



Legal Protection for Wives Against the Transfer of Marital Joint Property

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Abstract: Marriage establishes legal consequences, particularly the creation of joint marital property jointly owned by husband and wife. In practice, however, unilateral transfers of such property often conducted by the husband to parents or third parties are frequently used as a strategy to circumvent equitable distribution following divorce, thereby undermining the wife's legal rights. This study aims to examine the legal regulation of joint marital property in Indonesia and to analyze the forms of legal protection available to wives against bad-faith transfers. The research employs a normative legal method, utilizing statutory, conceptual, and case-based approaches to assess relevant legal frameworks and judicial interpretations. The findings reveal that joint marital property is regulated under Law Number 1 of 1974 on Marriage, the Compilation of Islamic Law, and the Civil Code; however, these frameworks do not explicitly provide sanctions for unilateral transfers, resulting in a significant legal gap. Judicial practice, as reflected in Supreme Court Decision Number 454 K/Pdt/2018, demonstrates that transfers conducted in bad faith particularly those intended to harm the wife's interests may be declared null and void. This indicates an evolving judicial effort to address the deficiency in statutory regulation. In conclusion, although existing legal provisions recognize joint marital property, stronger and more explicit regulatory mechanisms are necessary to ensure legal certainty and protect the rights of wives. Legal protection may be pursued through both preventive measures, such as clearer legal norms, and repressive measures through judicial remedies.

Keywords: Joint Marital Property, Legal Protection, Wife, Bad Faith

Introduction

The institution of marriage fundamentally transforms the legal and social relationship between a man and a woman while preserving the individual rights and obligations that each possessed prior to the marital union. Before entering marriage, both individuals maintain full autonomy over their personal rights, responsibilities, and property ownership. After marriage, these rights and obligations become interconnected within the framework of family life; however, this unity does not imply the dissolution or elimination of individual legal identities. Instead, both spouses retain their respective rights and responsibilities while sharing mutual duties within the marital relationship. In principle, marriage should be built upon mutual respect and equality rather than domination by one party over the other. This understanding emphasizes that neither spouse should assume a superior role while the other becomes subordinate within the household

structure. Such a perspective reflects the normative ideals of marital relations that promote balanced partnership and cooperation (Faizal, 2015).

Marriage is fundamentally intended to foster a harmonious and enduring family unit marked by emotional stability, mutual cooperation, and reciprocal support among spouses. However, the practical dynamics of marital relations frequently encounter obstacles, especially in the administration and allocation of assets acquired throughout the marital period, leading to disputes that may emerge both amid ongoing marital ties and in the aftermath of divorce proceedings (Sudarmanto et al., 2021). Within the Indonesian legal framework, property obtained during marriage is typically classified as joint property, pursuant to Article 35 of Law Number 1 of 1974 concerning Marriage, which designates such accumulated assets as collectively owned by both parties and necessitating mutual consent for their management and disposition. This statutory provision underscores the state's endeavor to provide legal certainty in property relations within marriage, thereby mitigating potential conflicts as evidenced in judicial practices (Permatasari et al., 2024).

Within the framework of marital property law, assets acquired by spouses are generally classified into joint property, which refers to those obtained collectively during the marital relationship irrespective of formal ownership documentation, and separate property, encompassing assets owned prior to marriage or acquired individually through inheritance or gifts. Property constitutes an essential component of human existence, encompassing tangible goods, income from employment, or resources derived from agricultural or business activities. The legal status of such property within marriage critically influences its management, utilization, and distribution between spouses, particularly amid ownership disputes (Zulkarnain, 2026). Consequently, issues surrounding marital property frequently emerge as a primary source of conflict within households (Pelu & Dakhoir, 2021).

The concept of joint property, commonly known in Indonesia as gono-gini, embodies not only statutory legal norms but also overarching principles of equity and the formal recognition of spousal contributions within marital unions. Economic contributions in marriage extend beyond direct financial income to encompass non-material roles, such as household management, child-rearing, and the provision of emotional support, all of which are indispensable to sustaining the economic stability and productivity of the family unit (Zulkarnain, 2026). Accordingly, the legal recognition of joint property functions as a vital mechanism to affirm the collective efforts of both spouses in constructing household prosperity, with particular salience in safeguarding the economic interests of wives who frequently occupy more vulnerable positions in the household structure (Pelu & Dakhoir, 2021). By institutionalizing such rights, the law thereby guarantees equitable treatment between spouses and establishes joint property as an effective instrument of legal protection that upholds fairness in marital economic relations.

