

Wives with The Double Burden: Measuring Gender Justice in the Division of Joint Property of Suku Anak Dalam (SAD) Batin Sembilan Viewed from The Principle of al-Musāwah

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DOI: 10.29240/jhi.v10i1.11023

Received: 31-07-2024

Revised: 17-12-2024

Accepted: 19-12-2024

Cite this article:

Dian Mustika, Yaswirman, Kurnia Warman, Yasniwati (2025). Wives with the Double Burden: Measuring Gender Justice in the Division of Joint Property of Suku Anak Dalam (SAD) Batin Sembilan Viewed from the Principle of al-Musāwah Approach Al-Istinbath : Jurnal Hukum Islam, 10 (1), 407-428. Doi : 10.29240/jhi.v10i1.11023

Abstract

This research aims to analyze gender justice in the customary provisions of the division of joint property towards wives carrying the double burden in the Muslim community of *Suku Anak Dalam (SAD) Batin Sembilan*, Jambi, based on the principle of *al-musāwah*. The customary provisions of this community regulate the division formulation of joint property. Both husband and wife get half a share in the event of divorce or death of one of the parties. However, in reality, wives face the double burden today. In addition to being responsible for household affairs, wives are forced to work to earn a living due to their husbands neglecting their obligations. This research uses an empirical juridical approach. Data were collected through in-depth interviews and documentation. The informants in this research were the customary elders and some residents of *SAD Batin Sembilan*, while additional information was obtained from the Village Head. The data obtained were analyzed from the gender justice perspective using the principle of *al-musāwah*. The results showed that based on the principle of *al-musāwah* emphasizing equality and proportionality (*tawāzun*), the customary provisions on the joint property division for wives carrying the double burden have not fully promoted the values of gender equality and justice in Islam. On that basis, the joint property division should be added to the contribution/role of the husband and wife in producing marital

assets. Thus, based on gender justice considerations, wives carrying the double burden are entitled to a more significant share of the joint property than husbands.

Keywords: Division Of Joint Property; Gender Justice; *Suku Anak Dalam (SAD) Batin Sembilan*.

Introduction

The division of joint property is closely related to the partnership between husband and wife and justice in social roles. It is reflected in the rights and obligations of each husband and wife as regulated in Islamic law, including legislation and the Compilation of Islamic Law. However, social and economic dynamics significantly influence changes in the pattern of husband-wife relations. In reality, it is not uncommon to find husbands who neglect their obligations, so that wives have to carry the double burden, not only taking care of the household but also working to make a living to meet their needs.¹ This reality certainly creates an imbalance in the contribution of roles and responsibilities between husband and wife, which has an impact on the process of forming joint property.

The above phenomenon is also found in the families of the Indigenous people of *Suku Anak Dalam (SAD) Batin Sembilan*, who live and settle in several areas in Jambi Province. According to the custom of *SAD Batin Sembilan*, the husband has a central role in the family. It can be seen from the provisions that require the husband to be able to provide a living and prepare a place to live for his wife and children. In addition, in domestic life, the *SAD Batin Sembilan* community is guided by the *seloko* (rhymes, proverbs, or sayings with ethical and moral values) "*anak walak bapak, bini walak laki*" (children must follow the father's orders, wife must follow the husband's orders). Based on this, the man (husband) heads the household and is responsible for his wife and children.

In line with society's social, economic, and cultural development, there has been a shift in the role of a wife in the family. The wife is not only required to take care of the household but is also forced to earn a living to fulfill her own needs (double burden). In addition, this condition is also found in families with polygamous marriages, which traditional rulers, *temenggung*, *mangku*, and *depati* usually practice. The unstable family economy due to the absence of a permanent job, many lands/gardens being sold to migrants at low prices, and the decreasing natural resources that support the community's life result in the husband's lack of contribution in fulfilling the family's livelihood. On the other hand, in the *SAD Batin Sembilan* tradition, the wife has full responsibility for domestic affairs. This condition becomes increasingly dilemmatic

¹ Fatum Abubakar, Mazroatus Saadah, and Ulin Na'mah, "The Transformation of the Dilemma of Role Exchange in the Household: Analyzed Gender in Family Resilience Discourse in National Law and Islamic Law," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 1–18, <https://doi.org/10.30984/jis.v21i1.1864>.

because, for the *SAD Batin Sembilan* community, the authority is in the hands of the husband, so in these conditions, the wife cannot do anything.

The reality of the above-mentioned conditions will lead to several problems related to the division of joint property and the dissolution of marriage. Customary provisions among the *SAD Batin Sembilan* community regulate that if a marriage ends due to divorce or the death of one of the parties, the joint property must be divided equally. This customary provision applies without considering both parties' contributions to acquiring marital assets.

It is clearly not in line with the principles of gender justice that promote equal rights and justice between men and women in the family, society, and the state. In fact, as a very strong bond (*mithāqan ghalīzan*),² marriage ideally prioritizes the values of equality and justice between husband and wife, both quantitatively and qualitatively. This equality can be realized in the form of a fair and equitable distribution of domestic household duties, childcare, and responsibility for maintenance.³ Therefore, this research analyzes aspects of gender justice in the customary provisions of the division of joint property of *SAD Batin Sembilan* in conditions where the wife carries the double burden.

