

## **Spousal Contribution and Fair Division of Matrimonial Assets: A Case Study of Malaysian Muslims**

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### **ABSTRACT**

The contributions of a spouse in terms of matrimonial properties are essential in determining the proportion of share for the divorced spouses. In order to determine a fair and equitable share of assets, the spouses have to show the quantum of their contributions; this has caused delays in the Shariah courts in Malaysia and prolonged the litigation process. This study examines the effectiveness of the statutory law in division of matrimonial assets by examining court practices in determining the proportion of share. For that purpose, a qualitative method was adopted and 215 unreported cases within the period of 2000-2012 was analysed. Findings showed inconsistencies in the court practices of asset division, especially when only contribution of the parties (in ascertaining their share) are factored. This study suggests that the court should use a more general consideration such as the interest of the parties and children when determining the proportion. This is to ensure a fair distribution of wealth and assets to the divorcing spouses.

*Keywords:* Fair distribution, matrimonial assets, quantum, Shariah Court, spouse contribution

### **INTRODUCTION**

The division of matrimonial assets in Shari'ah Courts in Malaysia has several stages subject to the specific provision in Section 122 of the Islamic Family Law Enactments. First, matrimonial assets are factored in division of wealth and second, ascertaining the portions to the divorcing spouses. All state shariah legislations define matrimonial assets or *harta sepencarian* as property jointly acquired by the husband and wife during their marriage. In cases of divorce, Section 122 of Islamic Family Law Enactment is referred to by the court in dividing these collective assets.

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Despite this, fair and equitable divisions of assets to the parties have not been part of the court's considerations. As a result, the parties encounter difficulties especially when the only assets available are those assets acquired during the marriage. This is further aggravated when the divorcing spouse fails to settle the distribution either through *sulh* proceeding or another form of settlement outside the court (Daud, 2002, p. 46). This loosely drafted provisions have led to various interpretation of the court in dividing the assets. Issues such as direct or indirect contributions of a spouse are not well defined. The effort made by the spouse in adding to the value of existing assets is also not clearly stated. This has resulted in various interpretations among judges to decide the extent of the contribution by each party.

This study, therefore, aims to examine the law applied by the court in dividing matrimonial assets. The focus is on the spousal contribution as an important factor in determining the proportion of share. The paper begins by explaining the statutory law in the division of matrimonial assets among Muslims in Malaysia. The methodology of the study is elaborated in the subsequent section. Analysis of findings are presented and discussed prior to the conclusions.

### **Statutory law on Contribution as factor in Division of Matrimonial Property**

Section 122 of Islamic Family Law Enactment/Act, which embodies the principle of division, provides that:

(1) The Court shall have power, when

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

(2) In exercising the power conferred by subsection (1), the Court shall have regard to-

(a) the extent of the contributions made by each party by money, property, or labour toward acquiring the assets;

(b) any debts owing by either party that was contracted for their joint benefit;

(c) the needs of minor children of the marriage and, subject to those considerations, the Court shall incline towards equality of division

(3) The Court shall have power, when permitting the pronouncement of *talaq* or when making an order of divorce, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale

(4) In exercising the power conferred by subsection (3) the Court shall have regard to-

(a) the extent of contributions made by the party who did not acquire the

assets to the welfare of the family by looking after the home or caring for the family:

(b) the needs of minor children of the marriage, if any, and, subject to those considerations, the Court may divide the assets or the proceeds of sale in such proportions as the Court deems reasonable, but in any case, the party by whose efforts the assets were acquired shall receive a greater proportion.

(5) For the purpose of the section, references to assets acquired during a marriage by one party include assets owned before the marriage by one party that has been substantially improved during the marriage by the other party or by their joint efforts.

The above provisions clearly embody the rules the court must adhere to in dividing matrimonial assets acquired during marriage upon granting a pronouncement of *talaq*. The section particularly highlights two subsections: first, sub section where the court orders the division between the parties of any assets acquired by them during their marriage by their joint efforts and subsection 3 where the courts order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage. For a division of the first category, the court shall incline towards equality of division. The division, however, is subject to certain factors, which the court has to take into account, such as

the extent of the contribution made by each party in the form of money, property or work towards acquiring the assets. Besides, any debts owed by either party, which was contracted for their joint benefit, will also be considered. The needs of minor children, if any, from the marriage, will not be ignored as well.

