

Strategies in Dealing With Jointly Acquired Property When Spouses Disagree: An Overview of Islamic Perspective

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Abstract

Jointly acquired property or the money shared between spouses is one of the most important issues concerned with the family system within the human community. This is considering that the family is a partnership between the spouses, each of whom has burdens that he must bear; so that the family continues to give and be a good building block within the human community. Herein lies the importance of studying and researching the jointly acquired property between spouses, strategies for dealing with it when disagreeing between spouses, and the legal controls that regulate those strategies. This is based on the Islamic legal preservation of money in general, and joint money in particular, and the wife's money in particular. With the spread of the Corona pandemic (COVID-19), the need to study legitimate strategies to deal with the disagreement between spouses about jointly acquired property, and this is what we are trying to address from this research paper.

Research Problem: The money shared between spouses is one of the most important thorny issues within the sinful society, as many problems appear between time and time between spouses due to lack of understanding of the reality of mutual funds and their controls and

how to deal with them. Also, the problem arouses in terms of the eligibility of each of the spouses in this jointly acquired property and its ruling in disputes.

Research Objectives: The study aims to achieve some objectives; namely, to understand the concept of the jointly acquired property between the spouses, to develop scientific and proper strategies to control the disagreement between spouses in mutual funds and finally to determine the Shariah ruling for jointly acquired property.

Research Questions: What is meant by jointly acquired property? What are the strategies for dealing with jointly acquired property? What is the legal ruling for differences and disputes over jointly acquired?

The Importance of the Research: The importance of research appears to emerge with the outbreak of the Corona pandemic (COVID-19) and the emergence of a difference between spouses regarding the eligibility of one of them to the jointly acquired property between them. In addition, this is supported with the emergence of the need for treatment and various expenses, and the consequences of the economic impact of the Corona pandemic (COVID-19).

Keywords: Strategies, Jointly Acquired Property, Disagreement, Spouses

Introduction

The First Strategy: Defining the Concept of Jointly Acquired Property for Both Spouses Before the Establishment of Married Life

Islam has given women many rights and Islam has proven a woman to have an independent financial responsibility. Women are qualified for financial behaviour just like men. The Holy Quran has stated that in more than one topic, Allah SWT the Almighty said: *“Just as there is a share for men in what their parents and kinsfolk leave behind, so there is a share for women in what their parents and kinsfolk leave behind - be it little or much – a share ordained (by Allah)”* (An-Nisa, verse: 7). God Almighty proved to the daughters a share in the inheritance and did not explain how much it is, so the Prophet PBUH, sent to Suwaid and ‘Arfajah not to separate from Aws’s money anything, for God made his daughters a share and did not explain how much it is until I see what our Lord has sent down in sura An-Nisa, verse 1 *“Yusikumullahu fi auladikum”* until verse 13 *“al-fauz al-‘adzim”*. So, he sent them [to give Umm Kujjah the price of what Aws left and his daughters two-thirds, and you will have the value of the money] (Al-Qurtubi, 2005) so the money that each of the spouses possessed before the conclusion of the marriage contract. It is part of the individual financial responsibility of each of the spouses, which is not included in the jointly acquired property, unless these funds were developed after the marriage contract, whether these properties were movable, such as cars, furniture, etc. or not, such as real estate and land.

The jurists have been exposed to the ownership and independence of women by disposing of their money without consulting the permission of anyone, whether he is a husband or a guardian, and this is what I will briefly introduce. The jurists dealt with this issue and the opinion on it was divided into two views:

1. The first view: the Hanafi and Shafi’i, and one of the views of Imam Ahmad: That the rational woman has the full disposition of her money just like a man, and that is in the case of ensuring her rationality and good behaviour in managing money. (Ibn Qudamah, 1997; Al-Bukhari, 2001).
2. The second view: Imam Malik and Ahmad in the other narration said that she could not dispose of her money in excess of one-third without compensation except with the permission of her husband (Ibn Qudamah, 1997).

According to Malik, if a woman does not pay the money to them unless they get married, if married to pay it, but its disposal is not carried out without the permission of the husband, unless you grow up and try (Al-Baghawi, 1997). It is written in his book, *al-Insaaf*: Can the husband set aside his wife for donating what was more than a third of her money? One of them, he has no stopping her from that. And it is the doctrine. It was chosen by the classifier, and the commentator. He corrected it in "*Al-Sahih*", "*Al-Fai'q*," and "*Al-Nadhm*." And he asserted it in "*Al-Wajiz*", "*Nihayat Ibn Razin*," "*Al-Nadhm*," and others. He introduced it in "*Al-Furoo*" and "*Al-Muharrar*", and he mentioned it at the end of the chapter on the gift. He said in "disinterestedness": She should give her money in charity whatever she wants, on the face of it (Al-Baghawi, 1997).

