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PEDOMAN TRANSLITERASI

Aksara Arab		Aksara Latin	
Simbol	Nama (Bunyi)	Simbol	Nama (Bunyi)
ا	<i>Alif</i>	tidak dilambangkan	tidak dilambangkan
ب	<i>Ba</i>	B	Be
ت	<i>Ta</i>	T	Te
ث	<i>Sa</i>	Š	Es dengan titik di atas
ج	<i>Ja</i>	J	Je
ح	<i>Ha</i>	Ḥ	Ha dengan titik di bawah
خ	<i>Kha</i>	Kh	Ka dan Ha
د	<i>Dal</i>	D	De
ذ	<i>Zal</i>	Ẓ	Zet dengan titik di atas
ر	<i>Ra</i>	R	Er
ز	<i>Zai</i>	Z	Zet
س	<i>Sin</i>	S	Es
ش	<i>Syin</i>	Sy	Es dan Ye
ص	<i>Sad</i>	Ṣ	Es dengan titik di bawah
ض	<i>Dad</i>	ḍ	De dengan titik di bawah
ط	<i>Ta</i>	Ṭ	Te dengan titik di bawah
ظ	<i>Za</i>	ẓ	Zet dengan titik di bawah
ع	<i>'Ain</i>	‘	Apostrof terbalik



غ	<i>Ga</i>	G	Ge
ف	<i>Fa</i>	F	Ef
ق	<i>Qaf</i>	Q	Qi
ك	<i>Kaf</i>	K	Ka
ل	<i>Lam</i>	L	El
م	<i>Mim</i>	M	Em
ن	<i>Nun</i>	N	En
و	<i>Waw</i>	W	We
ه	<i>Ham</i>	H	Ha
ء	<i>Hamzah</i>	‘	Apostrof
ي	<i>Ya</i>	Y	Ye

Hamzah (ء) yang terletak di awal kata mengikuti vokalnya tanpa diberi tanda apapun. Jika terletak di tengah atau di akhir, maka ditulis dengan tanda (‘).



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Waqf, Maqasid al-Sharia, and SDG-5: A Model for Women's Empowerment

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Abstract:

This study aims to provide an alternative waqf model as Islamic social finance in realizing Sustainable Development Goals (SDGs)-5, namely gender equality and correlate it with *Maqashid al-Sharia*. This study uses the Analytic Network Process (ANP). ANP is needed in the problem decomposition framework to structure complexity. There are 16 experts as the respondents. From the results of the ANP, it will also be known what the SDGs criteria, *maqashid al-sharia* components, and waqf models are priorities in realizing the 5th SDGs. The findings of this study reveal that among the other two, social pillars are the main criteria for the SDGs. In addition, the *maqashid al-sharia* framework's main objective is preserving religion (deen) as a means of enforcing religious

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responsibilities. Therefore, stakeholders need to consider this element. Then, according to this study, the best alternative waqf model is Waqf & Zakat, Infaq, Shadaqah (ZIS), which is very suitable for gender equality within the framework of women's empowerment in terms of education, entrepreneurship, and other life skills.

Keywords:

Waqf; Women's Empowerment; Maqashid al-Sharia; SDGs; ANP

Abstrak:

Penelitian ini bertujuan untuk memberikan alternatif model wakaf dalam mewujudkan *Sustainable Development Goals* (SDGs) ke-5, yaitu kesetaraan gender dan mengkorelasikannya dengan Maqashid Syariah. Penelitian ini menggunakan metode *Analytic Network Process* (ANP). ANP diperlukan dalam kerangka dekomposisi masalah untuk menstruktur kompleksitas. Jumlah responden adalah 16 informan pakar. Kemudian dari hasil ANP tersebut juga akan diketahui apa saja yang menjadi kriteria SDGs, komponen maqashid syariah, dan model wakaf yang menempati urutan prioritas dalam mewujudkan 5 SDGs. Temuan penelitian ini mengungkapkan bahwa pilar sosial merupakan kriteria utama SDGs. Selain itu, tujuan utama kerangka maqashid syariah adalah menjaga agama (*deen*) sebagai sarana untuk menegakkan tanggung jawab agama. Oleh karenanya, para stakeholder perlu mempertimbangkan hal ini. Kemudian, berdasarkan penelitian, alternatif model wakaf yang terbaik adalah dalam mewujudkan SDGs-5 adalah Wakaf & Zakat, Infaq, Sedekah (ZIS), dalam kerangka pemberdayaan perempuan baik dalam hal pendidikan, kewirausahaan, maupun *skill* hidup lainnya.

Kata Kunci:

Wakaf; Pemberdayaan Wanita; Maqashid Syariah; SDG; ANP

Introduction

Gender is a way for men and women to engage socially. Gender statistics demonstrate a model of organized social relations between women and men. These ties are not limited to personal and familial relationships; they also encompass social institutions such as social status and hierarchical relationships within work and organizational systems¹. Gender equality is a societal topic that has garnered considerable attention from all segments of society². Gender equality is also featured in the Sustainable Development Goals (SDGs), a national development plan that serves as a replacement for the Millennium Development Goals (MDGs). The SDGs consist of 17 goals and 169 development targets. Of the seventeen goals of the SDGs, there is one goal that focuses on gender equality (5th SDG).

The spirit of gender equality has long time colored various aspects of life, including economics through various instruments. *Waqf*, for instance, as an Islamic financial instrument with a direct functional relationship with efforts to solve social and economic problems, also targets women's economic empowerment³. Initially, men dominated the history of *waqf*, but more and more emphasis is being paid to women to find various facets of women's *waqf*. Women have the ability to establish *waqf* for themselves, their offspring, and their fellows. Throughout Islamic history, there has even been a particular *waqf* established to aid women. For instance, Zubayr ibn al-Awwam dedicated a house to his daughter⁴. Ibn Battuta later said that

¹ E. F Borgatta and M. L Borgatta (ed.), *Encyclopedia of Sociology* (New York: Macmillan Publishing Company, 1984).

² Nurasyiah, Aas, Lubna Sarwath, A. Jajang W. Mahri, Ripan Hermawan, and Gina Destrianti Karmanto. 2022. "Reducing Family Poverty through an Islamic women's Empowerment Strategy in Indonesia: An Analytical Network Process Approach". *Al-Uqud: Journal of Islamic Economics* 6 (2):206-19. <https://doi.org/10.26740/aluqud.v6n2.p206-219>.

³ Rozalinda Rozalinda, "Peran Wakaf Dalam Pemberdayaan Ekonomi Perempuan," *Kafa'ah: Journal of Gender Studies* 2, no. 1 (2014): 39, <https://doi.org/10.15548/jk.v2i1.40>; Syukri Iska et al., "Implications of the Pagang Gadai Contract on Disharmony Social Actors in Minangkabau Community," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 27-37, <https://doi.org/10.31958/JURIS.V21I1.5647>.

⁴ Abd-Allah b. Abd al-Rahman Al-Darmi, *Sunan Al-Darmi, Beirut, Dar Al-Kitab Al-Arabi*, 1407.

he discovered endowments in Tunis and Syria for poor girls' marriages⁵.

Additionally, history demonstrates that women are not exclusively *waqf* givers. They will also benefit from the *waqf* that they or others establish. When women create *waqf*, they consider both individual and communal needs. An example is the endowments established by the queens of the Ottoman sultans⁶. Additionally, they were tasked with the responsibility of maintaining and supervising *waqf*, which they successfully accomplished. *Waqf* has developed into a valuable historical resource for numerous facets of women's lives, including economic, financial, social, and political⁷. For ages, *waqf* institutions have provided a broad platform for women to demonstrate their abilities and employ their resources for the benefit of themselves, the community, and posterity⁸.

Furthermore, there is a unique *waqf* for women's aid in Islamic history. Numerous ladies endow their fortunes. For instance, al-Khassaf (261 H) reports that umm al-muminin Aishah purchased a house for the poor Mecca⁹. Additionally, Umm al-Muminin Umm Salamah established *waqf* due to the fact that *waqf*-based houses could not be sold, donated, or inherited (ibid.). Then Ummi al-Muminin Safyyah bint Uyayy presented the Bani Abdan with a dwelling¹⁰ for homeless families and relatives. Zubaydah (d. 216H / 831), the wife of the Abbasid caliph Harun al-Rashid, was another *waqifah* (woman who donate their property) who constructed a water channel for Mecca pilgrims¹¹. There also found Fatimah al-Fihri who founded the

⁵ Ibn Battutah, *Rihlah Ibn Baṭṭūṭah, Beirut, Dar Beirut Li Al-Tiba'ah Wa Al-Nashr*, 1985.

⁶ Ramazan Pantık, *Atik Valide Sultan Külliyesi (1686-1727)* (Ankara: Hacettepe Universitesi, 2014).

⁷ Pantık.

⁸ Abdul Azim Islahi, "Waqf: A Bibliography, Jeddah," in *Scientific Publishing Centre* (King Abdulaziz University, 2003).

⁹ Al-Khassaf, Abu Bakri Ahmad b. 'Amr al-Shaybani al-Ma'ruf bi'l-Khassaf. *Kitab Ahkam Al-Waqf*. Al-Qahirah: Maktabat alThaqafa al-Dinihi (1904).

¹⁰ Abu Bakr Ahmad b. Amar al-Khassaf, "Ahkām Al-Awqāf, Cairo, Diwan Umum Al-Awqāf Al-Miṣriyah," 1904.

¹¹ Iman Muhammad Al-Humaidan, "Al-Mar'ah Wa'l-Waqf - Al'Ilaqah Altabaduliyah (Woman and Waqf - Mutual Relation), Kuwait, Al-Amanat AlAmmah Li'l-Awqāf" (2016): 39.

University of al-Qarwyn in 245 H. In 570H/1174, the wife of Nur al-Din al-Zanki and Ismat al-Din build the Hanafi school al-Madrasah al-Khatuniyyah in the heart of Damascus¹².

The Ayyubid dynasty was historically referred to as *waqif* (a person who waqf his property), and its waqf assets were used for a variety of reasons, including education, health, water supplies, and free food for the needy and tourists¹³. As indicated previously, persons engaging in *waqf* activities are typically royal family members. Another instance is Khadijah Khatun, the daughter of Sultan Yes b. Al-Malik al-Adil, donated *waqf* to a Damascus school (al-Naimi, 1367 H). Al-Dhahabi, the renowned historian, wrote about Zamurrad Khatun (d. 599/1202), noting that the mother of the caliph Nasir li-Din-Allah established various *waqfs* as sources of piety in the form of mosques, schools, and other structures¹⁴. *Waqf* can be used as a source of funds for mosque economic empowerment¹⁵. The Great Haseki Hürrem, the Ottoman Sultan Sulaymn's wife, established endowments to assist Islam's holiest sites: al-Quds, Mecca, and Medina. He assisted in the construction of villages, land, factories, and other properties in Palestine. Furthermore, he constructed agricultural mosques, soup kitchens for Muslim pilgrims traveling to Mecca¹⁶.

India also has a history of waqf, particularly waqf performed by women. For instance, Begum Sawlatunnisa, a well-known Indian woman known for her charity, purchased land near Haram and contributed funds to a *madrassa* (School). In Egypt, Zaynab Hanum Afendi (d. 1302/1885), a daughter of Muhammad Ali, donated 10,299

¹² Abdul Azim Islahi, "The Role of Women in the Creation and Management of Awqāf: A Historical Perspective," *Intellectual Discourse* 26 (2018): 1025-46.

¹³ Islahi; Erie Hariyanto et al., "Effectiveness of the Economic System to Zakat and Waqf for Empowerment of the Ummah in Indonesia," *International Journal of Advanced Science and Technology* 29, no. 06 (2020): 1910-16, <http://sersc.org/journals/index.php/IJAST/article/view/12895>.

¹⁴ Shams al-Din Al-Dhahabi, "Tarikh Al-Islām, Beirut, Dar Al-Kitab AlArabi," 1987.

¹⁵ Aisyah As-Salafiyah, Aam Slamet Rusydiana, and Muhammad Isa Mustafa, "Meta Analysis on Mosque Economics," *Library Philosophy and Practice* 2021 (2021).

¹⁶ Oded Peri, "Waqf and Ottoman Welfare Policy: The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem," *Journal of the Economic and Social History of the Orient* 35 (1989): 167-86.

feddans (*an Egyptian unit of area*) of land and multiple structures for various uses, including education, hospitals, mosques, and Koran recitation (Mujam Trajim Alam al-Waqf, 1435H). Berkey discovered that the women's waqf tendency continued into the subsequent centuries. For instance, in the sixteenth century, the religious schools and other institutions created by women in Damascus through waqf were nearly identical to those in Cairo¹⁷. The number of waqfs donated by women has risen substantially over time. According to Creceliusin's analysis of waqf cases in three Cairo courts during five distinct periods between 1640 and 1802, men and women constituted the majority of waqfs in the 18th century. Additionally, an increase in the number of waqfs made by women was discovered beginning in the mid-eighteenth century¹⁸.

Numerous studies have been conducted on *waqf* and gender equality, particularly for women, including Amuda et al.¹⁹ who researched the application of cash waqf in empowering widows in Malaysia. The paper examines how cash *waqf* can be channeled to various media, instruments, and projects that will help empower and improve poor widows and their dependent children. Furthermore, Islahi researched the role of women in the creation and management of *waqf* from a historical perspective. By presenting examples of women who are involved in the control and administration of business and finance today, this paper tries to answer how women are fully competent to manage *waqf*. Moreover, since Muslim women have multiple sources of income without financial obligations, it is also said that they have a greater capacity to create waqf once they are properly educated and convinced.²⁰

¹⁷ J Berkey, *The Transmission of Knowledge in Medieval Cairo* (Princeton: Princeton University Press, 1992).

¹⁸ Mary Am Fay, "Women and Waqf: Towards a Reconsideration of Women's Place in the Mamluk Household," *International Journal of Middle East Studies* 29, no. 1 (1997): 33-51.

¹⁹ Y. J. Amuda, D. A. Razak, and A. A. Ahmed, "Application of Cash Waqf in the Empowerment of Widows in Malaysia," *Journal of Advanced Management Science* 4, no. 3 (2016): 255-59, <https://doi.org/10.12720/joams.4.3.255-259>.

²⁰ Islahi, "The Role of Women in the Creation and Management of Awqāf: A Historical Perspective."

Bello, meanwhile, researched the role of *waqf* in increasing the financial inclusion of women entrepreneurs in developing countries. The paper reviews existing literature to provide a research framework that will accelerate women's entrepreneurship and improve Islamic wealth management and women's financial inclusion in Muslim societies.²¹ Furthermore, Soemitra, Kusmilawaty, & Rahma researched the role of micro *waqf* banks in empowering women's micro-enterprises through Islamic social finance: mixed-method evidence from Mawaridussalam Indonesia. The study qualitatively analyzes how the Micro *Waqf* Bank has carried out its role in empowering women, including in dealing with the crisis due to the COVID-19 pandemic.²² Other more recent studies related to *waqf* and women were conducted by Loiseau²³ and Sabotic²⁴.

On average, some of these articles discuss *waqf*'s role in women's empowerment. Due to its infinity and sustainability, *waqf* is inextricably linked to the national SDGs agenda. However, this current study has differences from those previous studies. This study aims to provide a *waqf* model design as an effort to realize gender equality and women's empowerment by using the Multicriteria decision-making technique to get expert opinions. Additionally, this research has contributed to the development of numerous alternative *waqf* models, which are likely to contribute to the achievement of the fifth SDGs.

Method

This study uses the Analytical Network Process or ANP method which was first developed by Thomas L. Saaty from Pittsburg

²¹ Shukurat Moronke Bello, "The Role of Waqf in Enhancing the Financial Inclusion of Women Entrepreneurs in Developing Countries," *Journal of Islamic Business and Management (JIBM)* 12, no. 01 (2022): 125-38, <https://doi.org/10.26501/jibm/2022.1201-009>.

²² Andri Soemitra, Kusmilawaty, and Tri Inda Fadhila Rahma, "The Role of Micro Waqf Bank in Women's Micro-Business Empowerment through Islamic Social Finance: Mixed-Method Evidence from Mawaridussalam Indonesia," *Economies* 10, no. 7 (2022), <https://doi.org/10.3390/economies10070157>.

²³ Julien Loiseau, "'Boy and Girl on Equal Terms': Women, Waqf, and Wealth Transmission in Mamluk Egypt," *Orient* 54 (2019): 23-39.

²⁴ I. Sabotic, "The Waqf Formation of Tuzla's Beneficiary Tahira-Hanuma Tuzlic Property," *Historical Views* 94, no. 093 (2021): 51-69.

University, Pennsylvania, USA. ANP is an expert-based method for selecting alternatives from several criteria and elements. The ANP is a method for deriving composite priority ratios from separate ratio scales using a relative measurement theory. The scale gives a relative assessment of each interacting element's influence on the control criteria²⁵. ANP combines and captures intangible and tangible aspects through the use of reliance and feedback mechanisms²⁶. Additionally, ANP is a decision-making process with more comprehensive feedback. ANP is the evolution of the Analytic Hierarchy Process (AHP), which has a hierarchy at each level. At each level of the AHP network, there are elements and levels of objectives, criteria, sub-criteria, and options. In the ANP network, levels referred to as clusters have criteria and alternatives referred to as nodes²⁷.

It is vital to consider the data, objectives, and characteristics in this study to develop a strategy that produces the best results during the decision-making process. This study uses the ANP method because there are fewer quantitative *waqf* data, so it is quite difficult to collect and analyze. Then the focus of this research is to provide an alternative *waqf* model with specific criteria based on experts' opinions so that the ANP method is suitable for use in providing multi-criteria decision-making analysis.

The ANP approach is frequently used in the prioritization process²⁸. When numerous criteria, such as problem abstraction, structure width, structure depth, scientific foundation, and outcome validity, are considered, the ANP technique is relatively superior to

²⁵ T. L. Saaty, "Theory and Applications of the Analytic Network Process: Decision Making with Benefits, Opportunities, Costs, and Risks," *RWS Publicatios*, 2005.

²⁶ I. J. Azis, "Analytic Network Process with Feedback Influence: A New Approach to Impact Study," *In Paper for Seminar Organized by Department of Urban and Regional Planning, University of Illinois at Urbana-Campaign*, 2003.

²⁷ S. Sipahi and M. Timor, "The Analytic Hierarchy Process and Analytic Network Process: An Overview of Applications," *Management Decision*, 2010; Azis, "Analytic Network Process with Feedback Influence: A New Approach to Impact Study."

²⁸ T. L. Saaty, "Decision Making with Dependence and Feedback: The Analytic Network Process," *In Pittsburgh: RWS Publicatios*, 1996.

other decision-making methods²⁹. In addition, considering that there is little quantitative data available on waqf and SDGs studies, the ANP qualitative model approach is preferred.

The number of questionnaire frameworks in this study was 38 items, including feedback questions. The type of questionnaire is a closed question with a scale of 1-9. To analyze the questionnaire, a pairwise comparison was carried out and processed using the SuperDecision 2.10 software tool. In the final section, the data is then analyzed via Microsoft Excel to calculate the average weight of all expert respondents. ANP study requires respondents to answer paired comparison questionnaires consistently, with a maximum degree of inconsistency of 10%³⁰. The mechanism is to compare elements in the cluster and alternatives so that the priority weight of each element is obtained. Additionally, the respondents to the ANP study did not require a strong consensus (Kendall's rater agreement). Kendall coefficient is a value to measure the level of agreement between respondents.

Table 1 shows the list of respondents used in this study. This study used 16 respondents consisting of eight practitioners, four academics, and four regulators who understand the field of waqf. Furthermore, many of these respondents have different institutional backgrounds, and a detail explanation can be seen in the table below.

Table 1. Respondents Profile

No	Respondent	Institutions	Expert Cluster
1	NH	Indonesian Waqf Board (BWI)	Regulator
2	FZH	Ministry of Religious Affair/BRIN	Regulator
3	RI	Bank Indonesia	Regulator
4	NSB	Indonesian Waqf Board (BWI)	Regulator
5	BTP	Indonesia Waqf Institute	Academia
6	RAK	University of Indonesia	Academia
7	MSA	Tazkia Institute	Academia
8	MA	IAIS	Academia

²⁹ Thomas L Saaty and Luis G Vargas, *Decision Making With The Analytic Network Process* (Springer, 2006).

³⁰ Aam S Rusydiana and Abrista Devi, *Analytic Network Process: Pengantar Teori Dan Aplikasi*, 2013.

9	AS	BMH Hidayatullah	Practitioner
10	RR	Yayasan Edukasi Wakaf Indonesia	Practitioner
11	KMA	Waqf Forest Bogor	Practitioner
12	AA	Dana Lestari IPB	Practitioner
13	FK	Baitul Maal Khatulistiwa	Practitioner
14	ESA	Yayasan Wakaf Inovatif	Practitioner
15	AZR	Hutan Wakaf Aceh	Practitioner
16	MD	DMI DIY	Practitioner

Table 1 shows the profile of respondents engaged in this study. The selection of respondents was carried out by taking into account the expertise in the *waqf* field and also an understanding of the concept of *waqf*, especially for women's empowerment. The study surveyed respondents from a variety of backgrounds, including the Indonesian *Waqf* Institute, the Indonesian *Waqf* Board, the Indonesian Ministry of Religion, *waqf* regulators, the Department of Islamic Economics and Finance Bank Indonesia, and academics specializing in *waqf* research. Additionally, respondents participated in several stages of ANP, beginning from the development of the ANP model via FGD to pairwise comparison for each element. The ANP model was quantified using a questionnaire survey with an attachment.

ANP gives a basic framework for decision-making without making any assumptions about the independence of higher-level elements from lower-level elements or about the independence of elements within levels, as in hierarchies³¹. The stages of the ANP in this research can be seen in Figure 1 below.

³¹ Ascarya Ascarya, Ugi Suharto, and Jardine A. Husman, "Proposed Model of Integrated Islamic Commercial and Social Finance for Islamic Bank in Indonesia," *Eurasian Economic Review* 12, no. 1 (2022): 115-38, <https://doi.org/10.1007/s40822-022-00201-z>.

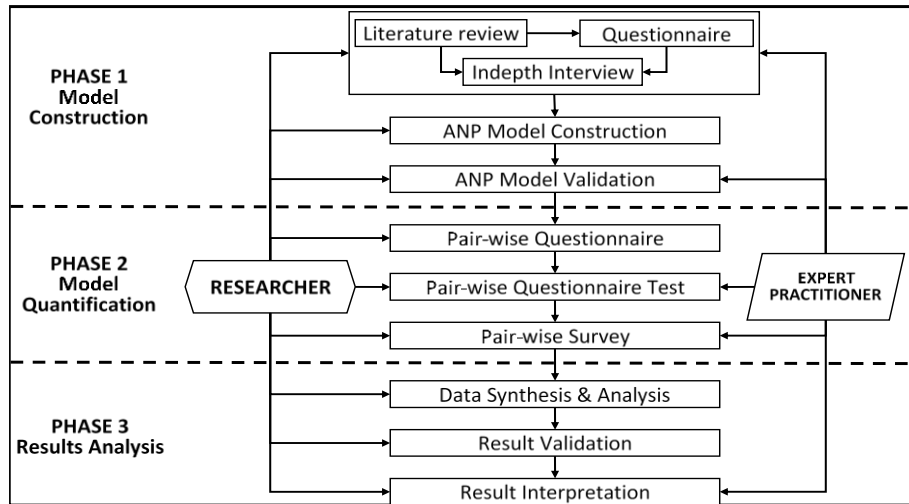


Figure 1. The flow of ANP research

Source: Ascarya & Yumanita, 2011

Figure 1 above shows that there are three stages will be followed in this empirical study: model construction, model quantification, and outcome analysis.

The first stage is a model generation or decomposition to discover, assess, and synthesize the problem's complexity into an acceptable ANP network. The construction of the ANP model in the form of a network hierarchy is based on theoretical and empirical references from the views of experts, regulators, and practitioners through focused interviews to examine alternative *waqf* models within the *maqashid al-sharia* framework in empowering women.

The second stage entails model quantification or pairwise comparisons. The quantification stage of the model uses questions in the ANP questionnaire in the form of pairwise comparisons between elements in the cluster to find out which of the two has the more significant influence (more dominant) and how big the difference is through a numerical scale of 1-9.

Stage 3 entails finding analysis. The results of the synthesis of the ANP network in the software super decisions for each respondent can be generated. The data is then exported to an excel worksheet to

be manipulated to produce the desired output. Validation is performed for each step of the procedure to ensure that all results are correct. Finally, detailed interpretations and results can conclude and become recommendations.

ANP is a mathematical theory that is used to examine the effect of addressing problems through the use of an assumption approach³². The solution employed in this method is to take into account the problem's complexity by decomposition of the synthesis, accompanied by the presence of a priority scale for achieving the largest priority effect. As an application, the model built comes from the literature which is then decomposed into several clusters and alternatives. Then obtained 5 alternative waqf models for SDG-5 goals. Apart from that, through this process, criteria were also determined which became the basis for considering the selection of the best waqf model.

Discussion and Result

Results and discussions are organized in the same section. The results contain ANP's output on the priorities of each section starting from the SDG criteria (each economic, social, and environmental aspect), *Maqasid al-Sharia* criteria to alternative *waqf* models.

ANP Model Framework

After the researcher analyzed by using ANP, the result of ANP model framework can be seen in figure 2 below:

³² Aisyah As-Salafiyah, Aam Slamet Rusydiana, and Muhammad Isa Mustafa, "Maqashid Sharia-Based Mosque Empowerment Index," *International Journal of Ethics and Systems* 38, no. 2 (2022): 173-90, <https://doi.org/10.1108/IJOES-06-2021-0122>.

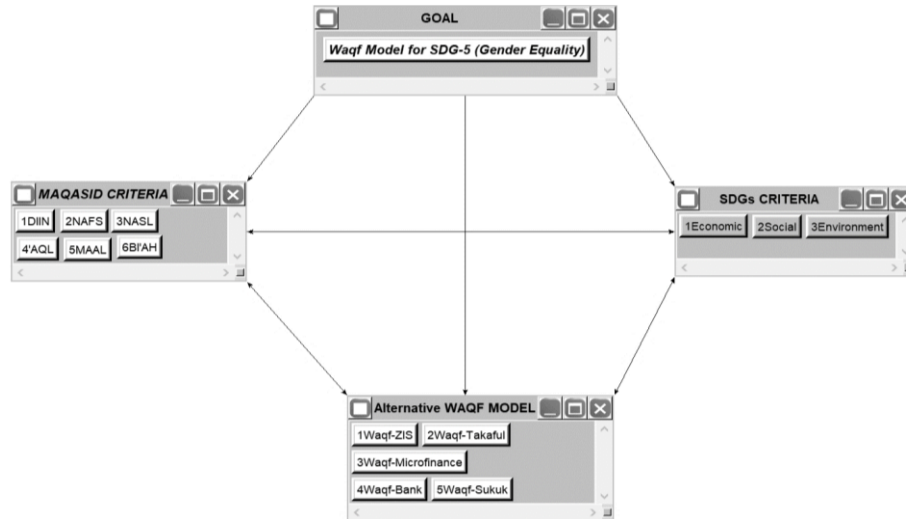


Figure 2. ANP Model Framework in SuperDecision 2.10

The alternative model depicted in Figure 2 is based on the ANP framework's results. The SDGs contain a development pattern that includes three main pillars of social, economic, and environmental development pillars. The criteria for the SDGs utilized in this study are classified into three categories: economic, social, and environmental, with each category subdivided into sub-categories. The economy is the first criterion divided into five sub-criteria: 1) good jobs and economic growth; 2) innovation and infrastructure; 3) responsible consumption; 4) peace and justice, and 5) partnerships. The second criterion is social including six criteria: 1) no poverty, 2) no hunger, 3) decent health, 4) high-quality education, 5) gender equality, and 6) decreased inequalities. The third criterion is the environment broken down into six sub-criteria: 1) safe drinking water and sanitation, 2) renewable energy, 3) sustainable cities, 4) climate action, 5) life below water, and 6) life on land. Additionally, each of the SDGs' criteria and sub-criteria is relevant to the maqashid al-sharia, which is comprised of six components: 1) defending religion (*deen*); 2) defending the soul (*nafs*); 3) defending offspring (*nasl*); 4) defending the mind (*'aql*); 5) defending property (*maal*); and 6) defending the environment (*bi'ah*). Additionally, this study will propose five alternative waqf methods for achieving the fifth SDGs,

gender equality. As stated by Rehman³³ almost all of the 17 SDGs goals are compatible with the maqasid shariah goals.

ANP demands consistency in outcomes, with a 10% tolerance for inconsistency³⁴, and there is no necessity for rater agreement (Kendal W) Convergence. Kendall's W-Value is equal to the P-Value. It demonstrates the degree of relevance. The P-value illustrates the significance of the SDGs criteria's priority ranking. If substantial findings are obtained, the respondents will have agreed on a priority ranking. Meanwhile, even if the calculated value is not statistically significant, there is still disagreement among responders. The ANP's performance against the SDGs criteria is summarized in Table 2.

Table 2. ANP result on SDG Criteria

SDG criteria	Respondent			Rank
	Expert	Practitioner	All	
1. Economic	0.317	0.328	0.323	2
2. Social	0.368	0.361	0.364	1
3. Environment	0.308	0.302	0.305	3
Consistency	0.000***	0.000***	0.000***	
Kendall's W	0.203	0.328	0.250	
P-value	0.196	0.072*	0.018**	

***Significant at 1% level; **significant at 5% level; significant at 10% level

According to the accumulated data in Table 2, the most critical SDGs criteria have a weighted value of 0.364 is the social aspect. The second place goes to economics which has a weighted value of 0.323, and the third place goes to the environment, which has a weighted value of 0.305. Along with the overall accumulation, it is essential to consider the consistency of the respondents' responses. Consistency value indicates a consistent value with a weight of 0.000, as determined by the analysis results.

The primary SDGs criteria are social to ensure basic human rights and improve people's welfare. Following that is the economy in

³³ Hafiz Abdurrehman et al., "Compatibility of Sustainable Development Goals (SDGs) with Maqasid Al-Shariah: Are There Any Missing Goals," *Islamic Banking and Finance Review* 8, no. 2 (2021): 109-32.

³⁴ T. L. Saaty and L. G. Vargas, "Decision Making with the Analytic Network Process," *Springer Science+ Business Media LLC* (2006): 282.

second place which tries to achieve high-quality economic growth. This may be accomplished through innovation, proper infrastructure, the development of inclusive industries, the creation of sustainable employment and business opportunities, the provision of inexpensive renewable energy, and partnerships. The final SDGs criterion is the environment which strives to manage natural resources and environmental sustainability.

Along with the SDGs criteria, this report addresses the *maqashid al-sharia* criteria's priority rating. Table 3 summarizes the ANP's performance against the *maqashid al-sharia* standards.

Table 3. ANP result on *Maqasid* Criteria

<i>Maqasid</i> criteria	Respondent			Rank All
	Expert	Practitioner	All	
1DIIN	0.194	0.157	0.175	1
2NAFS	0.173	0.167	0.170	2
3NASL	0.166	0.163	0.165	4
4'AQL	0.125	0.152	0.138	6
5MAAL	0.167	0.170	0.168	3
6BI'AH	0.155	0.167	0.161	5
Consistency	0.000***	0.000***	0.000***	
Kendall's W	0.226	0.044	0.087	
P-value	0.106	0.877	0.217	

***Significant at 1% level; **significant at 5% level; significant at 10% level

The results of the ANP are listed in order of priority in relation to the *maqashid al-sharia* criteria in Table 3. According to the combined responses of the two types of respondents, the highest priority for *maqashid al-sharia* is the protection of religion/ad-din (0.175), the protection of the soul/al-nafs (0.170), the protection of property/al-maal (0.168), the protection of offspring/al-nasl (0.165), the protection of the environment/al-bi'ah (0.161), and the protection of the mind/al-'aql (0.138). However, when the P-Value is considered, the results are inconsequential. This suggests that the respondents' consensus on the order of importance for *the maqashid al-sharia* has not yet been reached among experts and practitioners. Additionally, when the significant results are analyzed, the results are not

particularly valid. On the other side, the level of consistency displays a weighted value of 0.000, indicating a high level of consistency.

Maqashid al-sharia refers to an objective, goal, target, and requisite intentions. *Maqashid al-sharia*, according to *Usul Fiqh* scholars, is the goal and meaning desired by *syara'* as a law for human welfare. The objective (*maqsad*) prescribed by *waqf* is to safeguard humanity's necessities and interests while alive and after death. *Waqf* has therefore a role in maintaining the basic needs (*dharuriyyah*) so that the five, such as religion, soul, reason, honor, and property, can be maintained³⁵. The *dharuriyyah* incorporates the five *maqasid al-sharia* principles, which address the fundamental requirements of both the individual and the community. A person's life will be incomplete and imperfect if the five principles are not followed. Among the five emphasized principles are the following:

The primary objective of *maqashid al-sharia* is to maintain religion (*Hifz ad-Din*). It is possible to ensure that each Muslim adheres to Islam's teachings in all of his or her actions³⁶. Allah has stipulated that the five pillars of Islam must be implemented to actualize this *maqasid*³⁷. Thus, mankind must adhere to the pillars of Islam to safeguard the sanctity of religion. Additionally, the second order of *maqashid al-sharia* is to ensure life safety (*Hifz an-Nafs*). According to this idea, someone will make a concerted effort to keep themselves and their families secure.

Then, according to *maqashid al-sharia*, the third order is to protect the Wealth (*Hifz al-Mal*). In Islam, assets are fundamentally Allah SWT's property. As a result, people can only exercise authority over and ownership of these goods with God's permission. Two critical things to consider when debating the definition of *mal* are the

³⁵ Laldin, Mahmud, and Sawari, "Maqasid Al-Shariah Dalam Pelaksanaan Wakaf," *Jurnal Pengurusan JAWHAR* 2, no. 2 (2012): 1-25.

³⁶ Rahman and Ahmad, "Pengukuran Keberkesanan Agihan Zakat: Perspektif Maqasid Al-Syariah," *Proceedings of Seventh International Conference, The Tawhidi Epistemology, Zakat and Waqf Economy, Bangi*, 2010, 447-60.

³⁷ Asad Mohsin, Noriah Ramli, and Bader Abdulaziz Alkhulayfi, "Halal Tourism: Emerging Opportunities," *Tourism Management Perspectives* 19, no. 2016 (2016): 137-43, <https://doi.org/10.1016/j.tmp.2015.12.010>.

capability of mastering it and the ability to use it³⁸. Islamic teachings do not forbid pursuing riches as long as it is derived from authorized sources³⁹. Possessing and keeping a property is vital, but it must be managed and utilized for the benefit of society. *Waqf* can be defined as the maintenance of al-mal or property, which falls under the *Dharuriyyah* category⁴⁰.

In addition, this study proposes five main alternative *waqf* models based on a literature review, including 1) *Waqf-ZIS (zakat, infaq, sadaqah)*, which is a type of social *waqf* in collaboration with other social fund instruments such as *zakat, infaq, and sadaqah*; 2) *Waqf-Takaful* which is a type of *waqf* that is social and commercial, but the social dimension is greater than the commercial dimension. This model is *waqf* cooperation with insurance; 3) *Waqf-Microfinance*, a commercial and social *waqf* with the exact composition of commercial activities as the social component. This model is a collaboration between *waqf* and microfinance; 4) *Waqf-Bank* is a type of *waqf* with commercial and social purposes but is more on the business side. This model is a collaboration between *waqf* and bank institutions; 5) *Waqf-Sukuk* is a fully commercial *waqf*, where *waqf* has collaborated with *Sukuk* for various developments. The priority order of ANP outcomes in comparison to various alternatives of *waqf* models is shown in Table 4.

Table 4. ANP Result on Alternative Waqf Model for Women’s Empowerment (SDG-5)

Waqf Model for SDG-5	Respondent			Rank All
	Expert	Practitioner	All	
1Waqf & ZIS	0.271	0.275	0.275	1
2Waqf & Takaful	0.215	0.257	0.236	3
3Waqf & Microfinance	0.231	0.242	0.237	2

³⁸ N.A.B Ahmad A.A. Ibrahim, “Empowering Society Through Waqf Bazars: A Case Study in Kelantan, Malaysia,” *New Developments in Islamic Economic* (2006): 83-98.

³⁹ Rahman and Ahmad, “Pengukuran Keberkesanan Agihan Zakat: Perspektif Maqasid Al-Syariah.”

⁴⁰ Laldin, Mahmud, and Sawari, “Maqasid Al-Shariah Dalam Pelaksanaan Wakaf.”

4Waqf & Bank	0.168	0.127	0.147	4
5Waqf & Sukuk	0.108	0.097	0.102	5
Consistency	0.000***	0.000***	0.000***	
Kendall's W	0.400	0.709	0.539	
χ^2	12.800	22.700	34.550	
P-value	0.012**	0.000***	0.000***	

***Significant at 1% level; **significant at 5% level; significant at 10% level

Table 4 is the result of the ANP for the Alternative Waqf Model for SDG5 (Gender Equality). The first rank result that becomes a priority in applying the *waqf* model is the *Waqf & ZIS (zakat, infaq, and sadaqah)* model with a weight value of 0.275. This alternative combines *waqf* and ZIS and is a completely social form of *waqf*. This alternative instrument is entirely dedicated to social purposes and is well-suited to delivering immediate benefits. *Waqf* and ZIS are an instrument in the Islamic economic system that can empower the people's economy. As a result, it is critical that it is managed and developed optimally. These results show that the main problems of the SDGs in Indonesia such as poverty, economic disparity, as well as the issue of women's empowerment, can be solved with the *waqf* model which has a fully-social function. In this case, the model offered is the *Waqf-ZIS* model.

