



Research Article

A Comparative Analysis of the Practice of “*Ngone’en Bhen Ghiben*” After Divorce Under Islamic Law and Civil Law (A Case Study in Lenteng Barat Village, Lenteng District, Sumenep Regency)

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Abstract. This research aims to analyze the practice of post-divorce property division through the “*Ngone 'en Bhen Ghiben*” tradition viewed comparatively according to Islamic law and civil law, with the research locus in Lenteng Barat Village, Lenteng District, Sumenep Regency. The background of this research departs from the strong phenomenon of marital asset settlement based on customary law in Madurese society and the frequent occurrence of inequality in the division of brought-in property and joint property after a household breaks up, which often triggers internal conflicts within extended families. The research uses a descriptive qualitative method with comparative juridical and sociological

approaches. Primary data were obtained through deep interviews with former married couples, customary leaders, religious leaders, and village officials, while secondary data sourced from joint property (*syirkah*) fiqh literature, the Compilation of Islamic Law (KHI), and the Civil Code (KUHPer). Data analysis was conducted interactively through stages of data reduction, data display, and conclusion drawing. The research results show that the "*Ngone'en Bhen Ghiben*" practice rigidly separates brought-in property (*ngone'en*) and property acquired during marriage (*ghiben*). The perspective of civil law and Islamic law (through KHI) shares similarities in dividing joint property equally, but this local customary tradition tends to ignore the wife's non-economic contribution in the event of a divorce. Legal alignment can be achieved if the customary settlement continues to prioritize the principles of justice (*'adalah*) and peace (*shulh*) without damaging the rights of either party.

Keywords: *Ngone'en Bhen Ghiben*, Islamic Law, Civil Law

INTRODUCTION

Marriage is the fundamental social institution in Islam, intended to establish a lawful family and produce a pious generation. Within this sacred bond, there is a union not only between two individuals but also of the property acquired during the course of the marriage. When a marriage is forced to end in divorce, the settlement of property rights or marital property becomes a crucial aspect requiring legal certainty to ensure justice for both parties. Under Indonesian positive law, the division of marital property is comprehensively regulated in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPer*) and the Compilation of Islamic Law (*Kompilasi Hukum Islam/KHI*), which, in principle, provide for an equitable distribution of such property between the former husband and the former wife. This formal legal framework was established to provide legal protection, prevent prolonged disputes, and safeguard the economic rights of each party following divorce so that the transition to post-divorce life may proceed fairly.

However, the implementation of written law concerning the division of marital property in practice does not always correspond with the provisions of positive law or the normative principles of Islamic law. In several regions of Indonesia, particularly among the indigenous communities of Madura, the settlement of post-divorce property is often governed by customary law or local traditions, one of which is the practice of "*Ngone'en Bhen Ghiben*" (inherited property and property brought into or acquired during marriage). Several studies have shown that the dynamics of property division based on this traditional practice frequently give rise to differing standards of justice, whereby entitlement to household assets is determined according to physical contribution or initial ownership as regulated by customary law, rather than the principle of equal distribution mandated by statutory law (Wibowo, 2021). This customary mechanism of dispute resolution often results in social tension and one-sided disadvantages, particularly for former wives whose economic rights are vulnerable to being overlooked if they are not formally documented. Nevertheless, other studies have revealed that amicable settlement through local traditions has proven capable of resolving disputes peacefully without requiring lengthy judicial proceedings (Nugroho et al., 2020). From the perspective of Islamic law, the essence of post-divorce property distribution should be founded upon the principle of justice

('adalah) and should primarily aim to realize *maslahah* (public welfare) while preventing hostility ('*adawah*) between the parties (Anwar, 2022; Fatimah, 2020).