Concerning the second category of assets, the court may divide the assets in proportion, as it deems reasonable, subject to certain factors. The extent of contribution by the party who indirectly contributed to the assets by looking after the house and the family is deliberated in addition to the needs of minor children from the marriage, if any. In any case, the party that contributed significantly in acquiring the asset shall receive a greater proportion.

Section 122 describes assets as assets of joint and sole effort. The statutory and judicial definition of *harta sepencarian* was founded based on effort and contribution of each party during the marriage (*Ahmad Fikri Bin Mahmud v. Habibah Binti Muhamad* (2007) 23 JH, part 1, 23). Thus, the contribution to the acquisition of asset acts as a significant proof to the existence of joint or sole effort of parties that would be entitled to its share. This clarifies that marriage alone does not lead to contribution to matrimonial assets that permit the party (is) to their share after divorce (Suwaid, 2001, p. 70).

However, the contents of this particular are general which invite the judge to use his/her discretion while evaluating and deciding the reasonable portion for the parties. For example, Section 122(2) states

that in dividing joint effort assets, the court shall consider the extent of the contributions made by each party in the form of money, property, or labour towards this acquisition and subject to those considerations, the court shall be inclined towards equality of division. This general provision invites more discretion of the court to divide the assets, especially when the contribution involves disparity of proportion of financial contribution. On the other hand, the court also has discretionary powers not to be inclined towards the equality of shares. Section 122(3) is also unclear due to the generality of the sole effort contribution as factors in determining the spousal share (*Norsiah Bt Arshad v. Marsum Bin Paing* (2009)).

In certain cases, the court loosely interprets section 122(1) with regard to the definition of direct contribution. Household work and responsibilities carried out by a housewife are recognised as contribution and effort to the acquisition of assets via joint efforts. This issue is highlighted in case of *Haminah Bee v. Shamsuddin* (1980) where the court granted 1/2 of the assets to the plaintiff after the court took into account the indirect contributions of the wife during the course of their marriage. The court also granted equal share of business assets after taking into consideration the moral support the wife gave to the spouse to get the *dato*' title which had a positive impact on the husband's business (*Tengku Anum Zaharah v. Dato' Dr. Hussein* (1980)).

## METHODS

This study employed a qualitative method in analysing statutory law and other legal provisions governing the application of the law in the division of matrimonial asset. Case law analysis was also conducted to improve the statutory provision. The focus of this research is on problems in applying the existing law. Therefore, specific reference was made to reported cases in various law journals to identify the factors and variables that the court commonly apply when determining the share. Content analysis of the judicial decision of reported cases was focused on the practical approaches of the court in applying the law.

The study also reviewed case studies of unreported cases, which were carefully selected from six Shariah Courts between 2000 and 2012 that represented all the states in Malaysia, namely Selangor with the highest population density representing the Western Region, Penang, also densely populated, representing the Northern Region, Johor representing the Southern Region, Kelantan representing the population of the Eastern Region, and Sarawak representing the population of East Malaysia. Cases from the state of Perak were included since it has a similar law. Content analysis was applied in assessing the practical approaches of the court based on three important variables: scope of matrimonial assets, monetary and non-monetary contributions and the proportion of division of matrimonial assets.

## RESULTS AND DISCUSSION

The findings and recommendations of the study are discussed below.

### Judicial Approaches in Normal Proceedings

It was found the court relies upon the stipulated provision in section 122 of Islamic Family Law, the practice directions and previously decided cases in deciding the division of share of matrimonial assets between the spouses. Hence, the court was guided by a reliable authority and sources in arriving at a fair decision.