With the great potential of *Waqf* to overcome the problems of poverty, social gaps, and others, *Waqf* can be one of the instruments of Economic development of the people in reducing poverty and providing public facilities⁴¹. Besides *waqf*, *Zakat* also is one of the pillars of Islam which is the obligation of religion that is charged for one's property according to certain rules^{42,43}. Therefore, the

⁴¹ Rusydiana, Aam Slamet, Yayat Hidayat, Tika Widiastuti, and Solihah Sari Rahayu. 2020. "Cash Waqf for Developing Islamic Economy: Case Study in Indonesia". *Al-Uqud: Journal of Islamic Economics* 5 (1):43-59. <https://doi.org/10.26740/al-uqud.v5n1.p43-59>.

⁴² Habibi, M. Lutfillah, and Ana Toni Roby Candra Yudha. 2017. "Membangun Integrated Takaful Dan Wakaf Model Dalam Upaya Meningkatkan Kemanfaatan Pemegang Polis". *Al-Uqud: Journal of Islamic Economics* 1 (2):139-55. <https://doi.org/10.26740/al-uqud.v1n2.p139-155>.

combination of the two instruments will have a major impact on public goods and socio-economic welfare.

Waqf & Microfinance is ranked second, with a weight of 0.237. This alternative instrument is a partnership between waqf and microfinance, with the commercial component equating to the social component in the composition. Waqf & Takaful is ranked third, with a weight of 0.236. The collaboration between *Waqf* and takaful has a social benefit while also including a business component. This alternative is a social and commercial waqf that places a greater emphasis on the social dimension.

Waqf & Bank is ranked fourth, with a weighted value of 0.147. This waqf model is a partnership between waqf and banks, with banks assisting waqf financial institutions in maintaining social functions through a variety of bank products. This alternative waqf model combines commercial and social objectives, with a strong emphasis on the commercial aspect. Finally, Waqf & Sukuk with a combined weight of 0.102. This alternative instrument is a collaboration between waqf and Sukuk to contribute to the economy and society of the country through various Sukuk advancements. This is a distinct sort of waqf in which the commercial aspect is prioritized. Additionally, the significant P-value results imply that the sequence is extremely valid, and there is no disagreement among the respondents.

A Model for Women's Empowerment

In the history of Islamic women since the time of the Prophet Muhammad, woman has participated in a variety of community activities while also contributing to the development of a country⁴⁴. Women have been bestowed with wisdom as a result of their contribution to science's brilliance. Almost every friend of the Prophet, both men, and women, who possessed surplus income, paid waqf. Waqf is widely regarded as a successful tool for women's empowerment. Women establish waqf for their benefit, the benefit of

⁴³ Tika Widiastuti et al., "Optimization of Zakat Fund Management in Regional Zakat Institution," *Humanities and Social Sciences Reviews* 6, no. 2 (2018), <https://doi.org/10.18510/hssr.2018.6217>.

⁴⁴ Fay, "Women and Waqf: Towards a Reconsideration of Women's Place in the Mamluk Household."

their offspring, and the benefit of other women. Men also contribute to the welfare of women by donating their wealth.

The fulfillment of the SDGs is contingent upon the achievement of the 5th SDG namely gender equality, particularly for women. This study discovered that the alternative waqf model that is most ideal for resolving the issue of gender equality, particularly for women, is a waqf and ZIS (Zakah, infaq, and Shadaqa). This method combines waqf and ZIS, resulting in a fully social waqf paradigm. This instrument is solely for social reasons and is well-suited to giving immediate advantages. In the Islamic economic system, Waqf & ZIS can be used to empower the people's economy, especially for women's empowerment by providing business funds from zakat or productive waqf. Top management and development are essential to creating a substantial impact. Waqf and ZIS can provide funds to meet the needs of the community, especially women, and act as a catalyst to improve women's welfare. Figure 3 shows a diagram illustrating an alternate model for waqf and ZIS:

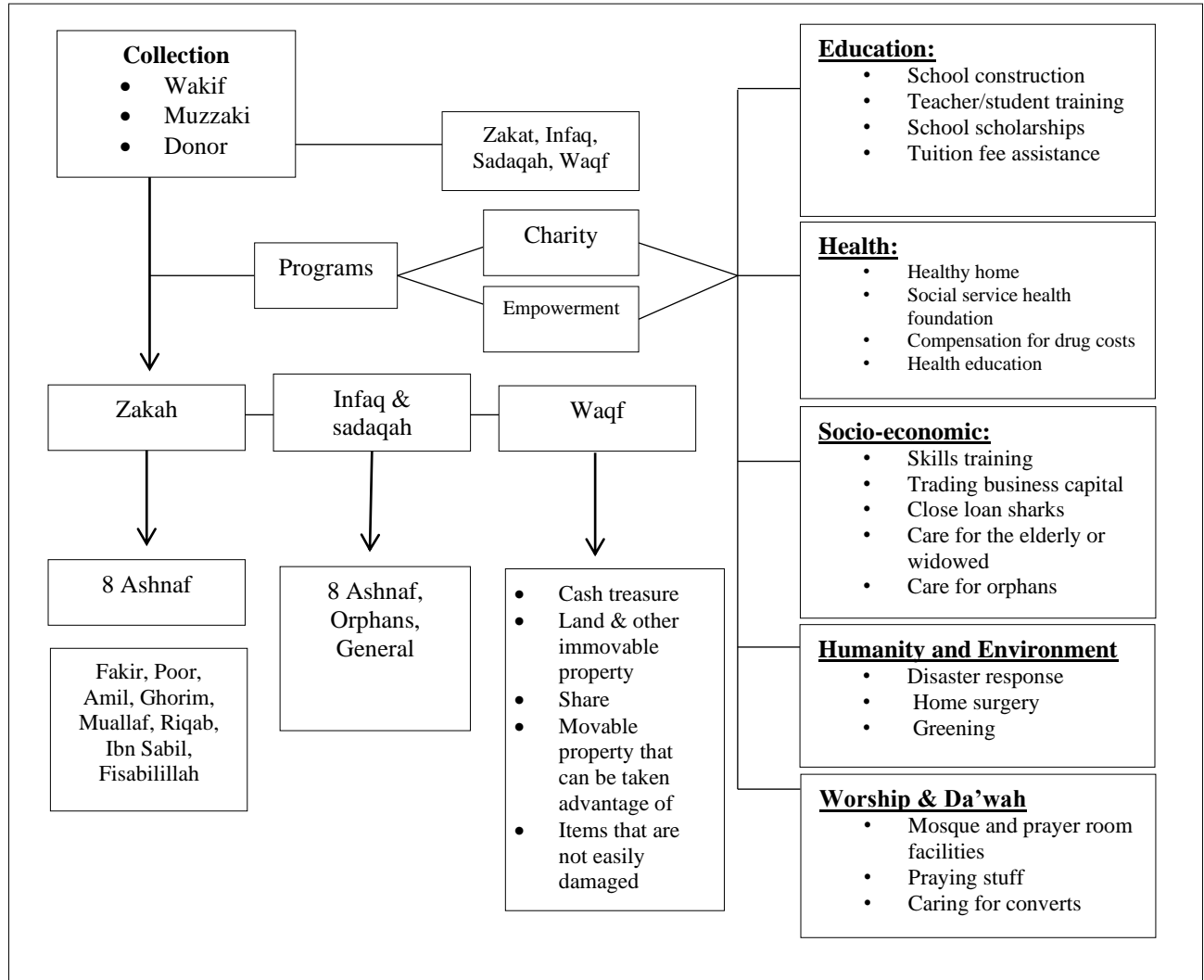


Figure 3. Waqf-ZIS Model for Women's Empowerment

Based on figure 3, the following is a waqf model framework for women's empowerment. The Waqf and ZIS models above are modifications of the *Khadijah Learning Center* (KLC) owned by *Dompnet Dhuafa* and the Indonesian Waqf Fund (Tabung Wakaf Indonesia).

KLC is a productive waqf program whose benefits will then be allocated to support women's empowerment programs, ranging from education, health, socio-economics, humanity, environment, and *da'wah*. With several existing programs, KLC is also expected to become a landmark and center of activity and entrepreneurship for Muslim women. Not only concentrating on waqf in carrying out women's empowerment activities, but they can also use ZIS funds⁴⁵.

Khadijah Learning Center is a waqf-based program education institution for female entrepreneurship in Bumi Serpong Damai (BSD) Tangerang Indonesia, which was mandated as a productive waqf asset in 2011⁴⁶. In the KLC education program, students will not only receive entrepreneurship training and workshops but also receive Islamic knowledge and guidance to form the character that underlies productive business activities⁴⁷.

From that figure, the waqf or zakat institution will collect ZISWAF funds from *waqif* (people who do waqf), *muzzaki*, and contributors and will distribute them according to their classification. It may only be distributed to eight categories of people when it comes to zakat funds: the needy, the poor, *amil* (zakat administrator), *gharim* (someone who has debts and doesn't have enough assets to pay them off), *mualaf* (someone who converts to Islam), *riqab* (human trafficking), *ibn sabil* (foreigners who run out of supplies in someone else's territory), and *fisabilillah* (People who fight (war) defend the religion of Allah SWT). Additionally, cash can be used for the public good, orphans, and distribution to those in need in connection with infaq and alms⁴⁸. Then, relating to waqf funds, there are funds for production facilities and infrastructure, which can take the form of

⁴⁵ A Idrus, "Analisis Atas Lembaga Wakaf Dalam Menjalankan Wakaf Produktif Pada Yayasan Dompot Dhuafa," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 3, no. 2 (2020): 311-28, <https://doi.org/10.24853/ma.3>.

⁴⁶ Idrus.

⁴⁷ Lila Pangestu Hadiningrum, Ning Karnawijaya, and Siti Rokhaniyah, "Nazhir's Development of Fundraising and Business Incubators through the Development of Waqf Villages Assisted," in *Proceeding of 1st International Conference on Research and Development (ICORAD) 2021*, vol. 1, 2021, 46-50.

⁴⁸ Kassim, Marina, Nor Azizan Che Embi, Razali Haron, and Khairunisah Ibrahim. 2022. "The Determinants of Cash Waqf Re-Endow Intention in Malaysia". *Al-Uqud: Journal of Islamic Economics* 7 (1). <https://journal.unesa.ac.id/index.php/jie/article/view/17508>.

monetary assets, land and immovable property, shares, exploitable moveable property, and indestructible things.

ZISWAF funding is subsequently processed and dispersed through capacity-building and empowerment programs. These programs include a range of areas, including education, health, socioeconomic development, humanitarian relief, environmental protection, and worship and *da'wah*. To assist the achievement of the fifth SDG, namely gender equality, funds from the ZISWAF may be utilized to assist women in achieving self-sufficiency. For instance, women must have the same rights as men to receive a high-quality education by providing them with scholarships. Through the use of ZISWAF funds in the education sector, it will aid women in obtaining a high-quality education, beginning with the establishment of educational institutions, the acquisition of skills-enhancing training, and the acquisition of scholarships and tuition assistance. Waqf in the education sector is an essential matter⁴⁹. Additionally, from a socioeconomic standpoint, ZISWAF grants can assist women in achieving self-sufficiency and empowerment, particularly economically. Women can access training that enhances their abilities and potential with the assistance of this funding. Additionally, a business capital support program is available to assist women in starting enterprises, achieving financial independence, and positively impacting the broader economy. The concept of waqf and ZIS for SDG5 is precisely what *Dompot Dhuafa* and *Tabung Wakaf Indonesia* have accomplished through their women-empowering *Khadija Learning Center* initiative.

⁴⁹ Aam Slamet Rusydiana, Raditya Sukmana, and Nisful Laila, "Waqf on Education: A Bibliometric Review Based on Scopus," *Library Philosophy and Practice* 2021 (2021). See also Akhmad Hanafi Dain Yunta Azwar Iskandar, Bayu Taufiq Possumah, Khaerul Aqbar, "Islamic Philanthropy and Poverty Reduction in Indonesia: The Role of Integrated Islamic Social and Commercial Finance Institutions," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 2 (2021). As cited in Abdurrohman Kasdi, "Filantropi Islam Untuk Pemberdayaan Ekonomi Umat (Model Pemberdayaan ZISWAF Di BMT Se- Kabupaten Demak)," *Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam STAIN Kudus* 9, no. 2 (2016).

Conclusion

Waqf is the most relevant Islamic instrument to the Sustainable Development Goals (SDGs) concept. One of the SDGs' points is gender equality. This research attempts to develop a waqf model to achieve SDG-5, namely women's empowerment. Waqf also plays a role in ensuring basic requirements (dharuriyyah) under the maqashid shariah.

The results of the study show that social functions are a top priority in the aspect of waqf development for SDG-5. This social pillar attempts to uphold fundamental human rights by enhancing communal well-being. Additionally, when regarded socially, waqf institutions have aided in the empowerment of the community, particularly women.

Additionally, according to the maqashid al-sharia criteria, religious preservation (deen) takes precedence over all other considerations when it comes to maintaining and carrying out religious commitments. Maintaining religion (Hifz ad-Din) is the primary objective of maqashid al-sharia to ensure that each Muslim adheres to the teachings of Islam in all of their actions. Then, based on the responses of experts and practitioners, the best alternative model in this study is the Waqf & ZIS model, which is well-suited for social goals by offering short-term advantages. Waqf-ZIS can be a solution for providing scholarships, strengthening the skills of women entrepreneurs, as well as providing special educational facilities for women. Therefore, for waqf stakeholders, it is necessary to consider the waqf model for women's empowerment. The development of a waqf model along with a detailed modus operandi is required for further study, likewise the use of a more robust method.

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Appendix

QUESTIONNAIRE

Instructions for Filling out the questionnaire: For the weight scale of dimensions, give a weight by putting a cross (X) or a check (✓) in the column for the range of values. As for the dimensions of criteria, give a weight by writing a scale between 1-9. The greater the points given, the more important/weighted/priority the criteria and sub-criteria are for you (point 9 means very important/highly weighted/priority).

1. Within the framework of **Mapping Waqf Development Models in Achieving SDG-5 (gender equality)**, give weight to each of the following **SDG-criteria**?

No.	SDG-Criteria	Weight Scale								
		1	2	3	4	5	6	7	8	9
a.	Economic									
b.	Social									
c.	Environment									

2. Within the framework of **Waqf Development Models in Achieving SDG-5 (gender equality)**, give weight to each of the following **Maqashid al-sharia criteria**?

No.	Maqashid al-Sharia Criteria	Weight Scale								
		1	2	3	4	5	6	7	8	9
a.	Hifdz al-Diin									
b.	Hifdz al-Nafs									
c.	Hifdz al-Nasl									
d.	Hifdz al- 'Aql									
e.	Hifdz al-Maal									
f.	Hifdz al-Bi'ah									

3. Which **model** do you think is the most important/priority of the **SDG-5 (gender equality) goal**?

No.	Alternative Model	Weight Scale								
		1	2	3	4	5	6	7	8	9
a.	Waqf & ZIS									
b.	Waqf & Takaful									
c.	Waqf & Microfinance									
d.	Waqf & Bank									
e.	Waqf & Sukuk									

Waqf-ZIS: This alternative is a fully social type of waqf, where waqf is collaborated with other social fund instruments such as zakat, infaq and shadaqah. The utilization of this alternative instrument is fully utilized for social purposes, making it suitable for providing short-term benefits.

Waqf-Takaful: This alternative is a type of waqf that has social and commercial characteristics, where the social dimension is greater than the commercial dimension. Waqf collaboration with insurance provides a social impact while still containing a commercial element.

Waqf-Microfinance: This is a sort of waqf that is both commercial and social, with the commercial component being equal to the social component. Collaboration between waqf and microfinance improves waqf as a financial institution while maintaining a social mission.

Waqf-Bank: This alternative is a waqf that have commercial and social purpose, with a greater emphasis on the business side. While the relationship between the waqf and the bank institution helps the financial institution, the waqf retains a social function through the bank's numerous products.

Waqf-Sukuk: This alternative is a fully commercial type of waqf, where waqf is collaborated with sukuk for various developments. This collaboration allows waqf to contribute to the economy of the community and the state through various developments using the sukuk instrument.

4. Which **criteria of Maqashid al-Sharia** do you think is the most important/priority of the following **SDGs criteria**? Give a weight on a scale of 1-9 for each criterion!

No.	SDG-Criteria	Maqashid al-Sharia					
		Diin	Nafs	Nasl	'Aql	Maal	Bi'ah
a.	Economic						
b.	Social						
c.	Environment						

5. Which **alternative waqf model** do you think is the most important/priority of the existing **Maqashid al-Sharia criteria**? Give a weight on a scale of 1-9 for each criterion!

No.	Maqashid al-Sharia	Alternative Waqf Model				
		Waqf-ZIS	Waqf-Takaful	Waqf-Microfinance	Waqf-Bank	Waqf-Sukuk
a.	Diin					
b.	Nafs					
c.	Nasl					
d.	'Aql					
e.	Maal					
f.	Bi'ah					

6. Which **alternative waqf model** do you think is the most important/priority of the existing **Maqashid al-Sharia criteria**? Give a weight on a scale of 1-9 for each criterion!

No.	SDG-Criteria	Alternative Waqf Model				
		Waqf-ZIS	Waqf-Takaful	Waqf-Microfinance	Waqf-Bank	Waqf-Sukuk
a.	Economic					
b.	Social					
c.	Environment					



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The Policy Integration Concept of The Mahram Relationship on Nurseling Study on Nurseling Practices in Semarang, Central Java-Indonesia

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Abstract:

Giving breast milk is becoming more popular, whether directly or mediated by organizations supporting nursing donors. In Muslim communities, donating breast milk has implications

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for the relationship between the child and the nursing mother, including the mother's husband and biological children. The relationship is called the *mahram* relationship. *Mahram* in Islam is essential because it clarifies the child's lineage and the relationship between the family of the nursing mother. The objectives of this study are 1). to describe the breastfeeding donor in Semarang; 2). to describe community awareness of its implication; and 3). questions whether any policy regulates the recording of breastfeeding donor practices to track *mahram* relationships. This is qualitative research by exploring information from primary sources in Semarang District. Furthermore, the data, also, is gathered from relevant policy documents to strengthen argumentation and analysis. The results indicate that breastfeeding donor policies already exist in Semarang, but each institution associated with various policies moves independently in its implementation. There is no policy regarding recording the *mahram* relations. The absence of a clear and integrated policy has led to a tendency for people to practice breastfeeding independently without the need to carry out official recording procedures. The research offers a cross-sectoral integrated policy concept aiming to fulfill children's rights to the best food in their early life while having the right to know the clarity of their lineage.

Keywords:

Integrated policy; *Mahram*; Nurseling; Sharia Islam

Abstract:

Pemberian ASI menjadi lebih populer, baik secara langsung atau dimediasi oleh organisasi yang mendukung donor ASI. Pada masyarakat Muslim, mendonorkan ASI berimplikasi pada terbentuknya hubungan mahram antara anak dan ibu menyusui, termasuk suami ibu dan anak kandungnya. Hubungan mahram dalam Islam sangat penting karena menjelaskan garis keturunan anak dan hubungan antara keluarga ibu menyusui. Tujuan dari penelitian ini adalah 1). untuk mendeskripsikan donor ASI di Semarang; 2). mendeskripsikan kesadaran masyarakat akan implikasinya; dan 3). mempertanyakan apakah ada kebijakan yang mengatur tentang pencatatan praktik donor ASI untuk melacak

hubungan mahram. Penelitian ini merupakan penelitian kualitatif dengan menggali informasi dari berbagai sumber primer di Kota Semarang. Sumber penelitian ini juga diperoleh melalui dokumen kebijakan yang relevan untuk memperkuat argumentasi dan analisis. Hasil penelitian menunjukkan bahwa kebijakan donor ASI sudah ada di Semarang, namun masing-masing institusi yang terkait dengan berbagai kebijakan bergerak secara mandiri dalam pelaksanaannya. Tidak ada kebijakan mengenai pencatatan hubungan mahram. Tidak adanya kebijakan yang jelas dan terintegrasi menyebabkan kecenderungan masyarakat untuk melakukan praktik menyusui secara mandiri tanpa perlu melakukan prosedur pencatatan yang resmi. Penelitian ini menawarkan konsep kebijakan terpadu lintas sektoral yang bertujuan untuk memenuhi hak anak atas makanan terbaik di usia dini sekaligus memiliki hak untuk mengetahui kejelasan garis keturunan mereka.

Kata kunci:

Kebijakan Terintegrasi; Kemahraman; Anak Susuan; Hukum Islam

Introduction

Indonesia has a large Muslim population who believe that children are a mandate and a commitment from Allah almighty. Islam has given special and severe attention to fulfilling children's rights from their mother's wombs to adulthood.¹ Several verses of the Quran and the hadith of the Prophet mention the rights ranging from the right to life, obtaining clarity of lineage (*nasab*), having a good name, breastfeeding, receiving care and nursing, to getting property and education.²

The issue of children's rights is also a global concern. The United Nations has compelled countries to adhere to the Convention on the Rights of the Child (CRC) policy.³ This convention regulates what they must do to ensure that children have rights, such as proper growth and development, education and protection, freedom of expression, and fair treatment.⁴ Indonesia has also ratified the CRC through Presidential Decree No. 36 of 1996.⁵

The right to access food and zero hunger are also mentioned in the Sustainable Development Goals (SDGs) objectives. However, various criticisms come up regarding the most basic right, such as purchasing food based on market mechanisms. This context is related to the baby and child food industry. The SDGs roadmap assumes that market mechanisms will be sufficient to secure nutritious and safe food for all.⁶

¹ M. Ali Hasan, *Pedoman Hidup Berumah Tangga Dalam Islam*. (Jakarta: Siraja, 2003).

² Aminuddin and Slamet Abidin, *Fikih Munakahat 2*. (Bandung: Pustaka Setia, 1999).

³ Didier Reynaert, Maria Bouverne-De Bie, and Stijn Vandeveldel. "A Review of Children's Rights Literature since the Adoption of the United Nations Convention on the Rights of the Child." *Childhood* 16, no. 4 (2009): 518-34. <https://doi.org/10.1177/0907568209344270>.

⁴ UNICEF, *Convention on the Rights of the Child* (1989).

⁵ Prameswari, Zesty Wulan Ayu Widhi. "Ratifikasi Konvensi Tentang Hak-Hak Anak Dalam Sistem Peraturan Perundang-Undangan Di Indonesia." *Yuridika* 32, no. 1 (2017): 167. <https://doi.org/10.20473/ydk.v32i1.4842>.

⁶ Jose Luis Vivero Pol, and Claudio Schuftan. "No Right to Food and Nutrition in the SDGs: Mistake or Success?" *BMJ Global Health* 1, no. 1 (2016): 1-5. <https://doi.org/10.1136/bmjgh-2016-000040>.

Implementing the children's right to life, growth and development, participation, and obtaining protection in many countries still faces obstacles.⁷ For example, in Africa, the implementation of CRC faces cultural practices that put children as objects of violence because children are considered weak creatures.⁸ Economic, political, social, and cultural issues also influence the implementation of the CRC in Africa.⁹ In South East Asia, all country members already put the CRC in the country's positive law. However, the implementation still faces obstacles due to political, economic, social, and cultural factors.¹⁰

Many studies of child's rights showed the common understanding that children's rights follow the CRC. Nevertheless, one crucial aspect of Islamic law has escaped international attention: the right to know the *nasab* (lineage) due to shared breastfeeding. The breastfeeding share implies the *mahram* relation. *Mahram* means prohibition of marriage which, in this context, is due to breastfeeding.

Literature studies on the children's rights concept in Islam related to *nasab and mahram* policies focus more on their status outside legal marriage.¹¹ *Mahram* relations in Islam can occur due to various attributes, such as the bond between the children and the nursing

⁷ Anissa Nur Fitri, Agus Wahyudi Riana, and Muhammad Fedryansyah. "Perlindungan Hak-Hak Anak Dalam Upaya Peningkatan Kesejahteraan Anak." In *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, 2:45-50, 2015. <https://doi.org/10.24198/jppm.v2i1.13235>.

⁸ Thoko Kaime, "The Convention on the Rights of the Child and the Cultural Legitimacy of Children's Rights in Africa: Some Reflections." *African Human Rights Law Jurnal* 5, no. 2 (2005).

⁹ Connie De La Vega, Kokeb Zeleke, and Esther Wilch. "The Promotion of Economic, Social, and Cultural Rights of Vulnerable Groups in Africa Pursuant to Treaty Obligations: CRC, CEDAW, CERD & CRPD." *Global Studies Law Review* 2, no. 14 (2015): 213-41.

¹⁰ Muhammad Ade, Safri Salampessy, Lucitania Rizky, and Isna Achdyana. "The Effectiveness of The Convention on the Rights of the Child (CRC) Regime by UNICEF in Encouraging the Implementation of Child Protection in Southeast Asian Countries" 2, no. 1 (2022): 12-20.

¹¹ Nasa'y Aziz, and Muksal Mina. "Nasab Anak Yang Lahir Di Luar Nikah: Analisis Fatwa MPU Aceh Nomor 18 Tahun 2015 Dan Keputusan MK Nomor 46/PUU/-VIII/2010." *Samarah* 1, no. 1 (2017): 72-100. <https://doi.org/10.22373/sjhk.v1i1.1571>. See also Amruzi, Fahmi Al. "Nasab Anak Dari Perkawinan Siri." *Al-Adl: Jurnal Hukum* 14, no. 1 (2022): 1. <https://doi.org/10.31602/al-adl.v14i1.5834>.

mother. Studies on *nasab* and the *mahram* relation have been normatively reviewed in Islamic law and history studies. For example, Mun'im's research on article 39 of the Islamic compilation law (KHI) analyzed the intensity of breastfeeding prohibiting breast milk marriage.¹² He criticizes article 39, which does not explain how much a baby consumes, which causes a *mahram* relationship.

Safir et al. studied the books of *Sirah* and fiqh to compare breastfeeding practices between the Prophet Muhammad and today. In conclusion, Safir's research suggests a meeting between children and nursing mothers to recognize each other. Breastfeeding aims to nurture a desire to educate the baby. Breastfeeding that the Prophet has passed is based on maintenance and education.¹³ This practice proves that breastfeeding is not simply feeding the mother's breast milk. Breastfeeding is a care and maintenance, education, and an impression on family relationships with the establishment of breastfeeding ties through the *mahram* relationship.

Maintaining the relationship that results from breastfeeding must be adequately refined. Therefore, to perfect breastfeeding, it is necessary to understand that it is not normal. It involves many parties, such as donors and receiver families, donor agencies, and related government institutions. The breastfeeding process certainly requires a systematic mechanism that can meet religious demands in harmony with the needs of all parties from all aspects holistically.¹⁴

Another critical study is the Islamic law perspectives regarding nursing. Hanafi's school of thought states that consuming breastmilk that has been separated from a woman's breasts is prohibited. According to this thought, the status of the breastmilk is the same as a carcass. Also, breastmilk is not included in the property category that can be sold. Meanwhile, the Syafi'i school of thought states that separated or pumped breastmilk is not forbidden for consumption. The breastmilk, either

¹² Ahmad Mun'im, "Intensitas Penyusuan Dalam Larangan Perkawinan Sesusuan (Analisis Pasal 39 Ayat 3 Kompilasi Hukum Islam)." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2017): 229. <https://doi.org/10.14421/ahwal.2016.09208>.

¹³ Halimatus Saadiah Mohamad Safir, Dhamirah Nursakinah Mohamad Safir, and Siti Fatimah Salleh. "Realiti Penyusuan Anak Susuan Pada Zaman Silam Dan Kontemporari." *Al-Qiyam International Social Science and Humanities Journal* 2, no. 2 (2019): 48-56.

¹⁴ Safir, Safir, and Salleh 2019)

directly fed or separately, is a sacred object; the baby can take advantage of it because it is similar to animal milk.¹⁵

According to the Hanafi school of thought, what causes a *mahram* relationship is a child breastfeeding directly on a woman's breast at a specific time. Meanwhile, the Maliki school says that entering a mother's breast milk into the baby's stomach can lead to a *mahram* relationship. The Shafi'i school also states that entering the mother's breast milk or what is produced from that milk into the baby's stomach, brain, or marrow causes a mahram relationship. The Hambali school also said that sucking or drinking breast milk from a woman's breast caused a *mahram* relationship.¹⁶

Another study about the ulama's thoughts discussed how much the mother's breast milk consumed by the baby leads to the *mahram* relationship. Maliki and Hanafi schools, according to her finding, stated that there is no limit to suction because one puff has already resulted in a mahram relation. The Shafi'i and Hanbali schools, meanwhile, require five feedings of puffs. Scholars also have different opinions about babies' age limit that leads to mahram relationships. The Shafi'i school, the Hanbali school, and the majority of the Hanafi school agree that the age limit for a baby to become a mahram is two years. However, Imam Abu Hanifah mentioned two years and a half (30 months), while the Maliki school limits it to two years and two months. In one narration, it is two years and one month.¹⁷

Studies on breastfeeding also concern mainly from a health perspective on the importance of breastfeeding for infant growth and development.¹⁸ Historically, breastfeeding has been seen primarily as a noble maternal duty, held in high esteem due to its beneficial effects on

¹⁵ Khusnul Fikriyah, "Pendapat Madzhab Hanafi Dan Syafi'i Tentang Jual Beli Asi Perspektif Al-Mashlahah Al-Mursalah." *Maliyah* 07, no. 01 (2017): 172-201.

¹⁶ Abdul Halim, "Donor Asi Dalam Perspektif Hukum Islam." *Miyah: Journal of Islamic Studies* 12, no. 2 (2013): 1-18.

¹⁷ Hani Rifqial Aini, "Implementasi Donor Asi Pada Lembaga Lactashare Dan Kesesuaian Dengan Fatwa Mui Nomor 28 Tahun 2013 Tentang Donor Asi." UIN Syarif Hidayatullah Jakarta, 2021.

¹⁸ Diane L Spatz, Riccardo Davanzo, Janis A. Müller, Rebecca Powell, Virginie Rigourd, Ann Yates, Donna T. Geddes, Johannes B. van Goudoever, and Lars Bode. "Promoting and Protecting Human Milk and Breastfeeding in a COVID-19 World." *Frontiers in Pediatrics* 8, no. February (2021): 1-6. <https://doi.org/10.3389/fped.2020.633700>.

infants and society.¹⁹ The trend of mothers who want to breastfeed their babies is increasing, along with the ongoing breastfeeding campaign.^{20 21} Unfortunately, not all mothers can breastfeed due to various factors, such as the mother's dependence on drugs, illness, or other factors.²²

The practice of breastfeeding donors in Indonesia runs without strict administrative and technical supervision. Several agencies have emerged to respond to this trend and are trying to achieve the goals of donor breastfeeding.²³ However, these institutions are non-governmental organizations. The rules these institutions apply, although referring to specific protocols, are not bound by certain legal standards.

However, not all children can get breast milk directly from their biological mothers. The lack of breastfeeding by biological mothers is caused by various factors, such as death and medical problems. Hence those with abundant breast milk share it with this category of babies. Several studies on breastfeeding donors and the emergence of human or breast milk banks have emerged in various countries. Examples include studies on the best practices in managing breast milk banks²⁴ and the concept of its banks following Islamic law.^{25 26}

¹⁹ Benaouda Bensaid. "Breastfeeding as a Fundamental Islamic Human Right." *Journal of Religion and Health* 60, no. 1 (2021): 362-73. <https://doi.org/10.1007/s10943-019-00835-5>.

²⁰ Tamadara Hilman, and Adjane Annisawati Asaretkha. "Persepsi Para Ibu Terhadap Sikap Donor Asi Di Bandung." *Jurnal Ekonomi Dan Bisnis* 8, no. 1 (2021): 141-46.

²¹ Ayunovita Dewi, A. Suparwati, and C. Suryawati. "Analisis Implementasi Kebijakan Asu Eksklusif Di Tingkat Kabupaten Kebumen Tahun 2013." *Jurnal Kesehatan Masyarakat (e-Journal)* 2, no. 1 (2014): 22-27.

²² Lactashare. "How Indonesia Human Milk Bank Works." Lactashare Foundation, 2020.

²³ Radian Nyi Sukmasari "Menyoal Praktik Donor ASI Di Indonesia." *Detik Health*, 2016. <https://health.detik.com/ulasan-khas/d-3267167/menyoal-praktik-donor-asi-di-indonesia>.

²⁴ B. T Hartmann, W. W. Pang, A. D. Keil, P. E. Hartmann, and K. Simmer. "Best Practice Guidelines for the Operation of a Donor Human Milk Bank in an Australian NICU." *Early Human Development* 83, no. 10 (2007): 667-73.

²⁵ Normaidah Daud, Nadhiroh Nordin, Zurita Yusoff, and Rahimah Embong. "The Development of Milk Bank According to Islamic Law for Preserving the Progeny of Baby." In *Contemporary Issues and Development in The Global Halal Industry*, edited by Siti Khadijah Abdul Manan, Fadilah Abd. Rahman, and Mardhiyyah Sahri. Springer, 2016. <https://doi.org/10.1007/978-981-10-1452-9>.

As a country with a majority Muslim population, the Indonesian government needs to provide a sound data recording system to start with integrated policy protection. Whereas knowing the clear lineage (including the nursing family) is children's right. This research offers a concept of an integrated policy to facilitate the status of mahram relations. The integrated policy of *mahram* relations due to breastfeeding will provide clear information on the lineage of the children and the nursing family. The integrated policy also allows the system to register the children's status in the population system. Clear lineage information may avoid the legal implications in Islamic marriage, such as the *mahram* relationship.

The study of breastfeeding donor policies is divided into several clusters, including policies related to health issues in Indonesia and Islamic law. The search results show that health issues and Islamic law stand in their scientific space. In terms of health, government regulation no. 33 of 2012 concerning exclusive breastfeeding was issued.²⁷ In this regulation, the government plays a role in formulating, advocating, fostering, and evaluating the implementation of the complete breastfeeding program. This policy applies to provincial and district/city governments and focuses on health services for mothers and children. It aims to improve maternal and children's health as well as reduce the risk of infant mortality.

The policy and practice of breastfeeding donors in Semarang have not yet reached the discussion of policy integration. Meanwhile, the issue of breast milk donors and their implications for the *mahram* relationship is regulated in Article 39 of the Compilation of Islamic Law (KHI). This research will fill a study that has not been discussed in previous research, namely developing the concept of an integrated policy to protect children's rights from an Islamic perspective.

²⁶ Lactashare, 2020)

²⁷ Peraturan Pemerintah Republik Indonesia No. 33 tahun 2012 tentang Pemberian Air Susu Ibu Eksklusif (2012).

Method

This study was conducted in Semarang, the capital of Central Java. Semarang is one of Indonesia's urban cities. Socially, the lifestyle of young mothers in this city is influenced by the development trend in Indonesia, including the campaign for breastfeeding babies.

This article is based on qualitative research. Data were collected using various techniques. First, the data were obtained through a literature review related to the *mahram* relations from an Islamic perspective, and we also reviewed different policies regarding breastfeeding donors. We also conducted a literature study using the narrative review to explore breastfeeding practices in Indonesia from 2010-2020. A narrative review is a critical analysis of literature published in books and electronic journal articles that discusses the state of knowledge of a particular topic or theme from a theoretical and contextual point of view.²⁸

Second, we obtained qualitative data from field research involving five donor mothers and five mothers of children receiving breast milk donors who were determined purposively. We conducted observations and interviews to discover mothers who donate breast milk and their families in Semarang City. In addition, we conducted interviews with the community health centre (PUSKESMAS) to determine the registration of children who received breast milk donors. Meanwhile, we interviewed the head of the sub-district religious affairs office (KUA) to obtain information about the *mahram* relation of breastfeeding children in the marriage registration process.

Discussion and Result

The practice of donating breast milk in Semarang

Donating breast milk in Semarang shows the community's enthusiasm to continue providing the best food for babies under any circumstances. The government has also been obliged to encourage babies to get their rights in the early days of life by issuing various laws. Meanwhile, fulfilling other requests, such as knowing the *mahram* relationship due to breastfeeding, has not received attention. We identified no government regulation registering the *mahram* relationship from these preliminary studies.

²⁸ Edna Terezinha Rother, "Systematic Literature Review X Narrative Review." *Acta Paulista de Enfermagem* 20 (2007): v--vi.

