



SYARAH: JURNAL HUKUM ISLAM DAN EKONOMI
P-ISSN: 2302-9978 / E-ISSN: 2715-262
Volume 13, Nomor 2, Desember 2024
DOI: <https://doi.org/10.47766/syarah.v13i2.4991>

Wife's Income and Asset Position: A Comparative Study of Indonesia, Malaysia, Türkiye and Brunei Darussalam

Zulhija Yanti Nasution¹, Syadidul Kahar², Muhammad Irsan Barus³

^{1,3} Sekolah Tinggi Agama Islam Negeri Mandailing Natal

² STIT Babussalam Aceh Tenggara

E-mail: zulhijayantinst@stain-madina.ac.id¹, Email: syadidulk@yahoo.com²

E-mail: mirsanbarus@stain-madina.ac.id³

Abstract: This research aims to describe the position of the wife's income from the perspective of the law in Indonesia, Malaysia, Turkey, and Brunei Darussalam. The research method uses normative legal studies by comparing the four countries' legal views. The results showed that the wife's income assets in Indonesia and Turkey became joint assets and were divided equally upon separation. Meanwhile, in Malaysia and Brunei, the size of the wife's share when there is separation is determined by the amount of the wife's income.

Keywords: Wife's Income Property; Comparative Study.

Abstrak: Penelitian ini bertujuan untuk mendeskripsikan kedudukan harta penghasilan istri dalam perspektif hukum di Indonesia, Malaysia, Turki dan Brunei Darussalam. Metode penelitian menggunakan kajian hukum normatif, yaitu dengan membandingkan pandangan hukum dari empat negara. Hasil penelitian menunjukkan bahwa harta penghasilan istri di Indonesia dan Turki menjadi harta bersama dan dibagi setara saat terjadi perpisahan. Sementara di Malaysia dan Brunei bahwa besar kecilnya bagian istri ketika terjadi perpisahan ditentukan oleh jumlah harta penghasilan istri.

Kata Kunci: Harta Penghasilan Istri; Studi Komparatif.

INTRODUCTION

A family that is peaceful, loving and compassionate needs financial support.¹When first building a household, some have worked first, be it the husband or wife. However, there are also those who build a household from the bottom. This means that neither the husband nor the wife has a permanent job and sometimes even relies on the help of parents, either the husband or the wife.

Scholars agree that the obligation to provide maintenance lies with the husband.²A husband is required to provide a decent and quality living for his wife and children. Although the wealth obtained is the result of the husband's efforts, it does not mean that the wife has no rights in it. The wife and husband each have the same rights because they are essentially a partnership in the household. People who are in a partnership both enjoy the benefits of the household business they have built. Husband and wife both feel bitterness if the business they have built fails and falls apart. Likewise, if the husband and wife both have jobs and collect joint wealth, so that each can be assessed for their contribution. Of course, their positions are the same in enjoying and owning it equally.

For that reason, when a separation occurs, whether due to divorce or death, the wife still gets a portion of the assets that were collected together. Although the distribution is different in each country. This is certainly related to the socio-culture and outlook on life of each country that they formulate in the constitution and positive laws that they adhere to.

What if a wife replaces the husband's role in providing a living? The source of wealth obtained in marriage is the wife's income. The husband is unable to provide a living for his wife due to economic difficulties or the husband is irresponsible. This condition requires a more comprehensive study. Because in positive law in Indonesia, what currently applies is an equal and equal division of assets. Regardless of whether the assets come from the husband's own income or the wife's income. If the assets come from the husband, it is a common thing because the husband is required to provide a living. The problem is if the assets come from the wife's income and the husband does not fulfill his

¹ Eva Yusi Anggraini dan Eva Yusi Anggraini, "Hubungan kepuasan terhadap pendapatan dengan keharmonisan keluarga pada masa pandemi covid-19" (Uiveritas 17 Agustus 1945 Surabaya, 2022); Ranti Nurdiansari dan Anis Sriwahyuni, "Pengaruh pengelolaan keuangan terhadap keharmonisan rumah tangga," *Jurnal Aktiva: Riset Akuntansi dan Keuangan* 2, no. 1 (2020): 27-34.

² Tarmizi M Jakfar dan Fakhrurrazi Fakhrurrazi, "Kewajiban Nafkah Ushul Dan Furu'Menurut Mazhab Syafi'i," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 2 (2017): 352-71; Nandang Fathur Rahman, "Perbandingan Kewajiban Nafkah Menurut Hukum Islam dan Hukum Positif Di Indonesia," *Al-Ahwal Al-Syakhsiiyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, no. 2 (2022): 193-206.

obligation to provide a living, then the husband or his family asks for the assets to be divided equally. There is a sense of injustice that occurs in this problem.

To answer this question, it is necessary to look at it more comprehensively. In addition, it is also necessary to compare the perspectives of various countries with Muslim majorities such as Malaysia, Brunei Darussalam and Turkey. The purpose of this comparison is to see in broad outline the legal perspective of the position of the wife's income assets. It is hoped that this perspective will be the subject of study and reflection to reformulate family law in Indonesia.

Several researchers have attempted to explain the position of a wife's property in Indonesia from an Islamic perspective and positive law, such as Mochamad Mansur,³Muhammad,⁴Puspytasari.⁵There is also research that explains how joint property is divided in Malaysia, such as Hassan,⁶and Harris.⁷Different from previous studies, this study aims to compare the positive legal perspectives of 4 countries including Indonesia, Malaysia, Brunei Darussalam and Turkey on the position of the wife's income after separation. This is considered important considering that these four countries are countries with Muslim majority populations.

RESEARCH METHODS

This research focuses on the study of regulations in four countries. Theoretically, this research is part of normative legal studies. In normative legal research, the object of study can be dogmatic rules or laws and regulations related to the behavior and life of society.⁸The regulations studied in this research are positive laws in four countries, namely positive laws in Indonesia, Malaysia, Turkey and Brunei Darussalam relating to family law, especially the law on the status of the wife's income.

³ Mochamad Mansur, "Pembagian Harta Bersama Dalam Konteks Penghasilan Istri Lebih Besar Dibanding Suami," *JUSTITABLE-Jurnal Hukum* 5, no. 1 (2022): 58-74.

⁴ Hanifah Salma Muhammad, "Analisis Yuridis Pembagian Harta Gono Gini Berdasarkan Kontribusi Suami Istri Selama Perkawinan," *Jurnal Restorasi Hukum* 5, no. 2 (2022).

⁵ Heppy Hyma Puspytasari, "Harta Bersama Dalam Perkawinan Menurut Hukum Islam Dan Hukum Positif," *Jatiswara* 35, no. 2 (2020).

⁶ Muhammad Khairi Bin Hassan, "Pembagian Harta Bersama Di Indonesia Dan Malaysia (Studi Perbandingan antara Kompilasi Hukum Islam dan Enakmen Undang-Undang Keluarga Islam Selangor)" (UIN Ar-Raniry, 2020).

⁷ Fatin Nabillah Binti Harris, "Pembagian Harta Bersama Pasca Perceraian (Studi Kasus di Mahkamah Tinggi Syariah Negeri Melaka, Malaysia)" (UIN Ar-Raniry Banda Aceh, 2018).

⁸ Junaedi Efendi dan Jonny Ibrahim, *Metode Penelitian Hukum Normatif dan Empiris* (Depok: Prenada Media Group, 2016)

DISCUSSION/RESULTS AND DISCUSSION

The Concept of Property in Marriage

Wealth is one of the supports for the sustainability of human life. Wealth is one of the instruments that can provide benefits to a person or group of people.⁹ When getting married, some husbands or wives bring wealth, be it inheritance, gifts or hard work. However, there are also those who do not have any wealth at all because so far what they have is the result of gifts from their parents.

