

## THE IMPLICATION OF PROPERTY CLASSIFICATION ON CONTRACT VALIDITY AND *TASHARRUF* RIGHTS: A COMPARATIVE ANALYSIS OF FIQH SCHOOLS

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### Abstract

Property (al-māl) occupies a central position in Islamic law as part of Maqāṣid al-Syarī‘ah. However, there is a fundamental divergence among Fiqh schools regarding its ontological definition. The Hanafi school emphasizes a materialistic approach requiring physical existence and storability while the Majority (Jumhur) scholars (Maliki, Shafi'i, and Hanbali) adopt a value-based functional approach. This study aims to analyze these comparative views and their implications for contract validity and disposal rights (ḥaq taṣarruf), particularly within the context of the digital economy. Using a qualitative library research method with a juridical-normative approach, this study finds that the Jumhur's definition is more adaptive to modern intangible assets such as cryptocurrencies and NFTs. Conversely, the Hanafi distinction between invalid (fāsid) and void (bātil) contracts offers legal stability in transactions. The study concludes that a methodological synthesis between Hanafi's legal rationality and the Jumhur's value-orientation is necessary to construct a contemporary Fiqh Muamalah that is responsive to technological disruption while maintaining Sharia compliance.

**Keywords:** *Al-Mal, Contract Validity, Digital Economy, Fiqh Schools, Tasharruf.*

### 1. INTRODUCTION

Wealth (al-māl) in the Islamic legal system occupies a very central position as one of the five maqāṣid al-syarī‘ah, namely the protection of religion, life, intellect, lineage, and wealth (ḥifz al-dīn, al-nafs, al-‘aql, al-nasl, wa al-māl) (Masrina, 2023). The protection of wealth is not merely economic but also a theological mandate related to social justice and the balance of human life<sup>2</sup>. In the Qur'an, wealth is referred to as zinah al-hayāh al-dunyā (adornment of worldly life) (QS. Al-Kahf: 46) as well as fitnah (a test) (QS. At-Taghābun: 15), demanding management that is fully responsible and in accordance with Sharia principles 3 (Muhit & Herawan, 2023). Ownership of wealth in Islam is not absolute but is a trust from Allah SWT. Humans act only as managers (*mustakhlaf*), while absolute ownership remains with God (Nizaruddin, 2019). Therefore, the concept of ownership in Islam contains elements of spirituality and social responsibility not found in conventional economic systems. However, when this normative concept is derived into positive Islamic law (*furu‘ al-fiqh*), fundamental differences of view arise among the schools of jurisprudence regarding the ontological definition of *al-māl*.

The Hanafi school defines wealth based on a materialistic approach emphasizing physical existence ('ain) and the ability to be stored (*iddikhār*) (Al-Sarakhsī in *Al-Mabsūt*), whereas the Majority of Scholars (*Jumhur*) (Maliki, Shafi'i, and Hanbali) prioritize a value-based functional approach emphasizing utility and exchange value (*qimah*) as the basis for determining wealth status (Suryaman, Yusup, & Jubaedah, 2024). This difference is not merely terminological but impacts the validity of contracts ('aqd), compensation mechanisms (*dhamān*), and legal status in modern transaction. For instance, the Hanafi school views "benefits" (*manfa 'ah*) not as wealth because they lack physical form, whereas the *Jumhur* considers them legal wealth (*maujud hukman*) because they possess economic value recognized by society ('urf) (Asmuni, Rahmah, & Anggraini, 2024).

In the contemporary context, this debate gains new relevance with the rise of the digital economy, introducing non-physical assets like cryptocurrency, Non-Fungible Tokens (NFT), and financial instruments such as stock waqf. Industry 4.0 has blurred the lines between tangible and intangible assets, challenging the conceptual boundaries of classical fiqh<sup>10</sup> (Fauzi & Mursal, 2024). In this regard, the *Jumhur*'s value-based approach is considered more adaptive to digital realities, as it acknowledges the existence of benefits and non-physical rights as part of *al-māl mutaqawwim* (Fahmi, 2023). Without proper reinterpretation, the Islamic legal system risks normative stagnation and lagging in accommodating new economic innovations like asset tokenization and the virtual economy (*metaverse economy*)<sup>12</sup> (Firman & Andatu, 2025). Therefore, this research aims to comparatively analyze the views of the Hanafi School and the *Jumhur* regarding the classification of wealth and its implications for the validity of contracts and *tasharruf* rights in the digital economy<sup>13</sup>. This study uses a qualitative approach based on library research, with primary sources from classical literature (*turāts fiqh*) and contemporary studies. This approach allows for a conceptual and comparative reconstruction of the doctrines of *fasiḍ-bāṭil*, *mutaqawwim–ghairu mutaqawwim*, and their relevance to digital ownership.

