

## Reconceptualizing Marital Seizure as a Gendered Safeguard in Indonesia's Religious Courts

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### Abstract

*The protection of women's economic rights in marital property disputes within Indonesia's Religious Courts remains problematic, particularly due to the risk of asset dissipation during divorce proceedings and the limitations of procedural safeguards. This study examines the interpretation and application of marital seizure (sita marital) as a legal mechanism to secure women's property rights, while also identifying disparities in judicial decision-making. Employing a qualitative socio-legal approach, this research analyzes 42 court decisions issued between 2018 and 2023, sourced from the Indonesian Supreme Court database. Data were analyzed through qualitative content analysis focusing on judicial reasoning, evidentiary standards, and gender-related considerations. The findings reveal three dominant judicial patterns: approval, rejection, and partial approval of marital seizure requests. These variations are largely influenced by inconsistent evidentiary thresholds and the broad scope of judicial discretion. Although a small number of decisions demonstrate gender-sensitive reasoning aligned with feminist legal theory and *maqāṣid al-sharī'a* (*ḥifẓ al-māl*), most rulings remain procedurally formalistic, which tends to disadvantage women, particularly those lacking access to financial documentation. This study argues that marital seizure constitutes a potentially effective yet inconsistently applied procedural safeguard. It reconceptualizes marital seizure as a gender-responsive legal instrument and underscores the urgency of doctrinal reform, the establishment of standardized evidentiary guidelines, and the integration of gender-sensitive judicial approaches. These measures are essential to ensuring substantive equality and strengthening the protection of women's economic rights in marital property disputes.*

**Keywords:** *Marital Seizure, Women's Rights, Judicial Disparities, Socio-Legal Analysis, Religious Courts.*

### Abstrak

Perlindungan hak ekonomi perempuan dalam sengketa harta perkawinan di Pengadilan Agama Indonesia tetap bermasalah, terutama karena risiko kehilangan aset selama proses perceraian dan keterbatasan perlindungan prosedural. Studi ini mengkaji interpretasi dan penerapan penyitaan perkawinan (*sita marital*) sebagai mekanisme hukum untuk mengamankan hak milik perempuan, sekaligus mengidentifikasi kesenjangan dalam pengambilan keputusan peradilan. Menggunakan pendekatan sosio-

hukum kualitatif, penelitian ini menganalisis 42 putusan pengadilan yang dikeluarkan antara tahun 2018 dan 2023, yang bersumber dari database Mahkamah Agung RI. Data dianalisis melalui analisis konten kualitatif yang berfokus pada penalaran yudisial, standar pembuktian, dan pertimbangan terkait gender. Temuan ini mengungkapkan tiga pola peradilan yang dominan: persetujuan, penolakan, dan persetujuan parsial atas permintaan penyitaan perkawinan. Variasi ini sangat dipengaruhi oleh ambang pembuktian yang tidak konsisten dan ruang lingkup luas diskresi yudisial yang luas. Meskipun sejumlah kecil keputusan menunjukkan penalaran sensitif gender yang selaras dengan teori hukum feminis dan maqāṣid al-sharī'a (ḥifz al-māl), sebagian besar putusan tetap formalistik secara prosedural, yang cenderung merugikan perempuan, terutama mereka yang tidak memiliki akses ke dokumentasi keuangan. Studi ini berpendapat bahwa penyitaan perkawinan merupakan perlindungan prosedural yang berpotensi efektif namun diterapkan secara tidak konsisten. Ini mengkonseptualisasikan ulang penyitaan perkawinan sebagai instrumen hukum yang responsif gender dan menggarisbawahi urgensi reformasi doktrinal, penetapan pedoman pembuktian standar, dan integrasi pendekatan peradilan yang sensitif gender. Langkah-langkah ini sangat penting untuk memastikan kesetaraan substantif dan memperkuat perlindungan hak-hak ekonomi perempuan dalam sengketa properti perkawinan.

**Kata Kunci:** Penyitaan Perkawinan, Hak-hak Perempuan, Kesenjangan Peradilan, Analisis Sosial-Hukum, Pengadilan Agama.

## INTRODUCTION

Marital property disputes represent a persistent challenge within family law systems worldwide, particularly in contexts where divorce can generate significant economic vulnerabilities for women. Empirical research consistently demonstrates that women often experience post-divorce economic marginalization due to unequal access to property, weak enforcement mechanisms, and procedural barriers in judicial processes.<sup>1</sup> These structural inequalities are further intensified by socio-cultural norms that historically privilege male ownership and control over property, limiting women's economic autonomy after marital dissolution.<sup>2</sup> Feminist legal scholarship highlights that formal equality in

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<sup>1</sup> Martha Albertson Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale Journal of Law & Feminism* 20, no. 1 (2008): 1–23; Carmen Diana Deere and Cheryl R Doss, "The Gender Asset Gap: What Do We Know and Why Does It Matter?," *Feminist Economics* 12, no. 1–2 (2006): 1–50, <https://doi.org/10.1080/13545700500508056>; Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press, 1994).

<sup>2</sup> S Yesufu and T S Nkomo, "Women, and Land and Property Rights in Benin City, Nigeria," *Southern African Journal of Social Work and Social Development* 30, no. 3 (2018), <https://doi.org/10.25159/2415-5829/3805>; M L O'Neil and S Toktas,

legal provisions does not always translate into substantive protection, particularly when procedural mechanisms fail to address structural gender imbalances.<sup>3</sup> Consequently, the protection of women's economic rights in marital property disputes has become a central issue in both legal reform and socio-legal research.

In Muslim-majority societies, the regulation of marital property disputes occurs within a complex interaction between Islamic family law, national legal systems, and evolving judicial interpretations.<sup>4</sup> Indonesia provides an important case study due to its hybrid legal framework, where Religious Courts exercise jurisdiction over Muslim family matters under a combination of Islamic law and state procedural law.<sup>5</sup> Within this system, disputes concerning joint marital property frequently emerge following divorce proceedings and are adjudicated through judicial processes that integrate mediation and adjudication.<sup>6</sup> Indonesian Religious Courts attempt to balance doctrinal Islamic principles with modern legal frameworks aimed at ensuring justice and equality.<sup>7</sup> In practice, judicial reasoning often recognizes both financial

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"Women's Property Rights in Turkey," *Turkish Studies* 15, no. 1 (2014): 29–44, <https://doi.org/10.1080/14683849.2014.891350>.

<sup>3</sup> Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989); Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition."

<sup>4</sup> Ziba Mir-Hosseini, *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence* (Oxford: Oneworld Publications, 2009); Abdullahi Ahmed An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Cambridge, MA: Harvard University Press, 2002).

<sup>5</sup> Tim Lindsey, *Indonesia: Law and Society* (Federation Press, 2008); B Jones and A Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217–31, <https://doi.org/10.1093/ojlr/rwad015>; T D Wirastris and S C van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32, <https://doi.org/10.15408/ajis.v24i2.38424>.

<sup>6</sup> E S Syaifei and S Djazimah, "Mediation in the Settlement of Joint Marital Property Disputes: A Study at Tanjung Karang Religious Court, Lampung," *Samarah* 5, no. 2 (2021): 867–91, <https://doi.org/10.22373/sjhk.v5i2.9039>; Amir, Ahmad Nabil, Tasnim Abdul Rahman, Seyed Mohammad Houshisadat, and Musa Adebayo Badrudeen, trans. 2025. "Muhammad Abduh and the Conception of Science: The Framework of Maqasid and Sharia". *Al-Battar: Jurnal Pamungkas Hukum* 2 (2): 175–86. <https://doi.org/10.63142/al-battar.v2i2.167>.

<sup>7</sup> M I Wahyudi, "Women Dealing With The Law In Religious Courts," *Ahkam: Jurnal Ilmu Syariah* 18, no. 2 (2018): 305–20,

and non-financial contributions within marriage, including domestic labor, in determining equitable property division.<sup>8</sup>

Despite the existence of legal frameworks governing marital property division, significant challenges remain in ensuring effective protection of women's economic rights during divorce proceedings. One major concern involves the potential dissipation, concealment, or transfer of marital assets before the court reaches a final decision. When such actions occur, women particularly those who have contributed to household management rather than formal income generation may face severe economic disadvantages after divorce. These risks illustrate a fundamental gap between normative legal protections and practical judicial outcomes, reflecting the broader socio-legal distinction between "law in the books" and "law in action".<sup>9</sup> Judicial processes are influenced not only by legal norms but also by institutional practices, evidentiary constraints, and social perceptions regarding gender roles.<sup>10</sup>

To address this risk, procedural legal systems provide mechanisms designed to secure disputed assets during litigation. One such mechanism is marital seizure (marital beslag), a form of conservatory seizure intended to preserve marital property while the case is under

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<https://doi.org/10.15408/ajis.v18i2.7491>; M L Hakim, "Between Hibah and Waṣīat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal* 17, no. 2 (2024): 147–66, <https://doi.org/10.14421/ahwal.2024.17201>.

<sup>8</sup> S Vicario, F Wamafma, and M A Papare, "Marital Bonds And Joint Property Cases: Implications For The Protection Of Spousal Rights," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 190–210, <https://doi.org/10.52496/mjhki.v2i2.48>; Marta, Rahma Fitria, Fakhurrrazi M. Yunus, Nurul Fithria, Ozioma Victoria Uchime, and Nur Farahin Afiqah Daud, trans. 2026. "Child Custody in Divorce of Husband Abandonment: Judge's Subjectivity Based on the Benefit of the Child Determination No. 310 Pdt.G 2023 MS. Bna". *Al-Battar: Jurnal Pamungkas Hukum* 3 (1): 67-81. <https://doi.org/10.63142/al-battar.v3i1.490>.

<sup>9</sup> Eugen Ehrlich, *Fundamental Principles of the Sociology of Law* (Harvard University Press, 1936); Lawrence M Friedman, *American Law: An Introduction* (New York: W. W. Norton & Company, 2001); Wahyudi, Muhammad Husni Abdullah Pakarti, and Diana Farid. 2024. "Peran Tradisi Dan Norma Gender Dalam Penyelesaian Sengketa Hukum Keluarga". *An-Nisa: Journal of Islamic Family Law* 1 (3): 1-11. <https://doi.org/10.63142/an-nisa.v1i3.50>.

