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S U R A B A Y A

FIQH, FATWA, AND FINANCIAL TECHNOLOGY IN INDONESIA

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Abstrak:
Financial technology is regulated by the National Sharia Council of the Indonesian Ulema Council in the DSN-MUI Fatwa Number 116/DSN-MUI/IX/2017 and the DSN-MUI Fatwa Number 117/DSN-MUI/II/2018. The two fatwas provide basic rules on how to transact electronically in sharia economic activities. Also related to the validity of electronic money used as a means of payment in transactions. By using a normative usuliyah approach, this paper presents two findings. First, the electronic money used is in accordance with the provisions of fiqh and the fiqh proposal in its formulation. Second, the provisions of the majlis in transactions and financing services follow the *ittihad al-majlis* perspective which allows the use of written contract signatures.

Key word: Financial technology, fiqh, fatwa.

1. INTRODUCTION

Financial technology has developed and coloured the wheels of Islamic economy and finance in Indonesia in the last decade. Various services and products are offered to support economic activities, from the macro sector to the small and medium sector.[1] No less than 35.35 million dollars in circulation in it. Services such as market place business lending, market place consumer lending, and market place real estate lending are becoming a trend that people are interested in.[2]

The development of sharia economic activities with the support of technology is a challenge in the study of *fiqh* and Islamic law. *Fiqh* as a product of *ijtihad* by *ulama* to respond and provide operational guidance for the Muslim community, is required to contribute. As is the characteristic of *fiqh* which is flexible and keeps up with the times, the answer is expected to provide convenience and comfort for the Muslim community to engage in activities in the sharia economy.[3]

One of the *fiqh* products that are present in Indonesia is in the form of a fatwa issued by the National Sharia Council of the Indonesian Ulema Council (hereinafter referred to as the DSN-MUI Fatwa). Following and responding to the demands of the Muslim community in Indonesia, a fatwa was issued relating to financial technology activities and operations, namely the DSN-MUI Fatwa Number 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money and the DSN-MUI Fatwa Number 117/DSN-MUI /II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles .

This paper explores and analyse the two DSN-MUI fatwas. A study that aims to see the extent to which the validity and authenticity of the main contents contained therein.

[1] Mochammad Fajar, Cintia Larasati, Peran Financial Technology (Fintech) dalam Perkembangan UMKM di Indonesia: Peluang dan Tantangan, HUMANIS (Humanities, Management and Science Proceedings) Vol 1, No 2 (2021): 702-715
[2] Muhammad Afdi Nizar, Teknologi Keuangan (Fintech): Konsep dan Implementasinya di Indonesia, Warta Fiskal Edisi No. 5 (2017): 5-12
[3] Irma Muzdalifa, Inayah Aulia Rahma, dan Bella Gita Novalia, Peran Fintech dalam Meningkatkan Keuangan Inklusif pada UMKM di Indonesia (Pendekatan Keuangan Syariah), Jurnal Masharif Al-Syari'ah Vol. 3 No. 1 (2018): 73-86. Rahman Helmi, Manhaj Penetapan Fatwa Hukum Ekonomi Syariah di Indonesia, Syari'ah: Jurnal Hukum dan Pemikiran Vol. 8 No. 2 (2018): 301-314

2. METHOD

This paper is the result of research or literature review. The materials in the study were obtained from various literatures related to the theme of the study, such as journal articles relating to the development and existence of financial technology in Indonesia, as well as the DSN-MUI Fatwa Number 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money and the DSN-MUI Fatwa. MUI Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles. These two fatwas are the main focus of the study because they are two fatwas that specifically provide answers about the use and application of financial technology in business transactions in Indonesia. The normative approach is used to see the extent to which the novelty of the two fatwas is compared to the fatwas and (or) existing Islamic law. Because the fatwa is the result of *ijtihad* or *istinbat al-hukm*, it is also analyzed with the *usuliyah* approach.

3. ANALYSIS OF STUDY FINDINGS

3.1 Sharia Electronic Money Fatwa Analysis

Electronic money referred to by DSN-MUI Fatwa Number 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money includes four criteria that are in line with Bank Indonesia's version of electronic money.[4] The four criteria include ;

1. Issued on the basis of the nominal amount of money that was deposited in advance to the issuer;
2. The nominal amount of money is stored electronically in a registered media;
3. The nominal amount of electronic money managed by the issuer is not a deposit as referred to in the law governing banking;
4. Used as a means of payment to merchants who are not the issuers of the electronic money;[5]

The electronic money used is fixed in the value of the rupiah. Units recognized and issued by the Indonesian government. This provision is important so that electronic money is still recognized and in accordance with Islamic legal criteria. According to Imam Ghazali, as quoted by Hasan, money is considered valid and valid if it is issued and recognized by a legitimate government.[6]

The use of electronic money for the needs of economic transactions must be in line with the provisions of other fatwas that regulate money storage and its administration. Therefore, the provisions of the sharia contract for the issuer of electronic money and the holder of electronic money apply. Among the contracts used are *qard* contracts and *wadi'ah* contracts. Both contracts allow the holder and the issuer to use the available funds flexibly. In addition, an *ijarah* agreement is also used to provide an operational basis for providing fees for various parties related to electronic money operations.[7]

Therefore, although electronic money diction is a new thing in fiqh and Islamic law, it is still in harmony with the provisions of *fiqh* and *usuliyah* rules. Because the operational principles used use various types of contracts that are familiar in the *fiqh* treasures. Even the arguments from the Qur'an and the hadith of the prophet remain in harmony and can be used even though they are based on general instructions (*dilalah 'am*).[8]

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[4] Bank Indonesia, Uang Elektronik, https://www.bi.go.id/id/statistik/metadata/sistem-pembayaran/Documents/MetadataEMoney.pdf

[5] Fatwa DSN-MUI Nomor 116/DSN-MUI/IX/2017 tentang Uang Elektronik Syariah

[6] Maysarah Rahmi Hasan, Regulasi Penggunaan Uang Digital *Dagcoin* dalam Prespektif Hukum Islam dan Hukum Positif, *el-BUHUTH,* Vol. 1 No.1 (2018): 1-24

[7] M. Yazid Afandi, Fiqh Muamalah dan Implementasinya dalam Lembaga Keuangan Syariah, (Yogyakarta: Logung Pustaka, 2009): 185

[8] Abdul Karim Zaidan, al-Wajiz fi Ushul al-Fiqh, (Bagdad: al-Dar al-Arabiyah li alTiba'ah, 1977). 177

3.2 Analysis of Fatwa of Information Technology-Based Financing Services Based on Sharia Principles

DSN-MUI Fatwa No. 117/DSN-MUI/II/2018 concerning Sharia Principles-Based Information Technology-Based Financing Services mentions three legal subjects that must exist in financing services, namely the provider, the recipient of the financing, and the financier. The three subjects can be said in *ittihad al-majlis*, as full of valid transactions, even though at the same time they are not sitting together. According to al-Dardiri, *sigat* contract can also be in the form of writing (*al-kitabah*). The origin of the writing clearly shows the intent of the contract and is not easily damaged or lost.[9] Information technology certainly meets the criteria for writing that is not easily damaged and lost earlier.

In the next provision, there are six points that must be met so that information technology-based financing is considered valid. Among these, it is stated that the contract used by the parties in the implementation of information technology-based financing services can be in the form of contracts that are in line with financing services, including 1) *al-bai', ijārah, muḍārabah, musyarakah, wākalah bil ujrah*, and *qarḍ* contracts. and 2) Operators may charge fees (*ujrah*) based on the principle of *ijarah* for the provision of information technology-based financing service infrastructure and systems.[10]

The six contained contracts are used for transactions between holders and issuers of electronic money. It also includes financing that involves third-party peer to peer lending (p2p) or crowd funding. Also, these provisions can always respond to the development of financial technology and customer needs. The variety of transactions developed will also not be separated from the six types of contracts above.[11]

4. CONCLUSION

Electronic money that develops and is used in sharia economic transactions has been regulated in two DSN-MUI Fatwas regarding sharia electronic money and information technology-based financing services based on sharia principles. Various existing economic transactions are in line with the needs of economic development and in accordance with the foundations of *fiqh* and Islamic law .

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[9] al-Dardiri, al-Syarhul Kabiir Juz 3, (Kairo: al-Baabi al-Halabi), tt.: 3

[10] Fatwa DSN-MUI No. 117/DSN-MUI/II/2018 tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berbasis Prinsip Syariah

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Muzdalifa, Muzdalifa. Irma Inayah Aulia Rahma, dan Bella Gita Novalia, Peran Fintech dalam Meningkatkan Keuangan Inklusif pada UMKM di Indonesia (Pendekatan Keuangan Syariah), Jurnal Masharif Al-Syari'ah Vol. 3 No. 1 (2018): 73-86

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المهر ومنحة الزواج في القانون الليبي

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الملخص: تتحدث هذه المقالة عن المهر ومنحة الزواج في القانون الليبي.في القانون رقم 10 لسنة 1984 بشأن الزواج والطلاق وآثارهما، نصت في المادة التاسعة عشر عن المهر وقيمته ونوعه وما يصلح المهر وسقوطه. وأنشئت منحة الزواج في ليبيا بموجب قرار مجلس الوزراء لحكومة الوحدة الوطنية رقم 540 لسنة 2021 بإعادة تنظيم صندوق الزواج. يستهدف خمسون ألف شاب وشابة على مستوى ليبيا بواقع أن يتحصل كل من الشاب مبلغ عشرين ألف والشابة عشرين ألف دينار كإعانتهم على الزواج وهدية من الحكومة. ولكن حصل جدل أو خلاف هل تعتبر هذه المنحة جزءا من المهر أو لا. بالنسبة للرأي الغالب فإن هذه المنحة لا يعتبر جزءا من المهر وإنما تمثل هدية من الحكومة وإعانة على الزواج. ويستطيع الزوج من نصيبه تقديم جزء منها كمهر لزوجته كمقدم صداق أو مؤخر بعد الدخول أو قبله.

الكلمات الأساسية: المهر، المنحة، الزواج، ليبيا، الشباب.

1. المقدمة

المهر يعتبر من أهم الحقوق للزوجة وواجب على الزوج ويسمى أيضا بالصداق.[1] كلمة الصداق ذكرت في القرآن قال تعالى: " وآتوا النساء صدقاتهن نحلة"[2]. إن المهر فرض بالنص الصريح وأكدت على ذلك السنة النبوية الشريفة: قال الرسول عليه السلام للرجل الذي لا يملك المال: "التمس ولو خاتما من حديد"[3].

المهر حق للمرأة واجب على الزوج تكريماً لها وأن الزواج سنة الله في خلقة فهو ميثاق شرعي يقوم على أساس المودة والرحمة والسكينة.[4] تحل بالزواج العلاقة بين الرجل والمرأة ليس أحدهما محرما على الآخر[5]. وقال تعالى:

"وَمِنْ ءَايَٰتِهِۦٓ أَنْ خَلَقَ لَكُم مِّنْ أَنفُسِكُمْ أَزْوَٰجًا لِّتَسْكُنُوٓا۟ إِلَيْهَا وَجَعَلَ بَيْنَكُم مَّوَدَّةً وَرَحْمَةً ۚ إِنَّ فِى ذَٰلِكَ لَءَايَٰتٍ لِّقَوْمٍ يَتَفَكَّرُونَ[6]

فالأسرة هي النواة الأولى في المجتمع والتي يعتمد عليها بناء الدولة. فمجموع الأسر يكون الشعب الذي هو من أهم أركان قيام الدول.[7] من هنا فإن الدول المسلمة أولت عناية خاصة بالأسرة و نظمت شروط عقد الزواج بما لا يخالف

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[1] Yazid Khalil Al-Hajjaj and Muhammad Mujli Al-Rababa'ah, "Al-Wiqayah Min Al-Niza'at Al-Muta'alliqah Bi Al-Mahr Min Khilal Ayat Al-Shadaq," *IUGJEPS: IUG Journal of Educational and Psychology Sciences* 30, no. 2 (2022): 553.

[2] -1 سورة النساء الآية 4

[3] حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَخْبَرَنَا مَالِكٌ عَنْ أَبِي حَازِمٍ عَنْ سَهْلِ بْنِ سَعْدٍ قَالَ جَاءَتْ امْرَأَةٌ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ إِنِّي وَهَبْتُ مِنْ نَفْسِي فَقَامَتْ طَوِيلًا فَقَالَ رَجُلٌ زَوِّجْنِيهَا إِنْ لَمْ تَكُنْ لَكَ بِهَا حَاجَةٌ قَالَ هَلْ عِنْدَكَ مِنْ شَيْءٍ تُصْدِقُهَا قَالَ مَا عِنْدِي إِلَّا إِزَارِي فَقَالَ إِنْ أَعْطَيْتَهَا إِيَّاهُ جَلَسْتَ لَا إِزَارَ لَكَ فَالْتَمِسْ شَيْئًا فَقَالَ مَا أَجِدُ شَيْئًا فَقَالَ الْتَمِسْ وَلَوْ خَاتَمًا مِنْ حَدِيدٍ فَلَمْ يَجِدْ فَقَالَ أَمَعَكَ مِنَ الْقُرْآنِ شَيْءٌ قَالَ نَعَمْ سُورَةُ كَذَا وَسُورَةُ كَذَا لِسُوَرٍ سَمَّاهَا فَقَالَ قَدْ زَوَّجْنَاكَهَا بِمَا مَعَكَ مِنَ الْقُرْآنِ
https://carihadis.com/Shahih_Bukhari/4740

[4] Ahmad Arif Masdar Hilmy and Ria Cahyaning Utami, "The Dowry Classing Concept Based on Women's Criteria at Karangsono, Wonorejo, Pasuruan; A Study of Berger and Luckmann's Social Construction," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 16, no. 1 (2021): 139.

[5] Putri Diana and Nur Fitriyana, "Peran Badan Penasihatan Pembinaan Pelestarian Perkawinan (BP4) KUA Terhadap Kekerasan Dalam Rumah Tangga (KDRT," *Jurnal Studi Agama* 4, no. 2 (2020): 41, http://jurnal.radenfatah.ac.id/index.php/jsa/article/view/7347.

[6] -21 الروم الآية

[7] Hameedah Sabar Kadzim Al-A'raji, "Al-Bina' Al-Islamiy Li Al-Usrah: Dirasah Fiqhiyyah," *Majallah Adab al-Kufah* 51, no. 2 (2022): 291, https://journal.uokufa.edu.iq/index.php/kufa_arts/article/view/3551.

الشريعة الإسلامية.[8] وضعت قوانين تنظم ذلك فمثلا ليبيا قانون رقم 10 لسنة 1984بشأن الزواج والطلاق وآثارهما وتعديلاته، قد حدد سن الزواج وكيفية عقد الزواج وشروطه.[9] وبما أن المهر أثر من آثار عقد الزواج فقد أفرد له القانون المادة التاسعة عشر والعشرون. وبما أن الدولة حريصة على مواطنيها وكمبادرة من دولة ليبيا متمثلة في صندوق الزواج التابع لحكومة الوحدة الوطنية فقد صدر قرارا بمنح منحة لكل شاب وشابة لإعانتهم على الزواج منحة تقدر عشرون ألف دينار لكل واحد من الزوجين وفق شروط معينة.

2. البحث

2.1 تعريف المهر

المهر هو كل ما يبذله الزوج لزوجته من مال أو منفعة مشعر بالرغبة في الزواج يجب شرعاً للزوجة على زوجها بمقتضى عقد الزواج.[10] ويطلق عليه "الصداق" في عرف الناس لدلالته على صدق رغبة الزوج في الزواج.[11]

والمهر ورد ذكره في القرآن الكريم والسـنة النبوية الفعلية والقولية. وأجمع فقهاء المسلمين على مشروعية المهر ووجوبه على الزوج ويدفعه لزوجته رمز تقدير وإكرام.[12] قال تعالى: "وأتوا النسـاء صدقاتهن نحلة"[13] " وقال الرسول عليه السلام للرجل الذي لا يملك المال: "التمس ولو خاتما من حديد".

المهر حق للمرأة واجب على الزوج تكريماً لها وليس ثمناً للاستمتاع بها كما قد يراه بعض الناس، لأنه مما يتنافى مع كرامة المرأة وإنسانيتها اعتبار المهر مقابل الاستمتاع بها. فهو ليس كذلك بدليل: وجوب نصف المهر للمرأة إذا طلقت بعد انعقاد العقد وقبل الدخول بها فلو كان المهر مقابل الاستمتاع، لما وجب لها أي قدر منه إذا طلقت قبل الدخول لعدم حصول الاستمتاع أن الاستمتاع في الزواج لا يكون من جانب الرجل وحده، بل هو استمتاع متبادل بين الزوجين، فإذا اعتبر المهر مقابل الاستمتاع بالمرأة، لما وجب لها مهر على الإطلاق.[14]

2.2 سبب وجوب المهر

- العقد الصحيح فيجب المهر المسمى وإن لم تكن هناك تسمية وجب مهر المثل.
- يوجب المهر بالدخول الحقيقي وهو وجوب مسـتقر يتأكد به الأقل من المسمى ومهر المثل للمدخول بها ولا يسقط بالأداء أو الابراء.[15] والمهر ليس ركناً في عقد الزواج ولا شرطاً من شروط صحته فيصح عقد الزواج ولو لم ينص في العقد على مهر أو نص فيه على مهر صوري.

2.3 مقدار المهر

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[8] Sheila Fakhria, "Menyoal Legalitas Nikah Sirri (Analisis Metode Istiṣlāḥiyyah)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016): 185.

[9] القانون رقم 10 لسنة 1984 بشأن الزواج والطلاق وآثارهما (Libya, n.d.), http://itcadel.gov.ly/wp-content/uploads/2015/12/law10-year1984.pdf.

[10] 'Alī Bin Ahmad As-Syarīfi and Taufīq, "Al-Huqūqu Al-Māliyyah Wa Al-Ma'nawiyyah Lī Az-Zaujat Fī Al-Fiqhi Al-Islāmī," مجلة كلية الشريعة والقانون 32, no. 2 (2020): 1064, https://jfsu.journals.ekb.eg/article_90171.html.

[11] Abd. Kafi, "Mahar Pernikahan Dalam Pandangan Hukum Dan Pendidikan Islam," *Paramurobi: Jurnal Pendidikan Agama Islam* 3, no. 1 (2020): 56.

[12]– محمد ابو زهرة ، الاحكام الشرعية للأحوال الشخصية،،دار الفكر العربي ،صـــــــــ398

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[14] The Natioanl Council for Women, "حقوق المرأة في مجال الأحوال الشخصية أحكام الزواج من الوجهة القانونية," *Http://Ncw.Gov.Eg/*, http://ncw.gov.eg/Page/502/حقوق-المرأة-في-مجال-الأحوال-الشخصية-أحكام-الزواج-من-الوجهة.

[15] – الدكتور سعيد محمد الجليدي ، أحكام الاسرة في الزواج والطلاق واثارهما ، ، دراسة فقهية مقارنه ،الجزء الاول ص 249

لا يوجد حد أقصى للمهر، لكن من المستحب شرعاً عدم المغالاة في المهور، تيسيراً على الناس، وتشجيعاً للشباب على الزواج. وقد روي عن رسول الله صلى الله عليه وسلم قوله:"خير الصداق أيسره"،[16] وقوله: "إن أعظم النكاح بركة أيسره مؤونة.[17]

أما الحد الأدنى للمهر عند المالكية: أقل الصداق ربع دينار ذهب أو ثلاثة دراهم من فضة فإذا وقع الزواج على أقل من ذلك أجبر الزوج على الاتمام وإذا لم يحصل دخول يخير بين الاتمام أو الفسخ [18].

ويجوز تعجيل المهر أو بعضه بالاتفاق بين الزوجين[19]. وجرى العرف في وليبيا على تعجيل نصف المهر وتأجيل نصـــفه الآخر إلى أقرب الأجلين: الطلاق أو الموت بالنسبة للطلاق وخاصة الطلاق للضرر أثبت أروقة المحاكم وبما فيها المحكمة العليا ثبوت حق الزوجة في ذلك .[20]

2.4 فساد المهر

إذا ســـمي في العقد مالا يصلح مهرا أو مالا تجوز تسميته كان المهر فاسدا وفقا للمذهب المالكية ووجب فسخ العقد فإذا حصل دخول تبت العقد ووجب مهر المثل .[21]

2.5 أنواع المهر

يختلف المهر في الزواج عما إذا كانت هناك تسمية أو لم تكن وما إذا كانت صحيحة أو فاسدة. وعما إذا حصل دخول أو لا فيكون المهر إما أن تتم تسميته ويسمى المهر المسمى أو لم تتم تسميته فيكون مهر المثل:

- المهر المسمى وهو ما يتفق فيه بين الزوجين في العقد الصحيح وهو ما يقدمه الزوج لزوجته قبل الزفاف أو بعده وما تعارف عليه الناس من اللباس والحلي والطعام.
- مهر المثل وهو مهر امرأة تماثل الزوجة وقت العقد من أسرة أبيها كأختها الشقيقة أو عمتها أو بنت عمها والمماثلة تكون في الصفات التي يرغب فيها الزوج ويختلف المهر باختلافها كالسن والعقل والتعليم والجمال والمال والبكارة والثيوبة إلى غير ذلك فاذا انعقد العقد دون أن يسمى مهرا رجعوا إلى مهر المثل.[22]

2.6 سقوط المهر

قد يسقط نصف المهر أو يسقط كله إذا لم يتأكد بالدخول أو الخلوة الشرعية الصحيحة. يسقط نصف المهر إذا حدثت الفرقة بالطلاق أو الفسخ بعد العقد وقبل الدخول الحقيقي أو الحكمي، بسبب يرجع إلى الزوج. ويكون النصف مستحقاً تعويضاً للمرأة عن فرقة أضرت بها دون خطأ من جانبها.

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16 أبو عبد الله محمد بن عبد الله الحاكم النيسابوري, "المستدرك على الصحيحين, ج. 2، حديث رقم 1139" 537, https://www.islamweb.net/ar/library/index.php?page=bookcontents&idfrom=2624&idto=2624&bk_no=74&ID=1161.

17 حديث رقم 1133."النيسابوري, "المستدرك على الصحيحين

18 Abd al-Rohman Al-Jaziry, "Al-Fiqh Ala Al-Mazahib Al-Arba'ah" (www.islamport.com, n.d.), 57, http://islamport.com/w/fqh/Web/2793/1569.htm.

19 al-Imam Ibn Baz, "حكم تعجيل المهر وتأجيله," *Https://Binbaz.Org.Sa/Fatwas*, https://binbaz.org.sa/fatwas/18607/حكم-تعجيل-المهر-وتاجيله.

20 306، 303 ــــــــــــــــــــــــــ ص 53/46 ق رقم المبدأ 2006 السنة ، مجموعة احكام المحكمة العليا ،قضاء الاحوال الشخصية -

21 Women, "حقوق المرأة في مجال الأحوال الشخصية أحكام الزواج من الوجهة القانونية."

22 Kholid Saifulloh, "Aplikasi Kaidah 'Al-'Adah Muhakkamah' Dalam Kasus Penetapan Jumlah Dan Jenis Mahar," *Al-MAJAALIS: Jurnal Dirasat Islamiyah* 8, no. 1 (2020): 76.

يسقط كل المهر في الأحوال التالية:

1. إذا أبرأت الزوجة زوجها من المهر كله قبل الدخول أو بعضه بشرط أن تكون كاملة الأهلية.
2. إذا خالعت المرأة زوجها على كل المهر قبل الدخول أو بعده.
3. إذا حدثت الفرقة بين الزوجين قبل الدخول الحقيقي أو الحكمي بسبب من جهة الزوجة.[23]

2.7 المهر في القانون الليبي

لابد لنا أن نذكر النصوص القانونية التي تخص المهر وقيمته ونوعه وما يصلح مهر وسقوطه. نصت المادة التاسعة عشر من القانون رقم 10 لسنة 1984 بشأن الزواج والطلاق وآثارهما:

أ- المهر كل ما يبذله الزوج لزوجته من مال أو منفعة مشعر بالرغبة في الزواج.

ب- كل ما صح التزامه شرعا ،صلح أن يكون مهرا.

ج- المهر حق خالص للزوجة تتصرف فيه كما تشاء .

د- يجوز تعجيل المهر بالعقد الصحيح ويتأكد كله بالدخول أو الوفاة .

ه – تستحق المطلقة قبل الدخول نصف مهرها فان لم يسمى لها مهر استحقت متعه لا تزيد على نصف مهر مثلها .

ز – التأجيل في المهر ينصرف إلي حين البينونة أو الوفاة مالم يكن هناك شرط أو عرف يقضي بغير ذلك .

نصت المادة العشرون:

"إذا اختلف الزوجان في مقدار المهر أصلا أو قيمة ،كان المعول عليه ما دون بوثيقة النكاح فإذا لم يدون بها شيء نحاكم إلي عرف البلاد".[24]

2.8 صندوق الزواج في ليبيا

أنشيء الصندوق بموجب قرار مجلس الوزراء لحكومة الوحدة الوطنية رقم 540 لسنة 2021 بإعادة تنظيم صندوق الزواج.[25]

المادة الاولى: يعاد تنظيم صندوق دعم الزواج وفقا لأحكام هذا القرار بحيث يسمى صندوق تيسير الزواج ويتمتع بالشخصية الاعتبارية والذمة المالية المستقلة ويتبع وزارة الشباب .

المادة الثانية: يكون مقر الصندوق مدينة طرابلس ويجوز أن تكون له فروع أخرى بموجب قرار يصدر من وزير الشباب بناء على عرض من مدير عام الصندوق.

المادة الثالثة: يتولى الصندوق اتخاذ ما يلزم من اجراءات لتسخير كافة الامكانيات لتنفيذ السياسات العامة المقررة فيما يتعلق بتيسير الزواج وله على وجه الخصوص ما يلي:

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[23] Women, "حقوق المرأة في مجال الأحوال الشخصية أحكام الزواج من الوجهة القانونية."

[24] القانون رقم 10 لسنة 1984 بشأن الزواج والطلاق وآثارهما.

[25] مجلس الوزراء, "قرار رقم 540 لسنة 2021 م بإعادة تنظيم صندوق دعم الزواج" *Lawsociety.Ly/Legislation*, last modified 2021, https://lawsociety.ly/legislation/قرار-رقم-540-لسنة-2021-م-بإعادة-تنظيم-صندوق-د/.

1-تشجيع الزواج بين الليبيين والليبيات للمحافظة على التماسك والترابط الاجتماعي بين أفراد المجتمع وإزالة العقبات التي تعيق ذلك.

2- تقديم الدعم المالي للمقبلين على الزواج بمراعاة الضوابط المحددة بموجب التشريعات النافذة.

شروط وضوابط الحصول على منحة الزواج من صندوق الزواج عبر النافذة االلكترونية:

1-أن يكون طال المنحة من الزوجين متمتع بالجنسية الليبية.

2- أن يكون المتقدم للمنحة قد بلغ سن الثلاثون عاما للزوج وخمسة وعشرون عاما للزوجة.

3- ألا يزيد فرق العمر بين الزوجين عن عشرة سنوات.

4- أن لا يكون المتقدم قد سبق له الزواج من قبل ويستثنى من ذلك الزوجة.

5- أن يكون تاريخ إبرام عقد الزواج من تاريخ 2021/8/12 وبشرط أن يكون حاصلا على رقم قيد حديث بعد هذا التاريخ.

6- يشترط على طالب المنحة وجود دخل أو مرتب أو أجر ثابت على أن يقدم ما يفيد ذلك.

7- حضور الزوجان دورات التأهيل والارشاد الاسري والبرامج التوعوية والتثقفية. لإعداد المقبولين على الزواج والتي ينظمها الصندوق إن أمكن لهم ذلك .

8- يراعى ذوي الاعاقة وبعض الحالات الاجتماعية الخاصة من بعض الشروط المشار إليها وتخصص لهم نسبة 2,5% من اجمالي قيمة المنحة .

الوثائق المطلوبة لاستلام المنحة:

1-صورة من عقد الزواج وتكون مصدقة من المحكمة.

2- اصل من واقعة الزواج من السجل المدني التابع للمأذون.

3- شهادة بالوضع العائلي من السجل المدني .

4- صورة من الاثبات الشخصي للزوج .

5- صورة من الاثبات الشخصي للزوجة .

6- شهادة مرتب او ما يفيد وجود دخل ثابت للزوج .

7- تقديم تعهد مصدق من محرر عقود ويتضمن ترجيع المنحة المصروفة إذا خالف أحد الزوجين الاتي:

ا- وقوع الطلاق قبل اتمام سنة ميلادية من تاريخ حصوله على المنحة .

ب- أن يتبين ان البيانات المقدمة غير صحيحة أو تم تقديم مستند مزور للحصول على المنحة.

وقد خصص من الحكومة ثلاثة مليار دينار الأول بتاريخ 2021/8/12 والثاني 2021/9/8 في الرابع عشر من أغسطس سنة 2021 والثالث في 27 ديسمبر 2021. قررت حكومة الوحدة الوطنية منح مليار دينار ليبي لصالح صندوق الزواج والقرار رقم 305 لسنة 2021 يستهدف خمسين ألف شاب وشابة على مستوى ليبيا بواقع أن يتحصل كل من

الشاب مبلغ عشرين ألف والشابة عشرين ألف دينار كإعانتهم على الزواج وهدية من الحكومة.[26] ولكن حصل جدل أو خلاف هل تعتبر هذه المنحة جزءا من المهر أو لا، بالنسبة للرأي الغالب وأنا من مناصريه فإن هذه المنحة لا يعتبر جزءا من المهر وإنما تمثل هدية من الحكومة وإعانة على الزواج. وقد وصل عدد المستفيدين من هذه المنحة إلي 27 من سبتمبر الجاري أكثر من 15 ألف طلب،[27] وفي واحد أكتوبر حوالي 21 وعشرين ألف وبنهاية أكتوبر وصلت إلى ثلاثين ألف. ولازالت عقود الزواج تعقد حتى وعدت الحكومة بصرف مليار ثالث للصندوق[28] وبالتالي نرى أنها خطوة جيدة لإعانة الشباب والتشجيع على الزواج.

4. الخاتمة

نتختم بحمد الله أن المهر وإن كان من أثار عقد الزواج إلا أنه واجب على الزوج وأن الحكومة الليبية خصصت المبالغ المالية للشباب والشابات المقدمين على الزواج مما يسهل عملية اتمامها نتيجة لغلاء المعيشة والتكاليف الباهظة التي بدأت تصاحب إقامة الاعراس. ويستطيع الزوج من نصيبه تقديم جزء منها كمهر لزوجته كمقدم صداق أو مؤخر بعد الدخول أو قبلة، ولكن لا يستطيع أن يأخذ من نصيبها شيء المخصص لها وبالتالي فإن المنحة لها مردود إيجابي .

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EQUITY CROWDFUNDING: FINANCING INSTRUMENTS MSMES COMPILATION OF PERSPECTIVE SHARIA ECONOMIC LAW

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Abstract: This study aims to analyze financing instruments for micro, small and medium enterprises (MSMEs) through equity crowdfunding and examine equity crowdfunding in the perspective of compilation of Sharia economic law (KHES). This type of research is descriptive qualitative research, namely research that seeks to describe and explain the data obtained with secondary data. This study uses a literature research approach, where the data sources are obtained from literature studies and various kinds of literature that are worthy of discussion, including the study of OJK Regulation No. 37/POJK.04/2018 and DSN MUI Fatwa No. 117 /DSN-MUI/II/2018. The results of this study indicate that the financing instrument carried out contains business actors, investors and fund distribution institutions. While the review of Islamic economic law regarding equity crowdfunding leads to 2 types of contracts, namely *mudharabah* and *musyarakah* contracts that can be used as references.
Keywords: *Crowdfunding, Financing, MSMEs, KHES.*

1. INTRODUCTION

The development of fintech in Indonesia is quite rapid, this is indicated by the total value of fintech investment (disclosed) in Indonesia with an exchange rate of Rp. 14,500/US dollar in 2019 reached around US$ 22.34 million or around Rp. 234 billion. Transaction value growth is estimated to grow 16.13%/year, and the largest fintech market share is in the payments sector at 38% and loans reaching 31%. In March 2020, the loan disbursed was Rp. 4.47 trillion and fintech loan growth reached 74.6%. This rapid growth is also supported by the large number of internet users in Indonesia reaching 202.6 million in 2020 (Ramadhani Irma, 2020). Referring to the growth of fintech in the loan category above, it is estimated that the loan potential in the following year will reach Rp. 7.8 trillion. This achievement is still far from the financing of Islamic commercial banks and sharia business units of IDR 282.1 trillion as of February 2020. However, credit growth is much faster for fintech, where in mid-2018 the growth of financing in Islamic banks only reached 4.1%. Thus, fintech services can fill the market or society, where around 50-60% of adults in Indonesia do not have an account or have not been served by a bank (Miswan Ansori, 2021).

On the other hand, the problem that is often faced by business actors is capital or funding sources, especially for small businesses, namely Micro, Small and Medium Enterprises (MSMEs) or it can also be called start-up. There are several things that are faced in this case, firstly, banks have not been able to serve people who are far from reach so that the costs borne by banks become inefficient. Second, the cash flow or income of startups or MSMEs is still limited so that they have not been able to bear the obligation to repay the loan principal and pay interest or profit sharing in the short term. Third, business actors do not have sufficient assets to be used as collateral or collateral (Saripudin et al, 2021).

