

How to Cite:

Zainon, M. M., Bakar, M. A., Zaghoul, S. G. G., Urus, N. S. T., Yusoff, M. M., & Azzis, N. M. A. (2021). Jointly acquired property of a working wife: A legal analysis from 'Urf perspective. *Linguistics and Culture Review*, 5(S4), 2318-2331.
<https://doi.org/10.21744/lingcure.v5nS4.1923>

Jointly Acquired Property of a Working Wife: A Legal Analysis from 'Urf Perspective

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Abstract--In Malaysia, jointly acquired property has been recognized due to divorce, polygamy, or death. Section 122 of the Islamic Family Law Enactment (State of Kedah Darul Aman) 2008, clearly provides the jurisdiction of Court in division of jointly acquired property. Disputes arose between Muslim's scholars on the status of property of a working wife whether it can be regarded as a private property or jointly acquired property. Nowadays, it seems that the domestic contributions for a living are attributed to the property of the working wife. These contributions include the purchase of house, car, and expenses in upbringing the children. Therefore, the objective of this study is to identify the classification of property of the working wives and the condition of jointly acquired property that can be claimed by

the husband from Islamic perspective and subsequently analyse the custom recognition on it. This study is a qualitative study in which data is collected from Islamic law books and legal sources. Data analysis completed by applying content analysis methods through a descriptive approach. The findings indicated that the custom (‘urf) recognized the classification of property of a wife to be accepted as jointly acquired property.

Keywords---acquired property, Islamic perspective, legal analysis, subsequently analyse, working wife.

Introduction

Jointly acquired property is property acquired by a husband and wife during the marriage in accordance with the conditions determined by Islamic law. The acquisition of this property is the result of the efforts of the husband and wife in providing direct or indirect contributions during the marriage. This property includes movable and immovable property. Movable property is transferable and non-permanent property, such as cash, bank savings, EPF savings, stocks, vehicles, furniture, jewelery, livestock and others. While immovable property is property that cannot be transferred and remains such as land and house. Direct contribution means a contribution in the form of money and energy in acquiring property, such as the purchase of a house with the sharing of money and the joint administration of a company. Indirect contribution means a contribution in non-monetary form for example psychological support, emotional support and energy that affect the acquisition of a property. The concept of jointly acquired property covers property that was acquired by one of the spouses before marriage but was developed during the marriage as a result of mutual corporation (McKinnon et al., 2018; Dowuona-Hammond, 2019).

Legislation on jointly acquired property

According to legal provision, Shariah Court has jurisdiction to order the division of jointly acquired property between husband and wife. Upon divorce, the spouses may claim their right on the jointly acquired property. By virtue of Section 122 (1) Islamic Family Law (Kedah Darul Aman) Enactment 2008, Court order for the division of jointly acquired property is based on the direct contributions of the parties:

“The Court shall have power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order the division between the parties of any assets acquired by them during their marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale”.

And according to Section 122 (3) Islamic Family Law (Kedah Darul Aman) Enactment 2008, Court order for the division of jointly acquired property can be done based on indirect contribution of the parties:

“The Court shall have power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order the division between the parties of any assets

acquired during the marriage by the sole efforts of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale”.

Thereafter, jointly acquired property can be claimed either during the divorce proceedings or after the divorce proceedings. Apart from that, this particular issue may be filed upon polygamy and death. A wife may file a suit on jointly acquired property upon husband’s application for polygamy marriage to the court. According to Section 23 (10) of the Islamic Family Law (Kedah Darul Aman) Enactment 2008:

“Every Court that grants the permission or orders the marriage to be registered under this section shall have the power on the application by any party to the marriage- (b) to order the division between the parties of the marriage of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division of the proceeds of the sale”.

