

THE SYSTEM OF RETURNING CONFISCATED LAND OBJECTS AT THE BANDA ACEH CITY DISTRICT COURT: A STUDY OF AL-MILKIYAH RIGHTS IN FIQH MUAMALAH

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Abstract

This article aims to examine the system of returning confiscated objects at the Banda Aceh city district court according to the perspective of Al-Milkiyah Rights in Muamalah Jurisprudence. The approach taken by the author is juridical-empirical research. The main data is obtained from interviews with the parties, and a number of applicable laws and regulations, while secondary data is obtained from the results of research related to this research. The results showed that the system for returning confiscated objects was carried out based on the provisions of the SOP. In the decision of the Banda Aceh District Court No.64/Pdt.G/2020/PN Bna, the decision of the Banda Aceh High Court No. 72/PDT/2021/PT BNA, the decision of the Supreme Court of the Republic of Indonesia No. 4173 K/Pdt/2022 regarding unlawful acts, namely the Defendant occupying and obstructing the plaintiff to take control of the disputed land that he had obtained from the winning auction No. 533/01/2020, and the execution of the execution No. 533/01/2020, and the execution respondent did not voluntarily vacate the land, then the granting of the request for execution will be executed by force with the execution agency. The judge ordered the Registrar of the Banda Aceh District Court and bailiffs accompanied by two witnesses to carry out execution against the land in order to ensure law enforcement by handing over the object of the land plot to the applicant for execution by order of the judge. From this decision, it was decided to carry out the execution of the land to fulfil the decision that has permanent legal force. The land object in dispute must be returned based on an inkrah court decision for certainty of law enforcement.

Keywords: Banda Aceh, Court Decision, *Fiqh Muamalah*, *Hak Al-Milkiyah*, and Land Dispute.

Abstrak

Artikel ini bertujuan untuk mengkaji sistem pengembalian objek sitaan pada pengadilan negeri kota Banda Aceh menurut perspektif Hak Al-Milkiyah dalam Fikih Muamalah. Adapun pendekatan yang penulis lakukan adalah penelitian yuridis-empiris. Data utama diperoleh dari hasil wawancara dengan para pihak, dan sejumlah perundang-undangan dan aturan yang berlaku, sementara data sekunder didapatkan dari hasil penelitian terkait dengan penelitian ini. Hasil penelitian menunjukkan bahwa sistem pengembalian objek sitaan dilakukan berdasarkan ketentuan SOP. Pada keputusan Pengadilan Negeri Banda Aceh No.64/Pdt.G/2020/PN Bna, putusan Pengadilan Tinggi Banda Aceh No. 72/PDT/2021/PT BNA, putusan Mahkamah Agung RI No. 4173 K/Pdt/2022 tentang perbuatan melawan hukum, yaitu Tergugat menduduki dan menghalang-halangi penggugat untuk menguasai tanah sengketa yang telah dia peroleh dari hasil menang lelang No. 533/01/2020, dan termohon eksekusi tidak melakukan secara sukarela untuk mengosongkan tanah tersebut, maka dikabulkannya permohonan eksekusi akan dieksekusi secara paksa dengan lembaga eksekusi. Maka hakim memerintahkan Panitera Pengadilan Negeri Banda Aceh dan jurusita disertai dengan dua orang saksi untuk melaksanakan eksekusi terhadap tanah tersebut guna untuk kepastian penegakan hukum dengan meyerahkan objek sebidang tanah tersebut kepada pemohon eksekusi atas perintah hakim. Dari keputusan tersebut maka diputuskan untuk melaksanakan eksekusi terhadap tanah tersebut untuk memenuhi putusan yang telah berkekuatan hukum tetap. Objek tanah yang bersengketa dikembalikan harus didasari kepada keputusan pengadilan yang bersifat inkrah guna untuk kepastian penegakkan hukum.

Katakunci: Banda Aceh, Fiqh Muamalah, Hak Milkiyah, Pengadilan, Tanah Sengketa, dan Keputusan Pengadilan

INTRODUCTION

In general, Islam provides a proportional position between individual property rights, collective (public) property rights and absolute property rights.¹ Property rights (*al-milkiyah*) can change or be changed according to the

¹ Ahdiyati Agus Susila, "Al-Mal (Property Rights) in the Fuqaha Perspective (Concept of Intellectual Property Rights)", *Iqtishodiyah: Journal of Islamic Economics and Business*, Vol. 3, No. 2, 2017, pp. 18.

level of interest and urgency through justified means. In terminology, the definition of al-milk is an object that is devoted to someone that is fully under his control, so that others cannot act and use it.² Indeed, only Allah created everything in the universe, everything in this nature belongs to Allah. Allah's Word in Surah al-A'raf verse 128:

