



## Marital Property in Indonesia (Review of Dayak Ngaju Customary Law)

Wahyu Akbar<sup>1\*</sup>, Rahmad Kurniawan<sup>2</sup>

<sup>1\*</sup>*Antasari State Islamic University Banjarmasin  
Jl. A. Yani Km. 4, Banjarmasin City, South Kalimantan  
wea.jtr@gmail.com*

<sup>2</sup>*State Islamic Institute of Palangka Raya  
Jl. G. Obos, Islamic Centre Complex, Palangka Raya City, Central Kalimantan  
rahmad.kurniawan@iain-palangkaraya.ac.id*

---

Submitted	: 2023-05-15	Accepted	: 2023-06-20
Revision	: 2023-06-13	Publish	: 2023-06-30

---

**Abstract:** *This study examines the position of marital assets in the law and customary law of the Dayak ngaju in the Indonesian legal system. Marital assets in the 1974 Marriage Law and KHI are legal products originating one of them from Customary Law, which still leaves problems in its implementation. As a result, there are differences in decisions in judges in the settlement of marital assets in Indonesia. This paper applies a type of normative research, besides that it also uses the library research method which examines the literature which is analyzed qualitatively using a statutory approach and a conceptual approach to Islamic Economic Law. The results of this study indicate that UUP marriage can be reviewed, one of which can be sourced from customary law, especially the institutionalized Dayak Ngaju. Marital assets should provide economic guarantees for women and the future of children through the distribution of marital assets.*

**Keywords :** *Marital Assets, Customary Law, Dayak Ngaju*

### Introduction

The importance of property in marriage and issues related to the separation of property after divorce. Property is an important factor in marital life because it can affect the happiness and well-being of the home. Although there are other factors that affect the survival of a household, property remains a pillar of welfare. According to the law, marital property includes all property controlled by a husband and wife during the marriage, both family property and personal property such as inheritance, grants, own income, joint livelihood property, and gifts. <sup>1</sup> One of the problems related to marital

---

<sup>1</sup> Rosnidar Sembiring, *Hukum Keluarga: Harta-Harta Benda Dalam Perkawinan* (Depok: Raja Grafindo Persada, 2017), 84, <http://repository.usu.ac.id/handle/123456789/70615>.

property is the division of joint property after divorce. In Indonesia, joint property cases are increasing, with 16 rulings recorded in 2020 and 17 rulings in 2021.<sup>2</sup> The division of joint property is generally concerned with evidence and separation between joint property and personal property in marriage.

Regulation of Property in Marriage and Issues Related to Its Implementation are contained in the Marriage Law (UUP) No. 1 of 1974 and Islamic Law Provisions (KHI) based on Presidential Instruction No. 1/1991 regulating marital property. There is also jurisprudence of some court rulings.<sup>3</sup> The regulation of marital property in the UUP is based on the concept of marital property in customary law, with three articles (Articles 35 to 37) regulating the material. However, the implementing regulation, namely PP No. 9 of 1975, does not further regulate marital property. Although it is only regulated regarding joint property in the event of divorce, the KHI provides special arrangements by mentioning the division of each one-half. However, in practice, court rulings also consider fairness as well as juridical and non-juridical considerations, which can lead to disparities and issues about the implementation of the rules.

Another problem arises in the atmosphere of plurality of laws governing marital property in Indonesia when it is tried to be integrated into the UUP, which stems from customary law.<sup>4</sup> According to Satjipto Rahardjo in Yunanto, UUP is an interesting example of an effort to obtain a single normative state for all regions of the country.<sup>5</sup> However, these legal remedies tend to ignore social and cultural pluralism in society, including local legal norms that are actually embraced and obeyed by citizens in community life. Local legal norms are even more effective and adhered to than laws created and enforced by the state. The question then arises how one can transfer the pluralistic law into a single law for the whole region. This condition then raises a

---

<sup>2</sup> Civil Religious Judgment, "Supreme Court of the Republic of Indonesia" (2023), [https://putusan3.mahkamahagung.go.id/search.html?q=%22Sengketa the division of joint property%22](https://putusan3.mahkamahagung.go.id/search.html?q=%22Sengketa%20the%20division%20of%20joint%20property%22).

<sup>3</sup> Rozy Fahmi, "Kumpulan Yurisprudensi Tentang Harta Bersama," *Rozy Fahmi & Associates LAW OFFICE*, 2023, <https://rfalaw.id/2020/09/21/kumpulan-yurisprudensi-tentang-harta-bersama/>.

<sup>4</sup> Winda Fitri, "Implikasi Hukum Kewarisan Terhadap Ahli Waris Yang Lahir Dari Perkawinan Berbeda Agama," *Wajah Hukum*, no. 2 (2021): 511, <https://doi.org/http://dx.doi.org/10.33087/wjh.v5i2.596>.

<sup>5</sup> Yunanto Yunanto, "Konsep Keadilan Dalam Sengketa Harta Kekayaan Perkawinan Berbasis Kemajemukan Hukum," *Masalah-Masalah Hukum* 41, no. 2 (2012): 328, <https://doi.org/https://doi.org/https://doi.org/10.14710/mmh.41.2.2012.326-340>.

dilemma in practice in court, between the ideal of unifying and enacting provisions in the UUP or sticking to the reality of pluralism.