A husband/wife may file a suit on jointly acquired property upon the demise of the spouse. JKSM Practice Direction No. 5 of 2003 stipulated that:

“I would like to draw the attention of YAA to the decision of the Syariah Court Practice Direction Meeting No. 4 of 2003 on 22-24th August 2003 equivalent to 24-26 Jamadilakhir 1424H in Shah Alam, Selangor has agreed and confirmed to adopt practice direction in relation to when making claims jointly acquired property is allowed either during a divorce application or after a divorce or after the death of any party. The court in this case may accept any application on jointly acquired property made after the death of any party in such claim and reference shall be made to any case which has been decided by a higher Court. This practice directive is effective from November 1, 2003.”

Fatwa on jointly acquired property

In Kedah, cases on jointly acquired property is based on the decision of a fatwa that was gazetted in 1979. The gazetted fatwas on jointly acquired property is to bind and ensure that all Muslims comply with the laws related to jointly acquired property. The rights of spouses upon jointly acquired property according to the existing legal provision also been guaranteed by virtue of the gazetted fatwa. The fatwa committee adopted a decision in a meeting in 1979 on certain matters relating to jointly acquired property as follows:

- “According to the practises of the states, husbands and wives live as partnership – as they create their livelihood by struggling together to buy property, farming, planting, cultivate land and forests and others that resulted in purchasing assets from their dedicated work – and such property is jointly acquired property. In order to preserve *maslahah* and interests of the wife, and to protect any infringement of her right upon this jointly acquired property, the Committee unanimously agreed:
 - His wife or heirs are entitled to benefit jointly acquired property at a certain portion based on the ordinary reasonable wages of a particular job. This opinion adheres to Qurratul ‘Ain bi Fatawa Ulama al-Haramain, pages 366-367.
 - Make a recommendation to the Majlis to include a legal provision in Islamic Religious Administration Law which gives rights to the wife or heirs – if the husband fails to do just over the jointly acquired property -

to file a case before any Kadi Court, and Kadi's discretion to declare the entitlement of the wives upon the jointly acquired property and determine the appropriate portion that is eligible for her or the heirs to obtain if she died on the basis of the ordinary reasonable wages of a particular job (Larijani & Zahedi, 2004; Al-Karasneh & Saleh, 2010).

- Since the cooperation of husband and wife to gain such property is included under transaction of *Syarikat al-Abdan* whereby *Syarikat al-Abdan* is invalid in Syafi'i school but valid in the Hanafi school regardless the difference or similarity on the nature of a particular job. It is also valid according to Maliki and Hanbali school with condition that there is similarity on the nature of a particular job – thereupon, the fatwa committee in the opinion in (1) and (2) above is with reference to the Hanafi school” (Kedah Darul Aman State Mufti Department).

Analysis on fatwa decisions

Based on the fatwa, the main source of the legalization of jointly acquired property is by way of *qiyas* to *syarikat al-Abdan*. Imam al-Haramain highlighted that jointly acquired property has become a practice (*'urf*) in Indonesian society by which husbands and wives acquiring jointly acquired property collectively during marriage period. For example, husbands and wives work hand in hand cultivating a land. Their income mixed together and impossible to distinguish whose efforts affects profits. The question that arises is when death occurs, will the jointly acquired property be divided equally between them or distributed thru *faraid*? Imam al-Haramain replied as follows:

“With reference to kitab *I'alah* written by our Sheikh: “If two people who are partners have agreed to divide their income from their job, either they both carry out the same task, for example both are tailors, or both carry out the same task but different job, for example, one person as a tailor and the other one is as embroiderer – this concept is named as '*syarikat al-abdan*'. '*Syarikat al-abdan*' is invalid according to Syafie School because there is no capital incurred. On the other hand, if a person runs a job privately, he is the sole proprietor and owned all the profits. Therefore, if a job is jointly done by two people, the profit will be divided according to the contribution of each party”.