There has been quite a lot of research on the *SAD Batin Sembilan* community in Jambi Province, including Delfi's research, which found that the *SAD Batin Sembilan* people who lived dependently on forest resources, were continuously trying to adjust to limited access to forests amid an incessant forest restoration program.⁴ In line with that, Indrizal describes the socio-cultural dynamics faced by the *SAD Batin Sembilan* community in responding to changes as a result of development and changes in forest ecology due to the intervention of extractive companies. On the other hand, they still maintain their socio-cultural identity.⁵ Furthermore, Nurti's research emphasizes that the resettlement policy of the *Batin Sembilan* community who originally lived and foraged in the forest and then switched to living in housing has created

² *Mithāqan ghalīzan* in marriage is a strong religious commitment and a great covenant that carries the obligation to maintain the bond. Imam Syafi'i, Ruqoyatul Faiqoh, and Vasco Fronzoni, "Meaning of Mitsaqan Ghalidzhan in Study Contemporary Interpretation Quraish Shihab Thoughts," *MILRev: Metro Islamic Law Review* 2, no. 2 (November 9, 2023): 115–33, <https://doi.org/10.32332/milrev.v2i2.7807>.

³ Mudofir Abdullah, "Marriage in Islam and the Problem of Gender Equality: A Philosophical Perspective," *Ulumuna* 22, no. 1 (August 15, 2018): 57–76, <https://doi.org/10.20414/ujs.v22i1.333>.

⁴ Maskota Delfi et al., "The Batin Sembilan People Facing Forest Restoration Pressures in Indonesia," *ETNOSIA: Jurnal Etnografi Indonesia* 8, no. 2 (2023): 230–46, <https://doi.org/https://doi.org/10.31947/etnosia.v8i2.27020>.

⁵ Edi Indrizal and Hairul Anwar, "The Indigenous People Suku Anak Dalam Batin Sembilan Livelihood: Adaptation and Socio-Cultural Dynamics," *ETNOSIA: Jurnal Etnografi Indonesia* 8, no. 1 (April 14, 2023): 24–43, <https://doi.org/10.31947/etnosia.v8i1.23836>.

complex socio-cultural dynamics related to community food security and diversification that make them able to adapt to new conditions.⁶

Beckert highlighted the contestation and struggle for land between the *Batin Sembilan* Indigenous people and the palm oil company PT Asiatic Persada, as well as the involvement of these Indigenous people in the discourse on indigeneity. This involvement enabled the transformation of the community from marginalized victims to empowered actors in their struggle to reclaim their customary land.⁷ On the other hand, in the aspect of traditional rituals, Helty's research revealed that the equipment used in the tradition of ritual treatment (*besale*) of the *SAD Batin Sembilan* community is a form of effort to maintain local wisdom whose existence is almost extinct considering that currently the use of medical treatment is preferred over traditional medicine.⁸

This article differs from several previous studies, which primarily focus on the socio-cultural dynamics and adaptation process of the *SAD Batin Sembilan* community amid various government policies and programs. Similarly, they tried to overcome conflicts over customary land with several large companies. Several studies above show that the discussion of gender justice in the division of joint property among *SAD Batin Sembilan* has not been touched. Therefore, this research seeks to fill the gap in the literature related to this matter.

This research uses an empirical juridical legal research approach based on the results of field research in Nyogan Village and Pelempang Village, Mestong District, Muaro Jambi Regency, Jambi Province. This location was chosen because many *SAD Batin Sembilan* communities settle and reside there. They have kinship ties, have assimilated into the local community, and have embraced Islam.

Data were collected through in-depth interviews and documentation. The research informants consisted of traditional elders and several *SAD Batin Sembilan* residents, with additional data obtained from the Village Head. In addition, the researcher also collected archives/papers to obtain objective data and relevant secondary data from reliable sources, dialogue, and observations conducted in the field. Data processing was conducted by collecting daily field notes on interactions

⁶ Yevita Nurti, Maskota Delfi, and Adam, "The Batin Sembilan Community in Jambi Province: Socio- Cultural Elements in Enhancing Local Food Security," in *IAPA 2023 Annual International Conference* (KnE Social Sciences, 2024), 590–604, <https://doi.org/10.18502/kss.v9i7.15532>.

⁷ Barbara Beckert, Christoph Ditttrich, and Soeryo Adiwibowo, "Contested Land: An Analysis of Multi-Layered Conflicts in Jambi Province, Sumatra, Indonesia," *ASEAS - Austrian Journal of South-East Asian Studies* 7, no. 1 (2014): 75–92, <https://doi.org/https://doi.org/10.14764/10.ASEAS-2014.1-6>.

⁸ Helty Helty et al., "Cultural Meaning on Traditional Equipment of the Healing Ritual Tradition of Anak Dalam Tribes in the Batin Sembilan Community, Muaro Jambi District: The Efforts to Preserve Local Wisdom," *Mudra Jurnal Seni Budaya* 39, no. 1 (January 16, 2024): 85–93, <https://doi.org/10.31091/mudra.v39i1.2545>.

and events. The data were then combined with interview transcripts for data classification or coding. After classifying the data, the interrelationships between all the data were analyzed by juxtaposing the findings from the literature review and linking them to a more abstract level. Irrelevant information was eliminated to make the research focus more specific.

This research explicitly aims to reveal the customary provisions of the *SAD Batin Sembilan* Muslim community regarding the division of joint property upon the dissolution of marriage. In addition, it aims to analyze gender justice in these customary provisions based on the principle of *al-musāwāh*. This research is significant as it provides a substantial contribution to the understanding of gender justice grounded in Islamic teachings and local wisdom, particularly in addressing the division of joint property in cases when faced with the reality of a wife carrying the double burden.

