Borrowing Without Clear Agreements from the Fikih Muamalah Perspective
(Study of the Utilization of People's Wealth)

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ABSTRACT
This research was conducted to examine the reality that occurs among the community in the form of borrowing goods without a clear contract regarding various acts of using goods belonging to the people. This research uses data collection methods through observation and documentation and analyzes it using a qualitative, descriptive analytical approach. The results of the research show that borrowing goods in the form of using goods belonging to the people without a clear agreement often occurs in the community, both intentionally and unintentionally. From the perspective of Islamic muamalah fiqh, this action is often called ghasab which is prohibited in Islamic sharia teachings. The perpetrators can be subject to law, both religious law and positive law. This is often considered normal and has become a habit, especially in dormitory-based educational institutions, so of course it is necessary to carry out various outreach activities before entering the relevant law enforcement.

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1. Introduction
From a legal perspective, all activities of every Muslim are regulated by Islamic law and all activities must be carried out in accordance with the guidelines set out in Islam. From the moment you wake up until you go back to sleep, the rules and guidelines of Sharia already exist and must be the basis and guide for every Muslim.

This includes lending activities or using other people's property, which of course must comply with the rules and must not violate these rules in order to ensure that injustice or wrongful use and use of other people's rights does not occur. In today's reality, quite a few Muslims take this matter lightly by using or borrowing other people's goods without permission from the owner, moreover this use or borrowing is not accompanied by a good return, so it is not uncommon for the owner of the goods to feel loss of the goods because the beneficial user does not return them to their proper place and/or returns them in the proper form. Like the use of sandals in a mosque that belong to a Muslim that are worn by another Muslim for ablution or other things.

This also happens very often in dormitory-based educational institutions, where it is not uncommon for students to feel that they have lost items that are actually used by other students, but not with the intention of stealing; only using the items. This article attempts to explore aspects of contemporary muamalah jurisprudence regarding the act of borrowing without a sarih agreement which often occurs in various levels of Muslim society.

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2. Borrowing from the Islamic Muamalah Jurisprudence Perspective

2.1. Understanding and Legal Basis of 'Ariyah (Borrowing)

As stated by Wahhab Zuhairy (1989: 54), 'ariyah is: “The restoration of benefits (something) without any reward.” In the perspective of the school of thought, the Hanafiyyah Ulama define 'ariyah as, (Al-Jaziri, 1969: 270-271) Ownership of the beneficial ownership of something for free.”

Meanwhile, Sya`fiyyah and Hanabilah define 'ariyah as: "The granting of benefits (something) without any reward". According to the Shafi`iyyah community, 'ariyah is: "Permission for the use of an object by another person, carried out by someone who is legally competent, voluntarily using the permitted method, while the object remains its substance to be returned to its owner." Al-Karkhi, one of the scholars from the Shafi`iyyah circle, and the Hanabilah scholars stated that 'ariyah is ibahah al-manfa`ah, namely allowing the benefits of an object voluntarily (without compensation). From this definition, they argue that 'ariyah is only about allowing the benefits of objects, not ownership of the benefits. This provision has implications for the borrower not being allowed to lend the object to other people (Zuhaily, 1989: 557-58).

According to the ulama, tamlik in this sense is the granting of power, which means that the person who lends the goods has given the borrower the power to use the goods he borrowed. Based on this understanding, according to them 'ariyah causes the borrower to have the benefit of the object borrowed. This provision has implications for the borrower's freedom to use the loan, including lending it to other people. From the explanation explained by the ulama, 'ariyah (lending and borrowing) is an act of allowing the use of belongings by someone to another person at a certain time without any compensation provided that the goods used are returned to the owner in intact condition without any compensation. This is different from ijarah (rental) which is the taking of the benefits of an item at a certain time with certain compensation. 'Ariyah (lending and borrowing) is a work that is circumcised by religion because this contract is purely mutual assistance without any commercial elements. This mu'amalah contract is recommended based on His words, help each other in goodness and piety and do not help each other in sin and enmity (QS Al-Maidah: 2).

