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# Gender Analysis of the Postponement of Joint Property Distribution of the Sole Residential Home for the Former Wife and Children

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## Abstract

The postponement of joint property distribution after divorce raises a complex legal issue when the disputed asset is the sole residential home occupied by the former wife and children. This study aims to analyze the legal justification for postponing the distribution of jointly owned residential property from the perspectives of gender justice, substantive justice, legal certainty, and the best interests of the child. This research employs a normative juridical method using statutory, conceptual, and case approaches. The legal materials consist of statutory regulations, international human rights instruments, judicial decisions, Supreme Court Circular Letter Number 1 of 2022, and relevant scholarly literature, which were analyzed through qualitative-descriptive legal analysis and gender-responsive interpretation. The findings show that although Indonesian positive law generally affirms proportional or equal distribution of joint property after divorce, judicial practice provides interpretative space to postpone the execution of a residential home when immediate distribution may undermine the right to housing, residential stability, and child welfare. From a gender perspective, such postponement functions as a corrective mechanism against structural inequality faced by women after divorce, particularly when former wives carry disproportionate caregiving responsibilities and have limited access to economic resources. The study also finds that the postponement does not eliminate the property rights of the former husband, but temporarily balances legal certainty with substantive protection for vulnerable parties. This study concludes that the postponement of joint property distribution involving the sole residential home should be understood as a gender-responsive and child-sensitive judicial measure. The implication of this study highlights the need for clearer judicial guidelines and more explicit legal norms to ensure consistent, accountable, and substantively fair protection for former wives and children in post-divorce joint property disputes.

**Keywords:** Best Interests Of The Child; Gender Justice; Joint Property; Legal Certainty; Residential Home

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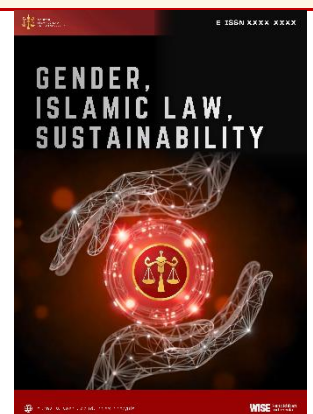
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## INTRODUCTION

Divorce as a socio-legal event has consequences that extend beyond the formal dissolution of marriage. One of the most sensitive consequences is the division of jointly owned property, particularly where the disputed asset is the only residential home occupied by the former wife and children. In the Indonesian legal system, joint property is generally understood as property acquired during marriage and, after divorce, may be divided according to the applicable legal regime [1], [2], [3]. This formal rule provides legal certainty and protects the proprietary interests of both former spouses. However, the immediate and mechanical division of the sole residential home may create serious social consequences when the house functions not only as an economic asset but also as the remaining living space for children and the primary caregiving parent [4], [5], [6].

The central problem addressed in this study lies in the tension between formal legal certainty and substantive justice. Formal equality tends to treat former spouses as juridically equal parties and to measure justice through proportional or equal distribution [7], [8], [9], [10]. Yet, in family-law disputes, such equality may be insufficient when it ignores unequal post-divorce conditions, gendered caregiving burdens, and the economic dependence that often develops during marriage. Previous studies on Indonesian family law and gender relations show that women may occupy a structurally disadvantaged position within marriage and after divorce because domestic work, reproductive labor, and caregiving contributions are rarely recognized as measurable economic contributions [11], [12], [13]. Accordingly, a formally equal distribution of property may still produce materially unequal outcomes when it fails to account for the different vulnerabilities experienced by women and children after divorce.

From a gender perspective, the residential home has a multidimensional function. It is a material asset, but it is also a protective space that enables the former wife to perform caregiving responsibilities and maintain a minimum level of post-divorce stability. Women who become primary caregivers after divorce may face a decline in income, reduced access to productive assets, limited time for employment, and increased responsibility for children's daily needs [14], [15], [16]. These conditions demonstrate that the division of joint property cannot be assessed solely through numerical equality. Instead, the court must consider the social position of the parties, the distribution of caregiving responsibilities, and the potential effect of losing the home on women's ability to rebuild economic independence.

