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Islamic Law's View of Monopoly And Its Impact on Monoplistic Practices in Indonesia

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Abstract

This research aims to examine how Islamic law views the concept of monopoly, as well as the impact of that view on monopoly practices in Indonesia. Using a descriptive qualitative approach, this study concluded that Islamic law's view of monopoly influences monopoly practices in Indonesia. The practice of monopoly in Indonesia takes the opinion of Islamic law which states that monopolies are allowed as long as it has a positive impact on society. This opinion is then applied in government policy to monopolize certain business areas, where the goal is to meet the needs of the community for primary goods at a reasonable price. The limitation of this study is that it does not analyze other factors that influence the government's monopoly policy.

Keywords: *Islamic law, monopoly*

Abstrak

Penelitian ini bertujuan untuk meneliti bagaimana pandangan hukum Islam terhadap konsep monopoli, serta dampak pandangan tersebut terhadap praktek-praktek monopoli di Indonesia. Dengan menggunakan pendekatan kualitatif deskriptif, penelitian ini menghasilkan kesimpulan bahwa pandangan hukum Islam terhadap monopoli membawa pengaruh terhadap praktek monopoli di Indonesia. Praktek monopoli di Indonesia mengambil pendapat hukum Islam yang menyatakan bahwa monopoli diperbolehkan selama berdampak positif bagi masyarakat. Pendapat ini kemudian diaplikasikan dalam kebijakan pemerintah untuk melakukan monopoli dalam bidang-bidang usaha tertentu,

dimana tujuannya adalah memenuhi kebutuhan masyarakat terhadap barang-barang primer dengan harga wajar. Keterbatasan penelitian ini adalah tidak menganalisa faktor lain yang ikut mempengaruhi kebijakan monopoli pemerintah tersebut.

Kata Kunci: hukum Islam, monopoly

Introduction

Islam is in a fair position and plays a fair role in business relations with all parties. Islam also prohibits unfair transactions and exploitation of human beings. Islam supports fair transactions in every commercial relationship. Transactions made by way of crimes where one party gains excessive profits against the other party are forbidden, such as the example of a monopoly that is troubling the community.

A monopoly will arise while the control center of the supply of goods or services is held by one person or a group of people. This party controls the supply of goods or services and sets a favorable price for it where the profit is not beneficial to the community.

Islam does not allow the control of personal monopolies, which is detrimental to society. Rasulullah SAW prohibits personal ownership or control of the goods used by the community. He said that he pasture belongs to the God and the Messenger of God. And no one is allowed to have it for himself.¹

Method

This research uses a descriptive qualitative approach. With this approach, researchers analyzed how Islamic law views monopoly and its impact on monopoly practices in Indonesia. The analysis tool used is Islamic law in which fiqh. While the object of research is monopoly practice in Indonesia. Researcher describe the impact of Islamic law's view on monopoly practices in Indonesia

Discussion

Some scholars give different understandings about monopolies. *Syafiiah* scholars argue that monopoly is the purchase of basic materials when the price is cheap, then hoard it with the aim that the price becomes expensive to get a

¹ Imam Al-Bukhari, *Shahih Al-Bukhari* (Beirut: Dar al-Fikri, n.d.).

double profit.² Yusuf Qardhawi defined monopoly with the meaning of withholding goods from the market turnover so that the price rises.³ The same understanding was given by Sayyid Sabiq who said that monopoly is to buy goods and store them so that there is scarcity in society so that the price becomes expensive. In addition, the notion of monopoly can also mean limiting the number of goods sold by waiting until the price becomes expensive.⁴ Ibn Taimiyah referred to monopolists as oppressors.⁵ Based on its development, this monopoly actor is not only one individual or company that controls the market, but also a collection of several individuals or companies market participants. This union will form a monopoly with greater power so that there is a concentration of market forces in determining prices and other decisions related to market conditions.⁶

Scholars have different views on monopoly law. Three opinions appear:

- a. *Makruh*. Some Ismailiah scholars who belong to Syafiiyah put this trade practice. They reasoned that each individual had full freedom to manage his property. This authority is limited only by the prohibition of oppression of others. As long as the management of this property brings good to the community, then monopoly is still allowed.⁷ This opinion is supported by Ali Abd al-Rasul who stated that the monopoly carried out by an individual or a company is punished makruh as long as it is only intended to obtain a reasonable profit.⁸
- b. *Haram*: scholars who argue like these include Hanafiah scholars, Malikiah, Hanabilah, and some syafiiyah. If the needs of the community are controlled by a handful of people, then it is possible to play a price game that can cause public unrest. People find it difficult to obtain goods due to high prices.⁹ If this happens, the authorities can force the monopolists to

² Ahmad Mustofa Afifi, *Al-Ihtikaar* (Kairo: Maktabah Wahbah, 2003).