Indonesia is known as a plural country in various aspects, including in the field of law. Three different legal systems, namely the civil law system, customary law, and Islamic law, live and develop in society.<sup>6</sup> This condition is often referred to as legal pluralism, which is a situation in which two or more legal systems apply simultaneously in a sphere of social life.<sup>7</sup> Although Indonesian national law is based on customary law, the influence of Dutch law is still visible in the formulation of national legal concepts and propositions.<sup>8</sup> Therefore, legal experts call Indonesia as one of the countries that adheres to a mixed system that combines statutory law, customary law, and Islamic law.<sup>9</sup> This condition of legal plurality can be seen in various legal provisions regarding marital property, both contained in the UUP, Customary Law, Civil Code, and those applied in practice in Religious Courts with reference to the KHI.<sup>10</sup> The issue of marital property, both in terms of division in marital property disputes, is also more complex when related to the legal system in Indonesia. Problems in this field both in terms of regulatory material, the application of regulations, issues of justice, even related to gender issues and child protection. The author tries to look at the problem of marital property from the side of customary law, especially customary law that applies to the Ngaju Dayak in Central Kalimantan. In addition, looking at the position and enforceability of marital property from Dayak ngaju customary law in Central Kalimantan. So that it seeks to find out the problem of the position of marital property in the law in Indonesia which is plural and efforts to ensure justice related to marital property. This paper applies the type of normative research, besides that it also uses

---

<sup>6</sup> SamarahGusti Muzainah and Firqah Annajiyah Mansyuroh, "Integration of Islamic Law and Banjarese Customary Law of Inheritance System Tionghoa Muslim Community in Banjarmasin, South Kalimantan," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 685, <https://doi.org/https://doi.org/http://dx.doi.org/10.22373/sjkh.v6i2.12386>.

<sup>7</sup> H A Khisni and Cetakan Pertama, *Hukum Islam Antara Teks Dengan Konteks* (Semarang: UNISSULA PRESS Semarang, n.d.), 3, [http://research.unissula.ac.id/file/publikasi/210389017/4202HUKUM\\_ISLAM.pdf](http://research.unissula.ac.id/file/publikasi/210389017/4202HUKUM_ISLAM.pdf).

<sup>8</sup> S H Kelik Wardiono, *Ilmu Hukum Profetik: Hampiran Basis Epistemologi Paradigmatik* (Muhammadiyah University Press, 2020), 18.

<sup>9</sup> Susilo Toto RAHARDJO Darmawan Wicaksono, "Pengaruh Elemen Ekuitas Merek Terhadap Perilaku Konsumen Dalam Melakukan Keputusan Pembelian Iphone (Studi Pada Pengguna Iphone Di Kota Semarang)" (UNDIP, 2013), 189.

<sup>10</sup> Yunanto Yunanto, "Titik Singgung Keragaman Sistem Hukum Dalam Pembagian Harta Kekayaan Perkawinan Pada Perkawinan Serial," *Masalah-Masalah Hukum* 47, no. 4 (n.d.): 387, <https://doi.org/https://doi.org/10.14710/mmh.47.4.2018.385-399>.

*the library research* method that examines the literature that is analyzed qualitatively using a statutory approach and a conceptual approach. The source of the research comes from secondary data sourced from several studies related to the research theme. This study examines the position of marital property in Dayak ngaju legislation and customary law in the Indonesian legal system.

### **Marital Property in the Marriage Act 1974**

Article 35 of the Marriage Law No. 1 of 1974 states that in marriage there are two types of property, namely joint property and congenital property.<sup>11</sup> When a couple divorces, their marital property is divided according to the provisions of Article 37 of Law No. 1 of 1974. The division of property between husband and wife in polygamous marriages is regulated by Article 65 of Law No. 1 of 1974. So, if a couple agrees on how to divide their property, they may set a different agreement.

Paragraph 1 of Article 47 provides that the bride and groom may settle financial matters among themselves in writing and certified by the Registrar of Marriages either at the time of marriage or before the marriage. As long as it does not violate Islamic principles, the agreement referred to in paragraph 1 may permit the mixing of personal property and the separation of each party's property. The Third Paragraph of the Agreement may also contain terms governing the authority of each party to enter into a mortgage agreement on personal property, joint property, or company property, in addition to the terms set forth in paragraphs (1) and (2) above. For the purposes of this article, "noun" in Article 35 paragraph (1) must mean "*vermogen*" or property, because in property includes all passive or obligation, and from this article it can be concluded that in one family there may be more than one group of assets.<sup>12</sup>

All property acquired by either spouse during the marriage, whether by individual efforts or the fruits of their labor, is considered joint property and subject to equal division in accordance with the provisions of the law. Property owned before marriage or received as a gift, grant, or inheritance is not joint property and instead

---

<sup>11</sup> Legislation and Directorate Generald., "Law Number 1 of 1974" (2023), <https://peraturan.go.id/>.

<sup>12</sup> Iskandar Laka, "Kedudukan Harta Perkawinan Setelah Perceraian Ditinjau Dari Kompilasi Hukum Islam," *Res Judicata* 2 2, no. 2 (2019): 290, <https://doi.org/https://doi.org/http://dx.doi.org/10.29406/rj.v2i2.1750>.

belongs to their respective owners.<sup>13</sup> When a marriage ends in divorce, each joint property is divided according to the separate law of the spouses, as stipulated in Article 37 of the Marriage Law. Some provisions of the Marriage Law offer only an overview of the laws governing the formation, administration, and division of marital property. Management, use, and distribution decisions can be made for the property along with legal support. Articles 35–37 of the Law regulate the division of jointly owned assets.

