

Colonial Legacy and Gender Inequality in Marital Property Law: A Critical Analysis of Article 119 of the Indonesian Civil Code

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Abstract

This article critically examines the legal protection of a wife's separate property within Indonesia's national legal system, focusing on the normative conflict between Article 119 of the Indonesian Civil Code (*Burgerlijk Wetboek*) and Article 35 of Law Number 1 of 1974 on Marriage. The core legal issue addressed is whether the automatic community of property regime established by Article 119, which absorbs all assets into joint marital property in the absence of a prenuptial agreement, remains compatible with constitutional principles of gender equality, legal certainty, and substantive justice. The objective of this study is to evaluate the continuing relevance of Article 119, assess its practical impact on the economic rights of wives, and formulate a juridically sound reformulation that aligns civil law with constitutional and human rights standards. This research employs a normative juridical method, utilizing statutory, conceptual, jurisprudential, and comparative approaches. Primary legal materials include the Civil Code, the Marriage Law, the 1945 Constitution, and selected Supreme Court decisions, while secondary materials consist of legal doctrine and international scholarly studies on matrimonial property regimes. The findings demonstrate that Article 119 of the Civil Code is no longer consistent with Indonesia's constitutional commitment to gender equality and legal protection, as it allows a wife's separate property to be absorbed into joint marital assets and exposed to division, inheritance claims, or creditors' rights. In contrast, Article 35 of the Marriage Law affirms the autonomy of each spouse over separate property and reflects a more equitable legal paradigm. Judicial practice, however, still shows normative dualism, generating legal uncertainty and structural vulnerability for wives. The study further finds that progressive jurisprudence has begun to recognize

separate property rights, but these developments remain fragmented without legislative reform. This study is significant because it provides a comprehensive normative and constitutional justification for reformulating Article 119 of the Civil Code, proposing a shift from an automatic community of property regime to a model based on individual property autonomy and mutual consent. By integrating constitutional principles, gender justice, and comparative family law, this research contributes to the development of a more coherent, equitable, and modern Indonesian civil law system that effectively protects the economic rights of wives within marriage.

Keywords: Legal Protection, Wife's Separate Property, Article 119 of the Civil Code, Gender Equality, Civil Law

Introduction

The regulation of marital property constitutes a central issue in contemporary legal systems because it directly affects property rights, gender equality, and family economic security. Different marital property regimes such as community property, separate property, and equitable distribution are not merely technical legal arrangements but reflect deeper policy choices about how economic power and risk are shared between spouses (Hasibuan et al., 2022). Comparative socio-legal research further demonstrates that these regimes significantly shape women's control over assets, labor-force participation, and long-term wealth accumulation. In the Indonesian context, however, these global debates crystallize into a concrete normative problem through Article 119 of the Civil Code (*Burgerlijk Wetboek*), which imposes an automatic community of property from the moment of marriage unless a prenuptial agreement is made (Scherpe, 2024a). This colonial-era provision creates a structural risk that a wife's separate property including assets acquired before marriage or obtained through inheritance may be absorbed into joint marital property, thereby placing her in a legally vulnerable position. Consequently, the regulation of marital property in Indonesia cannot be understood merely as a neutral private-law arrangement, but must be analyzed as a constitutional and gender-justice issue that directly implicates legal certainty, economic autonomy, and equality before the law (Nutz et al., 2022).

In the Southeast Asian context, the harmonization of customary norms, religious law, and national legal systems presents distinct challenges. Countries

with mixed legal systems must contend with inconsistencies in implementation that often result in legal uncertainty and the potential for injustice toward vulnerable groups, particularly women (Rahmawati, 2022). Indonesia occupies a distinctive position because the legacy of Dutch civil law codification through the *Burgerlijk Wetboek* (Indonesian Civil Code) continues to exert a strong influence; provisions such as Article 119 of the Civil Code, which formulates the principle of community of property from the moment of marriage, are frequently questioned in terms of their relevance to modern values concerning equality and the protection of women's rights (Achmad, 2023). Article 119 of the Civil Code, in practice, places all property of the husband and wife including separate property under the regime of joint marital property unless the parties enter into a prenuptial agreement; within the socio-economic realities of many segments of society, this "unless otherwise agreed" mechanism creates problems because access to, or opportunities for, drafting prenuptial agreements are not always equally available (Rahmawati, 2022).

