair division, while a mediator can facilitate negotiations and help couples reach an agreement without the need for a lengthy and expensive court process. The use of a third party can increase the efficiency and fairness of the division of marital property, as well as reduce the potential for conflict and emotional tension that often occurs during the divorce process.

Psychological and emotional factors also play an important role in the division of marital property. Divorce proceedings are often accompanied by high emotional stress, which can affect the ability of spouses to make rational decisions about the division of property. The court may need to consider the psychological impact of dividing marital property and ensure that decisions made do not worsen the emotional conditions of the partners involved. In some cases, counseling or mediation may be necessary to help couples reach a fair agreement and reduce emotional stress during the division of property.

In addition, the presence of children in a divorce can also affect the division of marital property. The welfare of the children is often the top priority in property division decisions, and the court will likely consider the needs of the children in determining an equitable distribution. This includes ensuring that the children remain in stable housing, have access to a good education, and have their emotional needs met. Therefore, the

²³ Kutbuddin Aibak and Inama Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia Dan Malaysia," *Hukum Islam* 22, no. 2 (2022): 73–96.

²⁴ *Ibid.*

expenses necessary to support the needs of the children can affect the amount of property divided between each party, especially the party responsible for primary care.²⁵

These social and economic factors are interrelated and often influence each other in determining how marital property is divided after a divorce. For example, gender roles and cultural norms can influence a couple's education level and economic circumstances, which in turn influence the division of marital property. Likewise, macroeconomic conditions can influence the value of marital property and the ability of a couple to divide their assets equitably. Therefore, it is important to consider all of these factors holistically when analyzing the division of marital property in a divorce proceeding.

Changes in social and economic dynamics in society also affect the way in which joint property is divided. With increasing awareness of women's rights and the importance of gender equality, courts are now more likely to consider women's non-financial contributions in the division of joint property. This reflects changing social values that place greater emphasis on fairness and balance in marital relationships. In addition, increasing social and economic mobility also affects the way couples manage their assets, which can impact the division of joint property after divorce.²⁶

Technology and innovation also play a significant role in the division of marital property. With the advancement of technology, couples now have better access to manage and track their assets, including digital investments and online properties. Technology also facilitates the negotiation and mediation process through digital platforms, which can speed up the process of dividing marital property and reduce the costs associated with traditional legal processes. In addition, information technology allows courts to access more accurate data and information about a couple's assets, which can improve the accuracy and fairness of the division of marital property.

In addition, factors such as age and length of service also affect the division of marital property. Couples who have been married for a long time may have a larger and more complex marital property to divide than couples who have been married for a short time. In addition, a long and stable employment period can increase the amount of property available for division, while unstable or intermittent employment can reduce the amount of property available for division. Therefore, the length of the marriage and job stability are factors to consider in the division of marital property.

The influence of the extended family and external relationships can also affect the division of joint property. In many cultures, the extended family plays an important role in supporting couples during marriage and after divorce. Financial or non-financial support from the extended family can affect a couple's ability to maintain or divide joint property fairly. In addition, external relationships such as friendships and social

²⁵ Januari, "Menggali Akar Masalah."

²⁶ Az-zahra, "Dinamika Penyelesaian Harta Bersama."

networks can also affect how couples manage their assets and reach agreements on the division of joint property.²⁷

In addition, factors such as complex asset ownership and the types of assets jointly owned also affect the division of joint assets. Assets that are of high value or complex, such as a family business, rental property, or stock market investments, require more careful and detailed assessment and division. The court must ensure that these assets are divided in a fair manner and take into account the market value and potential future growth of the assets. Therefore, a thorough understanding of the value and characteristics of assets is key to a fair and effective division of joint assets.

The influence of religion and belief also plays a significant role in the division of joint property, especially in countries with large religious populations such as Indonesia and Malaysia. The principles of a particular religion can influence how joint property is divided, with some religions having specific rules regarding the rights and obligations of spouses in the division of property after divorce. For example, in Islamic law, the principles of division of joint property are governed by Sharia law which establishes certain rights for husbands and wives. Therefore, understanding and respecting the religious beliefs of the spouses is essential in ensuring that the division of joint property is carried out in accordance with the values and principles of their religion.

In addition, demographic factors such as age at marriage and age at divorce also affect the division of marital property. Couples who marry at a younger age may have had more time to build and accumulate marital property, while couples who marry at an older age may have more established and diversified assets. Likewise, age at divorce can affect the division of marital property, with younger couples likely needing more support to rebuild their lives, while older couples may have more assets to divide.

In addition, factors such as debts and financial obligations also affect the division of marital property. Couples who have joint debts or other financial obligations must consider how those debts will be divided and repaid when dividing marital property. The court may consider each party's responsibility for those debts and obligations to ensure that the division of marital property does not place an unfair burden on one party. Therefore, a careful assessment of joint assets and liabilities is essential to achieving a fair and equitable division of marital property.

