

## COMPARISON OF THE CONCEPTION OF PROPERTY RIGHTS IN TERMS OF ISLAMIC CIVIL AND CIVIL LAW

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### Abstract

*Property rights are one part of human rights that have been regulated in the laws and regulations in Indonesia. Ownership can be owned by anyone who is entitled and valid according to written regulations. The focus of this discussion is to look for similarities and differences in the rules of the concept of property rights in terms of civil law (BW) and Islamic civil law (fiqh). Property rights are regulated in the Third Chapter of Articles 570 – 624 of the Civil Code. Article 570 of the Civil Code explains that "Property rights are the right to enjoy a good more freely and to act on it completely freely, provided that it does not contradict the laws or general regulations established by the competent authority and provided that it does not interfere with the rights of others; All of these do not reduce the possibility of deprivation of rights in the public interest and appropriate compensation, based on statutory provisions In this case the author aims to examine the concept of property rights in terms of civil law and Islamic civil law in a normative juridical manner. This writing method uses an analytical description, describing the differences and similarities in property rights in civil law and Islamic civil law in a normative juridical manner. The results of this discussion look at the differences and similarities in the conception of property rights in terms of civil and Islamic civil law.*

**Keywords:** *Comparison of the Concept of Property Rights, Civil Law, Islamic Civil Law*

### 1. INTRODUCTION

Property rights or eigendom rights are part of property law that cannot be separated. In fact, the concept of eigendom rights is based on the regulations of the Civil Code (KUHPdt) and Islamic Civil Law. However, in property rights, the concept based on the KUHPdt has been reduced by provisions repealed through Law Number 5 of 1960 concerning Agrarian Principles. So that this discussion is only limited to property rights over movable objects and immovable objects and immovable objects not land (Dewi, 2019).

Meanwhile, in Islamic civil law regarding property rights, it has been stipulated that there is an individual or group property right to a property that has been produced, but certainly does not violate sharia law. Likewise, in civil Islam has established ways to protect property rights, both protection from dispossession, injustice or other crimes that are able to interfere with property rights. Basically, property rights must be based on aspects of faith and morals, and implemented in legal regulations in order to grow justice and legal certainty. Just as it is an adigium that laws without morals can fall into tyranny and morals without laws can lead to uncertainty (O'Neil & Toktas, 2017).

It can be concluded that Ownership (al-milk) comes from Arabic from the root word "malaka" which means mastery over something. Ownership or al-milk is also commonly referred to as property rights or property only. Fiqh scholars define property rights (al-milk) as "a person's particularity over property recognized by the Shari'ah, thus making him have special power over that property, either utilizing and or interpreting it" Terminology, the definition of Al Milk put forward by the fukaha. Wahbah al-Zuhaili defines al-milk as follows (Djawas et al., 2022): "Property is a

specificity to a property that deprives others of that property. The owner is free to perform tasharruf unless there is a syar'iy hindrance".

Wahbah al-Zuhaily, Al-Fiqh al-Islamy wa Adillatuhu, Juz IV, page.37

*"Allah's possession is the kingdom in heaven and on earth and what is in it, and he is almighty over all things" (Al Maida: 120)*

The above verse is the basic foundation of ownership in Islam. The above verse shows that God is the sole owner of everything in heaven and earth and there is no ally for Him. Then God gave or entrusted the power of the earth to man, so that man managed and prospered it.

*"And give unto them the treasure of God which he has given you."*

*(QS. An-Nuur: 33)*

From this we find, that when Allah SWT explains the status of origin of ownership of these treasures, Allah SWT relies on Himself, where Allah SWT declares "Maalillah" (wealth belonging to Allah). Meanwhile, when Allah Almighty explains about the change of ownership to humans, then Allah relies on the ownership to humans. Where Allah Almighty declares with His words:

*"Then give them his treasures." (QS. An-Nisaa' : 6)*

*"Take it from their possessions." (QS. Al-Baqarah: 279)*

According to some scholars, property rights are specialized in an object that allows it to act legally against it as it sees fit as long as there is no sharia obstacle and prevents others from acting legally against it. The word obstruction in the above definition means something that prevents people who are not the owner of an item or use / use and act without the prior consent of the owner. Conversely, the definition of barrier is a provision that prevents the owner from acting on his property (Levine, 2005).

