



Reconstructing justice in marital property division for persons with disabilities in Indonesian marriage law

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ABSTRACT

Purpose: to reconstruct the concept of justice in the division of marital property for persons with disabilities within Indonesian marriage law by developing a disability-sensitive framework that considers functional capacity, marital contribution, and substantive justice in determining the equitable distribution of marital property after divorce.

Method: this study employed normative legal research using statutory and conceptual approaches. Legal materials were analyzed through interpretative and discourse analysis to reconstruct justice in the division of marital property for persons with disabilities.

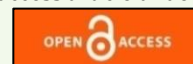
Findings: the current regulation of marital property division in Indonesia, which is primarily based on equal distribution, requires a substantive justice approach for persons with disabilities. Justice should be assessed proportionally by considering functional capacity, actual contributions, the distinction between inability and negligence, and post-divorce vulnerability.

Implications: to the development of Indonesian family law by proposing a disability-sensitive framework for marital property division that promotes substantive justice, equality, and the protection of human dignity.

Originality: lies in reconstructing marital property justice through a disability-sensitive approach by integrating distributive justice theory and disability rights principles into Indonesian marriage law.



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Introduction

Marriage law is fundamentally intended to create justice in regulating the reciprocal rights and obligations of husband and wife, including the legal consequences arising from the accumulation and distribution of marital property (Diep & Dang, 2026). Indonesian marriage law generally recognizes marital property as assets acquired during marriage that should be divided upon divorce according to applicable legal

principles, as reflected in the civil code, the compilation of Islamic law, and judicial practice (Oktober, 2023). However, although the legal framework provides certainty regarding the existence and distribution of marital property, the implementation of these rules often relies on formal assumptions that both spouses possess relatively equal capacity to perform their marital obligations (Damayanti & Yunanto, 2024). Such an assumption becomes problematic when applied to marriages involving persons with disabilities, whose physical, intellectual, mental, or sensory conditions may objectively influence their ability to perform certain legal and domestic responsibilities.

The issue of marital property division is increasingly complex because Indonesian marriage law still tends to assess the fulfillment of marital obligations using a normative rather than a contextual approach (Wafiroh & Yusuf, 2026). In practice, the contribution of each spouse is often evaluated using conventional indicators, particularly the husband's role as the primary breadwinner and the wife's domestic responsibilities (Andesma, 2024; Muda'i & Wahid, 2023). Consequently, failure to perform these normative obligations is often interpreted as negligence or insufficient contribution, which may subsequently influence judicial consideration in disputes over marital property. Such an approach overlooks situations where a spouse's inability to fulfill certain obligations arises not from unwillingness but from objective limitations resulting from disability. As a result, persons with disabilities remain vulnerable to receiving unequal treatment despite occupying an equal legal status within marriage.

From a justice perspective, the equal treatment of unequal conditions does not necessarily yield equitable outcomes. Justice requires that legal obligations be assessed according to the actual capacities and circumstances of the legal subjects involved rather than through identical standards applied universally (Mutsaniyah & Alyaa, 2025). Men, women, and persons with disabilities possess different capacities in carrying out economic, domestic, and social responsibilities within marriage. Therefore, the inability of a person with disabilities to perform specific marital obligations should not automatically be construed as legal negligence. Instead, justice demands a distinction between non-performance caused by objective incapacity and non-compliance arising from intentional neglect. This distinction is particularly important because persons with disabilities may continue contributing substantially to family life through emotional support, household management within their abilities, caregiving, or maintaining family relationships, although such contributions are rarely reflected in conventional legal assessments of marital property.

Indonesia's disability rights framework also supports a more contextual interpretation. Law number 8 of 2016 concerning persons with disabilities establishes respect for human dignity, individual autonomy, non-discrimination, equality of opportunity, accessibility, inclusive participation, recognition of diversity, and special protection as fundamental legal principles governing the treatment of persons with disabilities. These principles indicate that the law should not merely apply identical standards to all individuals but should accommodate different capacities to ensure substantive equality. Accordingly, the interpretation of marital property division should also reflect these disability-sensitive principles by considering the actual contribution, functional capacity, and post-divorce vulnerability of persons with disabilities.

Previous studies have extensively examined the legal regulation and distribution of marital property from various perspectives. Existing scholarship has discussed the comparison between Islamic law and positive law in marital property distribution (Harimurti, 2021; Risky, 2020), the implementation of justice theory in post-divorce property division (Paren et al., 2023; Utami & Dalimunthe, 2023), the regulation of

marital property under Indonesian civil law (Limbong et al., 2023), dispute resolution mechanisms concerning marital property (Putri & Wahyuni, 2021), and the contribution of husband and wife as the basis for equitable property distribution (Ristianawati, 2021). Collectively, these studies demonstrate that the discourse on marital property has predominantly focused on balancing the economic relationship between husband and wife, particularly by strengthening legal protection for wives who are frequently considered economically disadvantaged following divorce. Justice has therefore been interpreted primarily through the lens of gender-based economic contribution and the fulfillment of the husband's obligation to provide financial support.