<sup>10</sup> Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (University of Chicago Press, 1990); Wahyudi, Muhammad Husni Abdullah Pakarti, Diana Farid, Husain, and Sofia Gussevi. 2024. "Pergeseran Konsep Perwalian Anak Dalam Perkembangan Hukum Keluarga Di Indonesia". *An-Nisa: Journal of Islamic Family Law* 1 (4): 64-74. <https://doi.org/10.63142/an-nisa.v1i4.46>.

judicial examination. This procedural tool allows courts to temporarily restrict the transfer or disposal of disputed assets, thereby safeguarding the potential rights of the parties involved. In principle, marital beslag functions as a protective instrument within civil procedural law aimed at ensuring that judicial decisions remain enforceable and meaningful. From an Islamic legal perspective, such procedural protection aligns with the objective of safeguarding property rights (*ḥifẓ al-māl*), one of the fundamental goals of the *Shari‘a*.<sup>11</sup> Therefore, marital beslag theoretically represents a mechanism capable of bridging procedural law with broader principles of justice and property protection.

Legal scholarship has emphasized the importance of procedural safeguards in protecting economic rights during family law disputes. Conservatory seizure mechanisms are widely recognized in comparative legal systems as tools designed to prevent the loss or concealment of disputed assets during litigation.<sup>12</sup> Such measures ensure that the court’s eventual judgment remains enforceable and that the parties’ rights are preserved throughout the judicial process. In the context of marital property disputes, seizure mechanisms serve a particularly important role because assets may be transferred or hidden by one party before the court determines ownership or division.

Within Indonesia’s Religious Court system, marital beslag has been incorporated as part of procedural practice derived from civil procedural law traditions. Religious Courts exercise authority over family disputes involving Muslim parties, including divorce and joint marital property claims.<sup>13</sup> In adjudicating such disputes, judges often employ both juridical reasoning based on statutory provisions and

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<sup>11</sup> Mohammad Hashim Kamali, *Freedom of Expression in Islam* (Cambridge: Islamic Texts Society, 1997); Hayati, Mala, Fakhurrazi M. Yunus, and Gamal Achyar. 2025. “Child Rights Fulfilment in Families Practicing Early Marriage: A Juridical-Empirical Analysis of Child Protection Law Implementation in Blangkejeren, Gayo Lues Regency”. *An-Nisa: Journal of Islamic Family Law* 2 (4): 361-76. <https://doi.org/10.63142/an-nisa.v2i4.474>.

<sup>12</sup> J E Headley, “Seizure,” in *The Encyclopedia of Civil Liberties in America: Volumes One-Three*, vol. 3, 2015, 858–59, <https://doi.org/10.4324/9781315699868-610>; B M Da Silva and G C O Gomes, “Immunity from Seizure of Guarantor’s Family Property in Commercial Rent Contracts: Analysis of the Extraordinary Appeal No 605.709/SP,” *Revista de Direito Da Faculdade Guanambi* 6, no. 1 (2019), <https://doi.org/10.29293/rdfg.v6i01.251>.

<sup>13</sup> Jones and Aftab, “Inside Indonesia’s Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation”; Wirastrri and van Huis, “The State of Indonesia’s Marriage Law: 50 Years of Statutory and Judicial Reforms.”

broader philosophical considerations aimed at achieving fairness and social justice.<sup>14</sup> This interpretive flexibility allows judges to integrate procedural safeguards with substantive principles derived from Islamic legal thought and contemporary legal standards.

From a gender perspective, feminist legal theory has increasingly emphasized the need to reinterpret legal procedures in ways that address structural inequality. Scholars argue that procedural neutrality may inadvertently reinforce gender disparities if it fails to account for unequal economic positions within marriage.<sup>15</sup> Contemporary feminist scholarship within Islamic legal discourse has therefore advocated for reinterpretations of family law that recognize women's economic contributions and enhance protection of their rights in marital property disputes.<sup>16</sup> In this framework, mechanisms such as marital beslag may function not merely as technical procedural devices but as instruments capable of strengthening gender-responsive justice within family law systems.

Existing literature on Indonesian Islamic family law has primarily concentrated on substantive legal reforms, marriage law pluralism, and the evolution of gender rights within Islamic legal frameworks.<sup>17</sup> These studies have significantly contributed to understanding how Islamic family law adapts to contemporary legal and social conditions. However, most analyses focus on doctrinal aspects of marriage, divorce, and

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<sup>14</sup> B R Hakim and M Nafi, "REACTUALIZATION OF MASLAHAT AND SOCIAL JUSTICE PRINCIPLES IN THE CONTEXTUALIZATION OF FIQH ZAKAT," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 102–18, <https://doi.org/10.18592/sjhp.v24i1.12909>.

<sup>15</sup> MacKinnon, *Toward a Feminist Theory of the State*; T T Daeuva, "PROPERTY LAW AND SPECIFICS OF INHERITANCE IN A TRADITIONAL OSSETIAN SOCIETY: THE GENDER ASPECT," *History, Archeology and Ethnography of the Caucasus* 15, no. 4 (2019): 734–41, <https://doi.org/10.32653/CH154734-741>.

<sup>16</sup> C Ashford and A Maine, *GENDER, SEXUALITY AND LAW: A TEXTBOOK, Gender, Sexuality and Law: A Textbook*, 2024, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85211296193&partnerID=40&md5=7cb2f9455c2ef0b98da8b8a2c86d8bea>; G Kelkar and P Govindnathan, "Social Norms and Attitudes towards Women's Entitlement to Land," in *India Social Development Report 2023: Women's Contribution in the Economy*, 2024, 59–78, <https://doi.org/10.1093/oso/9780198885979.003.0004>.

<sup>17</sup> J Bowen, *Islam, Law and Equality in Indonesia* (Cambridge: Cambridge University Press, 2003); Tim Lindsey and Simon Butt, *Indonesian Law* (Oxford University Press, 2018); Ziba Mir-Hosseini, "Beyond Islam vs Feminism," *IDS Bulletin* 42, no. 1 (2011): 67–77, <https://doi.org/10.1111/j.1759-5436.2011.00201.x>.

inheritance rather than examining procedural mechanisms that influence the enforcement of women's economic rights during litigation.

Research concerning marital property disputes has also largely focused on normative frameworks such as the Marriage Law and the Compilation of Islamic Law (KHI), emphasizing principles of equitable distribution and recognition of household contributions. While these studies highlight the importance of ensuring fair property division, they rarely investigate the procedural tools used to secure disputed assets during ongoing legal proceedings. At the same time, broader comparative research on women's property rights has predominantly addressed land ownership and inheritance systems rather than temporary seizure mechanisms designed to preserve marital assets.<sup>18</sup>

Consequently, the socio-legal dynamics surrounding marital beslag remain insufficiently theorized and empirically examined. Existing studies on Indonesian Islamic family law have predominantly focused on substantive legal frameworks, such as marriage, divorce, and inheritance, while paying limited attention to procedural mechanisms that shape the enforceability of women's economic rights during litigation. This gap is particularly significant given that procedural tools, rather than substantive norms alone, often determine whether legal protection can be realized in practice.

This study addresses this gap by examining marital seizure (*sita marital*) as a procedural instrument within the adjudication of marital property disputes in Indonesia's Religious Courts. It is guided by three research questions: (1) how judges interpret and apply marital seizure in practice; (2) to what extent this mechanism functions as an effective safeguard for women's economic rights; and (3) what socio-legal and institutional factors contribute to disparities in judicial decision-making.

The study is grounded in an integrated theoretical framework combining socio-legal theory, feminist legal theory, and Islamic legal philosophy, particularly the concept of *maqāṣid al-sharīʿa* with emphasis on *ḥifẓ al-māl* (protection of property). This framework enables a more focused analysis of how procedural law operates within a hybrid legal system and how it interacts with structural inequality.

This study departs from existing scholarship by explicitly reconceptualizing marital seizure not merely as a neutral procedural device, but as a gendered procedural safeguard that operates at the

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<sup>18</sup> Deere and Doss, "The Gender Asset Gap: What Do We Know and Why Does It Matter?"; Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*.

intersection of law, institutional practice, and socio-economic asymmetry. While previous research has emphasized doctrinal or substantive aspects of marital property, this study foregrounds the procedural dimension as a critical site of legal protection and inequality. By analyzing judicial reasoning, evidentiary practices, and institutional dynamics, the study demonstrates how procedural law can either reinforce or mitigate structural disadvantage.

Accordingly, this research contributes to the literature in three ways. First, it provides an empirical socio-legal analysis of judicial decision-making on marital seizure, an area that remains underexplored. Second, it advances a theoretical reconceptualization by integrating feminist legal theory and *maqāṣid al-sharī'a* into the analysis of procedural law. Third, it identifies systemic inconsistencies in evidentiary standards and judicial discretion, offering a foundation for doctrinal and institutional reform.

## **RESEARCH METHODS**

This study employs a qualitative research methodology with a socio-legal empirical design to examine judicial reasoning, evidentiary constructions, and the socio-legal dynamics underlying the application of *sita marital* (marital seizure) in joint marital property disputes adjudicated by Indonesian Religious Courts. The qualitative approach is selected for its capacity to capture interpretive depth, normative arguments, and the contextual rationality embedded in judicial decisions, which cannot be adequately quantified. Methodologically, the study integrates doctrinal (normative juridical) analysis with empirical legal inquiry, enabling a comprehensive understanding of both law in books and law in action. This combined approach facilitates a critical examination of how procedural norms governing marital seizure are interpreted, operationalized, and shaped by broader socio-cultural and institutional contexts.

The primary data consist of 42 court decisions rendered by Religious Courts and High Religious Courts across Indonesia between 2018 and 2023, all of which involve petitions for *sita marital* in divorce proceedings concerning joint marital property. These decisions were obtained from the official database of the Indonesian Supreme Court, ensuring their authenticity and legal validity. A purposive sampling technique was employed, with inclusion criteria requiring that each decision explicitly addresses the request for marital seizure within its *ratio decidendi*. Secondary data comprise relevant statutory and regulatory frameworks, including provisions on conservatory seizure

under the *Herzien Indonesisch Reglement (HIR)* and *Rechtsreglement voor de Buitengewesten (RBg)*, the Indonesian Marriage Law (Law No. 1 of 1974 as amended by Law No. 16 of 2019), and the Compilation of Islamic Law (KHI), particularly Articles 85–97. In addition, scholarly literature, journal articles, and theoretical works on socio-legal studies, feminist legal theory, and Islamic legal philosophy especially the *maqāsid al-sharī‘a* framework are utilized to strengthen the analytical foundation.

