

## Ownership of Unlawful Wealth from Islamic Legal Perspective

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**Abstract:** This study examines the issue of ownership of unlawful wealth under Islamic law. The question is whether unlawful wealth either with respect to its substance or its acquisition is legally owned under Islamic law. In another words, whether Islam legally recognizes unlawful wealth with respect to ownership. The study examines the concept of ownership and means of acquiring ownership; and the concept of unlawful wealth and its position under Islamic law. The discussion extends to the position of unlawful wealth with respect to ownership particularly the wealth which is acquired by unlawful means like gambling, trading of unlawful substance, bribery etc. The research is a library research where the issue will be examined from the perspective of the Qur'an and the *Sunnah* primary sources of Islamic law and follows with the examination of the view of Muslim jurists of four well known schools of law as well as the view of contemporary Muslim scholars. It is hoped that the study may provide a clear reference and guideline regarding the concept of ownership and unlawful wealth in Islamic law that is significant and beneficial to all in our present day.

**Key words:** Ownership • Unlawful Wealth • Islamic Law • Unlawful Means.

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### INTRODUCTION

Human being is created with the instinct of loving the pleasure of this worldly life. The Qur'an states,

“Beautified for men is the love of things they covet: women and children; much of gold and silver; branded beautiful horse; and cattle and well tilled land. This is the pleasure of the present world's life; but Allah has excellence return (Paradise with flowing rivers) with Him.” (The Quran, 3: 14)

One of the basic instincts of human being either man or woman is love of wealth. They love wealth very much. The Qur'an states, “And ye love wealth with inordinate love!” (The Quran, 89:20). In addition, the Sunnah of the Prophet also reiterates the matter,

“It is reported by Anas that the Messenger of Allah says: If the son of Adam were to possess two valleys of wealth, he would long for the third one. And the stomach of the sons of Adam is not filled but with dust. And Allah forgives that who repents.” (Imam Muslim; Sahih Muslim)

The love of human being in wealth is usually loves to own, accumulate and to grow it which dominates his life till death. In principle, Islam does not deny this instinct but fully recognized right of a person either men or women to ownership of wealth. There are many verses of the Qur'an states to the effect. Among others it clearly state, “To men is allotted what they own, and to women what they own” (The Quran, 4: 32). In another verse, the Qur'an states,

“Do they see, We Who have created for them-among other things which our hands have fashioned-cattle, which are under their dominion?” (The Quran, 36:71).

Nevertheless, Islam lays down rules and regulation relating to ownership of wealth as guideline and guidance particularly with respect to means of its acquisition.

**Concept of Ownership in Islam:** Ownership in Arabic word is “milk” and literally means holding something and capable of occupying it [1]. Legally, there are many definitions given by classical Muslim jurists and contemporary Muslim scholar. Some of them define ownership as a legal ruling like Imam al-Qarafi of

the Maliki jurist. According to him ownership is “a legal ruling relating to a tangible object or usufruct that gives a person who has relationship with it an ability to utilize what he owned and to make it as means of exchange [2]. Some other defines ownership on the basis of its objective for example, Ibn al-Humam of Hanafi jurists. He defines ownership as an ability to do disposition which is established by The Law Giver from the very beginning [3]. Meanwhile others define ownership as a relationship between a person with a thing for instance, Sadar al-Shari’ah and al-Jarjani of the Hanafi jurists. According to Al-Jarjani ownership is a legal relationship between a person and a thing which allows that person to dispose of it to the exclusion of everyone else [4]. Many contemporary Muslim scholars provide definition of ownership based on this basis [5] for example al-‘Abbadi and Abdullah al-Muslih. Al-Abbadi defines ownership as a special relationship of a person with a thing that the law gives him right solely to utilize and dispose it from the very beginning except when there is an impediment [5]. According to Abdullah al-Muslih, ownership is a legal relationship between a person and something (owned) which enable him alone to utilize and dispose it from very beginning except if there is an impediment [6].

It seems that the definition of ownership which is based on the relationship between a person and wealth that manifests the true nature of ownership. The definition clearly shows that ownership is a legal relationship between a person with wealth be it tangible object, usufruct or rights. This indicates that in case if the law recognizes such relationship, the ownership exists and if the law does not recognize such relationship the ownership would not certainly exist. The primary objective of this relationship is to enable a person to utilize and dispose of the wealth unless there is an impediment on the part of person like minority, lunatic or immature. These rights of utilization and disposition are exclusively for the one who has such relationship and the other person is prevented from having such right unless with his permission or when there is a legal authorization.

Thus, we can conclude that ownership is a legal relationship between person and wealth that makes him ability to dispose of such wealth exclusively as long as there is no legal impediment and exclude others from dealing with it except with permission and legal authorization.