The issue is equally significant from the perspective of child protection. In post-divorce situations, children are exposed to psychological uncertainty, changes in routines, and potential disruption of educational and social environments. Studies on child welfare and custody disputes indicate that children may experience anxiety, emotional instability, diminished self-confidence, and difficulties adapting to new environments when parental separation is accompanied by unstable living arrangements [17], [18], [19]. Residential stability therefore becomes closely connected to the principle of the best interests of the child. A house is not merely a shelter; it is a space that sustains daily routines, emotional attachment, educational continuity, and a sense of security. Consequently, the immediate execution or distribution of the only family home may undermine the child's welfare even when it appears legally consistent with the principle of property division [20], [21], [22].

Indonesian legal development has begun to recognize this complexity through judicial interpretation. Although statutory provisions on joint property emphasize distribution after divorce, judicial practice has opened space for postponing the execution or distribution of a house where the property constitutes the only residence of the child. The emergence of Supreme Court decisions

and Supreme Court Circular Letter Number 1 of 2022 indicates a gradual shift from a purely formal distributive approach toward a more protective and child-sensitive approach. This shift is consistent with the broader obligation of judges to explore and understand the values of justice living in society, particularly in cases where written law does not provide detailed operational rules for vulnerable parties. Thus, postponement should not automatically be viewed as a denial of property rights, but as a temporary judicial mechanism for balancing ownership rights with gender protection and child welfare.

The normative importance of this issue is also reinforced by international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and child-rights principles. The ratification of CEDAW requires Indonesia to ensure that legal institutions do not reproduce discrimination against women, including through seemingly neutral rules that have unequal consequences in practice [23], [12], [24]. In family-law adjudication, gender-responsive reasoning requires judges to identify whether a legal rule, although formally neutral, produces disproportionate harm for women or children. This approach is not opposed to legal certainty; rather, it expands the meaning of certainty so that judicial decisions remain predictable while also responsive to substantive justice.

Several studies have discussed joint property, gender equality in marriage, women's rights after divorce, child custody, and judicial interpretation in the Religious Courts. However, these studies often examine these themes separately. Limited attention has been given to the postponement of the distribution of the sole residential home as a specific legal construction that simultaneously engages property rights, gender vulnerability, the right to housing, and the best interests of the child. This gap is important because the absence of clear criteria, time limits, and judicial safeguards may create inconsistency in court decisions and uncertainty for both former spouses. Therefore, this study aims to analyze the legal justification for postponing the distribution of jointly owned property in the form of the sole residential home and to examine how such postponement can be understood as a gender-responsive and child-sensitive mechanism within Indonesian family law. Specifically, the study explores the normative basis of postponement, its relation to substantive justice, the protection of former wives and children, and the need for clearer judicial guidelines in disputes over joint property after divorce.

## METHODS

This study applies a normative juridical research design using statutory, conceptual, and case approaches. The normative juridical design is appropriate because the study does not seek to measure empirical attitudes or behavior, but to examine legal norms, judicial reasoning, and the conceptual relationship between legal certainty, substantive justice, gender protection, and the best interests of the child [25], [26]. The statutory approach is used to analyze relevant legal instruments, including provisions on marriage, joint property, judicial authority, child protection, human rights, and gender equality. The conceptual approach is used to clarify key concepts such as joint property, substantive justice, gender-responsive adjudication, the right to housing, and child welfare. The case approach is used to examine selected judicial materials concerning the postponement of the distribution or execution of the sole residential home after divorce.

The legal materials consist of primary, secondary, and tertiary materials. Primary legal materials include statutory regulations, Supreme Court decisions, decisions of Religious Courts and Religious High Courts, and Supreme Court Circular Letter Number 1 of 2022, particularly the

formulation concerning the postponement of the execution of joint property where the house is proven to be the only residence of the child. Secondary legal materials include peer-reviewed journal articles, books, and scholarly writings on Indonesian family law, gender justice, women's post-divorce rights, child protection, judicial interpretation, and housing stability. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used only to clarify technical legal terms. The materials were collected through library research and document analysis by prioritizing sources that are directly related to joint property disputes, gender vulnerability, child welfare, and judicial discretion in family-law cases.

