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REVIEW OF MAQASHID SYARIAH ON THE PRACTICE OF CHILD LABOR AS A HAWKER AT THE PAWON PURWOKERTO STOP BY RESTAURANT

Anti Anfaul Lisani[1]
UIN Prof. K.H. Saifuddin Zuhri
Email: antianfa@gmail.com

Abstract: A child is someone who is still under age, whether male or female. The phenomenon of children as workers often occurs. The reality shows that poor families really need jobs for their children to help the family economy and for their own lives. In the Mampir Pawon Purwokerto Restaurant area, researchers found many underage children working as hawkers. Based on the description above, it is said that children are allowed to work when the child is 13-15 years old, however, the fact that researchers found is that some of the child workers at the Mampir Pawon Restaurant are still in the age range between 6-11 years and their working time is longer. from 3 hours in 1 day, and supervision from parents is still lacking. These child workers are not directly monitored by their respective parents. This has an impact on children's work safety because the Mampir Pawon Restaurant is also a place where other adults work and there are many visitors. The possibility of children experiencing violence cannot be denied because of the hard work life as well as competition in trade or the danger of being kidnapped. So the researcher focused on the research which was outlined in the problem formulation, namely how child labor practices as hawkers at the Mampir Pawon Restaurant in Purwokerto and how Maqasid Syariah reviewed the practice. child laborers as hawkers at the Mampir Pawon Restaurant. The research used is descriptive qualitative field research with data collection techniques using unstructured interviews, observation and documentation. Based on the research results, the author concludes that children are not allowed to work unless the work they do is light and does not interfere with the child's physical, social development and mental health. If you allow children to work in conditions that endanger their lives both physically and psychologically, because long working hours will threaten the child's life, this is not in accordance with maqasid sharia which is a dharuriyyah (primary) need, including protecting the souls of children because children still need them. strict parental protection. Employing children without paying attention to the child's rights is not in accordance with the maqasid sharia, this can make the child mentally weak as contained in the Qur'an, Surah AnNisa' verse 9. Meanwhile, if the child's rights are in accordance with the maqasid sharia, including that is, parents are obliged to provide for their children until the child has the ability to support himself, so that children can explore the potential that exists within them because children are national assets that must be looked after and protected because employing minors can affect the child's growth and development. -children who should get an education but are forced to do a job

Keywords: *Maqasid Syariah, Child Labor, Street Vendors*

INTRODUCTION

Islam explains that children are a mandate of Allah that must be well guarded, especially for parents, they should not just ignore it, because children's rights are included in one of the obligations of parents. Therefore, in pursuing this life, children have absolute rights that cannot be

violated, children are positioned as jewelry and world wealth for their parents. Like jewelry and wealth, children are treated, cared for, and even loved as best as possible by parents. Islamic law views child labor as part of the deprivation of rights that must be fulfilled by parents and the government. Islam also provides an alternative that children are allowed to work for certain reasons and as learning. However, in Islam, the phase of a person's age is divided into three levels, namely tamyiz (a person between the ages of 0-15 years), puberty (while in the age of puberty it is from the age of 15 years where religious teachings are obligatory for him to undergo as a mukallaf, according to his age he is capable), *rusyd* (a person who has grown up or is from 20 years of age or older), each of which has its own criteria and legal consequences. Islam provides a minimum limit on a person being allowed to work if he has reached 15 (fifteen) years (*puberty*).[1] One of the children's problems that received special attention was the issue of *child labor*. This issue has become global because so many children around the world are entering the workforce at school age. In fact, the issue of child labor is not just an issue of children carrying out jobs by earning wages, but is very closely related to exploitation, dangerous workers, inhibited access to education and hindering the physical, psychological, and social development of children. Even in the case of certain workers, child labor has entered as a qualification for children who work in the most intolerable situations.

According to the Great Dictionary of the Indonesian Language (KBBI), exploitation is the exploitation, utilization, or utilization for one's own benefit or extortion of other people's self is an uncommendable act. Child exploitation shows discrimination or arbitrary actions against a child committed by parents or society that force a child to do something for economic, social or political interests without caring about the child's rights to receive protection according to his physical, psychological, and social status.

Child exploitation is the unethical use of children for the benefit of the company or parents. In essence, children should not work because their time should be used to study, play, have fun, be in a peaceful atmosphere, get opportunities and facilities to achieve their goals in accordance with their physical, psychological, intellectual and social development. However, in reality, many children under the age of 18 have been actively involved in economic activities, becoming child laborers, among others in the industrial sector, citing economic pressure experienced by their parents or other factors.

Child labor is an exploitation to meet the economic needs of families hit by poverty. The situation of child labor is dilemmatic, on the one hand, children work to contribute income but are

[1] Ibn Rushd, 'Bidayatul Mujtahid Translation', *Imam Ghazali, (Jakarta: Pustaka Amani, 2007), Cet, 3rd*, 2002.

vulnerable to exploitation and mistreatment. The mistreatment in question is that children who work certainly lack attention and affection from their parents, this will make the child lose affection and the child interprets the loss as a failure to foster positive relationships, usually resulting in depression in children, minors should need to get more attention from their parents, especially in the field of education. Education is very important for children's future prospects to achieve success. If the child has worked at a young age, the time will be divided into working,[2] the child will prioritize work more and not focus too much on his education because when working the child can earn his own income and help the family economy, unconsciously this leads the child as a child worker who should not be able to work. At the Pawon Purwokerto Mampir restaurant, researchers found that there were still many minors who worked as hawkers.

Based on the age limit of the child, the child is allowed to work when he is over 15 years old or has matured intellectually, meaning that the child's intelligence allows him to make a work agreement or do work. History records that the Prophet Muhammad (peace be upon him), working when he was 12 years old, followed his uncle Abu Talib who was in the business of bringing merchandise from Mecca to Sham. This shows that children working was a natural thing during the time of the Prophet, but it is necessary to pay further attention that the motivation and conditions for employing children so that children's rights are not neglected. On the other hand, it is necessary to pay attention to the benefits and harms that arise from working children. Therefore, the age limit for children in work, which is contained in Law No. 13 of 2003 concerning Manpower, provides an age limit for underage workers. Underage worker is any child under the age of 18 (eighteen) years old, both female and male, who is involved in economic activities that can interfere or hinder the process of growth and development and endanger physical and mental health.[3] This condition illustrates that underage labor is very unfavorable for the process of children's growth and development and in terms of minimal economic needs, resulting in children being forced to work. If the situation forces the child to work, then parents must pay attention to their protection and rights.

Law Number 13 of 2003 concerning Manpower Article 68 prohibits employers from employing minors to perform further heavy work in Article 69 paragraph (1), explaining that employers are allowed to employ children between the ages of 13-15 years to do light work, as long as they do not interfere with development and physical, mental and social health. Thus the minimum working age is 13 years so that children who work under 13 years old are also called

[2] Baiq Leni Aprianti, 'A Review of Islamic Law on the Practice of Child Labor as Street Vendors in the Tourist Area of the Mandalika Special Economic Zone (SEZ), Central Lombok Regency' (unpublished PhD thesis, UIN Mataram, 2021) <https://etheses.uinmataram.ac.id/3649/1/Baiq%20Leni%20Aprianti%20160201162.pdf> [accessed 21 May 2024].
[3] Government of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower', *Ministry of State Secretariat of the Republic of Indonesia, Jakarta*, 2003, pp. 1–49.

underage workers. Furthermore, it is explained in paragraph (2) regarding light work carried out by children is a maximum working time of 3 hours in 1 day, carried out during the day and does not interfere with school time as well as the existence of occupational safety and health and receiving wages based on applicable regulations.[4] Regarding the age limit of children, it is explained in QS. An-Nisa' (4:6)

تَأْكُلُوْهَآ وَلَا ۚ اَمْوَالَهُمْ اِلَيْهِمْ افَادْفَعُوْٓ رُشْدًا مِّنْهُمْ نَسْتُمْ اٰ فَاِنْ النِّكَاحَۚ بَلَغُوا اِذَا ىحَتّٰ ىمُالْيَتٰ وَابْتَلُوا
فَاِذَا ۗ بِالْمَعْرُوْفِ فَلْيَأْكُلْ يْرًافَقِ كَانَ وَمَنْ ۚ فَلْيَسْتَعْفِفْ غَنِيًّا كَانَ وَمَنْ ۗ يَّكْبَرُوْا اَنْ وَّبِدَارًا اِسْرَافًا
حَسِيْبًا بِاللّٰهِ ىوَكَفٰ ۗ عَلَيْهِمْ فَاَشْهِدُوْا اَمْوَالَهُمْ اِلَيْهِمْ دَفَعْتُمْ

> Test the orphans (in terms of managing property) until they are old enough to marry. Then, if according to your judgment they are good at managing property, hand over the property to them. Do not eat them (orphans' treasures) beyond the limits of propriety and (do not) hasten (to spend them) before they reach adulthood. Whoever is able, let him refrain from eating the treasure of the orphan, and whoever is poor, let him eat the treasure in a good way. Then, when you give the property to them, you shall hold witnesses. It is enough for Allah to be the overseer.[5]

That the child can be charged in terms of handing over property if he has entered puberty and can manage his property properly as for the relationship with children who work underage. Similar to the above that children can be charged with work if they are old enough and capable in managing property and capable in their religious affairs, then children can distinguish between good and bad. Law No. 30 of 2014 Jo Law No. 23 of 2002 concerning child protection, article 26 paragraph (1) "that parents are obliged and responsible for:

a. Nurturing, nurturing, educating and protecting children:
b. Develop children according to their abilities, talents and interests;
c. Prevent marriage at a young age; and
d. Providing character education and instilling ethical values in children.[6]

Based on the description above, it is said that children are allowed to work when the child is 13-15 years old, but the fact found by researchers that some child workers at the Pawon Mampir Restaurant are still in the age range between 6-11 years old and also their working time is more than 3 hours in 1 day, and supervision from parents is still lacking. The child workers are not directly

[4] Indonesian.
[5] 'Qur'an of the Ministry of Religion' <https://quran.kemenag.go.id/> [accessed 24 May 2024].
[6] Law No, 'Year 2002 on Child Protection'.

monitored by their parents. This has an impact on children's occupational safety because the Pawon Mampir Restaurant is also a place where other adults work and many visitors from various regions. The possibility of children getting violence or kidnapping is undeniable because of the harshness of work life and competition in trade. In addition, the products offered by hawker workers in the Mampir Pawon restaurant area are quite expensive and non-negotiable, as if taking advantage of small children to get a lot of profit.

Departing from the description of the problem above, the researcher wants to examine and research how the practice of child labor as a street vendor at the Pawon Mampir Restaurant, reviewed in terms *of sharia maqoshid*, therefore the researcher took the title of the study, "A Review of Sharia Maqoshid on the Practice of Child Labor as a Hawker at the Pawon Pawon Purwokerto Mampir Restaurant.

METHODS

The research methods described include steps taken in determining, processing, analyzing, and presenting the results of the research. Analyzing and presenting the results of the research. This research is a qualitative research, which focuses on collecting data from the results of interviews, observations and other documents related to the practice of child labor as a hawker at the Mampir Pawon Purwokerto restaurant. The data that has been collected is then reviewed with case studies that focus on more specifically to obtain the most accurate data to find out how the practice of children as hawkers at the Mampir Pawon Purwokerto restaurant refers to Islamic law. Data analysis is carried out in a descriptive-analytical manner, the presentation of information obtained in the field in the form of written and oral data and steps that can be researched, then the data can be interpreted and interpreted so that the data can describe the actual things appropriately by using a theoretical framework related to the subject matter in this research. Focusing his research on how the practice of child labor as a hawker at the Pawon Mampir Restaurant in Purwokerto and how Maqasid Syariah reviews the practice of child labor as a hawker at the Pawon Mampir Restaurant.

RESULTS

Child Labor

The definition of a worker or child laborer in general is a child who does work regularly for his parents, for others or for himself who needs a large amount of time by receiving a reward or not.[7]

[7] Bagong Suyanto, *Children's Social Problems* (Kencana, 2010), p. 111 <https://books.google.com/books?hl=id&lr=&id=zqRPDwAAQBAJ&oi=fnd&pg=PA5&dq=Bagong+Suyanto,+Masala

Article 1 paragraph 3 of Law No. 13 of 2009 concerning Manpower states that a worker is every person who works by receiving wages or other forms of remuneration. From the definition of a worker, it is clear that only a workforce that has worked can be called a worker.[8] The problem of child labor is not a new problem, especially among rural communities who train children to work at an early age.[9] The term worker is any person who works by receiving wages or other forms of compensation.[10] There are many child laborers from rural areas in small industrial centers located in the middle of residential areas which indirectly encourage them to work without ruling out the possibility of exploitation by parents against them.

The definition of children according to laws and regulations is as follows:

a. Children according to Law No. 23 of 2002 concerning Child Protection The definition of a child based on Article 1 paragraph (1) of Law No. 23 of 2002 concerning Child Protection is a person who is not yet 18 (eighteen), including children who are still in the womb.
b. Children according to the Civil Code are explained in Article 330 of the Civil Code, saying that immature people are those who have not reached the age of 21 years and have not been married before. So a child is everyone who is not yet 21 years old and unmarried. If a child has been married before the age of 21 and then divorced or left dead by her husband before the age of 21, then she is still considered an adult person not a child.[11]
c. According to the Child Criminal Code in Article 45 of the Criminal Code, a child is a child whose age has not reached 16 (sixteen) years.
d. According to Law No. 4 of 1979 concerning Child Welfare, a child is a person who has not reached the age of 21 (twenty-one) years and has never been married (Article 1 point 2)
e. According to Law Number 11 of 2012 concerning the Child Criminal Justice System Explained in (Article 1 paragraph (3)) A child is a child who has been 12 (twelve) years old, but has not yet reached the age of 18 (eighteen) years old who is suspected of committing a criminal act.
f. According to article 1 point 5 of Law Number 39 of 1999 concerning Human Rights is as follows:

h+Sosial+Anak,+Jakarta:+Kencana,+2010,+hlm+111.&ots=XS640evPA3&sig=ydZXk3BlXxUnQECe18D6wSL7saA> [accessed 26 May 2024].

[8] Muhamad Sadi Is, MH SHI, and S. H. Sobandi, *Employment Law in Indonesia* (Prenada Media, 2020) <https://books.google.com/books?hl=id&lr=&id=2g7uDwAAQBAJ&oi=fnd&pg=PA127&dq=buku+Hukum+Ketenagakerjaan+I+ndonesia+(Edition+Revised),+Lalu+Husni&ots=Irr9Ckqaru&sig=CYNvDZk5t9i685v2shDO2wIoKow> [accessed 26 May 2024].

[9] Bagong Suyanto, *Child Labor and the Continuity of Education* (Airlangga University Press, 2003), p. 21.

[10] Indonesian.

[11] S. H. Pnh Simanjuntak, *Civil Law of Indonesia* (Kencana, 2017) <https://books.google.com/books?hl=id&lr=&id=c_pDDwAAQBAJ&oi=fnd&pg=PA101&dq=Kitab+Undang-Undang+Hukum+Perdata,+(Jakarta:+PT.+Pradnya+Paramita,+2002),+ppm.+90.&ots=rr65L8s77u&sig=PDcbBrO_rdcx-_OqwpCHongl6yY> [accessed 26 May 2024].

"A child is any human being who is under 18 (eighteen) years old and unmarried, including children who are still in the womb if it is for their own interests".[12]

Education is one of the efforts that is deliberately held to help the development of the personality and abilities of each child in order to improve the quality of their welfare in the future. On the one hand, there is a conflict about the necessity of children to work to obtain welfare because of their family's economic condition with the right of a child to receive a proper education and only focus on education for his future, but many child workers also attend school. Reality shows that parental poverty makes children lose the opportunity and right to education.[13]

Low level of education and economic helplessness, parents tend to be narrow-minded about their children's future so that they do not take into account the benefits of higher schooling can improve children's welfare in the future. This situation encourages children to choose to become child laborers.

Child Labor in the Perspective of Sharia Maqoshid

In Islamic law, employing a child is an injustice as according to LBM NU (Lembaga Bahtsul Masail Nadhdatul Ulama), because in Islam a child has a position of istimiewa, and has not been burdened with many obligations, should be given his rights by his parents because as the person in charge of a child, that is, the right to provide support, provide a proper education and prepare for a better future. Maqashid is a set of goals, needs, and moral concepts based on Islamic law such as justice, nobility, humanity, freedom of choice, generosity, holiness, and ease to humans and societies that cooperate with each other, therefore all goals and concepts represent the idea of human rights, development and social justice. To realize the achievement of this thing, it can be fulfilled with five elements of maqashid sharia.[14]

Maintaining religion (*Hifz Al-Din*)

It is the most important factor in human life, with religion human life will be hierarchical and get benefits from this life and the hereafter. Thus, a child must understand the deeds that are prohibited by religion and allowed by religion and always keep their religion strong.[15]

Nurturing the soul (*Hifz Al-Nafs*)

[12] 'LAW OF THE REPUBLIC OF INDONESIA'.
[13] Zahra Firdausi, 'The Relationship between Child Labor and Educational Attainment and Household Welfare Level', 2016 <https://repository.ipb.ac.id/handle/123456789/81959> [accessed 26 May 2024].
[14] Darwan Prinst, *Indonesia Child Law* (Citra Aditya Bakti, 1997), p. 80.
[15] 'Buku_Filsafat Islamic Law.Pdf', p. 95 <https://repositori.uin-alauddin.ac.id/17246/1/Buku_Filsafat%20Hukum%20Islam.pdf> [accessed 25 May 2024].

As a parent must take care of their child from the physical and mental health of a child who works causes mudharot, then it is not to be confused if indeed the child has to work to help meet the needs of his family in order to stay alive, then parents must teach the child so that his physical and mental health is maintained.[16]

Nurturing the intellect (*Hifz Al-Aql*)

Possessing reason to solve all problems, as a separation from good and right, a person who does not maintain his intellect well can fall into bad things, and always seeks justification for himself. In maintaining intellect, there are several kinds such as seeking knowledge to maintain intellect, of course, a child who works who puts aside his education for the sake of work, then it includes not maintaining his intellect. If a child works in a good environment and the company oversees the education of child labor, then it is possible that the child can maintain his intellect to continue his life.

Maintaining the offspring (*Hifz Al-Nasb*)

Islam prohibits free sex, this is to maintain the preservation of the lineage, an effort to maintain the offspring, namely through a legal bond in the form of marriage, thus it is feared that a child is married because he is still weak in thinking, he can do this act or be harassed by one of the workers, to avoid that the child is not recommended to work.[17]

Preserving treasure (*Hifz Al-Mal*)

In life, human beings can live and survive because of wealth, if human beings do not fulfill and neglect their possessions, their lives will be destroyed. To have property, one of the efforts is to work, if the child works to meet the needs of him and his family, that it can be done as long as it does not interfere with his mandatory activities, but there can be harm if the child works from theft or work which is prohibited by religion and the state. Thus, if a child is required to work to meet his needs, then he works in a halal way.

In the view of Islam, not only in the world but children will also help until the hereafter, then in Islam has also given a whole about human rights and paying attention to the salvation of mankind. That in essence children are a gift from Allah SWT, which not all families can be blessed with children, with children needing protection and having the right

[16] M. Ag Nurhayati and Ali Imran Sinaga, *Fiqh and Ushul Fiqh* (Kencana, 2018), p. 81 <https://books.google.com/books?hl=id&lr=&id=MeFiDwAAQBAJ&oi=fnd&pg=PR5&dq=Nur+Hayati,+dan+Ali+Imran+Sinaga,+Fiqh+dan+Ushul+Fiqh+(Jakarta:+Prenadamedia+Group,+2018),+h.+75&ots=V_KFmBwIRV&sig=EaJ-G7KixHWpoAiAYxIlZDxmZlw> [accessed 25 May 2024].

[17] Afifa Kurnia, 'EFFORTS OF THE CILACAP REGENCY CHILD PROTECTION OFFICE IN DEALING WITH CHILDREN WHO ARE FACED WITH THE LAW FROM THE PERSPECTIVE OF MAQASID SYARIAH' (unpublished PhD thesis, IAIN Purwokerto, 2020), p. 33 <https://eprints.uinsaizu.ac.id/7625/1/COVER_BAB%20I_BAB%20V_DAFTAR%20PUSTAKA.pdf> [accessed 25 May 2024].

to get what they have to get and be able to carry out their rights and obligations. Because children as future generations of the nation play an important role in the development of a country and its people. This has been stated in the 1945 Constitution which stipulates that the protection, progress, enforcement, and fulfillment of human rights are the responsibility of the state.

The Practice of Child Labor as a Hawker at Pawon Stop-in Restaurant

a) Child workers as hawkers at Pawon Stopper Restaurant

In practice, what happens to children at the Pawon Mampir Restaurant is inversely proportional to what has been explained above. Some minors have been employed as hawkers by their parents. At Pawon Stop by Restaurant, hawkers by offering their merchandise at very expensive prices, crackers or dry food that are small in size are pegged at 15,000 per container and the price is patented and cannot be negotiated, and that is a way for parents to take advantage of their children to be employed as street vendors. However, there are children who are only limited to helping people to meet their basic needs.

Amat, one of the workers, also explained that his work was only limited to filling the void, even the money from the sale was saved and some of it. In addition to the two children. There was also one of the children explaining the condition of the work that was done only to help the parents. This was explained by a child named Stenni

b) Children's rights that must be fulfilled

Children have rights that must be fulfilled in their lives. These rights include the following:

1) Right to protection
2) the right to live and thrive
3) the right to education
4) the right to receive alimony and inheritance
5) the right to equal treatment (non-discriminatory)

Each of the above rights must be fulfilled by parents in meeting the needs of their children's lives. but it is different with the children who trade at the Pawon Stop Restaurant. There are children whose right to a proper education is not fulfilled. However, not all of these children do not receive education, only a few children do not

go to school. This is based on the news that many children who trade as hawkers are categorized as minors.

c) Age of child labour

From the results of a study conducted by researchers at the Pawon Stop by Restaurant based on the age of child labor, it was found that quite a number of children worked as hawkers, but the researcher only took data on 25 people, the average age of the child was still a minor. Based on the data in the report, the researcher concluded that on average, some of the children who work as street vendors at the Pawon Mampir Restaurant are still in elementary school (SD) and the rest are in kindergarten (kindergarten).

Child workers who work as street vendors usually start emptying their goods after school until late afternoon. The activity is carried out every day. The children are usually escorted by their families to empty their goods from the morning after school until late afternoon. There are also those who wait until maghrib to be able to go home.

Activities as a hawker are usually carried out every day because the Pawon Mampir Restaurant is never empty of visitors even though at certain times the place is visited by only a few people. The profits obtained are usually partly used to buy food and part of it is given to their parents for daily needs, sometimes also the money from trading in the tube by the children. The items that are left behind by the children at the Pawon Mampir Restaurant are such as dry food. These dry foods such as fish crackers, starch crackers and many more. The merchandise products are ready-made food and then resold. The habit of being a hawker is a common thing among children at the Pawon Stop Restaurant. This is due to the unmet needs of the children themselves and the very minimal economic situation of the family. This situation makes children inevitably sell as street vendors to meet their needs.

The existence of hawkers at the Pawon Mampir Restaurant is also often complained about by tourists or visitors who come. This is because the hawkers often offer goods when visitors are eating. Especially with an abnormal price, a small pack is pegged at Rp. 15,000 and if bargained, it can't.

d) Factors that encourage children to work as hawkers

1) Economic Factors

a. Poverty

Some children admit that their parents only work as farm laborers, hawkers, fishermen and some do not work and prefer to be housewives. The results obtained from the job cannot meet their needs and that is what motivates children to work as street vendors and is used as a tool to help their parents earn a living.

b. Income

The lack of income obtained by parents results in children as a source of income, one of which is by selling in the Mampir Pawon restaurant area, but not all parents make children as a source of income, this is based on the results of an interview conducted with inaq juminah as a collector of goods where children take their merchandise.

c. Necessity

An inadequate economy is one of the factors for children to work at an early age, if the needs of the child are not met, the children choose to trade as street vendors to meet their living needs such as food, drink and pocket money. In addition to the money from the sale being used for personal needs, there are also children who on their own initiative want to reduce the burden on their parents, one of which is pocket money. There are even children if the income is felt to be more, then the results are given to their own parents.

2) Family Factors

Family factors can also affect children working at an early age, which is in line with several factors that affect it. Based on the experience of various cases, it is stated that the causes of the emergence of hawkers include:

a) The family is messy so the child chooses to live on the streets.
b) Not having a family (home, family and so on).
c) Parental coercion of children to provide for the family economy.
d) Economic poverty, access to information and so on in the family, so as to encourage children to be independent by living on the streets.
e) A culture that considers children to serve their parents.

3) Environmental Factors

Environmental factors are also factors that have a great influence on children who work as street vendors, where the environment where the majority of these children live work as street vendors. In practice, most of the hawkers live in the same area or place of residence. This affects other children to participate in selling as street vendors.

4) The child's own will

In addition to economic factors, family and environmental factors of their own volition also affect children to work at an early age. Because most of them sell as hawkers and from selling can meet daily needs such as pocket money and meals as well as intermediaries to play with friends.

DISCUSSIONS

a) Analysis of the Practice of Child Labor as a Hawker at the Pawon Purwokerto Stop-in Restaurant

The practice of child labor as a street vendor at the Mampir Pawon Restaurant, this activity has a negative impact on children, because child workers who work as street vendors are very early. The practice of child labor as a street vendor is a complex problem and still occurs today, where quite a lot of children work as street vendors, both in the formal and non-formal sectors. Children who work as street vendors prefer to trade rather than play like children in general because from work they can collect money to help the family economy. Selling as a hawker is a common thing among children at the Pawon Purwokerto Mampir Restaurant.

The practice of child labor as street vendors in the tourist area of Rumah Makan Mampir Pawon is quite high because the area is a lot of visitors who come from local residents and from other areas. Child workers who work as street vendors take advantage of this to sell various kinds of dry food. The child workers sell to help the family economy where they are already burdened to make a living.

Child labor as a hawker at the Mampir Pawon Restaurant has positive and negative impacts, including the negative impact, namely the physical development of children with adults being more vulnerable because children in the growing up period and the work done by child workers can cause accidents and diseases, this can be in the form of injuries or disabilities due to scratches, hits or bumps, while those that can cause diseases include workplace conditions that are The weather is very hot or too cold. The positive impact is that they get additional income to help meet the needs of life that are not met by their parents.

Child labor, especially in the informal sector, needs to get adequate legal protection as stated in the Labor Law, but the handling of child labor problems is difficult to do due to factors that directly and indirectly hinder the handling of child labor problems in the informal sector.

The causes of employing children as hawkers at the Pawon Mampir Restaurant include:

1) Economy

Family economic incapacity is the main factor for children to work at an early age. The inadequate needs of life make children inevitably do work as street vendors.

2) Education

Poor family conditions force some children not to continue school due to lack of funds, which makes children forced to work with low education. Low education has a bad impact on children's knowledge level. The limitations of education make children gain skills and insight in work are also limited.

This condition is experienced by some children who work as street vendors at the Pawon Mampir Restaurant. Child workers as street vendors are more concerned with work than continuing school, because from working the children get money to meet the needs of the family or the needs of the children themselves.

3) Milieu

In addition to the two reasons above, the environment also greatly affects the mindset of children, one of which is working as a hawker. Areas that are used as tourism are a trigger for the emergence of jobs both from the world of crafts, food, tourist attractions and others. One of them is a handicraft business that is widely looked at by workers or traders who are categorized as minors. In addition to a place that has the potential to be a business field, the number of friends or playmates as hawkers also influences other children to follow or engage in the business that their friends are engaged in. In addition to these reasons, there are also other reasons that are the influence of children working to become accessory traders because in the environment where they live, most children have worked like street vendors.

Law No. 13 of 2003 concerning Manpower Article 68 which states:

a. Written permission from a parent or guardian
b. The existence of an employment agreement between the employer and the parent or guardian C
c. Maximum working time of three hours
d. done during the day and does not interfere with school time
e. Pay attention to occupational safety and health f. There is a clear relationship
f. receive wages in accordance with applicable regulations.89 In Law no. 13 of 2003, it is required to comply with the rules that have been set. However, in practice all the rules that have been set are not fulfilled. so that the activities carried out by children

who carry out activities (street vendors) at the Pawon Purwokerto Mampir Restaurant can be said to be contrary to the applicable law.

a) An Analysis of Islamic Law on Children as Street Vendors at Pawon Purwokerto Stop-by Restaurants

Employing children who are still in elementary school and even those who employ children who are not yet in school has often occurred in the surrounding community. Especially in the area of the Mampir Pawon restaurant area, it is based on efforts to teach children to work from an early age. It is undeniable that children in this era can already do adult work, one of which is trading activities such as becoming street vendors. Child labor is a worker who is 13 to 15 years old. In article 68 of Law No. 13 of 2003 concerning employment, employers are prohibited from employing children. Employers can hire children with the following conditions, including:

a. Written permission from a parent or guardian
b. The existence of an employment agreement between the employer and the parent or guardian
c. Maximum working time of three hours
d. done during the day and does not interfere with school time
e. Pay attention to occupational safety and health
f. There is a clear relationship
g. receive wages in accordance with applicable regulations.[18]

In addition to article 68 above, article 75 discusses those related to children's work that:

> *"The government is obliged to make efforts to deal with children who work outside the employment relationship. Children who work outside of work relationships, for example, the children of shoe shiners or the children of newspaper sellers and so on".*[19]

This countermeasure is intended to eliminate or reduce children working outside the employment relationship. This effort must be carried out in a planned, integrated, and coordinated manner with related agencies. It must be acknowledged that the rules for the

[18] Wahyu Kuncoro, 'Practical Legal Tips: Smart Solutions to Facing Family Cases', *Jakarta: Achieve Success*, 2010, p. 191.
[19] H. Zaeni Asyhadie, M. Sh, and S. H. Rahmawati Kusuma, *Labor Law in Theory and Practice in Indonesia* (Prenada Media, 2019), p. 134 <https://books.google.com/books?hl=id&lr=&id=Qb-NDwAAQBAJ&oi=fnd&pg=PA1&dq=Rahmawati+Kusuma,+%E2%80%9CHukum+Ketenagakerjaan+dalam+Teori+dan+Praktik+di+Indonesia%E2%80%9D,+(Jakarta+Timur:+Rawamangun+cet.+1,+January+2019),+pp.+134&ots=1I6qQLL8Cv&sig=0lcMyPKAuP_V8xgZAiLRuhx5saw> [accessed 27 May 2024].

protection of the weak in Law No. 13 of 2003 have reflected the fulfillment of the five basic rights (*adhdharuriyyat al-khamsah*), and more specifically for the protection of the souls of workers. This is in accordance with the hadith of the Prophet which states:

> *"The workers are your brothers whom Allah has power over you. So whoever has a worker should be given food as he eats, clothed as he wears, and not forced to do something that he is not capable of. If he is forced to, he must be helped"*[20]

In principle, children are not allowed to work, exempt for certain conditions and interests children are allowed to work, as stipulated in Law no. 13 of 2003 concerning employment. The forms of work include:

1. Light work, children aged 13 to 15 years are allowed to do light work as long as it does not interfere with physical, mental and social development and development.
2. Work in the framework of the education or training curriculum, the child can do work that is part of the education or training curriculum authorized by the authorized official with the following provisions:
   a. Minimum age of 14 years
   b. given clear instructions on how to carry out the work
   c. provided with occupational safety and health protection
3. Work to develop talents and interests, to develop children's talents and interests well and their interests. To avoid the exploitation of children, the government has passed a policy in the form of Kepmenakertrans No. Kep. 115/Men/VII/2004 concerning Protection for Children Who Do Work to Develop Talents and Interests.

The requirements for employing children aged 13-15 years for light work are that they must meet the following requirements:

1. written permission from a parent or guardian
2. Employment agreement between the employer and the parent or guardian
3. Maximum working time 3 hours
4. done during the day and does not interfere with school time
5. Ensuring occupational safety and health
6. Existence of a clear working relationship
7. receive wages in accordance with applicable regulations.[21]

[20] Abdul Jalil, 'Labor Theology, Yogyakarta: PT', *LkiS Pelangi Aksara Yogyakarta*, 2008, p. 197.

From the above explanation, it can be explained that the condition of the child, if allowed to work, must be in accordance with the provisions that have been explained above that the child can work if the job is a light job where the age of the child is from 13 to 15 years old and is given protection for occupational safety and occupational health. Meanwhile, the condition of children who are not allowed to work is if there is no written permission from the guardian's parents, working hours exceeding the limit of work provisions do not interfere with school time and occupational safety and health are not guaranteed. Meanwhile, what happened to children who worked as hawkers in the Stopped by Restaurant was that many researchers found that children who were less than 13 years old were already working, their working hours also exceeded the limit of work regulations and there was no guarantee of occupational safety and health due to the absence of direct supervision from parents.

The basic and fundamental message of the building of Islamic legal thought (fiqih) is the benefit, the benefit of universal humanity or in more operational expressions of social justice. Any and however theoretical offer (*ijtihadi*), whether supported by nash or not, that can guarantee the realization of the benefits of humanity (including children) from an Islamic perspective is legitimate and Muslims are bound to control and realize it. On the other hand, any theoretical offer and however convincingly does not support the guarantee of benefits, much less opens up the possibility of the occurrence of madadharatan (*Fath al-Zari'ah*), in the eyes of Islam is a fasid, so that Muslims individually and collectively are bound to prevent it.[22]

From the explanation listed above, in every decision making on religious law, it should be more considered the aspects of maslahah and mufsadat as a reference in *maqasid sharia*. According to Al-Syatibi, the way to understand *maqasid sharia* includes the study of *illah al-nur* (command), and al-nahi (prohibition), which are found in the nash of the Qur'an and Hadith. For Al-Syatibi, *'illah* contains a very broad meaning, namely benefits and wisdom related to *al-awamir* (commandments), *al-ibahah* (ability) and *al-mafasid* related to *al-nawahi* (prohibitions). This means that *'illah* a law includes benefits and mafsadatan.

[21] PRESIDENT OF THE REPUBLIC OF INDONESIA, 'Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower', 2006 <https://www.cekindo.com/wp-content/uploads/2019/02/Undang-Undang-No-13-Tahun-2003-tentang-Ketenagakerjaan.pdf> [accessed 26 May 2024].
[22] Indar Wahyuni, 'The Problem of Child Labor: A Perspective of Maqashid Shari'ah', *Court: Journal of Islamic Law Studies*, 9.1 (2016), p. 93 <https://jurnal.syekhnurjati.ac.id/index.php/mahkamah/article/view/292> [accessed 27 May 2024].

Because *'illah* in the sense of benefit and mafsadatan in general is *maqasid sharia* itself. This impression is implied in the verse of the Qur'an surah At-Tahrim (6):

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا قُوْٓا اَنْفُسَكُمْ وَاَهْلِيْكُمْ نَارًا وَّقُوْدُهَا النَّاسُ وَالْحِجَارَةُ عَلَيْهَا مَلٰۤىِٕكَةٌ غِلَاظٌ شِدَادٌ لَّا يَعْصُوْنَ اللّٰهَ مَآ اَمَرَهُمْ وَيَفْعَلُوْنَ مَا يُؤْمَرُوْنَ

O you who believe! Protect yourself and your family from the fires of hell whose fuel is man and stone; its guardian angels, rough and hard angels who do not disobey God against what He commands them and always do what is commanded.

وَلْيَخْشَ الَّذِيْنَ لَوْ تَرَكُوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعٰفًا خَافُوْا عَلَيْهِمْ ۖ فَلْيَتَّقُوا اللّٰهَ وَلْيَقُوْلُوْا قَوْلًا سَدِيْدًا

And fear those who should leave behind their weak offspring whom they fear for their welfare. Therefore, let them fear Allah and let them speak with the right word.

The content of the understanding that can be concluded from the above narration of the Qur'an is the command to protect the family, including children, in order to avoid the torment of hellfire, evil and misery. Therefore, we should build a family that is qualified, faithful and pious. Parents are obliged to educate their children seriously and provide a wide range of knowledge by providing high education for their future so as not to give birth to a weak generation as stated in the two verses above. Islamic law states that caring for and educating children is mandatory, because if young children are not cared for and educated properly, it will have bad consequences for children and can even lead to the loss of their lives.[23]

The law in Islam is a person's obedience to carry out obligations and abandon the prohibitions that have been regulated both in the Qur'an, hadith, and sharia laws that regulate legal competence. Islamic law also regulates the propriety of a person that can be judged from his actions so that it has legal consequences for the perpetrator. Legal proficiency here is related to ahliyatul wujub which means the ability to own and bear rights, while propriety in acting concerns the appropriateness of a person to do the law in its entirety which in fiqh terms is called *ahliyatul ada'*. *Ahliyatul ada'* is the ability to give birth to obligations to oneself and rights to others. Therefore, uhsul fiqh scholars define the caliber in acting as the propriety of a person who has an act or action from him that has been determined by the law of sharia'. Legal proficiency in Islam is required to be aqil puberty, sensible and healthy so that this is even clearer with the definition of the age of puberty

[23] Abdul Aziz Dahlan, 'Encyclopedia of Islamic Law, Volume 5, Jakarta: PT', *Van Hoeve's New Ichtiar*, 1997, p. 415.

contained in the hadith of the Prophet narrated by the Muslim Imam in his saheeh book explaining the age limits of puberty and pre-puberty. The following is an explanation of the definition.

> *"I offered myself to the Prophet (peace and blessings of Allaah be upon him) to fight in the war of uhud when I was 14 years old, but the Prophet (peace and blessings of Allaah be upon him) did not allow me. I again offered my dir at the time of the qhandak war while I was (at that time) 15 years old, so the Messenger of Allah allowed me. Nafi' narrated, then I came to Umar Ibn Abdul Aziz who was serving as the caliph at that time and I told this hadith and he said, "This is indeed the boundary between the age of children and adults". then he instructed all Governors that they should designate people who have reached the age of 15 years (as befits adults), and those who are under that age should be categorized as children".*

The above hadith does not allow children who are 15 years old to participate in wars, judging from this context, indirectly children who work underage are not allowed because there are restrictions that allow children to work. indirectly based on the hadith, children are not allowed to work so that the practice of children who work (trade) who are categorized as minors at the Pawon Mampir Restaurant can be said to be contradictory.

Children who are born have the right to their survival, from still not being able to do anything until the child understands or has reached puberty. Therefore, parents, families and the community and the State are obliged to educate children, if parents are unable to afford it, then the family must follow and take care of the child, if the family is also unable to do so, the community or the government is obliged to take care of the child until the child grows up. Children are actually not allowed to do work because if children work at an early age, it will always bring harm and minimal benefits. Islam also teaches that the duty of parents is to educate children, whatever is experienced by their family, parents are still obliged to take care of children, children must be satisfied with their needs, both in the form of affection and education or teaching.

Based on the view of maqashid shari'ah, minors who work must have a basic goal in order to achieve benefits for their lives. Al-Syatibi explained that in the concept of maqashid shari'ah, there are 3 (three) parts, namely dharuriyat (primary), hajiyyat (secondary), and tahsiniyyat (tertiary). Dharuriyat means the benefits contained in religious sharia to be able to maintain the five basic elements of the purpose of preserving the religion, soul, intellect, property, and heredity. Hajiyat means a need to make it easier and lift all kinds of things that can give rise to difficulties. Tahsiniyat is the purpose of existence to give birth to a human life where it is born in order to beautify the order of human life in the future.

Syatibi explained about benefits, anything related to rizki for mankind, the fulfillment of their livelihood, what is demanded by their emotional and intellectual qualities, in a sense in language Syatibi also explained to share other explanations where maslahah can be studied. Benefit is one of the things in this world or the hereafter. That the essential guidance in the concept of maslahah is the consideration and protection of the element of interest.[24]

According to the explanation above, minors who work must have a clear goal, so that they can avoid harm while the child is working. In Islamic law, minors who work are not prohibited as long as the child has a strong reason to do the work, such as because of experience training or because of other factors. Children who are allowed to work means not giving a burden to replace parents who are supposed to work, the work in question is also in a form that burdens the child and gives time as long as the child works.[25]

The time a minor works is a maximum of 20 hours per week. They should not give a lot of workload if the treatment given to the minor child will interfere with their intellect and mind. Children who should be treated with full protection and affection but instead do work that can hinder the growth and development of the child. If a minor child is not treated properly or the child is left to do work, of course it is very contrary to maqashid shari'ah which is one of the important concepts in Islamic law in realizing good while avoiding evil or attracting benefits and staying away from harm. The understanding obtained from the above discussion is the command to take care of the family, especially always supervise the children to avoid harm and misery. This shows that parents must be obliged to educate their children with seriousness, in order to achieve the benefits of taking care of their families. It is also contained in the verse of the Qur'an, precisely in Surah At-tahrim (66) Verse 6 The verse explains that taking care of and educating children is an action that must be carried out by parents. Children must be protected from acts of discrimination, it is inappropriate for minors to do work that can threaten their growth and even threaten the child's life. The problem of children who work is not from what they do but from the consequences they will receive after they do the work, basically parents who should be looking for a job, not allowing or abandoning their children to do dangerous word.

[24] Al-Syatibi, Al-Muwafaqat Fi Usul Al-Ahkam, (Beirut: Dar Al Fikr, 1341 AH), p. 2
[25] Hardius Usman Nachrowi Djalal Nachrowi, Child Labor in Indonesia, p. 33

CONCLUSIONS

The practice of child labor as a hawker at the Pawon Purwokerto Mampir Restaurant is categorized into two, namely workers of their own volition and the request of their parents, thus child labor. The cause of employing children as street vendors in the Mampir Pawon Restaurant area is caused by economic, educational and environmental factors. Children are not allowed to work except for the work they do is light and does not interfere with the child's physical, social and mental health development. If you let children work in conditions that endanger their lives, both physically and psychologically, because of long working hours that will threaten the child's life, this is not in accordance with *the maqasid sharia* which is a *dharuriyyah* (primary) need, including protecting the child's soul because children still need strict protection from their parents. Employing children by not paying attention to the rights of children is not in accordance with *the maqasid of shharia* , it can make the child mentally weak as contained in the Qur'an Surah AnNisa' verse 9. Meanwhile, if the rights of children are in accordance with *the maqasid of sharia* , including parents are obliged to provide for their children until the child has the ability to provide for himself, so that children can explore the potential that exists in them because children are national assets that must be guarded and protected because employing minors can affect the growth and development of children who should get education but are forced to do a job.

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CONTROVERSY OVER BUYING AND SELLING GOLD IN CASHLESS (Analysis of DSN MUI Fatwa Number 77/DSN-MUI/VI/2010)

Kanzun Bairuha
Universitas Islam Negeri Prof. K.H. Saifuddin Zuhri Purwokerto
Email: kanzunby@gmail.com

Abstract

Currently, gold has become a favored investment instrument among the public due to its consistently rising prices. As time progresses, gold trading has diversified, ranging from mini gold sales to digital transactions and installment plans. This phenomenon raises questions within the community regarding the legality of gold transactions, especially those conducted through installments. The National Sharia Council (DSN), a part of the Indonesian Ulama Council (MUI), issued a fatwa (religious ruling) on gold installments, documented in Fatwa DSN Number 77/DSN-MUI/VI/2010. However, this issue continues to be controversial among scholars, particularly concerning non-cash gold transactions. This research aims to analyze the fatwa by comparing it with the opinions of scholars and delving deeper into the methodology used by the DSN to derive legal rulings regarding non-cash gold transactions. The study falls under the category of library research, utilizing normative and textual juridical approaches. In this research, the author examines the issue based on societal norms, drawing from Islamic law texts, government regulations, and other relevant sources. The conclusion drawn from this study highlights a significant difference between the DSN fatwa and the majority opinion of scholars, particularly the four major schools of Islamic jurisprudence, regarding the permissibility of gold installment transactions. While most scholars prohibit this practice, the DSN fatwa permits it, citing the opinions of Ibn Taymiyyah, Ibn Qayyim, and several contemporary scholars who share a similar view. Furthermore, the DSN fatwa diverges from the majority opinion because it considers the current context, where gold is no longer used as a means of payment or currency. Despite relying on the controversial Ibn Taymiyyah as one of its bases, the DSN fatwa still prioritizes public interest as long as the practice adheres to the rules outlined in the fatwa.

***Keywords**: Kontroversi, Istinbath, Gold Installment*

INTRODUCTION

In this modern era, gold has become one of the popular investment instruments among the Indonesian people. The increase in gold prices every year and the existence of inflation against the rupiah currency are one of the main factors that make people choose gold as an effort to keep their money from being eroded by inflation. Technological developments also make gold investment easier and more efficient to be done both online and offline and can even be done with a small nominal so that it can ease people to invest with small capital. This can be seen with the many mini gold sales or online gold sales through the ecommers application starting from a price of only five thousand rupiah. This certainly makes people more interested in investing in gold.

In addition, gold sales models are also increasingly varied and sometimes this becomes a controversy among the public, one of which is buying and selling gold which is carried out in non-cash/installments. The Indonesian Ulema Council (MUI) has issued a fatwa regarding the non-cash buying and selling of gold. The MUI decided that the law on saving gold in installments is a category of mubah (allowed). This is shown through the fatwa of the National Sharia Council (DSN) No. 77/DSN-MUI/VI/2010 concerning the sale and purchase of gold in cashlessness. The fatwa states that: "Buying and selling gold in a non-cash manner, either through ordinary buying and selling or buying and selling *murabahah*, the law is permissible (mubah, jaiz) as long as gold is not an official medium of exchange/money".(Kiki Andrea Putri Hasibuan, 2023)

The majority of scholars are of the opinion that the provisions or laws in transactions as stated in the Hadith of the Prophet regarding the prohibition of buying and selling gold in cash are ahkam *mu'allalah* (the law that has *'illat*) and the *'illat* is *tsamaniyah*, which means that gold and silver during *the ablution* period of the Hadith are *tsaman* (price, means of payment or exchange, money). So, it can be concluded that in the postulate of the DSN-MUI fatwa, it takes a *legal 'illat* against the Hadith of the Prophet which means gold with *tsaman*. Another consideration that is the basis for the DSN-MUI fatwa is the consideration of the socio-cultural background, one of which is the fiqh rule: "Laws based on customs (customs) apply with the custom and are invalid (invalid) with it when the custom is invalid, like currency in muamalat".(Ahmad Zakki Zamani, 2016)

In accordance with this basis, the consideration used by the MUI in determining the fatwa is because gold buying and selling transactions carried out by the community today are often carried out by means of non-cash payments, both in installments (*taqsit*) and in a resilient manner (*ta'jil*). After the fatwa, it turned out that it did not necessarily make the public calm in transacting gold cashlessly. This is because in the law there is still a growing debate among scholars about the halal and haram of buying and selling gold indirectly and these differences are also listed in the fatwa in the discussion.(Kisanda & Handayani, 2021)

This difference of opinion certainly caused controversy which ultimately made people hesitate to buy gold in installments. For ordinary people who don't think too much about this, it may not be a problem because it can make it easier for people to invest in gold. They can buy the gold they want even though they don't have enough money to buy it because it can be done in installments. However, it is different from a strong society with its stance in following the opinion of scholars who prohibit it. On the one hand, they do not have enough money to buy

gold in cash, but on the other hand they seem to be bound by the law of ulama or Kyai which they follow by prohibiting buying gold in installments. This is certainly a special concern to find a solution for people who are doubtful about the law of buying and selling gold in cash.

In a study conducted by Bustanul Arifin related to the non-cash buying and selling of gold from the perspective of classical and modern scholars, it is stated that classical scholars view this as something haram. Meanwhile, modern scholars are of the view that this is halal. This shows the development of Islamic law because 'illat (the legal reason that covers the law has disappeared).(Arifin & Nisa, 2022) Meanwhile, in another study written by Ayu Rahayu, it was explained that the Saudi Arabian Fatwa Council issued a fatwa on the prohibition of trading gold in non-cash or futures because gold is a type of riba property and contains 'illat as a unit of price.(Ayu Rahayu Nurhazila, 2021) Then, in a study conducted by Yaumil Refianti which discussed Ibn Qayyim Al-Jauziyah's views on buying and selling gold in cashlessness. In the study, it is explained that buying and selling gold in installments is allowed and this is in accordance with Ibn Qayyim's view.(Refianti, 2021)

Based on some of these studies, there are differences and controversies regarding the law of buying and selling gold in cash. There are opinions that allow it and there are also those who prohibit it. With this controversy, this study will focus more on the analysis of the DSN-MUI fatwa regarding the law taking carried out and provide a little overview of what the community should do in responding to these differences while still based on the principles that have been set out in the DSN fatwa.

METHODS

This study uses a qualitative method by examining Fiqh law, fatwas, and the opinions of scholars as the basis for analyzing the DSN-MUI fatwa on buying and selling gold in cash. The author uses a normative and textual juridical approach, which is to research problems based on societal norms by referring to texts sourced from Islamic law, government regulations, and other texts relevant to the research. The focus of the research is on the use of the applicable DSN-MUI fatwa provisions, the opinions of legal experts, legal principles, and theories that are directly related to the research.

This research is included in the type of library research because it critically examines literary materials such as laws sourced from the Qur'an, Hadiths, books, legal journals, applicable laws and regulations, and other legal materials related to the indirect buying and selling of gold. The main source of research is DSN-MUI fatwa No. 77/DSN-MUI/VI/2010.

Meanwhile, secondary sources are obtained through literature in books, articles or journals, as well as the opinions of scholars regarding the indirect buying and selling of gold.

RESULT

Buying and Selling Gold Cashless

Gold is one of the starting metals that has been registered in the chemical element with the code Au (Aurum). Gold has soft properties and is malleable because it has a relatively small hardness, which is only in the range of 2.5 – 3 (Mohs scale). The most recognizable characteristic of gold is its shiny yellow color and mushyness. In fact, many experts try the purity of gold by leaving bites on the metal. Gold itself is very flexible and can be mixed with many other metals. In fact, gold can be an excellent conductor of heat and electricity, so it is widely used as a semiconductor in mobile phone chipsets. Unlike other metals, gold does not know the word rust or corrosion.(Kisanda & Handayani, 2021)

With these characteristics, gold has become a valuable item in society from ancient times to the present. In the 14th century, gold was used as a currency alongside silver by being named dinar for gold and dirham for silver. But as the times progressed, gold was no longer a medium of exchange and had been replaced by paper money as we use it today. However, gold remains one of the attractive commodities in society. Gold is considered a stable long-term investment tool, with low risk and ease of disbursement of funds, making people interested in investing using gold. The rising price also makes gold can be used as a protector of wealth compared to saving money whose value is increasingly eroded by inflation. For this reason, gold can be one of the options for people to save or invest for the long term.

Non-cash/credit buying and selling is a way of buying and selling goods with payments that are not immediately paid off at the time the contract is carried out (payment is deferred or in installments). In Islamic law, buying and selling credit is said to be legal if it meets several requirements. These requirements include: (Kisanda & Handayani, 2021)

1) This contract is not intended to legalize riba. So, it is not permissible to buy and sell *'inah*. It is also not permissible in the credit sale and purchase contract to be separated between the cash price and the margin, which is tied to time and interest, because this resembles riba

2) The goods are first owned by the seller before the credit sale and purchase agreement is held. So, the credit service is not allowed to hold a motorcycle loan purchase and sale contract with the consumer, then after that he makes a purchase and sale contract, orders a

motorcycle and buys it to one of the motorcycle sales centers and then hands it over to the buyer.

3) The credit seller is not allowed to sell goods that have been purchased but have not been received and are not in their hands to consumers. Therefore, the credit service company is not allowed to carry out a motorcycle loan purchase and sale contract with its consumer before the goods that he has purchased from the motorcycle dealer are received.

4) The goods sold are not gold, silver or currency. Therefore, it is not permissible to sell gold by credit, because this is riba *ba'i*.

5) Goods sold on credit must be received by the buyer in cash at the time of the contract. Therefore, credit buying and selling transactions should not be carried out today and goods received the next day. Because this includes buying and selling debts with prohibited debts.

6) At the time the transaction is made, the price must be one and clear, and the number of installments and the term must also be clear.

7) The credit purchase and sale agreement must be firm. So, it should not be done by buying rent (leasing).

8) It is not allowed to make the requirement of obligation to pay fines, or the price of goods increases if the buyer is late in paying the installments. Because this is a form of usury carried out by the Jahiliah people in the time of the Prophet SAW.

There is a difference of opinion among scholars regarding the law of buying and selling gold in cash. There are scholars who forbid it, and some allow it. The following is an explanation of the difference of opinion regarding the law:(Ahmad Zakki Zamani, 2016)

1) The majority of scholars argue that buying and selling gold without cash is haram. These opinions include four Madzhab imams, namely Abu Hanifah, Imam Malik, Imam Shafi'i, and Imam Hanbali.

2) Meanwhile, the scholars who allow it as mentioned in the DSN-MUI fatwa are Ibn Qayyim, Ibn Taymiyah, and Sheikh Ali Jumu'ah.

Opinion of Scholars Who Prohibit Buying and Selling Gold in Non-Cash

In the article written by Kisanda and Santi, there are 10 opinion groups that prohibit the buying and selling of gold in cash. Here's an explanation of this:(Kisanda & Handayani, 2021)

1) Views of the Four Madhhab Scholars

It has been agreed by most scholars that gold and silver are categorized as *ribawi* goods because *their illat* is a price benchmark and is a means of payment that functions like modern money. Therefore, gold and silver can be used as currency, so that Hadith scholars understand that money is something that comes from gold as a similar currency with different terms and sizes. Four madhhab imams agree on the haram of buying and selling gold without cash. (Ahmad Zakki Zamani, 2016)

This is based on the Hadith narrated by Imam Muslim, Abu Daud, Tirmizi, Nasa'i, and Ibn Majah, with Muslim texts from Ubadan bin Shamit. The Prophet saw said:

الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيْرُ بِالشَّعِيْرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ, سَوَاءً بِسَوَاءٍ, يَدًا بِيَدٍ, فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِيْعُوْا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ.

(Buying and selling) gold with gold, silver with silver, wheat with wheat, sha'ir with sha'ir, dates with dates, and salt with salt (with the condition that it must) be the same and of the same kind and in cash. If the type is different, sell it as you like if it is done in cash.

There are six objects of *ribawi* according to *ijma*, namely gold, silver, wheat, *sha'ir*, dates, and salt. However, the '*illat* of gold and silver is different from the other. According to Imam Malik and Imam Shafi'i '*illat*, gold and silver are the benchmark of price and can be equated with money. If buying and selling gold and silver, they must be received by each before parting. And this opinion was agreed by Imam Malik.(Teungku Muhammad Hasbi Ash-Shiddieqy, 2001)

According to Imam Malik in Al-Muqaddimat Li Ibn-Rustd:

لايجوز في هذا البيع ان يكون تأخير في تسليم العو ضين سئل الأمام مالك عن الرجل يدفع الدينار الى الصراف يشتري به منه دراهم فيزنه الصراف ويدخله تابوته ويخرج دراهم فيعطيه قال: لايعجبني هذا, وليترك الدينار على حاله حتى يخرج دراهمه فيزنها ثم يأخذ الدينار ويعطي الراهم

In this sale, the handover must not be delayed. Imam Malik was asked about a person who paid dinars to money changers and bought from them dirhams, so the officer weighed them and put them in his savings and took out the dirhams and gave them to him. Because the '*illat* of goods' is used as a benchmark for price and it is these things that can only be equated with money. '*Such* an illat of haram is only gold and silver. If you buy and sell it, it must be received by each of you before separating.(Arifin & Nisa, 2022)

Then Imam Shafi'i in the Book of Al-Umm volume 3 explained:

قال الشفعي رحمه الله : لايجوز الذهب بالذهب ولا الورق ولاشئ من المأكول والمشروب بشئ من صنفه الابسواء يدا بيد

It is not permissible to exchange gold for gold, silver for silver, and anything that can be eaten or drunk with something of the same kind, except for those of equal value and made in cash. Imam Hanafi and Imam Hambali argue that the haram of selling gold for gold and silver with silver non-cash are objects that are weighed or measured. (Arifin & Nisa, 2022)

2) Ibnu Mundzir

Ibn Munzir said that scholars agree that two people who exchange money with each other if they separate before handing over the money, the transaction is invalid.

3) Al-Ghazali

Al Ghazali died in 505 H, saying that those who make usury transactions on Dinar and Dirham are indeed disbelieving blessings and committing injustice. Since the Dinar and Dirham were created as a medium and not an end, if traded they would become commodities and destinations, this is contrary to the original purpose for which money was created. Therefore, it is not allowed to sell it in futures (not cash), this can prevent people from making it a commodity and traders will not do this to make a profit.

4) Ibnu Hubairah

Ibn Hubairah died in 560 H, saying that Muslims have agreed that it is not permissible to exchange gold for gold, or silver for silver, whether it is still in the form of raw materials, in the form of currency, or in the form of jewelry in a non-cash and not equally heavy way. This is riba *nasiah* and riba *fadhl*. And Muslims also agree that it is permissible to exchange gold for silver of different sizes, but it is haram to do it in a non-cash way.

5) Ibnu Zubair

Ibn Zubair, who died in 741 H, said that scholars agree that it is unlawful to exchange gold for silver, or gold for gold, or silver for silver, either in the form of raw materials or have been converted into jewelry in a non-cash way. However, the handover of both goods must be done in cash.

6) Rabithah Alam Islami

For 2 commodities, namely gold and silver which were currencies during the time of the Prophet PBUH, it can be equated with the current currency as the result of the decision of the world scholars who are members of the Rabithah Alam Islami (Muslim Word League) in the

V congress in Mecca in 1982, which reads, "Based on the research submitted to the Assembly of Islamic Fiqh Institutions about real money and its laws according to sharia, After being reviewed, studied and discussed by the members of the Assembly, it was decided as follows:

First, based on the origin of money is gold and silver and based on '*illat the* applicability of riba on gold and silver is *mutlaq tsammaniyah* (absolute exchange rate) in the opinion of the strongest scholars. And based on the opinion of scholars that *mutlaq tsammaniyah* is not limited to gold and silver only, even though its status is a precious metal that is the benchmark. And based on the fact that currency is today considered a medium of exchange, replacing gold and silver, and as a measure of price, because no one is using gold and silver as a medium of exchange anymore. And currency has been trusted by people to invest, and store their property, and used as a means of payment for obligations, even though the value of currency is not a physical substance, but its value comes from the user's trust to change hands, from that the nature *of tsamaniyah* (value) is produced. And because the strongest opinion about '*illat* riba in gold and silver is absolutely the same as Nia and it is found in currency. Based on the above reasons, the assembly decided that currency is independent money, the legal point of currency is the same as gold and silver money, then it is obligatory to issue zakat from currency money. Riba *fadhl* and *nasiah* also apply to currency like gold and silver, so the laws related to gold and silver also apply to currency.

Second, currency is stand-alone money just as gold and silver money are of various types, according to the type of country that issued them. So, the Saudi currency is one type, the American currency is another, and so on each currency of a country is its own type. Thus, riba *fadhll* and *nasi'ah* can occur in every currency as riba *fadhl* and *nasi'ah* occur in gold and silver money. The consequences of this decision are as follows:

a. It is not allowed to exchange one currency for another country's currency or for gold and silver in a non-cash manner. For example, exchanging Saudi Reyal with other currencies in a non-cash way (the handover of both currencies is not at the place where the contract takes place) is not allowed.

b. It is not allowed to exchange money into denominations and currencies with different nominations even if it is done in cash. For example, one sheet of S.R. 10.00 with 11 sheets of S.R.1.00 is not allowed.

c. It is allowed to exchange different currencies of different types and nominations on the condition that it lasts in cash. For example, exchanging 1 US Dollar for 3 Saudi Reis in a non-cash way is allowed.

Third, it is mandatory to issue zakat on currency when the nominal value is worth one of the nisab of gold or silver zakat or complete the nisab with other assets such as business property. Fourth, it is permissible to use currency as capital in the contract of buying and selling greetings and as capital in association. *Wallahu a'lam*.

7) Decree No. 21 (9/3) of the Third Congress of World Scholars under the OIC

Decree number 2 (9/3) which reads "The Assembly of Islamic Fiqh Institutions stipulates that currency has a *tsammaniyah* (price/value) criterion. The law is the same as the laws that have been explained by the sharia regarding gold and silver. Riba can occur on currency. Currency is subject to zakat and can be used as capital in the salam contract and all predetermined laws.

8) Fatwa of the Kingdom of Saudi Arabia No. 3211

The case that has been asked to the fatwa institution of the Kingdom of Saudi Arabia, fatwa number 3211, which reads:

Question: A customer comes to my shop to buy gold, he only brings enough cash to pay the down payment, please set aside the gold and this is the money! Later I will come to pay it off". Sometime later he came to pay off and receive the gold. What is the law of buying and selling?

Answer: This buying and selling is not allowed, because the handover of goods is not cashy". (Fatwa Lajnah Daimah, volume XIII, p. 476).

Question: Sometimes the owner of a gold shop buys a large amount of gold from one of the out-of-town gold agents over the phone, and the type of gold ordered is clear. After a price agreement has occurred, then the buyer sends money to the seller via bank account transfer, is this transaction allowed, or what should be done?

Answer: this transaction is not allowed by law, because the handover of gold goods and money is not cash, even though both are riba commodities. This transaction includes riba *nasi'ah*, the law is haram. The solution is that when the money is received, the sale and purchase contract is repeated so that the contract takes place in cash. (Fatwa Lajnah Daimah, volume XIII, p. 475).

9) *Maj'ma Fiqh Al Islami* (Fiqh Division OKI)

The Maj'ma Fiqh Al Islami (the fiqh division of the OIC) at a congress in Abu Dhabi in 1995 decided, "Reiterate the opinion of jurists who prohibit the exchange of gold jewelry for non-jewelry of different sizes.".

10) Accounting And Auditing Organization for Islamic Financial Institutions (AAOIFI)

AAOIFI international sharia banking guidelines which states in Chapter: *Al Murabahah lil Amir Bisysyira'*, No. 2/2/6, which reads, non-cash *murabahah* buying and selling should not be carried out on gold or silver, or currency. (Al Ma'ayir Asyar'iyyah, hal 93).

In general, classical scholars prohibit the practice of buying and selling gold with a credit system. If gold is exchanged (traded) for paper money, it will have consequences (conditions), namely it is permissible *to tafadhul* (excess) but the existence of *nasa*‟ (credit) is prohibited. This means that there must be a cash handover at the place of the contract. This means that the sale and purchase must be paid in cash / in full during the contract, and this is the opinion of the majority of Fuqoha‟ from the companions of the Prophet PBUH such as Ibn Umar, Ubadah bin Shamith.(Saifurrahman Barito & Zulfikar Ali, 2005)

Erwandi Tarmizi, first explained the procedure for buying and selling gold or *gold murabahah* carried out by *sharia* financial institutions. First, it alludes to how it responds, and provides a law in prohibiting or legalizing issues related to modern muamalat. Second, describe the postulates used by DSN-MUI in issuing a fatwa on the sale and purchase of non-cash gold, namely the opinion of Ibn Taymiyah and Ibn Qayyim that it is permissible to exchange gold jewelry for dinars (gold) in a way that is not equally heavy and non-cash because according to these two opinions, gold jewelry (which has been subject to human intervention) has come out of the '*illat* of dinar gold money, namely *tsamaniyah*. So, gold jewelry is no different from merchandise that can be exchanged for gold currency (dinar) in a non-cash way and is not equally heavy. Third, that the opinion or postulate in the fatwa used by DSN-MUI in allowing the buying and selling of non-cash gold is a weak postulate. Fourth, that Muslims have agreed that it is permissible to exchange gold for silver of different sizes, but it is haram to do it non-cash. Fifth, that the fatwa issued by DSN-MUI opens up opportunities to legalize jahiliah riba and is contrary to international Sharia banking guidelines.(Erwandi Tarmizi, 2018)

Opinion of Scholars Who Allow Buying and Selling Gold Cashless

The scholars or opinions that allow the buying and selling of gold without it are as follows:

1) Ibnu Taimiyah

Ibn Taymiyah, said in Kitab *al-Ikhtiyarat* stated "It is permissible to buy and sell jewelry made of gold and silver of the same type without conditions (*tamatsul*), and the excess is used as compensation for jewelry making services, both with cash payment and with deferred payment, as long as the jewelry is not intended as a price (money).(Abu Hasan Al-Ba'liy al-Damasyqus, 2005)

2) Ibnu Qayim

Ibn Qayyim further explained: "Jewelry (from gold or silver) that is allowed, because it is made (to be jewelry) that is allowed, changes its status to a type of clothing and goods, not a type of price (money). Therefore, zakat is not obligatory on jewelry (made of gold or silver), and neither does riba (in exchange or sale) between the price (money) and other goods, even if they are not of the same type. This is because by making (becoming jewelry), the jewelry (from gold) has gone out of purpose as a price (no longer money) and has even been intended for business. Therefore, there is no prohibition on trading gold jewelry of the same type…".(Ibnu Qayyim, 1991)

Ibn Qayyim used his own method in dealing with a new case or problem. First, he referred to the Qur'an and the Sunnah, then when there was no clear *nash* in the Qur'an and the Sunnah he took the fatwas of the companions and tabi'in. Sometimes he also took the opinion of the fiqh imams. In such a condition, Ibn Qayyim will take the opinion that is closest to the Qur'an and the Sunnah even though these opinions are not in accordance with his school of jurisprudence. With this method, there is a strong bond between fiqh and the Qur'an and Sunnah. This method harmonizes ijtihad in matters of fiqh. The methods used by Ibn Qayyim in performing ijtihad are divided into six types, namely Ijma, Qiyas, Istiashab, Maslahah Mursalah, Urf, Sadd Adz-Dzariah. In his ijtihad, Ibn Qayyim did not use Istihsan because this method is only based on thinking without the postulates of sharia.(Refianti, 2021)

The ability to buy and sell gold in a cashless manner according to Ibn Qayyim's view is based on the following reasons:

a. Today, gold is a jewelry and is no longer a currency like in the past which was used as a medium of exchange in transactions. Therefore, the status of gold changes to goods or commodities like other goods that can be used as objects in buying and selling.

b. Riba does not apply to the exchange or sale of gold and money. This is analogous to when we buy a piece of land with money. Of course, this is allowed and not prohibited.

3) Wahbah Az-Zuhaily

Wahbah Az-Zuhaily in the MUI fatwa quoted the words "Likewise, buying jewelry from craftsmen with installment payments is not allowed, because the price (money) is not handed over, and it is also invalid by borrowing money from craftsmen." (Wahbah Az-Zuhaily, 2006)

According to the MUI, in terms of Wahbah Az-Zuhaily, it is permissible to buy and sell gold in installments if the purchase is not from a direct craftsman, because the gold and silver that have been formed into jewelry that causes it to have come out of its function as *tsaman* (price or money). In the context of the MUI fatwa, as one of the legal institutions in Indonesia, the MUI has also established a fatwa related to the law on the sale and purchase of non-cash gold which is a question for many people. After weighing and binding several issues and rules that are in accordance with the current situation.(Arifin & Nisa, 2022)

4) Fatwa DSN-MUI

As one of the legal institutions in Indonesia, MUI has also established a fatwa related to the law of buying and selling gold in cash, which is a question for many people. After considering and remembering several problems and rules that are in accordance with the current situation. The following is a determination based on the decision of the Fatwa of the National Sharia Council No. 77/DSN-MUI/VI/2010 concerning the Buying and Selling of Gold in Cash, as follows:

"The law of buying and selling gold in cash, either through ordinary buying and selling or buying and selling *murabahah*, the law (mubah/*ja'iz*) is as long as gold is not an official medium of exchange (money). Limitations and conditions:(Dewan Syariah Nasional, 2010)

a. The selling price (*tsaman*) must not increase during the term of the agreement even if there is an extension after maturity
b. Gold purchased with non-cash payment can be used as a guarantee (rahn).
c. Gold that is used as collateral as referred to in point b may not be traded or used as the object of another contract that causes a transfer of ownership.

In this MUI fatwa No. 77/DSN-MUI/V/2010 concerning the sale and purchase of gold in cash, DSN-MUI stipulates that buying and selling gold in a non-cash manner either through ordinary buying and selling or buying and selling *murabahah*, the law is permissible (mubah, jaiz) as long as gold is not an official medium of exchange (money). However, this ability has a condition, namely that the selling price (*tsaman*) must not increase during the term of the agreement even if there is an extension of time after maturity.

DISCUSSIONS

Responding to DSN-MUI Fatwa No. 77/DSN-MUI/VI/2010

According to the provisions of DSN-MUI fatwa No. 77 of 2010 concerning *gold murabahah*, the fatwa stipulates that buying and selling gold, whether in the form of jewelry or not, can be done in cash or installments/credit, on the grounds that contextually, gold and silver have lost their function and '*illat* as a medium of exchange (*tsamaniyah*), thus, gold and silver have the same status as other commodities.

One of the MUI's considerations in deciding the fatwa is that humans really need to buy and sell gold in installments. If this is banned, according to the MUI, it will damage human benefits and make it difficult. According to my analysis, this is in line with the rules of Fiqh which are also contained in the fatwa as follows:

الْعَادِةُ مُحَكَّمَةٌ

Customs are used as the basis for establishing laws.

الْأَصْلُ فِي الْمُعَامَلَاتِ الْإِبَاحَةُ اِلَّا اَنْ يَدُلَّ دَلِيْلٌ عَلَى تَحْرِيْمِهَا

Basically, all forms of mu'amalat can be done unless there is evidence that prohibits it.

Another basis used by DSN is the opinion of Ibn Taymiyah and Ibn Qayim. Ibn Taymiyah, said in the Book of Al-Ikhtiyarat stated "It is permissible to buy and sell jewelry made of gold and silver of the same type without the condition that it must be of the same level (*tamatsul*), and the excess is used as compensation for jewelry making services, both with cash payment and with deferred payment, as long as the jewelry is not intended as a price (money).(Abu Hasan Al-Ba'liy al-Damasyqus, 2005)

Furthermore, Ibn Qayyim stated that: "It is clear that jewelry is permissible and made in the permissible manner as well, including such as shirts and goods, not as a medium of exchange. Therefore, it is not obligatory on jewelry zakat, and there is no usury between jewelry and the medium of exchange, just as there is no usury between the medium of exchange and property."

From the two statements above, it can be understood that the permissibility of buying and selling gold in installments is the loss of legal '*illat* on gold jewelry as a medium of exchange that makes it an ordinary commodity. Plus gold is allowed to be processed which eliminates the nature of money as a medium of exchange and makes it an ordinary commodity.(Setiawan bin Lahuri & Labibah Dian Umami, 2023)

Meanwhile, the majority opinion or the majority of scholars stated the opposite. This means that buying and selling gold in installments or installments is not allowed in Islamic law. Due to the strong postulates that prohibit the sale and purchase of gold in installments, many antithethes have emerged in response to this DSN MUI fatwa. DSN MUI which emphasized the permissibility of buying and selling gold in installments due to the loss of the '*illat* aspect of gold as a medium of exchange. However, in fact, it has not been able to eliminate '*illat*. This is because gold is still used by large institutions such as the state as a foreign exchange reserve, this is stated in the explanation of Law Number 23 of 1999 concerning Bank Indonesia which has been amended by Law Number 3 of 2004:

"What is meant by foreign exchange reserves is the country's foreign exchange reserves controlled by Bank Indonesia which are recorded on the asset side of Bank Indonesia's balance sheet, which includes gold, foreign banknotes and other banknotes in foreign currencies..."

