

“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.”²

This verses started by the word of obligation that is *âminû* and *'anfiqû*. When discussing on property right, we can take from this statement some of lesson. Mandate or *amânah* in this verse can be taken from word *ja'alakum mustakhlafina fih*. So, we can utilize this property because God give it to us. And before he give us this property there are many requirement and part of them are we must obey what he want, believing him and give charity what in our hand from property. After we analysis from many side of perspective finally we will know that the Qur'an has give us complete rule how to manage and using property like will discuss it.

Someone who has been fortunate to acquire the property, in effect only accept property as a trust to be distributed and spent in accordance with the will of the true owner (Allah SWT), either in development or use of property. From the beginning God has determined that the property should be used for the common good. Not even an exaggeration to say that "at first" society that is authorized to use the property as a whole, then Allah conferred a portion of it to individuals (and institutions) who seek placement in accordance with the needs of every people. So a property ownership by the new man can be considered valid once it had obtained permission from Allah to have it. This means, ownership use the property must be based on the provisions of shara 'as stated in the Qur'an.

As a separate system, Islamic economics explaine everything related to the mechanism of acquisition of ownership, procedures for managing and developing the property, as well as how to distribute the wealth among human beings in detail through the provisions of its laws. On that basis, then the laws relating to economic

² al-Hadid: 7

issues in Islam, built upon common principles of Islamic economy (*al-qawâid al-'amma al-al-Islâmyyah iqtisâdi*) which includes three principles, namely:³

1. Ownership
2. Wealth management mechanism and
3. Distribution of wealth among the people

Of some description texts *shara'* can be explained that the possession of classified into three types, namely:⁴

1. Private property
2. Collective property
3. State property

In order to protect ownership, God Almighty ordered us to guard money. The Qur'an has also preserved freedom of ownership as God has ordained through enacting the penal code such as cutting the hand of a thief and others.

B. Property Rights in Islam and Capitalism

The Qur'an describes clearly how to manage the property and took the necessary rule by enacting economic and social legislations which omitted feudalism and ensured a respectful standard of living even for those who did not own any property. It was such a guarantee that Islam protected the poor class from exploitation by the corporacy.

Actually, not every regulation that exist in capitalism all refused by Islam, it must be understood that Islam would have permitted only such type of capitalism as would serve the public interest. In order to make the analysis run away in corridor of objective, the writer will mention the goodness and the weakness of capitalism below.

The goodness of the capitalist economic system can be explained in brief the goodness of the capitalist economic system:⁵

³ Muhammad Husain Abdullah, *Studi Dasar-Dasar Pemikiran Islam*, translated by Zamroni, (Bogor: Pustaka Thariqul Izzah, 2002), p. 106.

⁴ *Ibid.*, p. 106-108.

1. Proponents claim that the capitalist economic system economic very useful to encourage freedom for the betterment of society. They call it the basic economic law, and if the legal basis is performing well and free, it will increase productivity in the society. This is not only the improvement of State assets but can realize the wealth distribution proportionally.
2. Competition among individual will realize productivity and price on a reasonable and will help maintain a rational adjustment between two variables. Competition will maintain profits and wages stage at a simple and rational. For that, the basic law will defend all cases the fundamental stages.
3. The capitalist economic expressed that motivation for profit is the best destination, comparable to maximize productivity purpose. The less motivation for getting benefit, so getting fewer and smaller motivation to work harder and improve productivity can be ignored. Conversely, if we maintain the motivation of individuals to earn as much income as possible it will maximize the productivity.

In this way the quality and quantity of productivity will be repaired. All productivity principle will be improved to achieve that motivation. Consumptions of goods will used with a large quantity. Thus the motivation for profit is very useful for the individual.

The Weaknesses of the Capitalist Economic System⁶

1. Unlimited competition would lead to many evils in society. As example: unlimited individual rights to property resulting in excessive accumulation of wealth by a few individuals. This resulted in unbalanced distribution of wealth in society and cause damage system of economy.
2. The spirit of free competition resulted in rivalries between the interests of individuals so, individual and public interest will not affect balance and lack

⁵Afzalur Rahman, *Doktrin Ekonomi Islam*, translated by Drs. Soeroyo, M. A. and Drs. Nastangin, (Yogyakarta: Dana Bakti Wakaf, 1995), p. 3.