The selection of court decisions was conducted purposively based on their relevance to the research problem. The main criteria were that the decision involved joint property after divorce, concerned a residential house, contained legal reasoning related to children or vulnerable parties, and provided insight into whether the distribution or execution of the property should be conducted immediately or postponed. This purposive selection enables the study to focus on decisions that reveal the doctrinal development from formal distribution toward protective postponement. The analysis does not treat the selected cases as statistical samples, but as legal materials for identifying patterns of reasoning, normative gaps, and the emergence of judicial principles relevant to gender and child protection.

Data analysis was conducted through qualitative descriptive-analytical techniques. The analysis proceeded in four stages. First, the relevant legal provisions were mapped to identify the general rule on joint property and the legal principles related to child protection, gender equality, housing rights, and judicial authority. Second, selected judicial decisions were examined to identify the ratio decidendi, judicial considerations, and the way judges balanced property rights with social protection. Third, the findings were interpreted using grammatical, systematic, teleological, and gender-responsive legal interpretation. Fourth, the results were synthesized to formulate the normative justification, implications, and limitations of postponing the distribution of the sole residential home. Because this study relies on legal documents and does not involve human respondents, ethical approval was not required. Nevertheless, academic integrity was maintained through accurate citation, transparent use of legal materials, and careful distinction between legal norms, judicial findings, and the author's interpretation.

## **RESULTS AND DISCUSSION**

### ***Normative Basis for Postponing the Distribution of the Sole Residential Home***

The normative analysis shows that the postponement of the distribution of jointly owned property in the form of the sole residential home is situated within a legal framework that simultaneously recognizes property rights, gender equality, child protection, and the constitutional right to housing. Indonesian positive law principally provides that property acquired during marriage becomes joint property and may be divided after divorce [27]. However, the same legal system also contains principles that require judges to consider substantive justice, non-discrimination, the best interests of the child, and the living values of justice in society. Therefore, the postponement of execution does not necessarily negate the right of either party over joint property; rather, it operates as a protective mechanism when immediate distribution would undermine the housing security of the former wife and children.

**Table 1.** Normative basis for postponing the distribution of the sole residential home

Legal instrument / principle	Core legal value	Relevance to postponement of distribution
Law Number 7 of 1984 on CEDAW ratification	Non-discrimination and substantive equality	Requires state institutions, including courts, to prevent decisions that reproduce gender-based disadvantage after divorce.
Marriage Law and Compilation of Islamic Law	Recognition of joint property and post-divorce distribution	Provides the formal basis for property division while leaving interpretative room where strict equal division harms vulnerable parties.
Article 28H(1) of the 1945 Constitution	Right to housing and decent living	Supports the argument that the family home has constitutional significance beyond its economic value.
Child protection principles and the best interests of the child	Continuity, safety, development, and protection	Requires judicial decisions to prioritize the child's stable residence, education, routine, and psychosocial security.
Law Number 48 of 2009 on Judicial Power	Judicial duty to explore living values of justice	Authorizes judges to interpret the law progressively when written norms do not fully address social vulnerability.
SEMA Number 1 of 2022, Religious Chamber formulation	Postponed execution of the child's sole residence	Provides operational guidance that execution of jointly owned property may be postponed until the child reaches adulthood or marries.

### ***Gendered Vulnerability in Post-Divorce Property Distribution***

The analysis further reveals that the distribution of joint property cannot be separated from the gendered consequences of divorce. Former wives often experience economic vulnerability because domestic labor, caregiving, and reproductive work during marriage are rarely measured as direct financial contributions. When the only residential home is immediately divided or executed, women who carry the primary caregiving responsibility may face the risk of housing instability, reduced access to livelihood opportunities, and increased dependence on uncertain support systems. This finding indicates that a formally equal distribution of property may become substantively unequal when it ignores unequal caregiving burdens, limited access to productive assets, and the socio-economic conditions faced by women after divorce.