Despite the existence of legal regulations governing joint property, disputes frequently arise when one spouse transfers or conceals assets without the knowledge of the other party. Such actions often occur when the marital relationship becomes unstable or approaches divorce. In some cases, one spouse intentionally transfers joint property to third parties in order to reduce the amount of assets subject to division. This practice clearly

undermines the principles of justice and equality that form the foundation of marital property law. According to the principle of guilt, a legal act cannot be separated from the element of intentionality and awareness of its legal consequences. Actions that deliberately transfer joint property with the purpose of avoiding legal obligations toward a spouse may therefore be categorized as unlawful acts (Widijowati, 2024). As a result, the injured party often the wife may lose not only property rights but also financial security and economic stability, especially when she has sacrificed career opportunities for domestic responsibilities (Suman, 2022).

To prevent such injustices, legal mechanisms are available to protect the rights of spouses whose interests have been harmed by unauthorized asset transfers. One important legal remedy is the request for asset seizure (*conservatory attachment*) through court proceedings. This measure aims to secure disputed property during the litigation process so that it cannot be sold, transferred, or altered before a final court decision is issued. However, the implementation of such legal protection requires sufficient preliminary evidence demonstrating the existence and ownership of the disputed property. Various forms of documentary evidence may be used, including land certificates, vehicle ownership documents, bank records, sale and purchase deeds, and financial receipts. Additional supporting evidence such as family financial records, photographs, or witness testimony may also strengthen legal claims. Nevertheless, the persistence of cases involving concealed or transferred joint assets reflects broader structural issues, including legal loopholes, economic motives, and psychological factors that drive such behavior (Yulianti, 2018). Therefore, further legal analysis is necessary to identify effective forms of legal protection for wives against the bad-faith transfer of marital property in order to ensure justice and legal certainty in resolving disputes over joint assets.

Methodology

The present study employed a normative legal research method (juridical normative approach) to analyze legal norms governing the subject of the study. Normative legal research focuses on examining legal principles, statutory regulations, and doctrinal interpretations through the study of legal literature and secondary sources. This approach enables researchers to analyze the structure, coherence, and application of legal norms within the legal system. The research primarily examined legal provisions contained in legislation, legal doctrines, judicial decisions, and other authoritative legal materials. Through this approach, the study aimed to interpret legal rules systematically and assess their implementation in practice. Normative legal research is widely applied in legal scholarship because it provides a theoretical and doctrinal understanding of legal frameworks (Muhaimin, 2020).

In conducting the research, the study adopted a statutory approach (statute approach) as the primary analytical framework. The statutory approach involves examining all laws and regulations relevant to the legal issues under investigation. Through this method, the researcher systematically analyzed various legislative provisions to identify the legal norms governing the research topic. The analysis included reviewing statutory provisions, legal doctrines, and court decisions that shape the interpretation of the law. By examining the relationship between different legal instruments, the research sought to

understand how statutory regulations function within the broader legal system. This approach also enabled the researcher to evaluate the consistency and effectiveness of existing legal regulations in addressing the identified legal issues.

The type of data utilized in this research consisted primarily of secondary data, which plays a crucial role in normative legal studies. Secondary data were selected because the research emphasized the analysis of legal norms, statutory provisions, and judicial decisions rather than empirical data collected directly from the field. In normative legal research, secondary data provide the primary basis for constructing legal arguments and interpreting legal principles. The quality and credibility of secondary data significantly influence the depth and validity of the analysis. Therefore, the selection of data sources was conducted carefully to ensure that the study relied on authoritative and scientifically credible legal materials. This methodological consideration ensures that the conclusions drawn from the research are grounded in reliable legal references.