The process of donating breastmilk is an ancient practice in Indonesia. Recently the procedure was regulated through the 2012 Government Regulation on Exclusive Breastfeeding. The regulations set out the outlines regarding breast milk donation, including medical indications, the donor and recipient's identity, the donor and recipient's religion, and both the donor and recipient's social and cultural background.²⁹ Furthermore, the Indonesian Ulama Council (MUI), through the MUI Fatwa No. 28 of 2013, stated that breast milk donation could be carried out with various provisions and considerations that can have implications on the occurrence of a *mahram* relationship.³⁰

In 2013, the Mayor of Semarang issued mayoral regulation number 7 of 2013 regarding increasing exclusive breastfeeding.³¹ This regulation led to increased activities in nursing and breastfeeding mothers' associations such as *Asosiasi Ibu Menyusui Indonesia* (AIMI)-Jawa Tengah, established before the statute in 2008³², and later Lactashare, established in 2018. The association facilitated the communities to accommodate the communication needs of their members using various channels, such as social media.³³

In reality, the socialization of the *mahram* relationship on the practice of breastfeeding donors in the city of Semarang is not as intensive as the campaign for breastfeeding. Our study indicates the lack of socialization about the *mahram* relation due to breastfeeding donor practices. We distinguish three factors that influence the lack of socialization of the *mahram* relation due to breastfeeding practices. First, the government only focuses on the urgency and importance of breastfeeding from a health perspective. Second, due to the

²⁹ Peraturan Pemerintah Republik Indonesia No. 33 tahun 2012 tentang Pemberian Air Susu Ibu Eksklusif (2012).

³⁰ MUI, Fatwa Majelis Ulama Indonesia No. 28 Tahun 2013 Tentang Masalah Donor Air Susus Ibu (Istirdla').

³¹ Silma Intifada, and Ari Subowo. "Implementasi Peraturan Walikota Semarang Nomor 7 Tahun 2013 Tentang Peningkatan Pemberian ASI Eksklusif." *Journal of Public Policy and Management Review* 6, no. 2 (2017). <https://ejournal3.undip.ac.id/index.php/jppmr/article/view/15998%0Ahttps://ejournal3.undip.ac.id/index.php/jppmr/article/viewFile/15998/15451>.

³² Dedi Irwansyah, "Praktik Donor ASI Di Asosiasi Ibu Menyusui Indonesia (AIMI) Dalam Perspektif Hukum Islam." UIN Syarif Hidayatullah, 2011.

³³ Irwansyah.

breastfeeding donation, there is a poor understanding of Islamic law implications. The third is the lack of administrative policy regulating and recording the relationship between children who receive breast milk and donor families.³⁴

The policy of exclusive breastfeeding and its donor cannot stand alone due to the significant implications for the Muslim community. Therefore, an integrated policy study is needed to regulate the implementation of children's rights in life technically. Their rights include where they get the best food at the beginning of life and the right to know their lineage or *nasab* from breastfeeding donors if any. In traditional and straightforward community life, the *mahram* relationship was easily traced.³⁵ However, in a complex modern society with high social mobility, children can get breast milk from nursing mothers without family or kinship relationships.

Our current studies on the families of both donors and recipients in Semarang indicate that the families verbally inform their children and family members to socialize *mahram* relationship status as a breastfeeding donor. The decision process for the donor family or recipient is mediated by social media and personal communication with the donor's family. The decision to donate breast milk is influenced by several factors, including the baby's health, allergies to cow's milk, and insufficient breast milk from the biological mother. Families also search for potential donors and recipients independently through personal communication.³⁶

Donor families usually consider the gender of nursing, reasons for donating, and location. Similarly, the recipient families will question the gender of the biological children breastfed by the donor, health, and area. The health problems are only based on the physical view without laboratory tests. In rural communities, donating breast milk is more culturally based. Assuming the mother

³⁴ "FGD Dengan Ibu Pendonor ASI Juni 2021."

³⁵ Badieah, Ahmad Mujib, Muna Yastuti Madrah, Andi Riansyah, and Nur Muhammad. "Implementasi RESTful Web Service Pada Sistem Informasi Donor ASI Terintegrasi Di Indonesia Implementation of RESTful Web Service on Indonesian 's Integrated Breastfeeding Donor Information System." *SISTEMASI: Jurnal Sistem Informasi* 11, no. 2 (2022): 455-69.

³⁶ "Kompilasi Wawancara Dengan Keluarga Penerima Donor ASI Juni 2020."

cannot breastfeed independently, the family looks for donors, usually from relatives and neighbors.³⁷

From the observation, group discussion, and interview with both the nursing mother and recipient family, they are already aware of the implications of the *mahram* relationship due to the breastfeeding donor practice among families.³⁸ However, the community understanding related to the *mahram* implication only about the prohibition of marriage in nursing, as stated in MUI fatwa no. 28 of 2013. Official registration of nursing mothers and recipient babies has not yet been carried out formally due to a lack of policy regulation and obligation.

Associations and communities of breast milk activists do not have the authority to distribute them because these organizations are not legal breast milk bank institutions. The association plays a role in mentoring and educating mothers to breastfeed.³⁹ In comparison, an official breast milk bank has the authority to carry out all procedures for conducting health tests on donors, laboratory tests, and storing and distributing expressed breast milk to babies in need.⁴⁰

Individual or cultural selection of breast milk donors is not without problems. For instance, instead of providing the best food for children, they become vulnerable to various diseases disturbing their health and development. This study's findings indicate that donating breast milk in the city of Semarang is done informally through personal communication and self-consensus.⁴¹ The results show that this donor practice in Semarang is unstructured. Our resource person explained that the decision to breastfeed was due to his desire to breastfeed exclusively for the baby, but the milk production was insufficient. After discussing with her husband, they decided to look for breast milk donors through a network of friends at work and then

³⁷ "FGD Dengan Ibu Pendonor ASI Juni 2021."

³⁸ "FGD Dengan Ibu Pendonor ASI Juni 2021."

³⁹ Mia Sutanto, Astri Pramardini, and Sari Kailaku. "Donor ASI : Membantu vs Bumerang Bagi Ibu Menyusui." *Asosiasi Ibu Menyusui Indonesia*, 2017. <https://aimi-asi.org/layanan/lihat/donor-asi-membantu-vs-bumerang-bagi-ibu-menyusui>.

⁴⁰ J. Harry Baumer,. "Guidelines for the Establishment and Operation of Human Milk Banks in the UK." *Archives of Disease in Childhood: Education and Practice Edition* 89, no. 1 (2004). <https://doi.org/10.1136/adc.2004.053330>.

⁴¹ "Wawancara Dengan Keluarga Penerima Donor ASI Di Kota Semarang."

contacted the donor's mother and agreed to accept breast milk donors. Breast milk donation is carried out for three months after the exclusive breastfeeding period no longer consumes donor breast milk.⁴²

In terms of developments related phenomenon of breastfeeding donors and the initiation of its banks in Indonesia, government regulation No. 33 of 2012 was issued. This regulation contains the government's obligations in advocating and educating the exclusive breastfeeding program. The government must also ensure that complete breastfeeding program facilities are available. This program also regulates the division of responsibilities between the central government, provincial governments, and district or city governments⁴³. Technically, based on this rule, regional/municipal governments can adopt distinct regulations within the framework of this national law.

Besides, through the MUI fatwa no. 28 of 2013, the Indonesian Ulema Council (MUI) allows breastfeeding donors directly or indirectly. The MUI fatwa is a response to an initiative from the community to coordinate the various breast milk and breast milk donor initiation. The initiation raises questions regarding the religious provisions regarding other matters related to religious issues due to these activities. MUI deems it necessary to stipulate a fatwa regarding the issue of breast milk donation (*istirdla'*) to serve as a guideline.⁴⁴ However, this government regulation and the fatwa of MUI have not been synergized and integrated with other policies. The community also criticizes the fatwa. MUI doesn't provide a practical guideline for the community in responding to the problems of breastfeeding donors in Indonesia. The reason is that the community uses the milliliter scale to give breast milk to donors. The second reason is that this fatwa has not been widely disseminated to the public. For example, the criteria for five suction equals how many milliliters?⁴⁵

⁴² "Kompilasi Wawancara Dengan Keluarga Penerima Donor ASI Juni 2020."

⁴³ Peraturan Pemerintah Republik Indonesia No. 33 tahun 2012 tentang Pemberian Air Susu Ibu Eksklusif.

⁴⁴ MUI, Fatwa Majelis Ulama Indonesia No. 28 Tahun 2013 tentang Seputar Masalah Donor Air Susus Ibu (*Istirdla'*).

⁴⁵ "Wawancara Dengan Keluarga Penerima Donor ASI Di Kota Semarang."

Analysis of mahram relation because of breastfeeding in the Islamic law perspective

In Islam, the breastfeeding period is known as *al Radha'ah*⁴⁶. The tradition of breastfeeding non-biological children has long existed in Islamic society.⁴⁷ The Prophet Muhammad also got breast milk from three nursing mothers. The importance of breast milk conveyed in the Quran has inspired a positive attitude in modern society today⁴⁸.

The Indonesian Ulama Council (MUI) explained that the conditions for the occurrence of a *mahram* relationship through breastfeeding are: (a) the children's age is a maximum of two *qamariyah* (lunar calendar) years old, (b) the donating mothers are well identified, (c) the amount of milk consumed is at least five puffs, (d) the method of breastfeeding is conducted either directly from the mother's nipple (*imtishash*) or through milking by the bottle and (e) the breast milk make the baby gorged. Donors must also meet the physical and mental health requirements, and the donor's mother is not pregnant.⁴⁹

As illustrated in table 1 below, the MUI identifies eight types of *mahram* relations based on nursing.

Table 1. Categorization of *mahram* relationship according to MUI fatwa no. 28 of 2013⁵⁰

No	Category	Explanation
1	<i>Ushulu Al-Syakhsi</i> (The original parent)	Breastfeeding mothers and mothers their mothers continuing to the top (grandmother, great-grandmother, etc.).

⁴⁶ BK Desrikanti, "Konsep Al-Radha'ah Dan Hukum Operasional Bank ASI Menurut Pandangan Ulama Empat Mazhab." UIN Alauddin, 2014.

⁴⁷ (Safir, Safir, and Salleh, 2019)

⁴⁸ T Koçtürk, "Foetal Development and Breastfeeding in Early Texts of the Islamic Tradition." *Acta Paediatrica* 92, no. 5 (2003): 617-20.

⁴⁹ MUI, Fatwa Majelis Ulama Indonesia No. 28 Tahun 2013 Tentang Masalah Donor Air Susus Ibu (Istirdla').

⁵⁰ MUI.

2	<i>Al-Furuu' Min Al-Radhaa'</i> (offspring of breastfed)	The nursing child and children of the nursing child continue to the down (grandchildren, great-grandchildren, etc.).
3	<i>Furuu' Al-Abawaini min Al-Radhaa'</i> (descendants of foster parents)	The children and grandchildren of the nursing mother continue to the bottom (grandchildren and great-grandchildren).
4	<i>Al-Furuu' Al-Mubaasyirah Min Al-Jaddi wa Al-Jaddati min Al-Radhaa'</i> (descendants of maternal grandparents)	The siblings-in-law of the breastfeeding mother (breastfeeding uncles and aunts) exclude their children (breastfeeding cousins).
5	<i>Ummu Al-Zawjah wa Jaddaatiha min Al-Radhaa'</i> (breastfeeding mother of his wife and ancestors)	The breastfeeding mother of the wife, the mother of the breastfeeding mother ascending to the top (ancestor).
6	<i>Zawjatu Al-Abi wa Al-Jaddi min Al-Radhaa'</i> (wife of breastfeeding fathers and grandparents)	Fellow wife(s) of the breastfeeding mother (second, third, or fourth one continuing to their ancestors).
7	<i>Zawjatu Al-Ibni wa Ibni Al-Ibni wa Ibni Al-Binti min Al-Radhaa'</i> (wife of nursing children and wife of nursing grandchildren and sons of nursing daughters)	The wife of the nursing child, the wife of the nursing grandchild, and the wife of a son from a breastfeeding daughter (grandchildren, great-grandchildren, etc.)
8	<i>Bintu Al-Zawjah min Al-Radhaa' wa Banaatu Awlaadihaa</i>	Breastfed daughter of the wife and grandniece of the breastfeeding daughter from her son then going down (great-grandchildren, etc.).

Therefore, it is clear, from table 1 above, that the lineage relationship in nursing leads to a *mahram* relationship between the children, the nursing mother, and her family under Islamic law. With

so many *mahram* relationships from breastfeeding, how can one detect *mahram* relations in a complex society? Therefore, the explanation from table 1 can be used as a reference to develop an integrated policy model.

One of the most relevant government institutions is the office of religious affairs (KUA). In Indonesia, Islamic marriage should be registered by this office. According to our discussion with the regional director of KUA, they know the *mahram* relationship because it was already included on the marriage registration form. However, the office never rechecks the information from the couple. So far, they have never found a case of marriage annulment due to the relationship between *mahram* of breastfeeding. Although questions about kinship relations have been stated in the marriage registration form, they have not been explored in detail nor supported by solid evidence.⁵¹

At the Community Health Center (PUSKESMAS), the intake description column only lists children exclusively breastfed without recording the source in detail. Our findings indicate that the health centre, in this context, health department only focuses on the importance of breastfeeding.

Integrated policy concept for nursing data recording

As explained previously, the findings of this study indicate that there is no integrated policy in the nursing issues. The related government institution and non-government organizations seem to work independently without significant coordination. Therefore the ratification is quite long in *mahram* relations due to nursing. This research offers an integrated policy concept to anticipate the problem in tracing *mahram* because of breastfeeding in Indonesia. An integrated policy is needed from various governmental and non-governmental institutions to administer hospitality relations in the nursery.

Although regional autonomy in Indonesia opens up great opportunities for policy reform at the regional level, the practice of integrated policies does not exist. Several factors have increased the

⁵¹ "Wawancara Dengan Kepala KUA Genuk Dan KUA Gayamsari, September 2021."

number of actors involved in the policy process, such as the emergence of the information society, which allows public and non-governmental organizations to participate. However, the issue of recording the relationship of hospitality has not become a priority.

Badieah et al.⁵² developed an information system for issuing *mahram* certificates to nursing children. The initiative paved the way for engaging stakeholders. From Badieah's study, we know that it is necessary to involve various institutions in issuing a certificate of *mahram*. In her study, Badieah et al. only involved the breastfeeding agency or association, the office of demographic affairs (DUKCAPIL), and the office of religion affairs (KUA). However, the system information can be implemented if an umbrella policy involves all relevant institutions.

We identified the institutions involved in this breastfeeding relationship chain: the Indonesian Ministry of Health, the Indonesian Ministry of Religious Affairs, the Ministry of Social Affairs, the Ministry of Internal Affairs, and the independent breast milk donors agency. The role of each institution can be seen in table 2.

Table 2. Role of each institution involved in the *mahram* relation due to nurseling

Institution	Role
The Ministry of Health	Issuing a breast milk donor protocol, medical indications, procedures, and recording of the identities of donors and recipients.
The Ministry of Religious Affairs	provides policy protection to its technical institutions to issue proof of ties of <i>mahram</i> relation both to donors and recipients
The Ministry of Social Affairs	issue a policy supporting the breastfeeding donor protocol,

⁵² Badieah et al., "Implementasi RESTful Web Service Pada Sistem Informasi Donor ASI Terintegrasi Di Indonesia Implementation of RESTful Web Service on Indonesian 's Integrated Breastfeeding Donor Information System."

	mechanism of supervision, and monitoring
The Ministry of Internal Affairs	Provide policy of registering the status of nursing children that integrated into the population and civil registration services
The independent breastfeeding agency	Providing education and socialization of the policy

After identifying the various ministries, as table 2 above, that should be involved in the policy of registering *mahram* relations, we developed a scheme of inter-ministerial linkages. An integrated policy scheme is needed to achieve the goal of fulfilling children's rights. We illustrate the integration policy scheme as shown in figure 2 below

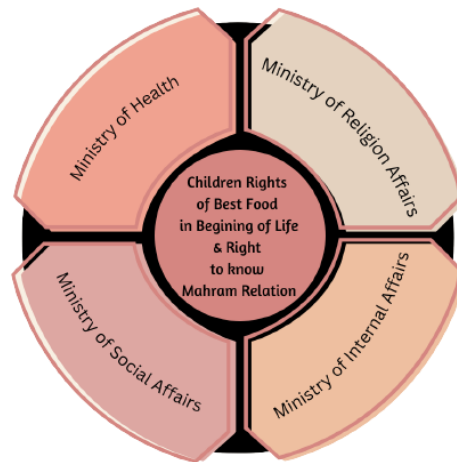


Figure 1: Integrated policy scheme regarding *mahram* relationship of nursing.

The schematic diagram with the basic shape of a circle, as Figure 1 above, shows that the ministries involved are on an equal footing, elaborating on fulfilling the goal of fulfilling children's rights. The policy of fulfilling exclusive breastfeeding is not only under the

health framework but also a religious, social, and population administration perspective. An integrated approach takes more than just coordination and cooperation from the institutions involved. Policy coherence is associated with managing cross-sectoral issues in policymaking that go beyond the boundaries of pre-defined policy areas, which are often inconsistent with the institutional responsibilities of each department.⁵³ Policy integration requires more interaction between sectors than coordination. The coordination aims to adjust sectoral policies; hence they are mutually reinforcing and consistent, producing a standard procedure for the sectors involved. This difference in output is also based on the variation in purpose. Coordination is about organizational policies with the same sectoral objectives, whereas integrated policymaking departs from goals not covered by sectoral goals on a larger scale. Implementing it requires a strong political commitment because making laws and regulations requires political support from regional leaders

The Semarang mayor's policy related to exclusive breastfeeding only focus on health issues. The regulation was developed to ensure that health services, health workers, and infrastructure support fulfilling exclusive breastfeeding for children. This regulation does not mention how to practice breastfeeding donors and the mechanism for donating breast milk. We saw this happen because the higher policies, such as at the provincial and ministerial levels, do not integrate the need for registration of breast milk donors into the regulation on exclusive breastfeeding.

There are two criteria for optimal integrated policies. The first consists of several coherent policy objectives, while the second is a mixture of instruments. Therefore, an optimally designed integrated strategy is needed to display a cohesive match of policy objectives with tools capable of producing an appropriate context for a particular large-scale problem⁵⁴. Policy integration is a process that

⁵³ Evert Meijers, and Dominic Stead. "Policy Integration : What Does It Mean and How Can It Be Achieved? A Multi-Disciplinary Review." In *2004 Berlin Conference on the Human Dimensions of Global Environment Change: Greening of Policies - Interlinkages and Policy Integration*, Berlin, 1-15, 2004.

⁵⁴ Jeremy Rayner, and Michael Howlett. "Introduction: Understanding Integrated Policy Strategies and Their Evolution." *Policy and Society* 28, no. 2 (2009): 99-109. <https://doi.org/10.1016/j.polsoc.2009.05.001>.

involves various elements which can develop at different speeds and in opposite directions.⁵⁵

Integrated public policies produce quality public services, which must fulfill several aspects, including customer-driven, task- and expertise-driven, resource- and data-driven integration⁵⁶.

An integrated policy review is needed to work optimally for communication, intermediation, partnership, and dissemination mechanisms. Integrated policies focus on goals that need to be planned in the political system, not haphazard actions.⁵⁷

The implementation of the integration policy will significantly affect all sectors involved and significantly impact the fulfillment of children's rights in Indonesia. This perspective also needs to pay attention to Islam's fulfillment of children's rights, where the *nasab* needs to be maintained.

Conclusion

Our investigation answers research questions about how breast milk donation practices work in Semarang. The tradition of donating breast milk in Semarang is still running individually and is not formally recorded.

The data we have obtained shows that public awareness of *mahram* relations as a result of breastfeeding donors is limited to the nuclear family of the donor and recipient. Our observations indicate that this is due to the lack of socialization the MUI Fatwa regarding breastmilk donors. In addition, there is no regulatory umbrella that regulates breastfeeding donors as well as the implications for *mahram*

⁵⁵ Jeroen J.L. Candel, and Robbert Biesbroek. "Toward a Processual Understanding of Policy Integration." *Policy Sciences* 49, no. 3 (2016): 211-31. <https://doi.org/10.1007/s11077-016-9248-y>.

⁵⁶ Mohammad Yudha Perwira, and Tities Eka Agustine. "Desain Layanan Publik Terintegrasi Di Daerah Melalui Whole Government Approach: Praktik Di Surabaya, Pontianak Dan Denpasar." *Komite Pemantauan Pelaksanaan Otonomi Daerah* 53, no. 9 (2017): 1689-99. https://www.researchgate.net/publication/329983428_Desain_Layanan_Publik_Terintegrasi_di_Daerah_Melalui_Whole_Government_Approach_Praktik_di_Surabaya_Pontianak_dan_Denpasar.

⁵⁷ J E Anderson, *Public Policy-Making*. Basic Concepts in Political Science. Holt, Rinehart, and Winston, 1984. <https://books.google.co.id/books?id=F3VHAAAAMAAJ>.

relations. The absence of a regulatory umbrella may cause the lack of integrated regulation in Semarang.

In conclusion, an integrated policy on recording *mahram* relations due to breastfeeding is essential to ensure the fulfillment of children's rights to determine the clarity of lineage or *mahram* line. Socially, the system is expected to strengthen family ties in the cultural system of the existing society. In Islamic law, an integrated information system will help prevent marriages with *mahram* while still paying attention to the right to get the best food at the beginning of a child's life.

Furthermore, the adequate effort is needed to develop an integrated policy to record children who receive breast milk from nursing mothers efficiently. There is a need to establish a system of information on it. The system can be embedded in the population system owned by the government (DUKCAPIL). However, the central government must prepare the legal standing policy umbrella by reviewing government regulations on exclusive breastfeeding while adopting the substance of the MUI Fatwa regarding the occurrence of *mahram* relations due to the practice of sharing breast milk. The study of integrated policies related to *mahram* relations is still wide open from other perspectives, such as law, public policy, and sociology.

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Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective

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Abstract:

The number of child marriages has recently increased significantly, particularly during the Covid-19 pandemic. This is caused by assumption that child marriage will save the child's financial and social security. In fact, child marriage actually causes many problems, especially regarding the abandonment of women's rights in domestic life. This is contrary to the purpose of marriage in Islam which is to create

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harmonious, prosperous and happy household. This study aims to gain an in-depth understanding on the forms of abandonment of women's rights in child marriage cases and how the Islamic family law perspective perceives it. The data were obtained through observation, interviews, and literature searches. The research location was conducted in Palembang City, South Sumatra, Indonesia. Data analysis is carried out with an interpretive approach to give meaning so that it has coherence between one another. The research findings show that the forms of abandonment of women's rights in child marriage cases include three types, namely the abandonment of economic rights, human rights and reproductive rights. The abandonment occurs because of community's legal culture which considers the action as commonplace in the household. Even, the victim of abandonment allowed herself stuck in that position. According to Islamic family law, the abandonment of women's rights in the household is an act of disobedience against justice as well husband's reluctance to the wife. It is a form of violation of the commands of Allah and His Messenger which is also emphasized in the legislation with the existence of both social and criminal sanctions.

Keywords:

Abandonment; Women's Rights; Child Marriage; Islamic Family Law

Abstrak:

Jumlah perkawinan usia anak baru-baru ini mengalami peningkatan signifikan, khususnya selama Covid-19. Ini diakibatkan oleh anggapan bahwa perkawinan usia anak dapat menyelamatkan finansial dan keamanan sosial. Padahal, perkawinan usia anak justru banyak menimbulkan masalah terutama terkait pengabaian hak-hak perempuan dalam kehidupan rumah tangga. Hal demikian bertolak belakang dengan tujuan perkawinan dalam Islam; yaitu mewujudkan rumah tangga yang harmonis, sejahtera dan bahagia. Studi ini bertujuan untuk mendapat pemahaman mendalam tentang bentuk pengabaian hak-hak perempuan serta bagaimana perspektif hukum keluarga Islam memandangnya. Data diperoleh melalui observasi, wawancara, dan penelusuran literatur. Analisis data dilakukan dengan pendekatan

interpretatif untuk memberikan makna terhadap data sehingga didapatkan koherensi antara satu data dengan yang lain. Temuan penelitian menunjukkan bahwa bentuk-bentuk pengabaian terhadap hak perempuan meliputi tiga hal, yakni pengabaian terhadap hak-hak ekonomi, hak asasi dan hak reproduksi. Pengabaian tersebut terjadi karena budaya hukum masyarakat yang menganggap bahwa tindakan semacam itu lumrah terjadi dalam rumah tangga. Bahkan, korban pengabaian sendiri membiarkan diri mereka tetap pada kondisi tersebut. Dalam hukum keluarga Islam, pengabaian terhadap hak-hak perempuan dalam rumah tangga semacam itu merupakan sekaligus *nusyuz* suami terhadap istri. Pengabaian tersebut merupakan bentuk pelanggaran terhadap perintah Allah dan Rasul_Nya yang juga dipertegas dalam aturan perundang-undangan dengan adanya sanksi sosial maupun pidana.

Kata Kunci:

Pengabaian; Hak Perempuan; Perkawinan Usia Anak; Hukum Keluarga Islam

Introduction

Since the emergence of the COVID-19 pandemic, there has been an increase in cases of child marriage. Data from the Department of Women's Empowerment and Child Protection (*Dinas Pemberdayaan Perempuan dan Perlindungan Anak, PPPA*) shows that 13.44% of South Sumatran practice this type of marriage¹ and the result is 11.21% higher than the national average.² One of them is the city of Palembang as the area with the highest number of child marriage cases. This situation indicates that the tradition of child marriage has been considered common in the community. Child marriage is carried out by adolescents between 13 to 19 years old in either the prospective

¹ Muhamad Amin, "Pernikahan Usia Dini Di Sumsel Melonjak Selama Pandemi," 2021, <https://rri.co.id/palembang/metropolitan/1202044/pernikahan-usia-dini-di-sumsel-melonjak-selama-pandemi>.

² Komnas Perempuan, "Melihat Dampak Pandemi COVID-19 Dan Kebijakan PSBB Melalui Kacamata Perempuan Indonesia" (Jakarta, 2021), <https://komnasperempuan.go.id/download-file/496>.

bride or groom³ or even both. This practice is prohibited in the marriage law which has determined a minimum age of 19 years (Article 7 paragraph (2) of Law No. 16 of 2019). The increase, in the proportion of cases presented in earlier data, indicates a contradiction to the rule.⁴

Several studies demonstrate the causes of child marriage. One of which is the family's weak economic factor that leads to the social belief that child marriage can preserve the family's finances.⁵ There is also a parental assumption that marriage is a solution to prevent children from promiscuity.⁶ In addition, the low educational factor makes individuals not consider the consequences. A lack of understanding regarding marriage preparedness requirements in religious beliefs also leads to an immature decision. These factors are believed to trigger an increasing number of child marriages.⁷

Under the present phenomena, upon entering a marriage life, one is confronted with a variety of challenges, such as the inability to meet family economic needs, unearned work troubles, unstabled relations, unreadiness to become a parent at a very young age, and other issues.⁸ These challenges may interfere with psychological stability and mental health among individuals in the family which then lead to uncontrolled situations even violations. They range from economic abandonment, injustice in work distribution, demands on

³ Fathur Rahman Alfa, "Pernikahan Dini Dan Percerain di Indonesia," *JAS: Jurnal Ilmiah Ahwal Syakhshiyah* 1, no. 1 (2019).

⁴ Lilis Suryani and Farida Agus Setiawati, "Peran Dan Kualitas Perkawinan Orang Tua Terhadap Perilaku Anak Usia Dini," *Jurnal Obsesi: Jurnal Pendidikan Anak Usia Dini* 6, no. 2 (2019): 977-88, <https://doi.org/10.31004/obsesi.v6i2.1561>.

⁵ Abdi Fauji Hadiono, "Pernikahan Dini Dalam Perspektif Psikologi Komunikasi," *Jurnal Darussalam; Jurnal Pendidikan, Komunikasi dan Pemikiran Hukum Islam* 9, no. 2 (2018): 385-97.

⁶ Mubasyaroh, "Analisis Faktor Penyebab Pernikahan Dini Dan Dampaknya Bagi Pelakunya," *Yudisia: Jurnal Pemikiran Dan Penelitian Sosial Keagamaan* 7, no. 2 (2016): 385-411.

⁷ Fransiska Novita Eleanora and Andang Sari, "Pernikahan Anak Usia Dini Ditinjau Dari Perspektif Perlindungan Anak," *PROGRESIF: Jurnal Hukum* 14, no. 1 (2020): 14.

⁸ Satih Saidiyah and Very Julianto, "Problem Pernikahan Dan Strategi Penyelesaiannya: Studi Kasus Pada Pasangan Suami Istri Dengan Usia Perkawinan Di Bawah Sepuluh Tahun," *Jurnal Psikologi Undip* 15, no. 2 (2016): 124-33.

women to become the backbone of the family to frequent result in the emergence of violent crimes both physical and mental ones.⁹ Problems that often arise in marital life result in women's disadvantages because they are considered weak parties. They are also considered dependent on their husbands in economic matters.¹⁰ In a case of child marriage, the abandoning of women's rights is particularly a significant concern at the present days.¹¹

The pandemic has increased cases of child marriage because it has dramatically impacted the economic and social life of the community. The government provides a social restriction policy to stop the spread of the Covid-19 outbreak by limiting community activities in economic activities. The long pandemic conditions have caused a decline in economic growth, so unemployment and poverty rates are increasing.¹²

The literature discussing the abandonment of rights focuses on three factors. *First*, the abandonment of women's rights in an intimate relationship which is based on intimate financial violence and resources in the family.¹³ *Second*, the experiences of domestic workers subjected to workplace violence, discrimination, and violation of rights by their employer.¹⁴ Regulation on protecting domestic workers

⁹ Arianus Harefa, "Faktor-Faktor Penyebab Terjadinya Tindak Pidana Kekerasan Dalam Rumah Tangga," *Jurnal Panah Keadilan* 1, no. 1 (2021).

¹⁰ Ayu Setyaningrum and Ridwan Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak Dan Perempuan," *MUQODDIMAH* 3, no. 1 (2019): 11.

¹¹ Sukiati and Ratih Lusiani Bancin, "Perlindungan Perempuan Dan Anak: Studi Akibat Hukum Pengabaian Pencatatan Perkawinan," *Gender Equality: Internasional Journal of Child and Gender Studies* 6, no. 1 (2020): 121-34.

¹² Nurul Aeni, "Pandemi COVID-19: Dampak Kesehatan, Ekonomi, dan Sosial COVID-19 Pandemic: The Health, Economic, and Social Effects," *Jurnal Litbang: Media Informasi Penelitian, Pengembangan dan IPTEK* 17, no. 1 (2021): 18.

¹³ Christina Vogels and Ayesha Scott, "Becoming Unstuck: The Emotional Challenges of Researching Women's Experiences of Intimate Financial," *Women's Studies*, 2020, 1-18, <https://doi.org/10.1080/00497878.2020.1861454>.

¹⁴ Beth Goldblatt, "Social and Economic Rights to Challenge Violence against Women - Examining and Extending Strategies," *South African Journal on Human Rights* 35, no. 2 (2019).

are also well discussed¹⁵. *Third*, the voices of women who have been victims of violence and marginalization.¹⁶ Of the three factors mentioned, there has been no writing that focuses on the forms of abandonment of the rights of women who do child marriage, women's attitudes towards the abandonment they experience and how Islamic family law views such the abandonment.

Islamic teachings contained in the Qur'an emphasize the obligations of the husband which is the right of his wife.¹⁷ The husband is the head of the family and the most responsible person to provide a living for the wife.¹⁸ This rule is confirmed in Sura Al-Baqarah verse 233 which indicates that the husband has to provide for the family as a welfare guarantor. Likewise, An-Nisa verse 34 states that the right of leadership is given because of the husband's obligation to bear the burden as a protector of the family's livelihood. Based on this verse, the act of abandonment of rights is a form of non-compliance with the divine provisions. Abandonment of women's rights in child marriage indicates a decrease in community compliance with the law. As a guideline, the legal position of Islamic families is mandatory to be implemented in the life of a Muslim. Incompliance with these rules can destroy the harmonious order in the household.¹⁹

¹⁵ Antony Jesu Rajan, Vettriselvan, and Divyaranjani, "Human Rights Violations against Rural Women Workers," *International Journal of Management Research and Social Science (IJMRSS)* 6, no. 1 (2019), <https://doi.org/10.30726/ijmrss/v6.i1.2019.61001>.

¹⁶ Subrata Banarjee, "Identifying Factors of Sexual Violence against Women and Protection of Their Rights in Bangladesh," *Aggression and Violent Behavior*, 2020, 8.

¹⁷ Umi Supraptiningsih and Khoirul Bariyyah, "Marriage Settlement among Minority Muslim by Datok Imam Masjid in South Thailand," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 14, no. 2 (2019): 221-35, <https://doi.org/10.19105/al-ihkam.v14i2.2631>.

¹⁸ Ahmad Rajafi, "Reinterpretasi Makna Nafkah dalam Bingkai Islam Nusantara," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 13, no. 1 (2018): 24, <http://orcid.org/0000-0002-8945-0299>.

¹⁹ Ahmad Lonthor, "Moluccas Local Wisdom in the Role of Marriage Arbitrators for Preventing Domestic Violence," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020): 201-23, <http://dx.doi.org/10.19105/al-ihkam.v15i2.3677>.

In several previous studies, abandonment was described as a violation that can lead to divorce lawsuits²⁰. The legitimacy of judicial institutions confirms this condition for parties who feel disadvantaged in their rights to seek for civil and criminal justice.²¹ The abandonment of living in Islam is not justified even if it is on the grounds of the husband's inability in economic matters. The obligation of living imposed in Islam is in accordance with the abilities possessed by the husband as explained in article 80 of *Kompilasi Hukum Islam* (KHI; Islamic Law Compilation).²²

The fact on the high cases of abandonment of women's rights in child marriage in Indonesia shows that the current positive law has not been fully complied with by the community. This is evidenced by the number of complaints from victims and the public regarding the abandonment case to various authorized institutions as data reported by the Women Crisis Center (WCC) Palembang city numbering 39 cases of abandonment of wives.²³ The approach of perspective of Islamic family law will further emphasize how the abandonment of women's rights as a violation of religious teachings is perceived. The adoption of Islamic family law should be more readily accepted as a solution to the abandonment problem because most perpetration of child marriage are from Muslim communities. It is known from reports from judicial institutions that cases of marriage dispensation have continued to increase, especially during the pandemic.²⁴

²⁰ Papreen Nahar and Annemiek Richters, "Suffering of Childless Women in Bangladesh: The Intersection of Social Identities of Gender and Class," *Anthropology & Medicine* 18, no. 2 (2011): 327-38, <http://dx.doi.org/10.1080/13648470.2011.615911>.

²¹ Sundari Anitha, Anupama Roy, and Harshita Yalamarty, "Gender, Migration, and Exclusionary Citizenship Regimes: Conceptualizing Transnational Abandonment of Wives as a Form of Violence Against Women," *Violence Against Women*, 2017, 1-28.

²² BPHN, "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam" (Bphn.Go.Id, 1991).

²³ Suara Sumsel ID, "Tidak Mirip Lesti Kejora, WCC: Wanita Di Palembang Cenderung Tak Cabut Laporan KDRT," n.d., <https://sumsel.suara.com/read/2022/10/19/184257/tidak-mirip-lesti-kejora-wcc-wanita-di-palembang-cenderung-tak-cabut-laporan-kdrt>.

²⁴ Mahkamah Agung RI, "Signifikannya Perkara Dispensasi Kawin Terus Meningkatkan di Masa Pandemi Covid-19," 2022.

Positive law takes this issue seriously by imposing prison sentences for perperation of neglecting women's rights as stipulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence which applies to all citizens of the Republic of Indonesia.²⁵ According to the terminology of Islamic law, the act of imposing sanctions by the government is in line with the concept of *ta'zir*. The concept of *ta'zir* is a punishment for someone who commits a crime and the punishment does not have a certain size.²⁶ Thus, the concept is applied to mistakes whose punishment is not determined by the Shari'ah. The government can therefore determine sanctions as a form of effort to realize the benefit of society.

This research was conducted to complement existing studies on the neglect of women's rights in child marriage from the perspective of Islamic Law. It was conducted empirically to discuss the phenomenon of abandonment of women's rights in child marriage through its types and according to Islamic law.

Method

This study examines women who experience abandonment of rights in child marriage by elaborating on primary data (interview results) in the field and conducting a discussion from the point of view of Islamic family law.²⁷ The selection of issues is based on the increase in cases of child marriage and domestic violence in young couples' households. This study was built on research conducted in Palembang, South Sumatra. The selection of this location was based on the fact that Palembang is the location with the highest number of child marriages. This strengthens the researcher to choose Palembang as the research location.

²⁵ "UU Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," n.d.

²⁶ MH Siregar, "Konsep Ta'zir Dalam Pendekatan Fiqh" (2015).

²⁷ Zulmi Ramdani, Tintin Supriyatin, and Susi Susanti, "Perumusan dan Pengujian Instrumen Alat Ukur Kesabaran Sebagai Bentuk Coping Strategy," *Jurnal Psikologi Islam dan Budaya* 1, no. 2 (October 31, 2018): 97-106, <https://doi.org/10.15575/jpib.v1i2.2955>.

The data used for the baseline analysis were obtained from primary and secondary sources.²⁸ Primary data were obtained through interviews, namely form of statements from respondents. The secondary data, meanwhile, were obtained from a literature study in articles or other sources relevant to this paper.

Data from interview and literature study were then grouped based on the pattern of respondents' opinions about their experience in an abandonment situation.²⁹ The grouping was placed as material ready for further processing. Data analysis, after that, employs an interpretive strategy to provide coherent meanings while facilitating writing. Specifically, interview data were analyzed through restatement, description, and interpretation of the abandonment situation. Restatement is by referring to the interview quotes based on the informant's experience, while the data was described to show the inclination of the respondents' opinions. Meantime, the interpretation process is carried out by understanding the results of observations and interviews, textually and contextually.