Discussion

The Concept of Gender Justice in Various Perspectives

The term gender is a social and cultural construction that refers to the various characteristics, roles, and responsibilities of men and women. Since the beginning of 1977, gender issues have been widely discussed. Feminist groups in London began to raise gender discourse to replace old discourses, such as sexist or *patriarchal*. Previously, the inequality of social roles based on gender (gender inequality), which assigned domestic roles to women and public roles to men, was considered standard, even interpreted as a religious doctrine sourced from God.⁹ Whereas in the perspective of nurture theory, differences between men and women are not influenced by biological reasons, but as a consequence of social construction.¹⁰

The term “gender justice” has recently been increasingly used by activists and academics. It is due to their concern and realization that phrases such as “gender equality” and “gender mainstreaming” do not effectively address and solve the problems of gender-based injustices experienced by women. However, while the term is increasingly used, there is still insufficient consensus on its definition, purpose, and expected outcomes. The term “gender justice” is often

⁹ Nur Faizah, “Konsep Qiwāmah Dalam Yurisprudensi Islam Perspektif Keadilan Gender,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (April 30, 2019): 13–22, <https://doi.org/10.14421/ahwal.2018.11102>.

¹⁰ Andi Sukmawati Assaad et al., “Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law,” *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 458–79, <https://doi.org/10.19105/al-lhkam.v17i2.6761>; Sheila Fakhria, Moh. Sholeh Afyuddin, and Muhammad Nazir Alias, “The Indigenous Idea of Gender Equality: Husband-Wife Relationship in the Manuscript of Adābul Mu’āsyarah,” *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (December 15, 2023): 317–28, <https://doi.org/10.31958/juris.v22i2.9475>.

used without a specific definition and is usually used interchangeably with concepts such as “gender equality”, “gender equity”, “women's empowerment” and “women's rights”.¹¹

According to the description proposed by Anne Marie Goetz and later adopted by ESCWA's 2017 report, gender justice refers to the establishment of equality between women and men. This equality can be achieved when men and women have equal rights and opportunities in all spheres of life, in terms of access to justice, economic and social opportunities,¹² as well as access to power, knowledge, and resources.¹³

Although no specific word in Islam refers to the term gender justice, Islam considers equality in all forms of justice. The notion of justice in the Qur'an can be found in two words, namely *al-`adl* (justice in general) and *al-qist* (inter-relational or socio-economic justice). The word *al-`adl* and its derivatives are mentioned in the Quran 28 times. Meanwhile, its synonym, *al-qist*, is found 27 times in the Qur'an. Both words in English relate to equality and justice. Therefore, according to Badawi, equality is considered a term close to justice in Islam and is even seen as part of Islamic moral teachings. Muslims are encouraged to behave pretty much towards all people, and even fair behavior is related to one's faith as a Muslim. Allah says: “*Be just! That is nearer to righteousness.*” (Q.S. al-Maidah [5]: 8).

Although the Quran does not have a specific word to indicate “equality” or “egalitarianism”, Islam emphasizes equality in the form of *`adl*. The meaning of *al-`adl* can be expressed both qualitatively and quantitatively. Qualitatively, the meaning of *al-`adl* refers to the abstract principle of equality, namely equality before the law or having equal rights. Meanwhile, quantitatively, *al-`adl* emphasizes the principle of distributive justice, which is more appropriate when expressed in terms such as *naṣīb* and *qist* (share).¹⁴

¹¹ Rachel Sieder and John-Andrew McNeish, *Gender Justice and Legal Pluralities, Latin American and African Perspectives* (New York: Routledge, 2013), <https://www.routledge.com/Gender-Justice-and-Legal-Pluralities-Latin-American-and-African-Perspectives/Sieder-McNeish/p/book/9781138934856>.

¹² UN-ESCWA, “The State of Gender Justice in the Arab Region” (Beirut, 2017), <https://www.unescwa.org/sites/default/files/pubs/pdf/state-gender-justice-arab-region-english.pdf>.

¹³ Sara Clavero and Yvonne Galligan, “Delivering Gender Justice in Academia Through Gender Equality Plans? Normative and Practical Challenges,” *Gender, Work & Organization* 28, no. 3 (May 30, 2021): 1115–32, <https://doi.org/10.1111/gwao.12658>.

¹⁴ Mohamed Sulthan Ismiya Begum, Indriaty Ismail, and Zul Azmi Yaakob, “The Concept of Gender Equality and Equity: An Islamic View,” *International Journal of Religion, Arts and Humanities* 2 (2023): 103–15, <https://www.ukm.my/ijrah/wp-content/uploads/2023/07/IJRAH-02-PG-103-115-The-Concept-of-Gender-Equality-and-Equity.pdf>.

The Principle of *al-Musāwah* and its Correlation with Gender Justice

Etymologically, *al-musāwah* means equalizing, equality, or balance. In the book *Mu`jam Mufradāt Alfāz al-Qur`ān*, this word is defined as balance in all things, such as color, shape, size, or behavior. In terminology, *al-musāwah* means eliminating differences of any kind and removing the barriers of differences in various aspects.¹⁵

In this regard, Ibn 'Āsyūr states that the realization of equality (*al-musāwah*) in life and the elimination of imbalance (*al-tafāwut*) is one of the objectives of Islamic Shari'ah. Furthermore, according to Ibn 'Āsyūr, *al-musāwah* (equality) is a principle (*al-ashl*) in Islamic shari'at, so no special evidence is needed to strengthen its legality in its implementation. Ibn 'Āsyūr gives an example that some calls in the Quran only use the word *mudakkkar* (which in Arabic is used to indicate men) but also apply to women. It shows that the source of Islamic shari'ah recognizes equality (the principle of *al-musāwah*), which in this context is meant as gender equality.¹⁶ Thus, *al-musāwah* is understood as a norm that aims to eliminate all kinds of discrimination due to differences in ethnicity, religion, language, or culture, even gender.

