

Public and Private Ownership Guideline in Fiqh Islam

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Abstract

The management of natural resources, the nation's wealth, and public necessities play a crucial role in the economy of a nation. Should national resources be allocated and monopolized by individuals, the burden of managing the state falls upon the shoulders of the populace through taxation and other mechanisms, consequently influencing the cost of living, purchasing power, government expenditures, and the nation's monetary velocity. Therefore, this journal paper endeavors to elucidate the principles of Sharia law and provide an abstract framework regarding privatization, delineating what is permissible and what is not. It is to ensure that the country's outcomes are attainable by all segments of the population, not just manipulated by a small portion of the people.

Keywords: Privatization, Ownership, Shariah Guideline, Nationalization, Mining Governance.

Introduction

The economic and financial resources of a country are the most crucial aspects and the primary keys to a nation's economic success. If national resources such as mining, public necessities, and others are not managed properly, the country will lose its resources and wealth. In Islamic countries, the economy is not built on taxes as depicted by Ibn Khaldun. Ibn Khaldun divided the reality of countries in this world into 2 types, namely "*Jibayah*" Country (Tax State) and "*Hidayah*" Country (God Guidance states that not based on taxes). (Hasis, 2010) *Jibayah* country prioritizes privatization of ownership and management while the government only collects taxes, and state finances are based on such taxes. Therefore, countries practicing this method are known as *Jibayah* or Tax Country. (Haq, 2022)

On the other hand, a *Hidayah* Country is characterized by a government prioritizing ownership and production from limited resources necessary for the public, where profits and revenues are obtained and fully controlled by the government or the public, leading to government operations and need not solely relying on taxes from the public. Thus, a nation practicing this approach is known as a *Hidayah* country, or a country following a system derived from Islamic guidance (Irshaid, n.d.)

Based on the *Maqasid Shariah* (objectives of Islamic law) and the creed behind the Islamic laws stated in the books of *Usul al-Fiqh* (principles of Islamic jurisprudence), something

prohibited by the Shariah has a negative impact; conversely, if permitted by the Shariah, it has a positive impact. (As-Subki, 1984) It is as definitive as a signboard showing the correct path, especially for those who are unfamiliar with the way and lack experience in a particular destination. Therefore, the good or bad for the country's economy, including the management of national resources and needs, the benefits and drawbacks, as well as its economic impact, closely relate to the policy of privatization and ownership of assets, land yields, project management, and public necessities. This journal paper will focus on providing guidelines for privatization or delineating the boundary between individual ownership and public ownership to propel the country's economy toward advancement and prosperity.

Definitions

In this journal, State or National ownership carries one meaning, which is public ownership. National ownership is defined by Economic and Social Commission for Western Asia (ESCWA) as the effective exercise of a government's authority over development policies and activities, including those that rely – entirely or partially – on external resources. (Asia, n/a).

Hence, public means something that can be used by anyone without restrictions, or something that is owned by the government specifically. In this case, the government is managed as public representatives to manage on their behalf, such as land owned by the Ministry of Defence where civilians are prohibited from entering except for the military. It includes assets such as pieces of land and minerals, projects such as ECRL (transportation project), businesses such as supply, and also services such as maintenance.

On the contrary, private ownership is owned by one person or a limited group of people consisting of a private company owned by shareholders or investors. It is also known as a legal entity. Imam Sana'ni narrated from Qadhi Iyad' who defined Privatization as: "the act of authorizing the country leader to allocate a portion of Allah's wealth to a deserving individual." He stated that this practice is widespread, involving the allocation of resources from the land to individuals who have a legitimate claim to it, either by transferring ownership for their use and enjoyment or by granting them the right to utilize it for a specific period. (San'aani, 1433 hijri).

Dr Wahbah Az-Zuhaili defined Privatization as: "a practice of assigning particular unutilized lands to specific individuals, whether for minerals or land, thus establishing their greater entitlement to it over others, as long as the land is not already allocated to someone else." (Az-Zuhaily, n/a)

Literature Study on Public and Private Ownership

A literature study on private and public ownership can delve into various aspects, including economic theory, political science, sociology, and business studies. In another aspect, the literature on private and public ownership in the context of economic impact and government policies covers a wide range of topics, including public-private partnerships (PPPs), privatization, and the efficiency of public and private ownership. The most important research on this topic is "The Economic Impact of Public-Private Partnerships in the Infrastructure Sector: Literature Review" written by the World Bank Group (Group, 2016)