Data collection was conducted through systematic document analysis, involving the identification, classification, and extraction of relevant legal reasoning from selected judgments. The collected data were analyzed using qualitative content analysis combined with a comparative and interpretive approach. This process involved coding judicial arguments, categorizing patterns of evidentiary assessment, and examining variations in judicial approaches across jurisdictions. Analytical interpretation was guided by socio-legal and feminist perspectives to uncover underlying power relations and gendered economic vulnerabilities reflected in judicial decisions. To ensure methodological rigor, the study applies triangulation between primary and secondary sources, maintains transparency in sampling criteria, and acknowledges inherent limitations, including reliance on publicly available decisions and the non-generalizable nature of qualitative findings. Despite these constraints, the research provides a robust and analytically grounded account of the application of marital seizure within Indonesia’s Religious Courts.

## RESULTS AND DISCUSSION

This section analyzes how marital seizure (*sita marital*) operates in judicial practice and demonstrates that it functions as a contested procedural instrument shaped by evidentiary standards, judicial discretion, and institutional context. Rather than being applied as a consistent legal safeguard, marital seizure reveals significant variation in judicial reasoning, which directly affects the level of protection afforded to women’s economic rights.

To clarify these patterns, the findings are summarized in Table 1, which identifies three dominant typologies of judicial decisions. These typologies do not merely describe variation but illustrate how procedural law is unevenly operationalized in practice.

**Table 1.** Judicial Patterns in Marital Seizure Decisions

Decision Type	Key Characteristics	Implications for Women’s Rights
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<b>Granted</b>	Evidence of asset transfer or exclusive control	Strong procedural protection
<b>Denied</b>	Lack of formal proof or insufficient evidentiary support	Limited protection; procedural rigidity
<b>Partially Granted</b>	Seizure applied only to specific assets	Fragmented protection

The table demonstrates that the application of marital seizure is not governed by a uniform evidentiary standard but is instead highly dependent on how judges construct and interpret “risk” within each case. This variation reflects the absence of clear procedural guidelines and highlights the central role of judicial discretion in determining outcomes.

More importantly, these findings indicate that marital seizure does not operate as a neutral procedural mechanism. Instead, its effectiveness is conditioned by structural factors particularly unequal access to financial information which disproportionately affect women as applicants. As a result, similar cases may produce different outcomes, not because of substantive legal differences, but due to divergent evidentiary expectations and judicial interpretations.

### **Marital Seizure as Preventive Law within the Framework of Equality in Marital Property**

The empirical analysis of selected Religious Court decisions reveals that the application of *sita marital* operates primarily as a preventive legal mechanism, designed to safeguard the integrity of disputed marital assets during the litigation process. As stipulated in Article 227 HIR and Article 261 RBg, the conservatory nature of this mechanism enables temporary seizure to prevent parties from transferring, concealing, or dissipating jointly owned property before a final and binding judgment is issued. Within marital property disputes adjudicated under the jurisdiction of Indonesia’s Religious Courts, this procedural device holds significant relevance, particularly in light of the principle of equal division articulated in Article 97 of the *Kompilasi Hukum Islam* (KHI).

In the case of *Pengadilan Agama Jakarta Selatan No. 2145/Pdt.G/2018/PA.JS*, the judicial panel granted the petitioner’s request for marital seizure after finding indications of asset transfer specifically a house and a motor vehicle occurring during the pendency of divorce proceedings. The reasoning (*ratio decidendi*) outlined by the panel emphasized the necessity of safeguarding the claimant’s potential

rights under the joint property regime. The seizure was considered essential to ensure the enforceability and fairness of the ultimate distribution decision. Conversely, in *Putusan PA Bandung No. 3254/Pdt.G/2020/PA.Bdg*, the same procedural request was denied. The court held that the petitioner failed to present concrete evidence establishing a credible threat of asset dissipation. This contrast highlights the highly contingent nature of marital seizure decisions, which rest heavily upon the court's construction of risk and the sufficiency of evidentiary presentation.

These cases collectively suggest that the preventive function of *sita marital* is not uniformly or predictably enforced, but rather depends on the interpretive discretion of the judiciary in each instance. While the mechanism is conceptually aligned with ensuring procedural justice and economic protection, its application reveals a pattern of inconsistency, driven by variable thresholds of proof and judicial attitudes toward evidentiary risk.

The variability in judicial responses to *sita marital* requests underscores a central tension between the normative aspirations of preventive procedural law and the discretionary realities of judicial practice. Theoretically, conservatory seizure in family law aligns with broader principles of preventive justice ensuring that litigants are not unfairly disadvantaged by unilateral actions taken during the pendency of litigation.<sup>19</sup> In jurisdictions that adopt equitable frameworks, such as Australia under the Family Law Act 1975, courts have institutionalized interim measures to preserve fairness, recognizing that the substantive outcome of property division is contingent upon the availability of assets at the conclusion of the case.

However, the Indonesian context reveals how this aspiration can be curtailed by judicial skepticism or limited interpretive engagement with the protective logic of interim mechanisms. The Bandung decision illustrates a judicial unwillingness to operationalize *sita marital* in the absence of incontrovertible proof of asset transfer. This evidentiary burden, while ostensibly neutral, may disproportionately burden women

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<sup>19</sup> A M Patrick Parkinson, "The Constitutional Constraints on Altering Property Rights After Relationship Breakdown," *University of Queensland Law Journal* 43, no. 2 (2024): 157–78, <https://doi.org/10.38127/uqlj.v43i2.8515>; Hayatusyifa, Noor Fadillah, Fakhurrrazi M. Yunus, Aulil Amri, Manuel Beltrán Genovés, and Nur Syahirah Binti Mohammad Nasir. 2026. "Children's Rights Fulfillment in Families of Female Migrant Workers: An Islamic Law Perspective from Aceh Tenggara". *An-Nisa: Journal of Islamic Family Law* 3 (1): 65-82. <https://doi.org/10.63142/an-nisa.v3i1.496>.

who lack formal control over financial records or legal documentation of jointly acquired assets.<sup>20</sup> In effect, judicial gatekeeping over what constitutes "sufficient risk" becomes a determinant of whether procedural equality is achievable.

Internationally, similar patterns emerge in jurisdictions where formal laws promise gender equality but are undermined by local judicial culture or socio-normative resistance. In Ethiopia, for instance, legal guarantees of marital property rights are often nullified by religious and customary constraints on women's property access post-divorce.<sup>21</sup> In Kosovo, traditional inheritance practices continue to exclude women despite codified reforms.<sup>22</sup> These comparative examples affirm that the effectiveness of preventive legal tools such as *sita marital* is contingent not on their textual presence, but on their interpretive activation within institutional and cultural contexts.

In Indonesia's Religious Courts, judicial reasoning is not merely the application of law but the product of a complex interplay between doctrinal rules, socio-religious values, and institutional logic.<sup>23</sup> The unequal implementation of *sita marital* thus reflects not only evidentiary challenges but also deeper structural asymmetries in how gendered vulnerability is understood or overlooked by judicial actors. As highlighted by socio-legal scholars, law in action frequently diverges from law in books when institutions fail to internalize the protective purposes of procedural tools.<sup>24</sup>

The findings carry significant implications for both judicial practice and the broader discourse on gender justice in Islamic family law. While *sita marital* is formally recognized as a procedural device for

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<sup>20</sup> Yesufu and Nkomo, "Women, and Land and Property Rights in Benin City, Nigeria"; O'Neil and Toktas, "Women's Property Rights in Turkey."

<sup>21</sup> D G Chala and N J Gemede, "Legal Pluralism, Gender and Justice: Women's Rights to Property under Marriage Dissolution among the Oromo in Jimma, Ethiopia," *Legal Pluralism and Critical Social Analysis* 54, no. 2–3 (2022): 278–96, <https://doi.org/10.1080/27706869.2022.2115222>.

<sup>22</sup> S Beshi, "Property Inheritance by Women in Kosovo," in *Accounting, Finance, Sustainability, Governance and Fraud*, 2020, 159–71, [https://doi.org/10.1007/978-981-32-9588-9\\_9](https://doi.org/10.1007/978-981-32-9588-9_9).

<sup>23</sup> Hakim and Nafi, "REACTUALIZATION OF MASLAHAT AND SOCIAL JUSTICE PRINCIPLES IN THE CONTEXTUALIZATION OF FIQH ZAKAT"; J Wei, "RELIGIOUS ETHICS AND THE MORAL FOUNDATIONS OF MARITAL PROPERTY RIGHTS: A PHILOSOPHICAL ANALYSIS OF SPOUSAL OWNERSHIP AND THE MARRIAGE LAW," *European Journal for Philosophy of Religion* 17, no. 2 (2025): 210–26, <https://doi.org/10.24204/ejpr.2025.4671>.

<sup>24</sup> Ehrlich, *Fundamental Principles of the Sociology of Law*.

asset preservation, its inconsistent application undermines its potential as a vehicle for substantive equality. In effect, the procedural neutrality of the mechanism its reliance on evidentiary risk assessments and judicial discretion may inadvertently exacerbate gender-based disparities in marital property disputes. Women who face institutional, financial, or informational asymmetries are less equipped to meet judicial expectations for concrete proof, thus rendering the procedural safeguard ineffective precisely where it is most needed.

Reframing *sita marital* as an instrument of *procedural maqāṣid*, particularly under the Islamic objective of *ḥifẓ al-māl* (protection of property), enables a more justice-oriented interpretation of its function.<sup>25</sup> This reconceptualization aligns the technical mechanism with Islamic legal values that prioritize dignity, fairness, and economic security. It also demands a shift in judicial culture: from evidentiary formalism to a context-sensitive approach that considers structural inequality, especially the gendered distribution of economic and legal power within marriages.<sup>26</sup>

Furthermore, socio-legal scholarship calls for a more robust integration of empirical realities into judicial reasoning. The judiciary must be sensitized to the lived experiences of female litigants who often occupy vulnerable positions within the legal system. The current practice, as observed in the analyzed decisions, suggests that the protective potential of *sita marital* is being limited by interpretive conservatism and institutional inertia. Legal education, procedural reform, and normative guidance rooted in gender-sensitive interpretation of Islamic principles may be necessary to reorient this procedural device toward its intended protective function.

Ultimately, the function of *sita marital* should be evaluated not solely on its textual availability, but on its capacity to deliver equitable outcomes in a context where formal legal equality is not always matched by substantive accessibility. Its effective application requires a jurisprudential shift that recognizes the asymmetric burdens placed on women in proving risk and asserting rights. Only through such a shift can *sita marital* evolve from a formal legal remedy into a meaningful safeguard of women's economic security in divorce proceedings.