Turning to the sphere of more modern national legislation, Law Number 1 of 1974 on Marriage offers an alternative normative framework. Article 35 clearly distinguishes property acquired during the marriage as joint marital property, while separate property, gifts, and inheritance remain under individual ownership. This clarity is intended to guarantee the protection of individual rights, including the economic rights of wives (*Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*, 1974). Nevertheless, the coexistence of the Civil Code and the Marriage Law has produced a persistent normative dualism in Indonesian judicial practice, whereby some courts continue to apply Article 119 of the Civil Code while others prioritize the Marriage Law as *lex specialis*. This inconsistency has resulted in unstable and unpredictable legal outcomes, particularly in disputes involving marital property. Yet, most existing legal studies have largely treated this dualism as a general problem of statutory hierarchy or legal harmonization, without systematically examining how it concretely affects the judicial protection of a wife's separate property. In particular, the way in which judges reason about asset origin, marital agreements, and constitutional principles when choosing between these two legal regimes remains

underexplored. As a result, there is still a significant analytical gap regarding how normative dualism translates into structural vulnerability for wives in property disputes, especially in cases where no prenuptial agreement exists. (Sanjaya, 2021). The practical consequences of this dualism are evident when a wife who has not entered into a prenuptial agreement finds that her separate or inherited property which should remain under her personal ownership is technically subsumed into the joint marital property regime and thus becomes subject to division upon divorce. This situation creates serious economic vulnerability for women (Achmad, 2023).

A critical juridical approach that examines the colonial origins of legal norms such as Article 119 of the Civil Code needs to be integrated with international empirical analyses demonstrating the impact of marital property regimes on women's welfare. This synergy is essential for formulating evidence-based legal reform recommendations (Scherpe, 2024b). Comparative international research indicates that legal reforms which recognize separate property and facilitate access to marital agreements significantly enhance women's economic autonomy and reduce the risk of post-divorce poverty. These findings are highly relevant for policymakers in Indonesia (Scherpe, 2024a).

Within the national scholarly discourse, there is a body of literature that examines the division of marital property after divorce, the legal implications of prenuptial agreements, and the role of the judiciary in determining the status of marital assets. However, relatively few studies specifically analyze the impact of colonial legal provisions on the protection of a wife's separate property from a gender equality perspective (Kapelle & Lersch, 2022). A number of studies published in national journals have highlighted practical issues surrounding the division of marital property in both religious courts and general courts, as well as the urgency of prenuptial agreements. Nevertheless, variations in methodology and scope mean that a comprehensive analysis linking normative provisions particularly Article 119 of the Civil Code to women's economic outcomes remains critically needed (*Putusan Mahkamah Agung Nomor 102 K/AG/2006*, 2006).

This study focuses on the legal protection of a wife's separate property, critically examining Article 119 of the Civil Code from the perspectives of distributive justice and gender equality, while also assessing the normative harmonization between the Civil Code and the Marriage Law through an analysis of jurisprudence, legal doctrine, and comparative literature (Nutz, 2022). Three relevant studies with different analytical emphases are worth comparing in order to clarify the novelty of this research. First, a quantitative study on joint and separate asset ownership (Nutz, 2022), provides empirical evidence on asset ownership patterns within marriage. Second, the research by Bansak et al. (2022) explores the impact of marital property law on women's labor market behavior. Third, the study by Kapelle et al. (2022) links asset ownership to life satisfaction within marriage. Although these studies are rich in international empirical data, they do not center their analysis on the colonial norms of the Indonesian Civil Code or on the specific implications of Article 119 for the protection of a wife's separate property within Indonesia's legal context (Bansak et al., 2022).

The novelty of this research lies in its integration of normative–juridical analysis particularly a critical assessment of Article 119 of the Civil Code with an examination of the implications for women's economic protection, enriched by international empirical findings. Through this synthesis, the study seeks to offer concrete, evidence-informed policy recommendations aimed at achieving legal harmonization. The methodology employed is normative–juridical, supported by an analysis of selected Supreme Court decisions on marital property disputes and a comparative study of legal practices in several regional jurisdictions. The judicial decisions examined in this study were selected based on their doctrinal relevance, frequency of citation, and legal significance in interpreting the status of separate and joint marital property, particularly in cases involving the application of Article 119 of the Civil Code and Article 35 of the Marriage Law. This purposive selection ensures that the analysis captures authoritative and representative judicial reasoning that has shaped the legal protection of a wife's separate property in Indonesia.. This approach enables a meaningful synthesis of legal theory, jurisprudence, and social context. At the regional level, the recommendations advanced in this study are expected to contribute to legal

dialogue in Southeast Asia on how states with mixed legal systems can strengthen the protection of women's separate property without disregarding relevant customary or Islamic legal norms (Afrijal & Radhityas, 2025). Finally, this research aims to provide an analysis that can be utilized by policymakers, academics, and legal practitioners to promote the harmonization of the Civil Code with national legislation, strengthen the legal protection of a wife's separate property, and formulate effective implementation mechanisms such as public legal education and the strengthening of notarial procedures and marital agreements. Accordingly, this study is not merely a historical critique of a colonial provision, but a constructive effort to formulate a more equitable civil law framework that addresses the root causes of gender-based economic inequality and legal uncertainty in practice. The problem statements examined in this research include: how the provisions of the Civil Code relate to a wife's separate property rights; how judicial practice applies these norms; and what normative reformulations can enhance legal protection. This study is expected to provide a robust argumentative foundation for future legal reform initiatives.

