

Ownership of Oil Wealth: A Fiqh Perspective in the Shade of Maqasid Sharia

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Abstract: Oil is one of the most fundamental sources of energy globally in the modern era. It plays a vital role in the function of the local and global economic systems. It has impact on national strategies and international politics. There are different views and perspectives about the ownership of oil. Socialism and capitalism advocated social ownership and unconstrained individual ownership respectively, presently, most of the countries do not allow individuals to claim ownership of oil while some other countries such as USA recognize both state and individual ownership. The Quran had mentioned common theories about the ownership the ownership of oil is one of the matters of ijtiḥad which needs to be regulated by Muslim rulers under the context of basic principles of the Quran and Sunnah, theories of Islamic law, Therefore, the major Islamic school of law involved in determining the ownership concept of oil ownership, The prominent Muslim jurists differ on the ownership concept of minerals. Thus, the aim of this paper is to compare, contrast and investigate the different concepts of ownership of oil in Islamic schools to examine conformity of such views with the objectives and purposes (Maqasid) of the Islamic law.

Key words: Ownership, oil, fiqh, Maqasid Sharia, Islamic law, Sunnah

INTRODUCTION

Natural resources are one of the most blessed sources of energy in the modern era. The advent of industrial energy revolution, especially oil has boosted the local and global economies of the countries. Since, oil became backbone of the economies, essential for human survival and growth of human civilizations, the ownership of oil also has a crucial impact on national strategies and international policies. Socialism and capitalism are two main extreme concepts in the past that advocated social ownership and unconstrained individual ownership respectively. Presently, most of the countries do not allow individuals to claim ownership of oil while some others recognize both state and individual ownership.

The Quran has mentioned common theories about the ownership, the ownership of oil is one of the matters of ijtiḥad that needs to be regulated by the Muslim rulers using the Quran, Sunnah and basics of Islamic law, Therefore, the major Islamic school of law involved in determining the ownership concept of oil ownership, the prominent Muslim jurists differ on the ownership concept of minerals. Thus, this research aims to compare and analyze the different concepts of ownership of oil in

Islamic schools and examine the conformity of that views with the objectives and purposes (Maqasid) of Islamic law to contribute in developing and preserving this precious wealth.

The prominent Muslim jurists differ on the ownership concept of minerals. Hanafi School of law considers that minerals ownership is included in land ownership. In Shafi and Hambali schools subsoil and surface minerals should not be owned by private sectors. In Maliki School they are off the view that all kinds of mineral resources are owned by the state.

It is important to examine these dissimilar ownership concepts and views of Islamic schools of law to see the conformity with Maqasid of Islamic law, The Maqasid of the Islamic law are the objectives and purposes behind the Islamic rulings (Jasser, 2007).

Literature review: Islam has dealt with the ownership concept with utmost care and in great detail. In most countries, ownership of valuable minerals is retained by the state. The ownership is an exclusive relation of the owned item with its owner which gives the owner absolute right to deal with in what he owns in any lawful way. Though Islam gives the ownership right to every

individual, the fact is that the absolute owner is Allah. Because God is the Supreme Owner, man and the society are His vicegerents. This is not a hollow concept and the idea without implication. Indeed, all the means that directly or indirectly turn the ownership of a property in a way of exploitation, injustice and harm to others is forbidden (Laluddin *et al.*, 2012).

Ownership of Oil and land is permitted in Islam. Private ownership is indeed encouraged. Islam calls for the principle of lawful ownership and keeps conditions and limitations ensuring ownership without oppression to others. The Shariah law along with the permission given provides ratification to protect both individual and communal ownership so that human being will be guided accordingly. It is necessary to spread and promote righteousness and trustworthy among all citizens to bring benefits from country's resources to the whole community.

In Saudi Arabia, the basic law of Governance specifies that the state protects freedom of private property and its sanctity. But, when the property serve the whole community and public interests it become common property, there will be a fair compensation. This echoes the protection of private property found in the Quran.

Both Nigeria and Angola vest the ownership of petroleum resources in situ in the state. Although state ownership of petroleum resources is ideally essential and effective for the protection of petroleum resources from exploitation, abuse and depletion, in both countries this system is not effective due to the abuse of state ownership by the respective governments through corruption, maladministration, lack of transparency and mismanagement of the resources (Mailula, 2013).

Quran, the primary source of Islamic knowledge, did not state the details of the right of oil ownership. What is enshrined in the Quran is that all properties belong to Allah and the human is only a trustee on them. Muslim rulers should regulate the laws pertaining to the ownership of oil in line with concern of purposes of shariah and interests of society. To classic Muslim jurists, ownership concepts of minerals differ due to many factors, Imam Malik developed the ownership concept of minerals according to people's interest (masalih) and the government has sovereign rights over minerals within its jurisdiction, it does not mean ownership right of minerals (Malik, 1996).

