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1

**RETURN OF DOWRY IN ANNULMENT OF MARRIAGE IN PAREPARE RELIGIOUS COURT
(CRITICAL REVIEW OF DECISION NUMBER: 372/PDT.G/2019/PA. PARE)**

BASRI, RAHMAWATI, AHMAD FADLY, FAROUQ AHMAD ALI

2

GENDER, EDUCATION, AND PEACEBUILDING IN SOUTHERN THAILAND

AMPORN MARDDENT

3

**ISLAMIC LAW REVIEW OF THE USE OF DIGITAL WALLETS IN BUYING AND SELLING
TRANSACTIONS**

SITI WALIDA MUSTAMIN, SITTI HAJERAH, HURRIAH ALI HASAN,
ULIL AMRI, NUR HISHALY G.H

4

**RETURN OF DOWRY IN ANNULMENT OF MARRIAGE IN PAREPARE RELIGIOUS COURT
(CRITICAL REVIEW OF DECISION NUMBER: 372/PDT.G/2019/PA. PARE)**

BASRI, RAHMAWATI, AHMAD FADLY, FAROUQ AHMAD ALI

5

**LEGAL CULTURAL DEGRADATION: A REVIEW OF THE SOCIO-JURIDICAL IMPACT OF THE
SUSPENSION OF INHERITANCE**

RASDIANA, MUNIRA HAMZAH, RAHMAN SUBHA

6

**INHIBITING FACTORS OF PUBLIC RELATIONS ROLE IN BUILDING A HARMONIOUS WORKING
RELATIONSHIP AT IAIN PAREPARE**

SUMARNI SUMAI, FAJAR SIDIQ, ANDI NURUL MUTMAINNAH,
AMRAN MAHMUD

7

DAKWAH IN DIGITAL ERA: OPPORTUNITY AND CHALLENGES

DAS'AD LATIF, ALI RUSDI

8

INTERACTION OF ISLAMIC AND INDIAN CULTURE

FAISAL NUR SHADIQ SHABRI

9

**THE SANCTION FOR NOT WEARING MASKS IN PUBLIC PLACES WEST SUMATERA PROVINCIAL
ON 2020 YEAR OF REGULATION IN FIQH JINAYAH**

FARID WAJIDI, DAHYUL DAIPON, HENDRI

Cerai Susuk as Women's Resistance against Patriarchal Culture in Banyuwangi: A Perspective of Mubadalah

Ramdan Wagianto¹, Puput Lestari², M. Khoirul Hadi al-Asy ary³

UNZAH Genggong Probolinggo^{1,2}, Mahasiswa Program Doktor UIN Sunan Kalijaga²

[*ramdanwagianto@gmail.com](mailto:ramdanwagianto@gmail.com), puputlestari920@gmail.com, Khoirulhadi1111@gmail.com

Abstract. This research raised the theme of studies related to the theme of Social Religion, one of the interesting studies came from Banyuwangi Regency, the title of the study was "divorce as women's resistance and against patriarchal culture in Banyuwangi regency. There are several research questions. First, how is the phenomenon of *divorce* in Banyuwangi Regency? second, what is the concept of *Mubakan* Faqihudin Abdul Qodir? and third, how is the phenomenon of *divorce* as a woman's resistance to patriarchal culture in Banyuwangi Regency? The results of this study are first, the phenomenon of *divorce* in Pesanggaran District, Regency, knowing the concept of *divorce* in the context of Banyuwangi Regency, second, the concept of *divorce* in the view of Faqihuddin Abdul Qodir, and third, the phenomenon of *divorce* as women's resistance to patriarchal culture in Banyuwangi Regency from the perspective of *mubadalah*.

Keywords: Cerai susuk, Mubadalah, Banyuwangi

1. INTRODUCTION

One of the problems faced by today's society is the high divorce rate, one of which is the divorce rate in East Java. In 2015 it is estimated to reach 100 thousand cases. This number increased compared to 2014 as many as 81,627 cases. This phenomenon is caused by many factors that exist and develop in society, ranging from economic aspects, third parties, education, and others. Historically, divorce rates in Indonesia have fluctuated. This can be seen from the results of research Mark Cammack, professor from Southwestern *School of Law-Los Angeles*. Based on the findings of Mark Cammack, in the 1950s the divorce rate in Southeast Asia, including Indonesia, was among the highest in the world. In that decade, out of 100 marriages, 50 of them ended in divorce.

In 2009 divorces reached 250 thousand cases. There seems to be an increase compared to 2008 which was in the range of 200 thousand cases. Ironically, 70% of divorces are filed by the wife or divorce. The following is data in 2010 from the Director General of Bimas Islam of the Ministry of Religious Affairs of the Republic of Indonesia, namely from 2 million people married every year throughout Indonesia, there are 285,184 cases that end in divorce per year. So, the trend of divorce in Indonesia is increasing from year to year. The divorce factor is caused by many things, ranging from third party interference, disharmony, to economic problems. Economic factors are the most common cause. About 70% of those who file for divorce are wives, arguing that the husband cannot meet the family's economic needs. The data above illustrates that, the divorce rate nationally is quite high.

In the last decade for the provincial level in 2011, East Java still ranks first compared to other provinces. At the district level, Indramayu ranks first and Banyuwangi second. From data collected by PKS, in 2009 the divorce rate in all regions in East Java was 92,729 cases. Of these, the highest divorced district or city was Banyuwangi Regency with 6,784 cases. Of the divorce cases, 70% are unique to women (wives). In the past, wives were the most worried/afraid of being divorced. On the contrary, in today's era, it is precisely wives who file divorce lawsuits in the Religious Court.

This shift in people's behavior from divorce talaq to divorce is a social phenomenon that concerns a culture that considers more modern and established. The courage of women to file for divorce on the one hand indicates that women's awareness, especially in the field of marriage law, is quite positive. It is about awareness of rights and obligations. Meanwhile, on the other hand, the

shift shows the fragility of the institution of marriage, in addition to increasing gender awareness in society.

If we look back at the teachings of Islam in this case Islamic Law divorce is a lawful act, but it is hated by Allah. Islam does permit divorce, but Allah hates divorce. That means, divorce is the last resort for married couples when there is no other way out.

In Q.S al Baqarah verse 227 it is stated:

عَلِيمٌ سَمِيعٌ اللَّهُ فَإِنَّ الطَّلَاقَ عَزَمُوا وَإِنْ

It means: "And if they are determined to divorce, then verily, God is All-Hearing, All-Knowing." This verse on divorce law continues in Q.S al Baqarah verses 228 to 232.

Therefore, religious understanding related to the concept of divorce is always a last resort. This is far from the phenomena that occurs in the Banyuwangi community. There is a unique phenomenon, namely *divorce*, divorce carried out by the wife by giving money to the husband. Returning this money is what in Javanese is called "*susuk*", which then the term divorce carried out by the wife by returning money to her husband is called "*divorce susuk*". This phenomenon of *divorce* occurs a lot among families whose wives become TKW (Women Workers). After a long time abroad and the wife already felt the stability and economic independence, so when she returned home the wife tried to divorce her husband by compensating her husband with some money.¹

Based on the background that has been described, it is interesting to examine whether the phenomenon of *divorce* arises because the woman (wife) has an awareness of marriage law that has implications for gender or is a woman's resistance to patriarchal culture / gender injustice, or whether the woman wants to show her existence in society. At this point the *mub* dimension is used to see this phenomenon more clearly and more specifically.

2. RESULTS

2.1 Demographics of Kemiren Village, Banyuwangi Regency

Banyuwangi is "*The Sun Rise of Java*", because of its location on the eastern tip of Java Island. Banyuwangi has three international attractions because of its quite exotic tourist attraction, namely Plengkung Beach, Ijen Crater and Sukamade Beach, which is famous for the *Diamond Triangle*. The area of Banyuwangi Regency is 5,782.50 km², Forest Area reaches 183,396.34 ha or about 31.72%, rice fields around 66,152 ha or 11.44%, plantations with an area of about 82,143.63 ha or 14.21%, settlements with an area of about 127,454.22 ha or 22.04%. The remaining area of 119,103.81 ha or 20.63% is used for various benefits of public facilities and social facilities, such as roads, green open spaces, fields, ponds and others.²

In addition to the use of such an area, Banyuwangi Regency has a coastline length of about 175.8 km, and as well as 10 small islands. The entire region has provided great benefits for economic progress. Geographically, Banyuwangi Regency is located at the eastern tip of Java Island. The area is divided into highlands in the form of mountainous areas, which are areas producing various

¹ Fitriyana, D. (2016). *The fulfillment of the rights of Hadhanah children after divorce is reviewed from Law No. 35 of 2014 concerning Child Protection and the Compilation of Islamic Law: A case study in Banjarwaru Hamlet, Kelir Village, Kalipuro District, Banyuwangi Regency*". Malang: Maulana Malik Ibrahim State Islamic University. See also Hanny Wahyudebia, "THE IMPACT OF PARENTAL DIVORCE ON CHILDREN'S BEHAVIOR IN THE PUBERTAS PHASE (Case study on children affected by divorce in Panderejo Village, Banyuwangi District, Banyuwangi Regency), t.t

²Goddess, K. (2021). Demographic and Regional Analysis of Banyuwangi with HINCO Approach for Regional Development. *DEMOS: Journal of Demography, Ethnography and Social Transformation* , 24-34.

plantation productions. Flat land with various potentials in the form of agricultural crop production, as well as the area around the coastline that stretches from North to South which is a producing area of various marine life. Based on the coordinates, the position of Banyuwangi Regency is located between 7 43' - 8 46' South Latitude and 113 53' - 114 38' East Longitude. Administratively, the north is bordered by Situbondo Regency, the east of the Bali Strait, the south of the Indonesian Ocean and the west is bordered by Jember and Bondowoso Regencies.

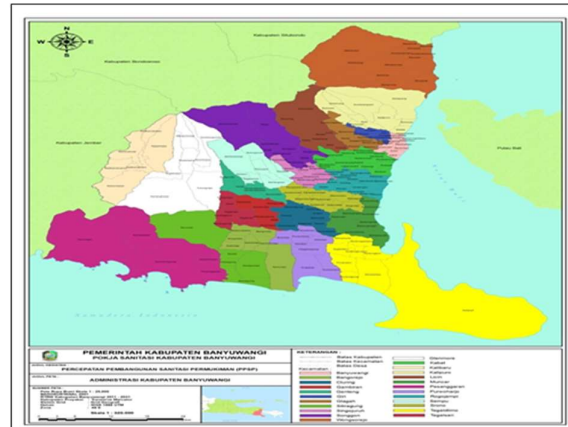


Figure 1. Regional Map and Administration Map of Banyuwangi Regency

2.2 The concept of *Khulu'* and *Divorce* in Islamic Law

Empirically, Islamic Law is a law that has lived in Indonesian society since the entry of Islam into the archipelago (Indonesia), according to JC. Van Leur since the 7th century AD. Thus, many Muslim communities are familiar with Islamic teachings through marriage law, one of which is the concept of *khulu'*. *Khulu'* in Islamic Law *Al-Khulu'*, in Indonesian is called a divorce lawsuit on the power of the wife with the payment of *'iwadl* to the husband. The word *Al-Khulu'* in Arabic means "to let go" and *'iwadl* means "substitute, reward, redeemer". Whereas according to the Shari'a, scholars say in many definitions, all of which go back to the understanding, that *Al-Khulu'* is the separation (divorce) between husband and wife gladly both and with payment the wife surrenders herself to her husband. This divorce is in line with the phenomenon of the concept of *divorce implants*. The word '*susuk*' in the title is a word absorbed from Javanese which means change. When assembled into the word '*divorce*', it is a term used by Banyuwangi residents to describe the fate of marriage of Women Workers (TKW), which refers to their behavior. Which, after earning more income overseas they feel independent, many wives are competing to divorce their husbands. This condition is called by the tongue of the locals '*in susuk i*', aka the husband is divorced by returning a sum of money to her husband based on the agreement of both parties. The term *talaq susuk* according to Banyuwangi residents is also called supernatural divorce. Because at the time of filing for divorce the wife uses the services of a lawyer, sometimes the husband does not even know it, or only finds out after a second subpoena.

2.3 The Concept of *Mubakan* in the View of Faqihuddin Abdul Qodir

Qiroah Mubdari arises because of three things. *First*, the primary texts of Islam use Arabic which has a worldview based on gender (*muzhakar-muannas*) with gender-biased language rules. *Second*, the predominance and dominance of textual approaches over major Islamic texts as a form of prudence, however, textual approaches tend to lead readers to ignore contextualized understandings. Even though this second understanding can accommodate studies and humanity for women. *The three* parthiarchical systems are still very strong in all fields, in Saudi Arabia and in Java and in areas where Islam is taught and spread. From here *qiroah mubdari* has urgency and finds significance by categorizing into three important things first *mabadi'* text that contains the basic values of Islam and that as the soul of the entire basic teachings of Islam in any aspect of life, for example texts related to tawhid, benefit, and *maqasdi sharia*, and humanity, respect for equality, goodness, and truth and others, *second*, is *qowaid* texts that carry the basic values of Islam in certain areas of life, for example, in trade, there are texts about the necessity of mutual willingness, honesty,

mutual benefit in marriage for example are *sakinah*, *mawaddah* and *warohmah*, firm promises, and *muasyarah bil ma'ru*.³ In addition, there is also the concept of *juz'I* texts that are applied to be specific, for example texts about providing for the family, meeting the needs of husbands and wives.⁴

In the meantime the three texts are mentioned and arranged hierarchically, namely with the text of *mabadi*, *qowaid*, and *juz'I* in the sense that the text of *qowaid* should not be understood contrary to the text of *mabadi*, and the text of *juz'I* should not contradict the text of *qowaid*, with this method of working partial instructions reflecting the views of gender bias by Arab society will be controlled with the values contained in the *qowaid* text and the *mabadi* text, with *Qiroah Mub* allowing religious and Islamic texts to be understood again with the spirit of monotheism that thus places men and women in an equal position as a full subject form in the life that exists with *Qiroah Mub* is a text can also be interpreted by existing phenomena. So in this paper *Qiroah Mubadalah' s approach* to read the phenomenon of *divorce in the dimension of women's resistance in patriarchal culture* which as stated why *mubis born* and respond to things that lead to inequality because patriarchy is one of the existing inequalities.

3. DISCUSSION

3.1 The Phenomenon of Divorce in Banyuwangi

The phenomenon of *divorce* is a phenomenon that occurs in Banyuwangi Regency, precisely in Pesanggaran Village, Pesanggaran District, South Banyuwangi. *Divorce* occurs mostly by women migrant workers and it is almost mostly experienced and divorced, while the process of *divorce* is by the method of filing for divorce, namely with the wife who sues for divorce to the religious court and does it in the general District Court if it is not Islam aka non-Muslim. The judicial costs will be borne by the woman who at that time was a migrant worker.

In the researcher's research, the phenomenon of *divorce* is the phenomenon of divorce by giving money to the husband to be willing to be divorced by the husband with a divorce mechanism, in practice the wife is still a migrant worker abroad and sends a legal representative by paying the divorce costs herself. The term *divorce* itself is commonly used because in the process, wives who work abroad feel able to *breastfeed* (pay money back / in Islam amounting to dowry with the concept of *khulu'*). In the observation of researchers in some temporary cases that those who divorce the husbands actually still want and do not want to divorce or want to maintain their household. Although finally giving up and deciding to divorce and in the process later who reconciled and did not become separated was 5-10%. This high failure is because most of these women or wives when divorced did not return and or were in Indonesia, resulting in mediation failing. The act of divorce committed by wives is not only done because they feel that the husband is no longer able to work and tells his wife to work abroad, also because the wife after sending her property and the results are often made spree by husbands. Thus, the results of work that was about 4-5 years did not bear fruit and ran out immediately they returned to the country.