لِلْمُتَّقِينَ إِنَّ الْأَرْضَ لِلَّهِ يُورِثُهَا مَنْ يَشَاءُ مِنْ عِبَادِهِ وَالْعَاقِبَةُ

"Verily, the earth belongs to Allah, and He destroys it for whom He wills of His servants, and a good end is for those who fear". (Q.S. al-A'raf [7]: 128)

Human ownership is only limited to obtaining benefits from property, but the true right of ownership remains with Allah.³ This is reflected in Surah Al-Hadid verse 7, where Allah states that humans only hold the trust over the wealth he gives them, and they must utilise it in a good way.

أٰمِنُوٓا بِاللّٰهِ وَرَسُوْلِهِ وَاَنْفَقُوٓا مِمَّا جَعَلَكُمْ مُّسْتَحْلِفِيْنَ فِيْهِۗ فَاَلَّذِيْنَ اٰمَنُوٓا مِنْكُمْ وَاَنْفَقُوٓا لَهُمْ اٰجْرٌ كَبِيْرٌ

"Believe in Allah and His Messenger, and spend some of the wealth over which Allah has made you rulers. So those who believe among you and spend (some) of their wealth will have a great reward". (Q.S. AlHadid [57]: 7)

It explains that Allah has allowed us to take possession of property in order to support ourselves and make good use of it in order to gain great rewards.

Al-milk is also a relationship between a person and a property that is recognised by shara', which makes him have special power over a property, so that he can take legal action against the property as long as there is no shara' obstacle.⁴ There are several opinions about ownership, including those put forward by fiqh scholars such as the opinion of Muhammad Musthafa Al-Syalabi, property rights are privileges that give exclusive control over an object, preventing others from using or taking action against it, and giving the owner the freedom to act directly on the object as long as it does not conflict with shara'.⁵

Another opinion expressed by scholars Wahbah Al-Zuhaily and Ahmad Al-Zarqa about ownership is that both emphasise the right to use the

² Fathurrahman Djamil, *Islamic Economic Law: History, Theory, and Concepts* (Jakarta: Sinar Grafika, 2023).

³ Sarmiana Batubara, "Private and Public Relative Ownership (Al-Milkiyah Al-Muqayyadah) in Islamic Economics", *Sharia Scientific Journal*, Vol. 16, No. 2, 2017, p. 3. 3.

⁴ Musthafa Ahmad al-Syalabi, *Al-Madhal fi Ta'rif bil-Fiqh Islami waqawa'id al Milkiyah wal Uqud Fih*, (Egypt: Darul Ta'rif, Volume II, 1960), pp. 16.

⁵ Yusnedi Achmad, *Legal Aspects in Economics* (Yogyakarta: Deepublish, 2015).

authority to the owner unless there are certain legal obstacles.⁶ As according to Al-Syatibi (w.790 H/1388 M) who is one of the important figures from the Maliki madzhab argues, that what is referred to as property (*al-mal*) must have two elements, namely: First, there is an element of being able to own (*al-milkiyah*) which the owner can control. Second, the element of "*al-urf*", namely the recognition that something is according to the element of *al-urf* (customs that apply in society and are justified by religion) has been categorised as property (*al-mal*).⁷

The position of ownership in muamalah fiqh is very important because it is related to the validity of a property transaction. The transaction can be carried out if the ownership of the property is legally recognised and there is no other reason that revokes its ownership rights from the parties involved in the transaction.⁸ Therefore, in Islam, ownership is recognised if it is obtained through a legitimate process. Conversely, investment practices that violate the rules are strongly condemned, especially if they harm the people who actually have rights in individual ownership according to Islam. In principle, Islam does not recognise ownership arising from actions that are not in accordance with the correct provisions.⁹

The object of confiscation is a tangible object seized by an investigator, public prosecutor or official whose position has the authority to confiscate the goods for the purposes of evidence in the judicial process. Evidence is an object or material that supports the investigation of a criminal offence and includes tools or facilities involved in committing the crime. Evidence can be said to have the same meaning as confiscated objects. Article 1 point 16 of the Criminal Procedure Code which reads as follows: "Confiscation is a series of actions by investigators to take over or keep under their control movable objects or tangible or intangible immovable objects for the purposes of evidence in investigation, prosecution and justice."¹⁰

To obtain evidence, the first step is through the confiscation process in accordance with the provisions of the Criminal Procedure Code. For example,

⁶ Ambok, P, "Capitalist and Socialist Economic Ownership (The Concept of Tawhid in the Islamic System)", *Journal of Islamic Economic and Social Studies*, Vol. 4, No. 2, 2011, p. 9. 9.

