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## **Local Wisdom and Gender Equality in Joint Property Division: An Islamic Legal Perspective from Malaysia**

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### **Abstract:**

This study investigates the practice of *harta sepencarian* (joint matrimonial property) within the Malay community in Malaysia, focusing on the interaction between Islamic law, local customs, particularly *Adat Perpatih* and *Adat Temenggung*, and cultural values. Using a normative legal approach supported by content analysis, the research examines whether current legal frameworks and social practices align with the principles of justice, gender equity, and the objectives of Islamic law (*maqāṣid al-shari'ah*), especially the protection of wealth (*hifz al-māl*), well-being (*hifz al-nafs*), and dignity and lineage (*hifz al-īrd wa al-nasab*). The findings reveal that *harta sepencarian* represents a hybrid legal model, integrating statutory Islamic family law with indigenous Malay traditions. The increasing acknowledgement of women's domestic and economic roles significantly influences decisions regarding asset division. While there appears to be a general harmony between religious and customary principles, the study highlights key challenges, such as the lack of legal clarity regarding indirect contributions and inconsistencies in dispute resolution processes. To bridge these gaps, the research advocates for the formalisation of equitable legal standards that incorporate both Islamic jurisprudence and customary wisdom. By doing so, *harta sepencarian* can evolve into a more just

and culturally resonant framework for managing marital property within the Malay Muslim community.

**Keywords:** gender; joint property; local wisdom; *harta sepencarian*.

## Introduction

The practice of dividing *harta sepencarian* has been around for a long time in the Malay community in Malaysia. This practice is also common among the indigenous people of Sabah and Sarawak.<sup>1</sup> Often, discussions related to matrimonial property in Malaysia revolve around customary practices in Malaysian society.<sup>2</sup> Scholars discuss matrimonial property in Malaysia that commonly refers to *Perpatih* and *Temenggung* customs. These two traditional systems form the foundation of local wisdom that continues to influence the division of joint property today. *Perpatih*, a matrilineal system practised in Negeri Sembilan and Melaka, emphasises the collective rights of women in property inheritance, where matrimonial assets are often passed down through the female line. In contrast, *Temenggung*, a patrilineal system dominant in most Malay regions, recognises the husband as the head of the household but also acknowledges the wife's contribution in acquiring joint property. Understanding these customary frameworks is essential in analysing how Islamic law interacts with local traditions to shape an equitable and culturally-rooted system of joint property division.

The recognition and implementation of *harta sepencarian* (joint matrimonial property) as a legal claim in cases of divorce is well-established across several Malay-majority countries in the archipelago,<sup>3</sup> including Malaysia, Indonesia, Singapore and Brunei Darussalam. In Malaysia, Section 58 of the Islamic Family Law (Federal Territories) Act 1984 explicitly allows either spouse to claim a share of jointly acquired assets (*harta sepencarian*) upon divorce, with the Syariah Court empowered to assess each party's contributions – both financial and non-financial.<sup>4</sup> Similar legal recognition exists in Indonesia under Article 97 of the Compilation of Islamic Law, where assets acquired during marriage are considered joint property and must be divided equally, unless otherwise agreed. In Singapore, the Administration of Muslim Law Act (AMLA) grants the Syariah Court jurisdiction to apportion matrimonial property upon divorce, while in Brunei, the Islamic Family Law of 1999 provides a similar framework for the fair division of assets.<sup>5</sup>

These Provisions reflect a shared commitment to *maqashid sharia*, especially *hifz al mal* (protection of wealth), by ensuring that both men and women maintain their economic rights and financial security during and after marriage.<sup>6</sup> The integration of

<sup>1</sup> Suwaid Tapah, "Konsep dan Amalan Harta Sepencarian Orang-Orang Islam Di Malaysia" (Malaysia, University Malaya, 1996).

<sup>2</sup> Saad Gomaa Gomaa Zaghloul et al., "Matrimonial Property Between Jurisprudence and Reality," *Linguistics and Culture Review* 5, no. S4 (2021), <https://doi.org/10.21744/lingcure.v5ns4.1919>.

<sup>3</sup> Soekanto, *Meninjau Hukum Adat Indonesia* (CV. Rajawali, 1981).

<sup>4</sup> Theresa Nutz et al., "Who Opted Out? The Customisation of Marriage in the German Matrimonial Property Regime," *European Journal of Population* 38, no. 3 (2022), <https://doi.org/10.1007/s10680-022-09613-8>.

<sup>5</sup> Nutz et al., "Who Opted Out?"

<sup>6</sup> Noraini M. Noor and Chan-Hoong Leong, "Multiculturalism in Malaysia and Singapore: Contesting Models," *International Journal of Intercultural Relations*, Multiculturalism, beyond ethnocultural diversity and contestations, vol. 37, no. 6 (2013): 714–26, <https://doi.org/10.1016/j.ijintrel.2013.09.009>.



indirect contributions, such as caregiving and domestic work, into judicial considerations upholds *hifz al nafs* (protection of well-being) and *hifz al 'ird wa al-nasab* (protection of dignity post-divorce).<sup>7</sup> This legal approach sharply contrasts with early English common law, which automatically vested a wife's property in her husband, leaving her with no legal standing over marital assets.<sup>8</sup> Similarly, certain Arab customary practices historically emphasised male ownership, often excluding women's domestic contributions from property claims. In contrast, the legal system applied in Malaysia demonstrates a hybrid model that harmonises Islamic jurisprudence with cultural norms and contemporary gender sensibilities.<sup>9</sup> This alignment with *maqashid shariah* not only protects property rights but also promotes justice, equity, and human dignity in the institution of marriage and its dissolution.

Several previous studies have explored the division of joint property from various angles, including Islamic and positive legal perspectives in Malaysia.<sup>10</sup> Comparative research between Indonesia and Malaysia reveals that Malaysia applies a more structured system that combines Sharia and common law, while Indonesia's approach is more flexible but lacks consistency. Other studies focus on specific themes, including the economic contributions of wage-earning wives in Indonesia using jurimetrics models, the classification of intellectual property as matrimonial assets in Islamic law, and the role of *fatwa* and *ijtihad* in recognising indirect contributions, such as domestic work.<sup>11</sup> Additionally, discussions on Muslim women's rights to joint property post-divorce have tended to overlook the influence of Malay customary norms in shaping Malaysia's legal system.<sup>12</sup> These gaps highlight a lack of attention to the integration of local wisdom and cultural practices with Islamic legal principles. In contrast, this research presents a novel perspective by examining how Malay cultural traditions, such as *Adat Perpatih* and *Adat Temenggung*, interact with Islamic law in the context of *harta sepencarian* practice. It further evaluates this integration through the lens of *maqashid sharia*, particularly focusing on

<sup>7</sup> Iffaty Nasyiah and Risma Nur Arifah, "Typology of Psychological Violence in Maqashid Sharia Perspective," *AT-TURAS: Jurnal Studi Keislaman* 11, no. 2 (2024): 2, <https://doi.org/10.33650/atturas.v11i2.8718>.