**Object of Ownership:** The above discussion shows that the object of ownership is wealth. According to the majority of Muslim jurists wealth is anything that has a material value among the people and permissible to take

benefit from it in a normal situation as according to Islamic law (*Shari’ah*) [5]. It includes corporal matters or tangible object like car, house, land etc; usufruct or intangible object like usufruct of land, home, care and so forth; right attach to property (intangible) like copy right, royalty, trademark, trade name, right to compensation and so forth.

Not all types of wealth are permissible for ownership. In principle there are four types of wealth that are not permissible for ownership. Firstly is a corporal object that has no any benefit, for instance some type of insect like fly or mosquito. This is because the legalization of ownership is for the purpose of taking benefit from it [7]. Thus it is useless to own a thing that cannot take benefit from it. Secondly is the prohibited corporal matter and usufruct like wine, swine and dead animal [7]. Nevertheless, according to Hanafi jurists, wine and swine are considered as wealth for non-Muslim [8]. Thirdly are all types of wealth which are specified for public usage like road, bridge, river and so forth. These types of wealth are meant specifically for the interest of public and not permissible to be owned by individual person [9; 7]. Lastly is the wealth that relating to the right of Allah such as mosque, charitable endowment and wealth of public treasury (*bait al-mal*) which are administered by the government for the interest of public at large [7, 9].

These types of wealth are not permissible to be owned under Islamic law. Other than that it is permissible for ownership.

#### **Types of Ownership and Means of Its Acquisition:**

Muslim jurists have classified ownership into many types and based on various considerations [10]. One of the classifications is based on its owner. There are mainly three types of ownership under Islamic law as based on this classification: personal ownership, public ownership and ownership of public treasury (*bayt al-mal*) [5]. The personal ownership, which is the focus of this study, refers to a type of ownership where its owner is a specific person or a number of persons by means of sharing [5].

Again this type of ownership is further divided into two types: perfect ownership and imperfect or partial ownership. Perfect ownership is a legal and beneficial ownership. This means that the owner legally owns the wealth and its usufruct and has a right to enjoy such wealth and its usufruct. The specialty of this type of ownership is that its owner has full right over the wealth either with respect to corpus and usufruct [7]. The owner has full authority to utilize and dispose of his wealth as

according to his wish but nevertheless it is subject to the restriction imposed by the *shari'ah*. In addition, such enjoyment is not limited by the time frame except it is transferred to another person by means of transaction and inheritance or it is damaged [10].

Partial ownership is a legal ownership without beneficial ownership or vice versa. This means that an owner merely owns the object but not its usufruct or owns the usufruct only i.e. having the beneficial right only but not own the object [11].

As mentioned above, Islam recognizes individual ownership of wealth. It organizes various means in acquiring ownership of wealth as a response to the need of a person according to his/her natural and basic instinct which is in line with the rule of justice and fairness and without causing any harm or injustice to the others. There are mainly three means of acquisition of wealth that are recognized by Islam. Firstly is through works or taking hold of all permissible things like fishing and hunting. Secondly is through the medium of contract whether contract of exchange like sale and all of its types, or contract of donation like gift (*hibah*), bequest (*wasiyah*) and *waqf*. Thirdly is through succession or inheritance [10; 7]. In addition, some person may receive a wealth through other means like *zakat*, alms, present, royalty, gratuity, bonus, pension and compensation.

**Meaning of Unlawful Wealth:** Unlawful wealth refers to a wealth which is prohibited by *shari'ah* and a wealth which is acquired by unlawful means [12].

The Muslim jurists have classified unlawful wealth into two main categories: unlawfulness because of its attribute or substance (*muharram li wasfihiwa 'aynihi*) and unlawfulness because of its acquisition (*muharram li kasbihi*) [13, 14]. The first category refers to all types of tangible objects which are physically prohibited by *shari'ah* because of their harmfulness or dirtiness such as liquor, pork, dead animal and blood [15, 16]. This category of wealth is by itself unlawful.

The second category of unlawfulness is because of other factors which are not related to their substance, as their substance is not dirty or harmful like the first category, but it is related to the means of their acquisition which are prohibited by *shari'ah* [15, 16]. This type of unlawful wealth is of two types. Firstly, wealth which is acquired not based on the consent of its owner such as wealth which is acquired by means of theft, misappropriation and breach of trust. Secondly, wealth which is acquired through consent between the parties involved but it is not recognized by Islamic law such as taking interest (*riba*) or wealth which is acquired by means of gambling,

corruption, prostitution, human trafficking, trading of prohibited items like liquor, pork etc. [16]. Both of these two types of wealth are not recognized in Islam. This is because the means of acquisition are prohibited by *shari'ah*. The Qur'an states,

“And eat up not one another's property for vanities nor give bribery to the rulers that you may knowingly eat up a part of the property of others sinfully.” (The Quran, 2:188).

