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Joint Marital Property (*Gono-Gini*) in Islamic Family Law: A Socio-Legal Analysis of Local Wisdom and Islamic Perspectives

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Abstract:

Gono-gini, or joint property, is a family law institution that has developed uniquely within the Indonesian legal system. Although not formulated as a separate institution in classical marital jurisprudence, the practice of dividing marital property has taken root in various Indonesian communities with diverse terms and characteristics. This study aims to examine gono-gini as a socio-cultural construct, analyze the legitimacy of its acceptance in Islamic law, and compare the marital property ownership systems of the Minangkabau, Sundanese, Javanese, and Malay communities. This study uses a library method with a normative approach, legal sociology, legal anthropology, and comparative law. Data were obtained from classical and contemporary fiqh books, ushul fiqh literature, legal sociology and anthropology books, legislation, and journal research from the last five years. The results show that gono-gini is a form of law that lives in society (living law), formed through the development of the family as a socio-economic unit. The four regions show variations in nomenclature, kinship systems, the status of inherited property, and the mechanism for recognizing marital property. The Minangkabau community distinguishes between heirloom property and search property; Sundanese society recognizes guna kaya in a bilateral kinship system; Javanese society develops gono-gini through a nuclear family orientation and deliberation; while Malay society recognizes shared property that develops through custom and the institutionalization of Islamic family law. The absence of the term gono-gini in classical fiqh does not necessarily indicate a prohibition against the practice. The principles of individual ownership, syirkah, 'urf, and the principle of al-'adah muhakkamah can be the basis for its acceptance as long as it is in accordance with sharia principles. This study concludes that joint property is the result of the interaction between customary law, Islamic law, and state law that reflects the development of Islamic family law in the social and cultural context of Indonesian society.

Keywords: Anthropology of law; customary practice; Islamic law; joint assets; local wisdom; sociology of law.

INTRODUCTION

Family law is one of the legal domains that interacts most strongly with social and cultural structures. Marriage not only creates a legal relationship between husband and wife but also forms a socio-economic unit within which roles are divided, resources are managed, family identity is formed, and wealth is accumulated. Therefore, the sociology of law does not view family norms merely as texts, but as institutions that operate through social structures, interaction patterns, power, and societal change (Ali, 2023). The phenomenon of *gono-gini* (marital property) illustrates the tangible interplay between law, culture, and social life. In the Javanese tradition, the term refers to assets acquired during a marriage. Similar concepts exist in various other cultures under different names—such as guna kaya among the Sundanese, *harta suarang* or *harta pencarian* in the Minangkabau context, *harta perpantangan* within the Banjar community, and *harta sepencarian* in the Malay tradition. This diversity of terminology reflects distinct cultural backgrounds and social systems, which in turn shape how different societies perceive the ownership of assets within a marriage (Ismuha, 1978). Thus, the existence of marital property cannot be understood solely as the result of state-enacted regulations; rather, it is also rooted in historical experience, collective customs, and the social structures that have evolved within a society.

The perspective of legal anthropology helps explain the diversity of property ownership systems within societies. Arrangements regarding ownership are closely linked to kinship systems, post-marital residence patterns, inheritance structures, gender relations, and a community's understanding of the family. In matrilineal societies, for instance, the distinction between ancestral property and assets acquired through a couple's own efforts carries a different significance compared to societies that follow a bilateral or parental kinship system (Hussin et al., 2025). Classic research on the Minangkabau reveals that changes in ownership and inheritance practices do not occur in a simple manner; rather, they unfold through an ongoing process of negotiation among customary (adat) provisions, Islamic teachings, and state administrative policies (Benda-Beckmann, 1979). Thus, an understanding of property law requires an analysis that takes into account the social and cultural context of the local community.

Within the Indonesian positive legal system, the regulation of marital property is normatively defined in Article 35 of Law Number 1 of 1974 concerning Marriage. For the Muslim community, these provisions are further clarified in Articles 85 through 97 of the Compilation of Islamic Law, which govern various aspects of property ownership within a marriage. Fundamentally, these regulations distinguish between property acquired during the course of a marriage and assets brought into the marriage, gifts, or inheritances—all of which, in principle, remain the individual property of the respective spouse (Moore, 1978). This distinction indicates that marriage does not automatically extinguish an individual's ownership of assets acquired beforehand. Nevertheless, the application of these provisions must still take into account the possibility of any separate agreements made between the husband and wife (Indonesia, 2019). Thus, the regulation of marital property reflects a national legal effort to provide certainty regarding the status and control of assets within a household.

The discussion of marital property (*gono-gini*) from the perspective of fiqh (Islamic jurisprudence) reveals a more complex set of issues than those addressed under positive law. Classical fiqh literature generally treats a husband and wife as independent legal subjects, each possessing the right to individual ownership. While the concept of *shirkah* (partnership) is indeed developed within the study of fiqh muamalah (Islamic commercial law), it is not explicitly formulated as a system of joint ownership covering all assets acquired during a marriage—a concept that is, however, recognized within Indonesian family law (Sumandiyar, 2024). In the jurisprudence (fiqh) texts of various schools of thought, the formation of a *shirkah*(partnership) involves a contractual agreement, the provision of capital, the contribution of labor, or other forms of economic cooperation. The rights of each party regarding profits are determined based on the terms of the cooperation agreed upon (Kasani, 1986). Thus, the mere existence of a marital bond does not automatically establish joint ownership of the assets belonging to a husband and wife. This understanding serves as an essential foundation for examining the acceptance of the practice of gono-gini (shared marital property) through a contextual approach to Islamic law.

