

The Urgency of the Expiration of Joint Property Lawsuits in the Perspective of Legal Philosophy: An Effort to Unravel the Fragmentation of Juridical Rationality for Evidence (Comparative Study in Indonesia and Malaysia)

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Abstract

The absence of a limitation period for filing joint property claims within the Indonesian legal system generates significant juridical and practical problems, particularly concerning legal certainty, evidentiary effectiveness, and the fragmentation of rationality within the jurisdiction of religious courts. In contrast, Malaysia has implemented a clear limitation period in resolving harta sepencarian disputes, thereby preventing legal uncertainty and the risk of evidence deterioration. This study employs a normative juridical approach and comparative analysis by examining statutory regulations, legal doctrines, and court decisions in both countries. The findings indicate that the urgency of establishing a limitation period can be philosophically justified through the theory of legal certainty and the fundamental values of law articulated by Gustav Radbruch and Hans Kelsen. Juridically, time limitation serves as an instrument to safeguard legal certainty and equality before the law. An ideal model may be formulated through the harmonization of positive law and the principle

of maslahah in Islamic family law, balancing substantive justice with formal legal certainty. Therefore, Indonesia should consider adopting a limitation period for joint property claims as a form of family law reform.

Keywords: *limitation period; joint property; legal philosophy; comparative study of Indonesia and Malaysia; juridical rationality*

A. Introduction

Joint *marital property* is one of the fundamental issues in family law in the national legal system and Islamic family law. The regulation of joint property in Indonesia is normatively stated in Articles 35–37 of Law Number 1 of 1974 concerning Marriage, where it is emphasized that property acquired during the marriage bond becomes joint property of husband and wife.¹ However, this provision does not regulate the limitation *period* for filing a lawsuit for the division of joint property after the termination of the marital relationship. Similarly, in the Compilation of Islamic Law (KHI), especially Articles 85–97 which regulate joint property, there are no rules regarding the expiration date for filing a division lawsuit.²

The absence of regulation regarding the time frame for filing the lawsuit has serious implications for legal *certainty* and the effectiveness of the judicial process. From the perspective of legal certainty theory, Hans Kelsen emphasized that legal norms must ensure clarity and predictability to prevent uncertainty and social conflict.³ When the filing of a lawsuit for the division of common property can be filed at any time without an indefinite time, the legal system loses the nature of finality and stability as a basic element of legal objectives.

Empirically, delays in filing lawsuits can weaken the quality of evidence in trial. A long period of time has the potential to cause the loss of physical evidence, changes in the structure of asset ownership, and manipulation of information that has an impact on the weakening

¹ Republic of Indonesia, *Law No. 1 of 1974 concerning Marriage*, Articles 35–37.

² *Compilation of Islamic Law*, Articles 85–97 (Jakarta: Dirjen Badilag MA RI, 2000), 42–46

³ Hans Kelsen, *General Theory of Law and State* (Cambridge: Harvard University Press, 1949), 110–112.

of the position of the parties in the litigation process.⁴ In addition, evidence that is no longer intact or has changed its legal status will make it difficult for judges to determine the economic value and contribution of each party to the common property. This is in line with Satjipto Rahardjo's view that the law must be able to provide protection for justice seekers substantially, not just procedural legalistic.⁵

The absence of a time limit also poses a problem of legal certainty for third parties such as heirs, buyers, or creditors related to assets. Ronald Dworkin explained that the legal system must minimize *moral hazards* and must run within the principles of moral consistency and integrity of legal decisions.⁶ When a lawsuit can be filed indefinitely, the legal position of third parties becomes unstable, causing fragmentation of juridical rationality and the potential for protracted conflicts that are contrary to the principle *of efficiency of justice*.

The situation in Indonesia is different from Malaysia, where the Limitation Act 1953 sets a time limit on the filing of civil claims, including the settlement of joint property disputes, which is a maximum of six years from the time the right of claim arises.⁷ The existence of time limits in Malaysian law creates stability in the resolution of family disputes, increases the effectiveness of sharia courts, and protects the security of community transactions after divorce. Hasnira Hassan's research shows that the time limit for property lawsuits in Malaysia facilitates the predictability of court decisions and prevents the exploitation of legal processes.⁸

Thus, the urgency of determining the expiration date of a joint property lawsuit in Indonesian national law is a crucial issue that needs to be studied in depth, both juridically and philosophically. The fundamental question that needs to be answered is whether the

⁴ Abdul Manan, *Various Problems of Islamic Civil Law in Indonesia* (Jakarta: Kencana, 2016), 215–216.

⁵ Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law* (Yogyakarta: Genta Publishing, 2009), 84

⁶ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977), 22–23.

⁷ Ahmad Ibrahim, *Family Law in Malaysia* (Kuala Lumpur: Malayan Law Journal, 1997), 312–314.