Based on what we have discussed above, DSN allows buying and selling gold not in cash because it is not money. DSN-MUI Fatwa Number 77/DSN-MUI/V/2010 concerning Cashless Gold Trading, is a fatwa as a legal breakthrough, drawing a lot of criticism. In the fatwa, it is stated that buying and selling gold not in cash, either through ordinary buying and selling, or through buying and selling *murabahah*, can be accepted *(mubah, ja'iz)* as long as gold is not an official medium *of exchange (money).* The selling price *of gold (tsaman)* gold must not increase during the term of the agreement even if there is an extension after maturity. The fatwa also states that gold purchased in cash cannot be used as collateral *(rahn)* and that collateral gold cannot be transferred.(Sholihin, 2021)

Then there is one more thing that is indeed urgent, namely humans really need to buy and sell gold. If it is not allowed to buy and sell gold in installments, it will harm people's interests and they will experience difficulties. If this door (buying and selling gold in installments) is closed, then the door of receivables will be closed, and the community will experience incalculable difficulties. For example, in modern times, where people's needs are increasingly complex, people who want to buy gold but do not have enough money need installments or installments. So that buying and selling gold or *murabahah* in installments will make it appropriate to fulfill human interests and avoid difficulties or even cause crimes such as gold theft and others.(Setiawan bin Lahuri & Labibah Dian Umami, 2023)

From this explanation, the author tries to respond to the controversy in the DSN-MUI fatwa. It has been explained that there are two strong opinions regarding the ability to buy and sell gold cashlessly. Broadly speaking, the opinion that prohibits it is from the classical scholars starting

from the four madzhab imams and the scholars after them or the current scholars who still adhere to this opinion. Then the opinion that allows it, especially from Ibn Taymiyah and Ibn Qayyim on the grounds that gold is no longer a medium of exchange/money. This opinion is a reference for DSN-MUI in issuing a fatwa on buying and selling gold in cash.

On this basis, the author tries to provide a solution to people who are still in doubt about the law of buying and selling gold in cash. Here are some possible solutions:

1) If someone can afford to buy gold directly without installments, it would be nice if it was done without installments. This is to maintain caution so as not to cause doubts
2) If someone cannot afford to buy it directly and is eager to buy gold in large quantities to be used as savings, then buying in installments can be a solution. However, it would be good if this was done in a sharia institution that has implemented rules according to the DSN-MUI principle regarding the non-cash buying and selling of gold. It must also be in accordance with the consideration that the person should be able to pay in installments according to the specified time so as not to cause new problems. At least he already has a budget allocation to pay the installments based on the monthly income he earns.
3) If a person is only able to buy gold little by little, then it is better for him to do it seeing that now there is a lot of gold sold in small sizes so that it is easier for people who want to save gold starting from a little. Because, if the person insists on paying gold installments, he is worried that there will be congestion in the installments due to factors that may occur. For this reason, it is better to buy gold according to its ability at that time so that it can avoid the risk of late installment problems in the future.

Those are some solutions that can be done by the public regarding buying gold in installments. In essence, the main goal is the achievement of benefits. If just because gold installments cause problems in payment, it is better to avoid it and buy according to your ability.

CONCLUSIONS

From this discussion, it can be concluded that there is a controversy regarding the law of buying and selling gold in cash. Although this has been fatwa by DSN-MUI with fatwa No. 77/DSN-MUI/VI/2010, there is still a debate about the law on buying and selling gold in cash. The fatwa has been carried out in accordance with the applicable Fiqh rules and the result allows the buying and selling of gold in a non-cash manner on the grounds that currently gold is no longer a currency, but only as a commodity. However, this still raises doubts for people who are still strong in following the ulama who prohibit it. For this reason, the author provides several

solutions to respond to this. For people who can afford to buy without installments, it is better to buy it directly. Meanwhile, for someone who cannot afford it, it is allowed to buy it in installments, but it must be considered their ability to pay the installments every month. If this cannot be guaranteed, it is better to buy a little gold according to the money he has at that time. This aims to prevent the risk of delays or inability to pay in the future.

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THE EXISTENCE *OF GREEN SUKUK* IN INDONESIA: AN ANALYSIS OF YŪSUF AL-QARAḌĀWĪ'S ENVIRONMENTAL FIQH

Linda Amala Udzma[1] , Mohammad Muqronul Faiz [2]
UIN Prof. KH. saifuddin zuhri purwokerto[12]
lindaamala15@gmail.com

Abstract

Green sukuk is present as a sharia investment instrument for project financing that supports environmental conservation efforts and the achievement of sustainable development in Indonesia. The existence of *green sukuk* has continued to increase since its inception in 2018 until now. Meanwhile, environmental fiqh is present to answer the problems that include environmental issues. Furthermore, how does environmental fiqh view the concept of an environmentally based economy such as *green sukuk* ? Starting from this question, this study aims to analyze the existence of *Green sukuk* in Indonesia from the perspective of environmental fiqh Yūsuf al-Qaraḍāwī . The method used in this study is qualitative-descriptive with a conceptual approach. The results of this study indicate that *Green sukuk* according to 2019-2023 data contributes to financing five green sectors including: climate change, renewable energy, energy efficiency, waste management and sustainable transportation. The existence of *green sukuk* is in line with the environmental ethics of Yūsuf al-Qaraḍāwī , which is contained in *the ri'ayah al -biah,* namely on the concept of environmental preservation. Yūsuf al-Qaraḍāwī emphasized that all forms of development must be environmentally friendly and follow the principles of compassion and care. This study also found that the concept of environmental protection can be influenced by other aspects such as sustainable economics.

Keywords*: Environmental Jurisprudence, Green Sukuk, Yūsuf al-Qaraḍāwi.*

INTRODUCTION

Environmental issues are currently being hotly discussed . The current problems in nature are due to changes in nature. (Diyasti & Wulandari Amalia, 2021) CO2 gas is the result of various daily activities of human life, so that the term carbon emissions or carbon pollution appears which of course can harm nature. The Indonesian government responded with a national commitment towards low-carbon and climate -resilient development . One of the programs launched is the funding sector, namely the idea of sustainable green economic financing. Sometimes, an environmentally friendly economic project requires higher costs. One of the financial instruments that can be used to support sustainable economic development projects is *Green Sukuk* . (Qanita, 2023, pp. 19–34)

The presence of *Green Sukuk* is a continuation of the green idea bond . [1]In general *Green Sukuk* is part of a security, then the proceeds from its issuance are allocated to finance environmental projects. *Green Sukuk* is also an application of one of Indonesia's commitments to the Paris Agreement which was ratified in 2016. This ratification is an effort to encourage Indonesia to become one of the countries that minimizes carbon and is resilient to climate change. (Hariyanto, 2021) *Green Sukuk* in 2018 was first issued in support of Indonesia's goal of reducing Greenhouse Gas emissions. (DJPPR Kemenkeu RI, 2020)

Although *Green Sukuk* does not yet have specific regulations, *Green Sukuk* refers to the Republic of Indonesia Law Number 19 of 2008 concerning State Sharia Securities (SBSN) and Financial Services Authority Regulation Number 18/POJK.18/2023 concerning the issuance and requirements of debt securities and sukuk based on sustainability. However, the contract mechanism in its issuance follows the state sukuk system regulated in regulation number XI.A.13 of the decision of the chairman of Bapepam and LK number: Kep181/BL/2009. (Yaniza et al., 2023)

In the process of issuing *Green Sukuk* strengthening Indonesia in the global Sharia financial market position. The existence of *Green Sukuk* is growing rapidly in Indonesia. This is in accordance with data provided by the Ministry of Finance.

No	Year	Amount (trillion)
1	2018	36.12
2	2019	48.24
3	2020	55.15
4	2021	66.45
5	2022	84.97

(source: Ministry of Finance 2023) (Ministry of Finance, 2023)

Based on the table above , it can be seen that the accumulated value of *Green Sukuk issuance* in the last five years from 2018 to 2022 has continued to increase. Based on the percentage calculation , it can be explained in 2019: 25.1%, 2020: 12.5%, 2021: 17%, 2022: 21.7%. The development of this value is in accordance with the growth of *Green Sukuk issuance* , although there was a decline in 2020 due to the pandemic, so this is considered

[1] Green bonds were first initiated when *Climate Bonds Initiative* (CBI) in collaboration with the *Clean Energy Business Council of the Middle East and North Africa* (MENA) and Dubai - based Gulf Bond to offer green sukuk concept . See also: (Suherman, 2019)

normal. (Adhi Purba & Mutafarida, 2023) The development of *Green Sukuk* in Indonesia has a goal related to the government and society in sustainable economic *development* . *development goals)* .

Furthermore, starting from the development and existence *of Green Sukuk* in economic and environmental contributions in Indonesia, this study wants to discuss *Green Sukuk* from the perspective of Environmental Fiqh. Environmental fiqh can be a foundation for society in implementing green project practices in economic activities. One of the figures who initiated environmental fiqh is Yūsuf Yusuf al-Qaraḍāwī in explaining environmental problems , the aspect that emphasizes the problem of human morality. So how is the existence of *Green Sukuk* from the perspective of thinking ? Joseph al-Qaraḍāwī on the environment.

METHOD

This research is a type of library research . research) with a qualitative approach to determine the existence *Green Sukuk* in Indonesia based on environmental jurisprudence from Yusuf al-Qaraḍāwī . This research examines the *green phenomenon economy* in the sharia investment industry, namely *Green Sukuk* . The study in this study observes the existence of green sukuk in Indonesia and is then discussed using relevant analysis.

The analysis process uses a descriptive analysis method. In general , descriptive means a picture of the situation according to the discussion in the study. This study describes the existence *Green Sukuk* in Indonesia. Secondary data which means not derived from direct observation, but based on data from literature studies is the data used. The data sources from this literature study vary from the book of Yusuf al-Qaraḍāwī entitled *Ri'ayah Al-Bi'ah fi Sharia al -Islam* and supporting literature, such as books, journals from international and national sources and the management website . The analysis used is descriptive by analyzing all the collected data, then compiling and interpreting it.

LITERATURE REVIEW

The author conducted pre-research on library documents or literature that are relevant to the research topic. Several literature studies that are relevant to this research, Ilyas Adhi Purba (2023) (Adhi Purba & Mutafarida, 2023) provided research results that in Ali Yafie's thinking; environmental awareness in humans is based on two things, namely rabbil alamin and rahmatan lil alamin.

The work of Suherman (2019), (Suherman, 2019) the results of his research provide an overview of the potential of *Green Sukuk market issuance* , both locally and internationally.

The potential of the local *Green Sukuk market* can be seen from the development of savings sukuk and retail sukuk investors. From the presentation obtained, the distribution of *Green Sukuk* shows rapid development marked by demand from investors.

Furthermore, research from Makmun (2020) (Makmun, 2020) and Risanti (2020) (Risanti et al., 2020) both discuss the concept, implications and roles given by *Green Sukuk* to Indonesia. The issuance of *Green Sukuk* contributes to sustainable development in accordance with the aim of funding green projects that have 9 sectors that have a role in environmental preservation and sustainability.

RESULTS

The Existence of Green Sukuk

Green Sukuk was born as an innovation from developed countries, whose people are aware of economic development that always prioritizes environmental aspects, prioritizes economic growth by ensuring the utilization of healthy natural resources and not consuming excessively but still getting optimal results. (Karina, 2019)

Law Number 16 of 2016 concerning the ratification of *the Paris Agreement to the United Nations Framework Convention on Climate Change* (Paris Agreement), is proof of the seriousness of the Indonesian government in implementing sustainable development by increasing national commitment in reducing emissions from various sectors, forest conservation, increasing renewable energy and involving the role of local and indigenous communities in climate control. ("Law Number 16 of 2016 Concerning Ratification of the Paris Agreement To The United Nations Framework Convention On Climate Change," 2016) For the implementation of the Paris Agreement , the government issued *Green Sukuk* , with large funds collected from the sale of *Green Sukuk* can fund green and environmentally friendly projects.

The potential of *Green Sukuk* in Indonesia is quite good from year to year . In increasing the value of *Green Sukuk,* it can create potential in the real sector. Indonesia is recorded as a pioneer in the issuance of green bonds in the Southeast Asia region through the issuance of a five-year *Green Sukuk* with an issuance value of US$1.25 billion or equivalent or Rp16.75 trillion in March 2018. This series will mature in 2023 and sets a yield *of* 3.75%. This transaction is the first *Green Sukuk issuance* in the world carried out by a country with investors spread throughout the world, namely: 32% Islamic market, 25% Asian market, 15% EU, 18% US, and 10% Indonesia. (Finance, 2020)

The report from the Ministry of Finance regarding the allocation of funds from the sale of funds issued by *Green Sukuk* in 2019 to 2023 has implications for eight sectors out of nine green sukuk. sector . Among them , energy efficiency *(energy efficiency)* , renewable energy *(Renewable energy)* sustainable transportation *transportation*), sustainable management of natural resources on land *(sustainable management of natural resources on land)* , green buildings *(green building)* , waste management into energy *(Waste to energy and waste management),* sustainable water and wastewater management *(sustainable water and wastewater management)* , resilience to climate change *(Resilience) to climate change).* (Ministry of Finance, 2022)

The latest report from the Director General of Financing and Risk Management (DJPPR) under the Minister of Finance stipulates the sales results of *Green Sukuk Retail in the ST011T4 series period with a 4-year tenor. The total volume of Green Sukuk* purchase orders that have been set reaches 20 trillion rupiah. This *Green Sukuk* uses the wakalah contract by using State Property (BMN) and the 2023 APBN Project as the underlying assets . (DJPPR Ministry of Finance of the Republic of Indonesia, 2020)

The issuance of this series is the last retail SBSN instrument issuance in 2023. Sukuk Tabungan in the 2-year tenor series offers a return/coupon rate of 6.30% per year and the 4-year tenor series 6.50% per year which is *floating. withfloor* . Evidently, the community has a very high interest in investing in the series of the year. The community's enthusiasm is also seen from the participation in educational activities carried out both offline *and* online *throughout* the offering period. The sale of *Green Sukuk* is supported by *campaigns* and educational activities to the community directly on the islands of Sumatra, Java, Bali and Kalimantan as well as optimization of social media to provide information about investing in the financial market, especially investing in retail government securities. [2]The issuance of *Green Sukuk* Retail is part of the Government's commitment to help reduce the impact of climate change because the proceeds from the issuance will be used to finance environmentally friendly projects in the APBN.

Yusuf's Environmental Jurisprudence al-Qaraḍāwi *(Ri'ayah al-Bi'ah)*

Environmental jurisprudence according to Yusuf al-Qaraḍāwī is the entire study of Islamic science that must be related to the environment, not just limited to one discipline.

[2] Director General of Financing and Risk Management of the Ministry of Finance of the Republic of Indonesia (DJPPR Kemenkeu RI), " *Green Sukuk* 2023 Issuance Report ."

Environmental fiqh essentially has teachings for humans on how humans live side by side and behave towards the environment in accordance with the principles of sharia.

Joseph al-Qaraḍāwī in his *Ri'ayat al -Biah fi as-Shari'ah al-Islamiyyah* stated that Islam highly values the environment. This is proven based on the evidence contained in the environment. Yūsuf al-Qaraḍāwī emphasizes two aspects. First, nature created by Allah is provided to fulfill human needs and support human life. Second, nature with its various contents, has a close relationship with each other. This relationship results in the existence of nature continuing to exist and carrying out its respective functions and levels according to Allah's decree. (Qaradhawi, 2010, p. 12) In line with the word of Allah in the Qur'an

QS. Al- Hijr 15:19-20

وَالْاَرْضَ مَدَدْنٰهَا وَاَلْقَيْنَا فِيْهَا رَوَاسِيَ وَاَنْۢبَتْنَا فِيْهَا مِنْ كُلِّ شَيْءٍ مَّوْزُوْنٍ ﴿١٩﴾ وَجَعَلْنَا لَكُمْ فِيْهَا مَعَايِشَ وَمَنْ لَّسْتُمْ لَهٗ بِرٰزِقِيْنَ ﴿٢٠﴾

"And We spread out the earth and made mountains on it, and We made everything grow on it according to size . And We have created for you on earth the necessities of life, and (We also created) creatures for whom you are not a provider of sustenance."

QS. Ibrahim: 33

"And He has subjected to you the sun and the moon, continuous in orbit; and has subjected to you the night and the day."

The first verse shows that Allah has prepared the welfare and fulfilled the needs of humans with the existence of the universe that can be utilized by humans. While the second verse means that the sun provides its rays continuously as its function for the growth of creatures on earth. This ecosystem shows that there is a relationship between one another. According to Yūsuf al-Qaraḍāwī , the verse above illustrates that nature has reciprocity and perfects each other's shortcomings. (Qaradhawi, 2010, p. 17)

On the other hand, humans who are crowned as caliphs on earth are only tasked with guarding, protecting and preserving nature, not to exploit, destroy or control without limits. The meaning of caliph in an ecological framework is more general and involves all the major biotic elements in the world that are bound by ethical values born from religious culture and from the wisdom of human civilization. Efforts to return activities carried out by humans to prevent the occurrence of an ecological crisis, in the form of formulating a new paradigm as well as new behavior towards the environment or environmental ethics.

Joseph Al-Qaraḍāwī stated that basically environmental ethics contains teachings on how to behave towards the environment in accordance with Islamic values and morals. so that there is a formulation of human ethics towards the environment, including :

a. Friendly to the surrounding environment, friendly in the sense of being alert to what is happening in the environment which includes all existing creatures.
b. Protecting the environment from exploitative individuals. Protecting is the basis of compassion, because by protecting it can help the sustainability of the environment so that it can support the sustainability of humans who cannot be eliminated by nature, and protecting is an obligation for anyone without looking at rank or position. This form of evil must be prevented and corrected either by using hands, tongue or heart. (Muslim, 2006)
c. Maintaining environmental cleanliness. One proof of environmental preservation is by maintaining environmental cleanliness. Clean environmental conditions will create a healthy life that can support human survival. Public awareness is very important in building a healthy and clean life. Cleanliness in Islam is not only a health aspect , but also a means of worship and getting closer to Allah. (Qaradhawi, 2010, p. 75)

From the three ethical formulations above, then Yusuf Al-Qaraḍāwī has a foundation of environmental ethical principles, namely the basis for human loyalty: namely the principle of respecting nature, the principle of responsibility, the principle of compassion and care, the principle of simplicity, the principle of justice and goodness.

The principle of respecting nature

Nature and its components are manifestations of God's creation. living with one common element, namely worshiping and serving Allah SWT. joining the same community, namely the ecological community , having relationships and bonds with each other. While humans enter into this order, so that humans who are part of it must respect other members of the community and not act arbitrarily. Regardless of the status of humans as caliphs on earth, they still prioritize the mandate of harmony in the universe.

1. Principle of Responsibility

The position of humans as caliphs gives consequences and mandates to humans. Responsibility becomes a task that is carried out by humans, including maintaining, caring for, protecting and preserving the universe as a whole. If humans carry out their duties well, they

will reap the results in the form of goodness in the world and rewards in the hereafter. However, if otherwise, then humans will bear the risk of not being able to enjoy the results of nature in the long term.

2. Principle of Compassion and Caring

Humans are required to have the principle of caring and loving nature and its contents, because all layers of the components of nature are a chain that is connected into one ecosystem. Humans love and care without discrimination and domination. The principle that is expected to be the basis that all nature always glorifies and worships Allah so that nature is a manifestation of the greatness and power of Allah. so that nature is not the target of human lust, but becomes a friend who can be loved. The manifestation of this principle is by protecting, caring for and preserving.

3. Principle of Simplicity

Nature was created by Allah SWT to fulfill the needs and be utilized by humans. Not freely, but with procedures and rules for nature to remain sustainable. Humans are prohibited from exploiting it brutally and without limits, because human behavior like this will cause environmental and natural damage, thus threatening the sustainability of future generations.

4. Principles of Justice and Goodness

The foundation that should not be left behind is justice and goodness, this behavior is very much needed by nature and all existing creatures. Humans are not the only creatures that can utilize natural resources, but all components of creatures. Therefore that is, the use of natural resources must be considered so that it can be evenly distributed. (Yusuf Qardhawi, 2002)

Yusuf's Thoughts al-Qaraḍāwī on the five principles of environmental ethics is a concern for the relationship between God, humans and nature in a harmonious and balanced circle. God as the creator of nature, humans become representatives who are given the task of utilizing nature and are responsible for its sustainability. Yūsuf al-Qaraḍāwī added that his thoughts on the environment are based on the Qur'an , hadith and the rules of Islamic jurisprudence which also concern the environment. And in line with the objectives of sharia or maqashid sharia. (Yusuf al-Qaradhawi, 2001) The enforcement of environmental jurisprudence is considered in line with protecting the soul, descendants, reason, religion and property.

DISCUSSION

Yusuf's thoughts al-Qaraḍāwī on *Green Sukuk*

The implementation of *Green Sukuk* is an innovation to fund environmentally friendly green projects in an effort to minimize carbon emissions and renewable and sustainable energy. (Affandi & Khanifa, 2022) Based on data from the *Green Sukuk allocation report* , the Ministry of Finance of the Republic of Indonesia stated that *Green Sukuk investment* has provided various benefits from sectors that have been spread across Indonesia. both new projects and continued projects, so it can be said that the implementation of *Green Sukuk* is a sustainable investment instrument that has a positive impact on overcoming environmental problems. (Ministry of Finance, 2022, pp. 1–20)

The allocation *of Green Sukuk* which is prepared for the classification of green projects by the government through the managing institution is closely monitored, so that green projects truly reduce the impact and risks of climate change. According to the 2019-2023 *Green Sukuk allocation data, it can be seen that Green Sukuk* finances five green project sectors, including the climate change resilience sector, renewable energy, energy efficiency, waste management, sustainable transportation. (Risanti et al., 2020)

Green Sukuk issuance from 2019 to 2020, *Green Sukuk* dominates the funding of the sustainable transportation sector by 46% and 48% of the total investment. In 2021 and 2022, *Green Sukuk financing* is more dominant in the climate change resilience sector by 49.51% and 27.22%. in 2023 it is dominated by the sustainable transportation sector by 53.74%. the report is published a year after the project is implemented, so the data displayed describes the project in the previous year. (Ministry of Finance, 2023)

The existence of *Green Sukuk* issued in Indonesia when linked to the thoughts of Yusuf al-Qaraḍāwī regarding *ri'ayah al -biah* , then it can be linked to the objectives of the implementation of *Green Sukuk* , the issuance of *Green Sukuk* is a government step in participating in the impacts and risks of climate change, both in terms of efforts to prevent and adapt to disasters. (Makmun, 2020) While Yūsuf's thoughts al-Qaraḍāwī in *the ri'ayah Al -Biah* initiated environmental preservation from an ethical element in preserving nature with implementation from the side of maintaining, preventing and adapting to the effects of disasters that occur.

The impact of climate change and environmental problems are losses that must be prevented. In the allocation of *Green Sukuk financing* , the government has set five sector

targets to maintain environmental sustainability. In line with the environmental ethics provided by Yūsuf al-Qaraḍāwī is friendly to the environment and follows the principles of compassion and care. (Yusuf Qardhawi, 2002)

This is also in line with the rules of Islamic jurisprudence that relate to the rules of Islamic jurisprudence and *Green Sukuk* , namely لاضرر ولا ضرار"must not harm oneself or others." (Al-Qaradhawi, 2001) *Green Sukuk* Investment is intended for green projects as a form of minimizing disasters and improving the impact of a disaster. For example, *Green Sukuk* funds climate resilience projects to build dams in Sumatra to overcome floods that have an impact on the community's economy. (Wibisono & Puspitasari, 2021)

The real form of *Green Sukuk distribution* is to enter a sustainable transportation project that can reduce carbon dioxide greenhouse gas emissions through improving transportation in Jabodetabek and railway facilities in the urban sector in 2021. This is in line with the principle of درب المفاسد اولى من جلب المصالح"rejecting evil is more important than inviting good" in line with the ethics of protecting the environment from exploitation. (Al-Qaradhawi, 2001) In this rule it shows In accordance with the principles of goodness, simplicity and responsibility, relevant to the objectives of *Green Sukuk* in overcoming environmental problems , which initially increased pollution due to the use of private vehicles and then switched to trains which were considered to be able to minimize greenhouse gas emissions due to climate change. (Finance, 2020)

One of the benefits resulting from funding *the Green Sukuk project* is climate resilience. This project is considered more urgent so it is prioritized over green building projects that receive a smaller portion. The operational sorting of these funds is more directed at existing benefits, thus prioritizing benefits and rejecting evil.

Yusuf's Thoughts al-Qaraḍāwī on environmental preservation based on the call of Islamic teachings, apart from the Qur'an , hadith, the rules of fiqh are also included in the maqashid sharia. Although preserving the environment *(ri'ayah al -biah)* is not included in the five main maqashid *(al-kulliyah al - khomsah*), but protecting the environment is included in the teachings of Islam. In addition, the environment is part of human life. (Al-Qaradhawi, 2010)

CONCLUSION

This study shows *Green Sukuk from* Yūsuf's perspective al-Qaraḍāwī is in accordance with environmental ethics which are the mainstay of his environmental fiqh. This can be seen

in the target sectors financed by *Green Sukuk* . In addition, the development of *Green Sukuk* which continues to increase from 2018-2023 can be interpreted in accordance with the principles developed by Yūsuf al-Qaraḍāwi .

This study also strengthens the concept that environmental protection can be influenced by other aspects such as sustainable economic aspects. In addition, this study also shows that environmental protection can also be realized through contributions between the roles of society and government. Furthermore, this study is very limited because it is only limited to the thoughts of Yusuf al-Qaraḍāwī and *Green Sukuk* . Therefore, this research can be further developed either in the thoughts of other figures or in the discussion of the environment from another perspective of sustainable economics.

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Reviewing the Term of Office of Village Heads: Between Political Interests and Legal Principles

Rahma Aulia[1], Amrina Rosyada[2]
State Islamic University of Kudus, UNISNU Jepara
rahmaaulia@iainkudus.ac.id , amrina@unisnu.ac.id

Abstract

This research examines village heads' terms of office in the context of village government in Indonesia. The term of office of a village head determined by law has an important impact on local political stability, government effectiveness and community participation. Changes in terms of office and periodization, which are often influenced by political dynamics and government policies, have a significant impact on administrative stability, village management effectiveness and community participation. This research aims to find out what influences the changes in the term of office of village heads and to determine the optimal length of term of office for village heads. The research method used is normative juridical. The research results show that changes in the tenure of village heads are influenced Philosophical, sociological and juridical factors all play a role in influencing the formation of policies regarding the tenure of village heads.. Ideally, the term of office of a village head needs to consider a balance between providing sufficient time to implement development programs and providing opportunities for leadership regeneration. A term of office that is too short or too long can have a negative impact on the continuity of development programs and community participation. A term of office of five years and a moving period of two is considered sufficient to achieve sustainable village development goals and encourage healthy and dynamic leadership changes. Limiting the term of office of village heads can also be used as a tool to control influential village heads and ensure their loyalty to the central or regional government. Therefore, this research recommends establishing a balanced term of office and accompanied by a regular evaluation mechanism to ensure that village heads can carry out their duties effectively and accountably.

Keywords: *terms of office, village head, political interests and legal principles.*

Introduction

As the smallest government unit in the Indonesian state structure, villages play an important role in national development as well as public services. The presence of villages has been recognized in The 1945 Constitution and supported by various other regulations including Law No. 6/2014 on Villages. This is where the role of the village head as the leader of the village government becomes very vital in determining the direction and quality of development and public services at the village level.[1]

During a number of year Finally , the discourse on the term of office of the village head has become a hot topic of debate in various circles, from academics, government

[1] Sutiyo , S., & Maharjan , K.L. (2017). Decentralization and Rural Development in Indonesia. Singapore : Springer .

practitioners, to the general public. This discussion not only touches on the administrative aspects of village government, but also touches on fundamental issues such as local democracy, leadership effectiveness, and the balance between stability and change in the context of village government .[2]

The term of office of the village head is basically refers to efforts to provide standards and reshape the duration of the village head's term of office within one scope of the Unitary State of the Republic of Indonesia. The idea was born on the basis of variations in the practice of organizing village head elections and the term of office of village heads in several regions of Indonesia . This arose in response to variations in the practices of village head elections and terms of office in different regions, partly due to differences in interpretation of existing regulations and partly due to long-standing local practices .

In One side , the term of office can increase legal certainty and prevent leadership stagnation [3]. Clear term limits can encourage leadership regeneration at the village level and open up opportunities for the emergence of new leaders with fresh ideas. In addition, this argument also emphasizes that the term of office can help create a more structured and uniform village governance system throughout Indonesia, which in turn can facilitate the coordination and implementation of national policies at the village level.

On the other hand, there are concerns that the normalization step could ignore local dynamics and limit the rights of village communities to choose their leaders. The importance of considering the diversity of socio-cultural contexts in various villages in Indonesia. T hrough " one " approach size fits all " in terms of the term of office of the village head may not always be in accordance with the needs and preferences of the local community. [4]Furthermore, there is concern that overly rigid normalization may hinder the continuity of effective leadership in certain villages where the incumbent village head has proven competent and well accepted by the community.

From a legal perspective, efforts to normalize the term of office of village heads must be placed in context system more Indonesian law wide . Considering that regulatory changes, even though they are accommodating, must pay attention to the hierarchy of laws and legal regulations . applies . Therefore That , normality of term of office head village must in line with

[2] Purwanto, E.A., & Pramusinto, A. (2018). Decentralization and Functional Assignment in Indonesia: The Case of Health and Education Services. Policy Studies , 39(6), 589-606.
[3] Sahdan , G., Mastuti, S., & Wibowo, MA (2019). Transformation of Village Government Institutional Model. Yogyakarta: The Indonesian Power for Democracy (IPD).
[4] Vel , J. A., & Bedner , A. W. (2015). Decentralization and village governance in Indonesia: the return to the village and the 2014 Village Law. The Journal of Legal Pluralism and Unofficial Law, 47(3), 493-507.

Spirit autonomy area and recognition to rights traditional society village as yes mandated in the 1945 Constitution of the Republic of Indonesia and the Village Law .[5] Meanwhile, from a political perspective, the issue of normalizing the term of office of village heads cannot be separated from the dynamics of power both at the local and national levels. Decentralization and democratization in Indonesia are often colored by competition between local elites in competing for resources and power. In this context, efforts to normalize the term of office of village heads can be seen as an arena for contestation between various political interests, both from the center and the regions.[6]

Research that discusses tenure head village , of course Enough interesting and important For discussed . It is said important and interesting Because often changing terms of office head village . While That study around term of office head the village has also Once done . Based on search study , research conducted by Riza *Multazam Luthfy with Title of Term of Office Head Village in perspective constitution . In the research the to study that* Based on the constitutional approach, the norm regarding the permission for someone to serve as village head for three terms (18 years) in Law No. 6/2014 is contrary to the direction of legal policy in the 1945 Constitution of the Republic of Indonesia and is considered unconstitutional.[7] Other research with title Reformulation of the Regulations on the Term of Office of Village Heads in the Constitutional System of the Republic of Indonesia by *Amancik Amancik , Ahmad Saifulloh's first son, Sovia Ivana Barus also discussed related to term of office head Village . In the research the more emphasize head impact of term of office head village that is too long, namely three period* .[8] This article designed For answer two question namely , what influences changed change of term of office head village as well as provide suggestions regarding the optimal term of office for village heads. Through two question said , it is expected capable produce recommendation strategic to all party , use strengthen effectiveness of term of office head village .

[5] Saputra, AD (2020). Legal Position of Village Government Administration in the Regional Government System. QISTIE Scientific Journal of Law, 13(1), 32-47.
[6] Aspinall , E., & As'ad , M.U. (2016). Understanding family politics : Success and failures of political dynasties in regional Indonesia. South East Asia Research , 24(3), 420-435.
[7] *Riza Multazam Luthfy , "Term of Office Head Village in perspective constitution ", Journal Legal Issues , Vol 48, No 4, 2019.*
[8] *Safe Amancik , Putra Perdana Ahmad Saifulloh, Sovia Ivana Barus , "* Reformulation of the Regulation of the Term of Office of Village Heads in the Constitutional System of the Republic of Indonesia ", Journal Law Vinding , Vol 12 Mo 1 Year 2023.

Method Research

This article uses method normative juridical. Normative juridical is study law bibliography conducted with method researching ingredients bibliography . In this method, all research data is obtained exclusively from library sources. These sources include various reading materials and information available in various media, both in traditional print form and those that can be accessed digitally through online platforms . This approach allows researchers to analyze and retrieve information from various written sources without the need for direct observation or interaction in the field.

Results and Discussion

Factor affecting changing terms of office Head Village

The changing tenure of village heads in Indonesia reflects the complex political, social, and administrative dynamics in the history of village governance. This evolution cannot be separated from the broader changes in decentralization and regional autonomy policies in Indonesia. In the New Order era, the term of office of the village head was regulated in Law Number 5 of 1979 concerning Village Government. According to this law, the term of office of the village head was set for 8 years and could be re-elected for one subsequent term. This rule reflects the centralistic approach of the New Order government, which aimed to create stability and control over village government .[9] After the Reformation era, there were significant changes in the regulation of village government. Law Number 22 of 1999 concerning Regional Government changed the term of office of the village head to 5 years and can be re-elected for one term. This change reflects the spirit of democratization and decentralization that characterizes the Reformation era .[10]

Furthermore, Law Number 32 of 2004 concerning Regional Government maintains the term of office of the village head for 6 years and can be re-elected for one term. However, this law provides flexibility to regions to regulate the term of office of the village head according to local socio-cultural conditions .[11] The latest changes occurred with the enactment of Law Number 6 of 2014 concerning Villages. This law stipulates that the term of office of village heads is 6 years and can serve a maximum of 3 (three) terms of office, either consecutively or non-consecutive. This change is intended to provide wider opportunities for village heads to

[9] Antl o v, H. (2003). Village government and rural development in Indonesia: The new democratic framework . Bulletin of Indonesian Economy Studies , 39(2), 193-214.
[10] Eko, S. (2015). New regulations, new villages: Ideas, missions, and spirits of the Village Law. Jakarta: Ministry of Villages, Development of Disadvantaged Regions, and Transmigration of the Republic of Indonesia.
[11] Vel , J. A., & Bedner , A. W. (2015). Decentralization and village governance in Indonesia: the return to the village and the 2014 Village Law. The Journal of Legal Pluralism and Unofficial Law, 47(3), 493-507.

implement long-term development programs, while also opening up opportunities for leadership regeneration . These changes reflect the government's efforts to balance various interests and demands, including the need for leadership stability, demands for democratization, and diversity of local practices. However, implementation in the field often faces challenges due to variations in interpretation and local practices that have been going on for a long time .[12]

In Indonesia, changes in the term of office of village heads have become quite a complex phenomenon. Some of the main factors that contribute to this change are: runway philosophical , legal and sociological in formation policy related to term of office head village : **Foundation Philosophical : interpreted as** a consideration or reason that illustrates that the regulations that are formed take into account the outlook on life, awareness, and legal ideals that include the spiritual atmosphere and philosophy of the Indonesian nation which originate from Pancasila and the Preamble to the 1945 Constitution. **Foundation Juridical : Meaning as** considerations or reasons that illustrate that regulations are formed to meet the needs of society in various aspects, and relate to empirical facts regarding the development of problems and the needs of society and the state. **Foundation Sociological** : **Meaning as** considerations or reasons that illustrate that regulations are formed to meet the needs of society in various aspects, and relate to empirical facts regarding the development of problems and the needs of society and the state.

Overall, these various factors interact with each other and have an impact on changes in the term of office of village heads in Indonesia. A deep understanding of these factors philosophical , sociological and legal it is very important to design policies that can increase the stability and effectiveness of leadership at the village level.

The dynamics of changes in the term of office of village heads cannot be separated from a broader context, namely the debate about the position and role of villages in the structure of Indonesian government. This involves considerations such as village autonomy, community participation, and the effectiveness of village government in the context of national development . Thus, the background to changes in the term of office of village heads in Indonesia reflects the complexity and dynamics in efforts to create a village government system that is effective, democratic, and responsive to the needs of local communities.

[12] Aspinall , E., & Rohman, N. (2017). Village head elections in Java: Money politics and brokerage in the remaking of Indonesia's rural elite. Journal of Southeast Asian Studies , 48(1), 31-52.

Interpretation of Normalization

Satjipto Rahardjo formulated that *law can function to control society and can also be a means to make changes in society.*[13] The connection has significant relevance in the context of reviewing the term of office of village heads in Indonesia. *First,* the law can function as a tool to control society in the sense of maintaining order and stability. Normalizing the term of office of village heads can be seen as an effort to ensure the stability of leadership in the village and prevent potential conflicts due to excessively long terms of office. *Second,* the law can also be a means to make changes in society. Normalizing the term of office of village heads can be seen as an effort to encourage positive changes in village governance, such as increasing the accountability and effectiveness of village government. However, it is important to remember that the law should not be used solely to control society without considering the aspirations or needs of the community. Given that it must and must be done by considering [14]fundamental legal principles such as the supremacy of law, equality before the law, good and correct legal processes, limitations on power, independent executive institutions, free and independent judiciary, state administrative courts, constitutional courts, protection of human rights, means of realizing state goals, transparency and social control, democratic in nature.

In relation to the review of the normalization of the village head's term of office, the word "normalization" has a complex and multidimensional meaning. However, in this study it refers to the interpretation : (1) *Returning to normal conditions,* this interpretation refers to efforts to return the village head's term of office to a duration that is considered ideal and in accordance with objective conditions in the village; (2) *Enforcement of the Rule of Law,* normalization is interpreted as being important to ensure equality *(equality before the law)* and legal certainty in the implementation of village government ; (3) *Balance of Interests,* that the normalization of the term of office of the village head needs to consider the balance between political interests and legal principles ; (4) *Preventing Conflict and Strengthening Local Democracy,* ideal normalization is expected to minimize the potential for conflict and strengthen local democratic values, so as to open up space for more active community participation; (5) *Contextual and Dynamic Considerations* , normalization is carried out by considering the context and dynamics of diverse villages. A “one size fits all” approach may not be effective and can cause injustice to villages with different conditions.

[13] Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2000).
[14] Pan Mohamad Faiz, “Legal State and Democracy,” *Constitutional Journal* 2, no. 1 (2016): 8–36, https://pusdik.mkri.id/index.php?page=web.Download2&id=838.

Legal Event Notes on the Term of Office of the Village Head

The nuances of Indonesian democracy are like the turbulence of air masses that move irregularly in all directions and are able to cause shocks that have a wide impact, namely on society, because they are caused by legal events that occur, one of which is the change in the term of office of the village head in Law Number 6 of 2014 concerning Villages (Village Law). The implementation of decentralization in modern governance today is a necessity. Larry Diamond, argues that decentralization is able to expand and strengthen democracy to the local level . This is possible because decentralization can increase community participation, accountability, and responsiveness in formulating policies that favor local interests, balance the distribution of centralized power, and open up space for local democratic channels.[15]

Regions have the right to autonomy with full authority for regions to regulate and manage their own regions. These rights have legitimacy from the function of the decentralization system, which includes authority, institutions, finances, and control that are handed over to the regions. With the intention that autonomy can run effectively as a democratic system, independence or full freedom is needed for the regions. It should be described that the essence of autonomy is the independence of the region itself. [16]Included in this independence is in the implementation of village government.

The constitutional position of the village is explicitly stated in Article 18b paragraph 2 of the 1945 Constitution which grants special status to villages, by recognizing their customs and traditional rights. This has implications for broader village authority within a state entity. [17]After the amendment to the 1945 Constitution, regulations related to the implementation of village governance have been stated in various laws and regulations. The latest regulation related to villages is Law Number 6 of 2014 concerning Villages (Village Law), confirming villages as legal community units that have the authority to manage and regulate their own governance, as well as the interests of village communities based on community initiatives, original rights, and/or traditional rights that are recognized and respected within the framework

[15] Mardyanto Wahyu Tryatmoko, "The Problem of Democratization in Post-New Order Asymmetric Decentralization," *Indonesian Society* 38, no. 2 (2012): 269–96, https://jmi.ipsk.lipi.go.id/index.php/jmiipsk/article/view/647.
[16] Bagir Manan, *Welcoming the Dawn of Regional Autonomy* (Yogyakarta: UII Center for Law Studies, 2005).
[17]Ivanovich Agusta, "Ten Years of the Village Law," *Kompas.Id* , 2024, https://www.kompas.id/baca/opini/2024/01/20/sepuluh-tahun-undang-undang-desa.

of the Unitary State of the Republic of Indonesia (NKRI). [18]In the previous Village Law, villages were regulated under the regional government.

As stated by Thomas S Kuhn , there is a normalization of the new paradigm into the immediate implementation facing the power of the exponents of the old paradigm. [19]Including in it village discourse , even after a decade of Law Number 6 of 2014 concerning Villages (Village Law). This is a reflection and is still worth focusing on in further efforts to normalize the new authority of the village and village governance in particular. The reflection contains notes on legal events including those concerning:

First, Extension of the Term of Office of Village Heads. The matter of the term of office of village heads is regulated in Law Number 3 of 2024 (Law No. 3/2024) concerning the Second Amendment to Law Number 6 of 2014 concerning Villages (Law No. 6/2014). Law No. 3/2024 is a legislative product that is full of accommodation of the subjective interests of village government officials. Along with the development of the times and the dynamics of village government, the term of office of village heads has undergone several changes. Since the reform era, there have been two changes to regulations related to the term of office. The following is a comparative table explaining the differences and changes that have occurred related to the periodization of the term of office of village heads in Indonesia:

Table 1 : Comparison of Term of Office of Village Heads Based on Statutory Regulations

Regulation	Status	Length of service	Notes
Law Number 2 of 1999 concerning Regional Government	Not applicable	Article 965 (five) years; and Can be re-elected for 1 (one) subsequent term of office;	2 (two) periods or 10 years
Law Number 32 of 2004 concerning	Not applicable	Article 204 6 (six) years; and Can be re-	2 (two) periods or 12 years

[18] Hario Danang Pambudhi, "Discourse Review on Extension of Term of Office of Village Heads Based on Constitutionalism Teachings," *WIJAYA PUTRA LAW REVIEW* 2 (2023): 25–46, https://doi.org/https://doi.org/10.38156/wplr.v2i1.82.
[19] Mohammad Takdir and Masykur Arif, "The Scientific Revolution of Thomas S. Kuhn and Its Contribution to the Conflict Resolution Paradigm in Indonesia," *Journal of Dialectical Sociology* 17, no. 2 (2022): 147–58, https://doi.org/https://dx.doi.org/10.20473/jsd.v17i2.2022.147-158.

Regional Government		elected for 1 (one) subsequent term of office	
Law Number 6 of 2014 concerning Villages	Valid – changed	Article 39 6 (six) years; and Serve a maximum of 3 (three) terms of office, either consecutively or non-consecutive.	3 (three) terms or 18 years
Law Number 3 of 2024 concerning the Second Amendment to Law Number 6 of 2014 concerning Villages	Valid	Article 39, 8 years for 1 period; serve a maximum of 2 (two) terms of office, either consecutively or non-consecutive.	2 (two) periods or 16 years

Source: Author's Analysis based on Indonesian Legislation

In the second amendment to Law No. 6/2014, namely Law No. 3/2024, it gives longer authority to village heads in running village government. The 8-year term of office is feared to trigger abuse of power or potential political deviation. Instead of being a solution to reduce post-village head election conflict, the extension of the 8-year term of office has the potential and is feared to create an oligarchic and corrupt village regime. The fear of feeling that they have become a respected person for a long time makes it very possible for someone to abuse their power to act, this will result in a government system based on oligarchy.[20]

Second , related to the periodization of the village head's term of office from table 1 illustrates the inconsistency of the law on Villages in the corridor of term limitation. The limitation of the Village Head's term of office should be a pillar of enforcing the principle of limiting power, because the principle of limiting power is a manifestation of the implementation of the principle of democracy as well as the spirit of the limitation desired in the 1945 Constitution. This is also in line with the spirit of limiting the term of office and the

[20] Muhammd Fathurrahman, "Urgency and Implications of Extending the Term of Office of Village Heads in the Dynamics of Village Government in Indonesia," *Case Law Journal of Law* 5, no. 1 (2024), https://doi.org/https://doi.org/10.25157/caselaw.v5i1.3766.

periodization of the term of office of the President and Vice President as well as in the term of office of regional heads and deputy regional heads. Thus, deviations from the principle of limiting the term of office of the Village Head in Law No. 6/2014 and the second amendment to Law No. 6/2014, namely Law No. 3/2024, are both inconsistent norms against the mandate of the constitution regarding the principle of limiting power.

Third, the euphoria of Law No. 3/2024 is overshadowed by fears of maladministration by policy makers in the village. The second amendment to Law No. 6/2014, namely Law No. 3/2024, which was pushed by the village head organization, is feared to be more biased towards the interests of the village elite . This can be seen from Article 26, Article 50A, Article 62 in Law No. 3/2024 concerning budget affirmation for allowances for village heads, village officials, and members of the Village Consultative Body (BPD). Law No. 3/2024 does not show concern for the welfare of village communities. There are no provisions that require the fulfillment of basic rights of village communities in the allocation of village budgets. Law No. 3/2024 is more appropriately referred to as the Village Government Law, not the Village Law. This law does not reflect the village as a legal entity and socio-cultural community, especially the customary law community within the framework of the Republic of Indonesia.

Review of Legal Principles in Extension of Term of Office of Village Head

The eight-year term of office in Law No. 3/2024 provides the Village Head with a fairly long opportunity to realize the vision and mission of village development through the Village Medium-Term Development Plan (RPJMDes). RPJMDes is a reference for assessing village development targets, both idealistic and pragmatic. For village heads who have integrity and are highly committed to realizing village progress, eight years is a sufficient time to carry out innovative village development programs. Village Heads who are tested in intellectual quality in achieving achievements and have *good leadership* and understanding the General Principles of Good Government (AAUPB) will be able to create a legacy of good leadership.

The era of village autonomy has produced many village heads who have achieved success in organizing *good village governance. governance* , accountable village financial management , and advancing village-owned enterprises (BUMDes). Innovative village heads even become *role models for strengthening participatory democracy in villages, and are able to encourage the presence of* pro-public and anti-corruption village budget governance .

However, *Indonesia Corruption Watch (ICW)* reported that corruption at the village level ranked first as the sector that was most prosecuted for corruption cases by law

enforcement officers from 2015-2021. Throughout the seven years, there were 592 corruption cases in villages with a state loss of IDR 433.8 billion. The increasing corruption in villages goes hand in hand with the increase in the allocation of funds that are quite large for village development. Since 2015-2021, IDR 400.1 trillion in village funds have been disbursed for village development needs, both in terms of physical and human development through community development programs and handling extreme poverty . Corruption that occurs in villages will have an impact on losses experienced directly by village communities. Furthermore, in 2023, there were 187 cases of corruption in villages. From their findings, the largest acts of corruption apart from the rural sector were government (108 cases), utilities (103 cases), and banking (65 cases). Corruption in the village sector is recorded to have cost the state around IDR 162.2 billion in 2023. The increase in corruption in villages cannot be separated from the enactment of Law Number 6 of 2014 concerning Villages which contains the allocation of village funds.[21]

The extension of the term of office of the village head (kades) has become a crucial issue that continues to reap pros and cons. On the one hand, there are aspirations from the Village Head and the village community who want an extension of the term of office to improve the stability and effectiveness of leadership. Then on the other hand, concerns arise that the extension of the term of office could potentially violate the basic principles of the rule of law and democracy, as well as open up loopholes for abuse of power. The vulnerability of corrupt practices has the potential to occur massively if control and supervision are weak.

Village Government is part of the concept of decentralization and the most important part of the concept of a state of law. Conceptually, democracy basically contains several main principles, namely representation, transparency, accountability, responsiveness , and participation. These principles are the basis for policy management, village planning, village financial management, and public services. The goal is to achieve people's welfare, which includes two major components: basic needs (food, shelter, education, and health) and village economic development that utilizes local potential.[22]

Village communities are the key to good village governance, based on the principle of legal certainty, namely the existence of laws and regulations and a leadership process that is mutually agreed upon to achieve a better life. This is in line with Plato's opinion with the

[21] Aryo Putranto Saptohutomo, "ICW Doubts Whether Revision of Law Can Prevent Corruption of Village Funds," *Kompas.Com* , 2024, https://nasional.kompas.com/read/2024/05/20/16500701/icw-ragu-revisi-uu-mampu-cegah-korupsi-dana-desa.
[22] Didik Sukirno, *Constitutional Law and the Concept of Autonomy, Political Legal Study on the Constitution, Regional and Village Autonomy after the Constitutional Amendment* (Malang: Setara Press, 2013).

philosophy of idealism, namely that the state is a unity and cooperation to achieve goals. [23]This strengthening also needs to be in line with the principle *of Good Governance* which are essentially ethical values or legal norms that serve as benchmarks for the implementation of good government performance in order to realize the goals of the state. [24]The goals of the state based on law so that there is no special arbitrariness in the actions of the ruler, including the actions of the community in accordance with the goals of the life of the nation and state of a country.[25]

The presence of law in society is among others to integrate and coordinate the interests that can collide with each other by law so that the collisions, namely friction of conflict, can be suppressed as little as possible. [26]Law functions as a means of development and as a means of renewing society that must continue to pay attention to, maintain, and defend order as a classic function of law. This is intended so that during development and change, order and regularity are maintained. [27]Referring back to the records of legal events related to the extension of the term of the regional head, it is necessary to strengthen the principle of *Good Governance* or known as the principles of good governance . The concept of good governance *(Good Governance) Governance)* is an important foundation for the realization of modern and democratic legal rules. Various principles *of Good Governance* , such as the supremacy of law, transparency, participation, efficiency, effectiveness, and accountability, has become a fundamental foundation in realizing an ideal government.[28]

Good principles *Governance* in line with the principles of village administration as stipulated in Article 24 of Law No. 6/2014 concerning Villages, including [29]Legal Certainty, Orderly governance, orderly public interest, openness, proportionality , professionalism, accountability, effectiveness and efficiency, local wisdom, diversity, and participation . Thus,

[23] Citranu, "Implementation of Good Governance Principles in Village Government to Prevent Misuse of Village Funds," *Journal of Hindu Religious Law* 12, no. 1 (2022): 27–45.
[24] Apriyanto Moha Weny A. Dungga, Abdul Hamid Tome, "Implementation of Good Governance Principles in Village Government Administration in Telaga Jaya District, Gorontalo Regency," *Scientific Journal of Law* 11, no. 1 (2017): 1–15.
[25] A. Zakarsi Dimar Simarmata, "Legal Awareness, Village Government, Development Planning, Lopak Aur. Village," *Inovatif Journal* XII, no. 1 (2019): 92–109.
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village administrators are required to make these principles the basis for implementing village governance. It should be noted that some of these principles are mandatory and if violated, will have legal consequences in accordance with laws and regulations. Normalization of the term of office of village heads must be carefully considered within the applicable legal framework. Relevant legal principles in this context include:

a. Decentralization and regional autonomy: Normalization of the term of office of village heads must not conflict with the values of Pancasila and the principles of the rule of law.
b. Strengthening the *Good principles Governance* in the governance of village government and all matters relating to the village.
c. Local democracy: Normalization of village head terms of office must take into account the rights of village communities to participate in local democratic processes and elect their leaders periodically.
d. Accountability: Normalization of village head terms of office must ensure village head accountability to village communities and encourage transparency in village government management.

CONCLUSION

The dynamics of changes in the term of office of village heads in Indonesia reflect the complexity of governance at the grassroots level. Philosophical , sociological and legal factors all play a role in influencing the formation policies related to the term of office of the village head. Normalization of the term of office of village heads must be carried out by taking into account the applicable legal framework, including the principles of decentralization, regional autonomy, *Good Governance* , local democracy, and accountability. These principles are important to ensure that normalization does not conflict with the values of Pancasila and the principles of the rule of law, strengthen village governance, and protect the rights of village communities to participate in local democratic processes and elect their leaders periodically. Normalization of the term of office of village heads must also encourage accountability of village heads to the community and increase transparency in the management of village government.

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Human Rights Perspective on the Prohibition of Marriage between Members of the Same Tribe in Minangkabau Culture, Specifically Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia

Novia Mungawanah[1], Yulies Tiena Masriani[2]
University of August 17, 1945 Semarang, Indonesia
noviamungawanah12@gmail.com [1] yulies-tm@untagsmg.ac.id [2]

Abstract

Marriage between tribes is prohibited in Minangkabau culture, because Minangkabau society considers people of the same tribe to be people of the same blood according to matrilineal and sekaum, even though they are from different villages but have the same tribe, so they are still considered to be of the same blood. Article 18B Paragraph 2 of the 1945 Constitution explains that the state respects the unity of customary law communities and their traditional rights as long as they are still alive in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law. From a Human Rights perspective, there is no prohibition on marriage between tribes, it is also explained in Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia that everyone has the right to form a family and continue their descendants through a legal marriage. The data collection technique is normative sociological because it uses books, scientific journals, laws and regulations, legal instruments, as well as the results of direct interviews and relevant field research.

Keywords: *Human Rights, Inter-ethnic Marriage, Minangkabau Culture*

INTRODUCTION

Humans are social beings who cannot live on their own and humans are destined to have a life partner since birth, one way for the couple to be related to each other is through the marriage process (Effendi, 2020) . Marriage is a social bond that recognizes the relationship between men and women, including sexual aspects, family formation, and the division of husband and wife tasks (Ahmad Agung Setya Budi, 2023) . The important functions of marriage include fostering affection, providing a sense of security, purpose, togetherness, social status and moral learning. In addition to fulfilling a pillar and conditions of marriage that give rise to legal consequences. The marriage contract also gives rise to rights and obligations between husband and wife. The fulfillment of peace, harmony and tranquility in the family are rights and obligations that must be carried out by each party (Trisnawati, 2023) .

Likewise, the customs that apply in Minangkabau, where in understanding marriage between one tribe, the Minangkabau customary rules led by the "Penghulu" or customary institution

only prohibit marriage between one tribe in the same Nagari, while if marriage between one tribe in a different Nagari is allowed but remains a concern and consideration for the "Penghulu" in deciding it, because in essence each "Penghulu" has an active role in maintaining the family, nephews and members of his clan, one of the roles or efforts that can be carried out by the "Penghulu" in maintaining and overcoming the occurrence of marriage between one tribe is by providing guidance and advice and developing customary values to the family, nephews and members of his clan. One of the reasons why marriage between one tribe is not allowed is because the people in Minangkabau believe that the relationship between one tribe is a family relationship and if this is violated, it will certainly be contrary to and not in accordance with what has been regulated by customary law and this will reflect the position and existence of customary law today which is increasingly weakening (Amalia, 2016) . Basically, marriage will unite two different families, not just unite a husband and wife. In the customary rules in Minangkabau, the couple who will marry are couples from different tribes (exogamy) not one tribe (endogamy) (Diah Puspayanthi I Ketut, 2017) .

The provisions regarding Human Rights in the constitution are regulated in Articles 28A to J of the 1945 Constitution. Historically, the formulation of Human Rights in the constitution has been a dynamic among *the founding fathers* of Indonesia. This is considering that the draft of the 1945 Constitution discussed at the BPUPKI session did not accommodate points regarding Human Rights. However, the drafters agreed that the Constitution to be drafted was based on the principle of family, a principle that contradicts liberalism and individualism (*Ini Babak Akhir Judicial Review Kawin Beda Agama* , nd) . The application of Human Rights in a state based on Pancasila as a source of law seeks to create harmony and balance between both individual interests and national interests (collective/community) (Enggar Wijayanto, 2023) .

Society is a social creature that needs guidance in its life, Human rights that are sovereign of the people are the ideals to be achieved. Aims to provide justice that is appropriate in its place (Khairazi, 2018) . Human rights are norms or moral principles that describe the standards of human attitudes that are systematically protected as national or international human rights law. Human rights are generally understood as absolute rights to become basic rights where people inherently have rights because their position is human which includes aspects of nation, location, language, religion, ethnicity, and other status (Makrifah N, 2021) . As the principle of the rule of law in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides an overview of the form of organizing national and state life based on law as a basis. On the other hand, recognition of Human Rights is an inseparable part of the concept of a state of law. Marriage is a

right that cannot be reduced or eliminated (*non-derogable right*) as regulated in Article 28B Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Enggar Wijayanto, 2023) .

This writing aims to discuss what the Prohibition of Marriage between the same tribe in Minangkabau culture is like from the perspective or point of view of Human Rights where there are two principles behind the concept of Human Rights itself, namely the principle of freedom and equality. These two things are the basis for the existence of justice. Human Rights are basic rights recognized in Indonesia, but there are restrictions set by law, morals, ethics, and religious values that emphasize that every human being besides having human rights to be protected, they also have an obligation to respect the human rights of others and also the order of the surrounding community (Putri DW D, 2022)

Based on the significance of the implementation of marriage between one tribe and a different Nagari, it is useful to implement, especially for those who have distant kinship but are bound by the same tribe in order to be able to marry and avoid adultery, that is why researchers are interested in discussing the title of the study on the Perspective of Human Rights on the Prohibition of Marriage Between One Tribe in Minangkabau Culture, especially Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia. The benefits of this study to re-emphasize the reasons why marriage between members of the same ethnic group is not permitted and the perspective of Human Rights (HAM), especially in Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia regarding the prohibition of inter-ethnic marriage. Previous studies only discuss or explain related to marriage within one tribe in Minangkabau from the perspective of Islam and cultural perspectives only. None have discussed it from the perspective of Human Rights. Therefore, here the author will explain marriage within one tribe in Minangkabau culture but from the perspective of Human Rights.

METHOD

The approach used in this research is normative sociological. The normative approach is an approach that is based on texts. The laws are the 1945 Constitution of the Republic of Indonesia, the Human Rights Law and the Marriage Law, as well as literature studies in the form of books, articles, scientific journals, legal instruments and direct interviews and relevant field research. The sociological approach is an approach that is associated with social theories, especially the sociology of society from Minangkabau culture or customs.

The research specification used is descriptive analytical, namely a study that describes clearly, in detail and systematically the object to be studied. To see clearly, in detail and systematically the prohibition of marriage between the same ethnic group in the Minangkabau community from a Human Rights Perspective. The types of data used by the author in the research are as follows . Primary Data; Field data is data obtained from the results of direct research on the object being studied or research objects that are related to the main problem, which is related to the study of the Human Rights Perspective on marriage between ethnic groups in Minangkabau culture. Secondary Data; Secondary data is data obtained by studying library materials in the form of laws and regulations and other literature related to the problems discussed. The research is directed at the phenomena of society related to the Minangkabau wedding tradition using a normative sociological research type, namely where the researcher compiles the research, and concludes and compiles the results of the research on marriage of one tribe in Minangkabau Custom. While the approach used in this study is a qualitative approach, in a qualitative approach the researcher conducts direct interviews with the Minangkabau community of West Sumatra to seek and explore information about marriage of one tribe. Here the researcher interviews the marriage actors, Elders or Chiefs (Datuak), figures and some of the Minangkabau community regarding marriage of one tribe in Minangkabau Custom, after that the researcher observes the results of the interview, so as to find accurate truth.

RESULTS

Marriage Law of One Tribe According to Minangkabau Customs

Customary law is recognized by the state as a valid law. So it is our collective obligation to comply with these regulations. If there is a violation based on this law, then everyone who violates it will receive a sanction that must be paid. Likewise in Minangkabau customs (Dewi & Nizam, 2023) . Each tribe and ethnicity in Indonesia has its own uniqueness and characteristics (Fauzan Al Amin, Syofiani, Arif Rahmat, Fidya Novita, 2023) . Minangkabau is one of the cultural tribes in West Sumatra Province, Indonesia. The Minangkabau tribe has many uniqueness and cultures that are different from other tribes in Indonesia. The implementation of traditional marriage in the Minangkabau community is carried out with several series of traditional ceremony processions involving elders and traditional leaders. The marriage procession is called *Baralek* (Febria et al., 2022) . The forms of Minangkabau traditional marriage (Febria et al., 2022) :

a. Ideal Marriage

One of the purposes of marriage in Minangkabau is to preserve heirlooms. For this, long-term steps are needed. One of them is by marrying close relatives, such as marrying a mother's child, commonly called "pulang ka mamak" or marrying a father's nephew, ommonly called

"pulang ka bako" as a manifestation of "children are held in the lap of nephews and guided". Another form is a "mutually taking" marriage to strengthen the relationship between in-laws. This marriage, commonly called *"cross-cousin"*, is very prominent in areas that use "pick-up money" so that the pick-up money does not move into the hands of others.

b. Consanguinal Marriage

In Minangkabau, in addition to building a household for two, marriage is also a matter of two family groups . The groups in question are a group of unilateral descendants from one mother of origin (grandmother). If there is a conflict between the two candidates and the group, the interests of the group are prioritized. Therefore it is called a consanguineous marriage.

c. Respected Son-in-law

Minangkabau society is the same as other societies that long for a son-in-law who is respected/has a position. In some nagari, what is meant by respected people is people of origin. Namely, people who have been in one nagari before others or from immigrants who are called kamenakan under lutuik (people who come to join one clan).

d. Abstinence Marriage

According to Minangkabau custom, in addition to religious prohibitions on marriage, there are also “taboo marriages”. Taboo marriages are marriages that can damage the kinship system, namely blood relatives according to matrilineal descent, one clan or one tribe even though they do not have genealogical relations or are not from the same nagari. Marriage within the same clan or tribe is not a prohibition as a prohibition in the religious sense, but only a taboo set by custom. This has been going on for a long time along with the history of matrilineal kinship. Until now it is still firmly held by its people.

e. Inconsistent Marriage

The term “sumbang” is used for actions that are done inappropriately or are not good according to the judgment of many people, such as a man visiting a girl's house, especially a widow. The mother of the girl or the man will be offended and considered unable to take care of her niece. The word “sumbang” when combined with the word “wrong” (sumbang salah), then it means a mistake that is no longer considered immoral, such as committing adultery, insulting the penghulu and so on.

The perpetrator can be said to have no sense of shame or is not polite, because he has committed an act that is not commendable and offends customary norms. To carry out a traditional marriage in Minangkabau, it is carried out through several stages or processes, namely: ***Maresek;*** Maresek is the first exploration as the beginning of a series of wedding ceremonies. In accordance with the kinship system in Minangkabau, the woman's family visits the man's family. Usually the family who comes brings gifts in the form of cakes or fruits in accordance with the etiquette of eastern culture. ***Proposing and Exchanging Signs;*** The family of the prospective bride comes to the family of the prospective groom to propose. If the engagement is accepted, it continues with exchanging signs as a symbol of the binding agreement and cannot be broken unilaterally. The event involves parents or ninik mamak and elders from both sides. ***Mahanta / Ask for permission;*** The prospective groom informs and asks for blessings for the wedding plan to his mothers, his father's siblings, his brothers who are married and respected elders. For the prospective groom, he brings a selapah containing nipah leaves and tobacco (but now it has been replaced with cigarettes). While for the prospective bride's family, this ritual includes complete sirih. ***Babako-Babaki;*** The family of the father of the bride (called bako) wants to show their affection by contributing to the costs according to their ability. The event takes place a few days before the marriage contract. ***Bainai Night;*** Bainai means attaching finely ground red henna leaves or inai leaves to the nails of the bride-to-be. This grounding will leave a bright red mark on the nails. Usually takes place the night before the marriage contract. This tradition is an expression of affection and blessings from the elders of the bride's family. The philosophy: The last guidance from a father and mother who have raised their daughter with honor, because after marriage, the one who will guide her again is her husband.

1. Picking up Marapulai/Pick up: The Groom The groom is picked up and taken to the bride's house to carry out the marriage contract. This procession is also accompanied by the giving of an inheritance title to the prospective groom as a sign of his maturity. The prospective bride's family must bring a complete set of betel in a cerana which indicates the traditional arrival, complete groom's clothes, yellow rice and chicken stew, side dishes, cakes and fruit.
2. Reception at the House of Anak Daro/Reception at the Bride's House. Welcoming the arrival of the prospective groom at the prospective bride's house. Accompanied by the sound of traditional Minang music, namely talempong and gandang tabuk, as well as a

line of the Reciprocal Customary Wave consisting of young men dressed in silat, and greeted by maidens dressed in traditional clothes who offer betel.

3. Marriage contract; It begins with the reading of holy verses, ijab kabul, marriage advice and prayers. Ijab Kabul is generally done on Friday afternoon. The dowry after the marriage contract process is completed and has been declared valid, then the handover (Pemasrahan) is carried out. The handover is the process of handing over the groom to the bride's family and the acceptance from the bride's family to the groom.
4. Basandiang on the bridal dais/Basandiang on the bridal dais; The bride and groom will sit side by side on the prepared dais. The bride and groom will wait for the guests *alek salinga alam* and enlivened by typical Minangkabau music.
5. Jewels of the Trail

One week after the marriage contract, usually on Friday afternoon, the newlyweds go to the groom's parents' house and ninik mamak with food. The goal is to honor each other's parents (Febria et al., 2022) .

In the Minangkabau culture itself, there is a marriage within the same tribe that becomes a barrier for someone to be able to marry someone from the same tribe. In Minangkabau customs, there is a culture of marriage prohibitions or called "prohibited marriage". Prohibited marriage is a marriage that can damage the kinship system, namely those who are related by blood according to matrilineal lineage or one tribe. Where each tribe is led by a "Penghulu". A "Penghulu" is a title given to a leader of a tribe or korong in the Minangkabau ethnic population area. A "Penghulu" must be chosen from a figure who is considered the wisest, most capable, and a man with the clearest views among his family members. In addition, the Penghulu also has a position as Ninik Mamak in his tribe or community. According to Minangkabau customary law, a person is prohibited from marrying someone from the same tribe because lineage in Minangkabau is seen based on the mother's lineage, while the marriage system uses a matrilocal or exogamy exogamy system (Yustim et al., 2022). Some of the reasons why the Minangkabau people prohibit marriages between members of the same tribe include (Rezi Dwi Fadilla, 2017) :

1. Pioneer of Corruption in the Race; Marriage in the same tribe can cause major conflicts. This is because the husband and wife come from the same tribe, which means they are badunsanak. If there is a dispute, they will complain to their respective parents and can destroy the tribe. Just like a country that is more easily destroyed if there is a dispute between people than if it is in conflict with another country.

2. Narrowing Down Social Circles; Those who are of the same tribe are people who are of the same blood and have the same lineage that has been determined by Minangkabau figures and ulama for generations. So that marriages of the same tribe do not create developments in the family or tribal order.
3. Disturbing Children's Psychology If inter-tribal marriage is carried out, it will create customary consequences, namely for those who carry it out, they are not considered by their relatives and are expelled from the traditional community. This can create racist treatment and exclusion which results in psychological disorders in children.
4. Loss of Customary Rights; Couples who marry within their tribe are considered within their tribe and are not accepted by other tribes in the region. For men, the right to hold office (uphold the sako) which exists in the Perpatih Adat system will be lost. Meanwhile, women will lose their rights to all tribal inheritance.
5. Bringing Material Loss; Because they have committed a customary mistake, the perpetrators of inter-tribal marriages must fulfill the conditions set out in the assembly supervised by the Tribal Chief. To accept them to join the family and tribal ties, for example, the couple must provide 50 gantang rice and donate one buffalo or cow for the assembly, pick up the Traditional Chiefs with full ceremony to attend the assembly, admit their mistakes and apologize in front of the community, especially the tribal members who are present (Editorial Team, 2020) .

The prohibition of marriage within the same tribe has existed since our ancestors first pioneered the area in Minangkabau, West Sumatra Province, which consisted of only a few people. It was not like today which has developed so that it is difficult to know the original lineage. They believe that when marrying people from the same tribe, if a problem occurs it is very difficult to solve it (Danil, 2019) . In Minangkabau culture, the matrilineal system is strongly adhered to, which is a system that allows someone to marry someone from a different tribe, thus giving a strong influence to their future descendants. Marriage between one tribe that has been passed down from generation to generation and is also called a sakampuang family (one village) or a group of people who gather in several traditional houses with one descendant or one ancestor, so this creates the opinion that marriage between one tribe is marri

In understanding marriage within the same tribe, Minangkabau customary rules led by the Penghulu or customary institution only prohibit marriage within the same tribe in the same Nagari, whereas if marriage within the same tribe in a different Nagari is permitted but remains a concern and consideration for the Penghulu in deciding it, because in essence each Penghulu has an active role in protecting the family, nephews and members of his clan. One of the roles or efforts that can be carried out by the Penghulu in maintaining and overcoming the occurrence of marriage within the same tribe is by providing guidance and advice as well as developing customary values to the family, nephews and members of his clan. The role of customary institutions or penghulu in resolving problems of tribal marriage includes:

a. Mediation and Conflict Resolution; In resolving conflicts arising from inter-tribal marriages, customary institutions often act as mediators. They can help conflicting families reach an agreement that is acceptable to all parties.
b. Implementation of customary rules; Customary institutions often refer to customary norms that regulate marriage and family relationships. They ensure that marriages within the tribe or between members of the tribe are followed according to the usual rules.
c. Facilitating Family Negotiations; Customary institutions can facilitate negotiations between families involved in intermarriage. They help reach agreements where compromises are made and the interests of all parties are taken into account.
d. Determining the consequences; If inter-tribal marriage violates customary norms, then the customary institution can determine the consequences or sanctions that must be borne by the parties involved. This can include compensation, exchange of property or certain customary ceremonies.
e. Maintaining tribal harmony; One of the important functions of traditional institutions is to maintain harmony and unity within a tribe or community group. They try to avoid the possibility of conflict that can damage social relations in society.
f. Providing Cultural Advice; Traditional institutions also provide cultural advice to families who marry within the same tribe. They ensure that the entire wedding process and traditional ceremonies are carried out properly.
g. Improving Education and Awareness; Customary institutions have a role in increasing public understanding of the importance of following customary norms and cultural values in marriage. They educate the public about applicable customs (Fauzan Al Amin, Syofiani, Arif Rahmat, Fidya Novita, 2023) .

One of the reasons why marriage between tribes is not allowed is because the Minangkabau community believes that a relationship between tribes is a family relationship and if this is violated, it will certainly be contrary to and not in accordance with what has been regulated by customary law and this will reflect the position and existence of customary law which is getting weaker (Amalia, 2016) . In Minangkabau customs, the punishment by the Customary Head is to leave the Nagari for 2 (two) years, be banished from the village, be fined, or be ostracized and humiliated by society. With this punishment, no one will commit a violation.

The Law on Marriage of One Tribe According to Human Rights

The right to marry is a human right that is a constitutional right of citizens as stated in Article 28B Paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that " **Everyone has the right to form a family and continue their lineage through a legal marriage** ". In addition to being regulated in the 1945 Constitution of the Republic of Indonesia, the right to marry is also further regulated in several laws and regulations.

> *The Declaration of Human Rights not only regulates family security, but also states that adult men and women have the right to marry and form a family without restrictions on nationality or religion (Siswandi, I., & Supriadi, 2023) .*

Marriage in terms of human rights itself is a right that is owned in a marital status. This means that marriage also has a guarantee that the rights of a man and woman who carry out the marriage are guaranteed by a rule that regulates human rights regarding marriage. The *Universal Declaration of Human Rights* or UDHR has adjusted the rules on marriage that have been ratified by Law Number 39 of 1999 concerning Human Rights, which was then also stated in positive law in Indonesia, namely Law Number 1 of 1974 concerning Marriage (TRS Cakraningtyas, 2023) . In Law Number 39 of 1999 concerning Human Rights, Article 10 states the following:

(1) Everyone has the right to form a family and continue their lineage through a legal marriage.