The data collection technique used in this research was library research, which involves systematically collecting legal materials from various written sources. Library research allows researchers to gather and analyze legal doctrines, statutory regulations, and scholarly interpretations relevant to the research topic. The process included reviewing books, academic journals, legal documents, and previous research studies related to the subject matter. In addition, the researcher examined legal references through reading, reviewing, and analyzing various legal publications and databases. Advances in digital technology also facilitate the exploration of legal sources through online academic repositories and legal databases. This systematic review of legal literature ensured the comprehensive collection of relevant legal materials for analysis.

The legal materials used in this study consisted of primary, secondary, and tertiary legal sources. Primary legal materials refer to authoritative legal documents produced by institutions with legislative authority and contain legally binding rules that must be followed. These materials form the fundamental basis for legal argumentation in normative legal research. In this study, the primary legal materials included statutory regulations such as Law Number 1 of 1974 concerning Marriage, the Indonesian Civil Code (KUHPerdata), and relevant jurisprudence or court decisions. These sources were analyzed to identify legal norms and principles governing the issue examined in the study. The examination of these primary legal materials provided a normative foundation for the legal analysis conducted in the research.

Secondary and tertiary legal materials were also utilized to support the interpretation and analysis of the primary legal sources. Secondary legal materials consisted of scholarly works such as academic books, seminar proceedings, journal articles, legal dictionaries, research papers, legal encyclopedias, and other written legal documents. These materials provide explanations, interpretations, and scholarly perspectives that assist researchers in understanding and analyzing legal norms. Meanwhile, tertiary legal materials serve as supporting references that guide researchers toward primary and secondary legal sources. Examples of tertiary materials include the *Kamus Besar Bahasa Indonesia*, legal dictionaries, academic journals, and credible websites. By integrating primary, secondary, and tertiary legal materials, the research ensured a comprehensive and systematic analysis of the legal issues examined in this study (Muhaimin, 2020).

Result and Discussion

Legal Regulation of Joint Property in Marriage in Indonesia

In the Indonesian marital legal system, the regulation of joint property constitutes a juridical consequence of the existence of a valid marital bond. This provision is intended to ensure fairness, equality, and protection of economic rights between husband and wife. The regulation of joint property is dispersed across several statutory regulations that complement one another. These legal instruments collectively establish the normative framework governing property relations within marriage. Each regulation contributes specific principles and procedural mechanisms concerning ownership and management of marital property. The relevant legal provisions regulating joint property in marriage in Indonesia include the following.

a. Law Number 1 of 1974 concerning Marriage

Law Number 1 of 1974 constitutes the primary legal basis governing the status of property within marriage. Article 35 paragraph (1) of the Marriage Law explicitly states that “property acquired during the marriage becomes joint property.” This provision affirms that all assets obtained from the time the marriage begins until it ends due to divorce or death automatically become the joint property of the husband and wife. The rule applies regardless of whose name the property is registered under. The principle reflects the idea that marital property is accumulated through the partnership of the spouses during marriage. Consequently, the law recognizes equal ownership rights over property obtained during the marital relationship.

Furthermore, Article 36 paragraph (1) of the Marriage Law stipulates that actions concerning joint property may only be undertaken by the husband or wife with the consent of both parties. This norm implies that the transfer, sale, donation, or encumbrance of joint property carried out unilaterally constitutes an act contrary to the law. Any legal action performed by one party without the consent of the other spouse may be classified as an unlawful act. The provision therefore emphasizes the importance of mutual agreement in managing marital assets. Such a requirement is intended to prevent unilateral decisions that may harm the economic interests of the other spouse. Through this mechanism, the law aims to safeguard the principle of equality within marital property relations.

However, the results of the study indicate that the Marriage Law does not explicitly regulate legal sanctions for violations of Article 36 paragraph (1). The absence of explicit sanctions creates a legal gap within the regulatory framework. This gap is frequently exploited by parties acting in bad faith to transfer joint property. Such actions commonly occur prior to or after the occurrence of divorce. As a result, disputes over marital assets often arise in the process of marital dissolution. The lack of clear sanctions may therefore weaken the practical effectiveness of the legal provisions regulating joint property.

b. The Indonesian Civil Code (KUHPERDATA)

The Indonesian Civil Code also provides a normative foundation concerning property in marriage. This regulation is particularly reflected in Article 119 of the Civil

Code, which adopts the principle of community property from the moment the marriage is concluded. The provision applies unless otherwise determined through a prenuptial agreement. Article 119 confirms that joint property constitutes a unified entity within the marriage. As such, the property cannot be controlled or transferred unilaterally by one party. The principle reinforces the legal notion that marital property belongs collectively to both spouses.