Assets acquired in marriage come from various sources. The sources of assets can be described as follows: First, assets acquired before marriage. These assets can be obtained from work, grants or inheritance. For example, before marriage, the wife or husband has worked or owned a business. That work or business produces assets that belong to him or her before marriage. It could also be, for example, that someone else gives a grant in the form of assets because of closeness or achievement. Before marriage, for example, the husband or wife has an achievement. This achievement is then given a cash prize by the government, organization, group or certain individual. On the other hand, it could also be that the husband or wife receives an inheritance because one or both parents have died. Assets owned before marriage can remain personal property or can become joint property of both parties depending on the agreement.¹⁰

Second, assets obtained after marriage, but not from work, in the form of grants or inheritances. This condition can occur, for example, when someone is married, he receives an inheritance or grant from his parents. The position of this asset is also the same as assets before marriage. It depends on the agreement whether the assets remain personal property or are merged into joint assets.

Third, wealth obtained from the husband's business. In general, a boy when he is an adult, is responsible for himself to find wealth. In contrast to a girl who is financed by her parents until she gets married. Marriage becomes an instrument for transferring the responsibility for financing/finding wealth that was originally borne by the parents, to being transferred to the husband. This is the basis in Islam that the responsibility to fulfill the wealth that is the family's livelihood becomes the responsibility of the husband.¹¹ A man's efforts to earn a living are part of maintaining the integrity of the family. This is an obligation since the marriage contract was carried out. In patriarchal societies, the task of

⁹ Andi Iswandi, "Maslahat memelihara harta dalam sistem ekonomi Islam," *SALAM: Jurnal Sosial dan Budaya Syar-i* 1, no. 1 (2014).

¹⁰ Ahmad Maulana, "Percampuran Harta Bawaan Menjadi Harta Bersama Melalui Perjanjian Pra Nikah Dalam Perkawinan Campuran" (Universitas Batanghari Jambi, 2023).

¹¹ Jumni Nelli, "Analisis tentang kewajiban nafkah keluarga dalam pemberlakuan harta bersama," *Al-Istinbath: Jurnal Hukum Islam* 2, no. 1 (2017): 29–46.

earning a living is generally the husband's task. The husband acts as the head of the household who is tasked with earning a living according to his profession, while the wife plays a greater role at home and does not do any work that directly generates money. The standard for measuring the provision of living by a husband to his wife is not explained in the Qur'an. This is the object of *ijtihad* by scholars, especially the imams of the *madhhab*.¹²

Fourth, wealth obtained from working together. Husband and wife both work in the money-making sector. This can happen in a society that adopts the concept of equality or the social conditions of life that have changed so that wives can work in the money-making sector. Societies that have agreed to equality generally do not assign the process of earning a living to the husband. However, husbands or wives can contribute to each other to earn income that is useful for supporting family finances. The Compilation of Islamic Law (KHI) Indonesia explains that husbands or wives both have an obligation to uphold a household that is *sakinah mawaddah and rahmah*.¹³

Fifth, assets obtained from the wife's income. In this condition, the wife replaces the husband as the breadwinner. Contemporary conditions today describe many wives who work and some even replace their husbands to meet their needs. Ironically, the wife does double work, namely in the household institution and works outside to earn a living. The husband is unemployed and unable to provide for his wife.

Wife's Income

Wife's income is the property generated by the wife from her work. The position of the wife's income is not specifically explained in the Qur'an. The wife's income is also not explicitly explained in Islamic law. The problem of the wife's income is an area of legal study that is open to Islamic legal experts to conduct *ijtihad*. The wife's income in the household occupies several levels of position. First, the wife and husband both generate assets. The wife with the competence and capacity she has can work to help her husband earn a living. Even according to the Central Statistics Agency, the phenomenon of working wives is a normal condition today. Data shows that there has been an increase in the number of working wives in Indonesia, namely 56.01%.¹⁴ In this condition there are two possibilities, namely the wife willingly merges the assets obtained

¹² Karimuddin Karimuddin et al., "Standardisasi Nafkah Istri: Studi Perbandingan Mazhab Maliki dan Mazhab Syafi'i," *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 23, no. 1 (2021): 83-95.

¹³ Rustam Dahar Karnadi Apollo Harahap, "Kesetaraan Laki-laki dan Perempuan dalam Hukum Perkawinan Islam," *Sawwa: Jurnal Studi Gender* 8, no. 2 (2013): 361-86.

¹⁴ <https://www.bps.go.id/id> di akses 14 Desember 2023

together with her husband so that they become joint property. The second possibility is that the wife asks for the money she earns for herself and still demands maintenance from her husband. This is actually reasonable because the obligation to provide maintenance is determined by the husband. The wife has the right to ask for maintenance even though she has her own income.

عَنْ عَائِشَةَ قَالَتْ دَخَلَتْ هِنْدُ بِنْتُ عُتْبَةَ امْرَأَةُ أَبِي سُفْيَانَ عَلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ يَا رَسُولَ اللَّهِ إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ لَا يُعْطِينِي مِنَ النِّفْقَةِ مَا يَكْفِينِي وَيَكْفِي بَنِيَّ إِلَّا مَا أَخَذْتُ مِنْ مَالِهِ بِغَيْرِ عِلْمِهِ فَهَلْ عَلَيَّ فِي ذَلِكَ مِنْ جُنَاحٍ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ خُذِي مِنْ مَالِهِ بِالْمَعْرُوفِ مَا يَكْفِيكَ وَيَكْفِي بَنِيكَ

"From Aisha she told about Hind binti 'Utbah the wife of Abu Sufyan and she complained, "O Messenger of Allah, Abu Sufyan is a stingy man, he never provides enough for me and my children, unless I take his property without his knowledge. Am I sinful if I do so?" The Messenger of Allah replied, "You may take it as much as you can to meet your needs and those of your children." Hadith narrated by Muslim No. 3233.

This hadith explains that a wife has every right to demand a living from her husband to fulfill the needs of herself and her children. Even if the husband is very stingy, the wife may take it by force or take it without her husband's knowledge.

Second, the wife supports herself because the husband does not provide for her, it could be because he is unwilling to take responsibility or is busy supporting the other wife, thus neglecting his obligations to the other wife. This condition can be categorized as a case of domestic neglect. Cases of domestic neglect in the context of positive Indonesian law are regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Article 9 paragraph (1) and (2) which explains "that neglecting another person within the scope of the household can be punished with imprisonment for 3 (three) years or a maximum fine of Rp. 15,000,000.¹⁵

Third, the wife replaces the husband to provide for the family. The wife who works to earn a living with various professions while the husband is unemployed. In this condition there are two possibilities, namely the husband replaces the wife's duties in carrying out housework such as cooking, cleaning the house, or taking care of children and so on. The second possibility, the husband only takes care of himself or is even taken care of by the wife so that the wife has a double job, namely

¹⁵ Undang-undang (UU) Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga

working at home and working to earn a living. A wife who is in a condition like this has essentially become a widow. This is because the wife has indirectly become the head of the family. The findings of PEKKA (Empowerment of Women Heads of Families) explain that one in four families in Indonesia is headed by women.¹⁶ They also explained that as many as 70 percent of families headed by women are below the poverty line. According to PEKKA, there are seven categories of women considered as heads of families, namely (1) widows who have died; (2) divorcees; (3) wives whose husbands have left them; (4) women who have children but are not married; (5) wives whose husbands are not working because they are sick; (6) women who have husbands who cannot fulfill their responsibilities as heads of families; (7) daughters who must bear the burden of the family.

