

Gender-Based Justice in Matrimonial Property Law: A Comparative Study of Post Divorce Protection for Women in Indonesia and Thailand

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Abstct

The division of marital property after divorce has become a crucial issue that often disadvantages women due to structural inequalities and patriarchal cultural influences. This study aims to analyze the legal regulation of marital property division in Indonesia and Thailand from a gender-based justice perspective, as well as to evaluate the effectiveness of legal protection for women's economic rights after divorce. This research employs a normative juridical method with a comparative approach to examine the regulations of both countries. The primary legal materials include Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, the Civil and Commercial Code of Thailand, and the Gender Equality Act of Thailand. The findings indicate that Indonesia adopts the principle of joint marital property (gono-gini) with an equal distribution system (50:50), as stipulated in Article 37 of the Marriage Law and Article 97 of the Compilation of Islamic Law. While this system provides legal certainty, it tends to be rigid and insufficiently accommodates women's non-economic contributions within the household. In contrast, Thailand applies the concept of sin somros (marital property) with an equitable distribution system that is more flexible, taking into account the actual contributions of each party, including women's domestic roles. From a gender justice perspective, Indonesia's equal distribution system appears formally fair but fails to reflect substantive justice, whereas Thailand's system is more responsive, although it relies on judicial discretion. The effectiveness of legal protection in Indonesia is hindered by patriarchal culture, limited access to justice, and inconsistent court decisions, while Thailand demonstrates a more progressive legal framework. This study recommends the reconstruction of Indonesia's joint property system by maintaining equal distribution as the default rule while allowing greater judicial flexibility to consider substantive contributions and the post-divorce economic conditions of women.

Keywords: Gender Justice, Marital Property, Divorce, Legal Protection

A. Introduction

Marriage as a fundamental social institution not only creates emotional and spiritual bonds, but also gives birth to complex legal consequences, especially in the aspects of ownership and division of property. When a marriage ends through divorce, the division of marital property is often a source of prolonged conflict that often harms the woman. This phenomenon reflects structural injustices rooted in the patriarchal legal system and culture that is still dominant in society.

In Indonesia, the regulation of marital property is regulated in Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) and the Compilation of Islamic Law (KHI) which adheres to the principle of joint property or gono-gini. Article 35 paragraph (1) of the Marriage Law emphasizes that property obtained during marriage becomes joint property, while Article 37 stipulates that if the marriage is broken up due to divorce, joint property is regulated according to their respective laws. In its implementation, religious courts and district courts generally apply an equal division (50:50) as stipulated in Article 97 of the KHI which states "Widows or widowers who are divorced for life each are entitled to one half of the joint property as long as it is not otherwise specified in the marriage agreement".

However, this system of equal distribution has drawn criticism because it is considered not to reflect substantive justice, especially in the context of gender inequality. Their research shows

that the distribution of joint property must consider the amount of contributions of each party, both economic and non-economic contributions such as child care and household management which are generally carried out by women. In a context where the wife's income is greater than that of the husband, a fair division should consider the actual contribution of each party. The Supreme Court Decision Number 597K/Ag/2016 shows the inconsistency in the application of the principle of joint property distribution, which indicates the need for a clearer and gender-responsive legal framework¹.

In contrast, the law in Thailand offers a different approach through the Civil and Commercial Code (CCC) which regulates the system of *sin somros* (marital property) and *sin suan tua* (personal property)². Under Section 1474 of the Thai CCC, property acquired during marriage, including the proceeds of personal property, becomes joint property that must be divided equally in the event of a divorce as stipulated in Sections 1533-1535³. This system gives judges greater flexibility to consider a variety of factors, including non-economic contributions, in determining a fair distribution. More progressively, Thailand has adopted the Gender Equality Act B.E. 2558 (2015) which explicitly prohibits gender-based discrimination and becomes a normative framework for realizing gender equality, including in the context of family law⁴.

The perspective of gender justice has become very relevant in the context of the division of marital property⁵. Aristotle's theory of distributive justice emphasizes that justice must be proportional to the contribution of each party⁶. In the context of marriage, women's contribution is not only limited to economic aspects, but also includes domestic roles that are often overlooked in legal calculations. When the legal system only recognizes formal economic contributions, it creates injustice for women who choose or are forced to become housewives. The equality of men and women in Islamic marriage law must be understood contextually, acknowledging the difference in roles but still ensuring substantive justice⁷.

