



A LIMITED LIABILITY COMPANY'S WEALTH STATUS IN ISLAMIC LAW

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ABSTRACT

This study focuses on the wealth of limited liability companies based on Islamic Law. The problem defined is how the validity of the Limited Liability Company and the position of the wealth by Limited Liability Company are based on Islamic Law. The research method used is normative with a statute approach and conceptual approach. The method used is a literature study which uses a descriptive analysis. The results of the study conclude that the validity of a Limited Liability Company can be equated with syirkah mal 'inan since a cooperation agreement between two or more people in the form of a commodity or an association in all forms of commodities. Separated assets and the capital of a Limited Liability Company can be categorized as mal ashal and the company result are mal tsamarah.

Keywords: *Limited Liability Company, Legality, Islamic Law*

1. Introduction

Indonesia's economic growth which is currently growing rapidly is supported by one of the factors, namely a company in the form of a Limited Liability Company (LLC). Limited Liability Company (LLC) is a company with a model of partnership of many parties as investors. LLC was established based on a formation agreement with the joint capital of the parties to carry out a business activity with legal consequences for the separation of assets between the founders/owners of the established company.

Limited Liability Company has its own position which is given by Indonesian laws and regulations. This autonomic stance has consequences, specifically which all risks arising from the undertaking actions of the limited liability company are the responsibility of the Limited Liability Company

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itself. Limited Liability Companies have assets that are separated from the personal assets of shareholders and those who run the company.²

Wealth in the perspective of Islam is the absolute property of *Allah SWT*. The ownership of wealth by humans includes the management and the usage that are relative. Muslims are required to acquire wealth on an ongoing basis and donate it as alms. The need to try and work hard to make a profit.³

A Limited Liability Company stands for profit. The validity of a limited liability company according to Islamic law will determine the position of the company's assets. This paper aims to describe the validity or equivalent of a business in Islamic law with a limited liability company applied in Indonesia, and the position of wealth/capital and profits of the company. Subsequently, the following question is formulated: How is the legality of the Limited Liability Company and the position of the Limited Liability Company assets based on Islamic Law.

The existing research is entitled 1) Status of Wealth and Implications in the Perspective of the Qur'an and Hadith written by Riki Aprianto Asnaini which focuses on the understanding of wealth, status of wealth, distribution of assets and legal consequences, as well as the causes of property ownership; 2) The Status of Wealth Management in Islam written by Choirunnisak This paper focuses on the definition of wealth, creation, and the cycle of wealth management based on Islamic law to obtain the concept of wealth in Islam; 3) Sharia Limited Liability Company: Concept and Legality The perspective of Islamic law written by Ainul Yaqin focuses on the equation of a limited liability company with a form of *shirkah* contract.

² Parman Komarudin, *Perusahaan Sebagai Subjek Zakat Dalam Perspektif Fikih Dan Peraturan Perundangan, Al-Iqtishadiyah* Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah Vol. IV, No. 1, June 2018, p. 86.

³ Choirunnisak, "Konsep Pengelolaan Kekayaan dalam Islam." *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah* 3, no. 1, 2017, p. 29.

2. Research Method

This research is a normative research, namely legal research that puts the law as a structure system of norms.⁴ The data used is secondary data. Secondary data is data obtained from the results of a literature review or a review of various literatures or library materials related to the object of research. The data collection technique used is literature study. The approach method used is the statutory approach (statute approach) and the conceptual approach. The data is analysed descriptively.

3. Results and Discussion

3.1. The Legality of Limited Liability Company based on Islamic Law

A limited liability company is the most common form of business, based on Law no. 11 of 2020 Omnibus Law concerning Job Creation, a limited liability company is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares. There are limitations arising from this definition, namely that a limited liability company is a legal entity; established by agreement; running a certain business; have capital which is divided into shares.

Limited Liability Companies are not human even though they are legal entities, LLCs are artificial and do not have their own power of thought, will, and awareness. To do an action must act through humans. A Limited Liability Company as a legal entity must meet the following elements:⁵

3.1.1. Organic Organization

An organic organization is proven by the organs of the GMS, the Board of Directors, and the Commissioners.

3.1.2. Owning wealth

⁴ Dewata, Mukti Fajar Nur dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Cetakan ke- 4, Pustaka Pelajar, Yogyakarta, 2017, p 34.

⁵ Ainul Yaqin, "Perseroan Terbatas Syariah: Konsep dan Legalitasnya Perspektif Hukum Islam." *Mahkamah: Jurnal Kajian Hukum Islam* 4, no. 1, 2019, p. 39

The Company must have its own assets in the form of authorized capital consisting of the entire nominal value of shares and immovable property.