The concept of '*syarikat al-abdan*' is permissible without any condition according to Imam Abu Hanifah. Meanwhile, Imam Malik and Imam Ahmad requested that parties to do the same task. In conclusion, property that has been acquired out of mutual corporation between husband and wife in cultivating land (where the profits have been mixed and the efforts are indistinguishable) must be divided between them based on the work done. Subsequently, the heirs have the right onto the property of the deceased, whether as an obligatory inheritance or '*asobah*' based on the provisions of Islamic law (Ibrahim, 1937). Mazhab Syafie regarded *Syarikat al-abdan* as illegal because the concept of partnership was based on capital, not on the effort done. The element of *gharar* and ignorance that exist have violated the ethics of the muamalat contract and render the concept as illegal (Al-Nawawi, 1991). *Gharar* means an element that resulted in some of the pillars in muamalat contract cannot be ascertained (Qal'aji & Qunaybi, 1988).

“*Syarikat al-abdan* (for example) as a partner in carrying out a transportation job as well as other jobs, on the principle of equal or unequal distribution of profits, whether both carry out the same task or not, like both carpenters, or a carpenter and a

embroiderer – and it is unlawful because there is uncertainty and ignorance in the contract” (al-Ramli, 1984).

Majority of the scholars, on the other hand, in the view that *syarikat al-abdan* is applicable and permissible because the concept of partnership in *syarikat al-abdan* is based on effort. It applies the rule of *qiyas* of *mudharabah* contract that take into account the effort contributed by the parties (Ibn Rusyd, 1995). *Syarikat al-abdan* seems to be a necessity as it involves the benefit of the people at large. Among the discussions on the fatwa decision are as follows:

- First: *Syarikat al-abdan* commenced with a contract. Among the pillar in a contract is *ijab* and *qabul*. *Ijab* means making offer to someone in order to be a partner in *syarikat al-abdan*. *Qabul* means acceptance of the offer made to him to be a partner in *syarikat al-abdan*. One party may say: "I am your partner in cultivating rice fields". And the other party may reply: "I agree". So, both of them put an effort as agreed and the profits divided accordingly. In actual, no agreement contracted by husband and wife other than marriage contract. In term of jointly acquired property, no contract on *syarikat al-abdan* was entered by both parties. Therefore, nothing on jointly acquired property has been agreed as no contract of *syarikat al-abdan* is executed before (Gibbons & Zloh, 2010; Kaplow & Shavell, 2002).
- Second: The division of jointly acquired property must be based on the consent of husband and wife. Consent formed as basis in property ownership. Without the consent of any party, a person is presumed to possess property belonging to someone else. It is considered as illegal and wrongful act although the matter involved husband and wife. Thus, *Majma' al-Fiqh al-Islami* has examined issues relating to jointly acquired property contracts executed after the marriage contract, in which the husband and wife are entitled to share their financial resources, especially they collaborate in accumulating and expanding those resources. Fatwa No. 227 (11/23) of 2008 has decided as follows:
 - “If the spouses agree with full consent and concise on the division of jointly acquired property, therefore, no restriction in Shari'ah law. No agreement can be entered into with coercion and conditional terms” (Al-Majma 'al -Fiqh al-Islami, 2018).
- Third: In Islam, the approach of managing the property of husband and wife is unrestricted and at the liberty each of them without any restriction. It is a fatwa issued by the Egyptian Fatwa Council, No. 2127 of 2009 (Dar al-Ifta 'al-Misriyyah, 2009). According to Islamic rulings, a husband has absolute ownership over his financial matters without reliance on wife's contribution, and a wife also has absolute ownership over her financial matters without reliance on husband's contribution. This ruling is based on hadith Prophet SAW:
 - “Everyone has more rights to his finances than his father, son and others.” Narrated by al-Daruqutni in his Sunan.
 This hadith indicated the capacity of an owner that have full authority upon his financial management. In that case, the marriage contract in Islamic law does not give implication on the amalgamation of property with another person, whether the property is in the form of cash, land, shares or any type

of property, and the husband or wife has no legal capacity to observe the financial management of each other (Ernst, 2001; Levine et al., 2020).

