

The Status of Marital Property in an Interfaith Marriage Following the Death of the Husband

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ABSTRACT

This article examines the status of marital property following the death of the husband in a marriage that was initially solemnized under Islam but subsequently became an interfaith marriage because the husband reverted to Christianity while the wife remained Muslim. There was no record of divorce or a court judgment terminating the marriage before the husband's death. Following the death of the husband, the child who followed the father's religion took control of the property, while the wife received no share of the property acquired during the marriage. This study employed a normative legal research method using statutory, conceptual, and case approaches. The case was treated as a case construction based on the chronology in the source manuscript and the available supporting records, rather than as a published court judgment. The findings indicate that a change of religion does not automatically terminate a marriage. In the absence of divorce or a court judgment, property acquired until the termination of marriage upon death remains presumed to be marital property. The wife's share must be separated before the distribution of the inheritance, whereas the estate includes only the husband's share of the marital property and his separate property. The inheritance regime is determined by the husband's religious status at the time of death, but religious differences do not extinguish the wife's proprietary rights in marital property. Legal protection may be pursued through an action for the determination and division of marital property, proof of the origin of the property, preservation of the disputed property, and enforcement of the judgment.

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1. Introduction

Marriage in the Indonesian legal system is understood not only as a personal relationship between a man and a woman but also as a legal event that gives rise to legal consequences in matters of personal status, family relations, children, and property. Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, affirms that marriage is a physical and spiritual bond between a man and a woman as husband and wife for the purpose of establishing a happy and enduring family based on Belief in the One and Only God [1]. Accordingly, marriage in Indonesia has both civil and religious dimensions. In Islamic legal literature, marriage is likewise understood as an institution in which responsibility, justice, and equality between husband and wife form the foundation for family formation [2].

The phenomenon of interfaith marriage remains a family-law issue that continues to generate debate. Religious differences may have existed from the outset of the marriage or may arise subsequently because one party changes religion or returns to a previous religion. These two circumstances must be distinguished. This article addresses the latter circumstance: a marriage initially solemnized under Islam that subsequently became an interfaith marriage because the husband reverted to Christianity while the wife remained Muslim. Thus, the issue concerns not only the validity of an interfaith marriage at the time of its formation but, more importantly, the continuity of the marital bond, the period during which marital property was formed, and the rights of the surviving spouse following death.

The validity of marriage in Indonesia is determined by its solemnization in accordance with religious law and its registration pursuant to state requirements. Waluyo's study indicates that a marriage is valid when it complies with religious requirements and is registered in accordance with applicable laws and regulations [3]. Rorong likewise emphasizes that the requirements for marriage include the consent of the prospective spouses, the minimum age, and registration in accordance with the applicable procedure [4]. A change of religion occurring after marriage is distinct from its initial validity. Such a change does not retroactively extinguish the legal fact of a marriage that was previously validly solemnized and registered, although it may give rise to grounds for divorce or other legal consequences.

Supreme Court Circular Letter No. 2 of 2023 (SEMA No. 2 of 2023) directs judges not to grant applications for the registration of marriages between persons of different

religions and beliefs [5]. The circular letter directly concerns applications to register marriages entered into from the outset by parties of different religions. It does not specifically regulate the property consequences of marriages that were valid and subsequently became interfaith marriages because of a change of religion by one spouse. Accordingly, SEMA No. 2 of 2023 is treated as a policy context, whereas the issue in this article is analyzed primarily on the basis of provisions concerning the termination of marriage, marital property, and inheritance.

The case presented in the source manuscript concerns a couple who initially entered into a marriage under Islam and acquired a number of assets during the marriage. The husband subsequently reverted to Christianity, while the wife remained Muslim. The parties continued to live as husband and wife, and the available materials contain no record of divorce, annulment, or other court judgment terminating the marriage before the death of the husband. Following the death of the husband, the child who adhered to the father's religion took control of the property, whereas the wife received no share of the property acquired during the marriage. This factual construction raises the issue of distinguishing between the wife's proprietary rights as an owner of marital property and the rights that may subsequently arise under the inheritance regime.