<sup>8</sup> Hadenan Towpek et al., "Amalan Pengurusan Suhu Di Jabatan Kehakiman Syariah," *Journal of Shariah Law Research* 8, no. 1 (2023), <https://ejournal1.um.edu.my/index.php/JSLR/article/view/44944>.

<sup>9</sup> Mualimin Mochammad Sahid et al., "Konsep Uruf Dan Maslahah Sebagai Sumber Rujukan: Status Wanita Terhadap Harta Sepencarian Dalam Perundangan Islam Di Malaysia," *Abqari Journal* 23, no. 2 (2020), <https://doi.org/10.33102/abqari.vol23no2.357>; Hari Triasmono and Ahmad Sholikhin Ruslie, "Comparison between Customary Legal Systems and Modern Legal Systems in the Context of Globalization," *International Journal of Law and Society (IJLS)* 3, no. 1 (2024): 24–33, <https://doi.org/10.59683/ijls.v3i1.76>.

<sup>10</sup> Afrijal Afrijal and Nuryasinta Kharisma Radhityas, "Comparison of Division of Joint Property after Divorce in Indonesia and Malaysia," *Estudiante Law Journal* 7, no. 1 (2025): 1, <https://doi.org/10.33756/eslaj.v7i1.29305>.

<sup>11</sup> Abd Rouf, "Jurimetrics in the Reconstruction of the Joint Property Division Model for Wage-Earner Wives in Indonesia," *Al-Ahkam* 34, no. 1 (2024): 1, <https://doi.org/10.21580/ahkam.2024.34.1.17937>; Khairina Khairina et al., "Reforming the Rules on the Division of Joint Property: A Progressive Legal Approach," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 1 (2024): 193–204, <https://doi.org/10.31958/juris.v23i1.11565>.

<sup>12</sup> Risma Nur Arifah, Syabbul Bachri, and Iffaty Nasyiah, "Rasio Decidendi Hakim Terkait Pembagian Aset Kekayaan Intelektual Sebagai Harta Bersama Pasca Perceraian," 2024, <http://repository.uin-malang.ac.id/21271/>.



the protection of wealth (*hifz a mal*), social well-being (*hifz al nafs*), and the safeguarding of dignity and lineage (*hifz al-ird wa al nasab*).<sup>13</sup> By doing so, the study aims to provide a more holistic understanding of how Islamic justice principles are applied not only through formal legal mechanisms but also through deeply rooted cultural norms in Malay society.<sup>14</sup>

## Methods

This study employs a normative legal approach by integrating Islamic law and the *Maqashid Sharia* framework to examine the alignment of *harta sepencarian* (joint matrimonial property) norms with core Islamic legal objectives.<sup>15</sup> The analysis was conducted with two primary methods: the statutory approach and the conceptual approach. The statutory approach entails a comprehensive review of formal legal instruments, including the Islamic Family Law Act 1984, fatwas issued by Malaysian Islamic authorities, and Syariah Court decisions regarding joint property division. The conceptual approach examines foundational Islamic legal principles and Malay customary doctrines (*Adat Perpatih* and *Adat Temenggung*) related to marital property rights. Primary legal resources include authoritative legal text and judicial rulings, while secondary legal resources are drawn from scholarly literature on Islamic texts, followed by a *maqashid sharia* evaluation to determine the extent to which existing legal norms uphold the protection of wealth (*hifz al mal*), personal welfare post-divorce (*hifz al nafs*), and the safeguarding of dignity and lineage (*hifz al 'ird wa al nasab*).<sup>16</sup> By isolating doctrinal elements from their social applications, this study aims to assess the intrinsic compatibility of Sharia law with joint property division laws within the Malaysian context.

<sup>13</sup> Mus'ab Yusoff et al., "Sustainability of Ijtihad and Fatwa to Respond the Issue of Indirect Contributions in Matrimonial Property Claim: A Critical Assessment Fiqh of Property," *Linguistics and Culture Review*, December 3, 2021, 2232–50, <https://doi.org/10.21744/lingcure.v5nS4.1934>.

<sup>14</sup> Wan Nur Intan Hidayu Wan Ali and Rodziana Mohamed Razali, "The Right of Muslim Women to Jointly Acquired Property After Divorce: Arising Issues from the Sharia Perspective," *SALAM Digest: Syariah and Law Undergraduate Symposium* 1, no. 1 (2023): 1; Kukuh Pramono Budi et al., "Adjudicating Joint Property Dispute in Islamic Jurisprudence: Balancing The Best Interests of The Child With A Focus on Residency," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 245–66, <https://doi.org/10.18592/sjhp.v23i2.12278>.

<sup>15</sup> Mufrod Teguh Mulyo et al., "From Margin to Authority: Islamic Legal Discourse on Women's Political Rights in a Global Human Rights Framework," *Al-Manahij: Jurnal Kajian Hukum Islam*, June 30, 2025, 133–48, <https://doi.org/10.24090/mnh.v19i1.13247>.

<sup>16</sup> Mellya Embun Baining et al., "Finding The Maqashid Al-Syariah Performance Model on Syariah Management Accounting Information System Values," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 2 (2024): 2, <https://doi.org/10.30631/alrisalah.v24i2.1642>; Doni Azhari et al., "Reassessing Tajdid An-Nikah: Maqashid Sharia and Legal Status of Illegitimate Children in Central Lombok," *Justicia Islamica* 22, no. 1 (2025): 1; Siti Aminah Chaniago Siti Aminah Chaniago et al., "Implementation of Halal Supply Chain in the Cooperative of Islamic Boarding School: Maqashid Syariah Perspective," *Jurnal Hukum Islam* 22, no. 1 (2024): 1, [https://doi.org/10.28918/jhi\\_v22i1\\_3](https://doi.org/10.28918/jhi_v22i1_3); Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (2025): 1, <https://doi.org/10.19109/nurani.v25i1.27133>.