3.1.3. Performing independent legal relationship

Limited Liability Company as a legal entity conducts its own relationship with third parties represented by the Board of Directors.

3.1.4. Carrying Goals

The Company has its own objectives which are specified in the Articles of Association of LLC. because the Limited Liability Company runs a business with the main objective of making a profit.

3.1.5. The existence of separate assets

Limited Liability Company which has assets separated from the shareholders'. This wealth is obtained from the capital entered by the shareholders in the form of authorized capital, issued capital and paid-up capital.

Cooperation between two or more people in the field of business or trade economy and on property to obtain mutual benefits with certain terms and conditions that have been mutually agreed is called *Syirkah* in Islam.⁶ *Syirkah* according to scholars has several specialties, namely: *Syirkah* is a contract named (*'aqd musamma*); *Syirkah* is *akad ja'iz*, that is, each member can cancel the contract at any time with the consequence that the *Syirkah* ends; Have causes that are in accordance with *shara'*; There is a right intention on the part of the *Syirkah* parties; The parties of *Syirkah* are more than one person because there is consent and acceptance; Sharing the advantages and disadvantages of *Syirkah* among members; The power (*yadd*) of members is based on *amanah* (trust); *Syirkah* can end with the existence of several reasons at the will of the parties or other reasons.⁷

⁶ Abdul Manan, *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama*, PT Fajar Interpratama Mandiri, Jakarta, 2012, p 121.

⁷ *Op.Cit* Ainul, p. 40

Islamic jurists divide the company into two forms, namely *syirkatul amlak* (*syirkah* of property rights), *Syirkah uqud* (*syirkah* transactions). *Syirkah uqud* is a *syirkah* carried out by two or more parties to establish a partnership of assets in order to seek profit. *Hanafiyyah* scholars classify types of *syirkah uqud* that not based on the object, they are *syirkah al-amwal*, *syirkah al-Manifest*, *syirkah al-a'mal*. According to other scholars, *syirkah uqud* is divided into four types, namely *syirkah al-inan*, *syirkah al-mufawadah*, *syirkah al-abdan*, and *syirkah al-wujuh*.

The realization of *syirkah* must meet certain conditions. Most scholars say there are three principle of *syirkah*, which are two parties who transact (*aqidan*); goods that become the object of the transaction (*ma'qud 'alaih*); agreement (*sugah*). *Hanafiyyah* scholars argue that there are two pillars of *syirkah*, namely *ijab* and *kabul*, while the parties to the transaction and the object are already prevalent that must exist to form an agreement. There are three general requirements for *syirkah*, namely being able to be represented (*qabiliyyah al-wakalah*); clarity of sharing profits; the profit share for each party stated in the *nisbah*.⁸

Limited Liability Company (LLC) substantially has similarities with *syirkah*, the similarity is an effort to invest in capital to conduct a joint business. Mixing the capital of the parties is to seek profit from the business conduct of LLC. The establishment of a LLC begins with an agreement in the form of a deed of establishment of the founders/owners of capital accompanied by the provision of capital and the taking of shares of the parties. Legal entity status can be obtained by fulfilling to government's provisions. The scholars have categorized LLC into *syirkah*.⁹

A Limited Liability Company has the characteristics of a capital association. Shareholders are entitled to gain in accordance with the value of the shares owned, and to bear the loss of the company equal to the value of the shares. There is a separation between shareholders and members of the management (board of directors). The Board of Directors

⁸ *Ibid.* p. 42

⁹ *Op.Cit*, Kontrak Kerja sama, p. 142

is an organ of the company with full duties and responsibilities for the supervision of the company for the interests, objectives and representing the company inside and outside the court in accordance with the articles of association. In addition to the Board of Directors, LLC also has Commissioners with supervisory duties.

If the Board of Directors are included to shareholders, the Limited Liability Company's agreement contract can be equated with *syirkah mal 'inan*, but if the Board of Directors is not a shareholder of a Limited Liability Company, the business agreement contract is the same as the *al-Mudarabah* cooperation contract. *Syirkah mal 'inan* including *syirkah uqud*. *Syirkah uqud* is a form of contract between two or more people who are united in capital and profits, *syirkah uqud* is divided into *syirkah mal*; *syirkah abdan*; *syirkah wujud*.