Research Method

The research method employed in this study is normative legal research (juridical–normative), utilizing statutory and conceptual approaches, in which court decisions are examined as authoritative normative legal materials rather than as empirical data. Accordingly, Supreme Court judgments are analyzed to identify doctrinal patterns, interpretative trends, and normative inconsistencies in the application of Article 119 of the Civil Code and Article 35 of the Marriage Law, thereby preserving methodological coherence between the normative framework and the discussion of judicial practice. (Arifin et al., 2025). Normative legal research is conducted through an examination of primary legal materials, consisting of statutory regulations such as the Indonesian Civil Code (*Burgerlijk Wetboek*), Law Number 1 of 1974 on Marriage, and their implementing regulations, including Supreme Court Regulation (Perma) Number 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in Conflict with the Law (Arifin, 2016). In addition, secondary legal materials

including scholarly literature, journal articles, research reports, and relevant conference proceedings are analyzed to strengthen the legal arguments and to identify the novelty of this research. The collection of legal materials is carried out through library research, with a qualitative analytical approach (Arifin & Masrukin, 2019). The data obtained are then systematically interpreted to reveal normative gaps between Article 119 of the Civil Code and Article 35 of the Marriage Law, as well as their implications for the legal protection of a wife's separate property. This approach enables the researcher to assess the extent to which Indonesia's national civil law system continues to preserve colonial legal legacies that are increasingly inconsistent with the principles of justice and gender equality in the context of modern Indonesian law (Arifin, 2025).

Results and Discussions

Legal Regulation of a Wife's Separate Property under the Indonesian National Legal System

The regulation of a wife's separate property within Indonesia's national legal system lies at the intersection between the legacy of Dutch colonial codification through the Indonesian Civil Code (*Burgerlijk Wetboek*) and post-independence national legislation such as Law Number 1 of 1974 on Marriage ("Marriage Law") (Giyanthi et al., 2022). The Civil Code, particularly Article 119, provides that from the moment a marriage is concluded, a community of property arises by operation of law between husband and wife, unless otherwise stipulated in a prenuptial agreement (Giyanthi et al., 2022). This provision implies that a wife's separate property brought into the marriage may be absorbed into the joint marital estate, unless a property separation agreement is in place.

The Marriage Law subsequently introduced a more modern regulatory framework for marital property. Article 35 paragraph (2) stipulates that the separate property of each spouse, as well as property acquired by way of gift or inheritance, remains under the control of the respective spouse (Ria & Yovitasari, 2024). Normatively, therefore, the national legal system recognizes a wife's right to separate property distinct from jointly acquired marital property. This

regulation is intended to provide legal protection for a wife's individual property rights and to reinforce the principle of equality within marriage.

Nevertheless, in judicial practice and legal implementation, a number of challenges persist (Hasibuan et al., 2023). Research indicates that although the Marriage Law formally distinguishes between separate property and joint marital property, colonial norms contained in the Civil Code are still frequently applied as the legal basis in many judicial decisions, particularly in cases where no prenuptial agreement has been made (Ria & Yovitasari, 2024). Marsela Saselah's study further demonstrates that although the regulation of separate property is clearly stipulated in the Civil Code, the Marriage Law, and the Compilation of Islamic Law (KHI), widows or wives left by their husbands without children often remain in a disadvantaged position, as the husband's separate property may transfer to his heirs rather than remain under the wife's control (Saselah, 2019).

National research also indicates that the regulation of a wife's separate property under the Marriage Law still contains several normative gaps, particularly concerning the profits, proceeds, or developments derived from separate property, gifts, or inheritance that are subsequently managed jointly by the spouses whether such assets should be classified as joint marital property or remain separate (Kinanty et al., 2023). For example, a study published in *Honeste Vivere* emphasizes that Article 35 paragraph (2) and Article 36 of the Marriage Law do not clearly determine whether the growth, appreciation, or development of separate or inherited property during the marriage becomes part of the joint marital estate or remains the personal property of the original owner.