## Result and Discussion

### Socio-Culture and Position of Women in Malay Society

Malay society follows the principle of cultural relativism, fostering a gender-inclusive environment where discriminatory customs are largely absent.<sup>17</sup> Unlike in some Islamic regions, Malay families do not exhibit a preference for male children; both boys and girls are valued equally as gifts from God. Socialisation processes prepare them for different roles; men are traditionally seen as providers and women as caretakers of the household.<sup>18</sup> However, Malay women have historically contributed beyond domestic responsibilities, actively participating in social and economic activities, often to support their husbands.<sup>19</sup> Historically, women's roles were influenced by heredity and social class. Noblewomen primarily engaged in domestic duties, such as raising and educating children, while their husbands held governance roles.<sup>20</sup> However, some noblewomen participated in economic activities such as managing land, running businesses, and even engaging in debt-related investments. In contrast, peasant women played a more direct role in agriculture, working alongside their husbands to sustain family livelihoods. Despite their societal status, women in both classes had economic contributions, even if their primary responsibility remained within the household.<sup>21</sup>

In traditional Malay society, it was common, rather than exceptional, for men to be viewed as primary breadwinners while women were expected to become homemakers.<sup>22</sup> Women were trained from an early age in domestic responsibilities such as cooking, cleaning and childcare to prepare for marriage.<sup>23</sup> While the prevailing norm did not emphasise women's participation in the formal workforce, economic realities frequently required them to contribute through informal means. In many communities, especially in Kelantan and Terengganu, women played a significant and visible role in agricultural production and market trade.<sup>24</sup> The absence of religious or cultural production and women's economic activity enables them to

<sup>17</sup> Isnaini Ruhul Ummiroh et al., "Women Social Entrepreneurs in a Muslim Society: How to Manage Patriarchy and Spouses," *Social Enterprise Journal* 18, no. 4 (2022): 660–90, <https://doi.org/10.1108/SEJ-11-2021-0092>.

<sup>18</sup> Asrizal Saiin et al., "Walking Together: Dynamics of Muslim Wives Dual Role in Rural Areas Pursuing Career and Household Responsibilities," *El-Mashlahah* 14, no. 1 (2024): 127–48, <https://doi.org/10.23971/el-mashlahah.v14i1.7827>.

<sup>19</sup> Tira Nur Fitria, "A Working Wife: An Islamic Economic Perspective on Women's Economic Participation in Household and Workforce," *Jurnal Ilmiah Ekonomi Islam* 11, no. 03 (2025): 03, <https://doi.org/10.29040/jiei.v11i03.17112>.

<sup>20</sup> Mohamed Nazreen Shahul Hamid et al., "Malay Women's Challenges in Balancing Careers and Households: A Textual Analysis Study of Selected Short Stories by Zurinah Hassan," *Cogent Arts & Humanities* 10, no. 1 (2023): 2259663, <https://doi.org/10.1080/23311983.2023.2259663>.

<sup>21</sup> Bisrat Teklesilassie Yazew, "Women's Contributions versus Men's Patriarchal Status among Afar Pastoralists in the Lower Awash Valley," *Helijon* 10, no. 14 (2024): e34469, <https://doi.org/10.1016/j.helijon.2024.e34469>.

<sup>22</sup> Peter J. Wilson, *Malay Village and Malaysia: Social Values and Rural Development* (Human Relations Area Files, 1968).

<sup>23</sup> Wilson, *Malay Village and Malaysia*.

<sup>24</sup> Tasnim Khan and Rana Ejaz Ali Khan, "Urban Informal Sector: How Much Women Are Struggling for Family Survival," *The Pakistan Development Review*, ahead of print, 2022, <https://doi.org/10.30541/v48i1pp.67-95>.



contribute meaningfully to household and community stability, illustrating that their participation was both necessary and socially accepted across generations.<sup>25</sup>

Over time, the status of women evolved due to factors such as improved access to education, economic changes, and shifting societal expectations.<sup>26</sup> While many women initially worked in subsistence agriculture, the post-independence period saw greater opportunities in the workforce, enabling them to take on professional roles beyond domestic responsibilities.<sup>27</sup> This shift also brought legal recognition of women's economic contributions, particularly in terms of property rights.<sup>28</sup> In traditional Malay society, gender roles were delineated, with men regarded as the primary breadwinners and women expected to manage the household, trained in domestic tasks such as cooking, cleaning and childcare.<sup>29</sup> This arrangement was not unique to a few households but reflected a widespread cultural norm across the Malay community.<sup>30</sup>

However, economic necessity often pushed women into productive roles beyond the household, especially in regions like Kelantan and Trengganu,<sup>31</sup> where women actively engaged in agriculture and dominated the market economy. The absence of religious or cultural prohibitions against women working enables them to participate openly in economic life.<sup>32</sup> Their dual roles, managing the household and contributing economically, were crucial to family welfare, demonstrating that women's contributions extended beyond the private sphere and were essential to social and financial stability. According to the principle of cultural relativism, gender relations in the Malay community reflect a distinctive pattern compared to other Islamic societies.<sup>33</sup> Traditionally, Malay society is characterised by relatively egalitarian gender norms, with minimal discriminatory customs in everyday life. The

<sup>25</sup> Thomas S. Weisner, "Human Development, Child Well-Being, and the Cultural Project of Development," *New Directions for Child and Adolescent Development* 1998, no. 80 (1998): 69–85, <https://doi.org/10.1002/cd.23219988006>.

<sup>26</sup> Raihan Chaerani Putri Budiman et al., "Gender-Based Development Discourse and Its Impact on Women Informal Workers in Yogyakarta," *Populasi* 31, no. 2 (2023), <https://jurnal.ugm.ac.id/populasi/article/download/92550/38238>.

<sup>27</sup> Taleb S. T. Taleb et al., "Mediating Effect of Innovation Capability Between Entrepreneurial Resources and Micro Business Performance," *The Bottom Line* 36, no. 1 (2023), <https://doi.org/10.1108/bl-07-2022-0112>.

<sup>28</sup> Mohammad Enamul Hoque and Mohd Azlan Shah Zaidi, "The Impacts of Global Economic Policy Uncertainty on Stock Market Returns in Regime Switching Environment: Evidence from Sectoral Perspectives," *International Journal of Finance & Economics* 24, no. 2 (2018), <https://doi.org/10.1002/ijfe.1702>; Rafea Khatun and Shakil Ahmed, "Hindu Women's Right to Property in Bangladesh: A Grave Denial of Gender Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (2025): 1, <https://doi.org/10.29303/ius.v13i1.1596>.

<sup>29</sup> Kwee Pheng Lim et al., "Women Directors and Performance: Evidence from Malaysia," *Equality, Diversity and Inclusion: An International Journal* 38, no. 8 (2019), <https://doi.org/10.1108/edi-02-2019-0084>.

<sup>30</sup> Harn Shian Boo, "Gender Norms and Gender Inequality in Unpaid Domestic Work among Malay Couples in Malaysia," *Pertanika Journal of Social Sciences and Humanities* 29, no. 4 (2021): 2353–69, <https://doi.org/10.47836/pjssh.29.4.14>; Napsiah Napsiah et al., "Inequality as a Construct of Customary Law: Access to Home Ownership Rights of Women in Lampung," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (2024): 1, <https://doi.org/10.22373/ujhk.v7i1.22456>.