The absence of specific provisions regarding gono-gini (jointly acquired marital property) in classical fiqh (Islamic jurisprudence) does not mean that the practice must be rejected within Islamic law. From the perspective of ushul fiqh (principles of Islamic jurisprudence), social customs that have evolved and gained widespread acceptance can be considered a basis for legal determination—utilizing the concepts of 'urf (custom) and the legal maxim al-'adah muhakkamah (custom as a basis for judgment)—provided that they do not conflict with sharia evidence or the fundamental principles of Islam (Hussin et al., 2023). This approach provides space for the

recognition of social practices that yield benefits for society. Certain contemporary ushul fiqh (principles of Islamic jurisprudence) perspectives also emphasize the importance of considering local traditions, particularly within the realm of muamalah (social and economic transactions), which is closely linked to the dynamics of social and economic life (Suyuti, 1990). This is based on the fact that patterns of transactions, human relationships, and forms of cooperation within a society are constantly evolving in response to changing times and geographical conditions. Therefore, the establishment of laws must take into account the social context that underlies any given practice.

Previous research has examined marital property through various theoretical perspectives and legal approaches. Anggraini, Yakub, and Sopiah applied structural-functional, conflict, and symbolic interactionist theories to explain gono-gini (marital property) as a social reality that simultaneously holds a juridical status. Meanwhile, Tarantang and his colleagues explored the fiqh (Islamic jurisprudence) understanding of marital property through the text Sabilal Muhtadin and the evolution of the thought of Sheikh Muhammad Arsyad al-Banjari. A different study was conducted by Ridwan, Rasyid, and Lubis, who compared the regulation of marital property from the perspectives of Islamic law and customary law (Tarantang et al., 2024). Efrinaldi identifies trends in contemporary fiqh (Islamic jurisprudence) thought regarding the legitimation of jointly-owned marital property, drawing upon the concepts of syirkah (partnership), ‘urf (custom), and maslahat (public interest). (Anggraini et al., 2024). These various studies demonstrate that marital property—or jointly owned assets—is not merely a matter of wealth ownership; it also reflects the interplay between religious norms, local traditions, social dynamics, and the evolution of the legal systems operating within a society (Ridwan et al., 2021).

Recent research highlights a growing interest in legal pluralism and comparative approaches to the study of marital property ownership. Safe’i and his colleagues examine the interplay between civil law, Islamic family law, and Javanese customary traditions in the regulation of joint marital property. Meanwhile, Kasumawati and Manfaluti investigate harta perpantangan (marital property under Banjar custom) as a form of "living law"—a set of norms that evolves and is actively practiced within the Banjar community (Rosen, 2006). In the Malaysian context, a number of studies position harta sepencarian (jointly acquired marital property) as the product of an integration between Malay customary traditions and the Islamic family law system. Furthermore, comparative research between Indonesia and Malaysia reveals that a shared cultural background does not automatically result in a uniform legal institutional system. These differences are linked to the specific characteristics of each nation's national legal system, legislative processes, and the mechanisms through which customary practices are recognized within each country (Safe’i, 2026). These findings confirm that the formation and development of marital property law are influenced by the interplay between cultural values, religious norms, and state policies—all of which exhibit distinct characteristics within each societal context.

Nevertheless, the existing literature remains relatively fragmented. Sociological studies often fail to delve sufficiently into kinship structures and customary genealogies; studies in fiqh (Islamic jurisprudence) tend to focus primarily on normative legitimacy; while studies on adat (customary law) are typically localized in nature. This research addresses these gaps through an integrative approach that bridges the sociology of law, the anthropology of law, and fiqh—along with its foundational principles (uṣūl al-fiqh)—while comparing four distinct customary regions: Minangkabau, Sunda, Java, and the Malay world. The focus is not to determine the "fairest" model for the division of assets, but rather to explain how societies construct categories of marital property, how Islam provides normative validation, and how the state subsequently formalizes these arrangements.

METHOD

This research employs a library-based methodology, integrating several approaches into its analysis. A normative approach is applied to examine positive legal provisions and fiqh (Islamic jurisprudence) doctrines concerning the regulation of marital property. Furthermore, a sociology of law approach is utilized to understand the role of norms within social life, including the dynamics of conflict, patterns of social interaction, and the level of effectiveness in their application. A legal anthropology approach is employed to investigate the interconnections between kinship systems, cultural values, and the "living law"—the law as it actually exists and functions within a society (Koentjaraningrat, 2015). The comparative legal approach aims to identify the similarities and differences in the systems of marital property ownership that have evolved within four indigenous communities: the Minangkabau, Sundanese, Javanese, and Malay. Employing these various approaches allows for a comprehensive discussion that accounts for normative, social, and cultural dimensions. Through this strategy, the research seeks to explain the formation, acceptance, and evolution of shared marital property practices within the context of Indonesia’s diverse legal systems (Cotterrell, 2006).

The materials used in this research are classified into four primary categories. First, primary sources in the field of Islamic law, including fiqh (Islamic jurisprudence) texts from various schools of thought (madhahib) and literature on usul al-fiqh (principles of Islamic jurisprudence) that address issues of ownership, shirkah (partnership), ‘urf (custom), and relevant Islamic legal maxims. Second, contemporary references on fiqh and usul al-fiqh, which serve to elucidate the evolution of Islamic legal thought in response to societal dynamics. Third, academic literature encompassing the sociology of law, legal anthropology, customary law, and Islamic family law, providing a framework for analyzing the interplay between norms, culture, and social practices. Fourth, scholarly publications—specifically journal articles published between 2021 and 2026—that focus on topics such as joint marital property (harta bersama or gono-gini), living law, customary systems, and jointly acquired assets (harta sepencarian) (Mardani, 2016). Furthermore, this study utilizes positive legal materials—primarily Law Number 1 of 1974 concerning Marriage (along with its amendments) and the Compilation of Islamic Law—as a basis for examining the normative recognition of property ownership within a marriage (Putra, 2022).