This situation gives rise to practical problems when a wife brings her separate property into the marriage and subsequently develops it together with her husband, for instance through joint business ventures or spousal investments. In the absence of a specific prenuptial agreement regulating such matters, the likelihood of property commingling where assets may become jointly controlled or even subject to dispute increases significantly. In such circumstances, a wife's autonomy over her separate property may be eroded by the marital property regime, which often fails to adequately account for her specific contributions.

The consequences for wives who do not enter into prenuptial agreements can be quite serious. A national study found that if a husband is declared bankrupt and no prenuptial agreement exists, the entire marital estate including assets that should legally constitute the wife's separate property may be absorbed into the joint marital estate and become subject to creditors' claims (Giyanthi et al., 2022). This illustrates that, without strong legal protection for a wife's separate property, her economic rights remain vulnerable to legal actions initiated by third parties.

On the other hand, prenuptial agreements serve as a legal instrument capable of protecting a wife's separate property; however, their level of utilization remains relatively low. A study published in the *JEBLR* journal finds that marital property agreements concerning separate assets made by spouses possess binding legal force and may even bind third parties, provided that they are duly registered in the public register at the local district court. Nonetheless, significant challenges persist in relation to public awareness, access to legal information, and the costs associated with the formalization of such agreements, particularly for couples from lower- and middle-income backgrounds.

From the perspective of family law and gender justice, normative provisions that grant wives separate rights over their individual property reflect a commitment to the principle of stable equality within marriage. Gender equality theory requires that legal norms must not place wives in a subordinate position with respect to economic benefits or proprietary rights. However, Civil Code provisions that tend to generalize the unification of property without adequately considering the origin of separate assets or the existence of prenuptial agreements may have discriminatory effects on wives who bring assets into the marriage (Fitriyah, 2024).

In adjudicative practice, the existence of a prenuptial agreement does not always guarantee full protection of a wife's separate property, as issues concerning how such agreements are formalized, registered, and made known to third parties remain significant obstacles. A study published in *El-Izdiwaj* demonstrates that Indonesia's positive law still lacks specific regulation accommodating wives who contribute financially and bring assets into the

marriage, resulting in the division of marital property not always reflecting or recognizing the wife's contribution (Watu et al., 2023).

Furthermore, the regulation of a wife's separate property also intersects with inheritance law and bankruptcy law. If a husband passes away or is declared bankrupt without a prenuptial agreement separating assets, the wife's separate property may be drawn into the mechanism of joint property distribution or into the husband's bankruptcy estate, thereby threatening the wife's proprietary rights (Giyanthi et al., 2022). This situation underscores the need for clearer regulations regarding the boundaries and safeguards of a wife's separate property in such extreme circumstances. From an institutional legal perspective, the primary obstacles between normative regulation and practical implementation include low levels of marital legal literacy, socio-economic disparities between husbands and wives, and cultural family norms that prioritize collective marital rights as "family property" over individual rights within marriage. These factors collectively contribute to the issue of a wife's separate property remaining insufficiently prioritized in legal policy and services (Suryantoro, 2020).

Within the framework of national legal harmonization, the interpretation of Article 35 of the Marriage Law must be linked to the principle of property rights protection as embodied in Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to recognition, assurance, protection, and fair legal certainty, as well as Article 28H paragraph (2), which ensures equality before the law. (Ria & Yovitasari, 2024) The colonial provisions of the Civil Code have not been formally revoked and therefore remain applicable insofar as they have not been superseded by newer legislation. Consequently, a critical examination of the legal status of a wife's separate property remains essential.

Regionally, legal systems in several Southeast Asian countries that have undergone reforms of their marital property regimes offer important lessons for Indonesia. Regulations that simplify the process of drafting prenuptial agreements, guarantee separate proprietary rights, and mandate formal registration to protect parties who bring assets into marriage can serve as valuable benchmarks for national legal reform (Giyanthi et al., 2022).

The regulatory recommendations arising from this study include clarifying the definition and legal treatment of the proceeds and development of separate property within the Marriage Law or its implementing regulations; introducing a stronger obligation for public dissemination and education regarding prenuptial agreements for prospective married couples; and strengthening the registration and public disclosure mechanisms of prenuptial agreements so that they are more easily proven and enforceable in court (Hasibuan & Rasyid, 2026).

In addition, legal practitioners including notaries, lawyers, and judges need to be provided with specific guidelines on the management of a wife's separate property within marriage. These should include forms of protection such as the drafting of prenuptial agreements, identification and safeguarding of separate assets (for example, through separate accounts or asset labeling), and consistent enforcement of the provisions contained in marital agreements.