⁸ Hasnira Hassan, "Time Limitation and the Enforcement of Claims on Matrimonial Property," *Journal of Islamic Law Review* 11, no. 2 (2022): 145–147.

limitation on filing a lawsuit can be justified based on classical and modern legal theory and how the ideal model of such regulation is compared to the Malaysian legal system so that there is no fragmentation of juridical rationality and weakness of evidence in the judicial process.

Problem Formulation

1. What is the normative construction and practice of filing a joint property lawsuit in Indonesia and Malaysia?
2. How can the urgency of restricting the filing of joint property lawsuits be justified philosophically and juridically in an effort to prevent the fragmentation of Juridical Rationality Towards Evidence, and how can the ideal model be formulated through a comparative study of the Indonesian and Malaysian legal systems?

Study Method

This research uses a literature study method (*library research*) with a normative-comparative juridical approach. The normative juridical approach is used to examine law as a norm contained in laws and regulations, legal doctrine, and court decisions, as well as legal philosophical views regarding rationality and legal certainty. Peter Mahmud Marzuki explained that normative legal research examines law as a written norm and rational argumentation, not the study of empirical facts or social behavior.⁹ Meanwhile, a comparative approach is used to compare the practice of resolving common property disputes in Indonesia and Malaysia, in order to find an ideal and applicable legal model in accordance with the goal of legal certainty. Through a comparative approach, the legal system of a country can be evaluated through learning from other countries' systems.

The implementation of normative research is carried out through several methodological stages which include the inventory of primary, secondary, and tertiary legal materials; interpretation of the construction of legal norms; and systematic analysis of legal principles and doctrines. Johnny Ibrahim explained that normative research

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2010), 35–36.

functions to build legal arguments through deductive reasoning on available legal materials, as well as interpreting legal rules logically and sequentially.¹⁰ In this context, the research applies descriptive-analytical analysis techniques, namely describing the applicable legal arrangements and then analyzing the need to regulate the expiration date of filing a joint property lawsuit and its implications for the effectiveness of proof and legal certainty.

The selection of literature studies as a research method is based on the characteristics of normative legal research that is oriented towards the construction of legal theories and scientific arguments, not on the collection of empirical data in the field. Soerjono Soekanto emphasized that legal research through a literature approach is the main basis for academic analysis in the field of law because it functions to interpret legal norms and principles to achieve theoretical and practical clarity.¹¹ Thus, this approach provides an appropriate methodological framework in assessing the urgency of the expiration of the filing of joint property lawsuits as well as the fragmentation of juridical rationality in family dispute resolution in Indonesia and Malaysia.

B. Discussion

1. Normative Construction and Practice of Filing Joint Property Lawsuits in Indonesia and Malaysia

In Indonesia, the normative framework on joint property is summarized in Law No. 1 of 1974 on Marriage and clarified by the provisions of the Compilation of Islamic Law (KHI) for the case of Muslim couples; however, the two sources do not include a provision governing the *limitation period* or the deadline for filing a lawsuit for division of property after divorce.¹² As a result, the arrangement is temporally open: a lawsuit for the division of joint property can be filed years after the breakdown of the marriage, which in practice leads to inconsistencies in the judgment and differences in interpretation by the judge of the Religious Court depending on the legal basis used.

¹⁰ Johnny Ibrahim, *Theory & Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), 118–120.

¹¹ Soerjono Soekanto, *Introduction to Legal Research* (Jakarta: UI-Press, 2007), 42–43.

¹² R. Nurdin, "Shared Property in Islamic Law in Indonesia," *Journal of Islamic Law and Thought* (IAIN Ambon) (2024): 5–7.

Empirical studies and verdict reviews show a tendency for judges to refer to KHI Articles (e.g. Article 97) to apply nominal divisions (50:50) in general circumstances; however, due to the absence of temporal arrangements, proof becomes highly dependent on the availability of documentary evidence and field facts which often weaken over time. Empirical researchers have also found that these practices create uncertainty for third parties (heirs, creditors) because the status of rights to assets remains potentially challenged in the future.¹³

In contrast to the normative one, the Malaysian legal system places *the limitation period* as a clear procedural instrument in the civil realm through *the Limitation Act 1953*, which generally stipulates a six-year period for many civil actions. Meanwhile, sharia jurisdictions in the state/Federation adopt *the provisions of the Family/ Islamic Family Law* enacts to resolve the issue of Muslim marital property.¹⁴ Comparative literature and doctrinal studies show that the existence of a *limitation* framework in Malaysia provides two important benefits: (1) increasing legal certainty as claims to property cannot be filed indefinitely; and (2) maintaining the effectiveness of proof as claims that are temporally permissible encourage faster submission and safeguarding of evidence.¹⁵