⁷ Ahdiyat Agus Susila, "Al-Mal (Property Rights) in the Fuqaha Perspective (Concept of Intellectual Property Rights)", *Iqtishodiyah: Journal of Islamic Economics and Business*, Vol. 3, No. 2, 2017, pp. 23.

⁸ Kompasiana.com, "The Nature of Ownership in Islamic Perspective", Accessed from the site <https://www.kompasiana.com/hakikat-kepemilikan-dalam-perspektif-islam> on 21 December 2023.

⁹ M. Faruq an Nabahan, *Islamic Economic System: The Choice After the Failure of the Capitalist and Socialist Systems*, trans: Muhadi Zainuddin, (Yogyakarta: UII Press, 2000), pp. 44.

¹⁰ Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure, website <https://jdih.kemenkeu.go.id/fulltext/1981/8TAHUN~1981UU.HTM> (Accessed on 21 December 2023)

movable goods can be confiscated with a warrant first, then followed by an application for a decree and for evidence that is immovable goods related to a criminal offence through the mechanism of requesting a court order first after which confiscation is carried out and in the process of confiscation the investigator must make minutes and receipts of confiscation of evidence of a criminal offence.¹¹

In the judge's decision it can be determined whether the evidence is returned to the last holder or interested party to be returned to the party deemed the most entitled owner or unless the object is returned to the state to be destroyed immediately so that it cannot be used again in committing a criminal offence because it can endanger the public interest.¹²

Thus, the integrity of confiscated objects is needed not only for evidentiary purposes in the judicial process so that witnesses can easily recognise the confiscated objects as they were at the time of the crime.¹³ With the integrity and maintenance of confiscated objects, it is intended to provide protection for the property rights of the suspect, and the property rights of the victim of a criminal offence or other parties that may be related to the criminal offence.¹⁴

Sita is the beginning of an execution¹⁵. The decision is considered final because there is no legal action filed by the objecting party, so that its implementation can include decisions from the basic court, appeal level, cassation level, and/or review process. The investigator's responsibility towards the confiscated evidence is to maintain the form in which it was confiscated. Seized items are only used as evidence in the stages of investigation, prosecution, and trial in court. The beginning of the process of returning the confiscated object to its owner begins with a letter of surrender of the confiscated object attached to the seizure warrant, news of the seizure or news of the confiscation. Then if the investigator no longer needs the confiscated goods, the goods subject to confiscation are returned to those most entitled in accordance with Article 46 of the Criminal Procedure Code, but the

¹¹ Romy, Olga & Vonny, "Return of Evidence in the Settlement of *Criminal Cases Under KUHAP*", *Lex Crimen*, Vol. 10, No. 5, 2021, pp. 199-200.

¹² Romy, Olga & Vonny, "Return of Evidence in the Settlement of *Criminal Cases Under KUHAP*", *Lex Crimen*, Vol. 10, No. 5, 2021, p. 205. 205.

¹³ Maria Prisilia Djapai, "Management of Confiscated Property under Article 44 of the *Criminal Procedure Code*", *Lex Crimen*, Vol. 6, No. 7, 2017, pp. 39.

¹⁴ Muhammad Siddiq Armia et al., 'Post Amendment of Judicial Review in Indonesia: Has Judicial Power been Distributed Fairly?', *Journal of Indonesian Legal Studies* 7 (2022): 525,

<https://heinonline.org/HOL/Page?handle=hein.journals/jils7&id=529&div=&collection=>

¹⁵ Execution is the implementation of a decision that has permanent or definite legal force.

return of confiscated goods must be authorised by the chairman of the District Court. The return of confiscated evidence by investigators or public prosecutors without the permission of the chairman of the court, is considered unlawful and if the confiscated object is used for other purposes outside of investigation, prosecution, and justice, then this action is not justified and is considered to have violated the law.¹⁶

In the District Court of Banda Aceh, if goods are confiscated by order of the president of the court to the bailiff, the bailiff executes the contents of the decision in accordance with the order. In criminal cases, if the judge orders the return of the confiscated goods, the prosecutor is the one who executes the order. If the judge orders the return of the confiscated goods, the prosecutor as the executor of the confiscated goods is the one who returns the confiscated goods¹⁷ in criminal cases. In civil cases, it is the court that executes the court, on the order of the president of the court, the bailiff/registrar executes the contents of the decision. If in a criminal verdict, the judge orders to return to the rightful party, then the prosecutor makes a letter on the goods that have been confiscated to become evidence, and on the order of the judge the evidence is returned, the prosecutor who carries out the return as executor. An example of a fixed object such as a house, if the house is confiscated, there are residents living, then it is returned to the owner before the next process until it is executed. So before the verdict is legally binding, then when it is confiscated, the owner of the house remains in its ownership with the condition that it is not allowed to change any form of the confiscated building.¹⁸ In practice, execution is carried out by the court clerk or often by bailiffs under the orders and supervision of the head of the District Court of Banda Aceh.

