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Wives' Property Rights in Muslim Family Law: A Comparative Analysis of Indonesia, Egypt, Morocco, Saudi Arabia, and Malaysia

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Abstract: *This study analyzes the legal status of property acquired by a wife during marriage (harta pencarian istri) from the perspective of Islamic family law, with a comparative focus on Indonesia, Egypt, Morocco, Saudi Arabia, and Malaysia. Using a normative-juridical method with a comparative-qualitative approach, this study examines primary legal sources the Qur'an, Hadith, Indonesia's Marriage Law and Compilation of Islamic Law (KHI), Egypt's Personal Status Law, Morocco's Moudawana (Family Code) of 2004, Saudi Arabia's 2022 Personal Status Law, and Malaysia's Islamic Family Law Act 1984 together with secondary academic literature. The findings show that classical Islamic family law uniformly recognizes a wife's independent ownership of property she earns through work, business, or profession, a principle rooted in QS. An-Nisa verse 32 and shared across all five jurisdictions. However, the degree of codification diverges: Indonesia and Malaysia recognize a statutory concept of jointly acquired marital property (harta bersama/harta sepencarian), while Egypt and Saudi Arabia retain separation of property as the governing default with no comparable joint-property doctrine. Morocco occupies a middle position, applying separation of property by default under Article 49 of the Moudawana while allowing spouses to contractually agree on joint asset management. Across all jurisdictions, the husband's duty of maintenance (nafkah/nafaqa) remains undiminished by a wife's income. This comparative mapping offers a more complete framework for understanding the legal protection of women's economic rights within Muslim family law and its relevance to ongoing legal reform in Indonesia.*

Abstrak: Penelitian Penelitian ini menganalisis kedudukan hukum harta yang diperoleh istri selama perkawinan (harta pencarian istri) dalam perspektif hukum keluarga Islam, dengan fokus perbandingan pada Indonesia, Mesir, Maroko, Arab Saudi, dan Malaysia. Menggunakan metode hukum normatif dengan pendekatan kualitatif-komparatif, penelitian ini mengkaji bahan hukum primer berupa Al-Qur'an, hadis, Undang-Undang Perkawinan dan Kompilasi Hukum Islam (KHI) Indonesia, Personal Status Law Mesir, Moudawana (Kitab Undang-Undang Keluarga) Maroko 2004, Undang-Undang Status Pribadi Arab Saudi 2022, serta Islamic Family Law Act Malaysia 1984, didukung literatur akademik sekunder. Hasil penelitian menunjukkan bahwa hukum keluarga Islam klasik secara konsisten mengakui kepemilikan mandiri istri atas harta yang diperolehnya dari pekerjaan, usaha, atau profesinya, sebagaimana ditegaskan dalam QS. An-Nisa ayat 32, dan prinsip ini berlaku sama di kelima negara yang diteliti. Namun, tingkat kodifikasinya berbeda: Indonesia dan Malaysia mengenal konsep harta bersama atau harta sepencarian yang diatur dalam undang-undang, sedangkan Mesir dan Arab Saudi tetap menerapkan prinsip pemisahan harta tanpa doktrin harta bersama yang setara. Maroko berada pada posisi tengah, menerapkan pemisahan harta sebagai rezim default berdasarkan Pasal 49 Moudawana, namun membuka peluang kesepakatan kontraktual mengenai pengelolaan harta bersama. Di seluruh negara yang diteliti, kewajiban nafkah suami tidak berkurang akibat penghasilan istri. Pemetaan komparatif ini memberikan kerangka yang lebih utuh untuk memahami perlindungan hukum terhadap hak ekonomi perempuan dalam hukum keluarga Islam serta relevansinya terhadap pembaruan hukum keluarga di Indonesia.