From an academic perspective, this study contributes by developing an analytical framework that specifically focuses on a wife's separate property rather than merely on joint marital property while critically examining surviving colonial provisions, particularly Article 119 of the Civil Code, from the standpoint of women's economic protection and legal certainty. This constitutes a scholarly novelty compared to many previous studies, which predominantly centered on the division of joint marital property in general (Zainudin, 2020).

Accordingly, although Indonesia's national legal system has established normative protections for a wife's separate property through the Marriage Law, significant challenges remain in terms of implementation and harmonization with the Civil Code, as well as alignment with socio-economic realities. Legal reform and practical enforcement efforts are necessary to ensure that legal protection for a wife's separate property does not remain merely a theoretical norm, but is effectively realized in practice (Watu et al., 2023).

Empirical Relevance of Article 119 of the Indonesian Civil Code to the Principles of Gender Equality and Legal Protection for Wives

Article 119 of the Indonesian Civil Code (KUHPerdata), which regulates the community of property in marriage, is a legacy of Dutch colonial law introduced in Indonesia through the *Burgerlijk Wetboek (BW)* in the nineteenth century. This provision stipulates that from the moment a marriage takes place, a full union of property between husband and wife arises by operation of law, unless otherwise stipulated in a prenuptial agreement (Rahmawati, 2022). The norm reflects a patriarchal logic embedded in classical civil law, in which the wife is structurally subordinated to the husband not only symbolically but also through concrete legal mechanisms governing property control and litigation. By presuming a default unity of assets under the husband's managerial authority, Article 119 effectively shifts the burden onto the wife to prove the separate origin of her property in court, limits her autonomous control over assets acquired before marriage, and exposes her property to claims arising from the husband's debts or legal actions. As a result, what appears formally as a "joint" property regime in practice operates as a legal structure that systematically weakens the wife's economic position and bargaining power in marital property disputes.

In the context of modern society, Article 119 of the Civil Code presents fundamental problems because it is no longer aligned with the principle of gender equality mandated by the 1945 Constitution and various national and international legal instruments ratified by Indonesia, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Mentari, 2024). The principle of gender equality requires equal recognition of women's economic rights, including their rights over personal property and income.

The relevance of Article 119 becomes even more questionable following the enactment of Law Number 1 of 1974 on Marriage, particularly Article 35, which differentiates between joint marital property and separate property (Zainudin, 2020). This provision affirms that a husband's or wife's separate property, as well as assets obtained through gifts or inheritance, remain under the control of each respective party. The Marriage Law therefore adopts a new paradigm that better respects the wife's economic autonomy.

However, in judicial practice, Article 119 of the Civil Code is still frequently applied, especially in civil cases involving non-Muslim marriages that are not governed by the Compilation of Islamic Law (Rahmawati, 2022). This situation creates a dualism of norms that may disadvantage wives, as positive law still allows for automatic property consolidation without adequately considering the wife's actual contribution or the origin of the assets.

From a progressive legal perspective, Article 119 of the Civil Code is no longer relevant to current social developments and evolving legal consciousness that demand gender equality (Asni, 2019). Today, wives do not merely play domestic roles; they also participate in economic productivity. When all property is automatically subsumed into joint marital property, a wife may lose control over assets independently obtained prior to marriage.

According to research by Giyanthi, Budiarta, and Ujianti (2022), an automatic system of community property in the absence of a prenuptial agreement has generated legal uncertainty regarding separate property, particularly in cases of divorce or bankruptcy (Giyanthi et al., 2022). This provision is often used to seize a wife's assets as collateral for the husband's debts, which clearly contradicts the principle of legal protection for women.

Article 119 of the Civil Code is also inconsistent with the principle of substantive justice in family law. As explained by Suryantoro (2020), in patriarchal societies the husband frequently acts as the primary controller of family finances, while wives may have limited access to the management of joint property (Suryantoro, 2020). Consequently, the concept of total community property may, in practice, weaken the wife's position, even though it is formally labelled as "joint".

Research by Fitriyah (2024) further demonstrates that in divorce proceedings, many judges continue to rely on Article 119 as the basis for property distribution, even in cases where the wife can provide evidence of personal ownership prior to marriage (Fitriyah, 2024). This indicates an imbalance in legal protection due to the continued application of outdated norms.

From a legal hermeneutic standpoint, Article 119 should ideally be interpreted restrictively, meaning that property consolidation should only apply

when both parties consciously choose such a regime through explicit agreement. (Zainudin, 2020) However, in practice, community of property is still treated as the default rule without requiring explicit consent from the wife, thereby undermining the principle of contractual freedom and individual autonomy in civil law.

