

Sharia Ownership Concept

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Abstract

This type of research is descriptive research. The data used in this study is a literature study and uses qualitative data. Data analysis methods in this study are descriptive analysis, content analysis, comparative analysis, and triangulation.

Ownership or al-milk is also known as property rights or just property. The fiqh experts interpret property rights (al-milk) as "a person's specificity towards assets that are recognized by the Shari'ah, thus making him have special power over a property, both utilizing and or managing it". In Islam, there are three elements of ownership, namely private property, public property, and state property. The causes that can make a person have property are work, inheritance, the need for the property to sustain life, giving state assets to the people, and assets obtained without wealth and energy. In addition, ownership has various types, including perfect ownership and imperfect ownership.

Keywords

Assets, Ownership, Sharia

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Introduction

Etymologically, ownership (*al-milk*) comes from Arabic from the basic word "*malaka*" which means mastery of something. Ownership or *al-milk* is also known as property rights or just property. The *fiqh* experts interpret property rights (*al-milk*) as "a person's specificity towards assets that are recognized by the sharia, thus making him have special power over a property, both utilizing and or managing it". In terms of terminology, there are several definitions of *al-milk* put forward by the jurists.

Wahbah al-Zuhaili gives the meaning of *al-milk* (property) as follows:

شرعي لمنع الا ابتداء التصرف من صاحبه يمكن و منه الغير يمنع بالشيء اختصاص

"Property rights are a specificity of an asset that prevents other people from that property. The owner is free to do *tasharruf* unless there is a *syar'i* obstacle." (Al-Zuhaili, 1984).
Muhammad Abu Zahro explains it this way:

ابتداء فيه التصرف من صاحبه يمكن و منه الغير يمنع بالشيء اختصاص

"Property rights are a specificity of a property that prevents other people from the property and allows the owner to be free to do *tasharruf* unless there are *syar'i* obstacles." (Buang, 2008).

This technical limitation can be described as follows, when there are people who get an item or property through methods that are legalized by sharia law, then there is a special relationship between the item and the person who obtains it. The special relationship possessed by the person who acquires the goods (property) allows him to enjoy its benefits and use it according to his wishes as long as he is not hindered by *syar'i* obstacles such as madness, memory pain, loss of mind, or is still too small so that he does not understand how to use the goods (Choudhury, 2005). Another dimension of this special relationship is that other people, other than the owner, have no right to use or use it for any purpose unless the owner has given him permission, power of attorney, or anything similar. In Islamic law, the owner may be minor, not yet mature, or a person who is insane or insane, but in terms of utilizing and using "his" goods, they are hindered by the *syar'i* obstacles that arise because they do not possess the qualities of maturity. However, this can be represented to other people such as guardians, *washi* (who are given a will), and representatives (who are authorized to represent) (Choudhury, 2005).

Literature Review

The Basic Concept of Ownership

"To Allah belongs the dominion of the heavens and the earth and whatever is within them. And He is over all things competent." (Al-Maidah:120).

"And give them from the wealth of Allah which He has given you." (An-Nur:33)

"Spend out of that in which He has made you successive inheritors." (Al-Hadid:7).

"And give you increase in wealth and children." (Nuh:12)

"Release their property to them." (An-Nisa:6)

"Wealth which you have obtained." (At-Tawbah:24)

"And what will his wealth avail him when he falls?" (Al-Layl:11).

The Concept of Ownership in Islam

In Islam, there are three elements of ownership, namely private property, public property and state property (Pryor, 1985).

Private Property

The tendency to pleasure is human nature, Allah has adorned in humans the love of women, children, and property. As Allah says in the Qur'an:

“Beautified for people is the love of that which they desire - of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return” (Ali 'Imran:14).

Public Property

Public property is sharia permission to a community to jointly use an item or property. Objects that are included in the category of public ownership are objects that have been declared by Asy-Shari'a that are intended for a community.

State Property

State property is property which is the right of all muslims, while its management is the authority of the State.

Causes and Types of Ownership

Causes That Can Make Someone Have Wealth

Wealth (*al maal*) is anything that can become wealth, whatever its form. Meanwhile, what is meant by the cause of ownership (*sabab at tamalluk*) is the cause that can make a person own property, which previously did not belong to him.