In line with the above view, in marriage, Jamal al-Banna, one of the figures in contemporary Islamic discourse who focuses on gender issues, assesses the importance of general principles underlying husband-wife relationships. These principles include the principles of justice (*al-`adalah*), equality (*al-musāwah*), kindness (*al-ma`rif*), love and affection (*al-hubb*), and mutual agreement (*ittifāq al-ṣawjain*), which are manifested in the form of speech and attitudes in everyday life.¹⁷

Furthermore, in the context of joint property, the principle of *al-musāwah* is realized by dividing marital property based on consideration of services or contributions between husband and wife. On that basis, the formulation of the share of joint property will differ depending on each family's conditions. The provision of the division of joint property, half for the husband and half for the wife, is considered to fulfill a sense of justice if both jointly make contributions that can maintain the integrity and survival of the family. Although the wife does not work outside the home, she has a significant role in caring for the household and is entitled to half of the joint property. The wife's role as a housewife also

¹⁵ Abū al-Qāsim al-Ḥusain ibn Muhammad Al-Ragīb Al-Isfahānī, *Mu`jam Mufradāt Alfāz Al-Qur`ān* (Beirut: Dār al-Kutub al-`Ilmiyyah, 2013).

¹⁶ Muhammad al-Ṭāhir Ibn 'Āṣūr, *Maqāsid Al-Syarī'ah Al-Islamiyyah* (Tunis: al-Shirkah al-Tuniziyyah li al-Tawzi', n.d.).

¹⁷ Muhammad Fauzinuddin Faiz, "Pemikiran Jamal Al-Banna Tentang Relasi Suami Isteri Dalam Kitab Al-Mar`ah Al-Muslimah Baina Tahrīr Al-Qur`ān Wa Taqyīd Al-Fuqahā`," *Al-Mazaahib: Jurnal Perbandingan Hukum* 3, no. 1 (June 1, 2015): 55–70, <https://doi.org/10.14421/al-mazaahib.v3i1.1380>.

contributes to obtaining joint property, regardless of whose name the property is registered.

Conversely, suppose one party does not carry out their roles and obligations in the household. In that case, the division of joint property with equal portions between husband and wife does not reflect the values of gender justice in the condition that the wife works to fulfill the family's needs. At the same time, if the husband does not carry out the role of a partner of the wife, either in earning a living or taking care of the household, then it is appropriate for the wife to get more shares than the husband. The wife is entitled to a share of $\frac{2}{3}$ or $\frac{3}{4}$ of the joint property. It is based on the consideration that the wife has done double work in production and reproduction during marriage. In addition, it is also a consideration of the reality of the wife's heavy responsibilities after divorce.¹⁸ Thus, equality and balance/proportionality (*al-tawāzun*) are created, which leads to gender justice.

Construction of Joint Property in Islamic Law, Customary Law, and Indonesian Legislation

The term joint property indicates the property obtained by the husband and wife during the marriage period, either through their own efforts or jointly. However, the term joint property is not recognized in Islamic law. Islamic law only recognizes the principle of individual property ownership between husband and wife. Therefore, the property produced by the husband remains his property and is absolutely under his control. Vice versa, the property produced by the wife remains hers and is absolutely under her control.

The concept of joint property in marriage is a modern issue not discussed in classical Islamic law. It is based on the understanding that Islamic *shari'ah* establishes independent financial responsibility for both spouses, the payment of dowry by the husband to the wife, and the husband's obligation to provide for his wife and children.¹⁹ Contemporary Islamic legal perspectives on the joint property are studied through an *ijtihadi* approach involving exploration and legal reasoning of the *nash*, and combining Islamic law and customary law. There are several arguments put forward by Islamic legal experts to support the existence of joint property in marriage: first, in the Qur'an and Hadith, there are no commands or prohibitions that indicate the mixing of joint property in marriage. Therefore, if it is connected with the rule that "the original law of something is permissible,

¹⁸ Arskal Salim et al., *Demi Keadilan dan Kesenjangan: Dokumentasi Program Sensitivitas Gender Hakim Agama di Indonesia* (Jakarta: PUSKUMHAM UIN Syarif Hidayatullah Jakarta dan Asia Foundation, 2009).

¹⁹ Rajnaara C Akhtar and Faizal Ahmad Manjoo, "Matrimonial Property in Islamic Law," in *Research Handbook on Family Property and the Law* (London: Edward Elgar Publishing, 2024), 77–91, <https://doi.org/10.4337/9781802204681.00012>.

until there is evidence that shows its prohibition” legally, the institutionalization of joint property in a marriage is permissible.

Second, based on the view of the scholars of the Syafi'i school, marriage literally means *`aqd* or contract (*haqīqatun fī al-`aqd*), although the essence of marriage is sexual intercourse.²⁰ This understanding is reflected in the term *`aqd al-nikāh* which refers to a contract because technically, the word *`aqd* means to bind someone with its conditions.²¹ Thus, a marriage that is preceded by *`aqd al-nikāh* in the form of *ijab* and *qabul* and fulfills several other requirements is considered to have bound the married couple, so that it has implications for unification in all matters, including property and children. It also indicates the existence of *shirkah* between husband and wife, which occurs due to marriage.

Thirdly, in the context of Islamic law, studies on Islamic jurisprudence have led to the interpretation that joint property in marriage can be analogized (*qiyas*) to *shirkah*, as discussed in the field of *fiqh mu'amalah*. The jurists define *shirkah* as an agreement/contract between two parties who share capital and profits in a partnership. In this context, the analogy of joint property to *shirkah* is based on the fact that joint property contains a form of cooperation or partnership between husband and wife in earning a living to meet the needs of life and the merger of property between them.²² According to Ismuha, the husband and wife's search property can be categorized as *shirkah al-`abdān* and *shirkah al-mufāvaḍah*. It is because, generally, husbands and wives work to provide for the family, although there are different tasks between them according to their respective capacities. In addition, because the cooperation is unlimited, anything acquired during the marriage becomes joint property, except for inherited property or gifts specifically to one of the parties.²³

Fourth, the concept of joint property ownership in Indonesia is rooted in customary law norms derived from local philosophical values about the balance of the

²⁰ Hakime Reyyan Yaşar, “‘Aqd Al-Nikāh: Explaining the Nexus Between Marriage and Contract in Islamic Law,” *Ankara Üniversitesi İlahiyat Fakültesi Dergisi* 63, no. 1 (May 31, 2022): 157–84, <https://doi.org/10.33227/auifd.975753>.