3.2 Women's Resistance to Patriarchal Culture

Women workers (TKW) who go abroad, most of them go alone and after leaving to improve the family economy. Their departure was due to the antithesis of husbands who could not provide enough economically for the family. Thus, migrant workers are forced to migrate to other countries, in this case showing that economic pressure and health provide strength for wives who were previously villagers with limited knowledge and knowledge and become foreign exchange heroes in the midst of their families.

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Wagianto, R. (2021). *THE CONCEPT OF FAMILY MASLAHAH IN THE PERSPECTIVE OF QIRA'AH MUBADALAH DAN ITS RELEVANCE TO FAMILY RESILIENCE DURING THE COVID-19 PANDEMIC*. JURIS : JOURNAL OF SHARIA SCIENCE, 10.

⁴ Mujahidah, M. A. (2021). "The concept of Mubdari Faqihuddin Abdul Kodir and its formulation in parenting patterns,". *FOCUS Journal of Islamic and Social Studies* 6, 92.

This phenomenon shows that women under pressure will also fight in protecting their rights, and indeed the phenomenon of female migrants who have been abroad have a greater income than their husbands and this is also the next trigger and the impact is that the wife wants to ask for a divorce and do and build an independent business with her children. In the eyes of researchers, patriarchal culture in Banyuwangi is still quite high with early marriage, and the lack of education for women and education for girls is a tangible form that the women of South Banyuwangi are hegemonized by the patriarchal system that creates *divorce* in the context of women's and family issues.

3.3 The phenomenon of divorce is viewed from Mubadalah's perspective

Seeing the phenomenon⁵ of divorce as a form of gender resistance, based on the mubakan study initiated by Faqihuddin Abdul Qodir that in domestic matters alone women should not work alone to take care of the household, but husbands must also help in the context of the household. Thus, the obligation to earn a living is an obligation imposed on the husband to divide his wife and children, and if it does not happen so it means that the *muba* is what does not happen in the context of marriage, especially occurs in *divorced* families which eventually results in divorce as a last resort in making decisions in a household wholeness. In the perspective of *mubadalah*, in the phenomenon of *divorce* is that the woman as the backbone is not valued as a source of fortune and is sometimes even considered as a coffers of wealth, at this level the act of *divorce* with the *mechanism of nyusuki* is the process of maternal salinity. If you violate the social contract in the form of family, the solution is divorce and *susuk* in the context of Banyuwangi female migrant workers.

4. CONCLUSION

In the conclusion of this paper, it is *first*, that the *divorce* that is understood by the people of Banyuwangi is a divorce filed by women by giving or *susuki* to their ex-husbands so that they can be condoned with the divorce, and one of the factors that occurs *divorce* is because since the beginning of marriage patriarchy culture dominated in the people of South Banyuwangi. In addition, economic inequality and the husband's irresponsibility to provide a decent living to the wives resulted in wives then taking their initiative to find work by languishing to other countries, and when it became a source of income it turned out that many husbands manipulated the property of their wives who had worked hard in other countries. *Second*, *Qiorah Mubdari* is to use *Qiroah Mubdari* to see the phenomenon of *divorce*, this is in line with the view of Faqihudin Abdul Qodir who stated that with patriarchy in female migrant workers, the salinity of *mubakan must* be pursued using the existing tradition of divorce.

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⁵ Biati, L. (2018). Divorce *Susuk* in Banyuwangi Regency. in *Proceedings of the Annual Conference for Muslim Scholars*, 981–92.

Wagianto, R. (2021). *KONSEP KELUARGA MASLAHAHDALAM PERSPEKTIF QIRA'AH MUBADALAH DAN RELEVANSINYA DENGAN KETAHANAN KELUARGA DI MASA PANDEMI COVID-19*. JURIS : JURNAL ILMU SYARIAH, 10.

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Inhibiting Factors of Public Relations Role in Building a Harmonious Working Relationship at IAIN Parepare

Sumarni Sumai¹, Fajar Sidiq², Iskandar³, Andi Nurul Mutmainnah⁴, Amran Mahmud⁵
Universitas Negeri Makassar¹, Universitas Fajar², Institut Islam Negeri Parepare³, Institut Islam
Negeri Parepare⁵, Universitas Negeri Makassar⁵

sumarni.sumai09@gmail.com

Orchid ID: <https://orcid.org/0000-0003-4245-3633>

Abstract. *In an organization that regulates and controls the communication system is public relations. The aim is to form a good will, tolerance, mutual cooperation, mutual trust, mutual understanding, and mutual respect, and the right image based on the principles of harmonious relations, with the public. But in reality, internal conflicts are still found that cannot be well communicated by public relations that end in the disharmony. This study aims to describe the factors inhibiting the role of public relations in building harmonious work relationships in IAIN Parepare. To obtain an authentic understanding, this research uses a descriptive qualitative approach with a phenomenological approach. As the basic purpose of phenomenology to reduce the experience of individuals with a phenomenon into a universal essence description. The results of this study show: 1) IAIN Parepare is a government-owned educational institution, in general the government's public relations only acts as a provider of communication technician service, as the role of public relations contained in PMA number 35 of 2018 concerning IAIN Parepare Ortaker. 2) Human resources (HR) in the public relations field, both in quality and quantity are still very limited.*

Keywords: *Inhibiting Factors, Role, Public Relations, Employment, Harmonious, IAIN Parepare*

1. INTRODUCTION

Currently the development of the world, human curiosity and mindset have arrived at a more complex and complicated situation, this causes the human mind to always develop. The need to build cooperation is getting higher, especially to decide something, which is related to the interests of the crowd. A person is not allowed to decide only on the basis of his own desires. Ideas, ideas, thoughts, and attitudes, should be communicated with others with an interest in those issues. In order to accommodate diverse characters and interests, humans build and develop institutions, groups, and organizations. Institutions, groups, or organizations can be built based on types of interests, goals, or they can also be based on race, ethnicity, religion, and other ethnic groups.

Every organization is formed and developed based on certain goals to be achieved. Literally the organization can be interpreted as a guide of the interdependent parts of one another. Evert M. Rogers and Rekha Agarwala Rogers (1976) in their book, Communication in organization refer to these guidelines as 'systems'. The use of the word 'system' to approach the notion of organization is very appropriate, because the notion of system is a totality of subsets that relate and combine to achieve a certain goal. System also refers to parts that interact harmoniously, dynamically and definitely. In an organization that regulates and controls the communication function is Public Relations.

The daily activity of Public Relations is communication, which has the characteristic of two-way traffic communication. This activity starts from revamping the internal organization, to building the image of the institution. In relation to this role operatively, Public Relations is a special function of management. This shows that Public Relations is not a management tool that can be held, moved, or eliminated, because its function structure is attached to one with management. Simply put, where there is management there is Public Relations. And what drives Public Relations is communication. Public Relations helps maintain institutional rules through inward or outward communication channels, and Public Relations becomes a source of inward or outward communication. The goal is to achieve mutual understanding or cooperation between organizations / institutions and the public.

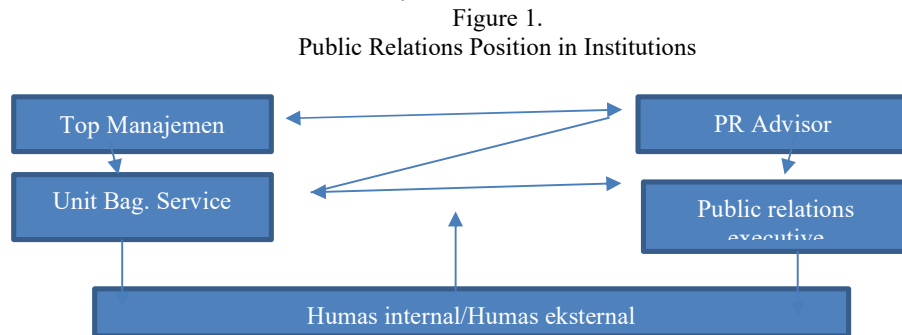
State Islamic Institute (IAIN) Parepare is an organization or government institution engaged in Islamic education. IAIN Parepare is the first university in Eastern Indonesia that is officially a Mikrotik Academy. As we all know that the target of IAIN Parepare in the future is to make this educational institution a leading Islamic university, with good governance institution and good academic culture. To realize this goal, of course, an ideal PR role is needed. The ideal role of Public Relations is intended in this research in accordance with the category of Dozier and Broom (1995).

Research on the role of public relations in an organization has been widely conducted. Noui et al. (2012) examined the role of Public Relations in the development and promotion of public structures. Ishak (2012) on public relations practices in organizations. Lenka and Petra (2014) on the role of public relations in branding. Safitri (2013) about the role and ethics of public relations in organizations. Sumai and Naumi (2016) related to the image recovery strategy of STAIN Curup. Alma (2018), Utami (2019), Elyus and Sholeh (2021) further

examine the role of public relations in building a positive image. Prisca and Anna (2020) examined public relations practices in Zimbabwe. Lani and Handayani (2021) about the role of government public relations creating a good performance reputation. Patrick D. Thelen (2021) examines PR research trends in Latin America through quantitative content analysis of articles published in PR and other communication journals. Sumai, Iskandar, Hilmiayah (2022) sees the role of Public Relations in building harmonious working relationships at IAIN Parepare. However, among these various studies, no one has specifically explored the inhibiting factors of the role of Public Relations in building harmonious working relationships at IAIN Parepare.

Public relations is basically an abbreviation of the phrase of the word 'Public Relations'. The term Public Relations as a translation of the term public relations, which in Indonesia has become popular in the sense of the word has been widely used by institutions or organizations. Frank Jefkins in Haris Munandar translates the definition of Public Relations as something that summarizes the overall planned communication, both inward and outward, between an organization and all its audiences in order to achieve specific goals based on mutual understanding. Based on the definition of Public Relations put forward by Jefkins, a common thread can be drawn that, Public Relations is a planned and continuous communication activity both within the organization and outside the organization.

In principle, structurally, the function of Public Relations in the organization is an integral part and cannot be separated from an institution. This is in line with the opinion of Anne Van der Meiden (1987) in Tondowidjojo, that the public relations function can succeed optimally if it is directly under the leadership or has a direct relationship with the highest leadership in the institution concerned. The ideal position of Public Relations in the organizational structure is described as follows;



Refer to figure 1. above, it can be seen that the position of Public Relations is very important and strategic in every institution/organization it shelters. Because, a Public Relations is always at the forefront in maintaining a harmonious relationship with his public, both internal and external public, including when the institution is experiencing a crisis with its public. The position of Public Relations directly under the highest leadership will authorize Public Relations to participate in determining policies or providing input at the decision-making level within the institution. So that Public Relations has the same opportunity as other management to sit together in determining institutional policies.

According to Dozier, the role of Public Relations is categorized into 2 parts, namely; Manager role and technician role. Manager roles provide opportunities for PR practitioners in solving problems (expert advisors), advising other managers (communication facilitators), making decisions and policies, success/failure of PR programs (facilitators of problem solving processes). Unlike the technician role position, PR practitioners are used as technical communication, their duties are like the duties of journalists.

In the book *Effective Public Relations* there is a quote written that: Public relations people, if they are truly respected by management, will definitely be entitled to a "seat at the management table". Based on this quote, it is enough to explain that public relations is considered a serious thing because it has an important role, namely as a decision maker in institutions / organizations. In other words, the position of Public Relations in the organizational structure that is included in the management circle is directly adjacent to top management.

Unlike the technician role position, based on research conducted by PRSA (Public Relations Society of America) and IABC (International Association of Business Communicators) in the United States, public relations practitioners who tend to apply the technician role are not part of the inner circle of management. Its main role is to prepare communications that assist the implementation of PR policies made by other parties.

The development of Public Relations today, has not provided maximum results. Many are found in various organizations / institutions that still treat Public Relations as technical personnel, their duties such as providing a place for meeting meetings, arranging chairs, covering and disseminating news. Indeed, the duties and functions of Public Relations are not just technical personnel but become managerial strategies that can help management to

create public opinion for internal and external organizations that shelter it, through harmonious communication. so that Public Relations is not only a complement to the institutional organizational structure, as happened at IAIN Parepare.

Public relations at IAIN Parepare acts as a technician role, placed in a position not directly related to top management, in this case (Rector). As a result, the role of Public Relations as a manager role cannot be realized. Public relations has no hand in determining policies or providing input at the decision-making level. Public relations also cannot be said to be able to build harmonious relationships between internal publics; such as the relationship between subordinates and leaders, the relationship between employees and employees within the scope of IAIN Parepare itself.

This fact is clearly illustrated in the organizational structure and function of Public Relations at IAIN Parepare. Broadly speaking, the role of Public Relations at IAIN Parepare is as follows; Carry out socialization and promotion programs for institutions, provide information and news services about institutions to the wider community, and carry out documentation of institutional activities. This task makes Public Relations at IAIN Parepare act as a journalist in organization that only provides technical communication services. Technician role, making Public Relations at IAIN Parepare unable to carry out its ideal role in building harmonious working relationships through two-way communications. Both Public Relations as a source of information and Public Relations as a channel of information for the public.

In the field, there are still internal conflicts that cannot be communicated properly by Public Relations, such as; Uneven teaching hours of lecturers, institutional rules that are often violated, scientific meetings become unscientific meetings, demonstrations, and so on that end in disharmony. Usually things like this start from small and interpersonal problems, then become big and group problems. Departing from the explanation above, it is interesting to investigate further related to the inhibiting factors of the role of Public Relations in building harmonious working relationships at IAIN Parepare.

2. METHOD

This research study uses qualitative methods with a phenomenological approach. The purpose of the phenomenological approach is to describe the inhibiting factors of the role of Public Relations in building harmonious working relationships at IAIN Parepare. As the basic purpose of phenomenology is to reduce an individual's experience with a phenomenon to a description of the universal essence (Creswell, & Poth, 2018). The informants in this study were 11 people, consisting of; Head of the IAIN Parepare AUAK Bureau 1 person, IAIN Parepare internal supervision unit 1 person, Dean of IAIN Parepare 2 people, senate representatives 2 people, and IAIN Parepare lecturer representatives 4 people, cooperation and public relations subdivision 1 person, The instrument used in this study is the researcher himself, because qualitative research methods cannot be separated from observation and the participation of researchers who determine the overall scenario. In qualitative research, researchers act as planners, implementers of data collection, analysis, interpretation, and as reporters of research results. So that researchers are said to be the main instrument (key instrument) of all stages of research.

The data collection techniques carried out in this study are: a) In-depth interviews. Qualitative research interviews as an attempt to understand the world from the point of view of the subject, to uncover the meaning of their experiences. The interview conducted in this study is an in-depth interview, because that way researchers will get the information needed in compiling research. b) Observation. Observations or field data are what the researcher observes, and what is recorded in the field notes and becomes material for systematic analysis. c) Documentation Studies. This technique is used to obtain data and information needed in this research by means of literature studies of books and other relevant documents.