The data analysis process is carried out through three interrelated stages. The first stage is conceptual reduction, which involves selecting and grouping key ideas relevant to the research focus. The categories analyzed include individual ownership, syirkah (partnership), ‘urf (custom), living law, kinship systems, and interlegality. This grouping aims to establish a systematic analytical framework for understanding the relationships between Islamic law, customary law, and state law (Soekanto, 2014). The second stage involves a comparison of marital property ownership systems among the Minangkabau, Sundanese, Javanese, and Malay communities. This comparison is structured using an analytical matrix that covers the characteristics of kinship systems, local terminology, the status of pre-marital (inherited or personal) property versus ancestral/communal property, the definition of assets acquired during marriage, mechanisms for the distribution of wealth, and the relationship between local traditions and Islamic teachings (Creswell & Poth, 2023). Through this matrix, the similarities and differences between communities can be identified in a structured manner, based on their respective social and legal characteristics. The third stage involves a theoretical synthesis aimed at formulating an explanation of how the practices surrounding property ownership evolve—shifting from local customs to becoming part of family law norms. This synthesis connects the comparative findings with normative, sociological, and anthropological perspectives (Sugiyono, 2012). Thus, the analysis does not merely inventory legal terms and provisions; it also explains the socio-cultural mechanisms underlying the formation, acceptance, and evolution of the institution of joint marital property within Indonesian society.

RESULTS AND DISCUSSION

Marital Property as a Social Institution of the Family

The study’s findings indicate that the starting point for understanding marital property (gono-gini) lies in the social structure of the family. Marriage creates a micro-scale social organization that manages labor, income, consumption, child-rearing, housing, and assets (Syarifuddin, 2006). In a household, a partner's contribution to the family's well-being is not measured solely by the financial income they earn. Domestic tasks, child-rearing, the management of family business activities, and the provision of social support all play a role in sustaining the household's economic stability. Although some of these contributions do not generate direct income, they are vital in creating the conditions that allow family members to work, develop businesses, and meet shared needs. Consequently, the creation of family wealth cannot be understood merely as the result of an individual's economic activity; rather, it is the outcome of cooperation and the division of roles between partners. In this context, the concept of "joint marital property" (harta bersama) has emerged as a form of social recognition of the collective nature of wealth accumulation during a marriage—encompassing both the direct and indirect contributions made by each partner to family life (Ali, 2023).

The structural-functionalist perspective views marital property as a consequence of the division and differentiation of roles between a husband and wife in managing their household life. Conversely, conflict theory posits that property serves as an economic resource capable of sparking disputes when a marital relationship fractures or comes to an end. Meanwhile, the symbolic interactionist perspective emphasizes that the meaning attributed to an asset is determined not merely by formal ownership status, but also by the values and symbols that emerge within social life. For instance, a house that is administratively registered under the name of one spouse may still be perceived as a shared family residence. Similarly, inherited property utilized for household purposes does not necessarily lose its significance as personal wealth derived from one’s family of origin. Together, these three perspectives demonstrate that issues surrounding marital property encompass structural

dimensions, power relations, and the social construction of meaning (Anggraini et al., 2024). Therefore, determining the status of an asset cannot be based solely on ownership documents; it must also take into account the underlying social context.

Genealogy of Islamic Jurisprudence: Individual Ownership, Partnership, and ‘Urf

From the perspective of classical fiqh (Islamic jurisprudence), a husband and wife each retain their status as independent legal subjects regarding the ownership of property. While marriage gives rise to a set of rights and obligations that govern family life, it does not automatically result in the assets of each party merging into a single, unified ownership. This is reflected in the structure of fiqh literature, which distinguishes discussions on marriage from those concerning muamalah (transactions), property ownership, and syirkah (business partnerships). Consequently, any attempt to equate the concept of ownership in classical fiqh with the institution of "joint marital property" (harta bersama)—as recognized within the Indonesian legal system—must be approached with caution. Both historically and methodologically, the concept of joint marital property cannot be directly considered an institution that was explicitly formulated within classical fiqh (Rushd & Ahmad, 2004). Nevertheless, the principles concerning property rights, transactions, economic partnerships, and the resolution of ownership disputes can serve as a foundation for examining such issues through the lens of Islamic law.

The concept of syirkah (partnership) is frequently employed by Islamic legal scholars in Indonesia as an analytical framework for understanding the economic cooperation that occurs between a husband and wife during their marriage. In various classical fiqh (Islamic jurisprudence) texts—such as Bada’i al-Sana’i, al-Mughni, Bidayat al-Mujtahid, and al-Majmu’—syirkah is discussed as a form of partnership involving the contribution of capital, labor, or the sharing of profits. Each school of thought (madhhab) holds its own distinct views regarding the provisions, forms, and validity of such partnerships. In the evolution of contemporary Islamic legal thought, scholars like Wahbah al-Zuhayli and Mustafa Ahmad al-Zarqa have further elaborated on syirkah as a significant institution within the realm of muamalah (Islamic commercial/civil transactions). Its implementation relies on the mutual agreement of the parties involved, as well as the defined rights and obligations that accompany it. Nevertheless, applying the concept of syirkah to explain the joint property of a husband and wife requires careful argumentation, as the two concepts are not entirely identical within their respective legal constructs (Kasani, 1986). Thus, syirkah serves as a functional analogy, yet it is not identical to marriage: a marriage contract is not a business partnership agreement, and the existence of joint property within the Indonesian context requires an additional social basis.