In the hadith narrated by Abu Daud, it is explained: Anas ibn Malik r.a. he said: "When the Prophet SAW. Taking refuge in Medina he borrowed a horse from Abu Talhah and told him circumcision was for him then the Prophet rode the horse.” (al-Ja‘fi, 1987: 1051). The explanation of the verses and hadith above shows that this act (read: loan) is something that is mandatory and should be done between people as part of helping each other.

2.2. Rukun, Terms, Classification, Status and Utilization Rights of 'Ariyah Objects

As 'Ariyah can become valid if the terms and conditions are met. According to Hanafiyyah scholars, the pillars of 'ariyah are consent and acceptance. However, the pillars of 'ariyah according to the majority of ulama are mu‘ir (person who lends/owner of goods), musta‘ir (borrower), mu‘ar (borrowed goods), and sighth.

Meanwhile, the requirements for 'ariyah are as follows:

a. The mu‘ir (the person who lends) is required to be wise. It is not valid for 'ariyah to be carried out by crazy people, children who are not yet sensible and puberty is not required. This is according to Hanafiyyah's opinion. However, apart from that, Hanafiyyah ulama require that the mu‘ir be mature, be sensible, not crazy and not be in a state of mahjur (under protection). This means that the mu‘ir must have the ability to act legally. Ariyah is a contract of tabarru’ (voluntary) ownership of the benefits of objects, so 'ariyah is invalid if carried out by people who are not legally competent, such as children, stupid people, crazy people, bankrupts and drunkards.

b. The musta‘ir (person who borrows) is required to be clear, sensible and not wasteful. This means that musta‘ir must have the right to tasharruf.

c. Mu‘ar (borrowed object), required:

1) The object lent belongs to the muir and is under his control. Therefore, it is not permissible to lend something that does not belong to you or is not under your control.

2) The objects lent must be useful and usable. Thus 'ariyah cannot be carried out on damaged goods that cannot be repaired.

3) Benefits of goods not being damaged or used up after use. This means that 'ariyah does not apply to food and drink, because they will decrease or run out when used.

4) The use of borrowed items is within the scope permitted by religion. So, it is not permissible to lend something to someone who will commit an act that is prohibited by religion.

5) There is delivery of goods to the borrower because the 'ariyah contract is a tabarru’ (voluntary) contract, so there is no 'ariyah legal provision if there is no delivery of goods.
d. Sighat (consent and acceptance), sighat is not required to have a specific pronunciation, as long as it still refers to the meaning of borrowing and borrowing, for example I borrow this item from you, or I lend it, whether it comes from the borrower or the person lending it. This is left to local customs and the suitability between the ijab and kabul statements.

2.3. Various types of Ariyah

According to Hanafiyah scholars, 'ariyah is divided into four types, namely:

a. Ariyah mutlaqah, namely lending and borrowing that is not linked to or limited by time or method of utilization. For example, someone says: "I am lending my house to you", without relating it to time and usage limits. This division has implications for borrowers being free to utilize 'ariyah.

b. Ariyah muqayyadah is borrowing and borrowing that is linked to time and method of use, for example someone says: "I am lending my house to you for 1 month and using it only to look after goods."

c. Ariyah which has limited usage time. However, it is free in how to use it. For example, someone says: "I lend you this house for one year." However, there are no restrictions on how to use it.

d. 'Ariyah which is limited in how to use it, but not limited in the time of use. In this division, the borrower may not use the borrowed goods according to the conditions set by the owner of the goods. Malikiyah and Shafi’iyah divide 'ariyah into two forms, namely mutlaqah and muqayyadah only.

2.3.1. Right to Utilize 'Ariyah Objects

Most scholars other than Hanafiyah are of the opinion that the borrower has the right to use the loan as permitted. However; Hanafiyah believes that the utilization rights that borrowers have differ according to the type of 'ariyah. Is 'ariyah mutlaqah or 'ariyali muqayyadah used? If the 'ariyah used is 'ariyah mutlaqah, the borrower can use the borrowed goods according to his wishes, whether used for himself or used with other people, without being limited by the time and place of use. If the use of borrowed goods according to local customs does not exceed the limit and then the goods are damaged during use, the borrower does not replace the damage, for example someone borrows a glass to drink from, and then the glass breaks so he does not replace it. If the 'ariyah contract used is 'ariyah muqayyadah, the borrower can utilize the loan item in accordance with the specified limits, both time and place limits, as well as the form of use. If the borrower uses the loan item beyond the specified limits, he is responsible for the risks arising from the use of the loan item. For example, someone borrows a motorbike. Then, he used it for business (motorbike taxi). Then, the vehicle is damaged so he is responsible for the damage.