Data analysis involves three stages; First, data reduction is to summarize, choose the main things, focus on important things that are in accordance with the research topic. Second, the presentation of data, through the presentation of the data, the data can be organized appropriately so that it is easy to understand. The final step in analyzing qualitative research is drawing conclusions. The conclusion is a new finding that was previously still unclear, so after research it becomes clear.

3. RESULTS AND DISCUSSION

Before we further describe the findings in the field about the factors that hinder the role and task of Public Relations in building harmonious work at IAIN Parepare, we first explain the history of the development of Public Relations in Indonesia. Why do we do this? In order to create the same perception in understanding one of the roles of Public Relations in an organization / institution.

Public relations in Indonesia began to be implemented formally and well organized since the 1950s. History records the first Public Relations organization established in the state petroleum company (Pertamina). The role of the Hupmas division (Government and community relations) is quite important in an effort to establish mutual communication relationships with clients, business relations, private companies and other communities. The forerunner of the formation of Public Relations in Indonesia was officially born through the President of PM Juanda's Cabinet, which instructed that every government agency must form a Public Relations section.

In 1967 coordination was established between public relations departments / state institutions abbreviated as Bakor which ex officio was led by the leadership of each department. Then in 1971, Bakor was changed to Bako-Humas (Government Public Relations Coordinating Board) through Menpen Decree No. 31 / Kep / Menpen / year 1971. Bako-Public Relations as a formal institution within the Ministry of Information of the Republic of Indonesia. In this period it was known as government service Public Relations.

Period III was marked by the presence of Perhumas (Indonesian Public Relations Association) on December 15, 1972 by private and government practitioners. Furthermore, on April 10, 1987, another Public Relations professional forum was formed called APPRI (Association of Public Relations Companies). With the aim of forming a professional forum in the form of an independent public relations company organization (public relations service consultants). Period IV, starting from 1995 until now, public relations developed among private professionals specifically (PR / Public Relations specialization in the service industry), both nationally and internationally. How is the relationship between the history of the development of Public Relations in Indonesia and the inhibiting factors of the role and duties of Public Relations in building working relationships at IAIN Parepare?

Based on the history of the development of Public Relations in Indonesia, there is a very close relationship with the inhibiting factors of the role and duties of Public Relations in building harmonious working relationships at IAIN Parepare. It must be understood that IAIN Parepare is an educational institution under the auspices of the Ministry of Religious Affairs. In other words, IAIN Parepare is a government-owned institution. The roles and duties of Public Relations in government are of course different from the roles and duties of non-government Public Relations (commercial institutions).

One of the duties of government public relations emphasized in Menpen Decree No. 31/1971 is to plan and implement public relations activities in accordance with government policy. This means that the role and duties of Public Relations at IAIN Parepare must be in accordance with the provisions set by the Ministry of Religious Affairs of the Republic of Indonesia as stated in PMA number 35 of 2018 concerning Ortaker IAIN Parepare, as stated I 12 below;

"Based on PMA number 35 of 2018 concerning Ortaker IAIN Parepare, the Subdivision of Cooperation and Public Relations has 4 duties and functions, namely; a). Cooperation, b). Public Relations, c). Documentation, d). Publications".¹

Referring to PMA number 35 of 2018 concerning Ortaker IAIN Parepare stipulates that the role and duties of Public Relations at IAIN Parepare emphasize more on the role as a communication technical, not as a communication facilitator. The task of Public Relations is only to provide communication technician services such as; carry out coverage and news on campus, make documentation of leadership activities, manage institute magazines, carry out press conferences and press release processes, manage web sites, manage social media, and so on that are informational and documentation as recognized by I 6 below:

"The task of Public Relations is to convey information to the campus community regarding information on campus".²

The task of Public Relations as a provider of technical communication services must be able to act as a *gatekeeper*. *Gatekeeper* or goalkeeper is a person or group in an institution whose job is to select information, starting from newly obtained data, the process of processing information, and finally the selection process before being disseminated to the public. Public relations at IAIN Parepare in this case are considered capable of becoming *gatekeepers*, as stated by I 8, as follows:

"For example, when one of the newspaper media raises negative news related to campus, this is where the role of public relations takes a policy whether the news needs to be countered or not, besides that public relations must be able to choose news that is suitable for consumption by the public".³

The role of Public Relations as a communication technician has contributed positively to IAIN Parepare, but its performance needs to be improved, so that the information needed by the internal public can be known immediately. The following is the narrative of I 2 and I 1, who expect that the performance of Public Relations at IAIN Parepare needs to be improved again;

"Public relations communication is quite good but still needs to be improved because there are still some campus information that is not spread thoroughly and seems late, for example some news of activities that are always late so that campus residents are sometimes not ready to participate in these activities".⁴

¹ Interview with Suherman, on July 5, 2021

² Interview with Muliati, on August 3, 2021

³ Interview with Qadaruiddin, on August 12, 2021

⁴ Interview with Zulfa, on July 26, 2021

"Of course, a lot has been done by Public Relations, for example, information about new student admissions has become the task of Public Relations to socialize, then student activities, lecturer activities, even institutional activities have been published all. But indeed if we want to see of course there are still many activities that they should convey, they socialize so that all information that should be published must all be centralized in Public Relations. But each of them I see that there are still those who go their own way. It certainly still needs to be empowered as much as possible".⁵

In carrying out the duties and roles of Public Relations at IAIN Parepare, of course, there are obstacles that hinder the implementation of the program. This inhibiting factor comes from limited human resources, both in terms of quantity and quality. This is recognized by I 12 and I 9, following;

"HR is one of the challenges both in terms of quantity and quality".⁶

"... People who are placed in Public Relations should be people who understand about Public Relations work, if there is education now, it is called Public Relations education, so how can the knowledge be used and applied. While at IAIN Parepare it may be due to limited human resources so that the determination of public relations is taken not in accordance with its recruitment and designation...." ⁷

Professionalism in public relations is the main key in carrying out duties, for that competency standards are needed for anyone assigned to the position as a good work culture. The success of the role of Public Relations, both its function as technical communication management and as a professional manager, of course, must be supported by elements of resources owned by the institution. The elements of these resources are called 6-M, namely human resources (*Men*), material resources / goods controlled (*Material*), tools or tools of production machines owned (*Machine*), financial capabilities (*Money*), methods used (*Method*), and marketing aimed at (*Market*). Human Resources (Human Resources) with competent capacity in the field of public relations and equipped with adequate facilities and infrastructure are certainly able to bring better changes to the achievement of IAIN Parepare targets in the future.

4. CONCLUSION

The factors that hinder the role of Public Relations in building harmonious working relationships at IAIN Parepare can be described as follows: First, as a government-owned educational institution, the role of government Public Relations generally only acts as a communication technician service provider, in accordance with the role of Public Relations listed in PMA number 35 of 2018 concerning Ortaker IAIN Parepare. Second, the limitations of Human Resources (HR) in the field of public relations, both in terms of quality and quantity, are still very limited. To overcome this obstacle, several suggestions can be put forward. First, the placement of Public Relations as managers with structural roles adjacent to top leadership. With this position, Public Relations can assist leaders in solving problems, advise leaders, and act as facilitators in the problem-solving process. Second, IAIN Parepare requires professional and skilled PR practitioners in their fields, who are able to bring better changes in achieving IAIN Parepare's goals in the future. With these steps, it is hoped that the role of Public Relations can be strengthened and more effective in building harmonious working relationships in the institution.

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Dakwah in Digital Era: Opportunity and Challenges

Das'ad Latif, Ali Rusdi

Universitas Hasanuddin, Indonesia, IAIN Parepare

**Corresponding author. Email: das'ad@gmail.com*

Scopus Id: [57226866722](#)

Abstract. In the era of digitalization, the landscape of dakwah (Islamic outreach) is experiencing both opportunities and challenges. With a significant portion of the Indonesian population engaging with the internet, particularly the millennial generation, there arises a unique space for Islamic outreach. This article examines the dynamics of dakwah in the digital age, exploring the opportunities presented by increased access to information and social media platforms, as well as the challenges posed by consumerism, radicalism, and the need for creative content. By analyzing these factors, the article aims to provide insights into effective strategies for dakwah in the digital era.

Keywords: Dakwah, Communication, Digital

1. INTRODUCTION

The emergence of digital technology has profoundly transformed the landscape of dakwah, presenting both unprecedented opportunities and formidable challenges for Islamic outreach efforts in Indonesia. With a substantial portion of the population, particularly the millennial generation, actively engaging with the internet, the potential for reaching diverse audiences through online platforms has never been greater. However, amidst this expansive opportunity lies a set of complex challenges, including the pervasive influence of consumerism, the rise of radical ideologies propagated through digital channels, and the imperative for dakwah practitioners to produce innovative and engaging content that resonates with contemporary audiences (Arif, 2015).

This article endeavors to delve into the intricate dynamics of dakwah in the digital age, aiming to illuminate both the promising opportunities and the daunting challenges inherent in this rapidly evolving landscape. By examining the multifaceted intersection of digital technology, Islamic outreach, and societal trends, the study seeks to provide valuable insights into effective strategies for navigating the complexities of dakwah in the digital era. Moreover, the article aims to contribute to a deeper understanding of the ways in which digitalization has reshaped the practice of dakwah, influencing communication patterns, audience engagement, and the dissemination of Islamic teachings (Arif, 2017).

Central to the exploration is a nuanced examination of the potential opportunities afforded by digital technology for expanding the reach and impact of dakwah efforts. At the same time, the article critically evaluates the challenges posed by digitalization, including the proliferation of consumerist values, the spread of radical ideologies, and the imperative for dakwah practitioners to adapt their methods and content to effectively engage with contemporary audiences. By shedding light on these opportunities and challenges, the study aims to provide a comprehensive understanding of the evolving landscape of dakwah in the digital age, informing future research and practice in the field (Zuhdi, 2017).

2. METHODS

This study employs a qualitative research approach, drawing upon data from various sources including Quranic verses, statistical data on internet usage in Indonesia, and insights from Islamic scholars and activists. The research methodology involves a thorough analysis of literature on dakwah, digital communication, and the millennial generation, as well as an examination of online

content and trends related to Islamic outreach. Through a synthesis of these sources, the study aims to provide a comprehensive understanding of the dynamics of dakwah in the digital era

3. LITERATURE REVIEW

Dakwah:

Scholarship on dakwah encompasses a range of studies examining the practice of Islamic outreach and propagation. Dakwah is understood as a fundamental aspect of Islamic teachings, involving the invitation to embrace the faith and the dissemination of its principles. Researchers explore various modes and methods of dakwah, including traditional approaches such as preaching and community engagement, as well as contemporary strategies utilizing digital platforms and communication technologies. Additionally, studies delve into the persuasive nature of dakwah, its role in promoting social cohesion, and its impact on individual and collective behavior within Muslim communities. By analyzing the theory and practice of dakwah, scholars aim to deepen our understanding of its significance as a means of disseminating Islamic teachings and fostering religious identity and community cohesion.(Baidowi & Salehudin, 2021)

Komunikasi:

Communication theory and research form a substantial body of literature that examines the dynamics of human interaction and information exchange. Within the context of dakwah, scholars explore the role of communication in conveying religious messages, persuading audiences, and fostering engagement with Islamic teachings. This includes an examination of communication strategies employed by dakwah practitioners, the use of language and rhetoric in conveying religious messages, and the impact of various communication channels on audience reception and understanding. Additionally, studies on communication theory provide insights into interpersonal communication, mass media communication, and the role of technology in shaping communication patterns within Muslim communities. By drawing upon communication theory, researchers aim to elucidate the mechanisms through which dakwah messages are conveyed and received, informing strategies for effective outreach and engagement(Hatta, 2018).

Digital:

The literature on digital communication encompasses a broad range of studies examining the impact of digital technology on various aspects of society, including communication patterns, information dissemination, and social interaction. Within the context of dakwah, scholars explore the role of digital platforms and communication technologies in facilitating outreach efforts, engaging with diverse audiences, and disseminating Islamic teachings. This includes an examination of social media platforms, websites, mobile applications, and other digital tools utilized by dakwah practitioners to convey religious messages and engage with communities. Additionally, studies explore the opportunities and challenges presented by digitalization, including issues related to accessibility, authenticity, and the proliferation of misinformation. By analyzing the intersection of digital technology and dakwah, researchers aim to understand the evolving dynamics of Islamic outreach in the digital age and inform strategies for effective communication and engagement(Fachrurrozi, 2008)

4. RESULTS

The findings of this study reveal a complex landscape of dakwah in the digital era, characterized by both opportunities and challenges. On one hand, the widespread access to information and social media platforms presents new avenues for engaging with audiences and disseminating Islamic teachings. However, challenges such as consumerism, radicalism, and the need for creative content pose significant obstacles to effective dakwah efforts. Moreover, the rise of misinformation and the rapid pace of information dissemination require dakwah practitioners to be vigilant and discerning in their approach..

5. DISCUSSION

Opportunities and Challenges in Dakwah, Communication, and Digitalization:

1. Integration of Digital Platforms in Dakwah Efforts:

- *Opportunities:* The widespread use of digital platforms, including social media and websites, presents an unparalleled opportunity for dakwah practitioners to reach a vast audience and disseminate Islamic teachings widely. With over 210

million internet users in Indonesia, particularly among the millennial generation, digital platforms offer a convenient and accessible means of engaging with diverse audiences.

- *Challenges:* Despite the potential for broad reach, dakwah efforts face challenges in effectively harnessing digital platforms to convey religious messages. Issues such as information overload, the proliferation of irrelevant content, and the need to compete for audience attention pose significant obstacles to effectively conveying dakwah messages in the digital space (Hatta, 2018).

2. Communication Strategies for Effective Outreach:

- *Opportunities:* The persuasive nature of dakwah, coupled with advances in communication theory, provides an opportunity for dakwah practitioners to develop innovative strategies for engaging with audiences and conveying religious messages effectively. By drawing upon principles of communication theory, practitioners can tailor their messaging to resonate with diverse audiences and foster meaningful engagement.
- *Challenges:* Despite the potential for effective communication strategies, dakwah efforts face challenges in addressing issues such as consumerism, radicalism, and the need for creative content. Moreover, the rapid pace of information dissemination in the digital age requires practitioners to adapt their communication strategies to ensure relevance and effectiveness in conveying dakwah messages.

3. Impact of Digitalization on Dakwah Practices:

- *Opportunities:* Digitalization offers dakwah practitioners access to a wide range of digital tools and platforms, enabling them to expand their outreach efforts and engage with audiences in innovative ways. With the increasing reliance on digital technology for information-seeking behaviors, there is a growing opportunity for dakwah practitioners to leverage digital platforms to address the religious needs and inquiries of digital-native audiences.
- *Challenges:* Despite the opportunities presented by digitalization, dakwah efforts face challenges related to the proliferation of misinformation, the spread of radical ideologies through digital channels, and the need for creative and engaging content. Moreover, the rapid pace of technological change necessitates continuous adaptation and innovation in dakwah practices to remain relevant and effective in the digital age (Hatta, 2018).

5. CONCLUSION

In conclusion, the integration of digital platforms in dakwah efforts offers unprecedented opportunities for reaching diverse audiences and disseminating Islamic teachings widely. However, dakwah practitioners must navigate challenges such as information overload, competition for audience attention, and the need for innovative communication strategies to effectively convey religious messages in the digital space. By leveraging communication theory and embracing digitalization, dakwah practitioners can develop strategies to address these challenges and capitalize on the opportunities presented by digital platforms to foster meaningful engagement and promote the teachings of Islam in the digital age.