Normatively, Article 35(1) of Law No. 1 of 1974 on Marriage provides that property acquired during marriage becomes marital property [1]. The Compilation of Islamic Law also recognizes marital property. Where marriage is terminated by death, Article 96 of the Compilation of Islamic Law essentially regards one-half of the marital property as belonging to the surviving spouse, while taking account of the specific legal circumstances [8]. On the other hand, the Indonesian Civil Code recognizes a community of marital property under Article 119 and the division of that community following its dissolution under Article 128 [9]. Although their legal constructions differ, none of these three frameworks supports the assumption that all property controlled by or registered in the husband's name automatically constitutes the estate.

The urgency of this research lies in the need to draw a clear distinction between marital property and inherited property. In social practice, all property left by a husband is often erroneously regarded as inherited property and controlled by the child or heirs without first setting aside the wife's share as the surviving spouse. Yet, the wife's rights in marital

property are proprietary rights arising from the marital relationship, rather than merely inheritance rights. If marital property is not separated first, the wife may lose her rights, and the principle of justice in marriage may be neglected.

The research gap addressed in this article has doctrinal and analytical dimensions. Studies of interfaith marriage have focused predominantly on the validity and registration of marriage, whereas studies of marital property are more often situated in the context of divorce. Discussion remains limited regarding the sequence of analysis where a difference in religion arises after marriage, the husband subsequently dies, and the child controls the family property. The literature also does not always clearly distinguish the stage of determining the wife's proprietary rights from the stage of determining the heirs and distributing the inheritance.

The novelty of this article lies in its two-stage legal construction. The first stage identifies and separates the wife's share of marital property without treating a difference in religion as a basis for extinguishing her rights. The second stage determines the husband's estate after that separation and subsequently determines the inheritance regime on the basis of the husband's religious status at the time of death. This construction clarifies that a dispute concerning the status of heirs cannot be used to eliminate proprietary rights that arose earlier during the marriage.

Based on this background, the following research questions are formulated:

1. What is the legal status of marital property in an interfaith marriage following the death of the husband?
2. What legal protection is available for the wife's rights in marital property after the death of the husband?

This research aims to analyze the legal status of marital property following the death of the husband in a marriage involving a change of religion, on the basis of Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and the Indonesian Civil Code, and to formulate forms of legal protection for the wife's rights in marital property before the distribution of inheritance.

2. Research Methods

This research employs a normative legal research method because the principal issues examined are the legal status of marital property, the legal consequences of a change of religion after marriage, the choice of inheritance regime, and the protection of the wife's rights under positive law. The research was not intended to statistically measure the frequency of disputes or institutional practices, but rather to

examine the norms, principles, doctrines, and interrelationships among provisions relevant to disputes over marital property following the death of the husband.

The approaches employed were the statutory approach, conceptual approach, and case approach. The statutory approach was used to examine Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, the Indonesian Civil Code, the Human Rights Law, and provisions concerning judicial jurisdiction. The conceptual approach was used to understand marital property, the community of marital property, change of religion, legal protection, and the separation of marital property from inherited property. The case approach was applied to a case construction developed from the chronology in the source manuscript. The available materials did not include a case number or a published copy of a court judgment; therefore, the case approach was not used to analyze the ratio decidendi of a particular judgment, but rather to test the application of legal norms to the constructed facts.

The legal materials consisted of primary, secondary, and tertiary legal materials. Primary legal materials included legislation and legal provisions governing marriage, marital property, inheritance regime, and the protection of rights. Secondary legal materials comprised books, journal articles, doctrinal writings, and legal expert opinions explaining the concepts of marital property and legal protection. Tertiary legal materials consisted of legal dictionaries and other supporting sources that assisted in clarifying legal terminology.

Legal materials were collected through library research and document review of source manuscripts, legislation, and relevant legal literature. The source manuscript referred to a research location at the Marisa Religious Court and limited interviews as supporting material. However, the available materials did not fully document the identities, number, or positions of the informants, or the timing, duration, interview guidelines, or transcripts. Accordingly, this information was not treated as independent empirical evidence and was not used to generalize the practices of the Marisa Religious Court; rather, it served only as supporting context for the normative analysis.

The legal materials were analyzed descriptively and analytically through the identification of norms, classification of property status, systematic interpretation across provisions, and application of norms to the case construction. The analysis proceeded sequentially: first, assessing the

continuity of the marriage following the change of religion; second, determining the period during which marital property was formed and its status; third, separating the wife's share from the estate; and fourth, identifying the inheritance regime that may apply to the husband's share. Conclusions were drawn deductively and were limited to the case construction analyzed.

