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# Implied Contributions for Jointly Acquired Property Based On Islamic Family Law in Malaysia

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**Abstract**--The Islamic Family Law Enactment for the states in Malaysia have recognized that jointly acquired property can be claimed by a Muslim woman due to death, divorce, or polygamy. It is in line with the TN50 target to empower women and elevate the dignity of women and prepare them for 2050. Besides that, the legal stipulation shows the law protects the rights of women to enables them to prepare for their future financial planning even after becoming widows or single mothers. The first objective of this study is to identify the legal provisions related to jointly acquired property. The second objective is to highlights the previous studies and cases related to jointly acquired property claims and the third is to propose a simple, quick and friendly standard procedure for jointly acquired property applications. This paper is also expected to provide an understanding regarding on jointly acquired property for future research.

**Keywords**--implies contribution, Islamic family law, jointly acquired, property claim, property protection.

## Introduction

Nowadays, women's agenda needs to be seen in the national and global context because the women's agenda is no exception in reaching the goals of the National Transformation 2050 (TN50) program. TN50 was created as a long-term program and become the direction of government policies by 2050 whereas this program was targeted to boost inspiration among citizen including single mothers, working mothers, housewives and women with disabilities. TN50 is seen as people inspiration on the direction of the government. It is different with New Economic Policy (NEP) or Vision 2020 where it comes as a policy document and vision from the government to the people. According to the posting in *Utusan Melayu*, 2050 is expected to be a great era for Malaysia' women. In economic perspective, women are encouraging to enhance their identity and self-potential in order to prepare themselves in facing any obstacles and challenges in life (McNaughton & Gray, 2000; Brekke et al., 2003).

The demand for jointly acquired property is seen in line with TN50's aspiration to prepare women economically and identity. Jointly acquired property is a wife' right that can be claimed by the event of the death of the husband, divorce or if the husband applying for polygamy. Jointly acquired property is counted as an asset acquired either from the husband or wife throughout the marriage. Usually, the property is acquired joint or private property whether movable or immovable property whereas it is utilized together during the marriage period (Suwaid, 2001). Originally, jointly acquired property was customary in the archipelago and this custom continued until now where spouses are working together to earn a living to cover daily expenses. The customs of a nation or races that are not contrary to Islam are required as part of the rules of life and legislation for a country. In the method of "Fiqh" or "Qawaid" "Fiqhiyah" it is known as "Al-Adah Muhakkamah". It means "adat" or "urf" according to "jumhur" is defined as something that has become a tradition for human beings to follow the rules in the affairs of daily life until it blends in with them and becomes a normal thing (Al-Jarumi, 2018).

Currently, jointly acquired property has been made as a part of Islamic law in Malaysia as provided in the Islamic Family Law Act and Enactment in each state and the settlement of the jointly acquired property claim is almost identical between one state and another. This enactment mentioned when dividing the asset or property, the court must take into account or consider several matters before a decision is made such as the level of the contribution made by each party to acquire the assets and the debt owed by one of the parties who have done for their mutual benefit as well as the needs of their children from the marriage (Nur Shafiqah Mudaran & Zuliza Mohd Kusrin).

## Background

Muslim women can be categorized as women who embrace Islam. Women need to arrange their financial planning in a more practical, pleasant and law-abiding manner in order to uphold and protect a woman's property. Matrimonial property can be claimed in the event of death, divorce or polygamy. In the rough view, it means that there should be a standard procedure to make it easier for a woman to claim their rights in jointly acquired property as allowed by Islamic Law, so

that the process of obtaining their right becomes smoother and can uphold the existing judicial system (Dewi & Dhewanto, 2012; Ibrahim et al., 2012).

