

General Property Rights from Sharia Perspective: Strategy for the Implementation of Ummah's Economic Welfare and Justice

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Abstract: *This study aims to reveal the legal status of public property rights from the perspective of sharia and strategies for implementing economic welfare and justice for the ummah. The method used in this study is to use qualitative research with a library study. The results of the study show that in the Sharia perspective, there are three types of public property; mining goods (natural resources) which are unlimited in number, and public utilities, and assets which in their original state are forbidden to own personally. Public property status becomes weak when it is not returned to its original state from a Sharia perspective. Coupled with the support of the Law on Water Resources which has not given serious attention to the status of public property rights. The most influential aspect of opportunity in this matter is the potential of public property to create prosperity and economic justice in society. The effectiveness of implementing economic welfare and justice will be realized by restoring the status of public property according to its position in the perspective of Sharia and by applicable government regulations.*

Keywords: *public property rights, natural resources law, welfare, economic justice, sharia.*

INTRODUCTION

Indeed, the Shari'a was sent down with the aim (maqashed) to safeguard human welfare. The benefit that is principally sought by humans includes 5 things; guarding religion (hifdzuddin), guarding the soul (hifdzunnafs), guarding the mind (hifdzul'aql), guarding honour (hifdzunnasl) or offspring and guarding property (hifdzulmal). These five things were called by Imam Syathibi [1] and Imam Ghazali with adl-dlaruriyyat al-khamsah. Even Imam Ghazali said that all things that do not pay attention to these five maqashidd will be considered mafsadah (damage) [2].

Safeguarding property is part of the goal of the revelation of the Shari'a. This is proof of the seriousness of Islam in paying attention to individual rights. Therefore, wealth is a basic component of human needs that can not be separated. It is undeniable that to carry out their strategic role, humans, as managers of the earth (Khalifah), in principle, need 3 basic strengthening components to support their activities; legal support (formal legal), human resource support (human resources), and financial support (financial support) [3].

The formal legal in question is the text of the law that expressly gives authority. And its authority is used as a legal basis for issuing formal administrative decisions or contracts between individuals in general or specific people. Likewise, human resources will be the perpetrators or executors of all activities, including transactional or social-economic activities. As for financial resources, this factor will certainly greatly affect the balance sheet (budget balancer) of economic activity, or in the form of other property or goods that are static or dynamic, whether owned privately or by the public [4].

This is where it becomes urgent to know that there is an implicit message behind the importance of regulation of public property rights. Regulations are referred to as religious regulations and government regulations in the form of laws. The question is whether some religious regulations and laws regulate and distinguish them. How great is the urgency to know the components of the property which are individual property rights and public

property rights? If there is a mixture of individual property and public property, is there a law capable of resolving it? How effective is the regulation of public property rights in implementing economic welfare and justice?

RESEARCH METHODS

The research method that the author uses is qualitative. The research was conducted using an investigative approach. In the early stages, the researcher collects data by interacting directly with all the supporting materials related to the research, either in the form of library data or the results of reports from facts in the field that have been carried out by experts regarding certain cases. All related materials are collected. Researchers are deliberately involved in situations and phenomena that are ongoing from day to day, from year to year. Relevant and comprehensive facts are then interpreted by the researcher. This is done to be able to describe, study, and explain ongoing phenomena [5].

There are several strategic steps that the author took to support this research. First, develop a research design. Namely by observing the problems associated with ongoing phenomena, which will then be verified. The location of the phenomenon is the object of research more specifically in Indonesia. Second, collect data. The data in question are library and field data, further strengthening the research. Third, perform data analysis. The data that has been obtained will be analyzed and interpreted by the author. Furthermore, the authors will draw conclusions and verification by looking at the level of data validity. Fourth, from the results of observation, data collection, and analysis, the authors present in the form of this paper, which the authors present using a descriptive-analytic method [6].

