

Property Position and Islamic Economic Law

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Abstract:

Property in Islam has a position as a pillar of life that supports the running of all activities, history records that the beginning of the Islamic struggle carried out by the Prophet SAW could not be separated from the role of his wife as a conglomerate who had advantages in financial terms. The position of this treasure is very important especially in economic activities, business, and worship, so that attention to this treasure has been prioritized by umara and scholars since time immemorial. Islam always teaches mankind to be grateful for the treasures that in their possession are used for devotion to Allah SWT and used solely to get closer to Him. In addition, it is also used for the benefit of many people in terms of helping others, for that it should be considered how to get it, its management and how to use it. The Qur'an pays great attention to the issue of wealth by giving detailed and extensive limits on property. Many scholars have opinions to know the position of this treasure including Imam Hanafi, Imam Shafi'i, Imam Maliki and others. Among their opinions is how the Shari'a establishes ways to obtain property, distribute it, develop it and so on. This was conveyed by them to be a reference and guideline so that the process of managing assets in human life does not cause damage and loss either to nature, the environment or to individuals and society.

Abstrak:

Harta dalam Islam mempunyai kedudukan sebagai tiang kehidupan yang menunjang berjalannya segala aktivitas, sejarah mencatat awal mula perjuangan Islam yang dilakukan Nabi SAW tidak lepas dari peran istri sebagai konglomerat yang memiliki kelebihan. dalam hal keuangan. Kedudukan harta karun ini sangat penting terutama dalam kegiatan ekonomi, bisnis, dan ibadah, sehingga perhatian terhadap harta ini menjadi prioritas para umara dan ulama sejak dahulu kala. Islam selalu mengajarkan umat manusia untuk mensyukuri harta yang dimilikinya digunakan untuk bertaqwa kepada Allah SWT dan digunakan semata-mata untuk mendekatkan diri kepadanya. Selain itu juga digunakan untuk kepentingan orang banyak dalam hal membantu orang lain, untuk itu perlu diperhatikan cara mendapatkannya, pengelolaannya dan cara pemanfaatannya. Al-Qur'an memberikan perhatian yang besar terhadap masalah kekayaan dengan memberikan batasan-batasan harta secara rinci dan luas. Banyak ulama yang berpendapat untuk mengetahui kedudukan harta ini diantaranya adalah Imam Hanafi, Imam Syafi'i, Imam Maliki dan lain-lain. Diantara pendapat mereka adalah bagaimana syariat mengatur cara memperoleh harta, mendistribusikannya, mengembangkannya dan sebagainya. Hal ini disampaikan mereka untuk menjadi acuan dan pedoman agar proses pengelolaan harta benda dalam kehidupan manusia tidak menimbulkan kerusakan dan kerugian baik terhadap alam, lingkungan hidup maupun terhadap individu dan masyarakat.

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INTRODUCTION

Treasure in Arabic is inclined, tilted or inclined (Suhendi, 2007: 9) While according to the term is something that is loved, liked and protected, obtained, needed and mastered by humans in the form of material or in the form of benefits.

In Islamic teachings, the real treasure belongs to Allah, man only gets the mandate to manage and cultivate it for survival. If a person has property, then basically he has the property only to be used and bound by the laws of shari'a, not free to manage absolutely but obliged to follow the rules of the game that Allah has set in the Qur'an and the Sunnah of His Messenger, including property should not be hoarded, not developed by usury, gambling and *gharar*.

For believers, wealth is only a tool to achieve the pleasure of Allah SWT, the greater the pleasure of Allah is achieved, this is the essence of property in the hands of believers is fully controlled, not vice versa, property is only as a tool not to use him. In Surah al-Kahf verse 46 which reads as follows:

“Possessions and children are the adornment of the life of the world, but everlasting and righteous deeds are better rewarded in the sight of your Lord, and better to be hope” (Ministry of Religious Affairs, 2015).

Many scholars explain the various notions of wealth as evidence of seriousness in expressing something that is the basis of human needs, because in practice many humans who have *sabuiyah* lust (animal lust) hunt for as much treasure as possible to fulfill their shahwat solely by ignoring halal or haram in obtaining it. Allah SWT created everything on this earth for humans, in the form of natural resources in the ocean and land, but Allah also set signs to get it so that nature and human life remain balanced, to have human wealth should follow the rules that Allah has set in His sharia so that there is clarity in the ownership of wealth there is no dispute or eating and acquiring one another.

This paper will reveal the position of property and its essence and how it belongs to a person so that there is clarity in obtaining it, developing it and distributing it, with expressions from various opinions of scholars as comparative material to be used as a reference in understanding the position of property and ownership.

RESEARCH METHODS

The preparation of this paper uses qualitative research methods, which is a research method that focuses on a deep understanding of one problem by not equating other problems, because the character of one problem is not the same as the character of another problem. Qualitative research methods are often called naturalistic research methods because the research is carried out on natural conditions (*natural setting*) is referred to as a qualitative method, because the data collected and analyzed are more qualitative (Suggestion, 2018: 7).