Legal marriage is the main basis on which a jointly acquired property claim can be made. This is because the term "mutual search" clearly involves the parties "only between husband and wife" and shows that they are allowed to make a claim for their property. Jointly acquired property is a property acquired jointly by husband and wife during marriage and effective in accordance with the conditions determined by Islamic law. Jointly acquired property is approved by the Islamic law based on wisdom and sharing life. The wife manages and controls the household while the husband going out to earn a living. If a marriage is not legally valid, any jointly acquired property claim cannot be made. For example, a couple who live together without legal marriage and acquire property during the period of cohabitation, they are not entitled to claim jointly acquired property according to Islamic law (Dominey & Dodane, 2004; Minbaeva et al., 2018).

For married couple who face problem in their marriage life will affect their psychological health and financial situation. Usually, it is very difficult for a woman to be happy after experiencing a bitter test in life. Such experiences give impact on their emotional aspects. Depression is one of the psychological diseases that involves serious emotional stress on individuals whether men, women, children, adolescents, adults or even elderly. It involves feelings of sadness, frustration, despair and loss of motivation to move on with life. Prolonged depression can have serious implications for individuals. Aside from emotional disorders, individuals with depression can be easily angered, easily tired and disturb their physical function and social interactions. Medical treatment, psychotherapy and counselling assistance should be given as early as possible to those parties involved in that situation, so it does not continue and lead in serious mental problems. Besides that, their financial aspects are also affected especially those who are unemployed and have no source of income (Burnecki et al., 2000; Glucksberg et al., 1997).

Usually, when people faced various situations and tests hit repeatedly, they demand spontaneous and quick action to solve the problems. The community craves a standard procedure to protect the rights of all parties. So that the victim can complain by following the proper procedure without taking too much time consequence increasing the cost of court's management. Thus, a clear understanding must be present in determining jointly acquired property and continuing education must be applied to society. A proper management for jointly acquired property is seen as able to help them to start a new life. It is not just to get their rights or shares, but the more important thing is to protect the people who are treated unfairly for example for the wife and children who have lost their love and place of dependence (Furukawa, 2010; Hertzfeld et al., 2006).

### **Objective of study**

- Identify the legal provisions related to jointly acquired property.
- Highlights of the previous studies and cases related to jointly acquired property claims.

- Propose simple, quick and friendly standard procedures for jointly acquired property applications.

### **Research Methodology**

This study is a qualitative study. This study highlights from the previous literature and actual case study that has been decided in court and the method of analysis and descriptive work is done to support a precise conclusion regarding the settlement of jointly acquired property protection for women and further plan for their finances in the future ([Jamalullail & Mr, 2017](#)).

### **Sole venture and implied contribution elements**

In comparison, marriage according to common law and Islamic law has a very different effect on property rights. According to the concept of common law, a married woman will lose her right to own and manage her property. Any property owned by her will belong to her husband as soon as they get married. This means that a marriage has an impact on the ownership or protection of property. Meanwhile, according to the Islamic law, the marriage bond is a strong contract or agreement and does not have any effect in property ownership ([Mohamed Ibrahim, 1997](#)). A married Muslim woman still has the right to own property and can continue to own property that was hers before she got married. She also has the right to dispose of any of her property without the consent or intervention of her husband ([Ibrahim, 1968](#)). The wife is one of the parties who can make a claim for matrimonial property in the event of divorce, polygamy and death.

The most common argument in jointly acquired property claims happened when the property obtained solely because of the efforts only from one party ([Ibrahim & Hak, 2007](#)). In this situation, the husbands are not aware of the indirect contribution that has been given by the wife and always deny wife's right in the matters of acquiring the property during the marriage period. Looking at the practice of the court, the wife still can get her share in the matrimonial property by taking into account the wife's contribution to the welfare of the household even though the property is obtained through the sole efforts of the husband. This can be seen in the case of *Boto 'v. Jaafar* (1985) 2 MLJ 29 where the court stated: "It is true that the plaintiff did not participate directly in the business, but her willingness being together with defendant allowed him to manage the business well. The court consider as indirect contribution made by plaintiff in producing peace of mind to the defendant and this matter should be considered. Indeed, it has been mentioned in its evidence that the plaintiff has ever accompany the defendant in his journey while managing his business because defendant will feel lonely if she did not do so. Therefore, this indicates that the property owned by the defendant is a jointly acquired property and the plaintiff has the right to claim her share ([Baranov et al., 2021](#); [Zharovska et al., 2021](#)).