<sup>31</sup> Sonia Akter et al., "Women's Empowerment and Gender Equity in Agriculture: A Different Perspective from Southeast Asia," *Food Policy* 69 (May 2017): 270–79, <https://doi.org/10.1016/j.foodpol.2017.05.003>.

<sup>32</sup> Akter et al., "Women's Empowerment and Gender Equity in Agriculture."

<sup>33</sup> Akter et al., "Women's Empowerment and Gender Equity in Agriculture."



birth of a child, regardless of gender, is celebrated as a divine blessing, with no preferential treatment given to boys over girls.<sup>34</sup> Children are raised with equal affection, although they undergo gender-specific socialisation in preparation for their expected roles.<sup>35</sup> Traditional norms have trained women to contribute significantly to the economic sphere, especially in regions like Kelantan and Trengganu. Historically, women have engaged in trading and market-related activities, often alongside or independently of their husbands.<sup>36</sup> This indicates that Malay Muslim women, though shaped by traditional expectations, have not been excluded from public or economic participation, showing a pragmatic approach to gender roles within the community.<sup>37</sup>

### The Transformation of Women's Economic Roles in Modern Malay Society

While traditional gender roles shaped early socialisation, preparing boys for leadership and girls for domestic responsibilities, the reality of women's contributions in Malay society has always been more dynamic and adaptive<sup>38</sup>. Beyond fulfilling household duties, women across all social strata engaged in activities essential to family and community survival.<sup>39</sup> Noblewomen, for instance, were not confined solely to the private sphere; some managed estates, conducted trade, and held financial assets, reflecting their influential position.<sup>40</sup> Meanwhile, peasant women took on physically demanding roles in agriculture and small-scale commerce, working alongside men to ensure the family's sustenance. These patterns reveal that Malay women's involvement in economic life was not an exceptional condition but rather a response to both necessity and opportunity.<sup>41</sup> The flexibility afforded by Malay customs, unconstrained by rigid religious or cultural prohibitions, enabled

<sup>34</sup> Mohd Hafiz Jamaludin et al., "The Application of the Instrument of Al-Istihsan Bi Al-'Urf in Harta Sepencarian Practice in Malaysia," *'Ulūm Islāmiyyah Journal* 14 (December 2014): 69–88, <https://doi.org/10.12816/0012615>.

<sup>35</sup> Raja Rohana Raja Mamat, *Peranan Dan Status Wanita Melayu Di Malaysia: Daripada Perspektif Sosial Dan Undang-Undang* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1991), [https://elib.usm.my/cgi-bin/koha/opac-detail.pl?biblionumber=62850&query\\_desc=kw%2Cwrdl%3A%20raja%20melayu](https://elib.usm.my/cgi-bin/koha/opac-detail.pl?biblionumber=62850&query_desc=kw%2Cwrdl%3A%20raja%20melayu).

<sup>36</sup> Ivan Szadvári et al., "Sex Differences Matter: Males and Females Are Equal but Not the Same," *Physiology & Behavior* 259 (February 2023): 114038, <https://doi.org/10.1016/j.physbeh.2022.114038>.

<sup>37</sup> Siti Zulaikha et al., "Dialectic of Public Sphere vs. Private Sphere in Millennial Families in Lampung Customary Law Community," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 2 (2021): 928, <https://doi.org/10.22373/sjhk.v5i2.9150>; Sulastri Caniago et al., "Gender Integration in Islamic Politics: Fiqh Siyasah on Women's Political Rights since Classical to Contemporary Interpretations," *MILRev: Metro Islamic Law Review* 3, no. 2 (2024): 2, <https://doi.org/10.32332/milrev.v3i2.9962>.

<sup>38</sup> Mohd Amirul Hussain et al., *A Review of the Elements of Nature and the Malay Cultural Landscape through Malay Literature*, 12, no. 6 (2020), <https://doi.org/10.3390/su12062154>.

<sup>39</sup> Zainal Abidin Borhan, *Adat istiadat Melayu Melaka: OPAC USU Library* (Institut Kajian Sejarah dan Patriotisme Malaysia, 1996), <http://sipus.usu.ac.id/opac2.2/buku/34618/Adat-istiadat-Melayu-Melaka.html>.

<sup>40</sup> Fahad Al Aghbari et al., "Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (January 16, 2024): 33–50, <https://doi.org/10.22219/ljih.v32i1.31493>.

<sup>41</sup> ID Supaat et al., "Customary Land and the Claim of Matrimonial Property: Ingenta Connect," *American Scientific Publisher*, ahead of print, May 1, 2017, <https://doi.org/10.1166/asl.2017.8920>.



women to act as active agents within both the domestic and public spheres, reinforcing the community's resilience and gender complementarity.<sup>42</sup>

Over time, the role of Malay women has undergone substantial transformation, shaped by expanded educational opportunities, economic development, and evolving societal expectations. While women traditionally supported family livelihoods through agriculture and trade, the post-independence era marked a turning point, allowing them to enter a broader range of occupations, including civil service, education, healthcare and entrepreneurship. This professional diversification was accompanied by important legal reforms, such as the recognition of women's rights to own and manage property independently, which further empowered them to contribute directly to household wealth and intergenerational asset accumulation.<sup>43 44</sup>

Yet, despite these advancements, structural challenges persist. Unpaid domestic labour, still primarily performed by women, remains economically invisible,<sup>45</sup> even though it plays a critical role in sustaining household well-being by reducing external costs for services such as childcare, eldercare, and household management. Housewives, in particular, often carry heavier daily workloads than their male counterparts, balancing emotional labour and domestic responsibilities without formal compensation.<sup>46</sup> Today, Malay women navigate a dual burden; they preserve traditional familial roles while simultaneously engaging in income-generating activities.<sup>47</sup> Their capacity to adapt to modern demands without eroding their cultural identity illustrates not only their resilience but also their central role in national development. As active participants in both public and private spheres, contemporary Malay women exemplify the evolving nature of gender roles within a society in transition.

### **Property Ownership and Division in *Adat Perpatih* and Malay Customary Practices**

*Adat Perpatih*, a matrilineal system rooted in the Minangkabau culture of *Pagar Ruyung*, Sumatra, and practised in parts of Negeri Sembilan and Melaka, offers a

<sup>42</sup> Nur Hidayah, "Gender, Economy, and the Law: Women Entrepreneurs in Indonesian and Islamic Legal Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 1171, <https://doi.org/10.22373/sjhk.v7i2.17944>.

<sup>43</sup> E. N. Taylor, *Malay Family Law*, vol. 15 (The Malaysian Branch of the Royal Asiatic Society, 1937), <https://www.jstor.org/stable/41559883>.