With the development of current fintech services, business people in start-up companies or MSMEs can choose alternative funding through crowdfunding, both loan-based crowdfunding (peer-to-peer lending) and equity-based crowdfunding (equity crowdfunding). The concept of crowdfunding is generally accepted, especially peer-to-peer lending. However, equity crowdfunding can be considered for start-up and MSMEs because the costs are

relatively cheaper than loans (Sentot Imam Wahjono, 2019). Funding without burdening the obligation to pay interest and principal is known as equity crowdfunding (ECF). With equity crowdfunding, the fundraising company only needs to offer a share of the shares issued by the start-up company or MSMEs as compensation for the investment made. The function of fundraising companies is almost the same as securities companies in the primary market. That way, investors will get a share of ownership from the start-up company or MSMEs, and will get a return in the form of dividends from the start-up or MSMEs according to the size of the shares they have (Novi, 2019).

As with funding activities, in addition to returns, there are also risks to be faced, including: losses, fraud, the risk of illiquid shares, the risk of failing to pay dividends and so on. To minimize this risk, OJK has set rules for implementing equity crowdfunding and these rules are made so that equity crowdfunding can be utilized by the community to the lowest level. Some of these rules, among others, stipulate that equity crowdfunding does not need to be sandboxed (limited testing space), because equity crowdfunding will have a lot to do with the capital market or stock exchange (A.T.R.C, 2020).

Seeing that equity crowdfunding is linked to the capital market. Then the risks that will be faced are risks related to investment, especially in the capital market. However, due to the lack of knowledge and understanding of the community about this, its development is also hampered. Equity crowdfunding should be a promising capital field for novice businessmen or MSMEs who need funds and develop their businesses if managed properly (Halim, 2020). Therefore, the existence of equity crowdfunding which can later open up opportunities for startup or MSMEs, it must be ensured that the funds collected in equity crowdfunding are funds that are far from the elements of MAGHRIB (Maysir, Gharar, Haram, Riba and Batil). This is because it will be used for capital for startup and MSMEs, all of which are run according to sharia principles (Kamaludin, 2019). From this, it is necessary to assess the extent of the financing instruments for Micro, Small and Medium Enterprises (MSMEs) through equity crowdfunding and equity crowdfunding in the perspective of the Sharia Economic Law Compilation (KHES).

2. RESEARCH METHOD (OPSIONAL) (CAMBRIA: 11, KAPITAL, TEBAL)

The research method used is qualitative with the research approach used is library research with descriptive analysis methods, which is a study used to collect information and data with the help of various materials in the library such as documents, books, magazines, historical stories, and so on (Jain, 2019). Data collection is done through a literature review with the object in question, namely reviewing books that have relevance to the discussion (Sugiono, 2020). The data collection technique needed in this research is literature study and documentation. The data analysis technique used is descriptive analysis method: (1) content analysis, (2) critical analysis and discussion methods: (a) inductive method, (b) deductive method, and (c) comparative method.

3. RESULT AND DISCUSSION

3.1 Micro, Small and Medium Enterprises (MSME) Financing Instruments Through Equity Crowdfunding

Bank Indonesia Regulation (PBI) Number 19/12/PBI/2017 article 3 states that fintech operations are categorized into: (a) payment systems, (b) market support, (c) investment management and risk management, (d) loans, financing, and the provision of capital, and (d) other financial services. Crowdfunding is one type of fintech service that falls into this category, including equity crowdfunding and peer-to-peer lending.

There are various definitions of crowdfunding from some academic literature, here are some of them. According to Ordanini (et al. 2018), crowdfunding is a collective effort of people who are interconnected and then they raise money together, usually via the internet, to invest to support efforts initiated by another person or an organization. An interesting illustration of crowdfunding is from Fikar D. S Gea's scientific work (2019) which describes crowdfunding

from the point of view of gotong royong in accordance with local wisdom in Indonesia, which is known for its gotong royong culture, but is now decreasing, experienced a shift and a decrease in value. Crowdfunding contains the values of gotong royong which are re-embodied in people's lives, but in a different social space, namely the internet as a new medium (Alesasando, 2015).

There are various types/categories of crowdfunding, where each category has different benefits for crowdfunding companies and also for investors. Crowdfunding consists of four categories according to the funding base offered by the crowdfunding platform, namely: pre-sales, donations, loans, and equity crowdfunding (Hutchinson et al, 2016). Crowdfunding is also grouped into 4 types, consisting of: (1) Reward crowdfunding, in this type investors who buy shares get non-financial returns. The greater the reward received, the greater the funds donated. The advantage for business people is that the cost for rewards is not expensive. Generally to fund creative projects and use a tiered system.

(2) Debt crowdfunding, in this type investors will get a return in the form of interest. The advantage of this funding is that business people get a source of funding that is cheaper than bank interest, it is easier to get support because investors get a return. However, this debt crowdfunding business should have revenue, to bear the fixed burden. (3) Equity crowdfunding, where investors will get a return in the form of a small number of shares from business people. This type is suitable for business people who are focused on growth or growth. (4) Donation crowdfunding, this type is designed for charity or social projects, and usually there is no reward for investors (Smith, 2018).

Starting from OJK Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services through Information Technology-Based Shares Offering (Equity Crowdfunding) Chapter I article 1, that equity crowdfunding or crowdfunding services through information technology-based share offerings, hereinafter referred to as Crowdfunding Services is a share offering service carried out by the issuer to sell shares directly to investors through an electronic system using the internet network.

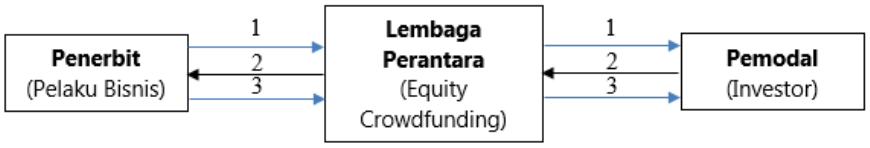

Figure 1. The equity crowdfunding scheme

Information:
(1) Flow of shares/bonds/sukuk
(2) Financing Flow
(3) Return flow

There are three stakeholders in equity crowdfunding, namely companies that need funds or business actors or publishers, crowdfunding platforms or fundraising companies or intermediary institutions or organizers, and investors or supporters. (1) Business actors who need funds tend to be companies with small business scales such as MSMEs or startups because they are in accordance with the funds to be invested in small amounts. It is called a publisher because it will submit ideas and requests for funding by issuing shares through an online portal intermediary called a crowdfunding platform to be offered to investors. (2) Investors/investors (supporters) will see investment opportunities and then commit to funding and then will get a return on investment. (3) The crowdfunding platform acts as an intermediary/intermediary institution that brings together investors and issuers.

These stakeholders must meet the requirements as stated in OJK Regulation Number 37/POJK.04/2018. The requirements that must be met by

intermediaries/organizers/crowdfunding platforms include: (1) Having a business license from the OJK, (2) Registering as an electronic system operator at the ministry of communication and informatics, (3) The legal entity administering it is an Indonesian legal entity, may be in the form of a Limited Liability Company (PT) or cooperative, may be in the form of a Securities Company that has obtained approval from the OJK to carry out activities as a Provider, (4) The Operator must have paid-in capital and own capital of at least IDR 2.5 billion at the time of applying for a permit, (5) Operators are required to have human resources (HR) with expertise and/or Information Technology (IT) background and HR with expertise in reviewing issuing companies, and must improve the quality of human resources through education and training programs that support development equity crowdfunding service. The issuer is an Indonesian legal entity that issues/offers shares through an operator. In practice, publishers focus on MSMEs and start-ups that are just developing their business. The requirements that must be met by the issuer are: (1) the number of shareholders is not more than 300 parties, (2) the total paid-up capital is not more than Rp. 18 billion, (2) the issuer must be in the form of a PT, (3) have assets of more than Rp. 10 billion (excluding land and buildings). (4) The issuer is not a company controlled either directly or indirectly by a business group or conglomerate; a public company (tbk) or a public subsidiary.

Investor/Investor is the party who buys the shares of the issuer through the operator. The requirements that must be met by investors/investors include: (1) Having the ability to buy shares of the issuer, (2) Having the ability to analyze the risk of the issuer's shares, (3) Meeting the investor criteria as stipulated in the POJK above. Every investor with an income of up to IDR 500 million per year, can buy shares through crowdfunding services for a maximum of 5% of annual income. (4) Investors with an income of more than IDR 500 million per year can buy shares through crowdfunding services for a maximum of 10% of their annual income. Investor criteria and restrictions on the purchase of shares do not apply if the investor is a legal entity and is a party who has experience investing in the capital market as evidenced by ownership of a securities account for at least 2 years prior to the share offering.

As with other investment instruments, apart from generating profits, on the other hand it also contains risks (Pardo, 2020). These risks include: First, the failure of the business actors, so that the investment value can be completely lost if at the time of liquidation the business actors cannot provide their share to investors. Second, business actors may experience dividend failure to pay (return) dividends to investors, especially in the early years, this is because business actors are start-up companies. Third, the investment is illiquid, because it does not allow investors to resell their shares on the stock exchange because the shares are not listed on the stock exchange. Fourth, Security. This service is based online, so the possibility of fraud, forgery and fraud is very large. The people involved in it do not know each other well, how honest they are, their capacities, their abilities and so on, so it is easier to act dishonestly, cheat or cheat, and the chances of cybercrime are also high. Fifth, according to Philips et al (2019), in new media there are three important elements that make up it, namely platform (devices), channels (channels) and context (context).

Platforms; is a device used to access the internet and its knowledge with an operating system (OS), including: computers, laptops, cellular phones, and others channel; this is a channel to access information, such as: instant messaging, SMS, website, email, social media (facebook, twitter, etc.), and various other channels. Context; is a space/place to access information, for example: at home, at work, on a trip, when the atmosphere is favorable, in different time zones and places, and so on (Crowdsourcing, 2022). Thus, these three elements must always be maintained, if one of them does not work it will pose a risk of service delays, one example is when the internet channel is not reachable from the user's place, causing the user to be unable to do the same. crowdfunding service.

Meanwhile, the advantages of equity crowdfunding include: (1) High risk high return. Investors will get a large rate of return when buying stocks that have the potential to grow and generate large profits. Success stories such as Alibaba's $1 billion purchase of Lazada, and Facebook's $19 billion acquisition of WhatsApp, illustrate the huge benefits gained through

crowdfunding equity investments, namely in the form of equity participation in startups. (2) Ease of investing. OJK has made regulations related to equity crowdfunding to make it easier for all stakeholders. Publishers get alternative funding with relatively cheap cost of funds, open access for all investors, both accredited and those who have not met the requirements. Meanwhile, the organizers carry out the selection process, legal due diligence and documentation, finance, and administration for the investment process.

Thus investors can determine safe investments, and make these investments easily and efficiently. In Indonesia, equity crowdfunding includes financial services activities under the auspices of the capital market (Febriyanti, 2020). However, in the equity crowdfunding scheme, startups are not required to go through the Initial Public Offering (IPO) process or public offering on the Indonesia Stock Exchange (IDX) in conducting their share offering. This is in accordance with POJK No. 37 of 2018 article 3, namely the offering of shares through the Crowdfunding Service (equity crowdfunding) is not a public offering as referred to in the Law of the Republic of Indonesia (UURI) Number 8 of 1995 concerning the Capital Market. The scale of the share offering through equity crowdfunding is smaller than that of an IPO, with a maximum period of 12 (twelve) months, the value of shares offered to investors is a maximum of Rp. 6 billion rupiah. At the time the issuer offers shares, it can only go through 1 (one) equity crowdfunding at the same time.

In the event that the investor intends to resell his shares in the secondary market, then it is regulated in POJK Number 37 of 2018 article 30, namely: "(1) Based on an agreement with the issuer, the operator may organize and provide a system and/or means to bring together selling offers and offer to buy shares of issuers on the secondary market through the organizer's website. (2) Trading on the secondary market as referred to in paragraph (1) can only be carried out between investors registered with the operator".

On January 8, 2020, OJK through its official website (ojk.go.id) announced the entry of Crowd dana as the third equity cow funding company licensed by the OJK. The following is a list of operating companies that have obtained permission from the OJK as of December 31, 2019.

Table 3.1 List of Equity Crowdfunding Companies

No.	Name Platforms	Website	Nama Company	Licended Mark	Date
01.	Santara	Santara.co.id	PT. Santara Daya Inspiratama	KEP-59/D.04/2019	September 06, 2019
02.	Bizhare	Bizhare.co.id	PT. Investama Digital	KEP-71/D.04/2019	November 06, 2019
03.	Crowddana	Crowddana.co.id	PT. Crowddana Teknologi Indonesia	KEP-93/D.04/2019	December 03, 2019

Like shares traded on the IDX, shares issued through the equity crowdfunding platform are also stored at the Indonesian Central Securities Depository (KSEI). Similar to shares on the IDX, these shares also incur capital costs for issuers in the form of dividends distributed to investors. In addition, the issuing entity must also pay an annual fee to the organizer as a crowdfunding service provider company (Shang, 2019). Other costs that must be incurred by the issuer are related to the cost of preparing a prospectus and business profile, reports on the use of funds, monthly financial reports, semi-annual financial reports, and annual reports that must be submitted to the OJK. These costs must be taken into account by prospective issuers of shares in considering whether to raise funds through equity crowdfunding or not, considering that the maximum amount of funds that can be raised

through the equity crowdfunding platform for a maximum period of 12 months is 10 billion rupiah.

Equity crowdfunding is a new alternative funding solution for business entities, especially MSMEs. As of mid-October 2020, there have been more than 130 issuing entities with more than 70 billion funds invested through the equity crowdfunding platform in Indonesia, and more than 160,000 investors have channeled their funds to MSMEs businesses that issue shares through the platform. As quoted from Santara.co.id, there are various business entities that issue shares through the organizer's platform, such as: (1) providing accommodation and food and drink; (2) farms; (3) agriculture, hunting, and forestry; (3) financial intermediaries; (4) health services and social activities; (5) fisheries; (6) wholesale and retail trade; (7) processing industry; (8) construction; (9) transportation, warehousing, and communication; (10) mining and mining quarrying; (11) electricity, water and gas; (12) real estate; (13) rental business and company services; (14) educational services; and (15) other community and individual services. These various business categories provide many options for placement of funds for potential investors.

3.2 Equity Crowdfunding in the Perspective of the Compilation of Sharia Economic Law (KHES)

Equity crowdfunding arises from the concept of gotong royong or gotong royong which is the essence of humans as social beings. In the religious aspect, it is also recommended to work hand in hand to help realize something good. For example, prayer which is the main obligation and commandment in Islam is prioritized to be done in congregation with the reciprocity of getting more rewards than doing it alone. The business concept is the same as the command to pray. It will be easier and get more profit if it is managed and funded in mutual cooperation and together. So that a large load will also feel smaller. The following is the basis of the verse in Q.S. Al-Maidah [5] verse 2:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ

"Help you in (doing) righteousness and piety, and do not help in sins and transgressions."

The implementation of equity crowdfunding must still be guided by the Qur'an and al-Hadith, must offer halal projects and products, the money that will be used in the funding process must be guaranteed halal. To determine the halalness of a project or product, it is necessary to establish a Sharia Supervisory Board. The function of the Sharia Supervisory Board is to ensure and guarantee that the money collected and will be used as funding for a project or production is truly halal and the source is halal (Suhel, et al, 2022).

The majority of crowdfunding platforms still use conventional economic methods. Even though the concept of Islamic economics is also in great demand by the Muslim community and even non-Muslims. In addition to the interests of the group, the concept of sharia also has a positive impact on the whole community. It is shown that the concept of Islamic economics is not only considered correct for the Muslim community, but is also a good alternative for the world community. This is evidenced by the number of Islamic banks in countries where the majority of the population is non-Muslim (al-Baari, 2022). So it is necessary to form a crowdfunding concept that is in accordance with sharia.

The author divides the aspects that are in accordance with sharia into 2 parts. The first is the forbidden aspect. A concept of Islamic economic products must be separated from the elements of MAGHRIB (Maysir, Gharar, Haram, Riba and Batil). So the concept of sharia crowdfunding that is in accordance with sharia values must be separated from these 5 elements. The second is the halal aspect. The concept of crowdfunding in accordance with sharia values must pay attention to the halal aspect, namely the contract used between several parties in the transaction, the project to be financed, the source of investor funds to be submitted, and profit sharing. between the parties, and the platform to be used. The first aspect can be used as the basis for analyzing Equity Crowdfunding with Islamic law (Zaki,

2019).

Crowdfunding is an online fundraising scheme that is small in scale but comes from many people so that significant funds are raised. Meanwhile, Equity Crowdfunding is a fundraising scheme using the internet with the aim of finding donors as funders, who will later receive compensation in the form of equity or income arrangements or profit sharing from the results of the fundraising project (Nafik, 2020). It can be concluded that Equity Crowdfunding is a project campaign to find investors as buyers of shares in the project.

So the mechanism of the Equity Crowdfunding site is to connect project owners and financiers. There are 3 parties, namely crowdfunding service providers, project publishers (startups), and investors (investors). Crowdfunding Service Providers are Indonesian legal entities that provide, manage and operate Crowdfunding Services (Hassanudin, 2021). The issuer of project shares (startup) is an Indonesian legal entity in the form of a limited liability company that sells its shares through a Crowdfunding Service Provider. Investor is a Party that buys Issuer's shares through Crowdfunding Service Provider (investor).

The Equity Crowdfunding Service Mechanism has been regulated in Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Crowdfunding). This regulation has explained in detail the parties and the mechanism of the Equity Crowdfunding transaction. Then the author will analyze the Equity Crowdfunding Service transaction based on POJK No 37/POJK.04/2018. Basically carrying out economic activities is legal. Ability to perform *muamalah* aspects, whether selling, buying, renting or others. In the rules of fiqh it is stated: "The basic principle of *muamalah* is that it is permissible unless there is evidence that forbids it."

Carrying out economic activities is human nature, but not all economic activities are justified by Islamic law, namely if these activities cause injustice, injustice, and harm others. So, in an equity crowdfunding transaction, as long as it does not violate Islamic law, the law of this transaction is allowed. *Muamalah* transactions between stock issuers and investors usually use 2 types of contracts, namely *mudharabah* contracts and *musyarakah* contracts. (1) *Mudharabah* is a contract between the owner of capital (assets) and the manager of the said capital, provided that the profits are obtained by both parties in accordance with the amount of the agreement. Meanwhile, *Musyarakah* is a contract made by people who bind themselves to work together, where each party has the right to take legal action on the managed capital. Then the type of mudharabah contract in the equity crowdfunding mechanism is *Mudharabah mutlaqah*. It can be concluded that, due to the form of cooperation between shareholders and workers/entrepreneurs in crowdfunding equity transactions as regulated in POJK Number 37/POJK.04/2018, the form of business is not determined and is not limited by shareholders (investors). While the results of the operation will be divided according to the initial agreement as outlined in the deed of agreement of the parties.

The review of the Crowdfunding Service mechanism through Information Technology-Based Share Offering (Crowdfunding) can also use a *musyarakah* contract. (2) *Musyarakah* from the *syirkah* model is a concept that can precisely solve capital problems. On the one hand, Islamic principles equate that everything that is used by others is entitled to a mutually beneficial reward, whether for capital goods, labor, or rented goods. According to the majority of scholars, there are three pillars of shirk, namely: '*aqidain* (both parties), *ma'qud alaih* (goods), and *shighat* (ijab qabul) (Zahra, et al, 2021).

However, what distinguishes the two contracts is that the parties in the equity crowdfunding service mechanism have their own duties, in which the investors and organizers do not participate in managing the project of the issuer of shares. However, more precisely, investors who later become shareholders can be adjusted to the *amlak syirkah* contract. *Amlak syirkah* is joint ownership and its existence arises when two or more people by chance acquire joint ownership of a property (Indriana, 2022). From these facts, it can be concluded that the mechanism carried out by the equity crowdfunding service in POJK Number 37/POJK.04/2018 is in accordance with Islamic economics.

Because the mechanism can be adjusted to the *mudharabah* and *musyarakah* contracts, and also apart from the 5 elements of Maghrib (Maysir, Gharar, Haram, Riba and Batil). However, the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Shares Offerings (Crowdfunding) still does not regulate in detail several important points. The first point, what business is allowed and what is prohibited. The second point is the clarity of the originof the investor's funds being channeled to stock issuers. The third point is the unclear distribution of profits/commissions, so that it has the potential to harm one party.

4. CONCLUSION

There are many definitions of equity crowdfunding, but the most interesting is the description of the definition from the perspective of gotong royong. So that equity crowdfunding is a method to facilitate between business actors who need capital and investors/investors through internet-based intermediary companies/providers based on the spirit of gotong royong. Meanwhile, the mechanism carried out by the equity crowdfunding service in POJK Number 37/POJK.04/2018 is in accordance with the perspective of Islamic economic law. Because the mechanism can be adjusted to the *mudharabah* and *musyarakah* contracts, and also apart from the 5 elements of MAGHRIB (Maysir, Gharar, Haram, Riba and Batil). However, as an implication, the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Shares Offerings (Crowd Funds) still does not regulate in detail several important points. The first point, what business is allowed and what is prohibited. The second point is the clarity of the origin of the investor's funds being channeled to stock issuers. The third point is the lack of clarity in the distribution of profits/commissions, so that it has the potential to harm one party.

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UTILIZING ILLEGAL LAND IN THE PERSPECTIVE OF INDONESIA LAND LAW AND ISLAMIC LAW

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Abstract: Illegal Land Use in Perspective of Land Law and Islamic Law. The issue to be discussed in this research is how to regulate illegal land use in terms of criminal law and how the law regarding illegal land use is viewed from Islamic criminal law. The research method used in this paper is a normative juridical method that originates from a literature study. Arrangements for illegal land use are regulated in statutory provisions, including Perpu Law No. 51 of 1960, which reads that it is prohibited to use the land without a valid permit or proxy and can be subject to a principal criminal penalty in the form of imprisonment for a maximum of 3 (three) months and/or a fine of up to Rp. 5,000. In the perspective of *jinayah fiqh,* agrarian regulations were not found. However, it can be explained using the concept*Maqa>sid as-Shari'ah* (the purpose of establishing Islamic law). There are also regulations regarding human welfare, namely taking advantage, rejecting harm and eliminating trouble.
Keywords: Illegal land; Land Law; Islamic law.

1. INTRODUCTION

Land grabbing is nothing new in Indonesia. The word confiscation itself can be interpreted as an act of taking rights or assets arbitrarily or contrary to laws and regulations, such as taking other people's land or houses that are not theirs. Unlawful land grabbing is an unlawful act that can be qualified as a criminal offence. In the regulations that have been written in the Criminal Code article 385 concerning land grabbing reads "anyone who with the intention of benefiting himself or another person with a credit verband a right over Indonesian land, a building, construction, planting, and seeding, even though it is known that those who own or participate in have rights over it are other people.(Pasaribu, 2013)

Furthermore, in the fiqh jinayah regarding illegal land use, in the view of fiqh there is no detailed provision regarding land or agrarian affairs, but we review land or agrarian affairs using ushul fiqh analysis, explaining the concept of maqashid as-shari'ah (the purpose of establishing Islamic law).).(Romli, 1999, p. 157)However, in fiqh there are also those that discuss human welfare, namely taking advantage, rejecting harm and eliminating distress.(Yahya & Fatchurrahman, 1986, p. 106)Illegal land use itself is also included in the takzir finger group, where the power lies with the government or leaders who lead in the area, the form of sanctions is not determined by syara' but belongs to the government or leaders.(Az-Zuhaili, 2011, pp. 284–285)

2. METHOD

Research is a core element in contributing to the development of science and technology. This is done because this research has the aim of uncovering the truth systematically, methodologically and consistently so that it can match real conditions. Through this research process, further analysis and processing of the data that has been collected are carried out.(Soekanto, 2016, p. 16)

The research method used is normative juridical research.(Ibrahim, 2008, p. 295)Normative juridical research itself has a meaning, namely research that has a focus on reviewing the application of positive legal principles or norms. Taking the term from Ronald Dworkin, research like this is commonly referred to as doctrinal research, which is research that

analyzes law, both written and unwritten in books or laws decided by judges through court proceedings. Sociological juridical research is different from normative juridical research, sociological research itself is research that starts from the problem by looking at the reality that occurs in the field and then connecting it with the applicable laws and regulations.

The nature of this research is analytical descriptive, analytical descriptive research is a study that describes, examines, explains and analyzes a legal regulation.(Nasution, 2013, p. 2)

3. ANALYSIS OF STUDY FINDINGS

3.1 The Concept of Illegal Land Use in the Perspective of the Land Law

The meaning of illegal land use is an act of controlling, occupying, or taking over land or anything belonging to another person illegally or against the law, violating the law here can be interpreted as any action or activity that is not in accordance with applicable regulations. In article 1 of Law Number 51 PRP of 1960 concerning the Prohibition of Use of Land Without a Permit, the right or proxy states that land is land that is directly controlled by the state and land that does not include the ownership of individuals or legal entities. Actions that are carried out intentionally with the intention of controlling and occupying other people's land are unlawful acts. Ervina Eka Putri, "Law Enforcement Against Criminal Offenders of Land Expropriation and Destruction in the Bandar Lampung Region" (University of Lampung, 2018), 4.

From a legal perspective, illegal land use is defined as follows. First, taking rights or assets in an arbitrary way or ignoring written regulations or laws. All activities that violate these regulations can be said to be a violation of the law. Second, attacking (breaking, crashing) in a reckless or silent way without the victim's knowledge. Third, committing the act of entering someone's house without the permission of the home owner, interrupting words or heeding other people's words, and so on. Fourth, use roads or public facilities at will without heeding existing regulations.Sapto Hadi et al., "Legal Study of Complaints and Land Acquisition Cases in the City of Samarinda Study Laws Against Cases of Complaints and Land Acquisition in The City Of Samarinda," Journal de Jure 12, no. 1 (2020): 87.

3.2 The Concept of Illegal Land Use in the Perspective of Islamic Criminal Law

Fiqh or Islamic law is a law that regulates the relationship between God and human creation, with their families and communities, and with the natural surroundings, in accordance with sharia law which is widespread. Experts are of the opinion that fiqh law regulates all aspects and is binding on all groups, including the mukallaf, and no work or action escapes fiqh rules.(Prasetyo, 2013, p. 12)

In fiqh, the definition of status of state land is land free of rights located in a certain area, which has not been built by a person or legal entity, land that is located far from human thought, does not include public or social facilities, while abandoned land means land that has been abandoned or not taken care of by the owner for 3 years.(Ismail, 2013, p. 29)

The fiqh scholars all agree that the definition and terms of state land or dead and neglected land are land free of the state from a right, land that has not been cultivated and utilized by a person or legal entity located in an area or area. Land that is located far from residential areas and is not one of the social facilities. While neglected land means land that has been abandoned and neglected by its owner for 3 years or more.

3.3 Penalties for Illegal Land Use in the Perspective of the Land Law

In view of Law Number 51 of 1960 concerning the prohibition of land use without permission the rightful person or proxy has regulated it, but in practice there is often a contradiction between factual events and the laws and regulations in effect at this time. There are many violations committed by the opposition or individuals for the sake of seeking personal gain without regard for common prosperity.

In Perppu. Number 51 of 1960 article 1 reads "it is prohibited to use land without the rightful permission or its legal proxy, with the condition that if plantation and forest lands are excluded they will be settled according to article 5 paragraph (1)". Without reducing the validity of the provisions in Articles 3, 4, 5, you can be sentenced to a maximum of 3 (three) months and/or a fine of up to Rp. 5000,- (five thousand rupiah). In article 2 it is also clearly written

"anyone who interferes with those who have the right or their legal proxies in exercising their rights over a plot of land".(Government Regulation in Lieu of Law (Perpu), 1960)

According to the author, the article above has many meanings so that there are many misunderstandings for a group of parties who misuse it, which the author underlines is "anyone who interferes with those who have the right or their legal proxy in exercising their rights over a plot of land". The right to a plot of land is meant whether it is the indigenous people who experience disputes over their territory or the government that has given management permits to investors or the entrepreneur who wants to build a business in that area. In the case above, conclusions can only be found when the judge has decided at trial.

3.4 Views of Airlangga University Students on Illegal Land Use in the Perspective of the Land Law

The informant interviewed by the author has a background as an anthropology student at Airlangga University, Surabaya, and is also active in cases of land disputes or usurpation of land rights by residents occupying customary lands. Ulayat lands are lands with related customary law communities. Mastery over indigenous peoples' land is known as ulayat land. Ulayat rights are a set of rights and obligations of customary law communities in relation to land within their territory. UU no. The existence of customary rights is recognized by Law Number 5 of 1960 or the Basic Agrarian Law (UUPA). The confirmation is accompanied by 2 (two) conditions, namely regarding its existence and regarding its implementation. According to Article 3 of the BAL, customary rights are recognized "as long as they exist".(Pradana, 2020)

4. CONCLUSION

Illegal use of land can be interpreted as an act of controlling, occupying, or taking over another person's land or land unlawfully, against rights, or violates applicable legal regulations even though he knows that another person has rights or shares rights over the land. , shall be punished by a maximum imprisonment of four years' imprisonment. According to the explanation above, in Jinayah fiqh illegal use of land is also included in the takzir finger group because the power is in the hands of the government or the leader of that area.

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INTERFAITH MARRIAGE IN INDONESIAN JURISPRUDENCE: STUDY CASE ON STATE COURT DECISION, NUMBER 916/PDT.P/2022/PN.SBY

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Abstract: The research entitled "Different-Religious Marriage in Indonesian Jurisprudence: Study of Determination of Number 916/PDT.P/2022/PN.SBY" is research to answer the formulation of the problem: "How are judges' considerations in Determining Number 916/PDT.P/2022/PN. SBY?" and "How is the analysis of the legal opinions of Nahdlatul Ulama, Muhammadiyyah and the Indonesian Ulema Council regarding the Decree Number 916/PDT.P/2022/PN.SBY?" This research is Library Research using Normative Islamic Law research methodology. The findings of this study are that the Surabaya District Court granted the request for interfaith marriage by the applicants with several considerations, namely: (1) the fulfillment of the formal requirements, (2) entering the realm of the District Court; (3) the right to defend their religious beliefs; (4) The right to form a household and offspring, (5) the applicants love each other and agree to marry; (6) parents agree; (7) the applicant has married with their respective religions; (8) Interfaith marriage is not prohibited; (9) procedures for interfaith marriages are different from general marriages; and (10) The judge considered that the applicants renounced their religious beliefs which did not allow interfaith marriages. Nahdlatul Ulama, Muhammadiyyah and the Indonesian Ulema Council view interfaith marriages as illegal and illegitimate. An important condition for marriage is to build a family that is sakinah, mawaddah and full of grace, not just love one another. Parental permission is indeed important, however, if it causes a Muslim to give up his faith, then it should be something that is not followed.
Key Words: Marriage; Interfaith Marriage; Community organization; Fatwas; Determination.

1. INTRODUCTION

Marriage comes from the word marriage which in the Big Indonesian Online Dictionary means forming a family with the opposite sex, having a husband or wife, and getting married. Marriage is a way for men and women to build a harmonious life (Shihab, 2018, p. 1260. Di In marriage, the relationship that every couple dreams of is a relationship that is sakinah, mawaddah, wa raḥmaḥ, namely a relationship that is everlasting, happy and brings grace (Sanjaya and Aunur, 2017, p. 16). ProsThe marriage contract is generally according to the religion adhered to by both the bride and groom. The marriage contract will be problematic when the bride and groom have different beliefs. This marriage is called interfaith marriage. This interfaith marriage has actually been happening for a long time in the world, even in the Islamic world itself the Prophet Muhammad saw. have carried out interfaith marriages twice. This marriage was carried out by the Prophet SAW. with Mariyatul Qibtiyah and Safiyyah. Mariyatul Qibtiyyah is a Christian woman and Safiyyah is a Jewish woman (Al-Tabarī, nd, p. 21).

Interfaith marriages today still exist in society. Countries in the world have different opinions regarding the rules of interfaith marriage. Indonesia is a country that does not clearly regulate interfaith marriages. The legal basis for marriage in Indonesia regulated in Law Number 1 of 1974 concerning Marriage only discusses that marriage must be carried out according to their respective religions. In contrast to Indonesia, there are several countries that explicitly allow interfaith marriage laws. These countries are England, Canada and Singapore (Sastra, 2011, p. 44). The three countries do not require similarity in religion to get married. For countries that prohibit

interfaith marriages, Middle Eastern countries mostly do it. In Indonesia, cases of interfaith marriages were even carried out by several public figures, such as Lydia Kandou and Jamal Mirdad, Marcel Siahaan and Rima Melati Adams, and Rio Febrian and Sabria Sagita Kono. The latest is the licensing of interfaith marriages by the Surabaya District Court in April 2022.

Regarding the law on interfaith marriage, Muslim scholars are actually different opinions. There are those who allow it if it is done by Muslims to non-Muslim women. There are those who only allow marriage to ahlu al-kitāb women (Jews and Christians) and forbid polytheistic women (majusi, idol worshipers, animists). There are those who absolutely allow interfaith marriages and there are also those who forbid the marriage of Muslim women to non-Muslims, both ahlu al-kitāb and polytheists. Indonesian Ulama also did not want to be outdone discussing this issue through their large mass organizations, namely Nahdlatul Ulama, Muhammadiyah, and the Indonesian Ulema Council.

Based on the background above, this research will answer the question: "How the judge's considerations in Determining Number 916/PDT.P/2022/PN.SBY?" and "How is the analysis of the legal opinions of Nahdlatul Ulama, Muhammadiyyah and the Indonesian Ulema Council regarding the Determination of Number 916/PDT.P/2022/PN.SBY?"

2. RESEARCH METHODS

PThis research is Library Research using Normative Islamic Law research methodology, which is the same research as normative legal research in the form of legal research conducted by examining library materials or secondary data however, the domain is law (Arfa and Marpaung, 2016, p. 44).