Types of Ownership

Al milk At Tamm (Perfect Ownership)

Perfect Ownership is the absolute right to the substance of an (object) and its benefits together so that thus all rights recognized by *syar'i* remain in the hands of imperfect owners (Zuhayly, 1985).

Al Milk An Naqish (Imperfect Ownership)

Imperfect Ownership is when someone only controls the material property, but the benefits are controlled by someone else. In other words, the imperfect property is possessing only the thing or only its benefits (Zuhayly, 1985).

Method

This type of research is descriptive research. The data used in this study is a literature study and uses qualitative data. Data analysis methods in this study are descriptive analysis, content analysis, comparative analysis, and triangulation.

Discussion

The Basic Concept of Ownership

The basis of ownership in Islam is in Al Maidah:120. This verse shows that Allah is the sole owner of everything in the heavens and the earth and has no partners with Him. Then God gives or entrusts the power of the earth to humans so that humans manage and prosper it.

From An-Nuur:33, Al-Hadid:7 and Nuh:12, we find that when Allah SWT explains the original status of ownership of these assets, Allah SWT relies on Himself, where Allah SWT states "*Maalillah*" (wealth belongs to Allah). Meanwhile, when Allah SWT explains about the change of ownership to humans, then Allah relies on the ownership of humans. Where Allah SWT declares with His word From An-Nisa:6, Al-Baqarah:279, At-Tawbah:24 and Al-Layl:11, we find that the property rights that have been handed over to humans (*istikhlaf*) are general for every human being as a whole. So that humans have property rights, not real ownership. Because humans are only given the

authority to control these property rights. Therefore, for humans to have a property (property rights), Islam provides a condition that there must be permission from Allah SWT to the person to own the property. Therefore, these assets can only be owned by someone if the person concerned gets permission from Allah SWT to own it. (Sait, Lim, humains, & Programme, 2006)

The Concept of Ownership in Islam

Private Property

In Ali Imran:14, Allah clearly explains that the human tendency towards pleasure is human nature. Therefore, humans are driven to get it and try to get it. This has become a must. From this, the human effort to obtain wealth is a natural thing and is something that must be done.

Islam is a religion of nature, and none of the teachings contained in it are contrary to human nature. Islam respects the human tendency towards beautiful and pleasant things. Therefore, every effort and effort that prohibits humans from obtaining wealth is very contrary to nature. Likewise, any attempt to limit human wealth to a certain measure is also contrary to nature. Islam is not prevented from getting as much wealth as possible. Humans are given the greatest freedom in obtaining wealth. However, the sharia limits it in terms of how to obtain it. Shari'a has determined the rules for obtaining wealth. Everyone has different levels of ability and needs in meeting their needs. If humans are given the freedom to obtain it, then there will only be a few people who monopolize wealth, the weak will be prevented from obtaining it, while the greedy will dominate it.

Therefore, the ownership of an item must be determined by a certain mechanism. Meanwhile, the prohibition against ownership of goods must be opposed, because it is contrary to human nature. Prohibition of ownership based on quantity must also be opposed because it will weaken the spirit to acquire wealth. Likewise, freedom in obtaining it will also cause social inequality in society. Indeed Islam is a religion of solution. Islam allows individual ownership and limits the mechanism for obtaining it, not limiting the quantity. This method is by human nature, it will be able to regulate human relations with the fulfillment of needs.

Public Property

Items included in public ownership are as follows:

- a. It is a public facility, if it is not available in a country or a community, it will cause a dispute in finding it.
- b. Mining goods are not limited in number.
- c. Natural resources whose nature prevents them from being owned by individuals.

The Prophet Muhammad has explained the provisions of objects that are included in public ownership. Ibn Abbas said that the Messenger of Allah said:

"Muslims are allied in three things: water, fields, and fire". (HR. Abu Dawud).

Anas narrated the hadith from Ibn Abbas by adding: *wa samanuhu haram* (and the price is haram). From Abu Hurairah, that the Messenger of Allah said:

"There are three things that will never be forbidden (to be owned by anyone): water, fields, and fire". (HR. Ibn Majah).

Regarding mining goods, they can be classified into two:

- a. Mining goods are limited in number, which does not include large quantities according to individual sizes.
- b. Mining goods are not limited in number.