The concept of ‘urf (custom) serves as a highly relevant framework for explaining the relationship between social practices and the application of Islamic law. Through this approach, customs that have developed and gained acceptance within a society can be taken into account during the legal determination process, provided they meet the requirements stipulated by Sharia. Al-Suyuti articulated the legal maxim al-‘adah muhakkamah ("custom is a basis for legal judgment"), which affirms that customs or habitual practices can be considered in legal deliberations within specific contexts. Meanwhile, al-Shatibi emphasized the importance of understanding social conditions and the consequences of actions when implementing Islamic law. Both perspectives demonstrate that the application of law cannot be entirely detached from the realities of social life. In the context of marital property, the concept of ‘urf can be utilized to analyze how assets are divided between spouses based on local customs, while ensuring adherence to Sharia principles, the requirements of justice, and the protection of the rights of each party (Hamdi, 2018). Abu Zahrah, 'Abd al-Karim Zaydan, and Ali Ahmad al-Nadwi emphasized that valid 'urf can be taken into account if it is generally accepted or dominant, does not contradict the text, and does not negate a firm agreement. This framework explains how the practice of joint property can be assessed from its substance without having to find identical terms in classical books (Nadwi, 1994; Zaydan, 2006).

The development of fiqh (Islamic jurisprudence) in Indonesia reflects a process of adapting Islamic legal thought to the local socio-cultural conditions. From an early stage, Hasbi Ash-Shiddieqy emphasized the importance of developing fiqh that does not merely rely on the classical intellectual heritage, but also takes into account the realities of life in Indonesia. This perspective asserts that an understanding of Islamic law must consider its social context in order to effectively address the issues that arise within the lives of the Muslim community. Regarding the concept of harta gono-gini (joint marital property), several contemporary studies on Hasbi’s thought suggest that the concept of ‘urf (custom) can serve as a methodological approach to explain the acceptance of practices concerning the division of assets between spouses. Local customs that have evolved and gained broad acceptance can be taken into account when formulating legal interpretations, provided they do not conflict with the principles of Sharia. The emergence of the concept of joint marital property in Indonesia can

be understood as a dialogue between Islamic legal norms, societal traditions, and the ever-evolving social needs of the community (Ibn 'Abidin, 1992). Thus, the acceptance of marital property can be understood as the result of socio-legal ijtihad: the principle of fiqh ownership is maintained, but established customs regarding marital wealth are accommodated through 'urf (Ash-Shiddieqy, 2001).

1.6 A Comparison of Marital Property Systems: Minangkabau, Sundanese, Javanese, and Malay

A comparative study across four regions reveals that the term "joint marital property" does not always represent a uniform pattern of asset ownership and management. Underlying the use of this term are distinct social structures shaped by kinship systems, local traditions, and societal perceptions of ownership within marriage. A fundamental aspect that differentiates practices between regions is the relationship between "pre-existing assets"—those acquired before marriage or through inheritance—and wealth accumulated during the course of a marriage. In societies with specific kinship systems, pre-existing assets may remain strongly tied to the extended family, whereas wealth acquired during marriage is often understood in terms of the individual contributions of each spouse. In other regions, the boundaries between these two categories may be defined by prevailing customs and social agreements. Any analysis of joint marital property must account for cultural context and kinship systems, ensuring that the diversity of ownership practices is not reduced to a single, monolithic legal model (Budi et al., 2024). Therefore, comparing nomenclature alone can be misleading; the analysis must examine who controls the assets, where those assets originate, and within what kinship system the household is situated.

Variables	Minangkabau	R	Java	Malay
Kinship system	Matrilineal; the maternal line and inheritance are very strong	Generally bilateral/parental, with local variations in traditional villages	Bilateral/parental and centered on the nuclear household	Generally bilateral, but in some areas there is a matrilineal Perpatih custom and a bilateral Temenggung custom.
The term marital property	Treasure hunt / treasure hunt	Use rich / mix rich	Gono-gini / gana-gini	Marital property
Original property/inheritance	Clearly distinguished from search treasures; high heirlooms are within the clan structure.	Original/inherited wealth remains distinct from wealth use	Property/brought property is distinguished from marital property	Inherited and inherited property are distinguished; the latter relates to business during marriage.
Social logic	The couple's household interacts with tribal and heirloom structures.	Household partnerships within the framework of bilateral kinship	Household cooperation and family harmony; deliberation has a strong role	Recognition of direct/indirect donations within the framework of Islamic family law and customs
Relations with Islam	*Adat basandi syarak*; custom-Islam negotiations are strong in the history of ownership	Acculturation of Islam and Sundanese customs; acceptance of customs is tested through religious norms	Javanese customs interact with fiqh and KHI in Muslim family practices	Sepencarian property is institutionalized within the Sharia jurisdiction and supported by Malay customs

Source: synthesized from customary law literature, legal anthropology, and recent studies on joint property/shareholding property.

1.7 Minangkabau: Jointly Acquired Property (Harta Suarang) within a Matrilineal Structure

The Minangkabau society exhibits distinct characteristics in the management of property ownership due to its matrilineal kinship system, in which lineage is traced through the maternal line. Within this system, ancestral property (harta pusaka) is closely linked to genealogical identity and the continuity of the kin group (kaum); consequently, its management cannot be equated with the wealth acquired by a couple during their marriage. Therefore, assets within a household must be distinguished based on their origin, function, and social status. Anthropological studies of Minangkabau law identify several categories—such as ancestral property (harta pusaka) and self-acquired property (harta pencarian)—along with other forms of wealth tenure that have evolved alongside the processes of Islamization, colonial influence, and administrative modernization. In this context, harta suarang refers to wealth acquired through the joint efforts of a husband and wife during their marriage. Conceptually, this category must be distinguished from harta pusaka tinggi (high ancestral property), which pertains to the collective ownership of a kin group and is inherited according to Minangkabau customary law (adat) (Benda-Beckmann, 1979).