Several comparative studies on family law in Southeast Asia have been conducted, comparing the division of common property between Indonesia and Malaysia, finding that the two countries adhere to similar principles but with different implementations. Meanwhile, studies on comparisons with Thailand are still limited, even though the Thai legal system offers an interesting perspective with its more flexible and gender-responsive approach⁸. This study seeks to fill this gap by in-depth

¹ Pakorn Sirinanthanon, "The Impact of the Amendment to the Principle of Suretyship under the Civil and Commercial Code Amendment Act," *Law Jurnal*, 2020.

² Darmawijaya dan Maslinee Ma'Ming, "Settlement of the Fulfillment of Wife and Child Livelihood by the Islamic Religious Council Southern Patani Region of Thailand," *Jurnal Hukum Keluarga*, Vol. 6, No. 1, 2023.

³ Samuiforsale, *Thai Property Law and Marital Property*, 2025.

⁴ Poranee Krawkeo, "Pembagian Harta Kekayaan antara Suami Istri dalam Kasus Perceraian Berdasarkan Putusan Pengadilan," *Jurnal Hukum Universitas Mae Fah Luang*, Vol. 7, No. 1, 2024; Supatida Sittirattanapong, "Grounds for Divorce: A Case Study on Gaslighting," *Public Health Policy and Laws Journal*, Vol. 11, No. 3, 2025.

⁵ A. Rahmi, U. Salamah, dan N. Khairiah, "Edukasi Hukum Berkeadilan Gender sebagai Upaya Pencegahan Kekerasan terhadap Perempuan bagi Pengurus 'Aisyiyah di Medan,'" *ABDI SABHA (Jurnal Pengabdian Kepada Masyarakat)*, Vol. 2, No. 2, 2021, hlm. 246-256.

⁶ Angela Kezia dan Andryawan, "Tinjauan Yuridis terhadap Harta Perkawinan Berupa Hak Milik dalam Perceraian Perkawinan Campuran," *Jurnal Serina Sosial Humaniora*, Vol. 1, No. 1, 2023.

⁷ Maya Azzahra Paren, Ani Yumarni, dan Hidayat Rumatiga, "Analisis Yuridis Pelaksanaan Putusan Perdamaian Pembagian Harta Bersama," *Karimah Tauhid*, Vol. 2, No. 6, 2023.

⁸ Andi Dadi Mashuri Makmur, Novitasari, Sitti Amelia, Muh Bayu Aprilya Candra, dan M. Asraf Fradama, "Efektivitas Jaminan Pemenuhan Hak-Hak Anak dan Perempuan Pasca Perceraian di Pengadilan Agama Sengkang Kelas 1 A," Vol. 4, No. 2, 2025, hlm. 1-11.

analysis of the legal system of division of marital property in Indonesia and Thailand from the perspective of gender justice.

The urgency of this research is even higher considering the increasing divorce rate in Indonesia. Data from the Central Statistics Agency shows an increasing trend in divorce cases which has a direct impact on the issue of joint property distribution. The public's lack of understanding of legal regulations related to common property can hinder the process of distributing it fairly⁹. Furthermore, in Triwardani's writing,¹⁰ a patriarchal culture that is still deeply rooted can worsen women's bargaining positions in the process of negotiating property distribution. Based on this background, this study aims to: (1) How to regulate the legal distribution of marital property after divorce in Indonesia and Thailand in the perspective of gender-based justice" 2. How is the ideal reconstruction of the legal protection of the distribution of marital property that is gender-equitable based on the comparison of Indonesian and Thai laws?

B. Research Method

This study uses a normative juridical method (legal research) that is prescriptive with a comparative approach. Normative legal research is research that provides a systematic explanation of the rules that govern certain categories of law, analyzes the relationship between rules, explains difficult areas, and predicts future developments¹¹. A comparative approach is used to compare the Indonesian and Thai legal systems to find similarities, differences, and identify best practices that can be adopted.