Mining items are limited in number can be privately owned. As for the mineral goods that are not limited in number, which cannot be spent, are included in the public property, and cannot be owned privately. Imam At Tirmidhi narrated from Abyadh bin Hamal:

"Indeed he once asked the Messenger of Allah to manage his salt mine. Then he gave it. After he left, one of the assemblies asked, "O Messenger of Allah, do you know what you gave him? Indeed, you have given something like flowing water." The Messenger of Allah then said, "Then remove the rope from him." (HR. At Tirmidhi).

State Property

Asy Syari' has determined the assets as the property of the State; The state has the right to manage it according to its views and *ijtihad* (Naqvi, 1977). State property includes *fai*, *Kharaj*, *Jizyah*, and so on. Because the sharia never determines the target of the assets being managed. The difference between public and state property is that general property basically cannot be given by the state to individuals. Meanwhile, state property can be given to individuals by agreed terms.

Causes and Types of Ownership

Causes That Can Make Someone Have Wealth

According to Islamic law, there are five reasons for ownership (*asbab al-tamalluk*) which are used as economic resources, (Naqvi, 1977) namely:

Work

The word 'work' is very broad in meaning, various types, various forms. Allah has determined the forms of labor and the types that are worthy of being done as the cause of ownership. In the sharia laws, the provisions on this matter are very clear. The forms of work used as the cause of ownership are as follows: work:

Revive dead land (*ihya' al mawat*)

Dead land is land that has no owner and is no longer used by anyone. What is meant by turning it on is to cultivate it, plant it, or build a building on it. Therefore, any attempt to revive the dead land is enough to make the land his own. From Umar bin Khattab, the Messenger of Allah said: "Whoever lives on dead land, then the land becomes his" (H.R Al Bukhari). In another hadith the Prophet reaffirmed, the Messenger of Allah said: "Whoever fences off a plot of land, then the land belongs to him. (H.R Ahmad). "Whoever arrives at something (a plot of land) first, while no Muslim before him arrived at it, then that something belongs to him". (H.R At Thabrani).

In this case, there is no distinction between Muslims and dhimmis infidels, because the hadith is absolute. Ownership of the land has conditions, the yanah must be managed for three years from the time the land was opened and the benefits will continue to be cultivated. If the land has not been managed for three years since the land was opened or left for three years, the ownership rights to the land are lost. This once happened during the caliphate Umar bin Khatab, from the narrative of Amr bin Shu'aib that Caliph Umar limited the period of fencing to three years. Umar bin Khatab said: "The person who fences off the land (then leaves the land alone) does not have the right to the land after three years".

Digging The Earth

Included in the category of work is digging the earth's contents. The type of earth content in this category is not a basic need of a community, or what is called *rikaz*. According to the provisions of fiqh, a person who digs the contents of the earth is entitled to 4/5 parts, while the remaining 1/5 parts must be issued as *khumus*. The provisions for *rikaz* property are if the assets stored in the land are originally due to someone's actions and the amount is limited and does not reach the amount needed by a community in very large quantities. If it is a treasure from the ground that is not cultivated by a person and is needed by a community, then this kind of property is not *rikaz*, but is public property. Which can also be equated with the treasures of the earth, which are the treasures of the air, such as oxygen and nitrogen. Likewise with other assets that are permitted by the sharia to be owned.

Hunt

Also included in the category of work is hunting. Included in the hunting that is allowed in Islam is hunting all types of fish, pearls, gems, and other marine prey. Likewise, hunting land and air animals, such as hunting birds, deer, and others. The stipulation is that the animal is free, meaning that the animal or property is not owned by another person and in public ownership. As Allah says

about the permissibility of hunting:

"Lawful to you is game from the sea and its food as provision for you and the travelers, but forbidden to you is game from the land as long as you are in the state of *iḥrām*. And fear Allah to whom you will be gathered." (Al Maidah:96).

"But when you come out of *iḥrām*, then [you may] hunt" (Q.S Al Maidah : 2)

"They ask you, [O Muḥammad], what has been made lawful for them. Say, "Lawful for you are [all] good foods and [game caught by] what you have trained of hunting animals which you train as Allah has taught you. So eat of what they catch for you, and mention the name of Allah upon it, and fear Allah (Al Maidah:4).