<sup>44</sup> Anjar Sri Ciptorukmi and Adalia Safira Rahma, "Children's Rights in the Crossfire: Examining Indonesia's Divorce Legal Culture," *LITIGASI* 25, no. 2 (2024): 2, <https://doi.org/10.23969/litigasi.v25i2.18009>; Fauzul Hanif Noor Athief and Resti Hedi Juwanti, "Court Decisions on Post-Divorce Children's Livelihood: Islamic Law Analysis on Their Practices in Indonesia and Malaysia," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 20, no. 2 (2020): 2, <https://doi.org/10.18326/ijtihad.v20i2.151-173>.

<sup>45</sup> Abdul Mutakabbir, Hastuti Hastuti, and Mikdar Rusdi, "The System of Inheritance Distribution in South Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (June 22, 2023): 57–76, <https://doi.org/10.18326/ijtihad.v23i1.57-76>.

<sup>46</sup> Center for General Studies and Co-Curriculum, Universiti Tun Hussein Onn Malaysia, Johor, MALAYSIA et al., "Budaya Masyarakat Bugis dalam Aspek Perkahwinan, Komunikasi dan Makanan Warisan," *Kajian Malaysia* 40, no. 2 (2022): 227–53, <https://doi.org/10.21315/km2022.40.2.10>.

<sup>47</sup> Zaleha Kamaruddin, Zati Ilham Abdul Manaf, and Nadhilah A. Kadir, "The Necessity for the Formulation of an Online Family Dispute Resolution Management Framework in Malaysia," *Journal of Information Systems and Digital Technologies* 2, no. 1 (May 13, 2020): 1–15, <https://doi.org/10.31436/jisdt.v2i1.125>.



unique framework for property ownership and inheritance. This customary law identifies four main categories of property: *harta pusaka* (inherited property), *harta sepencarian* (jointly matrimonial property), *harta bawaan* (property brought into the marriage), and *harta dapatan* (individually acquired property). Inherited property, typically ancestral land, heirlooms, or jewellery, is passed exclusively through the female line, from mother to daughter or among female relatives within the same *suku* (clan). Male heirs, including sons and husbands, are excluded from inheriting such property, preserving matrilineal continuity within the lineage. In contrast, *harta bawaan*, or property brought by a man into the marriage, remains his personal asset and reverts to his clan in the event of divorce or death. *Harta sepencarian*, or property acquired during the marriage through joint effort, is recognised as marital property and subject to equitable division. This principle also exists in *Adat Temenggung*—another form of Malay customary law practised widely across Peninsular Malaysia—which, though patrilineal in structure, allows wives to claim a share of jointly acquired property if they can demonstrate direct or indirect contributions.

Both customary systems emphasise the importance of mutual contributions within marriage while maintaining clear rules of ownership based on lineage and effort. Today, disputes involving these types of property are often resolved through community mediation or traditional councils and are only escalated to the Syariah Court under the state's Islamic Family Law Enactment when necessary. Contemporary judicial approaches increasingly strive to balance individual rights with communal and familial responsibilities, reflecting both the matrilineal values of *Adat Perpatih* and the collective ethos of Malay customary law.<sup>48</sup>

### Recognition of Non-Financial Contributions in Property Division

Under these customary norms, contributions by spouses are not limited to financial input. Instead, domestic labour, emotional support, and child-rearing are also regarded as valid forms of contribution.<sup>49</sup> For example, a housewife who manages household affairs throughout a lengthy marriage is often acknowledged as having contributed significantly to the family's well-being, thereby warranting a proportionate share of the matrimonial assets. Although customs do not always specify exact formulas, quantitative assessments often inform the division. Customary authorities of family elders may consider the duration of the marriage, the nature of the assets, and the behaviour of the parties when deciding on a fair outcome.<sup>50</sup>

**Table 1.** Customary Recognitions of Non-Financial Contributions in Marriage

No	Identity	Description
1	Zainab binti Ahmad v. Ahmad bin Salleh	In this case, the Syariah Court deliberated on a property solely registered under the husband's name, acquired during a 20-year marriage. Although the wife,

<sup>48</sup> Ahmad Musta'id, "The Position of Women in Islamic History," *Journal of Islamic History and Manuscript* 2, no. 1 (2023): 21–34, <https://doi.org/10.24090/jihm.v2i1.6966>.

<sup>49</sup> Che Zarrina Saari and Joni Tamkin Borhan, *Peranan Wanita Dalam Pengukuhan Akidah Umat Islam* | *Jurnal Usuluddin*, 23 (2006): 35–50.

<sup>50</sup> Pamela Herd et al., "Genes, Gender Inequality, and Educational Attainment," *American Sociological Review* 84, no. 6 (2019), <https://doi.org/10.1177/0003122419886550>.



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		Zainab, did not contribute financially to the acquisition of the property, the court recognised her significant indirect contributions through her roles in domestic management and child-rearing. The court awarded her a 40% share of the property. This case illustrates the principle that indirect contributions are valid and weigh heavily in the equitable division of <i>harta sepencarian</i> .
2	Noraini bt Ahmad v. Mohd Yusof bin Harun (2009)	In this case, Noraini claimed a share of various assets acquired during her marriage, including several properties and a family business. She had worked with her husband in the business and was actively involved in managing household finances. The court acknowledged her dual role as a homemaker and business partner and granted her a 50% share in the business and 30% in the properties. This judgment reinforced the Islamic legal maxim that justice must consider all forms of contribution
3	Halimah bt Osman v. Razak bin Idris (2015)	The court dealt with the division of agricultural land acquired during the marriage. Although Halimah was not registered as a co-owner, she had actively assisted in maintaining the land and participated in small-scale farming. The court awarded her a 25% share of the land, emphasising the importance of recognising non-monetary labour and effort

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### Integration of Customary Practices into Malaysia's Islamic Family Law System

The principles of Malay customary law, particularly those concerning matrimonial property, have been progressively incorporated into Malaysia's Islamic legal framework. Section 58 of the Islamic Family Law (Federal Territories) Act 1984 empowers courts to divide matrimonial assets during divorce or upon the death of a spouse, taking into consideration both direct and indirect contributions by either party.<sup>51</sup> This integration is guided by the Islamic legal maxim *al-'adah muhakkamah* (custom is authoritative), which permits customary practices so long as they do not

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<sup>51</sup> Mohd Norhusairi Mat Hussin, *Tuntutan Hak-Hak Suami Pasca Perceraian: Kajian DI Mahkamah Syariah Kota Bharu, Kelantan*, n.d., accessed July 1, 2024, [https://www.academia.edu/51496558/Tuntutan\\_Hak\\_Hak\\_Suami\\_Pasca\\_Perceraian\\_Kajian\\_DI\\_Mahkamah\\_Syariah\\_Kota\\_Bharu\\_Kelantan](https://www.academia.edu/51496558/Tuntutan_Hak_Hak_Suami_Pasca_Perceraian_Kajian_DI_Mahkamah_Syariah_Kota_Bharu_Kelantan).



