

Legal Definitions and Types of Found Goods in Fiqh Muamalah

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ABSTRACT

Found item isn't specific term for a particular type of property; it is a general term. Luqathah is an item that found at a public area. Taking luqathah is obligatory according Shafi'i Madhhab for saving the property of fellow Moeslim but it have to announced for a year. However, taking luqathah according Maliki Madhhab is makrooh because it is feared that there maybe negligence in matters there are required, such as announcing the found item to the public. Shafi'i Madhhab and Maliki Madhhab have the difference opinion about luqathah. Therefor, the purpose of this study is to find out what should the finder of found item do and what these two madhhab think about the ownership of found item. Imam Malik and Imam Shafi'i both allow to use of luqathah. According to Imam Maliki, the announcement must be made if there are no people take the luqathah as long as a year. The finder of luqathah have a responsibility to compensate the item that used or donated. Shafi'i and Malik agree if the luqathah is priceless or doesn't have any valuable that no need to saved, but it must be saved and announced if the item has valuable so its owner known.

Keywords: Found Muamalah, Fiqih Object, Miscellaneous, Law

ABSTRAK

Barang temuan bukanlah istilah khusus untuk jenis harta tertentu; itu adalah istilah umum. Luqathah adalah barang yang ditemukan di tempat umum. Mengambil luqathah wajib menurut Madzhab Syafi'i untuk menyelamatkan harta sesama Muslim tetapi harus diumumkan selama satu tahun. Namun, mengambil luqathah menurut Madzhab Maliki adalah makruh karena dikhawatirkan mungkin ada kelalaian dalam hal-hal yang diharuskan, seperti mengumumkan barang temuan kepada publik. Madzhab Syafi'i dan Madzhab Maliki memiliki perbedaan pendapat tentang luqathah. Oleh karena itu, tujuan dari penelitian ini adalah untuk mengetahui apa yang harus dilakukan penemu barang temuan dan apa yang dipikirkan kedua madzhab ini tentang kepemilikan barang temuan. Imam Malik dan Imam Syafi'i sama-sama membolehkan penggunaan luqathah. Menurut Imam Maliki, pengumuman harus dilakukan jika tidak ada orang yang mengambil luqathah selama satu tahun. Penemu luqathah memiliki kewajiban untuk mengganti barang yang digunakan atau disumbangkan. Syafi'i dan Malik sepakat jika luqathah tersebut tidak ternilai harganya atau tidak memiliki nilai apa pun maka tidak perlu disimpan, namun harus disimpan dan diumumkan jika barang tersebut memiliki nilai sehingga pemiliknya diketahui.

Kata Kunci: Aneka, Muamalah, Obyek Fiqih, Hukum.

INTRODUCTION

Nowadays, many people are in a hurry to do things. Therefore, people often leave their belongings behind unconsciously. Items that are found are not found where they are usually kept. This can happen because people forget or natural disasters such as floods, earthquakes, landslides, or other natural disasters can detach things from their owners. Items that are usually



kept somewhere, materials that are commonly worn and used, such as jewelry, or even lost pets can fall under the category of found property, which is a general term and is not limited to a specific type of item. Is it permissible to own, use or sell such found property? In this regard, Islamic law has laid down clear rules on how such found items should be treated. Then someone (almultaqit) finds the vanished item, which causes the issue of finding the item, to be left or taken. The scholars agree that it is legally permissible to take the found item (luqaṭah). Then the problem arises again if the found item is widespread for one year and no one knows who found it. Here there is a difference of opinion between Maliki and Shafi'i. Therefore, in this paper, the author will discuss the issue of ownership of luqaṭah and the comparison and differences between the Maliki and Shafi'i views. The author will discuss various topics about luqaṭah, starting from its definition, its pillars and types, what is done with it, and how it is used (Abidin, Zaenal, 2018) "Rikaz", which specifically protects ancient treasures or what is commonly referred to as treasure. (Mahfudhan, 2016) Luqathah etymologically means found merchandise. Our minds are actually set on the act of obtaining something that has a place for someone else by chance, and the question of being found is whether or not it is known who owns it, which means that the item found does not belong to the creator himself, and if it is known who owns it, the one who found it must immediately return it to the one who owns it. The word "malaka", which means possession of something, is the origin of the word ownership (al-milk).