However, scholars emphasized that the application of *limitations* does not eliminate the court's discretion, especially in cases involving elements of *trust*, *constructive trust*, or claims of distribution obligations under sharia principles, so that it is still necessary to harmonize rules and practices between *civil* and sharia courts so that there is no overlap of jurisdiction.¹⁶

Differences in the jurisdictional structure between *civil* and sharia, as well as variations in customary law and the existence/absence of *limitation periods* in both countries have direct implications for the legal

¹³ Safira Maharani Putri Utami, "The Application of Justice Theory to the Distribution of Joint Property After Divorce," *USM Law Review Journal* 6, no. 1 (2023): 435–437

¹⁴ W. M. A. Mohamed, "The Concept of Matrimonial Property: Conditions and Regulations," *Journal of Malaysian & Comparative Family Law* (2006): 1–8.

¹⁵ Rajnaara C. Akhtar & Faizal Ahmad Manjoo, "Matrimonial Property in Islamic Law," in *Research Handbook on Family Property and the Law* (Cheltenham: Edward Elgar, 2024), 78–86

¹⁶ See, e.g., discussion on Limitation Act and trusts in Malaysian context; N. H. Md Dahlan, *Limitation Periods in Malaysia* (thesis/monograph) (2005): 39–44

certainty of the parties. In Indonesia, multi-jurisdictions and the absence of time limits tend to result in judicial fragmentation: differences in evidentiary criteria, substantial differences *in outcomes*, and opportunities for repeated litigation that reduce the finality of the judgment.¹⁷ In contrast, Malaysia with a clear limitation framework minimizes unlimited litigation space, increases finality, and is more protective of the continuity of third-party ownership; however, it also requires the system to provide fair exceptions, for example in cases of justifiable delay or *latent claims* so that legal certainty does not compromise substantive justice.

Therefore, the juridical solutions proposed by the comparative studies are: (a) affirming the deadline for filing joint property claims at the Indonesian national regulatory level (with limited exceptions and evidentiary protection mandates), and (b) designing inter-jurisdictional coordination mechanisms, e.g. forum *conveniens* rules or the principle of cross-adjudication recognition) so that juridical fragmentation can be minimized without reducing access to justice.¹⁸

2. The urgency of restricting the filing of joint property lawsuits can be justified philosophically and juridically in an effort to prevent fragmentation of Juridical Rationality Towards Evidence, and how can the ideal model be formulated through a comparative study of the Indonesian and Malaysian legal systems?

Philosophically, the expiration arrangement (*statute of limitation/verjaring*) is an important pillar in the modern legal system because it is directly related to the principles *legal certainty* as a fundamental element of the state of law. Hans Kelsen emphasized that law applies and functions effectively only if legal norms are arranged in a consistent and definite hierarchical structure, because without certainty, law loses its binding power as a normative system.¹⁹

¹⁷ Abdul Jamil, Kholisatun Nikmah, & Nur Fuadi Rahman, "Distributive Justice in Post-Divorce Joint Property Distribution: A Juridical and Sociological Study," *IJJEL* (2025): 952–955

¹⁸ Synthesizing recommendation based on comparative literature: Aprindawati et al., "Analisis Pembagian Harta Bersama...", 154–156; W. M. A. Mohamed, "The Concept of Matrimonial Property," 6–8.

¹⁹ Hans Kelsen, *General Theory of Law and State* (New York: Russell & Russell, 1971), 124–127.

Legal certainty provides a clear temporal limit on when a right can be claimed, so that the parties can predict the legal consequences and are not allowed to live in prolonged uncertainty. This principle is relevant in the context of a post-divorce joint property lawsuit, because without a filing deadline, the status of assets becomes uncertain and can disrupt the stability of legal relations between both the former spouse and a third party.

Gustav Radbruch stated that law rests on three main values: justice, utility, and legal certainty. When all three are under tension, Radbruch asserts that legal certainty should be a minimum priority to maintain the stability of the social order.²⁰

In the case of joint property, allowing lawsuits indefinitely has the potential to damage social benefits because it creates uncertainty regarding the status of assets that have been managed, sold, or owned by other parties in good faith. In addition, the long delay in filing a lawsuit makes the evidence irrational (*fragmentation of juridical rationality of evidence*), because documents, witnesses, and physical objects can be lost or changed so that the value of substantive justice is weakened.

Lon L. Fuller's thinking further emphasizes the urgency of expiration through his idea of *the inner morality of law*, namely that the law must meet internal moral principles such as publication, clarity, consistency, and no *open-ended uncertainty*.²¹ Without a deadline for filing lawsuits, the legal system fails to meet the internal morality because administrative and procedural certainty cannot be guaranteed. Meanwhile, Ronald Dworkin emphasized that substantive justice must be balanced with procedural consistency so that there is no discrimination against parties who have long believed that legal rights to an asset have been stable.²²

²⁰ Manullang, E.F.M., "A Misinterpretation of Gustav Radbruch's Ideas on the Philosophical Doctrine of Legal Validity," *Law: Legal Journal* 5, no. 2 (2022): 460–461.