contradict Shariah principles.<sup>52</sup> As a result, Malaysian Islamic family law reflects a dynamic and hybrid legal culture where traditional wisdom and religious norms converge to ensure fairness and justice in family matters.<sup>53</sup>

In practical application, Malaysian Shariah courts have awarded varying percentages of matrimonial property distribution depending on the circumstances and evidence presented.<sup>54</sup> For example, wives who served as homemakers for decades have received between 20% and 40% of jointly acquired assets, acknowledging the value of their domestic contributions.<sup>55</sup> In cases where the wife was the sole income earner, courts have granted her a larger share<sup>56</sup>, while husbands who contributed financially while their wives stayed at home are similarly recognised for their role.<sup>57</sup> A notable precedent is the case of *Robert v. Ummi Kalthom* (1996), where a civil court affirmed a husband's entitlement to matrimonial property despite the property being registered under his wife's name—highlighting the legal system's preference for substantive contribution over formal ownership, which aligns with Islamic principles of equity and justice.<sup>58</sup>

This evolving recognition of *harta sepencarian* illustrates the Malaysian legal system's commitment to blending cultural and religious pluralism in ways that protect the rights of both spouses. The structured yet adaptable framework for property division not only reduces the likelihood of post-divorce disputes but also affirms the value of non-financial labour, particularly women's contributions within the household economy.<sup>59</sup> This legal accommodation signals broader societal shifts in gender roles while still adhering to Islamic teachings and local traditions. As such, the jurisprudence surrounding matrimonial property serves as a powerful example of how *adat* and Shariah can be harmoniously integrated within a contemporary legal system.<sup>60</sup>

<sup>52</sup> Nurnazli Nurnazli et al., "Productive Dowry and Women's Economic Empowerment and Their Influence on Marital Assets in Bandar Lampung," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (2024): 2, <https://doi.org/10.22373/sjhk.v8i2.19887>.

<sup>53</sup> Noer Yasin et al., "Interlegality of Interfaith Marriages Vis a Vis Supreme Court Circular Letter Number 2 of 2023 on The Rejection of Applications for Registration of Interfaith Marriages in Indonesia," *Jurnal Penelitian Hukum De Jure* 23, no. 4 (2023): 4, <https://doi.org/10.30641/dejure.2023.V23.389-402>; Deni Yusup Permana et al., "Integrating Indigenous Wisdom in Environmental Protection: Exploring Village Authority within the Framework of State Responsibility in Indonesia," *Jambura Law Review* 7, no. 2 (2025): 2, <https://doi.org/10.33756/jlr.v7i2.29582>.

<sup>54</sup> Hussin, *Tuntutan Hak-Hak Suami Pasca Perceraian*.

<sup>55</sup> Aulia Fadhilah Fawwaz, "Analysis of Qaul Qadim Imam Syafi'i in the Social History of Islamic Law," *Jurnal Pendidikan Islam* 1, no. 2 (2023), <https://doi.org/10.47134/pjpi.v1i2.166>.

<sup>56</sup> Fawwaz, "Analysis of Qaul Qadim Imam Syafi'i in the Social History of Islamic Law."

<sup>57</sup> Ahmad Akram Mahmad Robbi and Mek Wok Mahmud, "Maqāṣid Al-‘Adl (Keadilan) Dalam Isu Tuntutan Harta Sepencarian Di Malaysia (The Objective of Fairness (al-‘Adl) in The Matrimonial Property Conflict in Malaysia)," *Journal of Islam in Asia (E-ISSN 2289-8077)* 17, no. 3 (2020): 291–320, <https://doi.org/10.31436/jia.v17i3.986>.

<sup>58</sup> Muhammad Faizul Haque et al., "Women Rights to Inheritance in Muslim Family Law: An Analytical Study," *International Journal of Islamic Business & Management* 4, no. 1 (2020), <https://doi.org/10.46281/ijibm.v4i1.543>.

<sup>59</sup> Amrin Amrin and Amirullah Amirullah, "Contemporary Legal Istimbah: Study on the Theory of Changes in Fatwa According to Yusuf Qardhawi," *Mizan: Journal of Islamic Law* 6, no. 1 (2022): 89, <https://doi.org/10.32507/mizan.v6i1.1244>.

<sup>60</sup> Mohd Norhusairi Mat Hussin and Mohd Hafiz Jamaludin, "Harta Sepencarian vs Harta Perkahwinan Dalam Perundangan Sivil: Satu Sorotan Ringkas," *Al-Basirah Journal* 6, no. 1 (2016): 1.



### **Analysis Based on *Maqasid Sharia* Perspective in *Harta Sepencarian* Division: The Protection of Wealth (*Hifz al-Mal*) in the Equitable Division of *Harta Sepencarian***

One of the core objectives of *maqasid sharia* is the protection of wealth (*hifz al mal*), which ensures that both men and women have rightful ownership and access to financial security. In the context of *harta sepencarian* in Malaysia, the principle of justice in property ownership and contribution is evident. Unlike the English common law tradition, which historically merged a wife's property with her husband's, Islamic law and Malay customary law recognise individual and joint ownership rights. The division of *harta sepencarian* in Malaysia reflects this Islamic justice principle, where property acquired during marriage is distributed based on each spouse's financial and non-financial contributions. This system prevents economic oppression, ensuring that both parties retain their rightful share of the assets, thereby upholding the Islamic legal principle of justice (*al-adl*) in wealth distribution.

Additionally, the division of assets through *harta sepencarian* follows the *maqasid sharia* principle of wealth circulation and sustainability, which discourages monopolisation and unjust economic dominance by one spouse over another. In a case where one spouse contributed non-monetarily, such as through household management and caregiving, the courts recognise these indirect contributions as part of economic participation, thereby granting equitable financial security post-divorce. This approach not only aligns with Islamic legal principles but also serves as a protective mechanism against economic vulnerability, particularly for women.