When a separation occurs, the assets generated by the wife become joint assets.¹⁷ In some communities, the division of joint assets when still together between husband and wife is still considered taboo. Husband and wife usually only question the division of joint assets after a divorce or when the happiness of the household is on the verge of destruction. The purpose of marriage can no longer be achieved. The division of joint assets often undergoes a complicated process because each party, husband or wife, claims that the assets are theirs.

Many scholars argue that joint property is likened to partnership. This concept emerged because the wife can also be considered a partner or partnership who works, although she does not work in the general sense understood by society such as taking care of the household, cooking, raising children, washing and various other domestic jobs. Likewise, the husband who works replaces the wife's duties at home. So what the wife produces becomes joint property with her husband.¹⁸ The husband willingly replaces the wife's role and the wife willingly replaces the husband's role.

Position of Wife's Income in Indonesia

Property in marriage comes from five sources. In the Indonesian context, the concept of joint property is generally adopted.^{19,20} This means

¹⁶ <https://pekka.or.id/> di akses 14 Desember 2023

¹⁷ Marital properties are a legal concept that falls within the realm of marriage law. Not only in Indonesia, other countries, both those that adhere to common law and civil law, also recognize the legal institution of joint property. The terms often referred to as joint property are marital property, matrimonial property or marriage property.

¹⁸ Marital properties are a legal concept that falls within the realm of marriage law. Not only in Indonesia, other countries, both those that adhere to common law and civil law, also recognize the legal institution of joint property. The terms often referred to as joint property are marital property, matrimonial property or marriage property.

¹⁹ M Natsir Asnawi dan M H SHI, *Hukum harta bersama: Kajian perbandingan hukum, telaah norma, yurisprudensi, dan pembaruan hukum* (Prenada Media, 2022). Joint property is property in a

that wherever the assets come from, whether from inheritance and gifts or assets generated by both husband and wife or one of them, the assets are considered joint assets. The regulation of joint assets in the study of Indonesian Islamic family law is closely related to the compilation of Islamic law compiled by legal experts which is the result of ijtihad adjusted to the needs of Indonesian society.²¹

Joint property in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law and Civil Code. Compilation of Islamic Law explains in Articles 85 to 97 that joint property is based on the concept of syirkah abdan which is formulated from the form of 'urf (custom) which is considered good to be used as a source of law. Customs that previously developed in Indonesian society regarding the division of property after a husband and wife separated were adopted and made part of positive law. The concept of syirkah emerged as a consequence of the ijab kabul carried out between the guardian and the groom by fulfilling the conditions and pillars. At the time of the ijab kabul, the marriage guardian helps the bride to unite with the groom to build a household that will produce offspring and property. Their union in marriage gives rise to the consequence that what is produced during the marriage becomes joint property.²²

In some regions in Indonesia, joint property is known by different terms. The Minangkabau people of West Sumatra call it harta suarang, the Sundanese of West Java call it guna kaya, Bali (Dewu Gabro), Aceh (hareuta siharekat) and Kalimantan (Barang perpantaboo).²³

The 1974 Marriage Law explains that all income by a husband and wife, either jointly or individually, during the marriage period is referred to as joint property.²⁴ In addition to income, joint assets also include movable or immovable property, whether existing or to be present during the marriage. Meanwhile, assets obtained from gifts or inheritances are not included as joint assets unless the recipient determines it to be joint assets.²⁵

marriage that is produced by a husband or wife during the marriage. This property is the right of the husband and wife so that whether or not the couple has children is not a problem in joint property. Children do not have rights to joint property. Children only have the right to receive inheritance from their parents.

²⁰ Esti Royani, *Pembagian Harta Bersama Akibat Perceraian yang Berkeadilan Pancasila* (Zahir Publishing, 2021).

²¹ Andi Herawati, "Kompilasi Hukum Islam (KHI) Sebagai Hasil Ijtihad Ulama Indonesia," *HUNAFA: Jurnal Studia Islamika* 8, no. 2 (2011): 321–40.

²² Kutbuddin Aibak dan Inama Anusantari, "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia dan Malaysia," *Hukum Islam* 22, no. 2 (2022): 73–96.

²³ Happy Susanto, *Pembagian Harta Gono-Gini Saat Terjadi Perceraian* (VisiMedia, 2008). 10

²⁴ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.

²⁵ "Kitab Undang-Undang Hukum Perdata," n.d.

In Article 126 of the Civil Code, it is explained that a joint partnership will be dissolved due to: (1) death, (2) marriage with the permission of a judge after the husband or wife is gone; (3) divorce; (4) separation of bed and board; (5) separation of property. After the dissolution of the marriage, Article 128 emphasizes that joint property is divided equally between the husband and wife or between their heirs without questioning which party the property came from. This clearly shows that even though the property comes solely from the wife's income, it must still be divided equally.

This is also in accordance with the marriage law and the compilation of Islamic law which states that a husband and wife who are divorced, their property is divided into two. This provision explains that this means that even if the husband or vice versa only the wife works, the joint property is still divided into two. And this also confirms that the size of the income of each husband or wife does not affect the division of joint property after separation. It is still given as much as 50% to the husband or wife.

If examined further, then joint property in marriage in Indonesia is of three types. First, joint property (*gono gini*). This property is obtained during the marriage. In the Compilation of Islamic Law article 91 paragraph (1) it is explained that joint property can be tangible and intangible. The husband is responsible for maintaining joint property, the wife's property or his own property. Second, property brought in. Property brought in is property owned by each husband or wife that was obtained before the marriage or obtained as an inheritance and gift. This property brought in becomes joint property if the husband or wife agrees to merge with joint property, then the property brought in changes its status to joint property. As long as there is no agreement for the property brought in to merge into joint property, then the husband and wife have the right to use it according to their personal wishes without being tampered with by their partner. Third, property acquired. Property acquired is property that is owned personally by each partner after marriage, either from a gift or inheritance. This property can also become joint property, if there is an agreement to merge with property obtained during the marriage.

Property acquired before marriage is personal property unless there is a prior agreement. Article 35 paragraph (2) explains that the property brought by a husband or wife, both inherited property and gift property, is fully under the control of each. This means that even though there is joint property, it does not rule out the possibility of individual property for each husband or wife. For example, before marriage, the husband already has a car and a rented house. Likewise, the wife already has land and gold. After they get married, they make an agreement that the

property brought remains the property of each. This consequence means that the property that will be produced after marriage is what is called joint property, while the property brought remains under the control of each husband or wife. If a divorce occurs later, the property that is divided is the property obtained after marriage while the property brought is not divided and remains the property of each.

The adoption of customary law in the marriage law provides clarity on the need for strict regulations on property between husband and wife. This also provides justice to wives who have so far been considered not to work formally, especially in families that strongly adopt the concept of patriarchy. Often, wives at home are not considered to work. In fact, what wives do is very much and sometimes their working hours are even uncertain. The wife's work at home in the aspect of marriage law is considered equal to the husband's work outside the home.