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The Sanction For Not Wearing Masks in Public Places West Sumatera Provincial on 2020 Year of Regulation in Fiqh Jinayah

Farid Wajidi¹, Dahyul Daipon², Hendri³
UIN Sjech M. Djamil Djambek Bukittinggi^{1,2,3}

*Corresponding author. Email: dahyuldaipon55@gmail.com

Abstract. Tujuan penelitian ini karena dikeluarkannya Peraturan Daerah (Perda) Nomor 6 Tahun 2020 tentang Adaptasi Kebiasaan Baru Dalam Pencegahan dan Pengendalian Covid-19 dan juga kewajiban bagi setiap masyarakat mematuhi protokol kesehatan dengan memakai masker di tempat umum, mencuci tangan dan menjaga jarak. Serta adanya ketentuan pidana terhadap masyarakat yang melanggar aturan Perda tersebut dengan ancaman hukuman berupa sanksi administratif dan kurungan. Berdasarkan hal ini maka penulis ingin mengetahui secara mendalam bagaimana tinjauan Hukum Pidana Islam terhadap sanksi tidak memakai masker di tempat umum dalam ketentuan Perda Nomor 6 Tahun 2020. Penelitian ini menggunakan penelitian pustaka (*Library Research*) yang bersifat normatif. Library research dapat diartikan sebagai metode pengumpulan data yang dilaksanakan dengan menggunakan literatur (kepuustakaan), baik berupa buku, catatan, maupun laporan hasil penelitian terdahulu. Penelitian yang dilakukan termasuk penelitian kuantitatif yaitu yuridis normatif. Adapun data primer yang digunakan dalam penelitian ini adalah Perda Sumatera Barat No.6 Tahun 2020 serta Al-Qur'an dan Hadits sebagai *masdhar* hukum dalam ajaran Islam. Sedangkan untuk data sekunder adalah dari data hasil pengumpulan jurnal-jurnal, skripsi, serta media lain dengan cara mencari, mencatat, dan pelajari buku, dokumen dan peraturan perundang-undangan dari data yang didapatkan dianalisis dan ditinjau dengan menggunakan metode induktif, deskriptif untuk memperoleh tinjauan Hukum Islam terhadap sanksi tidak memakai masker di tempat umum dalam Perda nomor 6 tahun 2020 tentang adaptasi kebiasaan baru dalam pencegahan dan pengendalian Covid-19. Hasil penelitian ini, bahwa Sanksi tidak memakai masker di tempat umum yang terdapat dalam Perda Nomor 6 tahun 2020 pasal 101 Perda Nomor 6 Tahun 2020 ayat (1) dipidana dengan pidana kurungan paling lama 2 (dua) hari atau denda paling banyak Rp.250.000,00 (dua ratus lima puluh ribu rupiah). Tindak pidana ini hanya dapat dikenakan apabila sanksi administratif yang telah dijatuhkan tidak dipatuhi atau pelanggaran dilakukan lebih dari satu kali. Sedangkan dalam Hukum Pidana Islam sanksi tidak memakai masker di tempat umum termasuk kepada hukuman takzir karena penerapan hukumannya dilakukan oleh hakim atau penguasa. Sebagaimana yang telah dijelaskan dalam unsur-unsur dalam jarimah takzir yaitu unsur formal, unsur material, dan moral yang terdapat dalam hukuman takzir serta hukuman denda (*tahdid*) ditetapkan oleh syari'at Islam sebagai bentuk dari hukuman takzir

Keywords: Sanksi, Jinayah, Masker, Takzir

1. INTRODUCTION

Di Provinsi Sumatera Barat pertama kali kasus Positif Covid 19 terkonfirmasi pada tanggal 26 Maret 2020 di Bukittinggi. Pada 27 Mei 2020, seluruh Kabupaten dan Kota telah melaporkan kasus positif COVID-19. Hingga 25 Januari 2021, terdapat 26.452 kasus sedang dirawat dan 588 kasus meninggal dunia, guna memutus rantai penularan COVID-19. Pemerintah setempat melakukan penelusuran kontak dan pengujian secara masif berkerja sama dengan Laboratorium Biomtek Fakultas Kedokteran Universitas Andalas dan Balai Veteiner Bukittinggi dibawah pimpinan

Andani Eka Putra, Gubernur Irwan Prayitno memberikan kepercayaan kepada kalangan ilmiah dalam pengendalian Covid-19.¹

Disaat banyak provinsi masih berfokus pada pemeriksaan pasien dalam pengawasan (PDP), Sumatera Barat telah meningkatkan deteksi terhadap orang tanpa gejala (OTG) dan persentase pasien positif COVID-19 di Sumatera Barat hanya sebagian kecil dari PDP serta selebihnya dari orang tanpa gejala OTG. Penetapan COVID-19 ini sebagai bencana Nasional yang dinyatakan melalui Keputusan Presiden (KEPPRES) Republik Indonesia Nomor 12 tahun 2020 tentang Penetapan Bencana Non-Alam Penyebaran Corona Virus Disease 2019 (COVID-19) sebagai bencana alam pada tanggal 13 April 2020 yang dinyatakan langsung oleh Presiden Republik Indonesia Joko Widodo.²

Kemudian dalam Keppres (Keputusan Presiden), Presiden juga menetapkan bahwa penanggulangan bencana nasional yang diakibatkan oleh penyebaran COVID-19 dilaksanakan oleh Gugus Tugas Percepatan Penanganan COVID-19 sesuai dengan keputusan Presiden Nomor 7 tahun 2020 tentang Gugus Tugas Percepatan Penanganan Corona virus Disease (COVID-19) yaitu pada poin kedua dalam Keppres. Kemudian selanjutnya isi poin ketiga dalam Keppres adalah perintah kepada Gubernur, Bupati dan Walikota sebagai Ketua Gugus Tugas Percepatan Penanganan COVID-19 di daerah masing masing, dalam menetapkan kebijakan di daerah masing-masing harus memperhatikan kebijakan pemerintah pusat.³

Kebijakan pemerintah dalam penanganan pandemi COVID-19 telah mengeluarkan kebijakan tentang Pembatasan Sosial Berskala Besar (PSBB), yang merujuk pada Undang-undang Nomor 6 Tahun 2018 tentang Kekarantinaan Kesehatan, yaitu untuk menanggulangi dampak COVID-19 dari segi ekonomi dan sosial pemerintah mengambil kebijakan-kebijakan.⁴

Gubernur Sumbar Irwan Prayitno menambahkan, “bahwa adaptasi kebiasaan baru ini sebagai upaya pencegahan dan pengendalian COVID-19. Tentu hal ini sekaligus untuk memberikan efek jera kepada masyarakat yang tidak disiplin protokol kesehatan, sebab masih banyak masyarakat yang mengabaikannya”.⁵

Namun setelah disahkannya Perda ini masih banyak masyarakat yang tidak mematuhi, seperti data yang penulis dapatkan di halaman Artikel (Noli Hendra-Sumbar-*bisnis.com*) dimana ribuan masyarakat Sumatera barat kena sanksi, dan sebagian masyarakat yang dikenai sanksi lebih memilih kerja sosial. Ketua Satpol PP Provinsi Sumatera Barat Dedi Diantolani “mengatakan ribuan orang yang terkena sanksi tersebar di sejumlah kabupaten dan kota di Sumbar. Sebanyak 76 orang dikenakan sanksi administratif dengan 36 orang dilaksanakan oleh provinsi, dan 40 orang dilaksanakan oleh kabupaten dan kota. Adapun 2.062 orang melaksanakan sanksi kerja sosial”.⁶

Peraturan Daerah (PERDA) Provinsi Sumatera Barat Nomor 6 Tahun 2020 Tentang Adaptasi Kebiasaan Baru dalam Pencegahan dan Pengendalian, warga yang mengabaikan protokol kesehatan dengan tidak memakai masker saat berada diluar rumah akan dikenai sanksi tegas sesuai dengan Perda Sumatera Barat No 6 Tahun 2020 tentang Adaptasi Kebiasaan Baru.

Bagi setiap orang yang melanggar kewajiban tidak menggunakan masker sebagaimana yang dimaksud dalam pasal 11 huruf d angka 2, dan bagi setiap penanggung jawab kegiatan/usaha yang melanggar kewajiban sebagaimana yang dimaksud pasal 12 akan dikenakan sanksi administratif sesuai dalam pasal 92 Perda No 6 Tahun 2020 tentang AKB.⁷

Sanksi Administratif ini yaitu berupa kerja sosial membersihkan fasilitas umum selama 90 menit atau denda Rp 100.000 (seratus ribu rupiah), kemudian jika sudah dua kali pelanggaran dilakukan warga tersebut dikenai sanksi membersihkan fasilitas umum selama 120 menit. Jika

¹ Wikipedia, “*Pandemi COVID-19 di Sumatera Barat*” Diakses pada tanggal 25 Januari 2021.

² Keputusan Presiden (KEPPRES) No. 12 Tahun 2020. Tentang: Penetapan Bencana Non alam Penyebaran Corona Virus Disease 2019 (Covid-19) Sebagai Bencana Nasional

³ *Ibid*

⁴ I Wayan Wiryawan, “*Kebijakan Pemerintah dalam Penangan Pandemi COVID-19 di Indonesia*”, Diakses pada tanggal 25 Januari 2021.

⁵ Wahyu Saputra, “*Peraturan Daerah (PERDA) adaptasi kebiasaan baru dalam pencegahan dan pengendalian Covid-19*”, Diakses Pada tanggal 25 Januari 2021

⁶ <https://sumatra.bisnis.com/read/20201020/533/1307231/tak-pakai-masker-ribuan-orang-di-sumbar-kena-sanksi> di Akses Pada Tanggal 25 Januari 2021

⁷ Pasal 11 dan 12 Peraturan Daerah (PERDA) Sumatera Barat, tentang Adaptasi Kebiasaan Baru dalam Pencegahan dan Pengendalian Covid-19, No.6 Tahun 2020.

masih melakukan pelanggaran, warga tersebut dapat dikenai sanksi kurungan selama dua hari atau denda Rp 250.000 (dua ratus lima puluh ribu rupiah) sesuai pasal 101 yang mengatur tentang Ketentuan Pidana.

Berdasarkan hal tersebut dalam melakukan Adaptasi Kebiasaan Baru dalam menerapkan perilaku disiplin pada aktivitas diluar rumah dengan melaksanakan protokol kesehatan yang dianjurkan yaitu meliputi :

1. Wajib menggunakan masker diluar rumah
2. Cuci tangan menggunakan air dan sabun atau pembersih tangan lainnya
3. Menjaga jarak fisik (physical distancing)
4. Mengucapkan salam dengan tidak berjabat tangan

Apabila kebiasaan baru tersebut tidak terlaksanakan, maka akan dikenai Peraturan Daerah (Perda) Sumatera Barat No. 6 Tahun 2020, Pasal 101. yaitu “Setiap orang yang melanggar kewajiban tidak menggunakan masker sebagaimana dimaksud dalam Pasal 11 huruf d angka 2 dipidana dengan pidana kurungan paling lama 2 (dua) hari atau denda paling banyak Rp.250.000,00 (dua ratus lima puluh ribu rupiah)”.⁸

Dalam hukum Islam dijelaskan bahwa denda yang harus dibayar karena melanggar larangan Allah atau melanggar janji yaitu disebut kafarat. Kafarat merupakan asal kata dari kaya kufir yang artinya tertutup. Maksudnya, tertutup hati seseorang hingga ia berani melakukan pelanggaran terhadap aturan syar’i. Sedangkan secara istilah, Kafarat adalah denda yang wajib dibayar oleh seseorang yang telah melanggar larangan Allah tertentu. Kafarat merupakan tanda taubat Allah dan penebus dosa.

Hukum Islam juga menjelaskan dalam mentaati Ulil Amri agar tidak terjadi sesuatu yang tidak diinginkan yang menyebabkannya terjadi sanksi pidana dan denda, maka sudah dijelaskan dalam Al-Qur’an Surat An-nisa: 59 yang artinya :

“Hai orang-orang yang beriman, taatilah Allah dan taatilah Rasul (Nya), dan ulil amri di antara kamu. Kemudian jika kamu berlainan pendapat tentang sesuatu, maka kembalikanlah ia kepada Allah (Al Quran) dan Rasul (sunnahnya), jika kamu benar-benar beriman kepada Allah dan hari kemudian. Yang demikian itu lebih utama (bagimu) dan lebih baik akibatnya.” (QS. an-Nisa ayat 59).⁹

Isi kandungan dari surat ini menjelaskan bahwa: Setiap orang yang beriman harus ta’at kepada Allah dan Rasulnya, dan kepada pemimpin kita juga harus ta’at jika pemimpin itu benar, berdasarkan al-qur’an dan al-hadist, namun jika pemimpin itu tidak berdasarkan al-qur’an dan al-hadist kita boleh tidak menta’atinya. Kemudian apabila terjadi perselisihan dalam suatu urusan, maka harus kembali kepada Allah dan Rasul-nya. Maksud dari kembali kepada Allah dan Rasul-nya adalah kita kembalikan kepada al-qur’an dan al-hadist, cari dasar hukumnya dan dalilnya atas tentang apa yang di perselisihkan itu.¹⁰

Maka jika ada orang yang memerintahkan perkara yang membahayakan diri kita, atau bukan perkara yang dianggap bagus oleh akal sehat, perkara yang memalukan, perkara yang menjatuhkan wibawa, dan semisalnya ketika itu kita tidak wajib taat kepada orang tersebut. Apalagi perkara maksiat, tidak boleh kita taat kepada orang lain dalam perkara maksiat.

Bahwa tidak boleh seseorang melanggar agama demi untuk taat kepada makhluk, atau untuk mencari ridha dari orang lain. Dalam hal itu ada beberapa tujuan di dalam hukum Islam yaitu: (*Maqashid ays-syariah*) dalam (bahasa Arab مقاصد الشريعة, *Maqashid ays-syariah*, “maksud-maksud syariah” atau “tujuan-tujuan syariah”) adalah sebuah gagasan dalam hukum Islam bahwa syariah diturunkan Allah untuk mencapai tujuan-tujuan tertentu, tujuan-tujuan dapat ditemukan atau sumber utama hukum Islam (Al-qur’an dan Sunah) dan harus senantiasa dijaga saat memutuskan keputusan perkara hukum. Bersama dengan gagasan klasik lainnya yaitu *Mashlahah* (kemashlahatan umum).¹¹

Pada dasarnya, tujuan hukum Islam adalah mewujudkan dan menciptakan kemaslahatan hidup bagi segenap umat manusia, menegakkan keadilan dan berkonstruksi terhadap pendidikan serta menjaga eksistensi manusia itu sendiri. Dilihat dari substansi syariat, Islam adalah satu satunya

⁸ Pasal 101 Peraturan Daerah (PERDA) Sumatera Barat, No. 6 Tahun 2020, tentang Sanksi bagi yang melanggar kewajiban menggunakan masker.

