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The Challenge of Proving Jointly Owned Assets in Divorce Disputes: A Reconstruction of the Law of Evidence from a Civil Law Perspective

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ABSTRACT

Disputes over joint marital property are a common legal issue following the dissolution of a marriage. The primary challenge lies not necessarily in the legal norms governing the division of such property, but in the evidentiary process—specifically regarding whether an asset was truly acquired during the marriage, its source of acquisition, ownership status, economic value, and the respective contributions of each party. Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that property acquired during the marriage constitutes joint marital property, while Article 1865 of the Civil Code places the burden of proof on the party asserting the existence of a right or legal event. This study aims to analyze the legal issues surrounding the proof of joint marital property in divorce disputes and to formulate a reconstructed evidentiary framework capable of ensuring certainty, fairness, and effective dispute resolution. The study employs a normative legal research method utilizing statutory, conceptual, case-based, and analytical approaches. The findings indicate that the framework for proving joint marital property faces challenges such as the fragmentation of evidence, ambiguity regarding the relationship between the time of acquisition and property status, the commingling of joint and separate assets, the use of a single party's name on ownership documents, and difficulties in proving non-financial contributions. Supreme Court jurisprudence demonstrates that the division of joint marital property may deviate from the standard 50:50 split in cases involving special circumstances or unequal contributions. For instance, Decision Number 266 K/AG/2010 awarded three-quarters of the property to the wife, as it was proven that the entire joint estate was derived from her earnings and the husband had failed to provide financial support during the marriage. This study proposes a reconstructed "Four-Dimensional Evidentiary Model for Joint Marital Property," comprising the proof of the acquisition period, the source of acquisition, the legal status of the asset, and the contributions of the parties. This model positions the evidentiary process not merely as a means to verify formal ownership, but as an instrument for determining the status, proportion, and equitable division of joint marital property. This reconstruction is expected to reconcile legal certainty with substantive justice in the resolution of disputes regarding joint marital property.

Keywords: Joint Marital Property; Burden of Proof; Divorce; Civil Law; Legal Reconstruction.

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INTRODUCTION

Marriage does not merely establish a personal relationship between a husband and wife; it also creates a legal relationship concerning property and economic interests. Throughout the marital relationship, spouses may jointly or individually acquire various forms of assets, including land, houses, vehicles, bank accounts, shares, business interests, and other economically valuable property. Once the marriage is dissolved through divorce, these assets may become the subject of legal disputes concerning their classification, ownership, control, and distribution between the former spouses (Subekti, 2003).

Under the Indonesian marital property regime, assets acquired during the subsistence of a marriage are generally classified as marital property or community property. Article 35 paragraph (1) of Law Number 1 of 1974 on Marriage provides that property acquired during marriage constitutes joint property. By contrast, property owned by either spouse prior to marriage, as well as property subsequently obtained individually through inheritance or gifts, remains under the control of the respective spouse unless the parties have agreed otherwise (Law No. 1 of 1974, Article 35). This provision demonstrates that the time at which property is acquired constitutes one of the principal legal indicators for determining its status within the marital property regime.

The distinction between joint and separate property is further reinforced by Article 36 of the Marriage Law. With respect to joint property, legal acts concerning such property generally require the consent of both spouses. In contrast, each spouse retains full authority to undertake legal acts concerning his or her separate property. This regulatory framework establishes a clear distinction between the legal regime governing jointly owned marital assets and that governing individually owned property (Law No. 1 of 1974, Article 36).

The legal complexity becomes more pronounced following the dissolution of marriage. Article 37 of the Marriage Law stipulates that, upon divorce, the distribution of joint property is to be governed by the applicable legal regime of the parties (Law No. 1 of 1974, Article 37). For disputes falling within the jurisdiction of the Religious Courts, this provision is closely connected with the Compilation of Islamic Law, particularly Articles 85 to 97, which regulate property acquired during marriage and its distribution following divorce (Compilation of Islamic Law, Articles 85–97).

In judicial practice, disputes concerning marital property are not limited to determining the respective shares of the former spouses. A more fundamental issue arises at an earlier stage: whether the disputed asset can legally be classified as joint marital property in the first place. The claimant must therefore establish the identity of the asset, the time of its acquisition, its connection with the period of marriage, and the legal basis for including the asset within the pool of marital property. The Supreme Court of Indonesia has also emphasized through its developing jurisprudence that disputed marital assets must be sufficiently and specifically identified to enable effective judicial examination and subsequent enforcement of the judgment (Supreme Court of the Republic of Indonesia, 2026).

The evidentiary difficulties become even more complex when land certificates, bank accounts, vehicle registration documents, business licenses, or other ownership records are registered solely in the name of one spouse. Formal documentation may create the appearance that the registered spouse is the exclusive owner of the asset. Nevertheless, under Indonesian marital property law, the legal classification of an asset is not determined solely by the name appearing on the ownership document but must also take into account the timing and legal circumstances of its acquisition. Consequently, registration in the name of one spouse does not automatically transform an asset acquired during marriage into separate property (Manan, 2006).