²¹ Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), 39–45.

²² Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977), 81–82.

From a progressive legal perspective, Satjipto Rahardjo argues that the law must be placed as an instrument that serves humans.²³ Therefore, the expiration arrangement is not just a technical mechanism, but a tool to protect vulnerable parties, prevent abuse of the law, and avoid speculative litigation that harms parties who have had good faith to protect assets for many years. Therefore, the urgency of expiration in joint property lawsuits has a strong philosophical foundation: ensuring legal certainty, maintaining the proportionality of evidence, and ensuring procedural and substantive justice.

The ideal model for the establishment of the expiration date of a joint property lawsuit in Indonesia needs to be comprehensively prepared through the integration of philosophical, juridical, and comparative approaches. First, it is necessary to make explicit arrangements regarding the time frame for filing a lawsuit through amendments to the Marriage Law or the establishment of new regulations that expressly determine the time limit, for example two years from the date of the divorce decree with permanent legal force. Clear regulations will be the basis for legal certainty and prevent prolonged uncertainty. Second, harmonization between national civil law, Islamic law, and the principle of substantive justice is important because the majority of joint property disputes are processed through the Religious Court.²⁴ Third, it is necessary to align jurisdictions so that there is no overlap of authority between judicial institutions, while ensuring the consistency of decisions.

The ideal model must also provide protection against the evidentiary position and interests of third parties. This is because the object of joint property disputes has often been part of an economic transaction involving buyers, creditors, or heirs. Therefore, the expiration must serve to prevent the emergence of pending claims that can undermine the certainty of economic law. A comparative study with Malaysia shows that the litigation time limitation system in family law in

²³ M. Zainal Aulia, "Progressive Law of Satjipto Rahardjo," *Law: Legal Journal* 1, no. 1 (2018): 170.

²⁴ K. Folara, "Legal Certainty on Waiver of Expiration in Debt Collection," *Rechten Nusaputra* (2024): 55–56.

Malaysia is more structured and provides better certainty than in Indonesia.

Saro, Pasaribu, and Napitupulu concluded that *the need for statutory limitation period as implemented in Malaysia could be adopted in Indonesia to protect legal certainty and third-party interests*.²⁵ Lessons learned from Malaysia show that a combination of normative time limits, *pre-trial clarification* mechanisms, and goodwill assessments can be used as a reference in Indonesia's formulation.

Thus, the urgency of restricting joint property lawsuits can be justified philosophically and juridically through arguments of juridical rationality against evidence, protection of procedural justice, and socio-economic stability. Meanwhile, Indonesia's ideal model needs to be built through explicit regulation of expiration, harmonization of the legal system, protection of third parties, and adaptation of the best principles of the Malaysian system to ensure the consistency and effectiveness of national family law.

C. Conclusion

The absence of a regulation on *the limitation period* in post-divorce joint property lawsuits in Indonesia has created substantial problems in judicial practice, including fragmentation of juridical rationality in proof, legal uncertainty for parties and third parties, and the potential for prolonged and repeated litigation. The fragmented jurisdictional structure between Religious Courts and District Courts exacerbates the inconsistency of judgments, while the evidentiary process that relies on documents and witnesses becomes increasingly unreliable over time. In contrast, Malaysia with its *limitation act* framework and the integration of *civil-sharia* jurisdiction has succeeded in building a more predictive, final, and protective system for asset ownership stability, while still providing limited discretion for substantive justice in certain cases.

²⁵ I. Saro, S.A. Pasaribu & D.R.W. Napitupulu, "Granting of Dependent Rights: A Legal Comparison Between Indonesia and Malaysia," *TATOHI: Journal of Legal Studies* 5, no. 2 (2025): 95.

Philosophically and juridically, the urgency of setting expiry can be justified through the principle of legal certainty as stated by Hans Kelsen, the priority of social stability according to Gustav Radbruch, the internal morality of the law according to Lon L. Fuller, and procedural consistency put forward by Ronald Dworkin. Satjipto Rahardjo's progressive legal perspective strengthens the argument that expiration is an instrument of protection for vulnerable parties and the prevention of abuse of the law. Therefore, the ideal model for Indonesia requires the establishment of explicit rules regarding the time frame for filing a joint property lawsuit, the harmonization of *the civil-sharia* system, the coordination of jurisdiction, and the guarantee of protection of evidence and the interests of third parties, by adopting best practices from Malaysia as relevant comparative references.

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See, e.g., discussion on Limitation Act and trusts in Malaysian context; N. H. Md Dahlan, *Limitation Periods in Malaysia* (thesis/monograph) (2005).

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