In the legal provisions and SOPs there is a clear form of return of confiscated goods, but at the implementation level the return of confiscated objects sometimes has complicated problems, especially in cases involving the assets of third parties in the case, resulting in conflicts of interest.

RESEARCH METHODS

The research method of this article uses a qualitative research type, with a juridical-empirical approach focusing on combining the juridical approach

¹⁶ Chairul Fahmi, 'PHILOSOPHICAL TRANSFORMATION IN THE APPLICATION OF ISLAMIC SYARIAT (Critical Analysis of the Implementation of Islamic Shari'at in Aceh)', *Al-Manahij: Journal of Islamic Legal Studies* 6, no. 2 (2012): 167-76.

¹⁷ The executor is the person responsible for carrying out the execution or executing the execution order or duty.

¹⁸ Interview with Budiwansyah, S.H. Bailiff at the District Court of Banda Aceh City on 28 December 2023.

(law as a system, legal theory, legal interpretation) with the empirical approach (collection and analysis of factual data from the real world). This could mean examining how the law is actually applied in the field, how legal decisions affect individuals or society, or how the law influences certain behaviours or circumstances. This juridical-empirical research is conducted to generate a deeper understanding of how the law works in practice in the real world.¹⁹

Primary data in this study through interviews obtained directly from bailiffs and clerks at the Banda Aceh City District Court. Secondary data used in this research are books, articles, journals, theses and other documentation materials related to this research. The data will be analysed descriptively qualitatively, which is a method used to dissect a field phenomenon, both in the form of primary data and secondary data which will be arranged systematically after all the processed data has been collected.

DISCUSSION

A. Definition and Legal Basis of *Al-Milkiyah* Rights

Ownership in Islam refers to control over something that is regulated in accordance with Islamic law, and authorises individuals to act on their ownership as long as it is in accordance with established principles. In principle, Islam does not impose restrictions on the type or form of effort a person makes to acquire property, nor does it limit how much or how little the results obtained from the effort.²⁰ The word property comes from Arabic *al-milk* which means control of something. *Al-milk* also means something that is owned (property). Ownership is also a person's relationship with something property that is recognised by shara'.²¹

Human ownership is only ownership to enjoy empowering existing wealth, not as the ultimate owner. Humans can only have the benefits and facilities that exist. Such as having land that can be used as a residence, agricultural area, or as a business field.

There are several definitions of *al-milk* put forward by Fiqh scholars, but the essence remains the same. *Al-milk / Ownership* is a specialisation of an object that allows him to act legally on the object according to his wishes, as long as there is no Shara' obstacle and which prevents others from acting legally on the object. This means that the object assigned to a person is completely under his control, so that others cannot act on it or utilise it. So the

¹⁹ Muhammad Siddiq-Armiya, *Determining Legal Research Methods and Approaches*, ed. Chairul Fahmi (Indonesia: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022).

²⁰ Ali Akbar, "The Concept of Ownership in Islam", *Ushuluddin Journal*, Vol. XVIII, No. 2, 2012, pp. 2.

²¹ Achmad, *Legal Aspects in Economics*.

owner of the property is free to act legally on his property, such as in buying and selling, grants, waqf and also lending it to others, as long as there is no obstacle from shara'. Examples of shara' obstacles include the person is not legally capable of acting such as a child, a person who has lost his memory, a person with no reason and so on, or his legal capacity is lost for example experiencing bankruptcy so that in some situations, a person loses the legal ability to manage his own property.²²

The word "ownership" comes from the Arabic word "*al-milk*" which means control over something. "*Al-milk*" also refers to something that is owned, namely property. In the context of Islamic law, property also reflects the relationship between a person and property that is recognised by sharia. Human ownership is only to enjoy and utilise the wealth owned, not as the true owner. Humans can only own the benefits and facilities available, such as owning land for residence, agriculture, or business.