Keywords: *Harta Pencarian Istri, Hukum Keluarga Islam, Studi Perbandingan Hukum, Harta Bersama, Harta Sepencarian*

Introduction

Marriage is a fundamental institution in Islamic law that seeks to establish a family characterized by sakinah, mawaddah, and rahmah. Beyond its spiritual and social functions, marriage also creates legal and economic consequences concerning the ownership, management, and distribution of property between spouses (Ahmad et al., 2025). The legal status of property acquired during marriage is therefore essential to ensuring justice, legal certainty, and the protection of the economic rights of both husband and wife. Classical Islamic jurisprudence generally recognizes the principle of separate ownership between husband and wife. Each spouse is entitled to exercise ownership over property acquired before or during marriage. This principle is reflected in Qur'an 4:32, which recognizes that men and women are entitled to the benefits of what they earn (Rahmawati et al., 2019). Accordingly, property acquired through a wife's employment, business, or other economic activities may be regarded as her separate property, unless a legal provision or agreement determines otherwise. However, this principle encounters new legal challenges when it interacts with modern systems of marital-property regulation.

In Indonesia, Article 35 of Law Number 1 of 1974 on Marriage establishes that property acquired during marriage generally constitutes marital property. This concept is closely related to Indonesian customary law and is not explicitly formulated within classical Islamic jurisprudence (Affan, 2021). The coexistence of separate ownership under Islamic jurisprudence and marital property under national law may generate legal uncertainty, particularly when a wife makes a substantial economic contribution to the acquisition of family assets. The issue has become increasingly significant as women participate actively in the labor market as civil servants, lecturers, healthcare professionals, entrepreneurs, and migrant workers (Anisa et al., 2023; Kurniasari, 2025). In some families, the wife's income is even the principal source of household finances or exceeds the husband's income.

The regulation of wives' acquired property also varies across Muslim-majority countries. Malaysia recognizes the concept of harta sepencarian, which provides a legal basis for acknowledging the contributions of both spouses to property acquired during marriage. Egypt reflects a family-law tradition influenced by the Hanafi school and modern legislative development, while Morocco represents the Maliki tradition and family-law reform through the Moudawana. Saudi Arabia, meanwhile, reflects the development of family-law codification rooted in the fiqh tradition. These differences provide an important basis for examining how Islamic legal principles and national legislation address women's property rights within marriage. Previous studies have mainly adopted bilateral or general approaches. Aibak (2022) compared the regulation of marital property after divorce in Indonesia and Malaysia, while Hamim and Faisal (2022) examined Egyptian and Indonesian family law without focusing specifically on property acquired through a wife's efforts. Asnawi (2022) discussed marital property from a normative comparative perspective but did not provide a multilateral analysis involving Indonesia, Egypt, Morocco, Saudi Arabia, and Malaysia. This research therefore aims to analyze the legal status of wives' acquired property within the framework of Islamic family law and positive law in these five countries.

The study contributes to comparative Islamic family-law scholarship by examining variations in legal recognition, ownership, and protection of wives' economic contributions, while also providing insights relevant to the development of marital-property regulation in Indonesia.

Literature Review

The Concept of Wives' Acquired Property in Islamic Jurisprudence

Wives' acquired property refers to assets obtained by a wife through employment, professional activities, business operations, or other independent economic efforts during marriage. Such property may include salaries, professional fees, business profits, investment returns, and other forms of income generated through the wife's economic activities (Bahri, 2024). The concept is significant in Islamic family law because it concerns the relationship between individual ownership, marital obligations, and the economic rights of women within the family. In classical Islamic jurisprudence, the dominant position of the four major Sunni schools—Hanafi, Maliki, Shafi'i, and Hanbali—is that property acquired through a wife's own efforts belongs to her individually and does not automatically become the property of her husband (Hidayat, 2025). This position is primarily grounded in Qur'an 4:32. The verse is commonly understood as recognizing the independent economic and legal identity of both men and women. Accordingly, marriage does not, by itself, transfer ownership of a wife's assets to her husband or eliminate her authority to manage such property. The principle of separate ownership also indicates that a wife's income remains legally attributable to her unless it is voluntarily contributed to the household, jointly invested, or otherwise regulated through an agreement between the spouses.