Moreover, moral support has also been recognized by the court as one of the undeniable contributions. This principle can be seen in the case of *Tengku Anum Zahrah v. Dato' Dr. Hussein* (1980), 3 JH 125. The wife's claim her right in jointly acquired property has been denied by the husband by stated that the wife did not make any contribution either directly or indirectly. However, the court decided

that the jointly acquired property should be divided based on the moral contribution given by the wife. By marrying a wife of royal descent, the husband has earned the title of Dato quickly and indirectly has made the husband's business grow because it has gained the trust of the public ([Zaini Yusnita Mat Jusoh, 2016](#)).

### **The right to make a claim for jointly acquired property**

- The Event of Divorce

Section 122 (1) of the Sabah Islamic Family Law Enactment provides that the Court has the power to allow the pronouncement of talaq or to make a divorce order. Besides that, the court can order, any assets acquired by the parties at the time of marriage by joint venture should be divided between them or any of the assets are sold must distribute between the parties. Based on the provision, the 'parties' referred to the husband and wife. The Judge of Kota Kinabalu Sabah Syariah High Court, Tuan Ahmad Din Bin OKK Othman also stated that the husband also has a right to claim the division of jointly acquired property. For example, in the state of Sabah, there are several cases where the husband has filed a jointly acquired property claim against his wife such as the case of *Chong Yaw Kiong @ Muhammad Asif Chong Abdullah v. Affidah Binti Sarudin* (12100-017-0186-2014), *Ibrahim Bin Ag. Ali v. Mascila Maidol @ Maisarah Maidol Abdullah* (12100-017-02902014), *Zaharin Bin Naamat v. Nurhanisah Binti Abdullah @ Sumini* (12100-017-0461-2011) and *Mohd Khamal Bin Sahak v Julia Adlin Binti Musa* (12100-017-0173-2013).

The right to claim this jointly acquired property can be exercised whether a wife is working or not and the claim can be made based on a certain rate. For wife who do not work and become full-time housewife, the contribution is consider for managing the household. Thus, they have the right to claim jointly acquired property in honour of her who has taken over the duties and responsibilities of the husband in the household so that the husband can go out to work to earn a living ([bt Abd Latif, 2004](#)). Although the wife is given the right to claim jointly acquired property, but it does not mean that the wife will absolutely get large amount of the property because it then will be evaluated by the court in terms of contribution and so on ([Ramli et al., 2012](#)). The level of the contribution for the unemployed wife is based on several things such as ideas, encouragement, advice and comfort or peace to the parties who strive and succeed in obtaining the property ([Suwaid, 2003](#)).

There are several cases in Sabah showing the wife claiming jointly acquired property such as the case of *Malizah Binti Oldy v. Matyasin Bin Jamil* (12100-017-0581-2013), *Aimee Nadia Abdullah @ Jeslin Bin Beliku v. Jumain Bin Sainoh* (12100-0170517-2013), *Kamsinah Binti Malik v. Kadir Bin Gani* (12100-0170085-2013), *Saudah Binti Ali Baki v. Junit Bin Yusup* (12100-0170315-2015), *Siti Jurinah Asmat v. Musmulyady Matlin* (12100-0170096-2015), *Suhaini Binti Abdul Hamid v Chee Rodzmi Ismail* (12100-017-0009-2014) and *Suzane Binti Adzmin v. Ayatullah Bin Yampalera* (12100-017-0133-2015). The right of the heirs of the deceased in claiming the jointly acquired property arises as a result of several events or situations especially (1) if the deceased's husband or wife is still alive or (2)

if the deceased's husband is in polygamy (Sitiris & Halim 2010). Jointly acquired property has a principle in Islamic law, which gives the right to the heirs to make a claim whereas the right will be transferred to the heir if the owner of the right dies. Such claim can be made against the living party or against the heirs of the deceased because a person's right does not fall unless he denies his right and the right is still existing.