Fiqh scholars have given several definitions of "*al-milk*", but the essence remains the same. "*Al-milk*" is a specialisation of an object that allows a person to act legally on it as he wishes, as long as there is no Shara' hindrance that prevents him and prevents others from acting legally on it. In other words, the object devoted to a person is fully under his control, so that others cannot act and utilise it. As the owner of property, a person is free to act legally on his property, such as in buying and selling transactions, grants, waqf, and loans to others, as long as there is no obstacle from shara'. Examples of shara' impediments are people who are not yet capable of acting legally such as children, people who lose their memory, or people who are not of sound mind, and so on. A person who is incapable of acting legally, such as a child, a person who has lost his memory, or a person who is not of sound mind, and so on.

Meanwhile, the right of *ownership/al-milk* according to the Civil Code (KUHAP) is defined as the right to enjoy the use of an object freely, and to act freely on the object with full sovereignty, as long as it does not conflict with the Law or general regulations stipulated by a power entitled to stipulate it, and does not interfere with the rights of others, all without reducing the possibility of revoking the right in the public interest based on the provisions of the Law and with the payment of compensation.²³

²² Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, 'THE CONCEPT OF FRANCHISING IN THE INDONESIAN CIVIL LAW AND ISLAM', *Al-Mudharabah: Journal of Islamic Economics and Finance* 4, no. 2 (29 September 2023): 14–39, <https://doi.org/10.22373/al-mudharabah.v5i2.3409>.

²³ R. Subekti and R. Tijtrosbibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Paramita, 2003), pp. 166.

B. Legal Basis for Al-Milkiyah Rights

In the Quran there is an explanation of property rights, including:

1) Allah's word in Surah Al-Baqarah (2) : 284

لِلّٰهِ مَا فِي السَّمٰوٰتِ وَمَا فِي الْاَرْضِؕ وَاِنْ تُبْدُوْا مَا فِيْ اَنْفُسِكُمْ اَوْ تُخْفُوْهُ يُحَاسِبِكُمْ بِهٖ اللّٰهُ فَيَغْفِرُ لِمَنْ يَّشَآءُ وَيُعَذِّبُ مَنْ يَّعْزِبُؕ وَاللّٰهُ عَلٰى كُلِّ شَيْءٍ قَدِيْرٌ

"To Allah belongs whatsoever is in the heavens and whatsoever is in the earth; and if you bring forth what is in your hearts or conceal it, Allah will reckon with you concerning it. So Allah forgives whom He wills and punishes whom He wills; and Allah is over all things."

Basically, everything in the heavens and the earth belongs to Allah. Humans do not have absolute ownership, but are limited by the rights of Allah, so it is obligatory for them to give a small portion of their wealth as zakat and for other acts of worship. The ways of utilising wealth are aimed at achieving common prosperity, and their implementation can be regulated by the community through their representatives. Individual property can be utilised for the public good, provided the owner receives a reasonable return. The community is not allowed to interfere with or infringe on private interests provided their actions do not harm others or the community.

2) Allah's word in Surah An-Nisa (4) : 29

يٰۤاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تَاْكُلُوْا اَمْوَالِكُمْ بَيْنَكُمْ بَيْنَكُمْ بَاطِلٍ اِلَّا اَنْ تَكُوْنُوْا. تِجَارَةٌ عَنِ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوْا اَنْفُسَكُمْ اِنَّ اللّٰهَ كَانَ بِكُمْ رَحِيْمًا

"O you who have believed, do not eat of one another's wealth by unlawful means, except by way of mutual trade between you. And kill not yourselves; surely Allah is most merciful to you."

In this context, it is explained that we as humans are forbidden to take away someone's property rights, especially in relation to the ownership of someone's property in an unfair and inappropriate manner.

The legal basis for the return of confiscated goods system in the district court is multifaceted, ranging from the return procedure, management authority, and applicable laws. The following are some of the relevant legal bases:

1. Return Procedure: The return of confiscated goods in the district court is carried out in two conditions, namely before the case is decided or

simultaneously with the court process and after the court decision.²⁴ The return of confiscated goods is carried out based on an order or stipulation for the return of confiscated goods from the superior investigator.

2. Management Authority: The management of confiscated goods in the district court is passed on to the manager of evidence and booty. This management is carried out by depositing the proceeds from the sale of booty into the state treasury.
3. Return to Owner: The return of confiscated objects to the owner or other person is carried out by providing a memorandum of opinion and minutes of the return of confiscated goods signed by the manager of evidence and booty.
4. Management of booty: The management of booty in the district court is carried out by organising and safeguarding the booty so that it is not damaged or lost.
5. Management of Criminal Offence Assets: The management of criminal assets, including confiscated objects, is carried out by recovering losses caused by criminal offences. Conventional and *non-conviction based* approaches are used to recover offence assets.²⁵

In more detail, the legal standards on the return of confiscated objects to the district court should be in line with the applicable provisions and evidentiary interests in court. The procedures, management authority, and applicable laws of possession should be passed on in a transparent and orderly manner.²⁶

Regarding the return of confiscated objects, Article 46 of the Criminal Procedure Code stipulates that confiscated objects shall be returned to the person from whom they were confiscated or to the most entitled person if: It is no longer needed for investigation and prosecution. The return of confiscated property in the district courts in Indonesia is based on the provisions of the Civil Code, as well as on the interpretation and application of these provisions in court decisions. In addition, further procedures may be regulated in implementing regulations issued by the Supreme Court or authorised judicial institutions.