Article 37 explains that according to their respective laws are religious law, customary law, and other laws.<sup>14</sup> The surviving spouse is entitled to half of the couple's joint property in the event of divorce or death. If the husband and wife die without leaving children, then their respective families will get the inheritance (original property) they received each before marriage. When two people own common property, society usually tries to resolve their differences by dividing the property in half, either by religious provisions or positive laws.

The UUP and other Supreme Court rulings provide a legal basis for the legislative resolution of common property disputes. Supreme Court Decision No. 417 K/AG/2000 is one of them stating that husband and wife should divide all marital assets equally, regardless of who makes money. In addition, Supreme Court Decision No. 266K/AG/2010 addresses how wives and children should be compensated when their husbands fail to provide for them financially.<sup>15</sup>

## **Marital Property in IHL**

Law Number 16 of 2019 concerning Amendments to UUP No. 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and Law Number 7 of 1989 concerning the Religious Courts as amended by Law Number 3 of 2006. In the event of a divorce, both the husband and wife are granted divorce, or the wife is missing, the provisions of Article 96 and Article 97 KHI regulate the division and amount

---

<sup>13</sup>Wahidah Wahidah and Fahmi Al Amruzi, "Fenomena Kewarisan Pada Masyarakat Banjar Kalimantan Selatan," *Khazanah: Jurnal Studi Islam Dan Humaniora* 20, no. 1 (2022): h. 140, <https://doi.org/http://dx.doi.org/10.18592/khazanah.v20i1.6205>.

<sup>14</sup>Ongky Alexander, "Efektivitas Pembagian Harta Gono-Gini Pasca Perceraian Dalam Perspektif Yuridis Sosiologis," *El-Ghiroh: Jurnal Studi Keislaman* 16 16, no. 01 (2019): 121, <https://doi.org/https://doi.org/https://doi.org/10.37092/el-ghiroh.v16i01.70>.

<sup>15</sup>N Nurnazli, "Analisis Putusan Mahkamah Agung Tentang Pembagian Harta Bersama Dan Implikasinya Terhadap Pembaruan Hukum Keluarga Di Indonesia" (UIN Raden Intan Lampung, 2019), 68, [http://repository.radenintan.ac.id/6757/1/NURNAZLI DISERTASI HUKUM KELUARGA 2019.pdf](http://repository.radenintan.ac.id/6757/1/NURNAZLI%20DISERTASI%20HUKUM%20KELUARGA%202019.pdf).

of the share of each husband and wife's share of the joint property. Articles 85–97 KHI provide several options for sharing assets for married couples.<sup>16</sup> There are provisions on joint property that do not rule out the possibility of each husband and wife's property being separated, husband and wife sharing the responsibility of maintaining property, the status of joint property in the event of divorce due to death, and finally for Article 97, which stipulates that divorced widows or widowers are each entitled to half of the joint property.

According to Article 85 KHI, just because a husband and wife have joint property, it does not mean that they cannot also have separate property. Article 86 paragraph (1) then states that the assets of a husband and wife may not be mixed up. Paragraph 2 stipulates that the property of each party must remain the exclusive right and possession of each party during the marriage. Half of the marital property belongs to the surviving spouse, as stipulated in Article 97 KHI. Without any conflicting provisions in the marriage contract, the husband and wife each have sole power over their respective inheritance and gifts and inheritance received during the marriage. (2) Both husband and wife have the same legal authority to transfer assets to other parties (such as grants, gifts, alms, and so on). Each party has the right to enter into an agreement before the marriage takes place, as set forth in Articles 45 to 52. This is intended so that the division of assets in marriage becomes clearer with this agreement. As long as it does not violate Islamic law, the contract can combine personal assets, divide assets, and determine who has the ability to pledge personal assets, joint assets, or business assets.<sup>17</sup>

The use of marital property according to the KHI affirms that there is no mixture between the personal property of the husband and wife because the marriage and the wife's property remain absolute property of the wife and are fully controlled by the wife, as well as the husband's personal property becomes absolute rights and fully controlled by the husband. The KHI broadly states that the wife has the full right to take legal action against the property without the intervention of the husband or wife to sell

---

<sup>16</sup> Mahkamah Agung Indonesia, "Himpunan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dan Pembahasannya" (2011), 45, <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/23.pdf>.

<sup>17</sup> Firman Hidayat, "Tinjauan Asas Kepastian Hukum, Keadilan, Dan Kemanfaatan Dalam Akta Perjanjian Kawin Yang Di Buat Oleh Notaris," *Jurnal Akta* 4, no. 4 (2017): 593, <https://doi.org/https://doi.org/http://dx.doi.org/10.30659/akta.v4i4.2502>.

it, grant, or use. There is also no need for legal assistance from the husband to take legal action against his personal property. Thus, in the use of property and personal property obtained from gifts and inheritances may be used by each party freely without interference from both parties. Thus, the property that will be divided between husband and wife in the event of the breakup of marriage is only property obtained through the efforts of the husband and wife during the marriage. Does not include property given in the form of gifts or inheritance obtained by husband or wife even though it is still obtained within the bonds of marriage. Similarly, the property that each husband and wife brings into marriage is not included as joint property.<sup>18</sup>

The above articles affirm that the division of joint property between a husband and wife who are divorced alive or divorced, or because one of them is lost, each of them gets one-half/half of the joint property. It is not taken into account who works, and in whose name the common property is registered. As long as the property is acquired during the marriage period according to Articles 35 and 36 of Law 74, the property acquired is joint property, and is divided in half between husband and wife.