Despite these valuable contributions, existing scholarship has not adequately addressed how marital property should be distributed when one of the spouses is a person with a disability. Persons with disabilities continue to be positioned within the same legal framework as non-disabled spouses, without sufficient consideration of the limitations affecting their ability to perform marital obligations. Consequently, the current literature has not yet integrated disability rights principles into the legal construction of marital property distribution. This represents an important research gap because equality before the law cannot be achieved merely through identical treatment; rather, substantive justice requires legal interpretation that accommodates differences in capacity while maintaining equal legal dignity. Accordingly, the novelty of this study lies in reconstructing the concept of justice governing the distribution of marital property by integrating disability rights principles into Indonesian marriage law. Rather than measuring contribution solely through the fulfillment of normative obligations, this study proposes a contextual model that considers the actual capacity, non-economic contribution, and post-divorce vulnerability of persons with disabilities.

The theoretical foundation of this study is primarily derived from distributive justice theory, which emphasizes that justice consists not in identical treatment but in allocating rights and obligations proportionately according to relevant conditions and capacities (Efendi, 2024; Mutsaniyah & Alyaa, 2025; Nasution, 2017). This perspective is further enriched by Aristotelian notions of proportional justice and contemporary understandings of substantive equality, which recognize that different circumstances may require differentiated legal treatment to achieve genuinely fair outcomes (Arianto et al., 2025; McCormick, 1994; Wahyudi et al., 2022). In addition, the study incorporates the values embodied in *maqasid al-shariah*, which emphasize justice, balance, protection of human dignity, and the realization of public welfare within Islamic legal reasoning (Sumarta et al., 2024). These theoretical perspectives collectively provide the normative basis for reconstructing marital property distribution in a manner that is more responsive to disability, proportionality, and substantive justice.

This study aims to formulate a reconstruction of justice in the division of marital property for persons with disabilities within Indonesian marriage law. Specifically, the study seeks to develop a legal framework that evaluates marital obligations and contributions contextually by considering the functional capacity, actual contribution, and socio-economic vulnerability of persons with disabilities after divorce. The significance of this research lies in its effort to bridge the intersection between marriage law and disability rights, an area that has received limited scholarly attention despite the increasing recognition of disability as a human rights issue. Developing a disability-sensitive model of marital property distribution is essential to ensure that the limitations experienced during marriage do not transform into structural economic disadvantages after divorce. Such an approach strengthens the realization of substantive justice while ensuring consistency between marriage law and the constitutional

commitment to protecting the dignity and equality of persons with disabilities. This study is expected to contribute both theoretically and practically. Theoretically, it extends the discourse on distributive justice in Indonesian family law by incorporating disability rights principles into the legal framework for marital property division. In practice, the proposed framework may serve as a normative reference for judges, legislators, and legal practitioners in interpreting marital property disputes involving persons with disabilities, thereby encouraging more contextual, humane, and responsive judicial decisions that reflect the diversity of legal subjects within Indonesian society.

Method

This study employs a normative legal research design, using a qualitative approach, to reconstruct the concept of justice in the division of marital property for persons with disabilities under Indonesian marriage law. Normative legal research is appropriate because the study's primary objective is not to measure social phenomena empirically but to examine legal norms, principles, and theories of justice that govern the rights and obligations of spouses, particularly when one party is a person with a disability. The analysis is directed toward identifying whether the existing legal framework adequately accommodates the distinctive circumstances and capacities of persons with disabilities in determining the equitable distribution of marital property following divorce.

The research adopts a conceptual and statutory approach. The statutory approach is utilized to examine the legal framework governing marital property and disability rights in Indonesia, including the marriage law, the compilation of Islamic law, the Indonesian civil code, and law number 8 of 2016 concerning persons with disabilities. These legal instruments are analyzed to identify the normative principles regulating marital obligations, marital property, equality before the law, and the legal protection afforded to persons with disabilities. The conceptual approach complements this analysis by examining theories of distributive justice, substantive equality, disability rights, and legal interpretation to develop a more contextual understanding of justice in the distribution of marital property.