## **2. IMPLEMETATION METHOD**

This method of writing uses analytical description, describing the differences and similarities of property rights in Islamic civil and civil law in a juridical normative manner. While this method of thinking uses the method of deductive logic. Furthermore, the author uses a type of Qualitative research. Which will answer how the concept of property rights is compared in terms of Islamic civil and civil law. The study was conducted from July 12 to August 30, 2023 (Sugiyono, 2018).

## **3. RESULTS AND DISCUSSION**

### **3.1 Types of Property Rights According to Islamic Civil Law**

Property rights in the Islamic view consist of:

1. Perfect property (*al-milk at-tamm*), that is, perfect property because its possession includes control over its objects (substances) and benefits (results) of things as a whole. In other words,

the owner masters the object and its benefits simultaneously (Marita Carnelley, 2012). Restrictions on such possession are based solely on:

- a. restrictions prescribed by Islamic law;
- b. restrictions determined by the statutory provisions of a country.
  2. Imperfect property (*al-milk an-naqis*), that is, property whose possession is limited only to the control of its objects (its substance) or its benefits (results) only. According to Islamic law there are 4 ways a person can acquire property rights, namely:
    - 1) Because *ihrazul mubahat* (*having objects that can be owned*), what is meant by *ihrazul mubahat* is having something that can indeed be used as an object of ownership. What is meant by permissible or *mubah* is property that does not fall into the property of a respected person (belonging to a legitimate person) and there is also no obstacle allowed by the Shari'a from owning it.
    - 2) Because *al uqud* (*akad*) is meant by a contract or agreement is the act of a person or more in binding himself to others. While what is meant by "deed" in this context is a legal act. Legal acts are all actions done by a person deliberately to give rise to rights and obligations.

The classification of legal acts is:

      - a) Unilateral legal action; namely legal acts carried out by one party only and give rise to rights and obligations to the other party, for example: making wills, giving gifts, and grants.
      - b) Legal acts of two parties; namely legal acts carried out by two parties and give rise to rights and obligations for both parties reciprocally, for example: buying and selling, leasing, and work agreements. In the Islamic view, in addition to contracts that are carried out normally (equally sincere) there are also contracts that are caused by other things, namely:
        - c) *Akad Jabariyah*, is a contract whose existence is based on the necessity to obtain a judge's decision (which is done by force).
        - d) *Akad Istimlak*, is a sale and purchase carried out for the benefit of the public.
    3. Because *Khalafiyah*, what is meant by someone acquiring property rights because *khalafiyah* is the place of someone or something new in an old place that has been lost in various forms of rights,
    4. Because of the *Attawalludu Minal Mamluk*, *the birth of property rights due to the Attawalludu Minal Mamluk* is an inviolable right and is a fixed basis. As for what is meant by *attawalludu minal mamluk* is everything that arises from the object owned is the right of the owner of the item. In other words, ownership in this way is to acquire property rights automatically because someone already legally owns objects that can give birth to other objects (Muslimin & Ummah, 2022).

Furthermore, fiqh scholars divide the wealth that a person can own into three forms, namely:

1. Property that can be owned and made into the control of a person specifically, such as property produced through causes of ownership.
2. Property that cannot be private property at all, that is, property designated for public use, such as public roads, bridges, fortifications and city parks.
3. Property that can only be owned if the legal basis allows it, such as waqf property whose maintenance costs exceed the value of the property. In such circumstances, property may be sold, given away or made private property.

In terms of objects, ownership is divided into three forms:

1. Milk *al-'ain*, which is possession in the form of objects, like objects fixed or moving.
2. Mil *al-manfa'ah*, which is the possession of the benefits of an object.
3. Milk *ad-dain*, which is ownership of debts that exist in others.

In terms of the object of property rights, according to fiqh scholars, property rights are divided into: haqq mali (rights related to property), haqq ghair mali (rights that are not property), haw ash-shakhsi (personal rights), haqq al-'aini (material rights), haqq mujarrad (rights that are sole), and haqq gair mujarrad (which are not rights alone)(Djawas et al., 2022).

- a) **Haqq mali** (rights tied to property)

*Haqq mali* are rights related to property and benefits, such as the right of the seller to the price of the goods sold and the rights of the buyer to the goods purchased and the rights of the tenant and to the rent.

- b) **Haqq gair mall** (rights that are not property)

*Haqq gair mali are rights* that are not bound by property, kisas rights, all human rights, women's rights in talaq because their husbands do not provide for them, the right of husbands to reject their wives because their wives are infertile, the right of hadanah, guardianship rights towards someone, and other political rights.

