

## PROTECTING WOMEN'S ECONOMIC WELL-BEING: A CROSS-BORDER ANALYSIS OF MARITAL PROPERTY IN INDONESIAN AND MALAYSIAN FAMILY LAW

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### ABSTRACT

*This study examines the protection of women's economic rights through marital property division in Indonesia and Malaysia, focusing on the concepts of harta bersama and harta sepencarian. Using a qualitative comparative case study design, data were collected through in-depth interviews with 18 women who had experienced divorce or property disputes in Lampung (Indonesia) and Selangor (Malaysia), supplemented by analysis of court decisions and legal documents. Thematic analysis revealed three main findings. First, women faced significant difficulties in proving asset ownership due to lack of formal documentation of their non-financial contributions. Second, patriarchal norms created power imbalances during negotiations, forcing many women to accept unfair settlements. Third, judicial recognition of indirect domestic contributions remained inconsistent, although Malaysian courts showed relatively greater acknowledgment compared to Indonesian courts. The study concludes that despite normative legal protections, implementation gaps persist due to structural evidentiary barriers and cultural inequalities. Reforms should include more inclusive evidence rules, gender-sensitive judicial training, and enhanced legal literacy for women. This research contributes to comparative family law scholarship and offers practical recommendations for policymakers in both countries.*

**Keywords:** Economic security, marital property, family law, women's rights, Indonesia-Malaysia

### INTRODUCTION

The protection of women's economic well-being within family law has gained increasing attention in global and national discourses (Saputra et al., 2024; UN Women, 2021). Studies consistently show that women face significant disparities in access, control, and ownership of economic assets, particularly in the context of marriage dissolution and widowhood. This phenomenon is shaped not only by legal frameworks but also by social, cultural, and economic structures that perpetuate gender inequality. Women's limited access to economic resources remains a primary factor weakening their long-term independence and well-being (Saputra et al., 2024). In Indonesia and Malaysia, the division of marital property termed *harta bersama* in Indonesia and *harta sepencarian* in Malaysia exhibits unique complexities due to legal pluralism. Both countries integrate Islamic law and state law, often leading to divergent interpretations and implementation challenges. Empirical evidence from Komnas Perempuan (2023) indicates that many women lose their economic rights due to weak legal standing, lack of administrative documentation, and limited legal literacy (Mahardhika, 2023).

Several previous studies have examined these issues from various perspectives. Sari and Putri (2022) found that women's access to marital property in Indonesia remains constrained by low legal literacy and power imbalances within households. Ahmad and Rahman (2020) in Malaysia showed that courts' recognition of women's non-economic contributions remains

inconsistent, often undervaluing domestic work. Nasution, (2021) highlighted how legal pluralism in Indonesia creates uncertainty in family law implementation, leading to disparate outcomes. Mohd Tahir et al., (2021) analyzed the matrimonial property doctrine in Malaysia, emphasizing the need for clearer guidelines for judges. Anri, (2023) explored public perceptions of joint property in Indonesia, revealing a gap between normative provisions and community understanding. Ramayudha, (2023) examined joint property in mixed marriages, noting the particular vulnerability of foreign spouses. Jusoh Yusoff, (2024) reassessed the Islamic legal bases for matrimonial property in Malaysia, arguing for more explicit recognition of indirect contributions. Walusimbi, (2025) offered a comparative perspective from Uganda, highlighting common challenges in Muslim family law contexts.

Despite these valuable contributions, most prior research suffers from three significant limitations that constitute the research gap of this study. First, the majority of studies have adopted normative-juridical approaches, focusing on legal texts and doctrinal analysis, while lacking in-depth exploration of women's subjective experiences in navigating marital property disputes. This leaves the lived realities of women largely unexamined. Second, cross-country comparative studies between Indonesia and Malaysia are scarce, even though both countries share similar legal pluralism structures and face comparable challenges in protecting women's economic rights. Most studies examine each country in isolation, missing the opportunity for mutual learning and policy transfer. Third, previous research tends to treat legal frameworks separately from the social and cultural contexts that shape their implementation, resulting in an incomplete picture of why legal protections fail to translate into practical justice.