The study relies exclusively on library research as the primary method of data collection. The research materials consist of three categories of legal sources. First, primary legal materials include legislation and other authoritative legal instruments governing marriage, marital property, and the protection of the rights of persons with disabilities in Indonesia. Second, secondary legal materials include scholarly books, peer-reviewed journal articles, legal commentaries, and prior studies on marital property, justice theory, family law, and disability rights. These materials provide doctrinal analysis and academic perspectives that support the reconstruction of legal concepts. Third, tertiary legal materials, including legal dictionaries, encyclopedias, and reference works, are used to clarify legal terminology and ensure conceptual consistency throughout the analysis.

The collected legal materials were examined through qualitative legal analysis, integrating interpretative and discourse analysis. Interpretive analysis was employed to examine statutory provisions and legal doctrines concerning marital obligations, marital property, and disability rights to identify the underlying principles of justice embedded in Indonesian marriage law. This analytical process extends beyond the literal meaning of legal provisions by considering their objectives, coherence, and compatibility with broader constitutional and human rights values.

In addition, discourse analysis was employed to examine how legal discourse constructs the concepts of obligation, contribution, productivity, and justice within the context of marriage. Particular attention was given to identifying dominant legal narratives that tend to measure marital contribution primarily through normative economic and domestic roles, while overlooking the contextual realities experienced by persons with disabilities. Through this analytical framework, the study critically evaluates whether existing legal discourse unintentionally reproduces unequal treatment by applying uniform standards to individuals with differing capacities (Alejandro & Zhao, 2024).

The findings derived from these analytical processes are synthesized to formulate a reconstructed model of justice in the division of marital property for persons with disabilities. The proposed reconstruction emphasizes a contextual assessment of marital obligations by considering each spouse's functional capacity, recognizing both economic and non-economic contributions during marriage, and the socio-economic vulnerability experienced after divorce. Accordingly, this methodological framework enables the study to develop normative recommendations consistent with the principles of distributive justice, substantive equality, and the legal protection of persons with disabilities in Indonesian marriage law.

Results and discussion

The concept of justice as the foundation for reconstructing marital property division

Justice has long occupied a central position in legal philosophy because it constitutes the normative foundation upon which legal rights, obligations, and institutional arrangements are justified. Within legal scholarship, justice is not merely regarded as the ultimate objective of law but also as the principal standard for evaluating whether legal rules and judicial decisions genuinely achieve socially desirable outcomes (Nasution, 2017). Accordingly, justice cannot be understood solely through the formal validity of legal norms. Rather, it requires an assessment of whether legal norms operate fairly when applied to individuals who possess different social, economic, and personal circumstances. As MacCormick (1994) argues, the legitimacy of law depends not only on its internal coherence but also on its capacity to respond rationally to the realities faced by legal subjects. Consequently, a legal system that ignores social realities risks preserving legal certainty while simultaneously producing substantive injustice.

The relationship between justice and social reality has become increasingly important within contemporary legal discourse. Traditional legal positivism generally assumes that legal norms should be applied uniformly because equal treatment is regarded as an expression of equality before the law (Maccormick, 1994). However, subsequent legal scholarship has demonstrated that identical treatment does not necessarily produce equitable outcomes when legal subjects experience unequal circumstances. Efendi (2024) explains that excessive reliance on procedural legality may transform law into an instrument that perpetuates structural inequality by overlooking differences in individual capacity, vulnerability, and opportunity. Therefore, justice requires legal interpretation that accommodates factual conditions rather than relying exclusively on abstract legal formalism.

This understanding is particularly relevant in family law, where the fulfillment of marital obligations frequently depends on the spouses' actual capacities. Existing legal discourse generally evaluates marital contribution through conventional assumptions

regarding the husband's economic responsibility and the wife's domestic role (Andesma, 2024; Muda'i & Wahid, 2023). Although such assumptions may reflect the traditional structure of marriage, they become problematic when applied to marriages involving persons with disabilities whose physical, intellectual, or psychological conditions objectively influence their ability to perform certain marital responsibilities. Consequently, applying identical legal standards without considering these differences may undermine the realization of justice that marriage law is intended to protect.

The theoretical foundation for addressing these concerns originates from Aristotle's concept of distributive justice. Aristotle regarded justice as the highest ethical virtue because it regulates relationships among individuals within society and maintains social harmony (Wahyudi et al., 2022). Unlike formal equality, Aristotle rejected the assumption that justice requires every individual to receive identical treatment. Instead, justice demands proportionality, whereby rights and obligations are allocated according to relevant differences, including an individual's role, contribution, and actual circumstances. The principle of proportionality constitutes the central characteristic of distributive justice. According to Aristotle, equal treatment may itself become unjust when applied to individuals who possess unequal capacities. Justice therefore requires rational differentiation whenever factual differences are relevant to the legal relationship. Such differentiation does not violate equality because it is based upon objective considerations rather than arbitrary discrimination. In this sense, distributive justice recognizes that legal fairness cannot be measured solely by mathematical equality but must also reflect contextual fairness.