2.3.2. Nature of the 'Ariyah Contract

According to Hanafiyah, Syaifi’iyah and Hanabilah scholars, the ownership status of the borrower is general ghiru ownership (not binding). The owner of the item can take back the item he lent. Vice versa, the borrower is obliged to return the loan item within the desired time period. This opinion adheres to the hadith of the Prophet SAW: Narrated from Ibn Abas, actually the Messenger of Allah had borrowed armor from Shafwan ibn Umaiya during the Hunain war, then Shafwan ibn Umaiya said, O Messenger of Allah, will the loan be returned? The Prophet answered: 'The ariyah must be returned.'

Malikiyah ulama, in their famous opinion, are of the opinion that the mu'ir has no right to withdraw the borrowed goods before they are used by the borrower. If the 'ariyah has a time limit, the muir may not withdraw the loan items except until the agreed time limit. The person who lends (mu'ir) may not force the borrower to return the loan item if this will harm the borrower. However, Imam ad-Dardir is of the opinion that the person who lends (mu'ir) may withdraw the loan item (mu'ar) if his 'ariyah is absolute.

2.3.3. Ariyah status

The loan item is a liability (dhaman) or is only a trust for the borrower. In this case, there are differences of opinion among scholars. Hanafiyah is of the opinion that a loan is a trust for the borrower, not a liability (dhaman), the same as wad'ah, and ijarah is not subject to the dhaman of compensation for the borrower if the loan item is damaged accidentally. This opinion is based on the hadith of the Prophet SAW: From Anas ibn Sirin, Suraih actually said: "There is no obligation of compensation for the recipient of the deposit which is not in vain and there is no obligation of compensation for the person who borrows that does not fulfill the obligation of compensation in vain."

Meanwhile, Syaifi’iyah and Malikiyah are of the opinion that loans are a guarantee (dhaman) for objects that can be hidden, such as clothes and jewelry if the object is damaged and there are no witnesses. According to Malikiyah scholars, if the borrower uses borrowed items that may reduce the value of the item, such as clothing, the borrower bears the loss and compensates for the damage to the item (dhaman).
opinion is based on the hadith of the Prophet: Narrated from Umayah ibn Sa'fwan ibn Umayah from his father, actually the Prophet SAW borrowed his armor in the war of Hunain.

3. The Reality and Legality of Using Goods/Loans Without a Sarih Agreement

In contemporary times, borrowing and utilizing goods without a sarih contract often occurs and is a phenomenon among various groups, including Muslims. In Muslim circles, for example, in mosques, it is not uncommon for mosque sandals to be worn without the owner's permission for ablution or other purposes. After using and utilizing the sandals, the sandwich wearer often puts them back other than the place where they were originally used. Of course, this results in the owner of the item feeling like he has lost his sandals because they are already in a different place than where he put them.

This phenomenon often occurs in dormitory-based educational institutions such as Islamic boarding schools, where one of the students can use sandals belonging to other students (or even guests) to use and utilize and it is not uncommon for the sandals to not be returned to their original place. This results in the owner of the sandals feeling like they have lost their sandals, even though the sandals are not actually lost. In other terms, this is a form of ghashab which is also popular among Islamic boarding schools. In the Big Indonesian Dictionary the word ghasab means using someone else's property illegally for personal gain. Ghasab according to language is taking something (objects or goods) in an openly unjust way. Meanwhile, according to the term syara', it means controlling other people's rights through violence. Fiqh scholars agree that ghasab acts are haram and those who commit them are sinful. Whoever is in possession of property, he is obliged to return the property to its owner, even though he must bear the burden of returning it (at a price) doubled. And he is obliged (to pay compensation) to make up for the shortage of goods that are ghassab, for example cloth that is used, or goods that are reduced even though they are not used. Of course the perpetrator of this action suffers sin for his actions (Khaulani, A. T, 2015: 5).