This is certainly different from the position of assets derived from the wife's income. If the assets obtained from the wife's income are divided equally with the husband, then this violates fair distribution. Because the task of earning a living is actually the husband's task. In this position, the wife has the right to demand more of her assets if she is able to explain with strong arguments the source of the assets that have been owned in the marriage. In some cases, the court decides to give a larger share to the wife because based on the evidence presented in court, the husband does not provide a reasonable living and the wife is the one who provides the living for her husband.²⁶

This case occurred for example in the Supreme Court decision Number 597K/Ag/2016 which divided the larger assets to the wife with a proportion of 2/3 for the ex-wife and 1/3 for the ex-husband. This decision was made by the Supreme Court judge by ignoring Article 97 of the Compilation of Islamic Law where the Supreme Court judge was of the opinion that it was unfair and did not agree with the Aceh Sharia Court Judge. The argument put forward by the Supreme Court judge was that based on the evidence presented by those in the case, it turned out that the larger contribution so far in the accumulation of joint assets was from the wife's business or income.²⁷

The same thing is also true for example in the decision of the Religious Court Number 0189/PDT.G/2017/PA.SMG which decided that the wife's share was greater than the husband's with a proportion of $\frac{3}{4}$ of

²⁶ Noor Azizah, "Kajian Hukum Islam terhadap Pembagian Harta Warisan untuk Istri yang Ikut Menanggung Beban Ekonomi Keluarga" (Program Pascasarjana Universitas Diponegoro, 2007).

²⁷ Melia Melia, Muzakkir Abubakar, dan Darmawan Darmawan, "Pembagian Harta Bersama Setelah Perceraian (Studi terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016)," *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 3 (2019): 506–18.

the wife's share and $\frac{1}{4}$ of the husband's share. The judge decided this based on distributive justice where the judge gives each person a share based on their services or gives each person what is their right based on the principle of balance or gives each person rights based on their achievements.²⁸

This decision may be made by the judge considering that the judge has the Ex Officio Right to protect the rights of women in conflict with the law (as a party) based on Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law.

Position of Wife's Income Property in Malaysia

The position of the wife's income in Malaysia is basically also joint property, whether it is produced before or after marriage. Unless there is another agreement that implies the separation of property. This means that the property owned by the husband or wife is merged into one which is referred to as joint income property. This also applies if the property is produced by the husband alone or vice versa produced by the wife alone.

Joint property in Malaysian society is known as harta se-pencarian. The division of joint property is usually done if the husband and wife are going to separate or divorce, polygamy and death.²⁹ There is no clear discussion about the types of property that can be claimed in a livelihood property. Even now there is a debate in terms of demanding the distribution of property resulting from someone's intellectual property, which can be in the form of patents, copyrights, writings and other intellectual works.³⁰

In Malaysia, the concept of wealth for a living comes from Malay custom. This existing law was adopted by the ulama and authorities in Malaysia so that it was included in the Deed and Enactments of the Islamic Family Law. Livelihood assets in Malaysian law originate from the concept of al-syarikah and the concept of adat.³¹

One of the reasons for dividing the search assets is divorce. There are several causes of divorce in Malaysia, one of which is unilateral

²⁸ Arun Pratama, "Implementasi Percampuran Harta Bersama Dan Harta Bawaan Dalam Perkawinan (Studi Kasus Putusan Pengadilan Agama Nomor: 0189/Pdt. g/2017/Pa. Smg)," *Jurnal Ius Constituendum* 3, no. 1 (2018): 15–26.

²⁹ Mohamad Ali Roshidi Ahmad, "Permasalahan Tuntutan Harta Sepencarian Dalam Pembahagian Harta Pusaka: The Issues of Jointly Acquired Property Claims in the Division of Estate," *Journal of Fatwa Management and Research* 24, no. 2 (2021): 118–31.

³⁰ Marina Abu Bakar et al., "Isu Tuntutan Harta Intelek Sebagai Harta Sepencarian: Analisis Kritis dari Perspektif Syariah dan Undang-Undang," *Journal of Fatwa Management and Research (JFatwa)*, 2021.

³¹ Nur Sarah Tajul Urus, Maffuza Salleh, dan Naziree Mohd Yusof, "Harta Sepencarian dan Warisan Dalam Konteks Strategi Model Baharu Felda: Satu Pelan Inovasi Warisan Keluarga," *Journal of Fatwa Management and Research (JFatwa)*, 2021.

divorce by the husband by stating the reasons and reconciliation efforts have been made. In filing a divorce, the judge must approve it before it is considered valid according to sharia and must make reconciliation efforts within a maximum period of six months. If the judge then decides that there is an irreconcilable dispute in the marriage, then the husband is asked to pronounce the divorce, after which the divorce is registered. In addition, Malaysia also recognizes divorces filed by women, namely a husband who has been missing for more than a year, a woman has lived for three months without financial support, a husband is sentenced to three years or more in prison, a husband has not fulfilled his marital obligations for one year, chronic impotence and the woman is not aware of this fact when married, mental illness that lasts more than two years, leprosy or infectious diseases, if the woman opposes the marriage carried out by her father or grandfather before she was sixteen years old, cruel treatment and the husband refuses to have sexual relations for four months. For non-Muslims, divorce is only possible if announced by a competent court.³²

In Malaysia, joint property is defined as property acquired jointly by either a husband or wife during the marriage, where both parties have contributed directly or indirectly to the acquisition or ownership of such property.³³ A husband and wife in partnership mix their property and both have rights over the property.

This is also in line with the opinion of the National Council Muzakarah Council for Islamic Religious Affairs in Malaysia. According to them, livelihood assets are assets or the results of opinions that are jointly sought by the parties involved, including husband, wife or children, including their own children, stepchildren, adopted children, who are both working hard to get it. Meanwhile, the right to collect assets is determined based on the level of contribution and involvement of the relevant parties in producing these assets.³⁴

For example, the Selangor region, as one of the regions in Malaysia, also implements the distribution of assets for livelihoods. In Selangor, assets after the death of one of the parties to a marriage in the Selangor area may be distributed to the husband or wife before being faraided, including after the deceased's dependents are released. The distribution of assets should be given according to donations, either directly or indirectly, from both parties. Approval of distribution should be made through a

³² Jan Michiel Otto, "Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present," *Sharia Incorporated*, 2012, 1-676.

³³ Ahmad Ibrahim, *Undang-undang keluarga Islam di Malaysia* (Kuala Lumpur: Malayan Law Journal, 1999).

³⁴ <http://e-smaf.islam.gov.my/e-smaf/fatwa/fatwa/find/pr/11087>

court order.³⁵This is also in line with the Islamic Family Law (Family Areas) which explains that joint property is property acquired jointly by a husband and wife during marriage following the conditions determined by sharia law.³⁶

In Malaysia, assets or income obtained during the marriage through joint ventures will be divided by the judge according to the division of joint assets. The judge divides the income obtained based on a person's efforts by considering the extent of the effort given, for example from the wife's side, it is seen through work taking care of the household and family which has an effect on increasing the joint assets.³⁷The Islamic Family (Federal Territories) Act 1984 explains:

- a. The Court has the power, if it confirms the pronouncement of talaq or if it makes a divorce order, to order that any assets acquired during the marriage by the sole effort of one party to the marriage be divided between them or that any assets be sold and the proceeds of the sale divided between those parties.
- b. When exercising the powers granted by the sub-sector, the Court should pay attention to:
 - 1) Limit the contributions made by the party who does not acquire the assets, to the benefit of the family by maintaining the household or looking after the family;
 - 2) Any debt owed by either party has been performed for their mutual benefit;
 - 3) The needs of minor children from the marriage (if any) and are subject to these considerations, the Court may distribute the assets or proceeds from the sale according to the amount the munasabah thinks, however, the party who has acquired the assets -the asset with its efforts should receive a greater value

Malaysia gives the court broad authority to divide marital assets to each husband or wife after a divorce. Aspects considered in the division of joint assets include: (a) Contribution of each husband and wife to the acquisition of assets during the marriage; (b) Debts based on family interests; (c) Consideration of the needs of children; (d) Separation of personal assets; (e) Consideration of indirect contributions; (f) Increase in the value of assets during the marriage.³⁸

³⁵ E-SMAF Sumber Maklumat al-Ahkam al-Fiqhiyyah, <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/3> diakses 25 November 2023

³⁶ "Akta Undang-undang Keluarga Islam (Wilayah-wilayahPersekutuan) 1984 (Akta 303)," n.d.