Previous studies on marital property implicitly rely on this distributive perspective, although they generally limit their assessment of proportionality to economic contribution. Ristianawati (2021), for example, argues that the contributions of both the husband and the wife should be an important consideration in determining the distribution of joint property following divorce. Similarly, Utami & Dalimunthe (2023) emphasize that justice in marital property disputes requires judges to evaluate the respective roles of each spouse during the marriage rather than relying exclusively on an equal numerical distribution.

Comparable conclusions are also reached by Paren et al. (2023), who demonstrate that judicial discretion frequently reflects considerations of fairness beyond the literal wording of statutory provisions. Nevertheless, these studies primarily conceptualize contribution within conventional marital roles and do not sufficiently examine situations in which one spouse is unable to fulfill normative obligations due to disability. Consequently, proportionality continues to be interpreted primarily in terms of measurable economic or domestic productivity rather than the broader concept of individual capacity. This limitation demonstrates that although distributive justice has been discussed extensively within Indonesian family law, its application remains incomplete because it has not incorporated disability-sensitive considerations into the legal assessment of marital contribution.

Modern theories of justice further develop Aristotle's proportionality by emphasizing substantive equality. Rawls argues that justice should be understood as fairness, requiring legal and social institutions to provide greater protection for those occupying the most disadvantaged positions within society (Arianto et al., 2025). Under Rawls' theory, formally neutral legal rules are not necessarily fair because neutrality may conceal structural inequalities affecting vulnerable individuals. Accordingly, justice requires institutions to evaluate not only the wording of legal norms but also their practical consequences for disadvantaged groups.

This theoretical development is highly relevant to persons with disabilities. Disability frequently creates structural barriers that reduce opportunities to participate equally in economic, domestic, and social life. Therefore, evaluating marital contribution exclusively through conventional legal obligations may unintentionally disadvantage persons with disabilities despite the formal neutrality of marriage law. From the perspective of substantive justice, equal legal status should not eliminate the need to consider differences in functional capacity. Instead, legal interpretation should ensure that objective limitations do not become grounds for reducing legal protection or property rights after divorce.

The substantive justice approach is also consistent with the broader development of disability rights. Contemporary disability jurisprudence increasingly recognizes that equality cannot be achieved through identical treatment but requires reasonable accommodation and recognition of diverse human capacities (Syuib, 2025). This perspective reinforces the principle that legal assessment should distinguish between unwillingness to perform legal obligations and objective inability arising from disability. Consequently, justice requires evaluating the actual contribution made by persons with disabilities, including emotional support, caregiving, household management within their capacity, and other non-economic forms of participation that contribute to family welfare.

The evolution of justice theory also includes restorative justice, which shifts legal analysis from determining winners and losers toward restoring balanced social relationships. Restorative justice views legal disputes as manifestations of disrupted interpersonal relationships rather than merely violations of legal rules (Efendi, 2024). Accordingly, legal decisions should seek to restore dignity, reduce future vulnerability, and rebuild equitable relationships between the parties involved. In marital property disputes, this perspective implies that property distribution should not merely allocate assets mechanically but also consider the socio-economic consequences for each former spouse after divorce.

A comparable understanding exists within Islamic legal philosophy. Justice (*al-'adl*) constitutes one of the central objectives of Islamic law because sharia fundamentally seeks to realize *maslahah* (public welfare) and prevent harm (*mafsadah*) (Sumarta et al., 2024). Islamic scholars consistently emphasize that justice means assigning rights and obligations in accordance with their proper measure rather than imposing identical responsibilities on individuals with different capacities. Therefore, Islamic legal reasoning recognizes proportionality as an essential component of justice while simultaneously protecting human dignity and preventing unnecessary hardship. This understanding corresponds closely with the principles of *maqasid al-shariah*, which prioritize the protection of human welfare over rigid textual formalism.

Synthesizing these theoretical perspectives demonstrates that justice cannot be reduced to formal equality or mechanical compliance with statutory obligations. Rather, justice represents a contextual and proportional evaluation of legal relationships that considers the actual circumstances of the parties concerned. Aristotle's distributive justice provides the principle of proportionality; Rawls contributes the concept of substantive equality; restorative justice emphasizes the restoration of dignity and social balance; while Islamic legal philosophy reinforces the importance of *maslahah*, proportionality, and the protection of vulnerable individuals.