Bukola argues that state should have right to exercise absolute, permanent, unhindered and unfettered control over all of its natural resources and develop proper plane to utilize it to bring maximum benefits for the advantage of its citizens.

MATERIALS AND METHODS

The nature of the research necessitates a qualitative research. The qualitative method is used in analysing the data in order to justify the relevancy of the result, relying extensively on documentary data and it is a library based research which refers to various works from both fields, Islamic law and Oil and gas industry.

RESULTS AND DISCUSSION

There are three fundamental theories on ownership of oil in practice, the absolute ownership theory (Texas theory) which affirms that he who owns a land, owns that beneath it. The ownership of the surface includes ownership of everything from the skies to the beneath of the earth, Oil is not an exception. The qualified interest theory (Pennsylvanian theory) which says that possession of the land is not necessarily possession of the oil and gas (Summers, 1919) and the Oklahoma theory the non-ownership Theory which adopted "exclusive-right-to-take" theory that a land owner does not own the substances. This theory indicates incapability of petroleum ownership either absolutely or in a qualified manner. There is another theory in practice in many countries called National ownership theory, it advocates the vesting of complete and total ownership of petroleum resources in the government of the state (Omuli Iwere).

In the principle of Islamic law, ownership of everything belongs to Allah, Thus, all the individual and public properties are trust for which the owners will be accountable to Allah. Islam opens the doors for all to own properties and land and gives the owners right to do whatever they desire to do on and beneath the land but it is subject to right of others and public interest, Islam also gives the right to prevent anybody from using and taking anything from it. With regards to Oil, there is an exception. Thus, Concepts of ownership of oil are not consistent among prominent Islamic schools of law.

To start with, In Hanafi School of law ownership of minerals follows ownership of land, the surface owner is entitled to the surface itself and all below (Jumah, 2002). All components of earth such as minerals and natural resources beneath surface are consider as surface ownership. This approach apparently agrees with absolute ownership theory (Texas theory).

According to the Shafie School of thought, hidden minerals follows land ownership while unhidden minerals are not owned (Jumah, 2002). If the hidden minerals are found in dead lands, it belongs to the one changed it back to life and possess of all what is inside of it (Al-Nawawi).

In case of state-own land, the unhidden minerals belong to the community as whole, these kind of minerals are not permissible for private ownership (Toriguian, 1972). If the minerals are hidden and it is within the state's discretionary power to grant concessions to whichever investors it deems fit (Toriguian, 1972).

Having looked into opinions of both Hanafi and Shafi schools, it is clear that ownership of land is the factor of deciding the ownership of minerals in that land. On the other hand, Hambali School scholars consider that unhidden minerals in private, dead or state-owned lands cannot be owned privately. Ibnu Qudama states: "apparent minerals are not liable to private appropriation either through discovery and occupancy or through "Iqtha" or grant by ruler (Catlan and Reese, 1985) because, unhidden minerals are not part and parcel of the land.

According to Imam Maliki minerals are considered as public property (milk al-amma). It means that minerals do not follow ownership of land, all minerals are neither belonged by the Muslim ruler nor by any individual person, It belongs to Muslim community as a whole and under the direct control of the Imam. This view is in line with National ownership theory. The reason behind this is significance of oil and its necessity. On behalf of Muslim community it comes under the control of the Muslim government. Maliki's school experts expressed that all minerals are to be left to the ownership of the entire government to be held in trust for the entire populace and be made use of in line with the public interest. It is clear in this school that ownership of land itself is irrelevant in the determination of the mineral's owner.

They justified that private ownership will effect the public interests because it will cause to unfair distribution of such precious wealth among the Muslim society. But the question is that does public ownership mean state ownership or sovereign right of the state on its oil wealth.

Ownership (Milkiyyah) and sovereignty: The term "sovereignty" is a concept related to using power and authority. Presently the term "sovereign" is related with power of the government. Milkiyyah is a fundamental legal term that governs ownership of anything. It allows the owner to enjoy powers and right of use, dispose, benefit and exploit of the thing in possession of the owner but it should be within the border lines laid by the Islamic shariah law. In international law sovereignty in its widest sense means the supreme right and power exercised by any independent state over persons and property within a certain territorial domain jurisdiction. (Starke, 1989). The principle of permanent sovereignty

does not restrict a state from agreeing to certain specific limitations of its right to control or dispose of some of its resources for a specific period of time. Islamic law has bestowed the sovereign right of state to regulate oil related activities within its territory and to guide and utilize it for the interests of whole communities of the country. Maqasid al-shariah (purposes of Islamic shariah) is considered to determine the correct concept of ownership of oil that leads to fulfill interests of the community.