³⁷ Otto, "Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in the past and present."

³⁸ Asnawi dan SHI, *Hukum harta bersama: Kajian perbandingan hukum, telaah norma, yurisprudensi, dan pembaruan hukum*.

Based on the explanation above, then in the position of the wife's income assets can be one argument to obtain assets greater than the husband's share. This is because the division of joint assets in Malaysia can be decided by a judge with several considerations, namely considerations about who contributed the most to the joint assets and who gets custody of the child. The size of the division of assets is not specifically explained depending on the case handled by the court with the considerations taken by the judge. Based on existing cases that have been decided in Malaysia, sometimes the wife gets a share of 1/3 or 1/2 or even no assets at all. Likewise, the husband if in the same position sometimes gets 1/2, 2/3, 1/3 and even nothing.³⁹

In practice, legal provisions in Malaysia regulate the steps that must be taken by couples in cases of claiming joint/common property, namely:

- a. These assets may be claimed by the husband or wife;
- b. The claim process must be made at the Local State Sharia Court
- c. The Sharia Court has a decision regarding the order to divide assets in this way after the dissolution of the marriage bond, whether divorce or death;
- d. The Court provides an explanation to the couple regarding several matters before deciding on the distribution of assets at a certain rate for the husband or wife according to their respective shares;
- e. The party claiming the se-carian assets needs to certify the validity of the marriage bond and have it registered at the local religious office as stipulated in the country's Islamic family law.
- f. The party claiming assets in search of property should present evidence or documents showing the existence of the assets claimed during the marriage period.
- g. The party claiming the assets in search must bring evidence (supporting documents) of their contribution to obtain the assets, and bring two witnesses, namely male witnesses or a man and two women, to submit the statement accompanied by an oath.⁴⁰

So, the property acquired during marriage, whether generated by the husband alone, or the wife alone or both parties is called joint property. In Malaysia, the division of joint property after divorce takes into account the contribution made by both parties in acquiring the property.⁴¹ This contribution is not measured directly from the work that produces assets. However, the wife's duty to maintain the assets obtained

³⁹ Nurul Najihah Binti Abdul Rahim, "Pembagian harta bersama pada masyarakat muslim di selangor (studi kasus di mahkamah tinggi syariah shah alam)" (Universitas Islam Negeri Sumatera Utara, 2017).

⁴⁰ Ahmad, "Permasalahan Tuntutan Harta Sepencarian Dalam Pembahagian Harta Pusaka: The Issues of Jointly Acquired Property Claims in the Division of Estate."

⁴¹ Ahmad bin Mohd. Ibrahim, "The Status Of Women In Family Law In Malaysia, Singapore And Brunei," *Malaya Law Review* 7, no. 2 (15 December 1965): 299–313.

by her husband from work is considered a large contribution and therefore, the wife has the right to demand a fair division of joint assets. Unless the husband can prove that the wife is not responsible for maintaining the assets given by her husband. Likewise, if the wife works, then the wife can also obtain larger joint assets in the event of a divorce. Given that the wife's contribution is greater in obtaining assets than the husband.

In practice in Malaysia, assets acquired before marriage after divorce are not included in joint assets. Assets obtained from gifts or wills during marriage are also not included in joint assets. However, if the inheritance, bequest or will grows and generates income, then the income becomes joint assets, while the capital remains the personal property of the husband or wife. Thus, the position of the wife's income in Malaysia is part of joint assets. All of the wife's income during the marriage becomes joint assets with her husband. However, when divorced, the wife can claim more because she has contributed to the assets. It is even possible that the husband does not receive anything because he has not contributed at all to the accumulation of joint assets.

Position of Wife's Income Property in Brunei Darussalam

Brunei Darussalam (hereinafter referred to as Brunei) is a small country with an area of approximately 5765 km² located at the tip of the island of Borneo in Southeast Asia. The country regained its independence from Britain in 1984 after becoming a protectorate of the British Empire in 1906. The country's 1959 constitution enshrined Brunei as a Malayo-Islamic monarchy.⁴²

The Sultan of Brunei is highly respected and who in Pertuan Agung is only responsible to Allah as a "shadow on earth". Within the Sultanate he was the religious head, Prime Minister, and as sultan he appointed all members of the state advisory council. Is above the law and is the state legislator. The Sultan has the authority to change the constitution and bypass the Legislative Council without any court supervision.⁴³

Brunei Darussalam is one of the world's monarchies. In 1984, Brunei shed its colonial ties with Great Britain to become a fully independent country. Ethnically, Brunei is a pluralistic society.⁴⁴

⁴² Kwabena A Anaman and Hartinie M Kassim, "Marriage and female labor supply in Brunei Darussalam: A case study of urban women in Bandar Seri Begawan," *The Journal of Socio-Economics* 35, no. 5 (2006): 797-812, <https://doi.org/https://doi.org/10.1016/j.soc.2005.11.038>.

⁴³ A Black, "Exporting a Constitutional Court to Brunei? Benefits and Prospects," *Constitutional Review* 8, no. 2 (2022): 361-91, <https://doi.org/10.31078/consrev826>; BK Kamarul, "The company law of Brunei Darussalam," *Company Law in East Asia*, 2018, <https://doi.org/10.4324/9780429459719-14>.

⁴⁴ E Black, "Brunei Darussalam: Ideology and law in a Malay sultanate," *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, 2011, <https://doi.org/10.1017/CBO9780511921131.010>.

Historically, Islamic law in Brunei Darussalam was enacted during the reign of Sultan Sharif Ali (r. 1425–32) with the establishment of the Brunei Legal Code. This continued to be the core of Brunei Darussalam's legislature until the era of Sultan Hashim (r. 1885–1906). Brunei's Islamic law experienced a dark period when the British Residential administration was introduced in 1906. The British legal system was used not only in an effort to enforce civil law but also Islamic law. Thus, the role of Islamic law was weakened and could only be applied in family matters. This situation persisted until 2013, when Sultan Hassanal Bolkiah (r. 1967 to present) made an effort to gradually revive Islamic law. Based on the ideology of the Malay Islamic Monarchy (MIB), the establishment of Islamic law in the administration of the state, government, and community life has begun since Sultan Hassanal Bolkiah was crowned as Sultan until today.⁴⁵

Brunei Darussalam has a dual court system, namely the Syariah court system and the civil law system which operate in parallel. The Syariah courts hear cases such as (a) A marriage, divorce or matrimonial matter; (b) Property; (c) Maintenance of dependency, legitimacy or guardianship or custody; (d) Division or claim of joint property (harata sepencarian); (e) Other matters in respect of which jurisdiction is conferred by written law.