Social realities indicate that the people of Lenteng Barat Village, Lenteng District, Sumenep Regency, who firmly uphold the customary values of Eastern Madura, continue to practice the tradition of "*Ngone' en Bhen Ghiben*" in resolving the division of property following divorce. Nevertheless, most previous studies concerning post-divorce property distribution have primarily focused on the analysis of disputes over marital property adjudicated in the Religious Courts or on their implementation within urban communities that rely upon written law. For example, a study conducted by Lestari and Wijaya (2018) found that the implementation of the provisions governing marital property in the Compilation of Islamic Law (KHI) had a strong influence on legal compliance; however, the study was limited to the context of formal judicial institutions, where society tends to exhibit a relatively homogeneous awareness of state law. Likewise, Lopez and Saputra (2020) demonstrated a correlation between the clarity of property status and the psychosocial well-being of former spouses, yet their research again focused on urban communities and did not examine the dynamics of customary law intervention in rural areas characterized by strong local traditions.

A study by Al-Munir (2019) emphasized that Islamic law recognizes customary practices ('*urf*') insofar as they do not conflict with the principles of the Sharia. However, the study did not explicitly examine the position of local property distribution traditions when directly compared with the principles of justice embodied in the Western civil law adopted within the Indonesian Civil Code (KUHPer). Another study by Syarifuddin and Rahman (2021) argued that the traditions of marriage and divorce in Sumenep are strongly influenced by informal agreements among extended family members; however, it did not specifically analyze the practice of "*Ngone' en Bhen Ghiben*" within the framework of a comparative analysis between Islamic law and civil law. Therefore, the limited number of studies integrating the dimensions of Islamic law, civil law, and the dynamics of customary law in rural communities demonstrates the existence of a research gap. This study seeks to address that gap by explicitly analyzing the post-divorce practice of "*Ngone' en Bhen Ghiben*" from the perspectives of Islamic law, civil law, and the socio-cultural dynamics of society. Specifically, this research focuses on the procedures, underlying background, and comparative legal analysis of this traditional property distribution practice. Accordingly, the objective of this study is to analyze the practice of "*Ngone' en Bhen Ghiben*" from the perspectives of Islamic law and civil law and to identify the factors underlying the persistence of this tradition in Lenteng Barat Village, Lenteng District, Sumenep Regency.

METHOD

This study employed a qualitative research design using a juridical-empirical approach to compare the implementation of customary law and written law in the settlement of post-divorce matters. Primary data were obtained through interviews with former married couples who divided their property according to customary practices, Madurese customary elders, and the village head of Lenteng Barat.

Secondary data were collected from the Indonesian Civil Code (KUHPerdota), the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), and village dispute documents. Data collection in the field maximized the use of interview techniques, participant observation of the condition of the assets, and documentation of amicable settlement agreements. All collected data were analyzed comparatively through the stages of field data condensation, the preparation of comparative legal narratives, and the formulation of theoretical conclusions (Saldana, 2019). The trustworthiness of the data was examined through theory triangulation and source triangulation to ensure the objectivity of the property rights distribution investigated.

RESULTS AND DISCUSSION

The Practice and Procedures for the Distribution of "*Ngone' en Bhen Ghiben*" Property After Divorce in Lenteng Barat Village, Lenteng District, Sumenep Regency

The practice of property distribution following divorce in Lenteng Barat Village, Lenteng District, Sumenep Regency, is empirically dominated by the application of local customary law known as the "*Ngone' en Bhen Ghiben*" tradition. This term refers to the strict distinction between the separate property brought into the marriage by either the husband or the wife (*ngone' en*) and the property brought into or acquired jointly during the marriage (*ghiben*). Although state law provides formal mechanisms for resolving disputes concerning marital property through the Religious Court or the District Court, the people of Lenteng Barat Village collectively prefer to settle the distribution of domestic assets independently at the village level based on long-established customary practices, as reflected in the following actual cases.

The case involving the former spouses Mr. K.M. and Mrs. S.N. demonstrates the implementation of the *Ngone' en Bhen Ghiben* tradition through a peaceful settlement reached by deliberation among members of the extended family. Following the divorce, all separate property in the form of an inherited plot of land brought into the marriage by the husband (*ngone' en*) was returned entirely to him without any objection from the former wife. Meanwhile, jointly acquired property (*ghiben*), consisting of one motor vehicle and savings accumulated during the marriage, was divided equally between the parties after deducting the outstanding household debts. In contrast, the case involving the former spouses Mr. T.R. and Mrs. M.A. illustrates a customary property distribution process characterized by significant social conflict. The former husband claimed that the house they had occupied constituted his separate property (*ngone' en*) because it had been built on land belonging to his family, whereas the former wife asserted her right to the house on the grounds that she had contributed financially to its renovation through her income as a trader. The absence of formal written documentation made the distribution of the assets increasingly difficult and resulted in strained relationships between the two extended families.