A different evidentiary situation arises when one spouse asserts that the disputed asset was acquired before the marriage or originated from an inheritance or gift. In such circumstances, the party asserting the separate-property status must provide sufficient evidence establishing the legal basis and origin of the asset. The central evidentiary inquiry therefore moves beyond the relatively simple question of “whose name appears on the ownership document?” toward the more substantive questions of “when was the asset acquired?” and “what was the source of its acquisition?” (Harahap, 2019).

Civil procedural law generally adopts the principle that a party asserting a legal right or relying upon a particular legal event bears the burden of proving the factual basis of that claim. Article 1865 of the Indonesian Civil Code provides that a person who claims to possess a right, or relies upon an event to establish such a right or to challenge another person's right, must prove the existence of that right or event. Article 1866 further

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recognizes several forms of evidence, including documentary evidence, witness testimony, presumptions, admissions, and oaths (Civil Code, Articles 1865–1866).

On the one hand, this evidentiary framework provides legal certainty by identifying the party who bears the burden of proof. On the other hand, its rigid application in marital property disputes may generate substantive injustice where formal ownership documents fail to reflect the actual contributions made by the spouses. This problem is particularly apparent where one spouse serves as the primary income earner while the other performs unpaid domestic and caregiving responsibilities, or where an asset is acquired using financial contributions from both spouses but formally registered in the name of only one of them (Harahap, 2019).

Evidentiary difficulties are also apparent in relation to assets acquired through a progressive or mixed acquisition process. Examples include a house where the underlying land was purchased before marriage but the building was constructed during the marriage; land purchased through installments extending across both the pre-marital and marital periods; a business established before marriage but substantially developed during the marriage; or a bank account containing funds accumulated both before and during the marriage. An evidentiary approach that relies exclusively on a single indicator—such as the date on which ownership was formally registered—may therefore fail to capture the economic complexity underlying the acquisition and development of such assets (Manan, 2006).

From the perspective of Islamic family law, the Compilation of Islamic Law recognizes marital property in both tangible and intangible forms. Joint property may encompass immovable property, movable assets, securities, as well as certain rights and obligations arising during the marriage (Compilation of Islamic Law, Article 91). Accordingly, the subject matter of a marital property dispute is not necessarily confined to physical assets such as houses and land but may also extend to economic rights, financial interests, and legally relevant obligations generated during the marital relationship (Andi Hartawati, et all, 2022).

Article 97 of the Compilation of Islamic Law provides that, following divorce, each former spouse is generally entitled to one-half of the joint marital property unless the parties have agreed otherwise through a marriage agreement (Compilation of Islamic Law, Article 97). This provision establishes a relatively straightforward default rule and contributes to predictability in the distribution of marital assets. Nevertheless, judicial practice demonstrates that an equal 50:50 distribution is not necessarily the only legally possible outcome where particular circumstances justify a different allocation on grounds of substantive justice (Kurniawan & Hermawan, 2025).

The formal legal system based on the Herziene Inlandsch regulation (HIR) absolutely imposes the burden of proof based on the principle of actori incumbit onus probandi. As outlined in Article 163 of the HIR and Article 1865 of the Civil Code, Whoever postulates having a right, is obliged to prove the existence of such a right. In the context of the dispute, the plaintiff is absolutely obliged to prove the formal legality of the ownership of the object demanded, complete with physical details, valuation value, as well as authentic evidence of its acquisition.

In practice, the application of the principle of actori incumbit onus probandi rigidly gave birth to the phenomenon of inequality of economic power relations that led to information asymmetry. The financially dominant spouse, generally the husband who controls business operations or holds family Banking Access, has a great capacity to hide, destroy, or block original financial documents (such as land certificates, BPKB, or passbooks) from his spouse. On the other hand, the wife, who is often in a domestic position (housewife), does not have access to these formal documents. When he filed a lawsuit for the division of common property, his lawsuit was often declared inadmissible (niet ontvankelijke verklaard) or rejected by the panel of judges solely because he failed to present evidence of a formally valid letter at the trial.

This condition is compounded by two contemporary challenges that further blur the boundaries of formal justice. First, the high mode of legal smuggling or asset cloaking by bad faith parties. Assets purchased using common money are intentionally transferred in the name of a parent, sibling, or other third party shortly before or during the divorce process. Second, the dynamic development of modern digital-based intangible assets, such as cryptocurrency portfolios, marketplace/e-commerce business accounts, digital mutual fund investments, to intellectual property rights that generate royalties. The characteristics of digital assets that are private, decentralized, and often use pseudonyms make traditional proof-of-mail tools lose their relevance and effectiveness (Henny Saida Flora, et all, 2025).

