

Islamic Right for Women to Claim their Husband's EPF Contribution according to Maqasid Sharia

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Abstract

A wife has the right to claim the property jointly acquired (harta sepencarian) during the marriage period. Claims can be made during the marriage (polygamy), divorce, after death or apostasy. Among the property that is often claimed as property jointly acquired is the Employees' Provident Fund (EPF) contribution money, although the claim is often rejected by the Shariah Court due to legal constraints, especially the EPF Act 1991 (Act 452). Hence, the question arises as to the position of the husband's EPF contribution; whether it can be claimed by the wife on the basis of the property or is there another basis? Hence, the objective of this article is to discuss the position of this claim, whether considered as 'wife's rights in accordance with Islamic law' as opposed to 'property rights' in the Shariah Court. This qualitative study applied a content analysis approach for data collection and the analysis was presented descriptively. The results of the study found that the claim on the husband's EPF is more appropriate in the context of the 'claim of the wife's rights in accordance with Islamic law' than the 'claim of property rights' in the Shariah Court and in accordance with the *maqasid syaria*.

Keywords: Claims, Islamic Rights, Property, Property Jointly Acquired, *Maqasid Syaria*, Epf Contribution.

Introduction

Basically, *maqasid syaria* refers to the objective of Islamic law that has been revealed to the ummah. In the early phase of discussion, the jurists did not set a specific definition in designing the fundamentals of *maqasid syaria*. According to Ibn Asyur (2001), *maqasid syaria* refers to the meaning and wisdom which are prescribed by Islamic law (syarak) in all its forms or parts of Islamic law by not specializing in certain Islamic rulings. In addition, *maqasid syaria* is also defined as the aim of syarak which needs to be achieved by humans are five things: to protect their religion, soul, intellect, lineage, and property, also known as *usul al-khams*.

Furthermore, the position of *maqasid syaria* is crucial for scholars in conducting research on the rulings. To avoid contradiction with the *maqasid syaria*, as explained by Ibn Asyur (2001), the importance of the use of *maqasid syaria* should be considered for research purposes. While conducting research on a ruling, the mujtahid will go through the phase of comprehending the nas of the Quran, hadith, and qiyas to determine a new ruling for a new problem, which requires a prolonged study based on *the maqasid syaria* in order to carry out results in line with Islamic law (syarak).

Marriage is one of the greatest blessings given by Allah SWT to His servants. However, sometimes there are disagreements between the spouses that lead to divorce, so the property collected during the marriage period can be considered as property jointly acquired. According to Ahmad et al (2020), property jointly acquired can be claimed not only during or after the divorce (life or death), but also in the marriage, which is during the application or after polygamy, and also if there is a change of religion (apostasy) of one of the parties in the marriage. Hence, the question arises as to the position of the husband's EPF contribution; whether it can be claimed by the wife on the basis of the property held in common or is there another basis.

Recently, the claim of rights for both parties in a marriage (husband and wife) has rapidly increased. Consequently, there is a case in which the decision of the Shariah Court concerning the case of *Timah Binti Sulaiman v Abdul Rahman Bin Ayob* 14 [2001] 2 JH 297 stated that the Employees' Provident Fund (EPF) contribution as property jointly acquired. In this context, the Employees' Provident Fund (EPF) contribution is referred to as the Central Provident Fund (CPF) in Singapore, which has the same concept as the EPF. This is contradicted with the fatwa of the Muzakarah of the Islamic Religious Affairs Council which legalizes the Employees' Provident Fund (EPF) contribution as an inheritance. During the 96th Council of Rulers meeting held on September 20, 1973, the Fatwa Committee of the National Council for Islamic Religious Affairs gave an opinion and it was agreed by the Council of Rulers:

Employees Provident Fund, Post Office Provident Fund, Bank, Insurance, and Cooperation Company nominees serve as executors of the deceased's will. They are entitled to inherit the deceased's money from those sources, to be distributed to persons entitled according to the Faraid.

Then the Fatwa Committee of the National Council on September 19, 2000, decided that:

The EPF money is an inheritance which must be divided according to faraid, and the EPF nominee is the executor or administrator of the property. Nominees must distribute the EPF money (the deceased's legacy) according to the Faraid ruling.

In addition, the EPF contribution are covered by the EPF Act 1991 (Act 452) through the provisions of sections 51 and 54, which do not allow the contribution money to be distributed, transferred, or withheld for any purpose by any party, or in other words, it cannot be randomly withdrawn (Tapah, 2003), including in the context of a property jointly acquired.