These complementary theoretical perspectives provide a coherent normative foundation for reconstructing the division of marital property involving persons with disabilities. Existing legal approaches generally evaluate marital contribution through

standardized assumptions regarding economic productivity and household responsibilities. Such an approach is insufficient because it overlooks the objective limitations experienced by persons with disabilities and fails to recognize their non-economic contributions during marriage. Consequently, this study argues that the concept of justice governing marital property distribution should be reconstructed into a disability-sensitive model that evaluates marital obligations in context, recognizes diverse forms of contribution, and considers post-divorce socio-economic vulnerability. Through this reconstruction, the division of marital property functions not merely as a legal consequence of divorce but also as an instrument for realizing substantive justice and protecting the equal dignity of all legal subjects within Indonesian marriage law.

Marital property under Indonesian positive law: between formal equality and substantive justice

The regulation of marital property within Indonesian positive law reflects the legal understanding that marriage is not merely a personal or religious relationship but also a legal institution that generates reciprocal rights and obligations between spouses. From the moment a marriage is legally established, the husband and wife are regarded as forming a single legal unit in which economic interests, responsibilities, and assets become interconnected (Nurnazli et al., 2024). Consequently, property acquired during the marriage is generally recognized as marital property, representing the product of the spouses' shared life rather than the exclusive ownership of either party. This legal construction demonstrates that Indonesian marriage law conceptualizes marital property as the consequence of cooperation within marriage rather than merely the result of individual economic productivity.

This conception is significant because it implicitly recognizes that contributions within marriage extend beyond financial income. Domestic work, childcare, emotional support, and other forms of non-economic participation are understood as integral components of the partnership that enable the accumulation of marital assets. Such an understanding reflects the social nature of marriage, in which economic production is often inseparable from the domestic and relational support provided by the other spouse. Accordingly, Indonesian marriage law does not formally distinguish marital property according to which spouse generated the income but instead presumes that both parties contribute to the acquisition of family wealth through complementary roles.

The principle governing marital property distribution is principally reflected in the compilation of Islamic law and the Indonesian civil code. Article 97 of the compilation of Islamic law provides that, following divorce, both the former husband and wife are each entitled to one-half of the marital property unless otherwise stipulated by a valid marital agreement. Similarly, article 128 of the civil code provides that community property shall be divided equally between the spouses upon the dissolution of marriage. Although originating from different legal traditions, both legal instruments converge on the same fundamental principle: marital property should, as a general rule, be divided equally.

The existence of this parallel regulatory framework demonstrates that equal distribution has become an established principle within Indonesian positive law. Equal division seeks to ensure legal certainty while protecting both spouses from disproportionate economic disadvantage following divorce. Previous legal studies similarly conclude that the equal division principle has become one of the defining characteristics of Indonesian marital property law because it reflects the legal presumption that marriage constitutes a partnership in which both spouses contribute

to the accumulation of family assets (Harimurti, 2021; Risky, 2020). Nevertheless, neither the compilation of Islamic law nor the civil code explicitly explains the philosophical basis underlying the fifty-fifty distribution model. The statutory provisions merely prescribe the legal consequences without elaborating on whether equal contribution, reciprocal marital obligations, or the legal status of marriage itself justifies equal division. Consequently, the legal foundation of equal distribution remains largely normative, leaving considerable room for judicial interpretation regarding the meaning of fairness in particular circumstances.

Although Indonesian positive law does not explicitly allocate marital property according to economic contribution, the legal framework governing spouses' rights and obligations indirectly shapes the judiciary's understanding of fairness. Indonesian marriage law differentiates the respective responsibilities of husband and wife by positioning the husband as the primary provider of financial support and family protection, while assigning the wife primary responsibility for domestic management and maintaining family harmony (Andesma, 2024; Muda'i & Wahid, 2023). These differentiated responsibilities indicate that Indonesian law recognizes complementary rather than identical marital roles.

Importantly, the distinction between marital obligations does not result in unequal ownership rights over marital property. Instead, the law assumes that each spouse fulfills their respective obligations in accordance with their legally recognized roles, thereby justifying an equal entitlement to marital assets upon divorce (Khairina et al., 2024). This approach reflects the partnership principle embedded within Indonesian family law, whereby economic and domestic contributions are considered equally valuable despite their different forms. However, this normative assumption does not always correspond with social reality. In many marriages, one spouse may fail to perform the obligations assigned by law, whether by neglecting financial support, abandoning domestic responsibilities, or failing to participate meaningfully in family life. Under such circumstances, strict application of the equal division principle may itself generate inequitable outcomes because the factual distribution of responsibilities differs substantially from the legal assumption underlying the statutory framework.