### Statutory Interpretations

In determining the sole effort and joint effort assets, the court should adhere to the stipulated provision by identifying the types of asset. This is done by using statutory provisions where the law emphasises the element of contribution. The court determines which assets are jointly acquired upon establishing the money, labour or property that are used to acquire the assets. The physical contribution in taking care of the family should be factored in the case of the party who did not directly acquire the assets.

In dividing sole effort assets, besides adhering to the provision which directs the court to divide the property or the proceeds of sale in a particular proportion as the court thinks reasonable, the court ensures that those who contribute more to the acquisition will acquire a greater proportion as outlined in the law (Section 122(3) and Section 122(4), IFLA). Nevertheless, in certain

cases, the court used its discretion even though the asset is sole effort property. For example, in a case where the wife claimed equal share out of the total amount of matrimonial property acquired by the sole effort of the husband, the court granted the wife equal share out of the assets. Therefore, the court used its discretionary power by granting equal share despite the fact that it may deviate from the original principle of allocating a greater proportion to the acquirer in dividing a sole effort property.

### Monetary Contributions

Monetary contribution to the acquisition of assets is considered as direct when it is made for the purchase of property or its improvement that increases the asset's value such as renovation of a house (*Zaiton Binti Enchi Alli v. Hussin Bin Enchi Mat* 13100-017-0273-2007 (Sarawak); *Norhayati Binti Yusoff v. Ahmad Shah bin Ahmad Tabrani* 03000-017-0005-2007 (Kelantan); or construction of a house (*Zaliza Binti Aziz, Khatijah Binti Pawanchik v. Ahmad Bin Salleh* 07100-017-0251-09 (Perak). In the case of *Hamidah Binti Abdullah v. Mohd Johanis Bin Busu* (03000-017-099-2001) in Kelantan, however, the court granted only 1/3 of the share to the plaintiff, a housewife, even though she had contributed in acquiring the asset. The plaintiff took a part time job where the proceed was used for the renovation of the house and family expenditure. It was also used as family income when the respondent was studying for a degree. It is clear in this case that the court ignored the renovation as part of the

direct contribution to the acquisition of assets.

Actual contribution is assessed based on payment related to the purchase of the asset such as mortgage installment, deposit, premium and tax (*Normah Binti Mohd Ali v. Abdul Rahman Bin Embong 01100 017 231 2003*), balance of purchase price or payment for adding to the asset value by making an improvement and renovation on the asset. The wife is the main contributor when the purchase of the asset was solely financed by her or from the amount obtained from her EPF balance. In the Sarawak case of *Fatimahwati Binti Bakawi v. Sopian Bin Jamain (13100-017-0438-2003(Sarawak)* the court held that the plaintiff had made a direct contribution to the matrimonial home and ordered equal share of the asset to be granted to the plaintiff as she had paid the deposit for the purchase of the home. .

When a monetary contribution is identified and determined based on literal interpretation of statutory law, the court orders the asset to be of equal ratio. In Sarawak case of *Mohmad Peridar Bin Hj. Leman v. Anni Binti Osman (13100-017-0776-2001 (Sarawak)*, the matrimonial home was registered in joint names. The house was purchased in 1989 using a joint loan in which RM55000 was paid by the plaintiff and RM49,000 by the defendant. After the divorce, the defendant stayed in the said house. The court granted equal share of the house to the plaintiff. The rule is equally applicable if there is difficulty to determine the extent of the spouse's joint effort in acquiring the asset. The court also faced

difficulty to determine the contribution since the parties disputed the quantum, which the court could not decide. In that case, the court granted equal division.