According to Syariah High Court Judge, Yang Arif Tuan Ahmad Din Bin OKK Othman (2016) stated that the heirs of the deceased such as his or her children and parents can make a jointly acquired property claim on behalf of the deceased before the division of the inheritance is done. Therefore, the claim for jointly acquired property by the heirs of the deceased can be done if other parties in the deceased's marriage are still alive and do not submit any claim. For example, if a husband has two wives and one of them dies, then the children of the deceased can claim jointly acquired property on behalf of his mother (Nur Shafiqqah Mudaran & Zuliza Mohd Kusrin).

- The Event of Polygamy

Polygamy in Islam is permissible, but this practice is only allowed for a husband who can provide maintenance outwardly and inwardly. The husband also must be fair in providing the maintenance. In Islamic law, polygamy consider as a solution for specific circumstances such as infertility of the wife, physical disability of the wife or wife suffering from prolonged illness. The Islamic Family law enactment in each state has also specified that applications for polygamy in all states must obtain written permission from a qadi or a Syariah Judge.

The procedure for polygamy in Selangor has been provided for under Section 23 of the Selangor Islamic Family Law Enactment 2003 which states that no man during the existence of the first marriage may have polygamy except with the prior written consent of the court. An application for second marriage must be submitted to the court accompanied by a pledge stating the reasons why the second marriage is necessary, the applicant's income, details of the commitment and financial obligations of the applicant and the permission or views from his existing wife. If the husband has met all the conditions mentioned above, the court may also consider other matters before allowing the husband to have polygamy. One of the things is about the division of matrimonial property between the parties in the marriage. Section 23 (10) provides that every court granting or ordering the marriage to be registered under this section, shall have power over the application of any party to the marriage:

- To require a person to make maintenance payments to an existing wife or wives.
- To order any assets that has been acquired by the parties during the marriage by their joint efforts should be divided between them or any assets obtain during marriage period should be sold and the profit divided between them.

Therefore, based on the provisions of the law, the first wife or existing wives can claim their rights for jointly acquired property if the husband makes an application for polygamy. The effect of this provision also requires the husband to propose a distribution of jointly acquired property before the court approves the polygamy application. Without such recommendation, the court will not process the polygamy application made by the husband.

This provision aims to protect the existing wife from being abused when polygamy occurs (Zaini Yusnita Mat Jusoh, 2016).

- The Event of Death

The specific legal provisions on jointly acquired property claims after death are not enshrined in any Islamic Family law in Malaysia. Instead, it is contained in JKSM Practice No.5 of 2003 which states that the time of claiming jointly acquired property can be made during the divorce process, after divorce and after death. To further strengthen the position of jointly acquired property claims after death, there are several states issued fatwas mentioning about the obligation to claim the property after the death of spouse. Among the fatwas issued is from Selangor State Fatwa Committee dated 18th April 2005. The fatwa mention as the following:

- Jointly acquired property after the death from any parties in the marriage can be distribute to the husband and wife before distributing the property based on faraid.
- The distribution of the jointly acquired property shall be given according to the level of the contribution from both parties either directly or indirectly.
- The distribution agreement must be made by court order.

The right to claim jointly acquired property after death can be exercised by the deceased's spouse because it belongs to them as a result of sharing life together. This can be seen in the case of Bunga Bt Ibrahim v. Ila @ Zila bt Abdullah & others (1999), 9 JH 198 where in this case the wife whose husband has died has demanded the distribution of jointly acquired property which accumulated the 36 years of marriage period. Based on section 9 (2) (IV) of the Kelantan Syariah Court Enactment 1982, it was decided that the decease property considered as jointly acquired property and the wife is entitled to her rights. The same decision was also made in the case of Haji Saudah Lwn Hanafi, (1990), 8 JH 66 where in this case, the court allowed the wife whose husband had died claiming her right to obtain jointly acquired property accumulated during their marriage period. The Penang Syariah High Court in the case of Habsah Bt Saad v. Surianata Baharom & Shaari Samad (2004) XVI 83 has also allowed the wife to claim her rights over jointly acquired property accumulated during her marriage to her deceased husband when the defendant failed to prove the property was inheritance (Zaini Yusnita Mat Jusoh, 2016).