The stages carried out in this study are first by describing all the problems related to the position of property in Islam and its ownership according to scholars. Second, by focusing on reduction, namely removing data that is not needed and has no correlation with research, then determining representative, useful, *updated* and interesting data to deepen and develop towards the purpose to be obtained and become a solution. Third, by selecting and deciphering the data in more detail as well as conducting a more in-depth analysis of the data that has been determined so as to give birth to a hypothesis that can be a reference, comparison or solution to a problem.

RESULT AND DISCUSSION

Definition of Treasure

1. Basics of Understanding Treasure

As social beings humans are in dire need of wealth in living and living in the world, in Islamic teachings the question of wealth is included in one of the five basic needs (*with al-Kham in Adh-Dharuriyat*) i.e. religion, soul, heredity, reason and property (Siddiqy, 2004). Based on this, it retains property from all efforts made by others in a way that is not *Shahih* and how to *Facade*, is something that receives special attention in the teachings of Islam. So that a person should not be arbitrary in obtaining, managing and distributing his property. The measure of a person's freedom to own and utilize his property must be in accordance with the law of shara'. For this reason, the ownership and use of property, in addition to the personal benefit and benefit of the property owner, must also be able to provide benefits and benefits for many people (Muhammad Akram Khan, 1996).

More important than that, the use of property in Islamic teachings must take precedence in the order of dedicating oneself to Allah Almighty. The function of utilizing property is not only for property owners but also used as a social function in order to help fellow humans. As the Prophet SAW said in sunan Ibn Majah (Majah, 2005: 2681) as follows:

"It is from Fatimah bint Qais that she listened to it that the Prophet (peace be upon him) said: in every property of a person there is no right (to others), other than zakat."

The rights of others contained in one's property are called the rights of society that functions socially for the welfare of fellow human beings.

عَنْ أَنَسِ بْنِ مَالِكٍ يَقُولُ كَانَ أَبُو طَلْحَةَ أَكْثَرَ أَنْصَارِيٍّ بِالْمَدِينَةِ مَالًا وَكَانَ أَحَبُّ أَمْوَالِهِ إِلَيْهِ بَيْرَاحِي وَكَانَتْ مُسْتَقْبَلَةَ الْمَسْجِدِ وَكَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَدْخُلُهَا وَيَشْرَبُ مِنْ مَاءٍ فِيهَا طَيِّبٌ قَالَ أَنَسٌ فَلَمَّا نَزَلَتْ هَذِهِ الْآيَةُ لَنْ تَتَّالُوا الْبِرَّ حَتَّى تَنْفُقُوا مِمَّا تَحِبُّونَ قَامَ أَبُو طَلْحَةَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ اللَّهَ يَقُولُ

From Anas ibn Malik (r), he said, "Abu Talha was the most wealthy Ansar in the city of Medina, and his most beloved treasure was the garden of 'Bairaha' located in front of the mosque. The Prophet (peace be upon him) once entered the garden and drank its fresh water. Anas said, "When the verse comes down, {*You will not acquire virtue until you have given away some of the things you love*} (Qs. Aali Imraan(3): 92). Abu Talha went to the Prophet (peace be upon him) and said, 'Verily Allah says in his book, "*You will not gain virtue until you give away some of the property you love,*" Verily my most beloved treasure is *Bairaha*, so now I give up the garden because of Allah. I expect His reward as savings in God's sight. Therefore make use of it, as you please, O Messenger of Allah'."

The Prophet (peace be upon him) replied, '*Wah is the most profitable treasure, wah it is the most profitable treasure. I have heard what you say about the treasure, but I think you will leave it to your relatives.*' Then Abu Talha distributed it to his relatives and his uncle's children." (Muslim 532, 3/79)

In addition, the Prophet SAW also forbade wasting property, as he said which means: "The Prophet SAW forbade wasting property

"Behold, Allah desires three things for you, and is angry when you do three things. Allah is pleased if you worship Him and do not associate Him with anything, and (Allah is pleased) if you hold on to the rope of Allah entirely and you advise each other towards the rulers who manage your affairs. God is angry if you are busy with rumors, asking useless questions and wasting treasures." (HR. Muslim)

Based on the hadith of the Messenger above, it can be understood that even if a person already has abundant wealth, he cannot and should not have the right to do as he pleases with his property, disposing of property for nothing, because in his property it is related and involved the rights of others who need it. In this regard, a person who redundantly uses his property, according to the scholars of fiqh that person should be designated as someone under guardianship/guardianship (*al-Hajr*) (Mandzur, n.d.:550).

