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The Concept of Matrimonial Property: Conditions and Regulations

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Abstract---This research paper, titled “The concept of matrimonial property: conditions and regulations” aims at identifying the definition of matrimonial property, and the stance of Shariah on it, and illustrating its terms and conditions. The significance of the paper lies in its investigation of an issue that preoccupies the public in Islamic communities, that is the issue of matrimonial property and the entitlement of either spouse to such property which they both shared in accruing. The study shall draw on an inductive analytical approach, which is based on gathering facts, and comparing and analyzing them, to produce correct scientific results.

Keywords---conditions, rights, shared property, spouses, terms.

Introduction

Shared money between spouses is one of the new jurisprudential issues that were not addressed by previous jurists, and it is not classified among the financial rights arising out of the marriage contract. Rather, it is a financial right that some contemporary jurists deem entitled to one of the spouses when divorce or death occurs. This financial right is recognized in Malaysian law and is enforced by courts. That results in the need to identify the juristic ruling on this issue, the legal classification of it, and the evidence sustaining it Islamic Shariah. The issue of sharing property between spouses has witnessed a broad jurisprudential controversy, as many jurists have reservations about it, and they assert that it contravenes what the Shariah has dictated, regarding an independent financial responsibility for both spouses. Yet, some jurists deem its permissibility as long as it is sustained through the consent of both parties (husband and wife) (Cusack & Wolfe, 2007; Friedman, 1982).

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And though this case is absent in most of the laws of Islamic countries, the laws of some countries have passed legislation that allow the division of property that the spouses accrue after marriage, such as the Moroccan law (Family Code, Article 49), the Malaysian Law (<https://www.researchgate.net>), and the Tunisian Law (<http://maitreimennasri.over-blog.com/article>).

Financial rights resulting from the marriage contract

Islam has established certain rights for the wife over her husband (Ibn Jazzi al-Kalbi, 1431 AH), and these rights are of two types; financial rights and non-financial rights.

Matrimonial financial rights are classified into three categories

- Rights effected by the marriage contract, such as Mahr (dowry) and maintenance, knowing that the wife gets entitled to the whole amount of the Mahr after consummation of marriage or if either of the spouses dies even if before consummation (Al-Khurashi Al-Maliki, 2/54), since Almighty Allah says, "But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?" (An-Nisa' 20). Besides, if a wife is divorced before consummation and after allocating a Mahr for her, she becomes entitled to a half of its amount, since Almighty Allah says, "And if you divorce them before you have touched them and you have already specified for them an obligation, then [give] half of what you specified - unless they forego the right or the one in whose hand is the marriage contract foregoes it. And to forego it is nearer to righteousness. And do not forget graciousness between you. Indeed Allah, of whatever you do, is Seeing." (Al-Baqarah 237) Still, if she is divorced after consummation and before allocating a Mahr, then she is entitled to a Mahr equal to that customarily assigned for her peers, as Almighty Allah says, "So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation (González & Viitanen, 2009; Weiss, 1997). And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise." (An-Nisa' 24) In this regard, the Prophet (peace be upon him) urged the husbands to spend on their wives saying, "When someone spends on his family seeking his reward for it from Allah, it is counted as a charity from him." (Al-Albani & al-Din, 2002). The husband's providing for his wife is a Shariah-dictated obligation according to scholarly agreement, and as per the husband's financial ability (Al-Luhaimid, 9/283), because Almighty Allah says, "Let a man of wealth spend from his wealth" (At-Talaq 7). It is also obligatory for the husband to provide clothing for his wife, for the Prophet (peace be upon him) said, "and you shall provide for them and fairly clothe them." (Abu Dawud, 2009). So, providing for the wife is binding for a husband except in case of the wife's insubordination (Islamic Fiqh Academy, Resolution No. 144). Likewise, Shariah dictates financial rights for the wife after the divorce. If divorce be revocable, then the divorcee is treated as a wife in terms of financial rights, because Almighty Allah says, "O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and

keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter.” (At-Talaq 1) Yet, if divorce is irrevocable, then the divorcee is entitled to alimony until she gives birth (in case she be pregnant), and if she is not pregnant, then there is no maintenance for her, because the marriage contract between them has been dissolved. In this case, she has the right to Mut’ah (post-divorce gift) if she is divorced before consummation, because Allah Almighty says, “But give them [a gift of] compensation - the wealthy according to his capability and the poor according to his capability” (Al-Baqarah 266). The default rule regarding what the spouses stipulate in the marriage contract is that it is a valid condition that must be fulfilled, as long as it does not turn permissible things forbidden or forbidden things permissible, for the Prophet (peace be upon him) said, “The most deserving of conditions is that through which you have sexual intercourse permissible for you [marriage contract].” (Al-Albani & al-Din, 2002). The Prophet (peace be upon him) also said, “Whoever stipulates a condition that is not [approved] in the Book of Allah, then it is invalid” (Al-Albani & al-Din, 2002).