The discrepancy between normative assumptions and social reality has prompted Indonesian courts to adopt a more contextual approach to the distribution of marital property. Although statutory law establishes equal division as the general rule, judicial practice shows that judges often assess the factual circumstances of the marriage before determining the appropriate distribution of marital assets. Previous research indicates that courts increasingly consider the actual fulfillment of marital obligations when assessing equitable property division. Ristianawati (2021) observes that judges frequently evaluate the respective contributions of husband and wife throughout the marriage rather than relying mechanically upon the fifty-fifty formula. Likewise, Utami & Dalimunthe (2023) argue that the application of justice theory in marital property disputes has gradually shifted toward substantive fairness, taking into account the factual relationship between legal rights and marital responsibilities. Similar findings are reported by Paren et al. (2023), who demonstrate that judicial reasoning increasingly incorporates equitable considerations beyond the literal wording of statutory provisions. Furthermore, studies by Putri & Wahyuni (2021) reveal that dispute resolution concerning marital property frequently depends on a judicial assessment of fairness rather than on purely formal legal entitlement.

These findings collectively demonstrate that Indonesian judges possess considerable interpretative flexibility in applying the legal rules governing marital

property. Where one spouse is proven to have neglected fundamental marital obligations for a prolonged period, courts may conclude that equal distribution no longer reflects substantive justice. Consequently, judicial decisions increasingly recognize that proportionality, rather than strict mathematical equality, may better achieve equitable outcomes in particular cases.

Despite this important judicial development, the existing legal construction continues to evaluate marital contribution primarily through the fulfillment or neglect of normative obligations. The underlying assumption remains that both spouses possess relatively equal capacity to perform their respective legal responsibilities. Such an assumption becomes problematic when one spouse is a person with a disability whose physical, intellectual, sensory, or psychological condition objectively limits the ability to perform certain marital obligations. Current legislation provides no explicit guidance regarding how disability should influence judicial assessment of marital contribution. Likewise, previous studies examining marital property have concentrated primarily on disputes involving economically disadvantaged wives, comparisons between Islamic law and civil law, or the implementation of distributive justice in ordinary divorce cases (Harimurti, 2021; Limbong et al., 2023; Risky, 2020; Utami & Dalimunthe, 2023). Consequently, the relationship between disability, marital obligations, and property distribution remains largely unexplored within Indonesian legal scholarship.

This omission creates an important conceptual limitation because disability-related inability should not automatically be equated with legal negligence. Persons with disabilities may be unable to perform certain normative obligations while simultaneously making significant non-economic contributions that sustain family life. Evaluating their contribution solely by conventional productivity standards risks reproducing structural inequality despite the law's formal neutrality.

The analysis above demonstrates that Indonesian positive law already contains the normative foundation for contextual justice through judicial interpretation, even though statutory provisions continue to prescribe equal distribution as the general rule. The growing judicial tendency to evaluate factual marital contribution indicates that the legal system has gradually moved beyond rigid formalism toward a more substantive understanding of fairness (Hasibuan et al., 2026). However, this contextual approach has not yet incorporated disability as a relevant legal consideration. Consequently, reconstructing the concept of justice in marital property distribution does not require abandoning the existing principle of equal division but rather refining its application by recognizing differences in functional capacity. Such reconstruction requires judges to distinguish between deliberate neglect of marital obligations and objective inability arising from disability, while simultaneously recognizing both economic and non-economic contributions made during marriage.

Accordingly, the concept of marital property should be interpreted through a disability-sensitive framework that integrates proportionality, substantive equality, and legal protection for vulnerable individuals. Under this approach, the division of marital property no longer functions merely as a mechanical consequence of divorce but becomes an instrument for realizing substantive justice by ensuring that disability does not serve as the basis for post-divorce economic marginalization. Such a reconstruction is consistent not only with the evolution of Indonesian judicial practice but also with broader constitutional commitments to equality, human dignity, and the protection of persons with disabilities.

Reconstruction of justice in the division of marital property for persons with disabilities

The preceding discussion demonstrates that the legal regulation of marital property in Indonesia is founded upon the principle of equal distribution while simultaneously allowing judges to consider substantive fairness in exceptional circumstances. However, neither the statutory framework nor existing judicial doctrine explicitly addresses how marital property should be divided when one of the spouses is a person with a disability. This omission is significant because the legal assumptions underlying marital obligations are largely constructed upon the premise that both spouses possess relatively equal physical, mental, and social capacities. Consequently, the existing legal framework remains insufficient to accommodate disability-related differences in the performance of marital obligations, thereby creating the potential for substantive injustice despite the formal neutrality of the law.

The existing literature similarly reflects this limitation. Previous studies have examined marital property primarily from the perspectives of legal certainty, the protection of wives' economic interests, and the implementation of distributive justice in ordinary divorce disputes (Harimurti, 2021; Paren et al., 2023; Risky, 2020; Ristianawati, 2021; Utami & Dalimunthe, 2023). Although these studies acknowledge that judges may consider each spouse's contribution in determining equitable distribution, contribution is generally interpreted through conventional marital roles, particularly the husband's financial support and the wife's domestic responsibilities. Consequently, the existing scholarship has not examined how disability affects the legal assessment of marital obligations or how disability rights principles should influence judicial reasoning in marital property disputes. This conceptual limitation leaves an important gap within Indonesian family law because disability creates objective differences in capacity that cannot simply be evaluated through the same legal standards applied to non-disabled spouses.