Gender equality principles set out in Article 27(1) and Article 28D(1) of the 1945 Constitution must guide modern interpretation of civil law. In this regard, colonial legal provisions containing gender bias, such as Article 119, must be corrected or revised to align with Indonesia's constitutional commitments and international obligations (Asni, 2019).

Furthermore, Article 119 is inconsistent with Law Number 39 of 1999 on Human Rights, which guarantees women's rights to own and manage personal assets ("Harta Bawaan atau Harta Pribadi dalam Perkawinan," 2021). From a good governance perspective, the continued survival of such colonial norms reflects stagnation in legal reform, despite longstanding national agendas to develop a modern civil law codification..

Several court decisions have begun to adopt a more progressive interpretation of Article 119. For instance, in Supreme Court Decision No. 1471 K/Pdt/2019, the Court affirmed that property acquired prior to marriage or obtained through inheritance remains the personal property of the wife, even in the absence of a prenuptial agreement (*Putusan Nomor 1471 K/Pdt/2019*, 2019). This marks an emerging shift toward gender-just interpretation.

Research by Marsela Saselah (2019) emphasizes that Article 119 is increasingly inadequate because it fails to consider wives' non-material contributions within the household (Saselah, 2019). In modern legal thought, domestic contributions are recognized as productive work deserving legal acknowledgment. However, the Civil Code remains grounded in a classical economic perspective that separates domestic labour from public economic activity.

Studies by Watu et al. (2023) likewise assert that the position of wives under the Civil Code in relation to marital property division often fails to reflect substantive justice due to the absence of gender-responsive legal approaches

(Watu et al., 2023). Genuine justice in marriage requires not only formal division of assets, but also recognition of emotional, social, and reproductive contributions made by wives.

In response, many civil law scholars advocate for comprehensive revision of Article 119 through the development of a new National Civil Code (Rahmawati, 2022). Such reform is expected to abolish automatic community property systems and replace them with optional marital property regimes, whereby spouses may choose their preferred system. Similar models have been implemented in countries such as France, the Netherlands, and the Philippines. A gender-equitable legal approach not only protects wives' economic rights but also encourages financial transparency in marriage, thereby fostering fairness and shared responsibility rather than dominance by one party (Watu et al., 2023).

Conceptually, while Article 119 holds historical significance, it no longer satisfies contemporary standards of social relevance. A just legal norm must adapt to evolving social dynamics, including the transformation of women's roles in economic and public life. Retaining Article 119 without revision effectively perpetuates systemic gender inequality. From a legal protection perspective, reform of Article 119 should explicitly recognize wives' personal ownership rights, simplify the legalization of marital property agreements, and strengthen mechanisms for proving asset origin (Achmad, 2023). Such measures would ensure that gender equality principles are implemented concretely through legal policy. Accordingly, it can be concluded that Article 119 of the Civil Code is no longer relevant to the principles of gender equality and legal protection for wives. The provision represents a patriarchal paradigm incompatible with Indonesia's modern legal system. Reform of this provision is imperative to ensure that Indonesian civil law aligns with substantive justice and gender equality as mandated by the Constitution and international human rights standards (Kappelle & Lersch, 2022).

Structural and Juridical Reformulation of Article 119 of the Indonesian Civil Code in Alignment with Modern Principles of Justice

The Article 119 of the Indonesian Civil Code (KUHPerdata) is among the most heavily criticized provisions in Indonesia's family law system because, substantively, it contains patriarchal values and no longer reflects the principle of gender equality. The provision states that from the moment a marriage is solemnized, a complete union of property between husband and wife arises by operation of law, unless otherwise stipulated in a prenuptial agreement. In practice, this article is still frequently used by judges as the legal basis in marital property cases, particularly for non-Muslim couples. However, from the perspective of modern justice, Article 119 of the Civil Code requires comprehensive reformulation to ensure consistency with constitutional principles, social development, and the doctrine of equality before the law. The provision reads: *"From the moment the marriage is concluded, a complete commingling of property between husband and wife occurs by virtue of law, insofar as no other arrangement has been made in a prenuptial agreement."* This norm reflects the legacy of the Dutch colonial legal system, which adhered to the community of property principle, meaning that from the beginning of the marriage, all assets of both spouses merge into one legal entity without regard to who acquired them (Hasibuan et al., 2025).

The reformulation of Article 119 must be undertaken through a progressive juridical approach that takes into account the principle of substantive justice, rather than merely formal justice. Substantive justice requires that the law not only guarantee equality on paper but also provide real protection for vulnerable groups, including wives who are often socially and economically positioned in a subordinate role within marital relationships.