⁹ Mujamma’ Khadim al-Haramain as-Syarifain al-Malik Fahd li Thiba’at al-Mushaf asy-Syarif, Al Qur’an dan Terjemahnya, h. 128

¹⁰ *Ibid*

¹¹ Busyro, “*Maqashid Al-Syariah*” (Buku Pedoman IAIN Bukittinggi) h.5

agama yang menyediakan pedoman hidup secara utuh untuk manusia dengan berbagai aspek kehidupan untuk mencapai tingkat kebahagiaan hidup, baik secara rohani maupun jasmani, baik dalam kehidupan pribadi maupun dalam kehidupan masyarakat. Secara umum, tujuan Allah menetapkan hukum adalah untuk kemaslahatan, kepentingan, dan penjagaan eksistensi hidup manusia yang dapat dijelaskan sebagai berikut:¹²

Pertama, memelihara agama (*hifdz al-din*). Agama adalah peraturan dasar atau pedoman hidup yang harus diyakini dan dimiliki oleh manusia agar dapat menjalankan kehidupan sesuai dengan apa yang diperintahkan Pencipta.

Kedua, Pemeliharaan jiwa (*hifdz al-nafs*). Memelihara jiwa dimaksudkan untuk menjaga diri dari segala ancaman, baik internal maupun eksternal, baik yang bersifat medis maupun bersifat psikis, baik yang bersifat rohani maupun jasmani.

Ketiga, pemeliharaan akal (*hifdz al-aql*). Menjaga akal pikiran bertujuan agar dapat berfikir secara sehat dan objektif. Akal yang sehat akan menghasilkan perbuatan baik yang sesuai dengan tuntutan syaria. Pemeliharaan akal dinilai sangat penting karena identitas manusia yang sebenarnya dilihat dari akal. Dengan adanya akalnya manusia, ia dapat men-tadabburi kebesaran Allah, alam sekitarnya, dan dirinya sendiri.

Keempat, Pemeliharaan keturunan (*hifdz al-nasl*) atau menjaga kehormatan. Menjaga kehormatan berorientasi untuk menjaga dan memberikan kasih sayang secara proporsional kepada keturunan agar dapat tumbuh secara sehat, normal dan mendapatkan pendidikan yang baik melalui tata cara yang sudah diatur dalam Islam. Pemeliharaan kehormatan dilakukan dengan hubungan seks yang legal sebagaimana yang diatur dalam fiqh munakahat.

Kelima, Pemeliharaan harta (*hifdz al-mal-waal-irdh*). Adalah mengatur diri dan keluarga agar selalu mendapatkan rizki dengan cara dan hasil yang baik, benar, dan halal. Senantiasa sebagai kebersamaan dalam harta benda yang dimiliki kepada siapa yang tergolong tidak mampu sesuai tuntutan ajaran Islam.¹³

Dalam maksud dari *maqashid syariah* menggunakan masker dalam hidup kebiasaan baru tujuannya adalah memelihara jiwa. Namun dalam prakteknya masih banyak masyarakat yang tidak menggunakan masker ketika melaksanakan aktivitas diluar rumah dan berinteraksi dengan masyarakat lainnya. Seperti data yang penulis dapatkan pada Artikel (*Kompas.com/Ramadhani*) pada tanggal Kamis 25 Juni 2020, yang mana ada sebanyak 26 orang di Kota Padang Provinsi Sumatera Barat terjaring razia yang dihukum dan diharuskan melakukan kerja sosial dengan membersihkan fasilitas umum. Hal ini terjadi saat Dinas Perhubungan Kota Padang melakukan razia protokol kesehatan terhadap pengendara dan penumpang, adapun 26 orang yang melanggar protokol kesehatan tersebut di hukum karena kedatangan tidak memakai masker, dengan hukuman yang di berikan membersihkan fasilitas umum dengan menggunakan rompi sebagai tanda pengenal.¹⁴

Namun ada dua jenis sanksi yang diterapkan dalam masalah ini, yaitu membersihkan fasilitas umum kemudian denda uang, tetapi masyarakat tidak mau mengambil hukuman denda tersebut dan lebih memilih hukuman membersihkan fasilitas umum yaitu kerja sosial karena hukuman yang diberikan harus membayar uang Rp.100.000, (seratus ribu rupiah)

2. METHODS

Adapun jenis penelitian ini adalah penelitian hukum normatif, yaitu metode penelitian ilmiah yang dilakukan untuk menemukan kebenaran berdasarkan teori-teori keilmuan dari sisi normatifnya serta berdasarkan peraturan perundang-undangan. Penelitian hukum normatif ini bertujuan untuk menemukan suatu kebenaran apakah aturan hukum tersebut sesuai dengan norma hukum, dan apakah norma hukum yang berisi tentang sanksi dan kewajiban tersebut sesuai dengan prinsip hukum atau tindakan seseorang itu sesuai dengan norma hukum atau prinsip hukum. Oleh karena itu penelitian hukum normatif ini juga diartikan sebagai suatu pedoman dalam

¹² Muhammad Rezi, "Al-Hurriyah Jurnal Hukum Islam" Diterbitkan 30 Juni 2018.

¹³ *Ibid*

¹⁴ <https://regional.kompas.com/read/2020/06/25/20275451/tak-gunakan-masker-26-orang-di-kota-padang-dihukum-kerja-sosial> diakses pada tanggal 30 April 2021 pukul 17.00 WIB.

berperilaku.¹⁵ Metode analisis data dilakukan dengan menghimpun data melalui penelaahan bahan kepustakaan atau data sekunder yang meliputi bahan hukum primer dan bahan hukum sekunder, baik berupa dokumendokumen maupun peraturan perundangundangan yang berlaku yang berkaitan dengan analisis yuridis normatif terhadap sinkronisasi Perda dengan hukum Islam. Untuk menganalisis bahan hukum yang telah terkumpul, dalam penelitian ini menggunakan metode analisis data kualitatif yaitu yuridis normatif yang disajikan secara deskriptif, yakni dengan menggambarkan suatu kebijakan yang terkait dengan sinkronisasi Peraturan Daerah (Perda) dengan hak asasi manusia dan hukum Islam yang menghubungkan untuk memperbaiki kinerja sistem hukum di Indonesia dan selanjutnya dilakukan pengkajian apakah aplikasinya sesuai dengan ketentuan-ketentuan normatifnya.¹⁶

3. RESULTS AND DISCUSSION

3.1 Penerapan Sanksi Tidak Memakai Masker di Tempat Umum dalam Ketentuan Perda Nomor 6 Tahun 2020

Berdasarkan ketentuan Perda Nomor 6 Tahun 2020 tentang Adaptasi Kebiasaan Baru Dalam Pencegahan dan Pengendalian Covid-19 dijelaskan bahwa sanksi tidak memakai masker di tempat umum sebagaimana yang telah tercantum dalam Perda Nomor 6 tahun 2020 Pasal 92 ayat (1) bagi setiap orang yang melanggar kewajiban menggunakan masker sebagaimana dimaksud dalam Pasal 11 huruf d angka 2 dan bagi setiap penanggungjawab kegiatan/usaha yang melanggar kewajiban sebagaimana dimaksud dalam Pasal 12 dikenakan sanksi administratif. Sanksi pelanggaran terhadap pelaksanaan Adaptasi Kebiasaan Baru dalam pencegahan dan pengendalian Covid-19 sebagaimana dimaksud pada ayat (1) berupa:¹⁷

1. Bagi perorangan:
 - a. Teguran lisan
 - b. Teguran tertulis
 - c. Kerja sosial dengan membersihkan fasilitas umum
 - d. Denda administratif sebesar Rp.100.000,00 (seratus ribu rupiah)
 - e. Daya paksa polisional.
2. Bagi penanggung jawab kegiatan/usaha:
 - a. Teguran lisan
 - b. Teguran tertulis
 - c. Pembubaran kegiatan
 - d. Penghentian sementara kegiatan
 - e. Pembekuan sementara izin
 - f. Pencabutan
 - g. Denda administratif Rp.500.000,00 (lima ratus ribu rupiah)

Apabila sanksi administratif tidak dipatuhi dan pelanggaran tidak memakai masker di tempat umum dilakukan lebih dari satu kali, maka berdasarkan Perda Nomor 6 tahun 2020 Pasal 101 ketentuan pidananya itu Pasal 101 ayat (1) (2) dan Pasal 102 ayat (1) dan (2) adalah :¹⁸

1. Pasal 101 Perda Nomor 6 Tahun 2020
 - (1) Setiap orang yang melanggar kewajiban menggunakan masker sebagaimana dimaksud dalam Pasal 11 huruf d angka 2 dipidana dengan pidana kurungan paling lama 2 (dua) hari atau denda paling banyak Rp.250.000,00 (dua ratus lima puluh ribu rupiah).

¹⁵ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang : Bayumedia, 2013). h.57

¹⁶Henni Muchtar, *jurnal Analisis Yuridis Normatif Sinkronisasi Peraturan Daerah Dengan Hak Asasi Manusia*, (Fakultas Ilmu Sosial, Universitas Negeri Padang, 2015). diakses Pada Tanggal 18 April 2020.

¹⁷Peraturan Daerah (Perda) Nomor 6 tahun 2020, Pasal 92 ayat (1) tentang sanksi administratif bagi yang melanggar kewajiban menggunakan masker di tempat umum.

¹⁸Peraturan Daerah (Perda) Provinsi Sumatera Barat No. 6 Tahun 2020, pasal 101 tentang Ketentuan Pidana bagi pelanggar (individu) yang tidak memakai masker di tempat umum.

- (2) Tindak pidana sebagaimana dimaksud pada ayat (1) hanya dapat dikenakan apabila sanksi administratif yang telah dijatuhkan tidak dipatuhi atau pelanggaran dilakukan lebih dari satu kali.
2. Pasal 102 Perda Nomor 6 Tahun 2020
 - (1) Setiap penanggung jawab kegiatan/usaha yang melanggar kewajiban penerapan perilaku disiplin protokol kesehatan dalam melaksanakan kegiatan/usaha dan aktivitas lainnya, sebagaimana dimaksud dalam Pasal 12 huruf b dipidana dengan pidana kurungan paling lama 1 (satu) bulan atau denda paling banyak Rp.15.000.000,00 (lima belas juta rupiah).
 - (2) Tindak pidana sebagaimana dimaksud pada ayat (1) hanya dapat dikenakan apabila sanksi administratif yang telah dijatuhkan tidak dipatuhi atau pelanggaran dilakukan lebih dari satu kali.

Penerapan sanksi bagi pelaku yang tidak memakai masker di tempat umum dalam ketentuan Perda Nomor 6 Tahun 2020 mulai diterapkan di Sumatera Barat pada September 2020. Penerapan sanksi ini diterapkan karena banyaknya masyarakat yang tidak patuh mengikuti protokol kesehatan. Adanya sanksi pidana dalam Perda itu bertujuan agar memberikan efek jera kepada warga yang membandel tidak mematuhi protokol kesehatan. Dilansir dari website REPUBLIKA.CO.ID, PADANG sebanyak 277 ribu orang lebih dikenakan sanksi tidak memakai masker di tempat umum. Akan tetapi tidak membuat masyarakat menjadi jera.¹⁹

Pada tanggal 23 Mei 2021 Kapolda Sumatera Barat, ia bersama timnya kemungkinan akan memperberat sanksi bagi pelanggar yang tidak menggunakan masker di tempat umum. Ia menjelaskan, menurut Peraturan Daerah (Perda) Nomor 6 Tahun 2020 tentang Adaptasi Kebiasaan Baru Dalam Pencegahan dan Pengendalian Covid-19 sanksi bagi pelanggar protokol kesehatan meliputi teguran, kerja sosial, dan denda. Sanksi administratif bagi perorangan yang melanggar protokol kesehatan menurut ketentuan berupa teguran lisan, teguran tertulis, kerja sosial membersihkan fasilitas umum, denda administratif Rp.100.000,00 atau daya paksa polisional. Sedangkan sanksi bagi penanggung jawab kegiatan atau usaha yang tidak memenuhi kewajiban menerapkan protokol kesehatan berupa teguran lisan, teguran tertulis, pembubaran kegiatan, penghentian sementara kegiatan, pembekuan sementara izin, pencabutan izin, atau denda sebanyak Rp.500.000,00.²⁰

Menurut peraturan daerah, seorang warga yang melanggar kewajiban memakai masker terancam pidana kurungan paling lama dua hari dan denda paling banyak Rp.250.000,00. Penanggung jawab kegiatan atau usaha yang melanggar kewajiban menerapkan protokol kesehatan, menurut peraturan daerah, bisa kena pidana kurungan paling lama satu bulan dan denda paling banyak Rp.15.000.000,00.

Dedi Diantolani selaku Kepala Satuan Polisi Pamong Praja Sumatera Barat mengatakan bahwa kepolisian mengusulkan pemberatan sanksi karena menilai sanksi dan hukuman yang dikenakan terhadap pelanggar protokol kesehatan belum menimbulkan efek jera kepada masyarakat, sehingga Kapolda Sumbar berencana akan memberatkan sanksi kepada pelanggar yang tidak mentaati protokol kesehatan. Dedi Diantolani mengatakan, pemberatan sanksi terhadap pelanggar protokol kesehatan dimaksudkan untuk meningkatkan kepatuhan warga menjalankan ketentuan mengenai pencegahan penularan Covid-19.

Penerapan sanksi tidak memakai masker di tempat umum telah dilakukan di berbagai daerah di Sumatera Barat termasuk di Kabupaten/Kota. Dilansir melalui website (*Metrokini.com*) yang diakses pada tanggal 20 Oktober 2020 ada sebanyak 2.138 orang yang melanggar Perda Sumbar Nomor 6 Tahun 2020 tentang Adaptasi Kebiasaan Baru Dalam Pencegahan dan Pengendalian Covid-19 tidak memakai masker di tempat umum dan dikenakan sanksi berdasarkan ketentuan yang ada.²¹

Sanksi yang diberikan yaitu berupa denda Rp. 100.000,00 dikenakan kepada masyarakat yang tidak memakai masker di tempat umum dan tidak mengikuti protokol kesehatan. Sedangkan sanksi yang diberikan kepada penanggung jawab usaha yaitu denda sebesar Rp. 500.000,00 dikenakan kepada penanggung jawab usaha yang tidak memakai masker di tempat umum dan tidak mengikuti protokol kesehatan. Namun jika dilihat dari kenyataan yang ada di tengah

¹⁹ Republika.co.id, Padang diakses pada tanggal 26 Juli 2021. Pukul : 10.00

²⁰ Regional Kompas.co.id, Padang diakses pada 1 Agustus 2021, Pukul : 13.20

²¹ Metrokini.com, diakses pada tanggal 20 Agustus 2021, pukul : 18.00

masyarakat sanksi terhadap masyarakat maupun penanggung jawab usaha yang tidak memakai masker di tempat umum tidak memberikan efek jera kepada masyarakat.

Di lansir dari website Antarasumber pada Rabu 1 September 2021 rapat yang dilakukan Bapemperda di Padang Sumatera Barat bersama Gubernur Sumatera Barat terkait revisi Peraturan Daerah (Perda) Nomor 6 tahun 2020 tentang Adaptasi Kebiasaan Baru Dalam Pencegahan dan Pengendalian Covid-19. Badan Pembentukan Peraturan Daerah (Bapemperda) DPRD Sumatera Barat (Sumbar) melakukan rapat evaluasi Perda nomor 6 tahun 2020 tentang Adaptasi Kebiasaan Baru yang dinilai ada kekurangan dalam menghadapi situasi pandemi Covid-19.