Social and economic factors can also affect the division of marital property. The environment in which a couple lives, such as the cost of living, availability of jobs, and quality of health care, can affect each party's financial needs after a divorce. The court may consider these factors to ensure that the division of marital property can support a decent standard of living for both parties. In addition, changes in the social and economic

²⁷ Rizqullah and Fuad, "Perbandingan Hukum Dalam Pembagian Royalti Sebagai Harta Bersama Dalam Perkawinan."

environment can affect the value and growth potential of marital property, which in turn affects the division of marital property.²⁸

In the context of globalization, the international mobility of couples also affects the division of joint assets. Couples who live or work in different countries may face additional challenges in dividing joint assets, such as differences in property and tax laws between those countries. This can require cross-border coordination and a thorough understanding of the laws of each country to ensure that the division of joint assets is carried out fairly and in accordance with applicable law. Therefore, couples involved in international relationships need to understand the legal and economic implications of dividing joint assets across jurisdictions.

In addition, factors such as stock ownership or participation in a family business also affect the division of marital property. Couples who own stock in a company or are involved in a family business may need to consider the value of the stock and the growth potential of the business when dividing marital property. The court must ensure that the value of the stock is calculated accurately and divided in a manner that is fair, so as not to disadvantage either party. Likewise, involvement in a family business can add complexity to the division of marital property, especially if the business has sentimental or strategic value to the couple.²⁹

Factors such as the existence of non-traditional assets also affect the division of marital property. Non-traditional assets, such as artwork, collectibles, or digital assets, require special valuation and careful division. The court must ensure that the value and ownership of these assets are fairly and appropriately considered in the division of marital property. Additionally, digital assets, such as cryptocurrency or virtual assets, are becoming increasingly common and require a deeper understanding of how to manage them and divide them fairly in the context of a divorce.

The influence of information technology has also accelerated couples' access to legal and financial resources that can help them in dividing joint assets. With the existence of various online platforms and applications that provide legal and financial services, couples can now manage their assets more effectively and efficiently, and facilitate the process of dividing joint assets more transparently. Information technology also allows courts to access more accurate data and information about a couple's assets, which can improve the accuracy and fairness of dividing joint assets.³⁰

²⁸ Ibid.

²⁹ Akhmad Khisni, "Ijtihad Progresif Dalam Penegakan Hukum Positif Islam Di Pengadilan Agama Tentang Pembagian Harta Bersama," *Jurnal Hukum IUS QUIA IUSTUM* 19, no. 3 (2012), <https://journal.uin.ac.id/IUSTUM/article/view/4366>.

³⁰ Ahmad Mahmudin, "Akibat Hukum Pembagian Harta Bersama Akibat Perceraian Dari Pernikahan Siri (Studi Di Desa Malangsuko Kecamatan Tumpang Kabupaten Malang)," 2023, <https://repository.unisma.ac.id/handle/123456789/6823>.

In conclusion, the division of joint property in a divorce proceeding is influenced by various interrelated social and economic factors. Social dynamics, gender roles, education level, economic conditions, employment status, cultural norms, and other factors such as the presence of children, health, and power dynamics in the marital relationship all play an important role in determining how joint property is divided. In addition, macroeconomic factors, government policies, and technological developments also influence the process of dividing joint property. Therefore, in order to achieve a fair and balanced division of joint property, it is important for the court and the parties involved to consider all of these factors holistically and contextually. Thus, the division of joint property not only reflects legal justice but also considers the needs and contributions of each party in the broader social and economic context.³¹

Legal reforms that focus on improving fairness and efficiency in the division of joint property must take into account all of these social and economic factors. Courts and legal systems must continue to evolve and adapt to changing social and economic dynamics to ensure that the division of joint property remains relevant and fair in the face of new challenges. Education and training for legal professionals is also important to ensure that they understand and can take into account the various social and economic factors that affect the division of joint property. This can help to ensure that the division of joint property is fairer, more balanced and responsive to the needs of the spouses involved in the divorce process.

5. Conclusion

A comparison of the legal frameworks for division of joint property in Indonesia and Malaysia reveals significant differences in legal approaches despite the similarities in culture and Muslim majority in both countries. Indonesia adopts a hybrid legal system that integrates secular, customary and Islamic law, providing flexibility but creating challenges in consistency and fairness. Meanwhile, Malaysia integrates Sharia law more closely with the common law system, creating more structured and consistent procedures but perhaps less flexible in dealing with complex cases.

In addition to the legal framework, social and economic factors such as gender roles, education level, economic conditions, employment status, cultural norms, and power dynamics in marital relationships also influence the division of joint property. These factors are interrelated and influence the fairness and balance of the results of the division of property.

To improve fairness and efficiency, both countries can learn from each other's legal practices. Indonesia can adopt more structured procedures from Malaysia, while Malaysia can take advantage of the flexibility of Indonesia's mixed legal system. This

³¹ Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," *Jurnal Retentum* 5, no. 2 (2023): 177-91.

collaboration is expected to create a more equitable, consistent, and responsive system for the division of joint property to evolving social and economic needs.

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