- c) **Haqq ash-shakhsi** (personal rights)

*Haqq ash-shakhsi is a right* established by sharia for an individual in the form of obligations towards others, such as the right of the seller to accept the price of goods sold and the right of the buyer to receive the goods purchased, the right of a person to debt, the right of a person to receive compensation, and the right of a wife or relative to receive a living.

- d) **Haqq al-'aini** (material rights)

Haqq aini is a person's right that is determined by syara to a substance, so that he has full power to use and develop his rights, such as owning things, *haqq al irtifaq* and rights to objects that are used as collateral for debt.

With regard to haqq ash-shakhsi and haqq al-'aini, fiqh scholars point out some of their respective features. Haqq al-'aini is permanent and follows its owner, even if it is in the hands of the lan. For example, if someone's property is stolen and then sold by a thief to someone else, the owner of the stolen property remains and he has the right to demand that the property to which he is entitled is returned. While this right does not apply in haqq ash-shakhsi.

The difference between the two rights is that one's rights in haqq al-'aini are directly related to matter, while rights in haqq ash-asyaksi are rights related to the responsibilities of someone who has converted. The material in haqq al-'aini can change hands, while in haqq ash-shakhsi it cannot be aborted, because the right is in a person, unless the owner of the right dies. For example, haqq ash-shakhsi relates to his money

borrowed by others. Even if the borrower's property is extinct / exhausted, the creditor's haqq ash-shakhsi remains intact, not destroyed by the destruction of the debtor's property. This is because debt is related to a person's responsibility to pay it, not directly related to the property owned by the person who owes it. Responsibility cannot be aborted (Kameli, 2023).

### 3.2 Property Rights in Civil Law (BW)

Property rights (eigendom) is one type of property rights regulated in Book II of the Burgerlijk Wetboek (Civil Code, abbreviated as Civil Code). With the enactment of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), land ownership rights were revoked from Book II of the Civil Code and regulated in the UUPA. So that the method of acquiring, transferring, encumbering, and removing property rights over land is different from what is regulated in Book II of the Civil Code. Thus, the concept of property rights includes only property rights over movable objects and immovable objects that are not land (Muhammad et al., 2023).

Regarding property rights are regulated in the Third Chapter of Articles 570 – 624 of the Civil Code. Article 570 of the Civil Code explains that "Property rights are the right to enjoy a good more freely and to act on it completely freely, provided that it does not contradict the laws or general regulations established by the competent authority and provided that it does not interfere with the rights of others; They do not prejudice the possibility of deprivation of rights in the public interest and appropriate compensation, under statutory provisions." Thus, property rights can be said to be the most important property rights when compared to other property rights (Sutriyono, 2022).

Thus it can be seen that property rights give two basic rights to their holders, namely

1. The right to enjoy the usefulness of a thing;
2. The right to exercise freedom over the property with full sovereignty, which means that the holder of the property is free to sell, grant, hand over the property in his possession to anyone, as long as it does not conflict with the provisions that compel and/or violate the public interest, or the rights of others. This includes encumbrance, placing other property rights, pledging or using the property as collateral for debt.

The characteristics of property rights according to Prof. Sri Soedewi Masjchoen Sofwan are as follows.

1. Property rights are parent rights to other property rights, while other property rights are children's rights to property rights
2. Property rights in terms of quality are the most complete rights
3. Property rights are permanent, meaning that they will not disappear against other property rights, while other property rights can disappear if they face property rights
4. Property rights are the most basic (primary) rights, while other property rights are only part of property rights

Formerly property rights were absolute rights "*droit inviolable et sacre*" which could not be violated in existence. However, with the development of the times and the development of laws that live in society and the emergence of an understanding of the

principle of society "*sociale functie*" so that the nature of property rights as "*droit inviolable et sacre*" is fading. There are many restrictions on property rights, as contained in the meaning of article 570 of the Civil Code above. For example, restrictions by:

1. Administrative Law – evident from the increasing interference of the ruler with property rights.
2. Limitation by provisions in neighboring Law.
3. Its use must not cause interference (*hinder*) to the rights of others.
4. Its use must not abuse rights (*e.g. van recht*).

