



## Investigating the Islamic State's ownership of mines

Mahdi Sanei <sup>1\*</sup> 

<sup>1</sup>Faculty of Industries and Management, Department of Islamic Studies, Shahrood University of Technology, Shahrood, Iran.

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### ABSTRACT

Mines are strategic reserves that the world's economy depends on, and therefore, the amount of use is limited so that the field of use is possible for everyone. Therefore, prudent and fair management is an important matter to prevent their destruction and arbitrary appropriation and to observe intergenerational justice, and for this reason, it requires that the ownership, sovereignty, and guardianship of these resources - existing in private, state and public lands - be under a mandate that There has always been a history and there should be comprehensive conditions in the decisions that this position is the responsibility of Imam Masoom and during his absence, the legal guardian, so that by establishing laws and determining the type of exploitation, while maintaining the principle of ownership over these resources, the Islamic government is responsible for disciplining these affairs, or transfer it to the private sector in the form of partnership, lease, usufruct, or exploitation privilege and reserves the right to monitor it, or in the absence of the Islamic State and the conditions for the transfer to the private sector, to issue ownership permission to the public to use its benefits as much as necessary while maintaining the principle of competition.

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\* Corresponding author: **Mahdi Sanei**  
E-mail address: mahdisanei@shahroodut.ac.ir

## 1. Introduction

Mines are one of the most important manifestations of God Almighty's power on land and sea for His servants. Mines are one of the most beneficial blessings of God for the people of the earth in different countries, and one of the most valuable resources that the economy and people's lives depend on. This vital wealth has two types of external mines and internal mines, which are needed by all the people of the planet, and today, life without using it is impossible. All kinds of mines, as a strategic commodity with a tremendous impact on the economic, political, and social fields of nations and countries, especially mine-owning and exporting and importing countries, have become an important international issue that is discussed from different dimensions, especially from the legal point of view, and international laws and regulations have been noted. Today, mines in legal and jurisprudential studies, in addition to the traditional issues related to ownership and how to acquire, restore, and seize it, with the change of nature from simple issues to complex issues of the mining industry, have occupied a wide levels and scopes. The discussion about the province and the ownership of mines is one of the topics that always faces disagreements in jurisprudence and law. Therefore, in this article, to clarify the opinion of the sacred law and mining laws, an attempt is made with the comparative method, while comparing jurisprudence and legal laws, criticizing the former and existing laws in the Islamic Republic of Iran, and seeking to find an answer to the question: What is the province and ownership of mines?!

The total opinions of the jurists are used in this matter, depending on whether the mines are external or internal, located in private lands or public lands, there are different sayings, which mainly revolve around the "Anfal" and "Public Commons" systems. So, some consider mines to be part of Anfal, and others to be common, and some believe that mine ownership depends on land ownership. For this reason, the jurisprudential system of exploitation of mines will be different. Mines, whether private or public, are under the administrative ownership of the Islamic ruler, and the Islamic ruler can also act based on public interest and public interest in handing over mines to competent persons within the framework of clear systems. Of course, handing over these useful resources is illegal and not proper.

Islamic jurists have generally divided mines into two categories, external and internal, i.e., surface mines and underground mines, and the majority opinion is that external mines are the common property of the public. Therefore, in the use of these mines, the level of need and the beneficiaries and their historical rights will be the criteria of priority. Some jurists believe that the government cannot entrust the exploitation of these mines to a specific person because all people share it and no one has more rights than others, but others have allowed the exploitation of the government according to the rights of the beneficiaries.

Therefore, the ownership of mines is considered one of the important legal issues. In the Mining Law of the Islamic Republic of Iran, the ownership of these resources was considered a public commons and belonged to the general public until the victory of the Islamic Revolution. After the victory of the revolution, it was considered public wealth, which was transferred to the Ministry of Industry with the consent and permission of the Supreme Leader. Mining and trade have been entrusted to manage their various stages.