From an anthropological perspective, the distinct categories of property in Minangkabau reveal that the concept of the family—within the framework of legal regulation—is not strictly limited to the unit of husband, wife, and children. The nuclear household functions as part of a broader matrilineal kinship network, meaning that the ownership and management of wealth are also influenced by the interests of the kaum (kinship group). In this context, the relationship between adat (customary law) and Islam involves not only the alignment of norms but also the determination of authority regarding the control, transfer, and inheritance of property. This issue is significant because each category of wealth carries a distinct social function and is subject to specific management rules. Harta suarang (jointly acquired marital property), for instance, provides a space to acknowledge the economic contributions and interests of a husband and wife that develop during their marriage. Nevertheless, such recognition of household wealth does not alter the status of harta pusaka (ancestral/communal property), which is tied to the continuity of the kaum (Benda-Beckmann, 1979). Thus, practices regarding the ownership of property reflect a negotiation between the needs of the nuclear family and traditional kinship structures.

Sunda: Wealth Accumulation and Bilateral Kinship Structure

In the tradition of the Sundanese people, wealth acquired during a marriage is known by the term guna kaya or campur kaya. This concept is rooted in the understanding that assets accumulated throughout the course of a marriage are the result of the couple's economic activities and cooperation. Unlike the Minangkabau society, which follows a matrilineal kinship system, the Sundanese generally adhere to a bilateral system, in which lineage is traced through both the father's and mother's sides. This system positions the nuclear family as a key unit in the creation and management of household wealth. Although assets brought into a marriage—or pre-existing property—can still be distinguished from wealth acquired during the marriage, the fruits of labor generated throughout the couple's life together are typically viewed within the framework of household contribution. Various studies on Sundanese society and traditional villages also indicate that the category of guna kaya may be taken into account when determining the division of assets before the estate is distributed among those entitled to inherit (Ismuha, 1978).

In anthropological study, the concept of guna kaya reflects the capacity of Sundanese custom (adat) to adapt to the evolution of Islamic teachings and shifts in social life. Custom should not be viewed as a rigid framework isolated from external influences; rather, it functions as a social system subject to continuous reinterpretation through interactions among families, traditional leaders, and religious authorities. This process allows for the development of norms regarding the ownership and distribution of wealth—evolving in response to societal needs—without entirely abandoning deeply rooted traditional principles. Changes in livelihoods, family relationship patterns, and economic conditions all influence how a community classifies the assets it possesses. Nevertheless, the distinction between wealth acquired individually prior to marriage and assets accumulated during the course of a shared life remains a fundamental basis for understanding the status of family wealth (Abas et al., 2023). Thus, the practice of managing marital property within Sundanese society demonstrates a process of social adaptation that bridges the continuity of tradition, religious values, and the dynamics of economic life.

1.8 Javanese: Gono-Gini (Joint Marital Property) and the Centrality of the Nuclear Household

In Javanese society, the term gono-gini (or gana-gini) is widely recognized as referring to assets acquired during the course of a marriage; it has since become part of the common legal terminology in Indonesia. Within the Javanese customary legal tradition, a distinction is made between harta gawan—assets brought by each party into the marriage—and property accumulated through economic activities during the couple's life together. The bilateral kinship system prevalent in Javanese society, combined with an emphasis on the nuclear family, reinforces the understanding that assets acquired during a marriage are the product of the family's collective effort and cooperation. Should a dispute arise regarding the status or division of such property, family deliberation remains a significant mechanism for resolution, rooted in local social and cultural values (Ismuha, 1978). However, for Muslim couples, dispute resolution can also be pursued through the Religious Court—a formal institution with the authority to handle cases involving joint marital property, in accordance with applicable legal provisions.

A study on Javanese customary law, published in 2026, indicates that the understanding of marital property (harta gono-gini) remains closely linked to the social values that evolve within the community. The principle of harmony serves as a key consideration in governing ownership and resolving disputes over assets acquired during a marriage. Furthermore, the contribution of each spouse toward building the household influences how the status and division of such property are assessed. This contribution is not limited to financial earnings; it may also encompass domestic labor, childcare, and support for the family's economic activities. When disputes arise, a contextual approach to resolution is necessary, ensuring that any decision reached takes into account the origins of the assets, the roles played by each spouse, and the prevailing social norms (Nawawi, 2018). Thus, the construct of gono-gini (joint marital property) within the Javanese tradition is not merely a matter of formal ownership; it also reflects the interplay between cultural values, domestic fairness, and the need to maintain social equilibrium in the event of a dispute. This finding is significant as it demonstrates that the formal codification of joint marital property does not entirely displace traditional perspectives. While state law provides general legal categories, customary norms continue to shape how individuals perceive what constitutes joint property and how conflicts over such assets should be resolved (Safe'i, 2026).

1.9 Malay: Treasure Sequestering as an Institutionalized Custom

In Malay society, particularly in Malaysia, the term harta sepencarian (jointly acquired marital property) refers to wealth accumulated during the course of a marriage through the contributions of both husband and wife. Contemporary research views this concept as a synthesis of Malay customary traditions (adat) and the Islamic family law system. Over time, harta sepencarian has evolved beyond a mere social practice; it has gained formal recognition within the legal framework, addressed through the jurisdiction of the Sharia Courts and the Islamic family law regulations in force across various Malaysian states. From an anthropological perspective, the existence of Adat Perpatih and Adat Temenggung reveals a diversity of social structures and inheritance patterns that shape how society perceives the ownership of wealth. Despite their distinct characteristics, both traditions provide a context for understanding the recognition of property acquired during the course of a marriage (Hussin et al., 2024). Thus, shared assets reflect the dynamic interaction between customs, religious norms, and legal institutions in regulating the economic rights of couples.