⁶*Ibid.*, p. 4.

of harmony in the society. If wealth owned only a small fraction of individuals, then only use it for personal gain as well. A clear benefit of society eventually abandoned. Competition between the interests of the society and individual is slowly to be an important part in the overall society, where it will interfere with the systems of economic.

3. Moral values were high as brotherhood, cooperation, mutual aid, compassion and generosity is no longer worthwhile and not ignored anymore in social life. These values will ultimately be replaced individualistic attitude as selfish, vindictive and hostility between people. All the people working to achieve personal motivation and no further purpose to encourage them to work for the benefit of the more beneficial to the common good. Often there are individuals with its interest's aside communal interest in order to achieve his goal.
4. The differences between the owner of factory and employers would cause people to split into two rival groups that have mutual interests to drop between one another. Wage earners do not have the same opportunity to rival the person who has the capital. He has a chance to get a better education, technical skills are perfect, and a good job. This injustice will only further deepen the gap between the poor by the rich.
5. Furthermore, the system is so far resulted in moral damages and broken so it does not form noble moral values among the experts, misrepresentation and ideas are vile and immoral. In an effort to obtain the individual's wealth was often based on the spirit of cheating them. With an uneven situation so many ways to collecting wealth by way of deception, and ignore justice.
6. In short, the capitalist economic system on the one side provide all the benefits productivity and distribution under the control of the experts, who ruled much welfare problem and restricts the flow of wealth through narrow channels. In summary, all of the analysis was the result of an infinite desire to property and free competition.

As we know capitalism tends to exploit force of people for getting highest goal of company. By purifying and refining human nature and at the same time making the necessary legislations, Islam would not have allowed capitalism to grow into an oppressive and exploiting force. Besides, the permission of private ownership under Islam was subject to certain restrictions. It was prescribed, for example, that public resources are collective property. Where principles of justice required it, Islam prohibited private ownership and permitted it only when satisfactory guarantees had been made against injustice and oppression. Islam does not justify the accumulation of personal possessions. Islam justifies private property under certain provisions, other than Islam it will also empower the government to take steps.⁷

After deepening what we has discussed on property as state earlier, then can be gotten the line that the main feature of the concept of private property rights in Islam are the property belongs to the community, private property rights freely given but conditional, so it holds the trust property is as community and to enjoy its benefits justified freely on condition if not violating the rights of others. Private right to property is limited by certain restrictions and control of the government that aims to protect property by a small group of people. These limits are intended to achieve social justice in society.⁸

C. Property Rights in Islam and Socialism

Collective ownership of all property, as stated earlier, is the most distinctive character of socialist economy. Private ownership of property and of all the means of production, distribution and exchange is totally under the control of state. Land, factories, transport, communications, mines, etc. are all placed under state control. This leads to manage of these means of production by the bureaucracy. Bureaucratic running of economic machinery results into inefficiency, low production then collapse when the bureaucrats lack initiative because not compatible with their talent.

⁷*Ibid.* , p. 101.

⁸*Ibid.*, p. 109.

Islam does not abolish private ownership of property and does not place all the means of production, distribution and exchange in the hands of the state. Although Islam upholds public ownership of some means of production which are the common utility to the people, but it concedes the rights of private ownership of majority of the means of production and distribution. Unlike socialism, Islam gives economic freedom to an individual who can earn wealth, own it and enjoy it within certain limits provided he does not infringe teachings of Islam in the process of earning, owning and consuming it.⁹

If we review the three doctrines that are currently propagated namely capitalism, socialism and Islam, we shall realize how the economic system and the theory of ownership in each doctrine are closely related to their doctrine and social background. As previously mentioned, capitalism is based on the assumption that the individual is the important one for developing country without any restricting from state. Every thing will develop in normally when state not interfere the nature competition in getting wealth that occurring in the society. It follows that capitalism tends to permit unrestricted private ownership.

On the opposite, socialism is based on the belief that the Community is the base and that the people has no separate existence of his own. Their point of rule is abolishing private ownership. Therefore, socialism renders unto the state (as representative of the community) the ownership of all properties, this is really contrary with capitalism even depriving all individuals of such a right in oeder to make the discussion comprehensive below will be explained the goodness and the weakness of socialism.

The Goodness of the Socialist Economic System¹⁰

1. Every citizen is provided basic necessities including food twice a day, a few clothes, convenience facilities, properly home and others.

⁹ *Media Umat*, edisi 79, Pusat Kajian Islam dan Peradaban, p. 18.