The court is also inclined to an equal division when a quantum of money used for payment is related to the improvement and the acquisition of the asset in a longer marriage. In the Sarawak case of *Dayang Norain Binti Awang Putra v. Awang Sabeli Bin Awang Morshidi (13100-017-0103-2005)*, the marriage lasted for 21 years. The husband paid RM354 in monthly instalments for their house via a government loan. However, the plaintiff proved that both spouses had jointly paid for the renovation amounting to RM15,000. In this case, the court exercised discretion. The court is inclined towards equal division in the situation where there is an improvement of property irrespective of each party's contribution, and the duration of the marriage. In the Sarawak case of *Zaiton Binti Enchi Alli v. Hussin Bin Enchi Mat (13100-017-0273-2007)*, the matrimonial house was in joint names. The plaintiff and the defendant had made joint monetary contributions during their 25 years of marriage where the husband paid for mortgage installment of the house valued at RM 90,000 while the plaintiff contributed RM8487 payment to renovate the house. In 2007, she further contributed RM25,000 for renovating the house. The court held that, based on the payments made by the plaintiff, she is entitled for equal share of the house. This indicates an inconsistency in practice when the court did not merely base

its decisions on contributions of either party to the acquisition of the asset, but also other factors such as the duration of a marriage.

Inconsistency in court decision was also noted in the case of *Wan Petri Sadom @ Wan Zurihana Binti Wan Mohamad v. Che Ismail Bin Ahamad* (03100-017-1393-2007) and *Norpipah Binti Tahit v. Za'ba Bin Ahmad* (13100-017-0317-2010). In the case of *Wan Petri Sadom @ Wan Zurihana Binti Wan Mohamad v. Che Ismail Bin Ahamad* (03100-017-1393-2007), the court awarded 9.17% net value of RM280,000 (amounting to RM20,000) to the wife as her entitlement based on her monetary contribution for the renovation of two houses situated at Pair Puteh, Kelantan. However, the rule was not applied in the Sarawak case of *Norpipah Binti Tahit v. Za'ba Bin Ahmad* (13100-017-0317-2010), where the plaintiff paid mortgage instalments from 2005 to 2008 as well as a deposit of RM3000. The court divided the amount to be shared equally and refunded to the plaintiff being payment for the plaintiff's contribution to the acquisition of the house. The court then declared that the house was under the absolute ownership of the defendant.

Though in general, the court adheres to the literal provision of the law that requires consideration to direct financial contribution of the parties, in certain cases, however, the court deviates from the general principle when the property was acquired by indirect contribution. In the Penang case of *Zaliza Binti Aziz, Khatijah Binti Pawanchik v. Ahmad Bin Salleh* (07100-017-0251-09), their apartment was jointly owned and was

purchased at RM150,000 through a joint loan. The plaintiff paid RM12 000 from her EPF withdrawal while the rest was paid by the husband. In addition, the plaintiff contributed for renovations, furniture and equipment, family expenditure and daily expenses. The court, after considering both the direct and indirect contributions of the wife, granted her equal share of the said house. This proved that the court took into consideration the wife's financial contribution to make the house comfortable. This case indicates the wife could still obtain equal shares of matrimonial property upon considering other monetary contributions even though she contributed minimally in acquiring the asset. This shows the court did not follow the law strictly.

Similarly, if the wife is the sole breadwinner and has contributed a large amount to the purchase price of a jointly owned matrimonial house, she will obtain a greater share. In the Sarawak case of *Hasmi Binti Ibdrahim v. Khairul Azwal Bin Osman* (13100-017-0270-2007), even though the husband contributed to the deposit payment of the house priced at RM56,000, the wife contributed solely to the actual mortgage payment of the house when the husband went missing. In this circumstance, the court regards the assets as the sole property of the wife. This illustrates that principle relating to contribution is an essential criterion in determining the proportion of the share of assets regardless of who is the contributor.

In cases where the monetary contribution of a husband is a minimal, it is observed that the share is determined based on the

contribution of each spouse. In the Kuching case of *Azfawani Binti Haji Mohd Azami v. Kushahiri Bin Haji Mujir* (13100-017-0027-2007), a house was purchased in joint names at RM197,000 in 2001 where both parties paid the price. In 2007, the defendant stopped working and halted the mortgage instalments, and the plaintiff continued the payment. Additionally, the plaintiff-maintained mortgage payment using her own money totalling more than 95% of the whole monetary contribution. The court decided that the plaintiff contributed more to the payments of the house and granted her a 96.5% share. This case indicates that the court may grant a greater share to the wife.