3. ANALYSIS OF STUDYFINDINGS

3.1. Law of Interfaith Marriage According to Nahdlatul Ulama, Muhammadiyah, and Majelist of Indonesian Ulama

Nahdlatul Ulama was founded in 1926 in Surabaya as an organization that has the goal of "Enforcement of Islamic teachings that adhere to Ahlussunnah Waljamaah and according to one of the Four Schools to create a democratic and just social order for the benefit and welfare of the ummah" Islam (Fadeli and Subhan, 2007, p. 18). The method of extracting NU law can be broadly drawn into three ways, namely qouli, ilḥaq masā'il bi naẓairiha, and manhaji. (Nahdlatul Ulama Executive Board, 2016, p. 153).

Nahdlatul Ulama was noted to have discussed the law of interfaith marriage in three major events, first at the 19th Nahdlatul Ulama Syuriah General Council Conference in 1957, second at the IV Congress of Jam'iyyah Thariqah Mu'tabarah al-Nahdliyyah in 1968, and third at the 28th Nahdlatul Ulama Congress in 1989 (Said and Ma'ruf, 2004, p. 304). Nahdlatul Ulama (NU) prohibits interfaith marriages whether the marriage occurs between a Muslim and a polytheist woman or a Muslim woman and a non-seasonal man. Muslim marriages with women of the scriptures are still possible according to the opinion at the 19th Nahdlatul Ulama Syuriah General Council Council if the religion adhered to is still in the form of pure teachings. NU uses the qouli method in terms of determining this interfaith marriage law. NU follows the qaul of the Shāfi'i Ulama school which is in the book Fath al-Mu'in,

Muhammadiyyah believes that it is forbidden for Muslim women to marry non-Muslims and Muslims are prohibited from marrying polytheistic women (other than people of the book). Regarding Muslims marrying women of the people of the book, they take the al-tarjiḥ opinion that it is not permissible to marry women of the people of the book. Muhammadiyah seems to use two methods in answering this problem. The first method is to take the ijma' of the scholars. The second method is al-tarjih with historical, philosophical, sociological, and sadd al-dhari'ah approaches to interfaith marriages, what are the laws? Retrieved July 19, 2022. Fromhttps://muhammadiyah.or.id/nikah-beda-agama-how- Hukumnya/; Can You Marry Different Religions? Retrieved July 19, 2022. Fromhttps://muhammadiyah.or.id/may-menikah-beda-agama/).

MThe Indonesian Ulema Council (MUI) has two fatwas dealing with interfaith marriages. In its first fatwa in 1980, the MUI decided that the marriage of Muslim women and non-Muslim men was haram, then marriages between Muslims and women who were experts in the book MUI also decided that it was haram. MUI in 2005 decided that interfaith marriages are invalid and Muslim marriages with people of the book are haram and invalid. MUI in its two fatwas refers to 3 methods to explore its law, namely referring directly to the texts. Second, studying the opinions of the salaf scholars. Third, MUI conducts al-tarjih from the opinions of scholars with a sadd al-dhari'ah approach. (Mixed Marriage. Accessed July 19, 2022. Fromhttps://mui-jateng.or.id/perkawinan-dinding/; Perkawin different religions. Accessed July 19, 2022. Fromhttps://mui.or.id/perkawinan-beda-agama/.)

3.2. Judge's Considerations in Determining Number 916/PDT.P/2022/PN.SBY

POn April 26, 2022, the Surabaya District Court Judge granted the request for an interfaith marriage in decision number 916/Pdt.P/2022/PN.Sby which was carried out between a Muslim and a Christian woman in the presence of the Surabaya City Population and Civil Registry Office. PThe consideration of the judge in determining this case is quite a lot. These considerations are:

1. The applicant fulfills the formal requirements of his application;
2. Interfaith marriage is the domain of the District Court;
3. Applicants have the right to defend their religious beliefs;
4. Pthe applicant has the right to form a household and continue the lineage;
5. The petitioners already love each other and agree to proceed to marriage;
6. Applicants are approved by both parents;
7. The applicants have entered into marriages with their respective religions;
8. Interfaith marriage is not a ban;
9. Procedures for interfaith marriages are not like marriages of the same religion; And
10. The judge considered that the applicants renounced their religious beliefs which did not allow interfaith marriages;

3.3. Analysis of Indonesian Jurisprudence Determination of Interfaith Marriage by Religious Courts

Countryi Surabaya

If seen from the perspective of NU, Muhammadiyah and MUI, the interfaith marriages that the applicants will enter into are marriages that are illegitimate and illegitimate. The interfaith marriage case by the applicant is included in the case in the second Bahtsul Masa'il Nahdlatul Ulama, namely the marriage of a Muslim to a Christian which was carried out in two contracts, in a mosque and a church. NU's opinion is based on the opinion of the Shafi'i school of scholars. Muhammadiyyah is of the view that the people of the book today are not the people of the book that were the criteria of the old scholars. Marriage is also seen as not producing a family that is sakinah, mawaddah and full of grace. The number of Muslim women who can be married is also still large. This prohibition is also based on preventing damage (sad al-Dzari'ah), namely changing faith. MUI bases its opinion on the Qur'an and hadith, the opinion of the ulama', and the principles of fiqh. The MUI prohibits this marriage as a form of realizing and maintaining peace in household life.

Some of the judges' considerations in allowing this marriage are Human Rights Humans, mutually loving supplicants, and parental consent. The right to embrace and worship according to one's religion and beliefs, as well as the right to continue offspring through a legal marriage, is indeed a human right. However, the judge's decision to allow interfaith marriages on the assumption that the applicant renounced his religious beliefs which prohibited interfaith marriages was also inappropriate, even though the applicant himself said he still wanted to stick to his religion. Nahdlatul Ulama, Muhammadiyyah and MUI agree that an important condition for marriage is not only about loving each other but also building a family that is sakinah, mawaddah and full of grace in it. A family like this, of course, can only be realized if the compatibility of faith occurs. The judge's opinion that the applicant whose religion forbids this gave up his belief even strengthened that this marriage was not to form a sakinah mawadah and full of grace family but only to fulfill the applicant's personal desires. Parents' permission is indeed a mandatory requirement in a marriage, but if this

permission actually causes a Muslim to renounce his faith, then of course this should be something that is not followed.

4. CONCLUSION

The judge at the Surabaya District Court granted the request for an interfaith marriage with several considerations, namely: (1) the applicant fulfills the Formal requirements, (2) is within the realm of the District Court; (3) paras have the right to defend their religious beliefs; (4) the applicant has the right to form a household and continue the lineage; (5) the applicant loves each other and agrees to proceed with the marriage; (6) the applicant has the approval of both parents; (7) the applicant has married with their respective religions; (8) Interfaith marriage is not prohibited; (9) The procedures for interfaith marriages are not like general marriages; and (10) The judge considered that the applicants renounced their religious beliefs which did not allow interfaith marriages.

Nahdlatul Ulama, Muhammadiyyah and the Indonesian Ulema Council view interfaith marriages as illegitimate and illegitimate. Muhammadiyah holds the view of people of the book there are now people who are not the people of the book who were the criteria of the scholars of the past. Marriage is also seen as not producing a family that is sakinah, mawaddah and full of grace. This prohibition is also based on the aim of preventing damage (sad al-Dzari'ah), namely changing the faith of the husband and offspring. The MUI also forbids and forbids this marriage based on the Qur'an and hadith, the opinion of the ulama', and the principles of fiqh. MUI forbids this marriage is also a form of realizing and maintaining peace in household life. Nahdlatul Ulama in its Bahtsul Masa'il decided that the marriage of a Muslim with a Christian that is carried out in two contracts, in a mosque and a church is not valid. This opinion is based on the opinion of the scholars of the Shafi'i school of thought. Some of the judges' considerations in allowing this marriage are human rights, those who love each other, and the consent of the parents. The right to embrace and worship according to one's religion and beliefs, as well as the right to continue offspring through a legal marriage, is indeed a human right. However, the judge's decision to allow interfaith marriages on the assumption that the applicant renounces religious beliefs that prohibit interfaith marriages is also inappropriate. This is because when interfaith marriages occur, applicants whose religion prohibits interfaith marriages are considered to have left their religion even though the applicant himself said he still wants to stick to his religion. Nahdlatul Ulama, Muhammadiyyah and MUI agree that an important condition for marriage is not only about loving each other but also building a family that is sakinah, mawaddah and full of grace in it which can only be realized if the compatibility of faith occurs. Permission to marry with different religions with the assumption that the applicant whose religion forbids this gives up his belief actually reinforces that this marriage is only for the fulfillment of personal desires. Parents' permission is indeed an important thing in a marriage, permission that even causes a Muslim to renounce his faith is certainly something that is not followed.

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ABUSE OF POLICE AUTHORITY IN THE PERSPECTIVE OF ADMINISTRATIVE LEGAL FUNCTIONS

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Abstract: In general, officers and ranks of the National Police of the Republic of Indonesia in the field of Road Traffic and Transportation who carry out inspections of the completeness of motor vehicles or often referred to as raids on the road, periodically, and on the basis of authority for the police to carry out Police Operations and / or crime countermeasures, must be equipped with a warrant of duty. The motorist has the right to ask the officer to present the warrant to know whether the inspection is in accordance with legal procedures or not. While conducting a raid on a motorist, officers are required to submit a warrant. This refers to the technical matters and rules that must be considered by police officers when conducting inspections that have been stated in article 15 of Government Regulation Number 80 of 2012 concerning Procedures for Inspection of Motor Vehicles on the Road and Enforcement of Traffic and Road Transport Violations . This indicates that, when carrying out a motor vehicle raid on the road, the Traffic Police must complete its inspection procedure with a warrant of duty.
Keywords: Police; State Officials; Law State Administration; Authority.

Abstract :
In general, officers and ranks of the Indonesian National Police in the field of Traffic and Road Transportation who carry out inspections of the completeness of Motorized Vehicles or often referred to as road raids, periodically, and on the basis of authority for the police to carry out Police Operations and/or crime prevention, must accompanied by a work order. The rider has the right to ask the officer to show the duty order to find out whether the inspection is in accordance with legal procedures or not. When carrying out raids on motorists, officers are required to include a warrant. This refers to matters and technical rules that must be considered by police officers when carrying out inspections which are listed in Article 15 of Government Regulation Number 80 of 2012 concerning Procedures for Inspecting Motorized Vehicles on Roads and Enforcement of Traffic and Road Transportation Violations. This indicates that, when carrying out raids on motorized vehicles on the road, the Traffic Police must complete their inspection procedures with an assignment warrant.
Keywords: Police; State officials; State Administrative Law; Authority.

1. INTRODUCTION

In Indonesia, especially in big cities, police raids are often seen. This is usually done to filter out "naughty" drivers or violations. If proven violating, various sanctions can be given by the police, from giving a warning to giving a ticket. However, sometimes there are a handful of cases where it turns out that several police officers carry out raids without an official letter of assignment or notification via a signpost.

As in the viral video some time ago, June 26, 2022. In the video uploaded by the @jurnaliswarga62 account on the Tiktok channel, it shows a man who looks like he has been caught in a raid. It is believed that the video was recorded in the Aceh area. In the video, it is told that the man entered the hotel where he was staying, then suddenly two police officers were carrying out a raid. The man, while recording, asked about the raid, whether it was official or not and why he was being raided. As it turned out, the man who recorded the recording knew about the law and asked to be shown an official raid assignment letter, namely the SPT (assignment order) and questioned whether there was a sign indicating the raid was being carried out. But the officer instead asked the driver to come to the post, then the driver asked the officer to take the SPT and submit it at the hotel. The two policemen finally went to get the letter.

This journal is to educate readers why it is important to ask for the SPT during a raid. And why should a notification sign be included during a raid somewhere? We will discuss the full review in the following discussion.

2. METHOD

Research on the Abuse of Police Officer Authority From the Perspective of Administrative Legal Functions was carried out using a quantitative research method approach. Which research method is a type of research with systematic, planned, and clearly structured specifications from start to finish in making the research design. This research also requires a lot of numbers, starting from data collection, interpretation of the data, and the appearance of the results. To carry out the approaches in this study, here the author uses a type of non-experimental quantitative method, where the author provides a description of the quantitative data, attitudes, opinions of the population by studying the population.

As previously explained, the author's way of obtaining and collecting data is by using a structured questionnaire in the form of a Google Form which will be distributed to several populations whose opinions will be taken as research material. Apart from that, do not forget that as a research subject, an assessment of the Police is also carried out here. As well as related legislation, such as Government Regulation of the Republic of Indonesia Number 80 of 2012 concerning Procedures for Inspecting Motorized Vehicles on the Road and Enforcement of Traffic and Road Transportation Violations as the object of this research. Correlation between Research Subjects, who are none other than Police Officers and Research Objects, namely PP No. 80 of 2012 accompanied by public opinions obtained through Google Form data will be materials for this research. Assisted by several Scientific References that the author gets based on his understanding.

It is hoped that with the research method that the author has made, namely using a non-experimental quantitative research method in which the author has collected data, interpreted the data, as well as the appearance of the results that have been carried out in writing this journal, this writing is able to meet the criteria to be able to become reference material existing knowledge. So that it creates more benefits in terms of presenting literacy sources in academic circles. As an effort to participate in the intellectual life of the nation.

3. THEORETICAL REVIEW

3.1 Definition of State Administration

There are several views related to the definition of State Administration presented by several experts, including:

1. Leonard D. White said that state administration is all state activity to assist the government in carrying out state policies for the welfare of its people (Aisyah, 2018, p. 5).
2. Demock & Koening which defines administration into two parts of understanding, namely:
   a. In a broad sense, state administration is defined as state activities in organizing its political power;
   b. Meanwhile, in a narrow sense, state administration is an executive activity in the implementation of government.
3. Dwight Waldo defines Administration in two senses, namely:
   a. Public administration is the organization and management of people and things to achieve government goals;
   b. State administration is a science and art regarding governance which is used to regulate state affairs.
4. Pradjudji Atmosudirdjo revealed that State Administration is a function of administrative assistance from the government, in the sense that the government or state officials cannot carry out their duties and obligations without state administration. The duties of state administration consist of two things, namely:

a. State administration is the administration of the state as an organization. In this sense, where the President of the Republic of Indonesia doubles up as the government and at the same time the state administrator by leading a state apparatus;
b. State administration is governance that pursues the achievement of goals that have a state nature. In Indonesia, this task is carried out by state officials who are burdened with leadership and responsibility for the unity of one state organization.

5. Utrecht acknowledged that state administration is a unit of administrative apparatus under the leadership of the government, namely the President assisted by ministers, who carry out part of the government's work, administrative parts or functions that are not functioned by the judiciary, legislative and government bodies of the legal unions that are lower than the state, namely government agencies of the legal community.

Based on the statements of several experts as above, it can be said that state administration is an activity in the form of state governance in the form of a task force under the state executive and if there is no state administration, the state apparatus cannot administer government. Meanwhile, what is called State Administrative Law is a word which is a translation of Administratiefrecht in Dutch vocabulary, the mention of Verwaltungsrecht in Germany, Administrative Droit in France, Administrative Law in England and America.

3.1.1 Definition of State Administrative Law

Related to the understanding of Administrative Law is the law that regulates the structure and special authority of equipment from agencies, for example such as staffing which includes pensions, military conscription regulations, regulations related to education or teaching, arrangements regarding social security, housing, labor, guarantees poor people, and so on. Also according to State Administrative Law can be interpreted as a combination of regulations that enable state administration institutions to carry out their duties and also at the same time as a set of regulations that protect society against arbitrary attitudes regarding state administration, and also as a protector for the state administration itself (Aisyah, 2018, pp. 6-7).

3.1.1.1 Function of State Administrative Law

Philipus M. Hadjon revealed that State Administration Law has three functions, namely (Tutik and Widodo, 2011, p. 264).

1. Normative function
   This normative function contains the functions of the organization or government and concerns the matter of normalizing the power to govern in an effort to create a clean government. This function tends to indicate that state administrative law seeks to regulate basic norms related to government institutions as well as legal instruments used by institutions in government to carry out their duties in the wheels of government.
2. Instrumental function (instrumentele functie) The instrumental function has the meaning of determining the tools used by the government to use power in governing. According to P De Hans, this function consists of active instrumental functions and passive instrumental functions. The active instrumental function is in the form of authority, which is in the form of authority owned by the government agency, while the passive instrumental function is in the form of policies carried out by the government.
3. Guarantee Function (waarborgfunctie) Guarantee function is a function to provide guarantees or legal protection for the people. Where this function guarantees the implementation of government based on democracy. Then in order to be able to oversee the implementation of government based on democracy, it is necessary to provide guarantees through all acts of government behavior in carrying out supervision. This is done so that governmental tasks are carried out in a responsible and not arbitrary manner. Guarantees carried out by the legal function of state administration also concern all guarantees given to the public regarding all forms of legal protection and compensation for any government action deemed to have harmed the community.

4. ANALYSIS OF FINDINGS

4.1 Definition of Police

The police are a government agency whose job is to maintain security and public order, one of which is to control and arrest people who violate the law and so on. Then, Momo Kelana said that the term police has two meanings, the first is the police in the formal sense, which includes the organization and position of a police agency. Second, the police in a material sense, namely as part of the government which is responsible for issues and authority in dealing with disturbances related to order and security based on applicable laws and regulations (Jurdi, 2019, p. 301).

Charles Reith through his book entitled The Blind Eye of History says that the definition of Police in English is every effort to improve or regulate the structure of life in society, this understanding is based on the idea that humans are social beings who live in groups and make rules. mutually agreed upon. And among these groups there are parties or members who are unwilling to comply with the regulations that have been made and mutually agreed upon, giving rise to the problem of who is entitled and has the obligation to correct and discipline members of the group who have violated it, from that thought then police are needed (Wibowo, 2022, 134).

The definition of the police is also stated in the Encyclopedia and Social Science (Volume XI-XII, page 183), it is explained that the definition of the police covers the field of functions, broad tasks, used to explain various aspects of supervision in general. In another meaning, the police are given the meaning as things that have a relationship with the maintenance of public order and property from acts that violate the law (Wibowo, 2022, 135). According to the several definitions of the police that have been explained by several experts above, it can be concluded that the police are a controller of orderly deviations from the rules that have been made and agreed upon in a community group.

4.1.1 The powers of Police Officers are listed in the Constitution of the State

As one of the state officials who is an instrument of national defense, of course the police have an important position in the government structure. His participation in orderly society is quite large when viewed from various aspects of daily life. Not infrequently its existence needs to be acknowledged as a source of public order. The police in creating public order in society, of course, requires systematic arrangements so that the expected order can be realized. In line with this, the state constitution has regulated how the police can achieve this order by granting the powers that can and must be carried out by the police. These arrangements are contained in Law Number 2 of 2002 concerning the Indonesian National Police in Chapter III Duties and Authorities Articles 15 and 16.

Apart from being regulated in this Law, the police's powers are also clarified in Government Regulation Number 80 of 2012 concerning Procedures for Inspecting Motorized Vehicles on the Road and Enforcement of Traffic and Road Transportation Violations, which contains arrangements regarding the authority of the Police in the field of Traffic, especially related to public order and obedience in driving on the highway. These powers include inspection of vehicles on the highway as stated in Government Regulation Number 80 of 2012 Chapter II Procedures for Inspection of Motorized Vehicles on Roads in Part One concerning the Scope of Inspection Article 3 to Article 8. Some of the inspections referred to consist of completeness , driving license (SIM), motorized vehicle registration certificate (STNK),

In the practice of field inspections, the police will of course hold an activity called Raids. Raids are generally carried out in combination with the aim of upholding the function of traffic law so that the role of traffic rules is complied with by all road users (Chandra, 2014). One of the problems in carrying out raids that is often found is the abuse of authority by police officers in the form of discrepancies in the systematics of raids with related laws and regulations, namely Government Regulation Number 80 of 2012. a minimum distance of 50 meters before the checkpoint, as well as before and after the checkpoint on two-way traffic.

This causes the community to feel disadvantaged both materially and immaterially. Not only that, sometimes there are several police officers who when carrying out raids do not comply

with existing procedures, such as the absence of an assignment warrant and lots of illegal fees. Because of the many problems, the author will try to describe them from the point of view of the Administrative Law Function.

4.1.1.1 Correlation between Abuse of Police Authority and Administrative Law Functions

The normative function (normative function) in Administrative Law is more focused on government components to be able to exercise an authority based on legal norms. The study of legal norms in question is in the form of authority that has been regulated in laws and regulations. This aims to create legal certainty for authorized and/or authorized parties. With this in mind, it is hoped that there will be no abuse by government officials, such as the police.

The normative function that must be carried out by the police is to carry out their powers based on established regulations. These provisions must be carried out so that the objectives of the Administrative Law Function are achieved, namely to ensure legal justice, guidelines and standards for every human behavior and most importantly to create legal certainty in society (Agustian, n.d.). One of the powers that have been regulated by law against the police is stated in Law Number 2 of 2002. For the implementation of this law, several implementing regulations were issued, such as Government Regulation Number 80 of 2012 concerning Procedures for Inspecting Motorized Vehicles in Roads and Enforcement of Traffic Violations and Road Transportation.

In these regulations, several provisions have been explained regarding the authority of the police in carrying out their duties. However, even though provisions and limits on authority are provided by law, this does not fully make the police exercise their authority properly. There are several incidents or incidents that prove the abuse of authority by some police officers, which of course is contrary to existing regulations. This deviation certainly has an impact on the inefficiency of the function of administrative law in the aspect of its normative function. This is because in essence the normative function aims to make the parties in the government exercise their authority in accordance with predetermined regulations. Once such a rule exists,

Administrative law is the entire regulation of the law that forms the state apparatus, both high and low, the tools referred to here are the bodies that form the structure of a government, so Administrative Law is the provisions governing the policies taken when these tools will use constitutional authority (Nawangsasi, 2016, p. 54). As a law that regulates the running of government, of course, State Administrative Law also has a function, where with this function a regulation can regulate government policies. One of the functions possessed by State Administrative Law is the instrument function.

Instruments in the Big Indonesian Dictionary are defined as tools used to do something. This gives the sense that the instrument itself is something that is needed so that a job can be done. Meanwhile, what is meant by the Instrument Function in State Administrative Law is the function that regulates the norms used by the government in exercising its governing power (Syahrizal, 2013, p. 33). In accordance with the definition regarding the function of the instrument of the Constitutional Law, it is clear that the purpose of enacting this law is to control the power of the government so that it does not rule outside its authority.

This function regulates and guarantees all the powers of the state government apparatus, including the Police. If there is negligence or arbitrariness in carrying out their duties, such as the absence of a sign when carrying out a raid, or even the absence of a ticket order, it can be said that the police have committed negligence in exercising their authority. Even though all the provisions and procedures regarding carrying out inspections on the road have been listed in the Government Regulation of the Republic of Indonesia Number 80 of 2012 concerning Procedures for Inspecting Motorized Vehicles on the Road and Enforcement of Traffic and Road Transportation Violations. This proves that the function of this instrument is not optimal in its application so that there are still many unscrupulous officials who act as they please in carrying out their duties and can harm the public interest.

If one observes the function of the existing instruments in the State Administrative Law, in cases like the one mentioned above, it will be seen how little awareness the government

apparatus has in carrying out all its authority. State officials in general and especially police officials still often make procedural errors in exercising their authority. This means that the Instrument Function in Administration in Indonesia is still lacking in the implementation of state life.

With regard to the abuse of authority, State Administrative Law with its instrument function seeks to minimize it so that it does not happen again in the future. This function also provides legal protection to the public for losses incurred as a result of the arbitrariness of the apparatus. In addition, as an instrument or tool for the running of good governance, this function is also as a controller of the policy steps taken by the government, so that it is always orderly and does not violate the arrangements regarding its duties and authorities. Regarding the effectiveness of the influence of this function, it still cannot be said to be completely successful, but at least there are rules that can remember and bind our state officials to stick to the signs of their duties.

In addition to the normative and instrument functions, State Administrative Law also has a guarantee function in it. Guarantee in the Big Indonesian Dictionary comes from the word guarantee which means to bear. This means that one of the functions of State Administrative Law is to bear or ensure that the people receive legal protection from any actions by the apparatus that are detrimental.

Basically, every policy carried out by officials has been regulated systematically and should comply with these rules, but often not a few are still absent and negligent from their authority, so that the function of this guarantee acts as a shield so that society does not become an object that is always monitored. loss, loss here is when the authority that should be able to protect sometimes becomes a tool that complicates the public interest. The government seems to dominate and feels that it has more authority to take actions that are beyond its authority.

If it is related to a raid carried out without a ticket or a sign indicating a raid that is 50 meters apart before the inspection or 50 meters before and after the checkpoint when on a two-way traffic lane, then the Police as a state official can be said to have violated procedure in carry out their duties and powers. In this case the community is disadvantaged in terms of time and material in the form of money which is sometimes requested by the police from people who do not have complete vehicle procedures. If, in the practice of these raids there is extortion in the form of extortion, it is not impossible if this is called abuse in carrying out duties and authorities.

The guarantee function exists to ensure legal protection for community members (Zaman, nd, p. 219). In practice, state officials often violate the authority that has been determined, causing losses that have direct or indirect impacts on the community. The function of the State Administrative Legal Guarantee must be able to protect citizens so that justice and welfare can be realized evenly. The use of state power against citizens is not without conditions. Citizens cannot be treated arbitrarily as objects.

On the contrary, state officials are tasked with assisting the community in enforcing the norms and rules that apply in the life of the state. As officials who can be held responsible for their authority, they should not go far and deviate from the rules. Because of this, the guarantee function of state administrative law must pay more attention to state apparatus when they want to exercise their powers, so that people's rights can still be respected.

All decisions that are applied to the community should be accountable, it is also appropriate if we need regulations that can direct the implementation of government in accordance with what the people want. The government has realized specifically regarding the relationship between the state and its people, namely by having an administrative law that regulates how policies and the interests of the people should not overlap. It is hoped that by implementing this function it can help the government organize good governance in accordance with legislation and in accordance with the General Principles of Good Governance.

5. CONCLUSION

From this it can be seen that there is a correlation between the abuse of Police Officers and the Legal Functions of State Administration. The correlation in question includes how

administrative law functions are not carried out optimally when there are many abuses of authority. Where the function of State Administrative Law should be to be able to create and direct government policies that are better and do not violate the rules that have been set.

The non-optimum function of administrative law is evidenced by the abuse of authority by police officers during raids, such as the absence of signs indicating the conduct of raids or the absence of a warrant of assignment that should have been pocketed by police officers when carrying out raids on the streets. This is reinforced by the acknowledgments of several respondents that we collected and asked for their opinions, as explained in the table below:

Table 1-Public Opinion About the Abuse of Police Officer Authority

NO	RESPONDENT NAME	OPINION
1	Rizal Muhaimin	If the operation is obedient or the operation is carried out several times a year, it is mandatory to use a notice board, if you do not use a notice board then the raid is not in accordance with the procedure.
2	Muhammad Nur Wahyu Pramono	Not according to SOP
3	Yunan Setyo piston	If there is prior notice, such as a pamphlet, that's fine. However, if there is none then the person is definitely looking for profit.
4	Erlindah Yugo Setiawati	The police did this on purpose so that many people would be raided, but it would be better if there was a notice board.
5	Ririk Irsanti	I think the police action was very detrimental to me because of the lack of information about the raids and wasted a lot of time.
6	Pramestian Adistio Firmansyah	In my opinion, it is better to notify the public and put up a raid sign so they can be aware of a police raid. And can prepare documents and equipment before driving.
7	Fitri Destriani	In my opinion, this action is not justified because if an officer is going to carry out a raid, there must be information beforehand.
8	Rahadian Oktaviarani	Should have posted a raid notice sign so we would know

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ABORTION IN THE PERSPECTIVE OF POSITIVE LAW AND ISLAMIC LAW

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Abstract*:* Abortion is an act of abortion. In Indonesia, this action is prohibited, and is included in the Crimes Against Life Chapter in the Criminal Code (KUHP). Although abortion is legally prohibited, the reality is that abortions are still carried out by women for various reasons. Positive law and Islamic law have regulated the criminal act of abortion, in the Criminal Code the act of intentional abortion (abortus provocatus) is regulated in the second book of Chapter XIV concerning Moral Crimes, especially Article 299, and Chapter XIX Articles 346 to 349 , and is classified as a crime against life. in Islamic law itself the crime of abortion is described in the Qur'an in Surah An-Nisa' verse 93, Surah Al-Isra 'verse 31.
Keywords: Abortion; Crime; Positive Law; Islamic Law.

1. INTRODUCTION

In Islam it is said that the life of the fetus is a life that must be respected. Therefore it becomes an offense to abort a fetus in the womb, in this case carrying out an abortion, especially since the action was carried out without any valid reasons or confirmed by the medical team (Lestari and Suhandi, 2011, p. 74).

In Islamic law there are differences of opinion regarding abortion in the four schools of fiqh. Imam Hanafi, for example, is the most flexible school of thought in the view that before four months of pregnancy, an abortion can be performed if it threatens the life of the woman who is pregnant, the Maliki school forbids abortion after fertilization, the Syâfi'î school views that after zygote vertillation there is no may be disturbed, and intervention against it can be considered a crime, while the Hambali School firmly emphasizes that abortion is a sin, with bleeding that causes miskram as an indication that abortion is haram (Susanto, 2015).

When we talk about automatic abortion, we also talk about women. There are many cases out there, not only in adult women, but also in teenagers and even children. This can be justified because women are seen as perpetrators of abortion. From these facts it can be explained that in fact many women who have abortions, whether consciously or not, actually carry out this action at high risk for the health and safety of their souls and the child in their womb. Because of this, women must be given knowledge and understanding about the negative effects of abortion as well as given spiritual enlightenment so that they do not easily carry out the abortion for whatever reason, even though it is actually a reproductive right or a form of women's autonomy over their bodies. in fact, no less than 2 million Indonesian women annually have abortions due to unwanted pregnancies (KTD). The results of research by the UI Health Center and the Women's Health Foundation in 2003, found that 77% of those who had abortions were housewives who had husbands and only 12% were carried out by pre-marital girls. In a website about abortion, it is written that every year 42 million women in the world have an abortion. For example, like the case in East Java, a girl was raped by someone she just met on the Facebook social network. The victim named PTR (14 years) admitted that SK (22 years) raped her and then sold her to some of her friends on campus. PTR was not sold to SK's friends, but PTR reported the incident to the Surabaya City Police.

The issue of abortion is a controversial issue, because abortion is not only related to health problems, but is also closely related to moral ethics, religion and law. There is controversy among the scholars that is closely related to the problem of non-therapeutic abortion at the age of before 120 days. Some of them allow it, make it makruh, and some even forbid it. (Sari, 2013).

Given the breadth of the issue of abortion, the authors limit the discussion of abortion only within the perspective of positive law and Islamic law. Of course according to the ability of the author. With the hope that it can provide more in-depth scientific knowledge and can provide benefits as well as enlightenment for readers, especially women (Fidawaty, 2018, p. 107).

2. RESEARCH METHODS

This research is a library research. What is called library research or often also called literature study, is a series of activities related to methods of collecting library data, reading and recording and processing research materials. Meanwhile, according to Mahmud in his book Educational Research Methods explains that library research is a type of research conducted by reading books or magazines and other data sources to collect data from various literature, both libraries and other places (Mahmud, 2011, p. 86).

The sources of this research are laws, books and journal articles. Data was collected through literature study and then analyzed descriptively qualitatively.

3. ANALYSIS OF STUDY FINDINGS

3.1. Definition of Abortion

Abortion comes from the English word abortion and the Latin word abortion. etymologically means, abortion or miscarriage. While abortion in Arabic is called ijhadh which means dropping, throwing, throwing or getting rid of. In the Big Indonesian Dictionary, abortion means the emission of an embryo that is no longer possible to live (before the fourth month of pregnancy), miscarriage or keluron, a state of cessation of normal growth (for living things), abortion (fetus) (Saifulloh, 2011). In legal terms, it means expulsion of the products of conception from the uterus prematurely (before they can be born naturally).

Its relationship with abortion, about age. has not yet reached 28 weeks, has legal significance, because the end of 28 weeks is the end of fetal survival in English law. There is a possibility of change because the development of medical technology is still a legal survival (Romli, 2011).

In medical science, abortion can be classified into two categories, namely spontaneous abortion and provocative abortion. Spontaneous abortion (occurring on its own, miscarriage), the incidence of this abortion is generally recorded at 10% -20%. Meanwhile provokartus abortion (intentionally aborted), constitutes 80% of all abortions. There is provocative abortion based on a medical diagnosis that requires the abortion of the womb. And there are also those without a medical diagnosis, that is, at the will of the mother for various reasons such as a difficult economy, too many children, extra-marital relations, rape and so on, this is called non-therapeutic abortion. Abortus provocatus is divided into two, namely artificialis or therapeu ticus, a kind of abortion is an abortion for reasons that endanger the mother's life, for example because the mother has a serious illness,

3.2. Types of Abortion

Abortion / medical abortion can be divided into several types:

a) *Spontaneous abortion*, is an abortion that occurs without preceded by mechanical or medicinal factors solely caused by natural factors. And commonly called abortion / spontaneous abortion.
b) *Complete abortion*, (complete miscarriage) that is, all products of conception are removed so that the uterine cavity is empty.
c) *Incopletic abortion*, (remaining miscarriage), that is, there is only a portion of the products of conception that is released, what remains is the second decim and the placenta.
d) *Imminent abortion*, namely a miscarriage that is fatal and will occur in this case the discharge of the fetus can still be prevented by giving hormonal and anti-pasmodica drugs.
e) *Missed abortion*, namely the condition where the fetus has died but remains in the uterus and is not expelled for two months or more.

f) *Habitual abortion*or recurrent miscarriage, which is a condition where the patient has had 3 or more consecutive miscarriages.

g) *Infectious abortion*and septic abortion, is abortion accompanied by genital infection.