Departing from the understanding of property stated above, it can be concluded that, something can be said to be property if it meets the following conditions, namely:

1. Can be mastered and or can be stored, then something that can be mastered and stored must have form and matter.

2. It can be taken advantage according to habit. So something that has benefits for the owner.

Muhammad Salam Madkur separated the elements of the treasure into 3 (three) elements (Al-Hiskafi, 2000) that is:

1. Owned

2. Can be taken advantage of

3. The utilization is allowed by sharia in ordinary circumstances, not in forced circumstances.

2. Understanding Wealth According to Scholars

a. According to the Hanafi School:

Treasure according to Hanafi scholars is something valuable and can be stored, which at any time if needed is easy to get and use, so it is not categorized as treasure if it cannot be stored.

While what is meant by benefits is included in the category of something that can be owned, but it does not include property. According to Hanafi scholars, there is no difference between the definition of property and the definition of property, property is something that can be used specifically and cannot be interfered with by other people while property is something that can be stored for use when needed and its use can be interfered with by others. On the other hand, it does not include the wealth of something that cannot be owned but can be benefited, such as the air and the

wind, nor does it include the wealth of something that in fact cannot be taken advantage of, but can be concretely owned, such as a handful of land, a drop of water, a bee, a grain of rice and so on. So property according to the Hanafi school is something tangible and can be stored, then something that is intangible and cannot be stored is not called treasure. There are two elements of property according to Hanafi scholars, namely:

1. *'Ainiyah*, that is, something must have *'ainnya* or matter that has a tangible form.
2. *'Urf* (habit), that is, according to human custom, either by some people or in general view it as a treasure or not a treasure.

So the concept of property according to Hanafi scholars, everything that meets two criteria: *First*: Something that is owned and can be benefited according to ghalib. *Second*: Something that is owned and can be used concretely (*a'yan*), such as land, equipment, livestock and money. The criteria for something to be seen as a treasure or not depend on the views of all or part of man. Based on this, then:

1. Drugs, dogs, pigs and the like are something that can be kept and kept by non-Muslims, so for them it is a treasure because of the fulfillment of material elements. But for Muslims because they are prohibited from taking advantage of these items, it is not said that even property can be stored.
 2. Something that has been seen as a treasure will remain as a treasure, unless all mankind has forgiven and abandoned it. If someone or part of a human being allows or throws away something because it is no longer useful for him such as used bottles of drinks, clothes, but by someone or some people are still seen as useful, then that something is still seen as a treasure for him.
- b. According to the Shafi'iyah School:

It is not called property unless it has a value that can be bought and sold and if someone damages it then he reimburses the value of the property even a little, and everything that is not left by the person from their property such as money and the like. Second, everything that is beneficial is owned and lawful in price like a rental house and what is similar to it that is lawful wages.

According to Imam Shafi'i, property is something that has value, can be bought and sold and if damaged, the item has the consequence of replacing or bearing the value of the property damaged (Asy-Syafi, 2001). This means that these items have value to sell and the value of the property will continue to exist unless everyone takes no more benefits. Even if some people leave it, it is still considered a treasure because it is still useful and valuable to others.

From the definition above, there is a difference in the essence of the treasure put forward by Shafi'iyah scholars with Hanafi scholars. According to Shafi'iyah scholars, property is not only material, but also includes the benefits of an object. However, Hanafi scholars argue that what is meant by property is only material, while benefits are included in the sense of property (Az-Zuhaili, 2011).

The implications of such disagreements can be seen in the following example: if someone robs (*al-ghasbu*) or uses someone else's vehicle without permission. According to Shafi'iyah scholars the person can be compensated, because the benefits of the vehicle have property value. This they argue that the benefits of an object are the most important element in property, because the value of property is measured on the quality and quantity of the benefits of the object. However, Hanafi scholars say that the use of someone else's vehicle without permission is not subject to compensation, because the person is not taking property, but merely using the vehicle, while the vehicle remains intact. Nevertheless, Hanafi scholars still do not allow the use of other people's property without the permission of the owner

In another implication for the difference of opinion of Hanafi scholars with Shafi'iyah scholars that arises from the difference in understanding of this property is the difference in the form of rental cases (*ijarah*). If someone rents his house to someone else and the lease agreement has been agreed by both parties, then the landlord dies. In such cases, according to Hanafi scholars, the lease contract for renting the house is void, because the owner of the house has died and the house must be handed over to his heirs, because the benefits of the house he rents do not include property, therefore cannot be inherited. However, *jumhur ulama* argues that the lease contract continues until the end of the agreed contract period, even though the owner of the house has died, because benefits are property

that can be inherited to heirs. The expiration of the lease contract when it is due which has been agreed at the beginning of the contract, not because of the death of the owner of the house.

Hanafi scholars *mutaakhhirin* (next generation) argue that the definition of property put forward by his predecessors is considered not comprehensive and less accommodating, this can be understood as in surah al-Baqarah verse 29:

"God explained that everything He created on this earth was for mankind's benefit" (Ministry of Religious Affairs, 2015).