One of the main criticisms of Article 119 is that the norm originates from nineteenth-century Dutch colonial law, which was rooted in the concept of unity of property (*gemeenschap van goederen*) and assumed that the husband was the head of the household with full authority over assets. Such a system is no longer

relevant in modern society, where women possess economic capacity and legal standing equal to men.

Any proposed reformulation of Article 119 must refer to the fundamental principles of national law as stipulated in Article 27(1) of the 1945 Constitution, which guarantees equality of all citizens before the law, and Article 28D(1), which ensures fair treatment and legal certainty for every person. Therefore, any regulation governing marital property must respect the individual proprietary rights of both spouses, regardless of gender.

Another juridical criticism is that Article 119 fails to accommodate the concept of free mutual consent between husband and wife. The provision is automatic in nature; without a prenuptial agreement, all assets automatically become joint marital property. In fact, the principle of freedom of contract under Article 1338 of the Civil Code should allow parties to freely choose a marital property regime in accordance with their agreement (Masturi et al., 2020). Accordingly, the reformulation of this provision should place mutual consent as the foundation of the marital property system, rather than making it merely an exception.

Reformulation must also take into account the development of Law Number 1 of 1974 on Marriage, particularly Article 35, which distinguishes between joint marital property and separate property (Zainudin, 2020). This provision embodies the spirit of equality because it allows both husband and wife to retain personal property. Therefore, Article 119 should be harmonized with this law to avoid normative conflict and overlap.

According to Suryantoro (2020), the automatic system of community of property under Article 119 of the Civil Code results in legal disadvantages, particularly for women who already possess assets prior to marriage (Suryantoro, 2020). In the context of divorce, wives often lose their rights over separate property due to the absence of a clear distinction between personal assets and joint marital property. Therefore, the reformulation of this article must explicitly guarantee that separate property remains under the control of each respective party. Giyanthi, Budiarta, and Ujjanti (2022) argue that marital property should be regulated through an *optional regime* model, namely a system that

allows couples to consciously choose between community of property or separation of property before entering marriage (Giyanthi et al., 2022). This model has been implemented in many developed countries, such as the Netherlands and France, which place individual freedom as the foundation of legal relations within marriage.

From the perspective of progressive legal thought as advanced by Satjipto Rahardjo, law must function as an instrument of liberation and social renewal, not merely as a tool of control (Siagian, 2024). Accordingly, the reform of Article 119 should be directed toward empowering wives in the management of property and economic decision-making within the household.

Juridical criticism of Article 119 is also closely related to issues of law enforcement. In judicial practice, many judges still interpret this provision textually without considering principles of gender justice (Asni, 2019). In fact, the Supreme Court, through several decisions such as Decision No. 1471 K/Pdt/2019 has affirmed that assets acquired before marriage or obtained through inheritance remain personal property and are not part of joint marital property (*Putusan Nomor 1471 K/Pdt/2019*, 2019).

Furthermore, the reformulation of Article 119 must also affirm that marital agreements (prenups) may be made before or after marriage, as emphasized by the Constitutional Court Decision No. 69/PUU-XIII/2015. This decision is a significant milestone in the legal protection of wives' property rights because it enables couples to independently regulate their marital property regime in accordance with mutual agreement.

From a public policy perspective, amending Article 119 is also crucial for promoting economic equality within households. Fitriyah (2024) emphasizes that gender justice is not only related to formal rights but also to access to economic resources (Fitriyah, 2024). In many cases, women face structural barriers in managing property because the legal system continues to assume that the husband is the primary financial decision-maker.

From the perspective of distributive justice, the reformulation of Article 119 must take into account the wife's non-material contributions within the household. Marsela Saselah (2019) asserts that domestic contributions such as

maintaining the household and caring for children constitute forms of labor with economic value that deserve legal recognition in the distribution of property (Saselah, 2019). Therefore, the legal system must ensure acknowledgment of such contributions.

The reformulation of this provision may also be directed toward the establishment of a new National Civil Code, integrating the principles of the Civil Code with Islamic law and customary values. Such a new codification model may affirm that marital property is the result of cooperation between husband and wife, both of whom possess equal standing in ownership and management. According to Watu et al. (2023), family law reform must incorporate a gender-responsive justice approach, meaning a legal system that is sensitive to gender inequality and seeks to eliminate structural discrimination. (Watu et al., 2023) Reformulating Article 119 presents an opportunity to realize such an approach within national law.

Reformulation must also include protective mechanisms for wives when husbands undertake legal actions that may jeopardize marital assets, such as incurring debt or pledging assets as collateral. (Wahyu et al., 2024) This is essential so that wives possess a veto right or consent right regarding actions that may affect their economic interests.