The type of data used is secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include: (1) Law Number 1 of 1974 concerning Marriage; (2) Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law; (3) Civil Code (KUHPercivil); (4) Civil and Commercial Code of Thailand Section 1465-1535; and (5) the Gender Equality Act B.E. 2558 (2015) of Thailand. Secondary legal materials include textbooks, scientific journals, articles, and previous research results relevant to the research topic. Tertiary legal materials include legal dictionaries and encyclopedias. The data collection technique is carried out through library research by collecting, reading, and analyzing relevant legal materials. The collected data was then analyzed qualitatively using comparative and prescriptive analysis methods¹². Comparative analysis was conducted by comparing the regulations and legal practices of the division of marital property in Indonesia and Thailand, identifying similarities and differences, and examining their implications for gender justice. Prescriptive analysis was used to formulate recommendations for improving the legal system of division of marital property in Indonesia based on comparative findings and gender justice perspectives

C. Results and Discussion

1. Legal Arrangements for the Distribution of Post-Divorce Matrimonial Property in Indonesia in the Perspective of Gender Justice

a. Legal Basis and Concept of Shared Property in Indonesia

⁹ Fiantika Armanda dan Salsa Luthfiah Rezki, "Pembagian Harta Gono-Gini yang Berkeadilan Gender di Indonesia," Vol. 4, September 2025.

¹⁰ Apriliana Anggun Triwardani, "Perlindungan Hukum Terhadap Hak-Hak Perempuan Yang Berhadapan Dengan Hukum Dalam Konteks Perceraian (Cerai Gugat)," Vol. 4, No. 1, 2026.

¹¹ Risnita, Penelitian Hukum Normatif, 2024.

¹² Hasan Syahrizal dan M. Syahrani Jailani, Jenis-Jenis Penelitian dalam Penelitian Kuantitatif dan Kualitatif, Bandung: Pustaka Setia, 2018.

The Indonesian legal system recognizes the concept of common property or *gono-gini* which originates from customary law and is then adopted into the positive legal system. Article 35 paragraph (1) of the Marriage Law states: "Property obtained during marriage becomes joint property." While paragraph (2) adds: "The inherited property of each husband and wife and the property obtained by each as a gift or inheritance, are under the control of each of them as long as the parties do not specify otherwise." This provision provides a clear separation between common property and personal property¹³.

Article 37 of the Marriage Law stipulates that "If a marriage is broken up due to divorce, the joint property shall be regulated according to its respective laws." This provision provides space for the application of religious law and customary law in the distribution of common property. For Muslims, the Compilation of Islamic Law provides more specific arrangements in Articles 85-97. Article 97 of the KHI expressly states: "Widows or divorced widowers are entitled to one half of the joint property as long as it is not otherwise stipulated in the marriage agreement." The principle of equal division (50:50) has become the default rule in the practice of religious justice in Indonesia.

The philosophy of joint property in Islamic law basically does not recognize the mixing of wealth between husband and wife. The concept of shared property is more of an adoption of customary law which is then accepted because the value of the benefits is greater¹⁴. In Islam, the husband has the obligation to provide for the family as stated in the Qur'an. An-Nisa: 34, so that in principle the husband's income during marriage can be categorized as joint property. However, the income of a working wife does not automatically become part of the common property, because the wife is not obliged to provide for the family. This paradox then gave rise to a debate about justice in the distribution of common property¹⁵.

b. The Practice of Sharing Joint Property in the Indonesian Judiciary

In judicial practice, the determination of joint property is a crucial stage before the division is carried out. Property that falls under the category of common property includes: (a) property purchased during marriage; (b) property built up during the marriage even in the name of one of the parties; (c) income that grows from common property; and (d) income that grows from personal assets¹⁶. Proving the status of property is a burden for the applicant, and is often an obstacle for women who do not have access or knowledge of property ownership documents. Although the principle of equal division (50:50) is the general norm, there are inconsistencies in its application in various courts. The Supreme Court Decision Number 597K/Ag/2016 shows that courts are not always consistent in applying the principle of equal distribution, especially in cases where there are complex factors such as unbalanced contributions or the presence of mixed inherited assets. This

¹³ Soimin, *Hukum Orang dan Keluarga*, 2010.