### ***Housing Stability and the Best Interests of Children***

The findings also demonstrate that the sole residential home has a distinctive legal and social function for children. It is not merely a divisible economic asset but also a space of security, emotional attachment, educational continuity, and daily routine. In divorce situations, children may experience anxiety, uncertainty, emotional instability, and adaptation difficulties. Sudden loss of residence may intensify these effects because it can disrupt schooling, social networks, and the child's sense of safety. Accordingly, the postponement of house distribution reflects an attempt to align property law with the principle of the best interests of the child by ensuring that children are not forced to bear disproportionate consequences from the dissolution of their parents' marriage.

### ***Judicial Development from Formal Distribution to Protective Postponement***

The case analysis shows a gradual shift in judicial reasoning from a formal approach based on equal distribution toward a more protective approach that recognizes the socio-legal function of the house as the child's only residence. The first-instance and appellate decisions in the

Ambon case maintained the conventional logic of equal division. However, the Supreme Court at the cassation and judicial review stages introduced and reaffirmed a protective doctrine by refusing immediate distribution when the house was the only residence of the child. This doctrinal development was later systematized through SEMA Number 1 of 2022, which provides clearer guidance for postponing execution until the child reaches adulthood or marries.

**Table 2.** Development of judicial reasoning on the postponement of house distribution

Legal document / decision	Judicial orientation	Implication for women and children
Decision of Ambon Religious Court No. 205/Pdt.G/2016/PA.Ab	Formal equal division of joint property	The house was treated primarily as a divisible asset without deeper consideration of the child's sole residence.
Decision of Ambon Religious High Court No. 1/Pdt.G/2017/PTA.AB	Confirmation of formal equality	The appellate court maintained equal division and did not yet prioritize residential continuity.
Supreme Court Decision No. 159 K/Ag/2018	Protective interpretation based on the child's interest	The Court recognized that immediate division could eliminate the benefit of the house for the child.
Supreme Court Decision No. 6 PK/Ag/2019	Reaffirmation of protective jurisprudence	The doctrine of postponement gained stronger legitimacy through judicial review.
SEMA No. 1 of 2022, Religious Chamber formulation	Operational guidance for postponed execution	The claim may be granted, but execution can be postponed until the child reaches adulthood or marries.

### *Analytical Synthesis of Legal, Gender, and Child-Protection Needs*

The results indicate that postponement is not a simple exception to legal certainty but a juridical construction that seeks to balance property rights with social protection. The need for postponement emerges when the house simultaneously functions as joint property, the sole residence of the child, and a protective space for the former wife as primary caregiver. Therefore, judicial reasoning must move beyond the binary choice between immediate division and denial of property rights. A more balanced approach is to acknowledge the proprietary rights of both former spouses while regulating the timing of execution so that vulnerable parties are not deprived of housing stability.

**Table 3.** Synthesis of needs arising from the postponement of house distribution

Analytical dimension	Identified need	Substantive meaning
Legal certainty	Clear criteria, duration, and procedural limits for postponement	Prevents inconsistent judgments and protects the proprietary rights of both former spouses.
Gender justice	Recognition of women's post-divorce vulnerability and caregiving burden	Ensures that formal equality does not reproduce structural disadvantage.
Child protection	Stable housing until adulthood or marriage	Protects the child's routine, education, emotional security, and development.
Judicial practice	Gender-responsive and child-sensitive judicial guidelines	Supports consistency, accountability, and substantive justice in court decisions.

Social protection	Coordination between family law, housing security, and economic support	Positions property disputes as part of broader post-divorce welfare protection.
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Overall, the results show that the postponement of the distribution of the sole residential home is legally and socially significant because it operates at the intersection of property law, gender protection, child welfare, and judicial discretion. The findings support the view that the family home should not be treated solely as an object of economic distribution. In certain factual situations, especially where the house is the only residence of the child and the former wife serves as the primary caregiver, postponement may become a proportionate legal mechanism for preventing further vulnerability while maintaining the eventual possibility of property division.