## 2. Investigating the ownership of mines in Iran's subject law

In Islamic countries, the oil resources that were located in deserts and mountains were handed over through aqua [1-8], and the Diwan received income from this passage. At the beginning of his reign, Naser al-Din Shah, to encourage the people, made a law according to which whoever finds a mineral [9-15] in any place, the result will be his for five years, and after that it will be transferred to the government. In the eleventh chapter of the Reuters Deed, this matter is reflected differently as follows: No one can claim possession of a mine unless they have openly and publicly worked in that mine for a period of five years with the knowledge and acknowledgment of the public. This ruling is more compatible with the jurisprudential standards regarding the necessity of arguments. Because the meaning of possession, as stated in Article 146 of the Civil Law, is: "possession and possession, or preparing the means of possession and seizure". It seems that according to the law of Naser al-Din Shah, the possession or possession and placement of people in mines located in Mobahah lands is considered fixed when they have worked openly

and visibly in the mine for five years. Anyway, at the end of the reign of Naser al-Din Shah (Ramadan 1298 A.H.), a decree was issued according to which "all mines of Iran without exception, both open and unexplored, in all protected countries" were placed at the disposal of the Ministry of Mines and any seizure of the mines It was postponed with the special permission of that ministry.

According to Article 161 of the Civil Code of Iran, a mineral that is found in open lands (deserts and mountains) is considered mabahat [16, 17] and it belongs to the person who acquired it and a mine that is located in the private property [18-22] of individuals is considered to belong to the owner according to the land.

Article 1 of the Mining Law, approved in May 1336, divides minerals into three classes and considers them to be the property of the government wherever they are located, and the property where such a mineral is located must be sold to the government at a fair price before the discovery of the mine [23]. According to Article 44 of the Constitution, the ownership of large mines is included in the public sector, which is public property and under the control of the government. Also, according to Article 45 of the same law, mines are among Anfal [24-31] and part of public wealth that is at the disposal of the Islamic government to act on them according to the interests of all people. In all the countries that have laws and governments, mining is considered government property, and to revive and acquire it, they enact laws, and no one has the right to mine unless they get permission from the government authorities and act according to the relevant laws.

These discussions were related to mines that were located in dead lands, but if a mine is found on the private property of an individual, all the legislators in the civil law believe that the person who owns the land is also the owner of everything that is located in it, so such a mine is the property of the owner. It is land, and no one will have the right to occupy it without the consent of its owner. Article 38 of the Civil Law mentions that: "Ownership of the land requires the ownership of the space around it, wherever it rises, and the same is the case with the underground, and in short, the owner has the right to possess all kinds of land and air, except for what the Law of Exceptions stipulates." has done." In Article 161, it is stated: "Mines that are located on someone's land are the property of the owner of the land, and their extraction will be subject to special laws." However, these articles of civil law are not followed in any country nowadays. That is, the laws related to mines do not distinguish between mines that are located in dead lands and mines that are located on private property, and they consider all of them to be illegal, that is, they consider mines to be government property And in our country, with the approval of the Mining Law on May 2, 1336 - Article 16 of which was amended on 2/6/1344, and the executive statute of that article was approved on 12/16/1344 - this provision of the civil law was abolished. This is because in the Mining Law, mines are divided into three classes, and only the mines of the first class belong to the owner of each property, not all mines, according to Article 2 of the Mining Law [32].

Article 2 of the Mining Law, approved on 3/27/1377 (amended on 8/22/1390), is as follows: "In line with the implementation of the general policies of Articles 44 and 45 of the Constitution, the responsibility of exercising the government's sovereignty over the country's mines and maintaining mineral reserves is the responsibility of the Ministry of Industry, Mines, and Trade. The exercise of sovereignty mentioned in this article does not prevent the exercise of ownership by natural and legal persons within the scope of laws and regulations." It is also stated in Article 5 of this law: "Exploration of mineral reserves is carried out by authorized natural and legal persons. The Ministry of Industry, Mines and Trade is obliged to provide the necessary platform for the exploration of mineral reserves throughout the country for natural and legal persons." Some jurists write: "There are two opinions about underground mines among Islamic jurists; One is that it is not permissible to entrust them to certain people, but all people participate in it as members of the Islamic society. Second, it is permissible to leave it to people. However, there is a difference among the believers in this opinion: A group has said that this handover is only for exploitation and the holder of the right owns what he extracts and exploits, but he is not the owner of the original mine and he has no right to sell the mine to someone else and in case of his death, the mine will not be transferred to the heir. Even while alive, if the owner of the right refuses to exploit, his right will be lost, and the mine will return to the

original owner, the general public. But another group has said that this handover leads to ownership; in this way, the person to whom the mine has been handed over can transfer it to whoever he wants, and in case of his death, the mine will be transferred to his heirs among his other properties [33]."