³ Yusuf Qardhawi, *Al-Halal Wa Al-Haram Fi Al-Islam* (Maktabah al-Islami, 1994).

⁴ Sayyid Sabiq, *Fiqh Sunnah* (Dar Al-Fikr, 1983).

⁵ Ibn Taimiyah, *Hisba* (Leicester: The Islamic Foundation, 1982).

⁶ Nurimansyah Hasibuan, *Ekonomi Industri: Persaingan, Monopoli Dan Regulasi* (Jakarta: LP3ES, 1993).

⁷ Afifi, *Al-Ihtikaar*.

⁸ Ali Abd Al_rasul, *Mabadi Al-Iqtshadiyah Fi Al-Islami* (Dar al-Fikr, 1980).

⁹ Afifi, *Al-Ihtikaar*.

sell their stock at a reasonable price.¹⁰ If this is not done, consumers, poor workers, and society are victims of an economic system dominated by monopolies. A system that has shown a lack of harmony between personal and social interests. The state must control the monopoly, either by making laws or by planning the economy thoroughly so that the interests of the community are protected.¹¹

In detail, six things cause monopolies to be banned : *First*, the existence of a trading system that protects the products produced so that the selling price becomes expensive. The purpose of monopolies is to make a profit as much as possible from the price made expensive. It can be concluded, if the protection system applied is not intended for the price to be expensive, then monopoly is allowed. *Second*, monopolies are carried out when goods are needed by the public. One of the negative effects of monopoly is that goods become scarce in the market when people need them. If the rare goods and goods are in the power of monopolists, then the public is allowed to take them regardless of the owner. Nevertheless, it must still be of reasonable value.¹² Abu hanifah explained that the cause of monopolies is forbidden is to avoid public unrest.¹³ *Third*, monopolized goods are stored beyond the required number. Each individual is allowed to store items that support the needs of himself and his family. Nevertheless, Islam requires that the maximum amount stored is only for the needs of one year. Thus, the supply of goods in the market remains stable. Even monopolists who have excessive food supplies can be forced to sell them to highly needy communities at reasonable prices.¹⁴ *Fourth*, monopolized goods come from purchases. Scholars are still debating the origin of monopolized goods. Some scholars argue that it can be said that monopoly if the goods come from the purchase, not from the production itself.¹⁵ This view is supported by Hanafiah, Malikiah, and Syafiiah scholars. Abu Hanifah allowed a self-managed monopoly of agricultural products. He said

¹⁰ Taimiyah, *Hisba*.

¹¹ M. Abdul Mannan, *Ekonomi Islam, Teori Dan Praktek* (Yogyakarta: PT. Dana Bakti Prima, 1997).

¹² Taimiyah, *Hisba*.

¹³ Al_rasul, *Mabadi Al-Iqtshadiyah Fi Al-Islami*.

¹⁴ Taimiyah, *Hisba*.

¹⁵ Afifi, *Al-Ihtikaar*.

that, despite the form of monopoly, agricultural management still brings benefits to the community.¹⁶

Contemporary scholars state that wherever the goods come from, diving under the control of one person alone as the community is difficult to obtain, then the practice is still called a monopoly. Monopolized commodities do not have to come from purchases. All commodities are self-controlled without competitors and obtained in any way, if the aim of attracting profits outside the bounds of fairness, then it remains called a monopoly. Ibn Khaldun also argued that the monopoly of agricultural products from his land was a despicable act. *Fifth*, monopolized goods are food. Majority of scholars state that monopolies are only devoted to staples, such as wheat, dates, and other staple foods. They reasoned that in addition to the staple food is not so needed by the community. However, some scholars do not agree with this opinion and think that what is forbidden to be monopolized includes all things, not limited to foods.¹⁷ This opinion is supported by Abu Yusuf who asserts that monopoly is the mastery of all goods not only food. Every human being has different needs from each other. If there is a monopoly on any type of goods, it can be detrimental to others.¹⁸ Other reasons stated by the scholars are the meaning of monopoly covers all goods and is not limited to food. So it is not allowed to narrow the meaning of monopoly only with the monopoly of food. The reason monopolies are prohibited is to prevent the negative impact of monopolies. Any items monopolized will harm the community

- c. *Mandub*. Monopoly is recommended when it brings benefits to the community. Imam Subki said that he hoarded goods when the results were abundant to sell them when the people needed them the law is not prohibited but instead recommended but instead recommended. This opinion is supported by Ibn Hasem who states that hoarding goods at a time when goods are abundant is not even very good. This action is a preventive measure when one day the goods are difficult to obtain so that the public can still get them. In addition, the set selling price must be reasonable so as

¹⁶ Al_rasul, *Mabadi Al-Iqtshadiyah Fi Al-Islami*.