### *Discussion*

The findings of this study demonstrate that the postponement of the distribution of a jointly owned house cannot be understood merely as a procedural delay in the execution of property rights. Rather, it reflects a judicial attempt to reconcile formal legal certainty with substantive justice. This finding is consistent with Mu'in et al. [7], who show that the practice of Indonesian Religious Courts often depends on judicial interpretation when written norms are insufficient to resolve complex family-law disputes. In the present study, the judicial shift from immediate division to postponed execution similarly confirms that judges may function not only as applicers of statutory texts but also as interpreters of social justice. The contribution of this study lies in showing that such interpretation becomes particularly crucial when the disputed object is the only residence of women and children after divorce [28].

The results also align with Maret [27], who emphasizes that the implementation of CEDAW in Indonesia requires not only formal ratification but also effective institutional internalization in legal practice. The postponement of house distribution can be read as a concrete judicial expression of substantive equality because it addresses the unequal post-divorce position of women. While formal equality would require equal and immediate distribution of joint property, substantive equality requires attention to caregiving burdens, economic dependence, and the social cost borne by women after divorce. This confirms that gender justice in family-law disputes must be measured not only by whether both parties receive equal shares, but also by whether judicial outcomes prevent deeper vulnerability for the party who carries the heavier post-divorce burden [29], [30], [31].

This study further supports the argument advanced by Yuni and Haries [32] that the protection of women's rights after divorce in Religious Courts remains difficult to achieve when legal reasoning fails to respond adequately to women's socio-economic realities. The findings show that former wives may face compounded vulnerability when they lose residential stability while also retaining primary caregiving responsibilities. In this respect, the postponement of the house distribution functions as a corrective measure against a purely formalistic distribution of joint property. It does not abolish the rights of the former husband but situates those rights within a temporally adjusted framework that prevents immediate harm to women and children [33], [34].

The child-protection dimension of the findings is consistent with Mera [29] and Budi et al, [4] who emphasize that the best interests of the child must be placed at the center of judicial reasoning in family-law disputes. The present study extends this argument from custody and

child-related cases to disputes over joint property. The house is shown to be directly connected with the child's welfare because it supports routine, educational continuity, emotional security, and social adaptation after divorce. Therefore, a decision to divide or execute a house cannot be treated as a neutral property matter when its effect is to displace a child from the only stable living environment available after parental separation [35], [36], [37].

The psychosocial significance of housing stability also resonates with Nambiar et al. [23] and Selman & Dilworth-Bart [20]. Nambiar et al. show that children in custody disputes may experience anxiety, guilt, depression, emotional instability, and diminished self-confidence, while Selman and Dilworth-Bart highlight the importance of routines for child development. The present study confirms that the home functions as an anchor for such routines and emotional continuity. Consequently, postponing the distribution of the only residence can be understood as a child-sensitive legal measure that mitigates psychological disruption and supports developmental stability after divorce [38], [39], [40].

The findings are also comparable with Behrman and Gonalons-Pons [14] and Chu and Zhang [17], who discuss the relationship between women's employment, household roles, and non-economic welfare. Although these studies are not limited to Indonesian divorce law, they are conceptually relevant because they show that women's domestic and caregiving contributions are often invisible in conventional economic calculations. The present study applies this insight to the division of joint property by arguing that a strict numerical distribution of property may ignore the unpaid reproductive labor that women have contributed during marriage. This strengthens the argument that the house must be evaluated not only according to ownership shares but also according to its role in sustaining caregiving and post-divorce welfare [32], [41].