Accidental loss of the fetus usually occurs in young pregnancies (one to three months). This can occur due to diseases including: fever, high fever, kidney tuberculosis, syphilis or due to genetic errors. In spontaneous abortion it is not uncommon for the fetus to come out intact. There are times when a woman's pregnancy can fall on its own without any intentional action or action. This is often called a "miscarriage" or spontaneous abortion. This often happens to mothers who are young pregnant, due to an unintentional and desired result or because of an illness they are suffering from (Harefa, 2019).

3.3. Abortion in Positive Criminal Law

According to the Criminal Code in Indonesia, abortion is categorized as a criminal act or categorized as a crime against life, as in Article 299, Article 364, Article 348, Article 349 of the Criminal Code, prohibiting abortion and the legal sanctions are quite severe. The punishment is not only aimed at the woman concerned but all parties involved in the crime regardless of the background of the act and the person who committed it, namely all people, both perpetrators and abortion helpers, such as doctors or midwives (Tutik, 2010, p. 185).

The following are several articles in the Criminal Code (KUHP) which regulate abortion (Abortus Provocatus):

Article 229 :

a) Any person who deliberately treats a woman or orders her to be treated, with the notification or hope that because of this treatment her pregnancy can be terminated, shall be punished by a maximum imprisonment of four years or a maximum fine of three thousand rupiahs.
b) If the offender does so for profit, or makes the act out of pursuit or habit, or if he is a physician, midwife or medicine man, the sentence can be increased by one third.
c) If the person who is guilty of committing the crime is undergoing a search, his right to carry out the search may be revoked.

Article 314

“A mother who, out of fear of being caught giving birth to a child, at the time the child is born or shortly thereafter, deliberately takes the life of her child, is threatened, having killed her own child, with a maximum imprisonment of seven years”.

Article 342

“A mother who, in order to carry out the intention specified for fear of being found out that she is about to give birth to a child, at the time the child is born or shortly thereafter deprives the child's life, shall be punished, having committed murder of her own child with premeditation, by a maximum imprisonment of nine years”.

Article 343

“The crimes described in articles 341 and 342 are seen, for other people who participate in committing them, as murder or premeditated killing.

Article 346

"A woman Whichwith deliberate intent to abort or kill her womb or order another person to do so, shall be punished by a maximum imprisonment of four years”.

Article 347

1) Whoever intentionally aborts or kills the womb of a woman without her consent, shall be punished by a maximum imprisonment of twelve years.
2) If said act results in the death of the woman, a maximum imprisonment of fifteen years is imposed.

Article 348

1) Any person who with deliberate intent aborts or kills the womb of a woman with her consent, shall be punished by a maximum imprisonment of five years and six months.
2) If said act results in the death of the woman, a maximum imprisonment of seven years is imposed.

Article 349

"If a physician, midwife or pharmacist helps commit a crime referred to in Article 346, or commits or helps commit one of the crimes described in Articles 347 and 348, then the sentence specified in that article can be added to one third and the right to carry out search in which the crime was committed".

Article 535

"Anyone who openly demonstrates a means to abort a content, or openly or without being asked to offer it, or openly or by broadcasting a text without being asked, designates as available, such means or intermediaries, shall be threatened with maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiahs"

In my opinion, the abortion that has been regulated in the Criminal Code is very adequate and even very serious in efforts to enforce the criminal act of abortion. Criminal legislation in Indonesia has legal status which is "illegal" in nature, prohibiting abortion without exception. Thus, the Criminal Code does not distinguish between abortion provocatus criminalis and abortion provocatus medicalis/theraperticus. It can be seen that whatever the reason for the abortion, it still violates the law in force in Indonesia.

The Civil Code also regulates abortion, namely in article 2 and article 1363. In essence, these articles state that charges are imposed on people who have abortions or people who help carry out either directly or indirectly (Pranata, 2020). In essence, the formal law governing the issue of abortion states that the Indonesian government rejects abortion. Exceptions are given if there are medical indications as stated in Health Law Number 23 of 1992 Article 15 and Article 80. In addition, the issue of abortion is also related to the Indonesian Doctor's Oath, which among other things states that doctors will respect every life (Susilawati, 2015).

The same thing has also been regulated in Law Number 36 of 2009 concerning Health (Health Law) Article 75 paragraph (1) which reads "Every person is prohibited from having an abortion". However, there is an exception in Article 75 paragraph (2) which reads "The prohibition referred to in paragraph (1) can be excluded based on a) medical emergency indications detected at an early age of pregnancy, whether those that threaten the life of the mother and/or fetus, who suffer from genetic diseases severe and/or congenital defects, or those that cannot be repaired, making it difficult for the baby to live outside the womb or; b) pregnancy as a result of rape which can cause psychological trauma to the rape victim. Then,

Article 75 of the Health Law clearly shows that the law prohibits abortion except for the type of abortion provocatus therapeuticus (an abortion performed to save the life of the mother and/or her fetus). In the world of medicine, provocatus medicalis abortion can be performed if the mother's life is in danger of death as a result of the premature birth of the baby or the condition of the pregnant woman before delivery experiencing health problems involving, Iatrogenic, maternal, uterus, placenta, amniotic fluid, fetus, and cervix (Yanti, 2020).

3.4. Abortion in Islamic Criminal Law

In deciding the law of a case, a mujtahid must take several things. The stages of tracing the law on certain issues must be in accordance with the sequence or basic order of Islamic law (Buchari, 2018). This is a must for a mujtahid who really wants to study the Qur'an while still using the Al-Qur'an and Hadith as a guide and reference. Because, it is very naive if someone who wants to study and explore the meaning or content contained in the Al-Quran then does not return to referring to the main and most important source (Fatwamati, 2016).

The Al-Qur'an's description of the process of conception is not disclosed in detail, from beginning to end, but is stated in general and global terms. The verses that are usually used as references when talking about abortion include the following (Munarif, 2022).

a. Surah al-Isra' (17): 31 and 33:

وَلَا تَقْتُلُوٓاْ أَوْلَٰدَكُمْ خَشْيَةَ إِمْلَٰقٍ ۖ نَّحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ ۚ إِنَّ قَتْلَهُمْ كَانَ خِطْـًٔا كَبِيرًا

"Do not kill your children for fear of poverty. We will provide sustenance for them and also for you. Truly killing them is a great sin."

وَلَا تَقْتُلُواْ ٱلنَّفْسَ ٱلَّتِي حَرَّمَ ٱللَّهُ إِلَّا بِٱلْحَقِّ وَمَن قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لِوَلِيِّهِۦ سُلْطَٰنًا فَلَا يُسْرِف فِّي ٱلْقَتْلِ إِنَّهُۥ كَانَ مَنصُورًا

"And do not kill the soul that is forbidden by Allah except with truth. And whoever is unjustly killed, then verily We have given power to his guardian, but let not his family transgress in killing. Truly he is the one who has been won."

b. Letter. al-An'am (6): 151, stated:

قُلْ تَعَالَوْاْ أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ أَلَّا تُشْرِكُواْ بِهِۦ شَيْـًٔا وَبِٱلْوَٰلِدَيْنِ إِحْسَٰنًا وَلَا تَقْتُلُوٓاْ أَوْلَٰدَكُم مِّنْ إِمْلَٰقٍ نَّحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ وَلَا تَقْرَبُواْ ٱلْفَوَٰحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَلَا تَقْتُلُواْ ٱلنَّفْسَ ٱلَّتِي حَرَّمَ ٱللَّهُ إِلَّا بِٱلْحَقِّ ذَٰلِكُمْ وَصَّىٰكُم بِهِۦ لَعَلَّكُمْ تَعْقِلُونَ

"Say: Come, let me read what Allah has forbidden you: do not associate anything with Him, and worship both parents and parents. And do not kill your children because of poverty. We will provide sustenance for you and for them; and do not come close to abominable deeds, whether visible in them or hidden, and do not kill a soul that is forbidden by Allah except on the basis of something that is true. That is what was bequeathed to you, so that you may understand.

The description of the hadith which is the second source of Islamic law, as well as a source of reference in solving all problems that can be used as evidence in life, is of course very much needed in studying the issue of abortion. Several hadith editors were found with various sequences of transmission, which can be traced to various sources of muktabarah hadith books, including the following.

a. Sahih Bukhari Hadith in the Book Bad' al-Khalq
From Abdullah bin Mas'ud: "The process of human occurrence is first a seed that has been fertilized in the mother's womb for 40 days, then turns into 'alaqah which takes 40 days, then turns into a muddah which takes 40 days anyway. After that Allah sent an angel who was ordered to write down four things, namely about his deeds, his sustenance, his death, and his fate to be wretched or dangerous which then the spirit breathed on him.(Meranti, 2015).

b. The hadith editor in Sahih Muslim, Kitab alHudud, stated:
From Ubadah bin Shamit said: We were with the Messenger of Allah. In an assembly, he then said: "I was sworn in not to associate partners with Allah with anything, do not commit adultery, steal, and do not kill souls that Allah has forbidden except by right."

Yusuf Qardawi said that in general, referring to the provisions of Islamic law, the practice of abortion is prohibited and is a crime against living beings, therefore the punishment is very severe for those who do it. Muhammad Mekki Naciri, also stated that all Islamic legal literature from various existing schools of thought agrees that abortion is haram, because it is an act of murder and is absolutely not permissible, unless abortion is supported by valid reasons. Even so, the opinions of the scholars, related to the opinions above, are very diverse, especially in terms of determining when abortion is permissible with justified reasons.

The Hanafi school of thought allows abortion before 120 days of pregnancy on the grounds that creation has not occurred. The view of some other scholars from this school only allows before the 80th day of pregnancy on the grounds that creation occurs after entering the stage of muddah or the second 40th day of the fetus. The majority of Hanabilah scholars allow abortion as long as the fetus is still in the form of a blood clot ('alaqoh) because it is not yet human. Syafi'iyyah forbids abortion on the grounds that life begins from conception, one of which was stated by al-Ghazali in Ihya Ulumuddin. He was of the opinion that abortion is a criminal act that is unlawful regardless of whether there is a soul or not, because life has existed since the meeting between sperm and ovum in a woman's womb. If the spirit has been blown into the fetus, then it is a very heinous crime, on the same level as killing a live baby. However, al-Ghazali in his book al-Wajiz has a different opinion from his writings in al-Ihya, he admits the truth of the opinion that abortion in the form of a clot of blood ('alaqoh) or a lump of flesh (mudghoh) is okay because it has not taken place yet.

The majority of Malikiyyah scholars prohibit abortion. The legal basis used as an argument for these scholars is the following two hadiths of the Prophet.

a. *"From Abi Abdurrahman Abdillah bin Mas'ud RA said the Messenger of Allah told us that in fact someone among you was collected in your mother's stomach for 40 days in the form of a nutfah, then became a clot of blood ('alaqoh) at the same time, then became a lump of flesh (mudghoh) also at the same time. After that an angel was sent to blow the spirit into it and was sent to record four cases, namely to record his fortune, his age, his deeds and whether he was happy or unhappy" (HR. Muslim).*
b. "I heard the Messenger of Allah say that when the nutfah has passed forty-two days, Allah sends an angel to shape its appearance, make its hearing, sight, skin, flesh and bones and then the angel asks: O my Lord, was it made male or female? Then Allah determines what he wants, then the angel writes it" (HR. Muslim).

Several scholars also commented on the issue of abortion. Abdur Rahman Al Baghdadi in his book Emancipation Is There in Islam states that abortion can be performed before or after the soul (spirit) is blown. If it is carried out after the soul has been blown, that is, after 4 (four) months of pregnancy, the fiqh scholars agree that it is forbidden. However, the fiqh scholars differ on whether an abortion is performed before the soul is blown, some allow it and some forbid it. Among others, Muhammad Ramli (d. 1596 AD) in his book An Nihayah, who permitted abortion before the breath of the soul, argued that there was no living creature yet. There are also those who view it as makruh, arguing that the fetus is growing. Those who forbid abortion before the soul is breathed include Ibn Hajar (d. 1567 AD) in his book At Tuhfah. Even Mahmud Shaltut, former Chancellor of Al Azhar University in Egypt, is of the opinion that since the meeting of a sperm cell with an ovum (egg cell), abortion is forbidden, because there is already life in the womb which is undergoing growth and preparation to become a new animate creature named human. whose existence must be respected and protected. It will be even more evil and sinful if the abortion is carried out after the fetus is alive, and the sin will be even greater if the newborn is thrown away or killed from the womb. because there is already life in the womb that is experiencing growth and preparation to become a new animate creature named human, whose existence must be respected and protected. It will be even more evil and sinful if the abortion is carried out after the fetus is alive, and the sin will be even greater if the newborn is thrown away or killed from the womb. because there is already life in the womb that is experiencing growth and preparation to become a new animate creature named human, whose existence must be respected and protected. It will be even more evil and sinful if the abortion is carried out after the fetus is alive, and the sin will be even greater if the newborn is thrown away or killed from the womb.

The opinion agreed upon by the fuqoha, that it is unlawful to have an abortion after the soul has blown (four months), is based on the fact that the blowing of the spirit occurs after 4 (four) months of pregnancy. Abdullah bin Mas'ud said that Rasulullah SAW said: "Verily, each of you collects what happens in your mother's stomach for 40 days in the form of ˜nuthfah, then in the form of 'alaqah for that long too, then in the form of mudghah for that long too, then the spirit is blown into him . (HR. Bukhari, Muslim, Abu Dawud, Ahmad, and Tirmidhi) (Yusra, 2011, p. 1).

3.5. The crime of abortion committed by doctors according to Law Number 36 of 2009 concerning Health

According to the Criminal Code (KUHP), abortion has been regulated in the criminal law in force in Indonesia, abortion or abortion is a crime, known as "Abortus Provocatus Criminalis". The act of abortion in the Criminal Code (KUHP) in Indonesia is categorized as a criminal act, which receives a penalty (Ahmad, 2015):

a. Mothers who have abortions Doctors or midwives or traditional healers who help with abortions
b. People who support abortion

Doctors basically do not allow abortion. Before taking the oath of office from the start, the oath of Indonesian doctors was based on the Geneva Declaration which contained the completion of the Hippocratic Oath. A doctor proclaims that everyone's life will be respected from the

moment of conception. This is stated in the Indonesian Code of Medical Ethics, which contains the general obligation of every doctor to protect humans at all times. If a doctor violates it, the doctor will be tried according to the code of ethics, and will be subject to the sanction of "expulsion" as a member of the medical professional association or members of the professional community. Therefore, if the reason imposed is not because of pregnancy, then the health of the mother and/or the fetus in the womb may be threatened, such as for mothers with severe genetic diseases and/or birth defects (Kurniadi et al., 2020).

If a doctor, midwife or pharmacist helps to commit a crime under Article 346, or commits or helps commit one of the crimes described in Articles 347 and 348, then the sentence specified in that article can be added to one third and the right to carry out search in which the crime was committed The subject is a doctor, midwife or pharmacist. They are special subjects, the actions taken are:

a. Helping the crime Article 346; assisting here is in the sense of Article 56. However, they are not threatened with a maximum of four years minus one third, but four years plus one third.
b. Committing the crime is Article 347 or 348. In this case the maximum penalty is added to one third of Article 347 or 348 (Wulandari, 2019).

This is regulated as a provision in the articles of the Criminal Code which clearly does not provide an opportunity for an abortion to be carried out, if the application of the provisions of the article is absolute and there is no reason whatsoever. All forms of abortion are prohibited for women, without providing an alternative to providing safe reproductive health technology that can reduce the risk of death for pregnant women, due to the risk of serious illness that endangers the life of the pregnant woman. As a consequence, medical workers, especially doctors, midwives and other officers, are considered as violators of the law when they perform abortions with the aim of saving lives.

Article 194 of the Health Law reads, "Any person who intentionally has an abortion not in accordance with the provisions referred to in Article 75 shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to Rp. 1,000,000,000 (one billion rupiah))".

Criminal provisions regarding abortion provocatus criminalis as in Law Number 36 of 2009 concerning Health are considered good because they contain general and specific prevention to reduce the number of abortion crimes. By experiencing such a severe criminal threat, it is hoped that criminal abortion perpetrators will become deterrent and not repeat their actions again, in the legal world this is referred to as special prevention, namely efforts to prevent abortion perpetrators provocatus criminalis from repeating their actions (Pranata et al., 2020)).

4. CONCLUSION

The word abortion comes from the English word abortion and the Latin word abortion. etymologically means, abortion or miscarriage. The word abortion in Arabic is called ijhadh which means dropping, throwing, throwing or getting rid of. Whereas in the Big Indonesian Dictionary, abortion is the emission of an embryo that is no longer possible to live (before the fourth month of pregnancy), miscarriage or keluron, a state of cessation of normal growth (for living things), abortion (fetus). Types of abortion: spontaneous abortion, complete abortion, incomplete abortion, imminent abortion, missed abortion, infectious abortion and septic abortion.

According to the Criminal Code in Indonesia it is categorized as a criminal act or categorized as a crime against life, as in Article 299, Article 364, Article 348, Article 349 of the Criminal Code, prohibiting abortion and the legal sanctions are quite severe. The punishment is not only aimed at the woman concerned but all parties involved in the crime regardless of the background of the act and the person who committed it, namely all people, both perpetrators and abortion helpers, such as doctors or midwives.

The Qur'an does not explain in detail the process of fertilization, from start to finish, but is stated in general and global terms. Verses that are usually used as references when talking about abortion include the verses in QS. al-Isra' (17): 31 and 33. verses in QS. al-An'am (6): 15. The description of hadith as the second source of Islamic law, as well as a source of reference in solving

all problems that can be used as evidence in life, is of course very much needed in studying the issue of abortion. From "Ubadah bin Shamit said: We were with the Messenger of Allah. In an assembly, he then said: "I was sworn in not to associate partners with Allah with anything, do not commit adultery, steal, and do not kill souls that Allah has forbidden except by right. Some of the opinions of scholars include: Yusuf Qardawi, Hanafi School, Majority of the Malikiyyah scholars According to the Criminal Code (KUHP), abortion has been regulated in the criminal law in force in Indonesia, abortion or abortion of the fetus is a crime, known as "Abortus Provocatus Criminalis". The act of abortion according to the Indonesian Criminal Code (KUHP) is categorized as a criminal act.

Who received the punishment:

a. Mothers who have abortions
b. Doctors or midwives or traditional healers who help perform abortions
c. People who support abortion Doctors basically don't allow abortions.

Before taking the oath of office from the start, the oath of Indonesian doctors was based on the Geneva Declaration which contained the completion of the Hippocratic Oath. A doctor proclaims that everyone's life will be respected from the moment of conception. This is stated in the Indonesian Code of Medical Ethics, which contains the general obligation of every doctor to protect humans at all times. If a doctor violates it, the doctor will be tried according to the code of ethics, and will be subject to the sanction of "expulsion" as a member of the medical professional association or members of the professional community. Therefore, if the reason imposed is not because of pregnancy, then the health of the mother and/or the fetus she contains may be threatened, such as for mothers with severe genetic diseases and/or birth defects. If a doctor, midwife or pharmacist helps to commit a crime under Article 346,

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TINDAK PIDANA GERAKAN SEPARATIS KELOMPOK KRIMINAL BERSENJATA (KKB) DI WILAYAH PAPUA DALAM PERSPEKTIF HUKUM PIDANA POSITIF DAN HUKUM ISLAM

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Abstrak: Maraknya konflik di Papua yang disebabkan karena adanya aksi Kelompok Kriminal Bersenjata (KKB) dimana kelompok tersebut pro-kemerdekaan tanah Papua yang mendorong pemerintah untuk mengambil suatu tindakan yang lebih tegas dengan menetapkan KKB Papua sebagai kelompok terorisme. Tentu hal ini mendatangkan pro-dan kontra di berbagai kalangan. Penelitian ini dimaksudkan untuk mengkaji tentang gerakan separatis Kelompok Kriminal Bersenjata (KKB) di wilayah Papua dalam perspektif hukum pidana positif dan hukum Islam. Metode penelitian ini menggunakan metode yuridis normatif yang didasari pada aturan hukum maupun aliran pemikiran dari ahli hukum dengan cara menganalisa dari sumber hukum primer. Selain bahan hukum primer, bahan hukum sekunder yang dipergunakan dalam penelitian ini adalah buku-buku dan jurnal-jurnal yang memuat tentang pemberontak, perbuatan makar dan terorisme. Analisis dari penelitian ini dapat disimpulkan bahwa berdasarkan hukum positif KKB di wilayah Papua dikenai Pasal 104 – 110 KUHP, sedangkan berdasarkan Hukum Pidana Islam jarimah hudud dalam bentuk Pemberontakan (*Al-Baghyu*).

Kata kunci: Kelompok Bersenjata; Gerakan Separatisme; Hukum Pidana Positif; Hukum Pidana Islam;.

1. PENDAHULUAN

Kelompok Kriminal Bersenjata (KKB) Papua adalah kelompok yang menginginkan Papua agar melepaskan diri dari NKRI. Oleh karena itu, kelompok tersebut sudah bisa disebut sebagai gerakan separatisme karena mengancam keutuhan wilayah NKRI. Gerakan Separatisme yang artinya sebuah kelompok yang tujuannya yaitu memisahkan diri dari suatu wilayah atau suatu negara. Gerakan separatisme dilakukan oleh beberapa oknum dengan cara melakukan tindakan kasar dan brutal terhadap suatu pengambil alihan militer yang terjadi dahulu.[1]

Dibeberapa negara banyak sekali kelompok teroris yang menganggap gerakan separatisme adalah suatu tindakan yang tujuannya untuk mencari kebebasan dan kemerdekaan. Gerakan separatisme dalam hukum pidana islam disebut *Bughat* yang artinya pemberontakan terhadap pemerintahan.[2]

Ibn Arafah al-Maliki mengartikan *Bughat* sebagi pembangkangan terhadap negara yang sah dan adil, meskipun memiliki alasan. Sedangkan dalam hukum Islam yang dimaksud dengan *Bughat* adalah suatu usaha atau gerakan yang dilakukan oleh suatu kelompok dengan tujuan untuk menggulingkan pemerintahan yang sah.[3]

Ada pula pandangan dari tokoh lain mengenai tentang *Bughat,* Khatib Syarbini dalam kitab *al-Iqna' fi Halli Alfazh Abi Syuja'* terdapat tiga syarat mengenai *Bughat*, yaitu pertama, mereka yang memberontak memiliki kekuatan. Kekuatan yang dimikliki oleh kelompok tersebut menggunakan senjata, logistik, massa, wacana, dan sejenisnya. Kedua, mereka melakukan pemberontakan terhadap kepala negara sehingga mereka keluar dari ketaatan terhadap penguasa yang sah. Jika yang dimiliki hanya sebuah kekuatan saja, tetapi tidak diselingi dengan

[1] Anna Yulia Hartati, "Separatisme Dalam Konteks Global (Studi Tentang Eksistensi Republik Maluku Selatan (RMS) Sebagai Gerakan Separatis Indonesia)," *Spektrum* 7, no. 2 (2010): 1–10.
[2] Zainuddin Ali, *Hukum Pidana Islam*, cet-1. (Jakarta Selatan: Pustaka Firdaus, 2007), 134.
[3] Ibid., 135.

ketidak taatan terhadap penguasa atau imam yang sah, tidak dikategorikan *Bughat*. Ketiga, mereka menggunakan penafsiran atau *ta'wal* yang *batil*.[4] Maksudnya, dalam memerangi pemimpin atau kepala negara yang sah mereka menggunakan penafsiran tersebut yang tujuannya untuk membenarkannya. Sementara penafsiran itu jika kita analisis maka tidak memiliki sisi yang tepat apabila dilihat dari segi kemaslahatan masyarakat, kemungkinan kekacauan, anarki, dan lain-lain.

Tindakan bughat masuk kedalam kategori kepemimpinan politik atau al-imârah. Dalam hal ini prinsipnya sudah sangat jelas, seperti disebutkan dalam ayat Al-Qur'an yang menyatakan bahwa "Taatlah kepada Allah, taatlah kepada Rasul, dan ulil amri di antara kamu." (QS. An-Nisa', 4: 59). Disinilah pemimpin sebagai penguasa yang sah, dan karenanya harus ditaati.[5]

Perbuatan separatisme atau *bughat* merupakan salah satu tindak kejahatan yang diharamkan dalam hukum pidana Islam, sebgaimana dinyatakan dalam Hadits Rasulullah Saw: "Barangsiapa yang keluar dari ketaatan (kepada khalifah) dan memisahkan diri dari jamaah kemudian mati, maka matinya adalah dalam keadaan mati jahiliyyah." (HR. Muslim).

Dalam perspektif Hukum Pidana di Indonesia, jika kita tinjau lebih konkret ke dalam unsur-unsur kejahatan KKB di Papua bisa dikategorikan ke dalam tindak pidana umum dan atau tindak pidana khusus. Tindak pidana umum, tindakan yang dilakukan oleh KKB termasuk tindak pidana makar yang diatur dalam pasal 104-129 Kitab Undang-Undang Hukum Pidana. Sedangkan jika kita kategorikan ke dalam hukum pidana khusus, maka tindakan yang dilakukan oleh KKB Papua tergolong pada tindak pidana Terorisme yang terdapat dalam Undang-Undang Nomor 5 Tahun 2018 tentang Tindak Pidana Terorisme. Namun pembahasan ini akan cenderung pada pasal 104-129 Kitab Undang-Undang Hukum Pidana, yang artinya pembahasan tindakan yang dilakukan KKB ditinjau ke dalam kejahatan keamanan negara atau biasa disebut Makar.[6]

Selain tinjauan hukum, terdapat proses untuk mencegah tindakan separatisme yang mana merupakan suatu bagian terpenting dari pemerintah dalam mewujudkan Indonesia yang aman dan damai. Tercapainya pembangunan nasional di seluruh wilayah negara dalam kerangka Negara Kesatuan Republik Indonesia, harus disatu padukan dengan upaya komprehensif pencegahan dan penanggulangan separatisme. Salah satu pencegahan yang diambil misalnya memperketat pertanahan dan keamanan di batas-batas wilayah. Batas-batas wilayah suatu negara menempati posisi yang penting dilihat dari aspek geografis, hukum maupun politis.

Terdapat sebuah permasalahan yang menjadi sorotan perhatian masyarakat Indonesia yang sampai saat ini tidak dikirakan bahwa permasalahan yang menyangkut pada gerakan separatisme mulai menambah di beberapa daerah atau wilayah Negara Kesatuan Republik Indonesia (NKRI). Gerakan separatisme di wilayah papua sampai saat ini menjadi suatu kabar yang tidak jelas dikarenakan belum mendapatkan titik solusi yang dilandasi dari suatu strategi dari pemerintahan dan belum bersifat dinamis karena belum menyesuaikan dengan perkembangan yang ada di Papua. Akhirnya Kelompok Kriminal Bersenjata (KKB) beberapa oknumnya masih menebarkan teror sehingga mengakibatkan keresahan terhadap warga sipil maupun aparat keamanan negara TNI dan POLRI.[7]

2. METODE

Metode penelitian dalam jurnal ini menggunakan analisis yuridis normatif dengan cara mencari suatu kebenaran yang koherensi yaitu apakah aturan yang terdapat dalam undang-undang terorisme atau KUHP sudah sesuai dengan norma hukum dan apakah norma hukum

[4] Amin Suma Muhammad, *Hukum Pidana Islam* (Jakarta Selatan: Pustaka Firdaus, 2001), 78.
[5] https://www.nu.or.id/nasional/bughat-Gz0vY
[6] *Kitab Undang-Undang Hukum Pidana*, n.d., 58.
[7] Binsar H Sianturi and Margaretha Hanita, "Optimalisasi Peran Polri Dalam Penanganan Kelompok Kriminal Bersenjata Di Papua (Optimizing the Role of the National Police in Handling Armed Criminal Groups in Papua) Pendahuluan Pencegahan Dan Penanggulangan Separatisme Adalah Bagian Aman Dan Damai .," *Jurnal keamanan Nasional* VI, no. 1 (2020): 231.

sudah sesuai denga prinsip-prinsip hukum.[8] Penulisan ini didasari pada aturan hukum maupun pemikiran para ahli hukum (doktrin) dengan cara menganalisa dari sumber hukum primer, seperti dalam Undang-Undang Nomor 5 Tahun 2018 tentang Pemberantasan Tindak Pidana Terorisme dan aturan yang terdapat dalam Pasal 104 – 129 Kitab Undang-Undang Hukum Pidana (KUHP) tentang Makar (pemberontakan). Selain menggunakan sumber hukum primer, analisis dari penelitian ini menggunakan sumber hukum sekunder yaitu dengan mencari sumber dari buku dan jurnal, tulisan ilmiah baik tulisan yang disimpan dari lembaga tertentu maupun kepustakaan umum.

Dalam penelitian ini menggunakan metode pendekatan berupa pendekatan perundang-undangan, pendekatan yang konseptual, dan pendekatan dengan cara menganalisis kasus dan dipergunakan secara bersama-sama yang tujuannya untuk mengkaji berdasarkan perundang-undangan, pemikiran para ahli (doktrin) dan konsep mengenai beberapa pandangan dalam hukum pidana yang diseertai dengan adanya kasus-kasus yang berkaitan dengan KKB di wilayah Papua. Bahan hukum tersebut diperoleh melalui studi kepustakaan untuk kemudian dianalisa dengan metode deduktif dari hal yang bersifat umum menuju hal yang bersifat khusus, dalam hal ini adalah penetapan status teroris terhadap dalam Kelompok Kriminal Bersenjata di wilayah Papua.[9]

3. ANALISIS TEMUAN STUDI

Studi terdahulu tentang gerakan separtisme Kelompok Kriminal Bersenjata (KKB) di Papua cenderung membahas tiga issue. *Pertama*, studi yang membahas tentang memaksimalkan tugas aparat keamanan negara dalam memberantasi Kelompok Kriminal Bersenjata di Papua dan kebijakan pemerintah dalam upaya penanggulangan dan pencegahan KKB di Papua.[10] *Kedua*, studi yang menunjukkan implikasi konflik separatisme Papua terhadap hubungan diplomasi Indonesia dengan Australia.[11] *Ketiga*, studi yang menjelaskan analisis hukum menetapkan bahwa Kelompok Kriminal Bersenjata Papua sebagai tindak pidana terorisme yang dilihat dalam perspektif hukum pidana nasional.[12] Dari tiga kecenderungan issue diatas belum ada studi yang mejelaskan analisis hukum terhadap Kelompok Kriminal Bersenjata di Papua dalam perspektif hukum Islam.

3.1. STUDI KASUS

Pemberontakan ini berawal pada 28 Juli 1965 di Papua Barat yang terjadi di Kota Manokwari dan dilakukan oleh sebuah kelompok kriminal bersenjata dengan adanya penyerangan terhadap beberapa suku Arfak terhadap pasukan Barak Batalyon yang terdiri dari 751 anggota Brawijaya dimana terdapat tiga orang yang masuk menjadi anggota kesatuan dibunuh. Penyebab dari penyerangan tersebut yaitu anggota Batalyon Papua sebagai provokator orang dari suku Arfak karena mereka mengeluh terhadapmpemimpin atau penguasa di daerah tersebut karena adanya pengangguran yang sangat tinggi yang disertai dengan kelaparan yang terjadi di suku Arfak selama dua tahun.[13] Kepala pemimpin dari pergerakan ini Johan Ariks, beserta dua bersaudara Mandatjan (Komando militer) Lodewijk dan Barends, serta dua bersaudara Awom, Ferry dan Perminas. Jadi, yang melakukan kekuatan pertempuran pada

[8] Wila Chandrawila Supriadi, *Metode Penelitian Hukum* (Semarang: Universitas Katolik Sugijapranata, 2008), 5.
[9] Ibid., 6.
[10] Sianturi and Hanita, "Optimalisasi Peran Polri Dalam Penanganan Kelompok Kriminal Bersenjata Di Papua (Optimizing the Role of the National Police in Handling Armed Criminal Groups in Papua) Pendahuluan Pencegahan Dan Penanggulangan Separatisme Adalah Bagian Aman Dan Damai .," 76.
[11] Vega Falcon Dr. Vladimir, "Konflik Separatisme Dan Implikasi Terhadap Hbungan Diplomatik Indonesia-Australia," *Gastronomía ecuatoriana y turismo local.* 1, no. 69 (1967): 5–24.
[12] Tahar Rachman, "TINJAUAN HUKUM PENETAPAN KELOMPOK KRIMINAL BERSENJATA PAPUA SEBAGAI TERORIS DALAM PERSPEKTIF HUKUM PIDANA NASIONAL," *Angewandte Chemie International Edition, 6(11), 951–952.* 7, no. 1 (2018): 96.
[13] Robin Orborne, *Kibaran Sampari Gerakan Pembebasan OPM Dan Perang Rahasia Di Papua Barat* (Jakarta: ELSAM, 2001), 76.

gerakan tersebut yaitu para bekas anggota PVK, atau yang dikenal dengan sebutan Batalyon Papua.