- Fourth: There is no discussion done by the previous scholars on jointly acquired property. Jointly acquired property is considered as new issue arose in the archipelago and affecting Muslim community. In other words, this matter has no basis in Islamic law but the practices of the community has established the reality in contribution of husband and wife to live their lives together. Thus, according to Egyptian Fatwa Council, matters on jointly acquired property cannot be referred to Islamic law, whether by way of *qiyas* to partnership contract, hibah, wakalah or others. The Egyptian Fatwa Council has decided as follows:
 - “We cannot treat jointly acquired property as a contract based on any source of Islamic jurisprudence. Nor can we refer to any contract that has been enforced in Islamic law, whether it refers to a partnership contract, hibah, wakalah and others. And this matter give pressure to us (in finding a *faqih* person to play a role to maintain the stability and reform the society as he could), where perhaps we can adopt the opinion of *fugaha*’ that allows the introduction of a new contract based on *maqasid al-syariah* in general – that protect property, avoid uncertainty and injustice, avoid harm to others, preserve rights and perform responsibilities, (if the newly-introduced contract could include all such aspects) whereby it can be executed with the consent of both parties that have full capacity. This is a refined opinion done by Sheikh al-Islam Ibn Taimiyyah and others” (Mausu’ah al-Fatawa, 2017).

In conclusion, majority of the scholars prohibit the application of jointly acquired property by way of *qiyas* to the concept of *syarikat al-abdan*. Moreover, the initial fatwa given by Imam al-Haramain as discussed above stands as a tradition or ‘urf of the society at that time that is both spouses cultivating land collectively. Studies tend to say that there is a verbal *syarikat al-abdan* agreement made by the husband and wife that leads to the opinion of Imam al-Haramain in permitting the division of jointly acquired property between them. It can be seen in the preamble of his fatwa which states as follows:

- “If two people who are partners have agreed to share the income from their work.”

The wives’ position in indirect contribution

In jointly acquired property cases in Malaysia, the concept of division seems to be too general that include the indirect contribution of the wife and further without any formal agreement. In the event that the wife do all the house chores such as preparing meals, doing household chores, looking after the children and managing husband’s financial matters, those tasks are classified as matters to be taken into account in determining jointly acquired property. Subsequently, a legal discussion regarding indirect contribution of a wife should be take place. Is the wife's indirect contribution is a responsibility based on ‘urf or a profession? Imam al-Sayuti said:

“The customs of a race or ethnic group that are not contrary to Islam can be adopted as part of the rules of life and laws for a country”.

There are three views on the issue of indirect contribution of the wife:

- First view: According to the Maliki School, the wife’s obligation to indirect contributions during marriage depends on the practices (*‘urf*) of the local community (Kim, 1989; Anderson et al., 2017). In other words, indirect contribution during marriage is the duty of a wife. The first argument: The local *‘urf* as a source of law. This method is derived from the words of Allah S.W.T in Surah Al-Baqarah verse 228:
 - “And women shall have rights similar to the rights against them, according to what is equitable (*al-ma’ruf*).”
 - The word *al-ma’ruf* in the verse referred to *‘urf*. In the above verse, Allah S.W.T has stated that wives have responsibilities towards their husbands in a same way just as husbands have responsibilities towards their wives. The implementation of responsibilities during marriage in this *al-ma’ruf* way and should be seen to the local practice of such *‘urf*. If such practices is in accordance with the local *‘urf*, that is - the indirect contribution is the responsibility of the wife, which includes the matters related to the needs of the husband, children and household – then this indirect contribution becomes an obligation on the wife (al-Ityubi, 2003).
 - The second argument: The wife is obliged to contribute indirectly during marriage only based on the *‘urf* practices of the local community. Therefore, the husband cannot order the wife to carry out tasks beyond the limits of a woman’s physical ability that is in conflict with *‘urf*. It is clearly stated in verse 286 of Surah al-Baqarah which means:
 - “On no soul doth God place a burden greater than it can bear.”
 - The third argument: The same argument has been put forward whereby Prophet Muhammad SAW has given Ali and Fatimah their respective responsibilities in their marriage. The Prophet SAW himself has requested his wife Aisyah r.a to serve food and drinks to the guests who came to their house (al-Ityubi, 2014).
- Second view: According to the view of the Hanafi School, the wife is obliged to contribute indirectly during the marriage without referring to the local *‘urf* (Wizarah al-Auqaf, 2006). The first argument: Based on verse 34 of Surah al-Nisa’:
 - “Men are protectors and maintainers of women.”
 - With reference to the above verse, if the wife does not contribute indirectly, it means that the husband does not have the administrative power in household. Even when the husband do all the house chores, it indicates that the task is conducted by the wife, not the husband (Al-Walwi, 2005; al-Ithyubi, 2003).
 - The second argument: The act of Prophet Muhammad SAW himself who had divided the task of house chores between Saidina Ali r.a and Fatimah r.a. He has established that the internal management of a house is the responsibility of the wife, while the external management of a house is the responsibility of the husband. This argument forms the basis of prohibition on request of wages or salaries upon completion of wife’s responsibility (Zaghloul et al., 2021; Ahmad & Fisol, 2021).