According to al-Qurtubi (the learned Maliki scholar of Cordova, Andalusia, d. 671H), the meaning of this verse is that some of you should not eat up the property of other persons unjustly which includes gambling, cheating, usurpation, denying other person's right, and by means which are not consented by its owner or by means which are prohibited by *shari'ah* even though there is a consent by its owner such as by means of prostitution, soothsaying, selling of alcohol and pork and so on [17]. In addition, he further asserts,

“Anyone who takes a property of other persons by a way which is not permissible by *shari'ah*, in fact he takes such property unjustly.” [17]

In another verse, the Qur'an states,

“O ye who believe! Eat not up your property among yourselves in vanities; but let there be among you trade by mutual consent.” (The Quran, 4: 29).

In this verse, Ibn Kathir (The Shafi'i scholar of the eighth century hijrah, died 774H/1373 A.D.) asserts that Allah al-Mighty prohibits His believers' servants from eating one another's property for vanity, that is by any unlawful means such as by taking interest, by means of gambling and so on [18]. Thus, the acquisition of property by means which are not permissible by *shari'ah* whether with consent or without consent of its owner, is prohibited in Islam.

**Ownership of Unlawful Wealth from Islamic Legal Perspective:** The above discussion indicates that the unlawful wealth are mainly divided into two types: unlawful wealth because of its substance and unlawful wealth because of its acquisition. Again the unlawful wealth because of its acquisition is further divided into two types: unlawful wealth which is acquired without the consent of the owner and unlawful wealth which is acquired with the consent of the owner.

The Muslim jurists are in agreement that the ownership is not established on unlawful wealth because of its substance such as wine, swine and dead animal. As mentioned above, this type of wealth is not permissible for ownership and it cannot be the object of ownership [7]. Because it is not considered as wealth for Muslim as well as non-Muslim according to majority of Muslim jurists [8]. The Qur'an states,

“Forbidden to you (for food) are the dead animal, blood, the flesh of swine and that on which Allah's name has not been mentioned while slaughtering (that which has been slaughtered as sacrifice for other than Allah or has been slaughtered for idol) and that which has been killed by strangling, or by violent blow, or by headlong fall, or by goring of horns, and that which has been (partly) eaten by a wild animal, unless you are able to slaughter it (before its death), and that which is sacrificed (slaughtered) on stone-altars...” (The Quran, 5: 3).

Ahmad Farraj Husayn asserts that the ownership is based on the permissibility of utilization. What is permissible for utilization, it is valid to own it. And what is not permitted to utilize it, it is not valid to own it [7].

With regard to the unlawful wealth which is acquired without the consent of owner such as stealing, usurpation, misappropriation, criminal breach of trust, the Muslim jurists are in agreement that the ownership is also not established on it. They are of the view that a person who has taken the wealth of other by way of usurpation or unlawful means has to return it to original owner in case if the wealth is still in existence and in case if the wealth has damaged or has been consumed he is liable for compensation [19; 15]. This is also the position of many contemporary Muslim scholars [10]. It is based on the authority of sunnah,

“It is reported from the Messenger of Allah (peace be upon him) that: it is liable on the hand (person) with respect to something that has taken till he returns it.” (Abu Dawud)

It is also reported that the Messenger of Allah (peace be upon him) says, “whoever found his property with someone who is insolvent, he is more entitled to it than any other person.” (al-Nasa'i, Ibn Majah)

In addition, taking property of other person by unlawful means will not change the status of such property even though the judge gives judgment in his

favour. This means that unlawful wealth will not become lawful by the judgment of the court. Because the judge gives judgment based on outward fact or evidence and thus the judgment will not change the inward or actual ruling. Umm Salamah narrated that the Messenger of Allah (p.b.u.h) says:

"Indeed you come to me with your disputes, and I am only a human being, perhaps one of you is more eloquent at presenting his argument than the other. If I judge for one of you, giving him something from the rights of his brother, then it is only a piece of the Fire that I am giving him, so do not take anything from it." (al-Tarmidhi)

This is based on authority of the Qur'an, it clearly states,

“And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly some of (other) people's property” (The Quran, 2: 188).