In another explanation, Ghasab is interpreted as taking an object or thing in an openly unjust way. Meanwhile, according to sharak, it is controlling other people's rights through violence. Fiqh scholars agree that ghasab is an unjust act, therefore it is haram and the person who commits it is sinful. If someone uses property, they are obliged to return the property to its owner, and are obliged to pay compensation or make up the shortfall even if the property is not used (Dahlan, 1997: 400-401). Malikiyyah scholars define that ghasab is taking property by force without resorting to war; the war in question is without resorting to acts of violence in taking the property. Then the Hanafiyyah scholars added the definition of ghasab with the phrase "blatantly" to differentiate ghasab from theft. Because the theft was carried out secretly or clandestinely. However, the actions taken are not categorized as ghasab if they only take advantage of them. Shafi'iyyah scholars and Hanabilah scholars have a more general definition compared to the two previous definitions. According to him, ghasab is control over property arbitrarily or by force without rights. Ghasab not only took his property but also took advantage of the object or substance (Dahlan, 1997: 401). From the explanation above, ghasab is controlling someone else's property arbitrarily and openly with the intention of taking property and also taking advantage of property. Not in the sense of robbing or stealing but only taking material or benefits from the object. Fiqh scholars agree that ghasab is an unjust act, therefore it is haram and the person who commits it is sinful. If someone uses property, they are obliged to return the property to its owner, and are obliged to pay compensation or make up the shortfall even if the property is not used (Dahlan, 1997: 401).

This refers to His words, and do not let some of you consume the property of others among you in a false way and (do not) bring (the affairs of) that property to the judge, so that you may consume part of the property of others by (doing) sin, even though you know (QS. Al Baqarah: 188). In a hadith narrated by Imam Bukhari, Has told us Abu Ma'n mar has told us 'Abdul Warits has told us Husain from Yahya bin Abi Kathir said, has told me Muhammad bin Ibrahim that Abu Salamah told him that he once quarreled with someone and then told this to 'Aisyah radillahu 'anha, then 'Aisyah radillahu 'anha said: "O Abu Salamah, avoid quarrelling over land matters because the Prophet sallallahu alaihi wasallam once said: "Who has ever done an inch of wrongdoing (in land matters) then later he will be charged (Vandestra, 2017: 1014).

Scholars have argued about the criteria for actions that can be categorized as ghasab. In this case there are several opinions, namely:

a. Junihur Ulama The number of ulama referred to are the Malikiyyah, Safi'iyyah and Hanabilah ulama, who say that the act of ghasab is the possession or taking of other people's property, not just taking or controlling real things, but actions that constitute a barrier to property by the owner.

b. Imam Abu Hanifah and Abu Yusuf Removing someone's power from their property which has value and is done openly and forcefully, by taking action against that property. This is not yet categorized as an act of delusion if there are two things. First, determine and confirm the perpetrator's power over his property. Namely by taking the owner's property. Second, getting rid of the owner's power, namely getting rid of the property with the owner.
In a rule of fiqh muamalah it is stated, "لا يجوز لأحد أن يتصرف في ملك الغير إلا أنートونه" (No one should take advantage of another person's property without his permission.) This rule shows that basically a person cannot take legal action against someone else's property without the owner's permission. However, if someone acts legally on someone else's property, and then the owner of the property allows it, then the legal action becomes valid. From a positive law perspective, theft in positive law is regulated in Article 362 of the Criminal Code, namely anyone who takes something, which wholly or partly belongs to another person, with the intention of unlawfully possessing it, is threatened for theft with a maximum prison sentence of five years or a fine, a maximum of sixty thousand rupiah. The criminal threat imposed for petty theft is a minimum of 3 (three) months in prison and a maximum of 5 (five) years (Article 364 of the Criminal Code).