In the context of international law, Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obliges member states to eliminate discrimination against women in all spheres, including the economy and family relations (Setyowati, 2021). Therefore, the reformulation of Article 119 also represents the implementation of both constitutional and international obligations of the state.

The revised Article 119 of the Civil Code must embody modern principles of justice, namely equality, freedom, and substantive justice (Rahmawati, 2022). Civil law should no longer serve as an instrument of gender subordination, but rather as a tool for ensuring shared welfare and equal protection for every individual in marriage. Reformulating Article 119 is thus a strategic step toward establishing a family law system that is just, modern, and grounded in gender equality. Without fundamental change, this provision will continue to generate

injustice for women within households and perpetuate a colonial legacy that is philosophically and sociologically obsolete.

Based on the above analysis, the ideal reformulation of Article 119 of the Civil Code would replace the principle of full community of property with the principle of individual property autonomy, while still providing room for couples to establish joint marital property proportionally through mutual consent. A proposed formulation is as follows: “From the moment a marriage is concluded, each party shall retain ownership and control over property acquired before and during the marriage, unless the husband and wife expressly agree in writing to establish joint marital property under conditions that do not contradict the principles of equality, justice, and legal protection for both parties”. This formulation affirms the principles of individual legal autonomy, equality, and freedom of contract within marriage. Moreover, this reform concept supports substantive justice, as it recognizes both economic and non-economic contributions of each spouse. In the view of Philipus M. Hadjon, substantive legal protection can only be realized when positive law is capable of creating balance between the rights and obligations of every legal subject in a proportional manner (Hadjon, 1987). Thus, revising Article 119 is not merely a formal legal necessity, but also a manifestation of the state’s responsibility in realizing social justice for the entire Indonesian people, as mandated by the fifth principle of Pancasila.

This reformulation also carries broad implications for the national legal system. First, it will create vertical harmonization between the Civil Code, the Marriage Law, and the 1945 Constitution, thereby eliminating conflicting legal norms regarding marital property regulation. Second, it will strengthen the legal standing of women in households and ensure greater legal certainty in cases involving divorce, bankruptcy, or inheritance. Third, in socio-economic terms, it will encourage greater participation of women in the economic sector, since they will no longer lose rights over the results of their own labor during marriage.

Accordingly, the reformulation of Article 119 of the Civil Code is not only a normative renewal, but also a strategic step toward an inclusive, just, and equality-oriented national family law system. Overall, it may be concluded that

Article 119 must be reformulated because, philosophically, it no longer aligns with the principles of substantive justice and gender equality; juridically, it contradicts the Constitution, the Marriage Law, and international conventions; and sociologically, it generates economic inequality and legal uncertainty for wives. Reformulation must therefore aim to uphold the principle of property separation and strengthen freedom of contract in marriage, in line with modern societal developments and democratic values that uphold equality and justice for all citizens.

Conclusion

Based on the analysis of the three research problem formulations, it can be concluded that Article 119 of the Indonesian Civil Code (*Burgerlijk Wetboek*) is no longer relevant to the principles of justice and gender equality within Indonesia's national legal system. The provision, which establishes an absolute community of property between husband and wife from the moment a marriage is concluded, has generated structural imbalances in family law relations. This norm has the potential to undermine a wife's economic autonomy and to position her as the legally weaker party, particularly in the context of divorce or disputes over marital property. Consequently, Article 119 reflects a colonial and patriarchal legal paradigm that is incompatible with the constitutional spirit guaranteeing equality before the law. Law Number 1 of 1974 on Marriage has, in substance, introduced a more progressive reform of the marital property regime. Through Article 35, this law clearly distinguishes between jointly acquired marital property and separate property, thereby providing stronger legal protection for a wife's personal assets, whether acquired prior to marriage or obtained through inheritance or gifts. Moreover, the Marriage Law is consistent with the principles of gender equality and substantive justice as guaranteed under Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Accordingly, the Marriage Law may be regarded as a *lex specialis* that corrects the normative deficiencies of the Civil Code. The reformulation of Article 119 of the Civil Code is therefore an urgent necessity in order to realize a national family law system that is just, modern, and gender-

responsive. Such reform should be directed toward recognizing a wife's economic autonomy, affirming individual ownership rights over separate property, and strengthening the principle of free consent in determining the marital property regime. Furthermore, any revision of this provision must be aligned with the 1945 Constitution, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and progressive legal values that uphold equality and substantive justice. In this way, Indonesian civil law can evolve in accordance with the demands of modern society and universal human rights principles, transforming spousal relations from a subordinative structure into an equal partnership in all aspects of family and economic life.

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