Although the above matter was initially allowed in the Syariah Courts of Kelantan and Terengganu only, but lately it has been followed by other states in Malaysia. That type of claims should be allowed and considered as appropriate because denying the right of the spouse cause injustice, especially when it can be proven that the surviving party has contributed to acquire the property. It is exceptional if the surviving party volunteer on leaving the deceased's property and does not want to claim his or her right on the property (Ibrahim & Hak, 2007).

### **Jointly acquired property settlement**

The settlement for jointly acquired property claims is almost identical between one state and another. In Kota Kinabalu Syariah High Court, the distribution or settlement of jointly acquired property claims is based on three main approaches,

namely settlement through *sulh* method, mutual agreement and trial in court. In 2010, there were 12 cases of jointly acquired property registered in the Kota Kinabalu Syariah High Court where a total of 2 cases were resolved through mutual agreement between the parties involved and 3 cases were allowed to apply through a trial before a judge. Later, a total of 7 cases were rejected and have not been resolved. In 2011, 19 cases of jointly acquired property claims were registered. A total of 2 cases were resolved through *sulh* method, 3 cases were resolved through mutual agreement of the parties and 5 cases were resolved through trial and 9 more cases were rejected and pending. Then the number of jointly acquired property claims cases registered in 2012 increased to 30 cases and this number is the highest number registered between 2010 to 2015. In 2012, a total of 5 cases were resolved through the *sulh* method, 9 cases were resolved through mutual agreement between the parties and 2 cases were allowed to apply through the trial. The remaining 14 cases have been rejected and have not been resolved.

In 2013, the number of registered jointly acquired property claims cases decreased to 22 cases of which 11 cases were resolved through mutual agreement between the parties and 11 more cases have not been resolved and their applications have been rejected. In 2014, the number of jointly acquired property cases registered in the court was 23 cases. A total of 9 cases have been resolved through the *sulh* method, 2 cases have been resolved through mutual agreement of the parties and 1 case has received its application through trial. The remaining 11 cases have been rejected or have not been resolved. Finally, in 2015, the total number of cases registered was 21 cases. A total of 8 cases have been resolved through the *sulh* method, 2 cases have been resolved through mutual agreement, 1 case has received its application through trial and another 10 cases have not been resolved or rejected (Nur Shafiqqah Mudaran & Zuliza Mohd Kusrin). Based on the previous study, the distribution of jointly acquired property settlement can be done based on three main method, namely settlement through *sulh* method, mutual agreement and trial in court.

### **Sulh method**

There are certain cases can be resolved through *sulh* methods such as claims for breach of promise for marriage or engagement, *hadanah* claims (child custody), child support claims, application for court order and claims arising from a divorce such as jointly acquired property (Dahalan, 2014). The *sulh* ceremony was attended by the claimees, the claimants and a *sulh* officer. After the *sulh* council, the *sulh* decision will be decided whether it ends with the settlement of the claim or needs to be brought to trial (Siti Noraini & Zulkifli t.th: 11). If the *sulh* council succeeds in reaching its agreement either partially or wholly, the agreement reached between the parties involved shall be made in the form of a settlement agreement. The agreement must be signed by the parties involved in front of chairman in the *sulh* council. The decision will then be brought in front of the judge to be recorded as a court order in accordance with Section 94, Sabah State Syariah Civil Procedure Enactment 2004 which provides, if the consent of the parties involved has been resolved, the court may at any time with the consent of the parties will records the settlement including its terms, and the record of the settlement shall be a defence by way of *res judicata* in the subsequent action for

the same cause of action, or for the cause of action which is in the same eye. In addition, if the *sulh* council fails either partially or wholly, the case of the jointly acquired property claim will be brought in front of the judge for the trial process (Siti Noraini & Zulkifli t.th: 11).