This study has several limitations. First, the analysis relies on a single case construction developed from the chronology in the source manuscript rather than from a published court judgment. Second, the supporting interview materials were not fully documented and therefore cannot be used to describe institutional practices or the frequency of similar disputes. Third, the study did not compare variations in court judgments and could not calculate inheritance shares because documents concerning religious status, asset details, and the procedural history of the case were unavailable. The findings should therefore be read as a contextual legal construction that requires further testing through comparative research on court judgments and broader case data.

3. Results and Discussion

The results and discussion are organized around two research questions: the status of marital property following the death of the husband and the legal protection of the wife's rights. The analysis treats legal rules as the primary norms and then relates them to the case construction, doctrine, and prior research. Because the object of this study is not a published court judgment, the discussion does not claim to provide a general account of judicial practice; rather, it proposes a legal resolution framework that may be further tested in concrete cases.

3.1. The Status of Marital Property in an Interfaith Marriage Following the Death of the Husband

The first legal issue is whether the husband's change of religion affects the continuation of the marriage and the status of property acquired during the marriage. In the case at issue, the marriage was initially solemnized under Islam; the husband subsequently reverted to Christianity, whereas the wife remained Muslim. The parties acquired property during the marriage. Following the death of the husband, the child who followed the father's religion took control of the property, while the wife received no share of the marital property.

The husband's change of religion does not, in itself, terminate the marriage. Article 38 of Law No. 1 of 1974 on Marriage provides that a marriage terminates by death, divorce, or court judgment [1]. Under the Compilation of Islamic Law (KHI),

a change of religion or apostasy that gives rise to discord may constitute grounds for divorce, but it still requires legal proceedings, as reflected in Article 116(h) [8]. Because the case materials do not indicate that a divorce or court judgment occurred before the death of the husband, the marriage is treated as continuing until his death. Consequently, the period during which marital property was formed also continued until the marriage terminated by death, provided that no prenuptial agreement existed and that there is no evidence that an asset constituted separate property.

Under Article 35(1) of Law No. 1 of 1974 on Marriage, property acquired during the marriage becomes marital property [1]. This provision draws a clear distinction between marital property and separate property. Property brought into the marriage, gifts, and inheritances received by either the husband or the wife remain under the respective control of each spouse unless otherwise stipulated. Therefore, determining the status of property in this case must begin with the time and basis of its acquisition. Where property was acquired during the marriage, it is, in principle, marital property, even if ownership documents are registered in the husband's name or the property was controlled by the child after the death of the husband.

The Compilation of Islamic Law distinguishes between marital property and separate property in Articles 85 through 87 [8]. Where a marriage terminates because of death, Article 96 of the KHI is more applicable than Article 97, which primarily concerns division resulting from divorce. Article 96 affirms the status of the surviving spouse with respect to a share of marital property. Accordingly, before the distribution of the estate, the court or the parties must first identify the wife's share as a co-owner.

From the perspective of the Indonesian Civil Code (KUHPdata), the concept of marital property has a broader scope. Article 119 of the KUHPdata provides that, from the time a marriage is solemnized, a universal community of property arises between husband and wife unless a prenuptial agreement provides otherwise [9]. Article 128 of the KUHPdata further indicates that, when the community of property is dissolved, the joint property is divided equally between the husband and wife or their respective heirs [9]. Unlike the Marriage Law, which emphasizes property acquired during marriage, the KUHPdata essentially recognizes a community of both assets and liabilities within marriage. Although their legal constructions differ, both legal regimes recognize that the surviving spouse must not be

disregarded in the division of property.

The death of the husband gives rise to two legal stages that must be distinguished. The first stage is the identification and separation of marital property, including the determination of the wife's share as the surviving spouse. The second stage is the distribution of the husband's estate among the heirs in accordance with the applicable inheritance regime. The subject of inheritance is not the entirety of the family property, but rather the husband's share of the marital property after its separation, together with the husband's separate property that can be proven.

A frequent error in practice is to regard all property left by the husband as inheritance. This understanding is erroneous because it extinguishes the wife's proprietary rights, which arose during the marriage. In the case under review, the child cannot immediately take possession of all property on the ground of being the father's heir. The child may claim only a share of the father's estate after the wife's share of the marital property has been separated. If the child takes possession of all property without recognizing the wife's share, such conduct is contrary to the principle of marital property and the principle of balance between the rights of husband and wife.