¹⁰ Afzalur Rahman, *op. cit.*, p. 6.

2. Each individual gets a job and those who are weak and there is physical disability under the State supervision.
3. All work carried out by planning the perfect country between productivity and consumption. Thus the problems and shortcomings of over productivity as true in a capitalist economic system will not apply.
4. All forms of productivity owned and managed by the State and advantages gained will used for the benefit of the people.

The Weakness of the Socialist economic system has the following weaknesses:¹¹

1. Bargaining is very hard done by individuals who are forced to sacrifice the freedom of the individual, and the right to private property just to get fed twice a day.
2. System is completely rejecting selfishness, which hinders the individual's authority to obtain the freedom of thought and action. This indicates indirectly that the system is closer to the economic system dictatorship. Labor was enslaved by state to work like a machine.
3. In this system all the activities taken over in order to achieve economic goals, while the individual's moral education neglected. Thus if the achievement material needs to be the main purpose and moral values are not ignored anymore, so can be avoided in the end the people will be divided into several groups. The whole power is in the hands of the workers who are less education and civilized, unjust, oppression and revenge, be more dangerous than the capitalist economic system.
4. Socialist economic system tray to achieve these goals through external restrictions and restrictions preclude the necessity of moral and individual exercises. It is obvious they are trying to achieve the goal triumph: such as Law it selves is not sufficient to fix a person without moral education and

¹¹ *Ibid.*, p. 7.

individual training. Furthermore, behind the efforts to foster a spirit of brotherhood and good cooperation among employers with wage earners, the socialist economic system fosters hostility and resentment between them.

Overall, this systematic attempt to change the inequality of wealth by eliminating individual rights and freedoms and the right to property resulting in loss of work for a more enterprising spirit and reduced the efficiency of labor

Get away from those both extremes principle, there is moderate concept of economy that makes balance between each other that is Islam. Islam holds a different social concept and, therefore, it adopts a different economic system. With respect to the individual-community relationship, Islam maintains that an individual has two simultaneous capacities: his capacity as an independent individual and his capacity as a member of the community. His response to either capacity may at times be greater than his response to the other one but he will finally combine and harmonize both.¹²

When we analyze this principle more, of course will be gotten the line that the social concept based on such a belief which does not separate the existence of private right from his community are moderate system when comparing with capitalism and socialism. Even regard them as two conflicting forces than trying to overcome one another. Since an individual has an independent existence and is at the same time a member of the community, it is required of legislation to establish harmony between individual and communal propensities as well as between the interests of each individual and those of others. But such harmony must be achieved without sacrificing either interest for the good of the other. Legislation should not aim at the crushing of individuals for the sake of society nor should it allow society to disintegrate for 'the sake of one or more individuals.

This Islamic concept of economy is really as the best solving when now many scholars of economy realize that these two systems of economy get stuck when face big crisis like in Europe lately. The economic system of Islam is based on the above

¹² Hafidz Abdurrahman, *Muqoddimah Sistem Ekonomi Islam: Kritik Atas Sistem Ekonomi Kapitalisme Hingga Sosialisme Marxisme*, (Bogor: Al-Azhar Press, 2011), p. 8.

mentioned concept of harmony which is moderate between capitalism and communism. It combines the merits of both systems without making the mistakes or deviations of either. It permits private ownership in principle but subjects it to such restrictions as would render it quite harmless. Islam authorizes the community and the ruler in his capacity as the representative of the community to enact the necessary legislation organizing ownership and to change such legislation whenever he deems that the public interest requires it.

Islam admitted and respect on private ownership since it not tend to dominated the resource that claimed as the collective property utilized and usefull by many people then has power to eliminate dispute of public interest from it. It will be remembered that permission of private ownership in principle while vesting the community with the power to organize and restrict it is a much better arrangement than outright abolition of ownership on the uncertain assumption that it is neither a natural propensity nor a human necessity. The fact that Soviet Russia has had to permit a certain (small) degree of private ownership is clear evidence that satisfying the propensities of human nature is the best thing for both the individual and public interest.¹³

If the communists say that the differences among the classes and the individuals in Rusia are too small to lead to luxury or deprivation we may say that-thirteen centuries before communism came into existence-Islam included among its principles the necessity of bridging the gaps among people, prohibiting luxury and wiping out deprivation.