However, the EPF's contribution claim on the basis of the property is seen to be increasing as many related cases such as the *Che Mas Abdullah v. Mat Sharie Yaakob* [2005] 19 JH 1 32; *Norhayati binti Yusoff vs Ahmad Shah Bin Ahmad Tabarani* [2008] 27 JH 1 30; *Noridah binti Ab Talib vs Hishamuddin bin Jamaluddin* [2009] JH 29 2 213; and the case *NZ Vs MKIK* [2018] [Case Mal No. : 10000-017-0011]. But the Shariah Court has thrown out all of those cases because the property was bought together.

Still, in certain circumstances, the claim for EPF contribution is allowed by the court, for example, where in a situation where a husband does not own property, the wife can submit a claim of 'right of wife' pertinence with syarak (Islamic law) if her husband does not perform his responsibilities (Tapah, 2010), such as not providing nafaqah. Hence, the objective of this article is to study the permissibility of the husband's EPF contribution claim through the 'right of wife' according to *the perspective of maqasid syaria*. This qualitative study uses a content analysis approach in data collection and analysis and presents the results descriptively.

A Brief Discussion of the Concept of *Maqasid Sharia*

According to linguistics, *maqasid sharia* is a combination of two words, which are *maqasid* and *sharia*. The word *maqasid* is jama' for *maqsud*, which means purpose (*al-maqsud*) and meaning (*al maqsud*), which means that these two words carry the same meaning (Al-Raysuni, 2014). While the word *sharia* is derived from the word *syarak*, which means way or description (Al-Jur, 1973), or the path that man regularly uses to get water for himself or his livestock (Ibn Manzur, 1984). As for *sharia*, according to Zaydan (2002), it is referred to as a straight path or can be defined as *manhaj* based on the term perspective, *sharia* is the ruling that has been ruled by Allah SWT on His servants. *Sharia* can also be referred as *al-Din* and *al-Milah* which carries the same meaning.

Thus, *maqasid syaria* is one of the terms founded on the effects based on historical evolution, as per other kinds of disciplines. For example, the expansion of *usul fiqh* and *fiqh science of knowledge*. *Maqasid syaria* has undergone a great expansion from one period to another. Various definitions of *maqasid syaria* have been given by Islamic scholars. Among the definitions are:

(1) According to Ibn Asyur (2001), *maqasid syaria* is the implication and wisdom that *syarak* prescribes in all Islamic laws or parts of them by not specifying in specific Islamic laws.

(2) Al-Zuhayli (2014), *maqasid syaria* is the meaning and purpose that is secured by *syarak* in all its rulings or most of them. It is the purpose of *syarak* and the secret that has been set by Allah SWT for each ruling.

(3) Al-Raysuni (2014), said that *maqasid syaria* is the goal, decision, or benefit of syarak in order for syarak to rule. *Maqasid syaria* can also be referred to as the objective set by sharia to offer public interest (maslahat) for humans.

Thus, *maqasid syaria* refers to the goals, purpose, meaning, and wisdom of Islamic ruling as well as the secrets in order to preserve the public interest (maslahat) and harm of human life either in this world or hereafter. In addition, the importance of understanding and studying *the maqasid of sharia* is for the deep comprehension of fiqh. It can also be apprehended that *maqasid syaria* carries the values found in the Qur'an and Sunnah of the Prophet PBUH. With these values, scholars have done ijtihad to explain a problem with thoughtfulness.

Maqasid syaria is divided into three sections based on its importance to humans (Al-Zuhayli, 1995):

- (i) *Daruriyyah* (necessity) is something that is needed by humans. If it is not carefully taken care of the basic needs in human life, it will lead to harm in this world and punishment in the hereafter. *Daruriyyah* is placed in the foremost position. There are five things in the *daruriyyat*, which are religion, life, intellect, lineage, and property.
- (ii) *Hajiyyah* (complementary) is something that is meant to offer comfort to humans and remove difficulties. The absence of maslahah *hajiyyah* is not similar to the level of maslahah *daruriyyah*. But that only led to difficulties.
- (iii) *Tahsiniyyah* (embellishment) is to make human life equivalent and consistent with manners and morals. The absence of this maslahah does not make it irregular or disturbed as in maslahah *hajiyyah* and does not cause difficulties or damage in their lives as it happens in maslahah *daruriyyat*. However, this will be in conflict with maintaining self-respect, moral values, and fitrah (Zaydan, 2009).