Furthermore, Article 1365 of the Civil Code concerning unlawful acts becomes an important legal instrument in addressing the transfer of joint property conducted in bad faith. The transfer of joint property to parents or close relatives with the intention of avoiding a legitimate distribution may fulfill the elements of an unlawful act. Such conduct violates the subjective rights of the wife. It also contradicts existing legal obligations governing marital property relations. In addition, the act breaches the principles of propriety and prudence in civil legal conduct.

Legal Protection and Legal Remedies in the Application for Security Seizure of Joint Property Transferred by One Party in the Event of a Marital Dispute

Legal protection for a wife against the unlawful transfer of joint property can be pursued through several legal mechanisms. These mechanisms may take both preventive and repressive forms within the legal system. Preventive legal protection aims to prevent disputes before they occur. Repressive legal protection, on the other hand, focuses on resolving disputes through legal remedies after a violation has taken place. Both approaches play an important role in safeguarding the economic rights of spouses within marriage. Through these mechanisms, the legal system seeks to provide fairness and certainty in resolving marital property disputes.

From a preventive perspective, legal protection can be realized through the establishment of a marital agreement that clearly regulates the management and transfer of property during marriage. In addition, the registration of assets under joint ownership serves as an important preventive measure. The inventory of marital assets also contributes to transparency in the management of family property. Such measures reduce the risk of abuse of authority by one spouse. These preventive arrangements are recognized within the legal framework of marital agreements under Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage. Consequently, preventive regulation of marital assets can minimize potential disputes concerning joint property.

From a repressive perspective, the wife may pursue legal remedies through a civil lawsuit seeking the annulment of the legal act transferring the joint property on the basis of an unlawful act. In such a lawsuit, the wife must prove that the transferred property constitutes joint marital property. She must also demonstrate that the transfer was carried out without her consent. Additionally, evidence of bad faith on the part of the husband and the recipient of the transfer must be presented. The wife may also submit a request for marital seizure to prevent further transfer of the property during the judicial process. These legal measures are intended to ensure that the disputed property remains available until the court reaches a final decision.

Seizure of joint property may be requested by either the wife or the husband over marital assets, both movable and immovable, as a guarantee for obtaining their respective share. The purpose of such seizure is to ensure that the assets are not transferred during the litigation process (Supreme Court of the Republic of Indonesia, 2008). The evidentiary strength of ownership becomes a key factor in the request for security seizure. Judges will grant the request if it is reasonable, supported by strong legal grounds, and if the object of seizure clearly belongs to the defendant and is directly related to the dispute (Harahap, n.d.). The implementation of seizure must be supported by proof of ownership based on authentic deeds or private documents (Reglemen Acara Perdata, Article 728). Therefore, documentary evidence plays a crucial role in determining the success of the seizure request.

Evidence that may be presented in an application for security seizure of joint property is diverse. Such evidence may consist of written documentation, witness testimony, or the results of on-site examinations. First, authentic written evidence such as land certificates, vehicle ownership documents (BPKB), vehicle registration certificates (STNK), and deeds of sale and purchase constitutes evidence with strong legal force. A certificate of land rights, for example, functions as strong evidence regarding the physical and juridical data contained within it (Government Regulation Number 24 of 1997, Article 32 paragraph (1)). Second, supporting documents such as payment receipts, family financial records, or bill payment proofs may also strengthen claims of ownership or control over the property. Third, witness testimony from neighbors, family members, or other parties who directly know the history of the acquisition of the property can complement the evidentiary process. Finally, a local inspection (*descente*) may be conducted by court order to verify the physical existence, boundaries, and actual condition of the disputed object (Asnawi, 2016).