Property, or al-milk, is usually referred to as "a person's specificity over property that is recognized by the Shariah, so that it gives him special powers over that property, either to use it or to dispose of it", according to fiqh scholars. In different global legal frameworks, individual property rights over an object are recognized to varying degrees. Different legal theories justify the recognition of private property rights. (Roibin, H) Islamic law has the power to choose whether people of the Muslim faith should obey or bypass it. Because Islamic provisions usually have two types of sanctions: retribution in the world and retribution in the world that begins now. From the outset, Islamic law considers global consequences to be much more severe than local consequences. Thus, every devotee has a consciousness that can encourage himself to abide by the rules of Islamic law, carry out His commands, and avoid His prohibitions.

(Roibin, H) In Islam, the rules regarding found property are specific and particular. Therefore, they can be discussed specifically and considered as a scholarly discourse that has substantive value, both from a legal point of view and from a descriptive perspective. Nonetheless, this does not mean that analysis is no longer possible, that its development has been used up, or that the scholarly study of the discussion of found property has been discontinued. As this research is done normatively in Islam, this type of treasure provides an opportunity for those who find it to develop or spend it, provided that the finder has the ability and time to look after the treasure. (bin Muhammad al-Husaini, Taqiyuddin Abu Bakar , 2017) In light of the above, a number of rules applicable to found property were established; the main element of this category is the ability to preserve. The ability to take care of the property, starting from storing it, taking good care of it, or being able to notify and announce to the general public about the discovery of the property within one year, as well as being able to hand over the found property to the owner, provided that the claimant of the property can show proper and appropriate evidence. (Ibid) Since the problem of found goods (luqathah) is very common in society, its study must be carried out comprehensively, more specifically in terms of ownership of found goods. Finding movable goods, namely mobile phones, is one example of a problem that often occurs in society. In certain



cases, both the owner of the goods and the finder of the lost goods demand that the goods be returned to them. Therefore, in order to make the ownership of the found goods clear, several conditions must be met, especially the characteristics of the object of the goods and the obligations of the finder. In the Shafi'i school of thought, taking luqathah is obligatory because it protects the property of fellow Muslims.

(Suhendi, Hendi, 2002) In determining the law, the Shafi'i School has unique characteristics. Although the founder of the school is considered to be ahl al-hadith, his methods are still influenced by ahl al-ra'y fiqh knowledge. He argued that hadith should be practiced if the sanad is valid and muttasil (connected) to the Prophet. It need not be associated with the practice of ahl al-Madinah as suggested by the Maliki Madhhab. As a result, Imam Shafi'i is known as *nasr al-sunnah* (helper of the sunnah), his famous *ijtihad* is *qawl qadim* and *qawl jadid*. (Yanggo, Huzaemah Tahido, 1997) However, according to the Maliki Madhhab, taking luqathah is *makrooh* because of the fear that there will be negligence in matters that are required, such as announcing the product to the public. (Rusyd, Ibnu, 1990) In determining the law, the Maliki school has different characteristics from the Shafi'i school, which was founded by Imam Maliki, who was born in Medina and never left the city except for the pilgrimage. The Sunnah is not only what is recorded in the hadiths (*sahih hadiths*, of course), but also the deeds (traditions) that the people of Medina regularly practiced; he strongly favored the authority of Medina as the sole reference for all Islamic knowledge. Therefore, as we now see, *al-Muwatta'* contains not only the compiled hadith texts of the Apostle, but also the practices of the people of Medina. Moreover, the texts of *al-Muwatta'* are limited to what is in accordance with the deeds of the people of Medina. (Yanggo, Huzaemah Tahido, 1997) The majority of Muslim Indonesians in the country are followers of the Imam Shafi'i school of thought because the first preachers who spread Islam to Java were followers of the Shafi'i school of thought. However, according to Sayid Alwi bin Thahir al-Haddad in his book *Jana Samarikh min Jawab Asilah fi at-Tarikh*, the first spreaders of Islam in Java were followers of the Shafi'i Mazhab. Departing from the above background, this thesis investigates how the views of the Shafi'i and Maliki Mazhabs on Therefore, researchers want to find out more about "Ownership of Found Goods in Islamic Law."

RESEARCH METHODS

Research in libraries focuses on the consideration and analysis of texts. In most cases, this is done because the information used is written information. Library research means using library materials as the most important source of information. Since thinking is related to the understanding of Quranic verses, information related to these considerations is collected through written considerations or examinations. The researcher used a desk research strategy, i.e. investigating several Islamic textbook sources, to gather information for compiling this article. (Hadi, Sutrisno, 2009)

Based on the above, it can be concluded that library research can be a collection of exercises on how to collect library information, read and take notes, and process questions about fabrics. It is research that library sources seek to obtain data about. The importance of ownership of found objects (*luqthah*) will be found in this thought.