When compared in the KHI it is clearer about common property and congenital property. This is stated in Article 87 paragraph (1) of the Compilation of Islamic Law and the property obtained by each as a gift or inheritance is under the control of each, here does not mention the time, for example during marriage. It is most important that the property of the gift or inheritance is the right of each husband or wife, not seeing the gift before, or during the marriage.

### **Marital Property in Dayak Ngaju customary law**

Indonesian society has forms of kinship with different hereditary systems. These different systems of descent seem to have an influence on the system of regulation and control of property in marriage. Theoretically the hereditary system can be distinguished in three shades, namely :<sup>19</sup>

---

<sup>18</sup> Evi Djuniarti, "Hukum Harta Bersama Ditinjau Dari Perspektif Undang-Undang Perkawinan Dan KUH Perdata (The Law of Joint Property Reviewed from The Perspective of Marriage Law and Civil Code)," *Jurnal Penelitian Hukum* P-ISSN 1410, 2017, 448, <https://doi.org/https://doi.org/http://dx.doi.org/10.30641/dejure.2017.V17.445-461>.

<sup>19</sup> Gusti Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar* (Pustaka Akademika, 2016), 8, [https://idr.uin-antasari.ac.id/16182/1/Buku bu Gusti Muzainah Asas Kemanfaatan.pdf](https://idr.uin-antasari.ac.id/16182/1/Buku%20Gusti%20Muzainah%20Asas%20Kemanfaatan.pdf).

- a. Patrilineal system, which is a system of descent drawn according to the father's line where the male body is more prominent than the position of women in inheritance and control of marital property. (such as: Gayo, Batak, Nias, Lampung Buru, Seram Nusa Tenggara, Irian).
- b. Matrilineal system, which is a hereditary system drawn from the maternal line where the position of women is more prominent than the position of men (such as: Minangkabau, Enggano, Timor, Semendo)
- c. Parental/Bilateral system, which is a system of descent drawn according to parental lines or according to two-sided lines (father-mother), where the position of men and women is not differentiated in the control of property and inheritance (Such as: Aceh, East Sumatra, Riau, Java, Kalimantan, and others).

According to customary law, marital property is all property controlled by husband and wife as long as they are bound by the marriage bond, both individual property derived from inheritance, grant property, own income property, livelihood property jointly produced by husband and wife and gift items.<sup>20</sup> Regarding common property in general, customary law is almost the same in all regions that can be considered the same, but there are also those that are distinguished based on the local cultural context of the community such as areas in Central Kalimantan, namely the Ngaju Dayak tribe has its own rules in the distribution of property after divorce.

Marital property in Dayak Ngaju custom is divided into two categories, congenital property and joint property or acquired during marriage.<sup>21</sup> The property owned by husband and wife is inherited property (Dayak Ngaju: *Pimbit*) and joint property obtained by both of them during their life together as husband and wife. It is the property of a married couple who have no children (Dayak Ngaju language: *Tamanang*). Dayak Ngaju customary law regarding marital property divides as joint property and family property. The inheritance is arranged through deliberation, then according to the order of husband or wife, children, grandchildren, siblings of both

---

<sup>20</sup> Djuniarti, "Hukum Harta Bersama Ditinjau Dari Perspektif Undang-Undang Perkawinan Dan KUH Perdata (The Law of Joint Property Reviewed from The Perspective of Marriage Law and Civil Code)," *Jurnal Penelitian Hukum Dejure* Vol 17, no. 4 (2017): 446, <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/361>.

<sup>21</sup> Darwis Luther Rampay, "Perkawinan Menurut Hukum Adat Dayak Ngaju Kalimantan Tengah Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (UNIVERSITAS AIRLANGGA, 2003), IX, <https://repository.unair.ac.id/35031/>.



parties.<sup>22</sup> But the amount of property distribution does not distinguish the sex of whether male or female, but if the deceased is male, then the property falls to the wife or widow (in Dayak Ngaju language called *Balu*). If the deceased is a woman, then the property goes to suarni or widower (in Dayak Ngaju language called *Buyu*). Then if there is a child, then it falls to the child, if there is no child (barren) of course the family heirs of both parties. Marital property is usually regulated in the marriage agreement in Dayak ngaju custom. Marriage is considered sacred so it must be bound by a marriage agreement, so as not to divorce easily.

Based on the growing understanding of marriage agreements in Indonesia, that marriage agreements, or commonly referred to as prenuptial agreements, have so far only related to the arrangement of property in marriage.<sup>23</sup> This marriage agreement guarantees that their right to *palaku* (dowry) remains the right of the woman after divorce.<sup>24</sup>

The customary *kedamangan* institution states that with this marriage agreement, if in the future there is a separation/divorce there are provisions to regulate the distribution of their assets.<sup>25</sup> This is considered as something fair for all parties. The content of the marriage agreement usually regulates marital property. This is also accommodated in the existing marriage agreement in the marriage of the Dayak Ngaju indigenous people of Central Kalimantan. The existence of property arrangements when there is a divorce or death as a cause of ending a marriage has been regulated clearly and in detail. This agreement is also a form of local wisdom which has special

---

<sup>22</sup> Ibnu Elmi Achmat Slamet Pelu, Ahmad Syaikh, and Jefry Tarantang, "Tradisi Penyelesaian Sengketa Kewarisan Masyarakat Kalimantan Tengah (Studi Pada Kabupaten Katingan Dan Kota Palangka Raya)," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 205, <https://doi.org/10.24090/mnh.v13i2.2027>.