### **Property and Work**

In addition to monetary contributions, the analysis shows that the court also recognises contributions made in the form of property as a direct contribution. For example, a wife traded in a car as partial payment for a new car with the remaining balance being paid by the husband. The court regards such contributions in the division of asset. In Sarawak case of *Mohamad Peridar Bin Hj Leman v. Anni Binti Osman* (13100-017-0776-2001), their car was traded in for RM4500 to purchase a *Kancil*. The court held that the *Kancil* was matrimonial property and the proceeds of the sale of the car were to equally be divided. An option was given to the party to purchase the interest of the other part of the car. However, in another situation, the court deviated from the literal approach by not dividing the car purchased out of the “trade-in” as

a matrimonial asset. The court asked the other party to refund the trade-in amount of RM4500 to the defendant (*Norziana Binti Khamis v. Mohd Shukur Bin Khadid* 07100-017-0379-10).

The court also takes into account the contribution in the form of work. Work is recognised as a direct contribution if the contributed party enables the spouse to acquire new assets or increases the value of existing assets or made some improvement to the asset’s value. In determining the proportion of share, in this case, the extent of work by the spouse is deliberated by the court. Normally, an equal division is an appropriate share of the work done by the spouse. This is illustrated in Penang case of *Zarifah Binti Jahaya v. Samad Bin Said* (07100-017-0246-05) where the plaintiff claimed that she worked with the defendant in the retail business until they were able to acquire new assets consisting of a house, vehicle, food stall and 15 cows. The court ordered the assets to be equally divided.

In another situation, the court needs prove on equal or similar strength in work and nature of work where mere physical work does not constitute as a contribution to the acquisition of the asset. In the Perak case of *Bahanuddin Bin Ibrahim v. Kartini Binti Ibrahim* (08600-017-0023-2004) the plaintiff claimed for a share of a business asset consisting of two shops. The plaintiff assisted the defendant in managing the business by lifting goods and gave a lift to the defendant. It was not considered by the court as work, as the contribution was unclear and inconsistent. The contribution is

not made in relation to the nature of the work of the business and the court presumed that the work done by the plaintiff was merely as leisure to assist the defendant in his capacity as a husband. Thus, the case illustrates that physical work must be actively participated to be considered as a contribution.

The preceding discussions show the court considers direct contribution either in the form of money, work or property if the contribution is made to acquire an asset. However, the study also shows that the approach of the court is inconsistent in dividing the joint effort assets based on monetary contribution. When the amount contributed is minimal, the court deviates from the statutory provision by considering the indirect contribution of the homemaker wife and the proportion decided is one, which is equal. The court generalises the contribution by considering both indirect and direct contributions of the spouses in ascertaining the quantum of share related to joint effort assets.

### **Indirect Contributions of a Homemaker**

The contribution of homemaker has been addressed in the distribution of matrimonial asset. Analysis on 12 decided cases <sup>1</sup> in

<sup>1</sup> These cases shows that the court awarded 1/3 share based on purely homemaking contributions; see *Zaidah Bt. Md. Zin v. Abdul Razak Bin Khamis* 07100-017-0230-07 (Penang), *Mohamad Romdon Bin Ariffin v Sa'adiyah Binti Abd Rahman* 07100-017-0215-06 (Penang), *Puteh Bt. Sharip v. Ishak Bin Desa* 07100-017-0215-07 (Penang), *Rokiah Binti Sultan v. Razali Bin Hassan* 07100-017-325-09 (Penang), *Suharni Binti Samjuddin v. Mohamad Ishak Bin Abdu Hamid* 07100-017-

several states show that in dividing sole effort assets, the homemaker's right to matrimonial property is recognised for her service to take care of the family. Therefore, the homemaker will have an appropriate amount of share of matrimonial assets for her service in taking care of the family. It has been observed that the extent of homemaking contribution is confined to her physical efforts to serve her family during a reasonable length of the marriage. In the Sarawak case of *Zaiton Binti Enchi Alli v. Hussin Bin Enchi Mat* (13100-017-0273-2007), the facts show that the plaintiff was a full-time homemaker and did not directly contribute towards the acquisition of matrimonial assets. The court after considering her homemaking contribution, ordered 1/4 of the share of the asset to the plaintiff as her proportion of indirect contribution in maintaining the asset, taking care of the children and for discharging her role as a homemaker without any assistance.