Among the important writings related to this topic from an economic impact perspective are Coase R.H.'s article titled "The Problem of Social Cost" (Coase, 1960) and Stiglitz's article titled "The Contributions of the Economics of Information to Twentieth Century Economics" (Stiglitz, 2000). There are also writings on this topic from political and legal perspectives such as "Governing the Commons: The Evolution of Institutions for Collective Action" by Ostrom

(1990) and "The Tragedy of the Anticommons: Property in the Transition from Marx to Markets" by Heller (Heller, 1998)

This topic is not limited to issues of economic, political, and legal impact, but it also encompasses social and cultural effects. Among the most important writings related to this aspect are "The Forms of Capital" by Bourdieu Bourdieu (1986) and "Capital in the Twenty-First Century" by Piketty (Piketty, 2014). This topic is also discussed in the context of management, such as Jensen's journal titled "Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure" (Jensen, n.d.) and Berle's article titled "The Modern Corporation and Private Property" (Hessen, 1983)

In terms of Islamic writings, all books of Islamic jurisprudence and Islamic school of thought have discussed the laws of privatization and public ownership since 15 centuries ago. It can be said that these jurisprudential books delve into these laws in more detail, listing items such as water, fuel, salt, and others. One of the prominent figures who provides theoretical focus and thinking on this matter is Ibn Khaldun in his book entitled "The Muqaddimah." (Khaldun, 1406 / 2015)

The 4 Important Bases of Ownership in Islam.

Before we discuss the boundary lines between Public and Private Ownership, there are 4 important bases before talking about the boundary line between government and private ownership. The 3 bases are as follows:

a. Individual Ownership is an innate human right that cannot be denied.

Islam recognizes individual ownership. There are many proofs from the Qur'an and hadith related to Islamic recognition of individual ownership. Allah s.w.t said:

رُيِّنَ لِلنَّاسِ حُبُّ الشَّهَوَاتِ مِنَ النِّسَاءِ وَالْبَنِينَ وَالْقَنَاطِيرِ الْمُقَنْطَرَةِ مِنَ الذَّهَبِ وَالْفِضَّةِ وَالْخَيْلِ الْمُسَوَّمَةِ وَالْأَنْعَامِ وَالْحَرْثِ ذَلِكَ مَتَاعُ الدُّنْيَا وَاللَّهُ عِنْدَهُ حُسْنُ الْمَاَبِ

Meaning: "Beautified for people is the love of that which they desire - of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return." (Quran, 3: 14)

Narrated by Ibn Abi Haatem from Aslam who said: I saw Abdullah bin Arqam come to Sayyidina Omar bin Al-Khattab with a piece of jewellery and silver and Sayyidina Omar said: "Oh God, you mentioned this money and said: The enjoyment of worldly desires women.... until the end of the verse. And you said in another verse: "So that you do not feel sad about what you missed and do not rejoice in what has been given to you". We cannot do anything but rejoice in what you have beautified for us. He prays to Allah and said: "Oh God, make us spend it rightfully, and I seek refuge in You from its evil. (As-Sayuuti, 2003)

This verse explains to us that God made all these treasures and ornaments for humans. This matter is further explained about individual ownership in the form of compulsory dowry and maintenance on the husband for the wife and family, which then becomes a clear argument that it is the recognition of individual ownership. Allah said:

وَأْتُوا النِّسَاءَ صِدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا

Meaning: And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease. (Quran, 4: 4)

Besides this proposition, there are many other propositions of recognition of individual ownership such as the recognition of barren land ownership by reviving it up. Narrated by Jabir bin Abdullah that the Prophet (ﷺ) said:

مَنْ أَحْيَا أَرْضًا مَيِّتَةً فَهِيَ لَهُ

Meaning: Whoever revives a barren land, then it is for him. (Tarmizi, 1975)

b. Islam recognizes individual ownership and makes it the basis of economic construction.

In Islam, individual rights are recognized through the implementation of Sharia Legislation, ensuring protection against infringement by other humans, including governmental authorities.

Individual ownership stands as the bedrock for the progression of the nation's economy. It parallels the meticulous arrangement of bricks in erecting a building; devoid of which, the construction forfeits its stability and resilience.

Islam has arrived with a comprehensive framework for safeguarding individual rights, where not only are other individuals barred from encroaching upon them, but governments are also prohibited from infringing upon these rights. The substantiation for this lies in the Prophet's (peace be upon him) counsel to Mu'adh's bin Jabal, as narrated by Imam Bukhari, upon his appointment as governor in Yemen:

فَأَيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ وَاتَّقِ دَعْوَةَ الْمَظْلُومِ فَإِنَّهُ لَيْسَ بَيْنَهُ وَبَيْنَ اللَّهِ حِجَابٌ.