<sup>23</sup> Faradilla Asyatama and Fully Handayani Ridwan, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): h. 110, <https://doi.org/https://doi.org/https://doi.org/10.30656/ajudikasi.v5i2.3937>.

<sup>24</sup> Satriya Nugraha, "Eksistensi Hukum Adat Melalui Penerapan Singer (Denda Adat) Dalam Perceraian Suku Dayak Ngaju," *Belom Bahadat* 12, no. 1 (2022): 88, <https://doi.org/https://doi.org/10.33363/bb.v12i1.787>.

<sup>25</sup> Sriyana Sriyana and Hiskiya Hiskiya, "Makna Simbolik Perkawinan Adat Dayak Ngaju Di Kota Palangka Raya: The Meaning Of Symbolic Indigenous Marriage In Dayak Ngaju In Palangka Raya City," *Anterior Jurnal* 20, no. 1 (2020): 92, <https://doi.org/https://doi.org/https://doi.org/10.33084/anterior.v20i1.1546>.

characteristics by including the existence of sanctions (singer).<sup>26</sup> Dnature form divorce fines.

This customary law provision comes from Explanation 96 of the Tumbang Anoi Customary Law Article also regulates divorce, such as Article 3 Singer *Hatulang Tak* (Fine in unilateral divorce) and Article 4 with the title *Singer Hatulang Palekak Sama Handak* / Divorce fine by mutual will.<sup>27</sup> The threat of punishment in singer *Hatulang Not yet* is 1) In accordance with what has been agreed in the marriage agreement. 2) The customary Mantir may impose a penalty of up to 30 *catties of ramu* or if it is converted into Rp. 3,000,000,-. 3) If there are children, all items of the hand are divided in half or unless there is other consideration by the Mantir. 4) The cost of the traditional feast and drink together shall be borne by the guilty party. Furthermore, Article 4 regulates divorce under the title *Singer Hatulang Palekak Sama Handak* or divorce fines due to mutual will. In this singer, the rights and burdens of each divorce include: 1) Giving hands according to the marriage agreement. 2) If there is a child, the property of the hands becomes the right of the child. 3) If there are no children, the property is divided peacefully, divided by two, or divided by three according to the consideration of the customary Mantirs. 4) The cost of traditional feasts, meals and drinks with *hambai hampahari* (fraternal feasts) with the essence of announcements for all elements of the environment, both visible and invisible (*panggutin petak danum*) shall be borne jointly by both parties.

The application of Singer as a customary fine is a form of control in the community so that the community does not easily violate customary law and order in the area is maintained. In terms of divorce, the application of singer is also a form of effort to complicate divorce in the Ngaju Dayak tribal community so that the Ngaju Dayak tribe community always tries to maintain the harmony of their household. Another thing that is no less important, until now Muslim communities who still maintain traditions through customary marriage, are allowed Dayak people to make marriage

---

<sup>26</sup> Suriansyah Murhaini, *Singer Sebagai Ujud Tertib Hidup, Damai, Dan Keseimbangan Di Kalangan Etnis Dayak Ngaju* (Jakarta Pusat: Lembaga Literasi Dayak, 2017), 97, <https://onsearch.id/Record/IOS1.INLIS00000000698091>.

<sup>27</sup> Akhmad Fauzi Aseri Muhamamd Dlaifurrahman and and Mujiburohman Mujiburohman, "Hukum Hadat Dayak Ngaju: Tahiu Janji Pangawin Di Kalimantan Tengah," *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 1 (2023): 416, <https://doi.org/https://doi.org/http://dx.doi.org/10.35931/aq.v17i1.1576>.

agreements in writing based on customary law. Because Dayak ngaju custom and Islamic law go side by side and undergo adjustments.<sup>28</sup> The implementation of customary marriage agreements is something that is considered absolute for the local community because it is not only to maintain the preservation of customs, but also a prevention of divorce that has an impact on community development.<sup>29</sup> A marriage agreement is an agreement made by a prospective husband and wife during the mamanggul process or during a customary marriage that is carried out to regulate the consequences of marriage on their property. It can be said that those who bind themselves to the marriage agreement will have guarantees during the marriage and thereafter so that to break the marriage is also to violate the agreement, which is very rare considering the legal consequences that will be borne. The existence of a singer makes the implementation of the agreement strong before the law.

Customary divorces carried out by people who have religion and belief must be reported to the religious court or the civil registry and Kadamangan. According to the Dayak indigenous people, the decision in the Kadamangan Institute is valid and legally enforceable because it has been protected by Regional Regulation No. 16 of 2008 which was amended by Regional Regulation of Central Kalimantan Province No. 1 of 2010, specifically regarding dispute resolution contained in Chapter X article 27.<sup>30</sup> And within those rules, there are sanctions contained in chapter XI article 32. Where in article 28 paragraphs 1 and 2 it is explained that the decision of the trial at the sub-district or kadamangan level is final and binding on the parties. If the parties do not heed the customary decision, even more severe sanctions will be imposed. Among the toughest sanctions in customary law is being excommunicated and expelled from the Kalimantan region. The result of the decision of the customary court is the result of mutual agreement and is not coercive. If the parties object to the outcome of the

---

<sup>28</sup> Syaikhul Syaikhul, Gusti Muzainah, and and Rabi'atul Adawiyah, "Acculturation in the Inheritance Law of the Dayak Ngaju Community," *Al-Adalah* 18, no. 1 (2021): 110, <https://doi.org/https://doi.org/https://doi.org/10.24042/adalah.v18i1.8377>.