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Against this background, this study raises the fundamental question of whether the existing evidentiary framework provides judges with sufficiently effective legal instruments to accurately distinguish between joint marital property and separate property while simultaneously ensuring an equitable distribution between former spouses. This question is particularly significant because an error at the evidentiary stage may lead to an incorrect classification of the disputed asset and, ultimately, to a judicial decision that fails to achieve substantive justice.

Accordingly, the reconstruction of evidentiary principles in marital property disputes becomes necessary. Such reconstruction should not eliminate the principle of legal certainty or undermine the existing statutory framework. Rather, it should establish a more comprehensive evidentiary methodology capable of integrating the period of acquisition, source of acquisition, legal status of the asset, and actual contributions of the spouses into the judicial assessment by offering the novelty of a four-dimensional (4D) model of proof. This approach is expected to provide a more balanced foundation for determining both the classification and distribution of marital property following divorce.

METHODS

This study adopts a normative legal research methodology that is, the method of scientific research that places the law as a whole system of norms, which includes principles, rules, legislation, Court decisions, as well as the doctrines of civil law. The nature of this study is descriptive-analytical and prescriptive. Descriptive-analytical is applied to systematically outline dogmatic obstacles in the current positive Civil Procedure Law, in particular the inability of the actori incumbit onus probandi principle in responding to information asymmetry in common property disputes. Prescriptive nature is used to formulate and offer a new concept in the form of "four-dimensional proof Model (4D)" as a procedural norm that is a solution for law enforcement officers.

To dissect the complexity of legal issues and establish the validity of the idea of 4D models, this study integrates three legal approaches: (1) The approach of legislation is done by examining the consistency and synchronization of vertical and horizontal various material and formal regulations, including the Civil Code (KUHPerdata), Law No. 1 of 1974 on jo marriage. Law Number 16 of 2019, Herziene Inlandsch regulation (HIR), as well as supporting regulations such as the information and Electronic Transactions Law (ITE Law); (2) A conceptual approach, it draws from contemporary civil law doctrines, progressive legal theory, and the concept of substantive gender justice. This approach is used as a knife of analysis to deconstruct the rigidity of formal civil proof and construct theoretical indicators from the four elements of the 4D Model (period, source, Status, and contribution); (3) The case/jurisprudence approach is carried out through a review of several First Instance Court decisions to Supreme Court decisions related to joint property disputes that have failed to prove due to asset shielding and document asymmetry, in order to find the location of the practical weaknesses of conventional procedural law.

The data used in this normative research is secondary data that are classified into three types of legal material, namely primary legal material covering the Civil Code, Marriage Law, HIR/RBg, ITE Law, compilation of Islamic law (KHI) , as well as the Supreme Court Circular (SEMA) No. 3 of 2015, secondary legal material covering civil procedure law textbooks, scientific journals national and international law, academic, as well as research reports relevant to marital material disputes and forensic accounting methods and Tertiary legal materials which include the Indonesian dictionary (KBBI), Legal Dictionary, and civil encyclopedia.

The collected legal materials are examined using a qualitative and prescriptive method of legal analysis. The analysis proceeds through three interconnected stages. First, the study identifies and interprets the applicable legal norms governing marital property and its evidentiary requirements. Second, these norms are critically examined in light of the legal difficulties encountered in judicial practice, particularly where formal ownership evidence does not fully reflect the actual economic relationship between spouses. Third, the study develops a proposed legal reconstruction designed to bridge the gap between the existing normative framework and the demands of substantive justice in resolving marital property disputes (Marzuki, 2017).

Research Design and Sample

This study employs a qualitative doctrinal legal research design with a prescriptive approach. The unit of analysis is not respondents or human populations, but rather legal norms, legal doctrines, and judicial decisions concerning the classification, burden of proof, and distribution of marital property following divorce.

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The selection of legal materials is conducted through purposive selection based on their relevance to the research questions. The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Indonesian Civil Code, the Compilation of Islamic Law, Law Number 48 of 2009 concerning Judicial Power, Law Number 50 of 2009 concerning Religious Courts, as well as relevant Supreme Court decisions concerning marital property disputes. For the case analysis, judicial decisions are purposively selected based on three criteria: (1) the decision concerns a dispute over marital or joint property following divorce; (2) the court considers evidentiary issues concerning the classification or ownership of the disputed assets; and (3) the decision contains relevant legal reasoning concerning the timing of asset acquisition, source of funds, registration or ownership status, the respective contributions of the spouses, or the distribution of marital property.

Secondary legal materials are selected from authoritative scholarly books, peer-reviewed journal articles, legal commentaries or analysis, and other academic publications addressing Indonesian marital property law, the law of evidence, civil procedural law, Islamic family law, and judicial approaches to the distribution of marital property.

This research design enables the study not only to examine the formal validity of the applicable legal provisions, but also to analyze the consistency between statutory provisions, judicial reasoning, and the substantive realities underlying marital property disputes.