Sebelum dimulainya pemberontakan bersenjata tersebut, Ariks sebagai pemimpin partai politik yang bernama Partai Persatuan Orang New Guinea (PONG) pangkalannya terdapat di Manokwari. Partai Persatuan Orang New Guinea (PONG) awalnya beranggotakan orang dari suku Arfak. Partai ini memiliki tujuan, yaitu untuk mencapai kemerdekaan penuh di wilayah Papua Barat.[14]

Setelah terjadi pemberontakan KKB Papua yang dilakukan selama empat tahun di wilayah Kepala Burung salah satunya mencakup provinsi Papua Barat. Kemudian muncullah kembali pemberontakan kedua yang terjadi pada 1 Juli 1971 yang memiliki markas di Desar Waris, Kabupaten Jayapura, perbatasan Negara Papua New Guinea. Markas yang berada di wilayah tersebut dijuluki Markas Victoria. pencetus yang ada di markas Victoria berasal dari angkatan bersenjata, yang merupakan didikan dari tentara Indonesia yang memiliki pangkat Bintara, yang bernama Seth Jafet Roemkorem. Seth jafet Roemkorem mulai kesal menyaksikan beberapa pelanggaran hak asasi manusia pada saat acara Penentuan Pendapat Rakyat (Pepera) tahun 1969. Hal tersebut mendorong Roemkorem untuk masuk ke hutan bersama beberapa para aktivis dari KKB wilayah Jayapura.[15] Akhirnya, Roemkorem melakukan suatu pemberontakan dengan cara membaca teks proklamasi wilayah Republik Papua Barat Roemkorem juga memiliki kedudukan sebagai Presiden Republik Papua Barat dengan pangkatnya Brigadir Jendral.

Kemudian pada tahun 1980 pemerintah Indonesia mempunyai inisiatif untuk menangani perlawanan gerakan KKB dengan cara mengumpulkan kekuatan pasukan tentara Nasional Indonesia secara besar-besaran ke peningkatan peran aktif intelijen. Khususnya pada Komando Pemulihan Keamanan dan Ketertiban (KOPKAMTIB) yang anggotanya berasal dari orang-orang militer tetapi tidak begitu paham masalah undang-undang kepemilikan warga sipil atas tanah mereka.[16] Kemudian pada tahun 1988, mereka berkumpul di Stadion Mandala yang terletak di Kota Jayapura, sekitar 60 orang yang menyaksikan acara pembacaan teks "proklamasi OPM" yang disertai dengan "pengibaran bendera OPM". Orang yang membacakan teks proklamasi yaitu Thomas Wanggai beserta berdirinya negara "Melanesia Barat" dengan mengibarkan bendera baru yang dijahit oleh Nyonya Teruko Wanggai (istri Thomas Wanggai). Thomas Wanggai mendapatkan perhatian yang sangat luas dan terbuka oleh masyarakat Irian Jaya karena dia sebagai pendukung yang memiliki pendidikan yang paling tinggi pada masa itu.

Ada hal unik pada masyarakat di wilayah Papua, mereka mempunyai sebuah ritual yang sangat kompleks, yaitu menciptakan beberapa simbol yang suci. Simbol suci tersebut diambil dari makhluk hidup yang berada disekitar wilayah kesukuan penduduk asli setempat. Simbol suci tersebut adalah Burung Cendrawasih. Sampai sekarang digunakan sebagai ikonnya wilayah Papua. Pada saat itu terjadi perburuan burung cendrawasih yang dilakukan secara besar-besaran, karena ada beberapa manfaat dari burung cendrawasih. Salah satunya bulu dari burung cendrawasih dijadikan sebagai hiasan topi perempuan di Eropa.[17] Kemudian penjualan aset di wilayah Papua yang dilakukan oleh pemerintahan orde baru. Aset yang dijual berupa ladang tembaga yang memiliki campuran kandungan emas sebesar 2,5% yang dijual oleh pemerintahan orde baru kepada PT Freeport Indonesia Inc.[18] kemudian adanya perampasan hak atas tanah yang dimiliki oleh masyarakat Papua yang diumumkan oleh pemerintahan orde baru sehingga masyarakat Papua mengungsi ke Negara Papua New Guinea dan masyarakat Papua lebih

[14] Ibid., 77.
[15] Mochamad Septa Afrizal, "Sejarah KKB Di Papua" (1945): 13–27.
[16] Orborne, *Kibaran Sampari Gerakan Pembebasan OPM Dan Perang Rahasia Di Papua Barat*, 125.
[17] Ibid., 126.
[18] Frans H Winarta, *Suara Rakyat Hukum Tertinggi*, ed. Aloysius Soni BL de Rosari (Jakarta: PT Kompas Media Nusantara, 2009), 24.

mendukung gerakan separatisme yang dilakukan oleh Kelompok Kriminal Bersenjata (KKB). Penyebab-penyebab tersebut diketahui saat Pepera berlangsung.[19]

Terdapat sebuah permasalahan yang menjadi sorotan perhatian masyarakat Indonesia yang sampai saat ini tidak dikirakan bahwa permasalahan yang menyangkut pada gerakan separatisme mulai menambah di beberapa daerah atau wilayah Negara Kesatuan Republik Indonesia (NKRI). Gerakan separatisme di wilayah papua sampai saat ini menjadi suatu kabar yang tidak jelas dikarenakan belum mendapatkan titik solusi yang dilandasi dari suatu strategi dari pemerintahan dan belum bersifat dinamis karena belum menyesuaikan dengan perkembangan yang ada di Papua.[20] Papua, dalam konteks ini adalah Papua Barat atau Irian Jaya, merupakan salah satu wilayah yang mengalami pergolakan yang hingga dewasa ini masih belum dapat diselesaikan. Sebagai contoh Kelompok Kriminal Bersenjata (KKB) Papua, jelas dikenal oleh rakyat Indonesia (non Papua) sebagai bentuk *Pemberontakan.*[21]

Papua merupakan wilayah yang memiliki berbagai masalah disintegrasi, politik, dan keamanan yang dinilai cukup kuat jika dibandingkan dengan wilayah Indonesia yang lainnya.[22] Seiring berjalannya waktu, pada saat reformasi di Indonesia, permasalahan di papua kembali gencar di berbagai kalangan dari nasional, regional, bahkan internasional.[23] Hal tersebut muncul dampak negatif di era globalisasi. Penyebabnya dikarenakan munculnya kepentingan individu dan etnis yang mengakibatkan pola hubungan dengan negara lain semakin kritis terhadap tuntutan Indonesia sebagai pengayom kehidupan warga negara.[24]

Ada beberapa tindakan kriminal yang dilakukan oleh anggota Kelompok Kriminal Bersenjata (KKB), adalah sebagai berikut:

a. Adanya aksi penembakan yang dilakukan anggota KKB pada warga sipil dan aparat keamanan di beberapa wilayah termasuk di wilayah Kabupaten Puncak Jaya, Kabupaten Jayawijaya, Kabupaten Mimika, Kabupaten Paniai, Kota Jayapura yang terdapat pada perbatasan antara Republik Indonesia – Papua New Guinea.
b. Penyerangan yang sasarannya itu Pos Tentara Nasional Indonesia dan Polri.
c. Anggota maupun masyarakat yang sedang berpatroli diwilayah tersebut juga ikut diserang.
d. Mereka melakukan pengerusakan yang dilakukan dengan cara membakar gedung-gedung beserta fasilitas pemerintah, TNI dan Polri, bahkan juga masyarakat
e. Perampasan senjata api yang dimiliki oleh aparat kepolisian dan TNI

Gerakan KKB menimbulkan konflik fisik sehingga memakan banyak korban. Selain itu, mereka memiliki keyakinan yang sudah diperjuangkan dengan cara damai dengan upaya menyebarluaskan ideologi Papua Merdeka.[25] Meskipun memiliki dukungan yang sedikit, semua elemen masyarakat mengenai Papua Merdeka yang terbuka tetap ada indikasi yang menunjukkan dukungan terhadap kemederkaan Papua sudah terasa sangat jelas.

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[19] Leebarty Taskarina, Nuri Widiastuti Veronika, and Universitas Indonesia, "Penal Populism in The Changing Status of Papuan Criminal Armed Group (KKB Papua) into A Terrorist Organization" 5, no. 2 (2021): 16–31.

[20] Bimbi Rianda, Yuswari Octonain Djemat, and Angga Nurdin Rahmat, "Kebijakan Luar Negeri Indonesia Terhadap Dukungan Republik Vanuatu Atas Kemerdekaan Papua Barat Tahun 2015-2016," *Jurnal Dinamika Global* 2, no. 01 (2018): 82–113.

[21] M.H Hari Purwanto, S.H, *Gejolak Papua Dalam Perspektif Intelijen* (Surabaya: Jakad Media Publishing, 2021).

[22] Delvia Ananda Kaisupy and Skolastika Genapang Maing, "Proses Negosiasi Konflik Papua: Dialog Jakarta-Papua," *Jurnal Ilmu Sosial dan Humaniora* 10, no. 1 (2021): 12.

[23] Rianda, Djemat, and Rahmat, "Kebijakan Luar Negeri Indonesia Terhadap Dukungan Republik Vanuatu Atas Kemerdekaan Papua Barat Tahun 2015-2016."

[24] Ishaq, "Perbandingan Sanksi Pidana Pemberontakan Menurut Kitab UndangUndang Hukum Pidana (KUHP) Dan Hukum Pidana Islam," *IAIN Sulthan Thaha Saifuddin, Jambi* 1, no. 69 (2020): 5–24.

[25] Sianturi and Hanita, "Optimalisasi Peran Polri Dalam Penanganan Kelompok Kriminal Bersenjata Di Papua (Optimizing the Role of the National Police in Handling Armed Criminal Groups in Papua) Pendahuluan Pencegahan Dan Penanggulangan Separatisme Adalah Bagian Aman Dan Damai .," 96.

Dalam persoalan Papua, kita harus memperhatikan persoalan bangsa yang komprehensif sesuai apa yang sudah diamanatkan dalam konstitusi Undang-Undang Dasar 1945.[26] Sehingga muncul sikap inkonstitusional, dimana sikap yang saling mengabaikan terhadap persoalan yang ada di wilayah Papua baik semua Provinsi yang ada di Papua maupun Papua Barat saja. Pemerintah sangat menyadari pesan konstitusi yang ada di dalam UUD 1945, maka dari itu perlu dilakukan upaya pembenahan dalam penanganan kasus KKB. Pada masa reformasi, banyak yang menyadari kasus KKb seperti pemerintah, Lembaga Swadaya Masyarakat (LSM), pemerhati masalah Papua baik dalam negeri maupun luar negeri walaupun masih banyak yang mengalami kendala terhadap permasalahan tersebut. Namun, bukan berarti munculnya stagnansi perhatian dan upaya yang dilakukan pemerintah untuk bagi masyarakat Papua bisa membangun untuk menuju ke arah yang lebih baik.

3.2 Tindak Pidana Separatis KKB di Wilayah Papua dalam Perspektif Hukum Positif

Di negara lain ada saja masalah hambatan yang mengancam keamanan negara, salah satu dari permasalahan tersebut muncul di negara Indonesia. Di Indonesia muncul gerakan yang ingin melakukan pemisahan diri dari wilayah Indonesia. Salah satunya yaitu gerakan separatisme KKB di wilayah Papua. Gerakan separatisme KKB sampai saat ini masih bergejolak untuk menginginkan pemisahan wilayahnya dari Indonesia. KKB disebut sebagai sebuah tindakan melakukan perbuatan jahat yang mengancam negara Indonesia yang kasusnya berada di wilayah Papua. Kekerasan yang terjadi di Papua masih terjadi tiap tahunnya sampai saat ini. Pada saat itu, KKB merupakan suatu organisasi yang biasa, seiring berjalannya waktu disertai dengan beberapa masalah yang mengakibatkan pemberontakan maka KKB berubah menjadi gerakan separatisme.[27]

Berdasarkan analisis KKB di wilayah Papua yang ingin melakukan pemecahan dari wilayah Negara Kesatuan Republim Indonesia yang mengancam terhadap keamanan negara yang bisa dikenai pemidanaan berdasarkan UU No. 5 Tahun 2018 tentang Pemberantasan Tindak Pidana Terorisme dan Pasal 104 – 129 KUHP Bab I – kejahatan Keamanan Negara.[28] Namun dalam pembahasan kali ini akan berfokus pada tindak pidana makar yang lebih cenderung terdapat pada Pasal 104 – 110 KUHP. Ini merupakan sebagai perlindungan Indonesia dari berbagai bentuk penentang terhadap penguasa atau gerakan separatisme dimana perlakuan tersebut mengancam kepentingan dan keamanan yang mengancam negara. Negara memiliki kekuasaan yaitu membuat suatu peraturan perundang-undangan, pemegang kekuasaan tinggi dalam menentukan kejahatan dan hukuman.[29]

Tindak pidana pemberontakan atau makar, maka syarat terjadinya suatu perbuatan tersebut, harus memenuhi unsur-unsur tertentu, sebagaimana diatur dalam Pasal 53 ayat 1 KUHP, yang menyatakan bahwa:[30]

"...Mencoba melakukan kejahatan dipidana, jika niat untuk itu telah ternyata dari adanya permulaan pelaksanaan, dan tidak selesainya pelaksanann itu, bukan semata mata karena kehendaknya sendiri...".

Tinjauan perbuatan makar dilihat dari Pasal 53 ayat 1 KUHP, bahwa adanya tindak pidana lain merupakan suatu proses yang dimulai dengan adanya kehendak atau nikah untuk melaksanakan dengan cara mewujudkan berbagai tingkah laku yang terdiri dari persiapan sebelum melakukan perbuatan dan pelaksanaan saat melakukan perbuatan hingga perbuatan

[26] Firman Noor, "Analisis Terhadap Kebijakan Pemerintah Tentang Separatisme Papua," *Jurnal Pertahanan & Bela Negara* 6, no. 3 (2018): 19–46.
[27] Kompasiana, "Kejamnya Organisasi Papua Merdeka," Kompasiana, accessed April 12, 2015, www.hankam.kompasiana.com.
[28] Syawal Amry Siregar, "Tinjauan Yuridis Terhadap Keamanan Negara," *JURNAL RECTUM* 2 (2020): 88–95.
[29] Koes Dirgantara Adi Mulia, Muhammad Septa Afrizal, and Lukman Dwi Hadi, "Pertangungjawaban Pidana Anggota Organisasi Papua Merdeka (OPM) Sebagai Pelaku Makar," *Justitia Jurnal Hukum* 4, no. 2 (2020): 335, http://journal.um-surabaya.ac.id/index.php/Justitia/article/view/4372.
[30] *Kitab Undang-Undang Hukum Pidana*.

kejahatan tersebut tetap berlanjut bahkan sampai selesai.[31] Maka dari itu, pengertian makar dijelaskan dalam Pasal 87 KUHP yang berbunyi:[32]

"...Dikatakan ada makar untuk melakukan suatu perbuatan, apabila niat untuk itu telah ternyata dari adanya permulaan pelaksanaan sebagaimana yang dimaksud dalam Pasal 53...".

Hal ini mempunyai hubungan dengan ketentuan untuk mempidanakan percobaan melakukan suatu kejahatan dapat diatur dalam Pasal 53 KUHP, hal ini lebih jelas bahwa pemberontakan (makar) sudah diundangkan dalam Pasal 87 KUHP sebagai wujud perilaku yang telah memenuhi elemen dan ketentuan tertentu, yang meliputi sebuah niatan melawan hukum Pasal 53 KUHP. Maka dari itu, dapat dapat kita analisa bahwa tindak pidana makar merupakan suatu perbuatan yang telah memenuhi unsur sebagaimana diatur dalam pasal 53 KUHP yang Mencoba melakukan kejahatan dipidana, jika niat untuk itu telah ternyata dari adanya permulaan pelaksanaan, dan tidak selesainya pelaksanann itu, bukan semata mata karena kehendaknya sendiri.[33]

Tindak pidana makar yang mengancam keamanan dan keselamatan wilayah Negara Kesatuan Republik Indonesia (NKRI) telah dimuat pada Bab I Buku II Kitab Undang-Undang Hukum Pidana (KUHP), yang memiliki tiga bentuk adalah sebagai berikut:[34]

1. Tindakan makar yang tujuannya menyerang pemimpin atau kepala negara beserta wakilnya.
2. Tindakan makar yang tujuannya menyerang keutuhan wilayah
3. Tindakan makar yang tujuannya menyerang aparat sipil negara.

Pemberontakan yang dilakukan oleh KKB telah meliputi elemen atau unsur tindak pidana makar sebagaimana sudah tercantum dalam Undang-Undang Pasal 106, 108, dan 110 KUHP.[35] Dengan munculnya penyerangan yang dilakukan masyarakat dari suku Arfak yang yang terkena hasutan mengenai ketua suku arfak yang dipenjara disertai maraknya tuna karya atau penganguran dan krisisnya bahan pokok untuk kebutuhan masyarakat Papua. Beberapa kelompok masyarakat suku arfak dan masyarakat Biak yang dipimpin oleh batalyon Papua (PVK) yang memisahkan diri dari wilayah negara dikenai Pasal 106 KUHP yang berbunyi:[36]

"Makar dengan maksud supaya atau sebagian dari wilayah negara, diancam dengan pidana penjara seumur hidup atau pidana penjara sementara paling lama 20 (dua puluh) tahun."

Mereka juga melakukan pemberontakan terhadap pemerintah, yang dikenai Pasal 108 (1) KUHP yang berbunyi:[37]

"Barang siapa bersalah karena pemberontakan, diancam dengan pidana penjara paling lama 15 (lima belas) tahun."

Kemudian para anggota KKB juga dikenai pasal 110 KUHP karena melakukan adanya kesepakatan untuk melakukan suatu tindakan yang tujuannya untuk melancarkan aksi kejahatan sebagaimana menurut Pasal 106 dan Pasal 108 KUHP.

Dapat kita analisis dari tindakan Roemkorem pada saat melakukan pembacaan teks proklamasi yang disertai pada saat itu dia memiliki jabatamn sebagai Presiden Papua Barat. Dengan berpangkat jendral. Apa yang telah Rumkorem lakukan dapat dipidana dengan pasal 106 KUHP yang meliputi unsur perbuatan yang melakukan pemecahan wilayah Papua dari wilayah Indonesia. Selanjutnya perbuatan Thimas menyimpang Undang-Undang yang tercantum pada Pasal 106 dan 110 KUHP. Dengan membuat suatu negara baru yaitu Negara *"Melanesia Barat"*

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[31] Adami Chazawi, *Kejahatan Terhadap Keamanan Dan Keselamatan Negara* (Jakarta: PT raja Grafindo Persada, 2002), 9.
[32] *Kitab Undang-Undang Hukum Pidana*.
[33] Rachman, "TINJAUAN HUKUM PENETAPAN KELOMPOK KRIMINAL BERSENJATA PAPUA SEBAGAI TERORIS DALAM PERSPEKTIF HUKUM PIDANA NASIONAL," 82.
[34] Chazawi, *Kejahatan Terhadap Keamanan Dan Keselamatan Negara*, 11.
[35] Lani Sujiagnes Panjaitan, "PENERAPAN HUKUM PIDANA TERHADAP TINDAK PIDANA MAKAR OLEH ORGANISASI PAPUA MERDEKA (OPM) DI KABUPATEN JAYAWIJAYA," *Gastronomía ecuatoriana y turismo local.* 1, no. 69 (1967): 5–24.
[36] *Kitab Undang-Undang Hukum Pidana*.
[37] Ibid.

dengan cara suatu kesepakatan yang sangat jahat karena pada saat membacakan teks prokalmasi yang menghadirkan 60 orang untuk perkumpul pada saat pembacaan proklamasi tersebut.[38]

Setalah mengalisa dari pembahasan diatas serta beberapa Pasal dalam Bab I buku II KUHP delik-delik terhadap kejahatan keamanan Negara adalah "berbau" politik. Makar diatur dalam Pasal 104 KUHP dimana dalam membunuh atau merampas kemerdekaan presiden atau wakil presiden supaya tidak kuat lagi untuk memerintah dapat dikenai ancaman pidana berupa penjara 20 (dua puluh) tahun atau dalam kurun tempo tertentu dan pidana mati atau penjara seumur hidup.[39] Pasal 106 KUHP "....makar untuk menyerahkan wilayah negara ketangan musuh atau memisahkan diri dari wilayah negara dapat dikenakan sanksi pidana penjara seumur hidup atau dengan waktu tertentu paling lama 20 tahun..." ; Pasal 107 KUHP "..untuk menggulingkan pemerintahan yang sah dapat dikenakan pidana paling lama 15 tahun dan pemimpin yang melanggar ketentuan tersebut dapat dikenakan penjara seumur hidup atau dalam waktu tertentu paling lama seumur hidup..."; Pasal 108 KUHP tentang "...pemberontakan bersenjata terhadap pemerintah Negara, merupakan perbuatan-perbuatan yang erat hubungannya dengan kegiatan politik.[40] Dapat dikenakan pidana penjara paling lama 15 tahun dan pemimpin dari tindak pidana tersebut dapat dikenakan pidana penjara seumur hidup atau dalam waktu tertentu paling lama 20 tahun...". Seperti yang dijelaskan Pada Kitab Undang-Undang Hukum Pidana Pasal 110 KUHP bahwasanya munculnya suatu niat kesepakatan dalam melakukan perbuatan jahat pada KUHP sudah ditentukan beberapa pasal yakni Pasal 104-108 yang ancamannya berupa penjara 6 tahun, jika perbuatan tersebut disertai dengan perampasan barang maka pidananya dilipatgandakan.[41]

3.3 Tindak Pidana Separatis KKB di Wilayah Papua dalam Perspektif Hukum Islam

Kasus Kelompok Kriminal Bersenjata (KKB) di Papua dalam perspektif hukum Islam termasuk ke dalam jarimah hudud dalam bentuk Pemberontakan (*Al-Baghyu*). Karena dalam kasus ini merupaka suatu bentuk gerakan sepratisme yang mengacam persatuan dan keamanan NKRI. Tindakan yang dilakukan Kelompok Kriminal Bersenjata (KKB) semakin bergolak, namun dalam kasus KKB sampai saat ini belum menenmui titik terang dalam penyelesaiannya.[42]

Dalam pendangan hukum Islam suatu perbuatan dikatakan sebagai jarimah hudud pemberontakan apabila memenuhi 3 unsur, yaitu pembangkangan terhadap terhadap kepala Negara, pembangkangan dilakukan dengan kekuatan, adanya niat melawan hukum.[43] Jika dilihat dari studi kasus diatas tinndakan kriminal yang dilakukan oleh KKB telah memenuhi unsur-unsurnya.

Pertama, pembangkangan terhadap kepala Negara. Hal ini dibuktikan dengan tindakan pengerusakan atau perusuhan, beberapa fasilitas pemerintah dan pihak swasta dibakar secara habis-habisan, melakukan penindasan yang disertai dengan perampasan senjata api yang dimiliki oleh aparat kepolisian dan tentara, mengibarkan bendera Bintang Kejora serta penggelapan senjata api atau perdagangan senjata api. Tindakan yang dilakukan oleh KKB telah melanggar beberapa aturan yang telah ditentukan Pemerintah didalam KUHP.[44]

Kedua, Pembangkangan dilakukan dengan kekuatan. Dapat kita pastikan semua tindakan yang Kelompok Kriminal Bersenjata (KKB) dilakukan dengan menggunakan kekuatan yang

[38] Tolib Effendi and Ananda Chrisna Dewi Panjaitan, "Konsekuensi Penetapan Status Kelompok Kriminal Bersenjata (Kkb) Dalam Konflik Papua Sebagai Gerakan Teroris Menurut Hukum Pidana," *Rechtidee* 16, no. 2 (2021): 128.
[39] Ibid., 229.
[40] Mursyida Syafruddin, "PARADIGMA MAKAR DALAM PERSPEKTIF HUKUM ISLAM DAN HUKUM POSITIF," *Paper Knowledge . Toward a Media History of Documents* (2014): 417–434.
[41] Mulia, Afrizal, and Hadi, "Pertangungjawaban Pidana Anggota Organisasi Papua Merdeka (OPM) Sebagai Pelaku Makar," 343.
[42] Sianturi and Hanita, "Optimalisasi Peran Polri Dalam Penanganan Kelompok Kriminal Bersenjata Di Papua (Optimizing the Role of the National Police in Handling Armed Criminal Groups in Papua) Pendahuluan Pencegahan Dan Penanggulangan Separatisme Adalah Bagian Aman Dan Damai .," 91.
[43] Marsaid, *AL-FIQH AL-JINAYAH (Hukum Pidana Islam) Memahami Tindak Pidana Dalam Hukum Islam* (Palembang: CV. Amanah, 2020).
[44] Ibid.

bertujuan untuk melakukan pemberontakan atau dalam hukum positif bentuk delik pidana khusus yang dilakukan adalah bentuk terorisme.[45]

Ketiga, unsur *al-baghyu* yang terakhir adalah adanya niat melawan hukum. Dari pemaparaan studi kasus di atas sudah sangat jelas tindakannya melawan hukum. Selain konflik yang dilakukan fisik yang membawa korban jiwa tetapi dalam konflik ini juga berakibat pada kondisi psikis dari masyarakat yang ada disekitar daerah terjadinya penyerangan[46]

Sehingga dapat disimpulkan dari analisis diatas dalam hukum pidana Islam tindakan yang dilakukan oleh Kelompok Kriminal Bersenjata dapat dikenai hukuman hudud. Namun dalam jarimah pemberontakan bentuk pertanggungjawaban Pidana dan Perdata yaitu :[47]

1. Pertanggungjawaban sebelum *mugholabah* dan sesudahnya

   Ini berarti orang yang melakukan pemberontakan dibebani pertanggungjawaban atas semua tindak pidana yang dilakukannya sebelum *mugholabah* (pertempuran), baik perdata maupun pidana. Demikian pula ketika jarimah yang terjadi setelah selesainya *mugholabah* (pertempuan). Dalam kasus ini yang pertanggungjawaban yang harus dilakukan oleh KKB adalah penembakan terhadapap warga sipil maupun aparatur keamanan yang mengakibatkan hilangnya nyawa seseorang, maka akan dikenani jarimah *qisash*.
2. Pertanggungjawaban atas perbuatan pada saat *mugholabah*

   Dalam pertanggugjawaban atas perbuatan pada saat *mugholabah* di bagi lagi menjadi 2 bentuk yaitu tindakan pidana yang berkaitan dengan pemberontakan dan tindakan pidana yang tidak berkaitan dengan pemberontakan. Dalam kasus KKB, mereka melakukan perusakan pada fasilitas-fasilitas umum mulai dari pengerusakan, pembakaran fasilitas pemerintah dan swasta. Maka pelaku dapat dikenai pertanggungjawaban berupa hukuman *ta'zir*.[48]

Jika dikaitkan dengan perspektif hukum pidana positif maka tindakan yang dilakukan oleh KKB Papua sudah bisa dikategorikan kedalam kejahatan yang mengancam keamanan negara atau pemberontakan. Tetapi jika dalam hukum Islam pemidanaan/pertanggumg jawabannya berdasarkan sebelum atau sesudah *mugholabah* dilakukan.[49] Jadi dalam hukum Islam dapat disimpulkan bahwa KKB dapat dikenai 2 pertanggung jawaban sekaligus. Sedangkan dalam hukum pidana positif dikenai pidana penjara seumur hidup atau paling lama 20 tahun tergantung kategori kejahatan yang dilakukan, selain itu maish terdapat pula pidana tambahan nya berupa perampasan barang tertentu, dll.[50]

4. KESIMPULAN

Gerakan separtisme oleh Kelompok Kriminal Bersenjata (KKB) di Papuan tidak bisa dibenarkan oleh perspektif hukum positif di Indonesia maupu dalam perspektif hukum Islam. Gerakan separatisme merupakan gerakan yang dilakukan oleh suatu kelompok atau golongan masyarakat yang bertujuan untuk memisahkan diri dari suatu wilayah negara. Jadi dapat disimpulkan munculnya ide separatisme mengakibatkan terjadinya suatu disintegrasi bangsa.

Dalam hukum pidana positif, tindakan KKB dapat dikategorikan kepada kejahatan terhatan kemana negara/makar dan atau juga bisa dikategorikan kepada tindak pidana terorisme. Baik makar ataupun terorisme, keduanya memiliki pertanggungjawaban yang harus diberikan kepada KKB di Papua. Disamping itu, hukum Islam juga memiliki perspektif sendiri dalam menentukan pertanggungjawaban kepada KKB Papua.

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[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Ali, *Hukum Pidana Islam*, 17.
[49] Fauzan Hamsyah Permana et al., "Merdeka Negara Yang Berdaulat , Tetapi Ikut Serta Didalamnya Medeklarasikan Indonesia Sebagai Rechtstaat Dengan Produk Menjadi Pokok Bahasan Penulis Dalam Skripsi Ini Adalah Tindak Pidana Yang Mengancam Kedaulatan Negara" 5 (2016): 1–11.
[50] Marsaid, *AL-FIQH AL-JINAYAH (Hukum Pidana Islam) Memahami Tindak Pidana Dalam Hukum Islam*.

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STATUS AND RIGHTS OF CHILDREN OF UNDERHAND MARRIAGE: STUDY OF MARRIAGE PRACTICES OF ACEHNESE WOMEN WORKERS WITH BANGLADESHI FOREIGNERS IN MALAYSIA

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Abstract: The writing of this journal aims to analyze and find clarity regarding the perspective of the marriage of TKW Aceh with Bangladesh on children's rights and to find out. This research is a field research, in qualitative form from the results of field interviews that marriages are not recorded, the status of children born from these marriages. Children are also not recognized by the State. such as birth and death. Recording only important events, not like marriages which are legal events, recording does not affect the validity of marriages, it is only an administrative requirement. The problem is that the marriage is from the perspective of the marriage of TKW Aceh which is a marriage with Bangladesh which has an impact on the status of the child and the legal protection of the rights of the child, which also involves his nationality.
Keywords: Children's Rights, Women Workers, Marriage

1. INTRODUCTION

The geographical location of Aceh which is very close to the territory of Malaysia allows for the mobility of the Acehnese people who are looking for work in Malaysia, with the hope that economic changes will occur in their lives. The closeness of the distance and the weak supervision of the sea route has made many workers from Aceh, both men and women, go to Malaysia from the rear route. With relatives or acquaintances from the same village who had previously lived in Malaysia, they departed without official passports and using boats or sticks. Upon arriving in Malaysia, you will be accommodated by family or acquaintances, until you get a residence permit. The risks taken are quite large because of trips like this, not infrequently in Malaysia they are called illegal immigrants who will then be chased by the Malaysian police (Witanto, 2020, p. 76).

It is not clear how many female workers choose to work illegally. The Manpower Office records the number of TKW from Aceh working in Malaysia as follows:

Table: 1.1 Data of TKW Working in Malaysia

COUNTRY	2015	2016	2017	2018	2019
aceh	2,038	2,000	2.004	2,031	2.019

Data processed in 2022

Based on data from TKW registered at the Aceh Immigration Service Office, there has been a drastic decline where in 2019 it reached 2,019 people, a decrease from the previous year, in 2018 around 2,031 people, 2017 around 2,004 people and 2016 around 2,000 people, 2015 around 2,038 people (Djubaeda, 2019, p. 34)

Female workers looking for a life in Malaysia do not always have sweet stories, many of them experience an unpleasant life, and then choose to return to their hometowns. The situation of the Covid-19 pandemic which affected Malaysia as well as Indonesia including Aceh, forced many migrant workers to return to their hometowns. Among those who returned to their hometowns took part in bringing their children who were the result of marriages with Bangladeshi citizens. The husbands are immigrants who work in Malaysia. The TKW from Aceh returned with no bad life from before, coupled with the dependents of the children they brought (Hallet, 2019, p. 55).

The problem is not only economic, but the impact of social and religious law also affects their lives. The status of children in terms of citizenship is also a separate issue. Children born to fathers and mothers from different countries need a birth certificate when their mothers return

to their homeland (Harefa, 2019, p. 77). Marriages that are carried out must also be truly registered, and have legal force. Children who are born must have guardianship rights and rights to economic guarantees from their parents. Of course this is not easy to describe, children have many problems that arise if a child is born to a mother and father from different countries (Mansur, 2019, p. 86).

Based on data related to regulations regarding the right to obtain citizenship statusaccording to Article 4 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, what is meant by Indonesian Citizens (WNI) are as follows:

a. Childwho was born from a legal marriage from a father and mother who are Indonesian citizens.
a. Childwho was born from a legal marriage to an Indonesian citizen father and a foreigner mother.
c. Childwho was born from a legal marriage to a father who is a foreign citizen and a mother who is an Indonesian citizen.
d. Childborn from a legal marriage to an Indonesian citizen mother, but the father does not have citizenship or the law of the father's country of origin does not grant citizenship to the child.
e. Childwho was born out of wedlock to a foreign mother who is recognized by an Indonesian citizen father as his child and the recognition was made before the child was 18 (eighteen) years old or unmarried.
f. Childwho was born in the territory of the Republic of Indonesia whose nationality status of the father and mother was not clear at the time of birth.
g. Childnewborn found in the territory of the Republic of Indonesia as long as the father and mother are unknown.
h. Childwho was born in the territory of the Republic of Indonesia if the father and mother do not have citizenship or their whereabouts are unknown.
i. Childwho was born outside the territory of the Republic of Indonesia from a father and mother who are Indonesian citizens who because of the provisions of the country where the child was born gives citizenship to the child concerned.

Based on the description above thatThis community service aims to provide education to Acehnese in Malaysia so they can understand the forms of children's rights in the legal, economic, social and religious fields.

3.METHOD

In examining the problem of the marriage perspective of TKW Aceh and Bangladesh on children's rights, the author uses a qualitative research method. While the author's approach uses a phenomenological approach and a normative juridical approach, because it relates to people's understanding of the perspective of marriage between Aceh TKW and Bangladesh on children's rights. Meanwhile, juridical normative aims to find the validity of the marriage perspective of TKW Aceh and Bangladesh regarding children's rights and characteristics in this study is descriptive in nature because it describes the data as a whole and intact on the perspective of marriage of TKW Aceh.