RESULTS AND DISCUSSION

Ownership from an Islamic Perspective

In Islam, the perception is built that wealth in essence belongs to Allah SWT alone. Allah says:

لِلّٰهِ مُلْكُ السَّمٰوٰتِ وَالْاَرْضِ وَمَا فِيْهِنَّ يَّوْهُوَ عَلَى كُلِّ شَيْءٍ قَدِيْرٌ ؕ

“To Allah doth belong the dominion of the heavens and the earth, and all that is therein, and it is He Who hath power over all things.” (Al-Maidah: 120)

Human ownership of property is majazi ownership (not in the true sense). That is, his status is only as a person who is entrusted and trusted and only as a caliph or God's representative in controlling wealth [7]. As explained in the paragraph

اٰمِنُوْا بِاللّٰهِ وَرَسُوْلِهِ ۚ وَاَنْفِقُوْا مِمَّا جَعَلَكُمْ مُّسْتَحْلِفِيْنَ فِيْهِۦۙ فَالَّذِيْنَ اٰمَنُوْا مِنْكُمْ وَاَنْفَقُوْا لَهُمْ اَجْرٌ كَبِيْرٌ

“Believe in Allah and His messenger, and spend (in charity) out of the (substance) whereof He has made you heirs. For, those of you who believe and spend (in charity),- for them is a great Reward.” (Al-Hadid: 7)

The Islamic perspective on this wealth is that the property itself is not a goal but a means. Likewise, treasures in the perspective of treasures are not to be hoarded and piled up. This view and perspective is the first Islamic message to convey a striking message to undermine unjust capitalism. As for the issue of property rights from an Islamic perspective, it is considered a natural tendency and instinct as well as individual rights that are recognized by the Shari'a and protected by other divine religions. Because instinctively, all humans regard treasure as something beautiful [8].

In terms of ownership, assets are divided into three parts: Shalah As-Shawi & Abdullah Al-Mushlih, and Fikih Ekonomi Keuangan Islam [9].

1. Assets that cannot be owned and cannot be transferred, become public facilities (forum) such as roads, bridges, fields, and the like as long as they become public facilities.
2. Assets that are impossible to own or transfer ownership of, unless there is a reason according to the Shari'a, such as silent assets that are donated, land that is tied to the location of the Baitul Mal, and the like.
3. Those that may be owned and transferred, namely other than the two types of assets above.

There are also three rights to property: [10].

1. Personal rights (fardiyah). The wealth of a Muslim may not be touched by other people except with the willingness of the owner. For example, the criminal attitude of taking property using theft causes the perpetrator to have his hands cut off. If the treasure is not stolen, it must be given a lesson. This is still disputed among scholars regarding the permissibility of giving punishment with financial sanctions. However, opinions that allow it are considered opinions that are worth following.
2. The rights of Allah SWT. Wealth originally belongs to Allah SWT. All humans are only allowed to have it temporarily. Allah SWT says:

وَأَنفِقُوا مِّن مَّا لَِلَّهِ الَّذِي أَنزَلَ

"Give them some of God's treasure that He has given you." (An-Nur: 33)

وَأَنفِقُوا مِمَّا جَعَلَكُمْ مُسْتَحْلِفِينَ فِيهِ

"... and spend (in the way of Allah) some of what He (entrusted to you and) has made you authorized in (the use of) it." (Al-Hadid: 7)

3. The consequence of this right of Allah is two things; allocate these assets by the guidance of the Shari'a, and issue obligatory zakat. The poor have some of these assets with their right to receive zakat.

Common Rights (milkiyyah 'aammah). The consequence of this right is that common interests are prioritized over personal interests when conflicts occur. Namely by providing fair compensation to the owner of the property so that their rights are fulfilled.