Examples of cases that have been resolved using *sulh* method are the case of Suhaini Binti Abd Hamid v. Chee Rodzmi Ismail (12100017-0009-2014), plaintiff and defendant were married on 2 December 1995 and divorced on 19 January 2012. In this case, the wife has made a jointly acquired property claim on an apartment that was acquired with the husband during the period of marriage. However, in the *sulh* council the husband or defendant has agreed to surrender the full right over the house to the plaintiff. Both parties then signed a settlement agreement and the judge approved the agreement. The solution through the parties by handing over the ownership of the jointly acquired property to the children is similar to the case of Suzane Binti Adzmin @ Amin v. Ayatullah Bin Yampalera (12100-017-0133-2015). Plaintiff and defendant were married on 17 October 2003 and divorced on 15 February 2012. Plaintiff and defendant have three children. During the marriage, the plaintiff and defendant obtained a condominium unit. In the *sulh* ceremony held on 10 March 2015, both parties have signed a settlement agreement in which the condominium is fully handed over to the plaintiff and the plaintiff will include the names of his three children namely Muhammad Hidayatullah, Muhammad Fadlullah and Muhammad Dhoifullah in the ownership of the house. This settlement agreement was then reviewed and approved by the judge (Ino, 2016; Udu et al., 2016).

*Sulh* solution through "win-win" situation can be seen in the case of Siti Jurinah Asmat v. Musmulyady Matlin (12100-0170096-2015). Plaintiff and defendant in this case were married on April 4, 1999 and divorced on August 20, 2014. During the period of their marriage, the plaintiff and defendant purchased a house and the house was declared as matrimonial property by the court. The parties in this case have reached an agreement in the *sulh* council held on 18 February 2015 to sell the house and the defendant will give a sum of RM20,000.00 to the plaintiff. The two parties then signed a settlement agreement through this *sulh* council and the judge approved the agreement (Zulvany, 2020; Suwija et al., 2019).

In addition, the next case resolved through the same situation is the case of Saudah Ali Baki v. Juni Bin Yusup (12100-0170315-2015). Plaintiffs and defendants were married on 28 November 1983 and divorced on 3 December 2014. During their marriage period, they acquired several properties such as a house in Taman Kinarut Jaya with furniture, an apartment house with furniture, a Nissan Frontier car and a Motorcycle Honda CBR 150CC. The court has agreed to declare the property as jointly acquired property. The parties in this case have also reached an agreement in the *Sulh* Council held on 29 July 2015 for all the property to be divided equally between them which is 50% to the plaintiff and 50% to the defendant including a Nissan Frontier car and a Honda CBR 150CC motorcycle whereas all remaining monthly instalments for these two vehicles will be fully borne by the defendant. The court approved the agreement through the *sulh* council.

Another example of using *sulh* method is the case of Nikmah Binti Abdullah v. Ridwan Bin Tenriranran (12100-017-0414-2013). In this case, the plaintiff and the defendant were married on September 29, 2008 and divorced on March 12, 2013. They were endowed with three children. Plaintiffs and defendants have acquired a number of properties during their marriage and have been declared as jointly acquired property such as a terrace house and an apartment. As a result of discussions between the two parties in the *sulh* council, finally the parties involved agreed to give the terrace house 100% to the plaintiff and the apartment was also given 100% to the defendant. The judge then approved this agreement.