RESULT AND DISCUSSION

The word *luqathah* has many dialects. The most popular one is read with *dhammah*, while *qaf* is read *fathah* or *dead*. "The letter *qaf* is dead. If *qaf* is pronounced *fathah* then what is meant is the one who finds *luqathah* (*laaqith*)," said Al-Khalil. This is by *qiyas*. *Qaf* is only read by linguists



and hadith with the harakat fathah. until it is possible to say other than that it is not. (Al Bassam, Abdurrahman Abdullah bin, 2006) Al-Luqathah are all protected items that are useless and unknown to whom they belong. In most cases, this applies to products that are not living beings. The animal is called ad-dhallaha, which means lost. (Mardani, 2019)

Luqathah etymologically means “found goods”, and this term is general, not specific to a particular item. AlLuqathah also means getting something after trying or getting something. (Nawawi, Ismail, 2012) Lughathah etymologically means found goods. When we hear about barangatemuan, our thoughts actually go to taking something that belongs to someone else by chance, and who owns the found item is unknown or unclear. This means that the found item is not owned by the person who found it; if the owner is known, the person who found it must return it to the owner immediately. (Suhendi, Hendi, 2002)

According to fiqh terms, found property is the same as “luqathah”. The word “luqathah” means that a person accidentally finds something that belongs to someone else, even if he does not know who the owner is, which means that the found object does not belong to the finder, but to someone else. (Haroen, Nasrun, 2007). According to Sudarsono, SH, found property is finding someone's property on the road, which is lost due to falling, rgetting, or other reasons, and shara' is considered as lost property. According to Sayyid SABIQ, “Luqathah is any item that is preserved and the owner is unknown.” However, Hendi Suhendi has a different opinion, citing several scholars' (SABIQ, Sayyid, 2009) conclusions, including:

- a. Muhammad al-Syarbini al-Khatib, luqathah is “something that is found on the basis of a noble right, (Suhendi, 2010) is not protected, and whoever finds it does not know who the mustahiq (rightful owner) is”.
- b. Shaykh Shihab al-Din al-Qalyubi and Shaykh Umairah, luqathah is “something that comes from wealth or something that is especially fragrant not in the harby area, not maintained and not prohibited because.
- c. Al-Imam Taqiy al-Din Abi Bakr Muhammad al-Husaini, al-luqathah is “taking sublime property because it is wasted for him to maintain or own it after it is announced. (Sarwat, Ahmad, 2018)

According to the Mughni AL Muhtaj kitab, pengertian luqathah adalah segala benda yang ditemukan di tempat yang tidak dikuasai seseorang. This includes both harta and barang, which are objects that are lost or broken by their owners due to their length or suddenness, while those who find them do not know who the owners are. (Sarwat, Ahmad, 2018). According to the data above, luqathah is an item that is lost from its owner due to falling, forgetting, or other reasons, and is taken by someone. Luqathah is a name for lost items in the form of objects, people, or creatures. The word "found object" is used for general objects and is not specific to the name of a particular item, such as objects that can be stored in a certain place, jewelry, stray animals, food, and lost human children. Found items are divided into two: the first item is valuable and items of little or no value including found food.

The Ruling On Taking Found Objects

found items, commonly called luqathah, is any kind of item found in a place where the owner is not clear. Many verses in the Quran and hadith books indicate this, such as:

Al – Quran

...and whoever revives it, it is as if he has revived all humanity has revived all mankind.
(QS. Al Maidah: 32)

As – Sunnah

There are several hadiths that clarify the invention, including a hadith described by al-Bukhori and Muslim from Zaid ibn Khalid al Juhai :



"Zayd ibn Khalid al Juhani reported. In fact, the Prophet (PBUH) was asked almost about the things found; gold and silver? The Prophet replied, know the rope, wrap it then declare it for a year, if at that time no one recognizes it, you will spend it, as an order on you. Otherwise, if the owner comes to inquire about it, hand it over (and the goods/price) HR. Bukhori and Muslim.

In the Compilation of Sharia Economic Law article 18 explained that objects can be obtained by:

1. exchange;
2. inheritance;
3. grant;
4. will;
5. natural increase;
6. sale-purchase;
7. luqathah;
8. waqf, and
9. other ways that are justified according to sharia. (Indonesia, Mahkamah Agung Republik, 2011)

Whereas in Article 19 KHES, it is explained that the principle of amwal ownership are:

1. full ownership, giving rise to the existence of beneficial ownership and not limited in time; not limited by time;
2. ownership that is not full, requires ownership of benefits and is limited in time; 2) ownership that is not full, requires ownership of benefits and is limited in time.
3. full ownership cannot be extinguished, but can be transferred.
4. non-full ownership of the company is the same as separate ownership and separate tasharruf.
5. The full ownership of the shareholding is subject to the rights and rights and obligations proportionally.