The reconstruction proposed in this study begins with the legal understanding of marital obligations. Indonesian marriage law differentiates the respective responsibilities of husband and wife by assigning the husband primary responsibility for financial maintenance and family protection, and the wife primary responsibility for managing the household and maintaining family welfare (Andesma, 2024; Muda'i & Wahid, 2023). The equal distribution of marital property established under article 97 of the compilation of Islamic law and article 128 of the civil code implicitly assumes that each spouse has substantially fulfilled these legally prescribed obligations throughout the marriage.

Such an assumption becomes problematic when applied to persons with disabilities. The statutory formulation of marital obligations is drafted from the perspective of legal subjects possessing ordinary functional capacity. Consequently, legal assessment often interprets the inability to perform marital obligations as evidence of insufficient contribution or legal neglect. This interpretation overlooks an essential distinction between inability arising from objective physical or mental limitations and deliberate failure to perform legal responsibilities despite possessing the capacity to do so. From the perspective of distributive justice, these two conditions cannot be treated identically. Aristotle's theory emphasizes that proportional justice requires legal differentiation whenever factual differences are relevant to the legal relationship (Wahyudi et al., 2022). Similarly, Rawls' conception of substantive justice requires legal institutions to protect individuals in disadvantaged positions within society rather than merely applying formally identical rules (Arianto et al., 2025). Accordingly, disability-related inability constitutes a legally relevant circumstance that should inform the

judicial assessment of marital obligations without eliminating the individual's status as an equal legal subject.

The reconstruction therefore proposes that the fulfillment of marital obligations should no longer be evaluated through a purely normative checklist but through an assessment of functional capacity. In this framework, legal responsibility remains attached to persons with disabilities; however, the scope of expected performance is adjusted according to the individual's actual capabilities. Consequently, a spouse who faithfully performs the obligations reasonably achievable within the limits of their disability should be regarded as having fulfilled marital responsibilities in a legally meaningful sense. Justice therefore lies not in comparing identical outputs but in evaluating whether each spouse has acted in good faith according to their respective capacities.

A central component of this reconstruction is the distinction between objective inability and legal negligence. Existing judicial practice frequently adjusts the distribution of marital property where one spouse has intentionally neglected fundamental marital obligations over an extended period (Ristianawati, 2021; Utami & Dalimunthe, 2023). Such judicial reasoning remains consistent with the principle of substantive justice because deliberate failure to contribute to family life may legitimately affect the equitable distribution of marital assets. However, the same reasoning should not automatically be extended to persons with disabilities. Objective limitations arising from disability differ fundamentally from voluntary neglect because the inability to perform certain obligations originates from functional restrictions rather than personal choice. Equating disability with negligence would effectively punish individuals for circumstances beyond their control, thereby contradicting the principles of proportionality, equality, and non-discrimination.

Nevertheless, disability should not create absolute immunity from legal responsibility. Persons with disabilities remain legal subjects with rights and obligations (Roncancio & Caicedo, 2022). Accordingly, where evidence demonstrates that a spouse with a disability possessed the practical capacity to perform certain marital responsibilities but deliberately refused to do so without reasonable justification, judicial assessment may appropriately consider such conduct as legal negligence. This distinction preserves the balance between legal protection and individual accountability while preventing disability status from becoming either a source of discrimination or an automatic exemption from marital responsibilities.

Building upon this distinction, this study proposes a contextual model for determining the equitable distribution of marital property involving persons with disabilities. The reconstruction does not reject the equal division principle established under Indonesian positive law. Instead, equal distribution remains the general starting point because it reflects the partnership principle underlying marriage. However, the legal assessment supporting equal distribution must be revised to incorporate disability-sensitive considerations in evaluating the fulfillment of marital obligations. Under this reconstructed framework, judges should evaluate at least four interrelated factors before determining whether deviation from equal distribution is justified. First, the functional capacity of the spouse with a disability should be examined to determine which marital obligations could reasonably be expected during the marriage. This assessment recognizes that legal responsibility must correspond to actual capability rather than idealized assumptions concerning physical or mental functioning.

