

Monopoly in the Perspective of Islamic and Conventional Law

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Abstract

A nation's life is closely related to its economic activity. If the wheels of the economy do not run well, the country will stagnate, and it can even cause "death". However, one important thing cannot be avoided in economic life, which is competition. Sometimes, it causes damage to the market because many people only want to obtain the maximum profit without ethical economic values, and one of which is the monopoly. Thus, there must be clear regulations and sanctions, and its absence may lead to conflict in the community or even causing bloodshed. Based on this background, the research reviewed monopoly according to Islamic law and conventional law. This study was qualitative research focused on literature research with the descriptive analytic method. In this case, the researcher took fiqh (Islamic law) and conventional law books with the theme of monopoly as primary data. The research data was collected and analyzed through qualitative analysis. The results showed no significant difference between monopoly law in the perspective of Islamic law and conventional law. Goods related to the public interest are prohibited from being monopolized under both laws. Accordingly, people who monopolize the goods are forced to sell their goods in order to eliminate the harm to the people who need these goods. However, the sanctions that will be given to monopolists are regulated in detail in conventional law in articles 47, 48, and 49. In contrast, the monopoly in Islam is still legal based on the texts of the Qur'an and Sunnah. Despite that, monopoly is regulated through ijtihad by considering maslahah and mafsadah with the same principle as conventional law in eliminating harm for the public

Keywords: monopoly, Islamic law, Conventional law

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1. INTRODUCTION

The life of a country is closely related to its economic activity. If the wheels of the economy do not run well, the country will stagnate, and it can even cause "death". However, there is one important thing that cannot be avoided in economic life, namely competition. It sometimes causes damage to the market since many people intend to get big profits without heeding the economic ethics, one of which is by doing a monopoly (*ihthikar*).

Monopoly is by massively storing goods that are needed by many people, whether carried out by one person or a group, with the aim of reselling above the normal price and controlling the price to get maximum profit (Zaini, 2014). Humans tend to commit a monopoly in order to get the maximum profit. Thus,

there must be regulations to limit the deed. Its absence may cause disputes in the midst of society, which may even lead to bloodshed.

Therefore, the state as a system that runs the government must make rules (laws) related to business ethics so that market harmonization can be well-maintained. In Islam, there are also ethics that must be maintained, especially those related to monopoly. Ibn Khaldun explained in his *al-Muqaddimah* as quoted by Suhailah Zain al-Abidin that the state must provide human needs for food, clothing, shelter, and protection of the soul. All of those drive the existence of a system in society (Zain al-Abidin, 2016).

Research related to monopoly has been carried out several times, some studies focus on Islamic

jurisprudence studies (Wajdi, 2016), or on Islamic business studies (Fatah, 2012; Saragih, 2017; Zaini, 2014), and others focus on positive legal studies (Muhlizar, 2019). This research will discuss the comparative study of monopoly in the perspective of Islamic and conventional law.

2. METHODOLOGY

This research was qualitative research focused on descriptive-analytic literature research. In this case, the researcher took fiqh and conventional law books with monopoly themes as primary data. Also, the secondary data were from various sources, such as books, journals, and research. The research data were collected through the documentation method (Sevilla, 1993). The method was used to find library data in the form of written documents in several literature and books that discuss the monopoly theme, including data obtained from books, journals, and research. To analyze the data, the researcher used qualitative analysis with content analysis method (Krippendorff, 1993) to draw conclusions about monopoly in the perspective of Islamic law and conventional law.

3. RESULT AND DISCUSSION

3.1. Monopoly

Based on etymology, monopoly comes from the Greek *monos*, which means self, and *polein*, which means the seller. From the root of the word, people simply give the understanding of monopoly as a condition in which there is only one seller who offers (supply) a certain good or service (Siswanto, 2004). In Black's Law Dictionary, it is explained that monopoly is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of the whole supply of a particular commodity (Campbell, 1990).