Respondents consisted of seven women who experienced neglect of their rights in household life. The selection is based on the criteria of women working in the public sector, getting married at an early age, having children, and having a husband who does not have a permanent job. Statements obtained from respondents became the main basis of analysis.

Discussion and Result

Forms of Abandonment Women's Rights in the Household

National Commission on Anti Violence against Women (*Komisi Nasional Anti Kekerasan Perempuan, KOMNAS Perempuan*) conveyed that in the religious courts, there was a spike in child marriages almost threefold compared to the previous year. Marriage dispensation jumps from around 23 thousand to 64 thousand in the

²⁸ Russell D. Ravert, "‘You’re Only Young Once’: Things College Students Report Doing Now Before It Is Too Late," *Journal of Adolescent Research* 24, no. 3 (May 2009): 376-96, <https://doi.org/10.1177/0743558409334254>.

²⁹ John W Creswell and J David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*, Fifth Edition (Sage Publications, 2018).

Religious Courts in 2020.³⁰ The number is so large that it will provide important information and strengthen the urgency of the research. Child marriage contradicts children's right to education, pleasure, health, and freedom of expression. It is due to many reasons. By getting married, children will be busy with household matters, so they can no longer continue their education and enjoy their teenage year.³¹ In addition, marriage during underage results in poor maternal and reproductive health.³² The dimensions seriously impact the sustainability of their family life. The data on all respondents in this study can be seen in the following table 1.

Table 1. Respondents Demography

No.	Initial	Age	Occupation	Age at Marriage	Number of Children
1.	K	19	Household Servant	14 years old	2
2.	W	19	Vegetable Trader	15 years old	3
3.	N	18	Vegetable Trader	15 years old	2
4.	R	19	Laundress	15 years old	2
5.	KR	23	Night Club Waitress	14 years old	4
6.	H	25	Breakfast Seller	15 years old	2
7.	A	20	Masseus	15 years old	2

Table 1 above is brief information on respondents of this current study. The table describes the respondent's initial names, current ages, occupation, age at marriage and the number of children each the respondent has.

³⁰ Komnas Perempuan, "Perkawinan Anak Merupakan Praktik Berbahaya (Harmful Practice) Yang Menghambat Indonesia Emas 2045," 2021, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-perkawinan-anak-merupakan-praktik-berbahaya-harmful-practice-yang-menghambat-indonesia-emas-2045-3-agustus-2021>.

³¹ Ahmed Abdus Saleh Saleheen et al., "Sociodemographic Factors and Early Marriage among Women in Bangladesh, Ghana and Iraq: An Illustration from Multiple Indicator Cluster Survey" 7 (2021): e07111, <https://doi.org/10.1016/j.heliyon.2021.e07111>.

³² Susan Lee-Rife et al., "What Works to Prevent Child Marriage: A Review of the Evidence," *Studies in Family Planning* 43, no. 4 (2012).

The neglect of women's rights is a form of abandonment of the right to live, defend, and live with other beings.³³ The narrative of the division or polarization of public and private spaces has a significant impact on the occurrence of difficulties and neglect of women's rights.³⁴ Similarly, women's rights are increasingly being voiced due to the neglect of the domestic domain.³⁵ This is concerned with the right to personal freedom, family, work, and welfare.³⁶ Additionally, the right to health impedes women from acquiring complete reproductive health and sexual rights.³⁷ The abandonment of rights is a process of indifference carried out by women regarding the authority in selecting and determining their lives.

The effect can occur through unbalanced marital relations and unfair societal gender norms and relations among women.³⁸ Excessive participation or multiple roles is a form of abandonment of welfare.³⁹ Generally, the COVID-19 pandemic presents a challenge for women.

³³ Cho Cho Zaw Raheema and Myat Min Mohd Omar, "Five Pillars of Islam in Relation to Physical Health, Spiritual Health and Nursing Implications," *IJUM Medical Journal Malaysia* 17, no. 1 (July 18, 2018), <https://doi.org/10.31436/imjm.v17i1.1019>.

³⁴ Lohani Meenakshi and Aburaida Loai, "Women Empowerment: A Key to Sustainable Development," *The Social ION* 6, no. 2 (2017), <https://doi.org/10.5958/2456-7523.2017.00006.4>.

³⁵ Sigoro Atnike, Abby Gina, and Dewi Komalasari, "Portrait of the Impact of the Implementation of Large-Scale Social Distancing during COVID-19 Pandemic towards Women and Marginalized Groups through the Perspective of Intersectional Feminism," *Jurnal Perempuan* 25, no. 4 (2020): 295-308.

³⁶ Anu Manchikanti Gomez, Emily S. Mann, and Vanessa Torres, "'It Would Have Control over Me Instead of Me Having Control': Intrauterine Devices and the Meaning of Reproductive Freedom," *Critical Public Health* 28, no. 2 (March 15, 2018): 190-200, <https://doi.org/10.1080/09581596.2017.1343935>.

³⁷ Majel McGranahan, "Realising Sexual and Reproductive Health and Rights of Adolescent Girls and Young Women Living in Slums in Uganda: A Qualitative Study," *Reproductive Health* 18, no. 125 (2021), <https://doi.org/10.1186/s12978-021-01174-z>.

³⁸ Sylvain Y. M. Some, Christy Pu, and Song-Lih Huang, "Empowerment and Use of Modern Contraceptive Methods among Married Women in Burkina Faso: A Multilevel Analysis," *BMC Public Health* 21, no. 1 (December 2021): 1498, <https://doi.org/10.1186/s12889-021-11541-x>.

³⁹ Nesrin Varol et al., "The Role of Men in Abandonment of Female Genital Mutilation: A Systematic Review," *BMC Public Health* 15, no. 1 (December 2015): 1034, <https://doi.org/10.1186/s12889-015-2373-2>.

Job loss and childcare demands that are only emphasized to women create a high level of psychological stress.⁴⁰ Therefore, the influence of rights neglect provides a narrow space for women in life practices.⁴¹

Based on the finding of this current research, the types of abandonments of women's rights in child married cases are classified into three forms. They are abandonment of economic rights, human rights, and reproductive rights. The following is explanation on each of the three:

The Abandonment of Economic Rights

During the pandemic, the child marriage wives endured tough time, particularly those who were economically in the lowest class. The economic crisis has resulted in the unemployment and homelessness of men, formerly the backbone of the families. This condition forces their wives to work extra, as the following four women confessed:

"Since my husband was laid off, I did not get enough family spending. To buy milk for my child, I had to work as a domestic assistant" (K, 19 years old)

"The Covid pandemic resulted in my husband's shop going bankrupt. To meet the needs of my family, every day I had to leave the house at 03.00 am, shopping for vegetables and fish at the central market and sell around the housing complex" (W, 19 years old)

"My husband lost his job because the office reduced employees. In addition to taking care of my young child, taking care of the house, I work in a laundry that requires me to work from 08:00 am to 05:00 pm" (N, 18 years old)

⁴⁰ Linda L. Carli, "Women, Gender Equality and COVID-19," *Gender in Management: An International Journal* 35, no. 7/8 (September 30, 2020): 647-55, <https://doi.org/10.1108/GM-07-2020-0236>.

⁴¹ Odette van Brummen-Girigori et al., "Father Abandonment and Jealousy: A Study among Women on Curaçao," *Personality and Individual Differences* 96 (July 2016): 181-84, <https://doi.org/10.1016/j.paid.2016.02.048>.

"Our family's economy collapsed due to the pandemic. There is no government assistance in any form. My husband does not have any fixed income. By the end of 2020, I have decided to be a seller, and every day at 04:00 am, I have to prepare herb ingredients and sell them to traders in the market. After returning home, I must carry out the routine household task and care for sick parents." (R, 19 years old).

"Since getting married, my husband has never provided a living. Therefore, to meet my daily needs, I have to work, especially since I have 4 children. I work in a night club." (KR, 23 years old).

"Before the pandemic, my husband worked as a furniture maker. However, since the pandemic, he hadn't worked at all. To meet household needs, I have to work as a breakfast seller every morning". (H, 25 years old)

"My husband worked as a construction worker, but since the pandemic, he has often been unemployed because there are no offers for his job. Therefore, I work as a masseuse. Sometimes, I also go to the market to get paid to peel onions". (A, 20 years old).

The interview data above shows that women experienced stacked jobs to earn economic income during the pandemic. Those wives who initially took care of domestic affairs eventually got additional duties after their husbands were laid off. Additionally, the pandemic has forced them to accept all jobs randomly by not considering their own choice. These women's lack of skills or expertise due to their low education and unemployment have led them to get various jobs that do not require specific expertise. Formerly, they got married at the average age of 16 years or during the school age. Later, they are required to have responsibilities for the family's economic resilience.⁴²

⁴² Lohani Meenakshi and Aburaida Loai, "Women Empowerment: A Key to Sustainable Development" 6, no. 2 (2017), <https://doi.org/10.5958/2456-7523.2017.00006.4>.

At this point, the dual role, as mentioned by an expert, is a form of abandonment of women's welfare.⁴³ The dismissal of husbands from work has forced their wives to maintain the family's economic stability. In this position, these women appear more resilient and responsible for the crisis experienced, as shown by R in her description. The condition of those hit by family economic difficulties imply that women are the backbone of the family.⁴⁴

The findings in this section imply that during the pandemic, the rights of women from child marriage practitioners were neglected. In addition, it is also seen that Indonesian women have extraordinary resilience in an effort to maintain the integrity of their household. In fact, one of factors in the occurrence of child marriage is the illusion on achievement of social and financial security.⁴⁵ However, during the pandemic, the neglect of women's rights actually made their situation worse than before.

The abandonment of economic rights indicates that early marriage of women will further add to the unfair treatment. Injustice in the unbalanced division of labor can burden them extra workload. Hence, the abandonment of women's rights will trigger a rift in the household of young couples and even increase the potential for divorce. The results also show that underaged married wives from the middle and lower economic circles are very vulnerable to domestic violence. It is because economic hardship factors and domestic violence are inseparable.

The Abandonment of Human Rights

Human rights are based on the universality concept which states that everyone has equal rights without discrimination. Furthermore, the notion of the indivisible, acknowledgment, and interdependence of multiple rights encompass the fulfillment of civil, political, economic, social, and cultural rights. In this context, human

⁴³ Dwi Edi Wibowo, "Peran Ganda Perempuan Dan Kesetaraan Gender," *MUWÂZÂH* 3, no. 1 (2011): 356-64.

⁴⁴ Sri Fadilah, "Kesetaraan Gender: Fenomena Pergeseran Peran Ekonomi Wanita Dari Tulang Rusuk Menjadi Tulang Punggung," *Mitra Gender (Jurnal Gender dan Anak)* 1, no. 1 (2018): 18-26.

⁴⁵ Siti Nurul Khaerani, "Faktor Ekonomi dalam Pernikahan Dini pada Masyarakat Sasak Lombok," *Qawwaw* 13, no 1(2019): 1-13.

rights are concerned with equal and non-discriminatory treatment. Underaged marriage wives tend to lose their right to education and are vulnerable to physical and psychological violence. This is as stated by four respondents during interviews.

"I did not finish elementary school because of parental economic factors. As a result, I got unregistered marriage at a very young age. During this pandemic, my husband did not have a job, and when I asked for money to buy household needs, we often argued each other hard. I got harsh words even once slapped" (K, 19 Years old)

"I went to junior high school but at the age of 15, in the 10th grade, I was dismissed because I often did not attend the class. Finally, I decided to get married. The desire to maintain the integrity of the household and the feeling of shame when divorced make me endure working to earn money, even though I often get abusive treatment from my husband" (W, 19 Years old)

"I got married when I was 15 because I did not continue my education after finishing junior high school. With the low education background, I can only work as a worker in the laundry. Much workload makes me often tired, and the relationship with my husband is increasingly tense. Therefore, I often make conflicts with him who is not currently working. It is this conflict that often results in him uttering inappropriate words" (N, 18 Years old)

"The economic difficulties I experienced as a child resulted in my early marriage to reduce the burden on parents, even though my life did not get better. During the pandemic, my husband lost his permanent job. My parents are sick and need treatment. It resulted in an economic problem, and I had to work for a living. However, my unemployed husband is often angry when I am late to return home" (R, 19 Years old)

"I got married at the age of 14 because my parents could not afford to continue my education. I did not even finish elementary school. My husband often used violence and said rude things to me, even it's been a year since he left me physically. He never gave me and our

child a living, so I had to work at a nightclub. We are not divorced yet, because we only got unregistered married (sirri) so I have difficulties in filing a divorce lawsuit. To deal with administration related to our marriage, I have no money.” (KR, 23 years old).

“I did an unregistered (sirri) married at the age of 15 years. I didn't continue my education because my parents couldn't afford the tuituin so I only finished my elementary school. Since the beginning of our marriage, my husband had often abused me so we had divorced. However, I was ashamed of my status as a widow, so we reconciled. My husband's habit of being rude to me continues, especially since he didn't have a job during the pandemic. Therefore, I have to work as a breakfast seller every morning to meet household needs.” (H, 25 years old).

“I come from a poor family so I only finished elementary school. I got unregistered (siri) married at the age of 15 to reduce the burden of my family. However, my husband often used violence against me, especially since he was often unemployed during the pandemic. In order to meet the needs of my family I have to work as a masseuse.” (A, 20 years old).

Physical violence against women is an intense action where men assert power and control to cause pain.⁴⁶ Interview descriptions indicate that the 15-year-old woman is more susceptible to physical violence, including slapping and abusive treatment. Data from the Ministry of Women 's Empowerment and Child Protection shows that the increasing workload on women, the double burden of being a wife and mothers, and online teaching at home have resulted in higher violence against women during the pandemic.⁴⁷

The violence experienced by the seven informants was also influenced by their low educational factors and low-income family history. In this case, there is a significant relationship between the

⁴⁶ Shireen Lateef, “Wife Abuse Among Indo-Fijians 1,” in *Sanctions and Sanctuary*, 1st Edition, Cultural Perspectives on the Beating of Wives, 2019.

⁴⁷ Amin, “Pernikahan Usia Dini Di Sumsel Melonjak Selama Pandemi.”

education level of the victims and the violence experienced.⁴⁸ Low education makes it difficult to get a job with a decent income. It can even cause unemployment, especially during the pandemic. This is the common cause of economic crisis in the household and the economic crisis has led to frequent occurrence of violence against women. Furthermore, marriage at the child's age does not reflect physical and scientific maturity.⁴⁹

Psychological violence, furthermore, causes loss of confidence and helplessness or inability to defend oneself.⁵⁰ This is like what happened to several respondents who experienced feelings of loneliness, fear of the future, and felt unable to continue their life well. Women themselves cannot stop the double burden in physical and psychological violence they suffer because of internal factors. Those include feelings of shame when they want a divorce,⁵¹ harsh comments from men, pressure from the family, and the likes. The occurrence of domestic violence was also due to the unpreparedness of mental health and childish psychology of the couple.⁵² Consequently, the violence resulted in impairment of women's quality life and the risk of psychological violence ranging from depression to unwantedness⁵³.

⁴⁸ Ogadimma Arisukwu, "Perception of Domestic Violence among Rural Women in Kuje," *Heliyon* 7 (2021): e06303, <https://doi.org/10.1016/j.heliyon.2021.e06303>.

⁴⁹ Ajwang Warri, "Child Marriages, Child Protection and Sustainable Development in Kenya," *African Journal of Reproductive Health* 23, no. 2 (2019): 121-33, <https://www.jstor.org/stable/26772609>.

⁵⁰ Ramesh Adhikari, "Child Marriage and Physical Violence: Results from a Nationally Representative Study in Nepal," *Journal Of Health Promotion* 6 (2018).

⁵¹ Sofia Strid, Runa Baianstovu, and Jan-Magnus Enelo, "Inequalities, Isolation, and Intersectionality: A Quantitative Study of Honour-Based Violence among Girls and Boys in Metropolitan Sweden," *Women's Studies International Forum* 88 (2021), <https://doi.org/10.1016/j.wsif.2021.102518>.

⁵² Gimba Victor Kyari and Joseph Ayodele, "The Socio-Economic Effect of Early Marriage in North Western Nigeria," *Mediterranean Journal of Social Sciences* 5, no. 14 (2014): 11.

⁵³ Behice Han Almiş, Funda Gümüştas, and Emel Koyuncu Kütük, "Effects of Domestic Violence Against Women on Mental Health of Women and Children," *Psiikiyatride Güncel Yaklaşımlar-Current Approaches in Psychiatry* 12, no. 2 (2020): 232-42, <https://doi.org/10.18863/pgy.567635>.

The Abandonment of Reproductive Rights

Article 72 of the Health Law regulates reproductive rights, including healthy, safe, and freedom from coercion and violence. In addition, it also guarantees the right to determine readiness and desire for sexual life and pregnancy.⁵⁴ Meanwhile, the results of the interviews below show a disregard for women's reproductive rights.

"After marriage, even though I was very young, I immediately became pregnant without thinking about my physical and economic readiness. To my knowledge, married women do have to get pregnant and have children. I do not have a BPJS (health insurance) card because I am afraid that the monthly dues will not be paid" (W, 19 Years old)

"I had a child at 15 and gave birth to three. I do not practice birth control because I am always busy and have no time to go to a midwife. Furthermore, I do not have BPJS because there is insufficient income to pay monthly costs." (K, 19 Years Old)

"I gave birth at the age of 16 after 1 (one) year of marriage, and I had a miscarriage in early 2021 due to exhaustion during the day. But at that time, I did not realize I was pregnant." (N, 18 Years Old)

"I have two children aged 2.5 and 1.5 years, and the second child was born during the pandemic. I continue to trade on the market even though my pregnancy has reached the age of 8 (eight) months. There is a sense of worry when in the market. However, the demands of economic needs and the cost of giving birth require me to keep making money" (R, 19 Years old)

"I got married at the age of 14. Shortly after marriage, I became pregnant. I now have 4 children. The birth spacing between my children is not too far." (KR, 23 years old).

⁵⁴ Margaret Burnett, "A History of Abortion in Canada: The Quest for Women's Reproductive Rights," *Journal of Obstetrics and Gynaecology Canada* 41 (December 2019): S293-95, <https://doi.org/10.1016/j.jogc.2019.08.011>.

"I got married at 15 years old. I got pregnant not long after the wedding. I currently have 2 children. After I got married I didn't use birth control because I was afraid that I would be considered infertile. It is common in society that if someone married then she does not get pregnant, then she is considered infertile." (H, 25 years old).

"I got pregnant at the age of 15, not long after I got married. I have 2 children. The distance between the first and second pregnancies is very close, which is less than one year." (A, 20 years old).

Child marriage has had an impact on women's reproductive problems. According to the seven women, the young age marriage impacts the abandonment of their reproductive rights. This is mainly clear at the statement like; "I do not have birth control." Women reproductive problems mainly caused the fall in the family's financial ability that avoid them to purchase contraception instruments. In addition, another informant stated, "I do not have time to go to the midwife." This statement implied that the main concern is inability to pay medical fee or insurance in addition to abundant workload that give them no space to access medical service like contraception. An absence of contraception resulted in unplanned pregnancies, making the family more economically degraded. Above all, the economy is the main factor behind the lack of health insurance to cover health costs. Additionally, health insurance does not get much attention because of low knowledge.

Lack of knowledge about reproductive health has created obstacles for women to achieve full reproductive health and sexual rights.⁵⁵ They have no idea that pregnancy at a young age increases the risk of medical complications like bleeding, miscarriage, and even premature pregnancy and death because the body's anatomy is not ready for the process of conceiving to giving birth. The lack of communication with parents and poor understanding about reproductive health from the school also trigger this phenomenon. Lack of knowledge as well as physical and mental unpreparedness

⁵⁵ McGranahan, "Realising Sexual and Reproductive Health and Rights of Adolescent Girls and Young Women Living in Slums in Uganda: A Qualitative Study."

experienced by the seven women furthermore result in pregnancies with short intervals and even unwanted pregnancies. This situation makes them unable to carry out normal social functions. The absence of commitment to reproductive health has also led to sexual abuse.⁵⁶ One of them is violence against women through sexual activities that are unpleasant for them.

Islamic Law through *Kompilasi Hukum Islam* (KHI; Compilation of Islamic Law) in Viewing Abandonment in Women's Right

Women's role as the backbone or breadwinner of the family is perceived an abandonment of their economic rights. It is proved by the shift of responsibility in bearing the household economy from husband to wife. In Islam, marriage is an inner bond between a man and a woman to form a *sakinah* (harmony) household based on *mawaddah warahmah* (love and affection). One way of building household harmony is the implementation of rights and obligations between members. Household harmony will not be achieved without the awareness and care of each individual.⁵⁷

The obligation of husband to fulfill material need of wife is the provision of legal subsistence which is mandatory. These obligations are in the form of proper food, clothing, and housing. This rule is stated in article 80, paragraph 4, and article 81, paragraphs 1, 2, and 3 *Kompilasi Hukum Islam* (KHI). Based on the provisions in these articles, the abandonment of women's rights is a form of violation. This violation's impact can lead to filing lawsuits against husbands through religious court institutions.⁵⁸

⁵⁶ Majel McGranahan, "Realising Sexual and Reproductive Health and Rights of Adolescent Girls and Young Women Living in Slums in Uganda: A Qualitative Study," *Reproductive Health* 18, no. 125 (2021), <https://doi.org/10.1186/s12978-021-01174-z>.

⁵⁷ Haris Hidayatulloh, "Hak Dan Kewajiban Suami Istri Dalam Al-Qur'an," *Jurnal Hukum Keluarga Islam* 4, no. 2 (2019): 143-65.

⁵⁸ Sarah Brayne, "Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment," *American Sociological Review*, 2014, 1-25, <https://doi.org/10.1177/0003122414530398>.

In domestic life, women have the right for equal treatment with a balanced position with the husband.⁵⁹ However, some women experienced the abandonment of human rights, such as the right to education and safety from any physical and psychological violent treatment. The Compilation of Islamic Law confirms this in the article 79, paragraph 1, concerning equality of rights and position of husband and wife in the household and social life. In addition, article 80, paragraph 2, states that the husband must protect the wife and provide education and learning opportunities to obtain valuable and beneficial knowledge for religion, society, and the nation. Opportunities should be created for the wife to learn independently by reading books or by giving him permission to spend time studying outside through Islamic discussions.⁶⁰

On the other hand, the attainment of a good physical, mental, spiritual, and social condition concerning the reproduction system, function, and process will be hindered when women cannot access their reproductive rights. Additionally, women with undeveloped reproductive organs can become pregnant in early marriage cases.⁶¹ In fact, they should be independent to determine their physical and psychological readiness to become pregnant and the number of pregnancies according to their health and choice.⁶² They should also be protected from the possibility of unwanted pregnancies to prevent abortions that can endanger their safety and reproductive health. Article 80 of *Kompilasi Hukum Islam* (KHI) emphasizes that even though a husband is a guardian in the family, the wife should decide essential matters for the household, such as birth planning, child education, child care and maintenance, housing and so on.⁶³

⁵⁹ Amiur Nurudin and Azhari Tarigan, *Hukum Perdata Islam Di Indonesia*. (Jakarta: Prenada Media Grup, 2016).

⁶⁰ Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2003).

⁶¹ Ani Purwanti and Tridewiyanti Kunthi, *Stop Perkawinan Anak Dan Penghapusan Kekerasan Seksual Bagi Perempuan & Anak* (Thafa Media., 2019).

⁶² Deborah Ottenheimer et al., "Physician Complicity in Human Rights Violations: Involuntary Sterilization among Women from Mexico and Central America Seeking Asylum in the United States," *Journal of Forensic and Legal Medicine* 89 (July 2022): 102358, <https://doi.org/10.1016/j.jflm.2022.102358>.

⁶³ BPHN, "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam."

Indonesia laws and regulations also explicitly state that acts of domestic violence are a form of crime in the marriage that can be given criminal sanctions as stipulated in the Law on the Elimination of Domestic Violence (Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga, UUPKDRT) articles 44-53 of Law No. 23 of 2004. Article 5 of the Law on PKDRT states that domestic violence includes physical violence, psychological violence, sexual violence, and abandonment of the household (Undang-Undang Penghapusan Kekerasan dalam Rumah Tangga, UUPKDRT).⁶⁴ Physical violence is an act that can cause pain, fall ill, or be seriously injured (article 6 UUPKDRT). The informants (K., W., KR., H and A) in this study experienced physical violence by being slapped and mistreated by their husbands.

Psychological violence, meanwhile, is an act that can cause fear, loss of self-confidence, loss of ability to act, feeling helplessness, and/or severe psychological suffering in a person (Article 7 UUPKDRT).⁶⁵ All informants (K., W., N., R., KR., H and A) experienced psychological violence from their husbands. The victim received psychological violence, such as harsh and inappropriate words, and was often scolded. This violence causes fear, shame, loss of confidence, and helplessness.

All informants (K., W., N., R., KR., H and A) experienced economic abandonment. Their husbands have lost their jobs due to the pandemic, so they cannot provide a living for their families. This condition forced the informants to earn a living to meet their daily needs. The responsibility for maintenance lies with the husband instead of wife, so this condition puts them as the victims of economic abandonment in this case (Article 80, KHI).⁶⁶

In line with the Qur'an's commands in Q.S An-Nisa: 19 and the *Kompilasi Hukum Islam*, the husband is obliged to get along well with his wife in domestic life. *Kompilasi Hukum Islam* implicitly prohibits committing violence in any form in domestic life. It also provides

⁶⁴ JDIK BPH RI, "Undang-Undang (UU) No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," 2004, <https://peraturan.bpk.go.id/Home/Details/40597/uu-no-23-tahun-2004>.

⁶⁵ JDIK BPH RI.

⁶⁶ BPHN, "Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 Tentang Penyebarluasan Kompilasi Hukum Islam."

strict rules in article 116 concerning acts of violence in any form that can be used as a reason to file for divorce.⁶⁷ Islamic Law Compilation provides detailed rules regarding the rights of wives in domestic life. The abandonment of these rights is categorized as a crime regulated by the law on PKDRT.

Conclusion

Child marriage causes the abandonment of economic, basic human, and reproductive rights for women, even though it aimed for attainment of social and financial security. The abandonment of rights experienced by informants is all forms of domestic violence that they suffer and can be subject to criminal sanction. This situation has only gotten worse since the pandemic. Underage married women endured heavy burdens and suffering including losing the opportunity to live their desired life. However, they have tremendous resilience to maintain the integrity of their households. The use of the concept of rights in this paper has enabled a fundamental understanding of the neglect that occurs to underaged married women. They really need more attention, primarily related to fulfilling the rights of all human beings. Ignoring women's rights in the household according to an Islamic perspective is an act of husband's *nusyuz* towards his wife. In fact, a husband has an obligation to protect his wife and provide everything necessary for household life (a living, cloth and a place to live) according to his means. Such neglect is a form of violation of the commands of Allah and His Messenger.

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Muslim Youth Under Sharia Regime in Aceh: From Accommodation to Resistance

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Abstract:

In the context of shari'a implementation in Aceh, there has been resistance among young people wanting freedom and openness in public space with its modernity values. This study aims at investigating the responses of Aceh's young people to the implementation of Sharia in Aceh and how it implies for the Sharia law enforcement in the region. This is a socio-legal research relying on interviews and focused-group discussions as data collection methods. Respondents consist of young

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people aged 20-25. This research finds out that there has been a normalization of sharia in the Acehnese society with young people tending to accept sharia in Islamic tenets, propagation, attires, economic system, and penal system. Those who were born after or a while before sharia was implemented for the first time tend to get used to the sharia and consider it a part of their normal life. Their responses vary, from accommodation, adaptation, compromise to resistance. The resistance leads to the agency and creating a counterspace as their comfort zone to express creativity. In turn, this religiosity model contributes to sharia's moderatization in Aceh. Therefore, there is a need for the Aceh local government to maintain and develop spaces for young people to express creativity while maintaining sharia as a part of their lives.

Keywords:

Aceh; Sharia; Accommodation; Resistance; Agency

Abstrak

Dalam konteks implementasi syariah di Aceh, muncul resistensi di kalangan anak muda yang menginginkan kebebasan dan keterbukaan di ruang publik dengan nilai-nilai modernitasnya. Penelitian ini bertujuan untuk mengetahui respon anak muda Aceh terhadap penerapan syariah di Aceh dan bagaimana dampaknya terhadap penegakan syariah di wilayah tersebut. Ini adalah penelitian sosio-legal dengan wawancara mendalam dan *focused-group discussion* sebagai metode pengumpulan data. Responden terdiri dari anak muda berusia antara 20-25 tahun. Penelitian ini menemukan bahwa telah terjadi normalisasi syariah di masyarakat Aceh dengan kecenderungan generasi muda menerima syariah pada aspek ajaran Islam, dakwah, pakaian, sistem ekonomi, dan sistem hukum. Mereka yang lahir setelah atau beberapa saat sebelum syariah diterapkan pertama kali cenderung terbiasa dengan syariah dan menganggapnya sebagai bagian dari kehidupan normal. Namun begitu, respons anak muda Aceh terbilang beragam, mulai dari akomodasi, adaptasi, dan kompromi hingga resistensi. Resistensi tersebut mengarah pada agensi dan penciptaan *counterspace* sebagai zona nyaman bagi anak muda untuk mengekspresikan kreativitas. Pada gilirannya,

ekspresi religiusitas ini berkontribusi terhadap moderasi syariah di Aceh. Oleh karena itu, Pemda Aceh perlu memelihara dan mengembangkan ruang bagi generasi muda untuk berkreasi dengan tetap menjaga syariah sebagai bagian dalam kehidupan mereka.

Kata Kunci:

Aceh; Syariat Islam; Akomodasi; Resistensi; Agensi

Introduction

Amid support for the sharia in Aceh, young people ideally have a more critical response. Theoretically, their religious orientation is highly influenced by social and cultural environment around them. Some of their orientations are related to family, economy, education, politics, laws, friendship, entertainment, gender, sexuality, consumerism, and sports.¹ Like other youths, Aceh young people live in a modern environment with its free, open, and glamorous nature. The western lifestyle, as well as the Korean one, has become influential among them. However, such a lifestyle is also influenced by other factors, such as local values, education, multiculturalism, and global politics. Through social media, young people access information, modern and religious ideological persuasion as well as promotion. These all significantly contribute to the development of youths' attitudes.²

The youths' lifestyles, such as hanging out in coffee shops, skateboarding, dancing, surfing, graffiti painting and vaping,³ become more interesting amidst the sharia regime, which is often considered as a part of conservatism. At the same time, those lifestyles tend to be

¹ James A. Beckford, "Preface," in *Religion and Youth*, ed. Sylvia Collins-Mayo and Pink Dandelion (Ashgate Publishing, Ltd., 2010), xxiii; Nicola Madge, Peter Hemming, and Kevin Stenson, *Youth on Religion: The Development, Negotiation and Impact of Faith and Non-Faith Identity* (Routledge, 2014).

² Maghfur Ahmad, "Indonesian Muslim Youth and the Discourse on the Caliphate System, Islamic State and Sharia-Based Regional Regulations," *RELIGIA*, April 14, 2021, 79-99, <https://doi.org/10.28918/religia.v24i1.4191>.

³ "In Between - Youth Living under the Sharia Law," Thomas Cristofolletti, 2016, <https://www.thomascristofolletti.com/banda-aceh-youth-under-sharia>.

incompatible with the sharia.⁴ Consequently, young people face limitations in the name of sharia. If two young people plan to meet, they will choose a public place, such as a coffee shop, and have non-alcoholic beverages to avoid problems with the sharia police.⁵ This is among the contradictions between the modern lifestyles and sharia faced by young people in Aceh.

Since Aceh was determined to be the only province to implement sharia in a broader sense, Aceh has attracted scholars from various disciplines to be their object of study. These scholars include those from legal, political, and social sciences. Academic studies have continuously been conducted even after the two decades since the sharia was firstly formalized. Among the focus of those studies are related to sharia and politics;⁶ sharia in the context of legal pluralism;⁷ economy;⁸ the impacts of sharia on vulnerable and minority groups, such as non-Muslims and women;⁹ the implementation of Islamic

⁴ Abdul Manan, "Acceptance of the Implementation of Islamic Sharia Laws in West Aceh, Indonesia," *KnE Social Sciences*, 2020, 615–27.

⁵ Ana Salva, "Aceh, Indonesia: When Dating Meets Sharia Law," July 24, 2019, <https://thediplomat.com/2019/07/aceh-indonesia-when-dating-meets-sharia-law/>.

⁶ Moch Nur Ichwan, "The Politics of Shari'atization: Central Governmental and Regional Discourses of Shari'a Implementation in Aceh," *Islamic Law in Modern Indonesia*, Harvard: Islamic Legal Studies Program, 2007; Michelle Ann Miller, "The Nanggroe Aceh Darussalam Law: A Serious Response to Acehese Separatism?," *Asian Ethnicity* 5, no. 3 (2004): 333–51; Arskal Salim and Azyumardi Azra, *Shari'a and Politics in Modern Indonesia* (Institute of Southeast Asian Studies, 2003).

⁷ Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2013); Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism* (Edinburgh University Press, 2015); Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 426–49.

⁸ Bedjo Santoso Kadri, "Gold Currency Model in Aceh", *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, 12 (2), 2020, pp.207- 234.

⁹ Ali Abubakar, "Kedudukan Non-Muslim Dalam Qanun Jinayat," *Banda Aceh, Aceh: Dinas Syariat Islam Aceh Dan CV. Rumoh Cetak*, 2020; Dina Afrianty, *Women and Sharia Law in Northern Indonesia: Local Women's NGOs and the Reform of Islamic Law in Aceh* (Routledge, 2015); Muhammad Ansor and Yaser Amri, "Being Christians in the Acehese Way: Illiberal Citizenship and Women's Agency in the Islamic Public Sphere," *Journal of Indonesian Islam* 14, no. 1 (2020): 77–112; Abdul Halim, "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh," *Human Rights Review* 23, no. 2 (2022): 265–88; Al Makin, "Islamic Acehese Identity, Sharia, and Christianization Rumor: A Study of the Narratives of the Attack on the

criminal law;¹⁰ as well as the relationship between sharia and social, cultural, and economic aspects.¹¹ However, one aspect has been understudied, which is the response of the young generation to sharia. They are likely to have different perspectives about sharia than their older generation. This group has a significant influence on society but is often neglected. This section briefly shows the maps of previous studies and the gaps in them to justify the significance of this currently particular study.

Another issue that often comes up pertaining to sharia implementation is how sharia treats women¹² and minority groups, which in this case are non-Muslims. More or less similar finding is also discussed by Ansor and Amri in their study of non-Muslim women in Aceh. Their study reveals that non-Muslim women demonstrate dynamic agency during their lives under sharia.¹³

Bethel Church in Penauyong Banda Aceh," *Journal of Indonesian Islam* 10, no. 1 (2016): 1-36; Ma Milallos and R. Theresa, "Muslim Veil as Politics: Political Autonomy, Women and Syariah Islam in Aceh," *Contemporary Islam* 1, no. 3 (2007): 289-301.

¹⁰ Khamami Zada, "Pemberlakuan Hukum Jinayah Di Aceh Dan Kelantan" (Jakarta, Graduate School, UIN Syarif Hidayatullah, 2014). Mizaj Iskandar et al., "From the Public Space to the Prison Space: Regulation Polemic and the Implementation of Caning Law in Aceh," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (July 12, 2022): 216-41, <https://doi.org/10.19105/al-lhkam.v17i1.5646>;

¹¹ R. Michael Feener, "Social Engineering through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh," *Islamic Law and Society* 19, no. 3 (2012): 275-311; R. Michael Feener, *Shari'a and Social Engineering: The Implementation of Islamic Law in Contemporary Aceh, Indonesia* (OUP Oxford, 2013); Hary Abdul Hakim et al., "The Islamic Law within The Indonesian Legal System) A Case Study of Islamic Sharia Law in Aceh," *TSAQAFAH* 17, no. 2 (2022); Reza Idria, "Cultural Resistance to Shariatism in Aceh," *Regime Change, Democracy and Islam: The Case of Indonesia*, 2013, 180-201; Michelle Ann Miller, "The Role of Islamic Law (Sharia) in Post-Tsunami Reconstruction," *Post-Disaster Reconstruction: Lessons from Aceh*, 2010, 29-60; Mahdi Syahbandir et al., "State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/26200>.

¹² Afrianty, *Women and Sharia Law in Northern Indonesia*; Afrianty; Ansor and Amri, "Being Christians in the Acehese Way"; Milallos and Theresa, "Muslim Veil as Politics."

¹³ Ansor and Amri, "Being Christians in the Acehese Way"; Halim, "Non-Muslims in the *Qanun* Jinayat and the Choice of Law in Sharia Courts in Aceh"; Makin, "Islamic Acehese Identity, Sharia, and Christianization Rumor"; Safrilsyah Safrilsyah, "Non-Muslim under the Regulation of Islamic Law in Aceh Province," 2012.