We have two Aqta of concessions or concessions regarding the use of oil mines from the past centuries, both of which were intended to be used for public charity. One is an order regarding the use of oil and bitumen springs of Haft Shahidan in the area of Suleiman Mosque, which was allocated during the rule of the Safavid kings for the expenses of the imamzadeh located in that place, and the responsibility for it was given to a group of local Sadats. The other one, which was granted at the beginning of the Safavid era (1003 AH) regarding the mines of Baku, we do not have an explanation except that its income was Sadat's endowment according to the description written in Arabic on the pillar of a mosque [33]. These two clauses of privilege state that the transfer is only for exploitation, and they do not become the original owner.

The result is that, according to some articles in the Civil Code of Iran - including Article 161 - laboring is considered as a means of ownership of mines, and if there are mines in dead land, the person or persons who act on them become the owner. Also, the mines that are on the personal property of individuals are considered subordinate to the property and belong to the owner using the rule of subordination. In Article 38 of the Civil Law, it is mentioned that the ownership of land requires the ownership of its surroundings. However, in the first to third articles of the Mining Law, in general, mines are considered to be the property of the government, and reclamation and working on mines with the permission of government authorities is considered to be the right of extraction, not ownership, even in mines located on private lands.

### 3. Jurisprudential review of ownership of mines

About the ownership of apparent mines [34-36] and esoteric mines [34, 37-40]. Before the revival, there were some opinions among Imamiyyah jurists.

First: Mines belong to Anfal and Malik Imam [40, 41] absolutely [42-45]. Because:

- The existence of hadiths such as Ishaq ibn 'Ammar: "He asks Imam Sadiq about Anfal? In response, the Imam mentions the examples of Anfal and says: Anfal is a village that has been destroyed and its people have left it and the property of the kings and the dead land that the Muslims have gained without war And every land that has no owner, and the mines And the property of every heirless person who dies from Anfal and belongs to God and His Prophet, and after that, it belongs to the Imam [46]."

According to its authentic document, most of the Imamiyya jurists consider this narration as proof because the pronoun refers to Anfal after the mines, and the term "mines" and its plural are used in general, which means that all types of mines are from Anfal.

- Intellectual validity. This means that this is the norm in all governments. They provide properties such as mines that do not belong to individuals to governments to spend in the interests of the government and the people. The religion of Islam has also given such property to the Imam since he is responsible for managing the affairs of the community.

This proof is confirmed by what is mentioned in the hadiths that the whole earth belongs to the Imam [47]. This is because the term "land" also includes mines.

Second: Mines are one of the common denominators absolutely [39, 48-51]. Because:

- The principle is permissible. That is, the primary principle in wealth and property is that it belongs to the general public.

Responses: Despite numerous and authentic hadiths – such as the authentic hadith of Ishaq ibn 'Ammar – there is no room for adherence to the principle of permissibility, and the generality of this principle can be restricted.

- The continuous practice among Muslims has been the use and exploitation of mines without the permission of the Imam.

The answer to this argument was given in the reasons for the first theory.

- Hadiths make it obligatory to pay khums for people who use mines [52].

Responses: The obligation of khums is on the person who extracts these mines or on behalf of the Imams. It is taken as a substitute and the right of iqta, which can be used as permission to possess and extract it in exchange for paying its khums. Or is it that the religious ruling of God is those who extract these mines with the permission of the Imam. The hadiths that indicate that khums is obligatory on mines do not contradict the fact that the mines are Anfal, because the Imam is content with only one-fifth of it, and four-fifths of it has been given to him because of the hard work and effort of the miner.