<sup>29</sup> Imam Syafi'i, C H Mufidah, and and Suwandi Suwandi, "Fenomena Perjanjian Perkawinan Suku Dayak (Analisa Adat Dan Keadilan Gender Dalam Islam)," *Kafaah: Journal of Gender Studies* 12, no. 1 (2022): 23, <https://doi.org/https://doi.org/http://dx.doi.org/10.15548/jk.v12i1.488>.

<sup>30</sup> Thoyib, "Eksistensi Perjanjian Perkawinan Adat Dayak Ngaju Dalam Mencegah Perceraian Pasca Putusan Pengadilan Agama Palangka Raya" (IAIN Palangka Raya, 2017), 78, [http://digilib.iaain-palangkaraya.ac.id/1492/1/Tesis Toyib -15014017.pdf](http://digilib.iaain-palangkaraya.ac.id/1492/1/Tesis%20Thoyib%20-%2015014017.pdf).

customary decision, they can complain again to the Religious Court. At the local court, the customary decision will be considered by the judge to decide the case.

## **Review of UUP and KHI on Dayak Ngaju Customary Marriage Property**

Marital property is property owned by a husband and wife during the marriage period. Marital property usually consists of joint property owned by husband and wife and personal property of each husband and wife. Marital property in Islamic law each husband and wife has the right to own property individually within the limits controlled by him and cannot be disturbed by other parties. For example, a husband and wife receive an inheritance, grant or will without the participation of other parties, and the property becomes the right of each husband and wife.

The divorced husband and wife will then divide the joint property formed during the marriage between them, being able to settle it amicably. One form of peace is peace between husband and wife, or peace when there is a dispute related to common property. Husband and wife can deliberate in determining the distribution of the property, both related to the percentage, and management. The division of common property in Islamic law has no specific rules, but only provides general signposts in resolving the problem of common property without causing disputes. The best possibility in the division of common property is done by way of *al Shulhu* (peace), or by using the custom prevailing in society ('Urf), or the last resort is by the judge's Judgment.<sup>31</sup> The agreement or agreement of husband and wife is the first step in completing the division of joint property. This agreement in the Qur'an is called *Ash Shulhu*, which is an agreement to make peace between the two parties (husband and wife) after they have a disagreement.

Marital property in customary law although recognized as private property, but is not fully assessed as private property or husband and wife property but is seen as family property, where children or descendants have a dominant position, this can be proven by the perspective of Dayak Ngaju customary law, they place children as the main heirs and do not place widows or widowers as heirs but only have the right to use

---

<sup>31</sup> Hazar Kusmayanti, Efa Laela Fakriah, and Mutiara Rembune Payu, "Pembagian Harta Bersama Pasca Terjadinya Perceraian Di Kabupaten Aceh Tengah Berdasarkan Hukum Islam Dan Hukum Adat," *Jurnal Hukum PRIORIS* 8, no. 1 (2020): 10, <https://doi.org/https://doi.org/https://doi.org/10.25105/prio.v8i1.14963>.

as long as they are. Customary law can play an important role in determining the division of marital property. Customary law customs and traditions can be used as guidelines by families and communities in resolving the issue of division of marital property. Judges may consider customary law as an important factor in deciding marital property cases if positive law does not provide an appropriate solution to the case in question. Judges may consider customary law customs and traditions prevailing in local communities as relevant and important factors in deciding marital property cases. Dayak Ngaju customary law, which is instituted through Kademangan, can be considered by judges in deciding marriage cases. Dayak Ngaju customary law views marital property as a guarantee of the continuity of marriage, and also as a guarantee of the future of children.

UPP and Article 97 of the IHL actually provide a clear picture of flexibility in the distribution of joint property, especially in certain cases, because the article is regulating (*regelen*) not forcing (*dwingen*) so that the division is not absolute as such. If this is related to Article 97 of the KHI, which originally the joint property between the widower and the widow received half a share, then it may undergo changes, if in certain cases there are elements that change it. With regard to the application of law in joint property cases in Religious Courts, law enforcers, for the sake of law enforcement and justice for justice-seeking parties may use the discretionary method which is the discretion to decide something not based on the provisions of regulations, laws or applicable laws but on the basis of wisdom, consideration or justice.<sup>32</sup> In Islamic legal literature, this method of discretion is identical to the method of *ijtihad*, which means as a way to obtain some legal provisions from the proposition as its main basis. In addition, it can also be used as a method to provide legal certainty that arises due to claims and interests in *muamalah*.<sup>33</sup>

---

<sup>32</sup> Siah Khosyi'ah, "Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan Bagi Keluarga Muslim Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): 44, <https://doi.org/https://doi.org/https://doi.org/10.24090/mnh.v11i1.1266>.

<sup>33</sup> Siah Khosyi'ah, "Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan Bagi Keluarga Muslim Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): h. 44, <https://doi.org/https://doi.org/10.24090/mnh.v11i1.1266>.