Opposition to the seizure of joint property is generally not permitted because joint property serves as collateral for shared obligations within marriage. However, if the seized property constitutes personal property, opposition may be accepted unless a marital agreement stipulates otherwise. Based on jurisprudence in the Supreme Court Decision Number 306 K/Sip/1962 dated October 31, 1962, third-party opposition by the owner of seized property may be accepted even though it is not specifically regulated in the HIR. Legal protection is understood as all efforts undertaken to enforce an individual's subjective rights through existing legal processes. Such protection aims to achieve justice, legal certainty, and legal benefit. Therefore, the legal system provides mechanisms that allow parties to defend their property rights within judicial proceedings.

As stated by Yudistira and Rr Dijan Widijowati, the law of evidence in civil law differs from that in criminal law because civil law seeks formal truth, whereas criminal law seeks material truth (Yudistira & Widijowati, 2023). This principle is relevant in cases involving the transfer of joint property. A deed of sale or grant that appears formally valid may be annulled if it is substantively proven to have been conducted in bad faith. The distinction between formal and material truth highlights the importance of examining the substance of legal transactions. Courts therefore evaluate not only the form of the legal act but also its underlying intent. This approach ensures that legal transactions are not misused to conceal unlawful conduct.

Legal protection for wives in this context is further emphasized through the interpretation of the principle of good faith within the law of obligations. This principle, regulated under Article 1338 paragraph (3) of the Civil Code, may lead to a reversal of the burden of proof in certain circumstances. As a result, the third party receiving the property must prove that the transaction was conducted in good faith and without knowledge that the asset constituted joint property. On the other hand, the wife as the plaintiff still bears the burden of proving the status of the property as joint property. She must also prove the absence of her consent and the existence of bad faith in the transfer (Yudistira & Widijowati, 2021). These evidentiary requirements ensure a balanced allocation of responsibilities between the disputing parties.

A lawful transfer mechanism must fulfill the principles of mutual consent, transparency, fairness, and legal certainty. These principles are realized through the voluntary agreement of both parties as well as through formal procedures such as notarial deeds or deeds issued by the Land Deed Official (PPAT). To prevent and overcome losses, several legal remedies are available. Preventive remedies include marital agreements and proper asset registration. Curative remedies include lawsuits for annulment, claims for damages, marital seizure (*conservatoir beslag*), and even criminal proceedings if elements of fraud or falsification are present (Civil Code Article 1365; HIR Article 227/RBg Article 261; Criminal Code Articles 263, 264, and 378). Thus, the existing legal framework actually provides adequate instruments to protect the rights of wives, provided that these mechanisms are effectively accessed and enforced.

In certain circumstances, if the transfer of joint property involves elements of fraud or falsification, the wife may also pursue criminal proceedings as an additional form of legal protection. The combination of civil and criminal remedies demonstrates that the Indonesian legal system has actually provided adequate instruments of protection. Nevertheless, the effectiveness of these mechanisms depends on the courage and firmness of law enforcement authorities. Effective enforcement is essential to ensure that legal protections are not merely normative but also practical. Therefore, strengthening institutional commitment to enforcing these legal provisions remains crucial. Through such enforcement, the objectives of justice, legal certainty, and protection of marital property rights can be more effectively achieved.

Table 1. Summary of Legal Regulation and Legal Protection Mechanisms for Joint Property in Marriage in Indonesia

Aspect	Legal Basis / Source	Key Provisions	Legal Implications
Legal concept of joint property in marriage	Indonesian marital legal system	Joint property arises as a juridical consequence of a valid marriage and is intended to ensure fairness, equality, and economic protection between spouses.	Establishes the normative framework governing property relations within marriage.
Status of joint property	Law Number 1 of 1974 concerning Marriage, Article 35(1)	Property acquired during marriage automatically becomes joint property of husband and wife regardless	Confirms equal ownership rights of spouses over marital assets acquired during the marriage.