(2) A valid marriage can only take place with the free will of the prospective husband and wife concerned, in accordance with the provisions of statutory regulations.

For further provisions on guaranteeing the right to carry out marriage, this is regulated in separate regulations, namely Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 as a derivative regulation of Law Number 1 of 1974 concerning Marriage.

The regulation regarding the guarantee of the right to marry for citizens has been clear and has been rigidly regulated, which is the state's commitment to guarantee that citizens' rights are fulfilled in carrying out marriage. In various provisions regarding marriage, the most basic thing regulated is that it is carried out according to the religious provisions of the prospective husband and wife. The state only provides protection to citizens to carry out marriage and is guaranteed to be legalized if the marriage is legalized or approved by the religion of the prospective husband and wife.

From the provisions above, it is clear that the state has provided a guarantee that people have the right to form a family in order to have children, of course in a way that is legal according to religion and the state. Related to the marriage of one tribe which is prohibited in Minangkabau when viewed from the perspective of human rights. Tribes in Minangkabau are associations of kinship based on maternal lineage led by a mamak kepala kaum or also called Datuak. In one tribe there can be many datuak, this is because of the increasing development of society in Minangkabau, because the more developed this is part of kinship based on maternal lineage forming a separate sub-tribe led by a datuak.

It is not uncommon for there to be many Datuak from one tribe, for example in the Malay tribe there are several Datuak. Datuak leadership is passed down from generation to generation based on maternal descent which is passed on to sons from mothers of the same tribe.[1]

In line with the development of the times and life that is increasingly developing. Society is increasingly developing life must continue and when they start to grow up, Minang people will look for a soul mate to live together to build a complete and happy family. However, when they have found a soul mate, problems often arise, causing a few problems when they are going to continue the relationship to a more serious stage, namely marriage.

The most common thing that often becomes an obstacle in marriage is the similarity of the prospective couple's tribe. When they are of the same tribe, it will be a problem which is usually a marriage of the same tribe is still taboo for the Minangkabau people. However, is marriage of the same tribe not allowed? Does Minangkabau custom violate Human Rights related to marriage?

Minangkabau customs do not prohibit marriages between tribes, but there are conditions that must be met when carrying out marriages between tribes. The most important condition is that it is permitted by Islamic teachings because in Minangkabau there is something called adat basanti sarak, sarak basandi kitabulla which means custom based on religion and religion based on the

[1] Interview with the Elder of the Malayu Minangkabau Tribe, Mr. Armensis in South Solok Regency, West Sumatra Province.

Qur'an. In marriages between tribes, as long as they are in accordance with Islamic rules that allow within certain degrees of kinship, it is certainly permitted by custom.[2] The second requirement that must be met is to carry out the process of moving tribes from the male party who will marry also called the term "mangaku induak" to a different tribe by following the customary process according to the customs in the region. This is a form of respect for Human Rights by Minangkabau Custom when there is a problem of marriage between the same tribe where Minangkabau custom will provide a way out of the problem of marriage between the same tribe as long as it is permitted by Islam, because custom follows religion, not religion that follows custom.

DISCUSSION

In this paper, the author tries to provide a different perspective related to marriage of the same tribe in Minangkabau customs reviewed in the context of Human Rights which has been widely written in the perspective of Islam. This paper presents a different perspective in the context of Human Rights regarding whether or not marriage of the same tribe is permissible, whether it is contrary to human rights or not. In this paper, marriage of the same tribe is permitted with the conditions specified, including the existence of differences in the datuk of the tribal or village head and following the process of mangaku induak kesuku which is different and most fundamentally does not conflict with Islam and the concept does not conflict with Human Rights. So it can be concluded that Minangkabau Custom does not violate Human Rights in terms of the right to marry. The results of this study are expected to provide an important contribution to the understanding and handling of these sensitive issues in society.

CONCLUSION

Minangkabau custom does not prohibit marriage between the same tribe, but there are conditions that must be met when carrying out a marriage between the same tribe, namely carrying out the process of moving tribes from the male party who will marry, also called "mangaku induak" to a different tribe by following the customary process according to the customs in the region. This is a form of respect for Human Rights by Minangkabau Custom when there is a problem with marriage between the same tribe, where Minangkabau custom will provide a way out of the problem of

[2] Interview with the elders of the Malay Minangkabau tribe, namely Mr. Armensis and Mr. Zulkifli in South Solok Regency, West Sumatra Province.

marriage between the same tribe as long as it is permitted by Islam, because custom follows religion, not religion that follows custom.

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The Implementation of legal aid at Purwokerto Religious Court Legal Aid Post (Posbakum)

Eva Mir'atun Niswah
UIN Prof KH Saifuddin Zuhri Purwokerto, Indonesia
Email: eva_niswah41@gmail.com

Abstract

The Law number 16 of 2011 concerning Legal Aid emphasizes the importance of legal aid for poor people. One form of providing legal aid to poor people is by establishing Posbakum (pos bantuan hukum/legal aid posts) in every court. One of the Posbakum to resolve Islamic family law is the Posbakum at the Purwokerto Religious Court. However, at the Purwokerto Religious Court Posbakum, legal aid is also provided to people who can afford it. So that, it is necessary to study how to implement the provision of legal aid at the Posbakum in Purwokerto Religious Court. The research method is juridical-empirical. The results of the research show that the implementation of providing legal aid at the Purwokerto Religious Court Posbakum makes it easier for people seeking justice, however the provision of legal aid for people who can afford it is not in accordance with the mandate of the law. Apart from that, the provision of legal aid also faces several obstacles, such as inadequate consultation places and the absence of assistance services for cases that are considered serious.

Keyword: *legal aid, posbakum, religious court.*

INTRODUCTION

Legal aid on Law No. 16 of 2011 concerning Legal Aid is defined as legal services provided free of charge to recipients of legal aid. Recipients of legal aid are poor people or groups of poor people. (*Undang-Undang Nomor 16 Tahun 2011*, n.d.)This is important, considering that legal aid is one of the constitutional rights of citizens in a country based on law such as Indonesia. Quoting from Prof. Jimly Assidiqie, Indonesia's statement as a state law is expressly stated in the Indonesian constitution. A country of law or known as *Rechtstaat* according to Julius Stahl must fulfill four main elements: 1) Protection of Human Rights, 2) Division of Power, 3) Government based on Law, and 4) State Administrative Court (Asshiddiqie, n.d.). As a state law that guarantees the protection of human rights, Indonesia guarantees the right to justice access and equality before the law for every citizen. This is stated in the 1945 Constitution, Article 27 paragraph (1), Article 28 D paragraph (1) of the Constitution.

The guarantee of constitutional rights and obligations is the basis for the formation of Law no. 16 of 2011 concerning Legal Aid. Although it has actually been regulated in Law no. 39 of 1999 concerning Human Rights in articles 17, 18, 19 and 34. Previously, Indonesia had also ratified the

ICCPR (International Covenant on Civil and Political Rights) which in articles 16 and 26 explains the guarantee of equality before the law so that everyone has the right to receive legal protection and must be protected from various forms of discrimination, whether based on race, skin colour, gender, language, religion, different political views, nationality or national origin, wealth, birth or other statuses.

The provision of Legal Aid that is mandatory by the government gave the regulation of the Supreme Court Circular (SEMA) No. 10 of 2010 concerning Guidelines for the Provision of Legal Aid both in the General Court, Religious Court, and State Administrative Court. Each of these Courts is required to have a Legal Aid Post (Pos Bantuan Hukum / Posbakum). Furthermore, the government issued Supreme Court Regulation (PERMA) No. 1 of 2014 concerning Guidelines for the Provision of Legal Services for the poor people in the Court which includes: 1) Free court fee services, 2) holding trials outside the Court building; and Provision of Court Legal Aid Posts.

Banyumas Regency is one of the regencies in Central Java Province with a population of 1,665,025 people. The poverty rate in this regency according to BPS data in 2018 was 13.5% or 226,200 people. Still according to BPS, this Regency experienced a significant decline in poverty rates in 2018, where previously in 2017 it was 17.05% or 283,250 people. The figure of 13.5% is relatively small compared to several regencies in Central Java province, for example Wonosobo with 20.32%, Kebumen with 19.6% and Brebes with 19.14%.

In the field of Justice, Banyumas Regency has its own uniqueness compared to other regencies, namely having 2 jurisdictional areas in one regency. General Courts are the Banyumas District Court (*Peta Yurisdiksi*, n.d.) and the Purwokerto District Court (*Wilayah Yurisdiksi*, n.d.), and Religious Courts are the Banyumas Religious Court and the Purwokerto Religious Court. So that in one regency there are 4 (four) Posbakum, 2 (two) in the Religious Court, and 2 (two) in the General Court. These Posbakum will later serve the underprivileged in seeking justice.

Posbakum at the District Court, both PN Banyumas and PN Purwokerto, enforce the provisions for justice seekers in accordance with the provisions of the Supreme Court Regulation (PERMA) No. 1 of 2014, which only providing legal assistance to the poor people. Meanwhile, at the Posbakum at the Religious Court, both PA Banyumas and PA Purwokerto do not always provide services to the poor people, but to anyone who comes to the Posbakum.

This is certainly different from what is intended to be achieved by Law No. 16 of 2011 concerning Legal Aid, SEMA No. 10 of 2010 concerning Guidelines for the Provision of Legal Aid and PERMA No. 1 of 2014 concerning Guidelines for the Provision of Legal Services to the poor people in Court. This also applies to the Purwokerto Religious Court Posbakum, whose jurisdiction

covers urban areas in Banyumas Regency. Where according to BPS data, the poverty rate in urban areas in Central Java is smaller than in rural areas(*BPS Provinsi Jawa Tengah*, n.d.)

Based on this background, the author is interested in discussing further about How to Implement Legal Aid at the Purwokerto Religious Court Posbakum.

METHODS

The research approach in this paper is juridical-empirical, which studying the applicable legal provisions and what happens in reality in society (Arikunto, 2011). Or it can also be said that a research conducted on the actual situation or real conditions that occur in society with the intention of knowing and finding the facts and data needed, after the required data is collected then leading to the identification of problems that lead to problem solving (Bambang Waluyo, 1991). The juridical-empirical approach is carried out by examining the law in reality or based on facts obtained objectively in the field, either in the form of data, information, and opinions that can be obtained through direct observation of the problems discussed in this research. This research itself is included in qualitative research, which is research that can be interpreted as research that does not conduct calculations. The purpose of this research is to gain understanding, develop theories and describe complexly. Qualitative research is usually used to produce descriptive data in the form of written or spoken words from people, or observed behaviour, and then strengthened with primary and secondary data sources (Soekanto, 2006).

DISCUSSION

Legal Aid and Rule of Law

According to Abdul Rahman, legal aid can be interpreted as all forms of assistance or provision of services related to legal problems provided by someone who has legal expertise to those involved in the case either directly or indirectly by prioritizing the poor people (Rahman, 1980). Besides, in the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) according to Yahya Harahap, legal assistance referred to in the KUHAP includes the provision of legal assistance services professionally and formally, in the form of providing legal assistance services professionally and formally, in the form of providing legal assistance services to everyone involved in a criminal case, either free of charge for those who are unable and poor or providing assistance to those who are able by advocates by way of receiving compensation for services (M. Yahya Harahap, 2000).

Law No. 18 of 2003 concerning Advocates in article 1 number 9 states that legal aid is a legal service provided by an Advocate free of charge to clients who cannot afford it. Meanwhile, in Law No. 16 of 2011 concerning Legal Aid, it is a legal service provided by a legal aid provider free of charge to a legal aid recipient.

The definition of legal aid according to Yahya Harahap has characteristics in different terms, namely: first, Legal Aid. Legal aid means providing services in the legal field to someone involved in a case or matter. The provision of legal aid services is carried out free of charge. Legal aid assistance is more specifically for the poor community (Harahap, 2005).

Second, Legal Assistance. Legal assistance explains the profession of a legal advisor as a legal expert, so that in the sense of a legal expert, legal assistance can provide legal assistance services to anyone without exception. This means that the expertise of a legal expert in providing legal assistance is not only limited to the poor, but also to those who can afford the services (Harahap, 2005).

Third, legal service. Legal service is a legal aid referred to a service provision by the legal profession to the public in society. The purpose of legal service is that no member of society is deprived of their right to obtain the legal advice because they do not have sufficient financial resources. Thus, legal aid in the narrow sense can be said to be the provision of legal services to someone involved in a case for free or pro bono, especially for those who are unable or poor. While in the broad sense the definition of assistance is interpreted as an effort to help disadvantaged groups in society in the legal field (Eleanora, 2012).

Although legal aid has been regulated in legislation, the provision of legal aid does not always run according to the rules. Requirements as an implementer of legal aid providers sometimes become obstacles in the provision of legal aid. Thus, it can be said that the provision of legal aid does not run according to expectations because it is still influenced by inappropriate implementing regulations (Pujiarto et al., 2016).

The face of law in Indonesia is often shown through cases involving poor people. The public can certainly still remember the incident in 2011 that Minah case, a resident of Ajibarang sub-district, Banyumas. This case attracted public attention at that time. Minah had to sit in the court just because she stole three cocoa pods. The trial that attracted a lot of public attention ended with the judge's decision stating that Minah was legally and convincingly proven to have committed the crime of theft even though she was only sentenced to probation.

This is different to the legal treatment of people in power. The public was shocked by the news of the Suka Miskin Prison, a place where corruption convicts spend their sentences. The results

of the inspection conducted by the Ministry of Law and Human Rights and covered by the media at that time showed how luxurious facilities can be enjoyed by corruption convicts

The paradox above has not happened once or twice in Indonesia. Differentiation of treatment is received by someone based on the power and position they have. In fact, Indonesia is none other than a state law (rechtstaat), not a country of mere power (maachstaat). A state law places law at the highest level known as the term supremacy of law.

The United Nations (UN) defines the rule of law as a principle of governance in which all persons, institutions and bodies, public and private, including the state itself, are accountable to the law that is generally applicable, equally enforceable and independently administered, and that is in accordance with human rights norms and international standards. It also requires measures to ensure compliance with the principles of the supremacy of law, equality before the law, legal accountability, fairness in the application of the law, separation of powers, participation in decision-making, certainty of avoidance of arbitrary laws and procedural and legal transparency (Harahap, 2005).

The principle of rule of law in Indonesia is manifested in the Preamble to the 1945 Constitution, namely:

1. Indonesia is a state law (Article 1 paragraph 3);
2. The judicial power is an independent power to administer justice in order to uphold law and justice (Article 24 paragraph 1);
3. All citizens have equal standing before the law and government and are required to uphold the law and government without exception (Article 27 paragraph 1);
4. In Chapter XA on Human Rights, contains 10 articles including that everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law (Article 28 paragraph 1);
5. Everyone has the right to work and receive fair and proper compensation and treatment in employment relationships (Article 28 paragraph 2).

The provision of legal services and assistance is the implementation of the principle of fair trial and equality of arms between the parties. The right to a fair trial is the right to be examined fairly and openly to the public, unless the law states otherwise (fair and public hearing), by a competent, independent and impartial tribunal base on the presumption of innocence. A fair trial process is when the standard of recognition of the rights of a suspect and being treated equally before the law and not being declared guilty until a court decision declares him guilty (Harahap, 2005).

In other words, legal aid is a basic right of every person who is caught up in a legal case as a means of defending the constitutional rights of every person and is a guarantee of equality before the law (Kusumawati, 2016). Thus, legal aid services are a necessity in a state of law. This service must be provided to everyone without exception. And the state as the protector of its citizens is obliged to allocate legal aid funds for the poor, vulnerable marginalized, and for the sake of justice.

In the implementation of this legal aid, legal aid institutions have a very large role in access to justice for the community, especially the poor. This is because legal aid institutions are able to provide solutions from the consultation level, non-litigation assistance level to litigation (Kusumawati, 2016).

Furthermore, the provision of legal aid is a state obligation to fulfil the constitutional rights of the poor. The government provides funds to legal aid providers through the State Budget, considering that the Legal Aid Law adopts the concept of welfare model legal aid which is part of the social protection framework provided by a welfare state. The orientation and purpose of constitutional legal aid is an effort to realize a state law based on the principles of democracy and Human Rights (Ramdan, 2016).

Posbakum (Pos Bantuan Hukum/Legal Aid Post)

Legal aid in The Law number 16 of 2011 concerning Legal Aid Article 1 paragraph (1) states that legal aid is a legal service provided by a legal aid provider free of charge to a recipient of legal aid. The recipient of legal aid here is specifically a person or group of poor people who cannot fulfil their basic rights properly and independently who are facing legal problems.

In terms of providing legal aid, the government issued SEMA No. 10 of 2010 concerning Guidelines for Providing Legal Aid. This guideline regulates the rights of every person involved in a case to obtain legal aid and the state bears the costs of the case for justice seekers who cannot afford it, as well as the establishment of legal aid posts in every District Court, Religious Court, and State Administrative Court for justice seekers who cannot afford it.

Based on research findings in 2007, the poor face major financial barriers to accessing Religious Courts related to court fees and transportation costs to come to the Court. The Supreme Court responded to these findings by holding circuit courts and exempting court fees through a prodeo process. Besides, to holding circuit courts and exempting court fees through a prodeo process, another form of legal aid provided by the state is the establishment of legal aid posts at each District Court, Religious Court, and State Administrative Court. Posbakum is an important part of the court environment to facilitate the needs of poor communities (Pertiwi & Fimansyah, 2021).

In the District Court, Article 1 paragraph (4) states that the Posbakum is a space provided by and at each District Court for advocates on duty to provide legal aid services to applicants for legal aid to fill out legal aid application forms, assistance in preparing legal documents, legal advice or consultations, providing further referrals regarding exemption from court costs, and providing further referrals regarding assistance with legal services.

In the Religious Court, Legal Aid in Article 1 paragraph (4) is defined as the provision of legal services facilitated by the state through the Religious Court, both in civil cases of lawsuits and applications and criminal cases *(jinayat)*. Furthermore, each case is explained, namely in paragraph (5) Legal aid in civil cases includes prodeo case services, the organization of circuit courts and the provision of a free Legal Aid Post at the Religious Court for the poor. While in paragraph (6) Legal aid in criminal cases through the Legal Aid Post and Advocates at the Sharia Court is free of charge for the poor.

Types of legal services in Posbakum in Religious Courts include; providing information, consultation, advice and making lawsuits/applications to both plaintiffs/applicants and defendants/respondents. The requirement in providing legal services to plaintiffs/applicants and defendants/respondents is that it may not be done by the same legal aid provider.

Service providers at Posbakum are detailed in Article 18, paragraph (1) which states that those who can provide services at Posbakum are advocates, law graduates and sharia graduates. All three, according to paragraph (2), must come from legal aid organizations from the elements of the Advocates Professional Association, Universities, and Non-Governmental Organizations registered with the Ministry of Law and Human Rights. The remuneration for service providers at Posbakum in paragraph (3) is given through the DIPA (Daftar Isian Pelaksanaan Anggaran/ Budget Implementation Checklist) of the Religious Court.

The recipients of legal aid services in Article 19 are none other than people who are unable to pay for the services of an advocate, especially women and children and people with disabilities in accordance with applicable laws and regulations, both as plaintiffs/applicants and defendants/respondents. The requirements to obtain services from the posbakum in article 20 are by attaching the following documents;

1. Certificate of Inability to Pay (SKTM/Surat Keterangan Tidak mampu) issued by the head of the Village/Lurah/banjar/Nagari/Gampong; or
2. Certificate of Other Social Benefits such as the Poor Family Card (KKM/Kartu Keluarga Miskin), Community Health Insurance Card (Jamkemas/Jaminan

Kesehatan Masyarakat), Family Hope Program Card (PKH/Program Keluarga Harapan), and Direct Cash Assistance Card (BLT/Bantuan Langsung Tunai), or

3. Certificate of inability to pay the cost of legal services made and signed by the applicant for legal aid and acknowledged by the Head of the Religious Court.

The mechanism for providing services at the Religious Court's legal aid post in accordance with Article 22 is:

1. Applicants for legal aid services submit an application to the legal aid post by filling out the form provided;
2. The application is accompanied by: a photocopy of the Certificate of Inability to Pay (SKTM) by showing the original, or a photocopy of other Social Allowance Certificates by showing the original, or a statement of inability to pay for an advocate;
3. Applicants who have filled out the form and attached the SKTM can immediately be provided with legal aid services in the form of providing information, advice, consultation and making lawsuits/applications;

In addition to civil cases, Posbakum also provides legal services in criminal cases, but specifically at the Sharia Court in Nangroe Aceh Darussalam. The types of legal services contained in article 25 are legal aid services to suspects/defendants in the form of providing information, consultation and advice as well as providing free accompanying advocates to defend the interests of the suspect/defendant in the event that the defendant is unable to finance his/her own legal counsel and assistance in providing free advocates is only provided for cases that have been transferred by the Public Prosecutor (JPU) to the Sharia Court.

The presence of Posbakum in all Indonesian Courts makes the community closer to the Court. Ultimately, it is hoped that Posbakum will be able to erode the negative and frightening stigma about the court for the public (Nasution, 2015).

Purwokerto Religious Court

Banyumas Regency has a uniqueness besides other regencies in Indonesia. The uniqueness is, Banyumas Regency has two courts, both State and Religious as well as the Prosecutor's Office. So for Religious courts, in Banyumas there are Banyumas Religious Court and Purwokerto Religious Court. Purwokerto Religious Court is a Religious court with class 1 A under the Supreme Court, which is located at Jl Gerilya No. 7 A Purwokerto.

Based on Article 49 of Law Number 7 of 1989 concerning Religious Courts, which was last amended by Law Number 50 of 2009, the main task of the Religious Courts is to receive, examine, try and resolve every case between people of the Islamic religion in the fields of Marriage, Inheritance, Testament, Grants, Waqf, Zakat, Infaq, Shodaqoh, Sharia Economics.

The explanation of each of these functions is: first, the adjudicating function, namely receiving, examining and resolving certain cases that are the authority of the Religious Court (vide article 49 of Law Number 3 of 2006). Second, the Guidance and Supervision function and the Administrative function, namely providing direction, guidance and instructions and carrying out supervision to all its ranks, both regarding judicial and non-judicial technical matters in the fields of general administration, finance, personnel and others to support the implementation of the main tasks of the Judicial Technique and Judicial Administration. Third, the Advisory Function, namely providing considerations and advice on Islamic law to government agencies in their jurisdiction if requested (vide Article 52 paragraph (1) of Law Number 7 of 1989). Fourth, the Community function, namely the Religious Court is obliged to provide certainty of the truth (isbat) of the rukyah hilal testimony at the beginning of the Hijri month. (vide article 52A of Law Number 3 of 2006) .

The jurisdiction area of the Purwokerto Religious Court covers part of the Banyumas Regency area which consists of 16 Districts, namely: Gumelar District, Lumbir District, Wangon District, Jatilawang District, Ajibarang District, Pekuncen District, Baturraden District, East Purwokerto District, Kedungbanteng District, North Purwokerto District, Purwojati District, South Purwokerto District, West Purwokerto District, Karang Lewas District and Cilongok District.

Yayasan Lembaga Bantuan Hukum (YLBH/Legal Aid Foundation) SIKAP

The Legal Aid and Public Policy Study Institute, hereinafter referred to as YLBH SIKAP, was established on December 22, 2009 in the city of Yogyakarta, which was later changed to the SIKAP Legal Aid Foundation on May 22, 2013, is a legal entity in the form of a Foundation with a notarial deed Number: 11/ Date: May 22, 2013 Notary Office Muhammad Kamaludin Purnomo, S.H. Sleman, Yogyakarta. NPWP Number: 31.774.250.0-542.000. and registered as a community organization/Non-Governmental Organization at BAKESBANGLINMAS of the Sleman Regency Government, based on the Registered Certificate Number: 06/ Lsm/Bakesbanglinmas and PB/2011.

YLBH SIKAP has a program focus on; first, Providing legal aid, both inside and outside the Court. Second, Legal Counselling Program as an effort to increase legal awareness and the ability of the underprivileged and/or legally illiterate community to defend themselves and fight for their legitimate rights and interests according to law. Third, Guidance and legal practice training programs

for graduates and students who are interested in legal aid institution activities in the form of internships, training. Fourth, Socialization and publication of the understanding and values of the rule of law, the rights and obligations of Legal Subjects, human rights, and the understanding of legal aid in the broadest sense, obeying the rules of law. Fifth, Study and research programs (Research) on public policy and legal problems in society in the broadest sense related to social, political, economic and cultural problems. Sixth, Legal education and advocacy programs for vulnerable groups and sectoral community groups, especially for women and children, as well as workers, farmers, and street vendors.

The Implementation of legal aid at Purwokerto Religious Court Legal Aid Post (Posbakum)

The procurement of Posbakum is a mandate from the Law, so the Purwokerto Religious Court is committed to always implementing the program. The procurement procedure for Posbakum services is carried out with a transparent mechanism. In addition to conducting tenders, in order to obtain qualified human resources, who will later carry out the task of providing legal aid, the Purwokerto Religious Court also conducts tests on prospective legal aid providers.

The provisions regarding prospective officers and their institutions are in accordance with the rules in Perma No. 1 of 2014 as an amendment to SEMA No. 10 of 2010. The institution providing Posbakum services in accordance with the general provisions in article 1 point 8 is a civil society institution providing legal advocacy and/or legal advocacy work units in advocate organizations and/or legal consultation and assistance institutions at universities. Meanwhile, for officers in point 7 it is explained that service providers at the Court Posbakum are advocates, Law Graduates, and Sharia Graduates who come from institutions providing Court Posbakum assistance services that cooperate with the Court and are on duty in accordance with the agreement on the Court Posbakum service hours in the cooperation agreement.

The criteria for the institution providing the Court's Posbakum service are further contained in Article 27 of this Perma, namely: a) in the form of a legal entity, b) domiciled in the jurisdiction of the Court, c) Have experience in handling cases and/or litigation in court, d) have at least one advocate, e) have staff or members who will later serve at the Court's Posbakum who have a minimum degree of Bachelor of Law or Bachelor of Sharia, f) Pass the qualification test set by the Court, g) if including students to serve at the Court's Posbakum, they must have taken 140 credits and passed the Procedural Law and Procedural Law Practice courses and during their duties are under the supervision of an Advocate or Bachelor of Law or Bachelor of Sharia.

Based on this provision, LBH SIKAP becomes a partner in implementing Posbakum in the Purwokerto Religious Court environment. Of course, after going through the mechanism determined by the chairman of the Purwokerto Religious Court.

1. Legal Aid Procedures at the Purwokerto Religious Court Posbakum

The procedures carried out at the Posbakum in serving the community/clients, namely: first, the officer on duty will ask about the needs/problems faced by the client. Then as a formal requirement, the officer asks for a photocopy of the KTP, the client fills in the guest book and fills in the legal aid form. Problems handled by Posbakum include: legal consultation, making a lawsuit/divorce application, requesting permission to have more than one wife, requesting a marriage dispensation, requesting a marriage confirmation, requesting a determination of heirs, requesting a name change.

Second, the officer on duty examines the completeness of the documents so that they can later be registered with the Purwokerto Religious Court registration section. In the case of filing a lawsuit/application for divorce, the documents that must be available are a photocopy of the ID card, original marriage book/marriage certificate extract and photocopy, then the photocopy of the ID card and photocopy of the marriage book/marriage certificate extract are legalized with a stamp and stamped by an officer from PT Pos Indonesia who is placed at the Purwokerto Religious Court. In a prodeo case application, another document that the client must have is a SKTM (Certificate of Inability) issued by the sub-district and supporting cards can be PKH cards, Jamkesmas or Raskin.

Third, the officer interviews the client to make a legal document, this process takes the longest, because each client has different problems and different characteristics. The officer must be detailed in asking things related to the client's problems, for example in making a lawsuit the officer must be observant in determining the points contained in the client's posita (background of case), such as the client's domicile from marriage to the last residence, then search into the family problems faced by the client. Sometimes this is difficult, because often clients are not honest and cover up what happened.

Fourth, After the document is completed by the officer, the officer prints the document to then be corrected together with the client to ensure that there is nothing wrong. starting from the identity of the plaintiff/applicant and the defendant/respondent, the flow in the posita, and the petitum. Then, the officer copies it on a blank CD and reprints the document if there is an error then the client signs it.

Fifth, the officer asks the client to duplicate the documents into 8 (eight), where 6 (six) parts including the original will later be registered in the case registration section, 1 part for the client to learn, and 1 more part for the posbakum to be archived. After all are fulfilled, before being registered in the registration section, the officer helps the client compile the documents to be registered, for example in a divorce case, it must be ensured that there are 6 bundles of lawsuits, original marriage certificates, photocopies of KTP and Marriage Certificates that have been legalized and for prodeo it is equipped with SKTM and photocopies of other supporting cards. Sixth, officers invite clients to register their own cases and invite clients to continue to consult with the Posbakum during the handling of their cases.

2. Recipients of Posbakum services

Recipients of services at the court's legal aid post PERMA No. 1 of 2014 Article 22, namely:

a. Every person or group of people who are economically disadvantaged and/or do not have access to legal information and consultations who require services in the form of providing information, consultations, legal advice or assistance in preparing the required legal documents, can receive services at the court's legal aid post.
b. Inability as referred to, proven by attaching: 1) a certificate of inability (SKTM/Surat Keterangan Tidak Mampu) issued by the Village Head/Lurah/Head of the same level of region stating that the person concerned is truly unable to pay the court fees, or b) a certificate of other social benefits such as a poor family card (KKM/Kartu Keluarga Miskin), community health insurance card (jamkesmas/Jaminan Kesehatan Masyarakat), poor rice card (raskin/Beras Miskin), family hope program card (PKH/Program Keluarga Harapan), direct cash assistance card (BLT/Bantuan Langsung Tunai), social protection card (KPS/Kartu Perlindungan Sosial) or other documents related to the list of poor residents in the government's integrated database or issued by other agencies authorized to provide information on inability, or, c) a statement of inability to pay for legal services made and signed by the applicant for court posbakum services and approved by the court posbakum officer, if the applicant for posbakum services does not have these documents.
c. The person or group of people referred to are parties who will/have acted as: a) plaintiff/applicant, or b) defendant/respondent, or c) accused, or d) witness.

However, the Purwokerto Religious Court broadens the meaning of the "inability" of justice seekers not only referring to the economic conditions of the justice seekers. The Religious Court sees the description of legal aid not limited to legal aid and legal services that are specifically aimed at providing free assistance to the poor, but more to legal

assistance. By interpreting legal aid as Legal Assistance, the Posbakum at the Purwokerto Religious Court is required to provide legal aid services to anyone without exception. Posbakum no longer only serves people in the poor category as stated in PERMA No. 1 of 2014 Article 22 in point b above, but also to people who are able to pay for the achievement. Therefore, in the previous legal aid implementation procedure section, if there are people who come to court without preparing legal documents and then ask the information centre to be able to file a case, then the court officers will immediately direct the people to the Posbakum, without asking whether they are included in the category of being economically disadvantaged in accordance with the Perma.

3. Legal Aid Services Provided at the Purwokerto Religious Court Posbakum

The services available at the Purwokerto Religious Court Posbakum include document preparation and legal consultation. Consultation and legal document preparation that are widely requested by the public at the Purwokerto Religious Court Posbakum include: divorce lawsuits, requests for divorce vows, requests for marriage dispensation, requests for polygamy permits, requests for name changes, determination of heirs and requests for guardians.

However, there are also those who do not request legal document preparation services, but only consultation. This usually happens when the client does not understand the flow of the case, for example in the field of divorce, they consult who can later be a witness in court, or there are clients who want to divorce but do not meet the reasons for divorce permitted by the Law or the Compilation of Islamic Law. Cases that have occurred several times, clients want a divorce, but the existing conditions, husband and wife still live in one house, and only sleep apart, after further information is sought by the officer, it is known that the last time they had sexual intercourse was only one week ago. From this information, it is certain that the officer cannot help to make a document for a request for permission to declare a divorce/divorce lawsuit. What the officer can do is provide advice, so that both parties can correct each other's mistakes, try to think about the future of the child, and try to maintain the household that has been built with great difficulty so far. If the client is still adamant about getting a divorce, then the officer can only provide advice to meet the officer again, six months later after the client last had sexual intercourse. In the field of inheritance, they usually consult about who is entitled to receive the inheritance, before the document determining the heirs is made by the officer.

4. The Role of Posbakum in the Purwokerto Religious Court

The provision of services at the Posbakum greatly assists the services at the Religious Court. With the existence of Posbakum, the community seeking justice is greatly facilitated. Before the existence of Posbakum, usually the community who were going to litigate in court were often trapped by individuals who offered to help with document preparation services by asking for compensation. The community who usually became victims of these individuals were lay people in the law. This can be seen from their awkward, nervous and restless movements, so that they are very easily recognized by individuals who are looking for opportunities to find clients. They are usually immediately stopped in front of the building or court gate, and take them to the legal aid institution around the Religious Court building. With the existence of the Posbakum service, people who were previously confused when going to court (considering that they had to register a case with complete documents) now be served well without spending a penny. Posbakum, in addition to providing consultation services, also makes legal documents for free.

5. Problems in providing legal aid at the Purwokerto Religious Court Posbakum

Problems that sometimes arise in the posbakum service at the Purwokerto Religious Court include the assumption that posbakum officers are court officers. So, when there are officers who act inappropriately, the public assumes that it is part of the Purwokerto Religious Court. In trivial matters, for example, officers who are untidy in clothing give the impression that the Purwokerto Religious Court officers are untidy.

In addition, in carrying out their duties, sometimes the posbakum officers on duty are not precise in making documents. When this happens, the Court officers will immediately confirm to the posbakum officers so that they can be corrected immediately. Mistakes like this, if not immediately corrected, can cause cases to not be registered which will later harm those seeking justice.

Some of the problems experienced by the officers on duty at the Purwokerto Religious Court Post include: first, the Posbakum facilities. The Posbakum room at the Purwokerto Religious Court cannot be said to be adequate. This can be seen when the number of people seeking justice is large, they often have to queue until they leave the Posbakum room. In addition, the room, when viewed from the perspective of client comfort, can be said to be uncomfortable. This happens because most of the clients who come are filing for divorce, either in the form of a request for permission, a vow of divorce or a divorce lawsuit. It is understandable that in making these two types of documents, the officer

and the client need a little privacy. This is important because what the client will discuss is a personal problem, which should not be heard by others. So that the client will be more comfortable in telling their problems. The client will be embarrassed if the problems they are facing are known by others, in this case other clients who are also queuing to have documents made. In some cases, clients often show emotions of sadness in telling their family problems by crying. This is very inhumane, when someone cries telling their family problems, then heard by people around them. If the client can tell their problems, then the officer is easier in making a posita.

Second, the problem of the client itself. Often clients feel that Posbakum is part of the religious court, which is indeed tasked with serving the preparation of documents because they will later pay the court costs, not as a legal aid activity. Therefore, clients force what they want, not infrequently they force what they want. For example, a client wants to apply for a divorce oath permit, but the wife who will be divorced has not committed any violations according to the provisions of the Law or Islamic Compilation Law (KHI/Kompilasi Hukum Islam), what exists is that the husband wants to divorce his wife because she already has another partner. Because Posbakum is funded by the state, it cannot make a lawsuit according to the client's wishes, but according to the existing facts, which will later be stated in the posita.

The third problem is that there are parties who take advantage of the services of the Posbakum. This happens when there is someone from the client's home area who usually helps people who want to file for divorce in the religious court. The person previously asked for payment from the prospective client, promising to help make documents to be submitted to the religious court. The person only brings the client to the Posbakum, and the Posbakum was the one who made the documents, while the person was the one who received payment from the client. The impact of this practice is that clients, because they feel they have given some money, are often uncooperative when asked for information by officers. For clients, they often do not understand what a letter of application/lawsuit is. They only want a "divorce" to happen, without wanting to know that to file it requires a document containing the posita which contains the chronology, facts, and reasons for filing for divorce. When the officer search for client data, clients are often dishonest or cover up the problems that occur. Especially if the client is the party at fault/responsible for the breakdown of their family.

The fourth problem is the availability of facilities and infrastructure. In the provisions of Perma No. 1 of 2014, in article 33 the Court provides the facilities and infrastructure needed to support the implementation of posbakum, including a room equipped with furniture, computers, printers, air conditioners and office stationery. For the implementation of posbakum at the Purwokerto Religious Court, the court only provides a room, service desks and chairs, while computers, printers, air conditioners and office stationery are provided by YLBH SIKAP.

CONCLUSSION

As a conclusion the implementation of legal aid at the Purwokerto Religious Court Posbakum, it can be concluded that Posbakum at the Purwokerto Religious Court was carried out transparently and the selection of LBH SIKAP as the Posbakum manager was in accordance with the qualifications in PERMA No. 1 of 2014. Services at the Purwokerto Religious Court Posbakum include providing information, legal consultation/advice and the most is the preparation of legal documents, including: divorce lawsuit/application, answers, *replik, duplik*, applications for Marriage Dispensation, applications for determining heirs, applications for marriage confirmation, applications for changes to marriage book biodata, documents for applications for having more than one wife, and applications for the origin of children. The Purwokerto Religious Court applies legal aid at Posbakum not only as legal aid and legal service but also as legal assistance, where recipients of Posbakum services at the Religious Court are not limited to the underprivileged. So that Posbakum services are widely used by people who are actually able to pay, or parties who seek profit from this service. The infrastructure in the Posbakum service that is still lacking is the availability of space that still does not maintain client privacy.

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Islam and Identity Politics After the 2024 Presidential Election: The Islamic Students of Gen Z in Perspective

Ajrun 'Azhim Al As'hal[1], Ita Rodiah[2]
UIN SUnan Kalijaga Yogyakarta, Indonesia
Email: ajrunazhimalashal31@gmail.com[1], ita.rodiah@uin-suka.ac.id[2]

Abstract

This research examines the perspective of Islamic students of Gen Z towards identity politics after the 2024 election. The issue of identity politics is a popular and hot issue among society today. This research aims to discuss the impacts that occur after identity politics and the views of Islamic students' Gen Z towards identity politics after the 2024 election. The method used is qualitative research using a descriptive approach. The research techniques used are observation, interviews and documentation. The result of this research is that identity politics can threaten the integrity and unity of the nation because the existence of identity politics makes society divided and gen z also has a variety of opinions about the issue of identity politics, but most of them disagree with the existence of candidates who use identity politics issues in election contestation. This issue should not be used in political activities because it makes religion a tool to gain votes from Gen Z

Keywords: identity politics, post-election of 2024, islamic students of gen z

INTRODUCTION

The studies of identity politics have been discussed by previous researchers, such as Aryojati Ardipandanto (2020), that discussing the impact of identity politics in the 2019 presidential election based on populism, which resulted in populism in the 2019 presidential election being dangerous because it ignores national heterogeneity, especially when it is supported by the rise of hoax news and is not balanced with maturity of Indonesian society. Anifatul Kiftiyah (2019) researched efforts to reconcile identity politics after the 2019 election. Revealed that identity politics would be dangerous if it led to discrimination among the people, so there was a need for reconciliation initiated by the election contestants. According to Rendy Adiwilaga et al. (2017), elections and the inevitability of ethnic identity politics in Indonesia: a theoretical review. This research explains that the existence of ethnic identity politics must be seen as a local wisdom that is able to maintain cultural unity and harmony in Indonesia. Islam is known by a statement of the *rahmatan lil 'alamin*, which refers to a religion that is full of compassion, loves peace, and upholds brotherhood (Khairan Muhammad Arif, 2021). However, some people, even groups, deliberately use religion, especially Islam, as a tool to spread hatred and hostility (Siti Faridah & Jerico Mathias, 2018). In fact, they do not hesitate to use religious issues for purely political purposes. The issue of identity politics is one of the issues currently being widely discussed by Indonesian society. Since the nomination of the three presidential and vice presidential candidates until after the general

election, this issue has become increasingly widely reported. Starting from the emergence of Tarwiyah, who is a mother and PKS legislative candidate who demonstrated in front of the KPU (Republika, 2023) to what just happened during Eid al-Fitr prayers at Tamanan Square, Banguntapan, Bantul, where Ustadz Untung Cahyono as the preacher touched on political issues and fraud. 2024 election in his sermon (Detik.com, 2024).

The Ministry of Communication and Information of the Republic of Indonesia (KOMINFO), through the Deputy Minister of Communication and Information, Nezar Patria, explained that from July 1 2023, to January 24 2024, there are 195 cases of hoax news and narratives about identity politics regarding elections had been found spread across 2,825 pieces of content (KOMINFO, 2024). Even though there is a decrease compared to the previous election, the use of this issue is still often used to defeat opponents (fight for beat). Apart from that, the issue of identity politics is also used as a tool to gain voters' votes. Gen Z and Millennials are one of the targets for political elites to gain votes. Because in the 2024 election, Gen Z and millennial voters will be the most significant number of permanent voters in Indonesia that is 55% (KPU, 2024). This statement is in line with a researcher from BRIN, Aisah Putri Budiarti, who said that political parties currently still consider the votes of young voters, especially Generation Z and millennials, as something that must be achieved but not as an interested group (BBC.com, 2024). Research on Islam and post-election identity politics from the perspective of Islamic students of Gen Z is necessary. There are 2 main reasons underlying this research. First, the issue of identity politics raised by political elites indirectly tarnishes Islam, even though Islam always upholds the values of tolerance and peace, so this situation is like two different sides of a coin. Second, as a concrete form of the active role of young voters, especially Gen Z, in election contestation, young voters are only considered an apathetic generation, let alone only used as vote-getters for candidate pairs and political parties. Therefore, this research focuses on the perspective of Gen Z students towards Islam and identity politics after the 2024 election. This research aims to dissect what impacts are caused by identity politics after the 2024 election and what the views of Gen Z students, who in fact are the generation that has Sufficient knowledge of religious knowledge in viewing identity politics after the 2024 election.

2. METHODS

This research uses qualitative methods with descriptive research. Qualitative research is research that has the aim of knowing and understanding the phenomena and events that occur by research subjects such as actions, perceptions or views, motivations, and so on (Moelong, 2017). The types and sources used by researchers are through direct collection from informants consisting

of 7 Islamic students of Gen Z with an age range of 19-25 years. They are tahfidz students from the Al-Munawwir Islamic Boarding School, Krapyak, Yogyakarta, who have memorized more than 10 Juz of the Qur'an. With details: M. Agta Annafi Sugiyantoro, Farid Dihan Nahdi, M. Najwan Abiq, Rafa Ghani, Ahmad Zaki Yahya, Amri Faizal, and Adnan Prabowo. Supporting data for this research was also obtained from reference sources, related literature, newspapers and other materials by the study theme. Collection techniques are techniques used to obtain data (Sugiyono, 2018). The research was conducted from 27 April to 05 May 2024.

This research technique uses 3 methods observation, namely, the researcher directly observes the research object in order to obtain the information needed; interviews, namely, the researcher conducts interviews with related informants in order to obtain answers to the questions that have been created to obtain maximum results. And finally, documentation is using methods to search for data regarding things in the form of notes, newspapers, journals, books, etc. Meanwhile, the data analysis technique used uses the Miles and Huberman model, which includes data reduction, where, at this stage, the researcher takes notes from the data obtained and then simplifies it. Then the data presentation is done by selecting similar data before converting it into text. Finally, conclusions are drawn which aim to obtain credible conclusions to answer questions in the field (Sugiyono, 2018)

3. RESULTS

3.1 Politic Literacy of Islamic Gen Z in the 2024 Presidential Election

Generation Z is one of the largest voters in the 2024 election. Generation Z's understanding of politics comes from the news on social media, starting with YouTube, TikTok, Instagram, Facebook, and Twitter. According to one informant, he got the current political issues, from elections to election disputes, from social media.

"I know all the political news from social media. I rarely watch TV so I only get news from social media." (M. Agta Annafi B./01/05/2024)

Agta also explained everything he knew about politics during the election, starting with the feud between Jokowi and PDI-P and ending with why Prabowo had the most votes among the other candidate pairs.

"This election is very interesting because there are 3 candidate pairs competing, very different from last year when there were only 2 candidate pairs. Apart from that, what was interesting was right before the election because there was conflict between Jokowi and PDI-P over which one was

superior, the election of Cak Imin as Anis' deputy who directly defeated AHY, the reason why Prabowo was able to win by a landslide. Starting from Prabowo having his own voice, continuing with the entry of Gibran, it is impossible for the Democrats to want to join the candidate pair with Megawati, Jokowi's loyalty in the PDI-P is still highest, as proven in the election, the PDI-P won the parliament but lost in the presidential election, the existence of Ahok as a true Islamist. it's possible that Cak Imin entered candidate pair 1 to reduce Anis's vote, PKB's vote was divided, the proof is that Khofifah supports Prabowo-Gibran, Ganjar has too many mistakes, and my funniest opinion is Ganjar's votes is not his, but all of the votes is purely from prof mahfud's votes" (M. Agta Annafi B./01/05/2024)

Not only that, even Farid Dihan Nahdi, an informant, explained clearly the political strategies carried out by the candidate pairs, starting from Anis, who is identical to Habib Riziq Syihab, until Ganjar, who appears like a populist.

"The candidate pairs have their own ways of attracting voters. If Anis Baswedan is identical to Habib Riziq Syihab (HRS). even Ganjar Pranowo, who always tries to be the face of the people, even though he failed due to the political machine's half-hearted support for him, and Prabowo, who is synonymous with being firm and military." (Farid Dihan Nahdi/02/05/2024)

Another informant also expressed the same thing, adding that during the election, there was a lot of hate speech, hoax news, and even discrimination between races. He believes that election contestation will not be free from the shadow of dirty methods to gain votes from other voters.

"A lot of hoax news has emerged during the 2024 election. There are a lot of them on social media. Usually, the target is another candidate pair he feels superior to him. Then, it cannot be separated from the SARA politics, which are usually used every time there is a presidential or regional head election. "The aim is also the same to attack political opponents, and the last one is the issue of discrimination." (Najwan Abiq/01/05/2024)

Adnan Prabowo, who was also one of the informants, explained that he actually knew quite a lot about the political polemics in Indonesia. Although he believes that politics at this time is still quite conducive and calm compared to previous politics. Even so, he is excited about the 2024 election.

"The election is quite conducive now compared to last year, however I am still quite annoyed by everything that is happening" (Adnan Prabowo 03/05/2024)

The statements made by the informants prove that Islamic Gen Z has an interest in knowing politics in Indonesia. They also know and understand what issues are currently happening in Indonesia. Understanding political literacy also makes Islamic Gen Z not just someone who is

apathetic and doesn't want to know about their own country. Even just as a tool to gain votes by the political elite. However, Gen Z, especially Islamic boarding school students, have a big role in Indonesia's progress. Because 1 vote can determine the future for Indonesia for 5 years.

Picture 1 The Example of Political News in Social Media

(Source: @pinterpolitic on instagram)

The picture above is an example of news about politics during the 2024 election period on social media Instagram. The poster shown discusses the problem of the continuing decline in Ganjar's votes in the electability of the presidential and vice presidential candidate pairs. Even though PDI-P is still predicted to be the winning of political party.

3.2 The Perspective of Islamic Gen Z in Indentity Politic

Identity politics is an issue that is used by candidate pairs and political party leaders every election to gain votes. They use the issue of identity politics to attract votes, especially from Muslims and also young voters, one of whom is Gen Z. There are still many people who think that Gen Z is only a tool to get a big vote. Additionally, in the 2024 election, millennial and Gen Z voters reached more than 50 per cent of the votes. Therefore, all strategies are used by candidate pairs and parties to attract voters to choose their candidate pairs and parties. One of them is by using religious issues. Even though Islam prohibits this act. In line with this statement, M. Agta Annafi B, as the informant, stated that

"Religion as a guide to life definitely teaches good values. Islam as rahmatan lil 'alamin which always upholds the values of tolerance (tasamuh), does not divide, unites with each other." (M. Agta Annafi B./01/05/2024)

Amri Faizal as the informant also added a statement from Agta explaining the function of Islam itself,

"Islam as a religion that is a mercy for all of nature that saves humans from evil" (Amri Faizal/04/05/2024)

These two statements prove that Islam is a religion that always prioritizes peace and love of peace. There is never an Al-Qur'an or hadith that explains the Islamic religion, which teaches about division and hostility between humans, especially fellow Muslims. However, in reality, the use of religious issues as identity politics is still considered normal.

"Islam prohibits identity politics because it is contrary to the principles of that religion, such as: universal brotherhood, justice and tolerance." (Najwan Abiq/01/05/2024)

According to Farid Dihan Nahdi and Rafa Ghani, they have views on the meaning of identity politics itself.

"Identity politics is a method of gaining power by associating individuals and parties with a specific characteristic. For example: religion, nationalism, and also labor" (Farid Dihan Nahdi/02/05/2024)
"Identity politics is a phenomenon where individuals or groups identify themselves based on certain characteristics such as ethnicity, religion, gender, sexual orientation, or other factors that are used as a basis for identity to participate in the political process or to fight for their interests." (Rafa Ghani/01/05/2024)
They both also explained their views as Gen Z students regarding the identity politics used by candidate pairs.

"The number of millions of students is actually a dead voice because their voices are under the control of the boarding school leaders. The strategy used by candidate pair 1 won a lot in Islamic boarding schools, but lost with the veto vote of one of the most senior Tariqoh murshids in Indonesia." (Farid Dihan Nahdi/02/05/2024)
"Islamic Gen Z views on identity politics can vary depending on their background and personal experiences. Some may prioritize religious or ethnic values, while others may be more inclined to seek agreement and cooperation across groups." (Rafa Ghani/01/05/2024)

However, this is different from the views of Najwan Abiq and Ahmad Zaki Yahya, who said that the majority of students would fight,

" Islamic Gen Z are generally aware of the dangers of identity politics and are committed to fighting it." (Najwan Abiq/01/05/2024)
"Identity politics is not actually a big deal because identity politics has actually been carried out by everyone without exception" (Ahmad Zaki Yahya/01/05/2024)

Even though there are many opinions about the emergence of religious issues in the 2024 election contestation, most of them agree that identity politics should not be used to gain votes. The beginning of emergence of identity politics during the 2024 election began with individuals who stated that if they did not support the candidate pair they supported, their Islamic beliefs would be doubted.

"Before the election took place, we heard that there were candidate pairs who said that if you don't vote for candidate pair 1 then you will be doubted about your Nu and Islam." (M. Agta Annafi B./01/05/2024)

This situation has had an enermous impact on Indonesia. Not only does it divide the nation, but it can also delay the country's progress because of the identity politics involved.

"After the 2024 election, if identity politics continues, there is a possibility of social tension, great political polarization, and what is worse is the difficulty of achieving agreement to advance the national agenda" (Rafa Ghani/01/05/2024)

The results of the interview above explain the various perspectives of Islamic Gen Z regarding identity politics, especially religious issues, which are used as a tool to gain votes from voters, especially young voters. They argue that the issue of identity politics actually exists and is used by each candidate pair themselves. However, the levels used are different. According to them, identity politics will exist in every election contestation. Moreover, the issue of identity politics is packaged as a religious issue. They all agree that the impact of identity politics is very large, ranging from group divisions to the difficulty of moving this country forward.

The picture shows the participation of Generation Z, especially Islamic boarding school students, making the 2024 election contest a success. This situation is also evidence to refute the statement that Generation Z is only a source of votes for candidate pairs. In fact, it is not uncommon for Generation Z to openly support one of the candidate pairs they deem worthy of becoming president.

"Generation Z is actually very loyal and has high hopes for the elected president. So the involvement and activeness of Generation Z regarding the 2024 election is quite high." (Adnan Prabowo 03/05/2024)

This is proven by the many views or perceptions of Islamic Gen Z regarding the 2024 election, especially regarding the identity politics promoted by candidate pair 1. However, from these results, most of the Gen Z perceptions are that they reject the existence of political issues brought up by candidate pairs in the election contestation.

4. DISCUSSIONS

4.1 Islam and Identity Politics in Indonesia

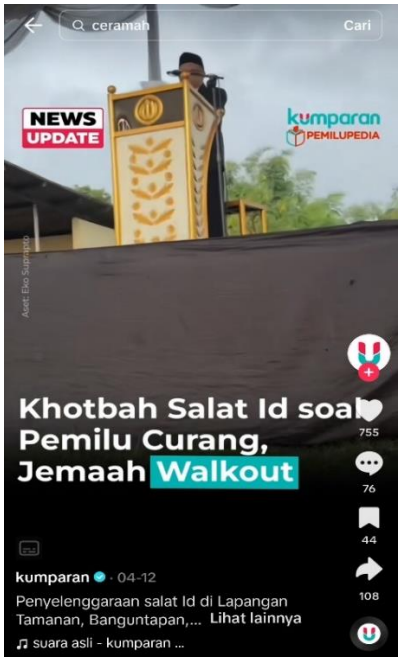
Islam is one of the religions with the most adherents in the world. Reporting from Global Muslim Population data uploaded by Times Prayer until February 2 2024, at 13.30 WIB, the Muslim population in the world has reached 2,022,131,798 out of a total world population of 8,088,527 people. This situation puts Islam after Christianity (Detik.Com, 2024). Meanwhile, Indonesia the second largest Muslim population after Pakistan, which is 236 million people (CNBC, 2024). Islam has always branded itself as a religion that teaches to be gentle in speaking, always loving, and full of compassion towards fellow humans, especially fellow Muslims, so it is known as Islam *rahmatan lil 'Alamin* (Khairan Muhammad Arif, 2021). Islam and politics actually have a connection between the two. The relationship between religion and politics is not only limited to political parties that declare themselves to be religious parties, such as PKB, PPP, PKS and the Umat Party (Agus Saputro, 2019). However, the two largest Islamic organizations in Indonesia, NU and Muhammadiyah, are also at the forefront in maintaining the integrity and unity of the Indonesian people.

In practice, politics is still considered by some people to be something bad, cunning, or even dirty (Agus Saputro, 2023). This stigma and assumption is not something strange because the basis they use is a feeling of disappointment with the authorities and political elites regarding the policies and governance carried out. As a country that adheres to a democratic system, Indonesia will never be free from the existence of rulers and political parties. Political parties are a pillar of democracy and the sovereignty of the people themselves (Evi Purnamawati, 2020). This is of course the basis for the implementation of direct democracy through general elections (elections) to elect the president and vice president, regional heads, and members of the council (Detik, 2023). The 2024 election is a form of implementing democracy carried out by Indonesia. In this election, all people have the same political rights. Since the beginning of the candidacy for president and vice president as well as members of the legislative council, the public has been presented with various campaign models. Not only interactive campaigns, but several political parties and also candidate pairs openly carry out black campaigns against fellow candidate pairs.

The rejection banner for one of the candidate pairs, namely Anis Baswedan, at Simpang Tiga Jalan Colonel Sugiono, Yogyakarta City, on Thursday (19/5/2023) is an example of a black campaign carried out by irresponsible individuals (Kompas.Com, 2023). This situation also happened to candidate pair number two, namely Prabowo Subianto, who received wild rumours that Prabowo had slapped and strangled Deputy Minister of Agriculture Harvick (VIVA, 2023). Apart

from that, identity politics is also spreading massively in society. The use of religious issues to overthrow political opponents has now become something that is considered commonplace in order to bring down political opponents. For example, in the case of Abah Aos, who is one of the supporters of the candidate pair, he stated that Anis Baswedan was the Imam Mahdi, and he even ordered his student named Eka Anugrah to help the candidate pair by handing over 100 cars as a form of obedience to his spiritual teacher (Suara.com, 2024). This situation clearly shows that Abah Aos used the word imam mahdi to attract the support and attention of the community, especially Muslims.

Identity politics relies on tribal and religious fanaticism, which is always vulnerable to being played with and used as a political tool (Siti Faridah & Jerico Mathias, 2018). Jerry Indrawan et al. (2023) explain that identity politics will never be separated from the meaning of that identity because identity or self-identity includes gender identity, race, work, religion, and so on. This situation indirectly tarnishes Islam. Because Islam, which is supposed to be a holy religion, cannot be used as a means of justification for doing something, especially politics (Siti Faridah & Jerico Mathias, 2018). Even though it is clear in the Al-Qur'an Surah Al-Baqarah Verse 256, which states that *"There is no compulsion to (enter) religion (Islam), in fact the right path is clearer than the wrong path. Therefore, whoever disbelieves in Thaghut and believes in Allah, then indeed he has held on to Allah, then indeed he has held on to a very strong rope that will not break. And Allah is All-Hearing, All-Knowing."* It is evidence in Surah Al-Baqarah that Allah never forces other people to convert to Islam. However, in reality, religious issues force people to choose one of the candidate pairs.



Picture 3 The one of Khatib in The Eid Prayer who Discusses the Election
(Source: kumparan on TikTok)

The picture is of one of the Eid al-Fitr prayer preachers on April 10 2024, named Ustadz Untung Cahyono, who was on duty as a prayer preacher at Tamanan Square, Banguntapan, Yogyakarta, openly discussing political issues and fraud in the 2024 election.

4.2 The Phenomenon Politic Identity After Election 2024 in Perspective of Islamic Gen Z

Religious education institutions, especially Islamic boarding schools, are still an alternative for parents to entrust their children to study religion. Not only are religious sciences taught in Islamic boarding schools, but also character education. Most recently, Islamic boarding schools offer formal and informal teaching, which includes general subjects such as mathematics, science, social sciences, languages, technology, and so on (Muhammad Fredy Kurniawan, 2023). In recent years, Islamic boarding schools have been filled with Generation Z. Generation Z is a term given to the generation born from 1995-2012, living an increasingly advanced era with rapidly developing technology (Heti Aisah & Uus Ruswandi, 2020). Through learning at Islamic boarding schools, students, especially Generation Z, can understand religious knowledge and, at the same time practice Islamic teachings in their daily lives.

These advantages make Islamic Gen Z have more capital and advantages compared to Gen Z students who have not received Islamic education. Although there are many assumptions that Gen Z students are only good at religious knowledge. For example, many students occupy important positions ranging from parliament to public officials. Even the General Chair of the National Awakening Party (PKB) DPP Abdul Muhaimin Iskandar confirmed as many as 4,000 santri to become members of the Indonesian Santri Laskar to prepare young cadres from Islamic boarding schools to become future leaders (Antara, 2022). This proves that santri have a strategic role apart from being a religious leader. Apart from that, Islamic Gen Z also made a big contribution to politics in Indonesia in the 2024 election contestation. This election is a bit interesting compared to the previous election. Because in the 2024 election, young voters will be the largest most significant number of permanent voters in Indonesia compared to previous years. Young voters reached 56.45% with the details of 33.60% for millennial voters and 22.85% for Gen Z voters (Detik, 2024).

This large number of voters means that presidential and vice presidential candidates and political elites are competing to attract the votes of Generation Z. As was done by the Prabowo-Gibran couple who used *gemoy* imagery and creative gimmicks to attract the attention of young voters, especially Gen Z (Nadya Hapsari Thrisianingsih Sukandar et al, 2024). Another strategy that is also used to get the votes of Generation Z, especially those who are Muslim, is by using the issue of identity politics. The phenomenon of identity politics issues always exists in every election

contestation. The issue of identity politics always uses political interests which are then added with verses and religious symbols. So that people who hear it will be lulled by heavenly promises (Andre Pebrian Perdana & Muslih, 2023). Even though Allah has said in Qs. Al-Baqarah verse 41 "*regarding the prohibition on selling Allah's verses at low prices"*. The meaning of this verse is to threaten anyone who uses verses from the Koran to exchange them for worldly matters that have nothing to do with Allah SWT.

The issue of identity politics itself is very attached to the number 1 candidate pair, Anis Baswedan and Muhaimin Iskandar in attracting votes, especially among Gen Z voters and also Muslims. Even though they denied using this issue (CNN, 2023). However, there is a lot of evidence that proves that they use identity political issues, such as conducting campaigns at mosques. They think that the strategy used will be successful because the majority of Indonesia's adherents are Muslim. However, it seems that this situation is not always right. The issue of identity politics itself not only occurs before the election occurs but is also carried out after the voting. Many individuals did not accept the defeat that befell the candidate pair they supported. Even worse than before the election occurred. Just mention Tarwiyah, as well as individuals acting on behalf of Aksi 164, Joint Forum (Forbes) 01 and 03, PDR Front, and so on (detik.com, 2024).

They held a large-scale demonstration in the Horse statue area, Central Jakarta, during the Constitutional Court hearing. Even former Minister of Religion Fachrul Razi and Former Danjen Kopassus Soenarko also took part in the big action held by this mass organization, and they said that they had the same vision, mission and goals, namely upholding justice and eradicating injustice (Tempo, 2024). Soenarno also discussed the fraud that occurred during the 2024 election. He asked the Constitutional Court to accept the petition submitted by candidate pairs 1 and 3. They claimed that the election results were fraudulent and that the winner had already been determined. The events had many major social effects on the unity and integrity of Indonesia (Aryojati Ardipandanto, 2019). Identity politics does not only impact the integrity and unity of the country. However, it also has a broad impact on the progress of this country and divides society into specific groups. In fact, identity politics also influences religious tolerance in Indonesia, so many people disagree with identity politics (Muhammad Jeral Palepa, et al. 2024).

This situation is also felt by Generation Z. Many people still think that Gen Z doesn't know anything about political issues, but in reality that is not true. They have various opinions, perceptions, and reactions. Most Islamic Gen Z think that identity politics has actually been carried out by all candidate pairs. The existence of identity politics actually threatens the integrity of the state. However, some say that identity politics is not that big of a problem if it doesn't get a big

response. Islamic Gen Z also believe that identity politics, both before and after the election, will still exist. In fact, they assume that in every election there will be a religious issue brought up by one of the candidate pairs. However, they all agree that identity politics should not be brought into a general election contest. Because the impact caused is also quite large. This situation proves that Gen Z understands and is active in the issues and problems in the 2024 election. So this statement also denies the views of political elites who state that easy voters, especially Gen Z, are only a means of gaining votes.

Picture 4 The one of Grand Mother who Speech in MK

(Source: Mahrus Ali on TikTok)

Figure 4 shows one of the grandmothers giving a speech in front of the Constitutional Court building to demand fraud in the election. In his oration he used the words jihad and also knocking on Allah's door, dzalim, and other words that had religious elements.

5. CONCLUSIONS

Religious issues, especially Islam, are still the priority for political party officials to gain votes. Not before the election starts but also after the election occurs. In fact, identity politics has many negative impacts on the nation and state. Starting from threatening the integrity and unity of the country to dividing society. These individuals use the issue of identity politics to influence voters, especially Gen Z. Because they still think that Gen Z is still ignorant and even apathetic towards the world of politics. Even though Gen Z currently really understands and is also active on this issue. In fact, most of them openly oppose the issue of identity politics being promoted by one of the candidate pairs.

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Islam, Democracy, and Human Rights: A Critical Approach

Rojif Mualim[1], Badrus Zaman[2], Anjar Kususiyanah[3]
[1]Universitas Islam Negeri Raden Mas Said Surakarta, [2]Universitas Islam Negeri Salatiga
[3]Institute Agama Islam Negeri Ponorogo

Email: rojifmualim@gmail.com, badruszaman@uinsalatiga.ac.id, kususiyanah@iainponorogo.ac.id

Abstract:
This article aims to explore the relationship between Islam, democracy and human rights through a critical approach to existing literature. This research was conducted by reviewing various academic sources, both from an Islamic and secular perspective, to understand how Islamic principles can support or challenge the concepts of democracy and universal human rights. This article analyzes religious texts, such as the Qur'an and Hadith, as well as the writings of Muslim and non-Muslim scholars to explore a deeper understanding of this topic. The research results show that although there are various interpretations, many principles in Islam are aligned with democratic values and human rights. However, there are also significant challenges and debates regarding the application of these concepts in Muslim-majority countries. The conclusion in this article is that dialogue between Islamic traditions and modern concepts of democracy and human rights needs to continue to be developed to achieve a more inclusive and harmonious understanding.

Keywords: *Islam, democracy, human rights, critical approach*

INTRODUCTION

Islam, as one of the world's largest religions with more than one billion followers, has a long history and rich traditions that cover various aspects of social, political and legal life. While Democracy, on the other hand, is a system of government that is based on the principles of people's welfare, political participation, and individual freedom. And Human Rights (HAM) are a collection of rights that are internationally recognized as basic rights that every individual has regardless of race, religion or other background. The relationship between Islam, democracy and human rights has become an increasingly relevant topic in global discourse. With a significant number of Muslims in the world, the question of the extent to which Islamic values can be accompanied by the principles of liberal democracy and human rights becomes increasingly important. Thus, the three have interactions and concepts that are often considered to have inherent tension.

History has also shown that in many Muslim-majority countries, the concepts of democracy and human rights were adopted with varying degrees of success and local adaptation. Some countries have succeeded in integrating democratic values and human rights into political systems based on Islamic principles, while others face significant challenges in this effort. So we think a critical approach to the interaction between Islam, democracy and human rights is very important to understand how the three can integrate or clash in various contexts.

This critical approach not only seeks to identify conflicts and challenges, but also to explore the possibility of harmony and synergy between the three concepts. For example, how can the principles of justice, equality and protection of individual rights in Islam support or strengthen the values of democracy and human rights? Conversely, how can democracy and human rights be adapted to respect and reflect cultural and religious values in Muslim societies?

If we look at the literature, the three have a strong relationship, for example the first relationship, Islam and Democracy. Much research has been carried out to understand the compatibility between Islam and democracy. A study by Stepan (2003) shows that democracy can develop in Muslim-majority countries with the existence of institutions and practices that support democracy. They emphasize that cultural and political factors, not religion, have a greater influence on the level of democratization. Meanwhile Dahl (1971) shows that democratic elements such as political participation and opposition can be found in the history and political traditions of the Islamic world. Dahl argues that democratic values can take root in Muslim societies, with an emphasis on consensus and consultation in accordance with the principles of shura in Islam.

The second relationship between Islam and Human Rights. The study by (Mayer, 2012) in "*Islam and Human Rights: Tradition and Politics*" discusses the challenges and opportunities in aligning the concept of human rights with Islamic law and tradition. Mayer argues that there is potential for harmony, but there are also serious challenges that need to be addressed, especially related to issues such as religious freedom, women's rights, and corporal punishment. In addition, Monshipouri (2000) in "*Islamism, Secularism, and Human Rights in the Middle East*" highlights the conflict between traditional interpretations of Islam and international human rights standards. They note that various Muslim-majority countries adapt human rights principles in different ways, often influenced by domestic and international politics.

The third relationship, between Democracy and Human Rights in Muslim Majority Countries. Diamond (2008) in "*The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*" examines democratic transitions in various countries, including Muslim-majority countries. Diamond finds that democratization is often faced with challenges from authoritarian regimes and conservative interpretations of religion that can limit individual rights. Meanwhile, in "*Islam and the Challenge of Democracy*" El Fadl (2004) puts forward the argument that democratic principles do not conflict with Islam, but require a progressive and inclusive interpretation of religious texts. El Fadl believes that democracy can support justice and equality in line with Islamic teachings.

On the other hand, in Case Studies and Practical Implementation. Case studies from countries such as Indonesia, Turkey and Tunisia are often used to show how Islam, democracy and human rights can interact in real contexts. For example, in "*Indonesia: Islam and Democracy*" Hefner (2003) shows that Indonesia has succeeded in developing an inclusive democracy by accommodating religious and cultural plurality, despite facing challenges from extremist groups. In contrast, Brownlee (2015) in "*The Arab Spring: Pathways of Repression and Reform*" shows that the democratic transition in Arab countries after the Arab Spring faced many obstacles, including violence, repression, and challenges in balancing Islamic traditions and human rights demands.

This means that the various literature studies above show that there are various views and findings regarding the relationship between Islam, democracy and human rights. Despite significant challenges, many researchers believe that with proper interpretation and institutional reform, these three concepts can synergize to create a just and inclusive society. Through a literature review, we will explore the arguments for and against the compatibility between Islam and democratic principles. This includes an analysis of concepts such as shura (consultation) in Islam and how they can be aligned with modern representative democracy.

By critically understanding and exploring these interactions, we can gain deeper insights into the potential for building just and inclusive political and social systems in the Muslim world, as well as the contribution that Islamic traditions can make in enriching global discourse on democracy and human rights. This approach also invites us to reassess the assumptions and stereotypes we may have about the relationship between religion, politics and human rights. To provide an overview of research that has been carried out regarding the relationship between Islam, democracy and human rights (HAM).

Various Islamic interpretations of human rights and how these religious values interact with international human rights standards. We will explore debates on controversial issues such as religious freedom, women's rights, and corporal punishment in an Islamic context. Through literature analysis of case studies, we will investigate how Muslim-majority countries implement democracy and human rights, including an understanding of the challenges faced and the factors that influence success or failure in integrating democratic values and human rights in an Islamic context.

So that in the future it will give birth to a better understanding of the relationship between Islam, democracy and human rights, which can provide insight into making a significant contribution to academic literature, as well as being valuable for decision makers, stakeholders and the general public in jointly designing appropriate policies. more effective in encouraging the

development of democracy, protection of human rights, development of inclusive societies in countries with a majority Muslim population throughout the world.

METHODS

This study uses a mixed approach that combines in-depth literature analysis with direct observation. This approach was chosen to enable a thorough understanding of the interactions between Islam, democracy, and human rights (HAM), as well as to obtain rich and contextual data about the observed practices. We will conduct an in-depth literature review to collect secondary data from a variety of sources, including academic journals, books, reports, and legal documents. This literature review will help us understand different views on the relationship between Islam, democracy, and human rights, and obtain a solid theoretical framework for our analysis.

Our research design will use a qualitative approach, allowing us to explore the complexity of the relationship between Islam, democracy and human rights in more depth. We will adopt an inductive analysis approach, letting findings from the data guide theory development and interpretation. The data collected will be analyzed using a thematic approach. We will identify patterns and themes emerging from the data, and compare and contrast findings from different sources and contexts. This analysis will provide in-depth insight into the interaction between Islam, democracy and human rights.

This method will enable us to gain a deep understanding of the complexity of the relationship between Islam, democracy, and human rights, and to make a valuable contribution to academic literature and policy practice. This research aims to investigate the interaction between Islam, democracy and human rights through literature study and observation approaches. We wanted to identify how these three concepts interact in practice, as well as explore the factors that influence them. We will modify existing parameters and models to reflect the complexity of the relationship between Islam, democracy and human rights. This includes considering cultural, historical, and political factors unique to each country context. With a comprehensive approach and tailored methodology, we are confident that this research will provide a deeper understanding of the interactions between Islam, democracy and human rights.

RESULTS

Basic Theories and Concepts

a. Islam in the Socio-Political Context

Understanding Islam in a socio-political context involves understanding how Islamic teachings and principles are applied and interpreted in the life of society and government. This context covers various aspects, including law, government, economics, human rights, and social interactions.

Islam, as a comprehensive religion, not only regulates spiritual and ritual aspects, but also includes socio-political aspects. In this context, Islam provides guidance on how society should be governed, how government should function, and how the law should be applied to achieve justice and prosperity for all members of society.