Among the examples of cases that occurred in this situation is the case of Ibrahim bin Ag. Ali v. Maisarah Maidol Abdullah @ Mascila Maidol (12100-017-02902014). Plaintiff and defendant were married on 16 August 2012 and divorced on 25 March 2014. During the marriage period, the parties involved acquired property together such as a house, wardrobe, bed, television, refrigerator, washing machine, air conditioner, two speaker units and a motorcycle. Plaintiff stated that he had built the house using his own money and bought home appliances such as cupboards, beds, televisions, refrigerators, washing machines, air conditioners and two speaker units also with his own money and paid a deposit to buy the motorcycle. Later, the *sulh* council was held between the parties on 11 June 2014 and in the ceremony, the parties signed a settlement agreement agreeing that all the property be handed over to the defendants. Consent through this *sulh* council was allowed by the judge (Nur Shafiqqah Mudaran & Zuliza Mohd Kusrin).

### **Mutual agreement**

In Malaysia, the presence of lawyers in court proceedings has begun since the establishment of the Syariah Courts under the Shariah Administration Laws of the states. Under this law, it allows the presence of legal officers and lawyers of any party in any proceedings in the Syariah Court, at any level of court including at the level of the Court of Appeal. In general, the duty of lawyers is not only limited to assist the court in matters of procedure and result from the previous cases, but they also play a role in finding a peaceful solution between the disputing parties. They can organize a *sulh* method to the client they represent in whatever stage of the proceedings is taking place with a conditional that it happens before the judgment is carried out.

With this, the dispute resolution can be expedited and suspense relationship between the parties can be avoided. This can be seen based on Practice Instruction No. 2 of 2012 which states that the cases accompanied by a Settlement Agreement / Agreement made by shariah lawyer or the parties, there is no need to refer to *sulh* council at the registration stage. Based on Practice Instruction No. 2 In 2012, after reaching an agreement between the two parties in the presence of their lawyer, the lawyer will make a certificate of contract that will be signed by both parties. Then, the syariah lawyer will inform the court during the trial that the parties have reached a mutual agreement and the judge will review the agreement then issue a court order. In addition, this mutual agreement can be made during ongoing trial process. This situation occurs when the *sulh* method between these two parties is unsuccessful and the parties are brought in front of judge for trial. When the parties involve reaching a mutual agreement

between them and stated the agreement in front of judge, then the judge will review the agreement made by the parties and issue a court order based on the agreement. This settlement named as a judgment by mutual agreement. Based on the statistics of settlement of jointly acquired 1 property cases in the Kota Kinabalu High Court, a total of 29 cases out of 65 cases were completed through mutual agreement between the parties and the settlement through this method recorded as the highest method of settlement in property claim.

Among the examples of cases through this mutual agreement is the case of Aimee Nadia Abdullah @ Jeslin Binti Beliku v. Jumain Bin Sainoh (12100-017-0517-2013). In this case, the plaintiff and the defendant were married on 3 February 1990 and divorced on 1 October 2013. During the marriage, the plaintiff and the defendant were blessed with two sons and they also acquired a two-storey terrace house and an apartment. Based on this case, both parties have signed a Memorandum of Understanding in front of their lawyer from Messrs. MS Association. In the contract states that a two-storey terrace house has become the property of the defendant, but the defendant agrees and allows the plaintiff and their second child to stay in the house for as long as the plaintiff wishes or needed. However, an apartment that has been purchased by the plaintiff remain as plaintiff's property and the defendant does not claim jointly acquired property on the apartment, but he requested to transfer the ownership of the apartment to their children equally. The plaintiff agreed with the requirement to hand over the ownership of the apartment to her children. The judge then reviewed the agreement and issued an order approving the mutual agreement.

### **Trial in court**

Couples who are unable to settle the case of jointly acquired property peacefully will be tried in front of judge. The settlement through the trial process shows the distribution of jointly acquired property which can be done by following the distribution of  $\frac{1}{2}$ ,  $\frac{1}{3}$ , or  $\frac{2}{3}$  from the total value of the property and depending on the level of contribution involved in obtaining the property. In the process of trial, the party who making the claim or allegation must submit related evidence to the jointly acquired property. In addition, the parties involved in the case of jointly acquired property claim must also prove to the court about their respective contributions in acquiring the property whether direct or indirect contributions. Direct contributions are usually proven through oral evidence, while indirect contributions are proven by circumstantial evidence. In addition, the parties also need to prove the level of contribution they have given in obtaining the matrimonial property.