The research data comes from library and field data. Library data was collected through documentation review, and field data was collected through interviews with various sources who knew about the issues being studied, such as community leaders and government elements, as well as by direct observation at the research location.

4.ANALYSIS OF STUDY FINDINGS

In the analysis of study findings regarding the perspective of marriage between Aceh TKW and Bangladesh on children's rights in Pidie Jayathere are conditions that must be met, administratively must complete files such as, Certificate of Marriage Permit from the embassy of the Applicant's country of origin, Applicant's identity letter, Proof of the Applicant reporting himself from the Indonesian Police, and Letter or Charter of the Applicant converting to Islam,

and so on (Greetings, 2020, p. 66). The judge considered, that because of the petition of the Petitioners, from this matter most TKW from aceh had many marriages outside the predetermined rules, as the results of the interview obtained from Ms. Mela that: marriages carried out in other countries follow religious rules but against the rules Country. (Mela, Personal Communication, 2022).

Based on the results of the interview above, it is explained that most TKW from Aceh carry out marriages outside their area of origin which do not conflict with religious rules but conflict with State regulations so that they affect children's rights. As was the result of an interview with Suryadi, it was difficult to make a child's birth certificate (Suryadi, Personal Communication, 2022), while Fadli also said that children who were victims of marriage without following state rules were due to overseas without being registered at the city immigrant office (Suryadi, Personal Communications, 2022).

It is very clear that the registration of marriages in Law Number 1 of 2007 is only regulated by one paragraph, but the issue of registration is very dominant, this will appear to be related to the procedures for the marriage itself, all of which are related to registration. There are some legal experts who place registration as an administrative requirement which also determines whether a marriage is valid or not.

Regarding mixed marriages in Indonesia, they are carried out according to the Marriage Law. Mixed marriages cannot take place before it is proven that the conditions for marriage determined by law are relatively complied with and therefore it is not necessary to carry out mixed marriages, then those who, according to the law applicable to each party, have the authority to register the marriage, are given a statement stating that the conditions conditions have been met (Hallet, 2008, p. 55).

From the above problems related to the perspective of the marriage of TKW Aceh and Bangladesh, it can be seen from the beginning of the trip without being registered at the Immigration office so that the marriages carried out are far from state regulations and give a negative impact on child protection. Child protection is an effort to provide conditions and situations that enable the implementation of children's rights and obligations in a positive humane manner which is also an embodiment of justice in a society. Thus, child protection must be endeavored in various fields of livelihood and life in the state, society and family based on law, for the sake of right, fair and welfare treatment

5. CONCLUSION

Based on the author's conclusion regarding the perspective of marriages of TKW Aceh and Bangladesh on children's rights, that the marriages carried out by many TKW violated the laws and regulations of the State so that children were not registered in the State, this was evident from an unclear journey for TKW.

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STUDY OF ISLAMIC ASTRONOMICS: METHODS AND CRITERIA OF RUKYAT HISAB DETERMINING THE BEGINNING OF THE MONTH IN LIBYA

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Abstract: Hisab and Rukyat as two methods of determining the beginning of the month of the Islamic calendar, where the result of the determination will be the Hijri or Qamariyah calendar. Often differences of opinion and determination regarding the determination of the beginning of the month of Qamariyah often occur in various countries, due to differences in latitude and longitude, weather conditions, provisions of government authority, up to the agreement on the criteria for the new moon. It is quite unsurprising that polemics often occur and can be used as a lesson by examining more deeply the criteria for the new moon and the methods used by each country and in correlation with the provisions of other countries with a fairly close regional zone. issues that have reached the realm of ijtihadi, because each country has its own rules and regulations.*Libyan Center for Remote Sensing and Space Science*(LCRSSS) which is dedicated to research on remote sensing, outer space, and earthquake science which to date has provided more than 5 research stations. The Libyan state determines the beginning of the month of Ramadan, Shawwal and Dzulhijjah with reference to the astronomical aspects of the occurrence of the new moon, namely the conjunction (ijtimak) before dawn which is carried out through a government research organization (LCRSSS).
Keywords: Hisab, Rukyah, Libya

1. INTRODUCTION

The determination of the beginning of the Islamic month, both Qamariyah and Hijriyah, has often occurred in various countries, be it neighboring countries that are quite close to their territory or countries that are far away. the differences in each of these countries always raise concerns and doubts as well as restlessness on the part of falakiyah academics and researchers of Islamic astronomy, when entering these months. Because there are often differences that can occur for several reasons which are indeed quite logical, starting from the results of differences in latitude and longitude, weather conditions, provisions of government authority, to agreement on new moon criteria. It is quite unsurprising that polemics often occur and can be used as a lesson by examining more deeply the criteria for the new moon and the methods used by each country and in correlation with the provisions of other countries with a fairly close regional zone. issues that have reached the realm of ijtihadi, because each country has its own rules and regulations. One of the interesting things is from the country of Libya, which from an astronomical point of view, this country is quite developed with the evidence that it has*Libyan Center for Remote Sensing and Space Science*(LCRSSS), so that from this case study the author's interest in making a paper that discusses this matter.

2. METHOD

This type of research method used by using analysis based on the method Historicalby making a reconstruction of the past, the methods and criteria for the new moon in Libya in an objective and systematic way. Then by methodDescriptiveby compiling it with an accurate, factual, and systematic description of certain facts.So that it can be pulled pits development from time to time with the method of developmentto investigate sequences and patterns of growth or change. So that a study can be carried out to see the level of correlation between the variation of one factor and the variation of other factors based on the correlation coefficient.

3. ANALYSIS OF STUDY FINDINGS

3.1 Geographic-Astronomical Conditions

Libya is a country in the North African region which is bordered by the Mediterranean Sea (north), Egypt (east), Sudan (southeast), Chad and Nigeria (south), and Algeria and Tunisia (west). Meanwhile, from an astronomical perspective, Libya is located at coordinates 19° North Latitude to 34° North Latitude and 9° East Longitude to 26° East Longitude.

The area of the country of Libya reaches around 1,775,500 km2 while the coastline of Libya is known to be 1,770 kilometers long and is the longest coastline in an African country. The climate of the country of Libya itself is dominated by a very dry climate like a desert, but its northern coast has a warmer Mediterranean climate characteristic.

3.2 Monographic Conditions

Its government is based on a socialist republic led by a head of state, namely the Head of the Presidential Council. When viewed in terms of population, Libya is a fairly large country but with a small population of around 6.7 million people. About 88% of the population resides in urban areas, especially in the cities of Tripoli, Benghazi, and Misrata. The majority of the population in Libya identify as Arabs who speak and culture Arabic, the language itself is (official) Arabic, but English, Italian, and Berber are also widely spoken (Fahrullah, nd, p. 57). Indigenous people of Libya Most come from various ethnic groups and most of the Libyan population is Muslim of mixed Arab descent, therefore about 97% of the population in Libya are Muslim and other religions (3%). The culture of the Libyan people itself is a mixture of various other countries in the world, due to exposure to many historical eras. Libyan culture involves roots in Berber, African, Turkish and Muslim cultures. Libya was also part of the Italian colony for about three decades, so Libyan culture is also influenced by Italian culture.

Libya's population is of Arab and Barbarian origin, there are also Italian, Greek and Maltese descent. The Libyan state currency itself is in the form of the Libyan Dinar (LD). For their livelihood, the Libyan people in the village are livestock herders, namely camels and other domesticated animals (Wargadinata, et al., p. 97-98). While in the city, namely in oil refinery factories, industry and offices. According to historical records, the Barbarian tribe was the forerunner to the birth of the Bedouin tribe in Libya. Even before the Arabs settled in Libya, the Barbarians had already occupied the country. This tribe is considered to be the original Libyan people who survived in a nomadic way. They are one of the inhabitants of a country where about 93 percent of the area is desert (Wargadinata, et al., p. 97-98).

3.4 Libyan Economy.

Before the discovery of large oil fields in 1959, the income of the Libyan people per person was the lowest compared to the Role of Arabic in Education and Civilization | 60 people's income in other Arab countries. At that time the country's economic situation was very dependent on aid from Britain and America. Now oil has become the main source of income and is the main source of income for the State's finances. Crude oil production accounts for around 95% of all exports.

Libya has now become one of the world's largest oil producing countries. Even so, Libya is still an agricultural country because around 80% of the population are farmers and ranchers. The main types of crops they grow are vegetables, grains, dates, oranges, and olives. The oasis region in the south produces a wide variety of vegetables and fruits, but dates are the main source of income. Farmers cultivating newly cleared land receive assistance from the government in the form of interest-free credit, agricultural equipment, machinery and superior seeds. Since 1961 the

minister of agriculture has been trying to buy surplus people's crops such as wheat, barley, olive oil and peanuts at relatively higher prices than prices on world markets.

3.5 Political Order (State Form)

The Libyan state with the capital city of Tripoli has a form of state or government, which is called the provisional government, while the government system of the Libyan state is not explicitly explained. The Libyan state itself is led by a Head of the Presidential Council with a Head of Government called Plt. Prime Minister. Administratively, Libya has 22 district lists including: Niqat al-Khams, Zawiya, Jafara, Tripoli, Murqub, Misrata, Sirte, Benghazi, Marj, Jabal al-Akhdar, Derna, Tobruk, Nalut, Jabal al-Gharbi, Wadi al- Shatii, Jufra, al-Wahat, Ghat, Wadi al- Hayaa, Sabha, Murzuq, and Kufra.

3.6 Early Month Determination

According to its own historical records, the country of Libya has The Jamahiriya Islamic Calendar (AJ = Anno Jamahiriya) and The Jamahiriya Solar Calendar, both of which were introduced and used since the reign of Mu'ammar al-Qadafi Libya. He uses this calendar to determine the beginning of the Hijri year. Previously, in 1980 the Libyan government also introduced The Jamahiriya Solar Calendar. This calendar system is almost the same as the Gregorian Gregorian calendar, in which the names of the months are changed and adapted to aspects of Libyan history and culture (Rahman, 2020, 122-123). Another historical record in the era of Mu'ammar al-Qazafiy used the lunar calendar, which counted the first year starting from the death of the Prophet Muhammad. in 632 AD This has sparked a strong reaction from some of the Muslim world's scholars' opinions because they are considered to have violated the consensus of the companions and the traditions of the Muslim community. After the Mu'ammar al-Qazafiy regime, the Libyan lunar calendar returned to the Hijri calendar.

Until during the era of the development of the country with a Muslim-majority country, it had its own determination of the beginning of the month for the unique Muslim community, especially the determination of the beginning of the month of Ramadan, Shawwal and Dzulhijjah. Where the government in this case has the authority to decide on the determination of the beginning of the month, where in 2008 a determination was made of the beginning of the month of Ramadan, Shawwal and Dzulhijjah with reference to the astronomical aspects of the occurrence of the new moon, namely the conjunction (ijtimak) before dawn (Rukhmadi, 2014 , p. 55). Which is done through research organizations from the government*Libyan Center for Remote Sensing and Space Science*(LCRSSS) which is dedicated to research on remote sensing, outer space, and earthquake science which to date has presented more than 5 research stations. The LCRSSS office itself is based in the Libyan city of Tripoli.

Based on the research process carried out by certain authorities the government refers tothe astronomical aspect of the occurrence of the new moon, namely at conjunction (ijtimak) before dawn, where if the ijtimak has occurred before dawn, then the next day it is declared a new moon regardless of the height of the new moon above the horizon, whether the new moon is visible or not visible. So that in this case the determination of the new moon by Libya is at great risk, because it clearly ignores the sharia (fiqh) aspect. Even so, all Libyans always fast and celebrate Eid together. Many people have questioned and rejected Libya's attitude, one of them is Prof. Dr.Muhammad Ahmad Sulaiman (Professor of Astronomy at the Helwan National Institute of Astronomy and Geophysics Research – Egypt) because this determination was full of controversy in science and Shari'a (Aris, 2016, p. 93).

In its development, the Islamic calendar in Libya itself has its own provisions. The Libyan calendar uses true reckoning with ijtimak criteria before dawn in eastern Libya. So if in the eastern part of Libya there is ijtima before dawn, then all of Libya enters the new moon on that day and if in the east there is ijtima after dawn, then the beginning of the month starts at the next dawn (Budiwati, 2017, p. 122). This Libyan calendar also adheres to the notion that the beginning of the day begins at dawn, not at sunset as is used by the majority of Muslims. In the framework of globalization and internationalization of the calendar, the leaders decided to withdraw the headquarters of the eastern region of Libya to the easternmost headquarters of the world, namely Kiribati (Budiwati, 2017, p. 122). The formula for this calendar is:

1) If ijtimak occurs before dawn at Kiribati point then the whole world enters the new moon that day; And
2) If ijtima occurs after dawn in Kiribati, the current month is completed with 30 days and the new moon begins at the next dawn around the world.

3.7 Prayer Times

The Libyan state itself in determining the prayer times for each of its mosques on average uses the provisions of the Muslim World League (World Muslim League), the OIC (Organization of Islamic Cooperation), or institutions followed by the Libyan state where to find out the prayer times, you can This is done by accessing the website/android-based applications which can be installed and accessed via mobile phones by a wide range of people. The Libyan state has no official provisions regarding the criteria for starting prayer times from its government, but there mosques can have their own provisions according to the region in each region in Libya itself. For the country of Egypt, several African countries in this case including the country of Libya as well, Syria.

3.8 Analysis

The era of development of the country with a Muslim-majority country has its own determination of the beginning of the month for the unique Muslim community, especially the determination of the beginning of the month of Ramadan, Shawwal and Dzulhijjah. Where the government in this case has the authority to decide on the determination of the beginning of the month, where in 2008 a determination was made of the beginning of the month of Ramadan, Shawwal and Dzulhijjah with reference to the astronomical aspects of the occurrence of the new moon, namely the conjunction (ijtimak) before dawn (Rukhmadi, 2014 , p. 55). Which is done through research organizations from the government*Libyan Center for Remote Sensing and Space Science*(LCRSSS).

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4. CONCLUSION

According to historical records, the country of Libya has several traces of determining the beginning of the month based on the calendar they made. In 1980 The Jamahiriya Islamic Calendar (AJ = Anno Jamahiriya) and The Jamahiriya Solar Calendar, both of which were introduced and used since the reign of Mu'ammar al-Qadafi Libya to determine the beginning of the Hijri year at that time. In 2008, a determination was made of the beginning of the month of Ramadhan, Shawwal and Dzulhijjah with reference to the astronomical aspects of the occurrence of the new moon, namely the conjunction (ijtimak) before dawn which was carried out through a government research organization (LCRSSS).

Until now, the Libyan Calendar uses true reckoning with the criteria of ijtima before dawn in eastern Libya. So if in the eastern part of Libya there is ijtimak before dawn, then all of Libya

enters the new moon on that day and if in the east there is ijtima after dawn, then the beginning of the month begins at the next dawn. The Libyan calendar also adheres to the belief that the day begins at dawn, by pulling the easternmost headquarters of Libya to the world's easternmost headquarters, Kiribati. If ijtimak occurs before dawn at Kiribati point then the whole world enters the new moon that day; and If ijtimak occurs after dawn in Kiribati, the current month is completed to 30 days and the new moon begins at the next dawn around the world.

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INDIAN CALENDAR SYSTEM IN ISLAMIC ASTRONOMY PERSPECTIVE

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Abstract: The Indian calendar or the Indian calendar system is a unique calendar. This is because many regions have their own version of the calendar. The Indian calendar uses two calendar systems in general, namely according to solar calculations and according to solar lunar calculations. This paper discusses the Indian calendar system in the perspective of Islamic astronomy. The method used in this research is library research*(library research)*. In the perspective of Islamic astronomy, the Indian calendar is not very suitable because it does not use calculations according to the movement of the moon. The Saka Bali calendar is one of the calendars whose calculations are close to the Hijri calendar or Islamic astronomy because it uses calculations for the movement of the moon and the sun.
Keywords: Indian Calendar; Islamic Astronomy; Saka Calendar.

1. INTRODUCTION

The life of living things is very dependent on time, including humans themselves who were created by Allah SWT. as the most perfect creature on this earth. Then in order to make it easier for humans to think of making a time marking system called a calendar. The calendar itself is a system consisting of units of time as a marker for calculating time in the long term (Saifullah and Sukma, 2022, p. 28). The calendar has the equivalent term, namely the almanac. Almanacs are used as guidelines for time planning in tabular form and corrections in agriculture, economics, and religion (Soderi, 2018, p. 242). With a calendar, humans can easily plan when to start planting, when to sell in the market, when to pray, and many other activities (Azhari, 2008, p. 115).

There are three calendar systems in use today in the world, namely the solar (solar) calendar system, lunar (lunar) calendar system, and solar (lunisolar) calendar system. The solar calendar is a calendar whose calendar calculations are based on the earth's revolution around the sun, one year has a total of 365 days plus a quarter of days every year. A lunar calendar is a calendar whose calendar calculations are based on the revolution of the moon on the earth, which takes a year to calculate 354 11/30 days (Mukarrom, 2017, p. 113). While the solar lunar calendar is a calendar system that uses the time the moon revolves around the earth for one month,

Until now, the calendar that is widely used by most people on earth is the Gregorian calendar, which is calculated based on the earth's revolution around the sun. Meanwhile, the lunar calendar itself, which is commonly called the Hijri calendar, is only used by Islamic countries. Indonesia, where the majority of the population is Muslim, still uses the Gregorian calendar in state administration (Izzudin, 2007, 56). The same thing also happens in parts of countries that already have their own calendars such as India. The Indian calendar is only used in religious events in the country, it is not comprehensive in the joints of life in state administration using the Gregorian calendar (Saifullah and Sukma, 2022, p. 29). The Indian calendar itself existed before the Gregorian calendar. The Indian calendar is unique in that it has several versions in each region of India. There are those who use sun and moon and sun calculations. Therefore, this journal will discuss the Indian calendar system in the perspective of Islamic astronomy.

2. METHOD

Research in this journal is library research. Data sources were obtained from books and journals that discussed the Indian calendar. The data was then collected and systematically systematized the Indian calendar in the perspective of Islamic astronomy.

3. ANALYSIS OF STUDY FINDINGS

3.1 Islamic Astronomy in Indian Civilization

The science of astronomy that developed in India is related to religion as in other countries. Several texts by Indian scientists became one of the works that added to Islamic

astronomical civilization. The text is among the firstAl-Arjabhar by Aryabhata, the second Zij al-Arkand by Brahmagupta, the third Zij as-Sindhind which can still be used for study by Muslim scientists because the two books mentioned earlier are hard to find.

According to al-Qifthy, Indian astronomical texts reached Islamic civilization in 156 H/773 AD brought by envoys from India to Baghdad and met the caliph carrying astronomical texts in Sanskrit Siddhānta (Arabic: Sindhind).The visit of the Indian envoy is an introduction to the Arab heritage of India as well as marking a turning point in the history of Arab intellectuals. According to al-Qifthy's statement again, the Sindhind text in general contains calculations for the motion of the stars, calculations for eclipses, calculations for the positions of the constellations (mathali' al-buruj) and other calculations which are entirely contained in several chapters. In Sanskrit, Siddhanta or Sindhind means knowledge, knowledge and sect. While terminologically it means books on astronomy and calculations of the motions of all the planets and/or stars.

*Brahmasphutasiddanta*is the original title of Sindhind in Sanskrit, a revised version of the astronomy book attributed to Brahma. The Arab writers omitted several words from this title and left Siddhanta, then modified it slightly by adding the word hind (India) at the end to make it as-Sindhind. Some contemporary circles call this book "as-Sindhind al-Kabir" to distinguish it from al-Khwarizmi's as-Sindhind.

The growing observation of the Indian astronomical system was primarily aimed at calculating heavenly bodies, not actually providing a theoretical model. But this system remained within a practical utilitarian framework which led astrology to produce more methods and theoretical frameworks for reducing astronomical phenomena. From this it can be concluded that the tendency of Indian astronomy with arithmetic patterns of celestial bodies has developed in Islamic civilization since the beginning of its existence which did not provide a theoretical framework, but certainly had a major role in formulating theoretical experimental models of astronomy (ArabicIslamic Astronomy in Indian Civilization, 2022).

3.2 Indian Calendar System

The calendar system in India is unique in that it has various variations in each of its regions. This variation arises due to long cultural influences. India uses two calendars namely Solar and Luni-Solar. The modern Indian calendar used today is astronomical because there is alignment with astronomical events such as the pattern of the sun's passage through the ecliptic and solar conjunctions (Lian, 2001, p. 17). According to Prabhakar Vyankatesh Holay in his phenomenal work Vedaanga Jyotisha, there are four calendar eras in India, namely (Holay, 1989, -. 122):

1. Kaliyuga calendar

   This period was the beginning of a more advanced Indian civilization marked by several events, such as (Mishra, nd, p. 72):

   a. Mahabharata war events
   b. The coronation of king Yudhisthira
   c. Coronation of king Pariksita
   d. Disappearance of Lord Krishna

   The Kaliyuga calendar is calculated based on the sidereal motion of the sun. A famous astronomer named Āryabhata mentions that the Kaliyuga calendar starts six days after the departure of Lord Krishna. Precisely on February 20, 3102 BC. However, this opinion cannot be accepted by the traditions of society. The opinion that is traditionally accepted is that the 52nd century kaliyugābda was on April 15, 1999 AD, so today, 2022, we are in the year 5123 of the Kaliyuga calendar (Saifullah and Sukma, 2022, p. 31)
2. Saptarshi Vatsara Calendar

   Saptharishis is a group of seven brightest stars in the constellation Ursa Mayor (The Big Bear). 14 Based on the findings of astronomers from ancient Greece, there is a difference in a certain time span between the existence of the tropical zodiac and the Saptarshi calendar (Ursa Major) which uses the moon as its calculation. The saptarshis calendar is no longer in use, this is because every 100 years there is a shift of the lunar mansion by 1°.
3. Vikrama Samvat Calendar

The Vikrama samvat calendar is simply a change of name to the calendar started in 57 BC by king Vikramasitya. The king considered that he had overthrown the tyranny of the old king so a new calendar was made to commemorate him starting from the Shukla paksha of the month of Chaitra. Vikrama is no longer used by Indian society for civil activities, but is still used for worship celebrations.

4. Saka Calendar

The Saka calendar or in full is Shalivahana Shaka Calendar is the national calendar which is still used with the Gregorian calendar in India. As used by The Gazette of India, which is the official news publication media issued by the Indian government. The Saka calendar is also used by Hindus in Java and Bali, for example, the Nyepi celebration to commemorate the new Saka year in Bali. The Nepalese Sambat calendar in Nepal is also a modification of the saka calendar. Apart from that, several areas of the Philippines also used the pre-colonial Saka calendar as written in the Laguna Copperplate inscription. The Saka calendar in India has many different versions in each region. There are at least four streams that use the Saka calendar with their respective versions (Aslaksen, nd, p. 2):

a. Orissa Calendar
b. Tamil Calendar
c. Malyali Calendar
d. Bengal Calendar

4. CONCLUSION

The Indian calendar has many versions in different parts of India. Broadly speaking, the calendar or calendar system in India is divided into two categories, namely the solar calendar and the solar lunar calendar. One example of a calendar that uses solar month calculations is the Balinese Saka calendar. While the calendar that is widely used is the Sayana Year which is based on solar calculations. This calendar is commonly used in newspapers or official mass media in India. However, the Gregorian calendar is still used during religious administration in India.

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HISTORY AND ASTRONOMICAL WISDOM OF THE CHANGE OF QIBLAT DIRECTION FOR MUSLIMS

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Abstract: The Kaaba, which is located in the city of Mecca, is not the first Qibla for Muslims. The first Qibla for Muslims is Baitul Maqdis or Masjid Al Aqsa. But the Kaaba is the first place of worship built on Earth. An interesting thing from the history of the change in the Qibla direction of Muslims is what exactly is the astronomical wisdom behind our changing the Qibla direction? Furthermore, this research is included in the category of library research with a qualitative descriptive method. From the results of the research, it is stated that history states that the order to change the Qibla from Baitul Maqdis to Baitullah occurred in the second year after the Prophet migrated to Medina. This shift towards the Qibla direction astronomically has its own wisdom with the method of determining the Qibla rashdul which we can easily do at any time with the help of a simple sunshade. This is because the latitude of the Kaaba in the city of Makkah does not exceed the highest declination value of the Sun. Both the north equinox and the south equinox. In contrast to Baitul Maqdis which is located in the city of Yarussalem, where the latitude value exceeds the highest declination of the Sun. So that the city or region will astronomically never encounter the phenomenon of a day without a shadow because the sun will never culminate right in that area. Both the north equinox and the south equinox. In contrast to Baitul Maqdis which is located in the city of Yarussalem, where the latitude value exceeds the highest declination of the Sun. So that the city or region will astronomically never encounter the phenomenon of a day without a shadow because the sun will never culminate right in that area. Both the north equinox and the south equinox. In contrast to Baitul Maqdis which is located in the city of Yarussalem, where the latitude value exceeds the highest declination of the Sun. So that the city or region will astronomically never encounter the phenomenon of a day without a shadow because the sun will never culminate right in that area.
Keywords: Qibla Direction, Mecca, Jerusalem

1. INTRODUCTION

The word al-Qiblah is repeated four times in the Koran. From the root language, the word comes from the word qabal-yaqbulu which means facing. Meanwhile, in terms of terminology, the word Qibla has various definitions. Al-Amidi stated that the Qibla is facing the place where people face when praying (Al-Amidi, n.d., p.44). Abdul Aziz Dahlan defines the Qibla as the building of the Ka'bah or the direction that Muslims aim to carry out their worship (Dahlan, 1996, p. 944). According to Slamet Hambali, the direction of the Qibla is the direction towards the Ka'bah via the nearest route where every Muslim must face that direction when performing prayers (Hambali, n.d., p. 84). Muhyiddin Khazin defines Qibla as the closest direction or distance along the large circle that passes through the Kaaba to the city in question (Khazin, 2004, p. 3). Meanwhile, according to Ahmad Izzuddin, the Qibla is the Kaaba or at least the Grand Mosque taking into account the latitude and longitude of the Kaaba and considering the direction or closest position calculated from the area we want (Izzuddin, 2010, p. 4).

Apart from the various definitions above, facing the Qibla is one of the conditions for the validity of prayer. So if the mushalli or the one who performs the prayer is facing away from the direction of the qibla, then the prayer is considered invalid. This indicates that facing the Qibla is an intermediary for performing prayers. Because establishing prayer is obligatory, then everything that is an intermediary to be able to perform prayer has an obligatory law as well. As the rule of ushul fiqh ''Maa laa orphans al-waajibu illa bihi fa huwa waajib" (As-Suyuti, nd, p. 116).

2. RESEARCH METHOD

This research is a type of library research with qualitative methods. This research is based on written data contained in books, scriptures or journals related to the history of Qibla direction and astronomy. The primary data sources used are the books of hadith and books of Al-Quran interpretation which explain the history of the change of Qibla for Muslims. While secondary data sources are books, articles and journals related to astronomy or astronomy. The method used in discussing this research is descriptive method (Nazir, 2009, p. 76). This method is used in order to be able to understand and provide a clear picture of the problems related to the content of the research, namely those related to the history and astronomical wisdom of the change of Qibla direction for Muslims (Sugiono, 2012, p. 57).

3. HISTORY AND ASTRONOMICAL WISDOM OF THE CHANGE OF QIBLAT FOR MUSLIMS

3.1History of Qibla Direction Change

The Kaaba is the qibla and the most famous place of worship in Islam. In the beginning, the location of the Kaaba was the location of Prophet Adam's tent after Allah sent him down from heaven to Earth (Dahlan, 1996, p. 944). Furthermore, the location was glorified and sanctified by the people of the prophets. Until the time of Prophet Ibrahim and his son Prophet Ismail, the location was built a house of worship, which is now referred to as the Kaaba building. So that the Kaaba is the first place of worship built on Earth.

إِنَّ أَوَّلَ بَيْتٍ وُضِعَ لِلنَّاسِ لَلَّذِى بِبَكَّةَ مُبَارَكًا وَهُدًى لِّلْعٰلَمِينَ

"In fact the first house built for (a place of worship) for humans is Baitullah, in Bakkah (Makkah) which is blessed and becomes a guide for all humans" (QS. Ali Imran: 96)

The verse above is Allah's rebuttal to kibab experts who state that the first house of worship that was built on Earth was the Baitul maqdis or aqsa.

After the death of the Prophet Ismail, the maintenance of the Ka'bah was held by his descendants, then it was continued by the Jurhum people, and the Khuza'ah children who worshiped idols. Furthermore, maintenance of the Kaaba was held by the Quraysh tribe ((Dahlan, 1996, p. 944). Prior to the advent of Islam, Abdul Muthalib, who was the grandfather of the Prophet Muhammad, was the caretaker of the Kaaba. However, after the event of the Mecca fathul, maintenance of the Ka'bah bah is fully held by the Muslims (Azhari, 2007, p. 42).

When the Prophet was still living in the city of Makkah and after the Prophet made his isra' mi'raj, there was no provision by Allah regarding the obligation to face the Qibla for Muslims in carrying out the prayer service. The Prophet himself, according to his ijtihad, in carrying out prayers, always faced Baitul Maqdis or Aqsa, as was done by the Prophets of the Children of Israel. Because at that time, Baitullah was still surrounded by hundreds of idols and the position of Baitul Maqdis at that time was still considered the most special. Even though in his heart the Prophet preferred the Qiblah of the Prophet Abraham. However, one history states that even though every time the Prophet prayed facing the Baitul Maqdis, he always took a position south of the Kaaba and faced north. Therefore,

When the prophet migrated to Medina, the prophet prayed only facing Baitul maqdis, due to the difficulty of ascertaining the exact direction towards the two qibla (namely Baitul maqdis and Baitullah) as was the case when the prophet was in Mecca. This went on for approximately 16 months (Al-Andalusi, 2000, p. 594). This even became the material ridicule of the Jews. They were happy and said: "...Muhammad's religion is indeed different from ours, but his Qibla follows ours. If there were no our religion, then Muhammad would not know where to face the Qibla" (Al-Maraghi, nd, p. 9)

Hearing this statement, the Prophet began to dislike facing Baitul Maqdis. There is even a History which tells that the Prophet once said to the angel Gabriel: "I really hope that Allah will move my Qibla from the Qibla of the Jews to another Qibla" (Al-Maraghi, nd, p. 9). Until after each prayer service, the Prophet often looked up to the sky to ask Allah to make the Kaaba the Qibla of Muslims.

Exactly in the second year of Hijriyah, when the Prophet was praying, a revelation came down ordering him to turn his qibla to the Kaaba. So the Messenger of Allah turned away which

was then followed by the companions who were praying behind him. At that time the Prophet and the Muslims were performing the Dhuhr prayer at the Bani Salamah mosque. In the first two cycles of the Prophet Muhammad oriented to Biatul maqdis, then in the next cycle he oriented to the Grand Mosque. So that the Bani Salamah mosque is now famous as the Qiblatain mosque (the mosque of two Qibla).

The following are verses of the Quran related to changing the direction of Qibla:

a. Al-Baqarah verse 144:

قَدْ نَرٰى تَقَلُّبَ وَجْهِكَ فِى السَّمَآءِۚ فَلَنُوَلِّيَنَّكَ قِبْلَةً تَرْضٰىهَاۗ فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِۗ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوْا وُجُوْهَكُمْ شَطْرَهٗۗ وَاِنَّ الَّذِيْنَ اُوْتُوا الْكِتٰبَ لَيَعْلَمُوْنَ اَنَّهُ الْحَقُّ مِنْ رَّبِّهِمْۗ وَمَا اللّٰهُ بِغَافِلٍ عَمَّا يَعْمَلُوْنَ

"Indeed, We (often) see your face looking up to the sky, so indeed, We will turn you to the Qibla that you like. Turn your face towards the Grand Mosque. Every where you are, turn your face on him. And actually those people (Jews and Christians) who were given the Al-Kitab (Torah and Bible) do know that turning to the Grand Mosque is true from their Lord; and Allah is never unaware of what they do"

b. Al-Baqarah verse 149:

وَمِنْ حَيْثُ خَرَجْتَ فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِۗ وَاِنَّهٗ لَلْحَقُّ مِنْ رَّبِّكَۗ وَمَا اللّٰهُ بِغَافِلٍ عَمَّا تَعْمَلُوْنَ

"And wherever you come out (come), then turn your face towards the Grand Mosque, in fact the provision is really something that is right from your Lord. And Allah is never unaware of what you do."

c. Al-Baqarah verse 150:

وَمِنْ حَيْثُ خَرَجْتَ فَوَلِّ وَجْهَكَ شَطْرَ الْمَسْجِدِ الْحَرَامِۗ وَحَيْثُ مَا كُنْتُمْ فَوَلُّوْا وُجُوْهَكُمْ شَطْرَهٗۙ لِئَلَّا يَكُوْنَ لِلنَّاسِ عَلَيْكُمْ حُجَّةٌ اِلَّا الَّذِيْنَ ظَلَمُوْا مِنْهُمْ فَلَا تَخْشَوْهُمْ وَاخْشَوْنِيْ وَلِاُتِمَّ نِعْمَتِيْ عَلَيْكُمْ وَلَعَلَّكُمْ تَهْتَدُوْنَ

"And where are you from (out), then turn your face towards the Grand Mosque. And wherever you (all) are, then turn your face towards it, so that there is no evidence for humans against you, except for those who are unjust among them. So do not be afraid of them and fear Me (only). And so that I may perfect My favor upon you, and so that you may be guided."