1) Islamic Theological and Legal Basics

Islamic theological and legal foundations play a major role in shaping this socio-political view. The Qur'an, as the holy book of Muslims, and the Hadith, as a collection of deeds, sayings and decrees of the Prophet Muhammad SAW, are the main sources of Islamic teachings. These two sources provide guidance for various aspects of life, including social and political aspects. Sharia, which originates from the Qur'an and Hadith, is an Islamic legal system that includes criminal, civil, family, and economic law. As stated by Esposito (2011), "*The Qur'an and the Hadith are the primary sources of Islamic theology and law. These texts provide comprehensive guidance on matters of faith, social conduct, and governance.*" This view emphasizes that Islam, with all its complexity, provides holistic guidance for managing human life, including in a socio-political context.

2) Government and Politics in Islam

In the context of Islamic government and politics, there are several main concepts that shape the structure and principles of government. One of them is the concept of the Khilafah, which is a system of government where a caliph leads as the successor of the Prophet Muhammad SAW. The Khilafah emphasizes the importance of just leadership and based on sharia principles, with the aim of creating a government that is in accordance with Islamic teachings.

On the other hand, several Muslim-majority countries have adopted modern democratic systems, which allow political participation through elections. However, there is debate regarding the extent to which modern democracy is compatible with Islamic principles. Although democratic systems offer mechanisms for people's involvement in the political process, challenges arise in aligning democratic principles with Islamic teachings.

The principles of justice and welfare are also an important focus in Islamic government. Islam emphasizes social and economic justice as the basis for ensuring the

welfare of all members of society. The government in the Islamic context is expected to implement fair and pro-people policies, as stated by El Fadl (2004b), who emphasizes that the principles of justice in Islam aim to create a prosperous and harmonious society. These principles reflect Islam's commitment to social justice and government responsibility in achieving general welfare.

3) Human Rights in Islam

Human rights in Islam include various recognized individual rights, such as the right to life, the right to freedom of religion, the right to property, and the right to justice. Although these principles are universally recognized in Islamic teachings, their implementation and interpretation may vary in different Muslim countries, depending on their respective social and cultural contexts. Apart from individual rights, Islam also emphasizes social obligations, such as the obligation of zakat to help the poor and the obligation to *amar ma'ruf nahi munkar*, namely inviting goodness and preventing evil.

In an economic context, the Islamic economic system or sharia economy is based on sharia principles which prohibit usury (interest), gharar (uncertainty), and maysir (speculation). This system encourages fair and ethical financial practices, and supports the fair distribution of wealth through mechanisms such as zakat, infaq and alms. Bielefeldt (1995) and Chapra (1992) underline that Islamic economics aims to create an ethical and just economic system.

Social interactions in Islam are also regulated by basic principles that encourage equality, teaching that all humans are equal before Allah regardless of race, skin color, or social status. This principle encourages inclusive and harmonious social interaction. Additionally, the family is considered the basic social unit in Islam, with clear roles for each member. Families are expected to educate children in Islamic values, as explained by Rahman (1984), who emphasizes the importance of family education in shaping individual character and morals in society.

4) Contemporary Practices and Realities

In contemporary practice and reality, various interpretations of Islamic teachings emerge in Muslim-majority countries, influencing how these teachings are applied in socio-political contexts. For example, Saudi Arabia strictly applies sharia law in its daily life and legal system, while Indonesia adopts a more moderate and pluralistic approach in implementing Islamic teachings. This difference reflects the diversity of views and applications of Islamic teachings in various countries.

Apart from that, various Islamic social and political movements try to fight for the implementation of Islamic values in government and society. Movements such as the Muslim Brotherhood in Egypt and the Justice and Development Party (AKP) in Turkey are clear examples of efforts to integrate Islamic principles in public policy and the political system. However, many Muslim countries face challenges in balancing modernization with the implementation of traditional Islamic values. Issues such as women's rights, religious freedom, and democracy are often points of conflict, as expressed by Hefner (2000), which shows the complexity of harmonizing Islamic traditions with the demands of the modern era.

5) International Relations and Islamic Diplomacy

In international relations and diplomacy, Islam teaches the principles of peace and cooperation as a basis for interacting with the international community. Islamic teachings encourage its followers to live side by side peacefully with other communities, upholding the values of tolerance and mutual respect in relations between nations. These principles reflect Islam's commitment to global harmony and constructive management of conflict.

Several Muslim countries implement diplomacy based on Islamic principles to build good international relations and promote mutual interests. In this context, Islamic diplomacy does not only focus on national interests, but also seeks to create cooperation that is beneficial for all parties involved. Hunter (1998) explains that diplomacy that refers to Islamic values can be an effective tool in establishing harmonious and mutually beneficial international relations, while supporting broader global goals.

6) Influence of Islam in National Law

The influence of Islam in national law varies across Muslim countries, with some countries adopting Islamic law fully or partially in their legal systems. This implementation can cover various aspects, such as family law, inheritance law, and criminal law, which are applied in accordance with sharia principles. The adoption of Islamic law reflects the integration of religious values in the legal structure and state governance.

In addition, Islamic values often influence public policy in various fields, including education, health and social welfare. Policies taken in this context usually reflect efforts to implement Islamic principles in government regulations and programs. Bowen (2003) emphasized that the influence of Islam in public policy not only functions as an ethical and moral foundation, but also as the main driver in the development and implementation of policies that support the welfare of society in accordance with Islamic values.

Overall, the meaning of Islam in a socio-political context is an understanding of how Islamic teachings and values are applied in various aspects of social life and government. It covers various dimensions, from law and politics to economics and social interactions, all of which contribute to the establishment of a just and prosperous society in accordance with Islamic principles.

1) Principles of Democracy

Democracy comes from the Greek words "demos" which means people and "kratos" which means power or government. Literally, democracy means "rule by the people." Democracy is a system of government in which supreme power is in the hands of the people, who can exercise that power directly or through representatives elected through free and fair general elections.

If you look at it, the Principles of Democracy mean that sovereignty is in the hands of the people, which means that all important decisions regarding government and law are taken based on the will of the majority of the people. The people have the right to elect their leaders and to be involved in the decision-making process through various participation mechanisms. As stated by Diamond (2015) "*Democracy is about the will of the people and their ability to influence decisions through regular, free, and fair elections.*" Based on free and fair elections, "*Free and fair elections are the cornerstone of democratic governance, ensuring that leaders are accountable to the people*" (Norris, 2018). This means that elections are the main mechanism through which the people express their will. Elections must be held periodically, free from manipulation, and every vote must be counted fairly.

Democracy guarantees human rights (HAM) for every individual. These rights include freedom of speech, freedom of assembly, freedom of the press, freedom of religion, and the right to fair legal protection. As in Mounk (2018) "*Human rights and democracy are interdependent, ensuring that all individuals can freely exercise their freedoms and participate in society*" In a democratic system, the law applies to everyone without exception. This principle ensures that no one is above the law, including government officials. An independent and transparent judicial system is an important component of the rule of law. "*The rule of law is fundamental to democracy, ensuring that laws are applied equally and fairly to all citizens*" (Levitsky, 2018).

Separation of powers prevents the abuse of power and protects democratic institutions by ensuring checks and balances (Huq, 2018). That, government power is divided into three branches: executive, legislative and judicial. This division of power aims to prevent the

concentration of power in one hand and ensure checks and balances. Democracy requires active involvement of citizens in the political process. This participation can take the form of voting, participating in public debates, or getting involved in civil society organizations. Active citizen participation is crucial for the health of democracy, fostering a sense of ownership and responsibility among the population (Fukuyama, 2014).

Democracy respects and protects diversity of opinions, beliefs and cultures. Tolerance of differences is important to ensure social cohesion and political stability. Pluralism and tolerance are essential for a vibrant democracy, allowing diverse voices to be heard and respected (Inglehart, 2018). Public officials in a democratic system must be accountable for their actions to the people. Transparency in government processes allows the people to monitor and assess government performance. As stated by Stiglitz (2015), Transparency and accountability ensure that government actions are open to scrutiny and that leaders are responsive to the people.

2) Human Rights and the History of Their Development.

Human rights (HAM) are basic rights that every individual has simply because they are human. These rights are universal, inalienable, and inherent in everyone regardless of race, gender, nationality, ethnicity, language, religion, or other status. Human rights cover various aspects of life, including civil, political, economic, social and cultural rights (What are Human Rights?, 2020).

History of the Development of Human Rights. Classical and Medieval Periods, Ideas about human rights can be traced back to ancient Greek philosophy and Roman law. For example, the concept of "*ius naturale*" (natural law) in Roman law refers to rights that are considered universal for all humans. In the Middle Ages, documents such as the Magna Carta (1215) in England began to recognize certain rights and set limits on the king's power.

Age of Enlightenment and Revolution, The 17th and 18th centuries marked an important period in the development of human rights, with the emergence of Enlightenment thought which emphasized rationality, individuality and freedom. Philosophers such as John Locke, Jean-Jacques Rousseau, and Montesquieu emphasized the importance of natural rights and the social contract. The United States Declaration of Independence (1776) and the French Declaration of the Rights of Man and of the Citizen (1789) were important milestones that articulated modern human rights principles.

Developments in the 19th and 20th centuries, the abolition of slavery, the women's suffrage movement, and other social reforms marked progress in the recognition and

protection of human rights. After the horrors of World War II, the international community recognized the need for global standards to protect human rights. This culminated in the formation of the United Nations (UN) and the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.

Post World War II Developments, After the UDHR, various international and regional agreements strengthened and developed human rights standards, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in in 1966. The European Court of Human Rights and other regional systems, such as the American Convention on Human Rights, play an important role in upholding human rights.

In the Contemporary Era, human rights continue to develop along with social and political changes. Issues such as LGBT rights, digital rights and climate change add new dimensions to the human rights debate. Global challenges such as terrorism, migration and economic inequality also influence how human rights are implemented and protected. "*The protection and promotion of human rights is a constant and evolving challenge that requires vigilance and adaptation to new circumstances*" (Sikkink, 2017).

DISCUSSIONS

Interaction of Islam, Democracy, and Human Rights

a. The Relationship between Religion and the State

The relationship between religion and state is a complex topic and varies depending on the historical, cultural, and political context of each country. In general, these relationships can be categorized into several main models:

First, a secular state. In this model, state and religion are strictly separated. The government does not adopt or support any particular religion and public policies are made without considering religious doctrine. "*In a secular state, the government is neutral in matters of religion and does not endorse or support any particular religion*" (Bowen, 2007). Examples of secular countries are France and the United States. Second, the Theocratic State. In this model, religion has a dominant influence in government. Laws and public policies are based on religious doctrine and religious leaders often wield significant political power. "*In a theocratic state, religious leaders often hold political power, and religious law is the basis of the legal system*" (Ruthven, 2012). Examples of theocratic countries are Iran and the Vatican.

Second, a country with an official religion. The state in this model recognizes certain religions as official religions and provides special support for them, although there may still be religious freedom for other religions. "*Countries with an official state religion often provide certain privileges and financial support to that religion*" (Fox, 2008). Examples of countries with official religions are England (Anglicanism) and Indonesia (Islam). Fourth, a country with religious pluralism. The state in this model recognizes the existence of various religions and tries to provide equal treatment to all religions. Public policies are often designed to promote interfaith harmony. "*A state that practices religious pluralism recognizes multiple religions and strives to treat them equally*" (Bielefeldt, 2013). Examples of countries with religious pluralism are India and Canada. In line with the reasons stated above, it can be concluded that the historical and political context of a country significantly shapes the relationship between religion and the state. As Casanova (1994) said, "*The historical and political context of a country significantly shapes the relationship between religion and state*".

In the relationship dimension, there are several factors that influence the relationship between religion and the state. Like, *First*, History. The history of colonialism, religious wars, and peace treaties often shapes the relationship between religion and the state. For example, secularism in France is largely influenced by the history of the French Revolution and the separation of church and state in the early 20th century. *Second*, Culture. Local cultural values and traditions influence how religion and the state interact. In many Asian countries, local religion and culture are often closely integrated and influence state policy.

Third, Politics. Political dynamics, including the power of religious-based political parties and alliances between religious groups, can influence state policy towards religion. For example, the policy of religious pluralism in India is influenced by political parties such as the Bharatiya Janata Party (BJP) which has a strong Hindu support base. *Fourth*, Law and Constitution. Constitutions and state laws also play a key role in determining the relationship between religion and the state. Many countries have specific laws governing religious freedom and the relationship between religion and the state.

However, this relationship has several impacts on the relationship between religion and the state. *First*, Religious Freedom. The degree of religious freedom can vary greatly depending on the model of relations between religion and the state. Secular states tend to provide greater religious freedom compared to theocratic states. *Second*, Interfaith Harmony. Harmonious relations or conflict between religions are often influenced by state policies towards religion. Countries with religious pluralism tend to be more successful in promoting interfaith harmony.

Lastly, Social and Economic Development. Religious policies can influence various aspects of social and economic life, including education, health and social welfare. For example, countries that support religious education may have different educational systems compared to secular countries.

Seeing all this, by understanding the reality of the various models and factors that influence the relationship between religion and the state, we can better understand the dynamics that occur in various parts of the world and how the new reality of this relationship should influence our daily lives in society.

b. Interdisciplinary Approach: Theology, Law, and Politics

An interdisciplinary approach is a method that combines perspectives and methods from various scientific disciplines to understand and solve complex problems. In the context of theology, law and politics, we will explain several layers of relationships and various approaches, so as to provide deeper and more comprehensive insight.

1) Theology and Law.

First, ethics and morality. Theology often discusses issues of ethics and morality which are also the basis for the formation of law. Many legal systems in the world are rooted in religious principles. *Second*, sharia law. In the Islamic context, sharia law is a clear example where theology and law are closely related. Sharia law is based on the Koran and Hadith, as well as the interpretations of scholars. Third, human rights. Theology can contribute to debates about human rights, for example by providing a perspective on human dignity that derives from religious belief.

2) Theology and Politics

First, legitimacy of power. Many political systems base the legitimacy of their power on theological doctrine, such as kingdoms that claim divine power. *Second*, Social Movements. Social and political movements are often influenced by theological values, such as the civil rights movement in the United States which was heavily influenced by Christian churches. *Third*, Public Policy. Theology can influence public policy, for example on issues such as abortion, same-sex marriage, and education.

3) Law and Politics

First, making laws. The legislative process is an area where law and politics meet. The formation of laws often involves intense political debate. *Second*, constitutional law. A country's constitution is often the product of political compromise and has far-reaching legal

implications. *Third*, justice. The justice system is also influenced by politics, for example in the appointment of Supreme Court justices which is often political.

From the description above, let's look at concrete examples together. For example, first, the Israeli-Palestinian conflict. In this case, where theology, international law and politics play a big role. Theological aspects relate to religious claims to land, international law relates to human rights and the laws of war, while politics involves negotiations and diplomacy. Second, the debate about abortion. On this issue, theological views on life, laws regarding reproductive rights, and the politics of health policy all interact.

Criticism and Challenges of the Integration of Islam, Democracy, and Human Rights

The integration between Islam, democracy and human rights (HAM) can be seen from a number of different cultural, political and historical contexts. But there are various criticisms and challenges to this relationship. For example, criticism of Democracy and Islam. Some criticism of the integration of Islam and democracy is rooted in the conflict between liberal democratic principles and traditional Islamic values. Some arguments suggest that Islam, as a religion that has its own unique legal system and values, is difficult to fully integrate into a democratic framework that may conflict with certain Islamic principles. For example, the principles of gender equality in liberal democracies often conflict with Islam's more conservative interpretations of gender roles.

Apart from that, there is also criticism of the Interpretation of Religion. That, one of the main criticisms of the integration of Islam, democracy and human rights is the challenge in interpreting Islamic teachings contextually and flexibly. Some strict and literal interpretations of religious texts can conflict with the principles of democracy and human rights. Therefore, this challenge underscores the need for a more dynamic and inclusive hermeneutic approach in understanding and applying Islamic teachings in a modern context.

The various criticisms above are actually challenges that should be faced together. For example, *first*, the challenges regarding Human Rights in the Islamic Context. Although there are cognate values between Islam and human rights, such as the right to life, freedom of religion, and fair treatment before the law, there are also tensions between certain interpretations of Islam and universal human rights standards. For example, Islamic concepts of punishment such as flogging or the death penalty for some crimes may conflict with international human rights standards which prohibit the use of cruel, inhuman or degrading punishment.

Second, Cultural and Political challenges. The integration of Islam, democracy and human rights also faces cultural and political challenges. In some Muslim-majority countries, democracy

has been considered a "Western concept" that is incompatible with Islamic values or local traditions. This is often a reason for authoritarian governments to reject or limit democratic reforms. Additionally, in some contexts, strong political Islamists tend to oppose liberal democratic ideas and see them as a threat to Islamic values and identity.

Third, implementation challenges. Regardless of theory or principle, implementing the integration of Islam, democracy and human rights is often complicated and requires political support, strong institutions and broad community participation. Economic, social and security challenges can also hamper efforts to realize this integration effectively.

Therefore, considering the above realities, overcoming these criticisms and challenges requires a holistic and sustainable approach, involving intercultural dialogue, inclusive institutional development, education that encourages a better understanding of universal values, and cooperation between government, civil society, and religious actors. Because, however, integration between Islam, democracy and human rights is not easy, but when it can be integrated well, it becomes a strategic and very important step in building a society that is fair, inclusive and just for all citizens.

Critical Approaches and Integration Solutions

In the integration of Islam, democracy and human rights (HAM), we think we need various critical approaches that take into account the historical, cultural and political context of each. So understanding that the political, cultural and social contexts differ in each Muslim country is very important in developing relevant approaches. This requires contextual analysis and careful assessment of local political history and social developments.

The integration of Islam, democracy and human rights also requires the involvement of various scientific disciplines, including religious studies, politics, law and sociology. A multidisciplinary approach is very necessary, so as to enable a more comprehensive understanding of the challenges and solutions faced. Apart from that, we think we must also carefully listen to the voices of society, including minority groups and human rights activists. Various dialogues and involvement in and by society are very important in developing inclusive and sustainable solutions. Intercultural and intergroup dialogue should also be emphasized to achieve better understanding. Including, we think that a critical approach must also reflect criticism of existing power structures, including authoritarianism, corruption and inequality. This requires an honest understanding of how power is maintained and used in society.

Looking at the various critical approaches above, the integration solution, for example, is to encourage the formation of strong and inclusive democratic institutions, including institutions that

represent the interests of all groups in society, such as parliament, political parties and independent media. Increase public education and awareness about democratic values, human rights, and Islamic principles that are in line with peace, justice, and equality. Push for reform of the law and justice system to ensure the protection of human rights for all individuals, regardless of religion or social status. Encourage the development of quality and responsible leaders who are able to fight for the interests of society fairly and based on the principles of democracy and human rights.

Apart from that, it is no less important to encourage the promotion of tolerance, dialogue and respect for plurality of religions and beliefs, thereby strengthening inter-religious cooperation and preventing conflict. Encourage international cooperation in promoting democracy, human rights and peace, taking into account local context and cultural sensitivity. This critical approach and integrated solutions all emphasize the importance of a holistic, inclusive and sustainable approach in achieving common goals, the aim of which is none other than the realization of a society that is just, democratic and respects human rights. Because, after all, Integrating Islamic principles with democracy and human rights (HAM) within a public policy framework requires a careful and comprehensive approach.

Policy Recommendations for Strengthening Democracy and Human Rights within an Islamic Framework

The integration of Islamic values, democratic principles, and human rights standards requires a deep understanding of the philosophical differences behind these concepts. John L. Esposito emphasized that the challenge of integrating Islam and democracy lies in reconciling the principles of Islamic governance with the ideals of democracy, he said, *The challenge of integrating Islam and democracy lies in the reconciliation of Islamic principles of governance with the democratic ideals of sovereignty of the people and protection of individual rights*“ (Esposito, 2002).

That is why Muslim thinkers must also strive to show how Islamic teachings are not only compatible, but must also support universal values of human rights and democracy. As expressed by Sachedina (2009). in Islam and the Challenge of Human Rights, *Muslim thinkers must strive to demonstrate how Islamic teachings are not only compatible with but also support the universal values of human rights and democracy.* In line with that, Abou El Fadl (2001) said, *A genuine Islamic democracy must be rooted in the principle of shura (consultation) and the moral values of justice, equality, and respect for human dignity.* For him, true Islamic democracy has the principle of deliberation so that it can give birth to moral values of justice, equality and respect for human dignity.

In addition, complex interactions between historical, cultural and political factors unique to each Muslim society are indispensable. This is confirmed by Lapidus (2002) who said, *The integration of Islamic principles with democratic governance involves a complex interaction of historical, cultural, and political factors unique to each Muslim society.* Moreover, an Islamic government must emphasize how important it is to create justice, consultation and social welfare, for the sake of upholding democratic principles. As Khan (1989) said, *Islamic governance should emphasize justice, consultation, and the well-being of the community, which aligns with many democratic principles.*

Furthermore, we think that another effort is to develop a human rights declaration that is based on Islamic principles and in line with international standards, such as the Cairo Declaration on Human Rights in Islam. Adopt and enforce anti-discrimination laws that protect all citizens from discrimination based on religion, ethnicity, gender, or other background. Including Integrating human rights education in all levels of education and professional training programs to increase awareness and respect for human rights. So, if these various policies are implemented correctly, they can help create an environment where the principles of Islam, democracy and human rights can develop harmoniously.

5. CONCLUSIONS

In this research, the relationship between Islam, democracy and human rights is a complex topic that often gives rise to debate. Through a critical approach, it can be concluded that although there are differences in views between Islamic principles and the concepts of democracy and human rights as understood in the Western context, there is actually significant harmonization potential. Islam has principles of justice, equality and prosperity which, if interpreted progressively, are in line with democratic values and human rights. However, conservative or literal implementation and interpretation of Islamic texts often becomes an obstacle to achieving this synergy. To reach a constructive meeting point, honest and open dialogue is needed between various stakeholders, including ulama, intellectuals and human rights activists. A contextual and reformist approach to Islamic teachings can be a middle way that allows the application of democratic principles and respect for human rights without sacrificing Islamic identity and basic values. Thus, the main challenge lies in how Islamic society and the global community are able to facilitate this process of dialogue and reinterpretation to achieve a shared understanding that is more inclusive and respectful of diversity.

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A Sociological Analysis of Stunting's Impact on Family Resilience: A Case Study in Karangmojo, Gunungkidul, Yogyakarta

Krismono[1], Nadhira Ayu Kholida[2]
Universitas Islam Indonesia[12]
Email: krismono@uii.ac.id[1], 20421004@uii.ac.id[2]

Abstract

This study examines the consequences of stunting on family resilience in the Karangmojo sub-district of Gunungkidul, where high stunting rates are connected to economic hardships that contribute to divorce. This study addresses a gap in the literature by employing a qualitative methodology guided by structural-functional theory, conflict theory, and symbolic interactionism to analyze the effects of stunting on family dynamics and resilience. Data were collected through interviews with the families and key stakeholders. The results of this investigation indicate significant changes in parenting practices, increased economic burden, and alterations in family dynamics. Despite these challenges, families exhibit resilience through adaptive strategies such as the implementation of improved nutritional practices and reliance on community support networks. This study emphasizes the urgent need for comprehensive policy interventions that address both immediate nutritional needs and broader socioeconomic factors that contribute to stunting and family stability.

Keywords: Family resilience, impact of stunting, socioeconomic factors, nutritional practices, divorce.

1. INTRODUCTION

Stunted growth is characterized by the hindrance of a child's physical and cognitive development owing to chronic malnutrition (Atamou et al., 2023; Gharpure et al., 2021; Mulyaningsih et al., 2021; Roediger et al., 2020). In Indonesia, stunting has become a primary public health concern because of its significant impact on both individuals and society as a whole (Cameron et al., 2021; Mulyaningsih et al., 2021; Wicaksono & Harsanti, 2020). This study specifically examined the impact of stunting on family resilience in the Karangmojo subdistrict, Gunungkidul, an area that is well known for its high prevalence of stunting due to economic difficulties that have plagued the region (Dinkes, 2023; Raharja et al., 2019).

According to data from the World Health Organization (WHO) in 2020, Indonesia had the second highest prevalence of stunting in Southeast Asia, with a rate of 31.8% (Dhar, 2021; Hatijar, 2023). Although there was a reduction, the prevalence of stunting in Indonesia was still 21.6% in 2022 (Gita et al., 2023), with some regions such as Gunungkidul showing higher rates than the national average (Puspita, 2023). Meanwhile, based on data from the Wonosari Religious Court (Pengadilan Agama), economic difficulties were one of the main causes of divorce in Gunungkidul (Harsoyo & Darmawan, 2023; RMA, 2023). Economic hardship generally leads to inadequate nutrient intake, contributing to stunting and exacerbating family resilience (Rahmadiyah et al.

2024). The close relationship among child health, economic conditions, and family stability is a critical issue in social development and health (Bradley & Corwyn, 2002; Hosokawa & Katsura, 2017).

Difficult economic conditions not only impact the financial well-being of families, but also affect access to adequate nutrition and healthcare services for children (Bell et al., 2021). Instability within the family due to divorce exacerbates the psychological and physical condition of children (Apata et al., 2023; Nunes-Costa et al., 2009), thereby increasing the risk of stunting and other developmental issues. Consequently, the purpose of this study was to explore how stunting affects family resilience and the strategies used by families to address this challenge. The study begins with the assumption that stunting not only impacts the physical health of children but also influences family dynamics and economic stability, which in turn can adversely affect family resilience.

This study provides a deeper understanding of the solutions required to comprehensively address the problem of stunting. Additionally, it aims to identify adaptive strategies used by families to strengthen their resilience when facing this challenge. This study is supported by a strong theoretical background, which includes three sociological theories: structural functional theory, conflict theory, and symbolic interactionism. Structural functional theory helps explain how stunting can disrupt normal family and societal functions. Conflict theory highlights how economic inequality contributes to the prevalence of stunting, while symbolic interactionism provides insights into how families cope with and respond to this challenge individually. This approach allows this study to capture the complexity of an issue.

Stunting is a widely studied health issue, particularly in terms of its impact on children's physical and cognitive development (Cameron et al., 2021; Handryastuti et al., 2022). Socioeconomic factors, particularly family income, are the most important factors influencing the occurrence of stunting (Asuman et al., 2020; Bradley & Corwyn, 2002; Pitoyo et al., 2022; Rizal & Van Doorslaer, 2019; Utami et al., 2019). Other studies emphasize the importance of family involvement and the environment in reducing the prevalence of stunting among children (Wicaksono & Harsanti, 2020; Yani et al., 2023). Interventions aimed at improving family resilience in children under five years of age also play a significant role in preventing and managing stunting (Rahmadiyah et al., 2024). However, existing studies still have limitations in that they comprehensively integrate economic, health, and family stability aspects. This study aims to fill this gap by examining the impact of stunting from a more holistic perspective and integrating economic,

health, and family dynamics with a sociological approach to provide a more comprehensive understanding of the prevention and management of stunting in children.

The significance of this study lies in its attempt to broaden the understanding of stunting beyond its immediate health effects by highlighting how economic conditions and family stability interact and influence each other. By understanding this dynamic, it is hoped that this research will make a significant contribution to the existing literature and provide new insights for policymakers to formulate more effective interventions. An integrated and holistic approach is expected to help address the problem of stunting comprehensively, improve family resilience, and support sustainable socioeconomic development in economically vulnerable areas, such as Gunungkidul.

2. METHODS

The Research Design

This study utilized a qualitative research design with a descriptive approach, aiming to comprehensively describe the phenomenon being investigated without attempting to explain cause-and-effect relationships or test hypotheses (Colorafi & Evans, 2016; Hall & Liebenberg, 2024). Descriptive research focuses on "what" occurs, "who" is involved, "where" it occurs, and "how" the process or phenomenon unfolds (Ayton, 2024; Bradshaw et al., 2017). Therefore, this study aims to delve into the impact of stunting on family resilience in Karangmojo District, Gunungkidul, to gain a comprehensive understanding through field data collection. By exploring the experiences and perspectives of the participants, it is hoped that this study will provide rich insights and contribute to effective strategies for addressing stunting.

The Research Informants

The informants in this study comprise the Karangmojo Community Health Center, Karangmojo Sub-district Office, and Karangmojo community members who have infants with a history of stunting. The informants were selected using the purposive sampling technique. This technique allows researchers to choose informants with specific characteristics relevant to the purpose of the study (Denieffe, 2020; Hassan, 2024). The selection criteria included families with infants with a history of stunting, health workers who handled stunting cases, and government officials responsible for public health programs. Five families were interviewed to provide in-depth

information about their experiences and views on stunting and family resilience. To maintain confidentiality, these families were identified with code names such as A, B, C, D, and E.

Methods and Tools for Data Collection

This study utilized various tools and methods for data collection to obtain comprehensive information about the impact of stunting on family resilience in Karangmojo District, Gunungkidul. First, in-depth interviews were conducted using a semi-structured interview guide (Mannan, 2020; Priyadarshini, 2020; Striepe, 2021). The purpose of this method is to explore in-depth information about families' experiences and views related to stunting and family resilience. The interviews enabled the researcher to gain rich and detailed insights directly from informants. Second, participant observation was conducted by the researcher at the study location. The purpose of this observation method was to observe stunting directly and to understand family interactions while maintaining resilience. Observations were conducted transparently and tailored to the data that needs to be obtained, providing an accurate picture of the situation faced by families. Third, the documentary method was used to collect important documentation, health reports, and related documents from Puskesmas and sub-district offices. The use of these documents is crucial for supplementing data obtained from interviews and observations and for providing an additional context that supports the findings of the study. By combining these three methods, this study provided a comprehensive and in-depth picture of the impact of stunting on family resilience.

The Validity and Reliability of Data

The validity of the data in this research was ensured through the application of various triangulation methods, which guaranteed the accuracy and consistency of the information obtained. First, triangulation of sources was used by collecting data from various sources, such as interviews with family members, health officers, and local government officials. This method ensures that the information obtained is accurate and consistent from different perspectives. Second, triangulation techniques were applied using various data collection techniques, including in-depth interviews, participant observations, and documentation. The use of these techniques allows the verification of findings from different perspectives, thereby enhancing the reliability of the data. Third, triangulation of time is achieved by collecting data on two different dates: March 13 and April 27, 2024. The collection of data on two different dates ensured that the findings of the research were consistent over time, thereby reducing the likelihood of temporal bias. Additionally, the reliability

of the data was obtained through continuous observation and discussion with competent parties in the research topic. Through this triangulation approach, the research ensured that the data obtained were valid and reliable, providing a strong foundation for the analysis and conclusions that were drawn.

Data Processing Stage

Data obtained from the interviews were recorded and transcribed verbatim for further analysis. A thematic analysis was employed to identify the main themes related to the impact of stunting on family resilience. Thematic analysis involved several steps. Initially, interview transcripts were transcribed verbatim to ensure accurate and comprehensive information. Second, the transcripts were thoroughly read and relevant sections of the text were marked during the initial coding phase. Third, the coded segments were grouped into main themes that mirrored the patterns and meanings of the data. Fourth, the identified themes were reviewed at the theme review stage to ensure their appropriateness with the available data. This review process is crucial for ensuring that the generated themes accurately reflect the information contained in the data, thereby providing a strong foundation for the analysis and conclusions drawn. By undertaking these systematic steps, this study aimed to uncover the profound impact of stunting on family resilience in the Karangmojo Subdistrict.

3. RESULTS

The study involved five families with infant children who had a history of stunting in the Karangmojo Subdistrict, Gunungkidul. The demographic information of these families is presented in Table 1.

Table 1. Demographic Information for Families

Informant	Number of family members	Child's age	Child's gender	Child's last education level	Average monthly income (million rupiah)
Family A	4	12 y, 2 y	female	SMK	2,5
Family B	4	14 y, 4 y	male, female	SMA	2
Family C	4	12 y, 2 y	male, female	SMP	2
Family D	5	6 y, 2 y, 2 y	male, female	SD	3

Family E	4	6 y, 2 y	male, female	SMK	4

Table 1 displays the number of family members, age of the child, gender of the child, highest education level of the family, and average monthly income for each family participating in the study. These data provided a basic demographic profile of the families participating in the study.

Table 2 presents information about the health and nutrition of the children from the families involved in this study.

Table 2. Health and Nutrition

Informant	Height & weight of the 1st child (cm, kg)	Height and weight of the 2nd child	Frequency of illness in the last 6 months	Daily food types	Distance to health facility
Family A	130, 26	76, 9.4	rare	vagetables, fruit, rice	3 km
Family B	140, 35	92, 11	Rare, only fever	vagetables and fruits, seldom	2.5 km
Family C	130, 26	76, 9	rare (2 x)	vagetables, fruits, rice	4 km
Family D	140, 35	78, 9.3	quite often (cough and cold)	vagetables, Protein, Tempeh	3 km
Family E	140, 35	80, 11	Rare (2 x fever)	vagetables and sufficient nutrition	4 km

Table 2 presents data on the height and weight of children from each family, the frequency of illnesses experienced by children in the past six months, the types of daily food consumed, and the distance of the family's residence from the nearest health facility. This information provides an overview of the health and nutritional conditions of children in families, which are the focus of this study.

Information regarding family strategies for ensuring children's nutrition and the assistance received from the government or organizations is presented in Table 3.

Table 3. Strategies and Assistance for Nutrition

Informant	Strategies to Ensure Nutrition	Assistance from Government or Organizations
Family A	Providing fruits and vegetables daily	Provision of eggs
Family B	Providing adequate meals and maintaining cleanliness	Provision of eggs
Family C	No specific strategy, child's nutrition is fulfilled	Provision of eggs and food
Family D	Providing adequate and balanced meals	Provision of eggs and food
Family E	Providing adequate and balanced meals	Food assistance every 3 months

Table 3 displays the various strategies employed by families to ensure that their children receive adequate nutrition. Family A ensured their children's nutrition by providing them with fruits and vegetables every day, while Family B ensured cleanliness and sufficiency of food. Family C does not have a special strategy, but considers that their children's nutrition needs to be met. Families D and E implemented balanced and sufficient food provision. Additionally, the table indicates that all families received aid in the form of egg and food donations from the government or organizations, with Family E receiving periodic food assistance every three months.

The following information presents data on family knowledge of stunting and access to stunting prevention programs, as displayed in Table 4.

Table 4. Knowledge and Access to Stunting Prevention Programs

Informant	Knowledge about stunting	Access to Stunting Prevention Programs
Family A	Adequate, affects child development	Yes, provision of sufficient nutrition
Family B	Already aware, can prevent	Yes, only knowledge
Family C	Adequate, regular guidance	no
Family D	Somewhat aware, like height and malnutrition	Yes, assistance from health center (for 3 months)
Family E	Just somewhat aware	Yes, assistance from health center

Table 4 presents the data regarding the level of knowledge among families about stunting and their access to stunting prevention programs. Family A had sufficient knowledge about stunting and understood that it affected children's development. They also had access to stunting prevention programs with adequate nutritional supplementation. Family B had knowledge about stunting and

prevention measures, but only had access to information and knowledge. Family C also had sufficient knowledge and received regular guidance, but did not have access to stunting prevention programs. Family D only had basic knowledge about stunting, such as height and low weight, but they received assistance from health centers for three months. Family E only had basic knowledge about stunting and received assistance from health centers.

Information regarding changes in child-rearing practices and dietary habits, as well as family attitudes towards the sustainability of preventive stunting intervention programs, is presented in Table 5.

Table 5. Changes in Parenting and Views on the Program

Informant	Changes in Parenting and Eating Patterns	Continuity of Intervention
Family A	Improved parenting and nutrition, regulated eating patterns	Need for evaluation with existing programs
Family B	Ensuring adequate meal portions and not skipping meals, providing sufficient nutrition	Adding PMT (additional food provision) programs
Family C	Improved and more varied eating patterns and nutrition for children	Quite good, regularly implemented
Family D	Paying more attention to eating patterns and nutrition, hindered by the child's picky eating	Need to increase PMT programs
Family E	Paying more attention to eating patterns and nutrition, hindered by parents who are active smokers	The program runs smoothly, need to enhance socialization efforts

Table 5 demonstrates the alterations that took place in the domains of childcare and feeding practices as well as the households' stance on the sustainability of preventative measures for stunting. Household A documented an uptick in childcare and nutritional management but believed that evaluations were necessary for existing programs. Household B ensured that children received appropriate portions, refrained from wasting any meal time, and supplied sufficient nutrition, suggesting the implementation of supplementary food programs (PMT). Household C expanded the variety of meals and nutritional content for their children and deemed the existing programs satisfactory and regularly conducted. Household D paid more attention to meal patterns and nutrition despite facing challenges in getting children to eat, and believed that additional PMT programs were required. Household E also paid more attention to meal patterns and nutrition, despite the constraints imposed by active smoking parents, and they felt that the programs were running smoothly but that socialization needed to be enhanced.

Information regarding family resilience in stunting faces is shown in Table 6.

Table 6. Family Reselience

Theme	Family A	Family B	Family C	Family D	Family E
Experience Facing Stunting	Sad, worried, health check-up	Shocked, child difficult to feed	Shocked, child difficult to feed	Shocked, child difficult to feed	Shocked, child difficult to feed
Impact on Family	Changes in eating patterns and activities	No impact on activities, mutual support	No impact on activities, mutual support	No impact on activities, mutual support	No impact on activities, mutual support
Adaptation Strategy	Balanced nutrition, taking vitamins	Providing food and milk	Providing food and milk	Providing food and milk	Paying attention to child's eating patterns and nutrition
Supports and Barriers	Health and food resources, economic barriers	Health and nutrition resources, economic barriers	Health and nutrition resources, economic barriers	Health and nutrition resources, child's difficulty in eating	Health and nutrition resources, parents are active smokers
Focus Group Discussion	Consultation and sharing experiences, very useful	Strengthening and sharing experiences, very useful	Strengthening and sharing experiences, very useful	Sharing information and strengthening, very useful	Sharing information and strengthening, very useful
Role of Tradition and Culture	Cleanliness, breakfast, positive changes	Utilizing local ingredients, paying attention to nutrition	Utilizing local ingredients, paying attention to nutrition	Cultural practices do not affect, focus on eating patterns and nutrition	Culture influences, need better action

Table 6 depicts various aspects of family resilience in confronting stunting, including experiences, impact on the family, adaptive strategies, support and barriers, focus group discussions, and the roles of tradition and culture. Family A feels sad and worried and conducts regular health checkups. They experience changes in eating and activity patterns due to stunting and employ adaptive strategies, such as balanced nutrition and vitamins. Economic barriers are their main challenge, but focus group discussions help them with consultation and sharing experiences. Traditions such as maintaining hygiene and morning breakfast show positive changes in this family.

Families B to E reported surprise upon learning that their children had difficulty eating and showed minimal impact on daily activities with mutual support. Common adaptive strategies include providing food and milk, except for Family E, which focuses on children's eating and nutritional patterns. The barriers faced include limited health and economic resources, with

additional challenges for children who have difficulty eating or smoking. Focus group discussions were evaluated as very useful by all families to share information and strengthen each other. The influence of tradition and culture varies, from utilizing local resources to the need for better actions to address negative cultural influences.

The results of the interviews with community health workers regarding their perceptions of stunting, intervention evaluation, and needs and expectations are presented in Table 7.

Table 7. Interview Results with Health Center Staff

Theme	Statements from Health Center Staff
Perception of stunting	Impacted by economic factors and lack of parental knowledge, stunting is considered a significant challenge that can hinder the potential of human resources.
Intervention evaluation	The implementation of the program PMT and home visits for newborns has been deemed effective. A reduction in cases of stunting has been observed as compared to the previous year.
Needs and Expectations	It is essential to provide guidance to parents of infants regarding appropriate and adequate nutrition. The PMT program should be supplemented with items like formula.

Table 7 displays the results of interviews with health officers regarding the key themes. Regarding the perception of stunting, the community health officer stated that stunting is influenced by economic factors and parents' lack of knowledge and is viewed as a significant challenge that can hinder human resource potential. Evaluation of interventions shows that the PMT (Supplementary Food Grant) program and visits to newborns are considered effective, with a decrease in stunting cases compared to the previous year. For the needs and expectations, the community health officer stated the need for guidance for parents of infants on good and sufficient nutrition and added that the PMT program should be supplemented with materials such as milk.

The results of the interviews with the head of the health office regarding policies and programs, community participation, and vision for the future are presented in Table 8.

Table 8. Interview Results with the Subdistrict Head (Camat)

Theme	Statement from the Subdistrict Head
Policies and Programs	Through the Village Budget (APBDes), funds

	are allocated for stunting reduction activities
Community Participation	Stakeholders are involved in reducing stunting education. Health cadres and community leaders play a crucial role in educating about stunting and sanitation.
Vision for the Future	The health examination and counseling of prospective spouses for the generation of stunting-free individuals. Counseling adolescent girls on nutrition. Priority steps: giving greater attention to infants experiencing stunting through health cadres.

Table 8 presents the results of the interviews with the village head regarding various main themes. Regarding policies and programs, the village head stated that special funds were allocated for stunting reduction activities through the Village Budget and Expenditure (APBDes). Community involvement involves engaging the public in education on reducing stunting, with a key role played by health cadres and community leaders in providing education on stunting and sanitation. The vision for the future includes health screenings and counseling for prospective brides to create a generation free of stunting, counseling adolescent girls about the importance of nutrition, and prioritizing attention to stunted infants through the active role of health cadres.

DISCUSSIONS

1. Based on Functional Structure Theory

The functional structure theory emphasizes the importance of various structures in society to maintain stability and social order (Britanica, 2024; Durkheim, 1964; Greve, 2022; Nickerson, 2024; Ormerod, 2020). In the family context, this theory highlights that the family functions as a supportive unit for the development of individuals, particularly children (Darling-Hammond et al. 2020). Functionalism views the family as a social institution with a crucial role in socialization, fulfilling basic needs, and shaping individuals' identities and behaviors (Allen & Henderson, 2022; Zeybek & Kasap, 2020). However, when serious health issues, such as stunting, arise, the family's ability to perform its functions optimally can be impaired (Ekholuenetale et al., 2020; McGovern et al., 2017; Precious et al., 2023). Stunting, caused by chronic malnutrition, can lead to growth and cognitive developmental problems in children, hindering their ability to develop properly (Ekholuenetale et al., 2020; Mustakim et al., 2022; Taslim et al., 2023).

In this study, families reported significant changes in their daily eating patterns and activities in response to stunting. For example, Family A experienced changes in daily eating patterns and activities to ensure that their children received adequate nutrition, reflecting adaptations made by families to maintain stability and social functioning. They explained, "We now cook more vegetables and ensure the children eat three times a day." When children experience health issues, their families must adapt and change their routines to meet their unique needs. Additionally, Family A reported that they had to change their family's eating patterns to ensure that their children received adequate nutrition. They also had to make more frequent visits to health facilities, which affected their families' time and resources. This reflects how stunting can disrupt a family's ability to provide basic needs for children and affect the family's overall well-being.

In addition, the family's role in fulfilling needs is evident from the changes in child-rearing and nutritional patterns after stunting. For example, Family C demonstrated the significant role of the family in supporting children's development by paying more attention to their nutritional intake after learning about their stunted growth. This is consistent with Kong and Yasmin's (2022) findings, which emphasize the important role of the family in meeting children's basic needs including nutrition and health. Family C stated, "We now pay more attention to children's nutritional intake after learning that they experienced stunting."

Thus, this study shows that disorders such as stunting not only affect children, but also have an impact on family structure and dynamics. Within the framework of the functional structural theory, this disorder impairs the family's ability to perform its functions efficiently and effectively. Rahmadiyah et al. (2024) in their study emphasized the importance of interventions that not only focus on children affected by the impact but also provide support for families to overcome these challenges.

2. Analysis Based on Conflict Theory

Conflict theory emphasizes that tension and conflict arise when resources, status, and power are not equally distributed in society (Crossman 2019; Prayogi 2023). Inequality in society affects access to important resources such as nutrition and health services (Ramadan et al., 2021). This inequality can create significant differences in the health and nutritional status of children, especially in families in the lower economic strata (Hosokawa & Katsura, 2017).

This study demonstrates that families A and B face significant economic barriers and an inability to obtain adequate access to healthcare resources, exacerbating stunting conditions in their children. For example, Family A, with a monthly income of 2.5 million rupiah, has better access than Family B, which has a lower income. Variability in income and education reflects the inequality that influences children's ability to meet their nutritional needs. Raharja et al. (2019) also showed that parents' economic status and family food resilience were risk factors for stunting in toddlers. Family B reported, "Our income is not enough to buy nutritious food every day."

Previous studies conducted by Bozkurt et al. (2023) and Karmali et al. (2020), Straughan and Chengwei Xu (2023), and Swindle et al.(2014) support the argument that access to information and social support play a crucial role in influencing childcare and nutrition. Families with better access to information and social support are more likely to make significant changes in their childcare and nutritional practices, supporting the notion that disparities in access reflect differences in the ability to implement nutritional interventions.

Inequity in the reception of government or organizational aid also reflects structural conflicts in resource distribution. Interviews with health center staff and village heads further strengthened the view that economic disparities and lack of parental knowledge are the main causes of stunting. This analysis showed that disparities in access to critical resources, such as nutrition and healthcare, are the primary factors influencing stunting in children. The social and structural conflicts generated by these disparities exacerbate children's health conditions and hinder families' ability to provide adequate nutrition. Therefore, greater efforts are needed to ensure more equitable resource distribution and increase access to information and prevention programs for stunting.

In this case, families A and B receive aid from the government or other organizations, but the disparity demonstrates structural conflicts in resource distribution. Denieffe (2020) emphasized that economic disparities are the primary factors influencing the health of children in many communities. Family A states, "We receive egg help every week, but our neighbors only get it once a month."

Analysis Based on Symbolic Interactionism Theory

Symbolic interactionism theory, introduced by George Herbert Mead and Herbert Blumer, emphasizes the importance of social interaction in shaping individual meaning and reality (Blumer, 1994; Meltzer et al., 2020). This theory is relevant to this study because it focuses on how families respond and adapt to stunting issues through social interactions, both within the family and within

the wider social environment. In the context of stunting, symbolic interactionism helps explain how families construct their understanding of and actions toward childhood nutrition issues through daily interactions with family members, health workers, and the community.

For instance, the family reported that interactions with health workers impacted their understanding of and actions related to child nutrition and health. Social interactions within the family and community help shape the knowledge, attitudes, and practices regarding stunting. This aligns with research conducted by Handberg et al. (2015) and Chen et al. (2020), who demonstrated that social meaning is created and transformed through daily social interactions. Family A stated, "The health workers at the community health center greatly helped us understand the importance of balanced nutrition."

In addition, the head of the household's highest level of education and access to information also influence social interactions related to nutrition knowledge and practices. Family C, who has a higher level of education, more easily understands the nutritional information provided, reflecting how education and access to information affect social interactions and nutritional practices within the family. Gunes (2015), Husnaniyah et al. (2020), and Yani et al. (2023) also showed that mothers' education plays a crucial role in determining children's health outcomes. Family C stated, "With higher education, we are more easily able to understand the nutritional information provided."

The analysis indicates that stunting not only affects children but also impacts the structure, dynamics, and social interactions within families. This hinders the family's ability to perform functions efficiently and effectively. For example, Ekholuenetale et al. (2020), McGovern et al. (2017), and Precious et al. (2023) create tensions and conflicts owing to unequal access to resources. In addition, stunting affects how families build their understanding and practice through daily social interactions. Therefore, effective interventions are required to help families overcome this challenge. These interventions should ensure a more equitable resource distribution and increase access to information and prevention programs, as recommended by Rahmadiyah et al. (2024) and Sukmawati et al. (2023).

Limitations and Future Research

This study has several limitations that need to be taken into consideration. First, the limited sample size of five families from one sub-district may not fully represent the more extensive population;

thus, the results of this study may not be generalizable to other areas with different socioeconomic and cultural conditions. Second, the qualitative approach used in this study, including in-depth interviews and participant observations, is highly dependent on respondents and researchers'subjective perspectives, which can lead to bias in data interpretation. Third, this study did not collect longitudinal data; thus, it was unable to track the changes in family resilience and stunting conditions over time. Fourth, the variability in information access and social support received by families in this study may have influenced the results and conclusions obtained.

The foremost objective of this investigation is to concentrate on the family perspective without considering the viewpoints of other stakeholders, such as non-governmental organizations (NGOs) that also have a role in managing stunting. Constraints regarding resources and time for data collection and analysis may affect the extent and quality of research findings. Furthermore, this study did not conduct a comprehensive assessment of the psychological factors that may influence the resilience of families and stunting conditions, such as parental stress, mental health, and emotional support within the family. Lastly, this study does not consider other external variables that may affect family resilience, including changes in government policies, natural disasters, or economic crises that can significantly impact family conditions and the occurrence of stunting.

Future research should increase the number of families from various sub-districts with different socio-economic and cultural conditions to obtain a more comprehensive understanding of the impact of stunting on family resilience. Additionally, the use of a longitudinal approach is crucial for tracking changes in family resilience and stunting conditions over time. Future studies should also increase the involvement of various stakeholders, such as non-governmental organizations (NGOs), health officials, and policymakers, to obtain a more holistic perspective. The measurement of deeper psychological factors such as parental stress, mental health, and emotional support within families should also be considered to fully understand the impact of these factors on family resilience. Additionally, incorporating external variables such as government policies, economic conditions, and natural disasters in the research analysis is important for understanding how these factors affect family resilience and stunting conditions. Finally, research should evaluate the effectiveness of long-term and sustainable intervention programs and assess existing programs to improve the overall management of stunting.

CONCLUSIONS

Research indicates that stunting is not solely a health issue, but also has profound implications for family resilience. Disruptions in the basic functions of the family, particularly in providing an environment that supports the growth of children, suggest that stunting weakens the social and economic foundation of the family, especially among those who are financially less well-off. The exacerbation of economic inequality exacerbates this situation, creating barriers that are difficult to overcome in accessing the necessary nutrition and health services. In addition, low levels of education and limited access to nutritional information weaken a family's response to stunting, making it a more structural challenge than an individual. Therefore, responsive and holistic policies are essential not only to address stunting, but also to strengthen family resilience. Policies targeting economic support, resource distribution, and nutrition literacy can play a critical role in rebuilding family resilience, which is eroded by the impact of stunting. This research reflects that strengthening family resilience through a comprehensive approach is key to creating a healthier and more prosperous society.

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FIQH SIYASAH DUSTURIYAH ANALYSIS OF THE PREPARATION OF VILLAGE REGULATIONS

Adhe Ismail Ananda
Universitas Sains Islam Al Mawaddah Warrahmah Kolaka (USIMAR Kolaka)
Email: adheismayl04@gmail.com

Abstract:
The purpose of this research is to find out how Siyasah Dusturiyah analyzes the formulation of village regulations. This study uses a normative juridical research method, namely the legal research method of literature which is carried out by examining library materials or only secondary data. The results of the study show that based on the duties and authorities of Ahlu Al-halli wal Aqdi in forming rules according to Islam, which when linked to the stages of drafting village regulations regulated in domestic regulation number 111 of 2014 concerning technical guidelines for villages regulations, the preparation of village regulations cannot be separated from the role of the village government, in this case the village head as the government leader in the village and the Village Consultative Body (BPD) as a forum for channeling the aspirations of the village community . The role of the BPD as a representative of the village community is the same as that of Ahlu Al-halli Wal Aqdi, namely having the right to establish legal rules together with the village head. siyasa dusturiyah fiqh analyzes that, in terms of legislation or forming regulations it is explained in detail how the mechanism for forming regulations. Forming regulations with deliberation by members of Ahlu Al-halli wal Aqdi, in the event that community meetings were involved to be asked for their opinion in forming regulations, the caliph also has the right to propose laws to be adopted by Ahlu Al-halli wal Aqdi has the right to form and stipulate laws that are binding on all people in matters that are not strictly regulated in the Al-Quran and Hadith.

Keywords: *Fiqh, Siyasah Dusturiyah, Village Regulations.*

INTRODUCTION

Indonesia as a constitutional state requires that every policy issued by the government in running the government be based on applicable laws and regulations. In the context of the unitary Republic of Indonesia, the implementation of its government is distributed in the form of central government and regional government consisting of provincial, city/district and village governments. The village government as the smallest unit in administering government has had a very strategic position since the enactment of Law Number 6 of 2014 concerning Villages. Villages are given the freedom to organize and manage their own households based on the principle of decentralization which involves the community in administering village government. In governing and managing their households, villages use legal instruments in the form of village regulations stipulated by the village head and agreed together with the BPD.

Every regulation formed by an authorized institution aims to create justice for the community in realizing proportional prosperity. (Yulianto & Rohmah, 2022) Likewise with village regulations. However, in practice, legal products in villages, in this case village regulations, seem

far from the purpose of the form of village regulations, on the other hand, it is not uncommon for village regulations to be made to cause confusion and incongruity in people's lives.

In terms of drafting village regulations, this problem is caused by the lack of maximum understanding of the institutions authorized to formulate village regulations regarding the theory and techniques for drafting legal products. This includes the formation mechanism which often does not refer to the basic guidelines and rules for the formation of statutory regulations. This is understandable, because the scope of village regulations as one of the statutory regulations is very broad. As Burkhardt Krems said, the science of legislation (Gesetzgebungswissenschaft) is an interdisciplinary science that is related to political science and sociology.(Razali dkk., 2022)

In the Islamic system of government and state administration, a siyasah fiqh is presented which discusses state legislative issues called Siyasah dusturiyah. In the Siyasah dusturiyah fiqh concept, the concepts of constitution, legislation and shura institutions are discussed, which are important pillars in the preparation of a legal product.(Rolando dkk., 2023)

Fiqh Siyasah Dusturiyah in the field of legislation covers the issue of the power of the Islamic government in making and enacting laws based on the provisions that have been revealed by Allah SWT in Islamic Shari'a which includes the government as the holder of the power to determine the laws that will be enforced in the Islamic society, the Islamic society that will implement them, and the contents of the regulations. or the law must be in accordance with the values of Islamic law. Legislative power is exercised by Ahlu ahalliwal Aqdi to make laws that will be enforced in Islamic society for the benefit of Muslims, in accordance with Islamic teachings. (Azkia, 2023)

The principle of drafting a legal product in siyasah dusturiyah according to Abdul Wahab Khallaf is respect for human rights. In the context of village regulations, the village head together with the BPD in drafting village regulations must consider respect for human rights such as protection, welfare guarantees and the right to receive equal justice before the law without differentiating between social strata. So that the aim of fiqh siyasah is to realize the benefit of the people.(Yulianto & Rohmah, 2022)

Based on the description of the problem above, the author is interested in discussing the process of drafting Village Regulations in Review from Fiqh Siyasah Dusturiyah, where the focus of the objective is to find out whether the process of forming village regulations is in accordance with Islamic legislative principles or not.

METHODS

The research method used in this research is normative juridical research (normative legal research method). The normative juridical research method is library legal research carried out by examining library materials or secondary data alone.(Ma'had Aly Raudhatul Ma'arif & Fadhli, 2023) This research uses a deductive thinking method, namely a way of thinking in drawing conclusions drawn from something of a general nature that has been proven to be correct and the conclusion is aimed at something of a specific nature.(Ar dkk., 2024) Thus, the object analyzed using a qualitative approach is a research method that refers to legal norms contained in statutory regulations.

RESULTS AND DISCUSSION

Overview of Siyasaah Dusturiyah

Siyasah Dusturiyah is part of Siyasah Fiqh which relates to state legislation. Among other things, the concepts of state administration (state constitution and the history of the origin of legislation in a country) and legislation (drafting laws) are also discussed. Apart from that, Siyasah Dusturiyah also discusses the concept of the rule of law from the Siyasah perspective and the reciprocal relationship between the government and citizens or society as well as the rights of citizens that must be protected.(Rolando dkk., 2023)

The problem in Siyasa Dusturiyah Fiqh is the formation of relationships between leaders on the one hand and the people and institutions in society on the other hand. Therefore, Siyasah Dusturiyah Fiqh usually has limitations and only discusses regulations and laws that are necessary for state affairs, which are in accordance with religious principles and are the embodiment of the interests of the people and the fulfillment of their needs.(Ma'had Aly Raudhatul Ma'arif & Fadhli, 2023)

Power in the concept of Islamic Constitutional Law is divided into 3 (three) parts, namely the legislative institution (sultah tasyri'iyah), which exercises the power to make laws, the executive institution (sultah tanfiziyyah) which functions to implement laws, and the Institution judiciary (sultah qada'iyyah), this institution is a state institution that exercises judicial power.(Cahyono & Zulkarnain, 2018)

In the context of legislative power or al sultah tashri'iyah which exercises the power to make laws, is exercised by the Ahlu hali wal aqdi institution. The duties and authority of ahlul wal aqd experts are ahlul ikhtiar, namely deliberating in general state matters, controlling general state affairs, making laws, carrying out supervision, and carrying out the constitutional role in

electing the state's highest leader. In other words, they act as legislative authorities that supervise governments and rulers to prevent them from committing acts of abuse.(Azkia, 2023)

Ahlu hali wal aqdi in the legislative process or in carrying out their duties in drafting a legal product try to find the arguments or legal basis related to problems that arise and adjust them to the provisions contained in the text, unless they have to refer to the member's ijtihad text, they must refer to the Jalb Al Masalih Wa Dar Al Mafasid or getting benefits and avoiding harm. Ijtihad must also pay attention to the situation and social conditions of the community, so that the results of the decisions that will be issued are in accordance with the wishes of the community and do not burden them.(Wafi & Renie, 2021)

Based on the description above, it can be understood that al sultah at tashri'iyah exercises legislative power by Ahlu hali Wal aqdi, which means the power of the Islamic government to determine laws made by the community based on the decrees and commands of Allah SWT given in Islamic law to be implemented. In addition, in carrying out this task, they carry out ijtihad reasoning on matters that are not explained explicitly in the Qur'an. The meaning of ahlu expert wal aqd must be fulfilled by mujtahids and fatwa experts as stated by them carrying out ijtihad to uphold the law.

General Overview of Preparing Village Regulations

Village Regulations are regulations made by the BPD together with the Village Head to regulate household affairs in the village. The scope of application is only in the village where the village regulations are made.(Rolando dkk., 2023) The preparation of Village Regulations must be in accordance with the legal rules and methods used in forming Legislation as regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations. However, this regulation does not provide further details regarding the techniques for forming Village Regulations.(Yulianto & Rohmah, 2022)

However, after the enactment of Law Number 6 of 2014 concerning Villages, the existence of villages and regulations received a clearer position. Through Government Regulation of the Republic of Indonesia Number 43 of 2014 concerning Implementing Regulations of Law Number 6 of 2014 concerning Villages, it is ordered to stipulate a Ministerial Regulation concerning Technical Guidelines for Regulations in Villages, the development of which is regulated in Minister of Home Affairs Regulation Number 111 of 2014.

Village Regulations are statutory regulations prepared by the Village Consultative Body (BPD) together with the village head. The aim of the village regulations themselves is to improve the smooth implementation of development and to serve the community. Village regulations are a further development of higher level legal regulations, which in their preparation take into account the socio-cultural conditions of the local village community.(Azkia, 2023)

Based on Minister of Home Affairs Regulation Number 111 of 2014 concerning Technical Guidelines for Village Regulations, it is said that the content of village regulations includes the implementation of village authority and is a further development of higher statutory regulations, so that the content of village regulations must not conflict with the public interest and higher regulations. tall. Meanwhile, the process of drafting Village Regulations starts from the planning, drafting, discussion, stipulation and promulgation, dissemination, as well as evaluation and clarification stages.

- Planning Stage

  The first stage in forming village regulations is planning. Planning is the stage where the village head and BPD determine the composition of the Draft Village Regulations which will be stipulated in the Village Government's work plan. In the Planning stage, community institutions, traditional institutions and other village institutions in the village can provide input to the Village Government and/or BPD for plans to prepare draft Village Regulations.(Yulianto & Rohmah, 2022)

- Preparation Stage

  After the planning stage, the next step is the preparation stage which in this case can be initiated by the village head or BPD. First, village regulations drawn up by the village head. The preparation of village regulations is initiated by the village government or village head. After the draft village regulations have been prepared, the draft must be consulted with the village community and the sub-district government to obtain responses to the draft village regulations. However, often the problem is that the draft village regulations are often not consulted with the village community who are the parties who will implement the regulations. So the contents of the village regulations do not meet the needs of the community. After the draft village regulations have been consulted and input has been provided, the next step is to submit the draft village regulations to the BPD for discussion and subsequent mutual approval. Second, the preparation of village regulations initiated by the BPD. One of the tasks of the BPD is to accommodate community

aspirations so that the BPD can prepare and propose village regulations. The draft village regulations submitted by the BPD can be in any form except draft village regulations concerning the RPJMDes, draft village regulations concerning the work plan of the village council, draft village regulations concerning the village APB, and draft village regulations concerning the accountability report for the implementation of the village APB.(Cahyono & Zulkarnain, 2018)

- Discussion Stage

  Then we enter the stage of discussion and agreement on the draft village regulations that have been completed. In this case, the BPD summons the village head. If there is a draft village regulation whose contents are almost the same as those proposed by the BPD and the village head, then the draft village regulation proposed by the BPD is given priority, while the village head's proposal is used as reference material. Draft village regulations that have not been discussed can be withdrawn by the party who proposed them. On the other hand, draft village regulations that have been discussed cannot be withdrawn unless there is an agreement between the BPD and the village government. The approved draft will then be adopted as a village regulation with an estimated time of no later than 7 (seven) days from the date of agreement and must include a signature with an estimated time of 15 (fifteen) days from receipt of the draft from the BPD leadership.(Wafi & Renie, 2021)

- Determination and Invitation Stage

  After being signed, the Draft Village Regulation is then submitted to the Village Secretary for promulgation. If the Village Head does not sign the Draft Village Regulation, then the draft Village Regulation can still be promulgated in the Village Gazette and legally become a Village Regulation.(Razali dkk., 2022) After the Village Secretary promulgates village regulations in the village gazette, the village regulations are declared to come into force and have binding legal force from the moment they are promulgated.

- Dissemination Stage:

  After the village regulations are promulgated, the next stage is dissemination. Dissemination is carried out by the Village Government and BPD since the determination of the plan for drafting Village Regulations, Preparation of Draft Village Regulations, and Discussion of Draft Village Regulations. The purpose of this dissemination is to provide information and/or obtain input from the public and stakeholders.(Azkia, 2023)

- Evaluation and Clarification Stage

Evaluation and Clarification is the review and assessment of draft village regulations that conflict with the public interest or higher regulations. Regarding the stages in the evaluation, namely the draft village regulations that have reached agreement are then submitted to the Regent/Mayor via the sub-district head with an estimated time of no later than 3 (three) days from the time it is agreed for evaluation. The Regent/Mayor does not have a time limit for submitting the assessment results so that village regulations can apply automatically. However, if the Regent/Mayor provides the assessment results, the village head must correct them no later than 2 (twenty) days after receiving the assessment results. The results of improvements and follow-up actions are conveyed by the Village Head to the Regent/Mayor via the sub-district head. If the Village Head does not follow up on the results of the assessment and continues to enact Village Regulations, then the Regent/Mayor cancels the Village Regulations with a Regent/Mayor Decree.(Rolando dkk., 2023)

Then at the clarification stage, the village regulations that have been promulgated are submitted to the regent/mayor no later than 7 (seven) days after the clarification. Next, it takes at least 30 (thirty) days from the receipt of the village regulations by the Regent/Mayor to complete the clarification stage by forming a team. The results of the clarification team can be clarification results that are in accordance with the public interest and do not conflict with the laws and regulations above, as well as clarification results that conflict with the public interest or laws and regulations above. In the event that the results of the clarification of Village Regulations do not conflict with the public interest, and/or the provisions of higher laws and regulations, the Regent/Mayor issues a letter of clarification results containing the appropriate clarification results. However, in the event that the results of the clarification conflict with the public interest, and/or the provisions of higher laws and regulations, the Regent/Mayor shall cancel the Village Regulation with a Regent/Mayor Decree.

Analysis of Siyasah Dusturiyah Fiqh on the Preparation of Village Regulations

Village Regulations are regulations prepared by the Village Consultative Body (BPD) together with the village head. The aim of the Village Regulation itself is to improve the smooth development and implementation of community services. Village regulations are a further development of higher statutory regulations that take into account the socio-cultural conditions of local village communities. Village regulations are all village regulations issued

by the village head after deliberation and ratification by the Village Consultative Body (BPD). Countries that adhere to a democratic system in drafting legislative regulations play a very important role in their formation, including village regulations in Indonesia.

The task of the village government is to implement the guidelines created by the village head together with the BPD in the form of policies and instruments contained in village regulations. In accordance with democratic principles, the BPD together with the village head are obliged to report to the buoati or mayor regarding the implementation of village government. The urgency of this village regulation also aims to accelerate the realization of community welfare by increasing regional competitiveness, upholding the principles of democracy, justice, regional privileges and uniqueness within the unitary state of the Republic of Indonesia.

In Islam, the formation of qanun or statutory regulations that hold the authority is in the hands of the caliph or leader in government assisted by the Al Sulthoh Al-Tasyri'iyyah institution which has the right to determine legal regulations which are implemented by the ahlu halli wal aqdi institution. Although in principle, the authority to make rules is absolutely in the hands of Allah SWT. However, when there is a social demand in society that requires the caliph or leader together with the ahlu halli wal aqdi to establish a rule that is not yet contained in the Al-Qur'an and hadith.

The preparation of village regulations from the Siyasah dusturiyah perspective, the formation of which cannot be separated from the authority of the Village Head as caliph or government leader in the Village in compiling and enacting village regulations. The BPD or Village Consultative Body is a shuro' assembly, in this case as Ahlu Halli Wal Aqdi which has the authority to form legal regulations.

According to Abu ala al-Maududi, Ahlu Halli Wal Aqdi as a legislative institution in an Islamic government has several tasks, including:(Ma’had Aly Raudhatul Ma’arif & Fadhli, 2023)

- Formulate legislation that is binding on all people regarding matters regulated in the Al-Quran and Al-Sunnah and enforce it strictly.
- When the instructions of the Koran and Sunnah have more than one possible interpretation, the legislative body has the right to decide which interpretation should be included in the law.
- When there are no clear instructions in the Qur'an and Sunnah, the task of this institution is to enforce the rules relating to the same, while maintaining the spirit of Islamic law. If there are already laws in the same field listed in the book of Fiqh, then this institution is

obliged to follow one of them, and if the Qur'an and Sunnah do not provide basic instructions at all, then we must interpret that God has given us the freedom to solve this problem as best as possible. Therefore, in such cases, this institution is free to formulate rules as long as they do not conflict with the spirit of sharia.

From the above tasks, the authority for Ahlu Al-halli wal Aqdi is given birth, namely:

- Providing advice and considerations to the Caliph in various activities and practical matters such as government, education, health, economics, business, etc.
- The caliph has the right to request the opinion of the popular assembly on matters requiring investigation and analysis, as well as disciplinary, economic, group and foreign policy matters.
- The Caliph has the right to propose laws or regulations to the Assembly for approval, the Assembly has the right to provide responses in the form of suggestions or evaluations, but this is not binding.
- The Assembly has the right to correct the Caliph's actions.
- The assembly also has the right to limit candidates for caliph as a form of succession to government power
- The Assembly has the right of interpolation, namely the right to request information from the caliph regarding strategic policies related to public representation. It has the right of inquiry, meaning the Assembly has the right to investigate various policies of the caliph that are considered anti-Sharia. and have the right to express opinions.

Based on the duties and authority of Ahlu Al-halli wal Aqdi above, which when linked to the stages of drafting village regulations as regulated in domestic regulation number 111 of 2014 concerning technical guidelines for village regulations, the preparation of village regulations cannot be separated from the role of the village government, in this case the head the village as the leader of the village government and the Village Consultative Body (BPD) as a forum for channeling the aspirations of the village community. The role of the BPD as representatives of the village community is the same as the role of Ahlu Al-halli Wal Aqdi, namely having the right to determine legal rules together with the village head.

The explanation above in fiqh siyasah dusturiyah analyzes that, in terms of legislation or forming regulations, it is explained in detail how the mechanism for forming regulations is. Forming regulations by deliberation by members of Ahlu Al-halli wal Aqdi, in the event that community deliberation is involved to ask for their opinion in forming regulations, the caliph also has the right to propose laws that will be adopted by Ahlu Al-halli wal Aqdi. He has the

right to form and enact laws that are binding on all people in matters that are not expressly regulated in the Al-Quran and Hadith.

CONCLUSIONS

Based on the duties and authority of Ahlu Al-halli wal Aqdi in forming rules according to Islam, which when linked to the stages of drafting village regulations as regulated in domestic regulations number 111 of 2014 concerning technical guidelines for village regulations, the preparation of village regulations cannot be separated from the role of the village government. In this case the village head as the head of government in the village and the Village Consultative Body (BPD) as a forum for channeling the aspirations of the village community. The role of the BPD as representatives of the village community is the same as the role of Ahlu Al-halli Wal Aqdi, namely having the right to determine legal rules together with the village head. Siyasah dusturiyah fiqh analyzes that, in terms of legislation or forming regulations, it is explained in detail how the mechanism for forming regulations is. Forming regulations by deliberation by members of Ahlu Al-halli wal Aqdi, in the event that community deliberation is involved to ask for their opinion in forming regulations, the caliph also has the right to propose laws that will be adopted by Ahlu Al-halli wal Aqdi. He has the right to form and enact laws that are binding on all people in matters that are not expressly regulated in the Al-Quran and Hadith.

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ANALYSIS OF IBTICAR RIGHTS AGAINST IPHONE *HANDPHONE DRAW COPY (HDC)*

Vera Aprilia[1], Rahmat Husein Lubis[2]
UIN Prof. K.H. Saifuddin Zuhri Purwokerto[1]
UIN Syekh Ali Hasan Ahmad Addary Padangsidimpuan[2]
Email: veraaprilia635@gmail.com[1], rahmathuseinl72@gmail.com[2]

Abstract

The unveiling of the iPhone in 2007 by Apple Inc. pioneer Steve Jobs sparked a technological and Handphone device revolution. Yet, the iPhone's widespread acclaim has spurred illicit activities, including the sale of unauthorized replicas like the iPhone HDC, violating Apple's industrial brand and design rights. This study explores the nexus between the distribution of HDC iPhones in the market and the implications for brand rights and intellectual property rights. This study uses a descriptive qualitative approach with literature research to support the conclusions produced. Despite efforts such as education and awareness campaigns, challenges persist in safeguarding brand and copyright rights, particularly in discerning between genuine and counterfeit items. It necessitates coordinated action among government entities, brand proprietors, businesses, and the public to curb counterfeit trade, thus preserving brand rights, copyrights, and fostering an ethical business milieu. These violations contravene Industrial Design Law No. 31 of 2000 and Trademarks and Geographical Indications Law No. 20 of 2016. Moreover, in Islamic law, such transgressions go against Quranic injunctions, including Surah Al-Baqarah verse 188, and the teachings of Prophet Muhammad in Hadist, emphasizing the protection of fellow Muslims' property and lives by avoiding arrogance.