Truly Allah SWT has bestowed everything in the heavens and the earth for humans to manage properly:

وَسَخَّرَ لَكُم مَّا فِي السَّمُوتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِّنْهُ

" And He has subjected to you, as from Him, all that is in the heavens and on earth: Behold, in that, are Signs indeed for those who reflect.." (Al-Jatsiyah: 13)

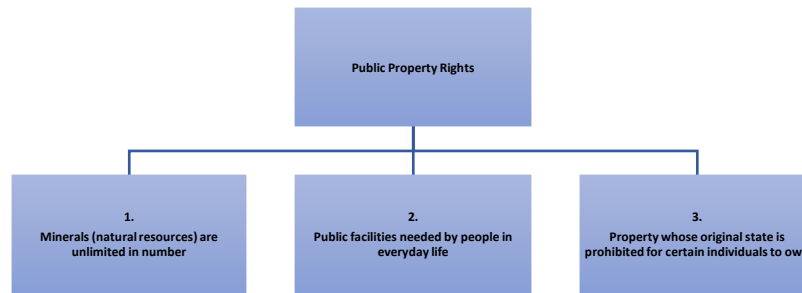
Furthermore, from the provisions of the Al-Qur'an and As-Sunnah, the characteristics of ownership in Islam can also be achieved, including: [11].

1. Public and individual property rights are at the same time the main basis, in contrast to the capitalist system which makes individual property rights the main basis and public property rights are set aside, in contrast to the socialist system which makes public property rights the main basis and individual property rights ruled out.
2. Property rights are related to the interests of the public and are oriented toward preventing harm from arising.
3. Property rights need to be spent/incorporated with the principle of balance (tawazun) [12].

Public Property Rights in Sharia Perspective

Public property rights can be grouped into three parts: [13].

Table 1. Public Property Rights



These three types of groupings and their branches and their income results are shared property, and they are allowed to work together in utilizing the assets. The first type of public property is mineral goods (natural resources) which are unlimited in number, namely mining goods which are predicted by mining experts to have a very abundant quantity. The income is shared property and can be managed by the state, or the state hires a team of experts to manage it.[14]

Mining goods that are small in number and very limited are classified as private property. This is like what Rasulullah SAW did when he gave legality to Bilal bin Harits Al-Maziniy to own and process mining goods that had existed for a long time in this part of the Hijaz region [15]. As for mining goods that are in large quantities and (deposits) are not limited, they are classified as general ownership for all the people so that they cannot be owned by one person or only a few people [16].

The argument that shows that Rasulullah SAW once withdrew mining goods that had been given to one of Abidh bin Hamal's friends after learning that the mineral deposits were abundant:

أَنَّهُ وَفَدَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَاسْتَقَطَعَهُ الْمَلْحَ الَّذِي بِمَارَبَ فَأَقْطَعَهُ إِيَّاهُ فَلَمَّا وَلَّى قَالَ رَجُلٌ يَا رَسُولَ اللَّهِ إِنَّمَا أَقْطَعْتَ لَهُ الْمَاءَ الْعِدَّ قَالَ فَرَجَّعَهُ مِنْهُ قَالَ وَسَأَلَهُ مَاذَا يُحْمَى مِنَ الْأَرَاكِ قَالَ مَا لَمْ تَنْلُهُ أَخْخَفُ الْإِبِلِ

"Indeed he intended to ask (mine) salt to the Messenger of Allah. So he gave it. He gave it and said to one of the men in the majlis, "Do you know what you have given him? Indeed, what you have given is like flowing water." Finally, he said, "Then Pull Back from him." (Narrated by Abu Dawud) [17][18].

The second type of public property is public facilities used by all members of society. Public utilities include water, pasture, and fire. Several hadiths explain the status of the three public facilities.[19]

Hadith of Rasulullah SAW:

الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ ، فِي الْكَلَالِ ، وَالْمَاءِ ، وَالنَّارِ

"Muslims are united in three things, namely water, pasture, and grass." (HR Ahmad). Jamaluddin Az-Zaila'i, Nashbur Royah Liahaditsil Hidayah, 1st edn (Jeddah Saudai Arabia: Muassasah Ar-Royyan), p.4/294.

In another hadith it is stated:

النَّاسُ شُرَكَاءُ فِي ثَلَاثٍ ، فِي الْكَلَالِ ، وَالْمَاءِ ، وَالنَّارِ

"Human beings are united in three things, namely water, pasture, and grass." (HR Ahmad dan Abu Daud) [18].