Hidayat selaku Ketua Bapemperda DPRD Sumatera Barat, mengatakan bahwa usulan revisi ini muncul dari Polda Sumatera Barat terhadap penegakkan protokol kesehatan di daerah tersebut. Politisi Gerindra menekankan semangat saat ini adalah bagaimana proses kehidupan sosial dan ekonomi dapat berjalan dalam protokol kesehatan. Misalnya pelaksanaan tatap muka di sekolah tetap berjalan dengan menggunakan masker dan separuh dari kapasitas dan lainnya. Dalam pembahasannya, persoalan Perda ini belum optimal seperti tidak melibatkan tokoh agama, adat, pemuka masyarakat dalam mengedukasi protokol kesehatan. Kita ingin tokoh ini kita rangkul lalu mereka melakukan sosialisasi agar masyarakat taat protokol kesehatan. Sementara anggota DPRD Sumbar, Ali Tanjung mengatakan bahwa penyebab dari tidak taatnya masyarakat akan protokol kesehatan adalah aparat yang tidak memberikan sanksi tegas kepada warga yang melanggar aturan, dan jumlah petugas yang bertugas tidak sepadan dengan masyarakat yang diawasi.²²

Jadi dari uraian di atas dapat disimpulkan bahwa dalam melakukan penerapan sanksi kepada masyarakat yang tidak memakai masker di tempat umum diperlukan penegasan pemberian sanksi yang dilakukan oleh aparat hukum, namun karena aparat hukum yang jumlahnya sangat terbatas maka sanksi tersebut sulit untuk diterapkan dengan seadil adilnya, diperlukan kesadaran dari masing-masing masyarakat untuk patuh dan taat dalam mengikuti protokol kesehatan.

3.2 Tinjauan Hukum Pidana Islam Terhadap Sanksi Tidak Memakai Masker di Tempat Umum dalam Ketentuan Perda Sumbar No. 6 Tahun 2020

Sanksi dalam Hukum Pidana Islam dikenal sebagai hukuman. Hukuman merupakan suatu pembalasan yang telah ditetapkan demi kemashlahatan masyarakat atas pelanggaran perintah Allah dan Rasulnya. Menurut istilah fuqaha sanksi (uqubah) adalah pembalasan yang telah ditetapkan demi kemashlahatan masyarakat atas pelanggaran perintah Allah dan Rasulnya.²³

Dari penjelasan di atas dapat disimpulkan bahwa sanksi (hukuman) itu merupakan suatu balasan yang dilakukan seseorang yang mana ketentuan hukumannya telah ditetapkan oleh syariat Islam terhadap perbuatan yang dianggap melanggar perintah Allah SWT. Tujuan dari ditetapkannya hukuman tersebut adalah untuk menjaga kemashlahatan umum, baik kepada si korban kejahatan, keluarganya, si pelaku itu sendiri, atau masyarakat umum.

Hukuman / sanksi dalam Hukum Pidana Islam di bagi menjadi tiga yang pertama yaitu hukuman hudud, yang kedua qishas, yang ketiga takzir.²⁴

1. Hukuman Hudud.

Hukuman hudud merupakan hukuman yang telah ditentukan macam dan jumlahnya dan hukuman itu merupakan hak Allah yang tidak bisa ditambah dan dikurangi oleh siapapun dan tidak mempunyai batas tertinggi dan batas terendah. Jarimah yang diancam dengan hukuman hudud adalah zina, qadzaf, sariqah, khamar, hirabah, pemberontakan, dan murtad.

2. Hukuman Qisas.

Hukuman qisas merupakan suatu balasan yang diberikan kepada pelaku sesuai dengan perbuatan yang dilakukannya. Misalnya perbuatan yang dilakukannya adalah membunuh (menghilangkan nyawa) seseorang maka hukumannya juga harus setimpal yaitu hukuman mati.

3. Hukuman Takzir.

Hukuman takzir adalah hukuman yang diserahkan kepada hakim atau penguasa. Hakim dalam hal ini diberi kewenangan untuk menjatuhkan hukuman bagi pelaku tindak pidana. Dari definisi yang dikemukakan di atas, jelaslah bahwa hukuman takzir adalah suatu

²² Sumbar antaranews.com, diakses pada tanggal 10 September 2021, pukul : 20.00

²³ Mardani, "Hukum Pidana Islam" (Jakarta : Prenada Media Group, 2017), h.47

²⁴ Ibid, h.49

istilah untuk hukuman atas jarimah-jarimah yang hukumannya belum ditetapkan oleh syara'.

Jika ditinjau berdasarkan Hukum Pidana Islam sanksi tidak memakai masker di tempat umum termasuk kepada hukuman takzir karena penerapan hukumannya dilakukan oleh hakim atau penguasa. Hakim dalam hal ini diberi kewenangan untuk menjatuhkan hukuman secara umum terhadap suatu kejahatan yang dapat digolongkan dalam hukuman takzir adalah segala bentuk perbuatan yang mengandung unsur pelanggaran terhadap jiwa, harta kehormatan, akal atau agama yang tidak diancam dengan hukuman had. Tindakan-tindakan tersebut mencakup semua kejahatan baik meninggalkan kewajiban keagamaan, sosial, dan budaya maupun keduniawian ataupun melakukan perbuatan yang diharamkan dan dilarang Agama demi kemaslahatan umum atau khusus.²⁵

Adapun kriteria orang yang melakukan kejahatan-kejahatan yang berhak mendapat hukuman takzir dalam Hukum Pidana Islam yaitu :²⁶

1. Orang yang melakukan kemungkaran (yang tidak diancam dengan hukuman hadd)
2. Menyakiti atau mengganggu seorang muslim maupun non muslim tanpa alasan yang dibenarkan baik berupa ucapan, perbuatan maupun menggunakan isyarat dengan mata maupun tangan.

Sumber utama rujukan hakim dalam menetapkan suatu kejahatan adalah berdasarkan syariat bukan akal dan kecendrungan pribadi. Dalam menetapkan suatu tindakan sebagai kejahatan, hakim pengadilan harus berpedoman pada perintah-perintah dan larangan-larangannya yang terdapat dalam Al-Qur'an dan As-sunnah, serta memanfaatkan hasil ijtihad sebagai jalan penunjuknya. Jika tidak terdapat dalam Al-Qur'an dan As-sunnah inilah yang kemudian diberi kewenangan kepada penguasa untuk menetapkan dan hakim harus mengikuti penetapan tersebut.²⁷

Hukuman takzir selalu dilandasi prinsip menjaga kemaslahatan umum dan menolak kemudharatan yang berskala umum harus ditolak maka yang dipertimbangkan adalah kemaslahatan individu tanpa merugikan orang lain.

Abdul Qadir Audah membagi hukuman takzir kepada tiga bagian yaitu :²⁸

1. Hukuman Takzir atas perbuatan maksiat.
2. Hukuman Takzir dalam rangka mewujudkan kemaslahatan umum.
3. Hukuman Takzir atas perbuatan-perbuatan pelanggaran (mukhalafah).
4. Hukum Takzir atas perbuatan maksiat

Menurut Jumhur ulama baru dapat dikenakan hukuman takzir apabila perbuatan maksiatnya tidak dikenakan hukuman hadd dan tidak pula kifar, baik perbuatan maksiat itu menyinggung hak Allah (hak masyarakat) atau menyinggung hak adami (individu). Sifat yang dijadikan alasan (Illat) untuk menetapkan hukuman takzir adalah adanya unsur merugikan kepentingan atau ketertiban umum. Agar unsur tersebut terpenuhi, maka ada dua hal yang harus terpenuhi yaitu :²⁹

1. Ia telah melakukan perbuatan yang mengganggu kepentingan dalam ketertiban umum.
2. Ia berada dalam kondisi yang mengganggu kepentingan dan ketertiban umum.

Dengan kedua hal tersebut jika salah satunya terpenuhi, maka hakim tidak boleh membebaskan orang yang melakukan perbuatan tersebut, melainkan hakim harus menjatuhkan hukuman takzir yang sesuai dengan perbuatannya. Walaupun pada dasarnya perbuatan tersebut tidak ada larangan dan tidak ada ancaman hukumannya. Penjatuhan hukuman takzir untuk keselamatan dan kepentingan umum ini didasarkan kepada tindakan Rasulullah Muhammad saw yang menahan seorang laki-laki yang dituduh mencuri onta. Setelah diperiksa dan ternyata dia tidak mencurinya maka ia kemudian dilepaskan oleh Rasulullah. Dalam hal ini Rasulullah yang melakukan penahanan adalah praktek hukuman takzir dari Rasulullah, sedangkan hukuman baru bisa dijatuhkan jika jarimah (kejahatan) bisa dibuktikan.

Larangan-larangan hukuman takzir yang disebut jarimah itu dapat berupa pelanggaran terhadap hal-hal yang dilarang, misalnya: melanggar larangan zina, minum-minuman keras dan

²⁵ Makhrus Munajat, "*Hukum Pidana Islam di Indonesia*", (Yogyakarta: Penerbit Teras, 2009), h. 177

²⁶ Ibid h.179

²⁷ Ibid, h.180

²⁸ Abdul Qadir Audah, "*Hukum Pidana Islam*"(Jakarta : PT Kharisma Ilmu, 2015), Jilid iv, h.123

²⁹ Makhrus Munajat, "*Hukum Pidana Islam di Indonesia*", (Yogyakarta: Penerbit Teras, 2009), h. 181.

dapat juga berupa meninggalkan hal-hal yang diperintahkan, misalnya: mengabaikan kewajiban zakat. Perbuatan-perbuatan yang jika dikerjakan atau ditinggalkan dipandang sebagai jarimah ialah perbuatan yang mempunyai akibat merugikan perseorangan atau masyarakat dalam aqidah, harta benda, harga diri, ketenteraman jiwa dan sebagainya yang berhak memperoleh perlindungan.

Sesuatu perbuatan dapat dipandang sebagai jarimah jika memenuhi unsur-unsur sebagai berikut :³⁰

1. Unsur formal

Yaitu adanya *nash* atau dasar hukum yang menunjuknya sebagai jarimah. Unsur ini sesuai dengan prinsip yang menyatakan bahwa jarimah dianggap tidak ada sebelum dinyatakan dalam *nash*. Contohnya seperti firman Allah yang terdapat dalam Kitab Suci Al-Qur'an Q.s Al-Isra' ayat 15 :

مَنْ اهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ وَمَنْ ضَلَّ فَإِنَّمَا يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ تَبْعَثَ رَسُولًا

Artinya : *Barangsiapa yang berbuat sesuai dengan hidayah (Allah), maka sesungguhnya dia berbuat itu untuk (keselamatan) dirinya sendiri; dan barangsiapa yang sesat maka sesungguhnya dia tersesat bagi (kerugian) dirinya sendiri. Dan seorang yang berdosa tidak dapat memikul dosa orang lain, dan Kami tidak akan mengazab sebelum Kami mengutus seorang rasul.*

Dari ayat di atas mengajarkan bahwa Allah tidak akan menyiksa hambanya sebelum mengutus utusannya. Ajaran ini berisi ketentuan bahwa hukuman akan dijatuhkan kepada mereka yang membangkang ajaran Rasul Allah. Untuk dinilai bahwa seseorang telah membangkang ajaran Rasul Allah harus terlebih dahulu diketahui adanya ajaran Rasul Allah yang dituangkan dalam *nash*.

Di dalam Hadis juga disebutkan bahwa hadis Nabi Muhammad SAW yang diriwayatkan oleh Bahz Ibn Hakim :

عن بهز ابن حكيم عن ابي عن جده، أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ حَبَسَ فِي التَّهْمَةِ (رواه ابو داود و الترمذي و النسا ئى والبيهقى و صحيحه الحاكم)

Artinya : *Dari Bahz ibn Hakim dari ayahnya dari kakeknya, bahwa Nabi saw. Menahan seseorang yang disangka melakukan kejahatan. (H.R. Abu Daud, Turmudzi Nasa'i, dan Baihaqi).*³¹

Hadis kedua yaitu hadis Nabi saw yang diriwayatkan oleh Abi Burdah :

عن ابي بردة الانصاري انه سمع رسول الله صلى الله عليه و سلم يقول : لا يجلد احد فوق عشرة اسواط الا فى حد من حدود الله. (رواه مسلم)

Artinya: *Dari Abi Burdah Al-Anshari ra. Bahwa ia mendengar Rasulullah saw. Bersabda: "Tidak boleh dijilid di atas sepuluh cambuk kecuali di dalam hukuman yang telah ditentukan oleh Allah Ta'ala. (Muttafaq Alaih).*³²

Dari kedua hadis tersebut dapat disimpulkan bahwa secara umum kedua hadis tersebut menjelaskan tentang eksistensi ta'zir dalam syariat Islam. Hadis pertama menjelaskan tentang tindakan Nabi yang menahan seseorang yang diduga melakukan tindak pidana dengan tujuan untuk memudahkan penyelidikan. Hadis kedua menjelaskan tentang batas hukuman ta'zir yang tidak boleh lebih dari sepuluh kali cambukan, untuk membedakannya dengan jarimah hudud. Dengan batas hukuman ini dapatlah diketahui mana yang termasuk jarimah hudud dan mana yang jarimah ta'zir.³³

³⁰ Ahmad Wardi Muslich, "*Hukum Pidana Islam*", (Jakarta: Sinar Grafika, 2005), h.260.

³¹ Syeikh Syariful Mahdi, "*Sunan Abu Daud*", (Kairo : Dar Ibnu Al-Haisami, 2008), h.232

³² Musthofa Dzahabi, "*Sahih Bukhori*", (Kairo : Dar Al Hadis, 2008), h.425

³³ Ahmad Wardi Muslich, "*Pengantar Dan Asas Hukum Pidana Islam Fikih Jinayah*" (Jakarta : Sinar Grafika, 2006), h.20

Adapun tujuan diberikannya hak penentuan jarimah-jarimah ta'zir dan hukumannya kepada penguasa adalah agar mereka dapat mengatur masyarakat dan memelihara kepentingan-kepentingannya, serta dapat menghadapi dengan sebaik-baiknya setiap keadaan yang bersifat mendadak.

Jadi jelaslah bahwa ta'zir juga telah diterapkan pada zaman Nabi dan eksistensinya juga telah disyariatkan dalam Islam. Sedangkan tujuan ta'zir sendiri adalah agar penguasa dapat dengan baik mengatur masyarakat dalam kepemimpinannya untuk menegakkan keadilan hukum yang sifatnya mendadak, dan saat itu juga harus diputuskan, karena dengan ta'zir hakim dapat diberi keleluasaan untuk berijtihad dalam menentukan hukuman.