- Third view: According to the majority *fuqaha*' from Mazhab Syafie, Hanbali and part of Maliki, the wife is not obliged to give indirect contribution during marriage, but it is good for her to give indirect contribution as practised *'urf* in society. In other words, indirect contributions are not obligatory based on the marriage contract but it is strongly recommended that the wife to accept the practise of *'urf* (Ibn Qudamah, 1984; al-Rafi'e, 1997).
- The first argument: The wife is not obliged to make indirect contributions during the marriage, such as grinding flour, kneading bread and cooking. Her duties are limited to manage her own needs only. But the utmost for her is to observe local *'urf*. If *'urf* specify indirect contribution should be done by the wife, then she has a duty to perform it (al-Karami, 2008).
- The second argument: The concept of marriage contract is to legalize consummation between husband and wife and does not confer the right to make use the wife's services to reap any profits and benefits. If the husband needs the wife's assistance in managing the household, he has to execute another contract after the marriage contract. Regarding the hadith referred by Hanafis and Maliks schools on responsibilities between Saidina Ali r.a and Fatimah r.a – it is not obligatory but a recommended and a noble act (al-Imrani, 2000; al-Ithyubi, 2003). In conclusion, the indirect contribution of the wife is obligatory and a responsible according to the selected view among the scholars based on *'urf*.

Application of 'Al-'Adah Muhakkamah' in jointly acquired property

The meaning of the word *'al-'Adah*' refers to local practices or customs. The practices in Malaysia shows that most of the wives are unemployed and become full-time housewives. They voluntarily do the house chores such as cooking, washing, cleaning, nurturing and educating the children. This responsibility was practised by all housewives from generation. As for those wives that has a profession, being a working women, they still do the same task as the housewives but it is imperfect. They cook on weekdays or prepare breakfast and dinner only, do the washing once every two days, babysitting at night according to her job commitment and her condition has been well understood by the husband. According to legal provisions, a housewife is entitled to claim jointly acquired property because her duties are evaluated in the category of indirect contributions. As for the working wife, she has the right on jointly acquired property because her profession evaluated in direct contribution category.

Customary practices related to jointly acquired property in Malaysia is a tradition in the Malay community referring to Temenggong customary practice (Adat Temenggong) and Perpatih customary practice (Adat Perpatih) since the 14th century BC. According to history, Adat Perpatih originated from Minangkabau, a country located in the middle of the western part of the Sumatra, Indonesia. Adat Perpatih being a tradition of Negeri Sembilan's community for generations. The founder of Adat Perpatih was the leader of Minangkabau – Sultan Balun who was known as Dato' Perpatih Nan Sebatang. He governed districts such as Jelebu, Jempol, Kuala Pilah, Tampin, Rembau and Seremban. On the other hand, Adat

Temenggong being a tradition of Malays' community practiced particularly by those reside the coast area for example Port Dickson. Currently, the Adat Temenggong has been practiced in all states in Malaysia except Negeri Sembilan and Nanning, Melaka. The founder of Adat Temenggong is Dato' Temenggong. Both figures came from Minangkabau who migrated to Malay Peninsula and opened a new area in Negeri Sembilan. The community in this locale adhered to the tradition as a result of combination of two customs, namely the Minangkabau customs and the local customs (National Archives of Malaysia).