¹⁷ Afifi, *Al-Ihtikaar*.

¹⁸ Al_rasul, *Mabadi Al-Iqtshadiyah Fi Al-Islami*.

not to complicate the community. This role is usually taken over by the State. Some instruments can control it and there is accountability to the public.¹⁹

Causes of monopolies

Some things that cause the onset of monopoly. *First*, the manufacturer has one or more important or unique and undisclosed resources, or manufacturers have different knowledge of production techniques that can minimize production costs. *Second*, manufacturers apply price limitation policies (pricing to the lowest possible level). With this policy, new companies will have difficulty entering the market. *Third*, economical production scale. The use of advanced technology within a company and abandoning manual means can reduce costs. As well as in production and distribution activities. Production scale is quite large and covers almost all production required by the market, where the amount of production almost equals the amount of demand or even above the amount of market demand. Thus the company reaches the most economical point. companies that do not have economies of scale and efficient will suffer losses if they compete and enter the market. the company's ability to achieve economies of scale with efficient production costs will give rise to monopolies. *Fourth*, the size of the market is so small to be served by more than one company that operates the optimum enterprise scale. In other terms due to large economies of scale and limited market then one company alone has been able to meet the market demand. Consequently if there are new companies interested in entering the market will have difficulty in selling must be the goods. *Fifth*, laws or government regulations. Government regulations, among others, regulate the monopoly authority of the government through state companies with the aim of controlling prices. Thus the price can be controlled at a minimum and affordable by the community.²⁰ In this position the government carries out two concepts : grant monopoly rights, and prices for goods and or services produced by the company. It is widely treated against the determination of goods and services in general such as electricity, telephone, drinking water, petroleum, railways.²¹

¹⁹ Afifi, *Al-Ihtikaar*.

²⁰ Ari Sudirman, *Teori Ekonomi Mikro* (Yogyakarta: BPFE, 1990).

²¹ Sadono Sukirno, *Pengantar Teori Ekonomi Mikro* (Jakarta: PT. Rajawali Press, 2002).

Pas and lowest states that the characteristics of monopoly are six. *First*, there is one company or seller with a large number of consumers or buyers or can, or it can be said that one actor or group of businesses controls more than 50% of the market share with one particular type of goods or services. Because there is only one company or seller then the buyer has no other choice. *Second*, lack of substitution products. The absence of similar substitution products makes the products produced by such monopoly companies the only option. *Third*, market blocking. There is no opportunity for other companies to enter the competition because of the barriers of monopolizing companies.²²

Monopoly practices must be regulated by law because this business practice has a negative impact, among others: *First*, high prices. Monopolies form high prices in the market. This is due to the lack of market competition, which encourages inflation that can be detrimental to society. *Second*, profit access. In the absence of competition, monopolizing companies can determine prices according to their own will. If this is the case then there will be excessive profits. *Third*, exploitation. Due to the absence of competition, it is vulnerable to exploitation of natural resources and human resources. *Fourth*, wastage. Monopoly companies tend to act extravagantly because they are not cost-oriented. *Fifth*, uneven income. Monopoly will result in the accumulation and concentration of capital in one company only so that there is no equalization of income.

Monopoly as a practice that exists in the market consists of several types based on nature and subject. Type of monopoly judging by its nature is natural monopoly and artificial monopoly. Natural monopoly is also often referred to as natural monopoly because the cause of the occurrence of this monopoly is no element of intentionality.²³ Because of this nature, there is no effort to do spite against competitor companies so as not to affect healthy business competition. The cause of this natural monopoly is three. *First*, no meaningful replacements or competitors. Due to the absence of substitute goods, the possibility of monopoly is very difficult to avoid. *Second*, limited market geography. The other cause of monopoly is the location of the market geography that only benefits one party. This condition makes it difficult for

²² Christopher Pass dan Briyan Lowes, *Kamus Lengkap Ekonomi* (Jakarta: Erlangga, 1998).

²³ Revisond Baswir, *Dilema Kapitalisme Perkoncoan* (Yogyakarta: Pustaka Pelajar, 1999).

competitors when they want to enter the market. *Third*, mastery of raw and strategic goods. The company can monopolize because it pioneers a business using raw materials that no one else has ever used.²⁴

In addition to the above causes of natural monopolies can also occur due to the merger of several businesses, efficiency, and innovation. With innovation, market mastery will always be maintained because consumers will always get good goods. But that does not mean that this natural monopoly is completely away from arbitrary actions, Because it is thus possible to exploit consumers.