Measures and Data Analysis

This study applies a set of legal analytical indicators to assess the adequacy of the evidentiary framework in marital property disputes. The analysis considers the timing and source of asset acquisition, legal and ownership status, and the respective contributions of the spouses, including both financial and non-financial contributions. These indicators are complemented by the principles of legal certainty and substantive justice, which serve to assess the clarity, consistency, and fairness of evidentiary rules in practice. Accordingly, the name appearing on a certificate or ownership document is not treated as the sole basis for determining the legal status of an asset. Instead, such status is established through a cumulative assessment of the asset's acquisition period, source of acquisition, legal status, and the actual contributions of the parties.

The legal materials are examined through qualitative juridical analysis using interpretive, comparative, and prescriptive approaches. The analysis proceeds through four stages: (1) identifying and interpreting legal provisions governing marital property and evidentiary matters; (2) examining legal doctrines concerning joint property, separate property, burden of proof, and ownership; (3) analyzing relevant judicial decisions to identify patterns in judicial reasoning concerning evidence and the contributions of the parties; and (4) conducting a prescriptive reconstruction by synthesizing the findings to formulate a more comprehensive evidentiary framework. This reconstruction seeks to reconcile legal certainty, consistency, and substantive justice in determining the classification and distribution of marital property.

RESULTS

Legal Construction of Marital Property under Indonesian Law

The analysis demonstrates that Indonesian marital property law places the period of acquisition at the center of determining the legal status of an asset. Article 35 paragraph (1) of Law Number 1 of 1974 provides that property obtained during marriage constitutes joint property. Conversely, property owned before marriage and property subsequently acquired individually through inheritance or gifts generally remain under the control of the respective spouse, unless the parties agree otherwise (Law Number 1 of 1974, Article 35).

The legal materials further demonstrate that the concept of marital property under the Compilation of Islamic Law (KHI) extends beyond physical property. Article 91 recognizes movable and immovable assets, securities, and certain rights and obligations arising during marriage as components that may form part of the marital estate (Compilation of Islamic Law, Article 91). Accordingly, disputes may concern not only land and houses but also vehicles, bank deposits, shares, receivables, business interests, and other legally recognized economic assets.

The analysis also establishes that formal registration does not automatically determine the marital character of an asset. An asset acquired during marriage may be registered in the name of only one spouse while remaining subject to the joint-property regime. Ownership documentation therefore constitutes important

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evidence, but its probative significance must be assessed together with the applicable marital property regime and the circumstances of acquisition (Subekti, 2003; Djubaedah, 2010).

The findings indicate that classification of marital property requires an integrated examination of the time of acquisition, source of acquisition, legal status, and circumstances of ownership and control. Although the existing legal framework provides a normative foundation for such classification, its application becomes more complex when the economic history of an asset cannot be established through a single document.

To break this chain of procedural injustices, the four-dimensional model of proof (4D) comes as an instrument of legal reconstruction. This Model no longer treats the status of formal documents as a single, absolute proof, but rather places them as one of the variables in the webbing of chronological history-the causality of assets.

The first dimension focuses on the timeline aspect of asset ownership. Conventionally, the judge only looks at the date indicated on the deed of sale (AJB) or certificate. But in the 4D Model, the acquisition period is de facto tested to detect bad faith in the run-up to the divorce. This dimension requires testing of the crucial time span, namely the period of active marriage, to prove that the real agreement on asset procurement occurs when the marital relationship is still harmonious. And the period of separation (De Facto Separation), often one party buys assets or deliberately releases assets unilaterally during the conflict before the divorce is officially registered. The 4D Model validates that as long as the marriage bond has not been broken by an inkracht Court decision, the assets acquired at the time of separation remain joint property.

The most significant novelty of the 4D Model lies in this second dimension, which is the application of the principle of follow the flow of funds into Family Law. Conventional Civil Procedure Law often gives up immediately if the plaintiff does not hold the original physical ownership document. Through the acquisition source dimension, information asymmetry is broken. Weak claimants on a document basis can still prove joint property status by proving the origin of the flow of funds, such as a track record of bank account mutations showing the deduction of balances from joint income accounts to pay off assets. And proof that the purchase funds are sourced from the profits of the corporation or business jointly managed during the marriage, and are not derived from property, grants, or pure inheritance (as limited by Article 35 paragraph 2 of the Marriage Law).

The third dimension analyzes the formal legality of assets based on the Civil Law of objects (zakenrecht), but with a critical and not absolute approach. The 4D Model places the legal Status of an asset not as the end of proof, but rather as an object that must be tested for its alignment with Dimension 1 (Period) and Dimension 2 (Source). If it is found that an asset was purchased during the period of marital acquisition (dimension 1) using a common source of income (dimension 2), but the legal Status of the asset (dimension 3) is formally on behalf of a parent, relative, or third party, then the 4D Model classifies it as legal smuggling or asset cloaking. Through this framework, progressive civil judges have a solid basis for breaking through the formality of names on paper (piercing the property veil) and establishing such assets as materially common property.