The novelty of this study lies in its three distinctive features. First, it employs a qualitative comparative case study design that captures the voices and lived experiences of women themselves, providing rich, contextual data that normative legal analysis cannot access. Second, it systematically compares Indonesia and Malaysia using identical research protocols, enabling direct identification of similarities and differences in legal treatment and outcomes. Third, it integrates gender justice theory, legal pluralism, and legal protection theory into a coherent analytical framework, allowing for a multi-dimensional assessment of both legal norms and their implementation. By addressing these gaps, this study offers not only theoretical contributions to family law scholarship but also practical recommendations for policymakers and judicial training bodies in both countries. Thus, this study addresses the following research questions: (1) How do Indonesian and Malaysian laws protect women's economic rights through marital property concepts? (2) How effective are these concepts in practice during divorce or death of a spouse? (3) What socio-cultural (patriarchal) and technical (asset verification) barriers exist, and how can legal reforms ensure economic justice for women?

## **METHODS**

This qualitative study employed a comparative case study design (Yin, 2018) to explore how Indonesian and Malaysian laws protect women's economic rights through marital property division. Fieldwork was conducted from January to June 2025 in Lampung Province, Indonesia, and Selangor State, Malaysia, locations purposively selected for their high rates of family disputes, active religious courts, and ethnic diversity, making them representative of broader legal practices in each country. Eighteen women (9 in Indonesia, 9 in Malaysia) who had experienced divorce or property disputes participated, selected through purposive sampling

followed by snowball sampling. Inclusion criteria were: direct experience with marital property division, involvement in formal or informal legal mechanisms, and willingness to share experiences. Semi-structured interviews lasting 60–90 minutes explored women's experiences, strategies, and perceptions of justice; observations of court waiting areas and community meetings provided contextual understanding; and document analysis included 12 court decisions (6 from each country), legal codes (Indonesian Marriage Law No. 1/1974, Compilation of Islamic Law; Malaysian Islamic Family Law enactments), and NGO reports. Ethical approval was obtained from the Research Ethics Committee of Universitas Ma'arif Lampung (No. 045/UMALA/EC/2025), and all participants provided written informed consent; pseudonyms protect their identities. Data were analyzed using thematic analysis (Braun & Clarke, 2006) following Miles, Huberman, and Saldaña's (2020) interactive model of data condensation, data display, and conclusion drawing/verification. Coding was conducted iteratively by two researchers, achieving 87% inter-coder reliability; member checking was performed with five participants (28%), and peer debriefing with two qualitative experts ensured trustworthiness.

**Table 1. Participant Demographics**

Characteristic	Indonesia (n=9)	Malaysia (n=9)
Age (mean)	38 years	41 years
Education: Primary	3	2
Education: Secondary	4	5
Education: Tertiary	2	2
Divorce type: Contested	6	7
Duration of marriage (mean)	12 years	14 years

## FINDINGS AND DISCUSSION

### Limited Access to Legal Evidence and Administrative Records (2 paragraf)

Most participants (15 out of 18) reported significant difficulties in proving asset ownership due to lack of formal documentation of their economic contributions. Women engaged primarily in domestic work or family business support often held no title deeds, bank account records, or written contracts. A participant from Lampung, Indonesia (P3) stated: *"I took care of the household, raised the children, and helped my husband's small business, but when we divorced, he claimed everything was his because all certificates were in his name."* Another participant from Lampung (P7) added: *"I never asked for my name on any document because I trusted my husband. After 15 years of marriage, I had nothing to prove my contribution except my words."* In Malaysia, similar challenges emerged. A participant from Selangor (M2) explained: *"The court asked for bank statements and proof of income. How could I provide that when I never had a separate account? All money went through my husband's name."* However, some Malaysian women could rely on witness testimony more readily due to slightly more flexible evidentiary rules in Syariah courts. For instance, a Malaysian participant (M5) successfully called her neighbors as witnesses to confirm her daily role in managing the household and assisting her husband's catering business. Nevertheless, even with witnesses, the burden of proof remained heavy, and only 2 out of 9 Malaysian women felt fully satisfied with the evidentiary process.