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<sup>25</sup> Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld, 2008).

<sup>26</sup> Daevea, "PROPERTY LAW AND SPECIFICS OF INHERITANCE IN A TRADITIONAL OSSETIAN SOCIETY: THE GENDER ASPECT"; Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition."

### **Positive Legal and Islamic Foundations: Normative Integration and Doctrinal Gaps**

The examination of judicial decisions concerning marital seizure indicates that the normative justification for the measure rests primarily on the relationship between substantive marital property rights and procedural safeguards. Indonesian positive law regulates joint marital property through Articles 35 and 37 of the Marriage Law as well as Articles 85–97 of the Compilation of Islamic Law (KHI). These provisions establish the fundamental principle that assets acquired during marriage constitute joint property and must be divided equitably following divorce. Article 97 KHI, in particular, guarantees that each former spouse is entitled to one-half of the marital estate unless otherwise determined by agreement. Although the statutory framework clearly recognizes the equal entitlement of both parties, it does not explicitly regulate the mechanism of marital seizure as a procedural tool for protecting those rights during litigation.

Judicial practice, however, reveals that courts frequently rely on conservatory seizure as a supporting procedural instrument to ensure the enforceability of this substantive entitlement. This relationship between substantive rights and procedural enforcement is evident in *Putusan Pengadilan Tinggi Agama Surabaya No. 48/Pdt.G/2019/PTA.Sby*. In this appellate ruling, the panel emphasized that temporary seizure was necessary to guarantee that the division of marital property could be implemented effectively. The court reasoned that the absence of such preventive measures would create the possibility for one party to transfer or dispose of assets before the judicial determination becomes final. Consequently, the appellate court framed seizure not merely as a procedural technicality but as a necessary mechanism for safeguarding the substantive rights embedded in Article 97 KHI.

This reasoning demonstrates an implicit doctrinal linkage between substantive marital property law and procedural enforcement mechanisms. In practice, the seizure of disputed assets operates as an institutional guarantee ensuring that the normative promise of equal division does not become illusory. Without such protection, the legal recognition of joint ownership could be rendered ineffective if assets are dissipated during litigation. Therefore, the court's reasoning illustrates a functional integration between civil procedural law and Islamic family law norms within Indonesia's Religious Court system.

Beyond positive law, the normative legitimacy of protecting property within marital disputes also finds resonance in Islamic legal

philosophy. The protection of property (*ḥifẓ al-māl*) constitutes one of the central objectives within the framework of *maqāṣid al-sharīʿa*, which identifies the preservation of religion, life, intellect, lineage, and property as the five fundamental interests safeguarded by Islamic law.<sup>27</sup> The principle of property protection requires legal systems to maintain the integrity of ownership and prevent unjust appropriation or unlawful transfer of wealth.<sup>28</sup> Within this normative structure, mechanisms designed to prevent asset dissipation during legal disputes align with the broader objective of safeguarding lawful ownership.

Consequently, marital seizure can be interpreted as a procedural instrument that indirectly operationalizes the objective of property protection within Islamic legal thought. By ensuring that disputed assets remain intact until the court determines the rightful distribution, the mechanism functions as a procedural extension of *ḥifẓ al-māl*. This dual grounding in both statutory regulation and Islamic normative philosophy highlights the unique position of marital seizure within Indonesia's hybrid legal system, where procedural law derived from civil legal traditions interacts with Islamic family law principles.<sup>29</sup>

Although marital seizure possesses both statutory and normative legitimacy, the judicial reasoning observed in the analyzed decisions reveals an uneven integration of these foundations. Most judicial arguments rely heavily on civil procedural reasoning, emphasizing the necessity of preserving assets for the execution of final judgments. References to Islamic legal philosophy or *maqāṣid al-sharīʿa* rarely appear explicitly in the ratio decidendi. Instead, judges tend to frame

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<sup>27</sup> R Saidon et al., "Preventing Illegal Marriages in the Light of Maqasid Al-Shariah," *Pertanika Journal of Social Sciences and Humanities* 25, no. S (2017): 331–40, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85057155302&partnerID=40&md5=33d6aa2ac9d22a7de86dce7a511b264b>; A H A Taufiqurrohman et al., "The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia," *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 83–100, <https://doi.org/10.15408/ajis.v24i1.33155>; A Baharuddin and M N Musa, "Environmental Ethics in Islam," in *Islamic Bioethics: Current Issues and Challenges*, 2017, 161–82, [https://doi.org/10.1142/9781783267507\\_0008](https://doi.org/10.1142/9781783267507_0008).

<sup>28</sup> R M R Alias et al., "Combating Money Laundering and Terrorism Financing: Perspectives from Maqāṣid Al-Sharīah," in *Emerging Issues in Islamic Finance Law and Practice in Malaysia*, 2019, 130–44, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85106211046&partnerID=40&md5=5cc7493661e1469f06dbc83e141d6e3b>.

<sup>29</sup> S C V Huis, "The Religious Courts: Does Lev's Analysis Still Hold?," in *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, 2019, 109–32, <https://doi.org/10.1017/9781108636131.005>.

their reasoning within the technical language of evidentiary standards and procedural safeguards.

This pattern reflects a broader characteristic of Indonesia's hybrid legal structure, in which state law and Islamic legal principles coexist within a unified judicial framework.<sup>30</sup> While this convergence allows flexibility in legal interpretation, it can also produce doctrinal fragmentation when courts rely predominantly on one normative framework while leaving the other implicit. In the context of marital seizure, the procedural justification grounded in civil procedural law often dominates judicial reasoning, even though the underlying substantive rights originate from Islamic family law.

Comparative research in other Muslim-majority legal systems suggests that such doctrinal gaps are not unique to Indonesia. Hybrid legal systems frequently struggle to reconcile the interpretive methodologies of civil law traditions with the normative objectives of Islamic jurisprudence. In some jurisdictions, this tension results in partial integration, where Islamic legal principles inform the substantive regulation of family matters while procedural law remains largely secular in structure. The coexistence of these frameworks can generate ambiguity regarding how Islamic legal objectives should influence procedural adjudication.<sup>31</sup>

Within the Indonesian Religious Courts, judges possess considerable interpretive discretion in balancing legal norms derived from multiple sources. The pluralistic nature of the legal system allows courts to incorporate religious, statutory, and social considerations when resolving disputes.<sup>32</sup> This flexibility has enabled judicial innovation in various areas of family law, including the adaptation of inheritance rules and the recognition of evolving gender relations within contemporary

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<sup>30</sup> M A Ramadan, "Child Support for Muslim Children in Family Courts in Today's Israel," *Hawwa* 13, no. 2 (2020): 1–27, <https://doi.org/10.1163/15692086-12341364>; Marta, Rahma Fitria, Fakhurrizi M. Yunus, Nurul Fithria, Ozioma Victoria Uchime, and Nur Farahin Afiqah Daud, trans. 2026. "Child Custody in Divorce of Husband Abandonment: Judge's Subjectivity Based on the Benefit of the Child Determination No. 310 Pdt.G 2023 MS. Bna". *Al-Battar: Jurnal Pamungkas Hukum* 3 (1): 67–81. <https://doi.org/10.63142/al-battar.v3i1.490>.

<sup>31</sup> Ramadan.

<sup>32</sup> H Horii, "Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection," *Journal of Human Rights Practice* 12, no. 3 (2020): 501–23, <https://doi.org/10.1093/jhuman/huaa041>.

Indonesian society.<sup>33</sup> However, the same flexibility may also contribute to inconsistencies in how normative principles are articulated within judicial reasoning.

From the perspective of marital property jurisprudence, the protection of jointly acquired assets is essential to maintaining fairness in the dissolution of marriage. Scholars have emphasized that clear legal mechanisms are necessary to prevent disputes over asset ownership and ensure equitable outcomes, particularly in complex marital arrangements.<sup>34</sup> Instruments such as prenuptial agreements have been proposed as preventive tools that align with Islamic legal objectives by safeguarding property rights before conflicts arise. In contrast, marital seizure operates as a reactive safeguard applied during litigation, making its effectiveness heavily dependent on judicial interpretation and procedural awareness.

The limited incorporation of *maqāṣid al-sharī‘a* reasoning within judicial decisions therefore reflects a missed opportunity for deeper doctrinal integration. While courts effectively employ procedural law to preserve disputed assets, they rarely articulate the broader Islamic legal rationale underlying property protection. As a result, the dual legitimacy of marital seizure remains conceptually underdeveloped within judicial discourse.

The findings suggest that marital seizure possesses a form of dual legitimacy rooted in both positive legal frameworks and Islamic normative philosophy. Nevertheless, the absence of explicit doctrinal articulation linking these two foundations reveals a conceptual gap in the current judicial approach. Courts recognize the practical necessity of protecting marital property during litigation, yet they seldom frame this necessity within the broader ethical and jurisprudential objectives of Islamic law.

This gap has important implications for the development of gender-responsive jurisprudence within Religious Courts. As demonstrated in the previous discussion of preventive legal protection (RD1.1), the effectiveness of marital seizure in safeguarding women’s economic rights depends not only on the availability of the mechanism

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<sup>33</sup> Y Fitriyati et al., “Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah,” *Nurani* 25, no. 1 (2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>.

<sup>34</sup> B N Rohman, V D Mukhoyaroh, and A A Arifin, “Ownership Status of Implementation of Assets in Mixed Marriages,” *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 101–18, <https://doi.org/10.15294/ciils.v2i2.68854>.

but also on the interpretive orientation of judges. When courts treat seizure solely as a procedural instrument without recognizing its normative significance in ensuring property protection, the mechanism risks being applied narrowly or inconsistently.

Integrating *maqāṣid al-sharī'a* into judicial reasoning could provide a stronger normative basis for the application of marital seizure. The objective of protecting property (*ḥifẓ al-māl*) requires legal institutions to ensure that individuals are not deprived of their lawful entitlements through procedural vulnerabilities or strategic manipulation of assets.<sup>35</sup> Within marital disputes, this objective becomes particularly significant because joint property represents the accumulated contributions of both spouses during marriage. Safeguarding those assets during litigation therefore aligns with the ethical foundation of Islamic law that seeks to maintain justice and economic security.