The Second Strategy: The Approach to Deal with Jointly Acquired Property

The term joint money is the contemporary terminology used by contemporary researchers, which means: "The money shared between the spouses is money obtained after the marriage period, so that each of the spouses contributed and participated in its collection and development, whether the contribution was direct or indirect. Depending on the amount of contribution and participation in the collection of money by the spouses. The entitlement to this money is due to the participation of the spouses in the work or the participation of one of them, such as if the husband works only without his wife who stays at home and carries out her duties such as raising the children, maintaining the safety of the home and taking care of it, and so on.

Islamic jurists have spoken about the reality of jointly acquired property and its content without defining a scientific term for it. But it came within their conversation about the duties of both husband and wife and the rights of each one of them. The jurists have simplified the discussion of jointly acquired property in general through their extrapolation of the company and the financial implications of it. And is it possible for the jointly acquired property between the spouses to be included in partnership *Syirkah al-Abdan*, which is known by it: two people agree to accept a work, provided that the wages for this work are between them according to the agreement. This often occurs among carpenters, blacksmiths, porters, tailors, goldsmiths and other professionals. This company is valid whether its craft is united or different, as a carpenter or a carpenter with a blacksmith. This partnership is called *Syirkah al-A'mal (Abdan)*, *Syirkah as-Shana'i* and *Syirkah al-Taqabud*.

This is what the Caliph Umar bin Al-Khattab r.a ruled in Amer bin Harith and his wife Habiba bint Zarif, whom Ibn Abi Zamanin mentioned in the electing of rulings to him and attributed her to Ibn Habib in the clear, saying: The original is in the company of the aforementioned spouses; Amer was short, and Habiba used to wear clothes until they gained a lot of money, so Amer died and left money, so his heirs took the keys to stores, and they shared the money. Then his wife, Habiba mentioned, rose up on them and claimed the work of her hand and her assistance, so she brought with the heirs to the Commander of the Faithful Omar bin Al-Khattab r.a and he decided between them in the money company of two halves, so the wife took half of the company, and a quarter of the husband's share of the inheritance because he did not leave a son and the heirs took the rest.

This is nothing wrong with it because it is a fixed right to the partnership contract between the spouses, but the real issue is in the event that the wife does not work outside the home and does not have money like the husband and there is no company between them. On the other hand, she stays at home to serve the husband, raise children, and take care of household affairs. So, in such a case, is the money acquired after the husband and that the

husband has earned, be joint money, or not? This is what some human rights organizations advocate in some countries, and this issue is one of the issues that Islamic scholars may not explicitly address even if they referred to it with partial references. This is due to the fact that the accepted custom in the countries of Islam is that the wife is responsible for taking care of the house and raising the children, and this is what was stated by the majority of jurists. (Ibn 'Abidin, 2000). Al-Hafiz Ibn Hajar Al-Asqalani said: "It is more likely that the matter will be blamed on the country's revenues, because they differ in this regard "(Ibn Hajar al-Asqalani, 2005).

On the other hand, the opinion of some jurists has escaped that a woman does not have to serve her husband, but rather that the jurists have obliged the husband to provide the appropriate servant who is worthy of his wife, and among these jurists are Imam Malik and Imam Ahmad in one of his two sayings (Al-Nawawi, n.d).

The Third Strategy: The Money Obtained After Marriage - The Woman Who Supports the Family in Light of The Husband That Aren't Working

There are cases when the woman is the one who works outside the home in addition to her work at home. In this case, the husband is not working, whether for a short period or for a long period, due to disability or illness that has prevented him from working, and here the woman is the breadwinner for the family in the presence of the man, and she is the one who provides for the family. It also works to develop the family's existing money or create other funds, whether movable or immovable. Women also deliberately borrow loans from banks through their work, and these loans are long-term, according to the current laws, even if the marriage relationship ends. Women have contributed directly and doubly through their work outside the home and inside the home in the formation of family money. But as soon as the marriage relationship ends, she goes out without any money for her from the family's money that she established through her work outside and inside the house, so that all the family's money goes to the husband according to the existing de facto division. Moreover, the woman will not be immune to the fact that she is still working to repay what she borrowed in order to develop the family's money without getting anything, and this is an unfair and unfair division for the woman who has made a double effort throughout the establishment of the marital relationship. As in cases where the woman is the breadwinner of the family, she is the one who constitutes her main source of income, in addition to her work outside the home she works at home. In this case, we are talking about women whose marital relationship ended with the death of the husband, in such a case.

In the event of the husband's death, all family funds become part of the husband's legacy, meaning that the money that the woman developed throughout his life became part of the estate, and is subject to the legal division of the inheritance, which means that the wife will only have her share of the inheritance. Whereas, the extended family will enter to share, along with its children, the inheritance from the estate, which deprives it of the money that it has laboured to develop and accumulate or its contribution to the development of money. Therefore, it is imperative that the joint money that takes place after marriage be shared between the spouses equally, and the woman will have taken half of the inheritance money if it is not part of the husband's financial responsibility. And then she gets her share in the estate from the other half of the husband, and this is what Omar bin Al-Khattab decided in such a case that are mentioned before.