Nevertheless, the limitation posed by sharia does not always limit women's movement. Afrianty, for example, found that amid such limitations, women in Aceh have been able to play their roles in the democratization and Islamization of society through the establishment of women-based civil society organizations. Therefore, sharia has not prevented the Aceh women from playing their role in public spaces.¹⁴

In this study, negotiation and agency are likely to be found during the sharia implementation. The significant role of youth in Indonesia is in their status as key actors in economic and social changes. A study by Naafs and White on Indonesian youths identifies three roles of this group: the future generation, the transitional generation, and culture creators and consumers.¹⁵ Regarding culture, the youths are likely to be influenced by globalization. Global cultures and consumerism are parts of globalization. Among the young Indonesian generation, at least two aspects influence their lifestyles and identities: consumerism and Islamism.¹⁶ These two generate a unique feature of lifestyles and cultural hybridity among young people.¹⁷

Furthermore, the study of religiosity among youth in the contemporary world is not new. Previous studies on the trend of piety among the youths are related to the born-again Muslim phenomenon,¹⁸ *hijrah*,¹⁹ and alike. Such phenomena are mostly related to young people's perspectives on sharia. Ihsan Yilmaz in Australia conducts a specific study on young people's perspective of sharia. He

¹⁴ Afrianty, *Women and Sharia Law in Northern Indonesia*.

¹⁵ Suzanne Naafs and Ben White, "Intermediate Generations: Reflections on Indonesian Youth Studies," *The Asia Pacific Journal of Anthropology* 13, no. 1 (February 1, 2012): 3-20, <https://doi.org/10.1080/14442213.2012.645796>.

¹⁶ Naafs and White, 13.

¹⁷ Pam Nilan, "The Relevance of Youth Culture of Devout Muslim Youth in Indonesia," in *Global Youth?* (Routledge, 2006), 103-22.

¹⁸ Amélie Blom, "Emotions and the Micro-Foundations of Religious Activism: The Bitter-Sweet Experiences of 'Born-Again' Muslims in Pakistan," *The Indian Economic & Social History Review* 54, no. 1 (January 1, 2017): 123-45, <https://doi.org/10.1177/0019464616683473>.

¹⁹ Firly Annisa, "Hijrah Milenial: Antara Kesalehan Dan Populism," *MAARIF Journal* 13, no. 1 (2018): 38-54; Windy Triana et al., *Hijrah: Millenials' Trends of Religiosity in Indonesia* (Jakarta: PPIM UIN Jakarta, 2021).

determines young people as a strategic research object, considering the meeting of religion and plurality during their identity formation in western society.²⁰ Yilmaz classifies two attitudes of young people towards sharia: legal pluralist and Muslim secularist. The legal pluralists see sharia as a legal system that can possibly be implemented in Australia. Meanwhile, Muslim secularists believe that sharia cannot be implemented formally in their country but can be implemented in Muslim-majority countries.²¹

Previous studies on young people in relation with the sharia is still very limited and mostly focused on other countries. Unlike those studies, this research presents discussions about young people in Aceh who were born and grew up under the shadow of sharia and have distinct perspectives. It is an influential aspect of young people's lives but is often considered to limit their expression and activities in public spaces. This paper analyses the accommodation and resistance of Aceh young people born during the formal sharia implementation in Aceh as well as its impact on sharia enforcement. On the one hand, their lives have been limited by the sharia regime. On the other hand, they are faced with free and open modern lifestyles. This paper therefore shows how young people negotiate sharia in their daily lives.

Method

This is a field research employing a socio-legal approach to see how the law is implemented and responded to by society.²² This approach examines the accommodation of young Muslim people towards the formal implementation of sharia and how their response colors the sharia enforcement in Aceh. This fieldwork was conducted in Banda Aceh, a metropolitan area in Aceh with young people adhering pop culture amid the sharia.

²⁰ Ihsan Yilmaz, "Muslim Secularism by Conduct: Attitudes of Young Australian Muslims to Legal Pluralism and Sharia," *Journal of Intercultural Studies* 0, no. 0 (July 25, 2022): 1-15, <https://doi.org/10.1080/07256868.2022.2104826>.

²¹ Yilmaz.

²² Linda Hamilton Krieger, "Socio-Legal Backlash," *Berkeley J. Emp. & Lab. L.* 21 (2000): 476; Annelise Riles, "Comparative Law and Socio-Legal Studies," in *The Oxford Handbook of Comparative Law* (Oxford University Press, 2006); Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Bloomsbury Publishing, 2005).

The primary data is obtained from in-depth interviews and FGD with 50 young Muslim people pursuing music, arts, theatre, sport, environmentalists, and adventurers in Banda Aceh, Sharia Office officials, and academics. These young Muslims aged between 20-25 (when the sharia had just been implemented for the first time in Aceh in 1999). The secondary data is taken from legal documents, such as Law No. 44 of 1999 on the Implementation of Aceh Specialty; Law No. 18 of 2001 on Nangroe Aceh Darussalam Special Autonomy; Law No. 11 of 2006 on Aceh Government; *Qanun* No. 11 of 2002 on the Implementation of Sharia in Field of Islamic Tenets, Worship, and Proselytization; and *Qanun* No. 6 of 2014 on *Jinayat* (Criminal Law).

The data is examined using sociological analysis²³ to show the experience of the young people in accommodating and negotiating the sharia. Some respondents in this study use pseudonyms to protect their privacy based on their requests. The data is taken during the field work in July 2022.

Discussion and Result

Sharia Normalization in Aceh: from Accommodation to Resistance among the Youth

In discussing the perception and experience of sharia, previous studies tend to focus on the initiators and policymakers, which can be considered "senior citizens" in Aceh. It can be said that these people had consciousness when Aceh started to implement sharia formally. However, the current findings showed their experience and perception are relatively different from young people who were born after or while sharia was formalized. This means that these young people have lived during the two decades of the sharia implementation. Their different experiences, in turn, generate distinct perspectives and attitudes towards sharia.

Before further discussion, it is important to explain the context of young people in Aceh. Apart from their existence side by side with sharia, it is important to note that many were unknowledgeable of

²³ Keith Faulks, *Political Sociology: A Critical Introduction* (NYU Press, 2000); Elisabeth S. Clemens, *What Is Political Sociology?* (John Wiley & Sons, 2016); George A. Kourvetaris, *Political Sociology: Structure and Process* (Allyn & Bacon, Incorporated, 1997); James C. Scott, "Everyday Forms of Resistance," in *Everyday Forms of Peasant Resistance* (Routledge, 2016), 3-33.

some common practices before the sharia and *qanuns* promulgation. One of them is related to the obligation of *jilbab* for women. The respondents mentioned that they did not know that Aceh women used to dress without *jilbab*, except after seeing the pictures of the parents in the past.²⁴ One of the respondents said: "women before them (parents), maybe their grandmothers, their mothers or those older than them, did not wear *jilbab* (headscarf)."²⁵ In such a situation, these young Muslims face the fact that they have been restricted by sharia to some extent. Sharia regulations, such as clothing, intersexual relationship, and consumption, have hampered their free, creative, and innovative characters.

Since the promulgation of *Qanun* No. 11 of 2002, Acehnese Muslim women should dress according to Islamic law. This *qanun* even obliges the leaders of various institutions, such as government, education, business, and society, to promote Islamic fashion. This is manifested by *jilbab* for women and covering outfits for men. Regarding social relationships, the *qanun* gives a clear restriction by forbidding activities leading to *khalwat* (a woman being in close proximity with a man unrelated to her by blood or marriage), *ikhtilath* (physical intimacy between an unmarried man and woman), *musahaqah* (lesbianism), *liwath* (homosexuality), and *zina* (adultery). *Qanun* No. 6 of 2014 on *Jinayat* (Criminal) Law regulates *khalwat* (Article 23), *ikhtilath* (Article 25), and *zina* (Article 33). The *qanun* also forbids what is considered sexual deviation, such as *liwath* (Article 63) and *musahaqah* (Article 64).²⁶

Despite the number of restrictions on young people's social interaction made by sharia, this research finds that they accept it. This acceptance cannot be separated from the normalization process.

²⁴ Interview with Dedy, a hip hop artist, 5 July 2022.

²⁵ Interview with Ihdi Karim Makinara, a lecturer at Universitas Islam Negeri Ar-Raniry, 3 July 2022.

²⁶ Salma Salma et al., "The Other Side of the History of the Formulation of Aceh *Jinayat Qanun*," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/21000>; Muhammad Amin Suma, Ridwan Nurdin, and Irfan Khairul Umam, "The Implementation of Shari'a in Aceh: Between the Ideal and Factual Achievements," *AHKAM: Jurnal Ilmu Syariah* 20, no. 1 (June 30, 2020), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/14704>.

Theoretically, normalization is the effort to make a practice as a part of everyday life elements, namely through embedding and instilling the practice into a social context or integration.²⁷ After more than two decades of sharia implementation, what has happened is the normalization of sharia in the society, which has made sharia a living value and part of Aceh people's identity. Moreover, the acceptance of sharia has been influenced by its existence which has become a value in Aceh cultures and customs. This implies that sharia has been an effective tool of social engineering.²⁸

To some extent, sharia formalization has changed the lives of Aceh people. They have adjusted to control their relationship and interaction with the opposite sex in public. *Khalwat* and *ikhtilat* are considered immoral acts; Alcoholic beverages have no longer been a part of their lives. The women have strengthened their Muslim identity with a *jilbab*. It is rare to find a Muslim woman without a *jilbab* in public.

Fatimah, for example, does not feel that she is oppressed by sharia. This is mostly because she was born and grew up in the middle of a Muslim society upholding the sharia. Her family and society see sharia as part of their lives.²⁹ Concerning the *jilbab*, young people in Aceh feel that wearing the *jilbab* (scarf) is a part of their religious consciousness. The respondents of this research maintained that they feel odd to see a woman without a *jilbab* in public. Silvi, a young athlete, said, "it feels odd not to wear a *jilbab* in public. It feels like everybody is looking at me. Going out of my boarding house, even just in its yard, without a *jilbab*, reminded me of the elders around wearing one."³⁰ Even, Aceh people have a critical consciousness to reject the anti-*jilbab* movement. Hamdani stated, "If someone asks Aceh women to take off their *jilbab*, it means war!" The

²⁷ Carl May and Tracy Finch, "Implementing, Embedding, and Integrating Practices: An Outline of Normalization Process Theory," *Sociology* 43, no. 3 (2009): 535-54; Carl R. May et al., "Development of a Theory of Implementation and Integration: Normalization Process Theory," *Implementation Science* 4, no. 1 (May 21, 2009): 29, <https://doi.org/10.1186/1748-5908-4-29>.

²⁸ Feener, "Social Engineering through Shari'a," 309.

²⁹ Interview with Fatimah, a theater artist, 3 July 2022

³⁰ Interview with Silvi, an athlete, 7 July 2022.

women will fight for the *jilbab* because they accept their fates and religious command."³¹

In the middle of a religious society, these young people are used to Islamic cultures. They are accustomed to the prohibition regulated by sharia until they feel that they need to be careful in obeying the rule. They are conscious that sharia in Aceh is controlling them. Mila, for instance, said, "they always remember that they can be raided if caught. When they are caught, they are caught. When they are not, they are not. They need to think that they live in Aceh. Therefore they need to be very careful".³² These young people know they should not do any prohibited acts in their social relationships and interactions.

Another restriction is in art and theatrical performances. As long as the activities consider and maintain Islamic attires, they are not prohibited to express themselves.³³ The provincial government also allows music concerts and women performing in the concert as long as they follow the rules, namely the rules of interactions and fashion.³⁴ During the concert, males and females are separated to prevent *khalwat*. This means that sharia in Aceh limits social interactions that potentially lead to immoral acts.

Majid, an Aceh musician, stated that he does not feel any obstacle in implementing the sharia, as he feels it is a part of his self-consciousness. He further stated: "I do not feel any obstacle with sharia in Aceh. For example, I never wear shorts when I go out. I do not feel this is a formalized regulation, as I have used to wear long pants since my childhood."³⁵ Fatimah explained a similar experience. She said: "In Aceh, we are educated about values and norms. Among other things is that we are not allowed to wear tight outfits and that we should wear *jilbab*. We have been taught about that since our childhood that females should wear *jilbab*".³⁶ These testimonies imply that both Majid and Fatimah do not get bothered with the restriction

³¹ Interview with Hamdani, a Sharia Office official, 4 July 2022.

³² Interview with Mila, a university-based environmentalist and adventurer, 4 July 2022.

³³ Interview with Jeje, an artist, 3 July 2022.

³⁴ Interview with Majid, a musician, 3 July 2022.

³⁵ Interview with Majid, a musician, 3 July 2022

³⁶ Interview with Fatimah, theater artist, 3 July 2022

of social interactions in public spaces, as they feel that those are part of the common practice.

As young people are known as "culture makers and consumers,"³⁷ they need spaces for expression and activities. In facing sharia restrictions formalized by the provincial government of Aceh, at least there are two ways they can take: accommodation or resistance. In this case, accommodation is how individuals conform to and uphold an ideology, which is integrated and socialized into a culture.³⁸ Accommodation, in turn, will generate adaptation and compromise. For example, young people from Theater Rongsokan whose performers are from UIN Ar Raniry students, mostly take the tendency to accommodation by adjusting their performance to the provisions of the sharia.

Even though young people of Aceh accept sharia, they still accommodate it with a distinctive way of adaptation and compromise. This is because some aspects of youth lifestyle cannot be freely expressed in various activities, especially in the aspects of arts and cultures when they strictly consider sharia. For example, in the theatrical performance, Aceh young people adapt and compromise with sharia by making strategies to alter sensitive acts, such as sexual scenes. In such cases, they will use an innuendo by swaying bed curtains. When a woman should show hair for the act, she will wear a wig. If the scenario involve the characters of LGBT, they tend to skip or even omit such scenes.

Fatimah stated: "In our "Putro Neng" performance, we have a sex scene, but we sought a way to do it by swaying the bridal bed curtains."³⁹ Fatimah added:

"If we make a performance where a woman should show hair, then she can wear a wig. Why not? Some acts are considered inappropriate in Aceh, and we will leave them. We often seek ways to make them appropriate and feasibly performed. We

³⁷ Naafs and White, "Intermediate Generations."

³⁸ Leoandra Onnie Rogers and Niobe Way, "Child Development in an Ideological Context: Through the Lens of Resistance and Accommodation," *Child Development Perspectives* 15, no. 4 (2021): 242–48.

³⁹ Interview with Fatimah, a theater artist, 3 July 2022.

consider options A and B. Some parts need careful consideration."⁴⁰

She continued that other theatrical performances need body moves and only males can take off their shirts. On the other hand, female actors should always wear clothes covering their *aurat* (body parts that should be covered according to sharia). If the performance involves a female actor as a prostitute, for instance, she will dress up to look like a prostitute but still cover her *aurat*. She can wear an inner shirt, and so on. However, they cannot do that in all places. Stull adaptation and compromise are needed to avoid the violation of sharia rules.⁴¹

Apart from accommodation, another chosen way by young people is resistance. Theoretically, resistance is a way chosen by individuals, consciously or unconsciously, to reject and oppose an ideology they consider "inhumane" and question social hierarchy.⁴² James Scott introduces the theory of "everyday resistance" to accommodate a resistance without dramatic actions, rebellions, demonstrations, and other extreme behaviors. "Everyday resistance" tends to be quiet, disguised, and unseen. Individuals use this strategy to survive amid repressions, and they see that extreme reactions will be risky.⁴³

Tofa, another informant, stated that in Aceh's case, everyday resistance could be found among the artist community. Some of them feel that there are things that they can no longer do after the sharia is formalized. They compromise to avoid conflicts. This is also because the Aceh people have been exhausted by the prolonged conflict during the Military Operation period.

"In the past, it is difficult (to do things) because of the conflict. We did not feel safe because of the conflict. We feel safe and comfortable now. I think that's the difference. What we have now (sharia) is what we have to pay to make us safe. It is okay,

⁴⁰ Interview with Fatimah, a theater artist, 3 July 2022.

⁴¹ Interview with Fatimah, a theater artist, 3 July 2022.

⁴² Rogers and Way, "Child Development in an Ideological Context."

⁴³ Scott, "Everyday Forms of Resistance."

as long as we can go out, and visit a coffee shop at any time, any hour. In the past, we were limited by curfew. We saw weapons and felt not safe. So, I would say we feel more comfortable now rather than in the past. ".⁴⁴

In the resistance, there is a so-called counterspace. Counterspace is where young people who feel marginalized can be themselves while expressing their truly selves and existence. They do not need others' validation to prove that others are wrong.⁴⁵ This means that counterspace is a safe space for young people to express their creativity. Besides that, everyday resistance can also generate agency. In the context of Aceh young people's response to sharia, the agency is manifested in the form of new creativities as a strategy to express their creativities despite the restriction.

One of the counterspaces for the Aceh young people is social media. As Tofa admitted, social media is a safe place for young people to express their creativity without being restricted by prevailing rules in real life. Besides, they can post any content without their real identities being recognized, including that they are from Aceh.⁴⁶ Using social media becomes one of the strategies enabling young people to go beyond the sharia restrictions. They realized that social media is a space where they can "run away" from the authorities' surveillance, including *Wilayatul Hisbah* or the sharia police.

The Role of Muslim Youth in Acehnisation of Sharia: The Implication on the Sharia Law

The face of Islam shown by the Aceh young Muslim generation reflects a synthesis between sharia and modernity. To some extent, Sharia limits young people's movement and expressions. However, those young people can still express their lifestyles and creativities despite the restriction. This is, then, called "Islamic piety".⁴⁷ Islamic piety refers to the paradox of Muslims' piety with religious restriction on the one hand. On the other hand, this piety

⁴⁴ Interview with Tofa, a graphic designer, 7 July 2022.

⁴⁵ Rogers and Way, "Child Development in an Ideological Context."

⁴⁶ Interview with Tofa, a graphic designer, 7 July 2022.

⁴⁷ Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press, 2012).

enables or gives them a space to innovate and be creative. As a result, Muslims still have freedom, agency, autonomy, and subjectivity as humans. This concept challenges a developed "conventional wisdom". It stated that if a state applies sharia, the restrictions posed by sharia tend to ignore the democratization process,⁴⁸ restrain human rights protection,⁴⁹ oppress freedom and expressions,⁵⁰ subordinate women,⁵¹ discriminate against non-Muslims,⁵² and are incompatible with modernization. This particular current study is empirical evidence challenging that conventional wisdom by proving that sharia, to some extent, does not limit the expression of young people and is not against the values of modernity, such as democracy, human rights, freedom of expression, women's and non-Muslims rights, etc.

Besides, various expressions of Aceh young people in arts, theatrical performances, dance, graphic designs, sports, etc., can be regarded as alternative lifestyles that are relatively different from the western styles. This is in line with the study of van Nieuwkerk finding that the pious lifestyles of 'hijra' celebrities in Egypt can be more acceptable alternatives compared to the ones introduced by western and secular society.⁵³ Van Nieuwkerk argues that in Islamic saloons, people manage Islamic studies forums, proselytization, and philanthropic activities. There, *hijra* celebrities have a chance to "Islamize" their lifestyles.

⁴⁸ Nazih Ayubi, *Political Islam: Religion and Politics in the Arab World* (Routledge, 2003).

⁴⁹ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Routledge, 2018); Ann Elizabeth Mayer, "Universal versus Islamic Human Rights: A Clash of Cultures or Clash with a Construct," *Mich. J. Int'l L.* 15 (1993): 307.

⁵⁰ The Cases of Satanic Verses and Charlie Hebdo Cartoons are often portrayed how Islamic values on freedom of expression have been misinterpreted as if Islam limits the freedom of expression.

⁵¹ Haideh Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* (Zed Books, 1999); Nur Hidayah, "Islamic Law and Women's Rights in Indonesia: A Case of Regional Sharia Legislation," *AHKAM: Jurnal Ilmu Syariah* 19, no. 1 (July 9, 2019), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/11717>.

⁵² Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Ashgate, 2004).

⁵³ Karin van Nieuwkerk, *Performing Piety: Singers and Actors in Egypt's Islamic Revival* (University of Texas Press, 2013).

In the context of Aceh, young people's lifestyle, at a certain level, experience adaptation by maintaining sharia rules. They have a stronger influence from modernity due to religious restrictions. In turn, this has resulted in new expressions that are relatively different from the ones defined by the authorities, such as Sharia Office, and the ones presented by young people from other provinces.

The young people's accommodation, resistance, and agency in the context of sharia reflect how sharia is contextualized and localized in *Serambi Mekkah* (Mecca Verandah, designation for Aceh due to a strong influence of Islam). In general, the contextualization of Islam in Indonesia has become a concern of Indonesian Muslim thinkers.

The contextualization efforts were promoted by Muslim thinkers, such as Abdurrahman Wahid and Nurcholis Madjid. Abdurrahman Wahid, representing the Indonesian Muslim traditionalists, called for the "nativization of Islam" by accommodating local wisdom.⁵⁴ On the other hand, Nurcholish Madjid, representing Muslim modernists, called for "Indonesian and modern Islam".⁵⁵ Both called out the contextualization of Islamic values to be adjusted with the time (historical contextualization) and space (cultural contextualization). This makes Islam compatible with Indonesian values, multiculturalism, and modernity, leading to rationalization, secularization, and even liberalization.

Young people in Aceh have translated the spirit of the contextualization of Islam in Indonesia during the sharia implementation. They maintain their submission substantively to the sharia rules. At the same time, they reject the technical and detailed restrictions of sharia. In this situation, they improvised to maintain their expression, creativity, and innovation by considering sharia limitations. Their expression of Islam and modern, glamorous, and relatively free lifestyle reflect Indonesian Islam's localization and contextualization model in Aceh. They are able to offer a different variant of sharia by challenging the sharia implementation that tends to limit, intimidate, and degrade humanity, as shown by some

⁵⁴ Abdurrahman Wahid, "Pribumisasi Islam," accessed December 3, 2022, <https://gusdur.net/pribumisasi-islam/>.

⁵⁵ Nurcholish Majid, *Islam, kemodernan, dan keindonesiaan* (Mizan, 1987).

Muslim countries, such as Afghanistan, Iran, and Sudan. It can be said that the expression of Islam among Aceh young people, to some extent, contributes to the moderation of sharia implementation in Aceh, which, in turn, strengthens the image of Indonesian Islam as 'Islam with a smiling face'.⁵⁶

Conclusion

For Acehnese Muslim youth, sharia is a part of their normal life. They accept and accommodate the limitations of Islamic tenets, proselytization, fashions, economic and social relationship, and penal law. Even if they seem to hope for free and modern lifestyles, they accommodate sharia by adaptation and compromise. New creativities emerge among the young people as a response to the sharia restrictions. However, some of them also maintain their resistance in silence, disguised and unseen. They avoid dramatic resistance in the form of protests and demonstrations. During the process, they create counter space as a safe and comfortable zone for them to maintain their expressions and creativities. The face of Islam shown by the Aceh young people reflects the synthesis between rigid and orthodox sharia with the value of modernity. Therefore, they can still express their modern lifestyle within the sharia limitations. Their expressions have also contributed to the moderatization of sharia in Aceh.

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⁵⁶ Azyumardi Azra, "Indonesian Islam, Mainstream Muslims and Politics," *Taiwanese and Indonesian Islamic Leaders Exchange Project*, 2006, 1-11.

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Actualization of Moderation in Reasoning at Ma'had Aly Salafiyah Syafi'iyah Sukorejo Situbondo and Its Influence on Istinbâth of Islamic Law

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Abstract:

This research aims to find and analyze the moderation in reasoning developed at Ma'had Aly Sukorejo and its influence on the inference of Islamic law. The data collection methods are interviews, observation, and document study. The results of this study found that the moderation of reasoning at Ma'had Aly Sukorejo permeated the space of *santri's* thinking because they studied and discussed the discipline of *ushul fiqh*, *maqâshid*, and other complementary sciences of *ijtihad* and then applied them in the practice of Islamic law inference (*istinbâth*). Their moderations of reasoning cover: 1). thinking that every *nushûsh al-syarî'ah* connects to its own *maqâshid*, 2). viewing proportionally between the idealistic and realistic points of view, 3). connecting the text with the current context, 4). not fanatical to any certain school(s), and 5). having openness,

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dialogue, and tolerance for differences. This reasoning results that the Islamic law products being flexible, adaptive, and beneficial as seen in the case of dialogue in the Friday sermon and marriage registration.

Keywords:

Moderation in Reasoning, Ma'had Aly Sukorejo, Islamic Law Inference

Abstrak

Artikel ini bertujuan menemukan dan menganalisis nalar moderat yang berkembang di Ma'had Aly Sukorejo dan pengaruhnya dalam menyimpulkan hukum Islam. Metode pengumpulan datanya adalah wawancara, observasi dan studi dokumen. Hasil kajian menunjukkan bahwa nalar moderat di Ma'had Aly Sukorejo meresap dalam ruang pemikiran santri karena mereka mempelajari, mengkaji dan mendiskusikan ilmu ushul fiqh, *maqâshid*, serta ilmu pelengkap *ijtihad* lain kemudian menerapkannya dalam melakukan *istinbâth* terhadap hukum Islam. Moderasi nalar pemikiran mereka tampak dari beberapa hal berikut: 1. Memandang bahwa setiap *nushûsh al-syarî'ah* memiliki *maqâshidnya*, 2. memandang secara proporsional antara idealistis dan realitas, 3. menghubungkan teks dengan konteks kekinian, 4. tidak terikat dengan mazhab tertentu atau multimazhab, dan 5. Bersifat terbuka, dialogis dan toleran terhadap perbedaan. Nalar pemikiran yang demikian menghasilkan hukum Islam yang berkarakter fleksibel, adaptif dan bermuatan *maslahat* seperti tampak dalam ketetapan hukum perihal khutbah Jum'at dialogis dan persyaratan administratif pernikahan.

Kata kunci:

Moderasi Nalar; Ma'had Aly Sukorejo; Pengambilan Kesimpulan dalam Hukum Islam

Introduction

Islamic law or *fiqh* can change and develop according to the needs and differences in certain times and places as long as it is still in line with *maqâshid al-syarî'ah* and correct principles.¹ Among the characteristics of *fiqh*, are flexibility, elasticity, and dynamics², it makes adaptive, easy, and can be implemented according to the context of time, place, and human benefit.³ Muslims, for example, can implement Islamic law in both normal and emergency conditions either in countries with a majority or a Muslim minority. In the context of Indonesia, even though this country has various tribes, ethnicities, customs, traditions, languages, cultures, and religions,⁴ Muslims in various regions can practice Islamic law in their daily lives⁵ both in their relationship with God and their interactions with fellow human beings. This is because Islamic law has a flexible, elastic, and dynamic character that makes it not fierce, stiff and rigid. Instead, it is friendly and in harmony with local traditions and customs as long as it does not conflict with the Qur'an and al-Sunnah.

However, the character of *fiqh* can be chipped and torn apart if *nushûsh al-syarî'ah* is only literally understood. With that sort of paradigm, that *fiqh* turns out to be hard, rigid, and complex. The group that understands *nushûsh al-syarî'ah* literally is called literalism (*al-ḥarfīyyûn*). This pattern of interpretation can trigger radical and fundamental understandings which lead to Islamic law formulation with harsh, difficult, and intolerant of differences in nature. It is mainly because the pattern does not examine the context (*asbâb al-*

¹ Wahbah al-Zuhaylî, *Mawsû'ah al-Fiqh al-Islâmî wa al-Qadhâyâ al-Mu'âshirah*, Juz I (Damaskus: Dâr al-Fikr, 2012), 38; Jâd al-Ḥaq 'Alî Jâd al-Ḥaq, *Murûnah al-Fiqh al-Islâmî* (Kairo: Dâr al-Fârûq, 2005), 69.

² 'Abdu al-Ḥalîm 'Uways, *al-Fiqh al-Islâmî Bayna al-Tathawwur wa al-Tsabât* (Madînah Munawarah: al-Syirkah al-Su'ûdiyyah liabḥâs wa al-Tawsîq, n.d.), 92; Akhmadul Faruq, "al-Pancasila fi al-Mandzûri al-Maqâshidî al-Syar'î: Dirâsah Tahlîliyah," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 215–16, <https://doi.org/10.19105/al-lhkam.v16i1.5027>.

³ Abdu al-Karîm Zîdan, *al-Madkhal li Dirâsah al-Syarî'ah al-Islâmiyah* (Iskandariah: Dâr 'Umar ibn al-Khaththâb, 2001), 67; Shâlih ibn Ghânim al-Sadlân, *al-Qawâ'id al-Fiqhiyah al-Kubrâ wa lâ Tafarra'a 'anhâ* (Riyâdh: Dâr Balnasyah, 1417), 388.

⁴ Ahmad Syafii Maarif (Prologue), *Fikih Kebinekaan* (Bandung: Mizan Pustaka, 2015), 20.

⁵ Abû Ishâq Ibrâhim ibn 'Alî al-Fayrûz Abâdzî al-Syayrâzî, *al-Luma' fi Ushûl al-Fiqh* (Beirut: Dâr al-Ḥadîts al-Kitâbiyah, 2013), 82.

nuzûl and *asbâb al-wurûd*) as well as *maqâshid al-syarî'ah*.⁶ This type of reasoning can eventually lead to an exclusive religious attitude, narrow-minded, *ghuluw* (beyond limits), intolerant, extreme, radical, and even tend to achieve goals by violent means.⁷

The contradiction to that first pattern of mindsets are the liberal one. Liberal groups make 'reasoning' the primary basis for understanding *nushûsh al-syarî'ah*. They free the mind to reason in expressing the meaning or intent of a passage. For them, if there is a contradiction between the benefit (*maslahah* according to their own logical reasoning) and the text, the benefit is put superior for the consideration of reason. They argue that there are no *qath'î al-dalâlah* texts so that all texts can be interpreted. Liberal groups dare to dismantle the *manhaj* (method) of thinking that has been built by classical scholars who are considered irrelevant to today's era. They offer and build new concepts and *manhaj al-fikr* which are considered more relevant.⁸

Both patterns of reasoning show extreme positions which is not justified in Islamic teachings. Islam teaches its adherents to think and behave moderately. Therefore, *nushûsh al-syarî'ah* can be understood correctly and adequately with moderate reasoning so that the correct understanding can be inferred and Islamic law can be formulated with flexible, elastic, dynamic, adaptive, and beneficial characteristics. Among others, this pattern of reasoning is obvious among students of Ma'had Aly Sukorejo. In understanding *nushûsh al-syarî'ah*, they try to integrate between *naql* and *aql*, text and context,

⁶ Ade Dedi Rohayana and Muhammad Jauhari Sofi, "Critique of Radical Religious Paradigm: An Epistemological Analysis from Principles of Islamic Thought," *Indonesian Journal of Islam and Muslim Societies* 11, no. 1 (June 21, 2021): 174–75, <https://doi.org/10.18326/ijims.v11i1.163-184>; Lestari Nurhajati and Adam James Fenton, "Islamist Newspeak: The Use of Arabic Terms as a Form of Cultural Hegemony in Political Communication by Muslim Fundamentalist Groups in Indonesia," *Journal of Indonesian Islam* 14, no. 2 (December 1, 2020): 292, <https://doi.org/10.15642/JIIS.2020.14.2.287-308>.

⁷ Muhammad Nasir and Muhammad Khairul Rijal, "Keeping the Middle Path: Mainstreaming Religious Moderation through Islamic Higher Education Institutions in Indonesia," *Indonesian Journal of Islam and Muslim Societies* 11, no. 2 (December 8, 2021): 232, <https://doi.org/10.18326/ijims.v11i2.213-241>.

⁸ 'Abdu al-Rahîm ibn Shamâyal al-Salamî, *Haqiqah al-Libarâliyah wa Mawqif al-Islâm minhâ* (Jeddah: Markaz al-Ta'shil li Dirâsât wa al-Buhûts, 2009); Shâlih Muhammad al-Damîjî, *Mawqif al-Libarâliyah fi al-Bilâd al-'Arabiyah min Muḥkamât al-Dîn* (Riyâdh: Maktabah al-Mulk, 1433 H), 589, 832.

nushûsh al-syarî'ah and *maqâshid al-syarî'ah*, *maqâshid al-syarî'ah* and *furû'* (fiqh issues),⁹ *kullî* (universal) and *juz'î* (partial),¹⁰ primary and secondary arguments as well as editorial universality and specificity of the situation.¹¹

This is not the only research that examines moderation in the context of Islamic law at the location where this study took place. Abdul Mughits's dissertation entitled *Kritik Nalar Fikih Pesantren: Mengupas Sejarah Sosial-Budaya Dominasi Fikih Mazhab Syafi'i* (Criticism of Fiqh Reasoning at Islamic Boarding School (Exploring the Socio-Cultural History of the Shafi'i School of Fiqh Domination) did the same. He concluded that Ma'had Aly Sukorejo's *istinbât* method is *manhajî* (methodological) by maximizing the theories of *ushul fiqh* and *qawâ'id fiqhiyah*. According to him, the doors of *ijtihad* continue to be open because the problem of Islamic law continues to grow thus requiring *shara'* rules.¹²

Meanwhile, the dissertation of Mufidah Ch. with the title *Pandangan Santri Ma'had Aly Tentang Pengarus-Utamaan Gender di Pesantren Salafiyah Syafi'iyah Sukorejo, Situbondo, Jawa Timur* (Santri Ma'had Aly's View on Gender Mainstreaming at Salafiyah Syafi'iyah Islamic Boarding School Sukorejo, Situbondo, East Java) captured another focus. Her research findings show that the students of Ma'had Aly have similarities in the concepts of gender equality and justice.¹³ Her study emphasized the views of students of Ma'had Aly on gender mainstreaming with all related issues. In the realm of implementation, he found that they have various views polarized on three typologies,

⁹ According to al-Syâthibî there are two conditions that must be met in *ijtihad*, namely: understanding *maqâshid al-syarî'ah* perfectly and establishing Islamic law based on *maqâshid al-syarî'ah* considerations Al-Syâthibî, *al-Muwâfaqât fî Ushûl*, Juz IV, 76.

¹⁰ Most of the explanations of the Qur'an to Islamic law are in the form of *kullî* (universal), if a text is found in the form of *juz'î* (partial) then it is directed at universal values Al-Syâthibî, *al-Muwâfaqât fî Ushûl*, Juz III, 274.

¹¹ Afifuddin Muhajir, *Membangun Nalar Islam Moderat: Kajian Metodologis* (Sukorejo: Tanwirul Afkar, 2018), 25–26.

¹² Abdul Muqhits, "Kritik Nalar Fikih Pesantren: Mengupas Sejarah Sosial-Budaya Dominasi Fikih Mazhab Syafi'i" (Pascasarjana UIN Syarif Hidayatullah Jakarta, 2007), 275.

¹³ Mufidah Ch., "Pandangan Santri Ma'had Aly Tentang Pengarus-Utamaan Gender di Pesantren Salafiyah Syafi'iyah Sukorejo, Situbondo, Jawa Timur" (IAIN Sunan Ampel Surabaya, 2009), 310–17.

namely conservative, moderate and progressive views.¹⁴ Meanwhile, my research is directed to examine the moderation of their thinking.

Third is the dissertation written by Musahadi entitled *Hukum Islam di Pesantren: Studi tentang Elemen Liberal dalam Kajian Fikih di Ma'had Aly Salafiyah Syafi'iyah Sukorejo Situbondo* (Islamic Law in Pesantren: Study of Liberal Elements in the Study of Jurisprudence at Ma'had Aly Salafiyah Syafi'iyah Sukorejo Situbondo). Using Charles Khuzman's theory of Liberal Islam, Musahadi found that Ma'had Aly was colored by liberal elements both in the realm of epistemology and the domain of praxis.¹⁵ The current research is different from those three aforementioned due to its main focus on the moderation of Santri's way of thinking. Therefore, based on the previous research and the background above, the purpose of this paper is to identify and evaluate the moderation in reasoning produced at Ma'had Aly Sukorejo and its impact on the inference of Islamic law.

Method

This paper is the result of empirical, philosophical research using scientific methods that are analytical, logical, conceptual, theoretical, and empirical. This research uses an interdisciplinary approach, namely the Islamic legal philosophy approach, *maqâshid*, and ethnomethodology. The philosophy of Islamic law and *maqâshid* is used to analyze the reasoning pattern that grows in Ma'had Aly Sukorejo while ethnomethodology is to describe and understand the students of Ma'had Aly Sukorejo in their daily life regarding the interaction patterns, ways of thinking, feelings, and ways of communication.¹⁶ This approach emphasizes the character of human behavior that is active, reasoning, and knowledgeable.¹⁷

¹⁴ Mufidah Ch., "Pandangan Santri Ma'had Aly Tentang Pengarus-Utamaan Gender di Pesantren Salafiyah Syafi'iyah Sukorejo, Situbondo, Jawa Timur" (IAIN Sunan Ampel Surabaya, 2009), 310–17.

¹⁵ Musahadi, "Hukum Islam di Pesantren: Studi Tentang Elemen Liberal dalam Kajian Fikih di Ma'had Aly Salafiyah Syafi'iyah Sukorejo Situbondo" (IAIN Walisongo Semarang, 2012).

¹⁶ Wirawan, *Evaluasi Kinerja Sumber Daya Manusia : Teori Aplikasi dan Penelitian* (Jakarta: Salemba Empat, 2007), 157.

¹⁷ William Outhwaite, *The Blackwell Dictionary of Modern Social Thought*, Translated by Tri Wibowo B. S. (Jakarta: Prenada Media, 2008), 284, <https://doi.org/10.1002/9780470999028>.