Third: Ownership of mines is subject to land ownership [53-57]. Because;

1. Narrated by Ishaq ibn 'Ammar. Therefore, the pronoun returns to the earth after the mines, and it is concluded that only mines on ownerless lands are part of Anfal. However, mines that are located on the lands that have been invaded and private lands are not included in this narrative, and are subject to the ownership of the lands.
2. The Method of the People of Reason and the People of Sharia, From the beginning of Islam until our time, it has been the practice that whoever owns the land has also owned the contents of the land according to the principle of the land.

The answer to these two reasons was given in the reasons for the first theory.

Fourth: The outward mines are common, and the inner mines are from Anfal [14, 58-64]. Because revival does not apply to apparent mines and is not owned by anyone.

Responses: The comprehensiveness of this argument is greater than the claim. And as soon as these mines are not able to be rehabilitated, there is no reason that they are common. And as soon as it is revivable, it is not proof of possessability. Rather, the ability to own wealth must first be proved with an independent reason from the outside, so that after that if it can be revived, we should consider revival as one of the means of its ownership.

In the case of esoteric mines, there is no difference between the first and fourth theories. According to both, the esoteric mines are in the hands of the Imam and the Islamic ruler. As for the external mines and the inner mines close to the earth's surface, the fourth theory agrees with the second.

After expressing their views and reasons regarding the ownership of mines, Imami jurists deal with theories of ownership as follows:

- Some people, according to their apparent basis in the definition of mines, believe that revival has no meaning for these mines [14]. Therefore, rehabilitation, which is considered one of the means of ownership, does not apply to apparent mines.
- The imam can hand over the internal mines before revival [14, 65]. Because these mines are from Anfal and are the property of the Imam and are under the authority and authority of the Imam. And the Imam, who is in charge of managing the affairs of the society, with his nobility towards the interests and interests of the individual and the society, is allowed to do all the actions in these directions and handing over to individuals is also based on compliance with the same interests. Therefore, Iqta, which is considered one of the means of ownership of the exploiter, creates the right for the exploiter to use the contents of the mine, but he does not become the owner of the original location of the mine. Also, Iqta, if the revival takes place in it, the reviver only has priority in possession, and reclamation does not lead to the original ownership of the mine site. The subject of tahjir, like a revival, only creates the right of priority in possession, because tahjir is the beginning of revival and its prelude.
- As a result of the difference in the type of ownership of mines, there is also a difference in the method of exploitation. Those who consider the mines to be from Anfal naturally condition the permission of the Islamic government in their exploitation. However, those who consider mines to be for the general public do not consider the permission of the Imam necessary in the first ruling unless their use is incompatible with the public interest.

- Others believe that the use of these resources is limited to the extent of the need [66] But some of today's jurists believe that there is no reason for such a restriction as long as a person's use does not harm others [67] In any case, assuming that there is a lot of conflict and exploitation of mines and limited resources, anyone can use some of this wealth so that it does not cause harm to others.

According to what has been said, it seems that the first theory has more solid and strong documents and pieces of evidence For this reason, all mines – whether external or internal, whether on government lands or public and private lands – belong to Anfal and are in the possession of the Muslim leaders It is not extracted except with their permission, whether public or private And the Imam can leave the extraction to someone if he deems it appropriate And with the existence of the Islamic government and the Supreme Leader at the head of the system and the proof of all matters for the Supreme Leader in the administration of the Islamic government, the seizure of Anfal at this time must be with the permission of the Supreme Leader and because the mode of ownership of the mine is the ownership of capital and not income, it can only be used to the extent of necessity. Mine, like other Anfals, is the capital of the Religion, not the property of a person or a nation. Religion also spends its benefits on the interests of the nation by preserving its capital, and the Vali-e Faqih is responsible on behalf of the Religion [68].