Through the foregoing, the work that the woman performs within the family, it is a productive work of high economic value, as it contributes in one way or another to the local production

of the state, in addition to being an effective contribution to the formation of family money directly that does not accept interpretation. From sharing family money equally between it and the man, it is nothing but an expression of the continuation of the approach of denying women access to their other rights in society, whether their political, social, economic or other rights.

The Fourth Strategy: Shariah Judiciary in Jointly Acquired Property

The acceptance by the Shariah judiciary in Malaysia of this money and its recognition depends mainly on two Shariah evidence, namely custom and interest. The definition of jointly acquired property between spouses in the Islamic Family Law Enactment of the States in Malaysia. It has been mentioned in the state of Johor, Pulau Pinang, Sabah, Sarawak, Terengganu, Melaka, Pahang, Perak, Selangor, Perlis, and Kelantan. The summary of this definition is that the jointly acquired property between spouses means; the money acquired by the spouses during the marital period is fixed according to its conditions according to the Shariah ruling. The jointly acquired property between the spouses are defined in the Islamic Family Law Enactment in the state of Negeri Sembilan as “money acquired by the spouses, whether directly or indirectly during the marital period, fixed with certain conditions and according to the Shariah ruling”. For the basis of the legitimacy of jointly acquired property between spouses in Islamic jurisprudence, the jurists did not mention in their books this type of financial right for women called “jointly acquired property” between spouses in their words about the rights of divorced women in the chapter on debates or other jurisprudential chapters. Therefore, there is no such designation of a financial right, nor is there a special statement for it. Nonetheless, the subject of jointly acquired property can be regarded as a new issue in Islamic jurisprudence and among the Malay people in archipelago countries such as Malaysia and Indonesia. Modern scholars have found a legal document regarding the acceptance of the jointly acquired property between the spouses, and they issued a fatwa - based on this document - that it is legally permissible and that it is applied in the Islamic law in the country. Among the evidences for the permissibility of applying this money and its legitimacy to be an Islamic law that follows the following: (Islamic Family Law Enactment 2006, Section 7: Care - division of jointly acquired property between spouses, Section Two, Islamic Family Law Enactment, Negeri Sembilan State in 2003, jointly acquired property between spouses.

Evidence for custom (*‘adah*) “custom is tight” based on the hadith: “What Muslims see as good is good with God, and what Muslims see as bad is bad with God, including: that it does not violate a text or a Shariah rule, that it is present at the establishment of the disposition, and that it is persistent, i.e., continuous in all or most of its incidents, that is, in most of them, and that the contracting parties do not declare otherwise if there was a contract. And if these conditions are met, it is permissible to rely on the evidence of custom to establish a ruling in the various emerging issues. One of these issues is the issue of mutual funds between spouses. It is known that the division of the mutual funds between the spouses, known as “*harta sepencarian*”, is a practical custom, in which the Malay people dealt with them in their lives and have become accustomed to it from a long time ago in their behaviour and social dealings. People in the Malay lands had long since known this custom, so that if the husband died or a divorce took place, the money acquired between them during the marital period was divided by half, or less than that, or more, depending on the contribution. And this habit has continued to this day. When we did not find any harm from applying this custom to people, rather we found that its benefit is more than its harm, people accepted the division

of this type of money and proved it in the Islamic Family Law Enactment of states and the Shariah courts decided to implement them in judicial matters. For any woman who has claimed her right to this type of money and is able to prove her contributions - whether it is a direct or indirect contribution, the court orders her to give her right from the money according to the amount of the contribution.

Evidence for the benefit of the sender, the interest that is transmitted is considered from the legal evidence that was stated by most jurists, especially the Maliki sect. Inferring the interest has an intimate relationship with the purposes of Shariah in preserving the five necessities, which are religion, soul, lineage, reason, and money. In order to divide jointly acquired property between spouses, the woman's money is preserved for her benefit. Scholars have defined sending interests as "Preserving the intention of the Shariah". There are three types of interests, which are: respected interests, which are considered by the legal evidence, and cancelled interests, which are those which the lawmaker has stated not to consider or contradict with its texts and directions, and interests sent, which are the absolute interests that no evidence from the street has established to consider them nor to cancel them. The scholars included the division of the joint money between the spouses as part of the missionary interests that lead, in their application, to the realization of the interests of the woman, such as maintaining them after separation from being lost, and helping them build a new life for the sake of raising children. Managing the affairs of her life and the life of her family after separation from her husband due to divorce or death, or fear of wrongdoing after her husband married another wife. The point of the matter is that dividing this money is in her interest and does not cause harm to the spouses. Based on this, the Islamic Family Law Enactment in Malaysia was based on this evidence in proving the financial right of the woman called jointly acquired property between the spouses, and it became a law in force and followed in the Shariah courts and issued a decree of its permissibility in the fatwa councils at the state and national levels.