The Hanafi school provides a particularly significant theoretical foundation for this principle. Abu Hanifah emphasized that women possess *ahliyyah*, or legal capacity, equivalent to that of men in relation to transactions, ownership, and the management of property (Murialti, 2022). Under this approach, a married woman is regarded as an independent legal person capable of acquiring, possessing, managing, and disposing of her property. Her marital status does not, in principle, invalidate her authority over property obtained through her own economic activities. The historical example of Khadijah bint Khuwaylid is frequently invoked to illustrate the legitimacy of women's economic participation in Islam. As a successful merchant and the wife of the Prophet Muhammad, her commercial activities were not regarded as incompatible with Islamic teachings. This example reinforces the argument that women's economic productivity and independent ownership are not contrary to the objectives of Islamic family law. Nevertheless, the application of this classical principle has taken different forms in modern Muslim-majority countries, particularly when national legislation introduces concepts such as marital property, joint ownership, or community property.

The Regulation of Marital Property in Indonesia

The Indonesian legal system adopts a combination of individual and joint-property principles. Article 35(1) of Law Number 1 of 1974 on Marriage provides that property acquired during marriage constitutes marital property. At the same time, Article 35(2) recognizes the existence of property brought into the marriage, as well as property received as a gift or inheritance, as the separate property of each spouse. This framework demonstrates that Indonesian marriage law does not entirely eliminate individual ownership but distinguishes between property acquired during marriage and property obtained through other legal bases. The regulation is further developed in the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI). Article 85 recognizes that the existence of marital property does not exclude the possibility of separate property belonging to either the husband or the wife. Article 97 provides a general framework for the distribution of marital property following the dissolution of marriage. Together, these provisions establish a legal structure in which joint property and separate property may coexist within the marital relationship.

Several scholars argue that the Indonesian concept of marital property represents a form of legal adaptation rather than a direct continuation of the classical fiqh doctrine of separate ownership.

Elimartati and Elfia (2020) observe that the provisions of the KHI concerning marital property reflect a form of *ijtihad* influenced by Indonesian customary law. Consequently, the Indonesian model is not entirely identical to the classical Islamic principle that each spouse retains ownership of property acquired through individual effort. This distinction creates an important conceptual issue regarding the legal status of property acquired through a wife's work or professional activities. If the property is obtained during marriage, it may be classified as marital property under Indonesian positive law, even when the income originates primarily from the wife's individual efforts. Conversely, the principle of separate ownership in classical Islamic jurisprudence would support the recognition of such property as the wife's personal asset. The interaction between these two approaches forms a central issue in comparative studies of wives' acquired property in Muslim family law.

The existing literature reveals two principal approaches to the regulation of wives' acquired property. The first is the classical Islamic approach, which emphasizes the independent legal personality and separate ownership rights of each spouse. The second is the modern statutory approach, which may classify property acquired during marriage as jointly owned in order to recognize the shared economic and domestic contributions of the spouses. Indonesia illustrates the coexistence and tension between these two approaches. Its legal system recognizes the personal ownership of certain assets while simultaneously establishing the concept of marital property for assets acquired during marriage. This dual structure raises questions concerning the extent to which a wife's individual economic contribution should be recognized within the broader framework of family property law. These questions provide a basis for further comparative analysis with other Muslim-majority countries that have developed different responses to the relationship between Islamic jurisprudence, customary law, and modern family-law legislation.

Method

This study employs normative legal research using a qualitative and comparative legal approach to examine the legal status of wives' acquired property in Indonesia, Egypt, Morocco, Saudi Arabia, and Malaysia. The study relies on secondary data collected through library research, consisting of primary legal materials, including the Qur'an, Hadith, Indonesian Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law, the Egyptian Personal Status Law of 1920 and Law Number 1 of 2000, the Moroccan Family Code (*Moudawana*) under Dahir Number 1-04-22 of 2004, the Saudi Personal Status Law under Royal Decree Number M/73 of 2022, and the Islamic Family Law (Federal Territories) Act 1984 of Malaysia. Secondary materials include peer-reviewed journal articles, research reports, scholarly books, and relevant legal studies. The five countries were purposively selected based on their diverse Islamic legal traditions and family-law codification models. The legal materials were analyzed descriptively, analytically, and comparatively to identify similarities and differences in the classification, ownership, and protection of property acquired by wives during marriage.