Religious differences may affect the inheritance stage, but they must not be conflated with the stage of separating marital property. The wife's rights in marital property are not inheritance rights, but proprietary rights arising from marriage and the acquisition of property during the course of domestic life. Therefore, a change of religion of the husband, wife, or child cannot serve as a basis for eliminating the wife's share of marital property.

After the wife's share of marital property has been separated, the inheritance regime is determined on the basis of the husband's religious status at the time of death, as evidenced by official documents. If the husband is legally registered as Muslim, the distribution of the estate falls within the framework of Islamic inheritance, and religious differences may affect the qualification of heirs, as reflected in the concept of an heir under Article 171(c) of the Compilation of Islamic Law (KHI) [8]. If the husband is registered as Christian or non-Muslim, the KUHPerdata provides a more relevant inheritance framework; under that regime, religion is not a general requirement for becoming an heir [9]. The determination of court jurisdiction likewise follows the religion of the deceased and the legal basis of the dispute, in accordance with the division of jurisdiction between the

religious courts and the general courts [19]. Because the case materials contain neither official documentation of religious status at the time of death nor a court judgment, this article does not determine the size of the inheritance shares, but emphasizes that the choice of inheritance regime is made only after the wife's rights in marital property have been resolved. These findings are consistent with Rahmaniah, who emphasizes that marital property in Indonesian marriage law developed from customary law traditions and is recognized by the Marriage Law and the KHI as affording husband and wife equal status [10]. Yusup and Al Hasan further explain that marital property comprises property acquired throughout marriage until the marriage ends, whether through divorce or the death of one spouse [11]. Accordingly, previous studies reinforce the argument that the death of the husband does not extinguish the wife's rights to a share of marital property.

However, this article is novel in that it addresses marital property not only in the context of divorce or marriage generally, but also in the context of interfaith marriage and the husband's change of religion before death. The novelty of its analysis lies in its clear distinction between the wife's rights as the owner of marital property and her position under the inheritance regime. On the basis of this distinction, religious differences must not be used to extinguish the wife's rights in marital property, which arose earlier during the marriage.

Accordingly, marital property must first be separated before the distribution of the inheritance. The wife's share cannot be appropriated by the child or other heirs. Once the wife's share has been separated, the husband's share of marital property and his separate property become the estate. The applicable distribution regime is then determined on the basis of the husband's religious status at the time of death and valid population registration evidence, without affecting recognition of the wife's rights that arose at the preceding stage.

3.2. Legal Protection of the Wife's Rights in Marital Property After the Death of the Husband

The second legal issue concerns guarantees for protecting the wife's rights in marital property after the death of the husband. Legal protection is necessary because, in the case under review, the wife, as the lawful spouse, did not receive a share of the property acquired during the marriage. This position demonstrates a disparity between legal norms recognizing marital property and the practice of children or heirs taking possession of such property.

The legal basis for the protection of wives can be found in Article 31(1) of the Marriage Law, which affirms that the rights and status of a wife are equal to those of her husband in household life and their shared social life within society [1]. Article 36(1) of the Marriage Law further provides that, with respect to marital property, either spouse may act with the consent of both parties [1]. These two provisions demonstrate that a wife is not a passive party or subject to her husband's control, but rather a legal subject with equal rights in marital property.

The guarantee of protection is further reinforced by Law No. 39 of 1999 on Human Rights. Article 17 grants every person, without discrimination, the right to obtain justice through applications, complaints, and legal actions [18]. Article 51(1) affirms that, during the marital bond, a wife has the same rights and responsibilities as her husband in all matters concerning marital life, relationships with children, and rights of ownership and property management [18]. This provision reinforces the argument that a wife is entitled to bring legal action when her rights in marital property are disregarded.

In the context of legal protection, a wife has several avenues available. First, normative protection consists of recognition of the wife's rights under the Marriage Law, the Compilation of Islamic Law (KHI), the Civil Code, and the Human Rights Law. Second, preventive protection consists of the use of marital agreements, asset registration, and mutual consent in property management. Third, repressive protection consists of an action before a court for the determination and division of marital property where a child or heir has exercised unilateral control over the property.

A wife's claim must be founded on clear legal grounds and facts. The statement of claim should set out the history of the marriage, the husband's change of religion, the time at which the property was acquired, the death of the husband, and the actions of the child or another party controlling the property. The relief sought may request that the court declare specified assets to constitute marital property, determine the wife's share, order the division or transfer of that share, and declare that unilateral control over marital property has no legal basis insofar as it infringes the wife's rights.