In the case involving the former spouses Mr. J.I. and Mrs. F.R., the customary method of property distribution was considered detrimental to the woman because of its rigid assessment of domestic contributions. During the marriage, Mrs. F.R. devoted herself entirely to her role as a full-time housewife, while Mr. J.I. was

responsible for earning the family's income. When the marriage ended in divorce, the property acquired during the marriage (*ghiben*) was unilaterally controlled by the former husband on the grounds that it had been purchased solely through his own earnings. The former wife was only permitted to reclaim her gold jewelry, which was classified as her separate property (*ngone' en*). Meanwhile, the case involving the former spouses Mr. H.O. and Mrs. Z.T. demonstrates a customary property settlement mediated by the local hamlet head. The distribution process was carried out through the preparation of an informal written settlement agreement signed privately in the presence of community leaders to prevent prolonged disputes in the future. This description of the reality of post-divorce property distribution indicates that economic justice within the family largely depends upon the three principal pillars of property rights protection in Islam, namely:

The Prohibition of Wrongfully Consuming the Property of Others

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ...

Translation: “O you who believe! Do not consume one another’s wealth unjustly, except through trade conducted by mutual consent among you...” (Qur'an, Surah An-Nisa' [4]: 29).

The Obligation to Fulfill Rights and Uphold Justice

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

Translation: “Indeed, Allah commands you to render trusts to those entitled to them, and when you judge between people, judge with justice...” (Qur'an, Surah An-Nisa' [4]: 58).

The Recommendation to Prioritize Peaceful Settlement in Disputes

...وَالصُّلْحُ خَيْرٌ...

Translation: “...And reconciliation is best (for them)...” (Qur'an, Surah An-Nisa' [4]: 128).

Background and Community Perspectives on the “*Ngone' en Bhen Ghiben*” Tradition in Lenteng Barat Village, Lenteng District, Sumenep Regency

Based on the results of in-depth interviews with several customary authorities and local residents, various sociological determinants underlying the persistence of the *Ngone' en Bhen Ghiben* tradition in Lenteng Barat Village were identified. To maintain ethical standards, the identities of the informants have been anonymized using pseudonymous initials. First, Mr. S.M. (SM), a local customary elder, explained that the community's perception of this tradition is rooted in psychological obedience to the ancestral heritage of Eastern Madura. The villagers believe that the absolute separation of separate property (*ngone' en*) is the most honorable way to preserve the integrity of family assets from external intervention following divorce.

Second, Mr. M.F. (MF), the village head, explained that efficiency in terms of time and cost constitutes the primary reason why community members are reluctant to bring disputes over marital property before the Sumenep Religious Court. Resolving property distribution through the formal legal system is considered highly complicated, requiring documentary evidence that village residents rarely possess,

and involving expensive court costs. Consequently, amicable settlement through the *Ngone'en Bhen Ghiben* tradition at the hamlet level is regarded as a far more practical solution. Third, Mrs. R.K. (RK), a prominent female community leader, expressed her critical view that this tradition persists because of the normalization of a patriarchal culture that positions men as the primary owners of property. Many former wives are compelled to accept this customary pattern of property distribution because they feel reluctant and fear being labeled as greedy women by the surrounding community if they demand an equal division of jointly acquired property.

Another internal societal factor contributing to the persistence of this tradition is the strong role of informal mediation carried out by village officials and local religious leaders. Whenever a divorce occurs, the *klebun* (village head) or the local *kyai* usually intervenes directly to reconcile both parties by applying the customary principles of *Ngone'en Bhen Ghiben*. The collective perception within the community is that resolving disputes on the terrace of a place of worship or at the village hall is far more blessed and preserves the dignity of the family better than engaging in adversarial proceedings in an open formal courtroom.