Research published between 2024 and 2025 indicates that claims for harta sepencarian (matrimonial property) in Malaysia can be pursued under various circumstances, including divorce, polygamy, or the death of a spouse. In resolving such claims, consideration is given to the nature of each party's contribution toward the accumulation of wealth during the marriage. A comparison between Indonesia and Malaysia reveals a conceptual similarity in the recognition of assets acquired during the marriage as wealth in which both spouses hold an interest. However, the two countries differ in institutional aspects—specifically regarding evidentiary procedures, legal considerations, and the mechanisms for the division of property. In the context of this research, the legal traditions of the Malay community in Malaysia serve as a relevant point of comparison, as they demonstrate a close interplay between local custom (adat) and the Islamic legal system. This experience illustrates that societal customs can gain formal recognition through Sharia judicial institutions without losing the underlying cultural character from which they originate (Mahat & Abdul Manap, 2025). Thus, treasure seeking becomes an example of the interaction between tradition, religious law, and state regulations.

1.10 Formalization of Marital Property under State Law

The analysis indicates that the regulation of marital property in Indonesia has evolved from social norms prevalent within society into formal legal provisions recognized by the state. Article 35 of Law Number 1 of 1974 concerning Marriage stipulates that, in principle, assets acquired during a marriage fall into the category of marital property. Meanwhile, Article 36 governs the authority of both husband and wife to undertake legal actions regarding either marital property or assets that remain their respective personal property. These regulations are further clarified in the Compilation of Islamic Law—specifically Articles 85–97—which provide a more detailed framework concerning the status, management, and division of marital property for Muslim couples. These provisions also affirm that the existence of marital property does not negate the individual ownership rights of either the husband or the wife over specific assets. Thus, Indonesian positive law accommodates two forms of ownership: joint assets acquired during the marriage and personal assets that remain under the control of each individual party (Indonesia, 2019).

The establishment of formal rules regarding marital property does not necessarily imply that the state created such an institution from scratch, devoid of any prior social foundation. On the contrary, the diversity of terms and ownership practices found across various customary traditions suggests that the state sought to consolidate, standardize, and codify legal norms governing what was, in reality, a pluralistic social landscape. This process facilitated the creation of a more systematic legal framework for determining the status, management, and division of assets during a marriage. From a legal perspective, standardization offers the benefits of regulatory certainty and greater ease in resolving disputes. However, the application of uniform provisions can also be limiting if it fails to account for the diverse social and cultural characteristics of a society. Variations in kinship systems, the origins of wealth, and patterns of asset control within different communities may not be adequately accommodated when all such practices are subsumed under a single legal category (Fanani & Hidayati, 2022). Therefore, the formalization of joint marital property should be understood as a process of negotiation between the need for legal certainty and respect for the anthropological diversity of Indonesian society. This is why sociological and anthropological approaches remain essential when national norms are applied.

Marital Property (Gono-Gini) as Living Law

These findings underscore the relevance of the "living law" concept in understanding the evolution of norms regarding the ownership of joint property. From the perspectives of legal sociology and anthropology, the validity of a norm is not determined solely by state sanction, but also by social acceptance and its application within daily social interactions. Through the concept of a "semi-autonomous social field," Sally Falk Moore explains that social groups possess the capacity to formulate, maintain, and enforce internal rules—even as these rules continue to interact with external legal influences. This perspective provides an analytical framework for viewing families and indigenous communities as social environments that generate their own provisions concerning the ownership, management, and distribution of assets. Before gaining formal recognition through legislation, such norms can evolve through customs, agreements, and recurring practices (Moore, 1978). Thus, the establishment of formal law regarding marital property can be understood as part of an interactive process between the norms that exist within society and the state's legal system.

Concepts such as gono-gini, guna kaya, harta suarang, and harta sepencarian (all referring to marital property) illustrate the formation of ownership norms rooted in social life. These practices evolved from the need to distinguish between personal assets and property acquired during a marriage. When a custom is practiced repeatedly and gains collective acceptance, it gradually establishes normative expectations regarding the rights and obligations of spouses in managing their wealth. Subsequently, the state may formalize these practices by incorporating them into legal categories and provisions. This process demonstrates that the creation of law does not always occur unilaterally through legislation; rather, it is also shaped by the dynamics of norms that exist within society. A 2026 study on harta perpantangan (marital property) among the Banjar people illustrates this mechanism through the perspective of "living law." (Kasumawati & Manfaluti, 2026). Meanwhile, research on marital property in 2024 asserts that its existence as a social reality is closely linked to its legal recognition. Consequently, local practices play a significant role in the development of marital property law in Indonesia.

The Anthropology of Ownership: Why Are There Four Different Systems?

A comparative analysis reveals that the regulation of marital property is closely linked to the kinship systems that have evolved within each society. In the Minangkabau tradition, the existence of ancestral property

(harta pusaka tinggi)—inherited along matrilineal lines—necessitates a distinction between wealth acquired through the joint efforts of a married couple and communal assets belonging to the kin group (kaum). Conversely, the bilateral kinship system—commonly found among the Sundanese and Javanese—places the nuclear family at the center of the creation and management of household wealth. Meanwhile, Malay society exhibits a variety of kinship patterns, as Adat Perpatih possesses matrilineal characteristics, whereas Adat Temenggung tends to follow bilateral principles. This diversity influences how these societies determine the status, control, and distribution of wealth acquired during a marriage (Benda-Beckmann, 1979). Thus, the category of marital property relates not only to rules of economic ownership but also represents a social construct concerning the boundaries of the family, kinship relations, and the basis for the legitimacy of ownership within a community.