Sheikh Abdurrahman Al-Bassam explained this hadith conveys a clear message that it is not permissible to give special rights to any individual about mastery of these three sources. These three sources are open for public use. The most important factor is that these three sources are classified as dlaruriyyah (primary human needs) problems that authority should not be given to anyone. At the same time, this also proves Islamic justice and a wider distribution of wealth. Thus, everything related to primary human needs belongs together [19]. Anyone can take advantage of it.

And the most important note is that if we refer to what was conveyed by Rasulullah SAW, we can conclude that all assets that have characteristics like the three natural resources above are also categorized as public property. Thus electricity and everything related to it, gas and everything related to it, stations, natural gas and coal, and everything related to it, are public property [20][21][22]

The third type of public property rights, property whose origin circumstances prevent a person from owning it privately. In line with this, Rasulullah SAW gave signs in some of his hadiths:

قُلْنَا يَا رَسُولَ اللَّهِ : أَلَا نَبْنِي لَكَ بَيْتًا يُظِلُّكَ بِمِنَى ؟ قَالَ : لَا ، مِنْ مَنَاحٍ مَنْ سَبَقَ

We asked Rasulullah SAW, "O Messenger of Allah, shouldn't we build a building for your residence in Mina?". So he said, "No need. Because Mina is a place for anyone who has arrived first." [23][24][25].

Because Mina's existence is not reserved for just one person. However, it is a public place, which is used by everyone for worship, from stoning the jumrah, slaughtering hadyu or shaving the hair, and so on.

Likewise with public roads. So it will remain a public road. And no one is allowed to have it. This is as hinted by the Prophet SAW:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : إِيَّاكُمْ وَالْجُلُوسَ فِي الطُّرُقَاتِ

"Avoid you sitting on the side of the public road." (Musnad Ahmad) [26].

Because the road is a public facility, which is used for human mobility. If there is a group of people sitting on the side of the road, it will cause inconvenience, disturb privacy and invite other bad things. If it is deemed necessary to sit on the side of the road, then it is obligatory to give rights of way. Among his rights are guarding his eyes, getting rid of anything that gets in the way, answering greetings, and Amar makruf Nahi mungkar [27].

Regulation of Public Property Rights, Strategy for Creating Welfare and Economic Justice

"Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Thus reads the 1945 Constitution Article 33 (3). Strictly speaking, the state has provided rules that will ensure the welfare and sense of social and economic justice for every citizen. This means that no one can monopolize all types of natural wealth. Because indeed the earth and water and the natural wealth contained therein are public property. And it is the state that is obliged to protect and regulate it [28].

Reporting from WALHI that there are around 8 million hectares of South Sumatra which are currently controlled by large corporations; the forestry sector with industrial plants (Acacia/Eucalyptus plantations) covering 1.5 million hectares, plantation sector (dominated by oil palm plantations) covering 1 million hectares, mining 2.5 million hectares, protected areas 1.3 million hectares [29].

If we look at the facts that are happening in our country, then it seems that we still have to seriously reorganize concerning the strategy of utilizing public property rights for the greatest possible welfare and socio-economic justice for the people. Check out the report from WALHI regarding the facts about corporations that have spread across this motherland below: [30].