In addition to considerations of efficiency, the absence of systematic bookkeeping or inventory records of assets accumulated during marriage constitutes another significant sociological factor. The majority of married couples in Lenteng Barat Village have never documented which assets were jointly acquired after marriage. When a marriage ends in divorce, the *Ngone'en Bhen Ghiben* tradition becomes the easiest practical solution because community members merely identify the major assets that each spouse physically remembers bringing into the marriage at its inception.

Furthermore, the agrarian economic structure of the community in Lenteng Barat Village further reinforces the position of this tradition. Most valuable assets in the village consist of agricultural land, dry farmland, or livestock, whose ownership lineage is often closely associated with inherited family property. Sociologically, the community considers it inappropriate for inherited ancestral land belonging to the husband's family to be divided equally or sold for the benefit of a former wife who is no longer part of the extended family. Consequently, the principle of *ngone'en* (that separate property must always return to its original owner) is regarded as an absolute rule that cannot be negotiated.

The fourth factor relates to the existence of moral sanctions and social pressure in the form of cultural ostracism imposed upon anyone who dares to violate the customary consensus governing this property distribution system. If a former husband or former wife insists on bringing a marital property dispute before the Religious Court in order to obtain a larger share than that provided under customary rules, that individual will be viewed negatively by the villagers as someone who does not understand or respect local customs (*ta' tao adâ'*). Fear of losing social capital and personal reputation within this closely knit rural community compels the parties to comply with the *Ngone'en Bhen Ghiben* method of property distribution.

Finally, the limited level of legal literacy concerning the national legal concept of marital property (*syirkah/gono-gini*) among rural women further exacerbates the unequal consequences of this tradition. Many housewives in Lenteng Barat Village

are unaware that marriage legislation grants them the economic right to one-half of all property acquired during the marriage, regardless of whether they participated in earning income. This lack of legal awareness perpetuates a customary tradition characterized by gender bias, in which the wife's contribution to childcare and household management is regarded as having no value in calculating the distribution of property following divorce.

Comparative Analysis of the Practice of “*Ngone' en Bhen Ghiben*” After Divorce According to Islamic Law and Civil Law in Lenteng Barat Village, Lenteng District, Sumenep Regency

From the perspective of comparative law, the practice of property distribution through the “*Ngone' en Bhen Ghiben*” tradition reveals both points of convergence and points of divergence when directly compared with Islamic Law (the Compilation of Islamic Law/KHI) and Civil Law (the Indonesian Civil Code/KUHPerdata). The following presents a detailed comparative analysis of this practice:

The Concept of Separate Property (Ngone' en) in the Two Legal Systems

With regard to the status of separate property (*ngone' en*), both Islamic Law (Article 86 of the Compilation of Islamic Law) and Civil Law (Article 119 of the Indonesian Civil Code through the mechanism of a prenuptial agreement) are entirely consistent with the customary tradition of Lenteng Barat Village. Both written legal systems recognize that property acquired before marriage, as well as property obtained through gifts or inheritance during the marriage, remains the exclusive property of the spouse who originally owned or acquired it. Accordingly, the customary practice of returning all *ngone' en* property to its original owner following divorce is considered lawful, equitable, and fully consistent with both positive law and Islamic law.

The Concept of Joint Property (Ghiben) and the Standard of Justice in Its Distribution

The fundamental difference lies in the mechanism for distributing property acquired during the marriage (*ghiben*). Article 97 of the Compilation of Islamic Law and Article 119 of the Indonesian Civil Code explicitly provide that jointly acquired property must be divided equally, with each former spouse receiving one-half (50%) following the dissolution of marriage through divorce, regardless of which spouse earned the family's income. In contrast, under the *Ngone' en Bhen Ghiben* tradition in Lenteng Barat Village, the distribution of *ghiben* property frequently disregards the rights of the wife if she served solely as a housewife. This customary practice conflicts with the modern Islamic legal principle of justice, which recognizes that a wife's domestic labor possesses economic value equivalent to the husband's financial contribution through the concept of *syirkah abdan*.