There are several forms of division of eigendom or property rights, namely:

1. Eigendom-singular, when upon something there is only one eigenaar person.
2. Eigendom-and, when there are two or more eigenaar

Then the form of eigendom-as well is still further divided into the following:

1. Eigendom and bound (*gebonden mede eigendom*) is when the object is in a partnership or company in which each owner has no power to act individually against the property property. For example, joint assets of husband and wife, limited liability company assets.
2. Eigendom and freedom (*vrije mede eigendom*) which occurs when an object becomes the property right for two or more people, which is not due to the occurrence of an alliance or company such as eigendom and bound. Here each *eigenaar* has an indivisible share (*ondeelbaar*), because it is considered a stand-alone and transferable property.

Based on Article 584 of the Civil Code, there are 5 ways to obtain property rights to, namely:

1. Possession/occupatio (Articles 585, 586, and 587 of the Civil Code)

This claim is regulated in Article 585 of the Civil Code, which states that the property rights to movable property that originally did not belong to anyone, are in the person who first took it in his possession. The point is to acquire property rights to objects that have no owner (*res nullius*). For example, hunting animals in the forest, finding treasure, and others.

2. Natrekking (Articles 500 to 502 and Articles 586 to 609 of the Civil Code)

Attachment / Follow-up is regulated in Articles 588-605 of the Civil Code, which means a way of obtaining property rights, where the object increases in size because nature or the object follows other objects. So it happens between two objects that are not the same but merged into one. For example, screws on chairs, plants on the ground, and others.

3. Past time/daluwarsa (*verneting*) (Article 610 of the Civil Code, further regulated in Book IV of Article 1955 jo Article 1963 and Article 1967 of the Civil Code)

The expiration of time / *daluwarsa* is regulated in Article 610 of the Civil Code which contains property rights over something obtained because of expiration, if someone has held a position of power over it during the time prescribed by law and according to the conditions and how to distinguish them as stated in the seventh chapter of the fourth book of this book. The purpose is to obtain property rights or release from



an engagement by the lapse of a certain time and on conditions determined by law. There are two types of expirations, namely:

- a. *Acquisitieve vernet*, a way of acquiring property rights due to the passage of time (acquiring material rights);
- b. *Extinctieve vernet*, frees a person from overdue billing or lawsuits (exempting an engagement).

There are 6 conditions for the occurrence of *daluwarsa* as follows:

- a. *Bezitter* as the owner.
  - b. *Bezitter* must be in good faith.
  - c. *Bezit* must be continuous uninterrupted.
  - d. *Bezit* is not bothered
  - e. *Bezit* is publicly known
  - f. *Bezit* it must be for 20 years or 30 years.
4. Inheritance (*erfopvolging*) (Article 611 )

Inheritance is a way of obtaining property rights given from heirs to heirs based on the basis of general rights, so that not only their rights transfer but also their obligations. Inheritance can be divided into two types, namely inheritance by law and inheritance by will. It is stipulated in inheritance law.

5. Submission (*levering*) (Articles 612, 613, 616 of the Civil Code (see Article 1459 of the Civil Code) . How to submit:

Surrender is a legal act of transferring property rights from the owner to another party who is desired so that someone else acquires the thing on his behalf. According to Prof. Subekti, submission has two meanings, namely:

- a. Acts in the form of mere surrender of power "*feitelijke levering*"
- b. Legal acts aimed at transferring property rights to another person "*juridische levering*"

In conclusion, the title to a new object can transfer to another person, if there has been a surrender of the object. However, the way to hand over the object can be distinguished according to the nature of the object to be handed over.

The method of submission of objects can be categorized according to the nature of the object, namely:

- c. For tangible movable objects (Article 612 of the Civil Code)
- d. For intangible movable objects (Article 613 of the Civil Code)
- e. For immovable objects (Article 616 of the Civil Code)

According to Prof. Sri Soedewi Masjchoen Sofwan, for the validity of the submission must meet certain conditions:

- a. There must be a *zakelijk agreement*.
- b. There must be a title (pedestal).
- c. It must be done by the person who has the authority to control the objects (the person who *beschikkingsbevoegd*).
- d. There must be a real surrender.

In addition to being regulated in Article 584 of the Civil Code, the method of obtaining property rights is also regulated in articles outside Article 584 of the Civil Code, namely:

1. Making things (*zaaksvorming*)

Making objects (*zaaksvorming*) is making a new object from existing objects. Regulated in article 606 of the Civil Code. For example, wood is turned into chairs.

2. Withdrawal of its fruits (*vruchttrekking*)

The withdrawal of the fruit (*vruchttrekking*) is that a bezitter gets the results of the object he bezit. Regulated in article 575 of the Civil Code.

3. Vereniging

*Vereniging* is the acquisition of rights from the mixing of several objects from several bezitter into a single unit. Regulated in articles 607-609 of the Civil Code.