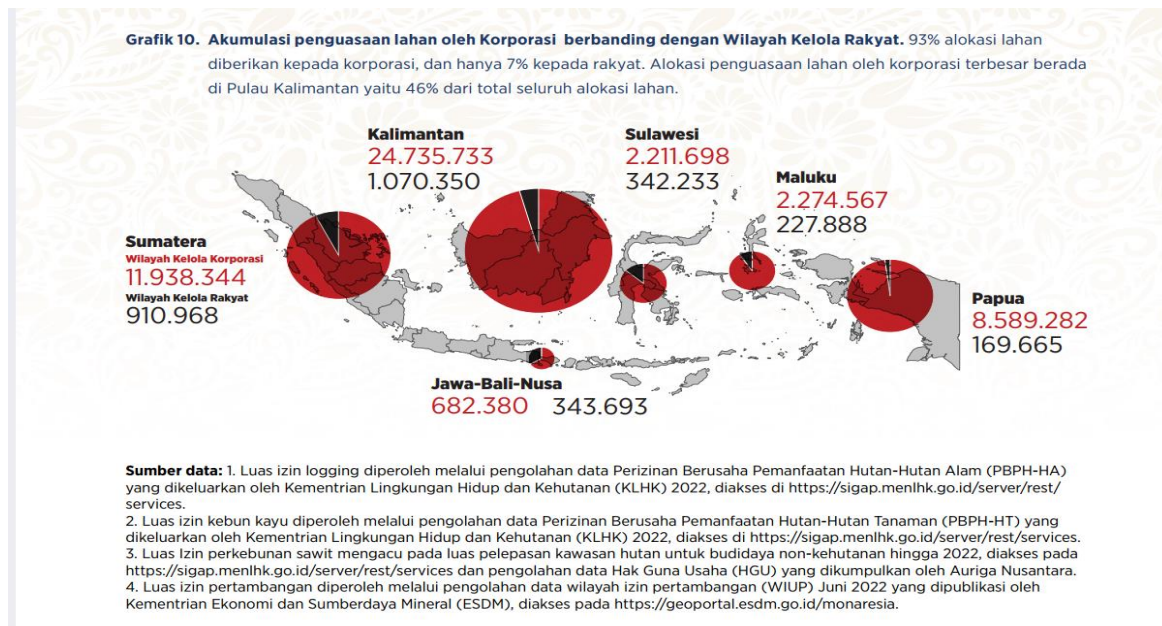


Figure 1. Accumulation of Corporate Land processing compared to people's

There are around 10 major mining corporations in Indonesia that are authorized to exploit agricultural products:



Figure 2. 10 major mining corporations in Indonesia

The lack of commitment from all parties, especially regulators (government) in terms of regulating the management of public property rights will invite large corporate owners to act as they please to collect rupiah coffers. Excessive and uncontrolled exploitation of natural resources will result in a multidimensional crisis (izdiwajiyatul azmah) [31].

1. Economic crisis, narrower job opportunities, low income, economic disparity, a monopoly on sources of wealth.
2. Social crisis, growing anti-sympathy, empathetic society, rising unemployment and poverty rates, and the emergence of social jealousy.

3. The cultural crisis, will loss of local wisdom surrounded by large factories, which has led to changes in lifestyle, and the erosion of local customs and culture.
4. Regional security crisis, the emergence of separatist movements.
5. Ecological and environmental crises have an impact on natural disasters and further disruption of ecosystems.
6. The Education Crisis has an impact on the low literacy of the nation's children, and low educational strata [32].