²¹ Šams al-Dīn Al-Ramli, *Nihāyah Al-Muhtāj Ilā Šarh Al-Minhāj* (Cairo: Dar al-Kutub al-‘Ilmiyyah, 2013), https://archive.org/details/NihayatalMuhtajSharhalMinhaj/00_75251/.

²² Isnadul Hamdi, “Perluasan Makna Harta Bersama Perspektif Sosiologi Hukum Islam,” *JURIS (Jurnal Ilmiah Syariah)* 17, no. 1 (June 30, 2018): 63–83, <https://doi.org/10.31958/juris.v17i1.1012>; Elimartati Elimartati and Elfia Elfia, “Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan,” *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (December 18, 2020): 231–43, <https://doi.org/10.31958/juris.v19i2.2283>.

²³ Ismuha, *Pencabarian Bersama Suami Istri Ditinjau dari Sudut Undang-Undang Perkawinan Tahun 1974 dan Hukum Islam* (Jakarta: Bulan Bintang, 1986); Mesraini Mesraini, “Konsep Harta Bersama dan Implementasinya di Pengadilan Agama,” *AHKAM: Jurnal Ilmu Syariah* 12, no. 1 (September 2, 2012): 59–70, <https://doi.org/10.15408/ajis.v12i1.980>.

position of husband and wife in the household.²⁴ In several regions in Indonesia, this joint property is known by various terms, such as *barenta sebareukat* in Acehnese society, *barta suarang* in Minangkabau society, *massow bebesak* in Lampung society, *guna kaya* in Sundanese society, *gono gini* in Javanese society, *ghuna ghana* in Madurese society, *druwe gabro* in Balinese society, and *cakkara* in Bugis society.²⁵ The settlement of the division of marital property is carried out through religious leaders, *qadi fatmas*, local courts, such as the portico court and *syara`* institutions. The formulation of the division differs from one another following local culture. Some regions apply the division of marital property with a formulation of one-third for the wife and two-thirds for the husband. In contrast to the culture-based formulations in several of these regions, in South Kalimantan, there is a formulation of the division of marital property known as *barang perpantangan*. This local wisdom refers to the Banjar culture, namely *adat badamai*, so that each husband and wife are entitled to an equal share of the joint property.²⁶

On that basis, it can be concluded that the legalization of joint property in a marriage is based on *qiyas* against *shirkah `abdān*, which is the basis for formulating the rules of joint property. In addition, an approach is also taken between *shirkah `abdān* and customary law because the existence of joint property in marriage has become a custom (*`urf*) in Indonesian society. This method is in line with the permissibility of making *`urf* (custom) a source of law and the existence of the rule *al-`ādatu muhakkamah* (custom has the force of law), which allows deeply rooted customary practices to be used as a source of law and become the basis of legal judgment, as long as it is in line with Islamic principles. In the context of joint property, the *al-`ādatu muhakkamah* rule is used because the practice of joint property has been a tradition for a long time and later became part of the existing laws and regulations.²⁷

Furthermore, at the formal juridical level, the discussion of joint property cannot be separated from the Compilation of Islamic Law (KHI) and Law Number 1 of 1974 concerning Marriage. As a result of *ijtihad*, KHI contains Islamic law rules tailored to the needs and legal awareness of Muslims in Indonesia. The use of the word “*shirkah*” to mention the joint property in KHI can be found in Article 1 letter k,

²⁴ Sofyan A.P. Kau and Zulkarnain Suleman, “Eksistensi Hukum Adat Dalam Kompilasi Hukum Islam Indonesia (KHI),” *Al `Adalah* XIII, no. 2 (2016): 165–78, <https://doi.org/http://dx.doi.org/10.24042/adalah.v13i2.1855>.

²⁵ Etty Rochaeati, “Analisis Yuridis Tentang Harta Bersama (Gono Gini) Dalam Perkawinan Menurut Pandangan Hukum Islam dan Hukum Positif,” *Wawasan Hukum* 28, no. 01 (2013), <https://ejournal.sthb.ac.id/index.php/jwy/article/view/61/43>.

²⁶ Ibnu Elmi AS Pelu and Ahmad Dakhoir, “Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications,” *Al-Jami'ah: Journal of Islamic Studies* 59, no. 2 (November 11, 2021): 287–316, <https://doi.org/10.14421/ajis.2021.592.287-316>.

²⁷ Mohamed Shafei Moftah Bosheya, “Matrimonial Property and Legality of Claiming It between Fiqh and the Laws of Malaysia, Morocco and Tunisia,” *Linguistics and Culture Review* 5, no. S4 (December 9, 2021): 2211–18, <https://doi.org/10.21744/lingcure.v5nS4.1918>; Mohd Norhusairi Mat Hussin et al., “The Division of Harta Sepencarian of Muslim Converts Upon Conversion in Malaysia,” *Malaysian Journal of Syariah and Law* 12, no. 2 (August 31, 2024): 282–95, <https://doi.org/10.33102/mjssl.vol12no2.578>.

namely: “marital property or *shirkah* is property obtained either individually or jointly by husband and wife during the marriage bond and from now on referred to as joint property, regardless of being registered in the name of anyone.”