This last dimension perfects the 4D Model expressly adopting the concept of care economy. Non-financial contributions are accommodated as a form of Real shares whose legal standing is equivalent to financial contributions. The proof of this dimension focuses on the role of the wife in managing domestic affairs, caring for children, and maintaining household efficiency that provides space for the husband to work for a living without hindrance. As well as the sacrifice of career opportunities from one party in order to support the growth of their partner's career or business during the marriage.

Evidentiary Findings on Acquisition Period and Source of Assets

The analysis identifies the timing of acquisition as a major evidentiary issue in marital property disputes. Difficulties become apparent where acquisition occurs through several transactions or extends over different periods. Examples include land purchased before marriage but paid for during marriage, land acquired before marriage on which a house is subsequently constructed during marriage, and assets purchased through installment arrangements extending across the marital period (Manan, 2006).

In such circumstances, the date recorded in a certificate may not fully represent the actual economic process of acquisition. The relevant evidentiary record may include sale and purchase agreements, payment receipts, bank transfers, financing documents, tax records, construction documents, and other materials capable of establishing the chronology of acquisition.

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The analysis further finds that the source of financing represents a distinct evidentiary issue. An asset acquired during marriage does not necessarily constitute joint property in its entirety where reliable evidence demonstrates that the asset originated from inheritance, a gift, pre-marital property, or another individually owned source. This distinction is expressly recognized by Article 35 paragraph (2) of Law Number 1 of 1974 (Law Number 1 of 1974, Article 35 paragraph (2)).

Determining the source of funds frequently requires a reconstruction of financial transactions rather than reliance on a single document. Bank statements, electronic transfer records, loan agreements, inheritance documents, gift instruments, and evidence concerning the disposal of pre-marital assets may collectively demonstrate the origin of the resources used to acquire the disputed asset (Harahap, 2019).

Evidentiary Findings on Registered Ownership and Spousal Contributions

The findings show that registration under the name of only one spouse represents an important evidentiary issue. Although a certificate or registration document provides formal evidence regarding the registered holder, it does not necessarily settle whether the asset constitutes separate or joint property. The legal character of the asset must still be examined in light of the marital property regime and the circumstances of acquisition (Djubaedah, 2010).

The analysis also identifies difficulties in proving non-financial contributions. Domestic work, childcare, household management, assistance in a family business, and efforts to preserve family assets may contribute substantially to the economic welfare of the marriage while leaving limited documentary evidence.

This evidentiary difficulty becomes particularly significant when one spouse is the principal income earner and the other performs predominantly domestic and caregiving functions. An evidentiary framework that emphasizes direct financial records may therefore fail to capture forms of contribution that are economically significant but not readily expressed in monetary terms.

Supreme Court Decision Number 266 K/AG/2010 provides an important judicial illustration. In that case, the wife received three-quarters of the marital property, while the husband received one-quarter, following findings concerning the wife's contribution to the generation of marital assets and the husband's failure to provide financial support (Supreme Court Decision Number 266 K/AG/2010).

Evidentiary Findings on Commingled and Progressively Acquired Assets

The analysis further identifies difficulties where separate property becomes mixed with marital resources. Such circumstances may arise when pre-marital land is developed using income generated during marriage, inherited funds are combined with joint income, or a business established before marriage is subsequently expanded through marital resources.

Descriptive scenario of asset mixing case: before marriage, Mr. A has a shop house (shophouse) in his own name with a market value of Rp 1 billion (pure assets). Mr. A later married Mrs. B. During the marriage, the shophouse was completely renovated into a modern fitness center, and all installments for fitness equipment and business development were paid using the operating account of the profits from the business. Mrs. B acted as a day-to-day operations manager with no formal salary. When a divorce occurs, the total value of the shophouse entity and the business in it jumps dramatically to Rp 5 billion. Shophouse land certificate remains in the name of Mr. A. Mr. A claims that all assets worth Rp 5 billion are his property that cannot be divided.

In the 4D Model, Mrs B as the plaintiff does not need to be burdened with the obligation to prove ownership of the shophouse land. He simply submitted preliminary evidence that an increase in asset value of Rp 4 billion occurred during the marriage (dimension 1) and he contributed domestic-managerial labor (Dimension 4).

Once this preliminary evidence is valid, the burden of proof is limitedly shifted to Mr. A. Mr. A must prove rigidly in dimension 2 (Source) if he claims that the Rp 4 billion surge in value comes from his personal inheritance or separate capital. If Mr. A fails to prove it, the value of the increase of Rp 4 billion is legally determined as joint property, while the initial value of Rp 1 billion remains the property of Mr. A.

These situations challenge a strictly binary classification between separate and joint property. Different components of an asset may have different economic origins. Accordingly, the evidentiary assessment should distinguish between the original value attributable to separate property and subsequent value generated or enhanced through marital resources (Manan, 2006).