The change in the direction of the Qibla then received a lot of protests, especially from among the Jews and Christians. Even the Jews say: "...turning them (Muslims) away from our Qibla (Baitul maqdis) is an act of vanity and stupidity" (A-Andalusi, 2000, p. 594). Their statement was then answered by Allah as follows: First, that the change of Qibla direction is the will of Allah who has power over everything. "... say to Allah belongs the east and the west" (QS.al-Baqarah: 142). Second, that the purpose of moving the Qiblah is to test the obedience of the Muslims to the Prophet. "... and we determine the qibla that is your qibla (now), but so that we know who follows the Messenger and who defected ..." (QS. al-Baqarah: 142). Third, that the value of worship does not lie in facing east or west, but in obedience and faith: "... it is not obligatory to turn your face to the east and west, but actually virtue is faith in Allah, the Day of Judgment, the angels angels, books, prophets…" (QS. Al-Baqarah: 177). Fourth, That the statements of the Jews and Christians show disobedience, because in fact they already know that the direction of the Kaaba is true. "...and actually those (Jews and Christians) who were given the al-Kitab (Torah and Bible) do know that turning to the Grand Mosque is true from their God..." (QS.al-Baqarah: 144). Even among the Muslims themselves, this change of Qibla event gave rise to slander for those whose faith is weak. Some of them apostate due to their doubts and hypocrisy. "...and actually those (Jews and Christians) who were given the al-Kitab (Torah and Bible) do know that turning to the Grand Mosque is true from their God..." (QS.al-Baqarah: 144). Even among the Muslims themselves, this

change of Qibla event gave rise to slander for those whose faith is weak. Some of them apostate due to their doubts and hypocrisy. "...and actually those (Jews and Christians) who were given the al-Kitab (Torah and Bible) do know that turning to the Grand Mosque is true from their God..." (QS.al-Baqarah: 144). Even among the Muslims themselves, this change of Qibla event gave rise to slander for those whose faith is weak. Some of them apostate due to their doubts and hypocrisy (At-Turki, n.d., p. 157).

3.2Astronomical Wisdom of Changing Qibla Direction

Based on existing syra'i arguments, Muslims have agreed that facing the Qibla of the Kaaba is a condition for the validity of prayer. For Muslims who are in the Mecca area, the order to face the Qibla is not too much of a problem. The problem arises when this obligation is faced by Muslims who are far from the Kaaba and even far from the city of Mecca. Because the size of the Kaaba is only about 13m x 11.5m, it is very difficult for people who are far from the Kaaba to be able to face the Kaaba exactly. In fiqh. Discussion of the Qibla direction revolves around the question of facing 'ain al-qiblat (Kaaba) or simply facing the direction towards the Kaaba. While the science of astronomy, as a tool for the science of fiqh,

One of the simple methods for determining the Qibla direction which is predicted to have quite precise accuracy is the Rasdul Qibla method, which is the method of determining the Qibla direction with the help of a simple sun's shadow. This method actually takes advantage of the position of the Sun. There are two ways that can be used in determining the Qibla direction with guidelines on the position of the Sun:

First, when the position of the sun is exactly at the zenith of the Kaaba. Within one year, the position of the Sun will culminate twice and astronomically have a height of 90 degrees above the Kaaba. That is when the sun is heading north in May and when the sun is heading south in July. Because indeed the Kaaba which is located in the city of Makkah has a latitude of 21̊ 25' 21.05'' LU. If this situation occurs, then the shadow of every object that is perpendicular to the surface of the Earth during the day will be directed towards the Kaaba. Astronomically, this situation can occur because the latitude where the Kaaba is located in these months is the same or almost the same as the declination when the sun is culminating. This phenomenon is called the annual Qibla rashdul. Dear Indonesia,

Second, the shadow of the Qibla or the daily Rashdul Qibla. Determining the Qibla direction based on the Qibla shadows can be done when the sun's position is exactly at the azimuth of the Kaaba or in the opposite direction to the azimuth of the Kaaba. In contrast to the annual Qibla Rashdul, which in practice does not have a specific calculation process, the daily Qibla Rashdul has several steps in the calculation formula that must be carried out before measuring the sun's shadow at a certain hour.

Determining the Qibla direction in this way can actually be done in several places on the surface of the Earth, including in our country Indonesia which has a latitude of 6o north latitude to 11o south latitude. The sun culminates in several parts of Indonesia from Aceh to Papua in mid-February to early April. This phenomenon is better known as the day without a shadow phenomenon. Astronomically, a day without a shadow can occur twice a year for certain cities that are on the Tropic of Cancer 23.4 degrees north latitude and Tropic of Capricorn 23.4 degrees south latitude. Meanwhile, cities that are located directly on the Tropic of Cancer will only experience a day without shadows only once a year. Outside the above area,

The Kaaba, which is located in the city of Mecca, has a latitude of 21̊ 25' 21.05'' LU, which is included in the category of a city or region that will each year experience the phenomenon of the sun culminating or a day without a shadow. This phenomenon is then used to determine the Qibla direction using the annual Rashdul Qibla method. In contrast to the city of Yarussalem in Palestine, the place where the Baitul maqdis or aqsa stands, has a latitude of 31̊ 46' 10'' LU. This latitude value exceeds the greatest declination of the Sun at both the north and south declinations. So that the city or region astronomically will never encounter the phenomenon of a day without a shadow. So this is what is then referred to as the astronomical wisdom of changing the Qibla direction from the Baitul maqdis in Yarussalem to the Baitullah or the Kaaba in Mecca.

4. CONCLUSION

From the results of the research above, it is stated that history states that the order to change the Qibla from Baitul Maqdis to Baitullah occurred in the second year after the Prophet moved to Medina. This shift towards the Qibla actually has its own wisdom astronomically, namely with the method of determining the Qibla rashdul which we can easily do at any time with the help of a simple sunshade.

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SUNDIAL DEVELOPMENTS IN SURROUNDING COMMUNITIES: STUDY AT QOWIYUDDIN JAGIR MOSQUE AND PENELEH MOSQUE, SURABAYA

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Abstract: The use of traditional tools at the present time is considered less attractive to do and has resulted in gradually being abandoned. Especially in the field of Astronomy there are technological developments that have supported the use of more practical tools or instruments. One of them on*Sundial*or a sundial which is a simple instrument that can tell time using the concept of the sun's shadow. The use of this tool is very rare. Researchers conducted a search and managed to find related to this traditional tool, namely at some of the oldest mosques in Surabaya, namely the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya. The two mosques still use the classical device to determine the start of their prayer times, namely by using the Sundial. Both the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya have their own mention of the Sundial they use. For example, the Qowiyuddin Mosque calls it Pandem, while the Jami' Peneneleh Mosque calls it Bencet. Based on that, the researcher wants to dig deeper into how the development of the use of Sundial or Pandem or Bencet in the surrounding community, especially at the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya. With this research it is hoped that it can become a source of knowledge related to the development of the use of Sundial itself.
Keywords: Sundial; *Pandem*; Mosque.

1. INTRODUCTION

*Sundial*or sundial is one of the many astronomical instruments used as a timepiece or clock based on the position of the sun. The working principle of the Sundial instrument is to utilize the apparent motion of the Sun which causes the position of the Sun to observers on Earth to move in an apparent way throughout the day. Over time, the position of the sun gradually changes, causing the time indicated by the shadow of the sun to change. The sundial itself basically functions as a timer, especially to determine the start of the prayer time.

Along with the passage of time, the existence of the sundial or sundial as a medium for determining time is gradually being abandoned and replaced. This is inseparable from the increasingly advanced science and technology that exists at this time. With this progress, new tools, instruments or devices that are much more sophisticated and practical can be used to determine time easily and quickly. Examples include digital clocks, wall clocks, watches, or even clocks on cellphones, and many others.

In its development, people used to be more familiar with the term Sundial with another name, namely Bencet. These bruises are often found in front of ancient mosques such as the Great Solo Mosque, the Demak Mosque and the Menara Kudus Mosque. Even though there are many and easy to find, in fact there are many Bencet that are only for display at this time, such as Bencet in Sunan Ampel Surabaya and Bahrul Ulum Islamic Boarding School in Sidoarjo. However, there are also several mosques that are still actively using the instrument today, as in the Al-Mahfudz Seblak Diwek Islamic Boarding School, Jombang and also the Tegalsari Laweyan Mosque, Surakarta.

Some of the Bencet in these mosques are thought to have been made since the 1900s, some of which are even hundreds of years old. However, there are also a number of bencets that have recently been made, for example the one at the Al-Mahfudz Seblak Diwek Islamic Boarding School, Jombang.

As for the places that the researchers found from the searches carried out, namely in the area around the Qowiyuddin Jagir Mosque, the people call Sundial as Pandem. Meanwhile at the Jami' Peneleh Mosque in Surabaya, he knew Sundial by the name Bencet. All of these instruments

were used by the previous pious scholars to determine the start of the prayer time at each of these mosques. Where the use of Pandem and Bencet over time has become a culture and habit that has been passed down from generation to generation by the people around the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya. Even though at this time a variety of sophisticated and practical tools are available and easily found everywhere, but it is not impossible that there are still those who still use and utilize the Sundial or Sundial or Pandem or Bencet to determine the time, especially regarding prayer times, for example at the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya. Therefore, researchers want to examine the ins and outs and how far the development of the use of Sundial / Bencet / Pandem in the surrounding community, especially at the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya.

3. DISCUSSION

3.1 Sundials

Etymologically, Sundial comes from the English word "sun" which means sun and "dial" which means plate.(Qulub, 2017, p. 129)Meanwhile, in Sundial Arabic it is better known as Mizwalla or as-Sa'ah ash-Syamsiyah.(Atabik and Ahmad Zuhdi Muhdlor, 2004, p. 1036)The sundial, also known as the sundial, was first discovered by archaeologists in Egypt and Babylon. Archaeologists also estimate that the obelisk-shaped Sundial (monument) existed around 3500 BC and also a shadow clock around 1500 BC.(Qulub, 2017)It was also in Egypt around the 15th century BC that the oldest sundial was found during the time of Thutmosis III, where the sundial consisted of two pieces on a stone that served as a needle and a clock line. The Sundial is also equipped with a pendulum which functions as a tool to measure the flatness of the Sundial itself.

Meanwhile, in Indonesia the Sundial is known as the Bencet, which is a simple device made of cement, wooden sticks or the like modified in such a way and placed in an open place to be exposed to or get sunlight.(Khazin, 2005, p. 12)The Bencet in Indonesia is usually used to find prayer times, true solar time, Syamsiyah date, and pranotomongso so that the dial has the angle of the sun, the north-south line, the sign of the sun's position (season), the analemma, and the asr timeline.

*Sundial*or what is also called a sundial is a device that is used as a local apparent time indicator that uses the sun to produce the shadows of the gnomons. The most important components of a Sundial instrument are the gnomon and the dial area. Gnomon is a tool component that functions as a sun shadow on the dial to indicate time. The gnomon can be set based on the dial surface, which is either parallel to the dial surface, perpendicular to the dial surface, or pointing to the celestial pole depending on the type of sundial.(Azhari, 2008, p. 105)While the area of the dial is where the sun's shadow falls, this component is in the form of a disc or plain on which the hour numbers are written.(Jannah & Rohmah, 2019, p. 135)Later the gnomon's shadow will point or point to the hour number.

In its development Sundial is divided into 3 types, among others; a) Equatorial Sundial, b) Vertical Sundial, c) Horizontal Sundial.(Riza, 2018, pp. 9–14)The various Sundials have different types, characters, and concepts but are still related to each other. Apart from that, there is also a Bencet which is a modification of the three Sundial models. Even so, it should be noted that the majority of Bencet have a shape that almost follows the Sundial Horizontal because the dial is horizontal. However, the difference between the Bencet and the Sundial Horizontal lies in the gnomon, where the gnomon Bencet does not tilt and forms a latitude angle like the Sundial Horizontal in general. So that this modification is more similar to the Sundial analemma.(Qulub, 2017)Besides that, there is also a Bencet which is made with gnomon placed on top of the dome of the mosque, namely in the form of a hole in the roof or dome, where later the sunlight that falls on the inner floor of the mosque is likened to functioning as a dial which will indicate the time of prayer.(Qulub, 2017)Such a model or concept of Bencet can be found at the Sunan Ampel Mosque in Surabaya and the Tegalsari Laweyan Mosque in Surakarta.

The functions of Sundial include:

- As a timepiece
- As a prayer time indicator

- As a medium for determining the Qibla direction
- As a sign of the season

3.2 Overview of the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya

The Qowiyuddin Mosque is the oldest mosque in the South Surabaya area, where this mosque was built in 1786. The Qowiyuddin Mosque has an area of 13 square meters with a size of 117 meters x 9 meters.(The History of the Qowiyuddin Mosque in Jagir Wonokromo Surabaya Founded by the Descendants of Sunan Gunung Jati - Surya Travel, nd)The mosque is located at Jalan Jagir, Kec. Wonokromo, Surabaya was founded by Mbah Qowiyuddin who is the 7th (seventh) descendant of Sunan Gunung Jati. Similar to Sunan Gunung Jati, Mbah Qowiyuddin is also a prominent scholar in the Cirebon area. Apart from being a prominent scholar, Mbah Qowiyuddin was also famous for his intelligence in formulating war strategies. For his intelligence and ability, Mbah Qowiyuddin became one of the scholars who the Dutch greatly feared during the Dutch colonial period in Indonesia. Because being a fugitive from the Dutch required Mbah Qowiyuddin to flee from Cirebon, he did this by drifting the wood into the sea where the wood finally stopped at the Brantas River (Rolag) in Surabaya. After successfully escaping from the pursuit of the Dutch, finally Mbah Qowiyuddin continued his preaching by building a mosque right where the wood he had washed away stopped. At first, the Qowiyuddin Mosque was built right at the floodgates of the Brantas River (Rolag) in Surabaya. However, during the Dutch occupation, the mosque had to be moved to Jalan Jagir permanently, due to the construction of irrigation canals by the Dutch government. It is said that the transfer of the mosque was carried out by Mbah Qowiyuddin himself by lifting it up, with Allah's permission the mosque was finally lifted. during the Dutch occupation the mosque had to be moved to Jalan Jagir permanently, due to the construction of irrigation canals by the Dutch government. It is said that the transfer of the mosque was carried out by Mbah Qowiyuddin himself by lifting it up, with Allah's permission the mosque was finally lifted. during the Dutch occupation the mosque had to be moved to Jalan Jagir permanently, due to the construction of irrigation canals by the Dutch government. It is said that the transfer of the mosque was carried out by Mbah Qowiyuddin himself by lifting it up, with Allah's permission the mosque was finally lifted.(Hamza, n.d.)Since its inception, the Qowiyuddin Mosque has renovated or changed it three times. Even so, the original part of the Qowiyuddin Mosque (to be precise on the inside of the mosque) has been maintained and has not changed.(Hamza, n.d.)As for the wood that was washed away by Mbah Qowiyuddin and stopped at the Brantas river in Surabaya, it was used as the pillars of the 8 meter long mosque which has maintained its authenticity to this day.(Looking at the Qowiyuddin Mosque, the Relics of Sunan Gunung Jati's Grandson - Indrajatim.Com, nd)

The Jami Peneleh Mosque is the 3rd oldest mosque in Surabaya.(Prayodya, 2019)The mosque is located at Jalan Achmad Djais Gang Peneleh V No. 41, RT. 06 / RW.03, Peneleh Village, Genteng District, Surabaya. It is estimated that it was built around the 1400s. The history of the Peneleh Mosque began when Sunan Ampel stopped by the Peneleh area via the Kalimas River (at that time it was the largest water transportation route). The Peneleh area is a stopover for Sunan Ampel because this area is the area closest to the water transportation route, having previously made a short stop at the Kembang Kuning area. The arrival of Sunan Ampel in the Peneleh area was also to spread the teachings of Islam, one of which was by establishing the Jami' Peneleh Mosque and establishing a boarding school located right next to the mosque. It is said that before establishing the mosque,(Peneleh As Surabaya Old Village 3_The Meaning of Village Names and Existence of the Sunan Ampel Heritage Mosque. Radar Surabaya. 13 May 2019. Pg. 3. Chrisyandi. Lib - Library, nd)Initially, the Jami' Peneleh Mosque could still be seen from across the Kalimas River, but over time the Jami' Mosque area was increasingly covered by the new buildings around it, causing the mosque area to become a densely packed environment.(Prayodya, 2019)In its development, the Jami' Peneleh Mosque has renovated and expanded the building 3 times, namely in 1800, 1945 and 1970's.

3.3 Sundial Development at the Qowiyuddin Jagir Mosque & the Jami' Peneleh Mosque

Apart from being one of the oldest mosques in South Surabaya, the Qowiyuddin Mosque is also one of the mosques that has a culture of using Sundial or Bencet to determine the start of

the prayer time. The term Sundial is better known by the people around the Qowiyuddin Mosque as Pandem. The Pandem is also one of the legacies of Mbah Qowiyuddin which was passed on to his children and grandchildren and its citizens. Pandem, which is located right in front of the courtyard of the Qowiyuddin Mosque, is estimated to have existed hundreds of years ago more or less simultaneously with the establishment of the Qowiyuddin Mosque. The position or location of the Pandem is still the same and has not changed since it was first built until now.(Hamza, n.d.)Mbah Qowiyuddin taught the use of Pandem directly as a medium for determining the start of prayer times, especially the Dhuhr and Asr prayers. Where when entering the Dhuhur and Asr prayer times the mosque administrator will check the accuracy of the initial prayer times using Pandem. However, unfortunately the culture of using Sundial or what is better known to the people around the Qowiyuddin Mosque under the name Pandem to determine the start of this prayer time, for the last 3 years Pandem has rarely been used anymore. This happened after the person who had knowledge of using Pandem had died. Apart from that, it is also due to the lack of current Qowiyuddin Mosque administrators who are able to operate the Pandem consistently.(Hamza, n.d.)Even though it is rarely used anymore, the Pandem in the Qowiyuddin Mosque can still function and be well maintained by the mosque management.

Similar to the Qowiyuddin Mosque, the Jami' Peneleh Mosque also has Sundial heritage. The people around the Jami' Peneleh Mosque are more familiar with the term Sundial as Bencet.(Amiruddin, 2022)However, it is very unfortunate that the Bencet at the Jami' Mosque has never been used since the caretaker or person who controlled the Bencet died. In addition, the existence of buildings or buildings around the mosque makes Bencet which is located in front of the Jami' Mosque less exposed to sunlight because it is blocked by buildings or buildings, which greatly hinders the use of the Bencet itself. Now, the Bencet in front of the mosque area is stored in a special container that is permanently locked. According to the management of the mosque, the Bencet at the Jami' Peneleh Mosque is very rare and almost never reopened due to the lack of mosque administrators who are able to use the Bencet. Therefore,(Amiruddin, 2022)

4. CONCLUSION

*Sundial*or sundial is a simple instrument that can tell time based on the shadow of the sun. Sundial on the development of the surrounding community, especially at the Qowiyuddin Jagir Mosque and the Jami' Peneleh Mosque in Surabaya, is more familiar with names such as Pendem and also Bencet. Even though they are known by different names, both Sundial, Pendem and Bencet are actually still related to each other, it's just that there are several modifications in their manufacture and use.

The development of the use of Sundial or better known by the local community as Pandem at the Qowiyuddin Mosque has become a habit that has existed since Mbah Qowiyuddin founded the mosque. Mbah Qowiyuddin taught the use of Pandem in determining the start of prayer times, especially Dhuhr and Asr, taught directly by Mbah Qowiyuddin to his children and grandchildren and his people and is still being used up to the last few years. However, it is very unfortunate that since the last 3 years the use of Pandem has begun to be rarely used. This is because people who have Pandem knowledge have died, and the lack of management of the Qowiyuddin Mosque who are proficient and consistent in using Pandem. Meanwhile, the use of Sundial or Bencet at the Jami' Peneleh Mosque has been taught by previous scholars. However, after the death of the caretaker, the use of Bencet in the Jami' Peneleh Mosque is increasingly disappearing. The administrators of the Jami' Mosque and local residents prefer to lock the Bencet permanently, and now the Bencet is only a display of the remains of the former pious scholars.

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SHARIA TOURISM DEVELOPMENT POTENTIAL IN LUNCI BEACH DISTRICT, SUKAMARA DISTRICT

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Abstract: The growing development of sharia-based tourism in several regions that have tourist destinations that support and are predominantly Muslim, as well as the increasing management of sharia tourism. This research is focused on two problem formulations, namely (1) Does the regional government's strategic plan for Sukamara Regency have priority in developing tourist areas; (2) What is the potential for sharia-based tourism development in Pantai Lunci District. The type of research used in this study is empirical juridical with a descriptive qualitative approach, while the data collection technique is by conducting interviews, observation, and documentation. The results of this study indicate that (1) the strategic plan of the Sukamara Regency government has priority in the development of tourist areas because this is part of the local government policy contained in the medium-term development plan of the Sukamara Regency area and the role of the Sports and Tourism Youth Service and awareness groups tour. (2) The tourism potential in Pantai Lunci District has the potential to be developed into sharia tourism, this can be seen from the people who understand sharia tourism, the majority of the population is Muslim, prayer facilities are available and easy to find, the products presented are halal products, and the community supports the development of sharia tourism.
Keywords: Potency; Development; Sharia Tourism

1. INTRODUCTION

ptourism has become a new trend in the development sector in the economic sector to accelerate economic growth and the welfare of local communities (Hamzana, 2017, p. 2). In line with the times with increasing levels of awareness of the religiosity of society, both locally and globally, sharia-based tourism is becoming a new trend in the development of tourism in various parts of the world (Djkafar, 2017, p. 29). Islam has recommended to travel or travel in accordance with the word of Allah SWT "Say: Walk on (the face of) the earth, then pay attention to how Allah created (man) from the beginning, then Allah made him once again. Verily, Allah is Powerful over all things." (QS. Al-Ankabut: 20)

In the implementation of tourism can not be separated from the provisions of the law. As for the legal provisions related to organizing tourism based on sharia principles, it may be carried out in accordance with the provisions in the DSN-MUI fatwa No. 108/DSN-MUI/X/2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles. In the DSN-MUI fatwa No. 108/DSN-MUI/X/2016 itself explains that sharia tourism is a place intended as a means of recreation for tourists, which in implementing its activities is in accordance with sharia principles.

The trend of developing sharia tourism has recently been very lively and has been studied by various groups. This is because the development of sharia tourism on the one hand is an aspect that can encourage the economic development of a region. In this regard, the development of sharia tourism is very important to be implemented especially in an area that has supportive tourism prospects. If an area or region has the potential for sharia-based tourism development, then there is a need for ideas related to sharia-based tourism development. In Central Kalimantan, one of the areas that has supportive tourism prospects is Sukamara Regency.

In general, Sukamara Regency is one of the fourteen Regencies/Cities in Central Kalimantan Province. Sukamara Regency is the result of the division of West Kotawaringin Regency, Central Kalimantan Province, Sukamara Regency is in the westernmost area of Central Kalimantan

Province and is located on the equator at 110º25´-110º09´ East Longitude and 2º19´-3º7´ South Latitude.

In the tourism aspect, Sukamara Regency has very interesting tourism potential, one of which is in Pantai Lunci District where there are tourist attractions, such as beaches, religious tombs, and the majority of the population is Muslim. So that it has the potential to develop sharia tourism. As for transportation to tourism in Sukamara Regency, especially Lunci Beach District by air, it has the potential for sharia tourism travel, namely from Iskandar Pangkalan Bun Airport, West Kotawaringin Regency, where there is an Islamic royal palace called the Yellow Palace and there is also a sharia hotel, then through Kotawaringin There is a mosque of Kiai Gede and the tomb of Kiai Gede who was a figure who propagated Islam in Central Kalimantan.

Based on visualization of population data, the number of residents according to religion in Sukamara Regency, namely 51,054 Muslims, 4,928 Christians, 2,418 Catholics, 3,492 Hindus, 125 Buddhists, and 24 Confucianists (https://gis.dukcapil.kemendagri.go.id/peta/, accessed April 14, 2021).It can be seen that the majority of the population of Sukmara Regency are Muslims, so it has the potential to develop sharia-based tourism. This is as contained in the Sukamara Regency Regional Medium Term Development Plan (RPJMD). One of the tourism potentials included in the Sukamara Regency RPJMD which will be developed for tourism areas is one of them, namely in Pantai Lunci District. This is in accordance with the Sukamara Regency Regional Regulation Number 2 of 2019 concerning the Sukamara Regency Regional Medium-Term Development Plan for 2018-2023.

Based on the above, when viewed in terms of the principles of implementing sharia tourism in the DSN-MUI fatwa No. 108/DSN-MUI/X/2016 itself states that the application of sharia tourism must avoid polytheism, immorality, evil, evil, and create benefit and benefit both materially and spiritually. In addition, in the terms of the tourist destination itself there are several things that must be owned, such as the availability of prayer facilities, halal food and drinks that are guaranteed to be halal.

2. RESEARCH METHODS

The method used in this research is empirical juridicalThis type of research is used to conduct research on actual conditions or real situations occurring in society with the intention of finding out and finding the facts and data needed, after the required data is collected it then leads to problem identification which ultimately leads to problem solving (Waluyo , 2022, p. 16). By using the approach to the law and Islamic law. Through the statute approach, the authors examine the strategic plan of the local government of Sukamara Regency in developing tourist areas based on the Tourism Law, while the Islamic law approach is used to examine the potential for sharia tourism development based on the DSN MUI fatwa.

3. ANALYSIS OF STUDY FINDINGS

3.1 Strategic Plan of the Local Government of Sukamara Regency in the Development of Tourism Areas

The regional development plan for Sukamara Regency begins with a medium-term plan, then an RKPD is made which is translated or passed down to each regional apparatus. Where in the document made it has been described for regional development, in which the development of the Sukamara Regency area is divided into three parts according to the characteristics and potential in the area. In regional development, there are several areas that are a priority, one of which is the tourism sector (Rendy, Personal Communication, 2021).

The local government already has a master plan for the development of tourist areas. However, the master plan has not been fully realized. The areas that are becoming tourist areas are the Jelai area and Lunci Beach. The Sukamara Regency Government seeks to elevate and empower the local community in terms of managing tourism areas, one of which is Pokdarwis. The aim is to increase the income of the people in the area.

The development of tourist areas is a priority in regional development, because this is included in the medium-term development plan for the Sukamara Regency area. The tourism area development plan will expand to areas that have tourism potential in Sukamara Regency. Regarding the tourism development plan in Sukamara Regency, it is still in the stage of preparing the Regional Tourism Master Plan which is currently still guided by the provincial tourism master plan (Syukur, Personal Coomuniation, 2021). The strategy and policy for developing tourism areas is by carrying out innovations for tourism development. With the existence of tourist destinations that have developed and are visited by many local tourists,

Based on Article 30a of Law no. 10 of 2009 concerning Tourism that district/city governments have the authority to:

a. Prepare and determine the district/city tourism development master plan.
b. Establish district/city tourism destinations.
c. Determine district/city tourist attractions.
d. Carry out registration, recording, and data collection on tourism business registration.
e. Regulate the implementation and management of tourism in its territory.
f. Facilitating and promoting tourism destinations and tourism products in their territory.
g. Facilitating the development of new tourist attractions.
h. Organizing tourism training and research within the district/city scope.
i. Maintaining and preserving tourist attractions in the region.
j. Organizing tourism awareness community guidance.
k. Allocating the tourism budget.

Based on Article 30 of Law no. 10 of 2009 concerning Tourism related to government authority that the regional government of Sukamara Regency has carried out several policies related to government authority in developing tourist areas. The authority exercised by the Sukamara Regency government is the making of RIPPARDA which is still in the drafting stage, the master plan, and those related to tourism development. The policy directions related to tourism development are included in the RPJMD namely developing superior and sustainable tourist destinations, improving tourism facilities and infrastructure, and developing tourism networks.

Regarding the establishment of policies for the development of tourist areas in terms of policy theory according to Carl Friedrich states that: "Policy is an action that leads to goals proposed by a person, group, and government in a certain environment due to certain obstacles to finding goals or realizing goals. desired" (Abdoellah and Rusfiana, nd, p. 16-17).

Judging from the policy theory that tourism development is a government policy for regional development by developing existing potential, which aims to improve the community and regional economy.

In the process of policy implementation, so that a policy can realize the desired goals, it must utilize existing resources, namely involving people or groups of people. In implementing policies, the programs implemented must be planned with good management in order to achieve the expected goals, as well as provide services and be able to provide benefits to the community.

The process of implementing the policies of the Sukamara Regency government regarding the development of tourist areas involves related agencies, namely the Youth Sports and Tourism Office and the community, namely Pokdarwis. As for the program for the development of tourist areas, namely prioritizing potential areas, by providing facilities and guidance to the local community, namely Pokdarwisa. So that with tourism, it can provide innovation to the community to build a creative economy by utilizing existing tourist objects.

3.2 Potential for Sharia-Based Tourism Development in Pantai Lunci District

The potential for developing sharia tourism in Pantai Lunci District can be seen from three aspects, namely, in terms of community understanding, halal food, and infrastructure. Community understanding is an important aspect in the development of a policy. Likewise in the development of sharia-based tourism, the main thing that needs to be considered is how the response and understanding of the community itself towards sharia tourism. Related to this, the majority of community religions are also very important for the development of sharia-based tourism.

The public's understanding of sharia tourism is tourism that is in accordance with Islamic law, in which there is no immorality. Based on the DSN-MUI fatwa No. 108/DSN-MUI/X/2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles that sharia tourism is tourism that is in accordance with sharia principles. This is in line with the public's understanding of sharia tourism, namely tourism that is in accordance with Islamic law, there is no immorality. However, in terms of visitors, there is still a mix between men and women which is not in accordance with the provisions regarding tourists. Where based on the DSN-MUI fatwa that tourists must adhere to sharia principles, one of which is to avoid immorality.

Based on the mas}lah}ah theory that sharia tourism is tourism that can bring benefits to both visitors and the community. The benefit of tourism is benefit that can maintain the objectives of the Shari'a (maqa>s}id al-shari>'ah). If there is no benefit and there is damage then the maqa>s}id al-shari>'ah or the objectives of the shari'a will not be achieved. With the existence of sharia tourism whose concept can avoid disobedience, it can maintain the goals of sharia.

In addition to public understanding regarding sharia tourism, halal food is very important for the development of sharia tourism. Because sharia tourism is tourism that presents halal products.

Based on the results of interviews with several informants, the products served at Lunci Beach and at tourist sites are local products which are food from seafood, such as shrimp, fish, crab, shellfish, and so on, which are definitely halal. As for the results of the observation that the products consumed and sold by the people in Lunci Beach are seafood and plantation products. Never found a community that sells prohibited items such as intoxicating drinks, food that is forbidden.

Based on the results of the interviews and observations above regarding the product, it is in line with the DSN-MUI fatwa regarding the stipulations that tourist destinations are required to provide halal food and drinks that are guaranteed to be halal with an MUI halal certificate. Even though the products served at Lunci Beach tourism do not all have halal certificates, their halal status is guaranteed because the products presented are seafood and also the majority of the population is Muslim.

Judging from the maslahah theory, the product served at Lunci Beach is a product that provides benefits and avoids harm because the product presented is a halal product, no one sells or serves unclean foods or intoxicating drinks. If there is no forbidden food or drink, harm is avoided.

The trip to Pantai Lunci District from Kotawaringin Barat which is the entry point for travel by air, land or sea to Lunci Beach has sharia tourism potential. As for his journey, he passed the Yellow Palace, the grave of Kiai Gede, the Kiai Gede Mosque, who was a figure who propagated Islam. Where in Lunci Beach there are natural tourist objects and there are also religious graves, so there is potential for the development of sharia tourism. To develop a tourist object, it must be supported by complete facilities and infrastructure.

Infrastructure is something that is important in a tourist destination as a support for tourism. Based on the results of interviews with several sources, the completeness of tourist infrastructure at Lunci Beach is sufficient, but not optimal. The infrastructure facilities at tourist sites are photo spots, gazebos, restaurants and prayer rooms. The Pokdarwis secretary said that the facilities that were still lacking were mosques or prayer rooms. However, based on the results of interviews with sub-district heads, owners of tourist sites and restaurants, tour managers, religious leaders, and the community, the mosque or prayer room is sufficient, even the sub-district head said that on the Anugerah Beach tour there is a prayer room and a place for ablution. While other tours, although there is no special prayer room for tourism, but if you want to worship, you can stay at the people's house which is close to tourist sites and you can also go to the mosque because the place is not too far from tourist sites. (Yunus, Personal Communication, 2021). This is in line with the results of the observation that with a Muslim majority and tourist sites located too far from community settlements, it is not difficult to find a place to worship. Even in tourist attractions that are managed privately, a place has also been provided to carry out

worship such as prayer. And also there is no place that is closer to disobedience such as a discotheque or a place that specializes in disobedience This is in line with the results of the observation that with a Muslim majority and tourist sites located too far from community settlements, it is not difficult to find a place to worship. Even in tourist attractions that are managed privately, a place has also been provided to carry out worship such as prayer. And also there is no place that is closer to disobedience such as a discotheque or a place that specializes in disobedience This is in line with the results of the observation that with a Muslim majority and tourist sites located too far from community settlements, it is not difficult to find a place to worship. Even in tourist attractions that are managed privately, a place has also been provided to carry out worship such as prayer. And also there is no place that is closer to disobedience such as a discotheque or a place that specializes in disobedience

Based on the results of interviews and infrastructure, places of worship are available and there is also no place for disobedience. Where based on the DSN-MUI fatwa related to tourist destinations it is mandatory to have proper and easily accessible worship facilities and also far from immorality.

Judging from the theory of maslahah which according to al-Ghazali maslahah is something that brings benefits or profits and keeps harm or damage away. Tourism on Lunci Beach is a tour that does not leave religious values with the availability of places of worship which are of benefit to Muslim visitors. Visitors can easily carry out worship on time. Where this is a form of benefit to maintain the goals of Shari'a.