Article 35, paragraph (1) of the Marriage Law states: “Property acquired during marriage becomes joint property.” Thus, every result of the husband and wife's efforts during the marriage, whether obtained jointly or individually, can be calculated as joint property, which is part of the marital property. Therefore, the ownership of joint property becomes the right of both because of the joint factor in obtaining property.

In the event of divorce, based on Article 37 of the Marriage Law, the division of joint property is regulated according to their respective laws. This provision allows husband and wife to divide the joint property based on the law they agree on, whether religious law, customary law, or other laws. However, the provisions of this article do not explain in full and in detail the division of joint property due to divorce or death and the number of shares obtained by both parties, as well as the distinction between husbands and wives who earn a living.²⁸

Meanwhile, KHI discusses in detail the shares obtained by both parties, whether the cause of marriage breakdown is death or divorce. This provision is contained in Articles 96 and 97 KHI. Article 96, paragraph (1) states: “If there is a death divorce, half of the joint property is the right of the spouse who lives longer.” Furthermore, Article 97 emphasizes: “divorced widows or widowers are each entitled to one-half of the joint property, as long as it is not specified otherwise in the marriage agreement.” The provisions of this article imply that in addition to halving the joint property, other provisions can be made, namely dividing the joint property based on an agreement by considering the facts that affect the acquisition of the property.²⁹

Furthermore, KHI also regulates the provisions for the division of joint property in polygamous marriages. Article 94 paragraph (1) states: “the joint property of the marriage of a husband who has more than one wife, each separate and independent.” Furthermore, paragraph (2) explains: “The ownership of joint property from the marriage of a husband who has more than one wife, as referred to in paragraph (1), is calculated at the time of the second, third, or fourth marriage contract.

Indigenous Peoples in Jambi Province: Getting to Know the Characteristics of *SAD Batin Sembilan* and Its Differences with *Orang Rimba*

²⁸ M Ridwan et al., “Distribution of Joint Properties According to Balanced Justice Principle,” *Jurnal Hukum Dan Peradilan* 12, no. 1 (March 31, 2023): 57–76, <https://doi.org/10.25216/jhp.12.1.2023.57-76>.

²⁹ Siah Khosyiah, “Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan Bagi Keluarga Muslim di Indonesia,” *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (February 22, 2018): 35–48, <https://doi.org/10.24090/mnh.v11i1.1266>.

Suku Anak Dalam is one of the Indigenous community groups living along the forests of southern Sumatra, and it has the largest population in Jambi Province. In addition to being referred to as *Suku Anak Dalam*, this minority ethnicity is also known as *Orang Kubu* and *Orang Rimba*. Tracing the naming of this hunting, gathering, and nomadic community as *Orang Kubu* can be found in a number of field studies conducted by several early European writers, such as Van Dongen (1910), Hagan (1908), Schebesta (1926), and Kamocki (1972).³⁰

According to Sager, the term *Kubu* refers to the majority Malay Muslim community's perception of the *Orang Rimba* using the jungle interior to resist broader inclusion with the Islamic social and religious world. The term *Kubu* has negative connotations, meaning uncivilized or undeveloped, primitive, dirty, smelly, ignorant, or unreligious.³¹ For most *Orang Rimba*, mentioning *Kubu* is highly offensive. Based on this, the government then initiated the use of the term *Suku Anak Dalam* to replace the term *Kubu*, which was considered to have negative connotations. However, *Suku Anak Dalam* is basically a generic term because, through this naming, the government has generalized the identity of several marginalized tribes in Jambi Province, namely *Orang Rimba*, *Orang Batin Sembilan*, and *Talang Mamak*.³² Thus, any community that is considered the same or has the same characteristics as *Orang Kubu* is classified by the government as *Suku Anak Dalam*.

The term *Suku Anak Dalam* itself summarizes two different cultural groups but has a number of similarities, namely *Orang Batin Sembilan* and *Orang Rimba*. This difference can specifically be seen in the aspects of migration and lifestyle. In later developments, the process of acculturation and modernization, including inter-ethnic marriages with migrants from outside, also influenced the differences between these two communities. The impact of acculturation and modernization caused *Orang Batin Sembilan* to embrace Islam much earlier than *Orang Rimba*. It is because *Orang Batin Sembilan* does not live as nomads but in semi-permanent houses in the forest, making it easier for Islamic *da'i* to approach them. However, the government has not given much attention to the differences between these two dispersed communities. For this reason, the first part of this

³⁰ Steven Sager, "Negotiating Identity, Ethnicity, and Place in Sumatra Through Orang Rimba Origin Stories, Myths, and Legends," *Anthropos* 113, no. 1 (2018), https://www.nomos-elibrary.de/10.5771/0257-9774-2018-1-65.pdf?download_chapter_pdf=1&page=1.

³¹ Steven Sager, "The Sky is Our Roof, The Earth Our Floor: Orang Rimba Customs and Religion in Bukit Dua Belas Region of Jambi" (The Australian National University, 2008); Dian Mustika, Rahmi Hidayati, and Sulhani, "Integration of Islamic Law and Customary Law on the Inheritance System of Suku Anak Dalam Muslim Converts," in *Proceedings of the 1st International Conference on Recent Innovations* (SCITEPRESS - Science and Technology Publications, 2018), 979–86, <https://doi.org/10.5220/0009921609790986>.