Inference by the Almighty, Allah SWT saying in Surah Al-Nisa, verse 32: *"Men have a share of what they have acquired, and women have a share of what they have acquired."* Among the evidence on which those who say that it is permissible to divide the jointly acquired property is what is stated in the general meaning of this verse, which can be interpreted that each of the man and woman has a share in the acquisition. Although this general interpretation is not mentioned in the books of the commentators, there is no objection to inferring it for the general meaning. Among the interpretations of this verse - as mentioned by the commentators - that it means: men and women are equal in reward in the Hereafter. That is because the good deed is ten times greater, in which men and women are equal, and it was said that it means: men have a share of what they gained from the command of *jihad*, and women have a share of what they gained from obedience to husbands and preservation of children. The authors of the Islamic Family Law Enactment in Malaysia have relied on inferring the general meaning of this verse regarding the permissibility of dividing the jointly acquired property between the spouses and its legitimacy, and the scholars and muftis in the state advisory councils and judges in the Shariah courts agreed on this. Based on this, the money shared between the spouses was legalized and recognized for its implementation in Islamic law. Therefore, we see that this law (i.e., the law of jointly acquired property between spouses) is considered one of the laws that mainly relied on the prevailing custom in the country and which was made a law followed and enforced in the Shariah courts in Malaysia. The position of the fatwa councils in Malaysia on the joint money between the spouses. The Fatwa Council committee at the national level as well as the fatwa councils in the states have

agreed to recognize the legitimacy of the jointly acquired property between the spouses and the permissibility of dividing it and implementing its decision through the Shariah courts based on the aforementioned Shariah document.

Conclusion

The jointly acquired property between spouses are one of the contemporary issues that must be examined and studied, and the Shariah ruling is devised. The Malaysian Dar Al-Ifta' did well in the field in this area by examining this issue and trying to find legal solutions to them. Accordingly, it is recommended that the necessity of continuing scientific efforts in order to establish the Shariah ruling on this issue, which represents one of the pillars of the economic system within society, and for the sake of protecting property, which is, known as a purpose of Islamic law (*Maqasid al-Shariah*) (Raissouni, 1991).

References

- Al-Baghawi, A. M. A. H. bin. M. (1997). Download features in the interpretation of the Qur'an-interpretation of Al-Baghawi. Achieved: Muhammad Abdullah Al-Nimr, Othman Juma Dameeriya, Suleiman Muslim Al-Harash. 4th edition. Dar Taiba for Publishing and Distribution. Cairo.
- Al-Bukhari, M. bin. I. (2001). Sahih al-Bukhari. Beirut: Al-Maktabah Al 'Asriyyah.
- Ibn 'Abidin, M. A. (2000). Hashiah Radd al-Muhtar 'ala al-Dar al-Mukhtar. Beirut: Dar al-Fikr.
- Ibn Hajar Al-A. (2005). Fathul Bari bi Syarh Sahih al-Bukhari. First Edition. Riyadh: Dar Taibah.
- Al-Maqdisi, Ibn Q., Muhammad, M. al-Din. Abu. M. bin. A. bin. A. bin. (1997). Al-Mughni Syarh Mukhtasar al-Khirqi. Third Edition. Riyadh: Dar 'Aalim al-Kutub.
- Islamic Family Law Enactment (Perlis). 2006 (En.19) (Malaysia)
- Islamic Family Law Enactment (Kelantan). 2002 (Malaysia)
- Islamic Family Law Enactment (Penang). (2004) (Malaysia)
- Islamic Family Law Enactment (Selangor). (2003) (Malaysia)
- Islamic Family Law (Federal Territory) Act. (1984) (Malaysia)
- Islamic Family Law Enactment (Malacca). (2002) (Malaysia)
- Islamic Family Law Enactment (Pahang). (2005) (Malaysia)
- Islamic Family Law Enactment (Johor). (2003) (Malaysia)
- Islamic Family Law Enactment (Terengganu). (1985) (Malaysia)
- Islamic Family Law Enactment (Kedah Darul Aman). (2008). (Malaysia)
- Al-Qurtubi, Abu A. M. bin A. Al-A. (2005). Al-Jami' Li ahkam al-Quran. First Edition. Beirut, Lebanon: Dar Al-Kutub Al-'Ilmiyyah.
- Raissouni, A. (1991). Al-Fikr Al-Maqasidi, Qawaiduhu, Fawaiduhu. Morocco: Maktabah Al-Najjah al-Jadidah, Al-Dar Al-Baidha.