Results and Discussion

Indonesia: Tension between Separate Ownership and Marital Property

Islamic family law in Indonesia occupies a hybrid position. Although classical Islamic jurisprudence recognizes the principle of separate ownership between husband and wife, Indonesian positive law, through the Marriage Law and the Compilation of Islamic Law (KHI), classifies property acquired during marriage including income generated by the wife as marital property, which is generally divided equally upon divorce (Harimurti, 2021; Yusriana, 2022; Nurdin et al., 2024). Nevertheless, the practice of religious courts indicates that the division is not invariably fixed at 50:50. Judges may take into account the actual contribution of each spouse to the acquisition and development of the marital assets (Sinta et al., 2026). This legal framework demonstrates the interaction between the classical Islamic principle of individual ownership and the Indonesian concept of harta bersama or marital property. Consequently, the income and assets acquired by a wife during marriage may not automatically retain the status of her separate property under Indonesian law. Their legal classification depends on the time of acquisition, the source of the property, the existence of a marital agreement, and the judicial assessment of the contributions made by both spouses.

Egypt: Separate Ownership and Financial Reform through Khulʿ

Egypt does not recognize the concept of marital property in the same manner as Indonesia. Egyptian family law, which is rooted in the Personal Status Law of 1920 and has undergone several partial reforms, generally maintains the principle of separate ownership between husband and wife, consistent with the classical Hanafi legal tradition (Hamim & Faisal, 2022). Property acquired by a wife through her employment, business, or other economic activities remains her exclusive property. At the same time, the obligation to provide nafaqah remains the responsibility of the husband, irrespective of the wife's financial position or personal wealth. An important reform was introduced through Law Number 1 of 2000, which recognized the mechanism of khulʿ. This mechanism enables a wife to seek unilateral divorce before the court without proving that she has suffered harm or wrongdoing from her husband. However, she is required to relinquish her financial marital rights, including maintenance and mutʿah, and to return the mahr that she received (Arab Reform Initiative, 2025). The regulation of khulʿ indirectly reflects the logic of separate property in the Egyptian legal system. Since the wife's property is not treated as marital property from the outset, the financial consequences of divorce primarily concern rights arising from the marriage contract, such as mahr, maintenance, and compensation. These consequences differ from the Indonesian model, in which assets acquired during marriage may be subject to judicial division as marital property.

Morocco: Separate Property as the Default Regime

Morocco follows the Maliki school of Islamic jurisprudence and has significantly reformed its family law through the 2004 Moudawana, or Family Code. Article 49 establishes separate ownership as the default regime for marital property. Under this provision, each spouse remains the full owner of his or her individual property (Avocat Marocain, 2026). However, the same provision allows the spouses to conclude a separate written agreement—independent of the marriage contract—concerning the management and distribution of property acquired during marriage. The adoul, or Islamic notary, is required to inform both parties of this legal possibility at the time of the marriage contract. This arrangement reflects an attempt to preserve the principle of separate ownership while providing contractual flexibility for spouses who wish to regulate their economic relationship differently. In the absence of a written agreement, Moroccan courts may apply general evidentiary principles by considering the work, financial contribution, and responsibilities undertaken by each spouse in acquiring and developing family assets. This approach is associated with the customary principle of kad wa siʿaya, which refers to effort, labor, and contribution to the accumulation of family wealth (9anon AI, 2026). The reform discourse surrounding the Moudawana between 2023 and 2025 has also proposed stronger recognition of wives' non-financial contributions, including domestic work and childcare, in the assessment of property distribution following divorce (Medfeminiswiya, 2025; Tahrir Institute for Middle East Policy, 2023). Morocco therefore occupies an intermediate position between Egypt, which predominantly maintains a strict separate-property regime, and Indonesia and Malaysia, which recognize legally codified forms of marital property. The Moroccan model retains separate ownership as its default principle but provides contractual and judicial mechanisms for recognizing joint contributions.