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The findings consequently indicate that the economic history of an asset should be reconstructed as a whole. Documentary evidence, financial records, witness testimony, and other admissible evidence should be assessed collectively rather than mechanically relying on one item of evidence (Harahap, 2019).

Findings on the Reconstruction of the Evidentiary Framework

Based on the analysis of legislation, legal doctrine, and judicial decisions, the study identifies four interconnected dimensions for reconstructing the evidentiary framework of marital property disputes.

The first dimension is the acquisition period, requiring the court to establish the chronology of the asset, including the marriage date, transaction date, payment period, transfer, registration, development, and divorce.

The second dimension is the source of acquisition, which examines the financial or economic resources used to obtain or develop the asset.

The third dimension is the legal status and identification of the asset, requiring the court to determine whether the asset constitutes joint property, separate property, inherited property, gifted property, commingled property, or another legally recognized category. The asset must also be identified with sufficient precision to ensure that the resulting judgment can be effectively enforced. This consideration is consistent with the developing jurisprudence of the Supreme Court concerning the need for sufficiently specific identification of disputed marital assets (Supreme Court of the Republic of Indonesia, 2026).

The fourth dimension is spousal contribution. After an asset has been established as joint property, the respective contributions of the spouses may be examined where such contributions are legally relevant to determining an equitable distribution. The significance of contribution is illustrated by Supreme Court Decision Number 266 K/AG/2010.

The findings also indicate that the basic burden of proof remains grounded in Article 1865 of the Indonesian Civil Code. Nevertheless, the practical allocation of evidentiary responsibility may require consideration of the parties' respective access to relevant documents and information (Civil Code, Article 1865; Harahap, 2019).

DISCUSSION

From Formal Ownership to Substantive Classification

The findings reveal a significant distinction between formal ownership and marital-property status. A person's name appearing on an ownership document provides important evidence of formal title, but it does not necessarily constitute conclusive proof that the asset is separate property.

For non-Muslim citizens, joint property disputes in the District Court often trigger a clash of norms between the two legal products, namely Article 119 of the Civil Code which adheres to the principle of unanimous property Union by law (algehele gemeenschap van goederen), which includes not only assets acquired during marriage, but also automatic mixing of debts since marriage occurs and on the other hand Article 35 of the marriage law rejects unanimous Union and separates expressly between inherited property (as well as gifts/inheritances) and joint property purely acquired during marriage (Andi Hartawati, 2026).

In general judicial practice, the jurisprudence of the Supreme Court has outlined that the rule of Article 35 of the Marriage Law of its position overrides (lex posterior derogat legi priori) Article 119 of the Civil Code. When faced with property mixing disputes, District Court judges may no longer directly apply Article 119 of the Civil Code blindly to evenly divide all asset entities regardless of their origin. The 4D Model provides an operational tool for general civil judges to screen which assets de facto meet the criteria of Article 35 paragraph (1) of the marriage law (through testing the period and source dimensions).

Such an approach is consistent with the view that ownership within marital property law must be examined together with the applicable property regime and the factual circumstances surrounding acquisition (Subekti, 2003; Djubaedah, 2010). The legal significance of a certificate therefore remains substantial, but it should not displace evidence concerning the economic origin and marital context of the asset.

Chronological Reconstruction and Tracing of Funds

The findings concerning acquisition timing and financing demonstrate that marital property disputes frequently involve economic processes that cannot be adequately represented by a single date or document. This is particularly apparent in installment purchases, progressive construction, business development, and transactions involving multiple sources of financing (Manan, 2006).

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For this reason, judicial assessment should reconstruct the chronology of acquisition by connecting transaction documents, payment records, financing arrangements, registration records, and subsequent developments of the asset. The objective is to determine when the relevant economic interest actually emerged and how it developed during the marriage.

Chronological reconstruction should be complemented by tracing the source of funds. This method is important for determining whether an asset acquired during marriage was financed through joint marital resources or through resources legally attributable to one spouse, such as inheritance, gifts, or pre-marital property (Harahap, 2019).

The combination of these two approaches provides a stronger basis for judicial determination because it answers two interconnected questions: when was the economic interest acquired, and from where did the resources used to acquire it originate?

Recognition of Non-Financial Contributions

The findings also demonstrate that a monetary conception of contribution is insufficient to capture the economic reality of many marriages. Domestic labor, childcare, household management, and assistance in a spouse's business may support the accumulation and preservation of marital wealth even though such activities generate little conventional documentary evidence.

From the perspective of distributive justice, these contributions should not be disregarded merely because they cannot easily be expressed in financial records. Rawls emphasizes the importance of fair allocation of rights, duties, and social benefits, a principle that may provide a theoretical basis for recognizing economically relevant contributions beyond direct monetary income (Rawls, 1971).