²⁴ HukumOnline.com, Supriardoyo Simanjuntak, "Legal Steps if Returned Evidence is Damaged", <https://www.hukumonline.com/klinik/a/langkah-hukum-jika-barang-bukti-yang-dikembalikan-rusak-lt63e5330c7579c/> (Accessed: 19 April 2024).

²⁵ Hukumonline.com, Dian Dwi Jayanti, "Can confiscated goods be returned?", <https://www.hukumonline.com/klinik/a/apakah-barang-sitaan-dapat-dikembalikan-lt637f2bf0a5396/> (Accessed: 19 April 2024)

²⁶ Chairul Fahmi, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industry in Aceh, Indonesia', *Peuradeun Scientific Journal* 11, no. 2 (30 May 2023): 667–86, <https://doi.org/10.26811/peuradeun.v11i2.923>.

There are traditions that are relevant to the issue of returning confiscated goods in the context of Islamic law. One of the most frequently cited traditions related to the principle of returning confiscated goods is the hadith narrated by Abu Hurairah as reported by Imam Bukhari and Muslim, which states:

"Whoever confiscates his brother's property unjustly, let him return it before the day comes when there will be no dinars and dirhams; on that day, if he has good deeds, a portion of his good deeds will be taken from him in proportion to the amount of his wrongdoing. And if he has no good deeds, then his sins will be taken away and charged to the one he wronged."

In the context of returning confiscated property, this Hadith emphasises the importance of returning unjustly taken property to its owner before the Day of Judgement. This shows that in Islam, the unjust taking of property is strictly prohibited, and the party who took the property must return the unjustly taken property to its owner. This Hadith confirms the principles of justice and social responsibility in Islam, and can be used as a guideline in determining attitudes regarding the return of confiscated goods in Muslim societies.

C. Standards of *Al-Milkiyah* Rights on the Return of Confiscated Objects in the District Court

The property rights standard in the return of seized goods in the District Court includes some basic principles that must be considered to ensure fairness and legal certainty. Here are some of the property rights standards that are usually applied:

- a. **Legal Certainty:** The return of seized goods must be based on clear and certain law. The District Court must ensure that the decision to return seized goods is based on applicable legal provisions, be it laws, court decisions that have obtained permanent legal force, or applicable legal principles.
- b. **Public Interest:** The return of seized goods must take into account the public interest, including the interests of the wider community and social stability. The District Court must ensure that the return of confiscated goods is not detrimental to the public interest or society in general.
- c. **Fairness:** The return of seized goods must be fair and proportionate to the loss suffered by the party who lost the goods. The District Court must ensure that the decision to return confiscated goods takes into account the principles of justice and does not unfairly disadvantage either party.
- d. **Property Rights:** The return of seized goods must take into account legitimate property rights. The District Court must ensure that seized

goods are returned to their rightful owners in accordance with property rights recognised by law.

- e. Recovery of Losses: If there is a loss suffered by the party who lost the seized goods due to unauthorised seizure, the District Court should consider compensating or compensating the party as a reasonable remedy.
- f. Adherence to Legal Procedures: The return of seized goods must be carried out in accordance with applicable legal procedures. The District Court must ensure that all processes for the return of confiscated goods are carried out in accordance with applicable legal provisions and procedures, including the fulfilment of established conditions.

By paying attention to this property rights standard, the District Court can ensure that the return of confiscated goods is carried out with due regard to the principles of justice, legal certainty, and public interest, as well as complying with applicable legal principles.