¹⁴ Puspytasari, *Hukum Perkawinan dan Harta Bersama*, 2020.

¹⁵ Aprilyani Yunita, "Tinjauan Yuridis terhadap Putusan Pengadilan Agama terhadap Gugatan Harta Bersama dan Implikasinya dalam Hukum Keluarga di Indonesia," *Lex Privatum: Jurnal Fakultas Hukum UNSRAT*, Vol. 13, No. 5, 2024.

¹⁶ Sudarsono, "Tinjauan Yuridis Normatif Pembagian Harta Bersama Akibat Perceraian Menurut Kitab Undang-Undang Hukum Perdata dan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan," *Fiat Iustitia: Jurnal Hukum*, No. 2, 2020.

inconsistency creates legal uncertainty and has the potential to harm weaker parties, especially women.

Furthermore, rigid systems of equitable distribution often fail to accommodate the reality of unequal contributions between husband and wife. In cases where the wife's income is much greater than the husband's, the 50:50 split can be considered unfair to the wife who contributes more economically¹⁷. In contrast, in cases where the wife is a full-time housewife, her non-economic contribution to childcare and household management is often not adequately accounted for, even though these contributions have significant economic value when quantified.

c. Gender Justice Analysis in the Indonesian Legal System

From the perspective of gender justice, the system of sharing common wealth in Indonesia contains several fundamental problems. First, the concept of formal justice embraced through equitable distribution does not necessarily reflect substantive justice. Aristotle's theory of distributive justice emphasizes the principle of "equals should be treated equally, and unequals unequally" – the equal is treated equally, the unequal is treated unequally¹⁸. In the context of the division of marital property, a 50:50 division is only fair if the contributions of both parties are equal, both economically and non-economically.

Second, the Indonesian legal system has not explicitly recognized the economic value of domestic work and childcare work that is generally carried out by women. The concept of reproductive labor in feminist economics emphasizes that domestic labor has quantifiable economic value¹⁹. When a woman chooses or is forced to become a housewife to care for children and manage the household, she is actually making an indirect economic contribution that allows the husband to focus on his career and generate income. However, these contributions are often not taken into account in the division of common property.

Third, the burden of proof placed on those who claim property as common property creates structural barriers for women. In a still dominant patriarchal culture, valuable assets such as land, houses, and vehicles are often registered in the name of the husband. When a divorce occurs, the wife must prove that the assets were acquired during the marriage to be able to claim them as joint property. However, wives often do not have access to the ownership documents or financial records necessary for this proof²⁰.

Furthermore, this structural imbalance is exacerbated by limited legal awareness and access to justice among women, particularly in rural or economically disadvantaged communities. Many women are not fully informed of their legal rights regarding marital property, nor do they possess the financial resources to pursue legal action effectively. As a result, even when the law formally guarantees equal division of joint property, in practice women may receive less than their fair share. This gap between law in the books and law in action highlights the urgent need for gender-sensitive legal aid services, as well as public

¹⁷ Sunggono, *Metodologi Penelitian Hukum*, 2018.

¹⁸ A. Rahmi, A. Asmuni, dan N. Nurasiah, "Protection of Women from Sexual Violence: Reconciling Gender Justice from an Islamic Perspective," *Jurnal Pena Justisia: Media Komunikasi Hukum dan Keadilan*, Vol. 22, No. 1, 2023.

¹⁹ Nurdiansari dan Sriwahyuni, "Konsep Reproductive Labor dalam Ekonomi Feminis," 2020.

education initiatives aimed at empowering women to assert their rights within the legal system.

In addition, reform efforts are necessary to move the Indonesian legal framework toward a more gender-responsive model of justice. This could include explicit legal recognition of unpaid domestic and care work as a form of economic contribution, as well as the adoption of clearer guidelines for judges in assessing non-monetary contributions during property division. Comparative insights from other jurisdictions that apply equitable distribution principles may also serve as valuable references for reform. By integrating substantive gender justice into both legislation and judicial practice, Indonesia can better ensure that the division of marital property not only reflects formal equality but also achieves genuine fairness for both parties, particularly for women who have historically been disadvantaged in this domain.