### **Protection of Life and Well-being (*Hifz al-Nafs*) Through Economic Stability Post-Divorce**

The division of *harta sepencarian* also aligns with the *maqashid* principle of protecting life and well-being (*hifz al-nafs*), ensuring that a divorced spouse, especially the financially dependent party, does not suffer from economic destitution post-divorce. In the Malay customary and Islamic legal system, *harta sepencarian* serves as a mechanism to prevent financial hardship, particularly for women who may have sacrificed career opportunities to support the household. The Islamic Family Law (Federal Territories) Act 1984 (Section 58) states "1) the court shall have power, when permitting the pronouncement of talaq or when making an order divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale; 2) in exercising the power conferred by subsection (1), the court shall have regard to a) the extent of the contributions made by each party in money, property, or labour towards acquiring of the assets; b) any debts owing by either party that were contracted for their joint benefit; c) the needs of the minor children, of the marriage, if any, and, subject to those considerations, the Court shall incline towards equality of division; 3) the court shall have power, when permitting the pronouncement of talaq or when making an order divorce, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale any such assets and the division between the parties of the proceeds of sale". It mandates that the court consider both monetary and non-monetary contributions in property division, reinforcing the Islamic principle of ensuring livelihood security after divorce.



Furthermore, the integration of Majlis Suhl as an alternative dispute resolution mechanism in matrimonial property claims embodies the *maqashid* principles of conflict prevention and social harmony. By encouraging amicable settlements, the Malaysian legal system mitigates the psychological and financial distress associated with prolonged legal disputes, ensuring that both spouses maintain stability after divorce. The division of *harta sepencarian* in Malaysia reflects a holistic application of *maqashid sharia*, particularly in protecting property (*hifz al mal*), dignity (*hifz al 'ird*), and lineage (*hifz al nasab*).<sup>61</sup> Equitable allocation ensures that both spouses, especially women who may have contributed indirectly through unpaid domestic labour, retain financial security post-divorce, thus preventing economic hardship and social marginalisation.<sup>62</sup> Data from the Department of Sharia Judiciary Malaysia (JKSM) indicate that in many court decisions, wives are awarded between 20% and 40% of matrimonial assets based on factors such as childcare, housework, and emotional support.<sup>63</sup>

**Table 2.** Distribution of Matrimonial Property Based on Non-Financial Contributions

No	Identity	Description
1	Tan Lee Mei v. Wong Kim Fatt [2014]	Tan and Wong were in a civil marriage for 15 years. Although Wong solely purchased the shop lot in question, the court found that Tan had made indirect contributions by maintaining the household and supporting their children. Applying Section 76 of the Law Reform (Marriage and Divorce) Act 1976, the High Court awarded her a 30% share in the property. This case demonstrates the civil courts' commitment to equitable distribution based on both financial and non-financial contributions
2	Lim Siew Lian v. Lim Boon Heng [2010] 1 CLJ 521	The petitioner, Lim Siew Lian, claimed a share in several properties registered under her husband's name. The court accepted evidence of her financial and non-financial contributions, including her role in managing the household and childcare. She was awarded 40% of the disputed assets. This case confirms

<sup>61</sup> Ikhwanuddin Harahap et al., "Understanding The Rise of Childfree Marriage: Avoiding Toxic Family, Being Happy and Well Without Children Despite Contradiction With Maqashid al-Sharia," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 1, <https://doi.org/10.29240/jhi.v10i1.9984>.

<sup>62</sup> Dwi Fidhayanti et al., "Restructuring Policy of Shariah Financing Towards UMKM Affected by Covid-19: Maqashid Syariah Perspective;" paper presented at International Conference on Engineering, Technology and Social Science (ICONETOS 2020), Malang, East Java, Indonesia, 2021, <https://doi.org/10.2991/assehr.k.210421.019>; Faisal Faisal et al., "A Review of Maqāshid Sharīa on Handling the COVID-19 Pandemic in Lampung and West Java Province," *Al-'Adalah* 21, no. 1 (2024): 221–44, <https://doi.org/10.24042/adalah.v21i1.21796>.

<sup>63</sup> Endad Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, April 18, 2025, 1–14, <https://doi.org/10.24090/volksgeist.v8i1.12214>.



		that even if property is registered under one spouse's name, the other may be entitled to a share if contributions can be demonstrated.
3	Kumar a/l Maniam v. Letchumy a/p Ramasamy [2007]	In this case, the court dealt with the division of multiple matrimonial assets, including vehicles and savings. The wife was a homemaker with no income, but had consistently supported her husband's career by managing household responsibilities. The court awarded her a 35% share in the matrimonial property, recognising her indirect support as substantial.

This legal recognition of non-monetary contribution helps dismantle the stigma attached to divorced women and affirms their social dignity ('ird). At the same time, this distribution guarantees continued financial stability for children, thereby safeguarding family lineage (*nasab*) through access to housing, education and basic needs. As property is fairly distributed, this also fulfills the aim of *hifz al mal*, ensuring that wealth is not unjustly concentrated or withheld but shared according to justice ('adl) and proportional effort. Therefore, *harta sepencarian* is not merely a cultural or legal tradition but a Sharia-compliant mechanism that balances justice, wisdom, and social harmony in post-marital agreements.

### Harmonising Islamic Law and Customary Norms in *Harta Sepencarian*

The division of *harta sepencarian* in Malaysia exemplifies a dynamic integration of Islamic law, Malay customary traditions, and statutory legal frameworks, aligning closely with the objectives of *maqashid sharia*, particularly justice (*al-adl*) and welfare (*maslahah*).<sup>64</sup> While Islamic jurisprudence sets the doctrinal basis for equitable distribution, customs such as *Adat Perpatih*, which emphasises matrilineal inheritance, and *Adat Temenggung*, which supports bilateral property, remain upheld. This legal pluralism ensures that matrimonial property division remains culturally relevant while upholding Islamic values.<sup>65</sup> The Malaysian legal system allows court to apply *ijtihad* (independent legal reasoning) when assessing cases, considering variables such as the wife's indirect contributions, duration of marriage, and caregiving responsibilities. For instance, the Syariah Court of Appeal in *Norozita bt Saad v Mohd Alias bin Ibrahim* (2019) upheld the wife's entitlement to a significant portion of matrimonial property due to her non-financial but consistent domestic support. Such rulings underscore the commitment to ensuring fairness beyond rigid financial metrics, representing a core aspiration of *maqashid sharia*. Hence, Malaysia's model demonstrates the flexibility and resilience of Islamic law when merged with

<sup>64</sup> Zulfikar Zulfikar, "Habib Ahmed's Maqāṣid Sharī`ah Concept on Cooperative Regulations in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 2 (December 29, 2021): 247–72, <https://doi.org/10.18326/ijtihad.v21i2.247-272>.