"Exercise caution against infringing upon the wealth of others, and be wary of the supplication of the oppressed, as there exists no veil between it and Allah." (Jabbar, 2014)

This hadith imparts a crucial lesson: notwithstanding Mu'adh's authority as governor, he was precluded from arbitrarily appropriating the wealth of the Yemeni populace, even in the absence of their conversion to Islam. Another hadith underscores that the appropriation of private wealth, be it through taxation or any other means, requires explicit validation from the Quran or Hadith. This underscores the Shariah Legal Maxim:

الأصل في المال الغير التحريم إلا ما دل دليل على خلافه

The default ruling regarding taking the wealth and possessions of others is prohibited unless substantiated evidence exists to justify such action. (Baz, n/a)

In addition to the evidence above, there are also other proofs indicating that Islam not only recognizes but also safeguards these individuals' rights and ownership, such as Hudud punishments for thieves, *Hirabah* Laws (declaration of war) against robbers, Hisbah punishment for lesser offenses like fraud in the market and business transactions. In addition, there exist Shariah Laws and Regulations about the obligation of providing dowry to the wife, regulations concerning the guardianship of orphaned children's assets, and comparable issues. All of these constitute Sharia laws not only recognize but also protect individual ownership and private ownership and rights as elucidated previously.

The most compelling evidence that the acknowledgment of individual and private ownership serves as the cornerstone of nation and state economics is found in the Sharia law of *Hirabah*. Originally law of *Hirabah* was devised to address warfare against insurgents and adversaries who assaulted the state with arms, *Hirabah* law extends its purview to cases of robbery. Within this context, Islam identifies the perpetrator of robbery as not only infringing upon the rights and possessions of individuals but also mounting an assault on the integrity of the state itself. Consequently, the declaration of war against robbers as aggressors of the state is underscored by the use of the term 'fighting against Allah and His Messenger,' as stipulated by Allah (God) in Al-Quran:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ

33. Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they are killed or crucified or that

their hands and feet be cut off from opposite sides or that they are exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment. (Quran, 5: 33)

c. Islam regards human ownership as a divine stewardship and a divine endowment.

Islamic economic principles are founded upon absolute faith, whereby financial interactions and monetary exchanges are grounded in this belief system. The core tenet concerning wealth is its divine ownership by Almighty God, while human beings serve solely as trustees over these resources. This perspective arises because God is the creator of everything within the cosmos. Allah SWT Said:

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ جَمِيعًا

Meaning: It is He who created for you all of that which is on the earth. (Quran, 2: 29)

Human logic dictates that the creator should own the created entity, and the inventor deserves it more than others. By extension, Quranic verses establish the true ownership of all things in existence belonging to Almighty God, such as when God says:

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَمَا بَيْنَهُمَا يَخْلُقُ مَا يَشَاءُ وَاللَّهُ عَلَىٰ كُلِّ شَيْءٍ قَدِيرٌ

Meaning: And to Allah belongs the dominion of the heavens and the earth and whatever is between them. He creates what He wills, and Allah is over all things competent. (Quran, 5: 17)

Human beings do not possess true ownership of wealth, nor do they share a partnership with the Almighty in this regard. As stated in the Quran: "And He has no partner in His dominion." (Quran, 23: 116) Instead, man is entrusted as a caretaker of this wealth. Allah's decree is evident when He said: "And mention when your Lord said to the angels, Indeed, I will make upon the earth a successive authority." (Quran, 2: 30) Furthermore, Allah s.w.t instructs: "And donate from what He has entrusted you with." (Quran, 57: 7)

In terms of wealth, a man stands in the position of an agent or a custodian of the treasury, therefore his handling of money should reflect that of an agent or a delegate. The term "ownership" in this context refers specifically to possession of utility and control, and this notion becomes apparent through interpreting verses alongside one another, particularly the following quote from the Quran: "Do not give away your property to fools, which Allah has given you as provision." (Quran, 4: 5) Here, wealth pertains to fools rather than the wise, however, it is assigned to the wise since they manage it. Humans' ownership is derived from the principle of stewardship, as evidenced by the Quranic verse: "and donate from what He has entrusted you with." (Quran, 57: 7) thus, God Almighty has bestowed upon humankind the rights of utilization and disposition.

This right is allocated to individuals in some assets, known as private ownership, while in others it is designated for people or the state, referred to as public ownership. As mentioned earlier, private ownership in Islam is safeguarded and inviolable, not to be encroached upon or violated, with stringent penalties in place to ensure its protection.