According to Adat Temenggong's inheritance matters, men inherit a bigger portion compared to women. Meanwhile, inheritance in Adat Perpatih gives advantage to women per se. Adat Perpatih holds the philosophy:

"Inheritance property bequested to children. If no children, bequested to close heirs. If no close heirs, bequested to those related to the heirs. If no inheritor, bequested to the tribe".

Properties in the form of house and customary land such as paddy fields and orchards are the rights and priorities for women. In the matter of jointly acquired property, Adat Perpatih ruled that the property acquired by the couple during the life partnership will be divided in two after divorce (AL-Otaibi, 2021; Atmaja, 2018). The principle of division is described as such:

"Those who bring may return, proceeds omitted, shares divided, if husband died - left to the wife, if wife died - left to the husband".

Whereas, Adat Temenggong ruled that jointly acquired property after divorce is divided by allotting two parts for men and one part for women. Judge E.N. Taylor in his judgment of *Re Elang, Re Kulop Degor and Lebar v. Niat* case that involve jointly acquired property in Perak said that – if a woman participated in farming, she could receive $\frac{1}{2}$ from the property and if not, she received a smaller portion (Hussin, 2016). The Perak Government Council dated 18 January 1907 declared:

"That the custom of Malays in Perak in terms of the division of property after divorce, in which the property is acquired by the parties or by either party during the marriage are – two portion for men and one portion for women" (Hussin, 2016).

According to majority of *usuliyin*, if practices of a custom is uncertain, such as there are divorced couples who divide jointly acquired property and there are also divorced couples who do not divide jointly acquired property, then the custom is conditional custom. Therefore, conditional custom does not stand as a basis in Islamic law. It also cannot be referred in transaction dealings. A particular custom that can be followed should be a permanent custom, continuously and widely practiced and a common tradition (Al-Ghazi et al., 2003). By virtue of the enacted laws regarding jointly acquired property and numbers of registered case, this particular customary practice can be proven. According to the statistics data, only 146 cases on jointly acquired property was registered in 2017 in Negeri Sembilan. It is a small number compared to the number of divorce cases being registered. It indicated that the division of jointly acquired property does not fulfil the requirement of acknowledging *'urf* as widely practised (al-Sayuti, 1990). A legal maxim stated as:

“A particular *‘urf* may stand as a rule if it is widening or dominating” (Al-Zuhayli, 2006). As a conclusion, even if the jointly acquired property is claimed based on the *‘urf*, but the division does not become a practice until the wife file a legal suit in court. If it is accepted as *‘urf* of the local community, we do not need to enforce its implementation. Recently, cases on jointly acquired property due to divorce, polygamy and death are still in a small percentage in Malaysian community. Thus, *‘urf* which is mixed and uncertain in its practices, is considered as *fasid ‘urf* and cannot be a basis for legal injunction.

Property of working wives classified as jointly acquired property

In general, majority of scholars recommend women to go out for work according to terms and conditions stipulated by Syariah. Among the conditions prescribed by Syariah are – Syariah compliance profession, the intention to work is to fulfil the personal and community needs, husband’s consent, perform her obligation toward the husband and children, appropriate job for women, observe proper attire and the workplace free from slander. The effort done by a working wife seems to be greater than the non-working wife as they assists in financial stability of the family, improve standard of living, secure future life and may contribute to the society – which is for the *maslahah* (Hilali, 2010).

Today, in Malaysia, women’s participation in workplace has shown an inspiring development. Based on the statistics from Department of Statistics of Malaysia, the number of female worker in the first quarter of 2019 was 55.7 percent involving 5.86 million women. In the second quarter of 2019 the percentage increased to 55.8 percent involving 5.90 million women. In the third quarter, the development of labor force participation rate among women reached up to 56.0 percent involving 5.93 million women. In the opinion of the scholars, the working wife is obliged to cover the additional household expenses if requested by the husband. This situation applied if the husband and wife are unable to reach an agreement on the extent of the wife’s contribution. Among the expenses that should be borne by the wife are the cost of maid, personal driver, extra clothing, purchase of fast food and childcare. This circumstance make ease for husband in expending basic needs for living. As such, the realization on the purpose of marriage, which is to nurture love and mercy can be uplifted. If the wife do not tolerate in sharing financial burden with the husband, such situation may lead to marital conflict which is prohibited by Islam. Thus, such conflict can be avoided with contributing and sharing financial responsibilities (Hilali, 2010).