These findings challenge the prevailing understanding that views marital property solely as a product of national legal norms. If the analysis relies exclusively on Article 35 of the Marriage Law, wealth acquired during a marriage might be perceived as a monolithic category, failing to account for the diversity of social contexts. In contrast, a legal anthropological perspective reveals that determining the status of an asset involves various interconnected dimensions. The origin of the wealth, the authority of extended family members, inheritance traditions, residence patterns, and the dynamics between husband and wife all shape how a society perceives and regulates ownership. Consequently, these factors can lead to different classifications—determining whether a particular asset is viewed as private property, communal property, or the result of household enterprise (Hadikusuma, 2003). Therefore, the use of a single national legal term does not always reflect a uniform conception at the local level. The term "joint property" (*harta bersama*) can encompass a variety of understandings shaped by the history, culture, and kinship systems of a given society.

'Urf as a Translation Mechanism between Custom and Islamic Law

Within the methodological framework of Islamic law, the concept of ‘urf (custom) serves as a bridge between the social realities that evolve within a society and the normative provisions of Sharia. The legal maxim *al-‘adah muhakkamah* ("custom is [a basis for] judgment") allows for customs to be considered in the determination of law; however, it does not imply that all societal practices automatically possess Sharia legitimacy. The acceptance of a custom requires an evaluative process that considers the actual existence of the practice, its persistence within social life, and its alignment with the principles of Islamic law. Furthermore, a custom must not contradict explicit Sharia texts, nor may it contain elements that are legally prohibited. Within this framework, the recognition of gono-gini (marital property/jointly acquired assets) should be understood as a normative evaluation of societal practices regarding the formation and division of marital wealth. This process does not merely assign religious terminology to a local tradition; rather, it assesses the tradition's relevance and appropriateness based on Sharia principles (Suyuti, 1990). Thus, ‘urf facilitates a critical dialogue between social traditions and the norms of Islamic law.

The functional distinction between the concepts of syirkah (partnership) and ‘urf (customary practice) serves as a crucial element in explaining the legitimacy of marital property under Islamic law. While the concept of syirkah provides a framework for understanding forms of partnership and economic cooperation between parties, it does not fully account for the basis upon which a distinct category of marital property emerges within a society. Conversely, ‘urf can explain how collective customs shape the understanding of the status of assets acquired during a marriage. Integrating these two concepts yields a more comprehensive analytical approach. On one hand, fiqh (Islamic jurisprudence) upholds the independent ownership rights of both husband and wife, meaning that marriage does not automatically merge all personal assets. On the other hand, joint economic activities can be analyzed through the principles of partnership as discussed under syirkah. Meanwhile, the social acceptance of assets acquired during marriage as a distinct category can be explained through the lens of ‘urf (Efrinaldi et al., 2022). Thus, the two concepts complement each other in connecting the principles of individual ownership, economic cooperation, and the social reality of the community.

Legal Pluralism and Interlegality

The phenomenon of joint marital property (harta bersama) demonstrates that Islamic family law in Indonesia evolves within a framework of legal pluralism, where diverse normative systems converge. Social life is not governed entirely by a single legal regime; rather, it is shaped by the interplay between customary law (hukum adat), Islamic law, and state regulations. These three systems can coexist, collectively shaping marital relations, property ownership, and the resolution of family matters. In practice, the presence of multiple legal systems does not necessarily lead to the isolated application of rules or the mutual exclusion of one by another.

Instead, individuals and social groups may select, adapt, and interpret provisions from different legal regimes based on the specific social context they encounter. This process reveals that law functions not merely as a set of formal rules, but as a social practice subject to ongoing negotiation. Ulum explains this dynamic through the concept of "interlegality"—specifically within the context of marriage among the Tengger Muslim community—which illustrates the encounter and interaction between various legal orders in everyday life (Ulum, 2023).

The concept of interlegality serves as an essential approach for understanding the dynamics of marital property law across four regions, each characterized by distinct social features and legal traditions. In Minangkabau, the interplay between customary inheritance systems, Islamic legal principles, and state regulations reveals a process of negotiation in determining the status and management of assets. Meanwhile, among the Sundanese and Javanese, local concepts regarding marital property have adapted to and integrated with the national legal system. In Malaysia—specifically within the Malay community—the relationship between custom (adat) and Sharia is manifested through the recognition and regulation of jointly acquired marital property (harta sepencarian) within the Sharia judicial framework. These variations underscore that the relationship between custom and Islamic law cannot be understood solely in terms of conflict; rather, the two can interact, mutually adjust, and give rise to context-specific legal practices (Hutabarat, 2024). Therefore, an analysis of interlegality must take into account history, kinship structures, social customs, and the institutional mechanisms that influence the application of law within family life. What actually occurs is a process of translation, selection, and institutionalization that varies according to historical context.

Comparative Synthesis: Common Patterns and Local Variations

A comparison of these four legal systems reveals three general patterns in the regulation of marital property. First, each society employs a classification that distinguishes between assets acquired prior to marriage—or inherited through one's family line—and assets accumulated during the course of the marriage. However, the specific boundaries of these categories and the terminology used vary according to local customary characteristics. Second, contributions to household life serve as a significant social basis for recognizing an individual's rights to certain assets. Such contributions are not limited to financial earnings but may also encompass domestic labor and family responsibilities. Third, all four systems have been influenced by state law and Islamic norms, which have helped shape changes in the mechanisms for the recognition, management, and resolution of disputes concerning marital property (Qudamah, 1968). However, the introduction of these two legal regimes did not automatically eliminate the classifications of property that had evolved within local traditions. Instead, customary categories persisted through processes of adjustment, negotiation, and integration with more formal legal provisions.