Based on the Collins economic dictionary, what is meant by monopoly is a type of market structure that has the characteristics that there is one company with many buyers, lack of substitute or substitute products, and the presence of a market blocking (barrier to entry) (Lubis, 2009). Whereas in the Anti-Monopoly Law No. 5 of 1999, a monopolist is defined as control over the production and/or marketing of goods and/or the use of certain services by one business actor or group of business actors (Article 1 paragraph (1) of the Anti-Monopoly Law). Consequently, "monopoly

practice" is a concentration of economic power by one or more actors, which results in the control of production and or marketing of certain goods and or services so as to create an unfair business competition and may harm the public interest in accordance with Article 1 paragraph (2) of the Anti-Monopoly Law.

In Islamic studies, monopoly is known as *ihtikar*, which etymologically comes from the word *al-hukrah*, which means *al-jam'u* (to collect) and *al-imsak* (to hold) (Al-Haurani, 2006). In comparison, in the terminology of sharia, the scholars of different schools of thought have different opinions in explaining the monopoly. The Hanafi school explains that monopoly is a person's tactic to buy food in the city, then he does not want to sell it, and it harms (harms) others. Likewise, if he buys it at a place closest to him, then he takes it to the city (Ibn Nujaim, n.d). In the Maliki school of thought, it is explained that monopoly is storing goods and expecting profits with market changes. While storing food ingredients, it is not a monopoly (Al-Baji, 1332 H). According to the Shafi'i school, monopoly is buying food when the price is high to hold it and selling it again at a price higher than the original price (Al-Syairazi, n.d). In comparison, the Hanbali school says that the monopoly buys (foodstuffs) to sell it again and holds it so that the goods are getting less so that the price becomes expensive (al-Bahuty, 2003).

3.2. Monopoly Regulation in Conventional and Islamic Law

The next problem that needs to be addressed in this monopoly is how the law in the state and in Islamic rules, whether it is absolutely prohibited or just partial prohibition.

Monopoly in Conventional Laws

In conventional law, this monopoly issue is regulated in Law number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition which was signed by president BJ Habibie on March 5, 1999, then the law was enacted one year later after its promulgation (Lubis, 2009). Details of the prohibition are contained in Article 17 of Law No.5/1999, which explains that:

- a. Business actors are prohibited from exercising control over production and or services that may result in monopolistic practices and or unfair business competition.
- b. Business actors should be suspected or deemed to exercise control over the production and or

marketing of goods and or services as referred to in paragraph (1) if:

- (1) There are no substitutes for the goods and or services concerned; or
- (2) Causing other business actors to be unable to enter into business competition for the same goods and or services; or
- (3) One business actor or a group of business actors controls more than 50% (fifty percent) of the market share of a certain type of goods or services (Lubis, 2009).

Based on the article above, there are several main elements to declare the occurrence of a monopoly. **First**, mastery of a product, in the sense that in the market there are no other competitor products. **Second**, control over the marketing of a product, which makes it difficult for other business actors to enter the market competition because there are formidable obstacles in front of them. **Third**, this control causes a monopoly. **Fourth**, this control causes unfair competition because there are those who dominate the market share of more than 50%.

Monopoly in Islamic Laws

In Islamic law, fiqh scholars have different opinions regarding the monopoly law (*ihhtikar*) which is generally divided into two groups, each of which has its own basis.

First, Haram. This is the opinion of the majority of scholars from the Hanafi School, Maliki School, most of the Shafi'i and Hanbali schools, and the Zahiri School. The arguments on which they rely are:

1. Al-Qur'an

Allah *Subhanahu wa Ta'ala* says:

إِنَّ الَّذِينَ كَفَرُوا وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ وَالْمَسْجِدِ الْحَرَامِ
الَّذِي جَعَلْنَاهُ لِلنَّاسِ سَوَاءً الْعَاكِفُ فِيهِ وَالْبَادِ وَمَن يُرِدْ فِيهِ
بِإِلْحَادٍ بِظُلْمٍ نُذِقْهُ مِنْ عَذَابٍ أَلِيمٍ