Before there is a joint division of assets, the court will allow a statement of divorce or when making a divorce letter, the assets acquired during the marriage to be divided between them. In its division, the court will consider the extent of the contribution made by the husband and wife in efforts to maintain and develop the assets. In addition, it will also pay attention to the children related to the marriage. In the end, the judge will divide the proportions that are considered reasonable and the spouse who contributes more to the assets will get a larger proportion.⁴⁶

Position of Wife's Income in Türkiye

Turkey is a country with a secular legal and constitutional framework that seeks to maintain the norm of equal citizenship and women are given equal rights with men. The marriage law is gender neutral.⁴⁷Historically, the reform of family law began in 1917 when the Ottoman Law of Family Rights was passed in Türkiye.⁴⁸During the

⁴⁵ H A Asbol, "Islamic Law In Brunei Darussalam (1425-2014): A Historical Perspective and Its Relationship With the Malay Islamic Monarchy Concept," *Routledge Handbook of Contemporary Brunei*, 2022, <https://doi.org/10.4324/9781003020431-12>; Abdurrahman Raden Aji Haqqi, "Islamic Law In State Life Of Brunei Darussalam," *Journal of Malay Islamic Studies* 1, no. 2 (2017): 81–92.

⁴⁶ Royani, *Pembagian Harta Bersama Akibat Perceraian yang Berkeadilan Pancasila*.

⁴⁷ Mary Lou O'Neil dan Sule Toktas, "Women's Property Rights in Turkey," *Turkish Studies* 15, no. 1 (2 Januari 2014): 29–44, <https://doi.org/10.1080/14683849.2014.891350>.

⁴⁸ James Norman Dalrymple Anderson, "Islamic law in the modern world," 1959.

Ottoman government, family law was still very traditional because it was only oriented towards the Hanafi school. Mustafa Kemal then secularized the law. This policy was seen by adopting The Swiss Civil Code in 1912. Furthermore, when it became a republic, the Turkish Parliament then made several amendments which were realized from the amendments to The Turkish Civil Code of 1926.⁴⁹

Historically legal and judicial reform was a central aspect of Kemal's modernization project.⁵⁰ Many Western laws were adopted and adapted to the conditions of Turkish society. The Swiss Civil Code in 1926 was flexibly adapted to replace Sharia law as the official law in the field of family law.⁵¹

The Turkish Civil Code of 1926 regulates marriage, divorce, family relations and inheritance has undergone several changes. Along with the development of the times, the Turkish Civil Code of 1926 underwent two amendment processes. The first stage of amendment occurred in the period 1933-1956. The results of this amendment include those related to compensation, marriage dispensation, couples are given the opportunity to improve a marriage relationship when they are separated and the elimination of all forms of divorce outside the court and the availability of divorce in court based on the wishes of each party.

Meanwhile, the second amendment process took place in 1988-1992, which enforced divorce by mutual consent, wife's maintenance and stipulations during the divorce process.⁵² The Turkish law states that the court has the right to regulate the compensation given by the divorcee to the divorcee as long as they have not been married for a period of not more than 1 year from the date of divorce. The current Turkish Civil Code of 2001 is the latest version of the Turkish Civil Code. The first paragraph was added to article 41 which states that the family is the foundation of society and is based on equality between spouses.⁵³

According to Turkish law, there are 6 reasons for filing for divorce, including; (1) one party has committed adultery; (2) one party has harmed the other party, causing injuries; (3) one party has committed a criminal act that disrupts the continuity of the marriage relationship; (4) one party has left the residence for unclear reasons for a period of at least 3 months;

⁴⁹ Umar Faruq Thohir dan Ramdan Wagianto, "Pembaharuan Hukum Waris Islam di Turki," *Asy-Syari'ah: Jurnal Hukum Islam* 5, no. 2 (2019): 181-201.

⁵⁰ Seval Yildirim, "Aftermath of a revolution: A case study of Turkish family law," *Pace Int'l L. Rev.* 17 (2005): 347.

⁵¹ Ruth A Miller, "The Ottoman And Islamic Substratum Of Turkey's Swiss Civil Code," *Journal of Islamic Studies* 11, no. 3 (25 November 2000): 335-61.

⁵² Oğna Alif Utama, "Pemenuhan Hak Ekonomi Istri Pasca Perceraian (Studi Komparatif Peraturan Perundangan-Undangan Di Indonesia, Turki, Mesir, Dan Arab Saudi)," 2016.

⁵³ Otto, "Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present."

(5) one party has a mental illness that can endanger the marriage life as stated by a doctor's certificate for at least 3 years; (6) ongoing disputes between husband and wife that can no longer be reconciled.⁵⁴

One of the important changes made to the adaptation of Swiss law is the joint ownership of property. Turkish law maintains the right of ownership for women but maintains the concept of separate property where in the event of divorce the couple keeps whatever they brought into the marriage unless otherwise specified in the marriage contract. However, control of the property remains with the husband as the head of the family even though the property comes from the wife's income.⁵⁵

After the amendment with the new civil law, Law Number 4721 which came into effect on January 1, 2002, the husband is no longer the head of the household and instead it is stated that "the husband and wife arrange the marriage together because men and women have the same status in marriage. Uniquely, men are not legally required to provide for the family and women do not need permission from their husbands to work. This is progressive because the husband or wife have authority over themselves. They are united together while still having independence in determining the direction of the marriage.

Wife's income in Turkey is part of the concept of joint property that applies a separate system into a partial community property system that requires equal distribution of property acquired during marriage in the event of divorce or inheritance after the death of the spouse. The partial community system explains that there are two types of property, namely communal property and individual property. Communal property is acquired during marriage. This includes income earned from work such as wages, salaries and other bonuses, all social security funds, compensation received due to accidents and loss of ability to work, and any income derived from personal property such as rent, interest payments and so on. This property can come from the husband's own income or the wife's income. While personal property is all property acquired before marriage and all property obtained from inheritance.

According to Turkish law, partial communal property, all property acquired before marriage remains the exclusive property of each individual, while the communal property consisting of all property accumulated during the marriage must be divided equally in the event of divorce. Any inheritance received during the marriage is considered as personal property and remains the sole property of the person regardless of the dissolution of the marriage. However, income derived from individual property or assets such as rent and interest, is collected and

⁵⁴ Anderson, "Islamic law in the modern world."

⁵⁵ O'Neil and Toktas, "Women's Property Rights in Turkey."

considered community property and therefore must be divided equally between the spouses in the event of divorce. In short, in the partial property system, property acquired before marriage remains the individual property of each spouse and only property acquired during the marriage is considered as community property. In the event of divorce, the community property is divided into equal shares. Inheritance received during the marriage is treated as personal property and cannot be divided.

For couples who do not wish to follow the partial communal property system, the law allows them to choose between a full community property system or a total separation of property and assets. If couples choose anything other than the established partial communal property system, they must sign a written agreement that is recognized by the court.

In the full joint property system (Articles 256-281 of the Civil Code) it is stipulated that all assets obtained either before or after marriage are collected together and then considered joint assets. With this idea, each party receives half of all the assets obtained, even though the assets may come more from one of the spouses.

While the property separation system (Articles 242-243) where assets acquired by each spouse before or during marriage remain the property of the individual, including income generated from individual assets or income such as wages and salaries. Under this system, if the marriage is dissolved, then there is no joint property divided between the husband and wife.⁵⁶In this condition, the wife who has income has the right to manage and distribute her income independently. The wife's income is absolutely her right. The husband may not intervene.

Comparative Analysis of the Position of Wives' Income and Assets in Indonesia, Malaysia, Türkiye and Brunei Darussalam

The assets obtained in marriage that are distributed after divorce are one of the guarantees of life for women in the future. In addition to inheritance, the institution of marriage is one of the instruments that can be used to make women have assets. Often after a divorce, women become the disadvantaged party because they have not been used to working and only receive a living from their husbands. Women must learn to adapt and find a life and seek employment opportunities in the midst of global economic competition. Ownership of assets allows women to be empowered and fight against the domination and inequality that occurs.⁵⁷

⁵⁶ O'Neil and Toktas.