Scholars have challenged the idea that the item found is more important than take it or leave it. Imam Abu Hanifah argued that taking it is more important because Muslims are required to safeguard the property of other Muslims. Imam Shafi'i was also of this opinion. (Rusyd, Ibnu, 1995) According to some opinions, taking a found item is Sunnah, while others argue that it is recommended, if the item is in a place that the finder considered safe when he left it. However, if it is in a place that the finder did not consider safe when he left it, then he is obliged to take it. If he knows that he has greed for it, then taking it is haraam for him. (Harun, Nasrun) The Imams agree that a found item (luqathah) should be announced for one year if it is valuable. If it is already eaten by the finder after one year has passed since its discovery, the owner has more right to it than the person who found it. (Abdurrahman ad-Dams, Syaikh al-Allamah Muhammad bin, 2012) Other fuqaha are of the opinion that the return of the found item is obligatory. They interpreted the hadeeth narrated by Imam Ahmad as saying that the prohibition mentioned in the hadeeth is to benefit from the found item and not to take the found item for the discoverer to proclaim. (Haroen, Nasruna, 2007)

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The Pillars Of Found Goods



Luqathah has two columns that must be fulfilled, just like any other Islamic law. They are as follows: a. The person who took (the one who found) : when someone takes something, it has the status of luqathah, meaning that it is still scattered and no one took it, including luqathah. Those who know where the merchandise came from, whether they are Muslims or non-Muslims, fasiqs or not, are considered luqathah. He can pick it up in an unauthorized place or in the middle of the street, but he prefers to pick it up if he can later take care of the found item, and if not, it means that he cannot be relied upon for the found item. Abu Hamid (Al-Ghazali) is of the opinion that collecting found property is permitted in Islamic lands only, and there are two opinions about the ability of a servant and a wicked person to collect found property:

- a. Slaughtered and eaten on the condition of "being able to pay the price if you meet the owner"; or
- b. Sold and the proceeds kept to be given to the owner.
- c. Kept and eaten only as a favor:⁴⁰ Although there are some small writings that can be used as references, it can be said that the luqotah fall into two categories:
 1. That which has an owner
 2. That which does not have an owner (Sudiarti, Sri, 2018)

First and foremost, owner-owned goods indicate that they are owned by someone. Here, the rule applies that if someone discovers something in less than one year, the finder is obliged to return the item to its owner. If the discovery relates to food or animals that have been sold, the finder must return the money from the transaction of the item in less than one year after the owner arrives. Second, finding merchandise that has no owner; after one year, the item is declared and deemed to have no owner, and is immediately owned by the finder.

Luqathah in the view of Imam Malik

Imam Malik prohibited taking found objects. According to Imam Malik's opinion, it is not permissible to take a found item (luqathah) if the purpose is to benefit from it or to possess it without the purpose of declaring it because this puts a person in a situation where they may eat something illegal. (Az-Zuhaili, Wahbah, 2011) Imam Malik was of the view that the found item remains the responsibility (compensation; cost) of the finder if he takes action, either by giving it in charity or utilizing it. According to them, this is because found objects are similar to wadi'ah (entrusted goods), so their ownership status will not transfer to someone else (the finder). Therefore, if the item is damaged, the finder must replace or pay for it. It is said that the Prophet was once confronted by a man who asked about Luqhatah. "Look at the vessel in which it is and the strap, then announce (the item) for a year. If the owner comes then hand over (the item)", he replied. to them, and if not, utilize it. Then the man asked, "How does the found item look like a stray goat?" "Take it, it belongs to you, or to your brother, or it will be eaten by wolves," he replied. The man continued to ask, "What if it is a stray camel?" The reply was, "What business is it of yours?" It still wears a terebinth and has its own water supply until its owner comes to find it. "According to HR Al-Bukhari.

CONCLUSION

Imam Malik prohibited taking found objects. According to Imam Malik's opinion, it is not permissible to take a found item (luqathah) if the purpose is to benefit from it or to possess it without the purpose of declaring it because this puts a person in a situation where they can eat something that is haram. If after one year no one recognizes or takes the item with the condition of mentioning its characteristics, the luqathah may be used or given in charity.



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