Aspect	Legal Basis / Source	Key Provisions	Legal Implications
Management of joint property	Law Number 1 of 1974 concerning Marriage, Article 36(1)	Any legal action concerning joint property must be carried out with the consent of both spouses.	Prevents unilateral transfer, sale, donation, or encumbrance of marital property.
Regulatory limitation	Marriage Law	The law does not explicitly provide sanctions for violations of unilateral transfer of joint property.	Creates a legal gap that may be exploited in cases of bad-faith property transfers, especially during divorce disputes.
Community property principle	Indonesian Civil Code (KUHPperdata), Article 119	Property becomes a community property from the moment the marriage is concluded unless otherwise determined through a prenuptial agreement.	Reinforces the concept that marital property constitutes a unified entity owned jointly by both spouses.
Unlawful transfer of property	Indonesian Civil Code, Article 1365	Transfer of joint property conducted in bad faith may constitute an unlawful act.	Provides legal grounds for civil claims when property is transferred to avoid lawful distribution.
Preventive legal protection	Marriage Law Article 29(1)	Legal protection may be implemented through marital agreements, joint asset registration, and asset inventory.	Prevents abuse of authority and potential disputes concerning joint property.
Repressive legal remedies	Civil lawsuit based on unlawful acts	The wife may file a lawsuit to annul the transfer of joint property and request marital seizure to prevent further transfer during litigation.	Ensures the disputed property remains available until the court decision is finalized.
Security seizure of joint property	Supreme Court Technical Guidelines (2008); Reglemen Acara Perdata Article 728	Seizure may be requested over movable and immovable marital assets to guarantee the claimant's share.	Prevents the transfer of disputed assets during the judicial process.
Evidentiary requirements	Government Regulation No. 24 of 1997; Asnawi (2016)	Evidence may include land certificates, vehicle documents, sale deeds, payment receipts, financial records, witness testimony, and on-site inspections.	Strong documentary evidence significantly influences judicial decisions regarding seizure requests.
Opposition to seizure	Supreme Court Decision No. 306 K/Sip/1962	Third-party opposition may be accepted if the seized property belongs to a third party, even though not explicitly regulated in HIR.	Protects the rights of third parties claiming ownership of seized assets.
Principle of evidence	Yudistira & Widijowati (2023)	Civil law seeks formal truth, whereas criminal law seeks material truth.	Legal acts that appear formally valid may be annulled if proven

Aspect	Legal Basis / Source	Key Provisions	Legal Implications
Good faith principle	Civil Code Article 1338(3); Yudistira & Widijowati (2021)	The burden of proof may shift to the third party receiving the property to prove good faith in the transaction.	substantively unlawful or conducted in bad faith. Ensures balanced evidentiary responsibility between the disputing parties.
Legal remedies for loss	Civil Code Article 1365; HIR Article 227/RBg Article 261; Criminal Code Articles 263, 264, 378	Remedies include annulment lawsuits, compensation claims, marital seizure (conservatoir beslag), and criminal prosecution for fraud or falsification.	Provides comprehensive civil and criminal legal instruments for protecting spouses' rights.
Additional legal protection	Indonesian legal system	In cases involving fraud or falsification, criminal proceedings may accompany civil litigation.	Strengthens legal protection for spouses against unlawful transfer of joint property.

Conclusion

The findings of this study indicate that the Indonesian legal framework, particularly Law No. 1 of 1974 on Marriage and the Indonesian Civil Code, provides a fundamental basis for regulating marital property by classifying assets acquired during marriage as joint property requiring mutual consent for their management or transfer. However, the absence of explicit legal sanctions for violations of Article 36 creates a normative gap that weakens enforcement and allows potential unilateral transfers, thereby rendering legal protection for wives more declarative than effective. This study implies an urgent need for strengthening the enforceability of marital property law through the introduction of clear administrative, civil, and criminal sanctions, as well as the optimization of legal remedies such as claims based on unlawful acts to ensure both preventive and corrective justice. Practically, stricter due diligence by notaries, land deed officials, and financial institutions, alongside increased public legal awareness and systematic documentation of marital assets, are essential to minimize disputes. For future research, it is recommended to conduct comparative legal studies across jurisdictions to identify best practices in protecting spousal property rights, as well as empirical investigations into the effectiveness of preventive legal instruments such as prenuptial agreements and asset registration systems in reducing marital property disputes.

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