Keywords: *Brand Rights, Intellectual Rights, Iphone HDC*

INTRODUCTION

Ranking 3rd as the country with the largest population in the world, Indonesia is one of the potential markets for various world technology products, especially smartphones. One of the world-famous smartphone brands that sells its products in Indonesia is Iphone (Atallah et al., 2023). High grades *(value)* owned by Apple, in this case Iphone makes some individuals look for loopholes to benefit from utilizing the brand's value by creating counterfeit goods. The counterfeit goods in question are widely circulated in the market place as Iphone HDC *(Handphone Copy Draw)* which can be called *smartphone super copy* with the same specifications but at a lower price. Manufacturer *smartphone super copy* In producing counterfeit goods have a very good resemblance to the original so that consumers who are not careful can be deceived and think that the goods they buy are *smartphone* original at a lower price. It is undeniable that *smartphone supercopy* even though it is made as similar as possible to the original, it can be confirmed that it has a much lower quality than the original (Zulkarnain & Safrina, 2022).

Some of the literature that discusses research that has relevance to this article is as follows: Study by Paulina Kasih (2016) on "Legal Protection for the Public Against the Circulation of

Counterfeit Goods" concludes that according to Law Number 20 of 2016 concerning Trademarks and Geographical Indications, trademark infringement is considered an act that requires a complaint from the trademark owner. In this case, the brand owner must be proactive in reporting any trademark infringement to take legal action.

Meanwhile, in the research conducted Anastasia Bernadin Dwi Mardiatmi et al., (2022) with the title "Literacy and socialization as an effort to avoid legal and economic effects for sellers and buyers of counterfeit or counterfeit goods in MSMEs in Cinere District, Depok, West Java," it was found that many MSME actors who sell counterfeit goods do not have a sufficient understanding of the law related to the sale of counterfeit goods. In addition, the marketing methods they use are still conventional. However, after gaining literacy and education, their understanding of the law and marketing strategies increased by about 70%. MSME actors are now more aware of the risks of acceptable legal sanctions due to selling counterfeit goods and the legal consequences that may arise.

Study on "Social and Personal Factors Influencing Consumers to Buy Counterfeit Fashion Items *(Counterfeited Fashion Goods)*" by Desyra Sukma Dewanthi (2018) shows that most Indonesians think that using expensive branded goods can improve their image in the eyes of others, even if the goods are counterfeits. Many people in Indonesia still choose to buy and use counterfeit fashion items, without considering the ethical aspects of counterfeit goods and their social impact. Although some people realize that counterfeit items are usually not as good as the real ones in terms of quality and reliability, the main reason they buy counterfeit fashion items is based more on personal desire than the need to collect various models from a particular brand.

Study by Utomo et al., (2021) entitled "Legal Protection for Trademark Owners for the Sale of Counterfeit Goods on *Platform Marketplace*concluded that brand counterfeiting includes various forms, such as pasting registered trademarks on fake or low-quality products, using the same or similar brand with unfavorable purposes, as well as harming consumers and damaging the reputation of genuine entrepreneurs. Trademark owners get legal protection against the sale of counterfeit goods on marketplace platforms based on Article 83 paragraph (1) and paragraph (2) of the MIG Law, as well as Article 25, Article 9, and Article 28 paragraph (1) of the ITE Law. Therefore, the brand owner has the right to take legal steps against the seller or marketplace platform in question. Legal steps that can be taken include reporting to the marketplace platform, seeking alternative dispute resolution, and applying for a temporary suspension. In addition, brand owners can file civil claims for compensation in the form of both financial and non-financial losses, as well as remove infringing content by showing adverse impacts, misleading information, and

resulting losses. If a civil lawsuit is considered inadequate, the trademark owner can use criminal provisions. For business actors who fully imitate other people's brands, they can be subject to criminal sanctions based on Article 100 paragraph (1) of the MIG Law. Meanwhile, for business actors who counterfeit or imitate brands by imitating the main characteristics of trademarks, they can be subject to criminal sanctions based on Article 100 paragraph (2) of the MIG Law.

Study by Hidayat (2020) entitled "The Concept of Intellectual Property in Islamic Law and Its Implementation for the Protection of Trademark Rights in Indonesia" states that copyright is basically the exclusive right to a work which is a manifestation of the creator's ideas in the fields of art, literature, and science. When someone buys a book, they only acquire the right to own and lend the book as they wish. The book becomes personal property in physical form or as a physical object of the book. However, the purchase of a book does not give the copyright rights of the written work in it which remains the property of the author or creator of the written work published as a book. The right to ibtikar functions as a protection mechanism for the creations of creators, including authors, artists, batik painters, musicians, dramatists, sculptors, computer programmers, and others. This right is designed to prevent others from publishing or reproducing the work without the permission of the creator. Essentially, copyright is an exclusive right granted to the creator to publish or reproduce his work, as well as to give permission to other parties to do the same in accordance with the provisions of the applicable law. The importance of this right lies in its ability to protect creators from the practice of unauthorized reproduction. In the traditional context, the main function of the Ibtikar Rights (IPR) by traditional leaders is to ensure the authenticity of local products or brands, prevent the infringement of ibtikar rights, and thus support the sustainable growth and development of traditional batik.

Based on the problems and research gaps that have been described earlier, a more in-depth study will be carried out on how the IPR analysis focuses on the trademark rights to the circulation of Iphone Handphone Copy Draw (HDC) which is sold freely and is widely found in market places easily and openly based on the provisions of the Fatwa of the Indonesian Ulema Council in July 2005 number: 1/MUNAS VII/MUI/5/2005 concerning the Security of Intellectual Property Rights (IPR) contained in the Copyright. The existence of the HDC Iphone, which is a knockoff product of the Iphone, uses the same brand for its sale, there is only an additional HDC in the sales description in the market place. The counterfeit products are traded freely in the market place. Regarding the trademark which is part of copyright which later in Sharia is called Haq al-Ibtikar whose regulations are based on the Quran and Hadith, I want to see further how the sale of Iphone HDC in terms of Brand Rights when viewed from the perspective of Haq Al-Ibtikar.

METHODS

This research is a normative research with a descriptive qualitative approach. Qualitative research is a research method that aims to present a systematic, factual, and accurate picture of the object of research through descriptions based on words and language (Moeleong, 2011). Literature research is carried out to explore relevant research results and theories to support the making of appropriate conclusions. The methods used in this study are *library research* or literature research. Data was obtained from two types of sources, namely primary sources and secondary sources. Data analysis is carried out by organizing information from various journals, official websites, and regulations related to the topic being studied.

RESULTS

The first iPhone series released on January 9, 2007 was first introduced by Steve Jobs, the founder of Apple Inc, during the Macworld keynote event in San Francisco. The launch of the iPhone is a revolutionary moment in the technology and Handphone device industry. The existence of the Iphone cannot be underestimated until now. The Iphone is considered one of the pioneers of electronics that has an extraordinary influence and has become something prestigious to be owned by the community which even among certain people is considered to improve the standard of living they have (Esa Widhiarta & Wardana, 2015). Along with the popularity of Iphone brand products, then irresponsible individuals emerged who made duplicates of Iphone, which later became known as Iphone HDC (Handphone Copy Draw), which is a Handphone phone product that is traded with a visual design imitating the Iphone product developed by Apple Inc. The trade of products that without the right to use the visual design of the Iphone whose Industrial Design rights are owned by Apple Inc. ini continues to develop due to its far price cheaper than the original Iphone product with the exact same visual design appearance. The needs of people's lifestyle and alternative choices in buying cheaper products with the same visual design make the HDC Iphone trade develop in tandem with the development of original Iphone products from Apple Inc. In addition, its sales on behalf of the Iphone brand also violate the provisions on Brand Rights. The trade of Iphone HDC products that without the right to use the visual design of the Iphone whose Industrial Design rights are owned by Apple Inc. ini violates the protection provisions in Law Number 31 of 2000 concerning Industrial Design. A brand is an identity that is placed or associated with a product, but not the product itself (Ok. Saidin, 2003). As part of Intellectual Property Rights, trademarks have significant economic value. A brand serves as a name or sign used by consumers to identify a particular good or service among other products, while providing assurance of its quality.

The existence of a brand is very strategic and essential for producers and consumers. For manufacturers, brands are not only a tool to differentiate products from similar competitors, but also as an instrument to strengthen the company's image, especially in marketing strategies. Meanwhile, for consumers, brands help in product recognition and also serve as a symbol of prestige. Consumers who are familiar with a brand tend to choose products with that brand, because they have confidence that the product has good quality (Krisnamurti, 2021). In the context of modern Islamic intellectual property, copyright is known as haq al-ibtikar. In the terminology of haq al-ibtikar (copyright), the word "haq" refers to the authority or ownership of a newly created copyrighted work (al-ibtikar). In the fatwa issued by the Indonesian Ulema Council, copyright is explained as the exclusive right owned by the creator or the holder of the right to publish or reproduce his work.

Over time, the iPhone has undergone various innovations in design and technology. The high interest in the iPhone has attracted some individuals to seek business opportunities, even though the action violates the provisions of Intellectual Property Rights. A brand becomes an important component for a company, with more advantages when it is widely known by the public. Brand owners who have registered their trademarks get exclusive rights granted by the government. Brands that are already registered get legal protection for the products they represent. Brands with a good reputation and popularity usually get stronger legal protection, this aims to maintain the integrity and reputation of the established brand in the eyes of consumers. Trademarks are part of Intellectual Property Rights which in essence serve as a sign to recognize the origin of goods or services *(indication of origin)* of a company compared to products or services of another company. Through brands, entrepreneurs can maintain and provide assurance of quality *(guarantee of quality)* from the goods and services they offer, as well as preventing unfair competition attempts from other companies that want to damage their reputation. Here are pictures of several market places where we can easily find sellers of Iphone HDC that are sold freely and openly.

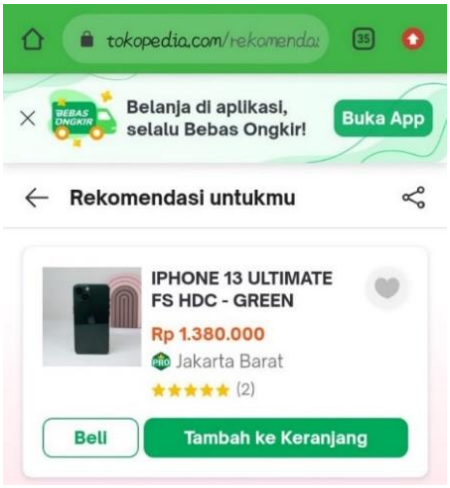

Figure 1 HDC IP Advertising In Market Place

Source : Tokopedia and Lazada

Figure 2 HDC IP Advertising In Market Place

Source : Tokopedia and Lazada

Brand owners have a central role in the evolution of trademark law in Indonesia. They have economic rights to the brands they own. Through licensing, the brand owner can give permission to other parties to use and obtain economic benefits from the brand. Both the licensee and the trademark owner serve as controls over the brand, ensuring that there is no infringement of the trademark in the community (Paulina Kasih, 2016). A brand is an intellectual asset that has significant economic value. Business people use brands in their trading activities, which can be logos, images, or writing. Brands serve as markers to identify goods and services produced or distributed by business people. Therefore, business people usually register their brands to get exclusive rights in the use of the brand.

A trademark is a form of intellectual property in the form of a name or mark associated with a product or service.

The trademark owner can be an individual, a company, or any other legal entity. Trademarks can be visible on packaging, labels, vouchers, or directly on products. Types of trademark infringement include:

a. Use a brand or Geographical Indication that is wholly similar to a trademark or Geographical Indication that has been registered by another person or party for similar goods or services being traded, without the permission or power of attorney of the rightful owner, and use a misleading Indication of Origin.

b. Use a mark or Geographical Indication that is substantially similar to a trademark or Geographical Indication already registered by another person or party for similar goods or services being traded, without the permission or power of attorney of the rightful owner.
c. Use a trademark and Geographical Indication that is wholly similar to a trademark or Geographical Indication that has been recognized and owned by another person or party who has been registered, without permission or authorization from the rightful party.
d. Use a brand or Geographical Indication that is substantially similar to a trademark or Geographical Indication that has been recognized and owned by another person or party, without the permission or power of attorney of the authorized owner (Maulidda Hafsari, 2021).

Law No. 20 of 2016 concerning Trademarks and Geographical Indications in Article 1 paragraph (5) states that "The State grants exclusive rights to the owner of a registered trademark for a certain period to use the trademark itself or to grant permission to others to use it". Although the Paris Convention does not provide a standard definition or criteria for a brand that is considered well-known, Article 6 *bus* The Paris Convention affirms that "The protection of a well-known mark only includes the obligation for any member or competent authority in a country to reject an application for registration of a mark that is the same or similar to a recognized well-known mark in that country". Therefore, to classify a brand as a well-known brand, it must meet the criteria set by member states.

Intellectual property comes from human ideas that require investment in the form of cost, effort, and time. This investment produces works that have value and the potential to create economic benefits. Therefore, it is important to provide recognition to creators through the protection of intellectual property laws. In general, intellectual property law serves as a protection against the implementation of human creative ideas in a tangible form. In today's digital era, access to intellectual property can be easily accessed through online platforms. Online transactions have not only become a popular fashion, but also an essential necessity. The lifestyle of modern people often relies on online stores for their needs because they are considered more efficient and practical than direct shopping which is considered time-consuming and troublesome. In addition, shopping on e-marketplaces provides advantages such as access to various stores from all over Indonesia with a variety of prices, allowing consumers to choose products at more competitive prices. Online product prices are also often more affordable compared to product prices in physical stores.

E-Commerce Just like a market that provides various needs of the community but is packaged in a *digital*. This kind of marketing is able to promote products with greater power than conventional media (Elida & Ari Raharjo, 2019). *Marketplace* is a digital platform where sellers

and buyers interact to make transactions of different types of goods or services. Like traditional markets, e-marketplaces function as a meeting place for sellers and buyers, but with a computerized system that allows for faster provision of information and a wider range of support services for both parties. Based on this principle, the marketplace establishes certain criteria that sellers must meet in order to be able to use the services available on the platform. This criterion is a reference for sellers in carrying out buying and selling transactions in *marketplace*.

Transactions using electronic methods refer to legal actions carried out through computers, internet networks, or other electronic media. Today, electronic transactions have become a routine part of people's activities, driven by advances in internet technology. The existence of the internet strengthens the development of information systems and technology that has permeated various sectors, including the trade sector. Electronic commerce refers to the process of buying and selling that is carried out online between individuals or parties involved, without restrictions on time and location, and without the need for direct interaction, which relies heavily on trust between parties (Utomo et al., 2021).

The practice of buying and selling Iphone HDC (Handphone Copy Draw) phones is rampant in the community. Because the price of the phone is many times cheaper than the price of the original phone. The high level of traffic makes it difficult for ordinary people to distinguish between the original phone and HDC. In this case, what is duplicated is the external appearance, namely in the design of the phone itself (shape and color configuration) and the User Interface (OS). The sale of Iphone HDC is an unlawful act according to article 9 paragraph (1) of Law Number 31 of 2000 concerning Industrial Design. To overcome these violations, there are repressive efforts consisting of compensation lawsuits, applications for cancellation of Industrial Design registration, criminal complaints, and arbitration. There are also preventive efforts, namely socialization and education to the public and business actors about the importance of protecting Industrial Design, as well as appeals to the public and business actors that the act of using and circulating Iphone HDC is an unlawful act. Although in reality these protection efforts are hampered because there are no civil lawsuits or criminal complaints made by Apple Incorporated.

DISCUSSIONS

Trademark rights are regulated in Law Number 14/1997 concerning Trademarks. This trademark right belongs to the copyright category which in the Sharia context is known as ibtikar rights. In the modern Islamic intellectual tradition, copyright is called haq al-ibtikar. In the concept of haq al-ibtikar, "haq" refers to the authority or ownership of a newly created copyrighted work

(al-ibtikar). In the fatwa from the Indonesian Ulema Council, it is explained that copyright is a special right owned by the creator or the party who gets the right to publish, reproduce his work, or give permission for it, taking into account the limitations that have been set by the applicable regulations. The definition of copyright affirmed in this fatwa refers to the existing copyright regulations in Indonesia. Although many contemporary Muslim intellectuals have expressed their views on copyright, most of the available literature is more copyright-oriented *(haq at-ta'lif).*

In the concept of copyright, there are two main aspects, namely economic rights *(True al-Iqtishadi)* and moral rights *(haq al-adabi).* Regarding economic rights, every creator of a work is entitled to economic compensation from his work. This opinion is in line with the definition proposed by Abdullah Al-Mushlih and Shalah Al-Shawi, which describes copyright as a number of privileges possessed by authors or creators that can be assessed by monetary value. Sometimes, these rights are also referred to as abstract rights, intellectual property rights, or intellectual rights. These economic rights reflect the commercial value of a written work or work of art, which is determined by the quality and commercial potential of the work when it is published and commercialized.

The presence of economic rights indicates that a creator has total control over his work, giving him the right to obtain both material and moral benefits from his work. In addition to economic rights, there are also moral rights that are an obligation for every creator. The creator has the right to be named when his work is cited, a principle that has long been recognized in the Islamic scientific tradition. This principle is even considered a form of blessing in science, as explained by Imam Al-Qurthuby in his introduction to tafsir. Furthermore, Usamah Muhammad Usman Khalil identified copyright as a component of intellectual property rights *(al-milkiyah al-fikriyah),* which includes the rights of individuals to their work in all formats. In addition, Masjfuk Zuhdi describes copyright as the result of a person's thought process, which is often referred to as *Al-Milkiyyat al-Fikriyyah.* In the fatwa from the Indonesian Ulema Council, it is explained that copyright is a special right owned by the creator or the party who gets the right to publish, reproduce his work, or give permission for it, taking into account the limitations that have been set by the applicable regulations. The definition of copyright affirmed in this fatwa refers to the existing copyright regulations in Indonesia. Although many contemporary Muslim intellectuals have expressed their views on copyright, most of the available literature is more copyright-oriented *(haq at-ta'lif)* (Chutisana & Mukhtar, 2021).

Property protection *(Hifdz Al-Mal)* is one of the principles of Islamic law *(Maqasid al-Shari'ah)* which reflects the basic needs of each individual. Thus, although Islam recognizes

copyright as part of the right of ownership, this right can be protected as well as the protection of other assets. The safety aspect in this context includes two things: first, it is forbidden to take or use the property of others without permission. In the context of copyright, this means prohibiting the use or exploitation without rights of a person's intellectual work. This prohibition is stated in the Qur'an, Al-Baqarah verse 188, where Allah says about the need to respect the property rights of others. The following is a quote from QS Al-Baqarah 188:

وَلَا تَأْكُلُوْٓا اَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوْا بِهَآ اِلَى الْحُكَّامِ لِتَأْكُلُوْا فَرِيْقًا مِّنْ اَمْوَالِ النَّاسِ بِالْاِثْمِ وَاَنْتُمْ تَعْلَمُوْنَ

Means:

Do not eat the wealth among yourselves in an unrighteous way, and you shall not bring it to the judges with the intention that you may eat some of the wealth of others by sin, even though you know it.

The verse expressly prohibits anyone, both men and women, from taking someone else's property in an unfair way. In the context of copyright, this means that others are not allowed to use someone's work without permission or rights. Imam Al-Tabary in his translation stated this verse as: Do not take other people's property with an arrogant attitude. Allah teaches that taking someone else's property with a haughty attitude is the same as taking one's own property with a haughty attitude. The cause of taking property with an arrogant attitude involves actions that are contrary to Islamic teachings, such as theft, robbery, gambling, taking usury, and so on. In the Tafsir Jalalain, it is known that the background of the descent of verse Al-Baqarah verse 188 comes from the incident of land disputes between several individuals, including Umru-ul Qeis bin 'Abis and Abdan bin Ashwa' Al Hadrami. This dispute reached a point where Umru-ul Qeis almost took his oath as evidence. The verse Al-Baqarah verse 188 is expressed as a warning: "And do not allow some of you to take the wealth of others in an arrogant way."

The conclusion of this verse emphasizes that according to shhari'a, taking someone else's property with an arrogant attitude, such as stealing, robbing, taking without permission, or giving bribes *(riswah)*, is haram. Utilizing property in such an arrogant manner is considered to be against Islamic law, and it has been agreed upon *(ijma')* by the scholars. Meanwhile, a hadith from the Prophet Muhammad (peace and blessings of Allaah be upon him) warns every Muslim not to take his brother's property with arrogance, and there are many hadiths that corroborate this. One of them is:

e Messenger of Allah (peace andIbn 'Umar (may Allah be pleased with him) reported that th blessings of Allaah be upon him) said: I was ordered to fight people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, and that they should pray and pay they will spare me their blood and wealth except for the right of Islam and ,zakaah, and if they do so Bukhaari and-their account against Allah Almighty. Narrated by al Muslim.

عَنْ ابْنِ عُمَرَ رَضِيَ اللهُ عَنْهُمَا أَنَّ رَسُوْلَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُوْا أَنْ لاَ إِلَهَ إِلاَّ اللهُ وَأَنَّ مُحَمَّداً رَسُوْلُ اللهِ وَيُقِيْمُوْا الصَّلاَةَ وَيُؤْتُوْا الزَّكَاةَ فَإِذَا فَعَلُوْا ذَلِكَ عَصَمُوْا مِنِّيْ دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلاَّ بِحَقِّ الإِسْلاَمِ وَحِسَابُهُمْ عَلَى اللهِ تَعَالَى. رَوَاهُ اَلْبُخَارِي وَمُسْلِمٌ

Means:

From Ibn Umar that the Messenger of Allah (peace and blessings of Allaah be upon him) said: I am commanded to fight against people until they testify that there is no God but Allah and Muhammad is His messenger, establish prayers, pay zakat, if they have achieved this then their blood and property will be saved from me, apart from the right of Islam, and the calculation is with Allah. HR. Bukhaari and Muslims.

This hadith especially emphasizes the importance of safeguarding the life and property of every Muslim. If a person violates this principle, it can be considered that they have violated the rules that have been established by Allah the Almighty and His Messenger. Copyright protection in Islam also involves administrative security and safety through civil law regulations.

a. Protections in the field of management include clarity in the contract between the creator and the organization that produces the copyrighted work. For example, the duration required by authors and their heirs to earn royalties from their work.
b. Legal protection through civil regulations gives copyright holders the right to take their cases to court if they feel that their rights have been abused.

In addition to the security aspect, there are other security considerations related to copyright, especially in the context of criminal regulations. In Islam, every act of violation has its consequences which are regulated in the criminal law *(fiqh al-jinayah)*. In the case of copyright infringement, it is important to determine the type of infringement that occurred. If referring to UUHC No. 19 of 2002 Article 72, copyright infringement includes the act: Announce, reproduce, or give permission to a work intentionally and without rights. One example is violating the provisions of deliberately displaying advertisements that are contrary to the authorities in the areas of royal protection and security, norms of decency, and public order. In addition, deliberately exhibiting, distributing, or promoting to the public works or goods related to copyright infringement is also

considered infringement. Based on the previous quote above, a brief conclusion regarding copyright infringement is:

a. Distributing, displaying, and distributing other people's work without permission
b. Duplicating someone else's work without permission
c. Granting permission to reproduce the work of others without permission
d. Selling someone else's work without permission.
e. Announce, exhibit, distribute, reproduce, and market goods resulting from copyright infringement.

In piracy, the common occurrence is that other people make a profit by copying someone's copyrighted work without permission from the owner. From this, it can be concluded that piracy is the act of taking the rights of others without consent. These rights are special rights obtained by the creator. For example, the perpetrator of piracy can profit greatly from his illegal actions, while the creator gets nothing. In the context of theft, piracy is taking away the rights of others without permission, and those rights are part of the exclusive rights of the creator. In summary, copyright protection in Islam includes several aspects, including:

a. Prohibition of eating other people's belongings without permission.
b. Islamic medical manners that must be implemented.
c. The settlement must be legal.
d. Protection from civil law attitudes.
e. Protection from criminal legal stances.
f. The threat of consuming non-halal food is a preventive effort from Islam to stop the spread of piracy that can cause damage in society. (Nursania Dasopang, 2023).

CONCLUSIONS

The existence of Iphone HDC violates Intellectual Property Rights regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Selling Iphone HDC which is freely carried out in the market place is an unlawful act according to article 9 paragraph (1) of Law Number 31 of 2000 concerning Industrial Design. However, due to the scale of Iphone Incorporated's own international sales in various countries and its sales are always good, Apple rarely sues the perpetrators who make the counterfeit goods and tends to ignore them considering that the perpetrators can be punished when the party who has the right to file a complaint against the party who commits fraud (complaint offense).

Based on the Industrial Design Law, Handphone phone design and user interface (User Interface) can be considered as an Industrial Design in accordance with Article 1 paragraph 1 of the

Industrial Design Law. The user interface can be considered as a work of image as mentioned in Article 40 paragraph (1) letter f of the Copyright Law, so HDC is a product that violates the article. The exterior design of Handphone phones often uses distinctive logos or symbols that can be considered trademarks and are protected by the Trademark Law in accordance with Article 1 paragraph 1 of the Trademark Law. For example, criminal sanctions are given to anyone who without permission uses the same trademark as another person's registered trademark for the same or similar goods produced or traded, such as the iPhone brand, with the threat of imprisonment of up to 5 years and/or a maximum fine of Rp 2 billion.

In Sharia, especially based on Surah Al-Baqarah verse 188, it is emphasized that it is forbidden for men and women to take other people's property illegally. Regarding copyright, this indicates that others are not allowed to benefit from the copyrighted work. The verse affirms that taking someone else's property in an arrogant way, such as stealing, robbing, or taking without permission, is haram. This has been agreed upon by the scholars. In addition, a hadith from the Prophet Muhammad (peace and blessings of Allaah be upon him) prohibits every Muslim from taking his brother's property with an arrogant attitude. This hadith emphasizes the importance of safeguarding the blood and property of every Muslim. If a person violates this, it means that he has violated the law set by Allah and His Messenger.

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Premarital Education in the Qur'an (Analytical Study of Q.S Al Hujurat: 13 in Tafsir Al Misbah)

Tita Yuliawati[1] Riski Hariyadi[2]
UIN Sunan Kalijaga, Yogyakarta
titayuliawati99@gmail.com[1] riskihariyadi0018@gmail.com[2]

Abstract:
Nowadays, there are many brides to be who do not understand matters related to premarial education, such as what is *ta'aruf*, *khitbah* according to *sharia thalaq*, *ruju'*, the rights and obligations of husband and wife, and most importantly do not understand how to solve various kinds of life problems in family and society. One of the verses of the Qur'an that explains premaritality education is Q.S Al Hujurat: 13. This study aims to describe the values of premarital education contained in Q.S Al Hujurat: 13. This study uses library *research* while the research method used is a qualitative method. Based on the results of the research, it can be concluded that premarital education in Q.S Al Hujurat: 13 in Tafsir Al Misbah is a step to internalize values carried out by a person to realize the purpose of marriage. The values identified include equality, diversity, ta'aruf (knowing each other), piety, science and honor and dignity. The implementation of these values in premarital education can help build a strong foundation for a harmonious married life, mutual respect, and piety. Premarital education based on the principles taught in Q.S. Al-Hujurat: 13 can help build a harmonious, respectful, and pious family.
Keywords: Premarital Education, Q.S Al Hujurat: 13, Tafsir Al Misbah

INTRODUCTION

Premarital education is important to learn for everyone to prepare and be able to live the life of a lasting marriage. The family is the smallest unit in the public sphere, which is the first educational environment and a very important influence on the development of children. The good and bad attitudes of children are determined by education and are applied by parents to their children at home. Thus, parents should strive to create a harmonious atmosphere at home, mutual affection and parenting based on religious teachings and values in order to ensure that the best early education for their children (Ditzen Beamas Islam, 2003). Islam is a religion that pays great attention to all aspects of human life including education (Ahmed Jain Sarnotto, Sri Thooti Rahmavati, 2021). So that education before marriage is included in it. Therefore it is important for one to learn about premarital education. So that he can build an obedient family on the commandments of Allah SWT and become a family that is always harmonious and guided by religious values. Premarital education is an education that prepares prospective brides of both marriage age, marriage period or premarital age to have resilience in the field of *spiritual, intellectual, emotional* and social in forming a family *Sakinah, Mawaddah, Warahmah* (Ubaedillah, 2021). The lack of good family knowledge in preparing for marriage is one of the obstacles that are often faced by prospective married couples (Mustahal, 2023). The basis for requiring premarital

education to be one of the requirements for marriage registration does not yet have firm legal force (Ihsani, I. F., & Kurnia, 2022), therefore currently premarital education is only recommended in Indonesia (Ma'arif, 2019). In his book Amir Syarifuddin entitled "*Islamic Marriage Law in Indonesia*"Explaining that education before marriage can offer advantages including to achieve a peaceful, peaceful and happy family and always full of affection between family members so that they can have a good social life in society. A happy family is not easy to realize without education or habits that start from the family itself. Thus, in creating a happy family, family members must be aware of the importance of the educational process in accordance with shari'a law so that the process and attitude of family members to change their behavior produces a good personality under the guidance of the shari'ah (Amir Sharifuddin, 2007). The Directorate General of Islamic Community Guidance (Bimas) of the Ministry of Religion of the Republic of Indonesia will require Marriage Guidance (Bimwin) as a condition for prospective brides to hold a wedding. The decision is based on the Circular Letter of the Director General of Islamic Guidance No. 2 of 2024 concerning Marriage Guidance for Prospective Brides. Head of the Sub-Directorate of Sakinah Family Development, Agus Suryo Suripto, said that his party would conduct socialization about the rule until the end of July 2024. After the socialization period ends, prospective brides who do not follow Bimwin will not be able to print their marriage books until they follow Bimwin first. Suryo believes that this rule is very important for the resilience of families in Indonesia. (Ditzen Beamas Islam, 2024). The results of more than 30 years of research in other countries of more than 24,000 family members across the U.S. state and 27 countries in DeFrain, Defrain & Asay, show that there are six psychological qualities that make a strong family: 1) Appreciation and affection: 2) Positive communication, 3) Commitment to family, 4) Enjoying togetherness, 5) Spiritual well-being, 6) Conflict resolution. The six qualities of a strong family relate and interact with each other. Appreciation and affection for each other make family members more likely to spend time together and time together is enhanced through positive communication. Positive communication increases their commitment to family and commitment to encourage families to spend more time together. Feeling that family members are prosperous spiritually gives them the confidence to cope with crises and the ability to manage crises makes family members appreciate each other more often. At a more operational level, the following results can be used as a reference for the most important components that must be present in a premarital education program (DeFrain, J., & Asay, 2007). This research is in line with the

research carried out by Ramadhan who explained that education is one of the important aspects, in his research that examines young marriage education and the problem explains the experience related to marriage, both from the side of Islam and positive law. The research carried out by Permadi which explains the formation of a strong family also starts from an education or education about marriage. With the education provided, it will be an experience for those who receive it. From these two studies, it can be explained how important a pre-marriage education is as a form of effort to maintain a harmonious and lasting family (Angga Permadi, B., Ramiati, E., Alfani, R., Azizah, N., 2021). In the context of Muslim society, premariah education based on Islamic principles can help prospective married couples to understand family values, equality, and mutual understanding between husband and wife. This can help them build a healthy and harmonious relationship in their marriage, as well as prevent future divorces (Mustaqim, Z., Tamam, AM, & Rahman, 2021).

Q.S. Al-Hujurat: 13 contains several key concepts that are very relevant to premarital education, namely the creation of man from man and woman, the diversity of nations and tribes, the purpose of getting to know each other, and the glory based on piety. These concepts provide a solid foundation for understanding how premarital education can be structured and implemented effectively. Tafsir Al-Misbah by Quraish Shihab is one of the contemporary Indonesian interpretations that provides an in-depth and relevant explanation of the verses of the Qur'an. Quraish Shihab is known for its contextual and moderate approach in its interpretation, which makes Tafsir Al-Misbah very relevant to study in the modern context. The difference in this research lies in the values of premarital education from the main source of Muslims, namely the Qur'an by looking at the book of tafsir found in Indonesia, namely Tafsir Al Misbah. This research is expected to add to the treasures of science, especially in the field of Qur'an interpretation and premarital education in Islam. This research can also be a reference for academics and researchers who are interested in the study of the Qur'an, interpretation, and family education in Indonesia. The results of this study are expected to provide insight and practical guidance for premarital education institutions, marriage counselors, and couples who are preparing to get married. By understanding the interpretation of Q.S. Al-Hujurat: 13 and its implications, premarital education programs can be designed more effectively to help prospective couples build harmonious and lasting relationships. This study will answer several questions about premarital education, through an analytical study of Tafsir Al Misbah by Quraish Shihab, including: *first*, how does Quraish

Shihab interpret Q.S. Al-Hujurat: 13 in Tafsir Al-Misbah? *Second*, what is the implication of this verse on premarital education from an Islamic perspective?

METHODS

This research is a type of descriptive qualitative research with primary data sources from the Qur'an, Tafsir Al-Misbah and secondary data sources from related literature. The data collection technique was carried out through literature studies, and data analysis using the content analysis method. This study uses the literature method in the study of premarital education involving the analysis of various sources of information such as scientific journals, books, articles, and related research. Researchers will compile an in-depth literature review to understand the latest theories, practices, and findings in the field of premarital education. Thus, the literature method helps to identify policies and best practices that can be applied in a practical and Islamic approach to premarital education.

RESULTS

Interpretation of Q.S Al Hujurat: 13 in Tafsir Al Misbah

يَٰٓأَيُّهَا ٱلنَّاسُ إِنَّا خَلَقۡنَٰكُم مِّن ذَكَرٖ وَأُنثَىٰ وَجَعَلۡنَٰكُمۡ شُعُوبٗا وَقَبَآئِلَ لِتَعَارَفُوٓاْۚ إِنَّ أَكۡرَمَكُمۡ عِندَ ٱللَّهِ أَتۡقَىٰكُمۡۚ إِنَّ ٱللَّهَ عَلِيمٌ خَبِيرٞ

O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted.

It was narrated by Abu Daud that this verse comes down with regard to Abu Hind whose daily work is cupboarding. The Prophet asked the Banu Bayadhah to marry one of their daughters to Abu Hind, but they were reluctant on the grounds that it was unnatural for them to marry their daughter to him who was one of their former slaves. This erroneous attitude is condemned by the Qur'an by emphasizing that the glory in the sight of Allah swt is not because of lineage or nobility, but because of piety. There is also a narration that says that Bhawa Usaid Ibn Abi al-Ish commented when he heard Bilal sound the azan in the Kaaba: "Alhamdulillah, my father died before seeing this incident." Still others commented: "Did Muhammad not find anything but this crow to pray?" Whatever the nuzul is, what is clear is

that the above verse affirms the unity of human origin by showing the equality of human beings. It is not natural for a person to be proud and feel superior to another, not only between one nation, tribe, or skin color and another, but between their genders. For if anyone had said that Eve, who was a woman, had come from Adam's ribs, while Adam had been a man, and that the source of something higher than his branches, again if anyone had said that it was only for Adam and Eve, not for all men because men other than the two of them were born from the union of man and woman. In this context, during the Hajj Wada' (farewell), the Prophet Muhammad (peace be upon him) said, among others: "*O all mankind, indeed your Lord is One, your father is one, there is no superiority of Arabs over non-Arabs, nor non-Arabs over non-Arabs, nor are people with black skin over red (i.e. white) nor vice versa except with piety, indeed your glory in the sight of Allah is the one who is pious*". (Narrated by Jabir Ibn 'Abdillah)

Quraish Shihab gives an in-depth and comprehensive explanation of Q.S. Al-Hujurat verse 13. Here are the details of the explanation: *In the context of the Creation of Man,* Quraish Shihab explains that this verse begins with an appeal to all mankind (يا أيها الناس). This shows that the message conveyed is universal, covering all of humanity regardless of religious, cultural, or ethnic background. This verse affirms that all human beings come from one common source, which is created from a man and a woman, namely the Prophet Adam and Eve. It emphasizes essential equality and equality of degrees among human beings. This commonality of origin teaches that there is no reason for humans to feel superior or inferior to others based on origin or ancestry. All human beings are part of one big family, which must coexist with mutual respect and appreciation.

The Purpose of Creating Diversity, Quraish Shihab emphasized that Allah deliberately created human beings in nations and tribes. The purpose of this diversity is "لِتَعارَفوا" (so that you may get to know each other). In his explanation, Quraish Shihab emphasized that diversity is not to be a source of division or conflict, but to enrich human interaction through the process of knowing and understanding each other. In a social context, this means that humans must make diversity an opportunity to learn, share, and grow together. This process of getting to know each other includes understanding the cultures, traditions, and values of different groups of people, which can enrich life together and strengthen social ties.

The concept of Ta'aruf (Knowing Each Other), according to Quraish Shihab, ta'aruf is not only about knowing a person's basic identity, such as name or origin, but also includes

understanding the person's character, values, hopes, and outlook on life. Ta'aruf is a deep and continuous process, which requires openness, honesty, and a willingness to learn from each other. In the context of prenuptial relationships, ta'aruf is an important step that helps prospective couples to get to know each other deeply before entering the marriage stage. This process helps them understand whether they have a good fit in different aspects of life, including values, life goals, and future visions.

Glory in the Sight of Allah SWT verse It also states that a person's glory in the sight of Allah SWT is not determined by worldly factors such as descent, nation, or wealth, but by the level of his devotion. "إِنَّ أَكْرَمَكُم عِندَ اللَّهِ أَتْقَىٰكُم" (*Indeed, the noblest among you in the sight of Allah is the most righteous among you*). Quraish Shihab explained that piety is the main measure of a person's glory before Allah SWT. Piety includes obedience to Allah SWT, moral integrity, and commitment to the values of goodness and justice (M. Q. Shihab, 2002). In the context of premarital education, it teaches that couples should judge each other based on moral and spiritual qualities, not superficial factors. Piety as the main foundation in a relationship will help couples build a blessed and harmonious home life.

Allah is All-Knowing and All-Knowing, This verse ends with the statement that Allah Swt is "All-Knowing and All-Knowing" (إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ). Quraish Shihab emphasizes that Allah SWT knows everything about his creatures, including their intentions and deeds. This reminds people to always do good and just because all their actions are known by Allah SWT. In the context of daily life, the awareness that Allah SWT knows everything encourages individuals to always act honestly and justly. In a prenuptial relationship, this means that the prospective spouse must establish a relationship based on honesty, justice, and responsibility, with the awareness that Allah SWT watches over their every deed (M. Quraish Shihab, 2002).

Its relevance to premarital education regarding Q.S. Al-Hujurat: 13 in Tafsir Al Misbah is that it contains principles that are very relevant to the current concept of premarital education. The values of equality, diversity, ta'aruf, piety, and awareness of the supervision of Allah SWT provide a strong foundation for building healthy and harmonious relationships. Premarital education that integrates these values can help prospective couples better prepare themselves to live a happy and blessed married life. Quraish Shihab's explanation in Tafsir Al-Mishbah to Q.S. Al-Hujurat: 13 provides a deep and applicable understanding of the values that must be held in human relations, including in the context of premarial education. The values of equality, respect for diversity, the process of ta'aruf, devotion, and awareness of the

supervision of Allah SWT are important foundations that must be taught in premarital education. By implementing these values, prospective couples can build a solid, understanding and harmonious relationship, which will be the foundation for a happy and blessed married life. So that after implementing premarital education, a person can better understand the important aspects in building a sakinah mawaddah warahmah family, including; effective communication, roles and responsibilities, shared spiritual foundations, compassion and education of children, and so on.

DISCUSSIONS

Marriage is basically a recognition of the legal bond between a man and a woman. In Indonesia, marriage rules refer to positive laws or regulations that apply to Muslims based on Islamic law. Both contain rules regarding the conditions and limitations of the implementation of marriage. Although there are slight differences, both emphasize the importance of maintaining trust in a marriage relationship, because the purpose of marriage is to have a happy relationship in the afterlife and avoid negative aspects such as divorce (Nurkholis, 2018). A practical and Islamic approach to premarial education can combine practical aspects such as communication skills and financial management with Islamic values and teachings about marriage, responsibility, and mutual respect between husband and wife. Thus, premarital education can provide a solid foundation for judging a happy and lasting married life in accordance with Islamic principles (Carolyna, F., Sumarni, N., Zahara, Z., & Parhan, 2024). Here the author will outline the values of premarital education contained in Q.S Al Hujurat: 13, so that it can be used as the main basis for Muslims to implement premarital education.

The values contained in Q.S Al Hujurat: 13 for Premarital Education

The value of premarital education contained in Q.S Al-Hujurat: 13 is the value of faith education, the value of sharia education and the value of moral education.(Raito, R., & Ramadan, 2023). Faith is the foundation of all aspects of life in Islam, including marriage. In the context of Premarital Education, faith is the foundation for prospective couples to understand the purpose of marriage as worship and seek the pleasure of Allah Swt. Topics related to creed, such as the meaning of ta'aruf and marriage, understanding of marriage as worship, the importance of intention in marriage and how this is rooted in belief in Allah Swt.

Morals in marriage include behaviors and attitudes that are in accordance with Islamic teachings. This should be incorporated into the premarital education curriculum, which addresses positive communication, conflict management, and understanding of self and partner. Then shari'ah (Islamic Law) which plays a role in providing guidelines and rules about various aspects of marriage, ranging from the ta'aruf process, marriage contracts, to married life. Shari'ah also includes an understanding of financial management in Islam. sex education in accordance with shlaw, and other aspects related to married life in accordance with Islamic law (Salam, J., & Shaleh, 2024).

The researcher wants to narrow down the three points into the following values that are in accordance with the verse discussed. *First; The Value of Equality,* this verse teaches that all human beings are created from the same origin, namely from a man and a woman. This emphasizes that in the view of Allah SWT, all human beings are equal regardless of gender, ethnicity, or nation. In the context of premarital education, this value of equality is important for prospective couples to understand. Couples must understand and acknowledge that they are equal in rights and responsibilities in marriage. Equality in marriage means that couples must respect each other and appreciate each other's roles and contributions. Premarital education should teach couples about the importance of gender equality, cooperation, and shared responsibilities in various aspects of household life, such as financial management, childcare, and housework.

Second; The value of diversity, this verse also emphasizes that Allah SWT created people of nations and tribes so that they know each other (ta'aruf). This shows that diversity is part of Allah SWT's plan and must be accepted and appreciated. In premarital education, this value teaches couples to respect the differences in each other's cultural backgrounds, traditions, and customs. Valuing diversity means understanding that differences in a couple's backgrounds and cultures can be a source of wealth in their relationship. Premarital education should include learning about each couple's culture and how they can integrate and appreciate those differences in their daily lives.

Third; The value of Ta'aruf (Knowing Each Other), this verse contains the command to know each other. Ta'aruf in the context of premarriage means the process of getting to know each other deeply between prospective couples before marriage. It involves getting to know each other's characters, values, hopes, and vision of life. The in-depth ta'aruf process helps couples to ensure their readiness and compatibility before marriage. Premarital education

should emphasize the importance of ta'aruf by holding counseling sessions, discussions, and activities that encourage open and honest communication. Couples should be encouraged to talk about important things such as life goals, personal values, and expectations in marriage.

Fourth; The value of Taqwa (Taqwaan), this verse emphasizes that the most noble person in the sight of Allah SWT is the most pious. Piety is an important spiritual quality in married life. Pious couples are those who live their lives in accordance with religious principles and try to get closer to Allah SWT. In the context of premariptial education, the value of taqwa teaches couples to make religious values the foundation in building a family. Premarital education should include spiritual aspects such as the importance of worshipping together, praying, and reminding each other in kindness. Couples must be taught to use religious values as a guide in facing various challenges in marriage.

Fifth; The Value of Science and Understanding, this verse also contains the value of the importance of science and understanding. Allah SWT declares that He is the All-Knowing, the All-Knowing. This hints at the importance of seeking knowledge and understanding in all aspects of life, including in premariptial relationships. Premarital education should encourage couples to continue learning and improve their understanding of the different aspects of marriage. This includes learning about couple psychology, effective communication, conflict management, and parenting skills. Couples should be encouraged to attend training, seminars, and read relevant books to prepare themselves holistically for married life.

Sixth; The value of Honor and Dignity, this verse emphasizes that a person's glory in the sight of Allah SWT depends on his devotion. This suggests that a person's honor and dignity are not determined by social status, wealth, or heredity, but by their spiritual and moral qualities. In the context of premarital education, couples should be taught to respect and appreciate each other based on their moral and spiritual qualities. Couples must understand that their dignity and honor do not depend on external factors, but on the values and principles they hold. Premarial education should emphasize the importance of integrity, honesty, and kindness as the foundation of a dignified relationship.

Quraish Shihab's interpretation of Q.S. Al-Hujurat: 13 emphasizes various important values that are very relevant to premarital education. These values include equality, diversity, ta'aruf (knowing each other), taqwa (piety), science and understanding, as well as honor and dignity. The implications of these values show that premarital education should emphasize aspects of communication, openness, deep understanding, spirituality, and appreciation of

differences. The implementation of these values in premarital education programs is indispensable to build strong relationships between prospective couples and prepare them to face challenges in married life.

The Relevance of Tafsir Al Misbah to the Current Concept of Premarital Education

Quraish Shihab emphasizes the concept of ta'aruf which is very relevant to premarital education today. Here are some of these relevance points: *The Importance of Communication,* Quraish Shihab emphasizes the importance of good communication in relationships. Today's premarital education also emphasizes communication skills as an essential element in preparing couples for married life. Openness and honesty in communication are key to building strong relationships and mutual understanding. One example is the pre-marriage school organized by the Salman Mosque ITB, in an interview with the chief executive of the program, it was revealed that the material involved important themes such as conflict management, effective communication between husband and wife, the formation of a strong generation, and family financial management (Salam, J., & Shaleh, 2024).

Respect for Diversity, Quraish Shihab highlighted the importance of respect for differences and diversity. In the context of premarital education, this means respecting each couple's background, culture, and values. Appreciation for diversity helps couples overcome differences and build harmonious relationships. In other broader perspectives such as the sociology of religion, premarital education can emphasize the value of respecting differences and realize how different religions view marriage in a multicultural and multireligious society (Majid, 2024).

Deep Understanding, The concept of ta'aruf according to Quraish Shihab involves a deep understanding of the couple's character, values, and expectations. Modern premaritality education also teaches couples to understand each other deeply before marriage. This deep understanding helps in making wise decisions and preparing for challenges in marriage. An example of a case in the pre-marriage school of the Salman Mosque ITB which puts the topic of marriage ta'aruf material into the basic material (Salam, J., & Shaleh, 2024)

Willingness to Adapt, Quraish Shihab emphasizes the importance of a willingness to adapt and work together in relationships. Today's premarital education also teaches couples about the importance of flexibility and adaptability in facing changes and challenges living

together. A willingness to adapt helps couples to stay harmonious and solid in various situations.

Holistic Education, Quraish Shihab's contextual and applicative approach to the interpretation of the Qur'an is in accordance with the concept of holistic premarital education. Premarital education includes not only spiritual aspects, but also emotional, social, and practical aspects. This holistic approach helps couples prepare comprehensively for married life.

The implementation of the values of Q.S. Al-Hujurat: 13 in the premarital education program is indispensable to build a strong relationship between prospective spouses. The case study is such as the Premarital School held by the Salman Mosque ITB, where the participants' understanding of the family *sakinah, mawaddah, warahmah* Generally, it is still limited to general and idealistic concepts. They consider family *sakinah, mawaddah, warahmah* as a harmonious, peaceful family, where husband and wife live together in togetherness with mutual respect and love for each other. Their understanding of the deeper aspects of building a family *sakinah, mawaddah, warahmah* such as effective communication, roles and responsibilities in the family, and spiritual foundations may not be so clear. They also do not fully understand that the family *sakinah, mawaddah, warahmah* involving affection, support, and good education for children. Their understanding is more general and conceptual (Salam, J., & Shaleh, 2024). Further research is certainly needed to develop effective premarital education methods and curriculum based on the values found in this study.

CONCLUSIONS

This research highlights the importance of premarital education which is based on the values contained in Q.S. Al-Hujurat: 13, as explained in Tafsir Al-Misbah by Quraish Shihab, the values identified include equality, diversity, ta'aruf (mutual knowledge), piety, science and honor and dignity. The implementation of these values in premarital education can help build a strong foundation for a harmonious married life, mutual respect, and piety. The application of these values in premarital education programs can prepare couples to face various challenges in married life. Thus, premarital education based on the principles taught in Q.S. Al-Hujurat: 13 can help build a harmonious, respectful, and pious family, which ultimately contributes to a better society.

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THE POSITION OF BASYARNAS AS AN ALTERNATIVE INSTITUTION FOR RESOLVING SHARIA ECONOMIC FINANCIAL DISPUTES AFTER THE ESTABLISHMENT OF LAPS-SJK

Maria Ulfah
UIN Prof.K.H. Saifuddin Zuhri Purwokerto, Indonesia
mariaulfah2500@gmail.com

Abstract

Basyarnas as an institution that has been operating for a long time, has an important role in alternative settlement of sharia economic disputes through arbitration. However, the existence of LAPS-SJK, which was initiated by the Financial Services Authority (OJK), has made changes in the dispute resolution mechanism in the financial services sector, including Islamic finance. This study aims to analyze the position of Basyarnas as an alternative institution for resolving sharia economic disputes after the establishment of LAPS-SJK. In addition, this study tries to analyze the differences in the mechanism for resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK. In answering these problems, the researcher uses literature research, which is research conducted using literature materials. The data that has been obtained is then analyzed using the descriptive analysis method. The results of this study show that with the existence of LAPS-SJK, Basyarnas still has relevance in arbitration-based sharia dispute resolution even though its scope is limited. The difference in sharia economic dispute resolution in Basyarnas and LAPS-SJK is that in Basyarnas *internal dispute resolution* is not a requirement to submit dispute resolution, while in LAPS-SJK it is one of the requirements. Furthermore, in Basyarnas there is no term *retail small claim*, while in LAPS-SJK there is one. Arbitral awards by Basyrarnas are registered with the Religious Court, while LAPS-SJK arbitration awards for both conventional and sharia disputes are registered with the District Court.

Keywords: Basyarnas, LAPS-SJK, sharia financial disputes.

INTRODUCTION

The establishment of Islamic banking is the starting point for the integration of the Islamic economic system into the national economic system of Indonesia. Over time, the sharia economy continues to develop in Indonesia, where the majority of the population is Muslim. The development of the sharia economy has increased both in terms of institutions, infrastructure, regulatory apparatus, supervisory institutions, and public interest in the sharia economic system. Financing based on sharia principles is not only found in Sharia Banking and the Non-Bank Sharia Financial Industry, but has developed to the Sharia Capital Market. In addition, the existence of the sharia economy in Indonesia can also be seen from the shift in public interest towards financing based on sharia principles. Thus, it can be said that the current position of the sharia economy is on par with the conventional economy.

The development of the sharia economy has implications for potential problems that can cause disputes. Disputes arise due to conflicts of interest between the parties. In addition, factors that can cause sharia economic disputes include: the first is the factor of disagreement between the parties to the contract because they are stuck in the profit orientation, the character of trial and error, or because of the inability to recognize their business partners and there may be no *legal cover*. The second factor is the difficulty in the implementation of the contract or contract that has been agreed. This is due to inaccuracy, lack of caution in negotiating, lack of expertise in understanding the contract that has been made, lack of ability to observe risks, or even dishonesty in making contracts so that it only benefits one party. Therefore, the parties who will carry out economic or business activities are expected to be careful and clearly understand the formulation of the contract, so that disputes between them can be avoided.

In Indonesia, the settlement of sharia economic disputes is known through two channels, namely through litigation or settlement through the court and through non-litigation channels, namely dispute resolution outside the court. Litigation settlement in the sharia economy is carried out through religious courts. This is regulated in Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning religious courts. Article 49 letter (i) expressly states that the Religious Court is tasked and authorized to examine, decide and settle cases at the first level between people who are Muslims in the field of sharia economics. What is meant by sharia economics in the explanation of Article 49 letter i is an act or business activity carried out according to sharia principles. These business activities include: Sharia Banks, Sharia Microfinance Institutions, Sharia Insurance, Sharia Reinsurance, Sharia Mutual Funds, Sharia Bonds and Sharia Medium-Term Securities, Sharia Securities, Sharia Financing, Sharia Financial Institution Pension Funds, Sharia Business.

The settlement of sharia economic disputes outside the courts in Indonesia is regulated through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. According to article 1 paragraph 10 of Law Number 30 of 1999, an alternative dispute resolution is a dispute resolution institution or a difference of opinion agreed upon by the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment. With the birth of the law on arbitration and alternative dispute resolution, the state gives freedom and choice to the public to resolve its business disputes outside the courts. One of the alternative dispute resolution methods that are popular with the public is through arbitration. Based on the provisions of article 1 paragraph 1 of Law number 30 of 1999, arbitration is a way of resolving civil disputes outside the general court, which is based on an arbitration agreement made

in writing by the parties to the dispute.[1] Other dispute resolution for business actors is much more profitable for them. This can be seen from the principle of arbitration itself which emphasizes the principle of *win-win solution* and dispute resolution that is closed and confidential. In addition, according to business actors, arbitrators are considered to understand business disputes more deeply than judges in court.

Institutional arbitration is an arbitration institution or body that is permanent. In Indonesia, institutional arbitration institutions that have the authority to resolve sharia disputes are handed over to the National Sharia Arbitration Board or Basyarnas. The Basyarnas Institution is an institution formed by the Indonesia Ulema Council, which was previously known as the Indonesia Muamalat Arbitration Board (BAMUI). The Deed of Establishment of National Arbitration (BAMUI) was implemented on October 21, 1993 with number 175 signed by KH. Hasan Basri (Chairman of MUI) and HS. Prodjokusumo (General Secretary of MUI). If calculated, Basyarnas has carried out its role in alternative dispute resolution for approximately 3 decades.

The existence of Basyarnas as a sharia arbitration institution in Indonesia is one of the juridical links that is very interesting from an Islamic perspective. Based on juridical, historical and sociological studies, it can be stated that the legal basis is very strong derived from the Qur'an and the sunnah. There are a number of reasons and arguments about the necessity of a sharia arbitration institution as well as Basyarnas. Likewise, sociological reality shows that people everywhere urgently need an institution to resolve disputes between them in an easy, cheap, and fair way. From the perspective of formal Islamic juridical, it shows that the necessity of the existence of an Islamic Arbitration Institution, namely Basyarnas, which aims to resolve disputes or problems of Muslims is an obligation.[2]

The presence of Basyarnas in carrying out its duties and authorities has a strong legal and regulatory basis in the form of laws, regulations, and fatwas of the MUI in recommending sharia arbitration as a means of resolving Islamic civil disputes in Indonesia. Since its establishment until now, Basyarnas has carried out its role and work as the only sharia arbitration body in Indonesia in resolving business, financial and other civil disputes in accordance with sharia principles. Although Basyarnas has not released a report on the number of cases that have been examined and decided since the beginning of its establishment. However, the dispute resolution clause contained in each contract always makes Basyarnas an alternative institution for dispute resolution. Based on this

[1] Kingkin Wahyuningdyah et al., Alternative Law on Dispute Resolution and Arbitration, (Bandar Lampung: CV Anugerah Utama Raharja, 2018) p. 6.
[2] Jefry Tarantang, *Sharia Arbitration Textbook*, (Yogyakarta: K-Media Publishers, 2022), p. 6.

description, it can be seen the urgency of the existence of Basyarnas in alternative dispute resolution in Indonesia.

A confusing condition occurred when, the Financial Services Authority (OJK) as an institution that has authority in the supervision of financial services institutions issued POJK Number 61/POJK.07/Year 2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector,. POJK Number 61/POJK.07/2020 was born from the existence of the Financial Services Authority Law and POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. As stated in Article 55 of the OJK Law, "The functions, duties, and authorities of regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financial Institutions, and other Financial Services Institutions are transferred from the minister of finance and the Moal Market Supervisory Agency and Financial Institutions to the Financial Services Authority." As the only Alternative Dispute Resolution Institution (LAPS) in the financial services sector that has obtained an operational license from the OJK, LAPS SJK replaces the roles and functions of the 6 LAPS that previously existed in the financial services sector and at the same time expands its scope to dispute resolution in the field of *Fintech*.

POJK Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector changes the previous OJK regulation, namely POJK Number 1/POJK.07/2014 which still allows LAPS to appear in many sectors, while in POJK regulation 61/2020 there is practically only one LAPS for the financial services sector. One type of LAPS SJK service is an arbitration service known as LAPS SJK Arbitration. LAPS SJK Arbitration is a way of resolving civil disputes outside the general court which is based on an Arbitration Agreement made in writing by the parties to the dispute. The examination of the arbitration of the SJK LAPS is conducted by the Sole Arbitrator/ Arbitral Tribunal to render the Arbitration Award in accordance with the procedural procedures determined by the SJK LAPS. LAPS SJK arbitration can be carried out as an alternative to dispute resolution, both conventional and sharia. In fact, so far, dispute resolution in the Islamic financial services sector through arbitration has been carried out by Basyarnas. The existence of the provisions of Article 6 of POJK Number 61/POJK.07/2020 leaves questions related to the position of Basyarnas as an institution that has been active and has made a great contribution to alternative settlement of Islamic financial disputes in Indonesia

Research on the theme of Basyarnas' position as an alternative institution for resolving sharia economic financial disputes after the establishment of LAPS SJK is still rare. However, in principle, this research is a development and continuation of previous research. The following are

some writings related to the theme discussed by the researcher: First, Ahmad Saprudin's 2024 research entitled "Quo Vadis Basyarnas in Dispute Resolution in the Sharia Financial Services Sector". The purpose of this study is to find out how the role of the National Sharia Arbitration Board (Basyarnas) in resolving sharia economic disputes outside the court, especially the Islamic financial services sector after the issuance of 61/POJK.07/2020 and number 6/POJK.07/2022 which only allows 1 Financial Services LAPS in resolving financial services disputes outside the court. This study uses a descriptive qualitative method and uses a library research approach by analyzing documents, data, and information related to Basyarnas. This research results in the POJK legal instrument limiting the movement of Basyarnas which has so far provided its work in resolving sharia economic disputes, especially the Islamic financial services sector.

Second, Dinah Tyas Juliana's 2023 research entitled "Comparison of Sharia Dispute Resolution Through Arbitration at the National Sharia Arbitration Board (Basyarnas) and Alternative Institutions for Dispute Resolution in the Financial Services Sector (LAPS SJK)". This study uses empirical legal research with a comparative approach to law and legal effectiveness. The primary data source is from direct interviews with the parties involved, namely Basyarnas and LAPS SJK resource persons. The results of this study show that the similarity of arbitration litigation in Basyarnas and LAPS SJK is that both institutions only accept civil disputes, if the applicant is not present at the first hearing, the arbitration application will be dropped. The difference is that in Basyarnas, *Internal Dispute Resolution* is not a requirement for submitting a dispute resolution. Meanwhile, the SJK Internal Dispute Resolution is part of the requirements for submitting dispute resolution.

The third research is Hasyim Sofyan Lahilote and Moh. Fitri Adam in 2021 entitled "The Existence of Basyarnas in Sharia Banking Dispute Resolution in Indonesia". This paper aims to find out the position and function of Basayarnas as a non-litigation Islamic banking dispute resolution institution which has advantages in terms of efficiency and speed as well as effectiveness in resolving business disputes, including Islamic banking disputes. The method used is normative juridical. The results of the study indicate that from the legal aspect of the existence of Basyarnas which refers to the provisions of Law Number 30 of 1999, its legal existence is still questionable considering that this provision does not mention sharia arbitration at all, but in practice there is a strengthening of the function of Basyarnas through Law Number 48 of 2009 which provides an explanation for the use of Basyarnas as a form of sharia economic dispute resolution.

This study focuses on the position of Basyarnas after the birth of LAPS SJK and analyzes the differences in the mechanism of resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK.

1. Method

This research is a literature research. This type of research is qualitative, namely research that produces descriptive data in the form of words instead of numbers. The data sources used are in the form of literature related to the discussion to be discussed. The data collection technique used is documentation. The documentation technique is carried out by collecting some knowledge information, facts and data. After the data is collected, it is then categorized that is related to research problems, both from document sources, books, scientific journals, and websites. In this data collection, the author uses *library research*, reviews books, websites, photos, and other documents related to the focus of the discussion. In analyzing the data, the researcher uses the descriptive method of analysis, which is a way of writing by prioritizing observation of actual symptoms, events and conditions in the present. The application of the descriptive analysis method is by describing and describing the position of basyarnas as an alternative institution for resolving sharia economic financial disputes after the establishment of LAPS-SJK.

2. Result

1. Legal Basis and Authority of Basyarnas

The existence of the National Sharia Arbitration Board (BASYARNAS) is based on several regulations that have been made by the government to be able to fill the institutional void at that time in resolving sharia economic disputes. The existence of the BASYARNAS institution was an extraordinary breakthrough to be able to help Islamic banking when it was just established, namely Bank Muamalat Indonesia.The National Sharia Arbitration Board (BASYARNAS) as an institution based on Sharia Principles formed by the Indonesia Ulema Council. The existence of BASYARNAS in carrying out its duties and authorities is supported by regulations in the form of laws, regulations and fatwas of the Indonesia Ulema Council in recommending Sharia arbitration as a tool to resolve Islamic civil disputes in Indonesia. The legal basis for the establishment of the BASYARNAS institution (National Sharia Arbitration Board) is as follows:

a. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration according to Law No. 30 of 1999 is a way of resolving civil disputes outside

the general court, while an arbitration institution is a body chosen by the parties to the dispute to give a decision on a particular dispute.

b. Decree of the MUI Executive Board No.Kep-09/MUI/XII/2003 dated December 24, 2003 concerning the National Sharia Arbitration Board. The National Sharia Arbitration Board (Basyarnas) is the only hakam (sharia arbitration) institution in Indonesia that has the authority to examine and decide muamalah disputes that arise in the fields of trade, finance, industry, services and others.
c. All fatwas of the National Sharia Council of the Indonesia Ulema Council (DS NMUI) regarding muamalah (civil) relations always end with the provision: "If one of the parties does not fulfill its obligations or if there is a dispute between the parties, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation".

The authority of Basyarnas is regulated in Article 1 of the Procedure Regulations of the National Sharia Arbitration Body, namely: 1. Resolve fairly and quickly muamalah (civil) disputes arising in trade, finance, industry, services and others which according to laws and regulations are fully controlled by the parties to the dispute, and the parties agree in writing to submit the settlement to the National Sharia Arbitration Board (Basyarnas) in accordance with the procedures of the National Sharia Arbitration Board National Sharia Arbitration (Basyarnas); 2. Providing a binding opinion at the request of the parties without a dispute regarding issues related to an agreement. Meanwhile, the objectives of Basyarnas are as follows: 1. Resolving disputes or civil disputes by prioritizing the principles of peace or ishlah; 2. Resolving business disputes whose operations use Islamic law by using Islamic law; 3. Resolving the possibility of civil disputes between Islamic banks and their customers or service users in particular, and between fellow Muslims who carry out civil relations that make Islamic sharia as the basis; 4. Providing fair and prompt settlement in muamalat/civil disputes arising in the fields of trade, industry, finance, services, and others.

Sharia arbitration is the settlement of disputes between parties who make a contract in the sharia economy, outside the court to reach the best settlement when deliberative efforts do not result in consensus. This arbitration is carried out by appointing and authorizing the arbitral body to provide justice and propriety based on Islamic law and applicable legal procedures. However, the existence of Basyarnas cannot simply be functioned. It must be underlined that settlement through Basyarnas can only be done if a clause is made in the contract regarding dispute resolution through Arbriter. This refers to the provisions in Law Number 30 of 1999 concerning Arbitration and

Alternative Dispute Resolution. The absolute competence of the arbitral institution is determined by the existence or absence of an agreement that contains an arbitration clause either before the dispute occurs (pactum de compromittendo). or after a dispute (acta compromis). In the provisions of Article 11 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that the existence of a written arbitration agreement negates the right of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court. Therefore, based on the applicable legal rules, the absolute authority of all judicial bodies, including in this case the Religious Court environment, cannot reach disputes or cases arising from agreements in which there is an arbitration clause.

The legitimacy of dispute resolution through arbitration is that the agreement applies as a law to the parties who make it (in accordance with the *Pacta Sunt Servanda Principle* regulated in Article 1388 of the Civil Code), and that the law of the agreement adheres to an open system, where there is freedom for the parties to determine the material/content of the agreement, the implementation of the agreement, and also includes the method of resolving the dispute (in accordance with the Consensual Principle which regulated in Article 1320 of the Civil Code. Thus, it is expressly stated in Law Number 30 of 1999 that arbitration is a dispute settlement outside the general court based on an arbitration agreement, both made before the dispute outside the general court based on an arbitration agreement, both made before the dispute occurs (*pactum de compromittendo*) and after the dispute occurs (*acta compromis*).

2. Dispute Resolution Mechanism Through Arbitration in Basyarnas

The arbitration procedure begins with the registration of a letter of request to hold an arbitration by the secretary in the Basyarnas register. The application letter must contain at least the full name and place of residence or position, and a brief description of the seat in dispute, and what is being sought. The application will not be accepted by Basyarnas if the arbitration agreement or clause is considered insufficient as a basis for Basyarnas' authority to examine the dispute submitted. The statement regarding the inadmissibility of the application is made with a determination issued by the Chairman of Basyarnas no later than within 14 days (fourteen days) from the registration of the application. Meanwhile, if the arbitration agreement or clause distributed to Basyarnas is sufficient, then the Chairman of Basyarnas immediately appoints and appoints a sole arbitrator or arbitrator of the tribunal who will examine and decide the dispute. Then ordered to submit a copy of the application letter to the respondent accompanied by an order to

respond to the application. The respondent must provide its answer no later than 30 days (thirty days) from the date of receipt of the copy of the application letter and summons letter.

Upon receipt of the respondent's reply, a copy of the answer is submitted to the applicant. At the same time, the sole arbitrator or the arbitrator of the tribunal orders the parties to appear before the trial on the date fixed, no later than within 14 days (fourteen days), from the date of issuance of the order. The applicant can withdraw his application as long as the decision has not been issued. If there is already an answer from the respondent, then the revocation can only be done with the consent of the respondent. If the application for revocation is made by the applicant before the chairman of Basyarnas appoints an arbitrator and determines the summons to appear before the hearing, then all examination fees are returned to the applicant.

The venue of the inspection event was carried out at Basyarnas' position. However, if there is agreement from both parties, the inspection can be carried out elsewhere. During the proceedings at each stage of the examination, the arrears arbitrator or the arbitrator of the tribunal shall give the same treatment and full opportunity to each party to defend and defend its interests. In the settlement of disputes in Basyarnas, arbitrators will prioritize the achievement of peace. If the effort is successful, then a single arbitrator or panel arbitrator will make a peace deed. However, if the peace is not successful, then the sole arbitrator or the arbitrator of the tribunal will proceed to the examination of the dispute requested.

In the trial, the parties are welcome to present their respective postulates and submit evidence that is considered necessary to corroborate them. If necessary, a sole arbitrator or an arbitrator of the panel may call witnesses or members to be heard. The party who requests the summoning of witnesses or experts must pay in advance to the secretary concerned. When the examination has been deemed sufficient by the sole arbitrator or arbitrator of the tribunal, the arbitrator or the presiding arbitrator of the tribunal shall close the examination and set a hearing date to pronounce the judgment taken.

The arbitrators who handle disputes in Basyarnas consist of 3 (three) people. Any award or other ruling from the arbitrator must be taken based on the majority vote. However, if a majority vote is not reached, the Chief Arbitrator may render an award based on his own authority, and it is deemed to be made by the majority of the arbitrators. The verdict must contain reasons unless the parties agree that the verdict does not need to contain reasons. The direct award is final and binding to the parties, if it has been signed by the arbitrator. The parties to the dispute are obliged to obey the decision and immediately fulfill its implementation. The verdict should not be announced because it is confidential, unless agreed by both parties. After the decision is made within twenty

days of being submitted, either party may submit in writing a request for correction of the judgment regarding errors related to the number of calculations, typographical errors, or printing errors. In addition, the parties can apply for the cancellation of the decision in writing which is submitted to the secretary and a copy to the opposing party as a notice with the reasons that have been determined. The Basyarnas decision is registered by the arbitrator or his legal representative to the Registrar of the Religious Court.

3. Legal Basis and Authority of LAPS SJK

The legal basis of LAPS-SJK is POJK number 61/POJK.07/2020. Based on Article 2 letter b of POJK No. 61/POJK.07/2020, LAPS SJK was formed with the aim that out-of-court dispute resolution services can be trusted by consumers and financial services business actors (Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector). The establishment of this institution went through a long process, namely in *a focus group discussion* (FGD) formed by the OJK during 2018 to 2019 with the initial idea of forming a single and integrated LAP. Until September 22, 2020, there was an agreement to form LAPS SJK by *Self Regulatory Organizations* (SROs) and associations within the financial services sector. Then the Financial Services Authority as an institution authorized by the Law to regulate, supervise, and conduct investigations into financial services institutions regulates this institution through POJK No. 61/2020 which was promulgated on December 16, 2020. From an institutional perspective, LAPS SJK is not part of the OJK, but as a consumer protection ecosystem built by the OJK. In carrying out its duties, LAPS SJK received an operational permit and was directly supervised by the OJK. The legal entity form of LAPS SJK is an association registered with the Ministry of Law and Human Rights. Dispute resolution through LAPS SJK is carried out independently, fairly, effectively, efficiently and easily accessible for the parties to the dispute.

The update of rules related to LAPS-SJK as briefly explained previously has an impact related to the dispute resolution process through LAPS SJK. LAPS-SJK based on POJK 61/2020 is an integrated institution and domiciled outside the OJK and is not the result of the merger of the existing LAPS, which is authorized to resolve disputes between Financial Services Business Actors (hereinafter referred to as PUJK) and consumers in the financial services sector, the establishment of LAPS-SJK aims to provide professional, credible financial services dispute resolution services and establish standardization of dispute resolution in the financial services sector. The disputes that can be resolved through LAPS-SJK must meet the criteria in accordance with the provisions of Article 32 paragraph (1) POJK 61/2020, namely: 1. There is a complaint first to PUJK, which is

then processed through Internal Dispute Settlement but no agreement has been met or has not received a response from PUJK. 2. The dispute submitted is not a dispute that is being processed or has been decided by a judicial institution, arbitration or other alternative dispute resolution institution. 3. The dispute submitted is civil in nature.

In article 4 of the POJK LAPS SJK, LAPS SJK has several duties and authorities, namely: a. Carrying out the handling and resolution of Consumer Disputes; b. Providing consultation on dispute resolution in the financial services sector; c. Conducting research and development of dispute resolution services in the financial services sector; d. Making regulations in the context of resolving disputes in the financial services sector; e. Collaborating with consumer protection institutions/agencies both nationally and international; and f. Developing the competence of mediators and arbitrators registered with the Financial Services Sector LAPS. LAPS SJK is authorized to resolve disputes in the financial services sector, both conventional and sharia. Alternative dispute resolution services available at LPSJ SJK include mediation, arbitration, and binding opinions. The duties of LAPS SJK are not limited to *retail disputes and small claims* but can also accept the resolution of commercial disputes by charging a fee for the settlement of such disputes

4. Dispute Resolution Mechanism Through Arbitration AT LAPS SJK

The main activity of LAPS SJK is to resolve civil disputes in the financial services sector between consumers and financial services business actors (PUJK) where the dispute has first been sought to be resolved through the IDR (Internal Dispute Resolution) mechanism, namely deliberation for consensus/direct negotiation between Consumers and PUJK; and the dispute is not being investigated and/or has not been decided by other (authorized) agencies. The Arbitration proceedings at LAPS SJK are based on the parties' arbitration agreement. In the agreement, the disputing parties agree in writing if the disputes that occur or will occur between them are resolved through the LAPS SJK Arbitration. Before the applicant submits the registration of the Arbitration Request, the Applicant must first provide notice to the respondent.