Among the Hanafi scholars of the *mutaakhhirin* was Mustafa Ahmad az-Zarqa', a fiqh expert who came from Syria and lived in 'Amman, Jordan, besides him there was a professor of Islamic fiqh at the University's Faculty of Shari'ah. Mustafa Ahmad az-Zarqa' gives the following definition of *mal*:

"Property is everything that has material value among society".

They are more likely to use the definition of property as stated by the number of scholars above, because the problem of property is related to the problems of habits, customs, situations and conditions of a society.

c. According to the Maliki School:

As for the Malikiyya scholar al-Shatibi (W 790 AH) an important figure among the Maliki school argued, that property is an element of ownership where the owner has the right to control and prevent others from taking it, and the category of property is property rights that are understood according to *al-'urf*, namely regulations that have been customary in an area and justified by sharia.

From this we can understand at least two things, namely, *first* The property will remain the rightful owner, unless it changes hands permitted by sharia law', such as buying and selling, grants, wills, endowments, inheritances and others. *Second* Everything recognized by *al-'urf* is both material and immaterial as long as it can be categorized as treasure (Sudiarti, 2013). Non-material examples such as copyright which has been passed by law No. 7 of 1987.

d. According to the Hambali School:

The definition of *maal* according to hambali scholars is anything that has a changing benefit for a need and or for emergency conditions (As-Suyuti, n.d.). Hambali scholars related to the understanding of property are more focused on its function to fulfill a human need both in leisure and emergency conditions, they view the existence of an ease to be used without any obstacles from any party because complete mastery does not require a long time and is measured with certainty and is precisely measured.

Division of Property And Its Legal Consequences

The division of this property the scholars have grouped it into several parts that are viewed in several aspects with special characteristics and their own legal consequences (Ibn Nujaim, n.d.).

1. In terms of its utilization ability according to *shara'*, property is divided into:

- a. *Mutaqawwim* (valuable because it is permissible by *shara'*). Mustafa Syalabi defines *mutaqawwim* property as something that can be controlled and allowed by sharia to take advantage of it.
- b. *Ghairu Mutaqawwim* (worthless because it is forbidden by *shara'*) . That is something that *Shara* is not allowed to take advantage of, such as pigs, dogs and *khamar*.

2. In terms of whether or not it can be moved, property is divided into:

- a. *Manqul* Treasure (movable)

Ali al-Khafif defines *manqul* property as something that can be moved from one place to another, whether the property remains in shape and its condition changes as a result of being moved. These treasures such as money, clothing, food, books and various types of items can be measured and weighed

- b. Treasure *'Iqar* (immovable)

Among the meanings of *'iqar* is a property that cannot be moved from its original place. This sense is understood to mean that such is only land and what follows it. The *fuqaha*, in this case the Hanafis and Malikis differ in opinion over the treasures of the *manqul* and *'iqar*. According to Hanafiyah that buildings, trees and plants on earth are not categorized as *'iqar* treasures except in the

status of following the land. So, if the land has buildings on it or there are plants, and then the land is sold, then the law of 'iqar will be applied to everything that follows the land, whether in the form of buildings or others. Meanwhile, if only the building or plant is sold without the land, then in this case the law of 'iqar is not applied. So according to Hanafiyah, the treasure of 'iqar includes nothing but the land alone, while manqul includes everything other than the land.

According to Malikiyah, they narrowed the understanding of manqul and expanded the understanding of 'iqar. They argue that manqul is something that can be moved from one place to another, but remains in its original condition and form, such as books, clothes, vehicles and so on. Whereas 'iqar is something that is impossible to move at all such as soil, or may be pindahkan but changes shape when moved such as buildings and plants. Buildings when moved will be destroyed and turned into rubble, as well as plants will turn into wood.

As for the legal consequences of the division of this type of property (Musthafa, Ibrahim, n.d.), the scholars of fiqh argue that:

- 1) *Shuf'ah* (the right to buy a share of the company's property) is only fixed on 'iqar (immovable) property, not on manqul (movable) property. When manqul property is sold according to the property on 'iqar, then *Suf'ah* is applied to both. With respect to the sale and purchase of *al-wafa'* (conditional sale, where the seller can buy back the goods he has sold), this applies only to 'iqar and does not apply to manqul.
- 2) *Waqf*, for *waqf* can be carried out against immovable property, this is agreed upon by the scholars of fiqh. However, endowments to movable property, Hanafi scholars do not allow unless there is a connection, or there is an *atsar* that shows its legitimacy such as horses, weapons or according to famous customs such as book endowments and the like. However, the number of scholars allowed movable property to be endowed.
- 3) *Muflis*, which is a person who is declared bankrupt, then to pay off the debt of a *muflis* can be done by selling his manqul (movable) property first before his 'iqar (immovable) property.
- 4) *Al-Washi* (the one who is given a will). The executor of the will can act on behalf of the *qashir* (a person who has not met the criteria to perform *tasharruf* perfectly on his property). A *washi* can sell manqul property for their needs as long as there is benefit and not excessive, 'iqar (immovable) property can be sold if there is an urgent and permissible thing *shara'* such as to pay off debts to cover very important needs, or to achieve greater benefit.
- 5) The rights of neighbors and *irtifaq*. This right is fixed only on 'iqar (immovable property), so there is no right of *irtifaq* on manqul (movable property).
- 6) The wisdom of this type of division of property, according to Abu Haneefa and Abu Yusuf, cannot be perceived as *al-ghashbu* or the seizure of 'iqar (immovable) property, because it is impossible to move and control which is a condition of *al-ghashb*. But according to *jumhur ulama* argue that in the property of 'iqar and manqul there can also be plunder.
3. In terms of use or use, property can be divided into:
 - a. *Istihlaki treasure* is a treasure that when used to enjoy its benefits as usual is by spending its substances, such as food, drink, soap, oil, firewood and others. Likewise, money is a treasure, because the way to use it is by getting it out of the hands of the owner even though in principle the substance of the money remains.
 - b. *Isti'mali treasures* are treasures that can be used and taken advantage of repeatedly but the substance is still intact, such as houses, clothes, books and so on
4. In terms of property status/ownership, property can also be distinguished into:
 - a. *Mamluk property* (property that is already owned) is a property that is under the power or ownership of either individuals, community groups or legal entities such as governments, organizations or foundations, unless there are contracts that transfer ownership.
 - b. *Mubah treasures* (free/unowned treasures) are treasures that have no owner, such as animals in the wilderness, fish in the ocean and so on. This kind of treasure can be owned by everyone because it may be controlled and stored, unless there is a certain *sebab-sebab*.
 - c. *Mahjur property* (property that should not be owned) is property that according to *sharia* 'should not be owned and handed over to others. So this treasure should not be used for certain personal

interests. Such as waqf property and property intended for public interest.

The legal consequences of the division of property into this form are:

- 1) Al-mamluk *property* if it belongs to the state, then its use is intended for the benefit of the general public and the people who use it must not damage the property and cannot be made private property. If it belongs to an institution / organization, then its use is for the benefit of the institution / organization or its members without harming others who do not participate in the institution / organization. For someone's property, he is free to use it according to the rules of shara', but if there are other people's rights such as debt security, or are being rented by someone then the owner must not act legally by eliminating the rights of others. If the property is jointly owned / associated among several people, then the legal action of each owner of the property is limited to actions that do not harm the rights of his union. Therefore, each party must not damage or eliminate the property, nor may it change its form, and it is not allowed to take an action outside the limits mutually agreed upon by the owners of the joint property / association
- 2) Al-mubah *treasure* as property that is not under the control of a person, then the treasure can be controlled and stored by anyone with the effort he makes.
- 3) Al-Mahjur's *property* as a property that Shara is forbidden to own, then this treasure is a treasure that can be used and intended only for public use.
5. In terms of whether or not it can be divided, property can be distinguished into:
 - a. *Qabilu lil qismah*, which is a property that can be divided and will not cause damage or reduce the benefits of the property. Such as, rice, flour, oil and water can be divided without damaging and reducing their benefits.
 - b. *Ghairu qabili lil qismah*, which is a treasure that cannot be used if divided, because the treasure will be damaged and useless. Such as, tables, chairs, plates, glasses and others

The legal consequences of the division of property into this form are as follows:

- 1) *Shirkkah* on divisible property may be executed by a judge's decision based on "qismah at-tafriq" i.e. division based on separation. Such a piece of land is divided into a northern part and a southern part. Unlike property that cannot be divided, the method is based on "qismah ridhaiyah" which is division based on the willingness of each party.
- 2) *Shirkkah* on property that cannot be divided, if the owner of the share gives it to someone else then the gift is valid. For divisible property, the gift is invalid until the division is made.
- 3) *Shirkkah* on immovable property that can be divided, if it requires an urgent expense to be given by one of the owners without the permission of his guild friend or without a judge's order, while the friend does not want to give the required fee, then the expense that has been incurred is considered a voluntary expense and cannot be compensated to the union friend. If the union's property is indivisible property, then the costs incurred can be asked for compensation.
6. In terms of development, whether the treasure can develop or not, whether it develops through results or through human effort or in its own way based on God's creation, it can also be divided into:
 - a. Harta al-ashl (original treasure), that is, the treasure that produces, meaning that it allows for the occurrence of other property. Such as houses, plantation land, livestock and others.
 - b. Treasure ats tamar (fruit or result), that is, treasure produced from another property. Such as house rent, fruits from trees in the garden, cow's milk, domda fur, buffalo calves and others.