D. Analysis of the System of Returning Confiscated Objects in Land Rights Disputes at the District Court of Banda Aceh City in the Perspective of Al-Milkiyah Rights

- 1) Decision of the District Court of Banda Aceh Number 64/Pdt.G/2020/Pn Bna in relation to justice and legal certainty

If the concepts of justice and legal certainty are connected to decision No. 64/Pdt.G/2020/Pn Bna on tort, in the decision the respondent for execution filed a lawsuit at the Banda Aceh District Court, where the applicant as the winner of the auction was also made a party to the case in the position of the third defendant, because he felt that the auction land was illegally owned by the applicant. But the lawsuit was rejected by the judge because the applicant had very strong authentic evidence. In this case there was an unlawful act, namely that the respondent was still occupying and obstructing the applicant from controlling the disputed land that he had obtained from the winning auction on 1 October 2020 No. 533/01/2020. In the counterclaim, it is stated that the counterclaim defendant who controls the disputed object without the permission of the counterclaim plaintiff to dismantle the building in any form and vacate the disputed object voluntarily, if it cannot be done voluntarily, it will be carried out by force through the execution institution.²⁷

²⁷ Ahmad Luqman Hakim and Irfa Munandar, 'THE LEGALITY OF MURABAHAHAH CONTRACTS SYSTEM IN ISLAMIC FINANCING INSTITUTIONS: An Analysis of Muḥammad BinṢāli Ṣāliḥ Al-UAl-Uṣaimīn's Thought', *JURISTA: Journal of Law and Justice* 7, no. 1 (2023): 24–36, <https://doi.org/10.1234/jurista.v7i1.66>.

Considering the above, the execution respondent did not show good faith voluntarily, the execution petition of the execution petitioner was granted. The judge ordered the Registrar of the District Court of Banda Aceh and the bailiff accompanied by two witnesses to carry out the execution against the land in order to ensure the enforcement of the law by handing over the object of the land plot to the applicant for execution by order of the judge.

2) Property rights in land confiscated as an object of confiscation in judicial proceedings at the District Court of Banda Aceh City.

In the context of Indonesian law, "Hak Milik" on land is the strongest right to land owned by a person. When land is seized as an object of confiscation in the judicial process at the District Court of Banda Aceh City, it means that the land becomes part of the evidence or object of the case in the ongoing legal process. Although the land is confiscated, the original property rights remain attached to the legal owner. This means that even if the owner cannot use or control the land during the judicial process, the title remains. The land does not become the property of the District Court or any other party involved in the legal proceedings.

Property rights to ownership of disputed land seized as an object of confiscation in the District Court of Banda Aceh City still follow the basic principles of property rights regulated in property law in Indonesia. The following are some important points related to the concept of property rights in this context:

- a. Absolute Property Rights: Property rights in Indonesia are regulated by Law No. 5/1960 on Basic Agrarian Principles (UUPA). According to UUPA, hak milik is the strongest right to land owned by a person, which gives the owner full power to utilise, control and enjoy the land, in accordance with applicable regulations.
- b. Title Remains: Although land is seized as an object of confiscation in judicial proceedings, the title to the land remains with the rightful owner. This means that the owner retains the right to mount a defence and prove their ownership claim in court.
- c. Return of Title: If the landowner is found not guilty or not involved in the unlawful act that is the subject of the judgement, the court will usually order the return of the title to the land to the owner.
- d. Auction: In some cases, if the dispute relates to the complex ownership status of the land or if the owner cannot be clearly ascertained, the court may order the auction or sale of the land. The proceeds from the

auction or sale may be used to pay compensation to the rightful owner or for other purposes as determined by the court.

The concept of property rights to ownership of disputed land that is confiscated as an object of confiscation in the District Court of Banda Aceh City Decision Number 64/Pdt.G/2020/Pn Bna refers to the applicable property law in Indonesia, with special considerations related to legal procedures and customs in the region. In the judicial process, when land is seized as an object of confiscation in the judicial process at the District Court, the landowner still has the right to the land but he cannot use it properly because the land is still controlled by the respondent. This situation meant that the applicant's property rights were not fully fulfilled.

In such cases, the owner of the seized land still has the right to mount a defence and provide evidence in the judicial process to prove their claim. If the land is not owned by the suspect or defendant in the case, then the party who owns the rights to the land will usually be involved in the legal process as a party after the judicial process is completed. From Decision No. 64/Pdt.G/2020/Pn Bna, the landowner has strong evidence that the land won by the auction belongs to him, so the land is returned to the owner.

- 3) Provisions for the return of disputed land that is the object of confiscation at the District Court of Banda Aceh City to its owner after the judicial process is completed.