## **2. IMPLEMENTATION METHOD**

This study employs a qualitative approach with a juridical-normative method based on library research, aiming to analyze deeply the Islamic legal doctrines regarding the classification of property (*al-māl*) across various fiqh schools and their relevance to contract validity and *tasharruf* rights in the digital era.

The data used are secondary data sourced from primary legal materials such as the Qur'an, Hadith, and classical works like *Al-Mabsūt* by Al-Sarakhsī and *Radd al-Muhtār* by Ibn 'Ābidīn, alongside contemporary literature such as Asmuni, Rahmah, and Anggraini (2024), and Suryaman, Yusup, and Jubaedah (2024) discussing *fiqh muamalah*. Data collection techniques involve literature review and documentation of classical and modern *fiqh* sources, including academic articles on digital assets like cryptocurrency and NFTs (Fahmi, 2023; Fauzi & Mursal, 2024). Data analysis is conducted using a descriptive-comparative and contextual method, describing legal concepts from each school, comparing their epistemological and ontological bases, and connecting them to contemporary legal challenges through deductive and inductive analysis. Data validity is strengthened through

source triangulation to ensure every legal argument has a textual basis and relevance to *maqāṣid al-syarī‘ah* (Masrina, 2023; Firman & Andatu, 2025).

### 3. RESULTS AND DISCUSSION

#### 3.1 The Dialectic of Property Definition

In Islamic jurisprudence, the fundamental difference between schools regarding *al-māl* lies in the relationship between material form ('ayn), value of benefit (manfa‘ah), and social recognition ('urf). The Hanafi school defines *al-māl* as something naturally desired by humans and capable of being stored and utilized concretely (imkān al-hiyāzah wa al-intifā‘).

المال : هو كل ما يمكن حيازته وإحرازه وينتفع به : عادة

وقد ورد تعريف المال في المادة ١٢٦ من المجلة نقلًا عن ابن عابدين الحنفي (٢) وهو : « المال : هو ما يميل إليه طبع الإنسان ، ويمكن ادخاره إلى وقت الحاجة ، منقولاً كان أو غير منقول

"Wealth is what human nature inclines towards and can be saved for time of need, whether movable or immovable" (Al-Zuhayli, 2011).

This definition classically excludes "benefits" and "rights" (*huqūq*) from the category of wealth due to their abstract nature. However, the role of '*urf* in the Hanafi school opens space for conceptual adaptation, so in contemporary development, digital storage is viewed as a new form of *hiyāzah* (Hasan & Abdullah, 2019). Conversely, the Maliki school focuses on exclusive ownership (*ikhtisās*) and the owner's ability to prevent others from utilizing it. For Malikis, benefit is the essence of wealth, while the physical object is merely a means (*wasīlah*) (Al-Shatibi, 2004). This approach has strong relevance for digital assets based on usage rights and licenses, such as software and NFTs. The Shafi'i school requires *al-māl* to have economic value (*qīmah*), be recognized in transactions, and mandate compensation (*damān*) if destroyed (Al-Suyuti, 1990). The Hanbalis explicitly require that the benefit must be absolutely permissible (*mubah*) (Ibn Qudamah, 1997).

From this mapping, the Majority of Scholars (Jumhur) (Maliki, Shafi'i, and Hanbali) have a more inclusive conceptual framework towards intangible assets compared to classical Hanafi, although the '*urf* principle in Hanafi remains an important instrument.

وأما المال عند جمهور الفقهاء غير الحنفية : فهو كل ما له قيمة يلزم متنفه بضمانه

"As for the definition of wealth (*al-mal*) according to the majority of jurists other than the Hanafi school: It is everything that has value, such that the one who destroys it is obligated to replace it" 34 (Al-Zuhayli, 2011).

Table 1. Comparative Analysis of Property Classification

Analysis Parameter	Hanafi School (Materialist)	Jumhur/Majority (Functionalist)

<b>Definition of <i>Al-Mal</i></b>	Something with physical form ('ain) and can be stored ( <i>iddikhar</i> ).	Something valuable ( <i>mutaqawwim</i> ), possessable, and utilizable, whether physical or non-physical.
<b>Status of Benefit (<i>Manafi'</i>)</b>	Not Wealth ( <i>Ghairu Mal</i> ), but Property/Ownership ( <i>Milk</i> ).	Absolute Wealth ( <i>Mal</i> ).
<b>Status of Rights (<i>Huquq</i>)</b>	Not Wealth.	Wealth, if it possesses exchange value.
<b>Possession Condition (<i>Hiyazah</i>)</b>	Requires real physical possession ( <i>Hiyazah Haqiqiyah</i> ).	Authority or access is sufficient ( <i>Hiyazah Hukmiyah</i> ).
<b>Legal Basis</b>	Human nature ( <i>Thab'</i> ) and custom.	Sharia Legality and Custom ('Urf).
<b>Main Implication</b>	Contracts on benefits (lease) are anomalies; usurpation of benefits requires no compensation.	Contracts on benefits are standard; usurpation of benefits requires compensation.