4. Onteigening

Revocation (*onteigening*) is to acquire property rights by disenfranchisement. Disenfranchisement itself has three conditions, namely:

- c. Based on the property revocation law.
- d. The existence of public interest.
- e. There is proper compensation.

5. Deprivation (*verbeurdverklaring*)

Deprivation (*verbeurdverklaring*) i.e. the ruler acquires property rights by means of expropriation, regulated in article 10 of the Civil Code.

6. Mixing treasures (*boedelmenging*)

*Boedelmenging*, which is like joint property between husband and wife after marriage, is regulated in article 119 of the Civil Code.

7. Dissolution of a legal entity

Dissolution of a legal entity (*ontbinding rather than legal entity*), that is, if there is a *dissolution of a legal entity*, all members of the legal entity are entitled to obtain property from the legal entity. Regulated in article 1665 of the Civil Code.

8. Abandonnement ( in the civil law of the sea – article 663 of the Criminal Code).

*Abandonnement* is that the ships and goods accounted for can be abandoned or handed over to the insurer, if things such as ship rupture, shipwreck, and others occur. *Abandonnement* is regulated in article 663 Wvk.

While the way of expiration of property rights is as follows:

1. Because someone else acquired that property right by one of the ways to acquire the property right above.
2. Because of the perishing of things.
3. Because the property rights holder relinquishes the title to the object.

### **3.3 Immaterial Property Rights**

Immaterial property rights in Indonesian law are known as Intellectual Property Rights or Haki. The term Intellectual Property Rights (IPR) is a translation of Intellectual Property Rights (IPR), as regulated in Law No. 4 of 1994 concerning WTO Ratification (Agreement Establishing The World Trade Organization). Understanding Intellectual Property Right (hereinafter written IPR) is what regulates all works born because of intellectual abilities that have a relationship with one's personal rights, namely human rights. Property rights here concern the notion of "ownership" (ownership) which concerns social and legal institutions, both of which are always related to the owner and an object owned. Broadly the concepts of "ownership" and "wealth" when associated with "rights", then in terms of law, known rights that concern property and rights that concern property. If explored further, intellectual



property rights are actually part of things, namely intangible objects (immaterial objects)(Asasriwarnia & Jandra, 2018).

The law places restrictions on the owner to enjoy or control the objects or rights that belong to him. Intellectual property rights arrangements always contain restrictions on such control or use, including:

- 1) Boundaries held by laws and regulations
- 2) Within the limits of decency and public order, this provision implies that intellectual property rights must not conflict with decency and public order, including the use of signs that contradict religion and morals.
- 3) The revocation of property rights for the benefit of the community, provided that the revocation of property rights is carried out based on the law and with the payment of a large amount of compensation.

This intellectual property only exists when human intellectual abilities have formed something that can be seen, heard, read, or used practically. That this intellectual property right is a right derived from the creative activity of a human thinking ability expressed to the general public in its various forms, which has benefits and is useful in supporting human life, also has economic value. The most important essence of any part of intellectual property is the existence of a certain creation (creation). This creation may be in the field of art, but it may also be in the field of industry or knowledge. It may also be a combination of all three fields, each of which has a specific term. From existing developments, it seems that now the regulation of intellectual property rights places the law not merely additional, but that the legislator has intended to provide a more coercive provision. However, the change in regulation still relies on the original nature of the intellectual property rights, including:

- 1) Has a limited period of time
- 2) Exclusive and absolute
- 3) It is an absolute right that is not material.

#### Scope of Intellectual Property Rights

1. Copyright is regulated in Law No. 28 of 2014
2. Patents are regulated in Law No. 14 of 2001
3. The brand is regulated in Law No. 15 of 2001
4. Protection of New Plant Varieties is regulated in Law No. 29 of 2000
5. Trade Secrets are regulated in Law No. 30 of 2000
6. Industrial Design is regulated in Law No. 31 of 2000
7. Integrated Circuit Layout Design is regulated in Law No. 32 of 2000

### 3.4 Immaterial Property Rights in Islamic Civil Law

Ibtikar linguistically means the beginning of something or the beginning. Ibtikar in Islamic fiqh is the right of creation or copyright produced by a person for the first time, which in the world of science Ibtikar is known as copyright. The notion of Ibtikar is not found in classical fiqh literature, and in-depth study of Ibtikar by Islamic jurists is also rare. The discussion of the right of Ibtikar can be traced in contemporary fiqh. Fathi ad-Duraini, stated that Ibtikar is a picture of thought produced by a scientist through his thinking and analytical abilities and the result is the first discovery or creation, which has not been put forward by scientists before (Levine, 2005).