2. Legal Arrangements for the Division of Post-Divorce Matrimonial Property in Thailand in a Gender Justice Perspective

a. Legal Basis and Concept of Marital Property in Thailand

Thailand regulates the division of marital property through the Civil and Commercial Code (CCC) by making a clear distinction between *sin suan tua* (personal property) and *sin somros* (marital property). Based on Section 1471 of the CCC, personal property consists of: (1) property owned before marriage; (2) property for personal use, clothing or ornaments appropriate to social status, or tools necessary to carry out the profession; and (3) property acquired during marriage through a will or gift²¹. Meanwhile, Section 1474 defines marital property (*sin somros*) as: (1) property acquired during marriage by one or both spouses; (2) property purchased with or exchanged from *Sin Somros*; (3) fruits/fruits from *sin somros* or *sin suan tua*; and (4) the profits of the business run using *sin somros* or *sin suan tua*. An important provision in this section is "in case of doubt as to whether a property is Marital Property or not, it shall be presumed to be Marital Property" – in case of doubt, the property is considered to be joint property²².

This principle of presumption of marital property is an important protection for the weaker parties in the marriage. In contrast to Indonesia where the burden of proof is on the party claiming the property as joint property, in Thailand the burden of proof is shifted to the party claiming the property as personal property. This approach structurally better protects women who often do not have access to ownership documents or family financial information.

From a gender justice perspective, this legal construction provides a more progressive foundation for protecting the economic rights of spouses, particularly women. By presuming that assets acquired during marriage are part of *sin somros*, Thai law reduces the evidentiary burden that often disadvantages wives in divorce proceedings. This is especially significant in patriarchal contexts where financial control and asset registration tend to be dominated by husbands. As a result, women are less likely to be excluded from claims over marital assets simply due to lack of documentation. The recognition of both direct and indirect contributions

²¹ Arjaree Me-Intarakerd Meesidhi, "An Application of Children's Well-Being and Welfare to Parental Power Following Divorce under Civil and Commercial Code," *Journal of Community Development Research (Humanities and Social Sciences)*, Vol. 15, No. 3, 2022.

embedded in this presumption aligns more closely with the principles of substantive equality, ensuring that legal outcomes reflect the realities of marital partnerships rather than merely formal ownership.

Moreover, the clear categorization between *sin suan tua* and *sin somros* also enhances legal certainty while still allowing room for fairness in judicial interpretation. The inclusion of “fruits” or income derived from both personal and marital property as part of *sin somros* demonstrates an understanding that economic value within a marriage is often interconnected. This becomes particularly relevant in cases where one spouse manages domestic responsibilities while the other engages in income-generating activities. However, despite these progressive elements, the effectiveness of this system still depends on judicial sensitivity and consistent application in practice. Therefore, continuous efforts to strengthen gender awareness within the judiciary and to ensure equitable enforcement remain crucial in fully realizing gender justice in the division of post-divorce matrimonial property in Thailand.

b. Equitable Division System in the Distribution of Marital Property

In the event of a divorce, Sections 1533-1535 of the CCC regulate the division of property with the principle of equitable division. Section 1533 states that the court shall divide marital property fairly by considering a variety of factors, including: (a) each party's contribution to the acquisition of the property; (b) child and household care; (c) the length of the marriage; (d) the economic condition of each party after the divorce; (e) career sacrifices made by one party for the benefit of the family; and (f) the behavior of each party that led to the divorce²³. This approach gives judges the flexibility not to be fixated on a 50:50 split, but can adjust to the substantive fairness of case by case. Explicit recognition of the contribution of childcare and household management as factors to be considered is a significant advance in recognising the economic value of domestic work that is generally done by women.

In judicial practice, Thai courts have shown sensitivity to gender justice issues. In Supreme Court Decision No. 1523/2565 (2022), the court affirmed that even though the house is registered in the name of the Thai couple and the land office issues a letter stating that the house is personal property, this cannot override Section 1474 which assumes that any assets acquired during the marriage are marital property. Furthermore, foreign spouses can claim reimbursement for their contributions from personal funds²⁴. This judgment demonstrates strong protection of the economic rights of the spouse, regardless of the name listed in the ownership document.