Concerning public ownership, we encounter a mention of it in the words of the Prophet Muhammad (peace be upon him), narrated by Imam Ahmed: "Muslims are partners in three things: water, pasturelands, and fire." These three indispensable items cannot be dispensed with. Due to their necessity, public ownership applies unless otherwise specified, such as privately stored water, individually owned pastures, and common trees used to ignite fire in private land.

It is possible to apply the same principles to other essential items, as necessities can vary from one era to another and from one environment to another. However, any comparison

should meet the necessary criteria, aligning with Islamic principles and guidelines. In addition to this form of public ownership, another type of public ownership exists, where certain lands were owned by the state, such as the lands where charity camels were pastured and so forth.

d. Islam stipulates public ownership of essential items for all people.

Islam recognizes public ownership in essential items that are needed by all people, such as water, pasturelands, fire (kindling), and salt. The Prophet Muhammad (peace be upon him) said: "Muslims are partners in three things: water, pasturelands, and fire." (Fawzan, 1435 h) Abu Dawud also reported that a man asked the Prophet (peace be upon him), "What is the thing that cannot be prohibited?" The Prophet (peace be upon him) replied, "Water." The man asked again, "What is the thing that cannot be prohibited?" The Prophet (peace be upon him) replied, "Salt." (Fawzan, 1435 h)

In this context, "salt" refers to the pure salt that occurs naturally in mountains, deserts, and similar areas, which can be obtained without significant effort, hardship, or processing. On the other hand, salt extracted from salt pans using specialized processes does not fall under this category.

These four items were specifically mentioned because they were essential for social life in the Arabian environment during the prophetic era. The essentials of community life vary with different environments and eras. Therefore, other items can be included through analogy (Qias). For example, Muslim Scholars have included in communal ownership the minerals found underground, prohibiting individual ownership of them, as is well-known among the Maliki school of thought. This also includes the properties of charitable endowments, such as agricultural and real estate properties, mosques, schools, hospitals, forts, hospices, and other similar assets.

Type of Privatization in Fiqh Islam

In Islamic jurisprudence, the term "privatization" is referred to as "الإقطاع." It pertains more to the privatization of land compared to other forms of privatization such as supply, projects, etc. It does not mean that the Shariah Legal concept of privatization of supply, privatization of projects, and others' privatization do not exist in the Shariah Legal concept. Certainly, the principles and frameworks, such as anti-monopoly policies, anti-bubble policies, and others, are firmly ingrained in Islamic jurisprudence. Hence, when considering privatization initiatives like projects and supply, among others, it is imperative to align them with these established principles.

The term "الإقطاع" refers to three categories: ownership (التمليك), exploitation (الاستغلال), and attachment (الارتفاق). Ownership privatization is divided into barren land (موات), developed land (عامر), and minerals (معادن). Exploitation privatization encompasses two categories: *U'syur* and *Kharaj*. Meanwhile, attachment privatization pertains to resources such as drinking water and water for livestock, domestic utility, ownership rights over water channels, ownership rights over roads and thoroughfares, building height regulations, and neighbourhood privileges.

This discussion is lengthy enough to be presented here. I will suffice by drawing some important conclusions from the Muslim Scholars' discussion regarding the Shariah perspective of privatization, thereby establishing guidelines about privatization according to Islamic jurisprudence.

Basis of Ijtihad In This Matter

"Ijtihad" is an Arabic term that refers to independent legal reasoning or scholarly effort to derive Shariah Legal rulings from primary sources in Islamic jurisprudence, namely the Quran and Sunnah (teachings and practices of the Prophet Muhammad), as well as secondary sources like consensus (ijma) and analogical reasoning (qiyas). It is also based on *Istiqlal*'s rules of Usul Fiqh, which refers to the process of induction or inference in Islamic jurisprudence. It involves drawing legal conclusions or principles from specific instances or cases. In other words, it is a method of reasoning by which general principles are derived from particular instances or observations.

As previously discussed, Islam recognizes individual ownership and regards it as an innate human right that cannot be denied. Islam recognizes individual ownership and makes it the basis of economic construction. Individual ownership stands as the bedrock for the progression of the nation's economy. It parallels the meticulous arrangement of bricks in erecting a building; devoid of which, the construction forfeits its stability and resilience.

The duty of individuals and the government as stewards of Allah is to fulfill the trust of managing this wealth. Therefore, certain matters become the property of individuals, but if they become public needs and interests, then they become public property managed by the government.