During the Imam's absence, the authority over Anfal and public property is in the hands of a righteous And the fact that the Imams have made Anfal permissible for their followers does not contradict the permissibility of the religious ruler's intervention in the affairs of Anfal if he has free will in the affairs of Anfal Because, apparently, the Imams wanted their followers to be in development during the reign of the caliphs and not having access to the righteous government And the government at all times is a necessary matter for Muslims from which there is no escape and it is not suspended religiously, and the government's need for financial resources and public property is also a clear matter And in such political and economic issues where the word "Imam" is used exclusively for the infallible Imam, the ultimate thing is that the ruling jurist or just ruler has authority on behalf of the infallible Imam. Accordingly, it is incumbent upon the righteous ruler to prevent the seizure of people in them for the sake of order and justice based on special conditions and conditions, so that the principle of mines remains.

#### 4. Content evaluation

According to the jurisprudential study of the ownership of mines and the fact that all mines are from Anfal, we will examine the laws governing mines in the Islamic Republic of Iran.

It seems that Chapter 11 of the Reuter concession, as well as the plan established by Nasser al-Din Shah to allocate mining profits to people who find mines, are wrong Because it does not seem rational at all that the law should deprive the person who discovered the mine of his right at the beginning of the exploitation after five years of work, which is the period of investment and enduring labor. The same applies to such things; Heyazat and appropriation in public funds also lead to appropriation and appropriation. However, such a plan was later changed, and the control of mines was handed over to the Ministry of Mines. However, if such a transfer takes place on the part of the Islamic ruler, it is enforceable, whereas at the time of the enactment of such a law, the Islamic ruler was not established in the country.

Considering the permissibility of mines in dead lands (Article 161 of the Civil Code) is contrary to our intended promise Because the permissible property can be owned by effort, while the original location of the mine must be preserved for the use of all human beings, even in the future For this reason, this legal article was changed over time and according to the first article of the Mines Law of May 1957, it was considered as the absolute property of the government However, according to Article 44 of the Constitution, its ownership was considered public to be in the hands of the government and to carry out its affairs in the interest of the public. Subsequently, according to Article 45 of the same law, mines were considered as part of Anfal and public wealth to be acted upon in accordance with the interests of the people It can be said that it is part of the Anfal of the mines, according to our opinion, but when it is considered as part of the Anfal, its ownership is proved to the Imam and the Islamic ruler It cannot be said that it is public property, although the Islamic ruler also takes into account the interests of the people, its ownership does not become

public so that the Islamic ruler only oversees the quality of the action Rather, the owner is in control of these resources. Therefore, according to the Velayat-e Faqih, during the Imam's absence, his permission is a condition and necessary for the transfer of these resources. All of these laws were related to mines located on dead land.

Regarding mines located on private lands, all legislators in the civil law believe that the property belongs to the owner of the land and not to Anfal Nor does it require the permission of the Imam and the Islamic ruler They believe in private property and the ownership around it up and down, and only its extraction is subject to special laws (Articles 38 and 161). Although these laws are not currently being implemented, the rights of natural and legal persons in this regard are protected (Article 2 of the Mining Law approved on 27/3/1377 as amended on 22/8/1390) And even the Ministry of Industry, Mines and Trade has been obliged to lay the groundwork for the exploration of mineral resources for these individuals (Article 5 of this law) However, according to our opinion, even to work on these types of mines, permission must be obtained from the religious ruler to act according to the appropriate theories of ownership in interests It has also happened in two cases of Iqta or Privilege in the Safavid era.

As for Articles 1 to 3 of the Mines Law, which considers mines to be the property of the state and considers the restoration and Heyazat with the permission of government officials, Causes the right to extract, not ownership, However, Lawyer consider revival, Heyazat, and iqta as the means of ownership However, because the mines are considered as Anfal, they only give rise to the right of extraction and usufruct, and these are the absolute property of the ruler on whose behalf the government takes possession and plans its affairs.