## Closing

The UUP then KHI and also Juresprudence related to the position of marital property is an effort to achieve justice with three accommodates, namely religious values, cultural values and human values (human rights). These three basic values are regulated side by side in the 1945 Constitution. These three dimensions of values can also be said to have represented values that live in the consciousness and justice of Indonesian society in general. Therefore, the affirmation of concepts and regulations related to marital property in the UUP needs to be reviewed. The regulation of marital property is clarified and affirmed based on the fairness of all parties and can apply in all diverse regions of Indonesia. Consideration of the position of property in customary law, especially Dayak ngaju which is institutionalized, provides the view that guarantees the future of women and children through the division of marital property. This is based on the philosophy of marriage for the Ngaju Dayak people, namely to maintain the dignity of women and children so as to provide protection for women, children and lineages.

## References

- Alexander, Ongky. "Efektivitas Pembagian Harta Gono-Gini Pasca Perceraian Dalam Perspektif Yuridis Sosiologis." *El-Ghiroh: Jurnal Studi Keislaman* 16 16, no. 01 (2019): h. 121. <https://doi.org/https://doi.org/https://doi.org/10.37092/el-ghiroh.v16i01.70>.
- Asyatama, Faradilla, and Fully Handayani Ridwan. "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): h. 110. <https://doi.org/https://doi.org/https://doi.org/10.30656/ajudikasi.v5i2.3937>.
- Civil Religious Judgment. Supreme Court of the Republic of Indonesia (2023). [https://putusan3.mahkamahagung.go.id/search.html?q=%22Sengketa the division of joint property%22](https://putusan3.mahkamahagung.go.id/search.html?q=%22Sengketa%20the%20division%20of%20joint%20property%22).
- Darmawan Wicaksono, Susilo Toto RAHARDJO. "Pengaruh Elemen Ekuitas Merek Terhadap Perilaku Konsumen Dalam Melakukan Keputusan Pembelian Iphone (Studi Pada Pengguna Iphone Di Kota Semarang)." UNDIP, 2013.
- Darwis Luther Rampay. "Perkawinan Menurut Hukum Adat Dayak Ngaju Kalimantan Tengah Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan." UNIVERSITAS AIRLANGGA, 2003. <https://repository.unair.ac.id/35031/>.
- Djuniarti. "Hukum Harta Bersama Ditinjau Dari Perspektif Undang-Undang Perkawinan Dan KUH Perdata (The Law of Joint Property Reviewed from The Perspective of

- Marriage Law and Civil Code)." *Jurnal Penelitian Hukum Dejure* Vol 17, no. 4 (2017): h. 446.  
<https://ejournal.balitbangham.go.id/index.php/dejure/article/view/361>.
- Evi Djuniarti. "Hukum Harta Bersama Ditinjau Dari Perspektif Undang-Undang Perkawinan Dan KUH Perdata (The Law of Joint Property Reviewed from The Perspective of Marriage Law and Civil Code)." *Jurnal Penelitian Hukum P-ISSN 1410*, 2017, h. 448.  
<https://doi.org/https://doi.org/http://dx.doi.org/10.30641/dejure.2017.V17.445-461>.
- Firman Hidayat. "Tinjauan Asas Kepastian Hukum, Keadilan, Dan Kemanfaatan Dalam Akta Perjanjian Kawin Yang Di Buat Oleh Notaris." *Jurnal Akta* 4, no. 4 (2017): h. 593. <https://doi.org/https://doi.org/http://dx.doi.org/10.30659/akta.v4i4.2502>.
- General d., Legislation and Directorate. Law Number 1 of 1974 (2023). <https://peraturan.go.id/>.
- Gusti Muzainah. *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar*. Pustaka Akademika, 2016. [https://idr.uin-antasari.ac.id/16182/1/Buku bu Gusti Muzainah Asas Kemanfaatan.pdf](https://idr.uin-antasari.ac.id/16182/1/Buku%20Gusti%20Muzainah%20Asas%20Kemanfaatan.pdf).
- Imam Syafi'i, C H Mufidah, and and Suwandi Suwandi. "Fenomena Perjanjian Perkawinan Suku Dayak (Analisa Adat Dan Keadilan Gender Dalam Islam)." *Kafaah: Journal of Gender Studies* 12, no. 1 (2022): h. 23. <https://doi.org/https://doi.org/http://dx.doi.org/10.15548/jk.v12i1.488>.
- Indonesia, Mahkamah Agung. *Himpunan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dan Pembahasannya* (2011). <https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/23.pdf>.
- Khisni, H A, and Cetakan Pertama. *Hukum Islam Antara Teks Dengan Konteks*. Semarang: UNISSULA PRESS Semarang, n.d. [http://research.unissula.ac.id/file/publikasi/210389017/4202HUKUM\\_ISLAM.pdf](http://research.unissula.ac.id/file/publikasi/210389017/4202HUKUM_ISLAM.pdf).
- Kusmayanti, Hazar, Efa Laela Fakriah, and and Mutiara Rembune Payu. "Pembagian Harta Bersama Pasca Terjadinya Perceraian Di Kabupaten Aceh Tengah Berdasarkan Hukum Islam Dan Hukum Adat." *Jurnal Hukum PRIORIS* 8, no. 1 (2020): h. 10.  
<https://doi.org/https://doi.org/https://doi.org/10.25105/prio.v8i1.14963>.
- Laka, Iskandar. "Kedudukan Harta Perkawinan Setelah Perceraian Ditinjau Dari Kompilasi Hukum Islam." *Res Judicata* 2 2, no. 2 (2019): h. 290. <https://doi.org/https://doi.org/http://dx.doi.org/10.29406/rj.v2i2.1750>.
- Muhamamd Dlaifurrahman, Akhmad Fauzi Aseri, and and Mujiburohman Mujiburohman. "Hukum Hadat Dayak Ngaju: Tahu Janji Pangawin Di Kalimantan Tengah." *Al Qalam: Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 17, no. 1 (2023): h. 416.  
<https://doi.org/https://doi.org/http://dx.doi.org/10.35931/aq.v17i1.1576>.
- N Nurnazli. "Analisis Putusan Mahkamah Agung Tentang Pembagian Harta Bersama