Based on these principles, Shariah scholars have extensively discussed matters related to the public interest, such as the sharing of water, beverages, drainage, fuel, roads, building construction, and so forth, determining what can be privatized and what can be nationalized. The scholarly discourse on the legality of privatization revolves around several major hadiths, including:

1. The hadith concerning Muslims being partners in three matters.

Hadith of the Prophet Muhammad (peace be upon him), which narrated a man of the Companions (RA):

عَزُوتُ مَعَ رَسُولِ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فَسَمِعْتُهُ يَقُولُ: النَّاسُ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْكَلْبِ وَالْمَاءِ وَالنَّارِ

Meaning: I went on an expedition with the Prophet (ﷺ) and heard him say, "People are partners in three things: grazing pasture, water and fire." [Reported by Ahmad and Abu Dawud, and its narrators are reliable (*thiqah*). (Fawzan, 1435 h). Another narration mentions that:

وِثْمَنُهُ حَرَامٌ وَالنَّارُ وَالْكَلْبُ الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْمَاءِ

Meaning: The Muslims are partners in three things: water, pasture, and fire, and their price is unlawful. (As-Sanadi, n/a)

2. The hadith related to the Prophet privatizing the al-Qabaliyah land to Bilal.

Narrated Amr ibn Awf al-Muzani: The Prophet (ﷺ) assigned as a fief to Bilal ibn Harith al-Muzani the mines of al-Qabaliyyah, both those which lay on the upper side those and which lay on the lower side. The narrator, Ibn an-Nadr, added: "also Jars and Dhat an-Nusub." The agreed version reads: "and (the land) which is suitable for cultivation at Quds". He did not assign to Bilal ibn al-Harith the right of any Muslim. The Prophet (ﷺ) wrote a document to him:

وَحَيْثُ جَلَسَهَا وَغُورَهَا أَعْطَاهُ مَعَادِنَ الْقَبْلِيَّةِ هَذَا مَا أَعْطَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِلَالَ بْنَ الْحَارِثِ الْمُزَنِيَّ يَصْلِحُ الزَّرْعَ مِنْ قُدْسٍ وَلَمْ يَعْطِهِ حَقَّ مُسْلِمٍ

Meaning: This is what the Messenger of Allah S.W.T assigned to Bilal ibn al-Harith al-Muzani. He gave him the mineral of al-Qabaliyyah (name of a place) both those which lay on the upper and lower side, and that which is fit for cultivation at Quds. He did not give him the rights of any Muslim. (Dawoud, n/a)

3. Privatization of Maarib Mineral To Abyadh bin Hammal.

Narrated by Abu Dawoud about the privatization of Maarib Salt as follows:

أَنَّ أَبَيْضَ بْنَ حَمَّالٍ اسْتَقَطَعَ الْمِلْحَ الَّذِي يُقَالُ لَهُ مِلْحُ سَدِّ مَأْرِبٍ . فَأَقْطَعَهُ لَهُ ثُمَّ إِنَّ الْأَفْرَعَ بْنَ حَابِسِ التَّمِيمِيِّ أْتَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي قَدْ وَرَدْتُ الْمِلْحَ فِي الْجَاهِلِيَّةِ وَهُوَ بِأَرْضٍ لَيْسَ بِهَا مَاءٌ وَمَنْ وَرَدَهُ أَخَذَهُ وَهُوَ مِثْلُ الْمَاءِ الْعِدِّ . فَاسْتَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَبَيْضَ بْنَ حَمَّالٍ فِي قَطِيعَتِهِ فِي الْمِلْحِ . فَقَالَ قَدْ أَقْلَنْتُكَ مِنْهُ عَلَى أَنْ تَجْعَلَهُ مِنِّي صَدَقَةً . فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " هُوَ مِنْكَ صَدَقَةٌ وَهُوَ مِثْلُ الْمَاءِ الْعِدِّ مَنْ وَرَدَهُ أَخَذَهُ " . قَالَ فَرَجٌ وَهُوَ الْيَوْمَ عَلَى ذَلِكَ مَنْ وَرَدَهُ أَخَذَهُ . قَالَ فَقَطَعَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَرْضًا وَنَخْلًا بِالْجُرْفِ جُرْفٍ مُرَادٍ مَكَانَهُ حِينَ أَقَالَهُ مِنْهُ .