## 5. Conclusions

God has ordained all the earth and all that is in it from the mines for the benefit of mankind from the beginning of creation to the end of it Therefore, in order to respect the rights of all people, even future generations, and to respect the general interests of the people in these resources, its guardianship, ownership, and sovereignty must be under a position that has been going on throughout history And he enjoys justice, awareness, and complete infallibility in decision-making, which is the position of the wilaya of the infallible Imam And according to the theory of Velayat-e Faqih, which considers the powers of the just Vali-e Faqih to be the same as the infallible Imam Wilayat, ownership and sovereignty over mines on private, public and public lands is the property of the infallible Imam and in the age of occultation, it is the property of the Supreme Leader Considering the interest of all people and the observance of justice between all generations in the exploitation of these resources, the preservation of these resources and the prevention of their destruction, the Islamic ruler can exercise his right of guardianship, ownership, and sovereignty in enacting laws and the type of exploitation of these resources And when the Islamic state is in place, it should make the state its representative in these affairs by using various methods of exploitation,- including: Using people's participation, Transferring Interests to the Private Sector by Leasing Resources in a Certain Period, Assignment of exploitation privilege or issuance of exploitation license or iqata -, The proceeds should be used for the public good. In the absence of an Islamic state, and if the conditions for handing over to the private sector are not met, the Islamic ruler issues permission for the public to take possession of it so that they can use its benefits as much as necessary while preserving the original location of the mine.

Therefore, considering the mines as private or public or public commons does not contradict the ownership of the Imam, but they are adjacent to each other In this way, the principle of these sources is in the hands of the Imam, but he can issue permission to occupy some of them according to the conditions of the individuals, and for others, he can issue permission for the allocation and Iqta, and for some of them, he can declare them unsuitable and Iqta.

## 6. Suggestion

Considering that the guardianship, ownership, and sovereignty of mines belong to the infallible Imam and the Supreme Leader, the Islamic ruler at the time of the establishment of the Islamic state can make the

government his representative in the exploitation of these resources And when the Islamic state is not in place, it should allow the people to use it as much as they need so that they can enjoy its benefits and the principle of resources is preserved. In both cases, it can use the following methods to manage these resources:

- Government Enterprise. The Islamic ruler can make the public sector his representative in the mines so that he can invest in the mines by enacting fair and prudent laws and by recognizing the temporal and regional priorities and respecting the interests of the people, he can extract them and in this way, with proper planning and good exploitation, it should be effective in creating employment, implementing social justice, and creating a balance in the wealth of the society. In this case, the Islamic state, on behalf of the Islamic ruler, is responsible for managing these resources in terms of discipline.
- Transferring to the private sector. In order to reduce costs, motivate the private sector, and at the same time have strong supervision over its performance, the Islamic ruler can not directly take over the use of mines but can do so with the participation of the people and the use of their capital and labor. Partnership with the private sector is possible in several ways. For example, the establishment of a company contract that the Islamic ruler can enter into by concluding this contract with the private sector in various projects such as exploration, extraction, refining, etc, Invest. This transfer is only possible in the form of a transfer of interests And the private sector cannot own the main resources because they are owned by the Islamic ruler, whose benefits must be used for the benefit of the public from the present and future generations Rather, the Islamic state, on behalf of the Islamic ruler, can supervise and supervise it And sometimes in cases where the private sector does not have a strong incentive to enter that sector or entrusting that activity to the private sector, it endangers the interests of weak groups or national interests Also, in special circumstances such as war and famine, it takes over the activity, and in fact, the economic activity of the government complements the activity of the private sector and does not replace it. This transfer of interests is possible in several ways:
  - Renting out resources in a given period. The Islamic ruler can lease the exploitation of mines to natural or legal persons or only assign the privilege and issuance of exploitation licenses. In this case, while reducing the burden of its tenure by renting and using the ability of the private sector, it can also include public interests in the form of conditions in the contract. It can also reserve the right to supervise. The peculiarity of this method is that it is more possible for the Islamic ruler or the Islamic government to supervise these projects on behalf of these projects. In addition to that, the amount of rent can be set every year in accordance with the economic conditions of the day and the situation of the project.
  - Iqta. The Islamic ruler may, if he deems it expedient, assign the exploitation of mines to individuals or groups with specific goals for a certain period. Iqta is not useful for the property but only creates the right of allocation.

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The authors avoided data fabrication, falsification, and plagiarism, and any form of misconduct.

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