Moreover, the integration of Islamic normative reasoning with procedural law may strengthen the coherence of Indonesia's hybrid legal system. Rather than treating civil procedural rules and Islamic family law as separate domains, judicial reasoning could articulate how procedural mechanisms serve the substantive objectives of Islamic jurisprudence. Such an approach would reinforce the legitimacy of judicial decisions while also enhancing the consistency of legal interpretation across cases.

Ultimately, the analysis indicates that marital seizure occupies an important yet under-theorized position within the adjudication of marital property disputes. It functions as a bridge between procedural enforcement and substantive rights, ensuring that the promise of equal property division articulated in Article 97 KHI can be realized in practice. However, the potential of this mechanism to contribute to substantive justice will remain limited unless courts develop a more integrated doctrinal framework that explicitly connects procedural safeguards with the normative objectives of Islamic law.

### **Practice in Religious Courts: Judicial Patterns and Decision Disparities**

A close examination of judicial decisions across various Religious Courts in Indonesia reveals marked discrepancies in the application of *sita marital*, highlighting a spectrum of judicial patterns shaped by evidentiary standards, legal discretion, and institutional cultures. Three primary typologies of decisions emerge: first, *sita* is granted in full where

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<sup>35</sup> Alias et al., "Combating Money Laundering and Terrorism Financing: Perspectives from Maqāsid Al-Sharīah."

judges identify strong indications of asset transfer or unilateral control; second, *sita* is denied based on insufficient proof or a perception of procedural prematurity; and third, partial *sita* is granted only on specific assets where evidentiary linkage can be established.

The decision of the Religious Court of Depok in *Putusan No. 1897/Pdt.G/2021/PA.Dpk* typifies the first pattern. The judicial panel accepted the *sita* application upon observing that the defendant held exclusive control over ownership documents and had unilateral access to financial transactions. The court acknowledged the asymmetry of control as a substantive risk to the equitable division of property. In contrast, the Religious Court of Medan in *Putusan No. 1123/Pdt.G/2019/PA.Mdn* rejected the same procedural request, reasoning that the plaintiff failed to demonstrate formal ownership evidence linking the disputed property to the marital estate. These opposing judgments, although issued within the same institutional framework, underscore the pivotal role that evidentiary interpretation plays in determining outcomes.

This fragmentation in judicial response is not random; it reflects deeper structural patterns in judicial behavior. The absence of clear procedural guidelines concerning the threshold of proof necessary to warrant a *sita* ruling leaves judges to interpret the notion of “risk of asset dissipation” through individualized legal logic. In some courts, control over documents or transaction history suffices, while in others, only formal certificates or deeds are accepted as valid indicators. Such divergence generates interpretive uncertainty and erodes the predictability of legal protection in marital property cases.

The findings reveal that *sita marital* functions not as a consistently applied legal right but as a discretionary privilege subject to the cognitive frameworks and evidentiary inclinations of individual judges. The result is a legal landscape in which similarly situated litigants can experience widely varying degrees of protection based not on the facts of the case, but on where and before whom the case is heard.

The inconsistencies identified in the application of *sita marital* find resonance within broader socio-legal critiques concerning the role of judicial discretion in family law. The Discretionary Judicial Decision Logic (DJDL) model, developed in comparative family law studies, explains how judicial discretion operates within the bounds of vague legal norms, where judges must fill normative gaps with individualized

reasoning.<sup>36</sup> This dynamic is especially pronounced in Indonesia's Religious Courts, which operate within a pluralistic legal environment that balances Islamic doctrine, positive law, and cultural expectations.<sup>37</sup>

The disparities between the Depok and Medan rulings are not merely procedural anomalies; they represent a systemic feature of Indonesian Religious Courts, where the absence of codified evidentiary standards permits a high degree of interpretive variance. The ambiguity surrounding what constitutes a credible threat of asset transfer enables subjective assessments that can both empower and constrain judicial protection. This environment encourages reliance on judicial instinct, prior experience, and local legal culture, rather than uniform doctrine.

Structural and institutional factors further shape these decision-making patterns. As studies of judicial behavior have indicated, infrastructure disparities, digital literacy, and case management capacities influence how effectively courts can assess and verify claims.<sup>38</sup> Courts in more urbanized jurisdictions with access to e-Court systems may possess better tools for evaluating asset control and transaction patterns, thereby facilitating the granting of *sita*. Conversely, in less resourced jurisdictions, evidentiary assessment remains limited to formal documentation, disadvantaging litigants—often women—who may lack access to such records due to gendered financial exclusion.

Gender bias also emerges as a latent variable in judicial behavior. Although not overtly acknowledged, existing studies have documented how judicial reasoning in family cases can reflect gendered assumptions, subtly shaping outcomes.<sup>39</sup> In the context of *sita marital*, this bias may

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<sup>36</sup> J Dik and R Markovich, "Modeling Judicial Discretion with Nuanced Permissions," in *Frontiers in Artificial Intelligence and Applications*, vol. 395, 2024, 48–59, <https://doi.org/10.3233/FAIA241233>.

<sup>37</sup> Wirastrri and van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms"; L Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38, <https://doi.org/10.15408/ajis.v21i2.21864>.

<sup>38</sup> H S Lahilote et al., "JUDICIAL DIGITALIZATION IN CENTRAL INDONESIA: A STUDY OF E-COURT AND E-LITIGATION IMPLEMENTATION IN COURTS," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 2 (2024): 315–32, <https://doi.org/10.18592/sjhp.v24i2.13879>; I Z Asyiqin, "Islamic Economic Law in the Digital Age: Navigating Global Challenges and Legal Adaptations," *Media Iuris* 8, no. 1 (2025): 95–112, <https://doi.org/10.20473/mi.v8i1.61800>.

<sup>39</sup> A Ecker, L Ennsner-Jedenastik, and M Haselmayer, "Gender Bias in Asylum Adjudications: Evidence for Leniency toward Token Women," *Sex Roles* 82, no. 1–2 (2020): 117–26, <https://doi.org/10.1007/s11199-019-01030-2>; A Maftuhin and M Cammack, "NAVIGATING DISABILITY: Perspectives and Practices in Indonesian

manifest in differential thresholds of belief toward male versus female litigants, especially when property ownership is contested without formal documentation. Consequently, even the ostensibly neutral application of procedural safeguards can perpetuate substantive inequality when interpreted through a gendered lens.

In addition, jurisdictional complexity introduces further ambiguity. In some cases, third-party claims to property or unclear title status can push judges to deny *sita* requests for fear of overstepping jurisdictional bounds, especially in the absence of procedural clarity regarding overlapping authority between Religious and District Courts.<sup>40</sup> This concern contributes to judicial caution and, at times, excessive formalism in evaluating *sita* petitions.

The observed disparities in the adjudication of *sita marital* petitions underscore critical implications for both access to justice and legal certainty within Indonesia's Religious Court system. The current framework, which relies on discretionary interpretation in the absence of uniform procedural standards, generates a fragmented landscape in which litigants cannot predict the degree of judicial protection available to them. For vulnerable parties, particularly women with limited economic and documentary power, this unpredictability undermines the promise of equitable treatment in marital property disputes.

The absence of a codified evidentiary threshold for proving the risk of asset dissipation invites interpretive subjectivity, which, while allowing for judicial flexibility, also opens the door to inconsistency and potential bias. Without procedural safeguards that account for asymmetries in power and access, the very function of *sita marital* as a preventive remedy is compromised. The analysis in RD1.1 has already illustrated that the effectiveness of the mechanism is contingent on its proactive and timely application. The current findings in RD3.1 and RD3.2 expand on this by showing that such application is uneven and structurally constrained.

To address these issues, doctrinal reform is necessary. The development of a standardized evidentiary guideline, tailored to the realities of marital property disputes, could harmonize judicial

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Religious Courts,” *Ulumuna* 29, no. 2 (2025): 603–33, <https://doi.org/10.20414/ujis.v29i2.1030>.

<sup>40</sup> A H Pratama et al., “The Position of Choice of Forum and Alternative Dispute Resolution Principles in Contemporary Sharia-Based Property Dispute,” *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 184–207, <https://doi.org/10.32332/milrev.v4i1.10140>.

interpretation without unduly limiting discretion. Such a guideline should recognize indirect indicators of control and risk—such as financial dominance, exclusive access to documentation, or patterns of asset concealment as valid grounds for *sita*. Additionally, a procedural presumption favoring protective measures in cases involving asymmetrical asset control could be introduced, shifting the burden of proof to the party in possession of the property.

Equally important is the need for judicial training that incorporates both gender-sensitivity and socio-legal awareness. The judiciary must be equipped not only with legal tools but also with interpretive frameworks that recognize the structural disadvantages many litigants face. Integrating socio-legal reasoning into judicial decision-making would align the adjudication of *sita* with the broader goals of substantive justice and gender equity.

Finally, institutional investment in legal infrastructure and transparency mechanisms—particularly the wider implementation of e-Court systems—could reduce evidentiary bottlenecks and facilitate more consistent judicial evaluation. Combined with public legal education to enhance litigants' awareness of their procedural rights, such reforms would significantly improve the accessibility and reliability of marital property protections.

In conclusion, the current application of *sita marital* in Indonesian Religious Courts reflects a complex interplay of discretion, legal culture, and structural constraint. While the mechanism holds theoretical potential as a preventive remedy, its practical efficacy remains uneven. Bridging this gap requires not only doctrinal clarification but a broader transformation in judicial culture and institutional capacity—ensuring that the principles of fairness and equality embedded in family law are realized in tangible, consistent judicial practice.

### **Women, Substantive Equality, and Sustainable Legal Innovation**

A systematic review of marital property disputes in Religious Courts indicates that *sita marital* is overwhelmingly initiated by women, particularly wives seeking to preserve joint assets during divorce proceedings. This pattern underscores the perception of *sita marital* as a legal instrument of last resort for economic protection amid the structural vulnerabilities of marital dissolution. The recurrent reliance by female petitioners on this mechanism reflects the socio-economic reality that, post-divorce, women face significantly heightened financial precarity

compared to their male counterparts.<sup>41</sup> Yet, the practical success of *sita* applications remains heavily contingent upon the petitioner’s ability to produce convincing documentary evidence of risk—an expectation that often overlooks the gendered distribution of informational access within households.