Ethnomethodological attention focuses on the daily practices carried out by Ma'had Aly students in living their daily lives.¹⁸

There are two types of data sources in this paper: primary data and secondary data. Primary data is obtained directly from Ma'had Aly Sukorejo, namely statements and information obtained from informants through both interviews and observations. Meanwhile, secondary data are documents, scientific books, and literature that support the data.¹⁹ The data collection method uses interview, observation, and document study techniques. I conducted interviews with informants to dig up the data from *santri* (students) of Ma'had Aly Sukorejo, lecturer, and alumni. Meanwhile, observation is needed to understand an event, fact, or reality when directly observing Ma'had Aly's students. Furthermore, document studies enabled me to examine and analyze the documents of Ma'had Aly's students, such as books, *Tanwirul Afkar* bulletins, articles, and other scientific works. The results of several data and interviews are complementary to produce complete and comprehensive information and understanding.²⁰

Discussion and Result

The reasoning that developed at Ma'had Aly Sukorejo reflects the values of moderation among the *satris* and the people who live in it. This moderation of thought crystallizes and manifests in their daily attitudes while influencing the formulation and inference of Islamic law when they have a discussion to answer any actual and factual problems in society. *Santri* (students) of Ma'had Aly Sukorejo is receptive to the development of scientific progress of human civilization and tolerant of differences in understanding and thought. For them, differences are *sunnatullah* and a necessity that should be handled wisely. The difference is considered as a strength instead of a weakness. Therefore, they learn to find common ground instead of widening the gap between or among them.

¹⁸ George Ritzer, *Modern Sociological Theory*, Translated by Tri Wibowo B. S. (Jakarta: Prenada Media, 2014), 330.

¹⁹ Farida Nugrahani, *Metode Penelitian Kualitatif dalam Penelitian Pendidikan Bahasa* (Solo: Cakra Books, 2014), 109.

²⁰ Deddy Mulyana, *Metodologi Penelitian Kualitatif; Paradigma Baru Ilmu Komunikasi dan Ilmu Sosial Lainnya* (Bandung: PT. Remaja Rosdakarya, 2010), 195.

The reasoning in Ma'had Aly Salafiyah Syafi'iyah Sukorejo follows the following principles:

Thinking that Every *Nushûsh al-Syarî'ah* connects to its *Maqâshid*

Every prescribed Islamic law is deemed to contain a goal (*maqâshid*) to realize, namely the goodness and benefit of humans in this world and the hereafter. Primarily, *maqâshid muamalah* (human interaction) can be easily known and rationalized, while *maqâshid ubudiyah* (worship) sometimes can be understood and sometimes not. Therefore, they think the *maqâshid al-syarî'ah* contained in the *nushûsh* must be considered so that Islamic law can be produced in line with *maqâshid* and benefit. They believe that study of *maqâshid* is essential because it is the core of Islamic law and the essence of Islamic law is wisdom and human benefit in this world and the hereafter. Every Islamic law, according to them, contains values of justice, mercy, wisdom, and benefit. Therefore, all issues of injustice, disaster, *mafsadah*, and uselessness are not in line with sharia teaching even though they are forced to use *takwil*.²¹

The *santri* of Ma'had Aly Sukorejo think that every *nushûsh al-syarî'ah* contains the intent or purpose of the *shari'a* which aims to realize benefits and reject harm while achieving goodness and happiness in this world and the hereafter. *Maqâshid al-syarî'ah* is believed as the essence of *sharia* and for that, the primary and secondary postulates are addressed. Identifying *maqâshid al-syarî'ah* hidden in the *nushûsh* is considered useful for grounding the *nushûsh* in a modern context while revealing the meaning and *dalâlah* (designation) of the texts that are still vague to be able to adapt them to current situations and conditions. In addition, it is considered

²¹ Muḥammad ibn Abû Bakr, popular with Ibn Qayyim al-Jawziyah, *I'lâm al-Muwaqqi'în 'an Rabb al-'Âlamîn* (Riyâdh: Dâr ibn al-Jawzî, 1423 H), 337; Yûsuf Al-Qardhâwî, *al-Islâm wa al-'Ilmâniyah wajhan liwajhin* (Kairo: Maktabah Wahbah, 1997), 145; Jasser Auda, *Maqâshid al-Syarî'ah Kafalsafah Littasyri' al-Islâmî Ru'Yah Mandhûmiyah (Maqasid Shariah as Philosophy of Islamic Law: A Systems Approach)*, ed. Translated by 'Abdu al-Lathîf Al-Khayyâth (Herndon: al-Ma'had al-'Âlamî lilfîkr al-Islâmî, 2012), 20; 'Abdu al-Karîm Zîdan, *al-Madkhal Lidirâsah al-Syarî'ah al-Islâmiyah* (Iskandariah: Dâr 'Umar ibn al-Khaththâb, 2001), 49; Nûruddîn ibn Mukhtâr al-Khâdimî, *al-Ijtihâd al-Maqâshidî*, Juz I (Qatar: Dâr al-Kutub al-Qatariyah, 1998), 128–29; Aḥmad al-Raysûnî, *al-Taysîr al-Fiqhî* (Beirut: Dâr ibn Ḥazm, 2007), 180.

useful to bridge the limited *nushûsh al-syarî'ah* with endless problems and phenomena.²²

Their technique in formulating Islamic law is carried out collectively. They are typically divided into eight groups with different and respective tasks. The commentary group is assigned to finding, compiling, and linking verses related to the problem in question, examining the *asbâb nuzûl*, identifying between *makkiyah* and *madaniyah* verses, sorting out *al-nâsikh* and *al-mansukh*, and understanding the thoughts of the commentators in interpreting them. The hadith group, meanwhile, is obliged to track, collect, and link the hadiths related to the problem in question, detect the *asbâb wurûd*, study the *takhrîj* hadith, distinguish among *shahîh*, *hasan*, *dha'îf*, *marfû'*, *mursal*, *musalsal*, and so on. Meanwhile, the *Ḥanafiyah* group, the *Malikiyah* group, the *Syafi'iyah* group, and the *Ḥanâbilah* group are responsible for seeking and reviewing the opinions of respective jurists, the used arguments, and their logical arguments or reasoning. Meanwhile, the *mu'âshirah* group is tasked with tracking and studying contemporary books, fatwas of contemporary scholars, and their reasoning arguments. The group of *ushul fiqh* and *fiqh* rules, the last one, is obliged to seek and explore the theories of *ushul fiqh*, *fiqh*, and *maqâshid al-syarî'ah* with regard to the discussed issues.

After conducting a serious search and study on the classic and contemporary *turâts* books, they usually present the results of their study in the discussion forum. Afterward, they discuss and analyze collectively the results of the study with theories, rules of *ushul fiqh*, rules of *fiqh*, and *maqâshid al-syarî'ah* classical and contemporary. Then, they formulate Islamic law on the case or problem.²³ Therefore, the interaction among reason, *nushush*, and *maqashid* can be seen in Figure 1 below.

²²Muhammad Ahdanal Khalim, Abdul Fattah Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

²³Observation at Ma'had Aly Salafiyah Shafi'iyah Sukorejo and document study—book of Santri Ma'had Aly, 7 March 2020.

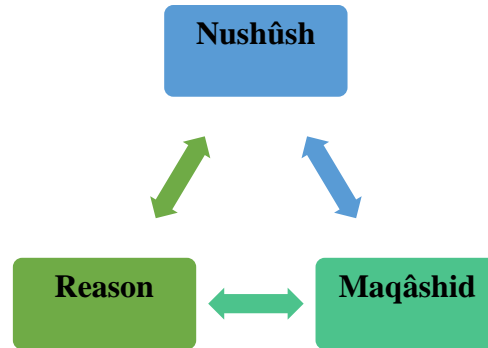


Figure. 1. Moderation and integration of reason, *nushûsh*, and *maqâshid*

Based on Figure 1 above, it can be seen that there are two ways of interaction among the component; *nushush*, reason, and *maqashid*. Furthermore, it means that one component depends on the other. Santri of Ma'had Aly studied *maqâshid al-syarî'ah* both classical and contemporary so that they believed that the theory of *maqâshid al-syarî'ah* formulated by classical scholars results from their *ijtihad* that is compatible with any development.²⁴ They literally know that 'Abdullah bin Bayyah,²⁵ Jamâluddîn 'Athiyah,²⁶ Yûsuf al-Qardhâwî²⁷ and Aḥmad al-Raysûnî,²⁸ for instance, include security protection as a part of *maqâshid al-syarî'ah*. 'Abdu al-Majîd al-Najjâr (b. 1945), meanwhile, added humanistic preservation, protection of social existence and environmental conservation as other parts of *maqâshid al-syarî'ah*.²⁹

²⁴Syachirul A'dhom and Abdul Fattah, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

²⁵'Abdullah bin Bayyah, *Khithâb al-Amni fî al-Islâm wa Tsaqâfah al-Tasâmuḥ wa al-Wi'âm* (Riyâdh: Akâdamiyah, 1999), 21.

²⁶'Athiyah, *Nahwa Taf'îl Maqâshid al-Syarî'Ah*, 157.

²⁷Yûsuf al-Qardhâwî, *al-Sunnah Mashdarân lilma'rifah wa al-Ḥadhârah* (Kairo: Dâr al-Syurûq, 2002), 231.

²⁸Aḥmad al-Raysûnî, *Min A'lâm al-Fikr al-Maqâshidî* (Beirut: Dâr al-Hâdî, 2003), 101.

²⁹'Abdu al-Majîd al-Najjâr, *Maqâshid al-Syarî'ah bi Ab'âd Jadîdah* (Beirut: Dâr al-Gharb al-Islâmî, 2008), 116.

Proportionally Balancing between the Idealistic and Realistic Point of View

The santri of Ma'had Aly Sukorejo think proportionally between idealistic and realistic point of view; they do not prioritize ideal rules while at the same time not ignoring reality. Both are really considered in formulating Islamic law. The rules of the Qur'an and hadith are ideal, yet to implement them, supporting factors are needed (social, economic, political, and cultural considerations). Therefore, if the supporting factors have not been met, they do not force us to embody something ideal.³⁰ Islam aspires to value an ideal order that can be enforced, but it does not turn a blind eye to reality.³¹ They also reason moderately between *nas* and *ijtihad*, toughness and flexibility, individual and collective benefit, *tahlîl* and *tahrîm*, interpretation and *takwil*, and so on. There are several *fiqh* rules which show that Islam is realistic on the one hand and idealistic on the other. They discuss while deeply thinking about *nash*, laws, and their *maqâshid* to establish Islamic law. On the other hand, they pay attention to reality; social, economic, political, cultural, and other factors. They think about and analyze the impact of benefits on a case for which the law is about to be determined, seen from these various factors.³²

They do believe that the main characteristics of Islam are *tawassuth*, *tawâzun*, and *i'tidâl*; these three words lead to the same meaning, namely moderate. The three teachings of Islam; the teachings of the faith, morality, and the Sharia are also deemed moderate. Islam, for them, puts a balance between reason and revelation, atheistic and polytheistic, *ta'thîl* (emptying) and *tasybîh* (likening), optimistic (*khauf*) and pessimistic (*rajâ'*), physical and spiritual, outer and inner, spiritual (*rûhiyah*) and materialistic (*mâdiyah*),³³ individual (*fardiyah*) and collective (*jamâ'iyah*),³⁴ divinity

³⁰Izzul Madid, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 5, 2020.

³¹Muhammad Rizqil Azizi, Lecturer of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 5, 2020.

³²Muhammad Rizqil Azizi, Lecturer of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 5, 2020.

³³ Wahbah al-Zuhayli, *Qadhâya al-Fiqh wa al-Fikr al-Mu'âshir* (Damaskus: Dâr al-fikr, 2007), 579.

and humanity, the world and the hereafter, idealistic and realistic, *tah̄l̄il* (halal) and *tah̄r̄im* (haram), knowledge and charity, individual benefit and collective benefit, persistence and flexibility, instruments and goals, *ush̄ul* and *fur̄u'*, the spirit of *dakwah* and tolerance, *nas* and *ijtilhad*, and so on.³⁵ Islam is seen to have a moderate character in ideology, worship, rituals, behavior, morals, *adab*, thoughts, *tasyr̄i'*, and social systems.³⁶

a. Connecting Text with Current Context

The santri of Ma'had Aly Sukorejo relate the text to the context of the past and present to obtain the correct understanding of any certain issue. They try to study the context in which the verse was revealed, or when the hadith was spoken then examine the current context. Looking at the text and context is deemed necessary because the history of *tasyr̄i'* (determination of Islamic law) explains that Islamic law was carried out gradually, such as the law of worship, *muamalah*, *munakahah*, criminal sanctions, prohibition of *khamr*, prohibition of usury, and so on. This indicates that *tasyr̄i'* pays attention to the context of social reality.

They put very much attention on the history of Umar, a prophet's companion, in enforcing Islamic law which was very concerned about truth. At first glance, his decisions seemed contradictory to the text. Still, in deeper thinking, it is obvious that the essence is in line with the text, such as reading and interpreting the word of Allah from QS. Al-Ma'idah: 38 ,

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا

“Men who steal and women who steal, cut them off their hands (as) recompense for what they did.”

³⁴ Yūsuf al-Qardhāwī, *al-Fiqh al-Islāmī Bayna al-Ashālah wa al-Tajdīd* (Kairo: Maktabah Wahbah, 1999), 15.

³⁵ Muhajir, *Membangun Nalar Islam Moderat : Kajian Metodologis*, 7–23.

³⁶ The Full description can be read in Yūsuf al-Qardhāwī, *al-Khashā'ish al-‘Ammah lil-Islām* (Beirut: Mu'assasah al-Risālah, 1983), 135–55; Yūsuf al-Qardhāwī, *Kayfa Nata'amal ma'a al-Qur'ān al-'Azīm* (Kairo: Dār al-Syurūq, 2000), 110; ‘Umar ibn ‘Abdu al-‘Azīz Quraysyī, *Samāhah al-Islām* (Riyādh: Maktabah al-Adhīb, 2006), 15.

This verse, for them, was judged from the point of view of its *dalâlah* and categorized as *qath'î al-dalâlah*. However, the legal rules of this verse are not implemented literally like what the verse mentions because attention is also needed to pay to the current reality. The contemplation of this model is called *ijtihād bi taḥqîq al-manâth*.³⁷

The *santri* also rely on *wasathiyûn* (moderate scholars) in maintaining Islamic law which do not only refer to *nushûsh al-syarî'ah*, but also tries to relate it to the reality of life. Therefore, they do not formulate Islamic law in an ivory tower. Instead, they always make sure that the law has paid attention even touches the reality of life, in harmony with *maqâshid*, benefit, and the spirit of the *Sharia*. They also believe that every problem of Islamic law must have an answer or a solution for its problem.³⁸ It is because the basics and sources of Islamic law are in the form of *naql* (*nushûsh*) and reason (*ijtihād*) which function to understand, contextualize, and dynamize it so that Islamic law is acceptable to be implemented at any time and at any place.

Knowing the condition of Arab society when the Qur'an was revealed and the hadith was spoken helps them in capturing the message of the text. Furthermore, exploring the present context and then confronting the text and the past context enables them to clarify the points of similarities and differences. The *santri* of Ma'had Aly Sukorejo make a link between understanding the text (*fahm al-nushûsh*) and reality (*fahm al-wâqi'*). This method helps them to interpret the text correctly and apply it to the real space appropriately. On the other hand, ignoring it is deemed to possibly lead to misinterpretation of the text and establishing Islamic law in the wrong way.³⁹ Connecting texts and the latest contexts (social, economic, political, and cultural), at the opposite, can produce *fiqh* with adaptive, responsive to new issues, and benefits centered on nature. In sum, they really believe that jurisprudence is the result of the

³⁷Abdul Wahid, Lecturer of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 2, 2020.

³⁸Abdul Fattah, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020; Abdul Wahid, Lecturer of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 2, 2020.

³⁹Ahsanul Arifin, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

interaction between text and reality.⁴⁰ The model of moderation and integration of reason, text, and context can be seen in Figure 2 below.

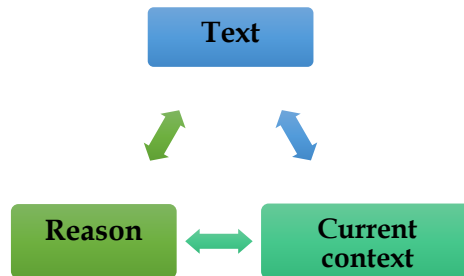


Figure 2. Moderation and integration of reason, text, and current context

Based on Figure 3 above, it can be seen that text, reason, and current context are depended and related to each other. There are two ways of interaction among every component. As a consequence, establishing Islamic law is considered not enough to refer to *nushûsh* only. Instead, it needs to pay attention to reality, consequences, and changes. In observing reality, there are two things that they put very much attention to, namely special attention (*tahqîq al-manâth al-khâsh*) and general awareness (*tahqîq al-manâth al-'âm*). *Tahqîq al-manâth al-khâsh* means paying attention to an individual's conditions, taking his/her freedom into account, and striving for the law that is appropriate for him/her. In this context, a *mujtahid* among *santri* of Ma'had Aly tries to formulate a relevant law for everyone according to the time, condition, and special needs. This is mainly because it is neither justified by *syara'* nor logical thinking to stipulate the same law in certain cases where the surrounding conditions are different from one another because local conditions influence the determination of Islamic law.⁴¹ Meanwhile, *tahqîq al-manâth al-'âm* is to establish Islamic law based on general considerations of reality.⁴² Observing

⁴⁰Abdul Fattah, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

⁴¹Fathî al-Duraynî, *Buḥûts Muqâranah fî al-Fiqh al-Islâmî wa Ushûlih*, Jld III (Beirut: Mu'assasah al-Risâlah, 2008), 129.

⁴²Aḥmad al-Raysûnî and Muḥammad Jamâl Bârût, *al-Ijtihâd al-Nâsh, al-Wâqi', al-Mashlahah* (Beirut: Dâr al-Fikr, 2000), 65; al-Syâthibî, *al-Muwâfaqât fî Ushûl*, Juz IV, 69–71; Aḥmad 'Abdu al-Salâm al-Raysûnî, *al-Tajdîd al-Ushûlî Nahwa Siyâghah Tajdîdiyah li'ilmî*

while not ignoring reality can produce Islamic law that is flexible, adaptive, and beneficial. This shows the importance of seeing reality in establishing Islamic law, whether *ijtihad* uses *tahqîq al-manâth al-khâsh* or *al-'âm*.

b. Not Fanatical to any Certain School(s)

The *santri* of Ma'had Aly Sukorejo study and discuss several opinions of scholars from various schools of thought; Ḥanafiyah, Mâlikiyah, Syafi'iyah, and Ḥanâbilah in giving answers to any problem. The goal is to avoid people being fanatical about certain schools of thought and educate them by explaining some different opinions. Then, they analyze the arguments of each opinion, evaluate them using the *tarjih* method, and choose views that provide benefits to people's lives. However, sometimes, they also allow readers (society) to choose one of the opinions among the *ulama*, mainly the one which is in line with the current situation and conditions, and creates benefits for them. The benefits should be categorized as *mashlahah haqîqiyah* (factual benefit) and *mashlahah 'ammah kulliyah* (public benefit) and do not conflict with any basic teachings, including *qath'î* texts and arguments based on *ijmâ'*.⁴³

In addition to benefits, they also consider *mafsadah* and current reality (social, economic, political, and cultural) to interpret Islamic law so that it can be easily practiced by the community. This shows another nature of moderate reasoning because it facilitates and eases people to apply Islamic law. Having this moderate paradigm in mind, they researched relevant *nushûsh* and reasoned deeply to find the ease in Islamic law that the *Syâri'* or Allah Almighty wanted. Practically, if two opinions are found the same or adjacent in which one is complex while another is easy, they will likely choose the easy opinion.⁴⁴ It is

Ushûl al-Fiqh (Beirut: Dâr al-Kalimah, 2015), 735; Mâhir Ḥusayn Ḥaswah, *Fiqh al-Wâqi' wa Atsaruh fî al-Ijtihâd* (Yordan: al-Ma'had al-'Âlamî lilfîkr al-Islâmî, 2009), 25; Muḥammad ibn 'Alî ibn Ḥusayn al-Makkî al-Mâlikî, *Dhawâbith al-Fatwâ* (Bâkûs: Dâr al-Furqân, n.d.), 47; al-Zubaydî, *al-Ijtihâd fî Manâth al-Hukmi al-Syar'î*, 256–57.

⁴³Abdul Fattah and Ahsanul Arifin, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

⁴⁴Syachirul A'dhom and Abdul Fattah, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

the basis on which scholars rely on it in strengthening their opinion with the words, "this is easier for humans to practice".⁴⁵

The santri of Ma'had Aly do believe that Muslims, in practice the rules of *fiqh*, have no obligation to bind themselves to certain schools of thought (*madzhab*). This is because this sort of bondage in a certain school of thought can plunge them into the abyss of religious difficulties. Another argument they keep in mind is that every school and opinion of the scholars (*ulama*) has an equal position; both have the possibility of being right and wrong. According to the situation and conditions, they like to follow the *madhhab* as long as they do not mix more than one *qawl* regarding one worship practice or muamalah (*talfiq* is forbidden).⁴⁶

c. Having Openness, Dialogue, and Tolerance for Differences

The *santri* of Ma'had Aly Sukorejo has an inclusive view of dealing with differences in opinions, thoughts, and understanding. They believe that differences are a necessity, including those with other religious believers. For them, instead of a problem, the difference is a gift and wellspring of knowledge.⁴⁷ This comes from their background in which they were taught and led to discuss diverse opinions of scholars from several schools of thought. Therefore, they literally think that every opinion has the same proportion and possibility of both right and wrong. This sort of multi-school education and habit of exchanging ideas form their inclusive behavior along with broad insights. They are, as a consequence, not easy to confuse other groups with a different opinions. Neither do they judge other groups doing any transgression and heresy.

In this talk, they perceive that dialogue and exchanging ideas are particularly needed because meeting points, inclusiveness, and sustainable understanding are the core parts to facilitate inter-religious interactions while creating a harmonious and peaceful life.⁴⁸

⁴⁵ Yûsuf al-Qardhâwî, *Dirâsah fî Fiqh Maqâshid al-Syarî'Ah bayna al-Maqâshid al-Kulliyah wa al-Nushûsh al-Juz'iyah* (Kairo: Dâr al-Syurûq, 2008), 151–52.

⁴⁶ M. Khafifuddin, *Metodologi Kajian Fiqh* (Situbondo: Ibrahimy Press, 2011), 23.

⁴⁷ Muhammad Abdul Ghafur, Santri of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

⁴⁸ Muhammad Rizqil Azizi, Lecturer of Ma'had Aly Salafiyah Syafi'iyah Sukorejo, *Interview*, Sukorejo, March 5, 2020.

Dialogue, according to them, is an obligation to held by religious people as emphasized in QS. al-Nahl verse 125:

أَدْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِهُمْ بِالَّتِي هِيَ أَحْسَنُ

“Call (people) to the way of your Lord with wisdom and good lessons and argue with them in a good way.”⁴⁹

Moreover, practically, they are also in dialogue with other groups and believers of other religions. The *santri* of Ma’had Aly sometimes invite them (other groups and non-Muslims) for dialogue to find common ground among groups and among religions. Their principle says that every group and religion has noble values that can penetrate and dissolve any barriers of difference. In that way, an attitude of respect and appreciation for other groups and believers of other religions are believed to grow on a humanistic basis as the highest value inherent in every human being. It is no longer entangled by the outer wrap that is unworthy to fuss about.⁵⁰

In a short words, they have a moderate position between conservative and liberal groups which also puts them to be qualified in one of the moderate characteristics, namely tolerance for differences in understanding and religion.⁵¹ In the matter of *furû’*, differences are considered as mercy. On the other hand, the result of *ijtihad* is *ẓannî* (strong conjecture), all of which contain the possibility of being right or wrong. Therefore, they strongly believed that a person or a group should not monopolize a single truth, blame and mislead the opinions or understandings of other people and groups.⁵²

⁴⁹Al-Qur’an, 16: 125.

⁵⁰Syachirul A’dhom and Abdul Fattah, Santri of Ma’had Aly Salafiyah Syafi’iyah Sukorejo, *Interview*, Sukorejo, March 3, 2020.

⁵¹Muhammad Rizqil Azizi, Lecturer of Ma’had Aly Salafiyah Syafi’iyah Sukorejo, *Interview*, Sukorejo, March 5, 2020.

⁵²Izzul Madid, Santri of Ma’had Aly Salafiyah Syafi’iyah Sukorejo, *Interview*, Sukorejo, March 5, 2020.

The Influence of Moderate Reasoning in the *instinbâth* of Islamic Law

Islamic law initiated by the *Santri* of Ma'had Aly Sukorejo is flexible, elastic, and dynamic because they are not bound to one certain school of thought. Still, they study several schools of thought, examine the text and observe the current context, consider *maqâshid* concept very well, analyze it and then choose an opinion that is deemed most appropriate to the conditions, easy to practice, and brings benefits to people's lives. Here, I analyzed two products of Islamic law inferred by *Santri* of Ma'had Aly Sukorejo as a sample of more than 500 results of their reasonings result. The two are as follows:

a. Dialogic Friday Sermon

Friday sermons are usually held without dialogue between the preacher and the congregations or audiences. Moslems are used to this kind of situation every Friday in mosques. Considering that this monotonous sermon can bore the audiences, the *santri* of Ma'had Aly offered a new method of preaching. According to them, the Friday sermon should be dialogical so that those who do not understand the sermon materials can ask the preacher. In suggesting this new type of sermon, they study relevant *nushûsh* while paying attention to the sociology of local people as well as the related *maqâshid*.

The main argument that underlies their opinion is the following hadith of the Prophet PBUH.

أن النبي صلى الله عليه وسلم دخل عليه رجل وهو يخطب يوم الجمعة، فقال: متى الساعة؟ فأوماً الناس إليه بالسكوت فلم يفعل وأعاد الكلام فقال رسول الله صلى ال له عليه وسلم له بعد الثانية: ويحك ما أعددت لها قال: حب الله ورسوله فقال إنك مع من أحببت

"Indeed, someone approached the prophet when he preached at the Friday sermin. The man asked, when is the day of judgment? Then people signaled him to be quiet, but he didn't heed it. He repeated his question a second time. Then, the messenger of Allah replied: Woe to you, what

provisions did you prepare for that day? He replied: love of Allah and the messenger of Allah. Then the messenger of Allah said: Verily, you will be with those you love".⁵³

The meaning of *mantûq* (expressed statement) in the above hadith shows that speaking during the Friday sermon is not prohibited when there is a need. If only the act was forbidden, the messenger of Allah and his companion would have not done it. Based on this understanding, dialogical preaching is deemed to be lawful to apply because no specific texts prohibit it. Relating to this, however *santri* of Ma'had Aly Sukorejo set several notes, namely: 1) the content of the dialogue should not deviate from the material of the sermon, 2) the dialogue contains questions and short answers, 3) the dialogue does not argue to sermon or such, and 4) dialogue is carried out in the first sermon because the second sermon must be shorter than the first one.⁵⁴

b. Marriage Registration

As mentioned earlier, *santri* of Ma'had Aly Sukorejo pays attention to the current text and context in answering any problem while examining *nushûsh* and benefits. They think that marriage registration in the past was not needed because the situation and condition of the community did not need it. However, contemporary society's conditions, behavior, and morals are not the same as those of the ancients, thus demanding changes in Islamic law. Other aspects, namely the development of administrative requirement along with the advancement of science and technology, also affects changes in Islamic law. Relating to this, *santri* of Ma'had Aly Sukorejo stated that marriage registration is mandatory. This opinion is based on the study of *nushûsh* and *mashlahah 'âmmah*, namely to maintain the family order and prevent harm to the wife and children. In reality, underhand or unregistered marriages (without registration) cause many problems

⁵³ Muḥammad al-Ḥusnī al-Ḥusaynī, *Kifāyah al-Akhyâr* (Damaskus: Dâr al-Basyâ'ir, 2001), 182.

⁵⁴ Santri Ma'had Aly, *Fikih Progresif Bunga Rampai Pemikiran Santri Ma'had Aly dalam Buletin Tanwirul Afkar* (Sukorejo: Ibrahimy Press, 2020), 158.

that harm women and children, such as domestic violence, sexual abuse, neglect of wives and children, and such.⁵⁵

Dealing with it, they studied several verses in determining the law of marriage registration, including surah al-Nisâ' verse 59:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

“O you who believe, obey Allah and obey the Messenger of Allah and those among you”.⁵⁶

There are several opinions of scholars in interpreting the word *uli al-amri*. Abû Hurayrah interpreted the word *uli al-amri* as the leader. Meanwhile, Mujâhid interpreted the word *uli al-amri* with scientists and jurists. Ibn Abî Najîh interprets the word *uli al-amri* with *fuqahâ'* and thinkers. In line with him, Jabir stated that the meaning of the word *uli al-amri* was an expert on the Qur'an and a scientist.⁵⁷ 'Athâ' interprets the word *uli al-amri* with *fuqahâ'* and ulama. Meanwhile, 'Ikrimah said that the meaning of the word *uli al-amri* was Abû Bakr and 'Umar. Furthermore, the results of al-Thabari's analysis concluded that the correct opinion is that of scholars who interpret the word *uli al-amri* with *umarâ'* (leader) and *wulât* (ruler) because it is supported by a number of hadiths containing orders to obey leaders and rulers in terms of obedience and rules which contains benefits for Muslims.⁵⁸

Conclusion

Moderation of reasoning can permeate and develop at Ma'had Aly Sukorejo because the *santri* study, analyze, and discuss the science of *ushul fiqh* both classical and contemporary, the rules of fiqh, *maqâshid al-syarî'ah* formulated by classical scholars and developed by contemporary scholars before trying to apply it in establishing Islamic law. The moderation of their reasoning can be seen in integrating *nushûsh* and contemporary contexts (social, economic, political, and

⁵⁵ Santri Ma'had Aly, 672.

⁵⁶ Al-Qur'an, 4: 59.

⁵⁷ Muḥammad ibn Aḥmad ibn Abi Bakr al-Qurthubî, *al-Jâmi' liahkâm al-Qur'ân*, Juz VI (Beirut: Mu'assasah al-Risâlah, 2006), 505–6.

⁵⁸ At-Thabari, *Jâmi' Al-Bayân*, Juz VII, 176–82.

cultural), *nushûsh*, and *maqâshid* and between idealistic and realistic. They take a middle path between conservatives who refer to *zahir nushûsh* and liberals who tend to liberate reason and put *nushûsh* aside. They think that every *nushûsh al-syarî'ah* must contain its *maqâshid* which must be studied and considered when formulating Islamic law because *fiqh* without *maqâshid* considerations goes without spirit and becomes stiff and rigid.

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Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law

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Abstract:

This article is the result of research on the cultural heritage of the Bugis people of Luwu, South Sulawesi. The research questions that were raised were: how is inheritance practiced among the indigenous people of Bugis Luo, what is the meeting point of inheritance between Islamic law and customary law, and how do Islamic law and customary law combine to create gender. Primary data was collected through in-depth and structured interviews, as well as on-site observation. The analysis was performed using

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interpretive methods. The study was conducted by analyzing the regulations related to the legal issues discussed by analyzing the laws and comparing the decisions of the Luwu and Bugis courts with the perspective of customary law and Islamic law. The analysis used in this study resulted in women and men being equal. Bugis Luwu Sulawesi has a pluralistic hereditary system with both Islamic and traditional elements. Equal rights and rules are general ideas. This research is based on the proposed mixed inheritance model: *masssideppungeng* that links the heirs to family, government, and religious customary authorities, the distribution of assets to field conditions, and proportionally identifies the needs, wants, and goals of the inheritors.

Keywords:

Gender equity, Legal Collaboration, Inheritance Systems,
Customary Communities (Bugis)

Abstrak:

Artikel ini merupakan hasil penelitian tentang budaya warisan masyarakat Bugis di Luwu, Sulawesi Selatan. Pertanyaan penelitian yang diangkat adalah: bagaimana pewarisan dipraktikkan di antara masyarakat adat Bugis Luwu, apa titik temu warisan antara hukum Islam dan hukum adat serta bagaimana hukum Islam dan hukum adat saling berpadu untuk menciptakan kesetaraan gender. Data primer dikumpulkan melalui wawancara mendalam dan terstruktur, serta observasi di tempat. Analisis dilakukan dengan menggunakan metode interpretatif. Kajian dilakukan dengan menganalisis peraturan-peraturan yang terkait dengan masalah hukum yang dibahas dengan analisis undang-undang dan membandingkan putusan pengadilan Luwu dan Bugis dengan perspektif hukum adat dan hukum Islam. Analisis yang digunakan dalam penelitian ini mengarah pada temuan bahwa perempuan dan laki-laki mewarisi secara tidak setara. Bugis Luwu Sulawesi memiliki sistem pewarisan pluralistik dengan unsur Islam dan tradisional. Persamaan hak dan peraturan terikat adalah ide umum. Penelitian ini mengusulkan model warisan blended: *masssideppungeng* yang menghubungkan ahli waris, keluarga, pemerintah, dan otoritas adat agama, pembagian harta berdasarkan kondisi lapangan, dan

proporsional mendefinisikan kebutuhan, keinginan, dan tujuan ahli waris.

Kata Kunci:

Kesetaraan Gender; Kolaborasi Hukum; Pembagian Waris; Masyarakat Adat; Bugis Luwu

Introduction

Inheritance law regulation is one of the arrangements that are quite complex and frequently causes us problems in daily life. Inequitable inheritance distribution frequently results in disagreements between relatives and families, which are subsequently litigated in court.¹ One of the causes of this unfairness is that many indigenous communities in Indonesia continue to practice their traditional inheritance system while being Muslim such Buginese Communities in Luwu,² South Sulawesi, Indonesia. Traditional preservation is vitally important for indigenous peoples, but religion must take precedence. Therefore, it is necessary to unite customary with Islamic law, including in the area of inheritance. Studies of inheritance law and religion have been common. Numerous researchers, for example, have investigated the link between local customs and Islam (Febriawanti & Mansur;³ Fikri & Wahidin;⁴ Pongoliu;⁵ Siska, Firman, & Rusdinal;⁶ Haniru.⁷ Others have

¹ Jasni Sulong, "Kedudukan Mazhab Syafi'i Dalam Amalan Pembahagian Pusaka Dan Wasiat Islam Di Malaysia," *Jurnal Syariah* 16, no. 1 (2008): 163-83.

² Asbudi Dwi Saputra, "Pembagian Harta Waris Menurut Sistem Kewarisan Hukum Adat Rongkong Studi Masyarakat Adat Desa Marampa Kecamatan Rongkong Kabupaten Luwu Utara," *Journal I La Galigo : Public Administration Journal* 3, no. 1 (July 7, 2020): 24-31, <https://doi.org/10.35914/ILAGALIGO.394>.

³ Dinta Febriawanti and Intan Apriyanti Mansur, "Dinamika Hukum Waris Adat Di Masyarakat Bali Pada Masa Sekarang," *Media Iuris* 3, no. 2 (July 2020): 119, <https://doi.org/10.20473/mi.v3i2.18754>.

⁴ Fikri, "(Peer Review) Konsepsi Hukum Waris Islam dan Hukum Waris Adat: Analisis Kontekstualisasi dalam Masyarakat Bugis."

⁵ Usman Jafar, Mawardi Djalaluddin, Nur Taufiq Sanusi, "Eksistensi Hukum Waris Adat dalam Masyarakat Muslim di Kota Gorontalo dalam Perspektif Sejarah," *Jurnal Diskursus Islam* 6, no. 2 (August 24, 2018): 361-401, <https://doi.org/10.24252/jdi.v6i2.6866>.

investigated the intersection between inheritance law and gender; Haque;⁸ Ahmad, Batool, & Dziegielewski;⁹ Gultom;¹⁰ Ezeilo;¹¹ Doss;¹² Mostofa¹³). Although some attempts have been made to address this issue, it is still a lack of how customary and Islamic law combines to reach gender equity.

The concept of gender equity refers to the situation wherein men and women are treated as equals. This concept is usually informed by the concept of justice, particularly in the division of rights and responsibilities between the sexes.¹⁴ As argued by

⁶ Eti Siska, Firman Firman, Rusdinal Rusdinal, "Pergeseran Hukum Waris Adat di Minangkabau (Studi Kasus: Hukum Warisan Tanah Ulayat di Nagari Ladang Panjang Kecamatan Tigo Nagari, Kabupaten Pasaman, Sumatera Barat)," *Culture & Society: Journal of Anthropological Research* 1, no. 2 (December 31, 2019): 157-63, <https://doi.org/10.24036/csjar.v1i2.26>.

⁷ Rahmat Haniru, "Hukum Waris di Indonesia Perspektif Hukum Islam dan Hukum Adat," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 456-74.

⁸ Muhammad Faizul Haque et al., "Women Rights to Inheritance in Muslim Family Law: An Analytical Study," *International Journal of Islamic Business & Management* 4, no. 1 (April 2020): 15-26, <https://doi.org/10.46281/ijibm.v4i1.543>.

⁹ Mahtab Ahmad, Moazma Batool, and Sophia F Dziegielewski, "State of Inheritance Rights: Women in a Rural District in Pakistan," *Journal of Social Service Research* 42, No. 5 (October 19, 2016): 622-29, <https://doi.org/10.1080/01488376.2016.1177633>.