- Dan Implikasinya Terhadap Pembaruan Hukum Keluarga Di Indonesia.” UIN Raden Intan Lampung, 2019. <http://repository.radenintan.ac.id/6757/1/NURNAZLI> DISERTASI HUKUM KELUARGA 2019.pdf.
- Pelu, Ibnu Elmi Achmat Slamet, Ahmad Syaikh, and Jefry Tarantang. “Tradisi Penyelesaian Sengketa Kewarisan Masyarakat Kalimantan Tengah (Studi Pada Kabupaten Katingan Dan Kota Palangka Raya).” *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 203–16. <https://doi.org/10.24090/mnh.v13i2.2027>.
- Rosnidar Sembiring. *Hukum Keluarga: Harta-Harta Benda Dalam Perkawinan*. Depok: Raja Grafindo Persada, 2017. <http://repository.usu.ac.id/handle/123456789/70615>.
- Rozy Fahmi. “Kumpulan Yurisprudensi Tentang Harta Bersama.” *Rozy Fahmi & Associates LAW OFFICE*, 2023. <https://rfalaw.id/2020/09/21/kumpulan-yurisprudensi-tentang-harta-bersama/>.
- SamarahGusti Muzainah, and Firqah Annajiyah Mansyuroh. “Integration of Islamic Law and Banjarese Customary Law of Inheritance System Tionghoa Muslim Community in Banjarmasin, South Kalimantan.” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): h. 685. <https://doi.org/https://doi.org/http://dx.doi.org/10.22373/sjhk.v6i2.12386>.
- Satriya Nugraha. “Eksistensi Hukum Adat Melalui Penerapan Singer (Denda Adat) Dalam Perceraian Suku Dayak Ngaju.” *Belom Bahadat* 12, no. 1 (2022): h. 88. <https://doi.org/https://doi.org/10.33363/bb.v12i1.787>.
- Siah Khosyi’ah. “Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan Bagi Keluarga Muslim Di Indonesia.” *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017): h. 44. <https://doi.org/https://doi.org/https://doi.org/10.24090/mnh.v11i1.1266>.
- Sriyana, Sriyana, and Hiskiya Hiskiya. “Makna Simbolik Perkawinan Adat Dayak Ngaju Di Kota Palangka Raya: The Meaning Of Symbolic Indigenous Marriage In Dayak Ngaju In Palangka Raya City.” *Anterior Jurnal* 20, no. 1 (2020): h. 92. <https://doi.org/https://doi.org/https://doi.org/10.33084/anterior.v20i1.1546>.
- Suriansyah Murhaini. *Singer Sebagai Ujud Tertib Hidup, Damai, Dan Keseimbangan Di Kalangan Etnis Dayak Ngaju*. Jakarta Pusat: Lembaga Literasi Dayak, 2017. <https://onesearch.id/Record/IOS1.INLIS000000000698091>.
- Syaikh, Syaikh, Gusti Muzainah, and and Rabiatal Adawiyah. “Acculturation in the Inheritance Law of the Dayak Ngaju Community.” *Al-’Adalah* 18, no. 1 (2021): 110. <https://doi.org/https://doi.org/https://doi.org/10.24042/adalah.v18i1.8377>.
- Thoyib. “Eksistensi Perjanjian Perkawinan Adat Dayak Ngaju Dalam Mencegah Perceraian Pasca Putusan Pengadilan Agama Palangka Raya.” IAIN Palangka Raya, 2017. [http://digilib.iain-palangkaraya.ac.id/1492/1/Tesis\\_Toyib\\_15014017.pdf](http://digilib.iain-palangkaraya.ac.id/1492/1/Tesis_Toyib_15014017.pdf).
- Wardiono, S H Kelik. *Ilmu Hukum Profetik: Hampiran Basis Epistemologi*



*Paradigmatik*. Muhammadiyah University Press, 2020.

- Winda Fitri. "Implikasi Hukum Kewarisan Terhadap Ahli Waris Yang Lahir Dari Perkawinan Berbeda Agama." *Wajah Hukum*, no. 2 (2021): hal. 511. <https://doi.org/http://dx.doi.org/10.33087/wjh.v5i2.596>.
- Yunanto, Yunanto. "Konsep Keadilan Dalam Sengketa Harta Kekayaan Perkawinan Berbasis Kemajemukan Hukum." *Masalah-Masalah Hukum* 41, no. 2 (2012): hal. 328. <https://doi.org/https://doi.org/https://doi.org/10.14710/mmh.41.2.2012.326-340>.
- Yunanto Yunanto. "Titik Singgung Keragaman Sistem Hukum Dalam Pembagian Harta Kekayaan Perkawinan Pada Perkawinan Serial." *Masalah-Masalah Hukum* 47, no. 4 (n.d.): h. 387. <https://doi.org/https://doi.org/10.14710/mmh.47.4.2018.385-399>.