D. Private Property in Islam

The Qur'an which applies to substances or specific uses, which allows the owner to utilize the goods and to obtain compensation - both because of its usefulness is taken by someone else such as rent or for consumption - of goods. The existence of

¹³ *Ibid.*, p. 73.

authority to the people to spend, spend and do various forms of property owned transactions, such as sale, mortgage, lease, grant, will, etc. This is evidence that Islam recognize the existence of individual property rights.¹⁴

Because the ownership based on permitting *al-syar'i* to use an object, then the ownership of an object is not merely derived from the object itself or because the character is basically, like useful or not. But he comes from a permit granted by the *al-syar'i* and comes from because that allowed *al-syar'i* to have it (such as ownership of a house, land, etc. instead of chicken liquor, pork, hemp, etc.), thus giving birth as a result, namely the ownership of the object.¹⁵

E. Collective Property in Islam

Collective ownership is a permit *al-syar'i* to a community to jointly take advantage of the object. While the objects are classified as collective ownership categories are objects that have been claimed by *al-syar'i* as objects of the community together and not be dominated by some people only. Due to public property, then any individual can use it but have it banned. At least, objects can be grouped into collective ownership; there are three types, namely:¹⁶

1. Collective Facilities

These objects belong to the type of collective ownership as a staple of the community and, if not met could lead to disunity. Property type is described in the hadith the prophet relating to public facilities:

الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ فِي الْكَلْبِ وَالْمَاءِ وَالنَّارِ

"People associate (collectively own) in three things: water, pastures and fire" (Ahmad and Abu Dawud)¹⁷

¹⁴ Taqyuddin al-Nabhani, *Membangun Sistem Ekonomi Alternatif: Perspektif Islam*, edition VII, translated by Drs. Moh. Maghfur Wachid, (Surabaya: Risalah Gusti, 2002), p. 66-67.

¹⁵ *Ibid.*, p. 67.

¹⁶ Muhammad Husain Abdullah, *op. cit.*, p. 107.

¹⁷ Ibnu Majah Abu Abdillah, *Sunan Ibn Majah*, juz. 2, (Beirut: Dar al-Ihya' al-Arabiyyah, 1311 H), p. 826.

And in addition there is another hadith: "... and the price is haram" (Ibn Majah, Ibn Abbas).¹⁸

Water referred to in the above hadith is that water is still not taken, either out of springs, wells, and the flow in the river or lake water is not owned by individuals in his home. Therefore, the discussion of the entrepreneur of the water as a collective ownership focused on water that has not taken before. As for *al-kala'* is grassland, either wet or green grass (*al-kala'*) and hay (*al-hasyiṣ*) which grown in soil, mountain or river that does not exist of owner. While the definition of *al-nâr* is the fuel and everything associated with it, including the wood for cooking.¹⁹

Discussing on collective ownership, not just limited to these three kinds of objects but also includes everything needed by the community and, if not met, could cause divisions and disputes. This is because the indication of *al-syar'i* associated with this matter considers that the objects are categorized as public ownership because of certain traits in them that are categorized as collective ownership.²⁰

2. The Nature of Natural Resources Block Formation Owned in private

Eventhough the same as the common means of collective ownership as the first type, but there are difference between the two. If ownership of the first kind, nature and origin of its formation does not preclude a person to have it, then this second type, the nature and origin of its formation, prevents a person to have it in private. As the hadith the prophet:

مِنِّي مُنَاخٌ مِّنْ سَبَقَ

¹⁸ al-Shawkani, *Nayl al-Awtar*, juz. 6 (Beirut: Dar al-Fikr, 1994), p. 48.

¹⁹ Lajnah Pentashihan Mushaf Al-Qur'an, *op. cit.*, p. 9.

²⁰ Muhammad Husain Abdullah, *op. cit.*, p. 107.

"The city of Mina to be a resident of any place which first (to him)"
(Reported by al-Tirmidhi, ibn Majah, and al-Hakim from 'Aishah)²¹

Mina is a place name that is located outside the city of Makkah al-Mukarramah as a haven after completing *wuqûf* in Arafah field with the aim of the symbols of the pilgrimage in the time specified, such as throwing *Jumrâh*, animal slaughtering, cutting *qurbân*, and spends the night there. Meaning where first person get to the conclusion is that Mina is where Muslims can utilize it. Whoever is the first reached the place at Mina, and he occupied it, then it is a part thereof and does not belong in private so that others may not have one (occupied).