The Wife's Rights to claim on her husband KWSP Contribution/ saving based on Maqasid Sharia

Islam has determined everything have it rights and need to be preserve and achieve. For example, when there is a disagreement between husband and wife that leads to harm, Islam provides several approaches so that both parties are not mistreated such as fasakh, taklik, khulu' and so on. If the husband fails to perform his responsibilities, the wife has the rights to be claimed as prescribed by Allah SWT in the Qur'an and al-Sunnah. Among the rights are nafaqah, debt, child custody (hadanah and mutaah) (Gusni et. al., 2012; Tapah, 2003). Also, in the context of the wife's right claim on the husband's EPF contribution also one kind of the right for the wife in line with syarak; if the husband fails to fulfill his responsibility of providing nafaqah to the wife. The *maqasid syaria* perspectives in term of the wife's rights to claim on EPF contribution are:

The Care and Preservation of Property for the Fairness of the Parties in Marriage

In general, the EPF contribution belongs to the individual since the contribution is generated from the employee's contribution and the employer's contribution (Tapah, 2003). It should be noted that this property, such as EPF contribution, is a property in the form of savings where the savings amount has not reached half of the property acquired during the marriage (Tapah, 2010). This situation coincides with the commandment of Allah SWT which prohibits his servant from taking or using the rights of others in a wrong way based on His statement (the Quran, al-Baqarah, 2:188), which means, "And do not consume one another's wealth

unjustly or send it (in bribery) to the rulers in order that (they might aid) you (to) consume a portion of the wealth of the people in sin, while you know (it is unlawful)". The verse clearly shows that Allah SWT prohibits humans from taking other people's property by deceiving them while they know that the property owned belongs to another (Ibn Kathir, 2013). Islam takes crucial care of the rights of its ummah, especially the individual rights which cannot be owned, such as EPF contributions. This is because EPF contributions are the right of individuals exclusively.

However, claiming ownership of this KWSP contribution is only permissible in the context of the domestic, in a situation where the husband failed to fulfil his duties during the marriage, such as being polygamous to the previous wife, such as not providing sufficient nafaqah (Bakar, 2010). Not to mention, if the husband does not own any property during the marriage period except the EPF contribution (Tapah, 2003; 2010), it leads to difficulties in providing sufficient nafaqah to his wife.

Still, the husband cannot use this reason to neglect his responsibilities because the nafaqah is the duty of the husband to the wife (Al-Bugha, 2013). As Allah SWT said: "Mothers may breastfeed their children for two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mother's provision and their clothing according to what is acceptable" (Al-Baqarah 2:233).

The above meaning explains that the breastfeeding period for a child is at least two years and it is the duty of the husband to provide nafaqah and clothing to the wife who is breastfeeding her child, referring to the custom according to their competence (Ibn Kathir, 2013).

When a wife is divorced by her husband, the wife has the right to earn nafaqah during iddah (Al-Marghinani, 2008) and has the right to claim her rights based on Islamic law if the ex-husband fails to pay the nafaqah after the matrimonial period. For example, in the case of *Rasnah binti Ariffin v. Shafri bin Khalid* 15 [2000] 2 JH 189. In this case, the defendant (husband) did not provide for the plaintiff (wife) from 1998. The plaintiff has filed a claim of RM 400 per month. The court's decision ordered the defendant to pay RM 300 per month

Besides the claim for nafaqah, mutaah is among those that can be claimed by the wife referred to the case of *Masiran bin Saadali v. Azizah binti Abd. Rahman* 16 [2011] 1 JH 33. In this case, the plaintiff and defendant married in 1998 and were confirmed divorced in 2000. The defendant has submitted a mutaah claim of RM 21,600.00 and nafaqah. The court has ordered the defendant must pay the mutaah claim for RM 10,000.00 in instalments of RM150 and RM 1,000.00 for the nafaqah (alimony) during the eddah to the defendant.

It should be highlighted that unpaid nafaqah considered as debt of the husband to the wife as it is a right that must be provided to the wife while in marriage. If this EPF contribution is denoted as seizure of property either in the Shariah or civil Courts, the EPF may use would advise contributors to settle all the claims when the time is allowed to withdraw the contribution under the court order (Tapah, 2003). This order can be viewed based on *the case of SSMY vs. MBO* [Case Mal bill: 10007-023-0236-2018]. In this case, the defendant claims a child sustenance (nafaqah) arrears of RM 79,600.00. The judge ordered the defendant to pay

arrears of RM 700.00 per month and the balance will be fully paid after he withdrew the EPF contribution.

Reflected to Allah SWT commandment, it is clear that Islam takes care of the rights of believers equally and defies the neglect of the husband's responsibilities to the wife. Islam has also established the necessary guidelines to prevent people from abdicating their responsibility to the ummah. Thus, the rights of the husband and wife are able to be protected from any element of tyranny.

Preserving Life from the Harmful Strain of Life

Hifz al-Nafs is to preserve oneself and society that leads to risky life because this life involves various races and nations (Ibn Ashur, 2001). Islam is very concerned about the lives of its ummah by reminding them to always take care of their daily life and soul as commended by Allah SWT. Allah SWT said, "And spend in the way of Allah and do not throw [yourselves] with your [own] hands into destruction [by refraining]. And do good; indeed, Allah loves the doers of good." (al-Baqarah 2:195).