Maqasid al-Shariah of oil: The term "maqasid" refers to purposes, objectives, principles, intents, goals, ends (Qayyim *et al.*, 1973). Maqasid of the Islamic law are the objectives or purposes behind Islamic rulings (Ashur, 1999). Imam Gazzali has categorized the objectives of Sharia into two primary parts: The purposes related to religion (deen) and related to material world (duniawi), the material world purposes are further divided into four types which are protection of life (nafs), lineage (nafs) intellect (aql) and wealth (maal).

Although, early theorists of maqasid al-Shariah did not pay attention to defining the term maqasid al-Shariah largely due to the fact that there was no need to do so as they were specifically writing for scholars (Raysuni, 2005). Later writers have provided various definitions for the subject, Ashur (1999) states that the general objectives of Islamic legislation of the deeper meaning and inner aspects of wisdom considered by lawgiver in all or most of the areas and circumstances of legislation. They are not confined to a particular type of the shariah commands.

Protecting and preserving wealth including oil which is one of the important resources in the world today is one fifth of the purposes of shariah, Money is lifeblood (al-Nisa-5). For the development and protection of the wealth Islamic laws prohibit all types of infringement and imposes punishment for the crime of stealing and laundering money. It is necessary to determine which type of ownership concept develop, protect and utilize oil to the interests of the whole community.

It is obvious from opinions of Islamic schools of thoughts that there are two mainstreams in the oil ownership concepts, private ownership and public ownership controlled by the authority. Each schools has its own justifications for their approaches. With both individual and government ownership there is much possibility to be misused this valuable property, the ruling parties' influential individuals and royal families can use the power to own those lands and industries. This causes to damage the one of the purpose of Islamic shariah.

It is better to open the door of oil ownership to individuals and the government under the principle of

lawful sovereignty of the government. So that, private and government oil firms will be under control of the sovereignty of the government to be the revenue of the oil channeled to economic development of the country and distributed to rich and poor by providing job opportunities and other lawful ways in which the purpose of shariah of oil wealth applied.

CONCLUSION

The above discussion reveals that there are three types of ownership in practice among the countries individual, public and both of individual and public ownership. The prominent Muslim jurists differ on the ownership concept of minerals between individual and state ownership. With both unconstrained individual and state ownerships there is much possibility of the royal families, elite class or ruling parties' influential people owning oil lands and its industries only for their own interests. As a result causing the accumulation of the wealth in few hands of the society which is against one of the purpose (Maqasid) of Shariah. Islamic Shariah encourages private ownership and ratifies protection both individual and state ownership. It is better to protect and develop the oil wealth by both individual and state ownership under the principle of lawful sovereignty of the government with conditions and limitations to channel the revenues from the oil wealth towards economic development of the country.

REFERENCES

- Ashur, M.T.I., 1999. *Treaties on Maqasid Al-Shariah* Trans. Dar al-Nafis-Dar al-Fajar, Kuala Lumpur-Amman, Kuala Lumpur, Pages: 183.
- Cattan, H. and W.L. Reese, 1967. *The Law of Oil Concessions in the Middle East and North Africa*. Oceana Publications, New York, USA.
- Jasser, A., 2007. *Maqasid al-Shariah as Philosophy of Islamic Law*. International Institute of Islamic Thought, USA.
- Jumah, K.M.A., 2002. Arab state contract disputes: Lessons from the past. *Arab Law Q.*, 17: 215-240.
- Laluddin, H., M.N. Mohamad, Z. Nasohah and S. Ahmad, 2012. Property and ownership right from an Islamic perspective. *Adv. Nat. Appl. Sci.*, 6: 1125-1129.
- Mailula, D.T., 2013. *Protection of petroleum resources in Africa: A comparative analysis of oil and gas laws of selected African States*. Ph.D Thesis, University of South Africa, Pretoria, South Africa.
- Malik, E.W., 1996. State ownership of minerals under Islamic law. *J. Energy Nat. Resour. Law*, 14: 310-324.
- Qayyim, I.A., A.D. Shams and A.M. Ihlam, 1973. *Taha Abdul Rauf Saad*. Dar al-Jil, Beirut, Lebanon.
- Raysuni, A., 2005. *Imam al-shatibi's theory of the higher objectives and intents of Islamic law*. International Institute of Thought, London, UK.
- Starke, J.G., 1989. *Introduction to International Law*. Butterworths Publisher, London, UK.
- Summers, W.L., 1919. *Property in Oil and Gas*. *Yale Law J.*, 29: 174-187.
- Toriguian, S., 1972. *Legal Aspects of Oil Concessions in the Middle East*. Hamaskaine Press, Beirut, Lebanon.