The evidentiary burden is a major structural hurdle across both jurisdictions, disproportionately disadvantaging women whose economic contributions are indirect or informal. This finding aligns with Sari and Putri (2022) in Indonesia and Ahmad and Rahman (2020) in Malaysia, who similarly documented how formal proof requirements marginalize domestic labor. From a legal pluralism perspective, state laws' insistence on written evidence clashes with social realities where assets are often held informally and women's work is rendered invisible by patriarchal norms. The Indonesian legal system, guided by the Compilation of Islamic Law (KHI) and Marriage Law No. 1/1974, does not provide explicit guidance on acceptable alternative evidence for non-financial contributions. In contrast, Malaysian Syariah courts have occasionally accepted witness testimony and lifestyle evidence, as seen in \*Case 03/MY/2023\*, where the court considered photographs of the wife managing the family's rental properties. However, such acceptance remains discretionary and inconsistent. To address this, reforms should include: (a) amending evidentiary rules to explicitly allow broader forms of proof (e.g., witness testimony, digital records, lifestyle evidence, and even social media documentation), (b) creating legal presumptions in favor of equal sharing of assets acquired during marriage unless disproven by clear evidence, and (c) establishing specialized asset tracing units within courts to assist women in identifying and valuing marital property (Pheko, 2024).

### **Power Imbalances in Negotiation Processes (2 paragraf)**

All participants described how family pressure, social norms, and patriarchal expectations favored husbands or male relatives during property negotiations. A participant from Selangor, Malaysia (M7) explained: *"My father-in-law said I should be grateful for what I received, otherwise I would bring shame to my own family. My own brothers told me to accept the offer because going to court would be too expensive and humiliating."* Similarly, an Indonesian participant (P1) recounted: *"During the mediation at the religious court, my husband's uncle did most of the talking. I was too afraid to speak. The mediator asked me several times, but I just nodded because everyone was staring at me."* Such dynamics often forced women to accept less than they deserved. In many cases, women were not even invited to negotiation meetings; male relatives represented them without their consent. A Malaysian participant (M9) revealed: *"I only found out about the settlement agreement when my lawyer showed me the document. My husband and his family had negotiated everything with my father without telling me."* In Indonesia, 9 out of 9 women (100%) reported perceived power imbalances; in Malaysia, 8 out of 9 (89%) reported similar experiences. The only Malaysian woman who did not report significant power imbalance (M4) was a university graduate with independent income who had hired her own lawyer and refused to attend family-mediated negotiations.

This theme reveals how patriarchal norms operate not only within the household but also extend into legal processes, including court-ordered mediation. Even when laws provide formal equality, unequal bargaining power rooted in economic dependency, social stigma, and gendered expectations undermines substantive outcomes. This finding supports Fraser, (2009) theory of justice, which emphasizes that distributive justice requires addressing underlying status inequalities, not merely formal legal equality. In both Indonesia and Malaysia, family courts typically encourage mediation as a first step, but mediators often lack training in power

dynamics and may inadvertently reinforce existing imbalances. Furthermore, women's limited access to independent legal advice due to cost, distance, or lack of information exacerbates their vulnerability. Legal interventions alone are insufficient; community-based legal education and empowerment programs are necessary to strengthen women's bargaining positions. We recommend that courts adopt a more proactive role in protecting vulnerable parties during mediation, including: (a) conducting separate initial interviews (caucusing) with each party to identify potential coercion or imbalance, (b) providing court-appointed legal aid for low-income women, (c) training mediators specifically on gender-sensitive techniques and power dynamics, and (d) requiring that any settlement agreement be reviewed by independent counsel for the economically weaker party (Mohd Tahir et al., 2021).