Syirkah mal is a cooperation agreement between two or more people who agree that if each of them submits a certain amount of capital to get results by managing it, and each member gets a certain share of the profits, *syirkah mal* is divided into two namely *syirkah mal mufawadah* and *syirkah mal 'inan*. *Syirkah mal mufawadah* is a cooperation agreement between two or more people who agree to associate in a job, provided that both parties have the same amount of capital, expenditure, religion, one party is the guarantor of the other party in obligations. *Syirkah mal 'inan* is a cooperation contract of two or more people in the form of a commodity or an association in all forms of commodities, there is no mention of coverage but there is representation, it is permissible between Muslims and non-Muslims, it is not required that there must be same amount in the main capital.¹⁰

In addition to *syirkah mal 'inan*, a limited liability company can also be equated with *al-mudarabah*. *Al-mudarabah* is capital participation by investors to other people to manage in the form of trading, where profits will be shared between investors and managers as agreed by both, and losses are borne by investors.

¹⁰ *Ibid.* 139

Taqyuddin an-Nabhani states that the company's partners can make purchases and sales transactions for certain reasons which he/she thinks are beneficial for the company. The partners have the right to release the price and sell goods, disagree in debt, and have the right to demand debt, move and moved by their debt, and have the right to return certain defects, have the right to agree with the company's investment, and be contracted, because these benefits apply to goods, so that status is the same as buying and selling. The shareholder has the right to sell, contracting their goods, because the benefits in the company are the same as the substance of the goods themselves, so that this also applies to the company.

The burden of the '*inan* company is determined based on the level of wealth value. If the parties determine the burden of losses other than those provisions, then the agreement has no value. The liability for losses suffered by the company will be adjusted to the size of the capital included by the shareholders. Profit sharing is in accordance with the the promised or agreement. Profits can be divided on the basis of paid-in capital, or on the basis of larger jobs. Therefore, an '*inan* company' is a company carried out by two or more people with the object of the transaction including capital that must be clearly, real, and not owed to other people.¹¹

Fiqh scholars argue that *al-mudarabah* is an agreement between two people, where one party includes capital to the other to be managed in the form of trade, and the profit share will be divided according to the agreement and the amount is determined. The form of a *mudarabah* company is the same as a *muqaradhah* company, both of which borrow money for business purposes. This company is justified in Islamic law because it aims to help each other between the owner of the capital and an expert in managing and operating the capital to obtain the expected profit. The legal basis for this form of cooperation is the word of *Allah SWT* in Surah al-Muzzammil (73) verse 20. Another reason this company

¹¹ *Op.Cit.*, Hukum Ekonomi Syariah, p.

is allowed is based on the example of the Prophet *Muhammad SAW* himself who worked as a *dharib* for Siti Khodijah before he was officially appointed as a Prophet.

Nasrun Haroen argues that there are differences in the views of the Hanafi scholars with the number of scholars in determining the *mudharabah* contract. Legal experts among the Hanafis state that the pillars in the *mudharabah* contract are only the consent of the person who submits the capital and the acceptance of the person who manages the capital. While the majority of scholars state that the pillars of *mudharabah* consist of people who have a contract, capital, profits, work and contracts, not only in terms of regular pillars but must be included in the requirements of the *mudharabah* contract. These conditions are related to the person whom conducting the transaction must be a person who can act legally and is capable of being appointed as a representative, because on the one hand the position of the person who will manage the capital is the representative of the owners of the capital; related to capital, it is required to be in the form of money, clear amount, and fully delegated to the capital manager (*dharib*); related to profits, it is required that the distribution of profits must be clear and that each share is taken from the profits.¹²

3.2. The Status of Limited Liability Company's Wealth

Wealth in Arabic is called *al-mal* which meaning is tendentious, inclined and slanted. Wealth based on etymology mean everything that pleases humans and is maintained in the form of material or benefits. Terminologically it means something that is devoted by human nature and allows it to be stored until it is needed. Hanafi scholars say that property is everything that can be collected, stored (maintained) and can be used according to general needs. *Jumhur Ulama* state to equate property rights and assets, while Hanfiyah scholars distinguish between property rights and assets. Property rights are something that can be used

¹² *Ibid.*

specifically and not interfered with by other people. Wealth is anything that can be stored for use when needed, in its use it can be interfered with by others.¹³

According to the *mazhab* Maliki, there are two kinds of property rights. The first is the inherent right of a person that prevents others from controlling it. Second, something that is recognized as owned property. The *mazhab Shafi'i* believes that property rights are of two kinds. Property rights are something that is beneficial to the owner, and property rights are valuable assets. The *mazhab* Hambali defines property rights into two types, namely something with economic value and protected by law.¹⁴ There are four things in property / property rights, namely something that can be taken advantage of; something that has economic value; something that is '*urf* (commonplace) recognized as property; regulatory protection.