<sup>65</sup> Rosdalina Bukido et al., "Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, no. 2 (November 30, 2022): 239–54, <https://doi.org/10.18326/ijtihad.v22i2.239-254>.



local practice, ensuring its relevance in addressing contemporary family dynamics while safeguarding dignity, equity and social harmony. The following is a comparison table about *harta sepencarian* (Mahkamah Syariah) and matrimonial property (civil court):

**Table 3.** Comparative Analysis of *Harta Sepencarian* and Matrimonial Property in the Malaysian Legal Context

Aspect	<i>Harta Sepencarian</i> (Mahkamah Syariah)	Matrimonial Property (Civil Court)
Legal Framework	Based on Islamic law (Syariah Enactments of each state)	Governed by the Law Reform (Marriage and Divorce) Act 1976 (LRA)
Jurisdiction	Syariah Court – applies only to Muslims	Civil Court – applies only to non-Muslims
Marriage Recognition	Must be a valid Muslim marriage under Islamic law	Must be a valid civil marriage under the LRA 1976
Type of Property	Property jointly acquired during the marriage or via joint effort	Property acquired during the marriage (joint or individual)
Basis of Division	Contribution (direct/indirect), welfare of parties, justice	Contribution (direct/indirect), needs of children, fairness
Claim Timing	Usually during divorce, but can also be claimed during marriage	Typically, at divorce proceedings
Evidence of Contribution	Both financial and non-financial contributions considered	Both financial and non-financial contributions considered
Gender Bias	No gender bias, but consideration of traditional gender roles	No gender bias; equality emphasised in assessing contribution
Court Discretion	Broad discretion by the judge based on <i>Syariah</i> principles	Discretion guided by Section 76 of LRA 1976
Children's Welfare	Considered if relevant to the property and spouse's contribution	Considered, especially for custody and maintenance
Recognition of Maintenance	Unpaid <i>nafkah</i> (maintenance) in the division to be considered	Unpaid maintenance or support to be considered
Appeals	Appealed within the <i>Syariah</i> legal hierarchy	Appealed within the Civil Court hierarchy

The division of matrimonial property in Malaysia operates under two distinct legal systems, *Sharia Courts for Muslims* and *Civil Courts* for non-Muslims, each grounded in different legal frameworks. *Harta sepencarian* is governed by state-specific Islamic law, while *matrimonial property* for non-Muslim is regulated under the Law Reform (Marriage and Divorce) Act 1976 (LRA). Despite their legal differences, both systems recognise the importance of valid marriages and the equitable distribution of property acquired during the marriage, considering both direct and indirect



contributions. Claims in both courts are typically made during divorce proceedings, although the *Syariah* system permits claims to be filed even during the marriage. Both systems value financial and non-financial contributions, such as domestic work and caregiving, with the *Syariah* court showing particular sensitivity to traditional gender roles. In terms of judicial discretion, *Syariah* judges have broad interpretative authority based on *maqashid sharia* principles, while civil court judges operate under the statutory guidance of Section 76 of the LRA. Children's welfare and unpaid maintenance are considered in both systems when relevant, and appeals follow separate judicial hierarchies<sup>66</sup>. Overall, while each court reflects its foundational legal and religious principles, both share a commitment to fairness, justice and the protection of family interests in matrimonial property disputes<sup>67</sup>. In light of the comparative analysis above, targeted policy reforms are necessary to reinforce the *maqashid sharia* orientation within the current *harta sepencarian* framework.

Based on the findings of this research, several policy recommendations deserve renewed consideration for inclusion in the discussion section, particularly to strengthen the *maqashid sharia* orientation of the *harta sepencarian* rulings in Malaysia. First, the consistent legal recognition of indirect contributions, such as unpaid domestic labour, caregiving, and emotional support, is crucial. These forms of contribution must be legally recognised as economic value, aligning with *hifz al mal* (protection of wealth) and *hifz al nfs* (protection of the self), thereby ensuring that divorced spouses, especially women, are not left financially vulnerable. Second, the effectiveness of the *Majlis Suh* as a *maqashid*-based dispute resolution tool should be further institutionalised to promote the Islamic principle of *ta'awun* (social cooperation), minimising emotional and financial strain. Third, while legal flexibility is necessary to reflect the unique nature of each marriage, a standardised yet adaptable legal framework is needed. Clear guidelines, especially regarding asset valuation, contribution weighting, and post-divorce child support, can promote *istiqamah* (legal consistency) and *al 'adl* (justice), reducing inconsistencies in judicial decisions. Finally, widespread public education on *harta sepencarian* rights is critical. Many Muslim spouses are unaware of their entitlements under Malaysian law, and this lack of awareness disproportionately affects women post-divorce. Embedding this knowledge in pre-marital counselling and family law education will empower individuals to make informed legal decisions, ultimately supporting the *maqashid sharia* goals of safeguarding wealth, dignity, and familial stability<sup>68</sup>.

## Conclusion

This research contributes significantly to the evolving discourse on Islamic family law by demonstrating how Malaysia's approach to *harta sepencaharaian* represents a successful integration of Islamic legal principles with Malay customary

<sup>66</sup> Mohd Norhusairi Mat Hussin and Muhammad Farid Aizat Fauzi, "Pembayaran Nafkah Anak Melalui Potongan Kumpulan Wang Simpanan Pekerja: Suatu Alternatif," *UUM Journal of Legal Studies* 14, no. 1 (2023): 1, <https://doi.org/10.32890/uumjls2023.14.1.13>.

<sup>67</sup> Al-Ghayathin, Abdulla Hamad OJ, Siti Aisyah Samudin, Mohd Norhusairi Mat Hussin, Mahamatayuding Samah, and Erik Sabti Rahmawati. "Protection Of Witnesses in Criminal Lawsuits an Analytical Study." *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 419-434.

<sup>68</sup> Musaddad, E., Ishom, M., Mat Hussin, M. N., & Jambunanda, A. J. (2025). Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and Malaysia. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 8(1), 1-14. <https://doi.org/10.24090/volksgeist.v8i1.12214>



law within a modern legal framework. Unlike many existing studies that tend to treat fiqh and customary practices separately or in tension, this study highlights their synergistic relationship in prompting the objectives of *maqashid sharia*, particularly *hifdz al mal* (protection of wealth), *hifdz an nafs* (protection of well-being), and *hifdz al 'ird wa al nasab* (protection of dignity and lineage). By foregrounding both direct and indirect spousal contributions, especially those of women in domestic roles, this research adds to the body of scholarship advocating for more inclusive and equitable interpretations of matrimonial property rights in Muslim societies.

The study also positions itself as a response to gaps in existing literature concerning the practical application of *ijtihad* in contemporary legal systems. It demonstrates how Malaysian courts employ contextual reasoning to balance religious norms with realities, making this system a leading example of *sharia-compliant* legal pluralism. Academically, this research recommends that future studies explore comparative implementations in other Muslim-majority contexts to assess the transferability of Malaysia's hybrid model. It also encourages interdisciplinary engagement between Islamic legal theory, sociology and gender studies to further refine legal interpretations and promote just outcomes in family law. Thus, this work not only supports legal reform but also provides a foundation for academic inquiry into the adaptability of Islamic law in diverse social and legal environments.

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