¹⁰ Elfrida R Gultom, "Development of Women Position in the Patrilineal Inheritance of Indonesian Society," *Jurnal Dinamika Hukum* 17, no. 2 (May 31, 2017): 194, <https://doi.org/10.20884/1.jdh.2017.17.2.886>.

¹¹ Joy Ngozi Ezeilo, "Rethinking Women and Customary Inheritance in Nigeria," *Commonwealth Law Bulletin* 47, no. 4 (October 2021): 706-18, <https://doi.org/10.1080/03050718.2020.1818596>.

¹² Cheryl Doss et al., "Women, Marriage and Asset Inheritance in Uganda," *Development Policy Review* 30, no. 5 (September 2012): 597-616, <https://doi.org/10.1111/j.1467-7679.2012.00590.x>.

¹³ Md Mostofa, "Rules and Practices of Women's Inheritance Rights in Islam: Bangladesh Perspective," *International Journal of Islamic Business & Management* 3, no. 1 (April 2019): 14-20, <https://doi.org/10.46281/ijibm.v3i1.245>.

¹⁴ Shannon M Ruzycki et al., "Association of Physician Characteristics With Perceptions and Experiences of Gender Equity in an Academic Internal Medicine Department," *JAMA Network Open* 2, no. 11 (November 2019): e1915165, <https://doi.org/10.1001/jamanetworkopen.2019.15165>. See also Maimun, Ainul Haq Nawawi, Abdul Haq Syawqi "The Development of Fiqh Munākahah (Marriage Jurisprudence) Material Course in Madurese Islamic Universities and Its Relation

Sharma and Sharma, gender equity means that men and women have equal access to opportunities, without any biases against them.¹⁵ Carter writes that gender justice means that men and women must not be subjected to fixed roles, subordination, marginalization, or violence.¹⁶ As such, Sharma and Sharma identify four indicators of gender equity: (1) access; (2) participation; (3) control; and (4) fair and equitable benefits.¹⁷ In this context, awareness of the need for gender equity is influenced by social and cultural constructions that distinguish between the sexes and their specific roles and responsibilities.¹⁸ As written by Bericat, gender equity is necessary to address the gendered structural inequalities that exist within society.¹⁹

Inheritance systems are part of the traditional customs that remain practiced around the world. Referring to Febriawanti and Mansur, inheritance systems are those systems that ascertain the legitimacy of heirs and manage the division of assets (wealth,

with Gender Equality and Divorce Prevention," *Al Ihkam : Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020), <https://doi.org/https://doi.org/10.19105/al-lhkam.v15i2.2734>. Murjani Lilik Andar Yuni, "Gender Sensitivity at Judge's Verdicts in Samarinda and Magelang Religious Courts; The Implementation of PERMA Number 03 of 2017," *Al Ihkam : Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020), <https://doi.org/https://doi.org/10.19105/al-lhkam.v15i2.2714>.

¹⁵ Radha R Sharma and Neha P Sharma, "Opening the Gender Diversity Black Box: Causality of Perceived Gender Equity and Locus of Control and Mediation of Work Engagement in Employee Well-Being," *Frontiers in Psychology* 6 (2015): 1371.

¹⁶ Michael Carter, "Gender Socialization and Identity Theory," *Social Sciences* 3, no. 2 (May 2014): 242-63, <https://doi.org/10.3390/socsci3020242>.

¹⁷ Sharma and Sharma, "Opening the Gender Diversity Black Box: Causality of Perceived Gender Equity and Locus of Control and Mediation of Work Engagement in Employee Well-Being."

¹⁸ Sue Jackson, "Young Feminists, Feminism and Digital Media," *Feminism & Psychology* 28, no. 1 (February 2018): 32-49, <https://doi.org/10.1177/0959353517716952>. dalam Muhammad Fahmi et al., "Media Representations Of Gender: The Marginalization Of Female Muslim Scholars In Indonesia," *Journal of Critical Reviews* 7, no. 05 (March 1, 2020), <https://doi.org/10.31838/jcr.07.05.44>. M S Manisha and Sunita Mangla, "Social Construction of Gender through Mediated Communication in India," *Journal of Content. Community & Communication Amity School of Communication* 9, no. 5 (2009): 64-67

¹⁹ Eduardo Bericat, "The European Gender Equality Index: Conceptual and Analytical Issues," *Social Indicators Research* 108, no. 1 (2012): 1-28.

property, and knowledge) amongst them.²⁰ Cooper writes that inheritance systems may be divided into bilineal (along both maternal and paternal lines) and unilineal ones (solely along paternal [patrilineal] or maternal [matrilineal] lines).²¹ Today, many inheritance systems are pluralistic, being a blend of formal, Islamic, and customary law.²² It is also affected by factors such as (1) kinship bonds; (2) life events such as marriage, birth, and death; and (3) retirement.²³ This reflects the argument that inheritance law is strongly influenced by kinship systems, as a result of which each society has its means of dividing inherited assets.²⁴

As a concept, customary society has been broadly explored in the literature.²⁵ As written by Nurhayanto and Wildan, customary societies are those that live their own lives and utilize their own worldviews.²⁶ Davidson writes that customary societies are those peoples who have existed within an area for generations and developed their own values, ideologies, politics, cultures, and

²⁰ Febriawanti, Mansur, "Dinamika Hukum Waris Adat Di Masyarakat Bali Pada Masa Sekarang."

²¹ Elizabeth Cooper, "Inheritance and the Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations," *Chronic Poverty Research Centre Working Paper*, no. 159 (2010).

²² Deo Andika Putra Sihombing, "Pembagian Waris Adat Masyarakat Suku Bugis di Kecamatan Enok, Kabupaten Indragiri Hilir, Provinsi Riau," *Premise Law Jurnal* 1 (2017).

²³ Nora Ellen Groce, Jillian London, and Michael Ashley Stein, "Inheritance, Poverty, and Disability," *Disability & Society* 29, no. 10 (2014): 1554–68; see also Khoiruddin Nasution, "PERAN KURSUS NIKAH MEMBANGUN KELUARGA SEJAHTERA," *AHKAM:Jurnal Ilmu Syariah* 15, no. 2 (March 2016), <https://doi.org/10.15408/ajis.v15i2.2862>.

²⁴ Sihombing, "Pembagian Waris Adat Masyarakat Suku Bugis di Kecamatan Enok, Kabupaten Indragiri Hilir, Provinsi Riau."

²⁵ Turnomo Rahardjo, Hapsari D Sulistyani, and Taufik Suprihatini, "Digital Media Literacy in Samin Indigeneous People," ed. Hadiyanto, Maryono, and Budi Warsito, *E3S Web of Conferences* 73 (December 2018): 14018, <https://doi.org/10.1051/e3sconf/20187314018>.

²⁶ Puji Nurhayanto and Dadan Wildan, "Transformasi Nilai-Nilai Kearifan Lokal Masyarakat Adat Cireundeu," *Sosietas* 6, no. 1 (2016).

territories.²⁷ In this context, customary societies have particular rights and responsibilities, which they transmit orally and performatively through their stories, expressions, and family activities.²⁸ Customary societies have the freedom to establish their own rules through which they assert control of their land, territory, and resources, thereby maintaining their institutions, cultures, and traditions.²⁹

This work is intended to address a gap left unfilled by prior research. At the macro level, this article aims to contribute to the sizable literature on customary inheritance laws and Islamic inheritance laws, as well as the processes and dynamics through which these laws have been implemented. At the micro-level, meanwhile, this study seeks to fill the gap in the literature regarding how was an inheritance practiced amongst the Bugis Luwu customary society, what the inheritance meeting points between Islamic and customary laws, and how Islamic and customary laws blended each other to create gender equity

This article argues that Indonesian inheritance law, which has been dominated by customary systems, is continuously adapting. Collaborative negotiations between Islamic law and customary systems are necessary to create gender equity. This shows that religious spaces are negotiable, adapting to various times and contexts.

Method

This study explores the inheritance systems used by the Bugis Luwu of South Sulawesi. Various inheritance systems are recognized by the Bugis Luwu, with some being equitable and others not. Primary data were collected through an in-depth and

²⁷ Mohammad Mulyadi, "Pemberdayaan Masyarakat Adat dalam Pembangunan Kehutanan," *Jurnal Penelitian Sosial Dan Ekonomi Kehutanan* 10, no. 4 (2013): 224-34.

²⁸ Nicholas James Reo and Kyle Powys Whyte, "Hunting and Morality as Elements of Traditional Ecological Knowledge," *Human Ecology* 40, no. 1 (2012): 15-27.

²⁹ Kyle Whyte, "What Do Indigenous Knowledges Do for Indigenous Peoples?," in *Traditional Ecological Knowledge* (Cambridge University Press, 2017), 57-82, <https://doi.org/10.1017/9781108552998.005>.

structured interviews, as well as on-site observations at the research location. Data were collected in consideration of availability and efficiency, with the researchers living in the community, observing informants, and listening to their statements regarding their practice of inheritance. Secondary data were collected through an exploration of the literature on Islamic inheritance law, customary inheritance law, gender equity, social anthropology, and associated formal law (*Compilation of Islamic Laws, Indonesian Legal Code - Civil*, etc.). Before the research was conducted, the researchers visited the site to collect data from informants—religious leaders, customary leaders, etc.—regarding disputes. Analysis was conducted using the interpretative method.

In-depth interview was chosen to obtain detailed data and meaningful information. More importantly, it was carried out because the decisions were verbally decided and rarely written down, including in the cases discussed here. In the next stage, this study employed two methods of analysis, namely statutory and comparative analysis. The former analyzes the regulations related to the discussed legal issues. Whereas, the later step is comparing those decisions by the Luwu-Buginese practice in the perspectives of customary and Islamic law.

Result and Discussion

Gender Inequity in the Luwu Buginese Inheritance System

The Buginese have diverse views of inheritance and kinship. Differences take place in one place and others. There are equal inheritance rights for men and women. Meanwhile, in some cases, people believe that division of the inheritance must provide sons more shares than daughters. In another case, the division of daughters is greater than sons. Meanwhile, some believe that the eldest son gets a larger share of the inheritance than his siblings. Meanwhile, another part says that the youngest child is the one who gets a larger share of the inheritance than his siblings. Furthermore, other people say that children who are most meritorious to their parents will be given a larger share of the inheritance than other siblings. Especially in Luwu, there are six types of inheritance. This system was reached from the interview and then classified into several parts as shown in table 1 below.

Table 1. Detail Aspect of Inheritance System

Source	Statement	Inheritance systems
Ikram (BP's eldest son) and Asiah, BP'S wife (wife of deceased)	BP passed in 2006, leaving a wife, 3 sons, and 3 daughters as well as a land area of 10,000 m ² , 3 shop houses, and 2 houses. The land was divided evenly amongst the six children. The other assets were divided as follows; one shophouse is rented and the result is shared among the children. Meanwhile, 2 other houses, 1 house in Palopo, was given to the youngest son, and the house in Makassar was given to the third child (daughter).	Equitable rights
IS's wife (Wife of deceased)	IS left behind a wife, 4 sons, and 1 daughter. 1 house is used by the wife while the land, 850 m ² , was divided for his lineage using the ratio 2:2:2:2:1 (2 for son and 1 for daughter).	Sons received a greater share than daughters
Ishak, ST's husband (Husband of deceased)	ST left behind a husband, 2 sons, and 2 daughters. The 1 shophouse, 1 house, and 500 m ² land were inherited. The shophouse was given to the 2nd (son) and 3rd daughter. The house and land were divided between the other son and daughter. All the asset has not been divided yet because the	Daughters received a greater share than sons

<p>Umi, KM's daughter (Daughte r of deceased)</p>	<p>husband is still alive therefore it is owned by the husband. However, it has been announced already that in the future the asset will be divided as mentioned above</p> <p>KM left behind a wife, 3 sons, and 1 daughter. Assets consisted of 1 house, 380 m² of land, and 700 m² of the garden. All the assets have not been divided yet because the wife still alive. However, in the future, the land and garden will be divided with the eldest child received a larger share than the others.</p>	<p>The eldest child received the greatest share</p>
<p>Waru, HS's wife (wife of deceased)</p>	<p>HS left behind a wife, 3 sons, and 4 daughters. Assets consisted of two houses and one car. A car was given to the youngest daughter. The first house was occupied by the wife, and the second was sold and the result was divided among the seven children.</p>	<p>The youngest child received the greatest share</p>
<p>Fara, HM's daughter (the second child of the deceased)</p>	<p>HM left behind a son and two daughters. Assets consisted of one house which was given to the second child, a daughter because she is the most faithful daughter.</p>	<p>The most faithful child received the greatest share</p>

Table 1 shows that six inheritance systems are used by the Bugis, especially in Luwu community. In the first case, the wife of the

departed divided assets equitably between her sons and daughters.³⁰ According to the wife of the deceased, they did not distinguish between their sons and daughters. In the second system, sons receive a larger share of assets than daughters.³¹ In the third system, daughters receive a larger share of assets than sons,³² as they were the ones who dedicate themselves to serving their parents. In the fourth system, the eldest children receive the greatest share of assets,³³ as they are the ones who take on the duties of the departed. In the fifth system, the youngest children receive the largest share³⁴ because the older children have often achieved economic stability or traveled abroad. In the sixth system, it is the child who has the most dedicated him/herself to the parents who receive the largest share.³⁵

Because of the way in which inheritance is handled in Buginese society in Luwu, it is clear that the ties of family and other relationships between the departed and their heirs are given a great deal of importance. The Islamic system appears to be followed only by the second system. When compared to the importance of links to one's family, the religious component does not rank as highly.

Most of the Bugis Luwu society is Muslim; however, they have continued to adhere to customary values and traditions such as maccera Tasi (gratitude for seafood obtained by fishing communities), mappalesso samaja (letting go of vows) followed by the manre sappera' (eating together), rambu tuka (joyful feast), toke' Sampa (raising or hanging heirloom cloths) as an illustration of the implementation of the party which is still considered sacred. When asked what inheritance system they practiced, most informants simply stated "Islamic". In practice, however, the division of assets follows customary laws that are not found in Islamic teachings (*fiqhi al-mawaris*), and this is deemed just by informants.

³⁰ Ikram, eldest child of the deceased, *interview*, September 2021.

³¹ Haniah, wife of the deceased, *interview*, August 2021.

³² Ishak, husband of the deceased *interview*, August 2021.

³³ Umi, daughter of the deceased, *interview*, June 2021.

³⁴ Waru, wife of the deceased, *interview*, July 2021.

³⁵ Fara, the second child of the deceased, *interview*, June 2021.

The six inheritance systems used by the Bugis Luwu are varied, and injustice may occur when the deceased and/or their spouse desire to divide assets a certain way. This is influenced by the kinship system, wherein discussions often occur within the family without providing heirs an opportunity to express their views. Many would feel ashamed if disputes were brought to court, for example, if the children or heirs disputed their share.

From the perspective of Islamic law, the six inheritance systems applied in Luwu are categorized as injustice. The principle of justice in Islamic inheritance law entails that there must be a balance between the rights acquired in the inheritance and the obligations or burdens of life that must be borne/fulfilled among the heirs; consequently, the meaning of justice in Islamic inheritance law is not measured by the similarity of levels between experts, but by the size of the burden or responsibility assigned to them, in terms of the general condition of society.

If it relates to Amir Syarifuddin's definition of justice as "a balance between rights and obligations and a balance between what is obtained and needs and uses," or a balance between the burdens and responsibilities of equal heirs, then justice will be reflected in the implementation of the distribution of inheritance according to Islam. The ratio of 2:1 applies not only between boys and girls, but also between husband and wife, between fathers and mothers, and between brothers and sisters, all of which, when studied and analyzed in depth, reveal profound insight.³⁶

Men, as opposed to women, are accountable for the maintenance of their families in Muslim society. If the woman is still a girl and unmarried, she becomes the responsibility of her parents, guardian, or brother. In contrast, once a woman is married, her relocation falls under her husband's obligation (male). Islamic Shari'ah does not require women to spend their fortune on themselves or their children, even if it is deemed capable/rich. If they are married, providing a living (a place to live, food, and clothing) for the family is

³⁶ Amir Syarifuddin, "Hukum Kewarisan Islam," Kencana, 2011, https://books.google.co.id/books?hl=id&lr=&id=5-UuEAAAQBAJ&oi=fnd&pg=PA168&dq=amir+syarifuddin+keadilan+warisan&ots=yytVKJ3zkD&sig=KivzVL-_GF-PYsm4fmsirRSQrEc&redir_esc=y#v=onepage&q=amir_syarifuddin_keadilan_warisan&f=false.

a *syara'* requirement put on the husband (a man after he marries).³⁷

The Meeting Point of Religious and Customary Law in Inheritance Systems

Diverse inheritance laws are practiced by the Bugis Luwu. The six inheritance systems applied two systems: Islamic and customary. Both are inexorably intertwined with Indonesian history, including its Hindu and Buddhist kingdoms, the rise of Islam, and the colonial era—all of which have influenced the everyday lives of society. According to the cases above, it can be categorised as six combinations as well as can be seen in Table 2 below.

Table 2. Inheritance Systems Used

Case	Inheritance System
Equitable Division	Customary
Greater share for sons	- Islamic
Greater share for daughters	Customary -
Greater share for the eldest child	Customary
Greater share for the youngest child	Customary
Greater share for most dedicated child	Customary

Data compiled from research

The data in Table 2 reveals that the Bugis Luwu group employs six distinct inheritance systems in their inheritance practices; five cases

³⁷ Fatima Mernissi, "Beyond the Veil, Revised Edition: Male-Female Dynamics in Modern Muslim Society," Saqi Books, 2011, <https://books.google.co.id/books?hl=id&lr=&id=4F-xf-R9vNEC&oi=fnd&pg=PR7&dq=Men,+as+opposed+to+women,+are+accountable+for+the+maintenance+of+their+families+in+Muslim+society.+If+the+woman+is+still+a+girl+and+unmarried,+she+becomes+the+responsibility+of+he.>

of inheritance distribution are carried out utilizing either the customary inheritance system or family discussions. While one case was conducted using a religious system, the ratio of boys to girls was 2:1, indicating that the proportion of boys was twice that of girls. In general, the Bugis Luwu community implements either a customary system or family discussions because they divide inheritance prior to the death of the heir on the grounds that it is safer and distributes it directly to their children, whereas in Islamic inheritance and State Law (Compilation of Islamic Law, civil law) assets are only divided after the death of the heir.³⁸ Islamic inheritance law has been practiced amongst the Bugis since the first king converted to Islam. Over time, customary and Islamic laws blended to create new traditions, such as those found in table 2. Today, members of the public have difficulty distinguishing between Islamic inheritance law and customary inheritance law.³⁹

The Buginese recognize a customary adage (proverb), "*ade' sanrei kisara'e atau sara' sanrei kiade'e*"—custom rests upon Islam, and Islam rests upon custom. As such, Islam and Buginese society are inexorably intertwined and cannot easily be distinguished. This is evident, for example, in the public's general response to the question of what inheritance law is being used; as noted by Zainuddin, "[they say] Islamic law but in reality, they practice customary law".⁴⁰ There appears to be an intersection and interaction dimension at the point where customary inheritance law and Islam meet. The family of BP and the wife of AI both stated "*de'ku passilengeng wija-wijakku pada manenguwarengngi warang parang*", i.e., they did not differentiate between their children when dividing their assets. Their three sons and three daughters received land, shops, and houses. All land was divided evenly between the children; the three shops were divided amongst pairs (one shop for every two children); the home in Palopo was given to the youngest son; while the home in Makassar was given to the third

³⁸ Azimar Rusydi, religious judge and former chief justice of the Palopo Religious Court, *interview*, September 2021.

³⁹ Rusydi, religious leader, *interview*, September 2021).

⁴⁰ Zainuddin, customary and religious leader, *interview*, July 2021)

child a daughter.⁴¹ The pluralistic inheritance system practiced by the Bugis Luwu reflects incorporating elements of both the Islamic and customary systems that could occur in the methods outlined as follow:

First, similarity in conceptualizing women as inheritors. There are terminological similarities between customary inheritance law and Islamic inheritance law, as it is stated in the Bugis language: "*mallempai uranewe ma'jujungi makkuraiwe*" which indicates that men carry two items while women carry one. This is as highlighted in Surah al-Nisa verse 11 of the Quran, "Allah has commanded that the portion of a son is equivalent to the share of two girls in terms of your children's inheritance."⁴²

Second, Equality in rights is the foundation for considering the rights of men and women. Men's rights and women's rights are both entitled to receive inheritance, even though women in the *jahiliyah* period did not receive the inheritance and were instead used as the inheritance that could be inherited by each of their other heirs. However, after Islam came, women were appointed and given the right to receive the inheritance as in surah al-Nisa verse 7, "For men, there is a right to share from the inheritance of both parents and their relatives and for women, there is a right to sever from the inheritance of both. Said⁴³ emphasized that the relationship between adat and Islam in Sulawesi has existed for a long time and this has then created an acculturation process so that the influence of adat is slowly influenced by Islam. The link between customary and Islamic law in Sulawesi is a long-standing one that is entrenched in acculturation, through which indigenous customs have been influenced by Islam. It is therefore not surprising that Islam and custom are mutually influential.

⁴¹ Asiah, wife of the deceased, *interview*, August 2021.

⁴² Mu'ammarr Zayn Qadafi. "The Contemporary Discussion on Women's Inheritance (A Study on Nasr Hamid Abu Zayd's Interpretation and Its Implication)". *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 12 (2), (2011). Yogyakarta, pp:289-308. <https://doi.org/10.14421/esensia.v12i2.714>.

⁴³ Muhazzab Said, a Study on the Acculturation of Islam and Local Culture Bungamale as a Local Culture of South Sulawesi, *JICSA: Journal of Islamic Civilization in Southeast Asia* 4, (2), 2015.

Third, similarities in the sanctions and regulations binding members. The *Compilation of Islamic Laws*⁴⁴ provides formal guidelines for resolving disputes in matters of inheritance. According to several scholars, the *Compilation of Islamic Laws* is an Indonesian form of *fiqh*.⁴⁵ In the second book of this compilation, both women—be they grandmothers, mothers, wives, daughters, granddaughters, sisters, or aunts—and men—be they grandfathers, fathers, husbands, sons, grandsons, brothers, or uncles—are identified as having the right to inherit assets. Jurisprudence also provides guidance for resolving disputes in inheritance matters.

Blended Model of Islamic and Customary law to Create Gender Equity

Amongst the Bugis Luwu, diverse mechanisms are used to divide assets between heirs. This often results in inequity, in part because of diverse understandings of inheritance law and in part because families tend to divide their assets as they please. Many heirs consequently feel as if the assets have not been distributed fairly. Therefore, the author initiated to develop a new model that blends Islamic and customary understandings of inheritance. Table 3 explains the blended models of inheritance used by the Bugis Luwu. It is divided into three models.

Table 3: Blended Models

Member of Society	Model	Description
Religious and	<i>Massideppun</i>	Bringing

⁴⁴The Indonesian compilation of Islamic law (*Kompilasi Hukum Islam*) is a *fiqh* codification document based on the collective *ijtihad* taking into account the various customs and traditions across Indonesia and *mashlahat* (exigency). This Compilation of Islamic Law was formally issued under the Indonesian Presidential Instruction No. 1 of 1991 as a guideline of material law for the Religious Courts, containing three books: the Book of Marriage; the Book of Inheritance, Wills, and Gifts; and the Book of Waqf. Habiburrahman, *Rekonstruksi of Islamic Inheritance Law in Indonesia*, (Jakarta; Kencana Prenada Media Group, 2011). 53. See Also Amin Husein Nasution, *Inheritance Law an analysis of Mujtahid Thought and Compilation of Islamic Law*, (Jakarta; Rajagrafindo Persada, 2012). 12

⁴⁵ Syarifuddin Daud, Religious Leader, Ex MUI Leader. Interview July 2021

customary leader	<i>geng</i>	together the main family member and government, religious and customary leaders to discuss the portion.
Government leader, customary leader, and religious leader	Conditional	Assets are divided conditionally based on facts in the field
Religious and customary leader	Proportional	Assets are divided between heirs justly to achieve a specific goal.

Source: *Primary data, collated by researchers*

Model One is *Massideppungeng*. It refers to a process in which the heirs, family, government, and religious customary leaders are assembled. This is intended to provide a further legal foundation for the heirs and distribution of assets, ensuring that items are distributed proportionally and fairly as agreed by all involved. As stated by one informant, in the distribution of assets, it is important to involve the authorities (for example, religious leaders and elders) as they best understand the distribution of assets.⁴⁶

Model two is the conditional distribution of assets in accordance with the facts in the field. The conditional distribution could be formed in several steps. First, all expenses incurred by the death of the departed are subtracted—hospital fees, funeral preparations, outstanding debts, and charity. Second, other debts are settled. Third, the current assets of the heirs are identified. Fourth, the main heir is identified.⁴⁷

Model Three is proportional, in which the heirs and their specific needs, desires, and goals are identified. Heirs are not equal. Some may be economically established, while others may not be. Some have used much of their parents' money for school, marriage, etc.,

⁴⁶ Syarifuddin Daud, Religious Leader, *interview*, August 2021.

⁴⁷ Rusydi, *interview*, July 2021.

while others have not yet. As stated by one informant, the particular situation of heirs must be considered; for instance, if Son A has had his education funded through his undergraduate degree, and his parents sold land to pay for his marriage while Daughter B lived at home and helped her family while receiving only a high school degree, it would not be just to give the son the larger share. Such factors are considered carefully when dividing assets.⁴⁸

Studies of gender equity have developed models that make it possible to investigate the inheritance issues amongst the Buginese of Sulawesi. The collaborative model used by the authors, which referred to customary and Islamic inheritance law, has enabled them to explore the development of gender equity in Buginese society.

Conclusion

This article has revealed that the Buginese in Luwu employed various beliefs of inheritance and kinship. There are unequal inheritance rights for males and women. Some people believe the division of the inheritance must grant sons larger shares than daughters. The Bugis Luwu people of Sulawesi have a pluralistic inheritance system including components of both Islamic and customary systems. The shared elements are the notions, equality in rights, and bound regulation. This research proposed blended inheritance methods employed by the Bugis Luwu. Model One is *Massideppungeng*, a procedure through which the heirs, family, government, and religious customary authorities are linked. Model Two is the conditional distribution of assets, in accordance with the facts in the field. Model Three is proportionate, where the heirs and their individual requirements, aspirations, and ambitions are defined. This article thus recommends the creation of a new model, one that integrates religious, customary, and social perspectives to provide an approach to the inheritance that is contextual, adaptive, and gender-equitable. Having only taken the Bugis Luwu as its sample, many findings can still be made. Further research could explore, for example, the dialog between religion and custom that exists amongst

⁴⁸Azimar Rusydi, religious judge and former chief justice of the Palopo Religious Court, *interview*, July 2021.

the Bugis Luwu of Sulawesi or, more broadly, amongst Indonesia's diverse Muslim-majority population.

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Patterns for Settlement of *Punah* Inheritance Disputes In the Community of Nagari Salareh Aia from the Perspective of Islamic Law

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Abstract:

This research aims to investigate the settlement pattern of inheritance disputes in Nagari Salareh Aia as well as the impact of this settlement pattern. This is a field study using customary law and Islamic law approaches. Data were obtained through interviews and document studies. To analyze data, the Creswell approach was used, which includes data reduction, data verification, and drawing conclusion. This research reveals three significant findings. First, the customary settlement

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pattern, for heirs who control *punah* inheritance, is done by selling it to other. If there are one or more heirs, the remaining sale of the assets is divided among the heirs after the *Mamak's* rights are excluded. Second, the settlement of *punah* inheritance disputes in Salareh Aia fosters close family ties. It also clarifies the heirs' position regarding inheritance and property status, whether it is a high inheritance or low inheritance. Third, based on the pattern of settlement and the resulting impact, it can be concluded that the mechanism for resolving disputes over the *Punah* inheritance in the *Nagari* Salareh Aia has fulfilled sharia principles, namely to maintain the property and the honor of the people.

Keywords:

Islamic Inheritance, Minangkabau, Dispute Settlement, *Punah*

Abstrak

Penelitian ini bertujuan mengeksplorasi pola penyelesaian sengketa waris punah di Nagari Salareh Aia serta dampak yang ditimbulkan dari penyelesaian tersebut. Penelitian ini merupakan penelitian lapangan dengan pendekatan hukum adat dan hukum Islam. Data diperoleh melalui metode wawancara dan dokumen sebagai alat pengumpul data. Pendekatan Creswell digunakan untuk menganalisis data dengan tahap: reduksi data, penyajian data, verifikasi data dan pengambilan kesimpulan. Temuan penelitian ini menemukan tiga hal penting. Pertama, pola penyelesaian adat terhadap ahli waris yang menguasai harta warisan punah, dengan cara menjualnya untuk dimiliki perorangan. Jika ahli waris punah satu atau beberapa orang, maka setelah diberikan hak mamak, sisa penjualan harta dibagi di antara ahli waris punah. Sedangkan penyelesaian terhadap sengketa harta campuran pusaka tinggi dan pusaka rendah, dilakukan dengan cara memurnikan dan memisahkan harta tersebut. Sebagian untuk ahli waris punah dan sebagian lagi untuk adat dalam status menjadi harta pusaka tinggi. Kedua, dampak yang ditimbulkan dari pola penyelesaian adat waris punah di Nagari Salareh Aia adalah menjadikan hubungan kekeluargaan terjalin erat. Juga, memperjelas kedudukan ahli waris terhadap harta warisan dan status harta, mana yang termasuk harta pusaka tinggi dan pusaka rendah. Melihat dari pola penyelesaian dan dampak

yang ditimbulkan maka mekanisme penyelesaian sengketa warisan punah secara adat telah memelihara prinsip-prinsip syariah yaitu selain memelihara harta juga memelihara kehormatan kaum.

Kata Kunci:

Kewarisan Islam; Minangkabau; Penyelesaian Sengketa; Punah

Introduction

The concept of *punah* is interpreted differently by the Minangkabau community and Islamic inheritance law (*faraidh*), thus, the two interpretations are used in solving inheritance disputes. The meaning of *Punah* in Islamic inheritance law is found in the concept of *kalalah* inheritance. A person is called *kalalah* if he has no offspring (children) and parents (father) passed away. People who have a kinship in the family, be it from the top line (parents) or the bottom line (descendants), are called *kalalah*¹. However, some also interpret *kalalah* as people with no offspring at all.² The term *kalalah* can be used for heiress and heirs. However, several opinions of linguists suggest the meaning of *kalalah*: *first*, someone who does not have children and parents; *second*, someone who does not have children, parents, and siblings; *third*, someone who does not have family and relatives. The first meaning is a representative meaning of the opinion of the majority of scholars. Meanwhile, *kalalah* heirs include siblings or brothers and sisters. The term *kalalah* can be used for heiress and heirs. Meanwhile, *kalalah* heirs include siblings or brothers and sisters³.

Principally, inheritance transfers ownership rights from the deceased to the living heirs⁴. *Kalalah* inheritance, which transfers

¹ Ahmad Suganda and Muhammad, 'Konsep Kalalah Dalam Fiqh Waris, Suganda and Muhammad. 04, 1-17 (p. 5).

² Al Yasa' Abu Bakar, *Rekonstruksi Fikih Kewarisan* (Banda Aceh: LKAS, 2012).

³ Suganda and Muhammad, "Konsep Kalalah Dalam Fiqh Waris The Concept of Kalalah in Inheritance Jurisprudence.", M Guntur Ageng Prayogi, "(IAIN) Metro Lampung," 2018.

⁴ Endah Dwi Atmaji, *Hukum Waris Dalam Islam* (Klaten: Cempaka Putih, 2019, h.3) See also Miftahul Huda, Niswatul Hidayati, Khairil Umami "Fiqh and Custom

ownership rights from the deceased to the living heirs is mentioned in the Qur'an Surah an-Nisa' verse 12 and 176. Verse 12 describes the share of each heir who gets the inheritance, including the *Kalalah* inheritance⁵. The mentioned verse explains the settlement of the share for the *Kalalah (Punah)* inheritance by emphasizing that both brothers and sisters are also counted as an heir if the late person does not have a father and children as heirs but only has a brother or sister instead. In verse 176, meanwhile, the *Kalalah* inheritance is identified for the heirs of siblings (siblings and agnate siblings, both male and female).

The term *Punah* showed in the Minangkabau customary inheritance. In this case, *punah* (extinction) refers to the situation in which there is no heir to inherit the inheritance. High ancestral inheritance assets, inherited in Minangkabau customary terms, are assets inherited based on the matrilineal system. High ancestral inheritance refers to the high ancestral inheritance from *Mamak* (*Mamak* means all mother's brothers) and *Ninik Mamak* (a traditional leadership title carried by a Minangkabau man, which is elected and agreed upon by members of his clan for an indefinite period) ahead to the top of the family tree. This is in line with a Minangkabau's proverb: *dari ninik turun ke mamak, dari mamak turun ke kemenakan* (from *Ninik* passed down to *Mamak*, from *Mamak* passed down to nephew)⁶. In Minangkabau custom, there are two forms of inheritance: high ancestral inheritance and low ancestral inheritance.⁷ High ancestral inheritance is recognized as assets from their ancestors and afterward inherited from generation to generation from *Mamak* to nephews of the kinship group. Thus, they become the high ancestral inheritance of the kinship group⁸. The provision of this high ancestral inheritance assets, in principle, cannot be sold or pawned to the public, as the

Negotiation in Avoiding Inheritance Dispute Tradition among Mataraman Society East Java," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020): 236, <https://doi.org/https://doi.org/10.19105/al-ihkam.v15i2.3787>.

⁵ Amir Syarifuddin, *Hukum Kewarisan Islam*, 2nd ed. (Jakarta: Kencana, 2005).

⁶ Safrudin Halimy Kamaluddin, *Adat Minangkabau Dalam Perspektif Hukum Islam* (Padang: Hayfa Press, 2005, h.85-85).

⁷ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: PT Gunung Agung, 1984).

⁸ Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia* (Jakarta Timur: Kencana, 2018).

Minang proverb says: *dijua tak dimakan bali, digadai tak dimakan sando* (which means that it can be sold but cannot be bought, pawned but cannot be held). If there is an urgent condition for an inheritance, it may be sold or pawned for the common good, but all lineage members must approve it. For example, a woman in the clan is not married (does not have the cost to get married and is eligible for marriage in terms of age), or someone dies and the body has not yet been buried. Under Minangkabau customary law, which is based on matrilineal, namely maternal law, then the inheritance system in Minangkabau custom is applied and calculated based on maternal lineage. According to the mother's lineage, the inheritance is shared with family members of the mother's line.⁹

The meaning of *Punah* in Minangkabau in this inheritance concept is that when a woman dies without an heir from her direct lineage, the heirs are the distant kindred. Consequently, the heirs are from distant heirs. Distant family heirs mean blood-lined family members from the mother's lineage or indirectly descended from the woman who died, such as the daughter of a deceased sister. If this lineage is still none, the inheritance goes to family members, including blood relatives, according to the maternal lineage from the ancestors. In addition, there is *jurai-jurai*, a family structure consisting of small groups according to maternal lineage kinship (matrilineal). It comes from the same *paruik* (blood-lined). If someone dies, *jurai* will be in the same Nagari (Nagari's meaning in terms of *punah* heirs is *adat* or customary)¹⁰. Furthermore, if all the heirs specified above no longer exist, the Nagari (institution) will inherit the inheritance. That is the meaning of *Punah* people in the concept of high ancestral inheritance in Minangkabau custom.¹¹

In terms of community reality, the settlement of inheritance distribution follows the rules of Islamic inheritance law. However, the majority divide inheritance in a familial manner and customary rules for certain areas. As happened in the Banjarmasin, the distribution of inheritance is accomplished in a family manner instead of following

⁹ Chairul Anwar, *Hukum Adat Indonesia Meninjau Hukum Adat Minangkabau* (Jakarta: PT.Rineka Cipta, 1997), h. 89.

¹⁰ (Chairul Anwar, 1997: 89-90)

¹¹ (Chairul Anwar, 1997: 91)

the practice of Islamic inheritance law and the Compilation of Islamic Law.¹² Correspondingly, the distribution of inheritance is similar in the community of Kemukiman Lamblang, Kota Baro sub-district, Aceh Besar District. The distribution of inheritance to the youngest daughter is carried out based on the principle of justice (in terms of independence and financial stability) in which other heirs give their inheritance rights to the youngest daughter.¹³ In Banjar, the inheritance distribution uses the bequeathed grant before death.¹⁴ Meanwhile, the principle of matrilineal kinship is applied in Minangkabau. It means the ownership of inherited assets occurs from generation to generation, from parents to their children. The position of *Mamak* role in high ancestral inheritance should be a supervisor because *mamak* possessed considerable power in customs. In fact, *Mamak* is no longer responsible for supervising the inheritance.¹⁵

The son's role in the high inheritance in Minangkabau is only as of *mamak waris adat* or *mamak kepala adat* (a person with complete control over the high inheritance and is in charge of supervising, maintaining, and developing the high inheritance property so that it does not run out), who is responsible for supervising the inheritance assets¹⁶. Settlement of inheritance disputes (according to Minangkabau customary law and Islamic inheritance), is resolved by the elders through deliberation involving *ninik mamak* who are the

¹² Rizeka Aprilia, *Penyelesaian Sengketa Waris Di Luar Pengadilan Agama Di Kota Banjarmasin* (Universitas Islam Negeri Antasari Banjarmasin, 2020, h. 74).