Indeed, those who persist in disbelief and hinder others from the Way of Allah and from the Sacred Mosque—which We have appointed for all people, residents and visitors alike—along with whoever intends to deviate by doing wrong in it, We will cause them to taste a painful punishment. (QS. al-Hajj [22]: 25)

Imam al-Qurtubi (1964) when explaining this verse he quoted the words of the Prophet *salallaahu 'alaihi wasallam*. "Monopoly over food in haram areas is *ilhad* (godlessness)." (Abu Daud No. 2020), and this is the opinion of Umar bin

Khattab as well as the opinion of other scholars in general. Imam al-Ghazali also explained in *Ihya Ulum al-Din* that a monopoly is a form of tyranny, and he is included in the part that is promised a painful punishment (Al-Ghazali, n.d).

2. Hadith

The Prophet Muhammad *sallallaahu 'alaihi wasallam* said in the following hadiths:

لَا يَحْتَكِرُ إِلَّا خَاطِئٌ

No one does a monopoly, except the sinner. (Muslim No. 1605)

الْجَالِبُ مَرْزُوقٌ، وَالْمَحْتَكِرُ مَلْعُونٌ

The one who brings is given sustenance, and the one who monopolizes is doomed. (Ibn Majah No. 2153)

من احتكر حكرة يريد أن يغالي بها على المسلمين فهو خاطئ
وقد برئت منه ذمة الله

Whoever does a monopoly in order to sell it at a high price to the Muslims, then he has made a mistake. And Allah will ignore him. (Ahmad No. 8617)

من دخل في شئ من أسعار المسلمين ليغلبه عليهم كان حقاً
على الله أن يقعده بعظم من النار يوم القيامة

Whoever intervenes in the price for the Muslims in order to control them, Allah has the right to seat him in the bones of hell on the Day of Resurrection. (Ahmad No. 20313)

من احتكر طعاماً أربعين ليلة فقد برئ من الله وبرئ الله منه
، وأيما أهل عرصة أصبح فيهم امرؤ جائعاً فقد برئت منهم
ذمة الله

Whoever monopolizes food for forty days, then he escapes from Allah, and Allah escapes from him. Whoever causes a person to starve, Allah's responsibility is off him. (Ahmad No. 4880)

من احتكر على المسلمين طعامهم ضربه الله بالجذام
والإفلاس

Whoever monopolizes the food of the Muslims, Allah will decree for him leprosy and bankruptcy. (Ibn Majah No. 2155)

Imam al-Syaukani explained that all the hadiths above show that monopoly is not allowed, even though some of them are not authentic. Among these hadiths, there are those narrated by

Muslims and clearly state that people who do monopoly are wrong people. That's enough to show his inadequacy because the guilty person here means the sinner and the sinner (Al-Syaukani, 1993).

3. Al-Atsar

There are several companions' *Atsar* who explain the prohibition of this monopoly. Among them, Umar bin al-Khattab *radhiyallahu 'anhu* explained, "There should not be a monopoly in our market. Let no one deliberately take the excess of sustenance that Allah Subhanahu wa Ta'ala has revealed to us, and then he monopolizes it" (Al-Baji, 1332 H).

Ali bin Abi Talib *radhiyallahu anhu* also considered that a person who monopolized food for 40 days meant that his heart had hardened, and he also burned the monopolized food (Al-Ghazali, n.d).

4. Logic

A monopoly is a form of tyranny because something sold in the market must be related to the public interest. If the buyer or consumer does not get it because he needs it, it means that his rights have been blocked from getting it. Preventing people who have the right to get their rights is a form of injustice, both in large and small numbers.

Second, Makruh. This is the opinion of the Imamiyyah Shia and the opinion of some scholars in the Shafi'i school. They are based on *Atsar*:

إياك أن تحتكر

Do not monopolize. (Al-Amali, 1414 H)

They stated that this prohibition was only aimed specifically at the person who was *khithab* (to talk to) at that time, namely Hakim bin Hizam. And the law doesn't cover anything else.