In addition, the equitable division system also reflects a broader commitment to substantive justice rather than merely formal equality. By allowing courts to weigh both financial and non-financial contributions, the law acknowledges that marriage is an economic partnership in which each party may contribute in different but equally valuable ways. This is particularly important in cases where one spouse assumes the primary role of homemaker, thereby enabling the other spouse to pursue income-generating activities. Such recognition helps to prevent structural disadvantage, especially for women who are more likely to engage in unpaid domestic labor. As a result, the application of Sections 1533–1535 of the CCC

²³ Supatida Sittirattanapong, "Grounds for Divorce: A Case Study on Gaslighting," *Public Health Policy and Laws Journal*, Vol. 11, No. 3, 2025.

promotes a more balanced and inclusive understanding of marital contributions in the division of property.

Moreover, the flexibility inherent in this system also allows the judiciary to respond to evolving social and economic contexts. Judges can take into account modern family dynamics, such as dual-career households or transnational marriages, where financial arrangements may be more complex. This adaptability ensures that legal outcomes remain relevant and fair in diverse circumstances. However, the discretionary nature of equitable division also places significant responsibility on judges to ensure consistency and avoid potential bias in decision-making. Therefore, continued development of judicial guidelines and jurisprudence is essential to maintain fairness, transparency, and predictability in the distribution of marital property following divorce.

c. Comparative Analysis of the Marriage Property Distribution System of Indonesia and Thailand in the Perspective of Gender Justice

A comparison of the legal system of the division of marital property between Indonesia and Thailand reveals fundamental differences in approaches and their implications for gender justice. The following table 1 presents a comprehensive comparison between the two systems:

Table 1. Comparison of Matrimonial Property Distribution Systems in Indonesia and Thailand

Aspek	Indonesia	Thailand
Legal Basis	Law No. 1/1974, KHI, Civil Code	Civil and Commercial Code Section 1465-1535, Gender Equality Act 2015
Concept of Property	Joint Property (gono-gini) vs Personal Property	Sin Somros (Marital Property) vs Sin Suan Tua (Personal Property)
Principle of Distribution	Equal division 50:50	Equitable division
Judge Flexibility	Limited, bound by the 50:50 principle unless there is a marriage agreement	High, can adjust to substantive justice case by case
Distribution Considerations	Not regulated in detail, generally only considering formal ownership	Contribution to property acquisition, child care, length of marriage, economic conditions, career sacrifices, party behavior
Gender Normative Framework	There is no specific law on gender equality	Gender Equality Act 2015 with the institution of CPGE and the Gender Equality Fund

Protection of the Weak	Moderate - melalui pembagian bagi rata namun tanpa pertimbangan konteks	Strong - through presumption, equitable division, and recognition of non-economic contributions
Legal Certainty	High - 50:50 formula is easy to predict	Moderate - depending on the judge's discretion and the facts of the case

d. The Effectiveness of Legal Protection on Women's Economic Rights After Divorce

The effectiveness of legal protection is determined not only by the substance of the rules, but also by the implementation and access to justice. In Indonesia, although the Marriage Law and KHI provide a clear legal basis for joint property, its implementation faces various obstacles. First, the patriarchal culture that is still strong in society often places women in subordinate positions in the negotiation of property division. Many women are unaware of their rights or choose not to claim their rights in order to avoid social stigma as "materialistic women" or "insincere"²⁵.

Second, access to justice is still a significant obstacle. The cost of litigation, distance to court, and lack of understanding of legal procedures make it difficult for many women, especially in rural areas, to access their rights²⁶. Research shows that many women end up giving up their rights to joint property because they don't have the financial resources to file a lawsuit or don't understand that they are entitled to the property. Third, the inconsistency of court decisions creates legal uncertainty. Melia et al. (2019) in their analysis of the Supreme Court Decision No. 597K/Ag/2016 show that courts are not always consistent in applying the principle of equitable distribution, especially in cases where there are complex factors such as unbalanced contributions or the presence of mixed inherited assets Butarbutar et al. (2024). This inconsistency creates uncertainty and can harm the weaker side.