The definition contains the understanding that in terms of form, the result of thought does not lie in stand-alone matter that can be touched with human sensory devices, but the thought is only shaped and has an influence if it has been poured into writing, media or logos and others. Then the result of the thought is not a copy or adaptation or repetition of previous scientific thoughts. However,

this *ibtikar* does not mean anything new at all, but can take the form of a discovery as an extension of previous scientific theories such as the translation of the results of other people's thoughts into foreign languages.

*Ibtikar* is only a picture of thought and a picture of this thought will have a broad influence if it has been presented or poured in the form of writing or print or in other media. The fruit of the scientific mind as *ibtikar* is actually a picture of thought that has not been material. However, if this thought has been expressed in any form of media, then the fruit of thought will have a broad influence both in terms of material and thought. Therefore, according to *fiqh* scholars, *ibtikar* when viewed from the material side, is more similar to the benefits of an object or material, such as fruits and milk of dairy animals, if it has been picked from the tree or milk from the animal, because a person's thoughts after being separated from his thinker and presented in a media, seminar or symposium and so on, then become material.

*Ibtikar* or copyright is something new in the study of Islamic law, along with the progress of the scientific world, the business world (trade), and the socio-cultural life of the community. *Ibtikar* is meaningfully a special property, and is the result of human intellectual work that deserves special appreciation from the general public both in terms of morals and financially.

While benefits or rights are not seen as property, but are ownership. *Jumhur Ulama* argues that property is everything that has value and the person who damages it must replace it or bear the burden of the damage. *Imam Shafi'i* said, *al-mal* (treasure) is devoted to something that is valuable and can be bought and sold and has consequences for those who damage it. Based on this sense *al-mal* (treasure) must be something that can reflect financial value, in the sense that it can be measured in monetary units. The logical consequence of this thought of *Jumhur Ulama* is that what is called property does not have to be material or material, but it can also be benefits or rights that can be viewed as property. The reason used by *Jumhur* that the intention of people to have an object is not because of the object alone but is the benefit of the object itself. The opinion of *Jumhur Ulama* when related to the right of *Ibtikar*, then the results of one's thoughts, creations, and creations include property, because according to them, property is not only material, but also useful. On this basis, thoughts, copyrights, or creations whose source is human thought are worth property and position equal to things.

Copyright or the creation of human intellectual works, is a new thing and has not yet been found *nash law* (special postulates) either from the verses of the *Qur'an* or *al-Hadith*. *Ijtihadi* can be based on:

- (1) "URF (a custom or can be generally accepted in a society). Customs that have been running and generally accepted can be used as a legal basis, as in the rules of Islamic law: "Adat Adat can be established as law".
- (2) *Maslahah Mursalah* is something that is considered *maslahat*, but there is no legal firmness to realize it nor is there any particular proposition either for or against it, but the *maslahah* is substantially in line or not contrary to the general guidelines of *shari'a* or the spirit of *shari'ah* or *maqasid shari'ah*. The consequences of Islamic law consider that the right of *Ibtikar* is included in the category of property that results in the inventor or creator of his work or creation being absolute property rights of a material nature

The inventor or creator is entitled to the value of that material or that right, when it is used or utilized by another person with his permission. This right is like property and applies to the law that surrounds it. Based on this, the right of *Ibtikar* has the same position as the ownership of other assets that can be transacted, inherited or testified, so to maintain the existence of the right of *Ibtikar* from things that damage it, it must get legal protection from the government through regulations or laws by considering the benefit of both parties

#### 4. CONCLUSION

According to Article 570 of the Civil Code (Burgerlijke wetboek / BW) is "The right to enjoy the use of something property freely, and to act freely on that property with full sovereignty, provided that it does not contradict the laws or general regulations established by the competent authority and does not interfere with the rights of others; All of this without prejudice to the possibility of revocation of such rights in the public interest under the provisions of the law and with the payment of a sum of damages".

Possession (al-milk) comes from Arabic from the root word "malacca" which means mastery of something. Ownership or al-milk is also commonly referred to as property rights or property only. Fiqh scholars define property rights (al-milk) as "a person's particularity over property recognized by the Shari'ah, thus making him have special power over that property, either utilizing and/or interpreting it."

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