In many cases, women do not possess or control ownership certificates, bank statements, or transactional records—documents which judges frequently require as evidence of imminent asset transfer. This administrative exclusion is rooted in broader socio-cultural structures in which financial control and legal agency remain male-dominated, especially within Islamic family contexts where customary practice reinforces male authority over property.<sup>42</sup> For example, in several reviewed judgments, female litigants failed to secure interim protective orders not due to the absence of risk but due to a lack of formal documentation, thereby nullifying the protective function of the mechanism. This evidentiary rigidity illustrates how procedural neutrality, in theory, masks structural inequality in practice.

However, there are notable exceptions that reveal a shift toward more responsive judicial interpretations. In certain progressive decisions, judges have taken into account the asymmetrical access to information when assessing the urgency of seizure requests. These decisions reframed the evidentiary challenge not as a litigant’s failure but as a structural symptom of economic dependency and gendered control over financial instruments. By considering informal indicators—such as exclusive access to documents, history of financial concealment, or patterns of unilateral decision-making—some courts extended *sita* protections even in the absence of formal proof. These rulings align with the vulnerable subject theory,<sup>43</sup> which foregrounds institutional

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<sup>41</sup> T Chanda, “Economic Wellbeing and Labor Supply Patterns of Subsequently Divorcing Mothers in Wisconsin,” *Journal of Family and Economic Issues* 44, no. 4 (2023): 821–35, <https://doi.org/10.1007/s10834-022-09875-8>; G Dhanya and S Karthikeyan, “Economic Vulnerability and Financial Transitions Post-Divorce for Indian Women: A Machine Learning Analysis,” *Iran Journal of Computer Science* 9, no. 1 (2026), <https://doi.org/10.1007/s42044-025-00354-5>.

<sup>42</sup> M Ikhwan et al., “Deciding To Be A Widow or Stay with A Husband: The Experience of Muslim Women Filing for Divorce in the Aceh Sharia Court,” *Al-Ahkam: Jurnal Ilmu Syari’ah Dan Hukum* 10, no. 1 (2025): 80–99, <https://doi.org/10.22515/alakhkam.v10i1.10825>.

<sup>43</sup> Fineman, “The Vulnerable Subject: Anchoring Equality in the Human Condition.”

responsibility in recognizing and responding to the material disadvantages disproportionately borne by women in legal processes.

The divergences in judicial treatment of *sita marital* applications illuminate a broader tension between formal procedural standards and the pursuit of substantive equality. Feminist legal theory has long critiqued the myth of procedural neutrality, arguing that uniform evidentiary demands often conceal the gendered realities of access and control.<sup>44</sup> Within this framework, the rigid application of proof burdens not only reproduces disadvantage but legitimizes it under the guise of impartiality. This critique is borne out in empirical data from Indonesian Religious Courts, where the failure to contextualize evidentiary limitations frequently results in the denial of protective remedies, despite the underlying presence of economic risk.

Comparative legal scholarship affirms that substantive equality cannot be achieved through formal parity alone. Jurisdictions that have made strides in gender-sensitive adjudication have done so by adopting compensatory and redistributive measures that account for historical and structural disadvantage.<sup>45</sup> These include relaxed evidentiary standards in cases involving power imbalances, affirmative policies for recognizing non-financial contributions, and mandatory judicial training in gender bias recognition.<sup>46</sup> The necessity of such measures is particularly acute in legal systems where the socio-legal status of women is shaped by religious and cultural norms that discourage financial autonomy.

In the context of Islamic family courts, procedural rigidity is often compounded by interpretive conservatism. As studies have shown, patriarchal readings of religious law can constrain the judiciary's

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<sup>44</sup> MacKinnon, *Toward a Feminist Theory of the State*.

<sup>45</sup> M V Matijević, "NAVIGATING THROUGH THE SUBSTANTIVE EQUALITY DOCTRINE: ANTI-DISCRIMINATION LAW AND SOCIAL CHANGE," *Pravni Zapisi* 15, no. 1 (2024): 89–120, <https://doi.org/10.5937/PRAVZAP0-49917>.

<sup>46</sup> S I M Rizvi, "Ensuring Economic Security for Women After Divorce: A Comparative Analysis of Alimony Rights," *Legal Transformation in Muslim Societies* 1, no. 1 (2024): 58–68, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-86000663163&partnerID=40&md5=fdcc62e15365ee19f78e1ac61dd42277>; D Ghilardi and K D N Coelho, "The Reform of the Civil Code and the Gender Perspective: Advances and Setbacks Regarding Care and the Division of Property in Divorce," *Sequencia* 46, no. 101 (2025), <https://doi.org/10.5007/2177-7055.2025.e109859>.

willingness to innovate or expand protections for women.<sup>47</sup> However, where courts have embraced legal pluralism as a dynamic space—allowing doctrinal development and the incorporation of international human rights standards—the outcome has been more inclusive jurisprudence. In Indonesia, such developments remain uneven. While some courts have demonstrated the willingness to reinterpret Islamic legal norms in light of gender justice, others remain tethered to formalist paradigms that privilege documentary ownership over contextual vulnerability.

Moreover, systemic barriers outside the courtroom exacerbate the situation. Women’s low legal literacy, especially in rural areas, limits their ability to articulate legal claims or navigate procedural requirements.<sup>48</sup> This is further complicated by the feminization of poverty and social stigma surrounding divorce, which collectively deter women from asserting their legal rights.<sup>49</sup> Without deliberate legal innovation, the combination of structural exclusion and judicial conservatism risks transforming *sita marital* from a tool of protection into a mechanism of procedural gatekeeping.

The findings underscore an urgent imperative to reconceptualize *sita marital* not simply as a procedural formality but as a vehicle for realizing substantive equality in the adjudication of marital property

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<sup>47</sup> S Grosso, “Women’s Rights on Trial: Gender Equality in a Family Court in Ben Ali’s Tunisia,” in *Asian Yearbook of Human Rights and Humanitarian Law*, vol. 3, 2019, 219–42, [https://doi.org/10.1163/9789004401716\\_011](https://doi.org/10.1163/9789004401716_011); M Bahar et al., “Women’s Access to Family Justice in Iran: Exploring the Main Barriers,” *Pertanika Journal of Social Sciences and Humanities* 26 (2018): 147–63, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85054021601&partnerID=40&md5=8c42ca04bcfc821e0fbc142e5c1496f1>.

<sup>48</sup> G Uygur, “Looking at Structural Barriers to Women’s Access to Justice From the Perspective of Injustice: Judicial Passivity as a Form of Oppression,” *Community and Physician* 39, no. 5 (2024): 339–43, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85213310170&partnerID=40&md5=017a60341ab8f2d896ac40bd75f732ff>; F Hamedanian and R Arjmand, “Access to Justice for Immigrant Women Facing Domestic Violence in Sweden,” *Social and Legal Studies* 35, no. 1 (2026): 98–120, <https://doi.org/10.1177/09646639251330499>.

<sup>49</sup> E Durojaye, G Mirugi-Mukundi, and O Adeniyi, “Legal Empowerment as a Tool for Engendering Access to Justice in South Africa,” *International Journal of Discrimination and the Law* 20, no. 4 (2020): 224–44, <https://doi.org/10.1177/1358229120969602>; K Gadd and F Ubeis, “‘I Must Care about the Reputation of My Family. This Is Very Important to Me’: An Exploration of Factors Affecting Iraqi Women’s Access to Justice,” *Legal Pluralism and Critical Social Analysis* 57, no. 1 (2025): 4–25, <https://doi.org/10.1080/27706869.2025.2483057>.

disputes. Building on earlier analyses of judicial inconsistencies (RD3.1) and normative ambiguities (RD2.2), it becomes clear that sustainable legal innovation must operate on multiple fronts doctrinal, institutional, and cultural to bridge the gap between formal guarantees and lived justice.

First, institutional reforms are necessary to establish uniform judicial guidelines that reflect a gender-responsive understanding of evidence. The absence of clear directives concerning what constitutes credible risk of asset dissipation enables discretionary practices that disproportionately affect female litigants. The Supreme Court could issue a formal *pedoman teknis* (technical guidance) specific to *sita marital* that incorporates an expansive evidentiary framework. Such a guideline should account for informal indicators of economic control, recognize non-financial contributions, and presume vulnerability where documentary access is demonstrably asymmetric.

Second, sustainable reform requires the integration of gender perspectives into judicial education and capacity-building programs. Judges must be trained to recognize how structural inequality and institutional bias manifest within legal proceedings, particularly in cases involving economic dependency and family dissolution. International experiences reveal that when judicial training incorporates intersectional and feminist legal frameworks, the outcomes are more equitable and the courts more trusted.<sup>50</sup>

Third, technological innovations such as mandatory financial disclosures and asset transparency systems could alleviate some of the evidentiary barriers faced by women. If parties in divorce proceedings were required to submit comprehensive financial disclosures as part of the case file, the burden would shift away from the economically dependent spouse. Additionally, enhanced digital infrastructure in Religious Courts, as noted in urban contexts,<sup>51</sup> should be extended

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<sup>50</sup> K A Kuvalanka et al., “An Exploratory Study of Custody Challenges Experienced by Affirming Mothers of Transgender and Gender-Nonconforming Children,” *Family Court Review* 57, no. 1 (2019): 54–71, <https://doi.org/10.1111/fcre.12387>; J A Alvarado-Vélez et al., “Justice for Rural Women: An Exploratory Analysis of Institutions and Mechanisms to Access Justice in Chimborazo, Ecuador,” *Heliyon* 10, no. 6 (2024), <https://doi.org/10.1016/j.heliyon.2024.e28234>.

<sup>51</sup> Lahilote et al., “JUDICIAL DIGITALIZATION IN CENTRAL INDONESIA: A STUDY OF E-COURT AND E-LITIGATION IMPLEMENTATION IN COURTS.”

nationwide to promote procedural consistency and access to documentation.

Fourth, legal empowerment at the community level must be prioritized. Legal literacy initiatives targeted at women, particularly in rural and marginalized communities, can equip them with the knowledge to assert their rights and navigate court procedures effectively. These programs should be coupled with the expansion of legal aid services that provide representation and strategic litigation support in marital property disputes.<sup>52</sup>

In conclusion, *sita marital* embodies a paradox within Indonesia's Religious Court system. It is both a symbol of procedural potential and a mirror reflecting entrenched structural inequality. For it to serve as a genuine safeguard of women's economic rights, it must be reconceptualized within a framework that prioritizes not only legal formality but the substantive conditions under which justice is pursued. By situating *sita marital* at the intersection of preventive justice, gender theory, and doctrinal reform, a path emerges for transforming a fragmented practice into a coherent instrument of legal empowerment and institutional equity.