Saudi Arabia: Codification and the Strengthening of Wives' Economic Rights

Saudi Arabia is among the countries that have only recently codified their family law. Before 2022, family disputes were primarily resolved through judicial ijtihad based on Islamic jurisprudential texts rather than through a comprehensive written code (Human Rights Watch, 2023). The Personal Status

Law, enacted through Royal Decree Number M/73 of 2022, introduced a written legal framework governing the rights and obligations of spouses, including matters relating to property. The law affirms that mahr constitutes the exclusive property of the wife and may not be claimed by her husband or his family. It also recognizes the possibility of including legally binding conditions in the marriage contract, including conditions relating to the wife's right to work, pursue education, or retain ownership of particular assets (Commoner Law, 2025). Saudi Arabia does not recognize a general regime of marital property. Property acquired by a wife through her employment, business, or other economic activity remains her exclusive property, consistent with the principle of separate ownership in classical Islamic jurisprudence. The husband's obligation to provide maintenance remains applicable even when the wife possesses substantial personal wealth. Implementing regulations issued in February 2025 further strengthened women's legal position, including through stricter requirements concerning guardianship and the expansion of evidentiary mechanisms in divorce proceedings based on marital harm (London School of Economics Middle East Centre, 2025). The Saudi model therefore reflects a process of formalizing classical principles of separate ownership while expanding contractual and procedural mechanisms for the protection of women's legal and economic rights.

Malaysia: *Harta Sepencarian* as an Adaptation of Customary Law

Malaysia recognizes the concept of harta sepencarian, namely property acquired by the husband and wife through joint efforts during marriage. This concept is regulated, among others, in Section 2 of the Islamic Family Law (Federal Territories) Act 1984 (Ahmad et al., 2020). Historically, harta sepencarian originated in Malay customary law and was subsequently incorporated into the framework of Islamic law through the principle of al-ʿadah al-muḥakkamah, according to which established custom may be recognized as a source of legal authority. In historical and philosophical terms, this concept is therefore similar to the Indonesian notion of marital property, although the two systems have developed through different processes of codification (Aibak, 2022). The principal distinction between Malaysian harta sepencarian and Indonesian marital property concerns the basis for distribution. The jurisprudence of the Malaysian Syariah Courts emphasizes that harta sepencarian must be proven to have been acquired through the joint resources, efforts, or contributions of both spouses. Distribution is therefore based proportionally on the degree of contribution made by each party rather than automatically according to an equal 50:50 division (Ali et al., 2021). Indonesia, by contrast, generally tends to divide marital property more equally through the practice of the Religious Courts, without always requiring detailed proof of the precise economic contribution of each spouse (Aibak, 2022). In Malaysia, a claim relating to harta sepencarian may generally be submitted in connection with divorce proceedings or following the death of one of the spouses, as provided under Section 122 of the same legislation.

Table 1. Summarizes The Legal Position Of Wives' Acquired Property In The Five Countries

Country	Main Legal Basis	Marital-Property Regime	Status of Wives' Acquired Property	Basis of Distribution and Legal Note
Indonesia	Law No. 1 of 1974, as amended by Law No. 16 of 2019; KHI Arts. 85 and 97	Codified marital property influenced by customary law	Generally included in marital property; property brought into the marriage, gifts, and inheritance remain separate property under Article 35(2)	Generally divided equally, although judges may assess the actual contribution of each spouse
Egypt	Personal Status Law of 1920; Law No. 1 of 2000 on *khulʿ*	Strict separate-property regime influenced by the Hanafi school	The wife's exclusive personal property	No general division of marital property; financial claims primarily concern *mahr*, maintenance, and *mutʿah*
Morocco	*Moudawana*, Dahir	Separate	Remains the wife's	Based on a written

	No. 1-04-22 of 2004, Article 49	ownership as the default regime, influenced by the Maliki tradition	personal property unless regulated by a separate written agreement	agreement or proof of the parties' contributions under the principle of *kad wa siʿaya*
Saudi Arabia	Personal Status Law of 2022, Royal Decree No. M/73	Strict separate-property regime, recently codified	The wife's exclusive property; *mahr* belongs exclusively to the wife	No general marital property; contractual conditions may strengthen the wife's property and economic rights
Malaysia	Islamic Family Law (Federal Territories) Act 1984, Sections 2 and 122	*Harta sepencarian*, an adaptation of Malay custom into Islamic family law	May constitute separate property or *harta sepencarian*, subject to proof	Distributed proportionally according to work, resources, and contribution rather than automatically on a 50:50 basis