The fundamental differences among these four systems relate primarily to the influence of kinship groups and the degree of legal formalization in the regulation of marital property. In Minangkabau society, a stronger communal dimension is evident through the existence of pusaka kaum (communal ancestral property), which is closely linked to a matrilineal kinship system. Conversely, Javanese and Sundanese societies tend to position the household as the primary unit for the formation and management of marital property, although these practices remain influenced by local custom. Meanwhile, the Malay community in Malaysia exhibits a more distinct institutionalization through Islamic family law provisions and dispute resolution mechanisms within the Sharia courts. This diversity underscores that the term "joint marital property" (harta bersama) cannot be understood as a uniform social category across different societies. Rather, it is more accurately viewed as a cluster of concepts that serve comparable functions in regulating marital property, yet have evolved through distinct kinship structures, local traditions, and unique legal-historical trajectories (Afrijal & Radhityas, 2025).

Theoretical Contributions and State of the Art

The primary contribution of this research lies in the integration of four analytical perspectives to provide a comprehensive understanding of the phenomenon of marital property (harta bersama). First, the perspective of the sociology of law explains how family life, as a social unit, gives rise to the need for recognition of assets accumulated through joint activities. Second, legal anthropology helps elucidate the diverse forms of marital property arrangements, shaped by varying kinship systems, cultures, and societal traditions. Third, the perspectives of fiqh (Islamic jurisprudence) and ushul fiqh (principles of Islamic jurisprudence) provide a normative foundation for examining the legitimacy of such practices through principles of ownership, the concept of syirkah (partnership), and the doctrine of 'urf (customary practice). Fourth, the approach of legal pluralism delineates the interplay between customary norms—which have attained normative legitimacy—statutory laws,

and the mechanisms for dispute resolution within judicial institutions. Integrating these four perspectives allows marital property to be understood not merely as a matter of asset division, but as a legal phenomenon shaped by the interaction between social needs, cultural diversity, religious principles, and the institutionalization of state law (Koentjaraningrat, 2015).

Theoretically, the dynamics behind the formation of marital property law can be explained through a conceptual model comprising six stages: local wisdom, social practice, "living law," normative validation via the concept of ‘urf (customary norms), interlegality, and formalization by the state. This sequence is not intended as an absolute, linear process, but rather as an analytical framework for understanding the reciprocal relationships between society, religion, and the state in the formation of family law. In practice, each element can influence the others and undergo adjustments based on specific historical and institutional contexts. In Minangkabau, for instance, the relationship between adat (customary law) and Islam evolved through a long process of interaction before being incorporated into national law. In Malaysia, the recognition of harta sepencarian (jointly acquired marital property) through the Sharia courts illustrates the role of judicial institutions in strengthening the formalization of law. Meanwhile, among the Javanese and Sundanese, local terms and practices have persisted alongside the categories established by national law (Ulum, 2023).

Through this conceptual model, the present study offers a more comprehensive approach than research that merely compares positive legal provisions or examines the legitimacy of marital property (gono-gini) from the perspective of fiqh (Islamic jurisprudence). The phenomenon of gono-gini is framed as a legal formation process that unfolds through the interplay of social needs, cultural constructs, religious normative evaluations, and state intervention. This process begins when economic necessities within family life acquire specific meanings through the social experiences of the community. These meanings evolve into collective customs, eventually attaining the status of "living law." Subsequently, such practices can be analyzed using Islamic legal methodology to assess their alignment with sharia principles, prior to being accommodated or reformulated within the state’s legal system. This approach is highly relevant to the sociology and anthropology of Islamic family law, as it conceptualizes law not merely as a collection of formal norms, but as a social phenomenon—one characterized by its own origins, mechanisms of legitimation, patterns of social acceptance, and dynamics of institutional change.

CONCLUSION

Gono-gini (marital property) is a family law institution that emerged from the complex interplay between social structures, culture, religion, and the state. Sociologically, this category arises because marriage forms a socio-economic unit that organizes labor, consumption, child-rearing, and the accumulation of assets. Anthropologically, the forms of shared property are not uniform, as they are shaped by the kinship systems and cultural histories of individual societies. A comparison among the Minangkabau, Sundanese, Javanese, and Malay peoples reveals significant variation. The Minangkabau distinguish between suarang (acquired property) and harta pusaka (ancestral property) within a matrilineal structure; the Sundanese recognize guna kaya within a bilateral kinship system; the Javanese have developed gono-gini centered on the nuclear household and the tradition of musyawarah (deliberation); and the Malay people recognize harta sepencarian—a concept that, in the Malaysian context, has become deeply integrated with Islamic family law institutions. These differences demonstrate that the concept of shared marital property serves as a national category encompassing a plurality of "living laws." From the perspective of Islamic law, the absence of the term gono-gini in classical fiqh (Islamic jurisprudence) does not imply a prohibition. Classical fiqh provides principles for individual ownership and the institution of syirkah (partnership), while ushul fiqh (the principles of jurisprudence) offers the concepts of ‘urf (custom) and the legal maxim al-‘adah muhakkamah (custom as a basis for legal judgment) to evaluate local practices. Therefore, the acceptance of shared marital property is best understood as a process of normative validation of social practices that do not conflict with sharia principles, rather than as a direct equation of marriage with a syirkah contract. Thus, gono-gini is a product of "interlegality"—it originates in local practice, acquires social meaning as a "living law," is interpreted through the methodology of Islamic law, and is subsequently formalized by the state. These findings underscore that the study of Islamic family law in Indonesia must maintain a dialogue between texts, fiqh, social structures, kinship, culture, and legal institutions in order to accurately explain the nature of the law as it truly exists within society.

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