Kemudian dalam kajian fiqh jinayat juga menyebutkan bahwa takzir secara penuh ada pada wewenang penguasa demi terealiasinya kemaslahatan umat. Dalam hal ini unsur akhlak menjadi pertimbangan paling utama. Misalnya pelanggaran terhadap lingkungan hidup, lalu lintas, dan pelanggaran-pelanggaran lalu lintas lainnya. Dalam penetapan jarimah ta'zir prinsip utama yang mejadi acuan penguasa adalah menjaga kepentingan umum dan melindungi setiap anggota masyarakat dari kemadharatan (bahaya). Di samping itu, dalam menetapkan jarimah ta'zir, prinsip utama yang menjadi acuan penguasa / hakim adalah menjaga kepentingan umum dan melindungi setiap anggota masyarakat dari kemudharatan (bahaya). Di samping itu, penegakkan jarimah ta'zir harus sesuai dengan prinsip syar'i. Hukuman hukuman ta'zir banyak jumlahnya, yang dimulai dari hukuman paling ringan sampai hukuman yang terberat. Hakim diberi wewenang untuk memilih diantara hukuman hukuman tersebut, yaitu hukuman yang sesuai dengan keadaan jarimah serta diri pembuatnya.³⁴

Adapun macam-macam hukuman ta'zir antara lain:³⁵

a. Hukuman Mati

Pada dasarnya menurut syari'ah Islam, hukuman ta'zir adalah untuk memberikan pengajaran (ta'dib) dan tidak sampai membinasakan. Oleh karena itu, dalam hukum ta'zir tidak boleh ada pemotongan anggota badan atau penghilangan nyawa. Akan tetapi beberapa fuqoha' memberikan pengecualian dari aturan umum tersebut, yaitu kebolehan dijatuhkan hukuman mati jika kepentingan umum menghendaki demikian, atau kalau pemberantasan tidak bisa terlaksana kecuali dengan jalan membunuhnya, seperti mata mata, pembuat fitnah, residivis yang membahayakan. namun menurut sebagian fuqoha' yang lain, di dalam suatu jarimah ta'zir tidak ada hukuman mati.

b. Hukuman-Kawalan (Penjara Kurungan)

Ada dua macam hukuman kawalan dalam hukum Islam. Pembagian ini didasarkan pada lama waktu hukuman. Pertama, Hukuman kawalan terbatas. Batas terendah dai hukuman ini adalah satu hari, sedang batas tertinggi, ulama' berbeda pendapat. Ulama' Syafi'iyah menetapkan batas tertingginya satu tahun, karena mereka mempersamakannya dengan pengasingan dalam jarimah zina. Sementara ulama' ulama' lain menyerahkan semuanya pada penguasa berdasarkan maslahat. Kedua, Hukuman kawalan tidak terbatas. Sudah disepakati bahwa hukuman kawalan ini tidak ditentukan masanya terlebih dahulu, melainkan berlangsung terus sampai terhukum mati atau taubat dan baik pribadinya. Orang yang dikenakan hukuman ini adalah penjahat yang berbahaya atau orang yang berulang ulang melakukan jarimah jarimah yang berbahaya.³⁶

c. Hukuman Salib

Hukuman salib sudah dibicarakan dalam jarimah gangguan keamanan (hirobah), dan untuk jarimah ini hukuman tersebut merupakan hukuman had. Akan tetapi untuk jarimah ta'zir hukuman salib tidak dibarengi atau didahului dengan oleh hukuman mati, melainkan si terhukum si terhukum disalib hidup hidup dan tidak dilarang makan minum, tidak dilarang mengerjakan wudhu, tetapi dalam menjalankan sholat cukup dengan isyarat. Dalam penyaliban ini, menurut fuqoha' tidak lebih dari tiga hari.

d. Hukuman Ancaman (Tahdid), Teguran (Tanbih) dan Peringatan

Ancaman juga merupakan salah satu hukuman ta'zir, dengan syarat akan membawa hasil dan bukan hanya ancaman kosong. Misalnya dengan ancama akan dijilid, dipenjarakan atau dihukum dengan hukuman yang lain jika pelaku mengulangi tindakannya lagi.

³⁴ Ahmad Hanafi, "Asas-Asas Hukum Pidana Islam", (Jakarta: PT. Bulan Bintang, 2000), h.80

³⁵ Ahmad Wardi Muslich, "Hukum Pidana Islam", (Jakarta : Pustaka Media, 2004), h.233

³⁶ Ahmad Wardi Muslich, "Hukum Pidana Islam", (Jakarta : Pustaka Media, 2004), h.245

Sementara hukuman teguran pernah dilakukan oleh Rosulullah terhadap sahabat Abu Dzarr yang memaki-maki orang lain dengan menghinakan ibunya. Maka Rosulullah saw berkata, "Wahai Abu Dzarr, Engkau menghina dia dengan menjelek-jelekkan ibunya. Engkau adalah orang yang masih dihindari sifat-sifat masa jahiliyah." Hukuman peringatan juga diterapkan dalam syariat Islam dengan jalan memberi nasehat, kalau hukuman ini cukup membawa hasil. Hukuman ini dicantumkan dalam al Qur'an sebagaimana hukuman terhadap istri yang berbuat dikhawatirkan berbuat nusyuz.³⁷

e. Hukuman Denda (tahdid)

Hukuman Denda ditetapkan juga oleh syariat Islam sebagai hukuman. Antara lain mengenai pencurian buah yang masih tergantung dipohonnya, hukumannya didenda dengan lipat dua kali harga buah tersebut, disamping hukuman lain yang sesuai dengan perbuatannya tersebut. Sabda Rosulullah saw, "Dan barang siapa yang membawa sesuatu keluar, maka atasnya denda sebanyak dua kalinya beserta hukuman." Hukuman yang sama juga dikenakan terhadap orang yang menyembunyikan barang hilang. Simpulan Secara umum, pengertian Jinayat sama dengan hukum Pidana pada hukum positif, yaitu hukum yang mengatur perbuatan yang berkaitan dengan jiwa atau anggota badan, seperti membunuh, melukai dan lain sebagainya. Jarimah (kejahatan) dalam Hukum Pidana Islam (Jinayat) meliputi, jarimah hudud, qishash diyat dan ta'zir. Ta'zir adalah hukuman yang tidak ditentukan oleh al Qur'an dan hadits yang berkaitan dengan kejahatan yang melanggar hak Allah dan hak hamba yang berfungsi untuk memberi pelajaran kepada si terdakwa dan mencegahnya untuk tidak mengulangi kejahatan serupa. Penentuan jenis pidana ta'zir ini diserahkan sepenuhnya kepada penguasa sesuai dengan kemaslahatan manusia jarimah ta'zir harus sesuai dengan prinsip syar'i (*nash*).³⁸

2. Unsur material

Yaitu adanya perbuatan melawan hukum yang benar-benar telah dilakukan. Alasan bahwa jarimah harus memenuhi unsur material ialah melewati hukuman untuk umat Nabi Muhammad atas sesuatu yang masih terkandung dalam hati selagi ia tidak mengatakan dengan lisan atau mengerjakannya dengan nyata.

3. Unsur moral

Yaitu adanya niat atau kesengajaan pelaku untuk berbuat jarimah. Unsur ini menyangkut tanggung jawab yang hanya dikenakan terhadap orang yang telah dewasa/baligh, sehat akal dan tidak terpaksa dalam melakukannya. Dengan kata lain unsur moral ini berhubungan dengan tanggung jawab pidana yang hanya dibebankan terhadap orang mukallaf yang bebas dari paksaan. Dapat dipandang sebagai jarimah takzir jika merugikan pelakunya atau orang lain. Mengenai ancaman hukumannya ditentukan dengan besar kecilnya kerugian masyarakat sebagai akibat dari jarimah yang dilakukan, dan dapat pula ditentukan oleh penguasa.³⁹

Dari teori tentang hukuman takzir yang telah dikemukakan di atas maka dapat diambil kesimpulan bahwa Hukum Pidana Islam memandang bahwa hukuman takzir merupakan suatu istilah dalam hukum Islam untuk hukuman atas jarimah-jarimah yang hukumannya belum ditetapkan oleh syara'. Hukuman takzir merupakan suatu hukuman yang pelaksanaan hukumannya itu dilakukan oleh hakim atau penguasa. Dalam hal ini hakim diberi kewenangan untuk menjatuhkan hukuman bagi pelaku tindak pidana.

Jika ditinjau berdasarkan Hukum Pidana Islam sanksi tidak memakai masker di tempat umum termasuk kepada hukuman takzir karena penerapan hukumannya dilakukan oleh hakim atau penguasa. Hakim dalam hal ini diberi kewenangan untuk menjatuhkan hukuman secara umum terhadap suatu kejahatan yang dapat digolongkan dalam hukuman takzir adalah segala bentuk perbuatan yang mengandung unsur pelanggaran terhadap jiwa, harta kehormatan, akal atau agama yang tidak diancam dengan hukuman had. Tindakan-tindakan tersebut mencakup semua kejahatan baik meninggalkan kewajiban keagamaan, sosial, dan budaya maupun keduniawian ataupun melakukan perbuatan yang diharamkan dan dilarang Agama demi kemaslahatan umum atau khusus. Sebagaimana yang terdapat dalam Perda nomor 6 tahun 2020 tentang adaptasi kebiasaan baru dalam pencegahan dan pengendalian covid-19. Bagi masyarakat yang melanggarnya akan

³⁷ Ahmad Wardi Muslich, "*Hukum Pidana Islam*", (Jakarta : Pustaka Media, 2004), h.250

³⁸ Ahmad Wardi Muslich, "*Hukum Pidana Islam*", (Jakarta : Pustaka Media, 2004), h.254

³⁹ Teuku Muhammad Hasbi Ash Shiddieqy, "*Hukum Islam*", (Semarang : Pustaka Riski Putra, 2001), h.202

dikenakan sanksi berupa denda dan kerja sosial. Dalam hal ini sanksi berupa denda dan kerja sosial yang diberikan kepada masyarakat yang melanggar aturan Perda nomor 6 tahun 2020 tentang adaptasi kebiasaan baru dalam pencegahan dan pengendalian covid-19 tidak memakai masker ke luar rumah maka sanksi denda dan kerja tersebut termasuk kepada hukuman takzir.

Sebagaimana yang telah dijelaskan dalam unsur-unsur dalam jarimah takzir yaitu unsur formal, unsur material, dan moral yang terdapat dalam hukuman takzir mengatakan bahwa hukuman denda (*tahdid*) ditetapkan oleh syari'at Islam sebagai hukuman. Mengenai sanksi berupa denda dan kerja sosial yang diberikan kepada pelanggar yang tidak memakai masker saat keluar rumah hukumannya didenda sebanyak Rp.100.000,00 bagi perorangan yang melanggar, dan Rp.500.000,00 bagi badan usaha atau penanggung jawab usaha yang melanggar.

5. CONCLUSION

Sanksi tidak memakai masker di tempat umum yang terdapat dalam Perda Sumbar Nomor 6 tahun 2020 Pasal 92 bagi perorangan yaitu berupa teguran lisan dan teguran tertulis serta kerja sosial dengan membersihkan fasilitas umum dan denda administratif sebesar Rp.100.000,00 (seratus ribu rupiah). Sedangkan Bagi penanggung jawab kegiatan/usaha yaitu teguran lisan dan teguran tertulis, serta pembubaran kegiatan penghentian sementara kegiatan dan denda administratif sebesar Rp.500.000,00 (lima ratus ribu rupiah). Sedangkan dalam pasal 101 Perda Nomor 6 Tahun 2020 ayat (1) menyebutkan bahwa setiap orang yang melanggar kewajiban tidak menggunakan masker sebagaimana dimaksud dalam Pasal 11 huruf d angka 2 dipidana dengan pidana kurungan paling lama 2 (dua) hari atau denda paling banyak Rp.250.000,00 (dua ratus lima puluh ribu rupiah). Tindak pidana ini hanya dapat dikenakan apabila sanksi administratif yang telah dijatuhkan tidak dipatuhi atau pelanggaran dilakukan lebih dari satu kali.

Dalam Hukum Pidana Islam sanksi tidak memakai masker di tempat umum termasuk kepada hukuman takzir karena penerapan hukumannya dilakukan oleh hakim atau penguasa. Hakim dalam hal ini diberi kewenangan untuk menjatuhkan hukuman secara umum terhadap suatu kejahatan yang dapat digolongkan dalam hukuman takzir adalah segala bentuk perbuatan yang mengandung unsur pelanggaran terhadap jiwa, harta kehormatan, akal atau agama yang tidak diancam dengan hukuman had. Tindakan-tindakan tersebut mencakup semua kejahatan baik meninggalkan kewajiban keagamaan, sosial, dan budaya maupun keduniawian ataupun melakukan perbuatan yang diharamkan dan dilarang Agama demi kemaslahatan umum atau khusus. Sebagaimana yang telah dijelaskan dalam unsur-unsur dalam jarimah takzir yaitu unsur formal, unsur material, dan moral yang terdapat dalam hukuman takzir mengatakan bahwa hukuman denda (*tahdid*) ditetapkan oleh syari'at Islam sebagai hukuman.

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Legal Cultural Degradation: A Review of the Socio-Juridical Impact of the Suspension of Inheritance

Rasdiana¹, Munira Hamzah², Rahman Subha³

STAI Al-Furqan Makassar¹, STAI Al-Azhar Mamuju², STAI Al-Azhar Mamuju³

Email: radianaku@gmail.com, mnrhamzah@gmail.com, rahmansyubha31@gmail.com

Orchid ID : <https://orcid.org/0000-0003-1035-9685>

Google Scholar: <https://scholar.google.co.id/citations?hl=id&user=RvHpZegAAAAJ>

Abstract.

Sociological facts that occur today based on the Study of Pinrang Class 1B Religious Court Decisions in 2011-2014, delays in the distribution of inheritance can cause internal conflicts by heirs. This study was conducted to determine the impact caused by the suspension of inheritance distribution, but also to determine the role of religious courts in resolving the suspension of inheritance. This research method is carried out by taking data / decisions in religious courts as well as interviews of resource persons and presenting in qualitative form with juridical-normative and theological-syar'i approaches. The results of this study show that: First, the impact of the suspension of inheritance distribution not only damages the composition of the shares to the heirs but also mixes the ownership of several people into the ownership / control of one person, the mixing of joint property and inheritance for a long time, and the increasing cost of litigation becomes another loss for the parties, while the social impact causes harmony in family life to be disharmonious as a result illustrates a bad precedent for legal culture. Second, the settlement of the case of postponement of inheritance by the Judge is carried out by examining the lawsuit filed, determining the divided estate, then determining the heirs, determining the number of heirs' shares and finally distributing the inheritance in accordance with the provisions in the Compilation of Islamic Law. Recommendation, the need for clear and concrete rules to provide limits on deferrals given to families to divide inheritance, this is done so that there is no lasting suspension that causes property to mix, and heirs die first before being divided.

Keywords: *Impact, Suspension, Legacy, Legal Culture*

1. INTRODUCTION

The universality of Islamic law indicates that its presence is not reserved only for one particular ethnicity, class, race or place, but is reserved for all human beings. Islam has a reach and range beyond the limits of a certain time and space. As a consequence of its universal characteristics, Islam entrusts adaptability to the locality of the society in which it is accepted. Even in this Islam has given important principles regarding rational development in the effort of adaptation to its new environment.¹ As for inheritance, it is not spared from the teachings stipulated in the Qur'an and Sunnah, as well as the number of shares that must be obtained. The division of inheritance is a familiar thing in family life and every family expects the division process to run peacefully without delay.

Islam is a religion that highly upholds peace, order and security. Peace or *islah* is highly recommended in Islam. So that all forms of actions that lead to disputes that cause *mudharat* can be avoided. In line with this, the division of inheritance that should make the lives of heirs better and more prosperous, the distribution of inheritance must also be divided fairly and wisely in accordance with the provisions of Islamic law and not delay the distribution of inheritance for various reasons that ultimately cause internal conflicts between fellow heirs. Meanwhile, if there is a conflict when the distribution of inheritance can be submitted to the Religious Court for Muslims.