³² Riwanto Tirtosudarmo, "Identitas dan Marjinalisasi: Orang Kubu, Orang Rimba, Suku Anak Dalam," *KRITIS* 31, no. 1 (June 30, 2022): 59–79, <https://doi.org/10.24246/kritis.v31i1p59-79>.

paper attempts to identify the characteristics of each of these Indigenous people, which are summarized in the following table:

Table 1: Comparison of Characteristics of *Suku Anak Dalam Batin Sembilan* and *Orang Rimba*

No	Categories	<i>SAD Batin Sembilan</i>	<i>Orang Rimba</i>
1	Patterns of Life	<i>Orang Batin Sembilan</i> does not live a nomadic lifestyle but is settled.	Most of <i>Orang Rimba</i> still live nomadically, with only a few settled.
2	Customary Leaders	<i>Depati</i>	<i>Temenggung</i>
3	Livelihood	Cultivating land and farming	Hunting, gathering, and farming
4	Beliefs	No longer adhere to ancestral beliefs. The majority have embraced Islam.	Most still adhere to ancestral beliefs, while some have embraced Islam and Christianity.
5	<i>Melangun</i> (wandering to relieve grief due to an outbreak of disease or the death of a family member)	No longer practice the tradition of <i>melangun</i>	Still practice the tradition of <i>melangun</i>
6	Social Interaction	More open and assimilated into the surrounding community	More introverted and deliberately avoiding outsiders
7	Kinship System	Follow a patrilineal kinship system, recently shifting toward bilateral.	Follow a matrilineal kinship system.

Data Source: Processed from various sources and field findings.

The Position of Property in Marriage of the Muslim Community of *SAD Batin Sembilan*

In general, property can be obtained in several ways in the life of the *SAD Batin Sembilan* community: First, through heirlooms in the form of property inherited from parents. Second, property obtained from the results of his efforts, such as clearing forests to be used as fields. Third, property obtained through purchases. Fourth, grants from parents to children during their lifetime.

These assets can then be categorized into two groups: First, the assets inherited from the parents for generations are owned by either the husband or wife before marriage, which is called the original or innate property. This property is known as *harto tempatan*. Furthermore, this *harto tempatan* can be further categorized into *harto tempatan lanang* (property owned by the man or husband) and *harto tempatan betino* (property owned by the woman or wife). Thus, if before marriage, a man owns a plot of garden, then he marries a woman who also owns a plot of garden, then each of them owns a plot of garden as the original property or *harto tempatan*. This *harto tempatan* is usually in the form of objects that are valuable in their view, such as land and tools made of iron or known as *besi tuo*, such as *keris* and spears. In addition, this *harto tempatan* includes property requested by the woman's family (*timbang jajaj*) when they are getting married. If, before the marriage, the wife's family, for example, asks for *timbang jajaj* in the form of a rubber plantation of 1000 (one thousand) stems and then fulfilled by the prospective husband, then the property is included in the wife's inheritance (*harto tempatan*). As property of origin, this *harto tempatan* is controlled personally by the husband or wife so that to be able to utilize it must be with the permission of the owner.³³

If one of the husband and wife dies, the inherited property (*harto tempatan*) is given to the children as heirs. However, if the testator has no children, the inherited property returns to the testator's relatives or parents. Thus, when the wife dies, the husband has no rights to the property. The property belongs to the child, but if the married couple does not have children, the property is returned to his heirs (his family).

Secondly, property acquired jointly during the marriage is called *harto besamo* or *harto pencarian*. Thus, if the couple establishes a garden together after marriage, the garden is referred to as *harto besamo*. This property is jointly owned and utilized by the husband and wife. In the event of divorce or the death of one of the parties, the husband or wife is entitled to half of the joint property.³⁴

The Division of Joint Property in the Muslim Community of *SAD Batin Sembilan* Viewed from the Perspective of Gender Justice

³³ Abun Yani, *Interview*, Bajubang, 16 September 2023.

³⁴ Mengku Rahman, *Interview*, Sikaladi, 23 December 2023.

According to the customary law applicable among the *SAD Batin Sembilan* Muslim community, when a husband and a wife divorce or one of the parties dies, the husband and wife are entitled to half of the joint property.³⁵ The aim is to fulfill a sense of justice and protect women's economic rights.

However, along with the times and social dynamics that occur among the *SAD Batin Sembilan* community, there has been a shift in the role of women, especially wives. They not only play a full role in caring for the family but also work to fulfill their needs. In addition to increasing income, some women work because their husbands do not contribute enough to fulfill the family's livelihood. This condition is also found among the wives of polygamous marriages. According to Rosita, polygamous wives are forced to play an active role in earning their livelihood because their husbands are negligent in fulfilling the family's needs. In such circumstances, the wives appear to be unable to do anything.³⁶ It is possible because polygamous marriages among Indigenous communities are usually carried out by customary rulers, *temenggung*, *mangku*, and *depati*, who have authority.³⁷ This reality becomes even more complicated when faced with divorce, which then requires the division of joint property. In this situation, the husband is considered not to have fulfilled his obligation to provide for his family, so if the joint property is divided equally between the husband's and wife's shares, it will eliminate the element of justice.

According to the Qur'an, *sunnah*, and *ijma'* (consensus of scholars), the husband's provision of maintenance to his wife is an absolute obligation. This obligation arises from the moment of the marriage contract between the couple. The obligation still applies even if the wife is financially well-off or has her own income. Therefore, the wife is entitled to material support from her husband and can even demand her rights if it turns out that the husband neglects it. In addition, based on the reasoning of Islamic jurisprudence (*fiqh*), the obligation of maintenance is attached to the husband because he has the right to keep the wife living with him. On that basis, the obligation of maintenance is compensation for the detention.³⁸

In line with the above provisions, KHI also emphasizes that the husband must provide maintenance. Article 80, paragraph (4) states: "By his income, the husband is responsible for: (a) *nafkah* (financial support), *kiswah* (clothing), and housing for the wife, (b) household expenses, medical care, and treatment costs

³⁵ Mengku Rahman, *Interview*, Sikaladi, 8 August 2023.