Tengku concludes that wealth from the various definitions that exist is that property is a name for other than humans which is determined for the benefit of humans, can be maintained in one place, *tasharrufi* can be carried out by *ikhtiyar*; something that every human being can have; something that is legally traded; something that can be owned and has value; something that can be stored for a long time or for a short time and can be used when needed.¹⁵ The *fuqaha* argue that property hinges on two elements, namely '*ainiyah* and '*urf*. The element of '*ainiyah* is that property has a form in reality (*a'yan*). The element of '*urf* is everything that is considered a asset by humans, can be given or not given.¹⁶

The Qur'an regulates the status of wealth, explain that wealth is only temporal, because humans are not having ability to create objects from nothing to exist, it is obligatory to donate the acquired property; Wealth as a living adornment that allows humans to enjoy it well and not

¹³ Asnaini, Riki Aprianto. "*Kedudukan Harta Dan Implikasinya Dalam Perspektif Al-Qur'an dan Hadis.*" *Al-Intaj: Jurnal Ekonomi Dan Perbankan Syariah* 5, no. 1, 2019. p. 16

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

excessively; Wealth is a test of faith. This mainly concerns how to obtain and use them; Wealth as a provision or a means of worship. According to the Islamic view, wealth is not a goal but only as a means to gain the pleasure of *Allah SWT*. The status of wealth in the Qur'an has a logical impact, namely that humans are not absolute owners, but are limited by the rights of *Allah SWT*, so they are obliged to issue *zakat* and other worship; Methods of taking wealth must lead to mutual prosperity, the implementation of which can be regulated by the community; Individual property may be used for the public, with provision of the owner should receive a fair compensation for doing it.

3.2.1. Parts of Wealth

The *fuqaha* argue that wealth consists of several parts, and each has its own special characteristics and status. These parts are *mal mutaqawwim* or valuable assets, namely every property that is kept by someone and *syara'* requires its use and how to obtain it with what is justified by *syara'*. *Mal qhayr mutaqawwim* or wealth which is not valuable is some assets that are not stored or owned by people, or assets that cannot be taken advantage of, how to obtain them or use them; *Mal mitsli* is a property that is comparable or similar to it without any excess or deficiency in all its *juzu'* (physical, parts) or in other words the type of property is easy to obtain exactly. *Mal qimi* is wealth that has no equivalent in the market, but the value of each unit is different. *Mitsli* assets can be turned into *qimi* assets, and *qimi* assets can turn into *mitsli* assets with the following conditions:¹⁷

- a. *Mitsli* assets are difficult to obtain in the market, so they will automatically turn into *Qimi* assets;
- b. There is a mixture of two *mitsli* assets of two different types, then it becomes a *qimi* assets;

¹⁷ *Ibid.*

- c. If the *qimi* property has an equivalent in the market, then it becomes a *mitsli* property.

The status of wealth of *mal istihlak* and *mal isti'mal*. *Mal istihlak* means wealth whose use must be run out in one time use. There are two types of *mal istihlak*, namely *istihlak haqiqi* and *istihlak huquqi*. *Istihlak haqiqi* is a wealth that after its usefulness is used, its form is clearly exhausted, while *istihlak huquqi* is a wealth that runs out when used but the form of the item is still there. *Isti'mal* assets are assets that can be used repeatedly and will not run out of form and property rights; *Mal manqul* is a movable property, this property has the advantage of being able to move from one place to another. *Mal ghair manqul* is a property that cannot be moved from one place and has a fixed and immovable nature;¹⁸

Assets *'ain* and *dayn*. *Mal 'ain* is a asset in the form of objects such as clothes, houses and others, this asset is divided into two, namely *'ain dzati qimah* is an object that has a shape seen as a asset because it has value; *'ain ghair dzati qimah* is an object that is not seen as a asset because it has no value. *Mal dayn* is an asset that is under the responsibility of a person or property owed by another person, so that the responsibility of the property is transferred to another person; *Mal al-'Ain* is an object that has value and is tangible. *Mal al-Naf'I* is a property that gradually grows according to the development of time, consumes intangibility and is not stored;

Mal qabil li al-Qismah and *mal ghair qabil li al-Qismah*, *mal li al-Qismah* are assets that can be divided. *Mal ghair qabil li al-Qismah* is property that cannot be divided, if the property is divided it will cause damage and