Meaning: Abyadh bin Hammal asked for a salt flat called the Maarib Dam to be given to him, and it was given to him. Then Aqra bin Habis At-Tamimi came to the Messenger of Allah (ﷺ) and said: "O Messenger of Allah (ﷺ), I used to come to the salt flat during the period before Islam and it was in a land in which there was no water, and whoever came to it took from it. It was (plentiful) like flowing water." So, the Messenger of Allah (ﷺ) asked Abyadh' bin Hammal to give back his share of the salt flat. He said: "I give it to you on the basis that you make it charity given by me." The Messenger of Allah said: "It is a charity from you, and it is like flowing water, whoever comes to it may take from it." Faraj (One of the narrators) said: "That is how it is today, whoever comes to it takes from it." He said: "The Prophet (ﷺ) gave him land and palm trees in Jurf Murad instead when he took back the salt flat from him." (Dawoud, n/a)

4. Reviving The Barren Land.

Narrated by Jabir bin Abdullah that the Prophet (ﷺ) said:

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ

Meaning: Whoever revives a barren land, then it is for him. (Tarmizi, 1975)

Similar meaning in another hadith, narrated by Imam Bukhari that the Prophet Muhammad (peace be upon him) said:

فَهُوَ أَحَقُّ بِهَا مِنْ عَمَرَ أَرْضًا لَيْسَتْ لِأَحَدٍ

Meaning: Whoever develops land that does not belong to anyone, has the most right to it. 'Urwa bin Zubair said that Sayyidina Umar ruled according to that during his caliphate. (Bukhari, 1422 1st edition)

5. *Ghubnun Faahish* Of *Talaqqa Ruqban* And *Bai' Haadhir Li Baadin*.

Ghubnun Faahish is a term in Islamic law that refers to sales with excessively high or unreasonable profit margins. It originates from Arabic, where "*ghubnun*" means "unfair profit" or "large profit margin," and "*faahish*" means "exaggeration" or "exceeding limits." Thus, *Ghubnun Faahish* refers to the situation where the selling price of a good or service is unreasonably high or above the norm, surpassing the true value of the goods or services. One of the reasons for high prices in the market is monopolies in the form of supply control by intermediaries. Among them are known as *Talaqqa Ruqban* or *Bai' Al Haadir Liibaadin*.

From a historical perspective, "*talaqqa*" means meeting, and "*ruqbaan*" means two riders on camels, horses, or donkeys which refer to caravans carrying merchandise. The

combination of these two words signifies the “meeting of two riders”. It refers to the pre-Islamic practice where suppliers of vegetables, fruits, and meat from the hinterlands were not allowed to enter the city of Mecca unless they sold their goods to specific individuals who monopolized trade within Mecca. Mecca is unsuitable for growing vegetables or raising animals due to the lack of fertile land.

So, the suppliers of vegetables, fruits, meat, and others from the hinterlands would ride bringing their produce, meeting with riders from Mecca, and unloading them in the middle of the road. Therefore, this transaction became known as *Talaqqa Ruqbaan*, or the meeting of two riders. This method is also known as Bai' Al Haadir Li Baadin or city dwellers helping to sell on behalf of rural or desert people (Bedouin) because the men in the city of Mecca were considered to assist rural or desert people in selling their produce since the system and laws at that time did not allow them to enter Mecca.

This reality forced the people in Mecca to buy their necessities at high prices due to the restriction of supplies by the governing system at that time, and subsequently, it was privatized to only a few individuals (government cronies) to sell. The privatization system of public necessities to a handful of individuals was eventually prohibited by Islam with the saying of the Prophet Muhammad (peace be upon him), as narrated by Imam Bukhari and Imam Muslim:

عن ابن عباس رضي الله عنهما قال: قال رسول الله صلى الله عليه وسلم: “لا تتلقوا الركبان ولا يبيع حاضر لباد” فقال له طاوس: ما قوله: لا يبيع حاضر لباد قال: لا يكون له سمسارًا.

Meaning: The Messenger of Allah (ﷺ) said, "The caravans carrying merchandise should not be met on the way to purchase from them; a man in the city should not sell for a man of the desert." Tawus asked him (Ibn 'Abbas): "What do these words imply?" He said: "He should not work as an agent on his behalf." - (Al-Baihaqi, 2003 - 3rd Edition)

In other words, the terms *Talaqqa Ruqbaan* and Bai' Al-Haahir Li Baadin can be translated to "brokerage" or "middleman." In the context of commerce or trade, it refers to individuals or entities who act as intermediaries between consumers or buyers and sellers or suppliers, facilitating transactions for a fee or commission. These intermediaries may influence prices and market dynamics, potentially leading to higher costs for consumers.