This opinion is disputed by the majority of scholars that in the *fiqh* method it is stated that *al-Ibrah bi Umum al-Lafzdi la bi Khusus al-Sabab* (The point is the generality of the *lafadz*, instead of the specificity of the reason).

The basis of these two groups is that the property is the property of the person who does the monopoly, so he has the right to do whatever he wants. No one can regulate it in this case.

Most scholars answered this opinion by stating that ownership is legal as long as it does not harm others. The basis is the words of the Prophet *salallaahu*

'alaihi wasallam "laa dharara wa laa dhiraara" "no harm and harm should not be", also his words "adh-dhararu yuzaalu" "all harm must be removed".

Of the two opinions mentioned above, the strongest opinion (*rajih*) is the opinion of the majority of scholars who state that monopoly (*ihthakar*) is unlawful with several considerations, namely *sahih* arguments that explain the prohibition of monopoly and the threat of punishment for those who do it, the monopoly is contrary to the rules and regulations in Islam, such as the rules of not being harmful and causing harm, and monopolies harms society and destroys the markets.

3.3. Monopoly Items

In conventional law, this monopoly rule deals with everything related to the public interest. Thus, there are no business specifications that are prohibited for monopoly, for example, only food or clothing. This can be seen from the explanation of Law no. 5 of 1999, the essence of which is a control that causes unfair competition and harms the public interest (Lubis, 2009).

Article 51 of Law No. 5/1999 explained:

"Monopoly and/or concentration of activities related to the production and/or marketing of goods and or services that affect the livelihood of the people as well as production branches that are important to the state are regulated by law and organized by State-Owned Enterprises and/or agencies or institutions that established or appointed by the Government".

If activities related to the production and or marketing of goods and or services that affect the livelihood of many people as well as production branches that are important to the state are not carried out by SOEs and or bodies or institutions established or appointed by the Government, it will cause losses to the state and the people (general), and this is what the antitrust laws actually prevent. However, the objective of the conventional market is to make the maximum profit, which sometimes negates the norms of state and populist life. If a product sells well in the market because of its good management or the product has an advantage, or through a long and tiring struggle, then it cannot be called a monopoly at all (Lubis, 2009). Whereas in Islam, *fiqh* scholars differ on what goods are included in the monopoly.

Monopoly is only prohibited for all forms of food.

This is the opinion of the Shafi'i School and most of the Hanbali Schools. Their foundation is the two hadiths of the Prophet *sallallahu 'alaihi wasallam*:

من احتكر على المسلمين طعامهم ضربه الله بالجذام والإفلاس
Whoever monopolizes the food of the Muslims, Allah will decree for him leprosy and bankruptcy. (Ibn Majah No. 2155)

من احتكر طعاماً أربعين ليلة فقد برئ من الله وبرئ الله منه،
وأيما أهل عرصة أصبح فيهم امرؤ جائعاً فقد برئت منهم ذمة الله
Whoever monopolizes food for forty days, then he escapes from Allah, and Allah escapes from him. Whoever causes a person to starve, Allah's responsibility is off him. (Ahmad No. 4880)

However, these two hadiths are problematic hadiths. The first hadith is problematic in terms of the *sanad*. Al-Syaukani explained that in his *isnad*, there is a narrator named al-Haitsam bin Rafi, and he is a person who has problems in his narration so that his hadith has problems to be used as evidence (Al-Syaukani, 1993). The second hadith is also problematic because in its history, there are narrators named Ashbagh bin Zaid and Katsir bin Murrah al-Hadhrani, which are disputed from the side of history. So, the hadith is also questioned if it is used as evidence.

Monopoly is prohibited in any needs and can cause harm when being done.

The point is that everything that is useful to others, then holding it, means hurting other people. The perpetrators are considered sinful because they commit actions contrary to the Shari'a, namely endangering the general public. And this is the opinion held by Abu Yusuf, al-Syaukani, al-Shaany, the Zahiri School, and some of the Maliki Schools.