As for the legal consequences of the division of property into this form (Mohammed Ahmed Sakr, 1995) be:

- 1) Waqf property should not originally be distributed to those who are entitled to receive endowments, but the proceeds may be distributed to them.
- 2) Property specifically intended for public use, originally cannot be distributed, but the proceeds can be owned by the general public.
- 3) The proceeds of the property that he had owned were his property even if the property was returned to the previous owner due to a barrier to his further possession. Like someone buys a house, then the house is rented for one month, after the house is received from the tenant it is known that there is a defect, where the defect is not caused by the person who rented the house,

- but is indeed defective from the beginning when buying, so the house is returned to the original owner (the seller of the house), so the rent for one month remains his property even though the house after rent is returned to the seller, for the house he rented out when it belonged to him
- 4) The result of the property when transacted the object is the benefit of the property, then the owner of the benefit is entitled to the result. Like someone who rents a house, where one room of the house is rented to someone else, then the rent of that one room belongs to him

Definition Of Ownership

Milik comes from the Arabic al-Milk which etymologically means mastery of something, as stated by Muhammad Mustafa Syalabi (1986; 245) that is:

"Man's store of things with the freedom to do anything about them."

Ali al-Khafif explained the definition of property as follows:

"Belonging is something that is kept and it is possible to act / do anything on it as long as there is no prohibition of sharia 'against it."

From the above understanding, it is understood that the object devoted to a person is completely in his control, so that others should not act and take advantage of it. The owner of the property is free to act legally against his property, such as buying and selling, grants, endowments and lending it to others, as long as there is no hindrance from shara'. Examples of obstacles include that the person is not yet capable of acting legally, for example a child, a madman, or his legal skills are lost, such as a person falling bankrupt, so that in certain cases they cannot act legally against their own. When a person keeps, or secludes an object legally, then that thing becomes his right (monopoly) or is reserved for him and he can benefit and do anything about it, except when there are obstacles such as crazy, stupid and so on. The other party may not benefit and act against their property unless there are valid reasons to allow it to act, such as a representative, executor of a will or a trustee exercising his guardianship.

a. Miscellaneous Property

Talking about ownership, of course, cannot be separated from the problem of property, because the object of ownership is property. Wealth is a necessity and circulates in life as well as a medium for life in the afterlife. This is understood from surah Al-Kahf verse 46. The Qur'an has made it clear that the earth and everything in it belongs to Allah, as stated in surah al-Maidah verse 17 and man as the caliph is empowered to manage and benefit from it, so man is the holder of the trust that must be held accountable. This is stated in surah al-An'am verse 165.

The division of ownership in terms of control can be divided into:

- 1) Private Property, which is property owned by an individual or several individuals (shirkah). This possession causes others to be hindered from mastering it. Such as houses, gardens and others that are one's or personal property.
- 2) Public Ownership, which is property whose benefits can be taken or used by everyone, so it must not be controlled by individuals or the state. Such as highways, rivers and others.
- 3) State ownership, ownership in this form is property or assets owned by the state, then the control is also controlled by the state and managed by the state.

As for ownership based on material and beneficial property, then property can be divided into two, in this case Mustafa Zarqa (1969: 259) mentions the division, namely:

1. Al-milk at-tam (perfect possession), that is, when the material and beneficial property is fully owned by a person, so that all rights related to the property are under his control. This kind of property is absolute, not limited by time and must not be aborted by others. For example, a person who owns a house, then he is free to control the house and use it freely as long as it does not conflict with shara'.
2. Al-milk an-naqish (imperfect property), that is, when a person only has material possession of the property, but the benefits are controlled by others, such as a person who owns a piece of rice field rented to others, or someone who owns a house whose use is handed over to others, whether by rent or loan.

b. Causes to have

As in the above discussion that there are two kinds of property, therefore the causes of possession can be seen from the two forms of ownership.

1. The reasons for the perfect owner.

There are four ways of perfect ownership of property that have been agreed upon by fiqh scholars according to Islam, namely:

- a. By means of permissible acquisition or possession of property (*ihraz al-mubahah*). Through the control of property that is not yet owned by a person or other legal institution, which in Islam is referred to as unfortunate property. Like the rocks and sand in the river, the fish in the sea that he picked up and worked on and then brought home. And he may use it himself or want to buy and sell it and various forms of transfer of ownership, because the property is already his.
- b. By means of contract (agreement, engagement) transfer of property (*al-'uqud an-aqilah lil milkiyah*). This is through a transaction made with a person or a legal institution, such as buying and selling, leasing, borrowing and borrowing, and others.
- c. By way of replacement (*al-khalafiyah*), it means occupying or replacing the position of the owner who owns the property (inheritance). Where a person becomes the perfect owner through the inheritance of the person he inherited, such as receiving inheritance from his deceased heirs.
- d. By way of accretion or birth (*at-tawallud min al-mamluk*). The results / fruits of property that a person already has, whether the results come naturally such as the fruit of the tree owned and fleece produced from the sheep owned, or the results are deeds such as the results of his efforts as a worker or trade profits obtained by a merchant.