In regular transactions between a seller and a buyer purchasing with their own money, if there is a *ghubnun* or a price higher than usual and the buyer agrees, the transaction and contract are valid. However, when the buyer is a custodian of the property of orphans, or the public treasury (the wealth of the public or government funds), or waqf funds, then the legality of the transaction may be nullified or cancelled. (Othmaniyyah, n/a) In other words, it becomes invalid and untrustworthy. When there are *ghubnun* or excessively high prices with payments using public funds, compounded with *talaqqa ruqban*, then undoubtedly, it is deemed prohibited and invalid.

Public And Private Ownership Guidelines

Based on the method of *Istiqrā'* in Usul Al-Fiqh (principles of Islamic jurisprudence), the following guidelines for privatization can be concluded as follows

1. Public Needs And Limited Resources

This first guideline can be gleaned from the Shariah sources above is that the nationalized assets and wealth resources must be a public need and also limited resources. If we examine each of the three aforementioned elements, namely water, pastures, and fire, it

can be deduced that during the time of the Prophet Muhammad (peace be upon him), water was exceedingly scarce, confined primarily to wells in oasis areas, with no rivers or alternative water sources available.

Privatizing and controlling it would lead to the prohibited monopoly in Islam, resulting in inflated prices. Similarly, pastures served as communal grazing grounds, predominantly found in oasis areas, as grass did not proliferate in desert regions. This also applies to the source of fire. The majority of scholars argue that the fire referenced in this hadith pertains to combustible materials or kindling. These resources were limited to oasis regions, akin to water and pasture sources.

This element can also be observed in the hadith concerning the privatization of a salt flat to Abyadh bin Hammal. When Abyadh bin Hammal's ownership restricted people from accessing it, the Prophet Muhammad (peace be upon him) nullified the privatization. This occurred after a complaint was made by Aqra bin Habis At-Tamimi, who argued that he used to collect salt from there, but after it was privatized to Abyadh, access was blocked. Due to this factor, the Prophet Muhammad revoked the privatization of this area from Abyadh'.

2. Created By Allah Not By Humans.

This second guideline can be gleaned from the Shariah sources above in that the public needs and limited resources such as water, salt, kindling, and so forth as mentioned above are created by Allah or natural creation.

If it involves assets such as land, water, minerals, and the like, then it is required that these assets occur naturally, or in other words, they are creations of Allah, not through human construction. Therefore, all schools of thought agree that water from a well dug on private land belongs to the digger. (الفقه الإسلامي)

Based on '*Illah* (Shariah Reason used by Scholars in *Qias*), similar to the ruling on salt, water, and fuel, modern necessities such as river sand for building construction, rare earth element (REE), silica sand, and others.

All the aforementioned minerals are valuable creations of Allah and are essential for the country and society. Human beings merely strive to extract them through mining, transportation, and sales. Thus, it is unfair for the results of Allah's creation, which can be easily accessed, to suddenly be owned by only one or a few individuals among millions of people.

Therefore, the ruling on naturally flowing river water is not the same as the water from a well dug by an individual on private land. The consensus among scholars is that the water from a well owned by an individual, dug by human hands, belongs to the landowner.

3. Avoiding High Price And Cost Due To The Present Of Middleman

Based on the discourse surrounding *Ghubnun Faahish* of the *Talaqqa* Ruqban or Bai' Haadhir Li Baadin above, it stipulates a guideline that for any government supply or development project, it must be dealt with directly with the supplier, rather than utilizing a middleman, as it would inflate the price and cost.

The high prices and costs referred to are not just the expenses borne by the government alone, but more importantly, the prices and costs borne by the people, even if the government appears to save costs. This is because the original owners of the money spent

by the government are the people and it is entrusted to them, not to government officials or the state government.

Take water management as an example: if the government privatizes the water supply, it may appear to reduce costs from a fiscal perspective. However, the people will inevitably bear higher costs because a third party will profit.

If it is managed by a Government-Linked Company (GLC) rather than privatized to a third party, the profits will return to the people in the form of lower water prices, as demonstrated by the late Tan Sri Khalid Ibrahim in Selangor, where free water was provided. This is vastly different from privatization to a third party, where the project owners profit without contributing to the workforce, unlike CEOs, engineers, and others who are actively involved. Instead, they are shareholders who sit on the Board of Directors to oversee the company and its profits.

Therefore, when it was returned to the government during Tan Sri Khalid Ibrahim's time, all employees remained, including the CEO, engineers, and others, but only the owners who had profited from the facilities of the public, which is water created and provided by Allah, were changed.