Their basis is the hadiths that show the prohibition of monopoly in general, without any specialization with food ingredients and so on:

لَا يَحْتَكِرُ إِلَّا خَاطِئٌ

No one does a monopoly, except the sinners. (Muslim No. 1605)

Other hadiths explain:

الجالب مرزوق، والمحتكر ملعون

The one who brings is given sustenance, and the one who monopolizes is doomed. (Ibn Majah No. 2153)

من احتكر حكرة يريد أن يغالي بها على المسلمين فهو خاطئ
وقد برئت منه ذمة الله

Whoever does a monopoly in order to sell it at a high price to the Muslims, then he has made a mistake. And Allah will ignore him. (Ahmad No. 8617)

من دخل في شيء من أسعار المسلمين ليغلبه عليهم كان حقاً على الله أن يقعده بعظم من النار يوم القيامة

Whoever intervenes in the price for the Muslims in order to control them, Allah has the right to seat him in the bones of hell on the Day of Resurrection. (Ahmad No. 20313)

Some of the hadiths mentioned above are *dha'if*. However, one of them is a hadith narrated by Muslim, and is enough to show that it is *shahih* and applicable. **Monopoly is strictly prohibited on human food.**

The proof is the '*aqli*' (logic) proposition that monopoly only harms the general public when it comes to food (Al-Kasani, 1986).

The third opinion has drawn criticism that the dangerous monopoly does not only occur in food but sometimes also occurs in other things. For example, when many people are sick, drug monopoly is also dangerous.

If the three opinions above are considered along with the arguments that serve as the basis, it can be concluded that the strongest opinion is the second opinion that monopoly applies to everything that will harm the general public, not specifically only food and the like.

3.4. Monopoly Sanctions in Conventional and Islamic Law

In conventional law, there are laws that regulate sanctions for monopoly activities. The sanctions take three forms; administrative sanctions, basic criminal sanctions, and additional criminal sanctions (Lubis, 2009).

One of the important elements related to this matter is the Business Competition Supervisory Commission (KPPU), which is an independent institution whose authority, as stipulated in article 36 is to conduct research, investigate and conclude the results of the investigation regarding the presence or absence of monopolistic practices and or unfair business competition.

KPPU can only give administrative sanctions, while the criminal sanctions, both basic and additional, are imposed by other institutions, which in this case is the judiciary.

First, administrative sanctions

If a violation occurs, KPPU has the right to impose administrative sanctions as regulated in Article 47 paragraph (2):

- a. Determination of the cancellation of the agreement as referred to in Article 4 to Article 13, Article 15, and Article 16; and or
- b. Orders to business actors to stop vertical integration as referred to in Article 14; and or
- c. Orders to business actors to stop activities that are proven to cause monopolistic practices and or cause unfair business competition and or harm the public; and or
- d. Orders to business actors to stop abuse of dominant position; and or
- e. Stipulation of cancellation of merger or consolidation of business entities and takeovers as referred to in Article 28; and or
- f. Determination of payment of compensation; and or
- g. The imposition of a fine of a minimum of 1,000,000,000.00 IDR (one billion rupiahs) and a maximum of 25,000,000,000.00 IDR (twenty five billion rupiahs).

Second, principal sanction

The principal punishment is regulated in article 48:

- a. Violation of the provisions of Article 4, Article 9 to Article 14, Article 16 to Article 19, Article 25, Article 27, and Article 28 is subject to a maximum fine of 25,000,000,000 IDR (twenty-five billion rupiahs) and a maximum of 100,000,000,000 IDR (one hundred billion rupiahs), or imprisonment in lieu of a fine for a maximum of 6 (six) months.
- b. Violation of the provisions of Article 5 to Article 8, Article 15, Article 20 to Article 24, and Article 26 of this Law is subject to a minimum fine of 5,000,000,000 IDR (five billion rupiahs) and a maximum fine of a maximum of 25,000,000,000 IDR (twenty-five billion rupiahs), or imprisonment in lieu of a fine for a maximum of 5 (five) months.
- c. Violation of the provisions of Article 41 of this Law is punishable by a fine of a minimum of 1,000,000,000 IDR (one billion rupiahs) and a maximum of 5,000,000,000 IDR (five billion rupiahs), or imprisonment in lieu of a fine for a maximum of 3 (three) months.