- Rights effected by the death of either spouse, namely inheritance. A husband is entitled to a share in the inheritance of his deceased wife and the wife is likewise entitled to a share in her deceased husband’s inheritance as long as the demise of the spouse occurs when the spouses are united by a valid marriage contract (Az-Zayla’i, 1313 AH), since Almighty Allah says, “And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt.” (An-Nisa’ 12).
- Rights effected by other financial relations, including buying, selling, etc. To this type of rights, the rulings governing such relations between other than the spouses apply (Kuwaiti Fiqh Encyclopedia 1427 AH). So, a wife is entitled to her own wealth, and she has the right to own and to dispose of her own property, while the husband has no authority over her property. (Islamic Fiqh Academy, Resolution 144). The marriage contract does not affect the independent financial liability of each of the spouses, nor does it lend the husband any authority over his wife’s property as long as she is a mature adult (Ibn Al-Mundhir, 1408 AH). Likewise, it does not give the wife the right to share her husband’s property, and she is only entitled to what the Shariah stipulates for her of maintenance and other expenses in the event of marriage, *mut’ah* in the event of divorce, and inheritance in the event of the death of the husband. The spouses must agree on common financial issues, so that their financial disputes do not negatively impact their marital life. Hence, the husband must protect the rights of his wife, for the Prophet (peace be upon him) said, “I declare inviolable the rights of two vulnerable [types of people]; the orphans and women”. Besides, the financial relations between the spouses must be documented because Almighty Allah says, “O you who have believed, when you contract a debt for a specified term, write it down.” (Al-Baqarah 282) (Siraji & Halim, 2021; Ahmed et al., 2021). In this regard, the wife is required to provide sufficient evidence

sustaining her claims. Yet, if the marital relationship ends while spouses have financial relations and their shares are not identified, then due judicial procedures based on evidence and oaths are necessary (Kuwaiti Fiqh Encyclopedia, 1427 AH). As for splitting or dividing property into fixed shares in case of the death of a spouse or of divorce, it does not comply with the rulings of the Shariah, as it spoils the marital relationship. The Egyptian Dar Al-Ifta' rejected such splitting or division, affirming that this idea is imported from the West and that it views the marital relationship as a permanent relationship that ends only in death. (<https://www.daralifta.org/AR/ViewFatwa.aspx?ID=12365&LangID=1>)

The concept of matrimonial property (Malaysian family law 2006)

Matrimonial property is the property accrued after commencing the marital life and as a result of the two spouses' contribution. This property is to be divided according to the shares of contribution to its accrual. As for the property accrued before contracting marriage, it falls within the independent financial estate of each spouse. Scholars almost agree that all the works carried out by the wife are considered as part of her domestic duties, and that she is not entitled to compensation for such works (Gede Budasi & Wayan Suryasa, 2021; Nasution, 2016).

Definition of matrimonial property in Malaysian family law

The family laws in Malaysian states mention close definitions of matrimonial property, indicating that matrimonial property is a property acquired by the spouses during the span of their marriage. (Malaysian Family Law 2006). It is also defined as the property acquired by the spouses during their marital period." (Islamic Family Law, State of Negeri Sembilan, 2003). According to these definitions, the division of property is according to the respective contributive shares of the spouses in accruing it (decision of the Fatwa Council in the state of Perlis).

Some contemporary scholars deem it permissible to split matrimonial property between the two spouses, and they quote the following as evidence:

- Tradition or customary practice, based on the Prophetic hadith that reads, "Whatever the Muslims deem good is good before Allah." (Ibn Raslan 2016). This is also derived from the customary practices among the Malay people. So, if the husband dies or divorces his wife, the money earned during the marriage should be divided according to the respective contribution to accrual of it. Legists accept the division of this property as established in the Islamic Family Law. Besides, the Shariah courts decided to implement it.
- Division of matrimonial property between the spouses is among public interests, since it is to the benefit of the wife and a form of sustaining her after divorce or death of the husband.