## CONCLUSION

This study concludes that marital seizure (*sita marital*) constitutes a pivotal procedural mechanism within Indonesia's Religious Courts for safeguarding women's economic rights in marital property disputes. However, its application remains inconsistent due to the absence of standardized evidentiary thresholds and the wide discretionary authority of judges. The identification of three dominant judicial patterns—full approval, rejection, and partial approval—demonstrates significant interpretive variation, reflecting an unresolved tension between procedural formalism and the pursuit of substantive justice. Consequently, the effectiveness of marital seizure as a legal safeguard is contingent not only on its normative foundation but also on the coherence of its judicial application.

Furthermore, the findings reveal that women, as the primary applicants of marital seizure, encounter structural barriers that undermine their access to justice, including limited control over financial documentation and heightened economic vulnerability. These socio-economic asymmetries are not consistently accommodated within formal

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<sup>52</sup> Uygur, "Looking at Structural Barriers to Women's Access to Justice From the Perspective of Injustice: Judicial Passivity as a Form of Oppression."

judicial reasoning, resulting in a gap between legal protection in theory and its realization in practice. Although certain judicial decisions exhibit a more responsive and gender-sensitive approach aligned with vulnerability theory, such practices remain sporadic and have yet to be institutionalized within the broader adjudicative framework.

In light of these findings, this study underscores the necessity of comprehensive doctrinal and institutional reform to enhance the consistency and equity of marital seizure implementation. Key recommendations include the establishment of Supreme Court guidelines to standardize evidentiary assessment, the institutionalization of gender-sensitive judicial training, the development of asset transparency and financial disclosure mechanisms, and the expansion of legal aid and legal literacy initiatives. Collectively, these measures are essential to reposition marital seizure from a discretionary procedural instrument into a reliable mechanism of substantive justice, thereby strengthening legal certainty and advancing gender equality within Indonesia's Religious Court system.

## **BIBLIOGRAPHY**

- Agarwal, Bina. *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge University Press, 1994.
- Alias, R M R, N M Yasin, B H Ibrahim, and M Y Z Kepli. "Combating Money Laundering and Terrorism Financing: Perspectives from Maqāsid Al-Sharīah." In *Emerging Issues in Islamic Finance Law and Practice in Malaysia*, 130–44, 2019. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85106211046&partnerID=40&md5=5cc7493661e1469f06dbc83e141d6e3b>.
- Amir, Ahmad Nabil, Tasnim Abdul Rahman, Seyed Mohammad Houshisadat, and Musa Adebayo Badrudeen, trans. 2025. "Muhammad Abduh and the Conception of Science: The Framework of Maqasid and Sharia". *Al-Battar: Jurnal Pamungkas Hukum* 2 (2): 175-86. <https://doi.org/10.63142/al-battar.v2i2.167>.
- Alvarado-Vélez, J A, D I Silva-Conde, G Y Medina-Garcés, and V Mejía-Chávez. "Justice for Rural Women: An Exploratory Analysis of Institutions and Mechanisms to Access Justice in Chimborazo, Ecuador." *Heliyon* 10, no. 6 (2024). <https://doi.org/10.1016/j.heliyon.2024.e28234>.
- An-Na'im, Abdullahi Ahmed. *Islam and the Secular State: Negotiating*

- the Future of Shari‘A*. Cambridge, MA: Harvard University Press, 2002.
- Ashford, C, and A Maine. *GENDER, SEXUALITY AND LAW: A TEXTBOOK. Gender, Sexuality and Law: A Textbook*, 2024. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85211296193&partnerID=40&md5=7cb2f9455c2ef0b98da8b8a2c86d8bea>.
- Asyiqin, I Z. “Islamic Economic Law in the Digital Age: Navigating Global Challenges and Legal Adaptations.” *Media Iuris* 8, no. 1 (2025): 95–112. <https://doi.org/10.20473/mi.v8i1.61800>.
- Bahar, M, F Hamedanian, M Farajiha, and T S Golpaygani. “Women’s Access to Family Justice in Iran: Exploring the Main Barriers.” *Pertanika Journal of Social Sciences and Humanities* 26 (2018): 147–63. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85054021601&partnerID=40&md5=8c42ca04bcfc821e0fbc142e5c1496f1>.
- Baharuddin, A, and M N Musa. “Environmental Ethics in Islam.” In *Islamic Bioethics: Current Issues and Challenges*, 161–82, 2017. [https://doi.org/10.1142/9781783267507\\_0008](https://doi.org/10.1142/9781783267507_0008).
- Beshi, S. “Property Inheritance by Women in Kosovo.” In *Accounting, Finance, Sustainability, Governance and Fraud*, 159–71, 2020. [https://doi.org/10.1007/978-981-32-9588-9\\_9](https://doi.org/10.1007/978-981-32-9588-9_9).
- Bowen, J. *Islam, Law and Equality in Indonesia*. Cambridge: Cambridge University Press, 2003.
- Chala, D G, and N J Gemedede. “Legal Pluralism, Gender and Justice: Women’s Rights to Property under Marriage Dissolution among the Oromo in Jimma, Ethiopia.” *Legal Pluralism and Critical Social Analysis* 54, no. 2–3 (2022): 278–96. <https://doi.org/10.1080/27706869.2022.2115222>.
- Chanda, T. “Economic Wellbeing and Labor Supply Patterns of Subsequently Divorcing Mothers in Wisconsin.” *Journal of Family and Economic Issues* 44, no. 4 (2023): 821–35. <https://doi.org/10.1007/s10834-022-09875-8>.
- Creswell, John W, and Cheryl N Poth. *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*. 4th ed. Sage, 2018.
- Daueva, T T. “PROPERTY LAW AND SPECIFICS OF INHERITANCE IN A TRADITIONAL OSSETIAN SOCIETY: THE GENDER ASPECT.” *History, Archeology and Ethnography of the Caucasus* 15, no. 4 (2019): 734–41. <https://doi.org/10.32653/CH154734-741>.

- Deere, Carmen Diana, and Cheryl R Doss. "The Gender Asset Gap: What Do We Know and Why Does It Matter?" *Feminist Economics* 12, no. 1–2 (2006): 1–50. <https://doi.org/10.1080/13545700500508056>.
- Dhanya, G, and S Karthikeyan. "Economic Vulnerability and Financial Transitions Post-Divorce for Indian Women: A Machine Learning Analysis." *Iran Journal of Computer Science* 9, no. 1 (2026). <https://doi.org/10.1007/s42044-025-00354-5>.
- Dik, J, and R Markovich. "Modeling Judicial Discretion with Nuanced Permissions." In *Frontiers in Artificial Intelligence and Applications*, 395:48–59, 2024. <https://doi.org/10.3233/FAIA241233>.
- Durojaye, E, G Mirugi-Mukundi, and O Adeniyi. "Legal Empowerment as a Tool for Engendering Access to Justice in South Africa." *International Journal of Discrimination and the Law* 20, no. 4 (2020): 224–44. <https://doi.org/10.1177/1358229120969602>.
- Ecker, A, L Enns-Jedenastik, and M Haselmayer. "Gender Bias in Asylum Adjudications: Evidence for Leniency toward Token Women." *Sex Roles* 82, no. 1–2 (2020): 117–26. <https://doi.org/10.1007/s11199-019-01030-2>.
- Ehrlich, Eugen. *Fundamental Principles of the Sociology of Law*. Harvard University Press, 1936.
- Fineman, Martha Albertson. "The Vulnerable Subject: Anchoring Equality in the Human Condition." *Yale Journal of Law & Feminism* 20, no. 1 (2008): 1–23.
- Fitriyati, Y, D Ibrahim, F Muntaqo, and K N S Hasan. "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah." *Nurani* 25, no. 1 (2025): 122–40. <https://doi.org/10.19109/nurani.v25i1.27133>.
- Friedman, Lawrence M. *American Law: An Introduction*. New York: W. W. Norton & Company, 2001.
- . *The Legal System: A Social Science Perspective*. Russell Sage Foundation, 1975.
- Gadd, K, and F Ubeis. "'I Must Care about the Reputation of My Family. This Is Very Important to Me': An Exploration of Factors Affecting Iraqi Women's Access to Justice." *Legal Pluralism and Critical Social Analysis* 57, no. 1 (2025): 4–25. <https://doi.org/10.1080/27706869.2025.2483057>.
- Ghilardi, D, and K D N Coelho. "The Reform of the Civil Code and the Gender Perspective: Advances and Setbacks Regarding Care and

- the Division of Property in Divorce.” *Sequencia* 46, no. 101 (2025). <https://doi.org/10.5007/2177-7055.2025.e109859>.
- Grosso, S. “Women’s Rights on Trial: Gender Equality in a Family Court in Ben Ali’s Tunisia.” In *Asian Yearbook of Human Rights and Humanitarian Law*, 3:219–42, 2019. [https://doi.org/10.1163/9789004401716\\_011](https://doi.org/10.1163/9789004401716_011).
- Hakim, B R, and M Nafi. “REACTUALIZATION OF MASLAHAT AND SOCIAL JUSTICE PRINCIPLES IN THE CONTEXTUALIZATION OF FIQH ZAKAT.” *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 102–18. <https://doi.org/10.18592/sjhp.v24i1.12909>.
- Hakim, M L. “Between Hibah and Waṣiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases.” *Al-Ahwal* 17, no. 2 (2024): 147–66. <https://doi.org/10.14421/ahwal.2024.17201>.
- Hamedanian, F, and R Arjmand. “Access to Justice for Immigrant Women Facing Domestic Violence in Sweden.” *Social and Legal Studies* 35, no. 1 (2026): 98–120. <https://doi.org/10.1177/09646639251330499>.
- Headley, J E. “Seizure.” In *The Encyclopedia of Civil Liberties in America: Volumes One-Three*, 3:858–59, 2015. <https://doi.org/10.4324/9781315699868-610>.
- Horii, H. “Legal Reasoning for Legitimation of Child Marriage in West Java: Accommodation of Local Norms at Islamic Courts and the Paradox of Child Protection.” *Journal of Human Rights Practice* 12, no. 3 (2020): 501–23. <https://doi.org/10.1093/jhuman/huaa041>.
- Huis, S C V. “The Religious Courts: Does Lev’s Analysis Still Hold?” In *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, 109–32, 2019. <https://doi.org/10.1017/9781108636131.005>.
- Hutchinson, Terry, and Nigel Duncan. “Defining and Describing What We Do: Doctrinal Legal Research.” *Deakin Law Review* 17, no. 1 (2012): 83–119.
- Hayati, Mala, Fakhurrazi M. Yunus, and Gamal Achyar. 2025. “Child Rights Fulfilment in Families Practicing Early Marriage: A Juridical-Empirical Analysis of Child Protection Law Implementation in Blangkejeren, Gayo Lues Regency”. *An-Nisa: Journal of Islamic Family Law* 2 (4): 361-76. <https://doi.org/10.63142/an-nisa.v2i4.474>.