The four methods above (obtaining perfect property) are opinions that have been agreed upon by fiqh scholars, but in the second way, namely by means of contracts, Abdurrazaq as-Sunhuri in his book *Mashadirul Haq fi Fiqhil Islamiy* has detailed the contract into two parts, namely contracts that occur on two parties, such as buying and selling, and contracts that occur only on one party such as wills. If we look at how to obtain perfect property through related and separate *pertam_bahan* is his, surely no one can interfere with owning it. Thus, all property that grows or is born from it is determined according to the first cause that keeps it the property of the principal. Whoever owns a livestock acquired by contract or inheritance owns it and all that is born of it in the future, because those results when they are realized are a separate part of the underlying property.

2. The reasons for the owners are not perfect.

Imperfect possession (*al-milk an-naqish*) will be obtained through four ways (*al-Khafif*, t.th: 41), namely:

- a. *Ijarah* (lease), this is beneficial ownership with the obligation to pay compensation / rent, such as rent for houses, hotels and others.
- b. *Al-I'arah* (borrowing and borrowing), this is a contract towards the possession of benefits without compensation like one borrows a book from someone else.
- c. *Waqf*, is a contract of ownership of benefits to the interests of the person given the *waqf*, because the *waqf* is to hold or prevent objects from being owned by someone and hand over the benefits of the property to what the *waqf* giver wants.
- d. *Will*, which is a gift that takes effect after the testator dies. So a will is a voluntary gift from the owner of the property to another person without compensation that applies after the testator dies.

Using public facilities, this is only according to the Hanafi group, where they argue that in addition to the four above, using public facilities as a general permit and special permission from the owner of the property (*ibahah*), this is the ability given to use a property and is included in the imperfect form of ownership.

c. The Principle of Ownership in Islam

Ownership in the Qur'an can be found in several surahs with a considerable number of verses, including: Surah al-Baqarah (QS. 2:107, 284), Sura Ali Imran (QS. 3:26, 189), Sura al-Maidah (QS. 5:17, 18, 40, 120), Sura al-An'am (QS. 6:57), Surah Yusuf (QS. 12:40, 67), Sura al-Qasas (QS. 28:70, 88), Sura al-Ahzab (QS. 33:72), Sura al-Mulk (QS. 67:1. The Qur'an pays great attention to the realization of justice, how many verses in the Qur'an remind people that wealth does not circulate in

the hands of rich people only. Everyone has the same right to achieve a good and prosperous life. Therefore there is a demand, which at the same time means also the recognition that to achieve a better life it is necessary to balance material interests with spiritual interests. This can be understood from the word of Allah in surah al-Qasas verse 77 which reads:

"And seek in what God has bestowed upon you (the happiness) of the land hereafter, and do not forget your part of the worldly (pleasures) and do good (to others) as God has done good to you, and do no mischief on the face of the earth. Surely God does not like those who do mischief." (Ministry of Religious Affairs, 2015).

The Qur'an is the primary source of law and first makes it clear that Allah is the creator, regulator and owner of all the universe, but not for His sake, but for His creatures. So man is the one who gets power from God to own and use these treasures. This is understood from the word of Allah in surah al-Hadid verse 7 which reads:

"Have faith in Allah and His Messenger and spend a portion of your property which Allah has made you master . . ." (Ministry of Religious Affairs, 2015).

Human beings are given individual property rights, each individual and individual has the right to own, enjoy and transfer his wealth while they have a moral obligation to give what he has to those who deserve it. There are several provisions that have been stipulated in the Qur'an and hadith regarding this ownership, among which are:

1. Legalized Ownership.

The Qur'an and hadith have forbidden all forms of action to acquire possession by unlawful means, because this is a source of corruption as the Word of Allah in surah an-Nisa verse 29 which reads:

"O men of faith, do not eat one another's property in a vanity way, except in the way of consensual business among you. and slay not yourselves: Verily God is merciful to you" (Ministry of Religious Affairs, 2015).

As for the hadith of the Prophet which states about legal possession (Efendi, 2006) Among these are the following:

"That the Prophet (peace be upon him) was asked about good efforts, and the Prophet replied: one's efforts with his hands, and every good trade" (Narrated al-Bazzar and Hakim).

This is in accordance with the method :

"He who precedes others to possess a good thing has possessed it."

2. Fulfill rights and obligations.

Every Muslim who has wealth and fulfills the conditions of obligatory zakat must fulfill his obligations according to the rules of sharia (Al-Qaradhawi, 1994). The word of Allah in surah al-Baqarah verse 267 which reads:

"O men of faith, spend (in the way of Allah) some of the fruits of your good works and some of what We bring out of the earth for you. and do not choose the bad and make a living of it, but you yourselves will not take it but by squinting at it. and know that Allah is Rich and Most Praiseworthy" (Ministry of Religious Affairs, 2015)

In the rich man's property is the right of the poor which is found in the word of Allah in surah at-Tawbah verses 60 and 104 which reads:

"Indeed, the zakats are only for the poor, the poor, the administrators of zakat, the converts who are persuaded by their hearts, for (free) slaves, debtors, for the way of Allah and for those who are on the way, as a decree required by Allah, and Allah is All-Knowing and All-Wise" (Ministry of Religious Affairs, 2015)

Similarly the hadith that the Holy Prophet (peace be upon him) said to Mu'adz: taken from their rich men and given to their poor. This is as the hadith of the Prophet which reads:

"It is from Ibn Abbas that the Holy Prophet (peace be upon him) sent Mu'az to Yemen and he said: Verily Allah has obliged the rich to take out alms (zakat) from their possessions and hand them over to the poor among them" (Muttafaq 'Alaih).