Similarly, public roads, the right man passing on it. Therefore, the use of roads that could harm other people in need should not be allowed by stake holder. This also applies to Masjid. Include in this category are railroads, water and electricity installations, poles supporting electricity lines and water pipes, it is public property in accordance with its own status as a public street is public property, that he should not be owned privately.²²

3. Mine Deposit goods Unlimited

Basic theorem used for this type of deposit is not limited to goods that are hadith narrated by Abu Dawud the prophet of Abyad ibn Hamal who asked the Prophet that he be allowed to manage the salt mines in the area Ma'rab:

أَنَّهُ وَفَدَّ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَاسْتَقْطَعَهُ الْمِلْحَ فَقَطَعَهُ لَهُ
فَلَمَّا أَنْ وُلِّيَ قَالَ رَجُلٌ مِنَ الْمَجْلِسِ أَتَدْرِي مَا قَطَعْتَ لَهُ إِيمًا قَطَعْتَ لَهُ
الْمَاءَ الْعِدَّ قَالَ فَاَنْتَزَعَ مِنْهُ

²¹ Muhammad bin Isa, *Sunan Tirmidzi*, juz. 3, (Mesir: Mustafa al-Baabi al-Halbi, 1975), p. 219.

²² Muhammad Husain Abdullah, *op. cit.*, p. 107.

"That he came to the Messenger of Allah asked (mine) salt, and then give it. After he left, there is a man who asked him: " O Messenger of Allah, you know what you give him? In fact, you have to give something like flowing water. "Then he said: Then the Messenger of mine was pulled back from him" (Abu Dawud).²³

The ban is not just limited to the salt mines only, but covers the entire deposit amount of minerals that it's deposite like water or unlimited. It also includes ownership of all types of mines, both of which appear on the surface of the earth as salt, precious stones or quarry is located in the bowels of the earth like mine gold, silver, iron, copper, oil, tin and such kind of it. Such minerals are into the collective domain so that should not be owned privately or only for several people. Similarly, the law should not, give privileges to someone or some institution to exploit but government must let that collective property for all citizens. The state is obliged to dig it up, separating it from other objects, sell and store the result in the *Bayt al-Mâl*.²⁴

But, when the mineral deposit is small or very limited, can be owned in private or associations.²⁵ It is based on the hadith that the Prophet told to Bilal ibn Harith allow al-Muzani has an existing mineral in Tihamah and they must pay *khums* (one fifth) than that produced the *Bayt al-Mâl*.²⁶

In Islam, is distinguished between ownership in private and ownership of the State. State ownership is property that is the right of all Muslims/people and their management under the authority of the caliph/state, where the caliph/country has the right to give or separate it to some of the Muslims/people in accordance with *ijtihad*. Meaning management by the Deputy is the power of the caliph possessed to manage it. State ownership includes all types of property

²³ al-Shawkani, *op.cit.*, p. 53.

²⁴ Afzalur Rahman, *op. cit.*, p. 105.

²⁵ Muhammad Husain Abdullah, *op. cit.*, p. 108.

²⁶ Riwayat lengkap beserta penjelasannya lihat: Abu Ya'la al-Farra', *al-Ahkam al-Sultaniyyah*, p. 264.

that can not be classified into types of collective property but sometimes can be classified in private ownership of property types.²⁷

Some of the treasures that can be categorized into types of state ownership according to *al-syar'i* and Caliphs/country have the right to manage it with the view of *ijtihad* are:²⁸

1. Ghanimah property, *anfâl* (spoils of wealth gained from the war with heathen), *fay'* (assets acquired from the enemy without fighting)
2. Property derived from *kharâj* (Muslim rights over land acquired from the heathen, either through war or not)
3. Property derived from the *jizyah* (a right given by God to the Muslims from the disbelievers as their submission to Islam)
4. Property derived from *darîbah* (tax)
5. Property derived from '*usyur* (sales tax taken from the merchant who beyond its boundary with the levies which are classified by religion)
6. Property that there is no heir or heirs of the remaining excess property (*al-fadla al-amwâl*)
7. Property left by the apostates
8. Property unlawfully obtained by the authorities, state employees, assets acquired that not in line with the Qur'an.
9. Another state owner property, such as: desert, mountains, beaches, sea and land that is not found its owner.

²⁷ Muhammad Husain Abdullah, *op. cit.*, p. 108.

²⁸ *Ibid.*, p. 108.