Study of Unauthorized Transaction from Prospective of Jurisprudence and Law

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ABSTRACT

Unauthorized transaction in accordance with Islamic law was a non-incisive transaction which was validated by owner's permission, i.e. Owner’s permission made unauthorized transaction as legal incisive. In this study, role of owner’s permission in unauthorized transaction was determined and various approaches in form of legal basis of permission in unauthorized transaction were discussed. Finally, regarding to all issues about unauthorized transaction, permission was known as complemented and perfect element of unauthorized transaction. Also, two common theories of Discover and quotes have been attended in legal consequences of unauthorized transaction and permission consequences was revealed in discovery theory and have been attended by Imamieh Jurisprudence. Then, related issues to permission would be discussed in some frames like permission conditions, permission provisions and quality of permission expression.

INTRODUCTION

Non-incisive of unauthorized transaction have been discussed in civil law in accordance to Islamic law. Another figure of non-incisive theory is to authorize permission right or rejecting non-incisive transaction to original owner. Civil law has discussed inheritance issue which is important.

As we know, law is included in inheritance articles. In other hand, permission right or rejecting unauthorized transaction is granted to the heirs in case of owner dead (before permission according to article 253 of civil law).[1]

Main question is that whether granting this right through inheritances justifiable or other way is considered by legislator?

Finding accurate answer to this question could provide suitable solutions and is discussed in this chapter.

Unauthorized transaction:

Unauthorized transaction is defined as transacting someone by other properties without any permission. Unauthorized transaction could be possession or covenant. Possession unauthorized transaction is defined as selling others properties without owner’s permission and covenant unauthorized transaction is defined as selling with commitment to other to do transaction. Someone who performs transaction without permission is called unauthorized, transaction party is called original and someone who transaction was done by its properties is called others. [3]

Permission division and its actions:

There are some studies about permission authorization or rejecting. According to accurate viewpoint, permission and admission is granted to heirs. Main question is that how this authority is divided among heirs? If heir is one, answer is clear. In Article 253, there is no provision about several heirs. Maybe, discussions about inheritance are applicable in this case. So, according to sharing in transaction case, permission is divided. For example, if a house is sold in unauthorized way and original owner died before permission declaration and has one daughter and one son, house is divided to 2 to 1, in fact, son has double authorized to permit or reject unauthorized transaction.

Maybe permission of rejecting is not done by inheritance share, and all heirs use of their right equally or each of heir have permission or rejecting right during transaction. [2]

These viewpoints due to possession of admission are not correct and are not consistent with inheritance regulation but it could be regarded unless there is crucial reason.

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If wife be one of heirs and property is irreplaceable, according to inheritance regulation wife doesn’t have permission or rejecting right, because irreplaceable property is not granted her.

According to above explanation, issues about permission or rejection by heirs is revealed. Admission in transaction is a right, so after owner’s dead, heirs have right to permit or reject transaction.

According to prior explanation, permission or rejecting of transaction by heirs is accurate and their authorization is created by transaction value, so dissolving transaction to various transactions in not problematic. So each of heirs could decide about own share. This kind of Prejudice is supposed during living original owner too. Cancelling or retaining transition is various issues which should be discussed.

Permission in covenant transaction is other discussion about permission or rejecting right. One of main difference in unauthorized matter is in transaction by general commitment no certain properties. [4]

If unauthorized regulation be current in certain properties, permission or rejecting by heirs is not discussed, but if unauthorized regulation is accepted in all transactions, so there is a main question. Whether heirs have right to permit or reject covenant transaction or not.

Some authors believes before permission there is no commitment to transfer to heirs after owner dead, in other hand authorization of financial transaction is not independent, so unauthorized transaction is cancelled. It seems that, truth is not reliable because property should consider against commitment and Conscience. If conscience is not paid completely, unauthorized discussion is not meaningful. Meaning of unauthorized transaction is completing part of transaction and not realizing other part. Maybe unauthorized commitment is related to individual and by individual dead, commitment is removed. This is not correct. Because generalize of transaction is not related directly to individual and non-incisive matter of transaction doesn’t have these characteristics. So, when an individual is obliged to pay one ton of rice, this commitment is transferred to property after dead.

(According to unauthorized commitment) Liability is transferred to individual properties, although be non-incisive and permission or rejecting authorization is attached. In other hand, article 253 is emphasized on this viewpoint.

Difference of unauthorized transaction and transferring to other Unauthorized transaction is legal and transferring properties to others is penal situation. I.e. although realization of field in unauthorized transaction is transfer, but initially ill will elements should be proved in penalty situation, in case of lack of unauthorized transaction, bondsman doesn’t have any right about other properties and should eliminate shortcoming by original validation, whereas according to article 247 and 249 gh.m properties should be cleaned and eliminated.

1. In transferring to other specially in tricks like following examples realization the ill willing is clear Someone whose introduces himself as original owner and rents estate to several individuals without any handwriting.

2. By defrauding transfers financial swindle to others in any large numbers in any case.


Moral and physical elements in term of lose and its results are gaining benefits by individuals. [5]

When someone doesn’t have separated certificate about inheritance and granted two tones to his friend as a sale letter, this transfer shows ill will.

When a child sells fathers automobile during father travelling in order to gain more benefits should be considered in other way.

One of most important difference of safety of property or availability of property is related to unauthorized situation and transferring to other. According to regulation in civil law:

Transaction to other individuals who are not inherited is not incisive.

Article 183, 190, 191, 192, 193, 198 and 199 explain about advocacy satisfaction and granting property is explained in article 348 of civil law.

In article 251 and 256 of civil law there is three important words like transaction, satisfaction and transferring. When these words are considered irreplaceable and good transfer is shown.

In Islamic regulation, term of individual is used extensive, below explanation could be useful:

Article 565, 581, 673, 674 and 690 explains about graft and spoofing regulation. Article 2 and 4 explain about penal situation and regulation about non-specific properties which was proved in 1929 and transferring regulation have been proved in 1923. Below information is shown

Compulsory force:
Ill will and abuse:
Invent and artifice:
There is no explain about transaction and commitment
Property is entitle to other and aimed to benefit or losing others.
Intentional actions
Conclusion:
Commitment is exception character for third person and is reflected by articles 196 and 768 of civil law, so, developing human relationship in current world would created some commitment like life insurance, transportation insurance. It could be accepted these experts is not understand as transaction or devotion, so there is a few evidence in this regard in this study. So, any situation could not included unauthorized transaction in commitment of third party and this is not consistent, so scientific methods should not be used.

REFERENCES