The competence of the Religious Court as one of the judicial institutions to resolve inheritance cases based on Islamic law, forces conflicting communities to submit it to the court as a last resort if the family path cannot be taken. The presence of courts and laws is a commitment of the state to bring conflict resolution among the community, therefore the court is not only expected to regulate but also be able to bring justice to its seekers, especially on the issue of distribution of inheritance.

Cases of postponement of inheritance in some places, prove that there are still many areas where the application of inheritance law (division of inheritance) is still carried out before ulama, kiyai ustadz, master teachers, and / or local religious leaders with a simple and familial atmosphere. In fact, some people discuss the division of inheritance is a taboo and rarely done immediately after the heir dies, because one of the widowers or widows is still alive and eventually delayed and causes mild or severe conflicts.² But this can cause disputes between heirs, because the determination of the division of inheritance is only done by custom, which can cause disputes in the future between heirs.³ The purpose of inheritance distribution in Islam is to provide a sense of security and justice to heirs with a clear division and based on the principle of balance of roles and closeness.⁴

It can be seen from the sociological facts that occur today based on the Study of the Pinrang Class 1B Religious Court Decision 2011-2014 delays in the distribution of inheritance can cause internal conflicts by heirs, many negative impacts occur if there is a delay in the distribution of inheritance and this can be a prolonged conflict because it requires a long time in the settlement process, In addition, if this continues, it will become a new habitual pattern in the distribution of inheritance that causes losses to several parties who become heirs. Therefore, the community needs to be given an understanding of the function of the court which is still circulating stigmatized as a scary place and does not bring solutions to disputes in the family, especially in the distribution of inheritance. This study not only knows the impact caused by the suspension of inheritance distribution, but also to determine the role of religious courts in resolving the suspension of inheritance.

2. METHOD

This research is a "*qualitative field research*" or field research with the location of the Pinrang Class 1B Religious Court. Data sources are obtained from research of decisions related to data problems obtained from literature in the form of books containing legal norms, both Shar'i norms and laws and regulations governing Islamic inheritance in Religious Courts as well as interviews of resource persons to take views or The judge's opinion on the matter under study.⁵ After the data collection , data examination, marking, data preparation and systematization (*systematizing*) based on the subject matter and sub-problems will be carried out and then analysis with adjustments to the subject matter studied with a juridical and theological approach to syar'i.⁶

3. RESULT AND DISCUSSION

3.1 Impact of Deferral of Inheritance on Family Harmony.

The distribution of inheritance that should make the lives of heirs better and more prosperous, then the distribution of inheritance must also be divided fairly and wisely in accordance with the provisions of Islamic law and not delay the distribution of inheritance for various reasons that ultimately cause internal conflicts between fellow heirs. Below are some of the social and juridical impacts arising from the delay in the distribution of inheritance from several judgment analyses at the Pangkep Regency Religious Court, namely:

3.1.1. Control of Property by One Family Member (Heir)

Control of property by one family member (heir) can occur due to a long delay in the distribution of inheritance, as in case No. 35/pdt. G/2012/PA.Prg. in this case one of the parties controls the estate that has not been divided among the other heirs.

That because the object that became is still a joint property (*gono-gini*) between the deceased La Emba Bin Latola and I Rabi Bint Labadaru which has never been divided between the deceased La Emba Bin Latola and I Rabbi Bint Labadaru, likewise the property of the object of dispute which is part or right of the deceased La Emba Bin Latola has never been divided into inheritance legally according to the law of inheritance between the legal heirs of the deceased La Emba Bin Latola are the plaintiffs and defendants.

Although plaintiffs I, II, III, IV, V, VI and VII have tried to contact and meet either directly or with intermediaries relatives and local government, with the intention of the plaintiffs, namely that the defendants are willing and willing to divide the property of the object of dispute and give and deliver to the plaintiffs the plaintiffs who are part or rights of the plaintiffs in a deliberative and familial manner properly, However, the Defendant did not want to and even the Defendant was angry with the Plaintiff, so that the efforts of the Plaintiffs did not bear fruit. It is thus clear, that the defendant is deliberately harming the plaintiffs.

3.1.2. Mixed Between Heritage Property and Common Property

Departed inheritance may also result in a mixture of inheritance and joint property owned by the testator and heir, as in case No. 683/pdt. G/2013/ PA.PRG. The object of dispute is joint property (*gono-gini* property), where the property has never been divided into heirs to all heirs. In the chronology it is stated that there is no

good faith to immediately divide the inheritance to heirs so as to cause disharmony between children and parents, even responded unreasonably by the Defendant and even the Defendant was angry.

3.1.3. Change of Inheritance Status to Personal Property by One Party

This change in status from inheritance to property can occur due to a long delay in the distribution of inheritance, so that one of the heirs controls the estate and can make it a personal property for himself. As in the case filed in the Pinrang Religious Court class 1B with case Number 081 / pdt. G/2013/PA.PRG. The plaintiff took the initiative to invite to talk and deliberate well and familiarly with him, so that the defendants were willing and willing to divide the estate of the deceased. However, the plaintiffs were improperly responded to by defendants I and II with various pretexts and absurd arguments, and even the defendants were angry with us plaintiffs.

Changes that are not accompanied by the inheritance process first cause an impact on the ownership status of the property, as a result if the inheritance that is not distributed is then sold and one of the heirs objects in the future, the sale and purchase contract becomes legally problematic and includes unlawful and even sinful acts because the property actually belongs to orphans.⁸

3.1.4. Requires Considerable Costs in the Case of Litigation Settlement.

Settlement of inheritance disputes carried out by litigation requires a lot of costs, ranging from the process of registering cases to the implementation of decisions decided by judges, especially if there are parties who feel dissatisfied and make appeals and cassation legal remedies, this requires more costs and a lot of time for the process, as in case Number 35 / pdt. G/2012/PA. Prg. On the first level requires a fee of Rp. 1.891.000,00. Meanwhile, if it is resolved in a familial and peaceful manner, it certainly does not require much cost or may not even exist.

3.1.5. Disharmony of Family and Economic Life

Not infrequently cases of delays in the distribution of inheritance bring quarrels that result in heirs quarreling and beating each other, causing a break in friendship and not greeting each other and not attending each other's events.⁹

The economic impact of delaying the distribution of inheritance is that the financial revolve around only one person and the property cannot be used properly, besides sometimes the property owned by only one person is not managed and not economically productive.¹⁰

This also happened in Langsa City, the negative impact of delaying the distribution of inheritance caused conflicts both mild and severe, breaking friendships, reducing the rights / shares of certain heirs, heirs did not get their rights because they died first.¹¹ Some of the factors are caused by: there is no deliberation, one parent is still alive, the child is considered unable to cultivate inheritance, the property is managed together, and there is a lack of knowledge of Islamic inheritance.¹²

3.2 Islamic Law's View on the Case of Postponement of Distribution of Inheritance

The Qur'an has specified in detail the share of each heir if there has been someone who has died and left relics, shortly after there is a death then immediately gives rise to inheritance rights for all heirs because in Islam adheres to the principle of *ijbari*. Each of them has been normatively able to know the amount of rights of the part that belongs to it. So that if there is a delay in the distribution of inheritance, it is tantamount to withholding the rights of others where the order contains an order that is mandatory.

The privilege of the Islamic inheritance law system where on the principle of inheritance due to death is that immediately after the funeral procession of a person's death, the right of distribution of inheritance is open to each heir to the heir's estate. At that time the emotional relationship between the heirs was still healthy, the object of the inheritance was still clear in number, it was clear who controlled it, and no party was felt to have taken much interest from the inheritance, such a situation could encourage the settlement of the division of inheritance peacefully and familiarly, so that the door to quarrels and disputes that would reduce the bond of affection could be minimized.

The Holy Prophetsa said, there is an order to accelerate the distribution of inheritance controlled by one heir or anyone else to all other heirs who are entitled to receive it.

..... أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوَّلَى رَجُلٍ ذَكَرَ.

Means:

Give the Faraidh (designated portion) to the rightful and give the rest to the male of the nearest male lineage.¹³

Based on this hadith, the obligation to distribute his legal inheritance *must be muaqat yang muwassa'* i.e. events carried out after the heir dies, where the execution is carried out whenever possible. However, if there are strong allegations such as inheritance property is not conveyed to the heirs because they may die first before getting their inheritance rights, there are tyrannies and conflicts and disputes between heirs, urgent economic needs, then the legal distribution of inheritance must be carried out immediately (*fauriyah*) then it is haram to postpone.¹⁴

According to the *jumhur* and some Ashab Shafi'i, Malikiyah, Hanabilah and Hanafiyah that shigat amar or the command in the nash of the Qur'an and hadith is basically a demand to be carried out immediately, in accordance with the rule "*The original law contained in the command is to demand to be done immediately*".¹⁵ This indicates that good works must be done immediately. Especially if the delay proves to bring harm. However, delays in the division of inheritance can be done to purify the property from debts, wills and / or property in a state of civil dispute or heirs in a state of *mafqud* (lost), or on the basis of mutual agreement that brings benefit.¹⁶ In addition to the existence of *udzur syar'i* which does not allow the distribution of inheritance to be carried out immediately, namely children or heirs still in the womb, multiple gender heirs, and or missing.¹⁷

In contrast to Islamic law, some communities in the Palangkaraya area, for example, make a habit of delaying the distribution of inheritance, this is done as an implementation of the will of their elders not to divide the inheritance for 1000 days after the heir dies, as a result on several occasions it causes problems in terms of differences of opinion regarding the share of property and does not cause division.¹⁸

3.3 Settlement of Suspension of Division of Property and Creation of Legal Culture

Regarding the distribution of inheritance, the KHI does not mention to immediately carry out the distribution. Only mentioned about the order of obligations carried out by heirs after the heir dies, Article 175 KHI states that the obligations of heirs to heirs are: 1. Managing and completing the burial of the body; 2. Settle the debts of the testator; 3. Finalize the will; 4. Divide the estate to the rightful heirs. Both the nash and the normative-juridical rules include the division of inheritance as an obligation and in parallel with the obligation to pay debts and wills, so that the distribution of inheritance is also an activity that must be synchronized, in accordance with the mandatory meaning contained in the nash and the article, because the law of origin of the obligation must be moved. Especially if the resolution is in the nature of eliminating severe conflicts, then based on the principle of benefit and leaving harm, the distribution of inheritance must be accelerated and not delayed.¹⁹

The settlement of cases of delays in the distribution of inheritance that occurs is through the litigation process, namely through the Religious Court institution which has relative authority in resolving Mal Waris cases, as in the Religious Court Law Article 1 paragraph (1) of Law Number 50 of 2009 concerning the Second Amendment to Law Number 7 of 1989 concerning Religious Courts. Religious Courts are courts for people of Muslim faith.

Since 1991, the Compilation of Islamic Law (KHI) which has *de facto* and *de jure* become the main guide generally for judges within the Religious Court in resolving inheritance law disputes submitted by justice seekers. The composition in the IHL that regulates inheritance is contained in Book II which consists of IV Chapters and 44 articles, namely from article 171 to article 214. Includes: General provisions (Chapter I Articles 171), heirs (Chapter II Articles 172-175), the size of each heir's share, (Chapter III Articles 176-191), aul and rad (Chapter IV Articles 192-193), wills (Chapter V Articles 194-209), and Grants (Chapter VI Articles 210-214). Settlement of Cases of Delay in the Distribution of Inheritance that occurs in the settlement process must refer to and pay attention to the rules applicable in the Compilation of Islamic Law as the source of Law used in the settlement of every dispute in the Religious Court, including cases of inheritance disputes that occur.

The process of resolving inheritance disputes is: *first*, the Judge must pay attention to the location where the dispute occurred, because if the location of the conflict is not included in the territory of the Court where it is located, the case must be rejected, because it is not in accordance with the relative competence of the court, then after seeing the relative competence, it must be checked that whether the case filed by the plaintiff is indeed true Inheritance disputes or not, after that it is seen whether the person who makes the lawsuit in the Religious Court is the person who is entitled or not because if the person who makes the lawsuit is a person who has nothing to do, the lawsuit can be rejected by the court. *Next*, the Judge is to examine the lawsuit filed, determine the divided estate, then determine the heirs, determine the number of heirs' shares and finally distribute the inheritance in accordance with the provisions in the Compilation of Islamic Law. *Finally*, after the Judge has

carried out all these processes, every heir who is entitled to a share of the estate must submit to and implement the contents of the decision determined by the panel of judges in his decision, because the decision has permanent legal force, and punish the losing party in the trial to pay the costs of the case used during the trial process.

Based on interviews with several judges in the Pangkep district religious court that, the settlement of inheritance disputes due to delays should indeed be carried out in the Religious Court, because what has been decided in the Court in the trial will be binding on all parties and it is demanded that the implementation, agree or not agree with one of the parties, must still be implemented, but in the Religious Court, Before the trial process is carried out, mediation is first held to find out what each party really wants, in order to achieve peace between the parties. However, the case of delay in the distribution of inheritance has characteristics that are difficult to resolve, because inheritance cases are basically petitions not lawsuits so there should be no conflict in them, but this case is different because this case is brought to religious courts with disharmonious family conditions so that often judges have difficulty mediating and not infrequently the estrangement is tapered because one party feels It is unfair with a verdict that only wants to control the inheritance unilaterally.²⁰

Meanwhile, the community in practice also often makes grants as an alternative to the division of inheritance and even through this, inheritance can be divided even though the heir has not passed away. This alternative grant, can also be used to eliminate the practice of delays in the community in dividing inheritance without going through the litigation process. Juridically, grants are allowed in article 211 of the KHI which states that "grants from parents to their children can be counted as inheritance".²¹ For example, in the pattae community in Polewali, grants are used as an alternative distribution of inheritance before the heir dies under the pretext of being arable property in the form of land used to meet his needs, especially for his children who have just married, the grant property will later become an inheritance to his children after his parents die.²²

The suspension of inheritance distribution in Indonesia is generally carried out for these reasons, namely: 1. 1. One of the abandoned fathers or mothers is still alive; 2. The heirs are not yet adults; 3. Unmarried heirs; 3. Lack of understanding of inheritance division; 4 Tradition/cultural factors.²³ The traditional factors inherent in society led to the degradation of legal awareness of the juridical division of inheritance and Islamic law which tended to experience long delays. This will have the effect of creating a legal culture that is contrary to juridical wishes which sociologically if the parties are not aware and feel innocent for delaying even though there is a court decision, then this sets a bad precedent for the legal culture.²⁴

4. CONCLUSION

The delay in the distribution of inheritance that occurs for years has the potential to cause disputes among fellow heirs and cause fraternal ties between them. Therefore Islamic law commands dividing the inheritance after other obligations are carried out as a signal so that it is immediately possible to distribute the heir's estate, this is done as a form of manifestation of Islamic law does not require long disputes between Muslims, especially in the family environment, on the contrary Islam strongly recommends respecting the rights of fellow brothers. Therefore, in the distribution of inheritance, Islamic law recognizes the principle of *ijbari* so that the distribution of inheritance is immediately carried out not only to distribute the rights of others but also as a way to eliminate prolonged conflicts caused by property. In addition, delaying the sociological distribution of inheritance even if it is already resolved through court rulings, will set a bad precedent for the creation of a legal culture.

Therefore, in this study, we recommend, the need for more massive socialization to the community to build legal awareness and the need for clear and concrete rules to provide limits on the deferral given to families to divide inheritance, this is done so that there is no lasting suspension that causes adverse effects on the delay.

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