This action can also be categorized as ironclad in civil law. Where possession is defined as the position of controlling or enjoying an item that is in someone's control personally or through the intermediary of another person, as if the item belonged to him based on Article 529 of the Criminal Code. Besit itself is divided into two, namely:

a. Besit in good faith, namely if the holder of the possession obtains the item by obtaining ownership rights without knowing of any defects in it.

b. Besit in bad faith occurs if the holder knows that the item he is holding is not his property

It is common for students in an Islamic boarding school to have a unique habit of using something belonging to another student as they please. This habit is known as ghasab. Every student considers existing objects and goods to be shared property, so they can be used together. If there is an item or object that is needed, it can be used immediately, no matter who owns it. The act of ghasab is not limited to one type of item such as sandals, clothes, sarongs, skullcaps, towels and so on, but also applies to food. If a student enters a friend's room and there happens to be food there, the student immediately eats it, even though the owner is not there. So the phenomenon of ghasab in Islamic boarding schools can be said to be a normal phenomenon in that environment. Human attitudes and behavior that become morals are very closely related to their habits (Ernawati & Erwan Baharudin, 2018: 208).

The ghasab phenomenon that already exists in the Islamic boarding school environment can generally be said to be a cultural phenomenon that has become entrenched, because it has become a habit and is considered something normal in that environment. Human attitudes and behavior that become morals are very closely related to their habits. There are many factors that make customs customary, including habits that have existed since previous generations, so that people accept them as something that already exists and then continue because of the legacy of previous people; perhaps also because it is through social media which brings and has quite a strong influence on everyday life.

Another factor that contributes is, because of his inclination towards occult actions, he feels happy or efficient in doing them, and in other words he is attracted by these attitudes and actions. And the heart's inclination is also followed through repeated practice, so that it becomes habitual. Although, perhaps the action is known to be inappropriate or violates existing norms, if there is no opportunity to act, for example there are prevention or obstruction, then this tendency will not be followed. On the other hand, perhaps the origin is that he has no inclination to do it, or perhaps the first time he is forced to do it, little by little he gets to know it and if he continues to do it, the habit will also have an influence on his feelings, because he is used to it. From the ghasab habits that live in the Islamic boarding school environment, the fact is that there is no collective agreement which states that a student can use other students' belongings without having permission.

This is also reinforced by the fact that students are often disappointed because when they want to use something they own, the item is no longer there and ultimately creates the same intention for other people's items as a form of disappointment. Even if the victim of an act of ghasab has given up his belongings to be ghasab, which is solely due to the victim's kindness and cleverness in managing his heart for what happened to him. This does not mean that the perpetrator of ghasab is free from the legal determination that he has committed ghasab, he is still categorized as having committed ghasab. Even though the literal meaning of ghasab and stealing is different, in a material context it has a similar meaning, namely taking someone else's property without their permission or knowledge. Many are harmed by the existence of occult behavior in Islamic boarding school life, where many objects belonging to students are lost without knowing who took them. Not only material losses, there can also be other losses suffered by students as a result of this ghasab behavior.

Therefore, the perception of santri about ghasab needs to be changed, because this is a fundamental thing that needs to be changed immediately by changing the perception of the santri who view that the ghasab behavior they do is something normal, so that it seems as if ghasab is something that is normal legal to do. In addition to the need for the role of administrators and ustads in making disciplinary rules regarding ghasab, it is hoped that the occurrence of acts of ghasab will decrease. Students who commit unethical acts must be
punished. For example, students who commit ghasab acts are given punishments such as cleaning the dormitory bathroom, throwing out rubbish or reading the Koran while standing. And the regulations that have been made will not only be written rules, but must also be actually implemented and obeyed. Dormitory administrators must really enforce the existing discipline in Islamic boarding schools so that the rules that have been created can run. The management and ustadz must be able to be good role models for other fellow students. Moral development for students is very important to improve the quality of students' morals so that they do not commit unethical acts again.

4. CONCLUSION
The problem of borrowing without a sarih agreement is often carried out either intentionally or unintentionally in various circles of society. Of course, this must be carefully considered so as not to violate various legal aspects related to this act. This action is often called ghasab which is prohibited in religious teachings. The perpetrators can be subject to law, both religious law and positive law. Considering that this is considered normal and has become a habit, especially in dormitory-based educational institutions, it is of course necessary to carry out various outreach activities before entering the relevant law enforcement.

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