

Full Ownership in the Context of Zakat on Shares

Lokmanulhakim Hussain

A researcher at the International Shari'ah Research Academy for Islamic Finance

Introduction

Zakat is an obligation upon Muslims provided certain conditions are met, one of which is full ownership of wealth. It is a condition agreed upon among scholars, as cited by Ibn Rushd in *Bidāyat al-Mujtahid*, "They [Sharī'ah scholars] agreed by consensus that zakat is obligatory on each Muslim who has freedom, maturity, sanity, and fully owns the *nisab*" (1425H: 2/5). Full ownership is defined by Al-Jurjānī in *Al-Ta'rifāt* as "the lawful relationship between a person and a thing, giving him the right to dispose of that thing and to deter others from disposing of that" (1403H: 229).

According to the above-mentioned definition, other than what was mentioned regarding the right of disposal of assets, Al-Jurjānī also mentioned the right to deter others from disposing of assets as a fundamental aspect of having full ownership.

Some scholars mentioned in detail that ownership is divided into two categories, namely: (i) ownership with the right to the title, and (ii) ownership with the right to dispose of a thing. The ownership with the right to the title refers to the event when the ownership of a thing has been transferred in a basic manner, such as when an item has been sold to a person but it has yet to be delivered to him. On the other hand, when the sold item has been delivered to the purchaser, the purchaser is regarded as the owner having the right to dispose of, thus he has full ownership of the item.

This means that full ownership occurs when the ownership has its effects entirely through the right to own and the right to dispose of the asset as stated by Al-Kāsānī in *Badā'i' al-Ṣanā'i'*.

In the Shariah Standards of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) on Zakah, "The full ownership materializes when nobody else has a right in the asset in question, the owner can dispose of the asset the way he likes, and the owner of the asset is the sole owner of the income generated from the asset" (AAOIFI, 2015M: 873).

In *Quyūd al-Milkiyyah al-Khāṣṣah*, Dr. 'Abdullāh al-Muṣliḥ listed that a full ownership leads to these criteria: (i) the owner shall have the right to make any kind of disposal of the asset, (ii) the full ownership shall include both types of the ownership which are the right to own and the right to benefit, and (iii) the ownership which occurs by

natural means without any transfer from someone to other is regarded as full ownership (1415H, 123-128).

The Ownership of Shares

In the context of shares, based on the definition of shares from a Sharī'ah perspective, it appears that shareholders have full ownership of the assets of the company, which lead to the obligation of paying zakat on shares. This is based on the following justifications:

- The shareholders are the real owners of the company's assets. It will be proven when a company is dissolved or wound up, its assets shall be returned to the shareholders after paying off all the liabilities (al-Qaradhaghī, *Al-Taḥqīq Fī Zakāt al-Ashum wa al-Sharikāt*: 10).
- This is in line with a legal maxim stating that "liability accompanies gain". As the shareholder is entitled to enjoy any benefits resulting from the shares, he is also obliged to bear all liabilities accompanying them, among others the obligation of zakat payment (Al-Qaradaghi, *Al-Taḥqīq Fī Zakāt al-Ashum wa al-Sharikāt*: 10).
- The right and freedom of a shareholder to sell or dispose of his shares indicates his right and freedom to dispose of the company's assets because the shares represent the assets of the company, hence the sale of shares mean the sale of a portion of the assets of the company.

Thus, full ownership exists in the context of ownership of shares. The inability of a shareholder to sell the company's assets such as buildings does not mean there is no full ownership, but there are some other elements hindering him from doing so, in a manner that will not affect having full ownership. Such external elements are:

i- Partnership

Although the shareholder is the real owner of the company's asset, his ownership is in a form of partnership where he owns a portion of assets that cannot be divided. It is stated in a *ḥadīth* that, "He who has a partner in a dwelling or a garden, it is not lawful for him to sell that until he is permitted by his partner. If he (the partner) agrees, he should go in for that, and if he disapproves of that, he should abandon (the idea of selling it)" (Muslim, al-Ṣaḥīḥ: 3/1229, No: 1608).

In the context of shares, the shareholder is unable to sell the assets because though there is no full ownership, it is in a form of partnership that deters each partner from selling the assets without a mutual agreement.

ii- The sale of assets can be done through selling shares

The claim that a shareholder does not actually own the assets of the company because he is not able to sell the assets is not accurate. This is because the

shareholder can sell the assets when he wants to through the sale of shares, based on the fact that the shares represent the assets of the company.

iii- Inability to dispose of does not mean not having full ownership

In the *fiqh*, there are a number of situations where the owner of the asset is deterred from disposing of his asset freely, but at the same time, he is still regarded as the real owner of the asset having full ownership. An example of these situations is the inability of a child to dispose of his assets, based on a Quranic verse, “And test the orphans until they attain puberty; then if you find in them maturity of intellect, make over to them their property” (Al-Nisā’: 6).

Although children are prevented from disposing of their assets, but it does not deny their full ownership of the assets and the obligation of zakat on their assets, as the view of scholars such as Al-Nawawī in *Rawḍah al-Ṭālibīn*, Al-Ḥaṭṭāb in *Mawāhib al-Jalīl* and Ibn Qudāmah in *Al-Mughnī*.

Conclusion

Based on the definition of full ownership, and deliberation with respect to the application of full ownership in the context of shares, it was found that a shareholder has full ownership of the assets of the company. Thus, satisfying one of the conditions of zakat and affirming their eligibility to pay zakat. Based on this, shareholders are obliged to pay zakat on shares if the assets of the company are zakat-able assets.