Second, judges should evaluate both economic and non-economic contributions made throughout the marriage. Existing legal discourse frequently emphasizes financial

support as the principal indicator of contribution. However, emotional support, caregiving, household management, parenting, and maintaining family stability frequently constitute equally significant contributions, particularly where disability limits participation in formal employment. Third, judicial assessment should distinguish objective inability from intentional neglect. The reduction of marital property rights should occur only where deliberate failure to perform achievable obligations is established by evidence rather than presumed from disability itself. Fourth, judges should consider the parties' post-divorce socio-economic vulnerability. Persons with disabilities frequently encounter greater barriers to employment, independent living, and economic participation following divorce. Consequently, marital property distribution should also serve to prevent disability-related economic marginalization while preserving the equal dignity of both former spouses.

This reconstruction carries important implications for the future development of Indonesian family law. First, it reorients judicial assessment from formal compliance toward contextual evaluation by recognizing functional capacity as an integral element of legal responsibility. Such an approach remains consistent with distributive justice, substantive equality, and the principles of proportionality without undermining legal certainty. Second, the proposed reconstruction harmonizes Indonesian marriage law with the normative values embodied in law number 8 of 2016 concerning persons with disabilities. The principles of equality, accessibility, non-discrimination, respect for human dignity, and special protection require legal interpretation that accommodates differences in capacity rather than imposing identical standards upon all legal subjects. Consequently, disability becomes a legally relevant consideration in interpreting marital obligations without altering the fundamental partnership principle governing marital property.

Third, this reconstruction provides clearer normative guidance for judicial reasoning. Rather than relying exclusively on abstract assumptions about marital roles, judges are encouraged to examine the factual circumstances of the marriage, including medical conditions, functional limitations, family dynamics, actual contributions, and evidence of good faith. Such contextual evaluation enhances judicial consistency while simultaneously strengthening substantive justice. Ultimately, the reconstruction proposed by this study transforms the concept of justice in marital property distribution from a model primarily centered on formal equality into one grounded in proportionality, contextual fairness, and human dignity. Marital property is therefore no longer understood merely as an economic consequence of divorce but as a legal instrument for realizing substantive justice by ensuring that disability does not become a source of structural disadvantage within Indonesian marriage law. In doing so, this study extends the existing discourse on marital property beyond conventional debates concerning gender-based contribution by integrating disability rights into the legal construction of distributive justice, thereby offering a new normative framework for future judicial interpretation and legal reform.

Conclusion

This study concludes that the concept of justice governing the division of marital property for persons with disabilities under Indonesian marriage law requires reconstruction from a formal equality approach toward a substantive justice approach. Although article 97 of the cof Islamic law and article 128 of the Indonesian civil code establish equal division as the general principle, these provisions are based on the implicit assumption that both spouses possess a relatively equal capacity to fulfill their

marital obligations. Such an assumption becomes inadequate when applied to persons with disabilities whose physical, intellectual, mental, or sensory conditions objectively affect their ability to perform certain legal responsibilities. Accordingly, this study finds that justice in the distribution of marital property should not be measured solely by the formal fulfillment of normative obligations but should instead be assessed proportionately by considering the functional capacity of each spouse, the recognition of both economic and non-economic contributions during marriage, the distinction between objective inability and intentional negligence, and the socio-economic vulnerability experienced after divorce. Through this reconstruction, equal division remains the general rule, while judicial deviation from that rule should be justified only where deliberate neglect of obligations is established rather than where limitations arise from disability.

The proposed reconstruction contributes both theoretically and practically to the development of Indonesian family law. Theoretically, this study expands the discourse on distributive justice by integrating the principles of substantive equality and disability rights into the legal construction of marital property distribution. It further demonstrates that proportional justice requires legal interpretation to accommodate differences in individual capacity while preserving equal legal dignity. In practice, the proposed framework provides normative guidance for judges and legal practitioners to evaluate marital contributions more contextually, thereby harmonizing Indonesian marriage law with the principles embodied in law number 8 of 2016 concerning persons with disabilities. Nevertheless, this study is limited by its normative legal research design, which relies primarily on statutory analysis, legal doctrine, and previous scholarship. As a result, the study does not examine how judges currently assess disability-related circumstances in actual marital property disputes, nor does it investigate the lived experiences of persons with disabilities who have undergone divorce proceedings.

Future research should therefore extend this normative framework through empirical and socio-legal investigations. Studies involving judicial decisions, interviews with judges, legal practitioners, and persons with disabilities, as well as comparative analyses with jurisdictions that have incorporated disability-sensitive approaches into family law, would provide valuable evidence for evaluating the practical implementation of the proposed reconstruction. Furthermore, future research may develop more specific judicial indicators for assessing functional capacity, non-economic contribution, and post-divorce vulnerability in marital property disputes. Such studies would strengthen the operationalization of substantive justice and support future legal reform to ensure that Indonesian marriage law provides equal protection, respects human dignity, and accommodates the diverse capacities of all legal subjects.

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