Thailand, despite having a more progressive legal framework, also faces implementation challenges. The Gender Equality Act 2015, while an important breakthrough, ran into constraints in terms of low public awareness. A UNDP study (2015) shows that many communities, including the LGBT community that are supposed to be protected by this law, are unaware of the existence of the law. The report said that only 22% of respondents knew about the Gender Equality Act, indicating the need for more intensive socialization campaigns. Furthermore, Section 17(2) of the Gender Equality Act provides an exception for gender discrimination based on religious or national security principles, which may limit protections for women in Thailand's southern border provinces that apply Islamic law²⁷. This exception raises a debate about the extent to which gender equality can be limited by religious considerations, especially in the context of family law.

²⁶ Amisena dkk., Akses Keadilan bagi Perempuan dalam Sistem Hukum Indonesia, 2023.

²⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), Thailand Gender Equality Report, 2024.



Nevertheless, Thailand has stronger institutional mechanisms to promote gender equality. The Committee for the Promotion of Gender Equality (CPGE) chaired directly by the Prime Minister has the mandate to make policies and measures to promote gender equality in various sectors. The Gender Equality Promotion Fund also provides financial resources for activities and programs that support gender equality, including providing assistance and compensation to victims of gender discrimination²⁸.

Indonesia needs to have a special law on gender equality that can serve as a legal umbrella for various policies and regulations related to gender justice, including in the context of family law (29). The Gender Equality Law can be formulated with several key substances: (a) the prohibition of gender-based discrimination in various areas of life, including family law; (b) a clear definition of gender discrimination that includes not only direct discrimination but also indirect and structural discrimination; (c) the obligation of the state to take affirmative measures in promoting gender equality; and (d) enforcement mechanisms and sanctions for violations.

This law also needs to establish a Gender Equality Commission that has the authority to: (a) make national policies and action plans for the promotion of gender equality; (b) provide recommendations to government agencies regarding the elimination of gender discrimination; (c) monitor and evaluate the implementation of gender equality in various sectors; (d) receive and handle complaints of gender discrimination; (e) coordinating with international organizations on gender equality issues; and (f) administering gender equality funds to support gender equality promotion programs.

D. Conclusion and Recommendations

The distribution of marital property after divorce in Indonesia and Thailand reflects two distinct legal approaches in pursuing gender justice. Indonesia adopts the principle of joint property with an equal division (50:50), which offers a high degree of legal certainty and simplicity. However, this approach tends to be rigid and does not adequately accommodate the diverse realities of marital relationships, particularly the non-economic contributions of women in domestic and caregiving roles. In contrast, Thailand applies a more flexible equitable division system that allows courts to consider a range of factors, including both economic and non-economic contributions, post-divorce socio-economic conditions, and the division of domestic responsibilities. As a result, the Thai system more effectively embodies substantive gender justice by recognizing the varied forms of contribution within a marriage.

Based on this comparison, it is recommended that the Indonesian legal system be reformed toward a more gender-responsive framework. While the principle of equal distribution may be maintained as a general rule to ensure predictability, greater judicial discretion should be introduced to allow consideration of substantive fairness on a case-by-case basis. In addition, legal reforms should explicitly recognize the economic value of unpaid domestic and care work, strengthen evidentiary mechanisms to reduce structural barriers for women, and enhance access to gender-sensitive legal aid. Such measures are essential to ensure that the division of marital property not only upholds formal equality but also delivers meaningful and equitable protection of women's economic rights in the aftermath of divorce.

²⁸ Putu Andhika Kusuma Yadnya, "Meninjau Keadilan Dalam Pembagian Harta Bersama Pasangan WNA dan WNI di Indonesia," Vol. 16, 2023, hlm. 535-544.

²⁹ Inda Ariani, Muhammad Yahya Selma, dan Sri Suatmiati, "Penegakan Hukum Terhadap Pelaku Tindak Pidana Penggelapan Harta Gono Gini Setelah Perceraian (Studi Kasus No. 2230 K/Pdt/2019 di Pengadilan Tinggi Bangka Belitung)," Jurnal Hukum Doctrinal, Vol. 7, No. 1, 2022.

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