Third, additional penalty

For additional penalties, it is regulated in article 49:

By referring to the provisions of Article 10 of the Criminal Code, for the crimes as regulated in Article 48, additional penalties may be imposed in the form of:

- a. Revocation of business license; or
- b. Prohibition for business actors who have been proven to have violated this law from serving as directors or commissioners for a minimum of 2 (two) years and a maximum of 5 (five) years; or
- c. Cessation of certain activities or actions that cause losses to other parties.

The above laws regulate monopoly sanctions in conventional law. As for Islamic law, as mentioned in the Qur'an, surah al-Hajj verse 25 is the basis for the prohibition of monopoly, the sanctions for the perpetrators in the hereafter will be a painful punishment. As for sanctions in the world, the scholars of different schools of thought have different opinions.

First, the opinion of the Hanafi School, as explained by Imam al-Kasani, is that among monopoly laws is to force people who do monopoly to sell their goods in order to eliminate injustice. However, what was ordered to be sold was the remaining part of his food ingredients and the food destined for his family. If he does not want to do it and still insists on doing a monopoly, then the matter is raised again to the *qadhi* (judge), and the judge will give him advice and threaten him. If he does not do what the judge decides, then the matter will be brought back to the judge to then imprison him and punish him for his bad deeds, and he is not forced to buy and sell (enough with the sentence imposed by the judge) (Al-Kasani, 1986).

Second, the opinion of the Maliki School, as stated by Abu al-Walid al-Baji that whoever monopolizes something that should not be monopolized, then in the book of Ibn Mazin from Isa bin Dinar it is explained that he must repent, then forced to go to the market and sell his goods. To people in need according to the purchase price and may not add to it. Because the prohibition is because the goods he buys relate to the rights of others and those in need, if he sells them according to the purchase price, then that means he is returning their rights. If he does not sell it at the purchase price, then he may sell it at a price prevailing on that day. If he does not want to do it, then he is forced to do it and

return the rights to those who are entitled (Al-Baji, 1332 H).

Third, the opinion of the Shafi'i School, as mentioned by Ibn Hajar al-Haitsami, explains that the scholars agree that if someone has food when people need it, then he is forced to sell it to eliminate harm to the community (An-Nawawi, 1329).

Fourth, the opinion of the Hanbali School, as stated by Al-Bahuty that people who carry out monopolies are forced to sell them as other people sell them in order to eliminate harm. If he is reluctant to sell what he monopolized, either human food or animal feed, then the judge distributes the goods to people in need, then they must return it to him when the famine is over (al-Bahuty, 2003).

4. CONCLUSION

The problem of monopoly will never be timeless. As long as there is a market and there is still economic activity, then a monopoly will still occur, which is carried out by parties who only think about profit without heeding economic (business) ethics as well as the interests of society in general.

As has been explained in the discussion on monopoly law, there is no significant difference between monopoly law in the perspective of conventional law and Islamic law. The goods that are prohibited from being monopolized under conventional law are goods related to the public interest. This opinion is in line with the opinion of the majority of scholars in the study of Islamic law, which is the strongest opinion.

The difference is only seen in the details of the sanctions imposed on the monopolists. If in conventional law, the details of sanctions can be seen in articles 47, 48, and 49. Whereas in Islamic law, there is little resemblance to conventional law where people who carry out monopolies are forced to sell their goods in order to eliminate harm from people who need these goods, without any details of sanctions as regulated in conventional law. However, the essence of punishment in Islamic law is still returned to the decision of the judge (government), who considers which is the best law to be imposed on the monopolist so that injustice can be removed from the midst of society. Monopoly law in Islam is not something *tauqifi*, which is clear and based on the texts of the Qur'an and as-Sunnah. The law is *ijtihad*i, which will pay attention to *maslahah* and *mafsadah*,

which are essentially the same as conventional law by eliminating harm from the general public.

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