Abu Tsa'labah al Khasyani also once said: "I once came to the Messenger of Allah, and asked "Our Messenger of Allah can hunt on land. I hunt with my bow and sometimes hunt with my trained and untrained dogs. Tell me, what should I do? He replied, "About what I remember, that you hunt on land, then you hunt with your bow, then mention the name of Allah every (releasing the bow) on your prey, then eat. The animal that you hunt with your trained dog and you call Allah's name (when releasing the dog) to your prey, eat it. As for the animal that you hunt with an untrained dog, slaughter it and then eat it." (Narrated by An Nasai and Ibn Majah)

Broker (*samsara*) dan guide (*dalalah*)

Samsara is a term for people who work for others for wages. This term can also be used for people who guide others (*dalal*). From Qais bin Abi Gharzat al Kinani who said:

"We at the time of the Prophet Muhammad used to be called *samasirah*. Then one day we met the Messenger of Allah and called us a more appropriate name than that. He said, "O merchants, actually buying and selling can bring nonsense and false oaths. Therefore, you must correct it with honesty" (Narrated by Abu Dawud).

Mudharabah

Mudharabah is a cooperation between two or more people in a trade. Capital from one party while the other party provides energy. The profits will be divided according to the agreement. This result is legitimate to have. Therefore, *mudharabah* is included from work. Rasulullah said:

"God's protection is above two people who cooperate as long as they do not betray each other. If one of them betrays his partner, Allah will remove His protection from both of them." (HR. DaruQutni).

Musaqat

Musaqat is someone who gives up his garden to be managed by someone else to care for and take care of the garden, from which he will get a share of the results of his harvest. Thus, *musaqat* is included in the category of work permitted by the Shari'a. As Abdullah bin Umar said:

"Indeed, the Messenger of Allah once employed the people of Khaibar for wages in the form of fruit or plants from the results obtained." (HR. Muslim).

Ijarah

Included in the work category is *Ijarah*, which is an employment contract. This means contracting the workers or laborers who work for him. Allah says: "Do they distribute the mercy of your Lord? It is We who have apportioned among them their livelihood in the life of this world and have raised some of them above others in degrees [of rank] that they may make use of one another for service." (Az-Zukhruf:32).

Inheritance

Among the causes of ownership is inheritance. In this case Allah has explained in very clear laws. Allah says: "Allah instructs you concerning your children [i.e., their portions of inheritance]: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate" (An-Nisa:11)

The need for the property to survive

Among the causes of ownership is the need for the property to sustain life. Because life is a right for everyone. A person is obliged to get life as his right. One of the things that can guarantee a person to live is to work, to meet the basic needs of his life. However, if he is unable to work, then the State is responsible for making him able to work. If he cannot work because he is too old, then the rich people of the State are obliged to meet his needs. But if this is not fulfilled, until he is starving, then it is permissible for him to take whatever can be used to sustain his life. If life is a cause for obtaining wealth, then the Shari'a will not consider it an act of stealing. Abu Umamah narrated that the Messenger of Allah said: "There is no ruling on cutting off hands in times of hunger." (HR. Al Khatib Al Baghdad).

Giving state property to the people

Also included in the cause of ownership is the state's gift to the people taken from the baitulmal, either to meet their needs or take advantage of their ownership. It can be in the form of giving land to work on or paying off their debts. At the time of Caliph Umar bin Khatab once gave the farmers in Iraq property from *Baitul Mal*, which could help them to cultivate their agricultural land, and fulfill their needs, without asking them in return.

Assets obtained without wealth and energy

There are five categories of assets obtained from without wealth and energy, namely:

- 1) The relationship between individuals with one another, either while still alive such as grants and gifts, or even after their death, such as wills.
- 2) Receive property as compensation for the harm that befalls someone, such as *diyat* (fine) for people who are killed or injured.
- 3) Obtaining a dowry along with assets obtained through a marriage contract
- 4) Findings (*luqathah*)
- 5) Compensation for the Caliph or people of equal status.

Types of Ownership

The fiqh scholars divide ownership into two forms, yaitu:

a. *Al milk At Tamm* (Perfect Ownership)

The characteristics of perfect ownership, including:

- 1) From the outset the ownership of materials and benefits is perfect.
- 2) The material and its benefits have existed since the ownership.
- 3) Ownership is not limited to time.
- 4) Ownership cannot be forfeited.

b. *Al Milk An Naqish* (Imperfect Ownership)

The characteristics of perfect ownership, including:

- 1) May be limited by time, place, and nature.
- 2) Cannot be inherited.
- 3) People who use the benefits are required to pay maintenance costs (Nurlaelawati, 2010).

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