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197-06 (Penang), *Burhan Abdul Manap* 07100-017-0278-09 (Penang), *Faridah Sueiman v. Mohd Noh Othman* mal case no. 86-2000 (Penang), *Habsah Binti Sad v. Surianata Binti Baharum, Shaari Bin A. Samad* 07100-017-49-01 (Penang), *Saurah Amma Bt Pickiri Saboo v Kuttabuteen Bin Aboo Salin* 707100-017-0108-03 (Penang), *Noraini, Rosenah Bt Ibrahim v. Ahmad Bin Ramli* 07100-017-71-02 (Penang). In *Jusoh Bin Saman v. Tuan Bidah Binti Tuan Kundor* 03000-017-0003-2012 (Kelantan); *Norasmah Bt Mahmud v. Amin Bin Abdullah* 03100-017-0059-2003 (Kelantan); *Semah Binti Daud v. Hassan Bin Awang* 03000-017-0004-2008 (Kelantan).; see cases *Tom Bt Nan v. Wan Adib Bin Wan Teh* 08100-017-68-2006 (Perak) and *Zawiah Bt Aki v. Abu Shahar B. Hj Yeop Wasil* 08100-017-0097-2007 (Perak).

The court also recognised a wife's financial contribution in family expenditure such as spending for home furnishing (*Faridah Sueiman v. Mohd Noh Othman* mal case no. 86-2000 (Penang), *Zaliza Binti Aziz*, *Khatijah Binti Pawanchik v. Ahmad Bin Salleh* 07100-017-0251-09 (Penang), as indirect contribution and significant in dividing the sole effort assets. In the Kelantan case of *Aimi Nazura Binti Nawi v. Mohamad Sobri Bin Ahmad* (03000-017-0010-2007), the court of appeal increased the plaintiff's share and granted her 1/3 share of the value of the matrimonial home after taking into account her direct and indirect contribution in the acquisition of the home during the nine years of their marriage. The plaintiff was formerly a teacher and contributed to the family's expenditure. The court considered the plaintiff's contribution to the family allowed the respondent to acquire other assets such as a house. Thus, this case shows that in dividing sole effort assets, the court takes into consideration the monetary contribution of the wife in meeting family expenditure. This highlights the problem associated with the difficulty to identify direct and indirect contribution resulting in inconsistency in the court's approach, especially in considering the monetary contributions to family expenditure. Thus, this creates a problem in the interpretation of the contribution due to the rigidity of the provision.

The study observed that the court provides substantial credit to a full-time housewife and working wife where it did not differentiate the share of housewife and

working wife. In the Kelantan case of *Zaiton binti Abdullah v. Zuha Bt. Hamzah* (03100-017-0920-2005), the plaintiff who worked as a part time cosmetic promoter apart from being engaged in doing house chores and child caring throughout the marriage was awarded 1/3 of the matrimonial property. The court recognises house chores carried out by the working wife by allocating the portion of a share of assets, which was not acquired by the plaintiff in substantially discharging her role as wife and mother.

The difficulty in identifying direct and indirect contribution has resulted to some extent in the court not awarding 1/3 share and grants 1/8 and 1/4 to the homemaker. The court, in majority of the cases, adopted a literal interpretation of section 122(3) and (4) where the homemaker's contribution though very substantial, was seen as irrelevant and not factored in when dividing joint effort assets. However, in a few cases, the courts deviated from the literal interpretation when an indirect contribution was considered in dividing the joint effort assets. For example, in the case where monetary contribution is minimal, consideration will be given to the wife's contribution as a homemaker. However, in several cases, it is observed that consideration of the division was based on the extent of both direct and indirect contributions. If the amount of money contributed to the acquisition of assets was not equal, the court would resort to the indirect contributions made to entitle the party for 1/3 portion of the matrimonial property.