An example of a jointly acquired property claim case heard in the Kota Kinabalu Syariah High Court is the case of Zaharin Bin Naamat v. Nurhanisah Binti Abdullah @ Sumini (12100-017-04612011). In this case, the plaintiff has made a claim against the defendant to obtain an order declaring a car belonging to the plaintiff namely Toyota Rav 4 which was purchased around October 1999 is not a jointly acquired property between the plaintiff and the defendant. The defendant must return the car to the plaintiff immediately. In addition, jointly acquired property claims were also made against the three houses from several houses owned by the plaintiff and defendant during the marriage period, namely a semi-

D house in Taman Sri Matang, an apartment in Beverly Hills and a two-storey terrace house in Taman Suria Indah as a jointly acquired property and the plaintiff is entitled to claim 90% of the value of the house as all its financing is borne by the plaintiff one to this day as well as the plaintiff's money amounting to RM147,000.00 which was used by the defendant to finance the defendant's son's education. Pontianak, Indonesia and deposit to buy a piece of land in Kuching Sarawak.

However, the defendants did not agree with the plaintiff's claim and filed a counterclaim against the plaintiff. In her claim, she wants 40% of the rights from the houses they owned, namely a condominium unit in Jalan Sulaman, an apartment in University Apartment, an apartment in Country Heights Apartment, an apartment in Beverly Hills and two apartments in Melinsung Summer Bay Resort Apartment. In addition, the defendant also made a claim that 40% of the Employees Provident Fund (EPF) owned by the plaintiff and 40% of the current value of a Gen 2 type car should also be handed over to the defendant. Meanwhile, a Toyota Rav 4 car should be given to the defendant in full. Therefore, in this case, the court has ruled that properties such as a semi-D house in Taman Sri Matang, two apartment units in Beverly Hills, a condominium in Jalan Sulaman and an apartment in Melinsung Summer Bay Resort Apartment as matrimonial property. The court also ordered the plaintiff to receive a share rate of 80% and a defendant can get 20% according to the current valuation of the professional appraiser on the matrimonial property after deducting costs and loan debt. In addition, the plaintiff's claim on a two-storey terrace house in Taman Suria Indah is allowed and the plaintiff gets a share rate of 30% while the defendant has 70%. The plaintiff's claim of RM147,000.00 as debt during the marriage was rejected and the defendant's counterclaim against an apartment in University Apartment, an apartment in Country Heights Apartment, an apartment in Melinsung Summer Bay Resort Apartments, the plaintiff's EPF and a Proton vehicle Gen 2 has also been rejected by the court (Nur Shafiqqah Mudaran & Zuliza Mohd Kusrin).

### **Conclusion**

The concept and division of jointly acquired property in Malaysia has been codified in the Islamic Family Enactments of the states. The Syariah courts in every state are given exclusive jurisdiction to hear and discuss for claims of this property from any divorced of Muslim couple. A claim that can be considered by the court depends on the level or rate of contribution given by the claimant to the accumulated property during their marriage. Syariah Courts usually consider the implied or indirect contribution on the assets during the marriage period. Indirect contributions in the marriage including in managing the house and children will be considered subject to the discretionary power of the court by considering the status of the applicant (Suwaid Tapah, 2001).

### **Recommendation**

This study suggests establishing a guideline or standard procedure for jointly acquired property application to ensure women are protected in helping these groups obtain their rights and subsequently plan more stable finances in the

future. The features of the standard procedure should be implemented in a form that can be achieved by the applicant of jointly acquired property. Next, the standard procedure should be user-friendly and easy to apply and quickly approved by the Court. This paper proposes to open express counter in court buildings specifically for jointly acquired property applications. Besides that, the management can also fully utilize the technological application by providing online application system. Such applications are very necessary to ensure the distribution process become faster, more efficient and able to provides convenience to women to claim their right that have been protected by law, especially to facilitate them for future planning.

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