Imam Qurtubi in explaining this verse contends that,

“ whoever takes the property of other wrongfully is considered as eating the property unlawfully. One of the instance of eating property unlawfully is when judge gives judgment in your favour and you are knowingly that you are wrong. Thus unlawful will not become lawful by the judgment of the court, this is because the judge gives judgment based on apparent or outward fact and evidence. This is a consensus of Muslim jurists on issue relating to wealth...” [17]

Regarding the unlawful wealth which is acquired with the consent of the owner such as from usury, gambling, prostitution or trading of the prohibited item, the Muslim jurists of four well-known schools of law, the Hanafi, Maliki, Shafi'i and Hanbali, are also in agreement that the ownership is not established in it. Al-Turi of the Hanafi jurists clearly states that if a person sells a wine, the seller is not owned the price from the sale because it is invalid [20]. In addition, al-Kasani of the Hanafi jurist asserts that unlawful is not suitable to be the cause of establishing ownership. This is because the ownership is a blessing, and the unlawful is not suitable to be the cause of blessing [21]. However, according to Hanafi jurists, the wealth which has been possessed from voidable contract,

the ownership is established on it. But such ownership is weak and it is not permissible for the owner to take benefit from it because such wealth has to be removed [21]. It seems that the establishment of the ownership in this instance has no legal significant, because such wealth cannot be utilized.

The Muslim jurists are of the view that the wealth has to be removed or relinquished from possession. Nevertheless, they have different of opinion whether it is to be returned to its original owner or to be given to the poor and for the interest of public. Ibn 'Abidin states that the way of tainted acquisition is to be given for donation if it is impossible to return to its original owner [22]. Similarly al-Qurtubi of the Maliki jurist also states that the way of repentance from the possession of unlawful wealth if it is from usury, it is to be return to its original owner. If there is no hope to find the owner, it is to be given for donation on his behalf [17]. Imam al-Ghazali of the Shafi'i jurist also states that whoever is having wholly in his possession of unlawful wealth, the performance of pilgrimage (haj) is not obliged on him and he is not obliged to pay any expiation money and zakat. It is obligatory on him to relinquish the whole wealth either to be returned to its original owner if he knows the owner or to be given to the poor if he does not know the owner [14].

On the other hand Ibn Qayyim of the Hanbali jurist views that if the payment has been taken from a person who spent it with his consent in exchange of something which is unlawful such as wine, swine or fornication, it is not obligatory to return the payment to its owner. This is because he spent it with his own choice and he has enjoyed with what he has paid for. Thus, it is not permissible to get back what he has spent [23].

The contemporary Muslim jurists are also of the view that the ownership of unlawful wealth which is acquired with the consent of owner is not established on a person who acquired it. [5, 10, 24] In this regard, al-Ba'li asserts that not all means of acquiring ownership is lawful. There are means where the ownership is not established. They are the means where Islamic law disapproved and prohibited such as the acquisition of wealth by means of gambling, usury, trading of wine, swine and other prohibited item [10]. The reason is because ownership is not established except with the approval of the law and through the means that are regulated by the law. Unlawful means of acquiring ownership is not recognized by Islamic law.

**Authority on Non-establishment of Ownership on Unlawful Wealth:** This is based on the verses of the Qur'an and the Sunnah. There are many verses of Qur'an on this issue and among other are the following verses:

“But Allah hath permitted trade and forbidden usury.” (2:275)

“O ye who believe !fear Allah and give up what remains of your demand for usury, if ye are indeed believers.” (2:278)

“O ye who believe !intoxicant and gambling, (dedication of) stone, and (divination by) arrow, are an abomination of Satan's handiwork; Eschew such (abomination), that ye may prosper.” (5:90)

There are also many Sunnah reported from the Messenger of Allah and some of them are as follows:

“From Abi Mas'ud 'Uqbah ibn Amru, he said: The Messenger of Allah (peace be upon him) forbade taking the price of dog, money earned by prostitution and the earning of soothsayer.” (Al-Bukhari, Muslim, Abu Daud, al-Tirmizi, al-Nasa'I and Ibn Majah)

“Abu Hurayrah reported the Messenger of Allah (peace be upon him) as saying: Allah forbade wine and the price paid for it, and forbade dead meat and the price paid for it and forbade swine and the price paid for it.” (Abu Daud)

“The Messenger of Allah (peace be upon him) says...: when Allah declared eating of a thing forbidden for a people, He declares its price also forbidden for them.” (Abu Daud)

## CONCLUSION

The discussion clearly shows that ownership is not established on a person who possesses unlawful wealth whether it is unlawful because of its substance or unlawful because of its acquisition either with or without the consent of the owner. This indicates that Islamic law does not recognize the ownership of unlawful wealth of all types. The reason is because the acquisition of wealth by unlawful means in some way is an act of injustice and oppression towards others and in other way it causes and brings harm to the society. Thus, injustice has to be avoided and harm has to be removed. This is in line with one of the basis principles of Islamic law i.e. 'the realization of justice' and in agreement with fiqh legal maxim 'harm must be eliminated'.

## ACKNOWLEDGMENT

This Research is funded by Ministry of Higher Education of Malaysia by virtue of FRGS grant.

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