The next step is to file an arbitration application. The management verifies and will submit confirmation of acceptance/rejection of registration within a maximum of 10 (ten) days after the date of registration of the arbitration application. In the event that the registration of the Arbitration Application is accepted: (a) The Arbitration Application is recorded in the LAPS SJK Case Register Book; (b) confirmation is submitted to the Parties, and a copy of the Request for Arbitration to the Respondent is attached; (c) The confirmation letter also contains information regarding the name of

the Secretary, the calculation of the Costs of Arbitration, and the stages of appointment of the Arbitrator. The Parties to the Arbitration may agree on an odd number of Arbitrators. The Applicant and the Respondent are each given the opportunity to appoint an Arbitrator within a maximum period of 10 (ten) days after the Applicant/Respondent receives confirmation of the registration of the Arbitration Request.

The time for the examination of the Arbitration shall be 180 (one hundred and eighty) days from the date the Single Arbitrator is appointed/ the Arbitral Tribunal is formed until the reading of the Arbitral Award. To overcome space and time limitations, LAPS SJK applies several concepts of online dispute resolution ("ODR"), which is a way of dispute resolution that is carried out through internet media so that the dispute resolution process can be carried out by parties in cross-border areas (borderless) and without having to be face-to-face.39 ODR itself is an online development and implementation of the Alternative Dispute Resolution (ADR) mechanism or alternatives dispute resolution. The means used by ODR vary from the use of video conferencing, email, chat features, automated systems, to a combination of these features.

In settling using arbitration in LAPS, SJK also wants peaceful efforts. If peaceful conditions are not realized, then at the next arbitration examination, the parties are given an equal and fair opportunity to submit evidence that is deemed necessary to corroborate their postulates. The Sole Arbitrator/Arbitral Tribunal is authorized to determine whether the evidence is admissible, relevant and relevant to the subject matter of the case and has the strength of evidence. If there is no longer any evidence or information that the parties wish to add, and the arbitrator is of the opinion that the examination of the arbitration is sufficient, then the parties are given the opportunity to present their conclusions at the time set by the arbitrator. After the parties submitted their conclusions, the arbitrator declared the hearing closed.

In the case of an arbitral award, the Sole Arbitrator compiles and signs the Arbitral Award on its own, whereas the Arbitral Award of the Arbitral Tribunal is collective in nature and is decided on the basis of deliberation for consensus or on the basis of a majority vote. Arbitral awards shall be pronounced at a hearing that has been determined by the Sole Arbitrator/Arbitral Tribunal. If one of the Arbitrators, or one of the Parties, or the Parties is not present, the Sole Arbitrator/Arbitral Tribunal may still read the Arbitral Awards at the scheduled hearings. Within a maximum of 30 (thirty) days from the date the Peace Deed/Arbitral Award is pronounced, the original sheet or an authentic copy of the Peace Deed/Arbitral Award shall be submitted and registered by the Sole Arbitrator/Arbitral Tribunal to the Registrar of the District Court.

3. Discussions

1. The Position of Basyarnas as an Alternative Institution for Sharia Economic Financial Dispute Resolution after the birth of LAPS SJK

So far, alternative solutions to sharia economic financial disputes in Indonesia have been implemented by Basyarnas. This has changed after the government issued POJK Number 61/POJK.07/2020. Article 6 of POJK Number 61/POJK.07/2020 stipulates that the settlement of disputes in the financial services sector outside the court, is carried out by one LAPS of the Financial Services Sector. These provisions apply to all financial services sectors, both conventional and sharia. POJK number 61/POJK.07/2020 also stipulates that all PUJKs who have become members of LAPS in the financial services sector registered as regulated in POJK number 1/POJK.07/2014 since January 1, 2021 automatically become members of LAPS SJK. The institutions referred to in the above regulations are institutions that carry out activities in the banking sector, capital market, insurance, pension funds, financial institutions, and other financial service institutions. Other financial service institutions in this case are pawnshops, guarantee institutions, Indonesia export institutions, public fund management institutions, *fintech* sectors, etc. This indicates that the institutions mentioned above no longer have the freedom to solve their problems in other institutions such as Basyaranas. So, institutions that have become members of LAPSJK automatically also handle their disputes at LAPS SJK.

The existence of the provisions of Article 6 of POJK Number 61/POJK.07/2020 actually does not kill the institution of Basyarnas which has been an alternative institution for dispute resolution through Arbitration. Even since January 2021, Basyarnas has had 20 representative offices in Indonesia. Basyarnas representative offices are spread across the provinces of East Java, Central Java, Yogyakarta, Banten, South Kalimantan, Central Kalimantan, North Sumatra, Riau Islands, Central Sulawesi, North Maluku, and others. This shows that with POJK Number 61/POJK.07/2020, Basyarnas can still carry out its duties, but its scope is now limited. Basyarnas still plays a role as an institution that handles disputes related to Islamic finance, but for disputes in the financial services sector registered in POJK number 1/POJK.07/2014, LAPS SJK has a central role.

The existence of LAPS-SJK is a challenge for Basyarnas to continue to play an active role in overcoming sharia economic disputes in Indonesia. It is undeniable that the birth of LAPS-SJK seems to override and limit the area of movement of Basyarnas which has been known as the only Sharia Arbitration institution in Indonesia. This of course must be considered by the government so that Basyarnas, which has been contributing to alternative sharia financial dispute resolution, is not eroded by its authority and position.

2. Differences in the mechanism for resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK

Basyarnas and LAPS-SJK are both alternative institutions for resolving sharia financial disputes that offer arbitration channels in their settlement. However, there are differences between Basyarnas and LAPS SJK in the dispute resolution mechanism by arbitration, including: First, in Basyarnas, *Internal Dispute Resolution* (IDR) is not a requirement to file a dispute resolution, while in LAPS-SJK it is one of the requirements. In LAPS SJK in Article 2 concerning the Scope of this Regulation, it is emphasized that: (3) Disputes that can be submitted for settlement to the LAPS-SJK Arbiterase are disputes between the Parties to meet the following provisions: (a) Settlement has been sought in advance by muasyawarah for consensus among the Parties themselves (Internal Dispute Resolution). Second, in the SJK LAPS, it is always accompanied by a notification by the applicant to the respondent, while not with Basyarnas. In the LAPS SJK Article 8 states: (1) In the event of a dispute, and before the Applicant submits the registration of the Arbitration Application, the Applicant must first submit a notification to the Respondent. (2) The Notice of Arbitration contains information from the Applicant that the terms of the arbitration held by the parties have been valid, and the notification clearly contains: the names and addresses of the Parties, the submission to the Arbitration Agreement, a summary of the basis of the claim and the amount demanded, the desired method of settlement, the number of Arbitrators in accordance with the Arbitration Agreement, or a proposal about the number of Arbitrators in an odd number if it has not been stated in the Arbitration Agreement. (3) The Respondent shall provide a response to the Claimant to the notice of arbitration, in particular with respect to the number of Arbitrators' proposals available. (4) The submission of the arbitration notification is no longer required in the event that an arbitration agreement is made after the dispute arises.

Third, in Basyarnas there is no known retail small claim while in LAPS-SJK it is known for the existence of retail small claims that apply to PUJK in the conventional and sharia fields. LAPS-SJK provides a special policy in the form of exemption of mediation fees for disputes between consumers and PUJK which are included in the retail & small claim category, namely: (1) Disputes with the value of the consumer's claim to PUJK up to Rp. 200,000 (two hundred million rupiah) for disputes in the fields of pawnshops, financing and fintech. (2) Disputes with the value of Consumers' demands to PUJK up to Rp. 500,000,000 (five hundred million rupiah) for disputes in 71 fields of banking, capital market, life insurance, pension funds, venture capital, and guarantees. (3) Disputes with the value of consumer claims to PUJK up to Rp. 750,000,000 (seven hundred and fifty million rupiah) for general insurance disputes. Fourth, in LAPS SJK, the arbitration award is

registered with the District Court, both conventional and sharia disputes. Meanwhile, Basyarnas arbitral awards are registered with the Religious Court.

4. Conclusions

After the birth of the Alternative Institution for Dispute Resolution in the Financial Services Sector (LAPS-SJK), the position of the National Sharia Arbitration Board (Basyarnas) has undergone several changes. Basyarnas continues to play the role of an arbitration institution authorized to handle disputes related to Islamic finance. However, for disputes in the financial services sector that are specifically under the supervision of the Financial Services Authority (OJK), LAPS-SJK has a central role as an alternative dispute resolution institution. OJK regulations stipulate that dispute resolution in the Islamic financial services sector can be through the LAPS-SJK mechanism, but Basyarnas is still recognized as a competent institution for sharia arbitration. These two institutions are expected to function in a complementary manner to provide legal certainty and justice for the parties to the dispute. With the existence of Basyarnas and LAPS-SJK, it is hoped that they can work together and collaborate in handling Islamic financial disputes. Basyarnas, with its experience and expertise in sharia arbitration, can support LAPS-SJK in handling cases that require special knowledge of sharia law and principles.

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THE POSITION OF BASYARNAS AS AN ALTERNATIVE INSTITUTION FOR RESOLVING SHARIA ECONOMIC FINANCIAL DISPUTES AFTER THE ESTABLISHMENT OF LAPS-SJK

Maria Ulfah
UIN Prof.K.H. Saifuddin Zuhri Purwokerto, Indonesia
mariaulfah2500@gmail.com

Abstract

Basyarnas as an institution that has been operating for a long time, has an important role in alternative settlement of sharia economic disputes through arbitration. However, the existence of LAPS-SJK, which was initiated by the Financial Services Authority (OJK), has made changes in the dispute resolution mechanism in the financial services sector, including Islamic finance. This study aims to analyze the position of Basyarnas as an alternative institution for resolving sharia economic disputes after the establishment of LAPS-SJK. In addition, this study tries to analyze the differences in the mechanism for resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK. In answering these problems, the researcher uses literature research, which is research conducted using literature materials. The data that has been obtained is then analyzed using the descriptive analysis method. The results of this study show that with the existence of LAPS-SJK, Basyarnas still has relevance in arbitration-based sharia dispute resolution even though its scope is limited. The difference in sharia economic dispute resolution in Basyarnas and LAPS-SJK is that in Basyarnas *internal dispute resolution* is not a requirement to submit dispute resolution, while in LAPS-SJK it is one of the requirements. Furthermore, in Basyarnas there is no term *retail small claim*, while in LAPS-SJK there is one. Arbitral awards by Basyrarnas are registered with the Religious Court, while LAPS-SJK arbitration awards for both conventional and sharia disputes are registered with the District Court.

Keywords: Basyarnas, LAPS-SJK, sharia financial disputes.

INTRODUCTION

The establishment of Islamic banking is the starting point for the integration of the Islamic economic system into the national economic system of Indonesia. Over time, the sharia economy continues to develop in Indonesia, where the majority of the population is Muslim. The development of the sharia economy has increased both in terms of institutions, infrastructure, regulatory apparatus, supervisory institutions, and public interest in the sharia economic system. Financing based on sharia principles is not only found in Sharia Banking and the Non-Bank Sharia Financial Industry, but has developed to the Sharia Capital Market. In addition, the existence of the sharia economy in Indonesia can also be seen from the shift in public interest towards financing based on sharia principles. Thus, it can be said that the current position of the sharia economy is on par with the conventional economy.

The development of the sharia economy has implications for potential problems that can cause disputes. Disputes arise due to conflicts of interest between the parties. In addition, factors that can cause sharia economic disputes include: the first is the factor of disagreement between the parties to the contract because they are stuck in the profit orientation, the character of trial and error, or because of the inability to recognize their business partners and there may be no *legal cover*. The second factor is the difficulty in the implementation of the contract or contract that has been agreed. This is due to inaccuracy, lack of caution in negotiating, lack of expertise in understanding the contract that has been made, lack of ability to observe risks, or even dishonesty in making contracts so that it only benefits one party. Therefore, the parties who will carry out economic or business activities are expected to be careful and clearly understand the formulation of the contract, so that disputes between them can be avoided.

In Indonesia, the settlement of sharia economic disputes is known through two channels, namely through litigation or settlement through the court and through non-litigation channels, namely dispute resolution outside the court. Litigation settlement in the sharia economy is carried out through religious courts. This is regulated in Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning religious courts. Article 49 letter (i) expressly states that the Religious Court is tasked and authorized to examine, decide and settle cases at the first level between people who are Muslims in the field of sharia economics. What is meant by sharia economics in the explanation of Article 49 letter i is an act or business activity carried out according to sharia principles. These business activities include: Sharia Banks, Sharia Microfinance Institutions, Sharia Insurance, Sharia Reinsurance, Sharia Mutual Funds, Sharia Bonds and Sharia Medium-Term Securities, Sharia Securities, Sharia Financing, Sharia Financial Institution Pension Funds, Sharia Business.

The settlement of sharia economic disputes outside the courts in Indonesia is regulated through Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. According to article 1 paragraph 10 of Law Number 30 of 1999, an alternative dispute resolution is a dispute resolution institution or a difference of opinion agreed upon by the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment. With the birth of the law on arbitration and alternative dispute resolution, the state gives freedom and choice to the public to resolve its business disputes outside the courts. One of the alternative dispute resolution methods that are popular with the public is through arbitration. Based on the provisions of article 1 paragraph 1 of Law number 30 of 1999, arbitration is a way of resolving civil disputes outside the general court, which is based on an arbitration agreement made

in writing by the parties to the dispute.[1] Other dispute resolution for business actors is much more profitable for them. This can be seen from the principle of arbitration itself which emphasizes the principle of *win-win solution* and dispute resolution that is closed and confidential. In addition, according to business actors, arbitrators are considered to understand business disputes more deeply than judges in court.

Institutional arbitration is an arbitration institution or body that is permanent. In Indonesia, institutional arbitration institutions that have the authority to resolve sharia disputes are handed over to the National Sharia Arbitration Board or Basyarnas. The Basyarnas Institution is an institution formed by the Indonesia Ulema Council, which was previously known as the Indonesia Muamalat Arbitration Board (BAMUI). The Deed of Establishment of National Arbitration (BAMUI) was implemented on October 21, 1993 with number 175 signed by KH. Hasan Basri (Chairman of MUI) and HS. Prodjokusumo (General Secretary of MUI). If calculated, Basyarnas has carried out its role in alternative dispute resolution for approximately 3 decades.

The existence of Basyarnas as a sharia arbitration institution in Indonesia is one of the juridical links that is very interesting from an Islamic perspective. Based on juridical, historical and sociological studies, it can be stated that the legal basis is very strong derived from the Qur'an and the sunnah. There are a number of reasons and arguments about the necessity of a sharia arbitration institution as well as Basyarnas. Likewise, sociological reality shows that people everywhere urgently need an institution to resolve disputes between them in an easy, cheap, and fair way. From the perspective of formal Islamic juridical, it shows that the necessity of the existence of an Islamic Arbitration Institution, namely Basyarnas, which aims to resolve disputes or problems of Muslims is an obligation.[2]

The presence of Basyarnas in carrying out its duties and authorities has a strong legal and regulatory basis in the form of laws, regulations, and fatwas of the MUI in recommending sharia arbitration as a means of resolving Islamic civil disputes in Indonesia. Since its establishment until now, Basyarnas has carried out its role and work as the only sharia arbitration body in Indonesia in resolving business, financial and other civil disputes in accordance with sharia principles. Although Basyarnas has not released a report on the number of cases that have been examined and decided since the beginning of its establishment. However, the dispute resolution clause contained in each contract always makes Basyarnas an alternative institution for dispute resolution. Based on this

[1] Kingkin Wahyuningdyah et al., Alternative Law on Dispute Resolution and Arbitration, (Bandar Lampung: CV Anugerah Utama Raharja, 2018) p. 6.
[2] Jefry Tarantang, *Sharia Arbitration Textbook*, (Yogyakarta: K-Media Publishers, 2022), p. 6.

description, it can be seen the urgency of the existence of Basyarnas in alternative dispute resolution in Indonesia.

A confusing condition occurred when, the Financial Services Authority (OJK) as an institution that has authority in the supervision of financial services institutions issued POJK Number 61/POJK.07/Year 2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector,. POJK Number 61/POJK.07/2020 was born from the existence of the Financial Services Authority Law and POJK Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector. As stated in Article 55 of the OJK Law, "The functions, duties, and authorities of regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financial Institutions, and other Financial Services Institutions are transferred from the minister of finance and the Moal Market Supervisory Agency and Financial Institutions to the Financial Services Authority." As the only Alternative Dispute Resolution Institution (LAPS) in the financial services sector that has obtained an operational license from the OJK, LAPS SJK replaces the roles and functions of the 6 LAPS that previously existed in the financial services sector and at the same time expands its scope to dispute resolution in the field of *Fintech*.

POJK Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector changes the previous OJK regulation, namely POJK Number 1/POJK.07/2014 which still allows LAPS to appear in many sectors, while in POJK regulation 61/2020 there is practically only one LAPS for the financial services sector. One type of LAPS SJK service is an arbitration service known as LAPS SJK Arbitration. LAPS SJK Arbitration is a way of resolving civil disputes outside the general court which is based on an Arbitration Agreement made in writing by the parties to the dispute. The examination of the arbitration of the SJK LAPS is conducted by the Sole Arbitrator/ Arbitral Tribunal to render the Arbitration Award in accordance with the procedural procedures determined by the SJK LAPS. LAPS SJK arbitration can be carried out as an alternative to dispute resolution, both conventional and sharia. In fact, so far, dispute resolution in the Islamic financial services sector through arbitration has been carried out by Basyarnas. The existence of the provisions of Article 6 of POJK Number 61/POJK.07/2020 leaves questions related to the position of Basyarnas as an institution that has been active and has made a great contribution to alternative settlement of Islamic financial disputes in Indonesia

Research on the theme of Basyarnas' position as an alternative institution for resolving sharia economic financial disputes after the establishment of LAPS SJK is still rare. However, in principle, this research is a development and continuation of previous research. The following are

some writings related to the theme discussed by the researcher: First, Ahmad Saprudin's 2024 research entitled "Quo Vadis Basyarnas in Dispute Resolution in the Sharia Financial Services Sector". The purpose of this study is to find out how the role of the National Sharia Arbitration Board (Basyarnas) in resolving sharia economic disputes outside the court, especially the Islamic financial services sector after the issuance of 61/POJK.07/2020 and number 6/POJK.07/2022 which only allows 1 Financial Services LAPS in resolving financial services disputes outside the court. This study uses a descriptive qualitative method and uses a library research approach by analyzing documents, data, and information related to Basyarnas. This research results in the POJK legal instrument limiting the movement of Basyarnas which has so far provided its work in resolving sharia economic disputes, especially the Islamic financial services sector.

Second, Dinah Tyas Juliana's 2023 research entitled "Comparison of Sharia Dispute Resolution Through Arbitration at the National Sharia Arbitration Board (Basyarnas) and Alternative Institutions for Dispute Resolution in the Financial Services Sector (LAPS SJK)". This study uses empirical legal research with a comparative approach to law and legal effectiveness. The primary data source is from direct interviews with the parties involved, namely Basyarnas and LAPS SJK resource persons. The results of this study show that the similarity of arbitration litigation in Basyarnas and LAPS SJK is that both institutions only accept civil disputes, if the applicant is not present at the first hearing, the arbitration application will be dropped. The difference is that in Basyarnas, *Internal Dispute Resolution* is not a requirement for submitting a dispute resolution. Meanwhile, the SJK Internal Dispute Resolution is part of the requirements for submitting dispute resolution.

The third research is Hasyim Sofyan Lahilote and Moh. Fitri Adam in 2021 entitled "The Existence of Basyarnas in Sharia Banking Dispute Resolution in Indonesia". This paper aims to find out the position and function of Basayarnas as a non-litigation Islamic banking dispute resolution institution which has advantages in terms of efficiency and speed as well as effectiveness in resolving business disputes, including Islamic banking disputes. The method used is normative juridical. The results of the study indicate that from the legal aspect of the existence of Basyarnas which refers to the provisions of Law Number 30 of 1999, its legal existence is still questionable considering that this provision does not mention sharia arbitration at all, but in practice there is a strengthening of the function of Basyarnas through Law Number 48 of 2009 which provides an explanation for the use of Basyarnas as a form of sharia economic dispute resolution.

This study focuses on the position of Basyarnas after the birth of LAPS SJK and analyzes the differences in the mechanism of resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK.

1. Method

This research is a literature research. This type of research is qualitative, namely research that produces descriptive data in the form of words instead of numbers. The data sources used are in the form of literature related to the discussion to be discussed. The data collection technique used is documentation. The documentation technique is carried out by collecting some knowledge information, facts and data. After the data is collected, it is then categorized that is related to research problems, both from document sources, books, scientific journals, and websites. In this data collection, the author uses *library research*, reviews books, websites, photos, and other documents related to the focus of the discussion. In analyzing the data, the researcher uses the descriptive method of analysis, which is a way of writing by prioritizing observation of actual symptoms, events and conditions in the present. The application of the descriptive analysis method is by describing and describing the position of basyarnas as an alternative institution for resolving sharia economic financial disputes after the establishment of LAPS-SJK.

2. Result

1. Legal Basis and Authority of Basyarnas

The existence of the National Sharia Arbitration Board (BASYARNAS) is based on several regulations that have been made by the government to be able to fill the institutional void at that time in resolving sharia economic disputes. The existence of the BASYARNAS institution was an extraordinary breakthrough to be able to help Islamic banking when it was just established, namely Bank Muamalat Indonesia.The National Sharia Arbitration Board (BASYARNAS) as an institution based on Sharia Principles formed by the Indonesia Ulema Council. The existence of BASYARNAS in carrying out its duties and authorities is supported by regulations in the form of laws, regulations and fatwas of the Indonesia Ulema Council in recommending Sharia arbitration as a tool to resolve Islamic civil disputes in Indonesia. The legal basis for the establishment of the BASYARNAS institution (National Sharia Arbitration Board) is as follows:

a. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration according to Law No. 30 of 1999 is a way of resolving civil disputes outside

the general court, while an arbitration institution is a body chosen by the parties to the dispute to give a decision on a particular dispute.

b. Decree of the MUI Executive Board No.Kep-09/MUI/XII/2003 dated December 24, 2003 concerning the National Sharia Arbitration Board. The National Sharia Arbitration Board (Basyarnas) is the only hakam (sharia arbitration) institution in Indonesia that has the authority to examine and decide muamalah disputes that arise in the fields of trade, finance, industry, services and others.
c. All fatwas of the National Sharia Council of the Indonesia Ulema Council (DS NMUI) regarding muamalah (civil) relations always end with the provision: "If one of the parties does not fulfill its obligations or if there is a dispute between the parties, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation".

The authority of Basyarnas is regulated in Article 1 of the Procedure Regulations of the National Sharia Arbitration Body, namely: 1. Resolve fairly and quickly muamalah (civil) disputes arising in trade, finance, industry, services and others which according to laws and regulations are fully controlled by the parties to the dispute, and the parties agree in writing to submit the settlement to the National Sharia Arbitration Board (Basyarnas) in accordance with the procedures of the National Sharia Arbitration Board National Sharia Arbitration (Basyarnas); 2. Providing a binding opinion at the request of the parties without a dispute regarding issues related to an agreement. Meanwhile, the objectives of Basyarnas are as follows: 1. Resolving disputes or civil disputes by prioritizing the principles of peace or ishlah; 2. Resolving business disputes whose operations use Islamic law by using Islamic law; 3. Resolving the possibility of civil disputes between Islamic banks and their customers or service users in particular, and between fellow Muslims who carry out civil relations that make Islamic sharia as the basis; 4. Providing fair and prompt settlement in muamalat/civil disputes arising in the fields of trade, industry, finance, services, and others.

Sharia arbitration is the settlement of disputes between parties who make a contract in the sharia economy, outside the court to reach the best settlement when deliberative efforts do not result in consensus. This arbitration is carried out by appointing and authorizing the arbitral body to provide justice and propriety based on Islamic law and applicable legal procedures. However, the existence of Basyarnas cannot simply be functioned. It must be underlined that settlement through Basyarnas can only be done if a clause is made in the contract regarding dispute resolution through Arbriter. This refers to the provisions in Law Number 30 of 1999 concerning Arbitration and

Alternative Dispute Resolution. The absolute competence of the arbitral institution is determined by the existence or absence of an agreement that contains an arbitration clause either before the dispute occurs (pactum de compromittendo). or after a dispute (acta compromis). In the provisions of Article 11 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated that the existence of a written arbitration agreement negates the right of the parties to submit dispute resolution or differences of opinion contained in the agreement to the District Court. Therefore, based on the applicable legal rules, the absolute authority of all judicial bodies, including in this case the Religious Court environment, cannot reach disputes or cases arising from agreements in which there is an arbitration clause.

The legitimacy of dispute resolution through arbitration is that the agreement applies as a law to the parties who make it (in accordance with the *Pacta Sunt Servanda Principle* regulated in Article 1388 of the Civil Code), and that the law of the agreement adheres to an open system, where there is freedom for the parties to determine the material/content of the agreement, the implementation of the agreement, and also includes the method of resolving the dispute (in accordance with the Consensual Principle which regulated in Article 1320 of the Civil Code. Thus, it is expressly stated in Law Number 30 of 1999 that arbitration is a dispute settlement outside the general court based on an arbitration agreement, both made before the dispute outside the general court based on an arbitration agreement, both made before the dispute occurs (*pactum de compromittendo*) and after the dispute occurs (*acta compromis*).

2. Dispute Resolution Mechanism Through Arbitration in Basyarnas

The arbitration procedure begins with the registration of a letter of request to hold an arbitration by the secretary in the Basyarnas register. The application letter must contain at least the full name and place of residence or position, and a brief description of the seat in dispute, and what is being sought. The application will not be accepted by Basyarnas if the arbitration agreement or clause is considered insufficient as a basis for Basyarnas' authority to examine the dispute submitted. The statement regarding the inadmissibility of the application is made with a determination issued by the Chairman of Basyarnas no later than within 14 days (fourteen days) from the registration of the application. Meanwhile, if the arbitration agreement or clause distributed to Basyarnas is sufficient, then the Chairman of Basyarnas immediately appoints and appoints a sole arbitrator or arbitrator of the tribunal who will examine and decide the dispute. Then ordered to submit a copy of the application letter to the respondent accompanied by an order to

respond to the application. The respondent must provide its answer no later than 30 days (thirty days) from the date of receipt of the copy of the application letter and summons letter.

Upon receipt of the respondent's reply, a copy of the answer is submitted to the applicant. At the same time, the sole arbitrator or the arbitrator of the tribunal orders the parties to appear before the trial on the date fixed, no later than within 14 days (fourteen days), from the date of issuance of the order. The applicant can withdraw his application as long as the decision has not been issued. If there is already an answer from the respondent, then the revocation can only be done with the consent of the respondent. If the application for revocation is made by the applicant before the chairman of Basyarnas appoints an arbitrator and determines the summons to appear before the hearing, then all examination fees are returned to the applicant.

The venue of the inspection event was carried out at Basyarnas' position. However, if there is agreement from both parties, the inspection can be carried out elsewhere. During the proceedings at each stage of the examination, the arrears arbitrator or the arbitrator of the tribunal shall give the same treatment and full opportunity to each party to defend and defend its interests. In the settlement of disputes in Basyarnas, arbitrators will prioritize the achievement of peace. If the effort is successful, then a single arbitrator or panel arbitrator will make a peace deed. However, if the peace is not successful, then the sole arbitrator or the arbitrator of the tribunal will proceed to the examination of the dispute requested.

In the trial, the parties are welcome to present their respective postulates and submit evidence that is considered necessary to corroborate them. If necessary, a sole arbitrator or an arbitrator of the panel may call witnesses or members to be heard. The party who requests the summoning of witnesses or experts must pay in advance to the secretary concerned. When the examination has been deemed sufficient by the sole arbitrator or arbitrator of the tribunal, the arbitrator or the presiding arbitrator of the tribunal shall close the examination and set a hearing date to pronounce the judgment taken.

The arbitrators who handle disputes in Basyarnas consist of 3 (three) people. Any award or other ruling from the arbitrator must be taken based on the majority vote. However, if a majority vote is not reached, the Chief Arbitrator may render an award based on his own authority, and it is deemed to be made by the majority of the arbitrators. The verdict must contain reasons unless the parties agree that the verdict does not need to contain reasons. The direct award is final and binding to the parties, if it has been signed by the arbitrator. The parties to the dispute are obliged to obey the decision and immediately fulfill its implementation. The verdict should not be announced because it is confidential, unless agreed by both parties. After the decision is made within twenty

days of being submitted, either party may submit in writing a request for correction of the judgment regarding errors related to the number of calculations, typographical errors, or printing errors. In addition, the parties can apply for the cancellation of the decision in writing which is submitted to the secretary and a copy to the opposing party as a notice with the reasons that have been determined. The Basyarnas decision is registered by the arbitrator or his legal representative to the Registrar of the Religious Court.

3. Legal Basis and Authority of LAPS SJK

The legal basis of LAPS-SJK is POJK number 61/POJK.07/2020. Based on Article 2 letter b of POJK No. 61/POJK.07/2020, LAPS SJK was formed with the aim that out-of-court dispute resolution services can be trusted by consumers and financial services business actors (Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector). The establishment of this institution went through a long process, namely in *a focus group discussion* (FGD) formed by the OJK during 2018 to 2019 with the initial idea of forming a single and integrated LAP. Until September 22, 2020, there was an agreement to form LAPS SJK by *Self Regulatory Organizations* (SROs) and associations within the financial services sector. Then the Financial Services Authority as an institution authorized by the Law to regulate, supervise, and conduct investigations into financial services institutions regulates this institution through POJK No. 61/2020 which was promulgated on December 16, 2020. From an institutional perspective, LAPS SJK is not part of the OJK, but as a consumer protection ecosystem built by the OJK. In carrying out its duties, LAPS SJK received an operational permit and was directly supervised by the OJK. The legal entity form of LAPS SJK is an association registered with the Ministry of Law and Human Rights. Dispute resolution through LAPS SJK is carried out independently, fairly, effectively, efficiently and easily accessible for the parties to the dispute.

The update of rules related to LAPS-SJK as briefly explained previously has an impact related to the dispute resolution process through LAPS SJK. LAPS-SJK based on POJK 61/2020 is an integrated institution and domiciled outside the OJK and is not the result of the merger of the existing LAPS, which is authorized to resolve disputes between Financial Services Business Actors (hereinafter referred to as PUJK) and consumers in the financial services sector, the establishment of LAPS-SJK aims to provide professional, credible financial services dispute resolution services and establish standardization of dispute resolution in the financial services sector. The disputes that can be resolved through LAPS-SJK must meet the criteria in accordance with the provisions of Article 32 paragraph (1) POJK 61/2020, namely: 1. There is a complaint first to PUJK, which is

then processed through Internal Dispute Settlement but no agreement has been met or has not received a response from PUJK. 2. The dispute submitted is not a dispute that is being processed or has been decided by a judicial institution, arbitration or other alternative dispute resolution institution. 3. The dispute submitted is civil in nature.

In article 4 of the POJK LAPS SJK, LAPS SJK has several duties and authorities, namely: a. Carrying out the handling and resolution of Consumer Disputes; b. Providing consultation on dispute resolution in the financial services sector; c. Conducting research and development of dispute resolution services in the financial services sector; d. Making regulations in the context of resolving disputes in the financial services sector; e. Collaborating with consumer protection institutions/agencies both nationally and international; and f. Developing the competence of mediators and arbitrators registered with the Financial Services Sector LAPS. LAPS SJK is authorized to resolve disputes in the financial services sector, both conventional and sharia. Alternative dispute resolution services available at LPSJ SJK include mediation, arbitration, and binding opinions. The duties of LAPS SJK are not limited to *retail disputes and small claims* but can also accept the resolution of commercial disputes by charging a fee for the settlement of such disputes

4. Dispute Resolution Mechanism Through Arbitration AT LAPS SJK

The main activity of LAPS SJK is to resolve civil disputes in the financial services sector between consumers and financial services business actors (PUJK) where the dispute has first been sought to be resolved through the IDR (Internal Dispute Resolution) mechanism, namely deliberation for consensus/direct negotiation between Consumers and PUJK; and the dispute is not being investigated and/or has not been decided by other (authorized) agencies. The Arbitration proceedings at LAPS SJK are based on the parties' arbitration agreement. In the agreement, the disputing parties agree in writing if the disputes that occur or will occur between them are resolved through the LAPS SJK Arbitration. Before the applicant submits the registration of the Arbitration Request, the Applicant must first provide notice to the respondent.

The next step is to file an arbitration application. The management verifies and will submit confirmation of acceptance/rejection of registration within a maximum of 10 (ten) days after the date of registration of the arbitration application. In the event that the registration of the Arbitration Application is accepted: (a) The Arbitration Application is recorded in the LAPS SJK Case Register Book; (b) confirmation is submitted to the Parties, and a copy of the Request for Arbitration to the Respondent is attached; (c) The confirmation letter also contains information regarding the name of

the Secretary, the calculation of the Costs of Arbitration, and the stages of appointment of the Arbitrator. The Parties to the Arbitration may agree on an odd number of Arbitrators. The Applicant and the Respondent are each given the opportunity to appoint an Arbitrator within a maximum period of 10 (ten) days after the Applicant/Respondent receives confirmation of the registration of the Arbitration Request.

The time for the examination of the Arbitration shall be 180 (one hundred and eighty) days from the date the Single Arbitrator is appointed/ the Arbitral Tribunal is formed until the reading of the Arbitral Award. To overcome space and time limitations, LAPS SJK applies several concepts of online dispute resolution ("ODR"), which is a way of dispute resolution that is carried out through internet media so that the dispute resolution process can be carried out by parties in cross-border areas (borderless) and without having to be face-to-face.39 ODR itself is an online development and implementation of the Alternative Dispute Resolution (ADR) mechanism or alternatives dispute resolution. The means used by ODR vary from the use of video conferencing, email, chat features, automated systems, to a combination of these features.

In settling using arbitration in LAPS, SJK also wants peaceful efforts. If peaceful conditions are not realized, then at the next arbitration examination, the parties are given an equal and fair opportunity to submit evidence that is deemed necessary to corroborate their postulates. The Sole Arbitrator/Arbitral Tribunal is authorized to determine whether the evidence is admissible, relevant and relevant to the subject matter of the case and has the strength of evidence. If there is no longer any evidence or information that the parties wish to add, and the arbitrator is of the opinion that the examination of the arbitration is sufficient, then the parties are given the opportunity to present their conclusions at the time set by the arbitrator. After the parties submitted their conclusions, the arbitrator declared the hearing closed.

In the case of an arbitral award, the Sole Arbitrator compiles and signs the Arbitral Award on its own, whereas the Arbitral Award of the Arbitral Tribunal is collective in nature and is decided on the basis of deliberation for consensus or on the basis of a majority vote. Arbitral awards shall be pronounced at a hearing that has been determined by the Sole Arbitrator/Arbitral Tribunal. If one of the Arbitrators, or one of the Parties, or the Parties is not present, the Sole Arbitrator/Arbitral Tribunal may still read the Arbitral Awards at the scheduled hearings. Within a maximum of 30 (thirty) days from the date the Peace Deed/Arbitral Award is pronounced, the original sheet or an authentic copy of the Peace Deed/Arbitral Award shall be submitted and registered by the Sole Arbitrator/Arbitral Tribunal to the Registrar of the District Court.

3. Discussions

1. The Position of Basyarnas as an Alternative Institution for Sharia Economic Financial Dispute Resolution after the birth of LAPS SJK

So far, alternative solutions to sharia economic financial disputes in Indonesia have been implemented by Basyarnas. This has changed after the government issued POJK Number 61/POJK.07/2020. Article 6 of POJK Number 61/POJK.07/2020 stipulates that the settlement of disputes in the financial services sector outside the court, is carried out by one LAPS of the Financial Services Sector. These provisions apply to all financial services sectors, both conventional and sharia. POJK number 61/POJK.07/2020 also stipulates that all PUJKs who have become members of LAPS in the financial services sector registered as regulated in POJK number 1/POJK.07/2014 since January 1, 2021 automatically become members of LAPS SJK. The institutions referred to in the above regulations are institutions that carry out activities in the banking sector, capital market, insurance, pension funds, financial institutions, and other financial service institutions. Other financial service institutions in this case are pawnshops, guarantee institutions, Indonesia export institutions, public fund management institutions, *fintech* sectors, etc. This indicates that the institutions mentioned above no longer have the freedom to solve their problems in other institutions such as Basyaranas. So, institutions that have become members of LAPSJK automatically also handle their disputes at LAPS SJK.

The existence of the provisions of Article 6 of POJK Number 61/POJK.07/2020 actually does not kill the institution of Basyarnas which has been an alternative institution for dispute resolution through Arbitration. Even since January 2021, Basyarnas has had 20 representative offices in Indonesia. Basyarnas representative offices are spread across the provinces of East Java, Central Java, Yogyakarta, Banten, South Kalimantan, Central Kalimantan, North Sumatra, Riau Islands, Central Sulawesi, North Maluku, and others. This shows that with POJK Number 61/POJK.07/2020, Basyarnas can still carry out its duties, but its scope is now limited. Basyarnas still plays a role as an institution that handles disputes related to Islamic finance, but for disputes in the financial services sector registered in POJK number 1/POJK.07/2014, LAPS SJK has a central role.

The existence of LAPS-SJK is a challenge for Basyarnas to continue to play an active role in overcoming sharia economic disputes in Indonesia. It is undeniable that the birth of LAPS-SJK seems to override and limit the area of movement of Basyarnas which has been known as the only Sharia Arbitration institution in Indonesia. This of course must be considered by the government so that Basyarnas, which has been contributing to alternative sharia financial dispute resolution, is not eroded by its authority and position.

2. Differences in the mechanism for resolving sharia economic disputes by arbitration in Basyarnas and LAPS-SJK

Basyarnas and LAPS-SJK are both alternative institutions for resolving sharia financial disputes that offer arbitration channels in their settlement. However, there are differences between Basyarnas and LAPS SJK in the dispute resolution mechanism by arbitration, including: First, in Basyarnas, *Internal Dispute Resolution* (IDR) is not a requirement to file a dispute resolution, while in LAPS-SJK it is one of the requirements. In LAPS SJK in Article 2 concerning the Scope of this Regulation, it is emphasized that: (3) Disputes that can be submitted for settlement to the LAPS-SJK Arbiterase are disputes between the Parties to meet the following provisions: (a) Settlement has been sought in advance by muasyawarah for consensus among the Parties themselves (Internal Dispute Resolution). Second, in the SJK LAPS, it is always accompanied by a notification by the applicant to the respondent, while not with Basyarnas. In the LAPS SJK Article 8 states: (1) In the event of a dispute, and before the Applicant submits the registration of the Arbitration Application, the Applicant must first submit a notification to the Respondent. (2) The Notice of Arbitration contains information from the Applicant that the terms of the arbitration held by the parties have been valid, and the notification clearly contains: the names and addresses of the Parties, the submission to the Arbitration Agreement, a summary of the basis of the claim and the amount demanded, the desired method of settlement, the number of Arbitrators in accordance with the Arbitration Agreement, or a proposal about the number of Arbitrators in an odd number if it has not been stated in the Arbitration Agreement. (3) The Respondent shall provide a response to the Claimant to the notice of arbitration, in particular with respect to the number of Arbitrators' proposals available. (4) The submission of the arbitration notification is no longer required in the event that an arbitration agreement is made after the dispute arises.

Third, in Basyarnas there is no known retail small claim while in LAPS-SJK it is known for the existence of retail small claims that apply to PUJK in the conventional and sharia fields. LAPS-SJK provides a special policy in the form of exemption of mediation fees for disputes between consumers and PUJK which are included in the retail & small claim category, namely: (1) Disputes with the value of the consumer's claim to PUJK up to Rp. 200,000 (two hundred million rupiah) for disputes in the fields of pawnshops, financing and fintech. (2) Disputes with the value of Consumers' demands to PUJK up to Rp. 500,000,000 (five hundred million rupiah) for disputes in 71 fields of banking, capital market, life insurance, pension funds, venture capital, and guarantees. (3) Disputes with the value of consumer claims to PUJK up to Rp. 750,000,000 (seven hundred and fifty million rupiah) for general insurance disputes. Fourth, in LAPS SJK, the arbitration award is

registered with the District Court, both conventional and sharia disputes. Meanwhile, Basyarnas arbitral awards are registered with the Religious Court.

4. Conclusions

After the birth of the Alternative Institution for Dispute Resolution in the Financial Services Sector (LAPS-SJK), the position of the National Sharia Arbitration Board (Basyarnas) has undergone several changes. Basyarnas continues to play the role of an arbitration institution authorized to handle disputes related to Islamic finance. However, for disputes in the financial services sector that are specifically under the supervision of the Financial Services Authority (OJK), LAPS-SJK has a central role as an alternative dispute resolution institution. OJK regulations stipulate that dispute resolution in the Islamic financial services sector can be through the LAPS-SJK mechanism, but Basyarnas is still recognized as a competent institution for sharia arbitration. These two institutions are expected to function in a complementary manner to provide legal certainty and justice for the parties to the dispute. With the existence of Basyarnas and LAPS-SJK, it is hoped that they can work together and collaborate in handling Islamic financial disputes. Basyarnas, with its experience and expertise in sharia arbitration, can support LAPS-SJK in handling cases that require special knowledge of sharia law and principles.

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IMPLICATIONS OF THE UNDERAGE MARRIAGE BILL FROM AN ISLAMIC CIVIL LAW PERSPECTIVE

Yulies Tiena Masriani[1], Novia Mungawanah[2]
17 August 1945 Univercity, Semarang[12]
Email: yulies-tm@untagsmg.ac.id[1] , noviamungawanah12@gmail.com[2]

Abstract

The Ministry of Religion is prepare Design Law (RUU) on Religious Courts concerning Marriage with objective punish wedding below age. this bill will arrange clear sanctions for violation the . Proposed sanctions is IDR 6 million For perpetrator wedding below age and IDR 12 million as well as confinement three month for the headman who takes care of it wedding. As for research This use method qualitative involving descriptive Constitution Family specifically regarding marriage. Study This own objective For examine in a way comprehensive related regulation, influence regulations, also implications application existing regulations. Research result show that marriage at age young Already become matter common in rural areas, p This show that public ignore important aspects in wedding. According to Marriage Law No. 1 of 1974, men must reach 19 year old and 16 year old female For marrie , however Still There is opportunity wedding below age past dispensation from court or official. The amendment to Law No 1 of 1974, Law No 16 of 2019, requires the bride and groom to be 19 years old Wedding below age This has show impact negative like enhancement divorce and numbers death Mother moment giving birth, as well become door enter prostitution. There is a Plan Governing law related punishment criminal for organizers and parties related to legalization marriage below age become foundation main For prevent various implications and impacts negative on maintenance marriage below age .

Keywords *: Minors Family Law ; Marriage; Regulations*

INTRODUCTION

Marriage is considered as something sacred and necessary consideration ripe before took place . One of important consideration is readiness second split the party that will Marry. Age also matters necessary factors noticed Because If wedding carried out by current partners too young , you can arise problem health and lack thereof readiness in undergo life home ladder . Thorough readiness required from facet physically and mentally so that you can operate duties and responsibilities answer in wedding . Marriage is not easy thing , but merger roles and responsibilities answer between husband and wife , as well as child for second the family concerned (Tahir & Husna, 2021, p. 120) .

Marriage below age , or often categorized as as marriage child according to *The United Nations Children's Fund* (UNICEF) is violation heavy to right every child For reach potency complete self . Therefore Therefore , *the United Nations Children's Fund* (UNICEF) set the

Sustainable Development Goals or *Sustainable Development Goals* (SDGs) for remove practice this will be in 2030 (Susyanti & Halim, 2020, p. 115) . According to WHO , marriage child or age early is marriage entered into by a couple or one of them couples who are still categorized as children or aged teenagers under 19 years old . According to UNICEF marriage child is the marriage was carried out in a way official or No officially done before 18 years old (Siwie et al., 2019, p. 141) .

The 2017 BPS report shows that number wedding child (ie marriage Where partner bride boy and girl under 18 years of age) incl is at at a high rank with level its prevalence namely 25.71 percent and it happens equally almost all over provinces in Indonesia (Dewi et al., 2019) . More astonishing again , no only tall but If seen from the sorted data (type gender) number child Woman the amount more tall that is One from four children women in Indonesia are victims of marriage age child or about 340,000 children Woman every year and in between there are 50,000 children women who experience it marriage at age not enough from 15 years .

Related marriage below age , Ministry of Religion medium prepare Design Law (RUU) (Ministry of Religion of the Republic of Indonesia, 2019) . Religious Courts regarding Marriage with objective punish wedding below age . this bill will arrange clear sanctions for violation the . Proposed sanctions is IDR 6 million For perpetrator wedding below age and IDR 12 million as well as confinement three month for the headman who takes care of it wedding the . Revisiting the proposed bill related giving penalty for organizers and parties involved in implementation wedding below age , research This will try dissect holistically and comprehensively related How Then implications if the bill applied look a number of case wedding below getting older increase each year .

As for some study related wedding below age Good in glasses Indonesian law or law civil Islam in Indonesia includes : (1) Research by Jacobus et al , in 2021 (Rahajaan & Niapele, 2021) with title " *Judicial Studies Against Child Marriage* " provides exposure related Constitution Number 16 of 2019 concerning Marriage, marriage legitimate If candidate bride has reach 19 years old and got permission from both parents . However , the Compilation of Islamic Law (KHI) article 15 paragraph (1) has not revise limit minimum age of marriage , so there is nonconformity between second regulation This . Nonconformity This can give rise to ambiguity and misinterpretation in society , as well potential bring up practice marriage below age violation law . Therefore that 's necessary done revision to regulation this

, in particular article 15 paragraph (1) KHI and article 7 paragraphs (2) and (3) of the Law Number 16 of 2019, for give clarity about dispensation marriage below age .

(2) Research by Theresia Sekar in 2023 (Sekar, 2023) with title " Marriage *Dispensation for Minors : Overview to Child Ham Perspective in Taking Policy (Case Study in District Jepara)* " revealed that application marriage dispensation in the Regency Jepara experience enhancement before and after exists change Marriage Law . Dispensation marriage Still easy found in society Regency Jepara without urgent reasons , though submission dispensation should based on urgent reasons . Although marriage is right basic humans , but also exist mandatory obligations obeyed in accordance law . Allow wedding below age The same with violate right basic man .

Search related study previously This show when Not yet some are peeling in a way comprehensive related implications application Design Marriage Law below age related giving penalty for implementers and parties related . As for urgency study done remember level wedding below old enough tall each the year . Central Statistics Agency (BPS), and the National Development Planning Agency (Bappenas) in 2020 based on amount Indonesian population occupies ranked 10th in total marriage child highest in the world. Report study the mention around 1,220,900 Indonesian children experience it marriage early . Problem wedding early of course become something existing problems happened a long time ago however until now Not yet can solved (Oktarianita et al., 2022, p. 19) ..

In Indonesia, marriage early or wedding child Still become worrying trend . More from One million Woman aged 20-24 years Marry first time before 18 year olds , with 1.2 million Marry before 15 years old . Data from the Central Statistics Agency 2020 also mentioned that in 2019 , the percentage wedding child reached 10.82%, with 15.24% occurring in rural areas and 6.82% in urban areas . Province with prevalence highest wedding child is Bengkulu (Oktarianita et al., 2022, p. 20) . Factors like lack of education and living in rural areas can influence reason somebody For married at a relatively young age young .

Source : BPS 2022 data (Indonesia Baik.id, 2023)

Enhancement wedding Early onset also has an impact on pregnancy early , and marriage below age often end with divorce that puts children are in a difficult position . Should they feel love affection and protection , however they rather must face divorce Because marriage that is not Ready (Oktarianita et al., 2022, p. 21) . Need exists effort For overcome problem this and give adequate education to child Woman . There is research This later join in endeavor For open room research and discussion more carry on related factor What just what is necessary noticed if Design Constitution the confirmed or No . Also included How right child from from executor wedding below age as man .

RESEARCH METHODS

The method used in the research is normative juridical legal research using a statutory approach and an analytical approach. Secondary data as the main data in the form of legal materials is collected using documentation and recording techniques, then analyzed using qualitative techniques (Nikmah, 2021, pp. 13–14) . This research also utilizes literature or document studies, because this research analyzes a lot through library studies or better known as studies on secondary data. The literature study carried out also used Pancasila references as the basis for the literature used in the research. The scientific logic in normative legal research is built on scientific discipline and the workings of normative legal science, namely

legal science whose object is law itself. (Ibrahim, 2012, p. 57) . The analytical approach itself is intended to understand the meaning contained in the terms used in statutory regulations conceptually, as well as knowing their application in practice and legal decisions. This is done through two checks. First, the researcher tries to obtain new meanings contained in the legal regulations in question. Second, examine these legal terms in practice through analysis of legal decisions (Ibrahim, 2012, p. 310) .

DISCUSSION

Underage Marriage According to Islamic Civil Law

Minor child marriage age , in Islamic law in general general considered as marriage is permitted Because No There is rules prohibit it . However , fukaha give right to child after reach age mature For formalize or cancel wedding the (Triyanto, 2013, p. 71) . As explained in Law NO. 1 of 1974 (Zulfiani, 2017) about marriage that explains that Marriage is something bond born nor inner between a man with Woman as husband legal wife in frame For form family (home ladder) which is happy and eternal based on Belief in the one and only God . Marriage is possible agreement a man own rights and benefits a Woman For satisfaction . Apart from that , marriage is also a desire from everyone because through wedding somebody can own legitimate descendants according to religion and the laws applicable in Indonesia.

Marriage is bond born inner between a man and woman as husband legal wife with objective form happy and eternal family based on supreme divinity esa . Therefore that 's marriage must considered serious and considered with ripe as well as must own mental and psychological readiness to be able to do it responsible answer and fulfill need House ladder (Khairillah, 2019, p. 133) . Maturity soul before Marry very important , because marriage below age can give rise to problems later day . However , if wedding carried out by a mature and ready couple mentally , you can give impact positive for life House ladder in matter maturity and mental readiness .

The Compilation of Islamic Law also states that marriage only can carried out by the candidate bride and groom who have reach specified age in Constitution number 1 in 1974. However , Islamic law does not arrange limit age marriage in a way specific , but refers to aqil puberty (Khairillah, 2019, p. 134) . Aqil is coming of age for Woman is after menstruation (menstruation), whereas for boy and girl is after experience dream wet .

However , there are difference pattern think between generation moment this one has maturity sexual However Not yet own pattern think maturely .

Islamic law does not limit age in carry out wedding , because according to Islam, marriage legitimate No determined by age , but by fulfillment harmony and conditions marriage . Harmony and conditions marriage the covers exists guardian and two witnesses , as well exists dowry and marriage contract . Islam recommends wedding when has There is readiness and blessing from parents , with objective For avoid action sex free . In the example Rasulullah SAW, he married Siti Aisyah when Still 7 years old , however wedding the taking place after Siti Aisyah was 9 years old (Puspytasari, 2021, p. 32) . Story This teach that in wedding below age , important For There is understanding between second couple who will Marry as well as wait readiness of the reproductive organs to function optimally.

In Islam, marriage is subordinate age before period considered legitimate If done with agreement as well as understanding between second party . View This has agreed that a father can get married child the woman is still downstairs age . However so , deep Islamic law , limits age marriage only determined by achieving age puberty , which is attached with terms and conditions marriage . One of condition legitimate marriage is reach age puberty , appropriate with regulation in Law no. 1 of 1974 concerning Marriage.

Verses in the related Qur'an with appropriateness somebody For do marriage are surah Al-Nur verse 32 and surah An-Nisa' verse 6.

وَأَنكِحُوا۟ ٱلْأَيَـٰمَىٰ مِنكُمْ وَٱلصَّـٰلِحِينَ مِنْ عِبَادِكُمْ وَإِمَآئِكُمْ ۚ إِن يَكُونُوا۟
فُقَرَآءَ يُغْنِهِمُ ٱللَّهُ مِن فَضْلِهِۦ ۗ وَٱللَّهُ وَٰسِعٌ عَلِيمٌ ﴿٣٢﴾

QS: An-Nur verse 32 " *Marry those who are still alive single in between you and also the worthy (married) of your servants , good man nor Woman . If they are poor, Allah will give ability to they with his gift . Allah is All-Encompassing (His gifts) and All- Knowing* ."

وَٱبۡتَلُواْ ٱلۡيَتَٰمَىٰ حَتَّىٰٓ إِذَا بَلَغُواْ ٱلنِّكَاحَ فَإِنۡ ءَانَسۡتُم مِّنۡهُمۡ رُشۡدٗا فَٱدۡفَعُوٓاْ
إِلَيۡهِمۡ أَمۡوَٰلَهُمۡۖ وَلَا تَأۡكُلُوهَآ إِسۡرَافٗا وَبِدَارًا أَن يَكۡبَرُواْۚ وَمَن كَانَ غَنِيّٗا
فَلۡيَسۡتَعۡفِفۡۖ وَمَن كَانَ فَقِيرٗا فَلۡيَأۡكُلۡ بِٱلۡمَعۡرُوفِۚ فَإِذَا دَفَعۡتُمۡ إِلَيۡهِمۡ
أَمۡوَٰلَهُمۡ فَأَشۡهِدُواْ عَلَيۡهِمۡۚ وَكَفَىٰ بِٱللَّهِ حَسِيبٗا ٦

QS: An-Nisa verse 6 " *Test it children orphan until they they reach age ready to get married (baligh); Then when you see they has capable (in affairs management wealth and religious affairs), then hand it over treasure they to they ; do n't eat treasure they in a way excessive and rushed worry they move on big ; Who just guardian rich orphan then let avoid (from eat treasure child orphans) and who just guardian poor orphan , then eat (from treasure child orphan) with good way ; Then when you submit it treasure they to them , do it testimony on they ; and Allah is sufficient as The Most Protective Substance* ."

In al-Misbah's interpretation, the word rushdan own meaning accuracy and straightness road . From here , the word rushd was born , which means perfection mind and soul so that somebody can behave and act with appropriate . According to al- Maraghi's interpretation , maturity (rushdan) occurs moment somebody understand with Good How use wealth and spend it , whereas balighu al- nikdh refers to age someone who has Enough For Marry (Puspytasari, 2021, p. 33) . With thus , al- Maraghi interpret that people who haven't puberty can burdened with a number of obligation certain .

In Islam, though No There is limitation age certain , marriage must held with fulfil harmony , conditions , and based on readiness as well as understanding between second couple who will Marry . Wedding below age is a must too Approved with approval and blessing from parents . So, it's important for public For understand principles so that the marriage takes place in accordance with religious teachings and protect interest as well as well-being second married couple .

Awareness Muslim women about rights those who are restrained by domination jurisprudence classic or conventional has bring up desire For protect right Woman in marriage through Constitution (Hardani, 2016, p. 131) . Since the Indonesian Women's Congress in 1928 , a forum has been held For discuss problems intermarriage Muslims , like coercion in marriage , marriage child below age , polygamy , and divorce arbitrary . Women

urge it was formed protective laws Woman in marriage , because rights and obligations Woman in marriage No arranged in law written . Fiqh books only become guidelines , however No seen as law written as possible enforced (Hardani, 2016, p. 132) . The Indonesian government has emit a number of regulation For repair situation this , however demands For governing law law material marriage Not yet fulfilled . Various organization Keep going push Government and the House of Representatives for quick promulgated a bill on law Islamic marriage .

More carry on related The event of the Prophet Muhammad's marriage to Aisyah was carried out when Aisyah was old six years , but the Prophet remained with Aisyah after He aged nine year . This matter based on hadith narrated by Muslim. Although Thus , marriage This No considered as action despicable , rather in accordance with development physical and psychological child women at that time (Azmi, 2023, p. 98) . The same thing happened in Umar's marriage to Hafsah, daughter of Abu Bakr. Hadith that tells the story The Prophet's marriage to Aisyah reaped pros and cons . In jurisprudence classic , approach textual used For formulate law wedding child below age . However , hadith This considered as text transcendent , containing meaning transcendent and able emulated . According to reason jurisprudence classic , the Prophet's marriage to Aisyah was not based on desire personal or weather lust , because all actions taken by the Prophet based on God's revelation .

Consensus in Islamic Law is that maturity a child characterized by change and cycles body . Imam Malik argued that semen discharge and growth hair on the body is sign beginning maturity (baligh). Imam Shafi'i opinion that discharge of semen and growth a number of sheet hair is sign beginning maturity (baligh) (Azmi, 2023, p. 99) . Imam Mad bin Anbal opinion that child man become puberty when they experience dream wet or discharge of semen or when they 15 years old . Whereas child Woman become puberty when they experience period . There are also other opinions that allow it wedding child Woman before puberty , but This considered as distorted opinion Because Rasulullah free from sin .

The Prophet Muhammad married Aisha at a young age youth and marriage child below age is still topic be pros and cons . In jurisprudence classic , approach textual used For formulate law wedding child below age . However , the hadith tells the story wedding Rasulullah with Aisyah considered as text transcendent who can emulated (Azmi, 2023, p. 100) . Consensus in Islamic Law marking maturity somebody based on change physical and

cyclical body . There are also opinions that allow it wedding child Woman before puberty , but This considered as distorted opinion because the Prophet Muhammad was free from sin .

Design Constitution Enforcement Penalty To Parties Involved in The implementation of underage marriages

According to Abraham H. Maslow, humans motivated For fulfil his needs , who has level or hierarchy . Need physiological is need base like eat and drink . Need for security covers protection and security . Need have and love involve look for connection social and love (Rahajaan & Niapele, 2021, p. 90) . Need award related with status and achievements . And needs actualization self related with development self and use potency . Marriage is also a need man Because covers need will have and love darling , related with reproduction and offspring .

Marriage is institution important in society and validate it connection law between man and woman . There are some definition wedding , incl fellowship recognized life in a way law and relationships law between man and woman For long time . Current existing conflict between limit age marriage regulated by the Marriage Law and Child Protection Law in Indonesia (Rahajaan & Niapele, 2021, p. 91) . Minimum age for Marry has become material consideration in effort realize values sublime wedding , but exists case marriage below age give rise to controversy . Conflict This Finally submitted to Court Constitution in 2017 and request change limit age wedding in Indonesia. Court Constitution moment This currently consider application the .

In Indonesia, Marriage Law no. 1 of 1974 regulates that marriage must based on consent second candidate bride and groom bride woman must own permission both parents If Not yet reach 21 years old . The Marriage Law also determines this limitation age for candidate bride and groom , with party man must be at least 19 years old and party female at least 16 years old . Impact from marriage below age covers exploitation , discrimination and oppression to children (Triyanto, 2013, p. 72) . Study This use method study law normative with analyze material References from discipline Legal studies .

UU no. 1 of 1974 concerning Marriage is one of them many laws get criticized spotlight Because No fulfil element justice especially for Woman . National Commission Against Violence Against Women (Komnas Perempuan) and organizations movement Woman has propose revision of the Marriage Law (Hardani, 2016, p. 130) . A number of

proposed issue For revised including maturation age marriage , the principle of non-discrimination in recording marriage , rights and obligations for women , and the rights and status of children born outside marriage . Although there are pros and cons to revision this , Law no. 1 of 1974 indeed contain the rules are not in accordance with objective Constitution This .

In Law No. 16 of 2019 (Ministry of State Secretariat of the Republic of Indonesia, 2019) as change Marriage Law no. 1 of 1974 related dispensation marriage , ' deviation ' in marriage only can done through submission application dispensation by parents candidate bride to Religious Court (for Muslims) or District Court (for religious people other than Islam) if second partner Not yet reach 19 years old . The very reason urge must There is as base application , where not There is another option and very forced For carry out marriage .

Sufficient supporting evidence must included , like letter evidence that proves it that age candidate bride still below age determined by law , as well letter information from power supportive health parent 's statement that marriage the urge held . The government does too socialization and coaching to public about importance prevent marriage age early , dangerous sex freedom , and its importance take notes marriage For create superior generation .

Implications Enforcement Design Underage Marriage Law

Accommodation Child protection

There is a Marriage Bill below age , basically is one of effort For accommodate right from child . Children is subject the law has qualification accountability based on age they . Children is aged individuals young , medium find teak self they , and have trend For easy influenced by the environment (Rahajaan & Niapele, 2021, p. 93) . In Indonesia, children often become victims of violence , which causes fate tragic for they . However , children are also generation successor and source Power man in development national .

Article 91 paragraph 4 of the Criminal Code (Government of Indonesia, nd) explain that children is under the same power with parents they . Constitution Number 23 of 2002 concerning Child Protection confirms that children is individuals who have not reach 18 years of age , incl still children in content . This matter show that according to Constitution this , someone considered Not yet mature before 18 years old and not own proficiency law , incl For do marriage .

Constitution Child Protection formed For give appropriate protection for children . Article 1 paragraph 2 of the law This state that protection child is purposeful activities For guarantee and protect children as well as rights them so they can live , grow , develop , and participate optimally appropriate with dignity humanity . Apart from that , the law this also delivers protection to violence and discrimination to children .

Terms about rights children are also confirmed in Article 26 paragraph 1 Law no. 23 years 2002 about Child protection . Chapter This mention that parents own obligation For prevent marriage children below 18 years old . In law here , kids defined as individuals who have not reach 18 years of age , incl still children in content . Constitution This guarantee and protect rights child to order them can live , grow , develop , and participate optimally appropriate with dignity humanity , as well protect they from violence and discrimination . With exists Constitution protection child This is expected children can get appropriate protection with rights they . Parents have too role important in prevent marriage children who violate Constitution This . All This aim For ensure that children can grow and thrive with OK , without must experience violence or discrimination .

Consideration Medical in Implementation of Underage Marriages

Behavior sexual pre-wedding teenager often resulting in marriage age young people in Indonesia, which is caused by views society still positioning child Woman as class citizen two and want speed up wedding , with reason economic , social , and opinion that education tall No important for child Woman . There are some causal factors matter this is like view about the ' maturity ' that is seen from facet economy , change physical and reproductive organs , occurrence pregnancy out of wedlock, and capacity women are considered No important for family (Hardani, 2016, p. 133) . Apart from that , no exists penalty criminal to There are also violations of the Marriage Law reason Why marriage at age early No can prosecuted in a way criminal . For prevent marriage below age and avoid impact the negative , it's important for everyone , especially parents , to realize and learn from consequences arising from marriage age child .

Based on data released by the Central Statistics Agency (BPS), from the countries that are members Within ASEAN, Indonesia occupies order to two with number wedding age early highest after the country of Cambodia. Report data the mention that there is about 23% of children or teenager 18 years old down has carry out marriage and percentage the assessed

including category tall (Yelvianti & Handayani, 2021, p. 238) . Early-age marriage own impact significant negatives , esp for teenager daughter . One of impact is problem health reproduction .

Girl's reproductive and psychological organs below age Not yet ripe completely , so wedding early can cause various problem health like risk tall violence in House stairs , malnutrition , and disorders health sexual and reproductive . Apart from that , relationships sexual at age young can cause damage to female organs and increase risk of obstetric fistula , which can result urine leakage or feces to in the vagina (Yelvianti & Handayani, 2021, p. 139) . Cancer the cervix also becomes threat Serious for girls who marry at age early because of the reproductive organs they Not yet Ready For do connection sexual .

Problems aside health , there are also risks for Mother pregnant and giving birth . Mothers who are under 18 years old own more risk tall For give birth to baby with birth weight low birth weight (LBW) and birth premature . Baby It's also risky experience abnormality or disabled default that has been happen since the pregnancy process (Yelvianti & Handayani, 2021, p. 140) . His height number wedding age Early childhood also contributes to stunting rates in Indonesia, with around 43.5% of stunting cases occur in children under age three year with Mother 14-15 years old . Problem wedding early No only impact period short , but also long term long . Girls who get married and get pregnant at age young , especially before 20 years old , yes experience decline growth bone . This can causes osteoporosis due to peak density bone No achieved optimally .

At the age of 16-19 years , bones teenager Still in the period of growth and density bone Still Keep going increase . Impact wedding early to health physical and psychological women , as well risk for mother and baby , show necessity effort For prevent wedding early and improve education comprehensive sexual (Yelvianti & Handayani, 2021, p. 141) . Government , institutions society , and family need Work The same For provide access to service health reproduction , involving teenager in taking decision about health they yourself , and improve awareness about risk wedding early in society in a way wide .

Preventive Efforts Reducing Levels of Domestic Violence (KDRT) and Divorce

Human Rights Declaration of the Year 1954 actually Already forbid happen wedding child , however until moment This problem wedding age early the more increase the amount and not care existing rules made by the government . Frequent child marriages happens in

society own significant impact . Impact This can form impact physical , psychological , and health in children who undergo wedding the . By physical , marriage age child can result violence in House stairs , which can hinder growth and development child (Maknun & Rufaida, 2023, p. 40) . Still children unstable his emotions easy trigger quarrels that lead to violence physique . Apart from that , violence in House stairs too often happen verbally , economically , and sexually that can be ended in divorce .

Impact psychological too occurs in children who marry at a young age early , like anxiety and depression . Shame and regret are also common appeared , esp for married child Because pregnant moreover formerly . Apart from that , health women are also disturbed consequence wedding child . Risk health reproduction child Woman very tall Because they must do connection sexual in age yet ripe in a way physical and emotional . As a result , the mother's mental health can disturbed , there is risk disease contagious , trouble in childbirth , and health baby being born (Maknun & Rufaida, 2023, p. 41) .

Apart from the impacts that , violation right education and exploitation children often too happen . Married child lost his rights For get education . This matter in accordance with Article 28C paragraph (1) of the 1945 Constitution (Salamat, 2016) . In addition , children who marry at that age early also have difficulty For get work and risk become victims of trafficking child . Child marriage happens often Because exists coercion marriage by parents . Lack of parents able and alive in poverty often get married child they in a way forced as solution For overcome poverty and letting go not quite enough answer as parents .

CONCLUSION

Wedding below age in Indonesia has serious implications for health , education and welfare children . Efforts preventive and protective strong law required For overcome problem this and for ensure that children own chance For grow and thrive optimally . There is a Plan The Marriage Law makes an effort give penalty to executor or parties involved in maintenance wedding below age can accommodate protection right child , consider risk medical will experienced in the future , as well prevent appearance divorce early or Domestic Violence (KDRT). Law Number 23 of 2002 concerning Child Protection guarantees that every child, including those still in the womb, has the right to live, grow and develop optimally, and be free from violence and discrimination. However, the practice of underage marriage still occurs and has serious negative impacts, especially for young women. Marriage

at age early Can cause various problem health reproduction , like violence in House stairs , malnutrition , disorders health sexual and reproductive , and even increase risk cancer cervix . Moms young people who become pregnant and give birth at age early also face to face with risk birth baby with birth weight low and birth premature . Additionally , impact period long like decline growth bones and the risk of osteoporosis also becomes threat for they . Violence in House stairs and problems psychological like anxiety , depression , shame , and regret often experienced by children who marry at a young age early . Violation right education , exploitation , and hardship get work is also a consequence from wedding below age . Coercion marriage by parents , esp in condition poverty , often become factor pusher wedding children .

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REVIEW OF MAQASHID SHARIA AS A BASIS FAMILY FINANCIAL PLANNING

Zahrotun Nafisah[1], Slamet Haryono[2]
Universitas Islam Nahdlatul Ulama Jepara[1], UIN Sunan Kalijaga Yogyakarta[2]
Email: zahro@unisnu.ac.id[1], slamet.haryono@uin-suka.ac.id.[2]

Abstract:
Family welfare is an important goal of Islamic law in building the welfare of society and the state. For this reason, the financial stability of the family is considered an important way to realize family prosperity by including elements of essential needs such as food, clothing, health, education and security. Lack of literacy about family financial management will cause disruption and problems in the family. Financial management means planning, controlling, monitoring and prioritizing financial activities to improve the lives of family members. Where Islamic law has taught that every activity should be planned and carried out in a well-organized manner in order to achieve the expected goals. Apart from that, from an Islamic perspective, wealth is a trust that is accountable for at the end of the day. So, there is a need to understand the use of assets owned by regulating all behavior in accordance with sharia principles. Therefore, this research describes several definitions of maqashid sharia with the meaning of urgency, essentiality, ideas and determining priorities for family financial management based on religious texts, journals and other publications related to maqashid sharia. With the aim of this paper, it can present concepts and ideas for managing familyfinances to improve the quality of life.

Keywords: Maqashid Sharia, Family Finance, Priority, Family Welfare·

INTRODUCTION

Islamic Sharia is a guide to human life that directs to prosperity and safety in this world and the hereafter. To understand Islamic law Comprehensive understanding is needed as well as property and wealth owned is a trust that must be managed well and will accountable later in the afterlife. For this reason, Islamic law emphasizes review maqashid on financial management, especially family finances for welfare of family members.

According to Al-Ghazali, maqashid sharia has five theoretical foundations which is fundamental to human needs as a continuation of life and humanity, namely aspects of religion, science, soul, property and so on descendants. In the aspect of religion, it becomes an umbrella for life and directed guidance. Also, with knowledge which provides the rationale to continue to develop new thoughts. Meanwhile, offspring must be protected so that they do not become extinct, and Wealth is important to fulfil the needs of a decent life (Paryadi. Haq, 2020) One step to achieve property protection is to planning family finances at can create family prosperity.

Where the family is a micro community, whose order has an impact positive and negative towards society at large. Hence, financial literacy among the community it is very important to minimize its occurrence disorders and problems in the family.

Hifz al maal which is the maintenance of assets can be an aspect family financial planning by applying maqashid sharia, which in the priority arrangement can be adjusted to the categories of dharuriyah, hajiyah and tahsiniyah. By interpreting dharuriyah as an essential primary need,hajiyah is a secondary need, while tahsiniyah is a tertiary need.

Family financial planning according to Islamic law has been regulated by guided by the Quran and al-Hadith which are technically in the study of muamalah discusses how to organize income planning, expenses, management debt and risk, zakat, infak, alms, investment and waqf. Then planning family finances also have a positive impact on individuals analyse their personal needs from an early age. Because it doesn't rule out the possibility, later it will develop into financial planning for industry, society and the state.

Indonesia is a country with a majority Muslim population with educational and economic levels that are still relatively low in comparison with other countries. Indonesia's education level is ranked 67th from 203 countries in the world after Albania in 66th position. Meanwhile, the economy of Indonesia based on Gross Domestic Product (PBD) records from the Central Agency Statistics (BPS) Indonesia is ranked 53rd out of 185 countries in the world. This manifest Indonesia has an economic growth rate of above five percent (Lahsasna, 2013).

Family problems in Indonesia are currently facing challenges and terrible problems, especially the economic factors that exist considerable influence on its stability. Lack of financial literacy is problems among the community, especially rural communities. In addition to being unable to make rational family financial decisions, as well as incapable plan finances for the long term.

The main reason for the high divorce rate in Indonesia. Every year, problem finance became the main priority as the reason the marriage ended divorce. Research presented by Ramadhani (2023), Afifatimah (2023) and Ruum & Chasanah (2023) show that 70% of divorce cases are due to unstable economic problems. Divorce can cause chaos in various aspects including mental health and family resilience. Family resilience (family strength) is a condition of sufficient and continuous access to income and resources to meet various basic needs, including: food, clean water, health services, educational opportunities, housing, time to participate in society, and social integration.