The study shows that different

approaches were adopted by the court in dividing the sole effort assets of the breadwinner husband or wife to determine appropriate proportions of their matrimonial assets. The extent of indirect contributions made to acquire the asset was relevant. This was illustrated in the Penang case of *Burhan Bin Abdul Manap v. Norazlina Binti Yusof* (07100-017-0278-09) where the marriage lasted for six years without a child and the matrimonial home was purchased in 2002, whereby in 2003, the defendant stayed in the said house. The plaintiff paid for the acquisition of the assets including down payment and mortgage instalments. Despite the plaintiff's contribution, the court considered the wife's role in maintaining the house and doing house chores for six years and awarded 1/8 of the net value of the proceeds of the house to the plaintiff.

However, in the case of *Mohamad Romdon Bin Ariffin v. Sa'adiyah Binti Abd Rahman* (07100-017-0215-06), the matrimonial home was in joint names and was purchased during their 25 years of marriage. The plaintiff claimed that the inclusion of the defendant's name in the title was only out of mercy, as the defendant did not make any monetary contributions to the purchase payment of the asset, as she was a homemaker. The court ruled that the house was not matrimonial property and the plaintiff's claim to remove the defendant's name registered in the title was allowed. Even though the facts of the case showed that there is an intention to give a gift to the wife, the wife's rights to the property was denied as the court decided she did not

contribute to acquiring the asset.

The court, however, hesitates to award a portion of share to the husband who has not contributed to the acquisition of the asset if the husband fails to prove any indirect contribution. In the Penang case of *Norhana Bt Abd Razak v. Ahmad Nazri Bin Zainuddin* (07100-017-0196-08) the plaintiff claimed that she had made all mortgage instalments of the matrimonial home for eight years. Besides the instalments, the plaintiff withdrew from her EPF to pay deposit and settlement of debt though the home was registered in joint names. The case was decided without the defendant's presence and the court held that the home was not matrimonial property and the house was the absolute property of the plaintiff. The court highlighted that the husband was responsible to provide a home for his wife and pay for a purchase price of the home and not to place the burden of the payment to the wife. The court considered the wife's voluntary contribution as a good effort and thus was valued as an effort to assist the husband to have a happy family.

The above cases indicate that the court will not be inclined to award equal division if the asset is acquired by sole effort. Here, the acquirer of the asset should receive a greater portion. In case of sole effort assets, the division cannot be equal. However, in certain cases, it is observed that the court did not follow the general rule strictly, especially after taking into account other considerations such as the duration of the marriage. In the Penang case of *Noraini Binti Abdullah v. Aziz Bin*

*Abdullah* (07100-017-0003-03), despite the fact that the husband had been paying for mortgage instalments for 13 years before the divorce, the court considered the wife's contribution as a homemaker for 40 years. The plaintiff did assist the defendant in running a business where the income from the business was used for family expenditure that entitled her to an equal share.

The above discussion proves that the prescribed proportion of share allotted to homemakers as per the law is not an absolute right. The court seems to consider other factors and widens the scope of contribution and not confining only to the direct acquisition of assets but indirectly towards the acquisition of such assets. In these situations, it is observed that the court awarded equal portions. This is observed in many cases, specifically in Kelantan, where the indirect contribution has been loosely interpreted.

## CONCLUSION

In Malaysia, the law provides a general rule to guide the court in dividing matrimonial assets. However, it has loopholes, which led to a different approach on how actual distribution should be made. This had resulted in inconsistencies in court rulings and practices regarding asset division and ascertaining their share, especially when they are based merely on the contribution of parties. Thus, this study suggests the court should generalise these considerations and to consider other factors in dividing the matrimonial assets such as duration of the marriage, the welfare of the divorced wife

and her dependents such as her ailing father or mother. In addition, equal weight should be given to nonfinancial contributions as they are part and parcel of necessities in life. Serious attention should, therefore, be given to reform existing provisions in order to ensure just and equitable division of matrimonial assets.

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