The relevance of contribution is also reflected in Supreme Court Decision Number 266 K/AG/2010, where the distribution of marital property departed from the conventional equal division because the court considered the wife's contribution and the husband's failure to fulfill financial responsibilities (Supreme Court Decision Number 266 K/AG/2010).

Nevertheless, recognition of non-financial contribution should remain evidence-based. Courts should rely on demonstrable circumstances, including household responsibilities, childcare, participation in family enterprises, management of family resources, and efforts to preserve or increase the value of marital assets.

Commingled Assets and the Limits of Binary Classification

The findings demonstrate that a rigid distinction between “joint property” and “separate property” may be inadequate in cases involving commingled assets. An asset may contain economic components originating from different periods and sources.

For example, land acquired before marriage may subsequently be developed using marital income, while inherited funds may be combined with joint resources and invested in a new asset. In these circumstances, categorizing the entire asset as either wholly separate or wholly joint may fail to reflect its actual economic history.

A contextual evidentiary approach is therefore necessary. The court should examine the original source of the asset, subsequent investments, changes in value, and contributions made during marriage. Such an approach is consistent with the principle that evidence should be assessed as an integrated body rather than through isolated reliance on a single item of evidence (Harahap, 2019).

The Four-Dimensional Marital Property Evidentiary Model

Based on the foregoing analysis, this study proposes a Four-Dimensional Marital Property Evidentiary Model consisting of (1) acquisition period, (2) source of acquisition, (3) legal status and asset identification, and (4) spousal contribution.

The first dimension reconstructs the chronological history of the disputed asset. The second identifies the economic origin of the resources used to acquire or develop it. The third determines its legal category and ensures that the asset is described sufficiently for effective judicial enforcement. The fourth evaluates the respective contributions of the spouses where such contributions are relevant to the distribution of the marital estate.

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The principal novelty of the model lies in integrating these four dimensions into a single sequential method of judicial fact-finding. Existing Indonesian law provides separate rules concerning marital property, ownership, evidence, and distribution. The proposed model connects these elements into an integrated evidentiary methodology.

The model may therefore be formulated as: Acquisition Period → Source of Acquisition → Legal Status and Asset Identification → Spousal Contribution → Classification and Distribution.

This sequence enables the court to move systematically from factual reconstruction to legal classification and ultimately to the determination of an appropriate distribution.

Reconstruction of the Burden of Proof

Article 1865 of the Indonesian Civil Code establishes the general principle that a party asserting a right or relying upon a legal event must prove the factual basis of that assertion (Civil Code, Article 1865). This principle remains important in marital property disputes because it provides a basic allocation of evidentiary responsibility.

However, its application should take account of the practical distribution of information between the parties. In certain disputes, one spouse may have exclusive access to bank accounts, business records, certificates, financial transactions, or other relevant documents. Strict application of the conventional burden of proof in such circumstances may create an evidentiary imbalance.

The study therefore proposes a context-sensitive application of the burden of proof, rather than an unrestricted reversal of the conventional rule. The party claiming that an asset constitutes marital property should first establish sufficient evidence connecting the asset with the marital relationship. Once such a factual basis has been established, the party claiming that the asset falls within an exception such as pre-marital property, inheritance, or a personal gift should provide evidence supporting that assertion.

This approach remains consistent with the fundamental principle of burden of proof while addressing information asymmetry between the parties (Harahap, 2019).

Implications for Legal Certainty and Substantive Justice

The proposed reconstruction seeks to reconcile legal certainty with substantive justice. Legal certainty requires predictable rules and reliable evidentiary standards, whereas substantive justice requires judicial consideration of the actual economic circumstances of the parties.

A framework relying exclusively on formal ownership documents may provide procedural clarity but may overlook the economic reality of the marriage. Conversely, an approach based solely on broad notions of fairness may increase the risk of inconsistent judicial decisions.

The Four-Dimensional Marital Property Evidentiary Model addresses this tension by requiring judicial conclusions to remain grounded in identifiable evidence while permitting a broader examination of the asset's economic history. Substantive justice is therefore pursued through a structured evidentiary methodology rather than unrestricted judicial discretion.

The reconstruction ultimately contributes a methodological framework for judicial fact-finding. It proposes that marital property disputes should be assessed through multiple interconnected evidentiary dimensions rather than through a single formal indicator. By integrating acquisition chronology, financial origin, legal classification, and spousal contribution, the proposed framework provides a more comprehensive basis for determining the status and distribution of marital property while maintaining the requirements of legal certainty and evidentiary accountability.

CONCLUSION

This study concludes that evidentiary problems in marital property disputes following divorce extend substantially beyond the presentation of formal ownership documents. The determination of marital property requires consideration of the time of acquisition, source of funds, legal status of the asset, registration and control, commingling of separate and marital property, and the financial and non-financial contributions of the spouses. Article 35 of Law Number 1 of 1974 provides the fundamental basis for classifying property acquired during marriage as joint property, while Articles 1865 and 1866 of the Indonesian Civil Code establish the general framework concerning the burden and forms of evidence in civil proceedings.