When examined from a philosophical and juridical perspective, the inequality found within the *Ngone' en Bhen Ghiben* tradition in Sumenep stems from differing paradigms regarding the definition of contribution within marriage. Western civil law views marriage as automatically creating a community of property (*algehele gemeenschap van goederen*) from the moment the marriage contract is concluded, unless otherwise stipulated by a prenuptial agreement. Likewise, the Compilation of Islamic Law (KHI), developed through the *ijtihad* of Indonesian Islamic scholars,

reconstructs classical fiqh by providing that property acquired during marriage automatically constitutes joint property because of the implicit partnership (*syirkah mufawadhah*) between the husband, who works outside the home, and the wife, who manages domestic affairs within the household.

In contrast, the sociology of customary law in Lenteng Barat Village continues to apply a concept of justice that is transactional and mechanical in nature. According to local custom, ownership rights over *ghiben* property belong only to the person whose name appears on the proof of purchase or to the individual who physically paid for the asset during the transaction. This rigid customary perspective overlooks the psychological and juridical reality that the emotional stability and domestic support provided by the wife constitute essential factors enabling the husband to work productively outside the home.

Accordingly, from the perspective of Islamic law, the continuation of this gender-biased *Ngone' en Bhen Ghiben* tradition must be evaluated through the doctrine of 'Urf (customary practice). Islamic law classifies customary practices into two categories: 'Urf Shahih (valid and acceptable customs) and 'Urf Fasid (invalid customs that conflict with the principles of the Sharia). When the *Ngone' en Bhen Ghiben* tradition is applied solely to distinguish separate property (*ngone' en*), it falls within the category of 'Urf Shahih. However, when the same customary rule is used to deprive a former wife of her rightful share of jointly acquired property (*ghiben*) merely because she did not participate in paid employment outside the home, the custom becomes 'Urf Fasid, the implementation of which is prohibited because it results in injustice (*dhulm*), which is forbidden in Islam.

From the standpoint of the effectiveness of civil law, the settlement of property disputes through informal customary institutions in Lenteng Barat Village possesses a significant weakness with respect to formal legal certainty. Customary settlement agreements executed before the village head do not possess the same executorial legal force as court judgments. Consequently, should one of the parties later breach the agreement or unilaterally reclaim the assets, the injured party must initiate legal proceedings from the beginning before the court, thereby prolonging legal disputes and increasing the financial burden upon members of the community.

To bridge the gap between customary law, Islamic law, and civil law, an inclusive process of legal convergence is required in Sumenep Regency. Islamic law does not prohibit the settlement of property disputes through peaceful reconciliation at the village level (*shulh*); indeed, it considers such reconciliation to be a virtuous act. Nevertheless, the customary reconciliation process under the *Ngone' en Bhen Ghiben* tradition in Lenteng Barat Village should ideally adopt the substantive principles of justice embodied in both the Compilation of Islamic Law and the Indonesian Civil Code by recognizing the former wife's right to one-half of the jointly acquired (*ghiben*) property in order to safeguard the welfare (*maslahah*) of women after divorce.

From a philosophical perspective, the persistence of the "*Ngone' en Bhen Ghiben*" tradition of post-divorce property distribution in Lenteng Barat Village demonstrates the remarkable resilience of customary law in resisting the dominance of the state's written legal system. This phenomenon illustrates that justice at the grassroots level

is not always measured by the provisions of formal legislation but rather by the extent to which a customary decision is capable of preserving cultural harmony and preventing the disintegration of kinship relations within the extended families of rural Madurese society. Therefore, the greatest challenge for the sociology of law in the future is not to abolish this local tradition but to reconstruct its meaning in a more humane manner so that the noble values underlying the distribution of inherited separate property may coexist with the fair and equitable fulfillment of the civil economic rights of former wives.