- Hayatusyifa, Noor Fadillah, Fakhurrazi M. Yunus, Aulil Amri, Manuel Beltrán Genovés, and Nur Syahirah Binti Mohammad Nasir. 2026. "Children's Rights Fulfillment in Families of Female Migrant Workers: An Islamic Law Perspective from Aceh Tenggara". *An-Nisa: Journal of Islamic Family Law* 3 (1): 65-82. <https://doi.org/10.63142/an-nisa.v3i1.496>.
- Ikhwan, M, M A Wahyudi, S Efendi, R M Gumilang, A Alfiyanto, and R Kumalasari. "Deciding To Be A Widow or Stay with A Husband: The Experience of Muslim Women Filing for Divorce in the Aceh Sharia Court." *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 10, no. 1 (2025): 80-99. <https://doi.org/10.22515/alahkam.v10i1.10825>.
- Jones, B, and A Aftab. "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation." *Oxford Journal of Law and Religion* 12, no. 2 (2023): 217-31. <https://doi.org/10.1093/ojlr/rwad015>.
- Kamali, Mohammad Hashim. *Freedom of Expression in Islam*. Cambridge: Islamic Texts Society, 1997.
- . *Maqasid Al-Shari'ah Made Simple*. London: International Institute of Islamic Thought, 2008.
- . *Shari'ah Law: An Introduction*. Oxford: Oneworld, 2008.
- . *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications, 2019.
- Karjoko, L, A K Jaelani, H Tegnan, H Glaser, and M J Hayat. "Islamic Court's Approach to Land Dispute in Inheritance Cases." *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213-38. <https://doi.org/10.15408/ajis.v21i2.21864>.
- Kelkar, G, and P Govindnathan. "Social Norms and Attitudes towards Women's Entitlement to Land." In *India Social Development Report 2023: Women's Contribution in the Economy*, 59-78, 2024. <https://doi.org/10.1093/oso/9780198885979.003.0004>.
- Krippendorff, Klaus. *Content Analysis: An Introduction to Its Methodology*. Sage Publications, 2018.
- Kuvalanka, K A, C Bellis, A E Goldberg, and J K McGuire. "An Exploratory Study of Custody Challenges Experienced by Affirming Mothers of Transgender and Gender-Nonconforming Children." *Family Court Review* 57, no. 1 (2019): 54-71. <https://doi.org/10.1111/fcre.12387>.
- Lahilote, H S, F Soleman, F Hasan, R Basri, and A Lahilote. "JUDICIAL

- DIGITALIZATION IN CENTRAL INDONESIA: A STUDY OF E-COURT AND E-LITIGATION IMPLEMENTATION IN COURTS.” *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 2 (2024): 315–32. <https://doi.org/10.18592/sjhp.v24i2.13879>.
- Lindsey, Tim. *Indonesia: Law and Society*. Federation Press, 2008.
- Lindsey, Tim, and Simon Butt. *Indonesian Law*. Oxford University Press, 2018.
- MacKinnon, Catharine A. *Toward a Feminist Theory of the State*. Harvard University Press, 1989.
- Maftuhin, A, and M Cammack. “NAVIGATING DISABILITY: Perspectives and Practices in Indonesian Religious Courts.” *Ulumuna* 29, no. 2 (2025): 603–33. <https://doi.org/10.20414/ujs.v29i2.1030>.
- Matijević, M V. “NAVIGATING THROUGH THE SUBSTANTIVE EQUALITY DOCTRINE: ANTI-DISCRIMINATION LAW AND SOCIAL CHANGE.” *Pravni Zapisi* 15, no. 1 (2024): 89–120. <https://doi.org/10.5937/PRAVZAP0-49917>.
- Merry, Sally Engle. *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans*. University of Chicago Press, 1990.
- Mir-Hosseini, Ziba. “Beyond Islam vs Feminism.” *IDS Bulletin* 42, no. 1 (2011): 67–77. <https://doi.org/10.1111/j.1759-5436.2011.00201.x>.
- Marta, Rahma Fitria, Fakhurrazi M. Yunus, Nurul Fithria, Ozioma Victoria Uchime, and Nur Farahin Afiqah Daud, trans. 2026. “Child Custody in Divorce of Husband Abandonment: Judge’s Subjectivity Based on the Benefit of the Child Determination No. 310 Pdt.G 2023 MS. Bna”. *Al-Battar: Jurnal Pamungkas Hukum* 3 (1): 67-81. <https://doi.org/10.63142/al-battar.v3i1.490>.
- . *Muslim Family Law Reform and Human Rights: Towards a New Jurisprudence*. Oxford: Oneworld Publications, 2009.
- O’Neil, M L, and S Toktas. “Women’s Property Rights in Turkey.” *Turkish Studies* 15, no. 1 (2014): 29–44. <https://doi.org/10.1080/14683849.2014.891350>.
- Patrick Parkinson, A M. “The Constitutional Constraints on Altering Property Rights After Relationship Breakdown.” *University of Queensland Law Journal* 43, no. 2 (2024): 157–78. <https://doi.org/10.38127/uqlj.v43i2.8515>.
- Patton, Michael Q. *Qualitative Research & Evaluation Methods*. Sage Publications, 2015.

- Pratama, A H, H Paserangi, A N Mufrih, A H Talli, and M.A.A.B. Samuri. "The Position of Choice of Forum and Alternative Dispute Resolution Principles in Contemporary Sharia-Based Property Dispute." *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 184–207. <https://doi.org/10.32332/milrev.v4i1.10140>.
- Ramadan, M A. "Child Support for Muslim Children in Family Courts in Today's Israel." *Hawwa* 13, no. 2 (2020): 1–27. <https://doi.org/10.1163/15692086-12341364>.
- Rizvi, S I M. "Ensuring Economic Security for Women After Divorce: A Comparative Analysis of Alimony Rights." *Legal Transformation in Muslim Societies* 1, no. 1 (2024): 58–68. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-86000663163&partnerID=40&md5=fdcc62e15365ee19f78e1ac61dd42277>.
- Rohman, B N, V D Mukhoyyaroh, and A A Arifin. "Ownership Status of Implementation of Assets in Mixed Marriages." *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 101–18. <https://doi.org/10.15294/ciils.v2i2.68854>.
- Saidon, R, F A Ismail, S K Ab Manan, N H Sahari, A A Aziz, and N H Jaapar. "Preventing Illegal Marriages in the Light of Maqasid Al-Shariah." *Pertanika Journal of Social Sciences and Humanities* 25, no. S (2017): 331–40. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85057155302&partnerID=40&md5=33d6aa2ac9d22a7de86dce7a511b264b>.
- Silva, B M Da, and G C O Gomes. "Immunity from Seizure of Guarantor's Family Property in Commercial Rent Contracts: Analysis of the Extraordinary Appeal No 605.709/SP." *Revista de Direito Da Faculdade Guanambi* 6, no. 1 (2019). <https://doi.org/10.29293/rdfg.v6i01.251>.
- Syafei, E S, and S Djazimah. "Mediation in the Settlement of Joint Marital Property Disputes: A Study at Tanjung Karang Religious Court, Lampung." *Samarah* 5, no. 2 (2021): 867–91. <https://doi.org/10.22373/sjkh.v5i2.9039>.
- Taufiqurrohman, A H A, M H Muhtar, N M Kasim, and S Y Imran. "The Role of Islamic Law, Constitution, and Culture in Democracy in the UAE and Indonesia." *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 83–100. <https://doi.org/10.15408/ajis.v24i1.33155>.
- Uygur, G. "Looking at Structural Barriers to Women's Access to Justice From the Perspective of Injustice: Judicial Passivity as a Form of

- Oppression.” *Community and Physician* 39, no. 5 (2024): 339–43. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85213310170&partnerID=40&md5=017a60341ab8f2d896ac40bd75f732ff>.
- Vicario, S, F Wamafma, and M A Papare. “MARITAL BONDS AND JOINT PROPERTY CASES: IMPLICATIONS FOR THE PROTECTION OF SPOUSAL RIGHTS.” *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 2 (2024): 190–210. <https://doi.org/10.52496/mjhki.v2i2.48>.
- Wahyudi, M I. “Women Dealing With The Law In Religious Courts.” *Ahkam: Jurnal Ilmu Syariah* 18, no. 2 (2018): 305–20. <https://doi.org/10.15408/ajis.v18i2.7491>.
- Wahyudi, Muhammad Husni Abdulah Pakarti, and Diana Farid. 2024. “Peran Tradisi Dan Norma Gender Dalam Penyelesaian Sengketa Hukum Keluarga”. *An-Nisa: Journal of Islamic Family Law* 1 (3): 1-11. <https://doi.org/10.63142/an-nisa.v1i3.50>.
- Wahyudi, Muhammad Husni Abdulah Pakarti, Diana Farid, Husain, and Sofia Gussevi. 2024. “Pergeseran Konsep Perwalian Anak Dalam Perkembangan Hukum Keluarga Di Indonesia”. *An-Nisa: Journal of Islamic Family Law* 1 (4): 64-74. <https://doi.org/10.63142/an-nisa.v1i4.46>.
- Wei, J. “RELIGIOUS ETHICS AND THE MORAL FOUNDATIONS OF MARITAL PROPERTY RIGHTS: A PHILOSOPHICAL ANALYSIS OF SPOUSAL OWNERSHIP AND THE MARRIAGE LAW.” *European Journal for Philosophy of Religion* 17, no. 2 (2025): 210–26. <https://doi.org/10.24204/ejpr.2025.4671>.
- Wirastri, T D, and S C van Huis. “The State of Indonesia’s Marriage Law: 50 Years of Statutory and Judicial Reforms.” *Ahkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 215–32. <https://doi.org/10.15408/ajis.v24i2.38424>.
- Yesufu, S, and T S Nkomo. “Women, and Land and Property Rights in Benin City, Nigeria.” *Southern African Journal of Social Work and Social Development* 30, no. 3 (2018). <https://doi.org/10.25159/2415-5829/3805>.



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