3.3 Sharia Tourism in Pantai Lunci District, Sukamara Regency The Perspective of Sharia Economic Law Creating Mas}lah}ah

In Islam tourism is known as the concept of pilgrimage which means visiting. From the pilgrimage culture, various forms of Islamic social institutions were born which were guided by their ethics and laws. Then the concept of dhiyafah was born, which means visiting manners which regulate the ethics and law of the relationship between dhaif (guest) and mudhif (host). According to the author, this is very relevant to the development of sharia tourism potential in Pantai Lunci District. Which on the way to Lunci Beach there is the Yellow Palace site, the tomb of Kiai Gede, the Kiai Gede mosque who was a figure who propagated Islam, and aspects of natural tourism found in the District of Lunci Beach.

In Islam tourism is also referred to as rihlah, namely in surah Quraish verse 2, "(namely) their habits of traveling in winter and summer." (QS Quraish: 2). *Rihlah*in the verse above implies a trip made not just for tourism but a trip to carry out business activities. Tourism activities in Islam are not only to fulfill physical satisfaction, but also have economic value.

This is very relevant when associated with tourism in Pantai Lunci District. Because the trip to go to Lunci Beach is not only for recreation, but also has pilgrimage value and economic value. Economic value can be seen from business activities that can be carried out by developing natural resources, one of which is nature tourism. The tourism potential in Pantai Lunci District, when viewed in terms of its business activities, is very supportive, because Lunci Beach is part of the Sukamara Regency, where Sukamara Regency is a district located on the provincial border, namely the provinces of Central Kalimantan and West Kalimantan.

With nature tourism, the community can develop various types of business activities to support the community's economy. One of them is the culinary business in which business activities include buying and selling transactions. As for buying and selling transactions in culinary business activities at Lunci Beach, objects that are traded are halal objects, namely typical food from coastal areas, such as seafood, fruit and vegetables from plantation products in coastal areas. In buying and selling activities, the price for culinary items at Lunci Beach is not too high or expensive according to the goods being traded. This is in accordance with the ethics of buying and selling in Islam, namely the goods being traded are goods that are lawful, mutually beneficial, and there is no usury. Where in the rules of fiqh it is also said “Basically, all forms of muamalah are permissible unless there is an argument that forbids them."

Based on this, the potential for sharia tourism in Pantai Lunci District, Sukamara Regency in the perspective of sharia economics to realize maslahah is very relevant. Tourism on Lunci Beach has economic value for the welfare of the community which prioritizes benefit. In the economic activities of tourism in Lunci Beach, they prioritize ethics based on religion, namely Islam. Both ethics in buying and selling and ethics towards visiting tourists. Where in ethical law is a very important thing to be realized, especially in economic activities.

4. CONCLUSION

The strategic plan of the local government of Sukamara Regency has a priority in the development of tourist areas. Where this is included in the medium-term development plan for the Sukamara Regency area. The parties involved in the development of tourist areas are the Department of Youth, Sports and Tourism and the community, namely Pokdarwis. The local government has a master plan for the development of tourist areas. The policy direction for the development of tourist areas is the development of superior sustainable tourist destinations, improvement of facilities and infrastructure, and development of tourism information networks. There are several obstacles to implementing this policy, namely the lack of a budget, the existence of the Covid-19 pandemic, the quality of human resources for tourism business actors and actors is not optimal,

The potential for developing sharia-based tourism in Pantai Lunci District from several aspects, namely in terms of community understanding, halal food, and infrastructure has the potential for sharia-based tourism development. Most people understand about sharia tourism. The products and food served are halal products, and the existing infrastructure is photo spots, gazebos, restaurants and prayer rooms. Based on the maslahah that the potential for developing sharia tourism in Pantai Lunci District is good in terms of public understanding, the products presented are halal products, and the availability of prayer facilities and no special facilities for immorality can refuse harm in order to maintain and maintain maqashid al-syari 'ah (objectives of the Shari'a). As for sharia tourism, there is an economic concept in which in sharia economics the concept of pilgrimage has economic ethical value and there are also buying and selling activities that are in accordance with the ethics of buying and selling in Islam. Where this can bring benefits to the people of Lunci Beach and other stakeholders.

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THE EXISTENCE OF *PRANATA MANGSA* CALENDAR IN THE MIDST OF GLOBAL CLIMATE CHANGE

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Abstract: This study discusses the existence of the *Pranata Mangsa* calendar in the midst of global climate change. This research uses qualitative research methods with a literature review approach. The *Pranata Mangsa* calendar is familiar in Indonesia, especially the Javanese people. This calendar is a seasonal calendar that has been used by Javanese people thousands of years ago. This calendar is synonymous with the circulation of the sun's rotation, which is sometimes also referred to as the agricultural and fishery calendar. Farmers use this calendar because it is a guideline in farming. For example, when Mangsa Rendeng (December February) is a month of storms, rains, floods, and landslides, while Kawolu (February-March) informs farmers to prepare for plant diseases and catastrophes affecting humans and animals. This study explains how the existence of the *Pranata Mangsa* calendar in the present where climate change occurs erratically.
Kata kunci: Existence, Pranata Mangsa, Climate

1. INTRODUCTION

Climate change is one of the world's problems. Increasing air temperatures and erratic rainfall patterns, causing various natural disasters, deteriorating health quality, and threatened food availability. Related to the last issue, weather uncertainty often causes droughts and floods. Agricultural land is affected so that crop failure often occurs. This condition is certainly very detrimental, especially the Indonesian people are very dependent on the agrarian sector. Knowledge of climate is indeed very useful for agriculture. The arrival and end of the rainy and dry seasons is very decisive for the time of planting, until the time of reaping the harvest.

Today, the source of knowledge about climate and weather (for agriculture) rests on modern science, which blends various disciplines, such as meteorology, soil science, hydrology, agronomy, and so on. Then, how do farmers determine the time of planting before the development of these scientific fields? One of the sources of such knowledge is Pranatamangsa. Pranatamangsa or Pranotomongso is a Javanese farmer season dating system, based on readings of various natural signs, such as the appearance of stars, wind movements, and the physical appearance of flora and fauna movements. Sindhunata mentioned that this system is a peasant culture that has been ingrained in the lives of Javanese and Sundanese farmers. Pranatamangsa was used before the arrival of Hindu influence. Pranatamangsa (allegedly) contributed to the greatness of agrarian countries, such as Ancient Mataram, Pajang, and Islamic Mataram.

In Indonesia, there are three calendars that are deeply rooted in the pattern of people's lives, because this calendar system seems to be ingrained in all community activities so that the three seem impossible to separate. These calendars are the Gregorian Calendar (Musonnif, 2011). It is this calendar that is widely used throughout the world that serves as the administrative system of the country. Another calendar is the Hijri Calendar (Darsono, 2010). This calendar is a calendar used by Muslims to determine the times of worship. Third is the Javanese Calendar, also known as the Pranata Angsa calendar. Pranata Mangsa is a traditional Javanese way of predicting weather and climate that has existed for a long time, which is based on natural events, so users of this method must "remember" (in Javanese: titen), when to plant and harvest (Shidiq, 2012).

The Javanese calendar of Pranata Mangsa is one of the legacies of human civilization that is very famous and important for human survival, especially the Javanese people. With the calendar or calendar makes it easier for humans to identify and mark events or events that have passed (Saksono, 2007).

2. METHOD

This research is qualitative research that is a library research that uses books and other literature as the main object. The type of research used is qualitative, namely research that produces information in the form of notes and descriptive data contained in the text under study.

3. ANALYSIS OF STUDY FINDINGS

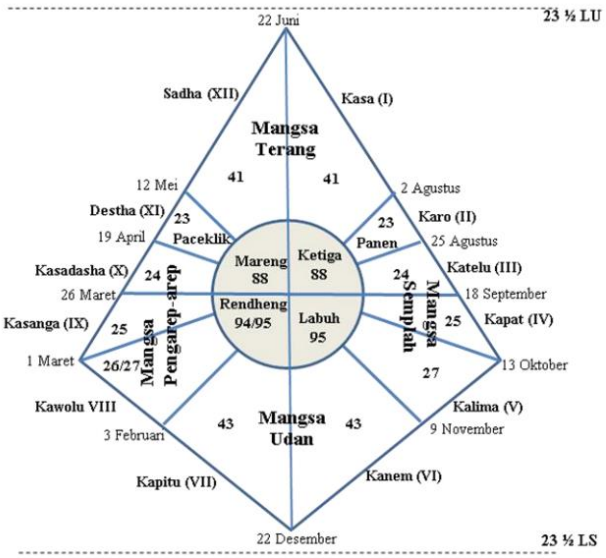
3.1 *Pranata Mangsa*

Linguistically, the word *Pranata Mangsa* itself consists of two syllables, namely the institution which means rules, and the *Mangsa* which has the meaning of time, season or periodization of the climate on earth caused by the shift in the solar orbit line or commonly called solar system dating. In islitah itself, the *Pranata Mangsa* is a calendar that becomes a guideline for Javanese people to understand signs from nature that are used to determine the season that will be used as a benchmark for their survival. The *Pranata Mangsa* itself is a periodization within a period of one year which is then divided into 12 *Mangsa*. These 12 *Mangsa* are based on the circulation of the sun (Surya Sangkala) with its wisdom in reading signs from nature such as the location of the sun, wind direction, weather, animal and plant behavior that are connected between people with their surroundings who have the aim of understanding, respecting, and belonging to each other.

Institutions *Mangsa* is one of the Javanese calendar that is very important for the survival of human life. Pranata mangsa is a legacy of the civilization of the ancestors of the ancient Javanese tribe. If there is no calendar or calendar, it will be difficult. This is because the community will have difficulty or difficulty determining the activities that will be carried out in the future, especially the design of activities related to time or *Mangsa* (Riza, 2018). The *Pranata Mangsa* has actually been used for a long time by the Javanese tribe community which has been inherited from the time of the Hindu kingdom of Mataram as guidance in agriculture, economy, administration and military defense. However, this calendar was only established as an official calendar by Sri Susuhunan Paku Buwono VII in Surakarta, namely on June 22, 1855. The determination of the use of the *Mangsa* Institution by Sri Susuhunan Paku Buwono VII was not only to regulate the peasant system, but also to provide certainty to the people so that they could carry out their activities smoothly. This is because at that time there were four kinds of time introductions, namely Saka, Pranata Mangsa, Sultan Agung and Gregorian. With this certainty, Sri Susuhunan Paku Buwono VII hopes that the public will no longer be confused and can know the start and end of a *Mangsa* (Minani, 2017). June 22 was chosen to be the first day, because at that time began the shift of the position of the sun from the northern equinox to the southern equinox.

At that time the *Pranata Mangsa* has been used as a guide to prepare for natural disasters and also related to weather forecasting. With this *Mangsa* institution, the community can avoid future things that do not cool the incident. This *Pranata Mangsa* uses a local calculation system used by Javanese people who have been adopted for a long time. Where in one year the *Pranata Mangsa* will be divided into 12 symmetrical *Mangsa*, as seen from the picture below (Minani, 2017).

Figure 1- *Pranata Mangsa* dating concept



In this dating system is divided into two periods, namely the first period and the second period. The first time starts from *gauze victims (first victims) who have an age of 41 days to* manngsa kanem *(sixth victims) who have an age of 43 days* . The second period starts from the *kapitu victim* (seventh victim) who has an age of 43 days to the kasadha *man (twelfth victim) who has an age of 41 days* . Details and explanations of each victim in the *Pranata Mangsa* are as follows:

Gauze Mangsa or the first *Mangsa* is 41 days, starting from June 22 to August 1. *Karo Mangsa* or the second *Mangsa* is 23 days starting on August 2 to August 24. *Katelu Mangsa* or third *Mangsa* is 24 days, starting from August 25 to September 17. *The fourth Mangsa* amounted to 25 days, starting from September 18 to October 12. Kalimo *Mangsa* or the fifth *Mangsa* is 27 days. This kelimo *Mangsa* starts from October 13 to November 8. Kanem's *Mangsa* or sixth *Mangsa* amounted to 43 days starting from November 9 to December 21. Magsa Kapitu or the seventh *Mangsa* amounted to 43 days starting from December 22 to February 2. The Kawolu *Mangsa* or eighth *Mangsa* is 26 or 27 days depending on February 28 or 29, which starts from February 3 to March 1. The Kasanga *Mangsa* or ninth *Mangsa* is 25 days long, starting March 1 to March 25. The tenth *Mangsa* of Keshadasa or *Mangsa* amounted to 24 days, which began on March 26 to April 18. Dhesta's *Mangsa* or eleventh *Mangsa* totaled 23 days, starting from April 19 to May 11. The Sadha *Mangsa* or twelfth *Mangsa* numbered 41 days, which began on May 12 to June 21.

SThe circulation system used in the Kaelnder Pranata Mangsa is to use the Solar LUNI system where this system uses the Sun reference as its circulation system. Because it uses a solar reference, the number of days in a year is between 365 days or 366 days. In other words, this *Pranata Mangsa* is almost similar to the Gregorian calendar because both use solar references. In this *Pranata Mangsa* , its circulation contains various natural phenomena and symptoms that can be used for guidance in farming activities and in order to prepare themselves to face seasonal changes that will occur.

3.2 Global Climate Change

One of the issues or problems What is happening in the world is global climate change causing human activities. Global climate change is a common problem that must be faced and overcome together. The impact of global climate change is felt by various

walks of life. Therefore, the issue of climate change must be a special concern so that all human activities and activities can run smoothly.

Penanggaalan Jawa Pranata Mangsa is one of the local wisdom of the Javanese people related to agricultural land management. The application of the Javanese Pranata Mangsa calendar shows that Javanese people will never be separated from the environment. Since ancient times, the Javanese have viewed nature as a subject, which means they are subject to nature (Rizqa, 2016). Viewed climatologically, the *Pranata Mangsa* collects information about seasonal changes as well as the times that apply to areas of Java that are affected by monsoon winds, which in turn are also controlled by the direction of the Sun (Faizah, 13).

But what needs to be remembered is that in the Javanese calendar Pranata Mangsa does not describe variations that may arise due to some natural phenomena. For example, due to the emergence of several symptoms such as ENSO *(El Nino Southern Oscillation) which is meteorologically described in the Southern Oscillation Index (SOI) value, El Nino phenomenon which extends the dry season and La Nina which extends the rainy season and is influenced by monsoon circulation which causes climate differences between the rainy and dry seasons and the influence of regional phenomena such as the Inter Tropical Convergence Zone* (ITCZ) which is an area of cloud growth and sea surface temperature conditions around the territory of Indonesia. So that this becomes a weakness of the Javanese Pranata Angsa dating system (Fidiyani et al, 2012).

3.3 The Existence of *Mangsa* Practice in the Middle of Global Climate Change

Along with the changing times marked by the increasingly advanced science and technology, especially in agriculture, farmers, especially in Java, began to forget and eliminate the use of the *Pranata Mangsa* as a guideline in farming. This is because global climate change makes seasonal changes erratic. Erratic seasonal changes make it difficult for traditional farmers to read the phenomenon of natural change as a marker of seasonal changes becoming erratic. Erratic seasonal changes make it difficult for traditional farmers to read the phenomenon of natural change as a marker of seasonal changes (Rizqa, 2016). However, even though environmental changes continue to occur and efforts to observe the phenomenon of natural change are increasingly difficult. However, some farmers in Java are still trying to preserve the use of Pranata Mangsa as a guideline in farming.

Therefore, seasonal uncertainty affects community activities, especially farmers. Because without the results of farmers we will not be able to get food sources. Therefore, with the Pranata Mangsa calendar that has been used, it needs to be updated again because it is slightly different from the current situation.

4. CONCLUSION

Pranata Mangsa is a calendar that becomes a guideline for Javanese people to understand signs from nature that are used to determine the season that will be used as a benchmark for their survival, one of which is to grow crops. Regarding the existence of the Pranata Mangsa calendar in the midst of global climate change, most Javanese people no longer use this calendar because climate change in the present is uncertain and no longer in line with the signs contained in the Pranata Angsa calendar.

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PHASES OF THE MOON IN HIJRI DEATH (STUDY OF CALCULATION OF MOON PHASES WITH JEAN MEEUS' ALGORITHM)

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Abstract: The Hijri calendar is a dating system based on the circulation of the moon. In general, the Moon has four main phases, namely the New Moon phase, the First Quarter, the Full Moon, and the Last Quarter. Many methods are used for the calculation of the phases of the moon, one of which uses the calculation algorithm of Jean Meeus. The calculation of Jean Meeus' algorithm data was assisted using Microsoft Visual Basic software with calculations during the period of 2001 to 2100 AD, with output results in the form of dates, hours, and minutes of the occurrence of lunar phases in the month of Kamariah. From the calculation results, the average values of the synodic time of the phases of *the New Moon, First Quarter,* Full Moon, and *Last* Quarter are *29.53046138, 29.53027321, 29.53083066,* and 29.53090767, respectively. The results of Jean Meeus' analysis of lunar phase calculation data found that the length of the lunar synodic period from the New Moon phase to the next *New* Moon and the length of the synodic period of other lunar phases have differences, even though it is only a few seconds.
Keywords: Hijri Heritage; Phases of the Moon; Jean Meeus' Algorithm

1. INTRODUCTION

The Hijri calendar or what we commonly know as the Islamic calendar is a dating system that uses the circulation of the moon as a reference. The moon is the natural satellite of the earth. When observing the moon we notice that the shape of the moon seems to change every day and goes through a complete cycle in about a month. Changes in the shape or phase of the moon are caused by changes in the relative positions of the Moon, Sun and Earth. In general, the Moon is divided into four phases, namely the New Moon (*New Moon*), the first quarter (*First Quarter*), Full Moon (*Full Moon*), and Last quarter (*Last Quarter*) (Rizqi et al., 2021).

In the study of science will often intersect with this one object, the Moon. The month has an important influence on the Islamic calendar or the so-called Hijri calendar, where Muslims in setting the time of their worship based on this calendar system such as fasting, praying, Hajj and so on. Until now, many methods have been used to calculate when the phases of the moon occur in the lunar history, starting with the following. *Taqribi*, *haqiqi,* to contemporary. One of the contemporary methods included is Jean Meeus' algorithm (Manzil, 2018).

One of the most important things to know in the matter of determining the beginning of the lunar month is the characteristics of the moon and the phases of the moon. Hilal as the main object in determining the beginning of the moon is a rare celestial object (phenomenon) that not everyone can and can see. Conjunction or ijtima' as a condition for the entry of the new moon is a condition when the moon is between the sun and the earth, where the face of the moon becomes invisible from the earth (Jamaludin, 2018).

This article examines the phases of the moon in the lunar month with calculations by Jean Meeus' algorithm. The calculation of the phases of the moon was carried out using Microsoft Visual Basic 6.0 software, in the period 2001 to 2100 AD. From the results of these calculations will be analyzed related to the length of the moon phase of each phase

change, such *as from New Moon to New* Moon and from *Full Moon to* Full Moon, *as well as the* Quarter phase.

2. ANALYSIS OF STUDY FINDINGS

2.1 Terminology of the phases of the Moon

The moon is a celestial body that circulates around the Earth. It is the only natural satellite of the Earth with a diameter of 3,480 km. The Moon cannot emit light on its own, the source of the Moon's light that we see from Earth is the reflection of the Sun's rays.(Riza, 2020) The period of revolution of the moon in its orbital plane is calculated from the position of the new moon phase until it returns to the position of the new moon phase, which on average is taken in 29.53046138 days, or commonly called the period *synodis* (Musonnif, 2011). Changes in the shape of the Moon seen from Earth are always different, these are called phases of the Moon. The half of the Moon facing the Sun will be bright while the other side facing it will appear dark. However, these phases depend on the relative position of the Sun, Moon, and Earth. There are four main phases of the Moon, namely:

a) New Moon

New Moon or also known as *conjunction*, or in science call it ijtimak, is the position of the Sun and Moon at one astronomical longitude. The definition of ijtimak when connected with the new moon is an event when the Moon and Sun are located in the same longitude position. In essence, at this time there is still a part of the Moon facing the Earth, which gets the reflection of sunlight. But sometimes, because it is very thin, it cannot be seen from Earth, because the Moon is located close to the Sun (Azhari, 2005).

The new moon rises in the east almost at the same time as the Sun rises, and is in the middle of the sky also around noon and sets almost at the same time as the Sun sets. But when the Sun rises to almost set, we cannot see the crescent moon because the intensity of the Moon's light is inferior to the Sun's rays. The Moon will appear when the Sun is about to set with a crescent-like shape because the intensity of sunlight at that time weakens (Tono, 2007).

b) First *Quarter*

In this *First Quarter phase, the* crescent Moon begins to move from day to day, until the position of the crescent Moon is getting higher above the horizon. About seven days after the beginning of the month, the part of the Moon exposed to sunlight increases in size so that the Moon will appear from Earth in a semicircular shape. This phase is called the first quarter where the moon has entered a quarter of its circulation (Jamaludin, 2018). In this second phase, the rising and sinking of the Moon is slower than the Sun, estimated at 6 hours. It rises on the eastern horizon at noon, is in the middle of the sky around sunset, and sinks on the western horizon around midnight.

c) Full *Moon*

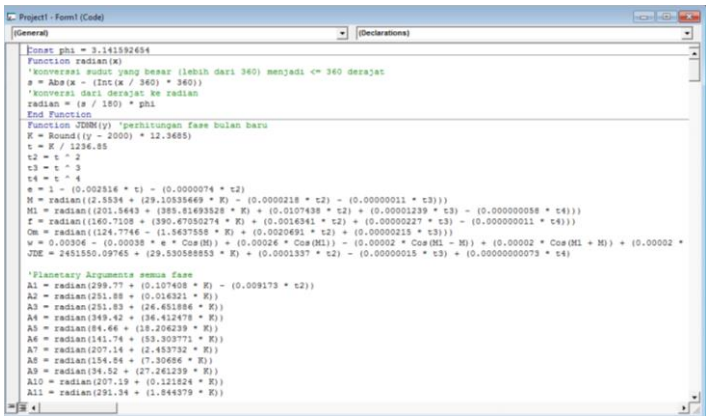
In the middle of the Moon around the 14th, 15th, and 16th of the moon, the Moon arrives at a position of opposition to the Sun. The part of the Moon that receives sunlight is almost entirely visible from Earth, and the Moon appears to be a full sphere. Conditions like this are called Full Moons or Full *Moons* (Muhyiddin, 2005). At full moon, the Moon is about 12 hours late from the Sun. The moon rises when the Sun sets, is in the middle of the sky at midnight and sets when the Sun rises. If at that time the position of the Moon is in line with the Earth and the Sun, then there will be a lunar eclipse, because the shadow of the Earth covers the Moon.

d) Last *Quarter*

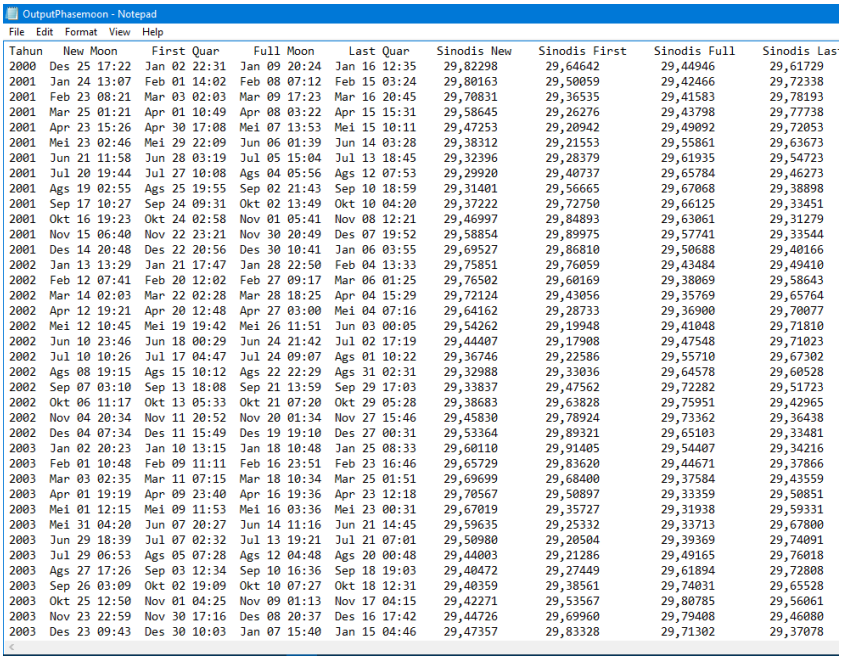
The Moon will continue to move and the shape of the Moon visible from Earth will get smaller. About 7 days after the Full Moon, the Moon will appear half as it did in the first quarter but in the opposite direction. This phase is called the *Last Quarter* which is the period of the moon that has passed about 22 1/8 days, which is similar to the first quarter (*First Quarter*) but with the opposite direction of crescent curve, which continues to move little by little towards the western horizon. In this phase, the Moon rises about 6 hours earlier than the Sun. This means, the Moon rises on the eastern horizon around midnight, right in the middle of the sky around sunrise and sets on the western horizon (Tono, 2007).

2.2 Analysis of the phases of the Moon Jean Meeus' algorithm

The calculation of the phases of the moon using the calculations of Jean Meeus' algorithm was carried out using the help of *Software* Microsoft Visual Basic 6.0, with calculations in the period 2001 to 2100. Previously, the author had made programming for the lunar phases of Jean Meeus' algorithm, with input year data and output results in the form of data on the occurrence of New Moon phases (*New Moon*), the first quarter (*First Quarter*), Full Moon (*Full Moon*), and Last quarter (*Last Quarter*) in units of hours and minutes of the process of the occurrence of the moon phase, also accompanied by the calculation of the length of the moon phase of each phase. In the calculation of the moon phase of Jean Meeus's algorithm, the results are expressed in Julian Day Ephemeris (JDE) with units of Dynamical Time (TD). Then, in order to be expressed in Universal Time (UT) or GMT, the time in TD needs to be corrected with Delta T.(Jean, 1998) which in this case the author uses Delta T calculations on NASA's website https://eclipse.gsfc.nasa.gov/SEhelp/deltatpoly2004.



Picture. 1 Display of moon phase programming algorithm Jean Meeus in *Software* Microsoft Visual Basic 6.0



OutputPhasemoon - Notepad

File Edit Format View Help

Tahun	New Moon	First Quar	Full Moon	Last Quar	Sinodis New	Sinodis First	Sinodis Full	Sinodis Las
2000	Des 25 17:22	Jan 02 22:31	Jan 09 20:24	Jan 16 12:35	29,82298	29,64642	29,44946	29,61729
2001	Jan 24 13:07	Feb 01 14:02	Feb 08 07:12	Feb 15 03:24	29,80163	29,50059	29,42466	29,72338
2001	Feb 23 08:21	Mar 03 02:03	Mar 09 17:23	Mar 16 20:45	29,70831	29,36535	29,41583	29,78193
2001	Mar 25 01:21	Apr 01 10:49	Apr 08 03:22	Apr 15 15:31	29,58645	29,26276	29,43798	29,77738
2001	Apr 23 15:26	Apr 30 17:08	Mei 07 13:53	Mei 15 10:11	29,47253	29,20942	29,49092	29,72053
2001	Mei 23 02:46	Mei 29 22:09	Jun 06 01:39	Jun 14 03:28	29,38312	29,21553	29,55861	29,63673
2001	Jun 21 11:58	Jun 28 03:19	Jul 05 15:04	Jul 13 18:45	29,32396	29,28379	29,61935	29,54723
2001	Jul 20 19:44	Jul 27 10:08	Ags 04 05:56	Ags 12 07:53	29,29920	29,40737	29,65784	29,46273
2001	Ags 19 02:55	Ags 25 19:55	Sep 02 21:43	Sep 10 18:59	29,31401	29,56665	29,67068	29,38898
2001	Sep 17 10:27	Sep 24 09:31	Okt 02 13:49	Okt 10 04:20	29,37222	29,72750	29,66125	29,33451
2001	Okt 16 19:23	Okt 24 02:58	Nov 01 05:41	Nov 08 12:21	29,46997	29,84893	29,63061	29,31279
2001	Nov 15 06:40	Nov 22 23:21	Nov 30 20:49	Des 07 19:52	29,58854	29,89975	29,57741	29,33544
2001	Des 14 20:48	Des 22 20:56	Des 30 10:41	Jan 06 03:55	29,69527	29,86810	29,50688	29,40166
2002	Jan 13 13:29	Jan 21 17:47	Jan 28 22:50	Feb 04 13:33	29,75851	29,76059	29,43484	29,49410
2002	Feb 12 07:41	Feb 20 12:02	Feb 27 09:17	Mar 06 01:25	29,76502	29,60169	29,38069	29,58643
2002	Mar 14 02:03	Mar 22 02:28	Mar 28 18:25	Apr 04 15:29	29,72124	29,43056	29,35769	29,65764
2002	Apr 12 19:21	Apr 20 12:48	Apr 27 03:00	Mei 04 07:16	29,64162	29,28733	29,36900	29,70077
2002	Mei 12 10:45	Mei 19 19:42	Mei 26 11:51	Jun 03 00:05	29,54262	29,19948	29,41048	29,71810
2002	Jun 10 23:46	Jun 18 00:29	Jun 24 21:42	Jul 02 17:19	29,44407	29,17908	29,47548	29,71023
2002	Jul 10 10:26	Jul 17 04:47	Jul 24 09:07	Ags 01 10:22	29,36746	29,22586	29,55710	29,67302
2002	Ags 08 19:15	Ags 15 10:12	Ags 22 22:29	Ags 31 02:31	29,32988	29,33036	29,64578	29,60528
2002	Sep 07 03:10	Sep 13 18:08	Sep 21 13:59	Sep 29 17:03	29,33837	29,47562	29,72282	29,51723
2002	Okt 06 11:17	Okt 13 05:33	Okt 21 07:20	Okt 29 05:28	29,38683	29,63828	29,75951	29,42965
2002	Nov 04 20:34	Nov 11 20:52	Nov 20 01:34	Nov 27 15:46	29,45830	29,78924	29,73362	29,36438
2002	Des 04 07:34	Des 11 15:49	Des 19 19:10	Des 27 00:31	29,53364	29,89321	29,65103	29,33481
2003	Jan 02 20:23	Jan 10 13:15	Jan 18 10:48	Jan 25 08:33	29,60110	29,91405	29,54407	29,34216
2003	Feb 01 10:48	Feb 09 11:11	Feb 16 23:51	Feb 23 16:46	29,65729	29,83620	29,44671	29,37866
2003	Mar 03 02:35	Mar 11 07:15	Mar 18 10:34	Mar 25 01:51	29,69699	29,68400	29,37584	29,43559
2003	Apr 01 19:19	Apr 09 23:40	Apr 16 19:36	Apr 23 12:18	29,70567	29,50897	29,33359	29,50851
2003	Mei 01 12:15	Mei 09 11:53	Mei 16 03:36	Mei 23 00:31	29,67019	29,35727	29,31938	29,59331
2003	Mei 31 04:20	Jun 07 20:27	Jun 14 11:16	Jun 21 14:45	29,59635	29,25332	29,33713	29,67800
2003	Jun 29 18:39	Jul 07 02:32	Jul 13 19:21	Jul 21 07:01	29,50980	29,20504	29,39369	29,74091
2003	Jul 29 06:53	Ags 05 07:28	Ags 12 04:48	Ags 20 00:48	29,44003	29,21286	29,49165	29,76018
2003	Ags 27 17:26	Sep 03 12:34	Sep 10 16:36	Sep 18 19:03	29,40472	29,27449	29,61894	29,72808
2003	Sep 26 03:09	Okt 02 19:09	Okt 10 07:27	Okt 18 12:31	29,40359	29,38561	29,74031	29,65528
2003	Okt 25 12:50	Nov 01 04:25	Nov 09 01:13	Nov 17 04:15	29,42271	29,53567	29,80785	29,56061
2003	Nov 23 22:59	Nov 30 17:16	Des 08 20:37	Des 16 17:42	29,44726	29,69960	29,79408	29,46080
2003	Des 23 09:43	Des 30 10:03	Jan 07 15:40	Jan 15 04:46	29,47357	29,83328	29,71302	29,37078

Picture. 2 The output result of the calculation of the moon phase of Jean Meeus' algorithm uses *Software* Visual Basic Microfot 6.0

From the data from the calculation of the lunar phase of Jean Meeus's algorithm obtained the average value for the length of time of the phases of the Moon in a period of 1099 years, namely from 2001 to 2100. The average phase of *the New Moon to the next* New Moon is 29.53046138 or 29 days 12 hours 43 minutes 52 seconds. While the average phase of the Full *Moon (Full Moon)* to the next Full Moon (Full *Moon*) is 29.53027321 or 29 days 12 hours 43 minutes 36 seconds. The average phase of the first quarter to *the* next quarter is 29.53083066 or 29 days 12 hours 44 minutes 24 seconds. While the average for the final quarter phase (Last Quarter) *to the next quarter (*Last Quarter*) is 29.53090767 or 29 days 12 hours 44 minutes 30 seconds.*

3. CONCLUSION

The results of data analysis of lunar phase calculations with Jean Meeus' algorithm show that the length of the lunar synodic period from the *New* Moon phase to the next New Moon with the length of the synodic period of other lunar phases has differences, even if it is only a few seconds. The time interval from New Moon to the next *New Moon* which ranges from 29 days 5.5 hours to 29 days 20 hours makes the age of the moon in the Hijri calendar varies, amounting to *29 days, 30 days, alternating 29 and 30 days, two consecutive months of 29 days and two consecutive months of 30 days.*

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