Regulations for matrimonial property

Matrimonial property is like a common property between any two parties who mutually agree to engage in trade on condition that profit be divided between them in fixed shares. Therefore, the regulations pertaining to matrimonial property are the same as those governing any type of financial relationships between any two other persons. They include the following:

It is permissible for any spouse to claim their share in matrimonial property during marriage or after its termination, based on the respective share of their contribution to its accrual (El Saadawi, 1982; Majzub & Mansor, 2012). Determining such shares falls within the discretion of the judge. (Decision of Muslim Scholars Association at the Kelantan State Council of Religious Affairs 2002) This came during the discussion about the fatwa regarding the demand for money shared between spouses by the heirs of the deceased wife, in which it was stated that:

- Claiming matrimonial property by a living spouse is permissible, whether the claim is due to separation by divorce or death.
- Claiming matrimonial property by the heirs is permissible, whether the claim is due to separation by divorce or death.
- Identifying the amount of financial right is pendent on the legal court's decision.

The Islamic Fiqh Council has permitted the spouses to split their money between themselves, especially in the case of cooperation in accruing and augmenting it, and in case the spouses agree. However, it is not permissible to impose that splitting on them (Islamic Fiqh Council, Resolution 22). This was also indicated in the decision of the Fatwa Council in the state of Selangor, regarding the matrimonial property by the two spouses (Frémeaux & Leturcq, 2018; Yeates, 1999). The decision permitted the division of the matrimonial property before the distribution of inheritance shares and after settlement of the debts of the deceased. Such division is based on the amount of the contribution of both spouses, and such property is divided by the court (<http://www.e-fatwa.gov.my>).

Based on the foregoing, it becomes evident that fatwa councils in Malaysia have permitted this financial right, if its conditions are met. A royal order was issued to that effect, and it was recognized by Shariah courts and implemented in many cases. Besides, Islamic Family Law does not identify a specific share for each spouse when dividing matrimonial property, but it is left to the discretion of the court. Each spouse is allowed to claim their right to matrimonial property, after the divorce or the death of either of them, or when the husband applies for a second marriage. Then, such property is divided according to the share of each of the spouses in the jointly owned property (<http://www.e-fatwa.gov.my>).

The impact of marriage contract termination on matrimonial property

The marriage contract ends when one of the following takes place: death, divorce, separation, *li'an* (Mutual Repudiation), *zihār* (A husband repudiating his wife by forswearing any marital relations with her, declaring her to be “like the back of

his mother”), annulment (of marriage contract), apostasy, etc. In each of these cases, there are rules, boundaries, and legal etiquette, which everyone must adhere to. Yet, none of these marriage termination modes affect the matrimonial property. The Islamic Fiqh Council issued a decision regulating the financial liability between the spouses, stating that “If the wife actually contributes through her money, or through her work in owning a (matrimonial) house, a real estate or a business, then she has the right to share ownership of that house or project in proportion to the money that she has contributed” (Islamic Fiqh Council, Resolution 144). Besides, each of the spouses has an independent financial responsibility, and the right to dispose of what he/she owns of money and rights. Likewise, what each of the spouses possesses as a result of the marriage contract or outside of it is considered private property of its owner, and it passes from the owner, after demise, to the due heirs. If the marital relationship ends and this causes harm to the woman, then she has the right to resort to the judiciary to claim compensation for the damage incurred upon her through a divorce. (Islamic Fiqh Council, Resolution 722) (Pole et al., 2004; Espinosa & Evans, 2008).

Conclusion

Among the key findings reached in this research paper are the following:

- That the issue of the matrimonial property was not introduced among the topics covered in Islamic jurisprudence, nor did the jurists deal with it in the past by way of illustration or explanation.
- The Malaysian legal judiciary’s acceptance of dividing the matrimonial property between the spouses relied for evidence on customary practice and interest.
- Islam cares for women's interests, raises their status, preserves their dignity, and sustains their rights.
- The claim for the matrimonial property is made through the judiciary after establishing respective evidence or documentation that proves the contribution of one of the spouses to such property (Karjono et al., 2017; Woang, 2021).
- This matrimonial property is divided according to the decision of the court and as per the amount of contribution to it by each of the spouses.

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