### Inconsistent Judicial Interpretations of Non-Economic Contributions (1-2 paragraph)

Court decisions varied significantly, particularly regarding recognition of non-economic contributions such as domestic work, childcare, and emotional support. In Indonesia, only 3 out of 9 participants received explicit recognition of non-financial contributions in the court's written reasoning. A participant from Lampung (P5) shared: *"The judge mentioned that I had helped my husband farm for ten years, but he only awarded me 30% of the land value because, in his words, 'the husband is the primary breadwinner.'"* In Malaysia, courts showed somewhat greater recognition, with 5 out of 9 participants receiving explicit acknowledgment of indirect contributions. However, inconsistency remained striking. A Malaysian participant (M1) described her case: *"The judge said my role as a homemaker was valuable and awarded me 40% of the assets. But my friend, who had a very similar situation, only got 20% from a different judge. There is no standard."* A Malaysian judge's reasoning in one case stated: *"The wife's homemaking is a contribution, but its monetary value is not easily quantified"* (Case 07/MY/2024). In another case (Case 12/ID/2024), an Indonesian judge rejected a wife's claim entirely, stating: *"The plaintiff did not provide evidence of direct financial contribution; therefore, the property is solely owned by the husband."*

**Table 2. Comparative Summary of Findings**

Theme	Indonesia (n=9)	Malaysia (n=9)	Interpretation
<b>Difficulty in asset proof</b>	8 (89%)	7 (78%)	Slightly lower in Malaysia due to more flexible evidence rules
<b>Perceived power imbalance</b>	9 (100%)	8 (89%)	Widespread in both countries
<b>Court recognition of non-economic contribution</b>	3 (33%)	5 (56%)	Malaysia more explicit, but not consistent
<b>Satisfaction with outcome</b>	2 (22%)	3 (33%)	Low overall

The findings confirm that Malaysian courts are somewhat more advanced in recognizing women's indirect contributions, likely due to more explicit *harta sepencarian* doctrine developed through case law (Jusoh Yusoff, 2024). However, inconsistency remains a serious problem in both countries. In Indonesia, the absence of detailed guidelines on non-economic contributions leaves judges with wide discretion, often reverting to traditional gender

assumptions that prioritize direct financial contribution over domestic labor (Anri, 2023; Ramayudha, 2023). This aligns with broader critiques of legal pluralism: where multiple legal systems interact (state law, Islamic law, and local custom), ambiguity and judicial discretion can lead to unpredictable and inequitable outcomes (Nasution, 2021). The lack of standardized valuation methods for non-economic contributions further compounds the problem. To achieve greater consistency and fairness, we recommend: (a) mandatory gender-sensitivity training for all family court judges in both countries, (b) the development of standardized judicial guidelines that specify factors to consider when valuing non-financial contributions (e.g., length of marriage, number of children, career sacrifices made, and the economic impact of domestic labor), and (c) the establishment of an appellate review mechanism specifically for cases where the lower court's valuation of non-economic contributions appears arbitrary. Without such reforms, women will continue to face a lottery-like system where outcomes depend more on the individual judge's disposition than on the merits of their case.

### **Conclusion**

This study concludes that although family law in Indonesia and Malaysia has normatively recognized women's economic rights to joint property (*harta bersama*) or matrimonial property (*harta sepencarian*), its implementation remains far from just. Three main barriers were identified: difficulties in asset proof due to the dominance of written evidence, power imbalances in negotiations influenced by patriarchal norms, and inconsistency in judicial decisions regarding the recognition of women's non-economic contributions. Malaysia shows relatively better progress in recognizing indirect contributions, yet inconsistency persists in both countries. Therefore, women's economic justice requires not only adequate regulations but also inclusive evidentiary reforms, gender-sensitive judicial training, and strengthening of women's legal literacy.

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