¹⁸ *Ibid.* p. 19

loss; *Mal ashal* (principal assets) and *mal tsamarah* (fruity asset), principal assets are assets from which there are including other assets (fruit assets); *mal khas* is owned property (private) which has the effect that only the owner can take advantage of it, and *mal 'am* is joint property whose benefits can be taken by the public or jointly.¹⁹

Assets can be owned through *ihraz al-mubahat*, transactions, inheritance, *tawallud min mamluk*, giving, obtained. *Ihraz al-mubahat* is a way of ownership through possession of property that is not owned by a person; Through transactions or contracts with other parties; Inheritance is property obtained by a person from a person who has passed away; *Tawalud min mamluk* is property that comes from property that has been owned; Assets given by the state to the people; Assets obtained by someone without spending wealth or effort.²⁰

3.2.2. Acquisition or Creation of Wealth

Islam teaches that property or wealth can be obtained by someone through effort and inheritance, it is not allowed to waste wealth. Money can be used for business to gain profits in ways that are lawful and in accordance with the principles of permissibility in Islam. Wealth must be cultivated to generate profits and distributed in the ways permitted by Islamic law. Income and business capital may not be obtained through prohibited means.

The development of prohibited wealth is too obsessive or excessive because it can interfere with the spiritual side of humans. The accumulation of wealth is not prohibited as long as the accumulation is not excessive and only among a group of individuals or society. The method

¹⁹ *Ibid.* p 22

²⁰ *Ibid.* p. 23

of acquiring property may not violate the following *Shari'a* rules:²¹

- a. Work or effort that results in forgetting death, forgetting *dhikrullah*, prayer and zakat, and concentrating wealth on a certain group of groups;
- b. Cases that degrade human dignity;
- c. It is forbidden to take illegal business;
- d. Consuming property by cheating;
- e. Acquire wealth by breaking promises and oaths;
- f. Cases that harm individual rights and the interests of the community;
- g. hoarding of assets;
- h. Prodigality,
- i. Producing, trading, consuming prohibited goods.

3.2.3. The Status of Wealth in the Qur'an and Hadith

There are many expressions about interpreting wealth and placing it in its actual position/status, in Islam the absolute owner of wealth is *Allah SWT*. Wealth is given to humans as a trust that must be held properly, as jewellery that adds to happiness in life, a test of faith, and provisions for worship. The Qur'an and the hadith of the position and implications of wealth are described as follows:²²

- a. The absolute owner of property is *Allah SWT*
The absolute owner of wealth/property is *Allah SWT*, while human ownership of property is only relative. The implication of this position is that humans should not be arrogant, haughty, miserly towards wealth, because in the end they will return to *Allah SWT*.
- b. Wealth as a entrustment/worldliness

²¹ *Op.Cit.* Konsep Pengelolaan, p. 34

²² *Op.Cit.* Kedudukan Harta, p. 23

Wealth/assets that are used to help and make everything easier for humans to live in the world, if not managed properly, it will end in disaster. Tarigan divides four groups of people in managing their wealth, the first group is those who get wealth in a lawful way and use it in a lawful way; The second group is those who collect wealth in a lawful way but use it for something unlawful; The third group, are those who collect wealth from the unlawful way and use it for something unlawful; The fourth group is those who accumulate wealth in a way that is forbidden to use it for lawful things.

c. Wealth as provision of worship

Wealth is similar to a knife, which is useful if it is held by a chef to cook food, but a knife will be a scary thing if held by a bad person. If property is owned by a good person, it will be very useful as a means of fulfilling worship and the general benefit, but property owned by a bad person will be very dangerous and can damage the foundations of the economy and the benefit of society.

d. Wealth as jewellery

Wealth/treasure is one of the jewels of life. If jewellery is used at the wrong time and place it will look horrible. So it is emphasized that something useful and happy are eternal and good practices. The implication of the position of property as jewellery is that humans should not be carried away by wealth, wealth should not neglect good and useful practices.

4. Conclusion

Limited Liability Company is a business or cooperation or *syirkah* by the collection of capital of from some parties for profit, Limited Liability Company can be equated with *syirkah mal 'inan* because a cooperation contract of two or more people in the form of a commodity or an association in all forms of commodities, there is no mention of insurance but there is a representative. And can be equated with *al-mudarabah* because the Board of Directors does not own shares, so one party includes capital to the other to be managed in the form of trading, and the profit share will be divided according to the agreement and the amount is determined.

The position of the assets of a Limited Liability Company is an effort for humans to manage and make some efforts of their profit/wealth. Wealth that have been separated and become the capital of a Limited Liability Company can be categorized as *mal ashal* and the results of the business are *mal tsamarah*.

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3. Constitution

Al-Quran

Al-Hadist