The novelty of this study lies in its integration of three analytical frames that are often discussed separately: the doctrine of joint property distribution, gender-based post-divorce vulnerability, and the best interests of the child in relation to housing. Previous studies tend to focus on gender equality in marriage law, women's rights after divorce, child custody, or judicial interpretation as separate issues. This study brings these dimensions together by arguing that postponing the distribution of the sole residential home is not merely a technical procedural option but a gender-responsive and child-sensitive judicial construction. It also contributes to the development of Indonesian family-law scholarship by positioning the house as a socio-legal object with economic, constitutional, psychological, and welfare dimensions [42].

The practical implication of this study is that judges require clearer operational guidelines for identifying when postponement is justified, how long it should last, what safeguards should protect the property rights of both former spouses, and what indicators should be used to determine the best interests of the child. The findings also imply that Religious Courts need gender-responsive and child-sensitive reasoning templates so that decisions are more consistent, accountable, and transparent. At the policy level, the study supports the formulation of clearer regulations or Supreme Court guidelines that integrate legal certainty with substantive protection for vulnerable parties. At the social level, the findings suggest that post-divorce property disputes should be linked with broader social-protection mechanisms, including housing stability, child support, and economic empowerment for former wives who are primary caregivers.

Despite these contributions, this study has several limitations. First, the research is normative-juridical and relies primarily on statutory materials, judicial documents, and scholarly literature; therefore, it does not directly capture the lived experiences of former wives, children, former husbands, or judges involved in such disputes. Second, the case analysis is limited to selected judicial materials and may not represent the full diversity of Religious Court decisions across Indonesia. Third, the study does not provide empirical measurement of the socio-economic impact of postponed house distribution on women and children. Fourth, because the study focuses on the sole residential home, its findings may not be fully applicable to other forms of joint property such as vehicles, land, savings, or business assets. Future studies should employ empirical socio-legal methods, include interviews with litigants and judges, and compare judicial reasoning across regions to assess how consistently the principle of postponed execution is applied in practice.

## CONCLUSION

This study concludes that the postponement of the distribution of jointly owned property in the form of the sole residential home can be legally and conceptually justified when the house functions as the only residence of children and the former wife who bears primary caregiving responsibilities. The findings show that a purely formal application of equal property division may fail to protect vulnerable parties and may produce new injustices when it disregards gendered economic inequality, caregiving burdens, housing stability, and the best interests of the child. Postponement does not eliminate the property rights of the former husband or deny the principle of legal certainty; rather, it delays execution in order to prevent disproportionate harm and to align legal certainty with substantive justice. The study contributes to Indonesian family-law scholarship by integrating the doctrine of joint property, gender-responsive adjudication, the right to housing, and child protection within one analytical framework. Its practical implication is that judges and policymakers require clearer operational guidelines concerning the criteria, duration, safeguards, and evaluation mechanisms for postponing the distribution of the sole residential home. Such guidelines are necessary to reduce disparities in court decisions, strengthen accountability in Religious Court reasoning, and ensure that post-divorce property disputes are resolved in a manner that is legally certain, gender-sensitive, and protective of children. However, this study is limited by its normative-juridical design and reliance on selected legal materials, so it does not directly capture the lived experiences of former wives, children, former husbands, or judges. Future research should combine normative analysis with empirical socio-legal inquiry to examine how postponement decisions are implemented, how affected parties experience them, and how judicial guidelines can be improved to provide more consistent and equitable protection.

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## AUTHOR CONTRIBUTION

A was solely responsible for all stages of the study, including conceptualization, methodology, software development, validation, formal analysis, investigation, data curation, visualization, project administration, and supervision. A also prepared the original manuscript draft and undertook the review and editing process. As the sole author, A has read and approved the final version of the manuscript and takes full responsibility for the integrity, accuracy, and accountability of all aspects of the research.

## CONFLICT OF INTEREST

The authors declare no conflict of interest.

## DECLARATION OF USE OF AI IN SCIENTIFIC WRITING

The authors used several generative AI tools in the process. ChatGPT was used to help organise complex concepts, while Grammarly was employed to enhance the grammar, style, readability of the text and improve the overall clarity of the writing. Although these tools provided valuable support, the researcher wrote all the content and conclusions.

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