There are other findings that people have habits or addicted to expensive things even though they don't have enough money despite relatively low-income levels. That's what most of them are for being financially unattainable to buy all valuable items high with cash and they buy on credit.

METHOD

The type of research used in this research is expert opinion which takes from various sources journals, books and other scientific articles. Besides, the authors also use the references topic of discussion from library research, namely taking data from journals, books, websites, databases, etc that's relate to the main topic.

There are two categories for library sources, primary data and secondary data. The primary data in writing this research are the books of maqashid sharia from some Scholars who discovered the main concept. The secondary data is some scientific articles that are relevant to this topic. The data collection technique in this paper uses documentation techniques of urgency, essentiality, ideas and determining priorities for family financial management based on religious texts, journals and other publications related to maqashid sharia. Finally, the author provides a conclusion based on data obtained from various sources on the answers to the problems studied. The following are the results of the data studied by the researcher to explain the problems above.

RESULT

Based on data obtained from the various sources' journals, books and other scientific articles this paper descripts maqashid sharia emphasizes concepts maslahah in Islamic finance aims to create a just and prosperous society which can start from managing family finances with broad implications in material and spiritual contexts. Which will influence family decision making in planning finances according to priorities that are adjusted to needs.

So that Family financial planning is prepared to be more effective and focused.

Dharuriyyah : Primary can be interpreted as anything that is more essential and vital for continuity life or the lack thereof can lead to the collapse of life. In understanding This idea, in Maqashid's view, essentially includes the protection of life, religion, heredity, property and intellect. These are the five essential interests or goals (maqashid) life.

Primary can also be defined as a personal interest that is the basis people or things that are important to him. It can be concluded that each families have important needs and if they are not met, they will lose its stability and dignity. Therefore, housing, food, water, electricity, and Security is a primary and essential need that cannot be relied upon to other people.

Hajiyyah : The secondary needs referred to are needs that are of a nature complete the primary needs above. This maqsid is intended to maintain the fivethe main things needed by the family for

each family member works fine. So that the benefits sought can eliminate levels difficulties that can pose a threat to the continuity of the order of life normal.

Tahsiniyyah : Tertiary needs enter at the third level, understood as needs that are according to human desires. They strive to achieve perfection and desired achievement. Needs related to this family include: living in luxury at a higher social level.

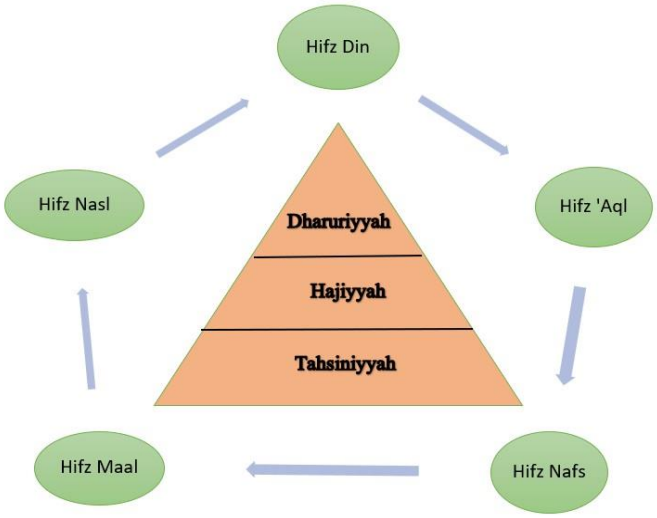

Figure 1: Priority scale on family needs

DISCUSSIONS

Maqashid Sharia

According to Imam Al-Ghazali, there are five objectives of maqashid sharia, namely existence protection of religion, reason, life, property and descendants. Whatever that leads to in its implementation it can be called maslahah (Ar-Raisuni, 2014). On the contrary, mafsadah means detrimental to the five essences that can be prevented and eliminated. The five concepts This protection is summarized by the term *al-Mabaadi' al-Khamsah* which became the aim of establishing Sharia law is to achieve benefits in this world and the hereafter as well avoid various damages (mafsadah).

For Imam Syatibi, every text of the Quran and al-Hadith in it including Islamic law definitely has certain desired goals. Where The law maker has a goal (maqsid) that the Shari'a must cause achieving benefits for humanity (maslahah) or preventing harm (Yasir, 2014).

Syatibi discusses maqshid sharia by dividing it into two things, namely *qasdu al-syari'* and *qasdu al-mukallaf.* In *qasdu al-syar'i* it is reduced to four part namely: *qasdu al-syari' fi wadhi' al-syariah*

(intention) in other words the shariah for enforce sharia; second, *qasdu al-syari 'fi wadhi' al-syariah lil ifham*, namely sharia which intends to make sharia as a concept; third, *qasdu al-syari fi wadhi 'al sharia li taklif wa muqtadhaha* in the sense of the intention of the sharia to uphold valid sharia on orders (taklifi) and obligations; Fourth, *qasdu al-syari' fi dukhuli al-mukallaf takhta ahkam al-syar'iyyah*, namely the intention of the sharia to include the mukallaf into legal law (Ar-Raisuni, 1995).

In addison Ibn Asyur gave the construction of maqashid with *maqashid Al-Ammah 'Amah* which has a principle of aim that is not only specific to one law (Fauzan, 2023). Thus, the overall aim of Islamic law is to regulate everything that exists It contains human rights and all forms of human activity fulfil his life needs. Ibn Qayyim said that this Sharia was built on the wisdom that leads to salvation in this world and the hereafter based on by absolute justice. For this reason, if there is a problem that is contrary to justice and benefit then this is not the aim of the Sharia (Al-Jauziyyah, 2006).

Etymologically, maqashid sharia consists of two words, namely maqashid and sharia. Maqashid means intention or purpose. Maqashid is the plural form of maqsud which comes from the syllable qashada which means 'will'. Maqashid means things that are desired and desired. While in terminology, sharia means the path to the water source. The path to the water source can also be interpreted as walking towards the source of life (Kasdi, 2019).

According to Abu Zahrah, maqashid sharia has three objectives The important thing is cleansing the soul with goodness, justice and benefit. In terms of cleansing the soul with virtue is intended for humans to do good and does not make himself a source of evil. Justice is being fair between people fellow Muslims and justice between humanity as a whole which this becomes highest priority on Islamic goals which include the domains of muamalah, facts, law and humanity. Meanwhile, benefits can be realized in various legal aspects which is of course based on the Qur'an and al-Hadith which refers to the protection of al-maqashid al-khamsah (Zahrah, 1994).

Muslim intellectual and contemporary Scholar, Yusuf Qardhawi (1993) believes that basically Mashalah is an important factor that can change determination of fatwa laws caused by changes in time and place. While in essence, humans can adapt themselves to the goals and causes of benefit

that have been regulated by Islamic sharia. Meanwhile, the definition of maqashid sharia is as the aim of the text of the particular laws that will be applied in daily life can take the form of orders or prohibitions for individuals and families and society or can also be interpreted as wisdom which is the aim of legal provisions.

The maqashid sharia theory compiled by Lahsasna emphasizes concepts maslahah in Islamic finance aims to create a just and prosperous society which can start from managing family finances with broad implications in material and spiritual contexts. Because in the maqashid sharia analysis you can used to determine maslahah and mafsadah, besides being able to identify understanding the objectives of sharia, its categories and priorities. Maqashid sharia can facilitate muamalah's legal reasoning which continues to develop by facilitating the realm of ijtihad of contemporary ulama (Kim et al., 2017).

Family Financial Planning

In general, there is no specific definition of financial management family. Even so, financial management experts have found a definition different regarding financial management. Family financial planning is the art of financial management carried out by individuals or families through the process of planning, organizing, leading and controlling finances to achieve efficient, effective and beneficial goals so that the family becomes a prosperous and peaceful family.

Therefore, financial management is a core activity in any organization. Which includes the process of organizing, planning, controlling and monitoring resources finances that are tailored to the desired goals and objectives of the organization. Another meaning of the definition is as a collection of administrative functions that exist within an organization in which cash and credit arrangements are interconnected so that the organization gets the means to use to implement it the goal (Kim et al., 2017).

There are several steps and stages of family financial planning that need to be done to ensure that family finances are always blessed and financial peace is realized, namely: a) Income (managing income), b) Expenditure (managing needs), c) Dreams and Desires (managing dreams), d) Managing Surplus and Deficits, e) Managing Contingencies that something may happen in the future, but cannot be predicted with certainty. contingency arises, because in every action and activity there are consequences that will arise, good or bad (Jalil, 2019).

Furthermore, Irwan (2021) defines it in line with Sharia. planning or financial management is a field that deals with decisions and activities relate to finance. Therefore, the sharia view of wealth

and Finance is very important in Islamic finance. Next, in the corner Sharia point of view, material wealth and mental resources provided to humans are a trust that must be used for personal and social welfare.

From the definition above it can be said that financial management aims to manage the activities of an organization related to financial behaviour achieve the expected goals and objectives. Likewise with activities family financial institutions should require some general principles in order for their activities his finances were successful. Other benefits that can be obtained from knowledge and implementing family financial planning are fulfilling the economic needs of family members, stability of family economic life, and better family economic growth (Mansor, 2022).

The Relationship Between Family Benefits and Wealth

Family stability is highly dependent on financial factors, in particular on aspects of human behaviour that depend largely on finances. So that a family parameter appears if the family finances are fulfilled then the family will get prosperity in life. For that, one of the variables Maqashid sharia is protection for property and wealth because it is almost all family endeavours and activities rely on financial matters such as basic needs for food, shelter, health, education, security, etc (Attia, 2007).

The welfare of modern families is very dependent on financial aspects, Strong financial strength will also provide protection to the lineage (descendants). Different from the more classic family welfare concept emphasizes the aspect of protecting offspring, so that sharia has sanctions punishment to an unfaithful partner in order to protect the partner (Zuhri, 2019).

Umar Chapra (2008) made an important note that the most important thing is protection wealth does not negate other important maqsid. But like four the other main maqashid is an important need that must be met to support the improvement of family welfare and general welfare. Therefore, the welfare of the family depends on one hand with success fair utilization and distribution and avoiding waste. Family requires principles and methods for carrying out successful financial management.

Family welfare through Islamic financial management which is expected to be able to realize the existing maqashid sharia. Because by implementing maqashid sharia will realize the benefits for humanity. In achieving this, humans are given the responsibility to obey the laws of sharia which contain wisdom. Because the essence of the legal rules that have been established by sharia is intended to create the welfare of humans and their environment. from this it can be seen that

maqashid sharia is a concept to find out the wisdom or values of sharia to achieve the ultimate goal, namely human welfare (Latifah, 2023).

Managing Family Finances as a Sharia Goal

Islamic Sharia pays more attention to family welfare as al-Quran and al-Hadith mention various propositions regarding procedures for creating a family who is sakinah mawaddah rahmah. Furthermore, the Shari'a aims to direct to manage finances well to maintain good relations between people in line with the goal of a prosperous life. Therefore, the Shari'a has provided different rules and regulations to govern financial assets such as plans
income, use of assets, maintenance rules, inheritance and wills (Lahsasna, 2013).

However, this article aims to propose several principles from Maqasid Sharia perspective to plan, organize and control as well monitoring the distribution of a Muslim family's finances, resulting in avoidance losses and enjoyment of benefits can be realized. Nevertheless, preservation family and wealth are one of the highest goals of Sharia, Sharia scholars lack of attention to this important area. Classical and modern maqashid very rarely discuss family financial aspects. In particular, Maqashid's proposal related to family where he brings order to the financial aspects Islamic perspective financial management is planning, organizing, monitor and control the financial activities of Muslim families following the principlessharia principles.

All of this management is necessary to improve the welfare of the family in this world and the hereafter, namely Falah. Therefore, Islamic law has drawn three conditions related to the acquisition and distribution of wealth. First, wealth must be obtained in the right way. Second, wealth must be managed in a very responsible way so that it not only benefits him own owners and families but also the wider community. Third, wealth does not distract Muslims from remembering Allah (Irwan, 2021).

The objectives of maqashid sharia conveyed by Lahsasna (2013) on finance the family aims to:

a. Circulation of business transactions regulated through financial planning appropriate.
b. Creating transparency in wealth
c. There is investment to develop wealth
d. Prevent difficulties and risks
e. Ensure fairness in income and expenditure

From the several goals mentioned above, steps are needed to aligning family financial management with the investment planning stages, zakat expenditure, housing construction, and pension fund payments.

The role of Islamic finance in the sakinah financial model studied by Latifah (2023) includes:

Managing Income, Managing Needs, Managing Dreams/Desires, Managing Surplus/Deficit, and

Managing Contingencies in fulfilling the maqashid sharia. namely (1) As a controller of household expenditure including: education, health, investment and Zakat Infaq Alms (2) As an evaluation in managing family finances so that there is no waste. (3) As a good and careful financial planner in fulfilling the needs of family members. so that the management of sharia finances with the sakinah financial model can realize the maqashid sharia as the goal of a happy and blessed life.

Maqashid Sharia as a Basis for Financial Planning

Muslims are encouraged to plan their lives economically and financially to achieve the goals of the sharia (maqashid sharia). The intention to undertake Islamic financial planning must be in line with the implementation of maqasid sharia, which emphasizes protecting the essential needs of Muslims which include the preservation of wealth. Financial planning provides direction and meaning to every financial decision.

As emphasized by several researchers above that for can minimize the problems of the family's economic factors formulated financial literacy to increase public knowledge. With include the following maqashid sharia review formula to reduce family financial problems and managing them well:

1) Understand the importance of family financial planning on a scale Priority

This is an important factor in financial planning, especially distribution of portions to meet family needs and desires. Family management is a must understand the appropriate level of needs and requirements. With that, classifying maqshid based on level and priority will help make the family's wishes come true.

Therefore, al-Ghazali's concept of three levels maqashid sharia is classified based on requirements, namely essential things which are called *Dharuriyah* (primary needs), *Hajiyah* (secondary needs) and T*ahsiniyah* (tertiary needs)(Ar-Raisuni, 2014). This means the first level needs that must be takes precedence over the other two levels then secondary needs and fulfill tertiary needs in the form of luxury. It is very important to connect this level of maqashid with the need’s family by classifying the priority scale.

The thing that needs to be taken into account is the wishes of each individual families will be at different levels. These differences can grow from customs or the surrounding environment. So that the classification of each family's needs will also be different in this tahsiniyah. This requires understanding from each member family on these three levels of interconnected needs in order to create prosperous family.

2) Plan for the Future by Gaining Benefits and Avoiding Loss

Preparing future plans for financial activities is part very important in family life. As Islamic law provides attention to the future of descendant in accordance with the words of the Prophet SAW to Sa'ad bin Abi Waqash:

إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ ، وَلَسْتَ تُنْفِقُ نَفَقَةً تَبْتَغِى بِهَا وَجْهَ اللهِ إِلاَّ أُجِرْتَ بِهَا ، حَتَّى اللُّقْمَةَ تَجْعَلُهَا فِى فِى امْرَأَتِكَ

Meaning: "Indeed, if you leave your heirs rich, it is better than leaving them poor so that they are forced to beg from fellow humans. "Indeed, whatever you earn with the intention of seeking Allah's approval you will definitely be rewarded, including what your wife eats."(HR. Bukhari No.4409 & Muslim No.1628, n.d.)

Prophetic traditions lead to planning for the future with conditions good and prosperous family economy. To avoid poverty and economic instability which can later impact children and descendants. So that this principle applies to achieve benefits in human behaviour.

Islam strongly recommends that families have a vision and mission that is far-sighted to achieve prosperity. Furthermore, there are many hadiths of the Prophet that explain the command to plan future efforts and avoid bad consequences such as the Prophet's words, 'take advantage of five before five' and stay away from poverty. Indeed, eradicating poverty is very important, because it will reduce human dignity both individually, as a family, nation and state. Which if poverty occurs, humans will not be able to maintain their religion and descendants to carry out their main duties on earth as Allah's caliphs (Ramadhani et al., 2023).

The 7 principles of managing finances in Islam Anggraini are consist of: *First,* Income which is a source that must be owned by a Muslim household. In seeking income, it must be in accordance with Islamic law, must be halal and toyyib. *Second,* expenditure requires good planning in the form of a financial budget. In planning expenditure, a division of basic needs is made. *Third,* Long-term planning needs to be done in household life, for example to determine children's education up to university level, handle emergency conditions such as illness or accidents, prepare to perform the Hajj or Umrah, etc. To face future conditions, there needs to be a good financial commitment.

Fourth, Insurance is a form of self-protection and property that is recommended to be insured in sharia products. *Fifth,* Islam allows its people to take out debt for urgent needs, but it is not allowed if the debt contains elements of usury. *Sixth,* next is Investment with the aim of utilizing excess funds owned. The investment can be in the form of gold, deposits or stocks that are indexed by

sharia. *Seventh*, Zakah is the last pillar of Islam that is obligatory for Muslims if they have met the nisab. The purpose of zakah is to purify the assets owned and to help fellow human beings (Anggraini et al., 2017).

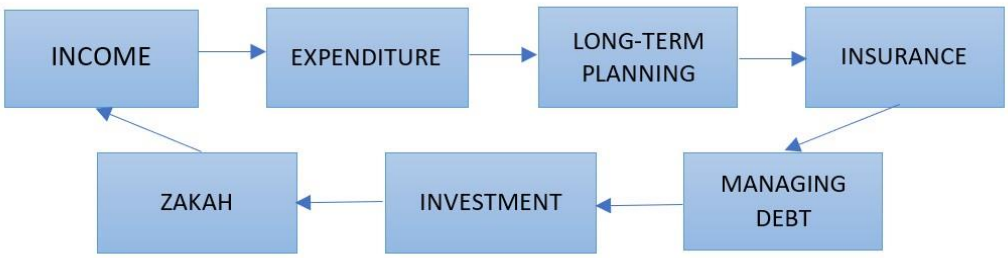

Figure 2: The 7 Principles of Managing Finances

3) Moderation and Fairness in Financial Distribution

Another important sharia principle in financial planning is moderation of financial distribution and expenditure. By maintaining balance income and expenses in family finances will make it easier to create a prosperous family life. This is in line with the verse of the Quran:

وَالَّذِيْنَ اِذَآ اَنْفَقُوْا لَمْ يُسْرِفُوْا وَلَمْ يَقْتُرُوْا وَكَانَ بَيْنَ ذٰلِكَ قَوَامًا

Meaning: "And, those who when giving are not excessive and are not (also) stingy. (Their income) is the middle between the two." (Al-Furqan 4: 67)

وَاَنْفِقُوْا فِيْ سَبِيْلِ اللّٰهِ وَلَا تُلْقُوْا بِاَيْدِيْكُمْ اِلَى التَّهْلُكَةِ وَاَحْسِنُوْٓا اِنَّ اللّٰهَ يُحِبُّ الْمُحْسِنِيْنَ

Meaning: "And spend of your substance in the cause of Allah and make not your own hands contribute to your destruction: but do good; for Allah loveth those who do good" (Al-Baqarah 2:195)

Islamic Sharia recommends not to overdo giving and charity not stingy, which if you understand the recommendation for balanced financial distribution expenditure of assets owned for the good of helping other people or not apply excessive savings. Islam forbids excessive consumption. However, Islam teaches how to behave in consuming rationally or proportionally. Excessive consumption behaviour will harm oneself and others because income expenditure exceeds the limits of one's ability.

In insurance that uses the principle of risk-sharing between insurance participants. Insurance participants agree to bear together and act in a mutually beneficial manner against the possibility of a disaster that is commonly called risk with the allocation of charity funds or *tabarru'*. In the distribution of wealth, it is managed and distributed with the principle of equitable economic activity by avoiding excessive exploitation, excessive hoardings, unproductive, speculative, and arbitrariness. There is a balance of activities in the real-financial sector, risk-return management, business-social activities, spiritual-material aspects & the principle of environmental benefits-sustainability and is oriented towards the welfare which means protecting the safety of religious life, the regeneration process, and the protection of the safety of life, property and mind (Hazmi, 2018).

So, Sharia does not allow excessive use of assets because it will not bring benefit, but *mafsadah*. Apart from that, Prophet Muhammad (PBUH) also directed people to live a balanced life. Moreover, he recommends living simply and using wealth sparingly without exaggeration. For this reason, Islam urges its followers to practice moderation and justice in all behaviour, especially in financial distribution. So, every family needs moderation in financial management that can be felt by all family members fairly and wisely.

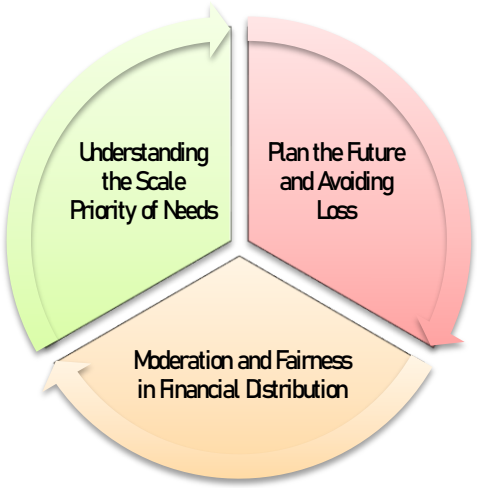

Figure 3: Moderation in Financial Distribution

CONCLUSIONS

Family financial planning ideas based on maqashid sharia is very important in building a prosperous family. As part of a family's efforts to create balance with moderate income and

expenditure based on family needs sharia maqashid levels. Namely dharuriyah (primary), hajiyah

(secondary) needs and tahsiniyah (tertiary) by prioritizing in the order of each level.

In the end, family financial planning will help enlighten the aim of maqashid sharia in the family which will realize the existence of *al-Mabaadi' al-Khamsah* which includes hifz al-din (guarding religion), hifz al-nafs (guarding the soul), hifz al-'aql (guarding reason), hifz al-nasl (protecting offspring) and the most important thing is hifz al-maal (guarding wealth).

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Grounding Fiqh Rules for the Development of Sharia Financial Institutions in Banyumas

Ida Nurlaeli[1], Betania Kartika Muflih[2]
UIN Saizu Purwokerto[1], International Islamic University Malaysia (IIUM)[2]
Email: idanurlaeli@uinsaizu.ac.id[2], betania@iium.edu.my[2]

Abstract: The views of the people of Banyumas on Islamic bank products are divided into 3 types, namely lawful, doubtful, and unlawful. Preliminary data shows that the Indonesian Muslim community is still diverse in responding to the existence of Sharia banking products, which are sharia products provided for Muslim community. The purpose of this study is to find ways to respond to Islamic bank products and what Islamic banks have to do with the attitude of the community. This type of research is field research with a qualitative descriptive approach. Using the Rules of Fiqhiyah as a tool for analysis. The result is that "Performing one of the actions that are less dangerous than two things that are dangerous is mandatory". This is manifested in actions in the form of, among others; back to sharia commitment, considering Islamic Financial Institutions not savings and loan institutions and product innovation.

Keywords : *Rules of Fiqhiyah, public attitudes, Islamic financial institutions*

INTRODUCTION

The development of Islamic banks in Indonesia began with the birth of Bank Muamalat in Jakarta as a sharia bank established in 1992, supported by Law (Law) number 21 of 2008 concerning sharia banking. Now the number of Sharia Commercial Banks (BUS) has multiplied, both new sharia banks and conventional national banks with dual systems. The development of sharia banking can be seen from its distribution, which is relatively spread throughout Indonesia. Meanwhile, regulations related to Islamic banking have been issued since a decade ago. Law Number 21 of 2008 concerning Islamic Banking states that the principles of Islamic banking business activities are based on the principles of sharia, democracy, economy, and prudence. Islamic banks function as collectors and distributors of public funds in addition to social functions in the form of baitul mal institutions and collecting social funds in the form of cash waqf. Islamic banks that have obtained a business license are required to clearly state the word sharia in the writing of the name. The concept of banking which was initially only a theoretical discussion, has now become a factual reality that is growing and developing.

Islamic Financial Institutions have great potential to contribute to the economy through two main aspects, namely higher and inclusive economic growth, and better economic and financial stability. The principle of profit and risk sharing in Islamic finance which is considered very appropriate for financing the real sector, especially small and medium enterprises (SMEs), can support inclusive and quality economic growth. Meanwhile, the principle of profit and risk sharing and asset-based financing will encourage better risk management and avoid credit booms. The total assets (specifically BUS and UUS) amounted to Rp. 443.03 trillion, the growth assets of national Islamic Banking reached 14.04%, market share 5.72%. The achievement of the market share of Indonesian Islamic banking for 20 years is still at 5%, although various efforts have been made by stakeholders through policies in order to increase market share according to the target. (Sharia Financial Masterplan). The large market potential is not accompanied by large market share growth, considering that the majority of the Indonesian population is Muslim. The growth of assets and market share cannot be separated from the various attitudes or views of the community towards Islamic banks. Views that place the position as accepted in society will imply a lot of use of the services of this institution.

On the other hand, the Banyumas community's view of Islamic banking products is divided into 3 types, namely lawfull, doubtful and unlawfull. Lawfull consists of people who view that Islamic financial institution products are already sharia by 30%, doubtful consists of people who view that Islamic financial institution products are only half sharia by 50% and unlawfull consists of people who view that Islamic financial institution products are a form of cloning of conventional banks or are not sharia by 20%. This is very concerning. In fact, in its journey, Islamic banks were able to face the crisis. While conventional banks when the credit crisis spread throughout the world showed how weak the foundation of the interest-based financial system was One of the roles of Islamic law is to place it as a product so that there is a drive to always be adaptive to problems. The movement starts from efforts to build patterns of interpretation of legal sources or strategies for implementing law in society in order to answer these demands. Or it is termed that Islamic law has the character of shalih li kulli zaman wa makan. In Islamic law, there are fiqh rules that are used as a developing study, apart from the evidence of the Qur'an and Hadith. It becomes interesting if it is mapped out what should be the efforts of Islamic financial institutions so that they are more in demand by the community. So to answer this, there needs to be fiqh provisions on how to respond to Islamic financial institution products, especially banking products as a guide. Therefore, this

research explains the response of the Banyumas community to Islamic bank products through the perspective of fiqh rules

METHODS

This type of research is field research with a qualitative descriptive approach. The objects of research are Islamic financial institutions in Banyumas and customers of Islamic financial institutions and members of MES (Islamic Economic Society) as many as 15 people, the method of data collection is by observation and in-depth interviews to explore respondents' opinions about their assessment of Islamic financial institution products and how their attitudes are. The results of the data from respondents were then reduced, classified, and analyzed using content analysis with the withdrawal of developments related to solutions to problems using the Fiqhiyah Principles as the analytical tool.This section can also entitle Models or Experiments. It is also possible for a manuscript to have both Theory and Experiment sections at the same time if necessary.

RESULTS

Factors that influence the development of Islamic banks, consist of factors related to customer/consumer decision making, including efficiency, education and public knowledge about Islamic banking and bank interest, regulations, fatwas that bank interest is usury and haram, Islamic banks proven to be superior in facing crises, integration of Islamic financial institutions, competitiveness of Islamic banking, socialization and available facilities. The increasing Islamic awareness of the community and the largest Muslim community in the world in Indonesia is a potential market for Islamic banks, accompanied by improving community welfare. Islamic law is one of the social institutions that carries the function as social control as well as new values and the process of social change. Carrying out the first function, it functions as God's blueprint, also the social engineering of a community group. While the second function places it as a product so that there is a drive to always be adaptive to problems. In Law there are fiqh rules that are one of the studies and developments in responding to problems. The rules of Islamic Law, including such as

اِرْتِكَا بُ اَخَفِّ الضَّرَرَيْنِ وَاجِب

“Taking one of the less dangerous actions of two dangerous things is obligatory”

Then the Rules of Islamic Law

دَ رْءُالْمَفَاسِدِمُقَدَّمٌ عَلَى جَلْبِ الْمَصَا لِحِ

“Avoiding harm/danger takes precedence over gaining benefit/benefit”

There is also a rule:

الرضا بالشين رضا بما يتولد منه

"Being willing to do something means being willing to do everything that comes from it."

Al-Qawā'id al-Fiqhiyah which is used in the case of usury is

ربا فهو منفعة جرم قرض كل

This means that anything that brings profit through debt activities is considered usury.

DISCUSSIONS

Inhibiting factors related to the implementation of a new banking system include, first; the community's inadequate understanding of the operational activities of Islamic banks, second; the incomplete banking provisions, monetary instruments and financial markets that support the operations of Islamic banks, third; the limited number and distribution of Islamic bank branch offices, fourth; small market share and fifth; Human Resources (HR) that do not yet have expertise. Islamic banks are required to increase the number of customers/consumers, one of which is by influencing their decision-making, through more active ways of developing their business, both in socialization, instrument innovation, and bank products. Providing satisfactory services and functioning Islamic banks is also not only as a financial and commercial institution but also a social financial institution because the entry of Islamic banks in social activities will create positive sentiments in various ways, so Islamic banks must have high competitiveness by adhering to Islamic values, being able to play a significant role and becoming a reliable institution.

Table 1.1. Total gross assets, total financing, DPK, FDR of Islamic General Banks in several regions in Central Java (Unsoed, 2018)

asset gross	financing	DPK	FDR	Daerah
366	356	71	498,95%	Tegal
138	136	122	111,52%	Pati
847	492	453	108,60%	Semarang
100	64	87	73,80%	Kendal
616	355	566	62,71%	Kudus
231	117	221	52,98%	Cilacap
924	558	842	66,35%	Pekalongan

77	62	77	80,26%	Salatiga
1.208	746	1.116	66,80%	Banyumas
3.471	2.917	2.958	98,62%	Semarang
5.609	5.126	3.352	152,95%	Surakarta

Consumers in choosing a bank for their financial transactions will go through these processes. This can also be seen in the post-decision-making behavior of Islamic bank customers in Central Java, divided into 2 (two) types, namely; customers with emotional-ideological characters consisting of customers who decide to only choose to transact and only have accounts in Islamic banks, and have an understanding that the profit sharing they receive is not solely due to economic factors, but because it is more justified by religion, and customers with rational-economic or rational-transactive characters consisting of customers who decide to transact and have accounts in Islamic banks and conventional banks including non-Muslims, because they have an understanding that the profit sharing received is more competitive compared to interest income from conventional banks.

The market share of Islamic general banks in the Banyumas region is 5.72%, although it shows a higher percentage than the market share in Purbalingga which only reached 1.6%, in Cilacap at 5%, Banjarnegara at 5.6% and Yogyakarta at 7.9%. However, when viewed from the market share target of 22%, it seems that the achievement is still far from what is expected. Judging from the high and low ratio of non-performing loans (NPL), Banyumas district has a lower percentage, which is below 5%, and according to Commission C of the Central Java Provincial People's Representative Council which is in charge of banking and finance, a good NPL is one that does not reach 5%, for the Central Java region the highest NPL is in Tegal which reaches 15.33%, Purworejo 11.92% and Kudus 10.09%.

Sharia Bank as a general bank with a profit sharing system based on Islamic law, has a strong legal basis, namely; UUD 1945, Government Regulation Number 70 of 1992 concerning General Banks, Government Regulation Number 72 of 1992 concerning banks based on the principle of profit sharing and regulations of laws concerning other Islamic financial institutions. Banking is an institution that carries out three main functions, namely accepting deposits, lending money, and money transfer services.

The law always changes according to the principle of tagayyur al-ḥkām bi tagayyuri al-azmināt wa al-amkināt wa al-'adadi wa al-aḥwāl. In the history of the economy of Muslims. The functions of banks have been known since the time of the Prophet Muhammad SAW, these functions are to receive deposits of property, lend money for consumption and business needs, and make money transfers. The Prophet Muhammad SAW, who was known as al Amin, was trusted by the people of Mecca to receive deposits of property, so that at the last moment before the Prophet migrated to Medina, he asked Sayyidina Ali ra to return all the deposits to their owners, in this concept, the person entrusted cannot use the deposited property.

A friend of the Prophet, Zubair bin al Awwam, chose not to accept deposits of wealth. He preferred to accept it in the form of a loan. Zubair's actions had different implications: first, by taking the money as a loan, he had the right to use it; second, because it was a loan, he was obliged to return it in full. Another friend, Ibn Abbas, was recorded as sending money to Kufah. It was also recorded that Abdullah bin Zubair in Mecca also sent money to his younger brother Misab bin Zubair who lived in Iraq. The use of checks was also widely known in line with the increase in trade between Syria and Yemen, which took place at least twice a year. Even in the time of Umar bin Khattab ra, he used checks to pay allowances to those who were entitled. With this check they then took wheat at the Baitul Mal which at that time was imported from Egypt. It is clear that there were individuals who had carried out banking functions in the time of the Prophet SAW, even though these individuals did not carry out all banking functions. There are those who carry out the function of receiving deposits of assets, there are friends who carry out the function of lending and borrowing money, there are those who carry out the function of sending money, and there are also those who provide working capital. Islam responds to banking or jihbiz, with the three main functions of banking, namely collecting, managing and distributing, basically it is permissible, except when carrying out banking functions using things that are prohibited by sharia. In conventional banking practices known today, these functions are carried out based on an interest system. Conventional banks are not necessarily identical to usury, because related to bank interest is still a debate.

Definition of usury, cause (illat) and purpose (hikmah) of usury prohibition, then conventional banking practices that are classified as usury can be identified. Riba fadl can be found for example in foreign exchange transactions that are not carried out in cash. Riba nasi'ah can be found in credit interest payments and savings / deposit / giro interest payments. Riba jahiliyah can be found in credit card transactions that are not paid in full. It is clear that conventional banking in carrying out

some of its activities is not in accordance with sharia principles. Therefore, efforts need to be made to introduce banking practices based on sharia principles. According to Islamic Law Principles:

اِرْتِكَا بُ اَخَفِّ الضَّرَرَيْنِ وَاجِبٌ

"Taking one of the less dangerous actions of two dangerous things is obligatory", So we must free ourselves, avoid with all our might the dangers of usury by going to Islamic banking. If it turns out that Islamic banking is not yet fully Islamic, that is the benefit that must then be our final goal, namely to make totally Islamic what was previously only half Islamic. If we are given the choice of half Islamic or fully conventional, then we should choose half Islamic, with the note that there is an unstoppable effort to move towards Islamic banking that is completely Islamic, not choosing completely conventional.

Running a sharia banking business is not completely separate from conventional banks. For example, in the case of non-halal current account funds from other banks, ta'zir or fines caused by late financing. In Nur Hadi's research, funds from this segment can be detected through accounting science. In it, it will inform the portion of funds that are considered halal bank income or dubious goods. Although later the portion of funds on this side if published will have the potential to damage the reputation of sharia banks. Lubis said, the basic philosophy of financial institutions is to seek Allah's pleasure to obtain fid-dunna or worldly profits as well as ukhrawi or the hereafter.

There are also rules:

الرضا بالشين رضا بما يتولد منه

"Being willing to do something means being willing to do everything that comes from it."

So in line with this rule, an Islamic institution must avoid all activities that can result in deviations from Islamic values. The logical consequence of the rule above is a silent attitude towards practices that have negative impacts. Of course, it is not the best solution if a Muslim knows when usury is oppressing others but remains silent, so that the practice of usury becomes necessary to switch to activities that are permitted in sharia.

One of the activities in sharia banking is using al-Qawā'id al-Fiqhiyah, namely the implementation of objectives

الأَصْلُ فِي الْمُعَامَلاَتِ ٱلإِبَاحَةُ إِلاَّ أَنْ يَدُلَّ دَلِيْلٌ عَلَى تَحْرِيْمِهَا

namely, this rule in terms of sharia banking is that all types of transactions managed by banks (especially sharia banking such as wakālah, murābahah, current accounts, deposits, etc.) are permitted as long as there are no other arguments that prohibit it.

This rule is mentioned 125 times and is a general rule that is often used as a universal provision in the DSN-MUI which provides guidelines related to the activities of Islamic financial institutions.

لا يجوز لأحَدٍ أَمْ يَأْخَذَ مَالَ أَحَدٍ بِلا سَبَبٍ شَرْعِي

"It is not permissible for a person to take another person's property without a justifiable reason according to the Shari'a" (az-Zarqa, 1989: 465). In Islamic banking, there is also a Qardu al-hasan product, the principle of which is a mutual assistance agreement and not a commercial transaction.

Adiwarman provides arguments about Islam and Islamic Sharia Banking. A view of life that regulates all aspects of human life other than Islamic teachings, including economic aspects. In ushul fiqh there is a rule that states that mala pamanmu alwajib illa bihi fa huwa is obligatory, namely something that must exist to perfect what is obligatory, so it must be held. The Messenger of Allah said أَنْتُمْ أَعْلَمُ بِأَمْرِ دُنْيَاكُم (you know more about your worldly affairs). However, if we trace the banking practices carried out by Muslims, it can be concluded that although the vocabulary of Islamic jurisprudence does not recognize the word 'bank', historical evidence actually states that the function of banking has been practiced by Muslims since the time of the Prophet. It can be said that the concept of a bank is not a foreign concept to Muslims, so that ijtihad to formulate the concept of a modern sharia bank does not need to start from the beginning. Adiwarman also did not close his eyes to the fact that there are still some irregularities in sharia banks. Both in terms of management and sharia. In his presentation on this matter, "If we never try, we don't know what to fix. That is the task of the National Sharia Council (DSN) to correct it.

Harmonization of fiqh, in responding to the operational products of Islamic financial institutions

The reasons underlying the birth of Islamic banks are that first; Muslims have been seen as being in a state of emergency, because Muslims can hardly avoid dealing with banks, even in terms of their worship. Second; saving the people from exploitation practices. Third; saving the dependence of Muslims on conventional banks. Fourth; the rules of fiqh مستحب الخروج من الخلاف "avoiding the dispute of scholars, the sunnah of the law is applied.

Muslims also see the impact of usury practices caused by the economic cycle in conventional banks, among others, first; causing exploitation (extortion) by the rich against the poor, second; large capital controlled by the haves is not channeled into productive businesses such as agriculture, plantations, industry and so on which can create many jobs, which are very beneficial for the community and also for the capital owners themselves, but the large capital is actually channeled into interest-bearing credit that is not yet productive, third; can cause business bankruptcy if the borrower is unable to repay the loan and interest. Meanwhile, there are various assessments of Muslims themselves regarding the products of Islamic banks, a small part considers them to be truly sharia products, half sharia and some others consider them only as a form of cloning of conventional banks.

The results of interviews with several respondents, August 31 - September 12, 2011, conducted by random sampling, with 80% of respondents' educational backgrounds being S1. Of the 20 respondents, 40% thought it was already sharia, 40% half sharia and 20% were just a form of cloning of conventional banks. This little information was obtained by the researcher from the results of interviews about attitudes with several respondents selected by the researcher by random sampling, so that initial data was found that the Indonesian Muslim community is still diverse in responding to the existence of sharia bank products which are in fact sharia products provided for the Muslim community. Thus, how should we respond to the growth of Sharia Banks which are crawling towards their development, if we are among those who state that in "Sharia Banks the system used is not fully sharia", then we must return to the Principles of Islamic Law: الضَّرَرُيُزَال "the danger must be eliminated/removed".

Then the Islamic Law Principle: دَ رْءُالْمَفَاسِدِمُقَدَّمٌ عَلَى جَلْبِ الْمَصَا لِحِ "Avoiding harm/danger is prioritized over gaining benefit/benefit"

The Islamic Law principle above can be seen in the following description; if a woman's pregnancy is at great risk to her life, then she is faced with two equally difficult choices, between having to eliminate the life of her fetus or continue to raise it at the risk of her life. Muslims are now in a state of trying to free themselves from the impact of usury caused by conventional banks, some of the impacts of which are; causing exploitation/extortion by the rich against the poor, large capital controlled by the haves is not channeled into productive businesses, such as agriculture, plantations, industry and so on which can create many jobs, causing bankruptcy if the borrower is unable to repay the loan including interest.

How important moral norms and ethical values are as a basis for development and can realize them in economic life. Values that contain justice and do not judge others. The position of humans as social beings. In Social Fiqh, KH. MA. Sahal Mahfudh defines human function as `ibādatullāh and imāratul ard to achieve saadatut daraini or to achieve a happy life in this world and the hereafter. So the importance of focusing on practices that are now widespread and applied in Islamic financial institutions continues to be studied to produce superior and very high quality products in order to be able to compete and provide benefits for life.

Product construction as a solution for developing Islamic banks in Banyumas

Therefore, there are several things that Islamic banking must do so that its growth can be seen significantly. There are several things that Islamic banking must do so that its growth can be seen significantly.

1. Return to Sharia Commitment

Sharia commitment is the main thing that must be upheld by Islamic banking in Indonesia. Both from banking in general, business units, Baitul Tanwil, and Islamic cooperatives. So that the bad expression that Islamic banks are the same as conventional banks will disappear in society, and society will believe in sharia. Quoting from the introduction of the Anwarul Bashair Book by Kiai Sahal Mahfud,

الحمد لله الذى كمل عباده بالعقول والبصائر

Allah gives the mind and eyes of the heart to be used in meditation and devotion to Him as a form of gratitude to Him. What a loss it would be if it was not used to develop knowledge to become a caliph on earth. Including understanding and applying economic concepts based on sharia principles. The aim of implementing sharia principles is to protect religion (ḥifẓ al-dīn), soul (ḥifẓ al-nafs), mind (ḥifẓ al-'aql), and descendants (ḥifẓ al-nasl) especially in the context of protecting property. (ḥifẓ al-māl) . Because basically every behavior that aims to fulfill the five needs (maqasid-syariah) is mafsadah, whereas every behavior that eliminates these five things is mafsadah.

2. Sharia banks are not savings and loan institutions.

Sharia banks are not savings and loan institutions, but rather investment managers. This is what differentiates Islamic banks from conventional banks. Through conventional banks, people can borrow from the bank if they are able to pay the installments and interest, even though the

business is not feasible after being surveyed, but because there is a guarantee of being able to pay (Civil Servant Decree, Salary Decree, or collateral that exceeds the loan), conventional banks will easily provide loans. This does not apply to Islamic banks, when surveyed do not meet the requirements to get financing, even though they are able to pay in installments, Islamic banks will reject their financing applications. The reluctance to buy on their own is caused by something that can be troublesome, sometimes in practice it is displaced and more driven to go into debt , which must be focused on being careful.

3. Product innovation but still sharia and not ignoring technology

Every bank must have its own superior products. If we look at savings and investment products in sharia banking, one with another will be the same. Even tend to imitate conventional banking. This is the function of the Sharia Supervisory Board, to continue to supervise sharia products. For example, when sharia banking in Indonesia issued a Murabahah product combined with Rahn (Pawn) Gold, until now it has caused a lot of debate in the Islamic Economic Community forum. Likewise, the Indonesian Ulema Council (MUI) which is involved in the preparation of the online waqf pledge, a mechanism that is in accordance with sharia principles, stakeholders can also make a digital waqf pledge that facilitates the process of handing over waqf funds. It can also be exemplified in the zakat system as an important instrument in the economy and system. Sharia finance is considered necessary to accept digitalization in order to move along with the development of the digital era.

This needs to be done so that Islamic banking in issuing products remains innovative but still maintains the halalness of its products. By maintaining its sharia and continuing to innovate, Islamic banking will continue to grow significantly, because Allah's blessings accompany it. The author does not say that until now Islamic banking has not grown significantly because of its lack of blessings, but it could be that there are still elements of usury there, which Allah SWT has forbidden.

CONCLUSIONS

There are various assessments of the Muslim community itself towards the products of Islamic banks, a small part considers them as truly Islamic products, half Islamic and some others consider them only as a form of cloning of conventional banks. Muslims must free themselves, avoid with all

their might the dangers of usury by heading to Islamic banking. "Taking one of the less dangerous actions of two dangerous things is obligatory". So it is the obligation of Islamic financial institutions to always improve themselves in the form of actions including returning to Islamic commitments and product innovations that still pay attention to Islamic provisions.

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ANALYSIS OF PAYLATTER TRANSACTIONS ON SHOPEE AND TIKTOK SHOP *MASLAHAH* PERSPECTIVE

Minnati Umdatul Istiqomah
UIN Professor Kiai Haji Saifuddin Zuhri Purwokerto
minn4ty@gmail.com

Abstract

Digital transformation has a very significant impact on all aspects of life, especially in the economic and business fields. Many economic transactions are starting to shift from manual to completely electronic and digital. Online markets such as Shopee and Tiktok Shop offer various convenience facilities, including payment models, from paying on the spot, transfer, paying through merchants, and the newest payment method is paylater, with a choice of terms ranging from one month to 12 months. In this way, it indirectly provides consumers with the opportunity to carry out credit transactions with easy facilities and without collateral. The principle of muamalah according to Islamic law is to realize benefits and avoid harm. The impact of paylatter really makes things easier for consumers, but apart from that, it also makes them addictive, so it can cause misery for those who cannot manage their desires and finances well. This research is qualitative research with descriptive empirical methods. Primary data in this research are paylatter users on Shopee and TikTok Shop, while secondary data was obtained from books, scientific works, journals and other sources relevant to this research.

***Keywords**: Paylater, Maslahah, E-commerce*

Introduction

With the increasingly rapid development of the digital world, it has an impact on changes in all aspects of human life, especially in the economic and business fields. Initially all economic processes were carried out manually, starting from production, distribution and consumption, now everything has shifted to digital methods. There are many positive things brought by this digital transformation, including taking advantage of digitalization to achieve economic and business goals. The digital economy is characterized by the increasingly widespread development of business or trade transactions that utilize digital media as a means of communication, collaboration and economic activities between companies or between individuals, such as E-Business and E-Commerce.[1]

This digital transformation has given rise to online shops which create a new world known as cyber space, so that transactions arising from online shop transactions

[1]Dewi Sartika Nasution, Etc., Digital Economy, (2019: Faculty of Islamic Economics and Business Uin Mataram, Mataram) H.1

are called e-commerce transactions, namely transactions carried out through a website or via social networks. Currently, micro, small and medium scale industries in Indonesia are also experiencing rapid growth and development with the existence of a marketplace for trade transactions via electronic systems (e-commerce) which is supported by increasingly wider marketing channels for industry players. So it is not impossible that Indonesia's economic growth in general will occur significantly.[2]

The presence of e-commerce has brought a change in consumer behavior. Previously they only shopped offline by coming directly to shopping centers, markets or the shops themselves, now they can easily do it online at home. According to Kotler and Keller (2012), changes in behavior are largely influenced by customers' perceptions regarding distance, price, promotions, places that have been determined by the company so far. The reason for consumers regarding the change in purchasing model from previous direct purchases to online purchases is because it has proven to be easier to do with all the facilities provided by online stores.[3]

As the online market develops, payment methods using installments and cash due are developing. Shopee collaborates with peer to peer lending service CV to provide the PayLater feature. PayLater or Lentera Dana Nusantara (LDN) is a popular payment tool in the world today. PayLater is a loan service offered online without a credit card that allows users to pay transactions not on the same day. The term "credit limit" is also often used to refer to this loan facility. Besides credit or debit cards and other mobile transfer methods, this new method is starting to emerge as one of the most widely used digital payment options. Paylater's payment and billing system is similar to payment via credit card. After making a transaction using PayLater, the user will be required to pay the bill according to the bill amount and due date according to the chosen time period.[4]

Islamic law regulates all aspects of human life, including muamalah. The concept that is used as the main consideration in resolving various problems in Islamic law is maslahah. Husīn Hamīd Hasan, in his book Fiqh al-Maṣlaḥaḥ wa Taṭbiqatuhu al-Mu'aṣirah, explains that maṣlaḥaḥ is interpreted linguistically as benefit, while in terms it is interpreted as something that brings benefits and averts harm. According to him, maṣlaḥaḥ is classified into two types. Firstly, based on the provisions of syari', it is

[2]Nandang Ihwanudin Etc., Digital Economy and Business (2023: Widina Bhakti Husada, Bandung) H.270

[3]Rahmatica Sari, The Effect of Using Paylater on the Impulse Buying Behavior of E-Commerce Users in Indonesia, Journal of Business and Investment Research Vol. 7, no. 1, April 2021, H.45

[4]Muh. Mahsun, et al, Analysis of Islamic Law on Shopee PayLater Transactions of IAIN Ponorogo Students, JSHEL (Jurnal of Sharia Economic Law) Volume 1 Number 2 (2023), December 2023 p.54

divided into three types: Maṣlaḥaḥ which is legalized by syara', which is canceled by syara' and there is no cancellation or recognition by syara'. Second, maṣlaḥaḥ which is recognized by the syara' in its parts, in its types, which are contrary to the naṣ syara', and which the syara' does not comment on. In his book, he formulated a correlation between maṣlaḥaḥ and the current situation.[5]

In the current development of online buying and selling models, with the aim of facilitating the transaction process, the paylater payment method has emerged. As previously explained, paylater is similar to a credit card, where consumers buy goods at a certain time, and can be paid in installments. That way, consumers can very easily get the goods they want without having to have money first. In buying and selling, the main principle is mutual consent, if the seller or the system used in the buying and selling has mutually agreed terms and conditions, then the buying and selling is safe, because there is no element of coercion. However, in transactions using the paylater payment method, there are many things that need to be studied, including in terms of benefit studies. On the one hand, this method makes it easier and easier for consumers to get goods by paying in installments in a very efficient and simple way. Meanwhile, on the other hand, this causes addiction so that many consumers are then trapped in mounting debts, because they are tempted by discount moments, limited editions of a product, or because they really need the item immediately. Paylater is the most appropriate solution to fulfill consumer desires. So how can paylater be analyzed from a maslahah perspective, does it bring goodness or prosperity to those who buy and sell?

Research methods

This research is qualitative research with descriptive empirical methods. The primary data in this research are 5 paylatter users on Shopee and TikTok Shop. Meanwhile, secondary data was obtained from books, scientific works, journals and other sources relevant to this research.

Discussion

History of Paylater on the Shopee and Tiktok Shop Applications

Paylater comes from the words "pay" which means give payment to, and "later" which means afterward. It can be interpreted that this payment method is a type of

[5]Safriadi, Maqãshid Al-Syari'ah & Mashlahahk: Study of the Thought of Ibn 'Assyria and Sa'id Ramadhan Al-Buthi, (Lhoksumawe: , 2021) p.14

payment with an installment model with no need to use a credit card. The digital company will pay in advance for purchases of goods made on an e-commerce platform application. Then the consumer pays according to the due date the following month. The payment period is adjusted to the tenor we choose at the beginning of the transaction. There are many reasons consumers choose this payment method. The main reason is because they can get the goods they want in an easy and practical way. Previously, consumers verified themselves first by filling in their biodata and identity, then uploading a selfie directly along with their identity. After that, consumers are directed to fill in the necessary personal data. After being verified by the system, for every purchase transaction, the paylater payment method appears, consumers are free to choose the tenor according to their abilities. In this way, consumers can immediately get the goods they want without going through long and difficult procedures.[6]

Based on survey results from the largest number of visitors to e-commerce platforms according to the Southeast Asian e-commerce market monitoring service, Shopee was ranked highest compared to other e-commerce platforms with a total of 227.6 million monthly (web) visits and 7.7 million application downloads/month.[7] This feature of the payment method using Paylater was rolled out on March 6 2019. Shopee provides this Paylater feature by collaborating with a peer to peer lending company called PT. Lentera Dana Nusantara (LDN).[8]

Furthermore, Tokopedia ranked second in terms of visitors and users with Monthly Visits (Web) were 95.6 million and Monthly Application Downloads (Android) were 2.4 million. Originally founded as a C2C platform in 2009, Tokopedia is a local multi-vendor marketplace, headquartered in Jakarta and currently has more than 8,000 official brand stores. One of its biggest advantages is that its logistics cover 93% of the country, with many regions having same-day express delivery. In December 2023, TikTok acquired 75% of Tokopedia's shares after the government banned e-commerce directly on social media platforms.[9]

[6]Gramedia Blog, Understanding Paylater: Advantages, Disadvantages, and How to Use It,*Https://Www.Gramedia.Com/Literasi/Pengertian-Paylater/*,Accessed May 25, 2024

[7]Tmo Group, (2024) Top 8 Marketplaces in Indonesia for Online Sales Business,Https://Www.Tmogroup.Asia/Insights/Top-Online-Marketplaces-Indonesia/, Accessed May 29, 2024

[8]Susi Susanti, Using Shopee Paylater for Online Shopping for District People. Ranomeeto District. South Konawe From a Sharia Economic Perspective, Thesis, Faculty of Islamic Economics and Business, Kendari State Islamic Institute (IAIN) 2023, p.43

[9]Tmo Group, (2024) Top 8 Marketplaces…

Therefore, when the shop menu is opened, the TikTok shop account will be connected to Tokopedia.

Several reasons and obstacles when choosing to use the PayLater payment method were expressed by 5 PayLater users on Shopee and TikTok Shop, as follows:

NO	NAME	PLATFORM USED	LONG TIME USING PAYLATER	REASONS TO USE PAYLATER	PROBLEMS/PROBLEMS AFTER USING PAYLATER
1.	Umi (entrepreneur)	Shopee	3 years	1. Get the items you need easily 2. Credit without collateral and easy to pay	when it is due and there is no money to pay/pay later installments
2	Muhammad (private employee)	Shopee and Tiktok	2 years	1. The right solution when you need something and don't have enough money 2. Can choose the payment installment period according to your abilities	Have ever been fined because the payment exceeded the specified time limit
3	Alfina (student)	Shopee and Tiktok Shop	2 years	Very helpful when the shipment hasn't arrived	So addicted, and sometimes you can't limit your desires
4	Danil (private employee)	Shopee	2 years	Have a debt-style item, without having to be embarrassed by other people	Bills pile up
5	Mila (private employee)	Shopee	2 years	It makes it very easy for me to be able to have things when money is running low, and then pay them when I get paid	Pay installments immediately when get salary

Table 1. Results of interviews with 5 PayLater users

From the 5 paylater users on the Shopee and Tiktok Shop platforms, it can be concluded that paylater users feel helped and greatly facilitated by the paylater payment method to meet their needs, but are also burdened when they have to fulfill their obligations. This is exactly the same as the credit financing model. Even though there are terms and conditions and are agreed to by both parties, for some people not being able to choose and differentiate between needs and desires also has bad consequences.

Maslahah according to experts

Maṣlaḥaḥ comes from the words ṣalaha, ṣaluha, ṣalāhan, ṣulûhan and ṣalāhiyyatan which mean good or positive.[10] Etymologically, the word al-maṣlaḥaḥ, the plural masãliḥ means something that is good, useful, and is the opposite of evil and damage. Maṣlaḥaḥ is sometimes referred to by the term meaning seeking the true. The essence of maṣlaḥaḥ is to create goodness and pleasure in human life and avoid things that can damage public life.[11]

Al-Ghazali in the book al-Mustashfa, formulated the definition of maslahah murrasa as follows:

Anything (maslahah) for which there is no evidence for it from the syara' in the form of certain texts that cancel it and no one pays attention to it.

From this definition, it can be seen that the substance of *maslahah mursalah* is, the existence of something that is seen as containing maslahah or being useful and bringing goodness to human life according to common sense. With it, human life becomes better and easier and avoids difficulties in living life. Then the maslahah does not conflict with the *nash syara'*, and is even in line with the objectives or maqashid al-Syariah. The third is that this problem is not discussed by the texts of the Shari'a, either from the Koran or hadith regarding its rejection or attention to it.

According to Al-Ghazali, the conditions for maslahah to be used are: first, maslahah is in line with sharia actions. Second, the benefit does not contrast with the Islamic texts, and third, the benefit is included in the dharuri category, whether the benefit is related to personal benefit or for everyone. In this regard, he also stated that maslahah which is hajjiyah when it concerns everyone can be dharuri.[12]

According to Amir Syarifuddin there are 2 forms of maslahah:

1. Creating benefits, goodness and pleasure for humans is called jalb al-manafi' (bringing benefits). There is goodness and pleasure felt directly by the person doing an action that is ordered, but there is also goodness and pleasure felt after the action is done, or felt the next day, or even the next day (afterlife). All the commands of Allah SWT apply to realize such goodness and benefits.

[10]Ahmad Warson Munawwir, Al-Munawwir Dictionary, (Surabaya: Progressive Library, 1997), p.788
[11]Hasballah Thaib, Tajdid, Reactualization and Elasticity of Islamic Law (Medan: Postgraduate Program, University of North Sumatra, 2003), P. 27
[12]Mukhsin Nyak Umar, Al-Maslahah Al-Murlah: A Study of Its Relevance in the Study of Islamic Law, (Banda Aceh: Turats, 2017) p.41

2. Avoiding humanity from damage and evil is called dar'u al-mafasid (avoiding damage). There are also those who feel damage and ugliness immediately after doing a prohibited act, there are also those who feel something happy when doing a prohibited act, but after that what they feel is damage and ugliness. For example: committing adultery with a prostitute who is sick or drinking sweet drinks for those who have diabetes.[13]

Ash-Syatibi divides maqashid into two important parts, namely the meaning of the shari' (qashdu al-syari) and the meaning of themukallaf (qashdu al-mukallaf). According to Syatibi, Allah SWT revealed the Shari'ah (rule of law) for no other reason than to benefit and avoid evil. In easier language, the legal rules established by Allah SWT are only for the benefit of servants, both in this world and the afterlife, according to Imam ash-Syatibi's words:

In fact, the Shari'ah aims to realize human benefit in this world and the hereafter."

From this understanding, it can be explained that the aim of sharia according to Imam ash-Syatibi is the benefit of humanity. In this regard, he stated that none of Allah SWT's laws has no purpose because a law that has no purpose is the same as imposing something that cannot be implemented. Asy-Syatibi in al-Muwafaqat defines maslahah as maslahah found in new cases which are not designated by a particular text but which contain benefits that are in line (al-munasib) with sharia actions.

Ash-Syatibi then divided this maslahah into three parts, namely: maslahat dlaruriyyah, maslahat hajjiyat and maslahat tahsiniyat.

1. *Benefits of dlaruriyyat*is something that must be realized in order to realize the benefit of religion and the world. If this does not exist, it will cause damage and even loss of life and life. There are five things included in it, namely: Guarding religion (حفظ الدين), Guarding the soul (حفظ النفس), Guarding offspring (حفظ النسل), Guarding wealth (حفظ المال), Guarding reason (حفظ العقل).
2. *Benefits of Hajiyat*, "secondary" level needs for human life are things that are needed for human life, but do not reach the dharuri level. If these needs are not met in human life, it will not negate or destroy life itself. However, its existence

[13]Amir Syarifuddin, Ushul Fiqh, Volume II, cet. 4th (Jakarta: Kencana Prenada Media Group, 2008), p. 208

is needed to provide convenience and eliminate hardships and difficulties in the life of themukallaf.

3. *Benefits of Tahsiniyat*, "tertiary" level needs are something that should be there to beautify life. Without fulfilling these needs, life will not be damaged and will not cause difficulties. The existence of this level of needs is a complement to the two previous levels of needs, it is complementary to the life of themukallaf, which focuses on ethical and aesthetic issues in life.[14]

The opposite of maslahah is mafsadah. Mafsadah comes from the word facade-yafsudu-fasadan which means something that is damaged. Mafsadah in language can also be interpreted as harm. If viewed from another angle, mafsadah is considered the opposite of maslahah or the opposite of goodness. From the definition above, it can be seen that mafsadah is a disadvantage that leads to damage. Even though mafsadah is the opposite of maslahah, its manifestation is very close to maslahah so it is difficult to understand by comparing the meaning between the two. However, if the two are combined in the principle of "Dar'u al-mafāsid muqaddam 'Ala jalbi al-masālih" it will produce real maslahah.

According to Syafiiyah scholars, there are very few things that happen in this world that contain pure mafsadah, as well as very few pure mafsadah, what is abundant are things that contain maslahah and mafsadah at the same time. Such as mixing good values with bad, pleasure with misery, pleasure with hardship and so on.[15]In contrast to Ibn 'Asyur who defined it as if he wanted to separate maslahah and mafsadah. He defined mafsadah as the nature of an action that produces damage or harm that is continuous, habitual, and occurs to the majority of humans or individuals.

Therefore, in the process of determining the law, the ulama are required to sort out whether something is maslahah or mafsadah. Of course, in determining a maslahah or mafsadah, scholars cannot use their minds alone but must use the help of Islamic texts. Because if maslahah and mafsadah only go through rational reasoning alone, it is likely that you will fall into judgment based on lust. That is why Imām al-Gazzālî when interpreting maslahah to achieve benefits and reject harm is

[14]Ash-Syatibi, Al-Muwafaqat fi Ushul Asy-Syari'ah, (Bairut: Dar al-Kutub al-Ilmiyah, 2005) juz 1, p. 3
[15]Muhammad Sa'îd Ramadān al- Buti, Dawabit al- Maslahah fî al-Syarî'ah al- Islamiyyah, (Beirūt: Mu'assasāt al- Risālah, 2000M), Cet VI, p.17

not to achieve human desires and goals but to achieve the goals of syara', which include: religion, soul, reason, offspring and wealth.[16]

Discussion

In every buying and selling transaction, at least four conditions must be met, namely: the seller, the buyer, and the medium of exchange in the form of money or goods being traded. If seen from an Islamic perspective, paylaters use Qardh contracts. According to Sayyid Sabiq Al-Qardh is property given by the debtor (muqrid) to the debt recipient (muqtarid) to then be returned to him (muqrid) as he received it, when he is able to pay it." According to the Law of the Republic of Indonesia concerning Sharia Banking Transactions No. 21 of 2008, a Qardh contract is a contract for lending funds to a customer and contains a clause that the customer is obliged to return the funds they receive at a mutually agreed time. The legal basis of the Qardh contract is similar to mutual cooperation between the borrower (muqtarid) and the lender (muqrid).

Based on the DSN-MUI Fatwa concerning Electronic Sharia Currency Number: 116/DSNMUI/IX/2017, the implementation practice is contrary to Islamic law, moreover the provisions of the Qardh Agreement do not apply to Paylater. The reason is, Paylater uses usury to pay his debts. The first month there is a 0% fee for those who repay the loan (Muqrid), after this time limit there will be a fine of 5% of the loan principal and an administration fee of 1%, meaning that the Paylater working mechanism benefits the platform. In this case, Shopee and Tiktok Shop /Tokopedia and users of the Paylater platform services are claimed, regardless of whether the parties have agreed to the contract submitted by the borrower (muqrid) to the lender (muqtarid) as riba.

However, according to Syamsudin, he has a different opinion, that debt and credit model sale and purchase transactions can be considered as Ijarah contracts. This is stated in the book Al-Mughni by Ibn Qudama as follows:

"Ijarah is the sale and purchase of benefits; and benefits are in the same position as objects."

If the use of the Shopee application and Tiktok Shop/Tokopedia Paylater as an intermediary between customers results in additional costs or debt, then these additional costs go to the system/company as ujroh.[17]

[16]Akbar Sarif, The Concept of Maslahah and Mafsadah as Principles of Maqāsid Syariah Thought: One Analysis, Ijtihad: Journal of Islamic Law and Economics, Faculty of Sharia, Darissalam Gontor University Vol.10 Number 2 (2016), p.5

Based on this controversial law, if we examine it from the perspective of the problems in using Paylater, the following conclusions can be drawn:

1. The use of Paylater is permitted with several notes, firstly considering the capabilities of each individual, secondly considering the type of needs, priorities for dharuriyat needs, if it falls into hajiyat or tahsiniyat needs then it is recommended not to use the Paylater payment method. This Paylater payment method is included in the maslahah because it is in accordance with the objectives of maqashid sharia, namely bringing benefits to both parties, both consumers and producers, plus the owner of the onlineshop application platform. Because consumers feel helped, because they get the goods they need in an easy and practical way, while the producer/seller directly gets the sales results from the 3rd party organizing the paylater, then the platform owner gets a blessing from the service.
2. If Paylater transactions do not use logical calculations and the ability to commit to paying, then it will only lead to disaster... as with several people who have been interviewed, there are those whose installments pile up, so that meeting daily primary needs becomes difficult. This is due to a lack of careful consideration and calculation in deciding to buy an item. It is very possible that the goods purchased are not a necessity but are simply attracted by advertising or discount promotions, without considering the ability to pay for them.

Conclusion

In online buying and selling transactions, the paylater feature is currently used as a payment method of choice which is quite popular with most millennials. Apart from being an easy and practical process, it also has a negative impact on users if they don't use it wisely. If paylater is used wisely, it can bring benefits, because it is easy, practical, and can be used at any time. This is in accordance with the principle of maslahah, namely bringing benefits and goodness and avoiding harm and damage.

Moreover, if paylater is not used wisely, it will lead its users to disaster/damage, because it makes users more consumptive, unable to manage their finances well, debts pile up, bills swell, life becomes a mess. In addition, if you don't understand Islamic law

[17]Sigi Putri Davni and Fernanda Sayyidatina, E-Commerce Transactions: Shopee Paylater Features in an Islamic Economic Perspective, Sharia Economic Forum Gadjah Mada University, August 2022,https://sef.feb.ugm.ac.id/shariarticle2201/accessed 8 June 2024

and understand the terms and conditions of using the Paylater payment method properly, then it could be haram to use this Paylater, because there are elements of gharar in it. This keafsadatan is not in accordance with the 5 principles of maqashid sharia, namely: Protecting religion (الدين حفظ), Protecting souls (النفس حفظ), Protecting descendants (النسل حفظ), Protecting wealth (المال حفظ), Protecting reason (العقل ح فظ).

Therefore, it would be good to provide guidance to the millennial community to be more careful in deciding to buy something, make sure it is safe, comfortable and also avoid things that will damage the soul, property, religion, lineage and also the mind. Last, we also ensure that the platform we use is guaranteed by the OJK as the authority that supervises and guarantees the security of all financial transactions.

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Questioning the Policy Direction of the Draft Law on Indigenous Peoples without Conflict-Based Customary Rules in Indonesia

Moh Abdul Latif[1], Nabila Luthvita Rahma[2]
Institut Agama Islam Negeri Kudus (IAIN Kudus)
abdullathif@iainkudus.ac.id, *nabilalr@iainkudus.ac.id*

Abstract. Adat laws without customary rules result in the social uneasiness of indigenous peoples and even tend to ignore their existence and the communal spatial planning regulated in the constitution, which is threatened with forms of criminalization. The purpose of this study is to explain why the government's seriousness about the tug-of-war over the passage of the Indigenous Peoples Bill caused social unease in the community. This research was conducted with *a conceptual approach, a statute approach, a philosophical approach,* and a literature review with descriptive analysis by considering the principles of special treatment in the UUPA. The results showed that the emergence of conflicts and discriminatory actions against indigenous peoples took the form of: (1) the anxiety of indigenous peoples in the face of prolonged conflicts; (2) the government's response has been slow in dealing with conflicts and its disregard for people's rights; and (3) the government's handling of certain cases has not been maximized without the equalization of the provisions in the Bylaws and the support of the ministry of home affairs. This research concludes that the government's lack of seriousness in providing legal protection to indigenous peoples has aggravated relations between indigenous groups and corporations, thereby increasing the potential for conflict and discriminatory actions in the territories of indigenous peoples. The need for a clear legal foundation in the passage of the bill to regulate space as a common space, so that people's anxiety about conflicts can be avoided.

Keywords: *Draft Law, Government Seriousness, Social Uneasiness, Indigenous Peoples.*

Abstrak. Hukum Adat tanpa aturan adat mengakibatkan terjadinya kegelisahan sosial berbasis konflik masyarakat adat dan bahkan cenderung abai terhadap keberadaan mereka dan tata ruang komunal yang di atur di dalam konstitusi dan terancam bentuk kriminalisasi. Tujuan dari penelitian ini adalah untuk menjelaskan bahwa ketidakseriusan pemerintah terhadap tarik ulur pengesahan RUU Masyarakat hukum adat menimbulkan kegelisahan sosial di masyarakat. Penelitian ini dilakukan dengan dengan pendekatan *conceptual approach, statute approach, philosophy approach* dan kajian pustaka dengan analisis deskriptif dengan mempertimbangkan prinsip-prinsip perlakuan khusus di UUPA. Hasil penelitian menunjukkan bahwa munculnya konflik dan tindakan diskriminatif terhadap masyarakat adat dalam bentuk; (1) adanya kegelisahan masyarakat adat dalam menghadapi konflik berkepanjangan; (2) Respon pemerintah lamban dalam menangani konflik dan abai terhadap hak-hak masyarakat; dan (3) penanganan pemerintah pada beberapa kasus tertentu belum maksimal tanpa penyamaan persepi dalam Perda dan bentuk dukungan dari kementerian dalam negeri. Penelitian ini menyimpulkan bahwa ketidakseriusan pemerintah dalam memberikan perlindungan hukum kepada masyarakat hukum adat telah memperparah hubungan antar kelompok masyarakat adat dan korporasi sehingga meningkatkan potensi konflik dan tindakan diskriminatif di wilayah masyarakat hukum adat. Perlunya payung hukum yang jelas dalam pengesahan RUU untuk mengatur ruang sebagai ruang bersama, sehingga kegelisahan masyarakat akan hal konflik dapat dihindari.

Kata Kunci: Rancangan Undang-Undang, Ketidakseriusan Pemerintah, kegelisahan sosial, Masyarakat Hukum Adat.

INTRODUCTION

Law enforcement agencies including the judiciary need documented customary laws. Thus Soepomo once said that in the positivistic approach of customary law, deductive reasoning is applied, namely considering the social bonding system and values maintained by the community in resolving disputes.[1]. Until now, there has been a lack of consistency from the government in passing the Indigenous Peoples Bill. [2]. In this case, it causes a form of social anxiety experienced by indigenous peoples, which is one of the most important phenomena during this country's freedom from colonization. In addition to the diverse territories of indigenous peoples and the impact on the problem of the development of the country's development that continues to accelerate, anxiety also occurs due to legal uncertainty in the form of legal protection for Indigenous Peoples.

The lack of legal certainty in the context of protecting the rights and recognition of individual and communal Indigenous Peoples has implications for the non-achievement of welfare for Indigenous Peoples and the emergence of potential conflicts in Indigenous Peoples that pose a threat to national security stability[3]. On the other hand, in order to enjoy their rights, which are mandated by the constitution, indigenous peoples can live safely, grow, and develop as a community group only as a mere imagination.

The anxiety of Indigenous Peoples is triggered by the rapidly increasing conflicts between communities and companies, all levels of society and groups experience it in various forms. Data from the Consortium for Agrarian Reform (KPA) revealed that the National Strategy Project (PSN) caused 38 agrarian conflicts throughout 2021. This number has increased by 123 percent from the previous year. Dewi explained that this agrarian conflict stems from the ambition to accelerate the execution of PSN. The government issued several regulations to accelerate the execution but ignored the rights of citizens to land. For example, Presidential Regulation Number 109 of 2020 concerning Acceleration of the Implementation of National Strategic Projects. After the issuance of the Perpres, many developments are in the name of 'public interest'[4]. The anxiety caused by the

[1] Budiyanto Budiyanto, "MODEL FUNGSIONALISASI NILAI-NILAI KEARIFAN LOKAL (LOCAL GENIUS) DALAM KEBIJAKAN HUKUM (LEGAL POLICY) DAERAH DI PROVINSI JAWA TENGAH (Kajian Konstitusional Penguatan Komunitas Adat Sedulur Sikep Pati Dalam Pengelolaan SDA & Pelestarian LH)," *Jurnal Pembaharuan Hukum* 3, no. 1 (2016): 69, https://doi.org/10.26532/jph.v3i1.1348.