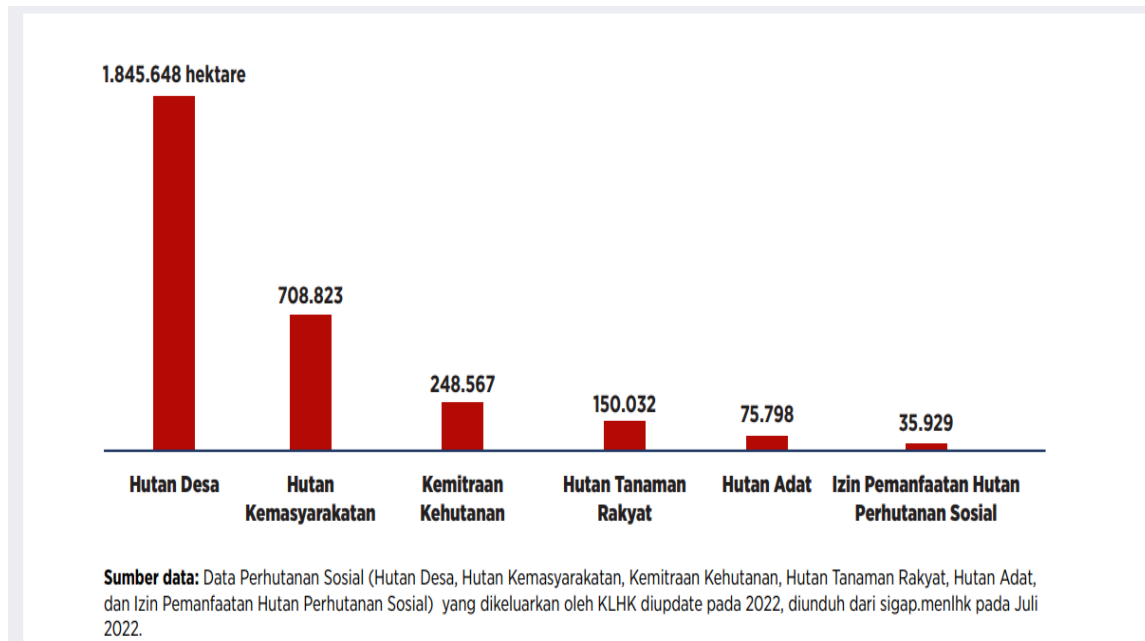


Figure 3. Social Forestry Data

The Forestry Law (UU 41/1999) which was drafted and ratified during the Habibie era had limited mining activities in forest areas, namely only allowing them to be limited in production forests and underground mining in protected forests [33].

However, in the following leadership era, a government regulation in place of law (Perppu 1/2004) was issued so that certain companies were allowed to mine openly (open pit) in protected forests. Based on this Perppu, the authorities finally issued Presidential Decree 41/2004 which allowed 13 corporations to mine in a protected forest covering an area of 927,648 hectares (out of a total permit area of 6,257,640.49 hectares) [34].

On the other hand, the WKR (People's Management Area) should not have a much narrower space than the area controlled by large corporations [35].



Figure 4. Living space with integrated management

With a proportional WKR, welfare and economic justice for the ummah will be achieved. With WKR having a narrower space, there will be a prolonged and increasingly complex multidimensional crisis.[35]

CONCLUSIONS

Islamic Sharia is very concerned with protecting individual property rights and public property rights. There are three types of public property rights; mining goods (natural resources) which are unlimited in number, public utilities, and assets which in their original state are forbidden to own personally. Each of them must be placed proportionally. Education about public property rights to all levels of society is very urgent to create welfare and economic justice for the ummah. Not only limited to that, the support and support from government regulations are also very important, as a foundation for strengthening the application of the concept of management of public property rights proportionally. The government must also be firm in rectifying parties who exceed the limits of their rights in exploiting public property rights. That is if there is a contradiction between mafsadah (damage) and mashlahah (benefit), then what must be put forward is avoiding mafsadah (damage). Because the Shari'ah's attention to efforts to distance something that is prohibited is greater than its attention to the implementation of orders. Do not let the spirit of collecting rupiah coffers overpower attention to the existing social, economic, and ecosystem balance. Even to the point of causing damage that cannot be stopped and cannot be replaced with rupiah and is prolonged as a historical legacy. It is the spirit of prioritizing avoiding this mafsadah that must be echoed. This rule should be the spirit and basis of movement and action in making policies related to the management of public property rights, both individuals or communities and even the government. In the author's opinion, involving the community more in the management of WKR (People's Management Area), as stated by WALHI, is also a positive alternative and needs to be taken seriously. Disobedience to the existing constitution, either from the Sharia constitution or the government constitution, will leave behind a multidimensional crisis that will continue from generation to generation. Hopefully, this article can awaken our awareness of the importance of regulating the management of public property rights, both individually and as a community, in a careful, wise, and proportionate manner. Moreover, the policyholders, in the realm of bureaucracy, are in line with the management spirit outlined in the 45 Constitution article 33 paragraph 3. "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

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