The burden of proof in disputes of this kind must focus on proof of the property's status, rather than solely on the name of the owner stated in the documents. Evidence that may be submitted includes a marriage certificate or other proof of marriage, land or building ownership documents, purchase records, tax payment records, witness testimony, evidence of

physical possession, and other documents demonstrating that the property was acquired during the marriage. Where the property is registered in the husband's name, this does not automatically render it the husband's separate property if it was acquired during the marriage.

The court must identify at least three categories of property: each party's premarital or separate property, marital property, and the husband's estate. This distinction must be made before distribution to the heirs. If the religious status of the decedent or the basis of judicial jurisdiction is disputed, the court must assess it on the basis of the marriage certificate, population registration documents, documents concerning the change of religion, and the legal basis of the claim. Such questions of jurisdiction or choice of inheritance regime do not eliminate the obligation to first separate the wife's rights in marital property.

Legal protection also requires measures for the preservation of the disputed property. If there is concern that marital property may be transferred, sold, mortgaged, or otherwise alienated by the party controlling it, the wife may seek protective measures in accordance with procedural law. Such interim protection is important to ensure that a court judgment subsequently recognizing the wife's rights can be effectively enforced.

Where the court has rendered a final and binding judgment but the party controlling the property does not comply voluntarily, enforcement mechanisms may be used. Mardani explains that enforcement constitutes the implementation of a final and binding court judgment [14]. Yahya Harahap likewise emphasizes that enforcement is the compulsory execution of a judgment with the assistance of public authorities where the unsuccessful party does not comply voluntarily [15]. Accordingly, legal protection for a wife does not end with the judgment but must extend to its enforcement. The findings of this study are consistent with Tambunan's findings, which emphasize that the law protects a wife when her husband sells marital property without her consent, including through preventive and repressive legal remedies [16]. Asni also demonstrates that a wife's rights in marital property disputes before the Religious Court may be recognized through the application of the Marriage Law and the KHI, although challenges remain in practice [17]. Accordingly, protection for wives in marital property disputes must be understood as part of the realization of substantive justice, rather than merely a legal formality.

Legal protection for wives in cases of interfaith marriage

must also take account of the principle of nondiscrimination. Differences in the religion of the wife, husband, or child must not serve as grounds for negating proprietary rights that arose during the marriage. Where the law recognizes the wife as a co-owner, those rights must continue to be recognized as objective rights that may be asserted before a court. This principle is important to ensure that dispute resolution does not disadvantage the wife solely because of a change of religion or religious differences within the family.

In practice, the protection of wife's rights also requires the involvement of notaries, land deed officials, and parties responsible for estate administration. Before rights in property assets are transferred, it must be established whether an asset constitutes the decedent's separate property or marital property. If the asset is marital property, the surviving spouse's share must be recognized and must not be disregarded. An asset inventory is an important step in preventing unilateral control and facilitating proof before the court.

The protection of wife's rights may be formulated as a layered model: first, inventorying and preserving assets; second, classifying separate property, marital property, and the estate; third, determining and transferring the wife's share of marital property; fourth, determining the inheritance regime applicable to the husband's share on the basis of his religious status at the time of death; and fifth, implementing the judgment through enforcement where it is not voluntarily complied with. This sequence provides greater legal certainty than commencing resolution directly with the distribution of the inheritance.

4. Conclusion

Under the construction of the case analyzed, the husband's change of religion did not automatically terminate the marriage. Because there was no record of divorce or a court judgment terminating the marriage, the marital bond was treated as continuing until the death of the husband, and property acquired during that period was presumed to constitute marital property. The wife's share must be identified and separated before the estate is distributed. Religious differences may affect the subsequent inheritance analysis, but they do not extinguish the wife's proprietary rights that arose during the marriage. The estate comprises only the husband's share of marital property and his separate property that can be proven.

Legal protection may be pursued through an action for the determination and division of marital property, proof of the

time and source of asset acquisition, interim preservation of the disputed property, and enforcement of a final and binding judgment. After the wife's share has been separated, the inheritance regime must be determined on the basis of the husband's religious status at the time of death and the applicable legal framework. This study does not calculate inheritance shares because the source manuscript does not contain a published judgment, official documents concerning religious status, complete asset details, or adequate interview documentation. Accordingly, its conclusions are contextual and doctrinal rather than generalizations about court practice.

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