Codification and Convergence

The comparison of the five countries indicates that the fundamental fiqh principle recognizing a wife's independent ownership of the property she earns, as reflected in Qur'an 4:32, remains influential across all jurisdictions examined. The principal difference lies in the extent to which each legal system codifies the concept of marital or joint property. Three regulatory models can be identified. The first is the codified marital-property model influenced by local customary law, represented by Indonesia and Malaysia. The second is the strict separate-property model, which remains closely aligned with classical Islamic jurisprudence and is represented by Egypt and Saudi Arabia. The third is the default separate-property model combined with contractual and judicial flexibility, as reflected in Morocco.

The first model provides a relatively high degree of legal certainty for couples who do not enter into a marital agreement. Nevertheless, it may fail to adequately reflect the differences in the actual contributions of the husband and wife. The second model most clearly protects the formal economic independence of the wife. However, it may leave spouses who make substantial non-financial contributions—particularly wives engaged primarily in domestic work and childcare—with insufficient economic protection after divorce, unless such protection is supplemented by rights such as mutʿah and post-divorce maintenance. The third model offers a relatively adaptive middle ground. It preserves separate ownership as the default rule while allowing the parties to establish a different arrangement through a written agreement. It also permits judicial consideration of the contributions made by each spouse. However, the effectiveness of this model depends substantially on public legal awareness and the willingness of spouses to conclude a written agreement at the beginning of the marriage.

Implications for Indonesian Family-Law Reform

The comparative analysis offers several lessons for the development of Indonesian family law. *First*, the Moroccan contractual model demonstrates that marital agreements concerning the separation or management of property already recognized under Article 29 of the Indonesian Marriage Law could be promoted more widely as an instrument for adapting the marital-property regime to the economic circumstances of individual couples. *Second,* the Malaysian proportional model provides a more nuanced alternative to an equal division that may operate rigidly in practice. A proportional approach enables courts to recognize more accurately the economic contributions made by a wife who works, generates income, or contributes substantially to the acquisition of family assets. *Third,* the experiences of Egypt and Saudi Arabia demonstrate that a strict separate-property regime should be accompanied by adequate post-divorce rights, including mutʿah and maintenance during the ʿiddah period. Such complementary rights are necessary to prevent the economic marginalization of spouses whose contributions to the household are primarily non-financial. For Indonesia, the most appropriate reform would therefore involve a balanced framework that preserves individual ownership, recognizes joint contributions, and provides proportionate judicial protection for both financial and non-financial contributions within marriage.

Conclusion

This study concludes that classical Islamic family law consistently recognizes property acquired by a wife during marriage through employment, professional activities, business, or other economic endeavors as her separate property, as affirmed in Qur'an 4:32. However, the comparative analysis of Indonesia, Egypt, Morocco, Saudi Arabia, and Malaysia demonstrates that this principle has been translated into three distinct regulatory models: the codified marital-property or *harta sepencarian* model adopted in Indonesia and Malaysia; the strict separate-property model applied in Egypt and Saudi Arabia; and the separate-property model with contractual flexibility adopted in Morocco. Despite these differences, all five jurisdictions generally maintain that the obligation to provide maintenance remains the primary responsibility of the husband and is not diminished by the wife's income or personal wealth. The wife's economic contribution is therefore treated as a voluntary contribution to the household, possessing religious and ethical value, rather than as a legal obligation that replaces the husband's duty of maintenance. This comparative mapping contributes to the academic development of Islamic family-law studies and provides a basis for reforming marital-property regulation in Indonesia, particularly by promoting the use of marital agreements and adopting a more proportionate assessment of the financial and non-financial contributions of each spouse to ensure justice and the protection of women's economic rights within the family.

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Conflict of Interest

This article has no conflicts of interest.

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