⁵⁷ Namita Datta, "Joint Titling — A Win-Win Policy? Gender And Property Rights in Urban Informal Settlements in Chandigarh, India," *Feminist Economics* 12, no. 1-2 (1 January 2006): 271-98, <https://doi.org/10.1080/13545700500508569>.

Division of assets after divorce is one solution to give women bargaining power within the family and society. Recent research shows that ownership of assets, especially in the form of assets, is a factor in reducing poverty and preventing domestic violence and allowing women to escape violence more quickly.⁵⁸ The division of property in Indonesia, Malaysia, Turkey and Brunei Darussalam emerged as an effort to help empower women amidst the ongoing patriarchal culture. All four countries recognize women's right to receive property after being left by their husbands.

Indonesia and Turkey divide 2 (two) or half of the assets obtained during the marriage. While in Malaysia and Brunei review the division of assets based on the amount of contribution between each given. This is very beneficial for women who earn and have a very large contribution to joint assets. Women who have a greater contribution to the marital assets will get a larger share.

Unlike the context of Indonesia and Turkey, it does not look at whether women work or not. If there are career women who work and earn more than their husbands, the joint assets are still divided in half because they have been considered to be in a union in the marriage from the start. Ironically, women who work to support or provide for their husbands will still receive the same share as their husbands. So, women are not given a living during the marriage, and after divorce they only get half of the assets they earn. However, if we look further, the contribution as a housewife in the context of Indonesia and Turkey is enough to guarantee that women get the same rights as men. This is one solution to guarantee the lives of wives who have so far depended on their husbands' income.

In the case of Malaysia and Brunei Darussalam, there is often an imbalance in distribution.⁵⁹ This is because the wife's contribution as a housewife is often considered insignificant to the addition of joint assets. The wife's domestic work at home, especially in a patriarchal culture, is considered not a job because it does not produce assets or income. It is different if the wife works outside and earns an income, then when a separation occurs with her husband, the wife can obtain greater assets.

Differences in determining the division of joint property in several Muslim-majority countries occur due to differences in the methods of *ijtihad*, constitutions and existing socio-cultural conditions. However,

⁵⁸ Nandita Bhatla, Swati Chakraborty, and Nata Duvvury, "Property ownership and inheritance rights of women as social protection from domestic violence: Cross-Site analysis," *Property ownership and inheritance rights of women for social protection: The South Asia experience-Synthesis of three studies*, 2006, 71-103.

⁵⁹ Ahmad bin Mohd. Ibrahim, "The Status Of Muslim Women In Family Law In Malaysia And Brunei," *Malaya Law Review* 5, no. 2 (15 December 1963): 313-37.

there is a spirit from all four countries to provide financial security to women after being left by their husbands either due to divorce or death.

CONCLUSION

The status of a wife's income in various Muslim-majority countries varies. In Indonesia and Turkey, the wife's income is joint property unless there is another agreement. It does not take into account the contribution made by one party in obtaining the property. This means that if the wife's income fully finances the marriage and there is property collected, then when a separation occurs, either due to death or divorce, the property is divided equally. Unlike Malaysia and Brunei Darussalam, the wife's income can be one of the instruments for consideration by the judge in deciding the division of property. The greater the wife's income that contributes to the accumulation of property in the marriage, the greater the share obtained if there is a separation. Likewise, the smaller the wife's contribution, the smaller the share obtained when a separation occurs.

In the context of Indonesia and Turkey, wives who earn income can get equal rights with their husbands and this helps wives to live after separation. However, it would be ironic and unfair if the wife who provides for the family is divided equally during separation. This is because the obligation to provide for the family is imposed on the husband. The irony is that the husband is no longer responsible for providing for the family, but instead gets the same share of the wife's income. That is why many court decisions override the marriage law on the division of property by giving a larger share to the wife according to the arguments presented in court. Meanwhile, in the context of Malaysia and Brunei Darussalam, it would be ironic for a wife who does not have an income. The wife will get a small share during separation. However, on the other hand, for wives who earn income, they have the strength of argument to ask for an equal division.

LITERATURE

- Ahmad, Mohamad Ali Roshidi. "Permasalahan Tuntutan Harta Sepencarian Dalam Pembahagian Harta Pusaka: The Issues of Jointly Acquired Property Claims in the Division of Estate." *Journal of Fatwa Management and Research* 24, no. 2 (2021): 118–31.
- Aibak, Kutbuddin, dan Inama Anusantari. "Pengaturan Harta Bersama Pasca Perceraian: Studi Komparatif Hukum Keluarga Islam Indonesia dan Malaysia." *Hukum Islam* 22, no. 2 (2022): 73–96.
- "Akta Undang-undang Keluarga Islam (Wilayah-wilayahPersekutuan) 1984 (Akta 303)," n.d.
- Anaman, Kwabena A, dan Hartinie M Kassim. "Marriage and female labour supply in Brunei Darussalam: A case study of urban women in

- Bandar Seri Begawan." *The Journal of Socio-Economics* 35, no. 5 (2006): 797–812.
<https://doi.org/https://doi.org/10.1016/j.socsec.2005.11.038>.
- Anderson, James Norman Dalrymple. "Islamic law in the modern world," 1959.
- Anggraini, Eva Yusi, dan Eva Yusi Anggraini. "Hubungan kepuasan terhadap pendapatan dengan keharmonisan keluarga pada masa pandemi covid-19." *Uiveritas* 17 Agustus 1945 Surabaya, 2022.
- Asbol, H A. "Islamic Law In Brunei Darussalam (1425-2014): A Historical Perspective and Its Relationship With the Malay Islamic Monarchy Concept." *Routledge Handbook of Contemporary Brunei*, 2022.
<https://doi.org/10.4324/9781003020431-12>.
- Asnawi, M Natsir, dan M H SHI. *Hukum harta bersama: Kajian perbandingan hukum, telaah norma, yurisprudensi, dan pembaruan hukum*. Prenada Media, 2022.
- Azizah, Noor. "Kajian Hukum Islam terhadap Pembagian Harta Warisan untuk Istri yang Ikut Menanggung Beban Ekonomi Keluarga." Program Pascasarjana Universitas Diponegoro, 2007.
- Bakar, Marina Abu, Noor Asyimah Ramli, Saad Gomaa Gomaa Zaghloul, Ahmed Ramadan Mohamed Ahmed, Meryem Abous, dan Mohamad Fauzi Md Thahir. "Isu Tuntutan Harta Intelek Sebagai Harta Sepencarian: Analisis Kritis dari Perspektif Syariah dan Undang-Undang." *Journal of Fatwa Management and Research (JFatwa)*, 2021.
- Bhatla, Nandita, Swati Chakraborty, dan Nata Duvvury. "Property ownership and inheritance rights of women as social protection from domestic violence: Cross-Site analysis." *Property ownership and inheritance rights of women for social protection: The South Asia experience-Synthesis of three studies*, 2006, 71–103.
- Binti Abdul Rahim, Nurul Najihah. "Pembagian harta bersama pada masyarakat muslim di selangor (studi kasus di mahkamah tinggi syariah shah alam)." Universitas Islam Negeri Sumatera Utara, 2017.
- Black, A. "Exporting a Constitutional Court to Brunei? Benefits and Prospects." *Constitutional Review* 8, no. 2 (2022): 361–91.
<https://doi.org/10.31078/consrev826>.
- Black, E. "Brunei Darussalam: Ideology and law in a Malay sultanate." *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, 2011. <https://doi.org/10.1017/CBO9780511921131.010>.
- Datta, Namita. "Joint Titling – A Win-Win Policy? Gender And Property Rights in Urban Informal Settlements in Chandigarh, India." *Feminist Economics* 12, no. 1–2 (1 Januari 2006): 271–98.
<https://doi.org/10.1080/13545700500508569>.
- Efendi, Junaedi, dan Jonny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Depok: Prenada Media Group, 2016.