This verse explains that a human being is obligated to earn for provision (nafaqah) to lessen conflict of hunger, thirst or fatigue (Ibn Kathir, 2013). Allah SWT also reminded "And do not kill any soul (a person) whom Allah has forbidden, except for a just cause! Whoever is killed wrongfully (unjustly), We have indeed given to his heir the authority" (Al-Isra 17:33). This verse explains that Allah SWT forbids human from committing suicide and killing other people except under the permission of syarak such as a Muslims who apostated (Ibn Kathir, 2013). This harm should be avoid based on a method of fiqh stating *that 'The harm must be prevented'* (Al-Suyuti, 1998). This situation can be seen when the husband neglects his responsibilities such as not providing nafaqah to his wife which harmfully affected the emotions of a wife as happened in the case of *Maisarah Binti Ali v Mohd Syariffuddin bin Abd Halim* [Case mal Bil: 01007-014-0122-2017]. In this case, the plaintiff has submitted a Fasakh claim to the defendant at the Pontian Shariah Subordinate Court. The fact of this case is, the plaintiff and the defendant were married on December 11, 2016 and were not gifted with children. After marriage, the defendant left the plaintiff for 4 months without any physically and spiritually maintenance (nafaqah). The defendant was in debt and all the debts were borne by the plaintiff to pay off the debt.

The defendant's actions have caused the plaintiffs to experience very strong emotional stress because, throughout the marriage, there was no initiative by the defendants to improve their household economy and he did not provide daily expenses to the plaintiff. The situation got worse when the defendant stopped paying the plaintiff maintenance (nafaqah) in January 2017.

After the court hears the appeal and arguments from the plaintiff, the court accepts the fasakh claim from the plaintiff. The court agreed that the defendant's failure to provide nafaqah during the marriage and his disappearance hurt the plaintiff's life and made her feel bad. The problem rises after her husband divorced the wife while she did not own financial resource. This situation affected the emotional distraction of the wife due to all responsibilities need to be taken such as the exhaustion of gaining financial resource alone (Dimon, 2019).

For example, in Sabah, there are 86,000 single mothers involved in critical economic difficulties. This caused them emotional suffering and 85,000 people were recorded. In addition, the factors of depression that arouse among single mothers should be concerned as the minimum recorded rate is 219 single mothers. This condition occurs because they feel the difficulty of preparing sustenance and the needs for their children as well as their future uncertainties (Kassim, 2018).

This situation must be restrained for any worse consequences towards the wife as taught by our Prophet PBUH to restrain his ummah from any harm, as narrated by Ubadah Ibn as-Samit, the Prophet PBUH said: " There should be neither harming nor reciprocating harm." (Sunan Ibn Majah, the book al-Ahkam).

According to the previous verse of al-Qur'an and the hadith, it is clear that Islam has emphasized the protection of one's life and self. It is possible to prevent the wife from being in a worse situation, which would require a higher cost of living. This situation affects the wife if the husband does not fulfil the rights of the divorced wife. For example, the ex-wife does not have the financial or property to start a new life, as well as the lack of financial resources to pay the cost of daily expenses.

In addition, the claims of child sustenance against the ex-husband are important to ensure the survival of the child. This becomes one of the challenges for a single mother to raise her child alone, which is usually meant for both husband and wife (Zakariah et. al., 2018).

This claim does not contradict the Islamic Family Law Act/Enactment. For example, section 72, Islamic Family Law (Federal Territories) Act 1984 (Act 303), which stated:

"It is the duty of a man to afford his child, whether the child is under his care or under the care of someone else, whether by offering them a place of residence, clothing, food, and the social life or with the payment of the living costs."

This provision of the act is also supported by the authority of the Shariah Court under section 73 of the Islamic Family Law (Federal Territories) Act 1984, which orders that:

"The court may at any time order a man to pay nafaqah for the benefits of any of his children
a) if he refuses or negligently provides for his child;
b) if he totally abandons his wife and child in her custody; "

Thus, the claim on the husband's EPF contribution by the wife is considered one of the wife's rights, which is not fulfilled by the husband, able to lessen the burden of the wife in order to start a new life.

Conclusion

Islam is a religion that is very concerned with the difficulties faced by its ummah, as every ruling set by Allah SWT is aimed at preserving the public interest (maslahat), including the difficulties of the issue of EPF contribution claims. Hence, it is clear that although the wife does not have the right to EPF contribution in the context of the property, the 'rights of wife' in accordance to syarak in terms of debt, nafaqah, and mutaah which have not been paid by the husband can be claimed to guarantee the welfare of the wife. Claims for EPF contribution

in such situations should be obtainable to protect the wife's rights based on the concept of *maqasid syaria*, which is to protect life and property.

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