### **3.2 Implication of Classification on Contract Validity**

The Hanafi school introduces a trichotomy of contracts: valid (*ṣahīh*), defective (*fāsid*), and void (*bāṭil*). Ibn 'Ābidīn in *Radd al-Muhtār* explains:

"الباطلُ مَا لَا يَتَصَوَّرُ صِحَّةُ بِوْجِهٍ، وَالْفَاسِدُ مَا يَتَصَوَّرُ صِحَّةُ بِوْجِهٍ أَخْرِيًّا"

"A void contract is one whose validity cannot be conceived in any way, while a defective (fasid) contract is one whose validity can be conceived in another way (if the cause of defect is removed)". Hanafi views that a fāsid contract still has limited legal effects, such as ownership rights after delivery. This approach is pragmatic for maintaining market stability (Siswadi & Najihah, 2023). Contracts such as sale (*bay'*), lease (*ijārah*), and pledge (*rahn*) by consensus (*ijma'*) require the object to be *māl mutaqawwim* (Al-Zuhayli, 2011).

In the context of the digital economy, cryptocurrencies lack physical form but possess global economic value. If analyzed using the *Jumhur* approach, the economic value (*qīmah*) and market recognition ('urf *tijārī*) make these assets meet the criteria of *al-māl*. Conversely, classical Hanafi analysis might question its validity due to the lack of physical form. However, the Neo-Hanafi approach accommodates digital storage as a new form of *hiyāzah* (Hasan & Abdullah, 2019). Based on the fiqh maxim "العادة مُحَكَّمة" (Custom is the basis of judgement), public recognition of digital asset value gives it the status of wealth. Therefore, cryptocurrency is categorized as *māl mutaqawwim* if it has an exchange value and is widely accepted (*ta 'āmul*). This aligns with DSN-MUI Fatwa No. 123/2021 (Fauzi & Mursal, 2024; Firman & Andatu, 2025). The concept of *qīmī* (unique wealth) also explains the status of NFT<sup>48</sup>. Imam Malik asserts that goods without identical substitutes are *qīmī* wealth. Thus, NFTs are categorized as *māl qīmī* due to their uniqueness. However, if it is based merely on speculation without underlying value, the contract may be potentially *fasid* (Rahman & Anwar, 2022). This aligns with Asmadi (2018), emphasizing clarity of the object as a fundamental prerequisite.

### 3.3 Taşarruf Rights over Digital and Non-Physical Assets

Ownership (*milkiyyah*) gives rise to taşarruf rights (to utilize, transfer, or develop). Contemporary fiqh categorizes intellectual property rights as *māl* because they meet the elements of value, benefit, and legal protection. Therefore, tasharruf without permission such as piracy is a violation of *hifz al-māl* (Hidayat, 2021; Faozan, 2020). E-wallet balances are also *māl*, and the owner has full tasharruf rights as long as not used for prohibited transactions.

### 3.4 Synthesis and Relevance for Modern Islamic Economic Law

The comparative analysis suggests that the *Jumhur* view provides a normative foundation more compatible with the modern economy dominated by intangible assets. Meanwhile, the Hanafi contribution through 'urf allows for legal legitimacy of digital innovation. This synthesis aligns with the *maqāsiyyah* approach (Iskandar et al., 2023). While the *Jumhur*'s value-based paradigm is more compatible with intangible assets, the Hanafi flexibility through *istihṣān* and 'urf *tijāri* remains crucial for adaptive regulation 61 (Hasan & Abdullah, 2019: 40). This legal flexibility aligns with the maxim by Al-Qarafi in *Al-Furūq*:

"إِنَّ الْأَحْكَامَ تَتَغَيَّرُ بِتَغَيُّرِ الْأَزْمِنَةِ وَالْأَمْكَنَةِ وَالْأَحْوَالِ وَالْعَوَائِدِ وَالنِّيَّاتِ"

"Verily, rulings change with the change of times, places, conditions, customs, and intentions" (Al-Qarafi, 2010: 228).

Thus, the transformation of the concept of wealth from physical to digital is not a deviation (*inhirāf*), but a form of contemporary *ijtihad* (Firman & Andatu, 2025: 112).

## 4. CONCLUSION

This research concludes that the conceptual difference between the Hanafi School and the *Jumhur* regarding *al-māl* is rooted in epistemological differences concerning the nature

of value. The Hanafi school requires physical existence, while the Jumhur relies on value and social recognition ('urf). The implication is seen in contract validity ('aqd) and compensation (dhamān). In the digital economy, the Jumhur paradigm is proven to be more adaptive to assets like cryptocurrency and NFTs. However, the Hanafi flexibility regarding fāsid and bātil contracts remains relevant for legal stability. A methodological synthesis is required to build a contemporary fiqh muamalah that is responsive and grounded in maqāṣid al-syarī'ah.

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