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The study further concludes that excessive reliance on formal ownership documents may produce an incomplete assessment of the actual economic relationship between spouses. The name recorded on a land certificate, bank account, vehicle registration, or business document should therefore not be regarded as the sole determinant of an asset's legal status. Documentary evidence must be examined together with evidence concerning the chronology of acquisition, source of financing, possession, control, and the circumstances in which the asset was acquired and developed during the marriage.

The analysis of Indonesian Supreme Court jurisprudence also demonstrates that the distribution of marital property is not necessarily confined to an inflexible 50:50 division. Supreme Court Decision Number 266 K/AG/2010 illustrates that the court may adopt a different distribution ratio where the evidence establishes significant differences in the parties' contributions and fulfillment of marital responsibilities. The decision therefore confirms the relevance of substantive circumstances in determining an equitable distribution of marital property.

In response to these findings, this study proposes the Four-Dimensional Marital Property Evidentiary Model, consisting of (1) acquisition period, (2) source of acquisition, (3) legal status and identification of the asset, and (4) spousal contribution. The model integrates these dimensions into a sequential evidentiary process, enabling courts to reconstruct the economic history of disputed assets before determining their legal classification and distribution.

The study ultimately proposes that equal distribution should remain the general normative starting point, while evidence-based proportionality should operate as a corrective mechanism in exceptional circumstances. Such an approach maintains predictability within the legal system while allowing judicial assessment to respond to proven differences in the economic and social circumstances of the spouses. Legal certainty and substantive justice should therefore be treated as complementary principles rather than competing objectives.

Implications

Theoretical Implications

Theoretically, this study contributes to the development of Indonesian marital property and evidentiary law by shifting the analytical focus from formal ownership toward substantive and contextual classification. The Four-Dimensional Model demonstrates that the legal status of marital property cannot always be determined through a single evidentiary indicator. Instead, classification requires an integrated assessment of acquisition chronology, funding sources, legal status, and spousal contributions.

The model also contributes to the development of a more responsive conception of evidentiary law. It demonstrates that evidentiary rules should not merely provide procedural certainty but should also enable courts to reconstruct the underlying economic reality of the marital relationship. In this respect, the model provides a conceptual bridge between legal certainty and substantive justice.

Practical Implications

For judges, the proposed model provides a structured method for assessing complex marital property disputes. Judicial examination can proceed sequentially from the identification and chronology of the asset, tracing of its financial source, determination of its legal status, and assessment of spousal contributions where relevant to distribution.

For litigants and legal practitioners, the model highlights the importance of presenting evidence beyond formal ownership documents. Evidence concerning payment history, financial transactions, inheritance or gift documents, asset development, possession, household contributions, and other relevant circumstances may become important in establishing the actual legal and economic character of disputed property.

Legal and Policy Implications

From a legal-policy perspective, the findings suggest the need for clearer judicial guidelines concerning the evidentiary assessment of marital property, particularly in cases involving single-name registration, mixed sources of financing, progressively acquired assets, commingled property, and non-financial contributions. Such guidance would improve consistency among judicial decisions while reducing excessive dependence on formal ownership records.

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The proposed framework does not seek to replace the existing statutory regime. Rather, it provides an interpretive and evidentiary methodology for applying that regime more comprehensively. Equal division remains the general rule for purposes of predictability, while proportional distribution may be justified where supported by sufficient and reliable evidence.

Accordingly, the principal implication of this study is that the adjudication of marital property disputes should move from a document-centered approach toward an evidence-integrated approach. Such reconstruction can strengthen legal certainty without sacrificing substantive justice and can provide a more reliable foundation for determining both the classification and distribution of marital property following divorce.

Limitations and Future Research

This study has several limitations. First, it employs a normative doctrinal legal approach, relying primarily on legislation, legal doctrines, scholarly literature, and judicial decisions, without empirical data from judges, advocates, litigants, or court practitioners. Therefore, the proposed Four-Dimensional Marital Property Evidentiary Model represents a normative and prescriptive reconstruction rather than an empirical assessment of its implementation. Second, the study focuses on the Indonesian legal system and does not undertake an extensive comparative analysis with other jurisdictions.

Future research should complement this doctrinal analysis with empirical and socio-legal studies involving judges, advocates, and litigants to evaluate the practical applicability and consistency of the proposed model. Comparative research may also identify evidentiary practices from other jurisdictions that could be adapted to Indonesia. Particular attention should be given to developing objective criteria for assessing non-financial contributions, commingled assets, and contemporary forms of wealth such as digital assets and business interests. Further analysis of a broader range of Supreme Court and Religious Court decisions would also be valuable in testing the consistency of the model and supporting the development of judicial guidelines or legal reform concerning the evidentiary assessment and distribution of marital property.

DECLARATIONS

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