The second monopoly is called artificial monopoly because this monopoly position is employed both in fair competition. When obtaining a monopoly position unfairly then such a monopoly is called a criminal monopoly.²⁵ Artificial monopolies as long as they do not use fraudulent means cannot be prohibited because there may be good motivation in the business. That is to meet the needs with divine pleasure. Islam itself recognizes the freedom for people in meeting their daily needs, but the meaning of freedom does not mean free from ethics.²⁶ Monopoly cheating is sometimes found in business life. Islam prohibits monopoly by cheating for several reasons, namely often take advantage of special or narrowness and sell services at a cost that exceeds normal collapse. In addition, judging from the economy, this monopoly will result in non-transparency, unrest in the market, as well as difficulties in market control.²⁷ A more dangerous monopoly is a monopoly carried out using mergers of several large companies in the form of price deals. In these conditions, the hardest hit is the consumer because the price will be very dependent on the entrepreneur or manufacturer

Generally, the subject-based monopoly is divided into two, monopoly by corporation and monopoly by the government. Monopoly conducted by the corporation can occur on a large and small scale. The small scale is carried out by individuals whose business is still at a small level. An example of a large-scale monopoly is that mergers exist in some businesses. Monopoly by the government can also be said as a structural monopoly because it arises from

²⁴ Musliech, *Ekonomi Manajerial* (Yogyakarta: Ekonesia FE UII, 1997).

²⁵ Revisond Baswir, *Dilema Kapitalisme Perkoncoan*.

²⁶ Qardhawi, *Al-Halal Wa Al-Haram Fi Al-Islam*.

²⁷ Muhammad Nejatullah Shiddiqi, *Aspek-Aspek Ekonomi Islam* (Solo: CV. Ramdhani, n.d.).

policies issued by the government. This monopoly is done to safeguard the good of the community itself. The government is the holder of a matter of survival for a country that concerns the lives of many souls. In addition, the government must also fight to overcome poverty by maintaining the fulfillment of the basic needs of the community. Realizing the fulfillment of the basic needs of the community must be first rather than the growth of the wealth of the conglomerates.²⁸

Islamic law allows the government to withdraw some of the wealth of the rich, namely taxes, when it is not yet able to meet the needs of the poor. The government in the Islamic view is also not allowed to privatize public ownership goods but must manage them themselves with state-owned enterprises. In this context, the Indonesia Government is a representative of the community who is the owner of wealth such as electricity, gas, oil mines, gold, forests, and the sea whose results are returned to the community in the form of comprehensive guarantees by providing health insurance, education in the form of free education from the elementary level to college.²⁹

In addition, the Indonesian government must also prohibit monopolies that harm society, hoarding goods that threaten the fairness of prices. Because it is very clear that Islamic law prohibits monopolies that aim to enrich themselves.³⁰ This was exemplified by Umar ibn Khattab who told a merchant to sell his wares when many people needed the goods.³¹

Thus, the practice of monopoly by the Indonesian government is allowed as long as it is for the benefit of the community. Because in addition to excellent motivation, namely maintaining the good of the community, it is also based on the function of the government, namely the holding of affairs for its people. This function covers all aspects of people's lives, both political, economic, social, and cultural. On the other hand, if the Indonesian government does not monopolize goods that concern the needs of the community, it will be detrimental to the community. Monopoly practices conducted by this

²⁸ Afzalur Rahman, *Doktrin Ekonomi Islam* (Yogyakarta: PT Dana Bhakti Prima, 2002).

²⁹ Rahman.

³⁰ Mannan, *Ekonomi Islam, Teori Dan Praktek*.

³¹ Muhammad Rawwas Qal'ahji, *Ensiklopedi Fiqh Umar Bin Khattab* (Jakarta: PT RajaGrafindo, 1999).

government is already regulated in the Law on The Prohibition Of Monopoly Practices And Unhealthy Business Practices No. 5 of 1999.³²

Conclusion

Islamic law aims to preserve the benefit of the community. This can be realized if five things can be fulfilled, namely religion, soul, reason, honor, and wealth. Monopoly as a business practice, has two different sides. When the desire for profit doubles as the main goal, monopoly becomes the right way to realize it. Various ways are done so that other parties do not participate in the benefits that exist. On the other hand, monopoly is also required. When natural resources and food are depleting, government intervention is needed. Because it concerns primary needs, government policy through monopoly is indispensable. From this exposure, it can be concluded that monopoly practices sometimes bring good to society, and sometimes cause harm. Both conditions are not caused by monopolies, but because of the impact of monopolies. Thus, if the negative impact can be eliminated, then of course monopoly is not prohibited

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³² UU Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat No 5 Tahun 1999, n.d.

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