- Haqqi, Abdurrahman Raden Aji. "Islamic Law In State Life Of Brunei Darussalam." *Journal of Malay Islamic Studies* 1, no. 2 (2017): 81-92.
- Harahap, Rustam Dahar Karnadi Apollo. "Kesetaraan Laki-laki dan Perempuan dalam Hukum Perkawinan Islam." *Sawwa: Jurnal Studi Gender* 8, no. 2 (2013): 361-86.
- Harris, Fatin Nabillah Binti. "Pembagian Harta Bersama Pasca Perceraian (Studi Kasus di Mahkamah Tinggi Syariah Negeri Melaka, Malaysia)." UIN Ar-Raniry Banda Aceh, 2018.
- Hassan, Muhammad Khairi Bin. "Pembagian Harta Bersama Di Indonesia Dan Malaysia (Studi Perbandingan antara Kompilasi Hukum Islam dan Enakmen Undang-Undang Keluarga Islam Selangor)." UIN Ar-Raniry, 2020.
- Herawati, Andi. "Kompilasi Hukum Islam (KHI) Sebagai Hasil Ijtihad Ulama Indonesia." *HUNAFA: Jurnal Studia Islamika* 8, no. 2 (2011): 321-40.
- Ibrahim, Ahmad. *Undang-undang keluarga Islam di Malaysia*. Kuala Lumpur: Malayan Law Journal, 1999.
- Ibrahim, Ahmad bin Mohd. "The Status Of Muslim Women In Family Law In Malaysia And Brunei." *Malaya Law Review* 5, no. 2 (15 Desember 1963): 313-37.
- Iswandi, Andi. "Maslahat memelihara harta dalam sistem ekonomi Islam." *SALAM: Jurnal Sosial dan Budaya Syar-i* 1, no. 1 (2014).
- Jakfar, Tarmizi M, dan Fakhrurrazi Fakhrurrazi. "Kewajiban Nafkah Ushul Dan Furu'Menurut Mazhab Syafi'i." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 1, no. 2 (2017): 352-71.
- Kamarul, B K. "The company law of Brunei Darussalam." *Company Law in East Asia*, 2018. <https://doi.org/10.4324/9780429459719-14>.
- Karimuddin, Karimuddin, Syahrizal Abbas, A Hamid Sarong, dan Afrizal Afrizal. "Standardisasi Nafkah Istri: Studi Perbandingan Mazhab Maliki dan Mazhab Syafi'i." *Media Syari'ah: Wahana Kajian Hukum Islam dan Pranata Sosial* 23, no. 1 (2021): 83-95.
- "Kitab Undang-Undang Hukum Perdata," n.d.
- Mansur, Mochamad. "Pembagian Harta Bersama Dalam Konteks Penghasilan Istri Lebih Besar Dibanding Suami." *JUSTITIABLE-Jurnal Hukum* 5, no. 1 (2022): 58-74.
- Maulana, Ahmad. "Percampuran Harta Bawaan Menjadi Harta Bersama Melalui Perjanjian Pra Nikah Dalam Perkawinan Campuran." Universitas Batanghari Jambi, 2023.
- Melia, Melia, Muzakkir Abubakar, dan Darmawan Darmawan. "Pembagian Harta Bersama Setelah Perceraian (Studi terhadap Putusan Mahkamah Agung Nomor 597K/Ag/2016)." *Jurnal IUS Kajian Hukum dan Keadilan* 7, no. 3 (2019): 506-18.
- Miller, Ruth A. "The Ottoman And Islamic Substratum Of Turkey's Swiss

- Civil Code." *Journal of Islamic Studies* 11, no. 3 (25 November 2000): 335-61.
- Mohd. Ibrahim, Ahmad bin. "The Status Of Women In Family Law In Malaysia, Singapore And Brunei." *Malaya Law Review* 7, no. 2 (15 Desember 1965): 299-313.
- Muhammad, Hanifah Salma. "Analisis Yuridis Pembagian Harta Gono Gini Berdasarkan Kontribusi Suami Istri Selama Perkawinan." *Jurnal Restorasi Hukum* 5, no. 2 (2022).
- Nelli, Jumni. "Analisis tentang kewajiban nafkah keluarga dalam pemberlakuan harta bersama." *Al-Istinbath: Jurnal Hukum Islam* 2, no. 1 (2017): 29-46.
- Nurdiansari, Ranti, dan Anis Sriwahyuni. "Pengaruh pengelolaan keuangan terhadap keharmonisan rumah tangga." *Jurnal Aktiva: Riset Akuntansi dan Keuangan* 2, no. 1 (2020): 27-34.
- O'Neil, Mary Lou, dan Sule Toktas. "Women's Property Rights in Turkey." *Turkish Studies* 15, no. 1 (2 Januari 2014): 29-44. <https://doi.org/10.1080/14683849.2014.891350>.
- Otto, Jan Michiel. "Sharia incorporated: A comparative overview of the legal systems of twelve Muslim countries in past and present." *Sharia Incorporated*, 2012, 1-676.
- Pratama, Arun. "Implementasi Percampuran Harta Bersama Dan Harta Bawaan Dalam Perkawinan (Studi Kasus Putusan Pengadilan Agama Nomor: 0189/Pdt. g/2017/Pa. Smg)." *Jurnal Ius Constituendum* 3, no. 1 (2018): 15-26.
- Puspytasari, Heppy Hyma. "Harta Bersama Dalam Perkawinan Menurut Hukum Islam Dan Hukum Positif." *Jatiswara* 35, no. 2 (2020).
- Rahman, Nandang Fathur. "Perbandingan Kewajiban Nafkah Menurut Hukum Islam dan Hukum Positif Di Indonesia." *Al-Ahwal Al-Syakhsiiyyah: Jurnal Hukum Keluarga dan Peradilan Islam* 3, no. 2 (2022): 193-206.
- Royani, Esti. *Pembagian Harta Bersama Akibat Perceraian yang Berkeadilan Pancasila*. Zahir Publishing, 2021.
- Susanto, Happy. *Pembagian Harta Gono-Gini Saat Terjadi Perceraian*. VisiMedia, 2008.
- Thohir, Umar Faruq, dan Ramdan Wagianto. "Pembaharuan Hukum Waris Islam di Turki." *Asy-Syari'ah: Jurnal Hukum Islam* 5, no. 2 (2019): 181-201.
- Undang-undang (UU) Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan.
- Urus, Nur Sarah Tajul, Maffuza Salleh, dan Naziree Mohd Yusof. "Harta Sepencarian dan Warisan Dalam Konteks Strategi Model Baharu

- Felda: Satu Pelan Inovasi Warisan Keluarga." *Journal of Fatwa Management and Research (JFatwa)*, 2021.
- Utama, Ogha Alif. "Pemenuhan Hak Ekonomi Istri Pasca Perceraian (Studi Komparatif Peraturan Perundangan-Undangan di Indonesia, Turki, Mesir, dan Arab Saudi)," 2016.
- Yildirim, Seval. "Aftermath of a revolution: A case study of Turkish family law." *Pace Int'l L. Rev.* 17 (2005): 347.