As the concluding part of this comparative analysis, the harmonization of Islamic law, civil law, and the *Ngone' en Bhen Ghiben* tradition ultimately depends upon the moral awareness of the holders of customary and religious authority in Lenteng Barat Village. The settlement of disputes through village-based reconciliation (*shulh*) is a highly honorable mechanism recommended by Islamic law; however, such virtue disappears when the customary mediation process itself produces new forms of injustice toward the weaker party. An integrated synergy among legal education provided by the Religious Court, active supervision by village government officials, and the internalization of the principles of justice embodied in *syirkah* through the religious sermons of local *kyai* constitutes the key solution. Only through such a comprehensive approach can the Madurese tradition governing the distribution of separate property and jointly acquired property evolve into a customary legal system that is not only culturally resilient but also promotes *maslahah*, justice, and harmony with the noble principles of Indonesia's Islamic family law.

CONCLUSION

The practice of post-divorce property distribution among the people of Lenteng Barat Village, Lenteng District, Sumenep Regency, is empirically dominated by the application of customary law through the "*Ngone' en Bhen Ghiben*" tradition. This customary pattern applies a strict separation between each spouse's separate property (*ngone' en*) and the jointly acquired property obtained collectively during the marriage (*ghiben*). Most property disputes are resolved through informal mediation at the village level in order to avoid the complexity of formal court proceedings.

The persistence of this customary property distribution tradition is rooted in psychological adherence to the ancestral heritage of Eastern Madura, as well as the absence of proper documentation recording household assets. The efficiency of avoiding court costs, the strong communal ownership of inherited agricultural land belonging to extended families, and the existence of moral sanctions in the form of social ostracism for those who violate customary norms constitute the primary factors sustaining this tradition. The low level of civil law literacy among rural women has also contributed to the continued preservation of this gender-biased customary practice.

The comparative analysis demonstrates a strong point of convergence between customary law, Islamic Law (Article 86 of the Compilation of Islamic Law), and Civil Law (Article 119 of the Indonesian Civil Code) regarding the status of separate property (*ngone' en*). All three legal systems agree that separate property, gifts, or

inherited ancestral assets remain the exclusive property of the individual who brought them into the marriage and must be fully returned to their original owner upon divorce. The customary distribution of property in this regard is therefore considered consistent with the principles of justice embodied in both written law and Islamic law.

A significant point of divergence arises in the mechanism for distributing jointly acquired property (*ghiben*), where both the Compilation of Islamic Law and the Indonesian Civil Code explicitly require an equal division of one-half (50%) for each party, regardless of their respective financial contributions. In contrast, the *Ngone'en Bhen Ghiben* tradition in practice tends to disregard the rights of former wives who served as full-time housewives by assuming that domestic contributions have no economic value. This unilateral distribution pattern by former husbands conflicts with the Islamic principle of *syirkah* justice as well as the civil law principle governing the community of property.

From a juridical-epistemological perspective, the customary practice of distributing *ghiben* property while disregarding the civil rights of women is categorized as an invalid custom (*'urf fasid*) because it gives rise to economic injustice (*dhulm*) following divorce. Furthermore, the settlement of disputes through informal village institutions lacks formal legal certainty because such agreements do not possess the executorial force of court judgments. Legal harmonization therefore requires that village-based reconciliation (*shulh*) continue to be preserved as a valuable local tradition, while the substance of the property distribution should adopt the principle of equal division in order to safeguard the welfare (*maslahah*) of former wives.

RECOMMENDATIONS

1. For the Village Government of Lenteng Barat: It is recommended that the village head and hamlet heads, as customary mediators, apply the principles of justice embodied in the Compilation of Islamic Law (KHI) when facilitating the distribution of *ghiben* property by ensuring that former wives receive an equitable one-half share.
2. For the Community and Married Couples: It is recommended that the Madurese community cultivate the practice of maintaining written records or inventories of valuable assets jointly acquired during marriage to facilitate proof of ownership in the future.
3. For Women's Empowerment Organizations: It is recommended that legal aid institutions (LBH) and local women's organizations intensify socio-legal education regarding the rights of housewives to jointly acquired marital property (*gono-gini*) in rural areas of Sumenep so that they are not compelled to accept gender-based inequalities embedded in customary practices.
4. For the Judiciary: It is recommended that the Sumenep Religious Court strengthen educational cooperation with the association of village heads in order to promote public awareness of the importance of preparing legally valid settlement agreements following customary divorce proceedings.

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