This is in accordance with the method of ushul fiqh:

The basis is to keep what already exists against what already exists."

3. Social justice

In Islam, the right of individuals is recognized and allowed to own wealth in prescribed ways, but ownership does not mean the creation of concentration of wealth but must be created circulation of wealth by distributing it through prescribed means such as, zakat, infak and alms among the community. Allah has signaled this in His word surah az-Zariyat verse 19 and surah al-Hashr verse 7 which reads:

"And on their possessions there is a right to the poor who ask and the poor who do not share."

"Whatever booty (fai-i) Allah gave to His Messenger (from property) which came from the inhabitants of the cities Then is for Allah, for the apostles, relatives, orphans, the poor and those who are on the way, so that they may not circulate among the Rich among you. what the Apostle gives you, Then receive. and what he forbids you, Then leave it. and be fearful of Allah. Surely God is very harshly punished."

In this regard it is clear that Islam views that the accumulation of one's wealth is actually built on the sweat of the poor, because no rich person with a profession he has can move without the help of people whose economy is classified as weak (Nazir & Muhammad, 2004).

4. Utilization.

The owners of property should make the most of their property and not waste it, because it is something that Allah dislikes and is a wasteful act, this is satanic behavior. The word of Allah in surah az-Zukhruf verse 32 which reads:

"Are they the ones who dispense the grace of your Lord? We have determined among them their livelihood in the life of the world, and We have exalted some of them above others by some degree, that some of them may make use of others. and the mercy of your Lord is better than what they gathered" (Ministry of Religious Affairs, 2015)

Likewise, the Prophet said that whoever clears a dead land that no one else cultivates is entitled to that land. The hadith of the Prophet reads:

"It is from Said bin Zayd that the Holy Prophet (peace be upon him) said: Whoever clears the dead land (which no one else cultivates), then the land belongs to him" (HR Tsalatsah).

This is in accordance with the rules:

"The origin on something is possible."

5. Balanced use.

Islam teaches that man should use what he has in a balanced manner, meaning that he should use it simply and balancedly, should not be extravagant and should not be miserly. The word of Allah in surah al-Isra' verse 29 which reads:

"And do not make your hands tied to your necks, and do not stretch them too much, therefore you become despicable and contrite."

Similarly, the hadith of the Prophet states that man is united on 3 things, namely water, pasture and fire.

6. Did not harm the other party.

The owner must use what he has to benefit and benefit himself and others, the owner is prohibited from doing damage and harming others. The word of Allah in surah al-Muthaffifin verses 1-3 which reads:

"It is a great accident for those who cheat, (that is) those who, when they receive a measure from others they ask to be met, and when they measure or weigh for others, they reduce" (Ministry of Religious Affairs, 2015)

Similarly the hadith of the Prophet forbids mudharat and declares:

"The Holy Prophet(sa) said: Do not do mudharat nor make a declaration" (HR. Ahmad and Ibn Majah).

This is in accordance with the rules:

That evil must be eliminated."

7. Accountability

Islam as a teaching with Divine and Human dimensions the deeds done by humans must be accounted for, and this will be questioned by Allah later, as stated in surah al-Ankabut verse 13 as

follows:

"And verily they shall bear their burdens (sins), and burdens (other sins) in addition to their own burdens, and Verily they shall be asked at the Day of Judgment concerning what they have always had" (Ministry of Religious Affairs, 2015)

CONCLUSION

Property is everything that is valuable and useful and fully controlled by its owner. Scholars have little difference in viewing property in terms of ownership, even though it all boils down to one source, namely how to get the treasure, not everything that is useful is called treasure because there are identical to the principle of benefits that can be felt together such as sunlight, air and others. The Hanafi School argues that the category of property rights is everything that is worth owning and utilizing, while according to the Maliki School property must have an element of ownership so that the owner has the right to control and prevent others from taking it. While the Shafi'i School of scholars underlines wealth related to the benefits of property for the owner. The correlation of property with the law is the extent to which obtaining property becomes legally owned, then there are rights and obligations that must be cashed from the property, so that justice arises in enjoying and taking benefits because it is balanced in its management and distribution which is not only felt by the owner but also by others. Including in terms of obtaining it, no other party is harmed, but the process follows the sharia that Allah has set its provisions so that it can be accounted for both before Allah and to humans in general.

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