The process of returning disputed land that is the object of confiscation at the Banda Aceh City District Court to its owner after the judicial process is completed usually follows established legal procedures. The following is what happened in case decision Number 64/Pdt.G/2020/Pn Bna:

- a. Restoration of Title: if the landowner is proven innocent or not involved in the unlawful act that is the subject of the judgement, the court may order the return of the land to the original owner. This means that the title to the land is fully restored to the rightful owner.
- b. Compensation: where the land has been confiscated as part of judicial proceedings and it is not possible to restore it to its original state (for example, the land has been transferred to another party), the court orders the party that expropriated the land to compensate the rightful owner.
- c. Auction: In some cases, if the land is involved in a complex dispute or if the owner cannot be clearly ascertained, the court will order an

auction or sale of the land. The proceeds from the auction or sale can then be used to pay compensation to the rightful owner or for other purposes as determined by the court. The land owned by the applicant is the result of a winning auction.

- d. Assignment of Rights: this dispute relates to the ownership status of land, the court has given a judgement assigning ownership rights to one of the parties involved in the dispute, and the land will revert to that party.

Any decision regarding the return of land to its owner after the judicial process has been completed will depend on the evidence presented in court, as well as the laws and procedures applicable in the District Court of Banda Aceh.

- 4) The concept of al-milkiyah on ownership of disputed land seized as an object of confiscation at the District Court of Banda Aceh City.

In the context of muamalah fiqh, the concept of property rights over disputed land seized as an object of confiscation at the District Court of Banda Aceh City also has relevance. Fiqh muamalah pays attention to various legal aspects relating to the ownership, acquisition and use of land. Some relevant principles in the concept of property are:

- a) Respect for Property Rights: Fiqh muamalah emphasises the importance of respecting individual property rights. In the context of land seized as an object of confiscation at the Banda Aceh District Court, the legal owner is still respected for his property rights even though the land was seized by the court.
- b) The Principle of Justice: One of the main objectives of law in muamalah fiqh is to maintain justice in transactions and dispute resolution. In the case of disputed land Number 64/Pdt.G/2020/Pn Bna, the principle of justice was applied in resolving the dispute and returning the property rights to the rightful owner after the judicial process was completed.
- c) Liability: In muamalah fiqh, individuals are held accountable for their actions and decisions regarding property, including land. If any action harms another party in relation to land, that individual must be held legally and morally responsible. In Decision Number 64/Pdt.G/2020/Pn Bna, the other party is not responsible for voluntarily vacating the disputed object.
- d) Peaceful Solution: Fiqh muamalah encourages the settlement of disputes by peaceful means and based on deliberation. In the context of land dispute decision No. 64/Pdt.G/2020/Pn Bna, the applicant

originally wanted to settle the dispute with the local keuchik and had promised to vacate the disputed land no later than 27 December 2020, but was not kept.

The application of the principles of fiqh muamalah in the case of disputed land confiscated as an object of confiscation in the District Court of Banda Aceh City as in Decision Number 64/Pdt.G/2020/Pn Bna can help ensure that dispute resolution is carried out fairly, in accordance with Islamic principles, and with due regard to the rights of each individual involved.

CONCLUSIONS

In the context of Indonesian law, when land is seized as an object of confiscation in a judicial process at the District Court of Banda Aceh City, it means that the land becomes part of the object of the case in the ongoing legal process. Although the land is confiscated, the original property rights remain attached to the legal owner.

In the decision of the Banda Aceh District Court No.64/Pdt.G/2020/PN Bna regarding unlawful acts where the defendant occupied and obstructed the plaintiff to take control of the disputed land that he had obtained from the winning auction No. 533/01/2020, and the defendant did not voluntarily vacate the land, then the granting of the request for execution will be executed by force with the execution agency. The judge ordered the Registrar of the Banda Aceh District Court and bailiffs accompanied by two witnesses to carry out the execution of the land in order to ensure law enforcement by handing over the object of the land plot to the applicant for execution by order of the judge. From this decision, it was decided to carry out the execution of the land to fulfil the decision that has permanent legal force.

The process of returning disputed land that is the object of confiscation at the Banda Aceh District Court to its owner after the judicial process has been completed usually follows established legal procedures. Any decision regarding the return of land to its owner after the completion of the judicial process will depend on the evidence presented in court, as well as the laws and procedures applicable at the Banda Aceh District Court.

In the context of *al-milkiyyah* in muamalah fiqh, various legal aspects relating to the ownership, acquisition and use of land are considered. In the case of disputed land in decision No. 64/Pdt.G/2020/Pn Bna, the defendant did not keep his promise to vacate the land. The main objective of law in muamalah fiqh is to maintain justice in transactions and dispute resolution. In

the case of disputed land No. 64/Pdt.G/2020/Pn Bna, the principle of justice was applied in resolving the dispute and returning property rights to the rightful owner after the judicial process was completed. From this decision, the disputed land object is returned to the rightful owner based on an inkrah court decision in order to ensure law enforcement.

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