³⁶ Rosita, *Interview*, Nyogan, 23 December 2023.

³⁷ Rahmi Hidayati, "Pergeseran Sistem Perkawinan dan Perceraian Pada Suku Anak Dalam," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 16, no. 01 (June 30, 2016): 151–68, <https://doi.org/10.30631/alrisalah.v16i01.1354>.

³⁸ Jumni Nelli, "Analisis Tentang Kewajiban Nafkah Keluarga Dalam Pemberlakuan Harta Bersama," *Al-Istinbath: Jurnal Hukum Islam* 2, no. 1 (June 1, 2017): 29–46, <https://doi.org/10.29240/jhi.v2i1.195>.

for the wife and children, and (c) education expenses for the children.” If the husband does not fulfill his obligations, referring to Article 77 KHI, the wife has the right to file for divorce in the Religious Court.

Although it does not apply in general, the reality that occurs in several families among the *SAD Batin Sembilan* community shows that gender inequality and injustice have occurred. Ideally, in the household, gender sensitivity should be prioritized, which carries the values of equality between husband and wife. This equality is realized in the form of a fair and equitable division of domestic tasks in the household, financial responsibility, and decision-making processes in the family.³⁹ Similarly, the division of joint property in the event of divorce. The principle of proportional justice must be prioritized. In this case, justice is synonymous with suitability, equality, balance, and proportionality, but it does not require equal levels and conditions for all parts of a unit to be balanced⁴⁰

Furthermore, when viewed from the principle of *al-musāwāh* in Islam, which requires equality and proportionality (*tawāḥḥun*) in the formulation of the distribution of joint assets, the contribution of services between husband and wife in obtaining marital assets should also be taken into consideration in determining the amount of portion to be obtained. This principle ensures that both parties receive a fair share of the joint assets acquired during the marriage period. On this basis, the customary provisions of *SAD Batin Sembilan* are considered not to prioritize the values of gender justice and proportionality as desired in Islam.

In the context of the division of joint property, justice can be adjusted to the household's circumstances, allowing each husband and wife to obtain a different share. The share obtained by the husband and wife should be adjusted to the role played in the family and the contribution to the acquisition of marital property. It is what is referred to as justice (proportional/balanced share). Thus, in the condition that the wife has the double burden, she is not only responsible for taking care of the household but also plays an active role in earning a living. At the same time, if the husband does not fulfill his obligations in fulfilling family maintenance, the wife has the right to obtain a larger share than the husband in the event of a divorce. The possible portion of joint property obtained by the wife is $\frac{2}{3}$ or $\frac{3}{4}$ part. Meanwhile, the husband gets $\frac{1}{3}$ or $\frac{1}{4}$ share.

Secondly, death, divorce and having children. If the husband dies, then $\frac{1}{3}$ or $\frac{1}{4}$ of the joint property that belongs to the deceased husband plus the inherited property becomes the inherited property. In this case, the wife, as the heir, is

³⁹ Supriyadi Supriyadi et al., “Building Husband and Wife Partnership Patterns Among Regional Parliament (DPRD) Members from the Mubādalāh Perspective,” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 2 (November 9, 2023): 445–64, <https://doi.org/10.29240/jhi.v8i2.6972>.

⁴⁰ Abd Rouf, Mufidah Ch, and Zaenul Mahmudi, “Joint Property Division in Indonesia: A Gender Equality Viewpoint,” *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 2 (2023): 230–50, <https://doi.org/10.18860/j-fsh.v15i2.23050>.

entitled to $\frac{1}{8}$ of her husband's inheritance. Meanwhile, the children left behind are entitled to a share according to their portion. Vice versa, if the wife dies, then $\frac{2}{3}$ or $\frac{3}{4}$ of the joint property plus the inherited property becomes the inherited property. As the heir, the husband (widower) is entitled to get $\frac{1}{4}$ part of the inheritance, while the children left behind are entitled to a share according to their portion.

Conclusion

In the division of joint property upon the dissolution of marriage, the customary provisions of *SAD Batin Sembilan* regulate that joint property is divided into two, namely, half for the husband and half for the wife. This customary provision applies, in general, without distinguishing the contribution of each husband and wife's role in acquiring marital assets. Meanwhile, among the *SAD Batin Sembilan* community, there is a fact of a shift in husband-wife relations, where wives carry the double burden. This condition is even found in families with polygamous marriages. Based on the principle of *al-musāwāh*, which emphasizes equality and proportionality (*tawāzun*) in the formulation of the division of joint property, the shares obtained by husbands and wives should be adjusted to the roles played in the family, including contributions to the acquisition of marital property. On that basis, the customary provisions of *SAD Batin Sembilan* in the division of joint property are considered not to prioritize the values of gender justice. Therefore, to adapt to the dynamics in the community, this customary provision should be flexed to be more gender-responsive.

The results of this research contribute to filling the gap in the literature related to gender justice in the division of joint property among the *SAD Batin Sembilan* Indigenous community in Jambi Province. However, this research has limitations because it only reviews customary provisions associated with the shifting roles of wives who carry the double burden in two settlement locations in Muaro Jambi Regency. Meanwhile, the *SAD Batin Sembilan* settlement area is spread across several locations in three districts in Jambi Province, namely: Muaro Jambi, Batanghari, and Sarolangun, with different characteristics and community adaptability. Therefore, the results of this research cannot be generalized, so further research is needed to complement these limitations.

Acknowledgements

This research was conducted to contribute to the development of knowledge in the field of Islamic family law. The researcher received funding support from the Lembaga Pengelola Dana Pendidikan (LPDP) of the Ministry of Finance of the Republic of Indonesia.

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