[2] M S W Sumardjono, "JALAN TENGAH PENGATURAN MASYARAKAT HUKUM ADAT1," *Meninjau Ulang Pengaturan Hak Adat*, 2019.

[3] Democrat National Party, "Urgensi Dan Pokok-Pokok Pengaturan Penyusunan Rancangan Undang-Undang Masyarakat Hukum Adat," 2019.

[4] yla, "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021 Baca Artikel CNN Indonesia "Proyek Stranas Disebut Picu 38 Konflik Agraria Sepanjang 2021," CNN INDONESIA, 2022, https://www.cnnindonesia.com/nasional/20220107055037-20-743621/proyek-stranas-disebut-picu-38-konflik-agraria-sepanjang-2021.

facts of criminalization and violence has led to various misguided actions that make the situation worse.

So far, studies on the policy direction of the Indigenous Peoples Bill have tended to look at the preconditions that cause and the consequences of social unrest. Unrest is communicated and perceived by indigenous peoples. These two trends in the study of social anxiety of indigenous peoples may emphasize the lack of dimensionality of social reality. First, many studies pay attention to the role of the State in maintaining the existence of Indigenous peoples, which does not at all support the independence and recognition of Indigenous peoples. Second, studies pay attention to the implications of the existence of Indigenous unrest and dispute resolution, which does not lead to the disappearance of the unrest experienced by Indigenous peoples.

This research complements the shortcomings of existing studies by looking at how the anxiety of indigenous peoples about threats to themselves and their territories is immediately given legal certainty in the form of the ratification of the Indigenous Peoples Bill into a law that can be directly implemented in social practices that have implications for the ability of indigenous peoples to manage customary territories.

This research is based on the argument that anxiety is not only caused by the state's lack of seriousness in providing legal recognition and protection for indigenous peoples in the face of continuous conflicts, but also has adverse implications for problem solving caused by issues involving indigenous territories. The psychological trauma experienced by indigenous peoples has become the basis for the difficulty of problem solving.

Anxiety as part of psychological trauma can occur due to a poor democratic system in the formation of legislation that does not provide special treatment to Indigenous Peoples. At the same time, various drafts of laws and regulations that do not involve public participation occur as a result of limited knowledge. In addition, widespread dis-information also contributes to anxiety in the form of good knowledge being defeated by bad knowledge produced by massive media. Thus, the anxiety of indigenous peoples is something that is important homework for the state and citizens.

METHODS

Indigenous peoples who experience psychological and physical trauma, both directly and indirectly, in line with the prolonged conflict involving communities and corporations because of the unclear certainty in the form of legal protection that should exist in the Indigenous Peoples Bill are the unit of analysis of this research.

The writing of this article is a type of normative research or also known as doctrinal legal research. This type of research was chosen because the research goes through a series of processes to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand, namely the chaotic performance of state institutions in the ratification of the Indigenous Peoples Bill which has an impact on the emergence of conflict and social unrest. The approach used (conceptual approach), statutory approach (statues approach), conceptual approach and philosophy approach (philosophy approach) Furthermore, the legal materials used are primary legal materials including: First, Law No. 5/1960 on the Basic Regulation of Agrarian Principles, Second, Law No. 6/2014 on Villages. Third, Constitutional Court Decision Number 35/PUU-IX/2012. Fourth, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Customary Law Communities and Communities Located in Certain Areas (Permen ATR 9/2015). Fifth, the Draft Law on Indigenous Peoples.

In addition to these primary legal materials, several other secondary legal materials in the form of scientific articles, books, and other scientific publications that are still related to the title of this paper. The method of analysis used uses theoretical triangulation, namely comparing information from different theoretical perspectives, in this case the problems studied are analyzed using the perspective of more than one theory. In addition, the interpretation of primary legal materials is carried out using legal interpretation techniques, namely in the form of grammatical interpretation by paying attention to generally applicable language rules, systematic interpretation by connecting a statutory regulation with the entire legal system, and hermenetic or interpretation of the meaning in a text in interpreting the principles contained in the legislation in order to obtain valid research results.

RESULTS AND DISCUSSION

Unwillingness of the Government and Parliament

Indigenous conflict-based anxiety occurs due to the rejection and unwillingness of the government and DPR in the ratification of the Indigenous Peoples Bill. In a discussion in Jakarta, Chairman of the Working Committee on the Indigenous Peoples Bill Willy Aditya said that one of the things that made this bill never passed in the DPR plenary meeting was due to the absence of political will, both from the president and the DPR. Even though seven factions have agreed to continue this bill as the right of initiative of the DPR as a result of the plenary of the Legislative Body, while two factions refused. Those who refused seem to be haunted by the shadow that the

Indigenous Peoples Bill will become an obstacle to development and investment. Or it is feared that it will collide with the implementation of the Job Creation Law.

According to Lon L. Fuller, Customary Law is based on the process of interaction in society and then functions as a pattern to organize and facilitate the process of interaction so that Customary Law is referred to as "a system of stabilized interactional expectations". However, Fuller does not consider the doctrine of "opinion necessitates" which is a repetitive action because this doctrine does not apply when Customary Law is still in the process of formation. Fuller uses another approach from the American Law Institute's Restatements of Contracts. Where what determines the process of the formation of Customary Law is the ultimate goal of the act or event, namely creating a peace that is characterized by a harmony between order and tranquility in society.

In practice, said Willy, it is actually large corporations that are worried about the existence of the law. This can be seen from the annexation of customary land by certain companies. [5]. Agrarian Law and Customary Law expert Aartje Tehupeiory confirmed the need to pass the Customary Law Society Bill to preserve culture, customs and customary land. Indeed, so far there have been regulations that encourage local governments to issue regulations that recognize the existence of indigenous peoples, but according to him, these regulations clash with investment, especially after the existence of the Job Creation Law.

The existence of bills related to the existence of customary law is being discussed in the House of Representatives, such as the Indigenous Peoples Bill, the Land Bill, the Palm Oil Bill, the Criminal Code Bill. Hot discussions are taking place because some of these bills have several articles that clash with each other, contradict each other, cross paths with customary law, so it is predicted that they will harm the rights of indigenous peoples, especially with regard to natural resources or theagrarian rights of indigenous peoples.

On 1 August 2018, approximately 15 indigenous peoples' organizations led by aman gathered in Jakarta to encourage the government to review the indigenous peoples bill, which is currently being discussed in the DPR. There is a form of anxiety from observers of indigenous peoples towards the current legal politics related to the existence of customary law. Why is there such anxiety? Because since the existence of Law Number 5 of 1960 concerning Basic Agrarian Principles with the powers available to it has reduced the norms, principles and values of customary law as the original law of the Indonesian nation.

AMAN itself recorded 40 (forty) cases of criminalization and violence against Indigenous Peoples that occurred in 2020. Most of these cases were cases that had started in previous years, but

[5] Fathiyah Wardah, "Mengapa RUU Masyarakat Hukum Adat Tak Kunjung Disahkan?," voaindonesia, 2021, https://www.voaindonesia.com/a/mengapa-ruu-masyarakat-hukum-adat-tak-kunjung-disahkan-/6324774.html.

continued because they never received a resolution from the state. Given this situation, it is difficult to argue that the state has indeed been neglecting and discriminating against Indigenous Peoples. In detail, the forty cases can be categorized as followst[6]:

First, Indigenous Peoples vs Plantations: 10 cases. Second, Indigenous Peoples vs Mining : 5 cases. Third, Indigenous Peoples vs dams and hydropower plants : 6 cases. Fourth, Indigenous Peoples vs Government and Local Government: 5 cases, Fifth, Indigenous Peoples vs KPH: 6 cases. Sixth, Indigenous Peoples vs Industrial Plantation Forest: 3 cases. Seventh, Indigenous Peoples vs TNI: 1 case. Eighth, Environmental Pollution in Indigenous Territories : 4 cases.

Of the forty cases, 39,069 Indigenous Peoples divided into 18,372 households have suffered losses, including economic losses, social losses, and moral losses as a result of intimidative actions, violence, and criminalization. The total indigenous territory where the forty cases took place reached 31,632.67 hectares. This figure only represents the cases that have surfaced. The actual number is much higher, given the typology of conflicts, most of which are latent and do not always surface..

From the data above, quoting from the Chairman of the Laman Kinipan Indigenous Community Effendi Buhing was arrested by the Central Kalimantan Police. The arrest was allegedly related to a land conflict between the indigenous community and a palm oil company. Effendi Buhing was forcibly picked up by police at his home in Kinipan Village, Batang Kawa District, Lamandau Regency. The above incident was eventually resolved through deliberation, and in this case it has also not resolved the problems that occur between indigenous peoples and corporations. This is in line with observations of different locations as shown in Figure 1.

Figure 1. form of anxiety of wadas purworejo residents

Source: CNN indonesia

[6] Aliansi Masyarakat Adat Ausantara, "RESILIENSI MASYARAKAT ADAT DI TENGAH PANDEMI COVID-19: AGRESI PEMBANGUNAN DAN KRISIS HAK ASASI MANUSIA (HAM)" (Jakarta, 2020), file:///C:/Users/LENOVO/Downloads/DOC PDF/CATATAN-AKHIR-TAHUN-2020_AMAN_2.pdf.

Figure 1. Demonstrates a justification for the ongoing social unrest within Indigenous communities that can exacerbate the geographical conditions that are primary livelihoods and Indigenous fears of inadequate facilities are widespread.

There are three basic things faced by the community related to the poor geographical conditions that become livelihoods: the availability of land that is a place to make a living for families in daily activities, the overlapping and unclear rules of law in the context of benefiting large investors based on legal certainty, and the quality of natural resources that are reduced continuously..

The anxiety that occurs in various places illustrates the conditions to which indigenous peoples respond and the consequences of a response. Responses to the conditions experienced by indigenous peoples have also become the basis of anxiety as a result of experiences shared through discourse and social practices in the unwillingness of the DPR and the government to pass the indigenous peoples bill.

The inadequacy of the political argument that is the basis for the formation of the Law on Indigenous Peoples and the poor policy on behalf of legal protection of indigenous peoples, which until now has not existed massively, shows concern based on the phenomenon of oppressed indigenous peoples, which has become the observation and experience of the community as the basis for the birth of fear and doubt. Thus, the form of anxiety of indigenous peoples is not caused by economic factors but rather by experiences that are shared and perceived with group values over the government's lack of seriousness in terms of legal protection to indigenous peoples in the form of certainty regulated in the Law.

Government Response to Various Cases Involving Indigenous Peoples and Corporations

Indigenous peoples in various countries experience the same problems, namely conflicts over the struggle for rights to land or residence, because of these problems then made the United Nations respond by issuing a declaration to restore the rights and protect indigenous peoples. The Unitary State of the Republic of Indonesia is one of the countries that signed the declaration. Participation in the agreement on the rights of indigenous peoples obliges Indonesia to implement the regulations in the UN regarding the rights of indigenous peoples[7].

[7] Sefriansyah Guspin, "KEBIJAKAN PEMERINTAH INDONESIA TERHADAP MASYARAKAT ADAT Dalam BAB III Ini , Penulis Akan Menjelaskan Mengenai Kebijakan Pemerintah Pusat Untuk Melindungi Hak-Hak Masyarakat Adat Di Seluruh Nusantara Dengan Mengacu Pada Deklarasi Yang Di Keluarkan Oleh Per," n.d., 52–89.

The existence of indigenous peoples depicted on the face of the constitution is still not seen in the form of a rule of law with certainty seems to still cause a variety of varied responses from various government circles, both from the legislative and executive institutions as the spearhead of the ratification of the MHA Bill to local governments and the general public.

The government's response to the existence of indigenous peoples ranges from conflict-based responses in socio-economic activities to legal protection practices that have not protected the rights of indigenous peoples. In terms of the implementation of regulations on behalf of "Adat", many activities carried out are considered to have fulfilled existing procedures and policies. The existence of the Constitution and the Land Law is actually a form of response from the central government to maintain harmony and the rights that must be owned by indigenous peoples and further strengthen the principle of state control rights.

For example, the granting of concessions by the government to investors has led to many land conflicts between concession-holding investors and indigenous peoples. Conflict data recorded by the National Human Rights Commission, the Indigenous Peoples Alliance of the Archipelago and Sawit Watch has reached 500-800 cases of land conflicts between these investors and indigenous peoples.[8]. In-depth attention to coastal areas is still lacking compared to other mainland areas. Often the implementation of government programs does not accommodate the interests of the community. Equitable planning, including coastal areas in spatial planning, can certainly accelerate and reduce the potential for conflict[9]. Therefore, there is a lack of government response regarding the mapping of potential conflicts in order to connect parties to the problem and with other parties.

Furthermore, a concession is an agreement between a private party and the Government to do some government work, or the private party is authorized under certain conditions, it can also be interpreted as a license to do a certain extent of work, by not allowing other parties to participate. The work performed is related to the public interest performed by the company, which is not possible for the Government to do. A concession is also said to be a stipulation that allows the concessionaire to obtain dispensations, permits, licenses and also a kind of Government authority that allows him to, for example, build roads, overpasses and so on. The conditions for granting this concession must be carried out by the Government with great care and careful calculation.[10].

[8] Joesoef, "PEMBERIAN KONSESI KEPADA INVESTOR DI ATAS TANAH ADAT DAN EKSISTENSI HUKUM ADAT."
[9] Rahmat Datau and Hairan Hairan, "ASPEK HUKUM DALAM PENGELOLAAN WILAYAH PESISIR DALAM PERSPEKTIF OTONOMI DAERAH," *Gorontalo Law Review*, 2019, https://doi.org/10.32662/golrev.v2i2.700.
[10] Joesoef, "PEMBERIAN KONSESI KEPADA INVESTOR DI ATAS TANAH ADAT DAN EKSISTENSI HUKUM ADAT."

Land policy at this time still refers to the work creation law should be aimed at integrating a number of Sectoral Laws so as to change from first, the Act as a stand-alone law to a legal system with Sectoral Law as its elements, Second, egosectoral law leads to the harmony of inter-sectoral laws, Third, the substance of inter-sectoral laws that deny each other to inter-sectoral laws that strengthen each other, Fourth Inconsistency of inter-sectoral laws that cause legal uncertainty to inter-sectoral laws that guarantee legal certainty and justice[11]

As outlined in the Job Creation Bill will cause : Land policy will be further away from the principles and objectives of the UUPA; The spirit of the UUPA to harmonize the objectives of economic growth through capitalistic land policies with the objectives of equity through Agrarian Reform will be increasingly difficult to realize because in essence between the two contains a conflicting spirit.

On the one hand, UUPA provides equal opportunities for anyone to have land rights in Indonesia and compete with each other to utilize land productively and optimally (Article 4 paragraph (1) jo. Article 4 paragraph (1) jo. Article 10 paragraph (1) and Article 15), but on the other hand UUPA also gives special treatment to Indonesian citizens to have all kinds of land rights and for Indonesian citizens who do not have land or have land that is not suitable to be given priority to obtain land[12]. In fact, the spirit of the State's position tends to be neglected as in the Job Creation Law.

Building a Model for Problem Solving in the Indigenous Peoples Bill

The indigenous peoples bill has come a long way in the legislative process. For the first time, this bill was discussed in the Special Committee in 2014 under the name of the Bill on Recognition and Protection of the Rights of Indigenous Peoples (PPHMHA), which unfortunately until the end of the period, the DPR was unable to complete this bill. Throughout 2017-2018, the Indigenous Peoples Bill was discussed within the House of Representatives together with related parties such as the Indigenous Peoples Alliance of Indonesia (AMAN) and the Indonesian Civil Society Coalition to improve the substance of this bill. This bill has also gone through the Harmonization process and was discussed by the Legislation Body. However, despite a Working Meeting between the Legislation Body and the Government, until the end of the 2014-2019 term of

[11] nur hasan Ismail, "RANCANGAN UNDANG-UNDANG CIPTA KERJA : Pengabaian Prinsip-Prinsip UUPA," ed. Tarmizi (Sinar Grafika, 2020), https://www.google.co.id/books/edition/Pengantar_Hukum_Perdata_Tertulis_BW/uzZCEAAAQBAJ?hl=id&gbpv=1&dq=Pengantar+hukum+perdata+tertulis&printsec=frontcover.
[12] Ismail.

office of the House of Representatives, this bill still cannot be enacted. The latest development shows that this bill has become a Priority Prolegnas in 2022 with serial number 24 through DRP RI Decree Number 8/DPR RI/II/2021-2022.

The Indigenous Peoples Bill consists of 16 chapters and 57 articles. In this bill, the point that is emphasized is the recognition of indigenous peoples by the state. Article 1 letter (2) of the bill states that recognition is a form of acceptance and respect for the existence of Indigenous Peoples and all the rights and identities attached to them. Recognition in the Indigenous Peoples Bill is the door to obtaining protection, empowerment, and a series of rights such as Indigenous Peoples have Rights to Customary Territory, Rights to Natural Resources, Rights to Development, Rights to Spirituality and Culture, Rights to the Environment; which are regulated in this Bill.

The tug-of-war over the discussion and enactment of the Indigenous Peoples Bill tends to be caused by political aspects that have the potential to clash with the spirit of investment and capital investment being promoted by the government. The government's reluctance to submit the manuscript of the Problem Inventory List (DIM) in the process of discussing this bill is evidence that the government is more pro-investment than the recognition and protection of indigenous peoples, which has long been discussed in the legislative process.

Conflict of interest in indigenous peoples' disputes with capital owners is not a new problem. The antinomy in Law No. 39 of 2014 is one example that indigenous peoples have an unequal position when confronted with capital owners and the government. In the Plantation Law, Article 1 paragraph (5) and paragraph (6) do cover Masyarakat Hukum Adat and Hak Ulayat, but Article 13 of the same law also states that Masyarakat Hukum Adat must be determined in accordance with the provisions of laws and regulations. Meanwhile, the legal umbrella to gain recognition as a customary law community from the Government has not yet been passed and promulgated. This fact further sharpens the chances of conflict that will be faced by indigenous peoples.

Indeed, in the Indigenous Peoples Bill, especially chapter II, it is stated that the State recognizes Indigenous Peoples that are still alive and developing in the community in accordance with the principles of the Unitary State of the Republic of Indonesia. However, the procedures that must be followed involve many parties and take a long time. The stages in Article 6 include: identification, verification, validation, and determination. The results of a series of procedures will be outlined in the Decree of the Regional Head.

The experience of conflicts or disputes experienced by indigenous peoples with all the problems that have not been resolved and are actually repeated should bring understanding to the

government on the problem-solving model in dealing with these prolonged conflicts directly from the main cause of the conflict. Overlapping laws that create counter-productivity, long procedures for legality and recognition of indigenous peoples, and models for resolving prolonged conflicts deserve the Government's attention in drafting the Indigenous Peoples Bill.

Customary law communities have their own characteristics that are communal in nature [13], and has a different origin principle, which is also alluded to by Law No. 6/2014 on Villages. This specificity, of course, has an impact on the non-uniformity of efforts that can be made to at least provide recognition of the rights of indigenous peoples in order to minimize conflicts and handling conflicts that are increasingly tapered, or at least cut down the process of recognition of indigenous peoples that are not complicated. Unfortunately, this concern is not comprehensively addressed in the Indigenous Peoples Bill.

So far, the recognition of indigenous peoples has been done through Regional Regulations issued by the heads of the relevant regions. This refers to the Decision of the Constitutional Court (MK) Number 35/PUU-IX/2012 which basically contains the separation of customary forests from state forests. However, in practice, even before the Constitutional Court Decision was issued, there were still inconsistencies between Regional Regulations or Decrees that had been issued regarding the recognition of indigenous peoples and other public policies. For example, the Decree of the Regent of North Luwu No. 3/2004 on the Recognition of Seko Indigenous Peoples was merely a public policy because it ignored the views of the community who rejected the presence of a hydroelectric power plant in Seko.

Technically, the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 9 of 2015 concerning Procedures for Determining Communal Rights to Land of Indigenous Peoples and Communities Located in Certain Areas (Permen ATR 9/2015) is considered as one of the operational options to recognize indigenous peoples. However, Permen ATR 9/15 regulates that the subject of communal rights is not only indigenous peoples, but also applies to other communities, which in Permen ATR 9/15 are termed communities in certain areas, namely communities in forest or plantation areas [14]. Whereas the concept of customary rights of indigenous peoples and communal rights to land are different things because both have different characteristics from one another [15]. Looking at the

[13] Wimba Roofi Hutama, "Eksistensi Hak Ulayat Pasca Berlakunya Peraturan Menteri Agraria Nomor 18 Tahun 2019," *Notaire*, 2021, https://doi.org/10.20473/ntr.v4i3.28036.
[14] Nurul Firmansyah, "Menyoal Subjek Hak Komunal," *Hukumonline*, 2015.
[15] Mariska Yostina, "HAK KOMUNAL ATAS TANAH MASYARAKAT HUKUM ADAT DI INDONESIA (Analisi Peraturan Menteri Agraria Dan Tata Ruang Nomor 9 Tahun 2015 Tentang Tata Cara Penetapan Hak Komunal Atas Tanah Masyarakat Hukum Adat Dan Masyarakat Yang Berada Dalam Kawasan Tertentu)," 2015, 1–26.

efforts to recognize indigenous peoples so far, the legal logic of formalizing recognition into a series of legislative procedures is ineffective. It is almost impossible for a law to accommodate technical arrangements for the recognition of indigenous peoples' rights to their social, economic, political and cultural rights at the same time [16].

While in some contexts formalizing ownership means little more than endorsing existing practices, this process formally recognizes individual or collective rights not only to use and profit from but in some cases also dispose of land in much the same way as de Soto envisioned in Admos Chimhowu's journal [17]. At the same time, quoting from Chimhowu, that there are substantial changes in the law of indigenous peoples in Kenya, more details are explained in table 1. following;

Fitur	Old Type of Customary Law	New Type of Customary Law
Customary Rights in Legislation	Not recognized as property rights	ownership and recognition of customary law in recognizing customary rights as property under statutory law (see Kenya Community Land Act 2016) also Uganda, Mozambique, Tanzania, and Burkina Faso
Authority over land	The state has delegated authority to traditional chiefs, clan chiefs or family elders.	State authorizes customary or reformed institutions (a combination of elected and appointed customary chiefs)
Independence from state institutions	Most state independence in terms of licensing	Increasingly integrated and co-opted in statutory law. Increasing standardization of practice across indigenous communities.
Land administration and recording	verbal and informal written agreements	Statutory land registration; group and individual boundaries through the use of new technologies.
Cadastre	Still manual without any technology	Land registration based on survey work done by professionals using new,

[16] R Yando Zakaria, "Strategi Pengakuan Dan Perlindungan Hak-Hak Masyarakat (Hukum) Adat: Sebuah Pendekatan Sosio-Antropologis," *BHUMI: Jurnal Agraria Dan Pertanahan*, 2016, https://doi.org/10.31292/jb.v2i2.66.
[17] Admos Chimhowu, "The 'New' African Customary Land Tenure. Characteristic, Features and Policy Implications of a New Paradigm," *Land Use Policy* 81, no. August 2017 (2019): 897–903, https://doi.org/10.1016/j.landusepol.2018.04.014.

		cheaper technology.
Dispute Resolution	Locally embedded grievance and dispute resolution mechanisms	Formal integration into the national justice system where statutory law is supreme but some scope for adat dispute resolution is privileged, the state should not intervene.
Land commodities	Most land sales and leases are granted on the basis of need rather than ability to pay for those with eligible rights	Sale and lease of land is possible for all persons with rights and qualified investors. Taking into account the principle of special treatment for indigenous nationals [18].

Substance that can be adopted in the Kenyan indigenous peoples law, there is significant in that the sale and leasing of land is possible for all persons with rights and qualified investors. Taking into account the principle of special treatment for indigenous nationals. Basically, the principle is recognized in the UUPA giving special treatment to Indonesian citizens and is supported by the Principle of Nationality and the Principle of Equitable Land Ownership and this is only natural because the State was built to ensure the interests of its citizens. If other regulations are preoccupied with giving foreign nationals the same land rights as Indonesian citizens, it is unnatural and contrary to the principles of the UUPA.

Looking at the conflicts of indigenous peoples so far that have arisen due to the lack of recognition of the rights of indigenous peoples, it is necessary to have an initial understanding in advance of who and what can be referred to as the subjects and objects of the rights of indigenous peoples in the social and cultural order concerned that will be recognized in the district / city concerned [19] , and Recognition of the rights of indigenous peoples by the State can be carried out based on the values of local wisdom of indigenous peoples [20].

Pengakuan ini dapat dialasi oleh produk hukum tingkat daerah baik itu Peraturan Daerah maupun Surat Keputusan Kepala Daerah setempat yang berisi kategori-kategori dan atau bentuk-bentuk pengelompokan sosial yang dapat disebut sebagai wujud lapangan dari apa yang disebut

[18] National Council for Law Reporting, "LAWS OF KENYA, Land Act," no. 6 (2016).
[19] Zakaria, "Strategi Pengakuan Dan Perlindungan Hak-Hak Masyarakat (Hukum) Adat: Sebuah Pendekatan Sosio-Antropologis."
[20] Hidayat Hidayat, "PENGAKUAN HUKUM TERHADAP HAK ULAYAT MASYARAKAT HUKUM ADAT," *To-Ra*, 2016, https://doi.org/10.33541/tora.v1i3.1140.

sebagai 'masyarakat hukum adat' di daerah itu; bentuk-bentuk penggunaan sumber daya alam apa saja yang dapat dikategorikan sebagai obyek hak masing-masing subyek hak; dan juga berbagai jenis hak yang dikenal dalam kehidupan sehari-hari komunitas yang bersangkutan [21]. Dengan pengaturan hukum yang demikian, masing-masing masyarakat hukum adat perlu melakukan self assesment diri untuk memperoleh pengakuan, sementara instansi terkait yang perlu lebih berperan aktif untuk melakukan penetapan terhadap hak-hak publik masyarakat hukum adat.

The state has constitutionally recognized the entity of indigenous peoples who are part of the citizens who should also give respect to the identity of indigenous peoples as legal subjects, namely the same rights to live prosperously as the goal of national development [22]. The philosophy of protection of indigenous peoples is in line with Satijipto Raharjo's view that it is intended to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law in order to obtain social justice.[23].

CONCLUSION

From the description above, it turns out that social unrest that occurs due to prolonged conflicts is a result of the experience of indigenous peoples trying to defend customary rights as a result of the unwillingness and tug of war between the DPR and the government regarding the ratification of a bill that has an impact on the concession of indigenous territories between the government and the private sector and unrest has become a common experience that arises from the government's inability to handle conflicts between communities and corporations. Thus, this study provides a perspective in looking at social unrest not on static causal factors but on the dynamic process of how indigenous peoples' unrest about customary territories that have no legal certainty

This paper has limitations in data sources that only rely on literature and online media so that it cannot be used as a strong and comprehensive basis for policy formulation. Policy formulation requires extensive surveys and in-depth informant interviews to be used as a basis for policy formulation, interviews with informants on affected experiences. Follow-up studies that accommodate a wider sample and diverse sources of information can be a source of knowledge for a deeper understanding and better social structuring of indigenous peoples.

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[23] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).

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Analysis of Karl Marx's Materialism Concept on Family Resilience in Jepara Regency

Ahmad Fauzan Mubarok. [1] Shofiatun Ni'mah.[2] Elmala Putri Damayanti Hukum.[3] Hesti Adi Wahyuni.[4]

Universitas Islam Nahdlatul Ulama
atunshofi21@gmail.com

ABSTRACT

Family resilience is a condition of family dynamics in managing resources and problems faced to achieve the goal of a quality and resilient family to realize national resilience. Vulnerability in family resilience can have implications for divorce. Based on data from the Jepara Regency Religious Court, divorce cases in Jepara Regency from 2021-August 2023 have increased in 2021, the divorce rate in Jepara amounted to 2,055 cases. In 2022, the divorce rate in Jepara will be 2,208 cases. And in 2023 the divorce rate in Jepara will be 2,207 cases. With divorce cases including 5,090 contested divorce cases. There are many factors that cause divorce, including economic factors which are considered the main factors that cause divorce. Since 2016, Jepara has developed into an industrial city with the presence of labor-intensive factories with foreign investment. This research aims to examine the influence of Karl Marx's concept of materialism on family resilience in Jepara Regency. This research uses qualitative research methods with a library research approach and field studies using observation, interviews and literature study techniques in data collection techniques and analyzed using psychographic analysis. Research results from Karl Marx's perspective. Economic pressure, alienation from work and social relationships, as well as changes in social and cultural values are the main factors that can cause tension in marriage, which in turn can increase the divorce rate.

Keywords: *Family Resilience, Karl Marx, Divorce, Causes of Divorce*

ABSTRACT

Family resilience is a condition of family dynamics in managing resources and problems faced to achieve the goal of a quality and resilient family to realize national resilience. Vulnerability of family resilience can have implications for divorce . Based on data from the Jepara Regency Religious Court , divorce cases in Jepara Regency from 2021 to August 2023 increased in 2021 , the number divorce in Jepara totaling 2,055 cases . In 2022, the number divorce in Jepara totaling 2,208 cases . And in 2023 the number divorce in Jepara totaling 2,207 cases . With case divorce among them is case divorced sue totaling 5,090 cases . There are many factors that become reason divorce among them factor the economy is considered as factor main reason divorce . Jepara since 2016 has developed into an industrial city with the presence of labor-intensive factories with foreign investment. Research This aiming For examines the influence of Karl Marx's materialism concept on family resilience in Jepara Regency . Research This use method study qualitative with approach *library research* and field studies with use technique observation , interview And studies library in technique data collection and analyzed with *psychographic analysis* . The results of the Karl Marx perspective

study Economic pressure, alienation from work and social relationships, and changes in social and cultural values are the main factors that can cause tension in marriage, which can ultimately increase the divorce rate.

Keywords : Resilience Family , Karl Marx , Divorce , Causes Divorce

1. Introduction

Family resilience is a dynamic condition of a family in managing physical and non-physical resources and managing problems faced to achieve a goal, namely a quality and resilient family as the main foundation in realizing national resilience [1]. A strong family is one of the... One foundation most important in development source Power man in accordance ideals sublime nation . One of the goals of family resilience is to improve family welfare. Increasing family welfare will potentially strengthen family resilience. One of the welfare level standards can be seen from the regional minimum wage (UMR) provisions of a region as a reference for employer provisions in providing wages or salaries that become income for recipients.[2]

The challenge of family resilience is to ensure that the relationships between individuals in a family can be managed well, harmoniously, and free from divorce . Divorce is the end of a marriage, namely the severance of the relationship between husband and wife due to by failure husband or wife in operate bond on role each .[3] Divorce In Islam, it is not a prohibition, but rather the last door of a household, when there is no other way out. Divorce Also is A the facts that happened between partner husband wife , consequences differences principles that are not can united Again through various the way that is in life family while each individual still maintain stance , desire And his will alone , without make an effort For give in for the sake of achieving integrity family . Like an emergency exit, divorce is a process that involves many aspects

[1]Jadidah, Amatul "The Concept of Family Resilience in Islam", *Maqashid Journal of Islamic Law* Vol.4, No.2 (2021)
[2]Rastri, Paramita, "A Look at Minimum Wages and Income Inequality in Indonesia", *Jurnal Budget* Vol. 6, No. 2, 2021
[3]Sitepu, Linda et al., "Providing Psychoeducation on "Divorce on Family Perspective" to Psychology Students at Potensi Utama University", *JUDIMAS (Journal of Community Service Innovation)* , Vol. 3, No. 1, June 2022

such as emotions, economics, social, and official recognition by society through applicable laws is part of an emergency exit that does not need to be used except in dire circumstances to resolve divorce. [4]Every divorce must begin with a conflict that causes disharmony in the household so that the essence of marriage itself is not achieved, namely to create a family that is *sakinah, mawaddah, and warahmah* .[5]

Jepara Regency has been transformed into one of the industrial cities in Central Java for almost a decade with the presence of an industrial area in Mayong District and its surroundings in 2016. The presence of this industry has increased the standard of living in Jepara Regency from year to year, which is reflected in the determination of the UMR by the local government. Jepara UMR salary in 2019 is IDR 1,879,031, in 2020: IDR 2,040,000, in 2021: IDR 2,107,000, in 2022: IDR 2,108,403, in 2023: IDR 2,272,626 and Jepara UMR Hajj in 2024: IDR 2,450,915.[6]

Another phenomenon of the transformation of industrial areas is based on data from the Religious Court of the Regency Jepara , case divorce in the Regency Jepara the more increase from year to year . In 2021, the divorce rate in Jepara was 2,055 cases. In 2022, the divorce rate in Jepara totaling 2,208 case . And in 2023 the number divorce in Jepara amount to 2.207 case . With case divorce among them is case divorced sue amount to 5,090 cases divorce filed by party wife .[7]

Every hope partner of course want integrity in build House ladder .[8] t no couple expects to experience a rift in their married life that ends in divorce.

[4] N Bainah, "Factors Causing Divorce in Long Ikis Village, Paser Regency," *E-Journal of Sociology Sociology* 1, no. 1 (2013): 74–83.
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[6] https://money.kompas.com/read/2024/01/21/060916926/gaji-umr-jepara-2024-dan-daerah-lain-di-jateng . Accessed on June 12, 2024
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[8] Armansyah Matondang, "Factors That Cause Divorce in Marriage," *Journal of Government and Social Politics* 2, no. 2 (2014): 141–50, http://ojs.uma.ac.id/index.php/jppuma.

[9]There are many factors that trigger divorce. The sustainability and happiness factors of a marriage are greatly influenced by its financial life. [10] The underlying factors are economic factors, lack of time for family, age differences, lack of communication, social media, and low morals [11], family disharmony is caused by a shift in marriage values.[12] As with the research conducted by Zairofi Setyo. W. In his research he stated that the problem or cause of divorce is from an economic perspective. Because if we look at the facts in the field that most of the Indonesian population generally have low to middle incomes. In fact, often their income is only enough for daily food.

In a marriage, a man as a husband and a woman as a wife have their respective rights and obligations, where the husband has the obligation to provide for his family while the wife has the obligation to organize and take care of the household. [13]It is undeniable that the continuity and happiness of a family is greatly influenced by its economic-financial conditions. [14] Needs family can fulfilled well if the husband and wife have adequate financial resources. Financial changes in a family make it difficult for them to adapt to accept the situation. [15]In this context, we will try to understand the phenomenon of increasing divorce cases in modern society through the perspective of Karl Marx and combine psychographic analysis which examines the psychological

[9] Aris Tristanto, "Divorce During the Covid-19 Pandemic in a Social Science Perspective," *Sosio Informa* 6, no. 3 (2020): 292–304, https://doi.org/10.33007/inf.v6i3.2417.
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[13] Ni Lindayani and Sayu Dewi, "The Impact of Capital Structure and Inflation on Profitability and Stock Returns of Financial Companies in the Banking Sector," *None* 5, no. 8 (2016): 253669.
[14] Iwan Ridhwani ndah Fatmawati, "Economic Problems as a Cause of Divorce in Families," *Pro Justicia* 2, no. 2 (2022): 60–69.
[15] Amanda Puspitawati et al., "Analysis of Factors Influencing the High Divorce Rate During the Covid-19 Pandemic: A Systematic Review," *Jurnal Kesehatan Tambusai* 2, no. 3 (2021): 10–17, https://doi.org/10.31004/jkt.v2i3.1886.

and demographic characteristics that influence individual or group behavior. Perspective Marxist highlight factors like :[16]

Structure Class : Marx argued that public divided become classes social based on connection they with tool production . In modern context , we can observe How difference class social And economy can influence dynamics wedding .

Alienation : Marx put forward draft alienation , where individual feel isolated from job , product from work they , and on Finally from self they Alone and others. Alienation This Can influence personal relationships , including wedding .

Materialism Historical : Marx emphasized that change social And structure economy determine development history And change culture . In context this , change economy And fast social can influence stability wedding .

2. Research methods

This study uses a qualitative research method. Qualitative research is a research method that has a descriptive nature and tends to use analysis based on theory, as a focal point of research to be in accordance with the facts in the field. Qualitative research, in general, obtains primary data through observation and interviews). Then the approach used in study This that is approach *psychographic analysis* ,

psychographic analysis is method research used For understand behavior consumer or individual based on on factors psychological , such as values , attitudes , interests , styles alive , and personality they . Research using psychographic analysis is often done in context marketing , sociology , psychology consumers , and other areas that require it understanding deep about motivation And preference individual [17].

[16]Saputri P. and Gunaryo A.. Reviewing poverty in indonesia: karl marx's view of religion is an opium. Alwatzikhoebillah Journal of Islamic Studies, Economic Education, Humanities 2021;7(1):50-57. https://doi.org/10.37567/alwatzikhoebillah.v7i1.335

[17]Liu, H.; Huang, Y.; Wang, Z.; Liu, K.; Hu, X.; Wang, W. Personality or Value: A Comparative Study of Psychographic Segmentation Based on an Online Review Enhanced Recommender System. Appl. Sci. 2019, 9, 1992. https://doi.org/10.3390/app9101992

Data collection was carried out with how to conduct observations, interviews, and regulatory studies. Regulatory studies are used to collect data related to the Law. Because the initial foothold in this research proves the basic assumptions based on positive legal norms, as well as court decisions, all of which are based on written documents.

3. Results Study And Discussion

divorce data what we get from the District Religious Court Jepara amount case divorce in the Regency Jepara in 2021 to 2023 there are 6487 case divorce . Divorce is an effort to release the bonds of husband and wife from a marriage caused by certain reasons. Divorce occurs because there is no longer a way out .[18] Divorce occurs due to several factors , namely the factor of continuous disputes and quarrels being the main trigger of divorce that occurs in Jepara Regency with a total of 2,432 divorce cases , Economic Factors are the second trigger after continuous disputes and quarrels with a total of 2,225 divorce cases , the factor of leaving one of the parties is a factor when the trigger of divorce with a total of 511 divorce cases , and then the factor of customary law totaling 58 cases , the Factor of Apostasy totaling 15 cases , the factor of being sentenced to prison totaling 13 cases , the factor of gambling totaling 11 cases , the factor of Domestic Violence (KDRT) totaling 8 cases , the factor of being drunk totaling 4 cases , the factor of forced marriage totaling 4 cases , the factor of polygamy totaling 3 cases , the factor of being physically disabled totaling 2 cases , and the factor of adultery totaling 0 cases .

Economic factors are currently the biggest factor in a household that must be considered. [19]Divorce caused by economic factors or sustenance does occur, this is that divorce can be caused because the husband is not responsible for the

[18] Nibras Syafriani Manna, Shinta Doriza, and Maya Oktaviani, "Divorce Lawsuit: Study of Causes of Divorce in Families in Indonesia," *JOURNAL OF AL-AZHAR INDONESIA HUMANITIES SERIES* 6, no. 1 (2021): 11, https://doi.org/ 10.36722/sh.v6i1.443.
[19] Badruddin Nasir, "Factors Influencing Divorce in Sungai Kunjang District, Samarinda City," *Psikostudia: Journal of Psychology* 1, no. 1 (2012): 31, https://doi.org/10.30872/psikostudia.v1i1.2172.

needs of his family and does not work hard to fulfill his obligations. [20]Economic problems that often occur in households are often caused by sustenance. Sustenance is a husband's obligation to provide something to his wife, relatives and his property as basic necessities for them. The law of sustenance is mandatory which is the wife's right to her husband because of the consequences of marriage . [21]There are two types of sustenance, namely physical sustenance and spiritual sustenance. Physical sustenance or physical sustenance is a gift from the husband in the form of food, clothing, and shelter and other necessities needed by the family. While spiritual sustenance or spiritual sustenance is related to the psyche or psyche of a wife.[22]

The relationship between divorce and increased industrial activity has been explored in numerous studies, suggesting an interaction between economic conditions and family dynamics. Economic hardship, such as that experienced during the Great Recession, has been associated with changes in divorce rates. Some studies suggest that financial stress may increase the likelihood of divorce because of the stress it places on relationships. For example, job loss and property foreclosure can create significant stress, potentially leading to marital breakdown. However, during the Great Depression, divorce rates actually fell, perhaps because couples could not afford to live apart.[23]

Increased industrial activity and urbanization often bring significant social changes, which can affect family structures. In urban areas, where industrial growth is more pronounced, divorce rates tend to be higher than in rural areas. This is partly because urban women often have greater financial independence, making it easier for them to leave unsatisfying marriages.[24]

[20] Muhammad Habib et al., "As-Syar'i: Journal of Family Guidance & Counseling Economic Factors as Reasons for Divorce (Case Study of Class 1 B Religious Court Stabat 2019)" 2, no. 2019 (2019): 252–61, https://doi.org/10.47476/assyari.v2i2.736.
[21] Low Income, "Kabuyutan: Journal of Social Sciences and Humanities Studies Based on Local Wisdom ISSN 2962-7435; EISSN 2962-7435" 1, no. 2 (2022): 63–67.
[22] Interview with Mrs. Mayadina, Dean of FSH Unisnu Jepara, Dean's Room, (September 25, 2023)
[23]https://www.pewresearch.org/social-trends/2012/05/02/divorce-and-the-great-recession/
[24]https://draya-eg.org/en/2022/10/22/the-phenomenon-of-divorce-in-egypt-causes-repercussions-and-ways-of-confrontation/

Data from the Jepara Religious Court in 2023, the jobs that most often filed cases in court were laborers/employees at 48.7%, self-employed at 22%, housewives at 19.7% and farmers at 4.4%. [25] This shows that laborers/employees have the potential for vulnerability in maintaining family resilience.

Shifting perception of Livelihood

According to the data we obtained regarding women's perceptions of the obligation to provide maintenance given by husbands, they agree that husbands are required to provide maintenance to their wives. However, in determining the adequacy of maintenance, they have different opinions, two informants said that the adequacy of maintenance is when the family's needs can be met, four informants said that the adequacy of maintenance is when clothing, food and shelter are met. One informant said that fulfilling family needs is not included in maintenance, however, what is meant by maintenance is when the husband fulfills the wife's personal needs. Three informants are of the opinion that the wife can accept any amount of maintenance given by the husband .[26]

Husbands are required to earn a living and provide for their families, both physical and spiritual. Regarding the measure of adequacy of living, there is no definite limit. Adequacy of living is measured based on where the husband and wife live. In addition, adequacy of living can be achieved when the wife can receive any amount of living provided by her husband. A wife may earn a living as long as she does not abandon her obligations as a wife and if the wife earns more than her husband, the wife must remain obedient to her husband . [27]In Islam, a husband is obliged to provide for his wife has great wisdom. When becoming a wife, a wife is bound by marriage which is the rights of the husband's rights, while it is forbidden to work for her husband. Therefore, all the needs of the wife become the responsibility of the husband, if the wife's

[25]Religious Court Report 2023
[26] Interview with 10 factory workers, factory workers, PT HWI Banyu Putih Page, (October 10, 2023)
[27]Interview with Kyai Mashudi, chairman of the Jepara MUI, Home, (September 25, 2023)

needs were not the husband's responsibility, the wife would surely die of hunger . This is a reality experienced by religion and reason.[28]

The concept of sustenance, which traditionally encompasses the provision of basic necessities such as food, clothing, and shelter, can be analyzed through the lens of Karl Marx's theory to understand the economic and social dynamics that influence how sustenance is provided and maintained. [29]Marx's theory, particularly through historical materialism and the labor theory of value, offers profound insights into how sustenance is managed in capitalist societies and how the relations of production influence the distribution of resources.

Marx's historical materialism focuses on how the basic economic structure (base) influences the superstructure (ideology, law, politics, and other social forms). In the context of subsistence, the capitalist economic structure creates conditions in which workers must sell their labor power in exchange for wages, which are then used to meet their subsistence needs (living). Relevant literature shows that in a capitalist system, living is often insufficient to meet workers' basic needs, since the primary goal of capitalism is the accumulation of profits by the owners of capital .[30]

Marx also developed the labor theory of value, in which the value of a commodity is determined by the amount of labor required to produce it. In this case, the wages workers receive are often less than the actual value of their labor, because the surplus value is taken by the capitalist as profit. This means that the living wage earned by workers is often below a decent level, creating conditions of exploitation. [31]Several studies have shown that this exploitation affects workers' quality of life and well-being, including their access to basic necessities.[32]

[28] Syamsul Bahri, "The Concept of Livelihood in Islamic Law," *Kanun Journal of Legal Studies* 17, no. 2 (2015): 381–99, https://jurnal.usk.ac.id/kanun/article/view/6069/5002.
[29]Farihah, Irzum.. "Karl Marx's Philosophy of Materialism (Dialectical Epistemology and Historical Materialism)." *FIKRAH: Journal of Faith and Religious Studies* 3(2): (2015) 431–54
[30]Harvey, D. (2007). A Brief History of Neoliberalism. Oxford University Press.
[31]Marx, K. Das Kapital. Volume I(1867).
[32]Wright, EO Class Counts: Comparative Studies in Class Analysis. Cambridge University (2000). Press.

Psychographic Analysis and the Increase in Divorce Cases

Economic Change and Class Structure : In modern society, many couples face significant economic pressures, such as work demands, unemployment, or economic instability. These pressures often increase conflict within the household. In Marx's perspective, working-class couples may feel more pressured than middle- or upper-class couples who may have more resources to cope with economic problems.

Alienation in Relationships : Many individuals in modern society experience alienation, both from their jobs and from other social relationships. This alienation can spill over into marital relationships, where couples may feel emotionally and psychologically unfulfilled. Technology and social media also play a role in this alienation, reducing direct, deep interaction between partners.

Materialism and Consumerism : Modern society is often characterized by high levels of materialism and consumerism. Couples may feel pressure to achieve a certain standard of living, which can lead to financial conflict and feelings of inadequacy. From a Marxist perspective, the pressure to achieve higher economic status can lead to dissatisfaction and stress in a marriage.

Changes in Social and Cultural Values : Traditional values about marriage have changed, with more people placing a premium on personal happiness and gender equality. These changes may influence couples' decisions to divorce if they feel that marriage is no longer providing happiness or if there is a perceived inequality. Marx would see these changes as the result of broader social and economic developments.

Gender Inequality: In patriarchal societies , gender inequality can be a source of tension in marriage. Social changes that demand gender equality often challenge traditional norms, which can lead to conflict in relationships if one or both partners feel threatened or unable to adapt to changing roles.

4. Conclusion

From Karl Marx's perspective , the increase case sue divorced in modern society can understood through analysis structure class , alienation , materialism , change mark social , and gender inequality . Pressure economy , alienation from work And connection social , as well as change values social And cultural is a number of factor main thing that can cause tension in marriage , which on Finally can increase number divorce . With understand factors this , we Can see How dynamics social And more economy wide influence life personal And decision individual in modern society .

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Pesantren as a Political Object Law era of President Joko Widodo

Muhammad Saifulloh[1]
[1]Islamic State University of Pro. K. H. Saifuddin Zuhri Purwokerto, Indonesia
Email: saifmoe95@gmail.com

Abstract: Pesantren as oldest education institution give more contribution to development of civilization in Indonesia. Pesantren can survive when Netherland came and brought modern education system. Even today pesantren have big potention in social, economic, and culture. This big potention make pesantren a prospective object of politic law for governance. This research try to explain how far pesantren be an object politic law and what impact for pesantren. The research use library research with law about pesantren as primary source, and previous research that analyze about pesantren. From some sources are found about 11 laws that advantageous to pesantren. But in the fact, critic about these laws bring anxiety to change original identity of pesantren that have survived for centuries. In this paper will inform the readers about pesantren and his position as object of politic law.

Keywords: Pesantren, Politic, Law, Object

INTRODUCTION

Pesantren as Indonesia's oldest pattern of religious education (Ulil, 2022: 78) have a trademark that no other institution can relate to. The most noticeable feature of pesantren is "*ngestoaken dawuh*" of the kiai. It means that whatever kiai tells us to do is an order to do by santri. It certainly doesn't abide by any rules. Because pesantren has guidelines that have been passed along well in the specific traditional literacy of the akhlaq discussion. One is the poem described in the book of "ta'lim al muta'allim" which means: truly teachers and doctors will not give advice unless glorified, then feel your illness if at the doctor and accept your foolishness if reverting to the teacher (Az Zarnuji, 2004: 28).

That teaching was rooted strongly in santri. Because they had confidence that one would make their science successful if it respected teachers and no rebellious ones are already teacher's orders. This makes pesantren like a small kingdom able to control its santri, include implanting doctrines from their teachers. It is often pesantren to be easy targets for governance to promote support in rules, power, economic capitals, and others.

Based on history, we learn that the war of Surabaya were fought on November 10th, 1945 by santri on the basis of the K. H. Hasyim Asy'ari jihad resolution order. The event illustrates to all of us that pesantren has great power to mobilize santri and fanatical society against the kiai. At present a force of this magnitude has shifted into the political object of government law. It cannot escape the great hope that can be born of pesantren.

Pesantren according to Zamakhsyari Dhofier come from the word santri with prefix pe- and suffi -an meaning santri residence. Whereas pondok came from the use an Arabic word, funduq, meaning dorm (Dhofier, 1982: 18). Further Dhofier explaining about the elements of pesantren to be met: mosque, Kiai, Santri, traditional literature, and dormitories. This was strengthened by the ministry of religion in the decision of the director general of Islamic Education Number 1626 year 2023 on the technical hint of pesantren's existence, that a pesantren may be registered is that it meets a pesantren elements (arkanul ma'had) made up kiai, santri settled, pondok or dormitories, mosque, as well as studies of the traditional literatures or dirasah Islamiyyah with education pattern of Mu'allimin.

Pesantren as an object of legal politics, when defined as a political policy of the law itself is a policy that determines what rules of law should apply to governing matters of public and state life (Syamsuddin, 2013: 9). Then pesantren as an object in political policy is essentially a setup for national living. The principles of enforcing the rule of law can be critically seen from legal products created by executives as state organizers, in this case president, vice president, and ministers. The president as the government holds a direct responsibility to the people in which it is represented by the parliament to assess and control the government. But in the era of President Joko Widodo the parliament became the coalition, so the role of the parliament as an institution that control government performance is weakened. It is undeniable that laws as policy are highly subjective.

In the days of President Joko Widodo's rule, he said, must go forth to pesantren especially in honor of its contribution to the independence of the Republic of Indonesia. Among them it was decided that October 22nd would be a national santri day, application of legislation number 18 year 2019, president rule number 82 year 2021. These privileges are considered a wonderful gift for pesantren. But what are the expectations of these special rules pesantren? Will these rules to bind and subdue pesantren of government, or indeed just a token of appreciation? The study will discuss what many citizens once thought to be traditional and marginalized educational models, both by governments and by the public, are now objects of interest to all.

The presence of a law on pesantren and other rules regarding pesantren is expected to be a stimulus for student longevity as an educational institution that participates in boosting children and making pesantren more qualified. Because in the midst of today's high

incidence of moral decadence in school-age children, pesantren is considered a fitting place to be able to teach religious lessons and practice morality. This is what is considered important to observe pesantren in order to compete with other educational institutions.

These rules make two sides of a different blade. On the one side, as a fresh breeze through Pesantren in Indonesia and on the other, it is a concern that pesantren will not become independent and seem to be an accomplice of the government. If this really happens, pesantren will lose its respect as an institution of education that promotes the values of the brotherhood.

METHODS

The study uses library research with techniques to search data editing, organizing, and finding. In this case the authors search out literature sources that feel relevant to the study of pesantren as objects of political law. With government policies in 2014-2024 and other literature relating to the study of legal political objects as a primary source of data. And other literary sources were secondary. And once the data is collected, it will be analyzed using a deductive method.

RESULTS AND DISCUSSION

Politics of law is one youthful discipline of law compared with other law disciplines. This does not mean, however, that politics does not have a strategic position as a science that from the axigious side is able to unravel the mysteries of the law as well as previous legal disciplines (Santoso, 2021: 21). Politics itself is a blend of the science of law itself and of political science. This combination is necessary because they are all practical aids that can be used as approaches. It is therefore expected that the legal understanding of the law will be more thorough and intact, and that its legal product can be effective.

According to Mahfud MD in the introduction to Daniel S. Lev's book describes three skeletons of political and legal relationships (Mahfud in Daniel, 2013). First, das sollen's political and legal patterns. The pattern starts from premise that politics is the determinan over the law. This pattern places the laws (ius constitutum) as the basis for how politics ought to be run. In other words the existence of law predates political interests.

Second, views based on das sein. Premise this view recognizes that the law of political determination. It was a crystallization, formalization, or legalization of the opposing political will, either through compromise or dominance by a strong political force.

Third, das sollen sein's view. This view recognizes that law and politics do not dominate one another, whether legally or politic are two aspects that are not mutually oriented.

The view that law as a political product is the dominant view of legal political analysts. This view cannot be dismissed from the empirical aspect because in reality the aspects of political importance will always permeate the process of forming the law. Hence political interests would have always colored the process of law enforcement (Syahriza, 2019: 82).

Pesantren

Pesantren as Indonesia's oldest system of education testifies to its existence in the face of changing and developing times. Pesantren were in Indonesia long before the europeans arrived. At least many historians refer to Shaykh Maulana Malik Ibrahim as the author of the text pesantren in Indonesia. Pesantren in Indonesia are thought to date from about the 16th century as the Islamization of Hindu-Buddhist traditions (Rika, dkk., 2020: 32). In its development, during the Dutch occupation, pesantren became the center of resistance to the Netherlands. This does not excuse pesantren as centers of Islamic learning that give doctrine to followers. The influence of the figure became particularly chiseled in the doctrinal process among the pesantren. The fatwa delivered by the kiai was viewed as incarnate of the religious order because they believed that the kiai was *waratsatul anbiya'* or an heir of the prophets.

An islamic institution is, in a sense, a boarding house if it fulfills the following elements (Efendi, 123-129):

a. Dormitory

   The dormitory refers to the place that santri used as his residence. It may have been a separate building as well as a few rooms specially provided for santri resting. Because pesantren system focuses more on the 24-hour model of education under the kiai's supervision.

b. Masjid / Mosque

In the early days of Islam, mosques were instituted as centers of worship, judicial centers, commerce, military centers, even health centers. (Rifa'I, 2016: 157) It is only natural that a mosque should be made one of the elements that should exist in pesantren. The mosque represents an opportunity to teach science as a means to worship Allah SWT.

c. Santri / Students

Santri is a special term used for students who study in pesantren. Usually the term santri is also applied to students who study religious science in other nonformal institutions, such as Al Qur'an Education Institutions (LPQ) and madrasah diniyyah.

d. Classic Literature Teaching

The classic culture referred to the work of clerical salaf in various scientific fans. The ancient scriptures were usually printed in bare Arabic script and in separate or commonly referred to as Koras (Arifin, 1993: 8-9).

e. Kiai / Leader of pesantren

It is a degree pinned by society to a person considered capable of religious science, behavior, and habits. So it cannot be pinned down to just anyone or even a title.

Pesantren as traditional educational models are often viewed as old-fashioned, underhanded educational models that the participating school board does not offer a bright future for its santri. But as the ages grow ever more and more without limit, the fact remains that pesantren are able to prove their existence. Evidenced by the growing number of pesantren down through the ages. Insight on the data of currently the Ministry of Religious pesantren totaled 41,559 boarding houses with a total of 3,143,555 santri (emis.kemenag.go.id). Surely in real this amount would be greater, given that there are still a lot of unregistered pesantren. Both out of reach, and sometimes there are still a lot of pesantren who hesitate to follow government records because they don't want to be involved in the internal affairs of pesantren.

With such a force, it would not be impossible for pesantren to be one of the driving factors of phenomena occurring in society. Because social change can happen because of elements that exist in society itself. Among the things that accelerate social change is the open stratification system. Open-air stratification paves the way for wider social motion in society (Nanang, 2011: 19). The existence of pesantren as a media of Islamization at the

beginning of the Islamization period in Indonesia, eliminating the caste system that made people enamored with Islam. Islam with its pesantren gives belief in a brighter future. Of course it's not just trust. Rather, it was the role of the kiai who had an expertise in religious science that made public confidence levels high. This is the social push that drives social change.

Seeing viewpoint of how kiai could mobilize people to jihad against colonists, seeing how the pesantren as a institution strengthened of religious structure in existence, and seeing current data with enormous potential, would certainly be an interesting thing for governments to take a quick look at mortgages. Pesantren are deemed capable of contributing to the nation. Not just in the sciences but also in economics and in the social sphere. In economy terms, pesantren can have a positive influence on pestering independence through santri empowerment. And in social terms it is expected to have a positive impact on people's change. In addition, it is expected that the media deliver government policies.

Pesantren as an object of political law

The existence of the pesantren in the midst of a current moderative current remains significant. Pesanren have an important contribution to brighten nation life. The institution of education is worthy of consideration in the process of building a nation of education, religion, and morals.

Historical reviewers, pesantren have an amazing experience of upbuilding, brightening, and developing communities. Even pesantren are able to improve their role independently by drawing out the potential of those around them. In addition, pesantren also have preeminence for intellectual, emotional, and spiritual intelligence (Zaini, 2015: 342).

It is with a variety of historical, social, and cognitive considerations that the pesantren is deemed a worthy object of a political decision that will certainly benefit the various parties. David Easton (Easton, 2009: 3) explained that political decisions can be viewed as a reaction to the political system for the needs of the environment. As in system theory, Easton states that a particular characteristic in political decisions is not independent of actors' involvement. This was due to the fact that the decision was made by rulers in the

political system, that is, the highest of the tribal elders, the executive members, the legislature, judicial, administrators, counselors, Kings, and the like.

During President Joko Widodo's leadership, pesantren became a very prospective object. Not only because of the aforementioned objectives, but also because of the support of the PKB and NU (Nadia, 2020: 14) as a representative of the society of pesantren. And in 2019 when President Joko Widodo flies with an old kiai K. H. Ma'ruf Amin. The influence of K.H. Ma'ruf Amin has been felt since before the presidential election was held in July 2019. According to the SMRC survey, Joko Widodo and K.H. Ma'ruf Amin first saw the increased electrification of January 2019 by 54.8% to 57.6% in March 2019. And the result of 2019 presidential elections, the influence of K.H. Ma'ruf Amin has generated a majority of pesantren votes, especially in Central and East Java.

During President Joko Widodo's leadership there are at least some policies addressed to the pesantren:

Table 1. President Joko Widodo concerns the pesantren

Num.	Policy	Year
1.	Strengthening National Santri Day	2015
2.	Launching Islamic Formal Education	2016
3.	Launching Micro Wakaf Bank	2017
4.	Launching LPDP Santri scholarship	2018
5.	Office training center in Pesantren	2019
6.	Regulation of Pesantren	2019
7.	Online learning aids	2020
8.	Pesantren operational aids	2020
9.	Social aids for pesantren’s teacher	2020
10.	Sanitary Program	2020
11.	Economic Independence of Pesantren program	2021
12.	Pesanren digitisation aids	2021

a. Strengthening National Santri Day

Pesantren began to receive special attention from the government starting with the inauguration of a national santri day set up in the decision of the President of the Republic of Indonesia 2015 number 22. The inauguration of the day is set against the spirit of the santri nationalism (in this case the kiai) united with other freedom fighters to promote the independence of the Indonesian state. And its establishment on the 22nd of October was the historic date at which Hadhratus Sheikh Hashim Asy'ari, founding father Nahdlatul Ulama, issued a resolution of the jihad of the ulama. The jihad resolution was so phenomenal that it was adopted by santri class from various areas. On the basis of nationalism in santri it is the government's gift of national santri day.

b. Launching Islamic Formal Education

The policy of the current new and unprecedented formal education is the new unit on the Indonesia formal education map, which is established under the regulation of religious minister number 13 2014. The new policy and unprecedented policy was the launch of Islamic formal education (PDF). The PDF is designed to accommodate all santri living in pesantren gaining his right as citizens to the same positions as any other formal education. The PDF is a formal education initiated by the Ministry of Religions by not changing the features of pesantren with the national education curriculum with just 25% and the other is a typical islamic religious education curriculum. And the unique side of the regulation is that the graduates of this school are accredited with formal education and that their diplomas can be used for further formal education.

But in PDF alone provides a more or less complete range of education beginning at the *ula* (as level elementary school), *wustha* (as level junior high school), *ulya* (as level senior high school), and *ma'had 'aly* (college level) (Dudin, 2019: 202). So that those who did require a complete education with the mastery of the pesantren curriculum could be held only in a pesantren, without attending a formal education outside pesantren.

c. Launching Micro Wakaf Bank

In economics, pesantren are trusted to carry out Micro Wakaf Bank program with its legal standards under the ministry of cooperative and micro/small/medium enterprises whereas the legal status is the corporation of the services cooperative. His business license is under the supervision of the financial services authority with status as sharia micro finance institution (OJK, 2019). Where the program targets productive societal groups to provide

collective venture capital. Interestingly, the program is awarded to pesantren as both organizer and companion. Because in the financing model at Micro Wakaf Bank members are not only given venture capital, but also studies to strengthen their religious knowledge.

d. LPDP / state schoolarship to santri program

A similarly interesting program is the perpetual pesantren fund that forms part of the perpetual national education fund under the Ministry of Finance of the Republic of Indonesia. These perpetual fund appear in the 82nd presidential decree of 2021. Where it can only be used for scholarships and research costs alone. This is certainly well received by pesantren community. Because of this program it is expected to improve the quality of pesantren through teacher and santri development. The perpetual fund of today's can be exploited by pesantren community, includes santri and ustadz in the form of the LPDP (state schoolarship program) scholarship held by the Ministry of Religion and the Ministry of Finance. It has been sourced from the Ministry of Religion website of the Republic of Indonesia that the government is distributing 250 billion rupiah for the program (www.kemenag.go.id).

e. Pesantren office training center

Beyond that which has been mentioned above, the government's attention to pesantren is in human resources by erecting a work training hall in pesantren through the Ministry of Employment and Transmigration. The program is based on the 2017 Ministry of Labor of the Republic of Indonesia's number 8. In this program the government provides such specialties as mechanical, automotive, electric, buildings, commerce, agriculture, and so on (www.kelembagaan.kemnaker.go.id). This aims to form a competitive santri in the face of the work world. So pesantren are no longer viewed as unskilled and ill-informed. And development of human resources in Indonesia will also show a positive trend.

f. Regulation of pesantren

From the time that President Joko Widodo became President of the Republic of Indonesia in 2014, he has shown an interest for pesantren. Added to this in 2019 years has been the increase in attention to pesantren. At least the highest concern in President Joko Widodo – K. H. Ma'ruf Amin's leadership is his legislation number 18 of 2019 about pesantren. The law further reinforcing the position of pesantren on national view and provides high opportunity for pesantren to access government funding.

In juridical, in the formulating of these laws, pesantren is needed to more specifically govern the existence of religion-based education to create a law enforcement that conforms to state mandate and legislation that extends specifically to religious education. (Rolan, 2020: 200) The juridical aspect of this juridical is intended to keep its message as a specific object of the political product in accordance with previously approved laws, such as laws on national education systems. And another purpose of the application of this law is that improved education and quality of a santri or learner become more capable and competitive and secure and recognized in its power so as to fill and become a motor locomotive in various areas that can enhance personal, family, and national development.

g. Online learning aids and pesantren operational aids

The two aids were initiated by the ministry of religions as responsible domains of the ministry of religions. Both aid was featured in the report by the Inspector General of the Ministry of Religion dictum number 71 of 2020. Both were provided when the covid-19 outbreak occurred. The purpose of this aids is to ensure that the education of pesantren is not disrupted. And it has a very positive impact on pesantren in a time of economic downswing. Budget of the Ministry of Religions raised funds for this aids by 2,599 billion for the 21,173 pesantren (NU Online).

h. Social aids for Pesantren's teacher

In addition to the afore mentioned list of aid, governments also provide incentives to teachers/ustadz and leaders of pesantren through a cash outright social assistance scheme (BLT). In this case the Ministry of Religions coordinated with the Social Ministry for the integrated data of social welfare (www.news.schoolmedia.id). Finance minister, as sector leading on this whole policy says the purpose of this assistance is to aid economic reinforcement.

i. Sanitary Program

Not to be outdone by ministers who had previously helped to allocate their programs for pesantren, the Ministry of Public Works and People's Housing also launched a compact program of cash providing tools and sanitation infrastructure in pesantren (www.pu.go.id). This was intended to improve the quality of life of santri to get used to being clean with adequate sanitation.

j. Economic Independence of Pesantren program

In addition to the micro wakf bank that has a positive impact on people around pesantren, there is also a pesk-based independence program with the program of pesantren business incubation program. The program is running under the Ministry of Religious affairs of the Republic of Indonesia to encourage pesantren to develop their economic potential. Thus, it will be able to expand its other economic potential and also be independent in financing pesantren costs.

Since were launching from 2021, the total of pesantren receiving this aids has been growing. In 2021 these recipients of aids amount to 105 of the society. Then in 2022 504 institutions. And in 2023 the number of recipients of this aids is 1470 institutions. So if cut from 2021 to 2023 this aids recipients are 2079 institutions (Eko in news.schoolmedia.id, 2023).

k. Pesantren Digitasation program

During pandemic, government prices were high on pesantren. In 2020, the government also provided three-month online study aids of 211.7 billion targeted at 14,115 institutions at a nominal rate of 5 million each month. With the end of the pandemic, this aids continue for the purpose of helping pesantren to adapt to the demands of the age. In 2023 the Ministry of Religions provided 1080 laptops for 270 pesantren (Sania in compass.com, 2023). If you look at the amount, it's no match for the total number of pesantren. So it was subsequently rededicated in 2024.

D. Challenges facing pesantren

But with the prominence that this pesantren has acquired, it certainly raises new issues. The problems that arise are not in pesantren's potential to run those programs. But the administration process that requires pesantren to implement. Pesantren as traditional Islamic educations-growing from the bottom to the will of people of kiai, santri, and people around them, including the rural device, have an activity of learning, understanding, exploring, internalizing, and practicing Islamic teachings by emphasizing the importance of religious morals as a guide to daily living (Efendi, 2014: 5). Because the traditional system has emerged from below, the government has had long trouble organizing boarding schools as sub-ordinates.

Pesantren are still very limited in administration activities that conform to the standards expected by the government. Pesantren habitually receives only a receipt without being

drafted using an accounting report consistent with the standard accounting accounting rule (PSAK) nuber 45 on non-profit financial reporting (Solikhah, dkk., 2019). Limited in reporting of this type of thing requires an extra job in meeting reporting demands for the government. It is certainly not easy for pesantren to pursue the ability to administer these financial matters. Because programs provided by the majority of governments are funded that respond favorably to reports of finance.

In addition to limitations in the form of financial reporting, pesantren also face obstacles to the management of formal education systems, including those in the management of its own educational units, learning planning, learning processes, learning methods, and the santri assessment of the learning process. (Dudin, 2019: 215-217) of course, the solution of this matter is preparation for student body workers. This is obligatory because the term "formal" behind diniyah's education, which suggests a typical pesantren, should be able to follow the standards established by the government so that there will be no gap between education under pesantren and non pesantren.

Under the rule of the 2014 religious ministry number 13 on Islamic religious education, article 11 states that pesantren with at least 15 santri state are required to register their pesters with the office of the district/city Ministry of Religions. The rule is blurred when governments meet pesantren that are not in themselves in need of government because they are thought to be present and carry traditional customs without government interference. On the contrary, offers of help and other government programs are regarded as a government intervention in pesantren. This is a homework system, how to consolidate between pesantren, in this case represented by the kiai, with governments for a good continuity between the ulama' and umara'.

In the legislation of pesantren, it also states that the government will implement an insurance quality pesantren system of teaching, management, and curriculum. As already noted, the government is struggling to coordinate pesantren because the government is not believed to be in attendance among the society at the beginning. And since 2014 that the attention of pesantren was felt. It is still considered a government effort to intervene and other views that are even more extreme. Of course, each pesantren has its own signature and cannot be equally lamented regarding the curriculum and its standards. Older pesantren, do not need promotions and advertisers to attract public interest in pesantren.

The simplicity of the pesantren is sufficient to demonstrate that the curriculum used by the student is mature. Incomparably with young pesantren, they will do their best to offer the various programs that would otherwise attract people to study in their pesantren. So, too, the absence of scientiality in each pesantren would have been impossible. Just as marketers with more emphasis on the nahwu shorof sciences will have different methods, both in terms of modules, teaching methods, goals, development, as opposed with pesantren that paying attention to fikih science.

And the final problem with pesantren as a political object with pesantren's teachers incentive, operational pesantrenaids, and others are worried about diminishing the flavor of pesantren's acceptance. According to pesantren community, they believe that acceptance is the key to unlocking *barakah* and the value of science. Acceptance is achieved through the *khidmah* path. *Khidmah* is thought to be more important than intellectual because they are convinced by this path they have an altruistic personality (Muhadjir & Zulfi, 2022: 90). This altruistic personality will change a santri's life. Because in this temple santri would be taught how to look at other things more substantial than finding any justification that would benefit him personally. This personality is the reason people choose pesantren to be the right place for education for their sons and daughters. Do not let government approval cause pesantren to spoil and lose its main feature.

With the challenges facing boarding schools there are certainly some possible solutions to offer:

1. Increased pesantren's human resources should be increased. Although some of these programs have already been implemented as in sanitation assistance and the incubation assistance of the boarding business where administrators are given technical guidance on budget management. But in some areas, as in formal diniyah education still remains a human resource weakness. This weakness can be seen from the lack of ability of both educators and education to conform to the standards set by governments. Therefore, teachers' education programs, or training, increase capacity in teaching and managing institutions.
2. Governments should use persuasive measures to use the power of people who also come from the pesantren's world, so that the government does not sub-ordinate pesantren.

3. There should be a continuing evaluation in order for pesantren to get organized. government dream making is also capable of realizing pesantren.

5. CONCLUSIONS

Indonesia's oldest institute of education was part of its society long before Indonesia was familiar with the modern system of education brought by the Netherlands. The history of pesantren is believed to have been established by the one Shaikh Maulana Malik Ibrahim, also the first guardian to preach in Indonesia. Because of its supposed position as a traditional institution of education, it is often viewed as an undercard to the public. Pesantren was primitive because it was too idealistic to maintain the high teachings of the Islamic religion.

But in its development, the boarding school proved its existence by its survival in the onslaught of the growing age. In fact, the Minister for Religious Services of the epublic of Indonesia has recorded a total of 41,559 pesantrens in Indonesia with a total of 3,143,555 santri. With this much potential, pesantren are certainly a promising political object of the law.

The role of kiai as the highest authority in pesantren, and also as a glorified figure in society proves capable of mobilizing time. The kiai figure determines the success of a pesantren. The greater pesantren, the better the ability to mobilize time. At least this is what follows the message back to ren in a position worthy of being accounted for by President Joko Widodo. The pesantren and the characters behind him become the great drivers of President Joko Widodo's victory in the 2014 presidential election. Then it's no wonder the attention of cheerleaders has grown since Joko Widodo's leadership.

But the advent of law products for pesantrens raises concerns for the world of pesantrens. Some of them are not yet ready to implement reports according to government standards, differences in perspective on what awaits customers from below and already existing from before government regulations, and the difficulty of government sub-ordinating pesantrens, the fear of government intervention in the world of pesantren, and the fear of loss of acceptance as a trademark of pesantrens.

It is hoped that the government will be able to persuade the world of pesantrens to advance Indonesia in cooperation. Hopefully, with a good collaboration, we will be able to correct the concerns of the world of pesantrens after pesantren laws have been passed.

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