According to *ijma’*, the property of working wife is of her own and she has the full right over her property although her job has utilized the time to settle the house chores as the husband consented to her profession. In the event that the husband voluntarily give up his right on the wife’s time, the wife gains absolute ownership over her property. And if the husband and wife have made an agreement on a certain part to be contributed by the working wife, then the agreement that has been reached must be implemented (Hilali, 2010). In the event that the wife has absolute ownership over her property, the husband also has the same right. Both of them carry out their responsibilities, respects each

other's property and do not encroached each other's right without permission. Allah SWT said in verse 32, Surah al-Nisa' which means:

“And in no wise covet those things in which God hath bestowed His gifts more freely on some of you than on others. To men is allotted what they can earn, and to women what they earn: But ask God of His bounty. For God hath full knowledge of all things”.

The above verse was revealed to criticize the feeling of of envy towards fellow Muslims that has been bestowed with wealth. Envy in the context of this verse is to expect loss of others. Umm Salamah once expressed her desire:

“If we had an equal share in the inheritance, and we could take part in the war with the men” Men also hoped for: “If we get a greater reward than women in the hereafter, as we have gained an advantage in the division of inheritance in the world” (Al-Thaalabi, 1997; Ibn Kathir, 1999; al-Jasas, 1985).

Allah SWT revealed the verse 195 of Surah Ali-Imran:

“Never will I suffer to be lost the work of any of you, be he male or female”.

The negative attitude of jealousy is prohibited as it affects the ruling related to the division of inheritance, property possession and men's commitment. According to Qatadah bin Hasan, *jahiliyyah* society deny the right to inheritance upon women and children. The distribution of inheritance property was done to those selected by them. The interpretation of the above verses of Qur'an clearly proves that Islam recognizes individual ownership on property, both husband and wife. The wife's property belongs to the wife, while the husband's property belongs to the husband. However, both of them have the responsibility in contributing their property in the household according to the legal rulings. The verse should not be construed as Islam recognizing individual ownership on property whereby the husband and wife are entitled to claim jointly acquired property on the basis of contribution done during marriage time. The marriage contract is not the grounds for equal ownership of property between husband and wife, whether due to divorce, polygamy or death. This verse does not support the argument on jointly acquired property as its application is out of context (Amori, 2021; Suryasa et al., 2019).

However, if the husband and wife contribute to purchase a house, vehicle, business and other assets, then both of them has the right to claim their right on jointly acquired property because of the concept of property sharing. Thus, the property of working wife cannot be classified as jointly acquired property that can be claimed by the husband. Housewives that contributes indirectly are entitled to maintenance, food, clothing and shelter during the marriage and receive a proper distribution of inheritance in the event of death.

Conclusion

Islam has stipulated a clear rulings regarding the issue of property between husband and wife with reference to dowry, maintenance, *'iddah* maintenance, *mut'ah* and inheritance. Thus, the issue of jointly acquired property is to consider a compensation to wife's contribution throughout the marriage either directly or indirectly. At the same time, Islam has enjoined the obligation of *mut'ah* for the

wife in divorce cases. In fact, the judge is obliged to order the payment of *mut'ah* as divorce compensation. The cooperation between husband and wife in fulfilling the needs of the household guarantees a better living of the family. It is appropriate to enter into a contract between the husband and wife – so that the division of property is in line with Islamic law excluding the element of tyranny, oppression and trespassing on the property of others. Working wife that has contributed in additional needs of the household and possess certain property out of her employment cannot be classified as jointly acquired property that can be claimed by the husband.

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