Another example is if a government hospital requires medication produced by Merk & Co, one of the largest pharmaceutical companies in the world, the government should directly order from the company. If a middleman is appointed when the government is capable of placing direct orders from the company, then appointing the middleman or privatizing the supply is considered impermissible according to the principles of *Ghubnun* by the Representative of Baitul Mal.

This third guideline is based on the status of government officials who manage public funds, such as trustees of orphanage funds or Baitul Mal. If the cost becomes higher due to the appointment of middlemen, then it falls under the category of *Ghubnun*, which is not allowed when the payment involves public funds, especially considering the presence of the elements of *Talaqqa Ruqban* and *Bai' Haadir Libaadin*. Furthermore, the appointment of middlemen who control prices goes against the objectives and Maqasid Sharia behind the prohibition of transactions involving *Talaqqa Ruqban* and *Bai' Haadir Libaadin* by the Prophet Muhammad (peace be upon him).

Therefore, the solution for such government supply and projects is to establish enough Government-Linked Companies (GLCs) wholly owned by the government to manage supplies or implement projects. Alternatively, the government should consider establishing a new ministry, namely the Ministry of Supplies, to oversee governmental needs.

4. Emergency Necessity Privatization

In times of necessity and dire need, all that is forbidden becomes permissible, subject to specific conditions such as the necessity justifying the extent of the action (الضرورة تقدر بقدرها), and it must be temporary or the like. Even substances like pork and alcohol, which are ordinarily prohibited, are allowed in such circumstances.

Similarly, with the privatization of excavation and public needs, there may be situations where it cannot be provided by everyone, it is beyond the capacity of the government to provide, and can only be afforded by certain parties such as the manufacturing of high-speed train such as Electric Train Service (ETS) and the like. In such circumstances, it can be privatized to those who are capable, but with the condition that it is permitted only to the extent of necessity.

In other words, it must be privatized temporarily, and private entities should be prevented from directly controlling public facilities and interests. Therefore, if it is necessary to privatize the construction of high-speed trains due to the government's lacking expertise, then it may be privatized, but transferring expertise or studying and striving to acquire it in the future is obligatory.

Also, it is a condition that this privatization does not lead to private parties, especially foreigners, controlling public assets such as land and the like because land and natural resources are power value, not just commercial value. Natural resources are not the same as wealth itself.

Conclusion and Summary

As a conclusion and summary, Islam sets clear guidelines regarding private ownership and national ownership, what can be privatized and what cannot be privatized. Differences of opinion in jurisprudence are merely technical, even though the names are the same. For instance, the term النفط (petrol) has been used for centuries. Some schools of thought argue that it can be privatized, while others hold the opposite view in classical books.

The issue does not lie in the term petrol itself, but rather in the reality and essence of petrol. Petrol in ancient times was not a necessity as it was merely a seepage from rocks in the hills used for lighting fires. However, it was not the primary material for starting fires as wood was prioritized over petrol, therefore it was not a public necessity. But petrol today has become a public necessity for everyone as fuel to power vehicles. Akin to the reality of grass in the time of the Prophet, necessary for every farmer, or limited water needed by every person for drinking. Hence, upon scrutinizing their respective arguments, they do not deviate from the guidelines listed above.

Therefore, if one of the guidelines or conditions mentioned is missing, then it can be privatized. For example, grass in the context of Asia, which can grow on any available land, is no longer a limited resource and can be owned by everyone. Also, the three materials forbidden from privatization as stated in hadith, encompass two crucial elements: the public's needs and limited resources. If either of these elements is absent, privatization and individual ownership become permissible. For instance, items needed by the public but not limited to supply, such as dates, rice, vehicles, and so forth. Conversely, resources that are limited but not essential to the public, like certain types of trees such as the jujube tree and similar examples.

To ensure public interest, the Maliki school of thought is considered the best in managing these resources, as it views excavation as public property that should be managed by the government and cannot be directly owned by individuals. Its management should be governed by the principles of Fai' (thesis: m/s 70), which are revenues and income acquired by the state without war, as if it is obtained from war, it is called *ghanimah*, and if it is derived from public payments, it is called taxes consist of *zakah*, *jizyah*, *kharaj*, and others.

The guidelines in the journal are a crucial contribution to realizing the concept of the velocity of money, which aims to maximize the positive impact of the nation's wealth. The concept of the velocity of money indicates how frequently a unit of currency is used to purchase goods and services within a specific period. If an important resource, such as petroleum, is monopolized by a single entity, the frequency and amount of currency circulation will remain confined among the major holders of the nation's output. Conversely, if such a vital resource is owned by the state, its benefits would undoubtedly be distributed to all citizens in the form of aid, facilities, loans, and similar measures.

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