¹³ Hirdyadi M. Ansar Israr, "Tehnik Pembagian Warisan Terhadap Anak Bungsu Perempuan Dalam Masyarakat Kemukiman Lamblang Kec. Kuta Baro Kab. Aceh Besar Menurut Hukum Islam," *Samarah* 1, no. 2 (2018); See Also Lego Karjoko et al., "Islamic Court's Approach to Land Dispute in Inheritance Cases," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 213–38, <https://doi.org/10.15408/AJIS.V21I2.21864>.

¹⁴ Wahidah and Faridah, "Praktik Penyelesaian Harta Warisan Pada Masyarakat Banjar" (*Universitas Islam Negeri Antasari Banjarmasin*, 2018).

¹⁵ Ria Agustar, "Pelaksanaan Pembagian Warisan Atas Harta Pencarian Dalam Lingkungan Adat Minangkabau Di Kecamatan Lubuk Kilangan Kota Padang" (Program Pascasarjana Universitas Diponegoro, 2008).

¹⁶ Danial Abdillah Lazuardi and Endang Pandamdar, "*Harta Pusaka Tinggi Menurut Hukum Waris Adat Minangkabau*," 2015, 1–13. Qasim Muhammadi, "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman The Theme in This Study Is the Distribution of Inheritance from a Mixture of Pusaka Tinggi and Pusaka Rendah Which Is Located in Nagari Lurah Ampalu Dis" 30, no. 1 (2020): 39–60.

elders in a clan.^{17 18} The management of high ancestral inheritance assets in Minangkabau indigenous peoples, such as in Batipuh Subdistrict, Tanah Datar District, is carried out in a profit-sharing agreement for pawning, which is allowed by *adat* (customs).¹⁹

Handling disputes over customary land tenure through the customary court of West Sumatra, such as customary land disputes, namely the *pacuan kudo*, occurred due to the status of customary land and unclear *ranji* (structure), resulting in an unclear distribution of assets. Disputes over customary land tenure are resolved through customary court, which is subsequently forwarded to the District Court.²⁰ To avoid conflicts and disputes, it is necessary to apply an Islamic inheritance system in inheritance distribution to create harmony and justice²¹.

Although the Minangkabau community adheres to the customary inheritance system, they still consider the Islamic inheritance system. If there is a dispute, the Tribal Council settles it amicably²². Eric expressed the same thing that high ancestral inheritance cannot be divided equally among heirs because Minangkabau tradition applies a collective inheritance system. In

¹⁷ Puspita Farahdillah et al., "Mediasi Tentang Penyelesaian Sengketa Waris: Studi Putusan No. 181/PDT.G/2013/PA.YK" 9, no. 1 (2022): 381-95.

¹⁸ Rama Deyan and others, 'Penyelesaian Sengketa Waris (Menurut Hukum Adat Minangkabau Dan Hukum Islam)', IV.Oktober (2021), 436-46.

¹⁹ Indra Rahmat, "(Studi Di Kecamatan Batipuh Kabupaten Tanah Datar) Sumber Diterbitkan Oleh : Indra Rahmat : Laboratorium Program Studi Pendidikan Sejarah Sekolah Pengelolaan Harta Pusaka Tinggi Dalam Masyarakat Adat Minangkabau (Studi Di Kecamatan Batipuh Kabupaten Ta" 8 (2019): 15-24.

²⁰ Hesty Wahyuni et al., "Penanganan Sengketa Penguasaan Tanah Hak Adat Melalui Peradilan Adat Sumatera Barat" 4, no. 3 (2021); See Also Syukri Iska et al., "Implications of the Pagang Gadai Contract on Disharmony Social Actors in Minangkabau Community," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 27-37, <https://doi.org/10.31958/JURIS.V21I1.5647>.

²¹ Lalu Supriadi and Bin Mujib, "Revitalisasi Hukum Waris Islam Dalam Penyelesaian Kasus Sengketa Tanah Waris Pada Masyarakat Sasak" 19, no. 1 (2019): 67-87.

²² Ernawati and Baharudd, 'Akulturasi Kewarisan: Penyelesaian Sengketa Pusaka Tinggi di Minangkabau', 2017.

contrast, low ancestral inheritance applies to Islamic inheritance law²³. Settlement of inheritance disputes can also be accomplished through mediation through *takharruj* (the heir's exit or resignation from receiving his share rights of the inheritance) or *tasaluh* (peace), which means the willingness and agreement between the heirs^{24 25}. It is completed in order that the distribution of inheritance follows each provision. It is also known as distributive justice, in which someone obtains a share according to their rights²⁶. The gender justice system also characterizes the distribution of Islamic inheritance, in which men and women are equally qualified for a share of the inheritance, in line with each heir's share.²⁷.

Referring to the findings of the preceding studies, it is clear that the settlement of inheritance disputes varies according to the heirs' agreement.²⁸ Inheritance can be divided amicably or based on Islamic inheritance law. However, some resolve inheritance disputes through various forms of tradition, such as in Kenagarian Salareh Aia. In this area, there is a gap in customary law carried out by the community related to inheritance. As previously stated, there is a case of inheritance distribution in Nagari Salareh Aia based on the extinction of the heirs who are entitled to inherit the property, such as the inheritance is in the form of a house but is built on customary land which is a gift from the previous *ninik mamak*. The daughter as the recipient of the right to the inheritance is *Punah*, and no one is allowed

²³ Eric Eric, 'Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau', *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 3.1 (2019), 61.

²⁴ Rini Fahriyani Ilham and Ermi Suhasti, "Mediasi Dalam Penyelesaian Sengketa Waris : Studi Putusan No . 181 / PDT . G / 2013 / PA . YK" 9, no. 181 (2016): 67-86.

²⁵ Laras Sessa, Oloan Muda Hasim Harahap, and Elimartati, "Eksistensi Hukum Islam Dan Sistem Waris Adat Yang Dipengaruhi Oleh Sistem Kekerabatan Melalui Penyelesaian Al-Takharruj" 6, no. 1 (2021): 145-64.

²⁶ Islamiyati, "Analisis Keadilan Pada Pembagian Harta Warisan Menurut Hukum Islam," n.d.

²⁷ Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Keadilan Gender" 3, no. 1 (n.d.).

²⁸ Maimun, "The Women's Rights in Divorce and Gender Equality Discourse in The Dynamics of Divorce in Madura," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 468-92, <https://doi.org/10.22373/SJHK.V6I1.12804>.

to receive it. In fact, this inheritance is seized by the only son. By all means, this son is not the heir. He cannot receive it because he is not part of the kinship group. Moreover, the inheritance given to the son is sold. On the other hand, customary only qualifies inheritance to someone from the same kinship group, and it is not allowed to be traded because the legal action is not in line with customary rules and Islamic inheritance law. The assets is permittable to sell on four conditions: 1). *gadih gadang indak balaki* (to carry out the marriages of the tribe's unmarried women), 2). *mayat tabujua diateh rumah* (the hold the funeral), 3). *rumah gadang katirisan* (to renovate the tribe's traditional house), and 4). *mambangkik batang tarandam* (restoring lost or no longer living traditional heirlooms). However, selling the inheritance does not need the four conditions in this issue.

There are several problems investigated in this research. First, what is the pattern of *punah* inheritance dispute settlement in the Nagari Salareh Aia community? Second, what effect does the pattern of settling *punah* inheritance disputes have in Nagari Salareh Aia?

Method

This is a field research with a qualitative approach. The primary data sources of the research are in the form of explanations or information obtained from disputing parties, *Ninik mamak*, *Datuak* and KAN (a mediation institution at *Nagari* level in Minangkabau) *Salareh Aia Solok West Sumatera*, namely the head of Nagari's Customary Court and the head of the custom and *syara'* Nagari's Customary Court to provide information for more complete data collection. The secondary data sources in this study were taken from books related to the topics concerned, such as books of inheritance including Islamic inheritance law and customary inheritance law books, followed by other literature to support this research. Techniques for collecting data in this study included interviews with disputing parties, *Ninik mamak*, *Datuak*, Religious leaders, and the head of Assembly of *Adat Nagari*, the head of the *adat* and *syara'* Customary Court of Nagari Salareh Aia regarding the settlement pattern of customary *Punah* heir dispute in the Kenagarian. Data were analyzed using the Creswell approach in the following ways: the first phase is data reduction. The data were reduced by summarizing and selecting the main information on extinct inheritance (*punah*) dispute resolution, then focusing on

important points, such as customs procedures and mechanisms in resolving inheritance disputes to determine the pattern used in traditional dispute resolution in Nagari Salareh Aia. The second phase is data presentation. The presentation of data is completed in a short description which is processed from the local language that has been translated and then made into a narrative text that is easy to understand. The third phase is conclusions, and verification. The third stage is to verify the data and formulate conclusions after discussing and analyzing the findings.

Discussion and Result

Overview of Nagari Salareh Aia

Salareh Aia is an administrative *nagari* (under the jurisdiction of the regency) in Palembang Subdistrict, Agam District, West Sumatra which is located between the border of Agam District and Pasaman District. Nagari Salareh Aia was formed on May 31, 1946. As a *Nagari* Government, Salareh Aia consists of 11 *Jorong* (The term *Jorong* is equivalent to urban village. It is under the jurisdiction of *nagari*) and has different areas with a population of 4168 families. The socio-cultural conditions of *Nagari* Salareh Aia are not far from the role of *Ninik Mamak*, traditional and religious leaders tasked with managing the customs in *Nagari* Salareh Aia. *Nagari* Salareh Aia characteristics are uniform because these areas are still occupied by indigenous people and have no immigrant communities. People who live or work in *Nagari* Salareh Aia are mostly traders and farmers, civil servants, artisans, and fishermen. The majority of people in this region are Muslim.²⁹

In Salareh Aia, several leaders have to manifest the law in the field of local *adat* which consists of two local political units known as *Langgam*. The two *Langgam* in Nagari Salareh Aia has different structural compositions and local cultural values. However, they have similarities in the basic pattern that forms the structure and customary values, namely the habit of living in clans and groups through a matrilineal system and solid philosophical values of Minangkabau custom. The *Adat* structures are the *Saripado Langgam*, for instance is

²⁹ Iron Maria Edi, *Langgam: Struktur Politik Lokal Minangkabau Yang Tergerus, (Kasus Langgam Nagari Salareh Aia, Kecamatan Palembang, Kabupaten Agam, 2019.*

formed through maternal lineage kinship and relationships based on close residence. In *Langgam Saripado*, unity includes the *paruik* (a nuclear family descended from matrilineal relations), *kampung* (village), tribe, and *luhak* (a kind of confederation area of *Nagari* in Minangkabau). Meanwhile, the *Rajo nan Balimo Langgam* formed its unity based on the same thing while forming the unity based on the *paruik*, *kampung* (village), tribe, and *langgam* with a different history in the composition of the customary unit.³⁰

Customary Procedures for Settlement of the Disputes of *Punah* Inheritance in Nagari Salareh Aia

Settlement of the disputes of *Punah* inheritance in Nagari Salareh Aia, Palembang Subdistrict, is carried out through the customary courts. There are several customary procedures for dispute settlement that the disputing parties must pass. The settlement of this dispute is through customary court with deliberation.³¹ In carrying out his duties, the *Penghulu* (the highest title held by a Minangkabau man in a clan, chosen by clan agreement) of the *Kerapatan Adat Nagari* (KAN) is guided by the customary rules that apply in Nagari Salareh Aia both for people who adhere to *Langgam Saripado* and those who adhere to *Langgam Rajo Nan Balimo*. This two *langgam* (the customary system) have the same customary rules although the implementation of customary settlements is different. Differences in customary systems in terms of customary rules used to result in differences in power and authority. In *Langgam Saripado* there is a kinship relationship formed based on maternal lineage and close residence. *Langgam Rajo Nan Balimo*, on the other hand, has a kinship-based community based on maternal lineage and place of residence. The flow of settlement toward *punah* inheritance can be shown in Figure 1 below.

³⁰ Edi, *Wawancara*, 22 December 2021. *Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia*.

³¹ Edi, *Wawancara*, 22 December 2021. *Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia*.

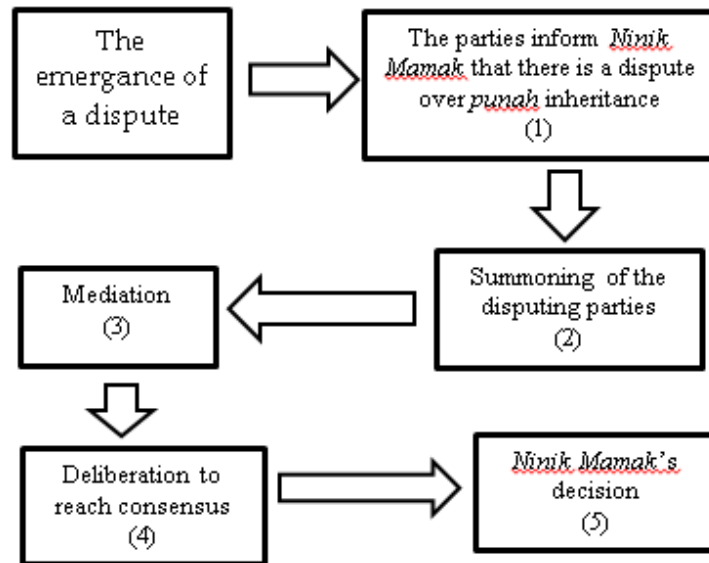


Figure 1. The settlement stages of *punah* inheritance disputes in *Nagari Salareh Aia*

From the Flow in Figure 1 above, it can be seen that the Customary Court resolves the *Punah* inheritance dispute in *Nagari Salareh Aia* by holding a customary court through several stages: the first is reporting. The reports from the disputing parties that there is disputes related to *Punah* inheritance with other parties is the main starting point. The report's form is a complaint from one of the parties that are submitted to the *ninik mamak* or the *ninik mamak's* leader. When *ninik mamak* receives the report, they will summon the disputing parties with the intention of conveying the problems that arise in the form of a claim by one of the disputing parties to be tried. Afterward, the *ninik mamak* manages a meeting in the official's *Nagari* to implement the customary trial. If it is agreed on, then a sign and address are placed.³²

³² Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Prosedur Adat Menyelesaikan Sengketa Waris Punah Di Nagari Salareh Aia.

Second, the summoning of the disputing parties (discussed/deliberated at the meeting) is accomplished a week after the head of the *ninik mamak* receives the report, and there is an agreement between both parties to carry out the trial. At this stage, the disputing parties are requested to explain the inheritance dispute between the parties. Furthermore, both parties can present their complaints. In the customary trial process, the disputing parties are called to resolve the problems encountered through custom meetings.³³

Third, do mediation. This mediation is carried out after the disputing parties are summoned before the *ninik mamak* and then resolved by finding a common ground to establish an agreement. Afterward, a meeting is held for both disputing parties to carry out mediation actions. One of the mediation actions carried out is to relay the case to the *Ninik mamak* to be resolved amicably within the time provided: three days, seven days, or maximally 14 days. If there is no amicable settlement between the two parties, the *Ninik mamak* summons the two disputing parties, and then the decision rests on the *Ninik mamak*.³⁴ This mediation is carried out after the disputing parties are summoned before the *panghulu* and then resolved by finding an identical perspective to establish an agreement.³⁵

Fourth, is deliberation to reach a consensus among *ninik mamak*. The deliberation system is completed amicably so that there is no interference from other parties outside of the disputing family members. Every customary dispute in the family will be discussed by family members guided by *Ninik mamak*.³⁶ Before a decision is made by the *ninik mamak* and during the process of deliberation and consensus, the *Ninik mamak* preferably examines and investigates everything related to the inheritance, including the origin of the inheritance to the *ranji* (structure) of ownership of the previous *Punah* inheritance. The customary trial is carried out at least seven to eleven

³³ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan 15

³⁴ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

³⁵ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

³⁶ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021

times until it is found clarity of the *Punah* inheritance to determine a fair decision.³⁷

The fifth is making decisions among *ninik mamak*. This is the *ninik mamak's* highest decision in customs. After deliberation and consensus have been carried out, the *Ninik mamak*, as the customary leader, determines a decision based on the results of the deliberation that has been mutually agreed on. As a result, because the customary settlement is based on mutual consideration and agreement, among the heirs, there will be no disputes. Thus, the process of resolving inheritance disputes is carried out peacefully until there is an identical perspective and clarity on the status of the *Punah* inheritance.

Some Case Studies about Mechanism of Dispute Resolution in *Punah* Inheritance

The meaning of *punah* in the Minangkabau traditional inheritance system of Nagari Salareh Aia is the end of the closest heir, including the daughter from the matrilineal. In principle, the Minangkabau custom has determined that the inheritance of property is passed down to the niece's children close to matrilineal kinship. Although there are sons from the mother's descendants, they cannot be regarded as heirs who are entitled in Minangkabau custom because inheritance for sons is a mere usufructuary right, so they cannot fully control the inheritance. However, the main point of this study is that sons can control the collection of inheritance passed by their parents.

There are cases of *punah* inheritance disputes that have occurred in Nagari Salareh Aia, however, only a few cases were taken as samples in this study, including first is the case in Kampuang Gadang Jorong Kayu Pasak Timur, on behalf of *Oyoih* (nickname), Chaniago clan, 51 years old who is the sole *punah* heir. In this case, the inheritance left by both parents is a house and land established upon customary land. The inheritance is a mixture of high ancestral inheritance and low ancestral property. As the sole heir, *Oyoih* controlled the entire inheritance, then all property was sold to other people. The form of settlement for this combination of high and low ancestral inheritance is to sell the property to a buyer. However, *Mamak* required that he should receive a 10% share of the transaction

³⁷ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

of this ancestral inheritance combination. If the *punah* heir did not agree to share with *mamak*, then *mamak* is reluctant to assist in the process of selling the inheritance, such as signing an approval letter for the deal purpose.³⁸

Second, the case in Padang Gantiang Jorong Kayu Pasak Timur, on behalf of Ijen (nickname), Jambak clan, 47 years old. He is a *punah* heir along with three other brothers. The form of inheritance left by both parents is an area of land, but it is a composition of high ancestral inheritance and low ancestral inheritance. Ijen and his three other brothers, who were heirs of extinction, resolved the case of high inheritance mixed with low inheritance by dividing the inheritance equally among them. Each person deserved an equal share. After each *punah* heir acquired a share, the share for Ijen's heirs from the distribution, which is the property, was sold to the other party. Albeit, in the process of selling the inheritance, it must obtain approval from the *Mamak* with proof of signature on the letter, and it requests the *Mamak* to obtain 10% of the inheritance sale.³⁹ That part is given to all *Mamak* and used for their personal spending.

Third, the case that occurred in Jorong Kayu Pasak, in the name of Sirubidin (nickname), Piliang clan, as the sole *punah* heir. His parents left an inheritance in form of land and houses. The inheritance is a mixture of high and low ancestral inheritance. The customary settlement carried out on this combination of high and low ancestral inheritance was by selling and distributing a share of 10% to the *Mamak* because in the correspondence process, the *Mamak's* signature was required as evidence of the approval and *mamak* therefore requested for a share. The type of inheritance always has an impact on how disputes are resolved. After deliberation, it was agreed that the inheritance might be marketed by the *punah* heir.⁴⁰

Fourth, the case that occurred in Padang Gantiang Jorong Kayu Pasak Timur, representing Icam (nickname), Jambak clan, 45 years old, as a *punah* heir. The forms of inheritance sold are land and houses, which are composed of high and low ancestral inheritance. Customary settlement of a combination of both cannot be separated

³⁸ Ratmiyati, Wawancara, 23 Desember 2021.

³⁹ Yerman, Wawancara, 21 Desember 2021

⁴⁰ Kasiman Dt. Marajo Nan Tinggi, "Wawancara," 2021.

from deliberation, so in this case, when a *punah* heir wills to sell the inheritance, a discussion is carried out with the *mamak* as the head of the customary inheritance. The settlement carried out, in this case, is by deliberation and it was also required that the *mamak* was provided with 10% of the proceeds from the inheritance sale.⁴¹

Fifth, the case that occurred in Jorong Kayu Pasak Selatan, on behalf of Nulih and Majik (nickname), as *punah* heirs. The forms of inheritance obtained by these *punah* heirs are land, houses, and rice fields from the combination of high and low ancestral inheritance. Some of the inherited assets were sold and others were not. However, some of the sold assets are called gifts using a grant contract, but principally the heirs would earn a sum from the grant. This composition of high and low ancestral inheritance was settled amicably by the *punah* heirs with *Mamak* because they wished to sell the whole assets ranging from land, and houses to rice fields. Then, a family discussion was held between the *punah* heirs and the *Mamak* to provide approval in order to assist the transaction using proof of signature in the letter. In other cases, the *Mamak* would ask for a 10% share of the inheritance deal.⁴²

If analyzed, some of the cases above show that the *punah* inheritance dispute that occurred in Nagari Salareh Aia is heirs controlling the entire inheritance and then selling it. However, the settlement of this inheritance is not according to the inheritance legal system in Minangkabau custom and also with customary law regarding the inheritance law prevailing in Nagari Salareh Aia. Basically, the combination of high and low ancestral inheritance cannot be controlled and traded in its entirety by *punah* heirs before the inheritance is divided and settled according to customary inheritance law.

This customary settlement of disputes between high and low ancestral inheritances has been resolved based on a system of negotiation for consensus which results in *ninik mamak's* decision. *Mamak's* decision should be based on mutual agreement and discussion, which following the applicable customary law in *Saripado* style. For that

⁴¹ Amralis Angku Rajo Endah, Wawancara, 24 December 2021. Kasus-Kasus Sengketa Waris Punah Di Nagari Salareh Aia.

⁴² Ratmiyati, Wawancara, 23 December 2021.

reason, several examples of cases of mixed inheritance of high and low ancestral inheritance assets took place in the Luhak Kayu Pasak, which is part of the *saripado* style traditional area in order to find solutions (In *langgam saripado* there is a kinship relationship formed based on maternal lineage and close residence).

As per the applicable customary law in the *Saripado* style, following finding the results of the negotiation for consensus, a decision is issued by *ninik mamak*. The decision should be following *sakato samupakat* (negotiation for consensus) from the results of the deliberation. In the settlement of the *Saripado Ninik mamak*-style case, the *Mamak* (all mother's brothers) is not authorized to make and resolve separate decisions. Meanwhile, the settlement carried out in the cases above was based on the agreement of the *Mamak* and the requirement that allows *Mamak* to obtain a 10% share had no legal basis before the custom.

Several cases that occurred and the form of customary settlement of *punah* inheritance disputes carried out in Nagari Salareh Aia showed that the customary settlement of *punah* inheritance (Punah) disputes in Nagari Salareh Aia demonstrates that there are differences and similarities in customary rules and principles of Islamic inheritance, such as in the case of heirs.

The heirs of high inheritance are given to women under Minangkabau customary law, whereas sons and daughters both receive a share of the inheritance under Islamic inheritance law. However, when the female heirs are extinct, the inheritance is passed directly to the sons who are still alive.

The basic provisions of Islamic inheritance law that have been stipulated in the Qur'an state that sons will get the inheritance of their parents. The position of the son in the *punah* inheritance shows that the son is *ashabah binafsihi*, that is, the son will inherit the rest of the property alone. The legal basis that determines that a son has the right to inherit property from his parents is written in Q.S an-Nisa' [4]: 7. These are obligatory shares. The verse explains that the son will have a share of the inheritance left by either his father and mother or both. Likewise, daughters get a share of the inheritance left by their parents as well ⁴³.

⁴³ Amir Syarifuddin, *Hukum Kewarisan Islam*, (Jakarta: Kencana), 2005), h. 7.

The implementation of the customary settlement of inheritance disputes in Nagari Salareh Aia referred to several sides of inheritance in customary Minangkabau. The customary settlement in Nagari Salareh Aia should be carried out in the following forms: First, is in terms of the status of inheritance. Assets that are inherited or sold do not belong to the heirs so the *punah* heirs do not have the right to have any. The second is from the perspective of the heirs. In this case, the son is a *punah* heir and the inheritance left is a mixture of high ancestral inheritance and low ancestral inheritance. In terms of property ownership, and the position of the son as *punah* heir is not included in the inheritance of high ancestral inheritance of the custom because Minangkabau applies an inheritance system based on matrilineal kinship. Despite that, low ancestral inheritance in the Qur'an verse explains that the son will inherit a share of the inheritance, the position of the son is *ashabah* heirs, or the person who controls the rest of the property. The third is the distribution of inheritance. Islamic inheritance law dictates that the share for sons is twice that of daughters. If there is no daughter heir, then the son who is *ashabah* will inherit the rest of the assets. The prevailing customary rules addressing *punah* inheritance law in the Nagari Salareh Aia custom on a mixture of high ancestral inheritance and low ancestral inheritance are by dividing the two assets. Some are for *punah* heirs and some are endowed to be used as a high ancestral inheritance.

If the heirs have received a share of the mixed assets of high inheritance and low inheritance, then selling the property is permitted under customary law. All Ninik Mamak receive 10% of the sale of inheritances, not from the property distribution to the heirs. This has become a provision of customary inheritance law in Nagari Salareh Aia. After the combination of high ancestral inheritance and low ancestral inheritance is divided according to customary rules, the heirs have received some of the property, and part of it becomes high ancestral inheritance. Subsequently, a part of this heir may be sold based on the *ninik mamak* agreement such as *tigo tungku sajarangan* (Traditional leaders in Minangkabau include *Niniak Mamak/Penghulu*, *Alim Ulama* (religious experts), and *Cadiak Pandai* (intelligent people)).

Elders in the customary system will have their share according to their level of position before the custom.⁴⁴

This form of customary settlement is carried out by inviting all *sapayung* (kinship of people of the same) *datuak* (traditional title bestowed on a person by the agreement of people or tribe) parties in inheritance disputes, especially *ninik mamak* who should divide the mixed assets of high and low ancestral inheritance, which partly if for the heirs and the other are for the customary. The combination of high and low ancestral inheritance cannot be controlled entirely by the heirs, yet cannot be traded and cannot be controlled by *mamak* (because the property is not entirely customary)⁴⁵ The distribution of property is instead acknowledged by the *mamak* and witnessed directly by the *mamak*.⁴⁶

The customary settlement is carried out by inviting all parties involved in inheritance disputes, particularly *Ninik Mamak*. This is done in order to convey the distribution of mixed high and low inheritance. Some are given to heirs, while others are included in high inheritances. The position of the mixed inheritance of high and low ancestral inheritance is under the control of *payuak timbago* (sako house, a traditional wealth center, also known as the traditional leader's house of *Tigo Tungku Sajaringan*). If the inheritance is completely controlled, the customary law of *warih bakaturunan sako babandaran* (some of the properties of *punah* heirs (*punah*) is lost.⁴⁷

The customary settlement of mixed assets of high ancestral inheritance and low ancestral inheritance is different. In the case of high ancestral inheritance, the settlement is carried out by involving all elements of custom, while low ancestral inheritance only requires the nuclear family and nephew-cousin kins cannot interfere, including disputes over low ancestral inheritance because it is not property rights.⁴⁸ In the low ancestral inheritance, only the nuclear family has

15 ⁴⁴ Arman Dt. Tan Mangindo, Wawancara, 22 December 2021. Pucuk Adat Nan

⁴⁵ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

⁴⁶ Yerman, Wawancara, 21 December 2021

⁴⁷ Rabuman Dt. Jelo, Wawancara, 23 December 2021.

⁴⁸ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021

the rights, and nephews cannot dispute it because it does not belong to them.

Mechanisms and efforts for the customary settlement of inheritance disputes of mixed high ancestral inheritance and low ancestral inheritance are performed by applying two forms of settlement, namely: First is negotiation which is conducted to anticipate social turmoil and ongoing disputes over the inheritance dispute. The second is consensus, the word consensus is taken after deliberation. The agreement does not harm other parties and certainly does not violate the applicable customary laws. One of the reasons for the implementation of these two forms is to apply the concept of justice, therefore the agreement that will be decided does not harm any of the disputing parties and maintains kinship in family relations.⁴⁹

In traditional inheritance disputes, *ninik mamak* plays an important role in the process of settling *punah* inheritance disputes as stated by Kasiman Khatib Marajo Nan Tinggi. He mentioned that *ninik mamak* has a great influence on the mechanism of customary settlement of disputes between high ancestral inheritance and low ancestral inheritance in Nagari Salareh Aia. This is caused by *ninik mamak* holding the decisions on negotiation and consensus which is completed collectively before the religious stakeholders as well as *imam khatib*. Whereas the customary elder serves as a person who will explain custom or what is known as "*pai tampek batanyo balik tampek barito*" (the elder understands more about the ins and outs of custom if there is a customary settlement that is not in accordance with customary rules).⁵⁰

Impact and Solutions for *Punah* Inheritance Settlement Patterns in Nagari Salareh Aia

The impact of the customary settlement pattern on *punah* inheritance disputes in Nagari Salareh Aia is: First, the customary settlement of *punah* inheritance disputes has shown the clarity of the heir's position with respect to inheritance and property status in the

⁴⁹ Asril Dt. Rangkayo Mulia, Wawancara, 23 December 2021, Yerman, Wawancara. 21 December 2021,

⁵⁰ Kasiman Dt. Marajo Nan Tinggi. Wawancara, 26 December 2021.

category of high ancestral inheritance or low ancestral inheritance and or mixed assets of both. Second, it can avoid disputes between parties and heirs because the settlement pattern is applied following the concept of justice.

The customary settlement of inheritance in Nagari Salareh Aia is based on the *Salingka of Nagari* custom (A rule that has been practiced in society from generation to generation in a particular *Nagari* in Minangkabau and does not necessarily apply in other *Nagari*.), which is inseparable from the *adat basandi syara', syara' basandi kitabullah* (the customary provisions are based on the Shari'a, and the Shari'a refers to the Qur'an). It can be understood that the customary settlement process of the *punah* inheritance dispute is based on the customary laws that apply and are used in Nagari Salareh Aia. These laws are inseparable from *syara'* law.⁵¹

Some of the solutions put forward by traditional leaders in the traditional settlement of a *punah* inheritance dispute of combined high and low ancestral inheritance in Nagari Salareh Aia, Palembayan Subdistrict are: First, to understand that inheritance is the subject of the customary inheritance dispute. The second is to organize the discussion. The discussion held with traditional leaders is negotiation and consensus making, which is to find common ground for the settlement of customary rights on inheritance. Negotiations are held to maintain relationships within the family, therefore it is performed in a familial way, to avoid problems and disputes between heirs, *Mamak*, and other family parties. The third is to make a consensus. The consensus made is based on the results of negotiation by all parties involved in the settlement of customary inheritance disputes. Fourth, is the decision of *ninik mamak*. This is the highest decision issued by the *ninik mamak* in customs.

The form of the solution presented by these traditional leaders is indivisible from the *Salingka Nagari* Customary system which is also based on the *adat syara', syara' basandi Kitabullah*. This is to avoid disputes, bad impacts, and that will occur in the future as the effect of the implementation of the settlement of *punah* inheritance dispute.

⁵¹ Asril Dt. Rangkayo Mulia. Wawancara, 22 December 2021. Analisis dan Solusi Penyelesaian Adat Sengketa Campuran Harta Pusaka Tinggi dan Harta Pusaka Rendah Waris Punah Di Nagari Salareh Aia.

Therefore, the disputing parties can accept the *ninik mamak* decision without any other disagreement and the outcomes of the negotiation and consensus do not harm each other because of the settlement of the *punah* inheritance as per the concept of justice.

The nature of customary law that applies in society is not a proposition that is determined by *syar'i*. However, this customary law includes *'urf* in the maintenance of *mashlahah* (*Mashlahah* is a concept that is used as the primary consideration in solving Islamic law problems because its principle is the protection of the law's objective purpose (*maqasid al-syari'ah*), which is the preservation of religion, soul, mind, lineage, and property) in society. The intended *maslahat* is one that clearly maintains the five parts; the protection of religious beliefs, the protection of the soul, the protection of the mind, the protection of family and descendants (human dignity), and the protection of property⁵². As stated by al-Ghadzali is *hifzu al-Kulliyat al-Khams*⁵³. Related to this present research on the customary settlement of *Punah* inheritance disputes in Nagari Salareh Aia, Palembayan sub-district, the implementation of this customary settlement is relevant to *mashlahah mursalah*, which aims to preserve offspring and property

The implementation of inheritance distribution has been explained in the Qur'an Surah an-Nisa verses 11, 12, and 176, as well as several hadiths of the prophet. However, the community also applies customary laws that have become a habit and are implemented by the people in Nagari Salareh Aia. In principle, high ancestral heritage assets are to be maintained and developed continuously so that the next generation can benefit from these assets and these assets can be passed down from generation to generation. However, in contrast to mixed assets of high ancestral inheritance and low ancestral inheritance, the form of ownership may shift if the heirs agree to divide and settle so that ownership rights also change. Therefore, it is also not allowed in customary inheritance law to

⁵² Abdul Ghofur Anshori and Yulkarnain Harahab, *Hukum Islam Dinamika Dan Perkembangannya Di Indonesia* (Yogyakarta: Kreasi Total Media, 2008).

⁵³ Firdaus, *Ushul Fiqih: Metode Mengkaji Dan Memahami Hukum Islam* (Depok: Rajawali Pers, 2017).

control and sell all assets before the distribution of the mixed inheritance is completed.

Conclusion

This research shows that the pattern of tribal-based inheritance dispute settlement by prioritizing the kinship approach is effective in resolving *Punah* inheritance disputes in *Nagari* Salareh Aia. This pattern of the settlement also has a significant impact on class solidarity, clarifies the position and status of the heirs, and clarifies the inheritance's status. Based on the pattern of settlement and the resulting impact, it can be concluded that the mechanism for resolving disputes over the *Punah* inheritance in the *Nagari* Salareh Aia has fulfilled sharia principles, namely to maintain the property and the honor of the people.

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A Critical Analysis of Islamic Law and Fatwa of MUI (Majlis Ulama Indonesia) & NU (Nahdlatul Ulama') on A Gold-Backed Cryptocurrency (OneGram)

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Abstract:

Cryptocurrency is a result of recent development of digitalization in the financial transaction. OneGram is a part of it that uses gold instruments to back up and maintain its value stable. The purpose of this study is to explore how Islamic law and MUI & NU, through their fatwa, perceive the OneGram. This research uses a qualitative approach to gain a deep understanding of the OneGram by using secondary data collected from the Quran, hadith, relevant academic journals according to Islamic law and fatwas from both organization. The results of this study state that OneGram is allowed by Islamic law and the fatwa to be used as digital payment system. OneGram is furthermore supervised by shariah supervisory board to avoid *gharar* (uncertainty) and *maysir* (gambling) in maintaining its value. The unique fact from this digital currency is that the use of gold in transaction had been applied in the time of Prophet Muhammad SAW. From this

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digital development, OneGram as a gold-backed cryptocurrency can revive the function of *dinar* as currency. OneGram transforms the gold value in *dinar* coin which physically has no flexibility in today transaction to the gold value in digital platform which has flexibility in digital transaction with broad accesability.

Keywords:

Cryptocurrencies Backed-Gold; OneGram; Islamic Law;
MUI & NU

Cryptocurrency merupakan hasil perkembangan digitalisasi di bidang transaksi keuangan. OneGram adalah bagian dari digitalisasi tersebut dengan instrumen emas untuk menopang stabilitas nilainya. Tujuan penelitian ini adalah mengeksplorasi pandangan hukum Islam dan fatwa MUI & NU tentang OneGram. Penelitian ini menggunakan pendekatan kualitatif untuk mendapatkan pemahaman yang mendalam tentang OneGram dengan data sekunder dari Alquran, hadits, jurnal akademik yang relevan dalam pandangan hukum Islam dan fatwa dari dua organisasi tersebut. Hasil penelitian ini menyatakan bahwa OneGram diperbolehkan dalam hukum Islam maupun fatwa MUI & NU untuk digunakan sebagai sistem pembayaran digital. OneGram juga diawasi oleh Dewan Pengawas Syariah untuk menghindari *gharar* (ketidakpastian) dan *maysir* (perjudian) dalam mempertahankan nilainya. Fakta unik dari mata uang digital ini adalah bahwa penggunaan emas dalam bertransaksi sudah diterapkan di zaman Nabi Muhammad SAW. Dari perkembangan digital inilah, OneGram sebagai salah satu ragam *cryptocurrency* yang ditopang oleh emas dapat menghidupkan kembali fungsi dinar sebagai mata uang. OneGram mengubah nilai emas dalam koin dinar yang secara fisik tidak memiliki fleksibilitas dalam transaksi saat ini menjadi nilai emas dalam platform digital yang fleksibel untuk transaksi digital dengan aksesibilitas yang luas.

Keyword:

Cryptocurrencies Backed-Gold; OneGram; Hukum Islam;
MUI & NU

Introduction

Cryptocurrencies have the potential to generate new forms of money to establish a new non-cash payment instrument as the global economy develops.¹ In line with that, the creation of Bitcoin is an ancient method of gold-based payment that is being employed as a new medium of value storage.² Although Islamic finance experts debate the merits and demerits of cryptocurrencies in response to previous studies stating that the potential losses will exceed the gains,³ other experts assert that cryptocurrencies can also comply with Islamic law like the prohibition of interest while combining the principles of *maslaha* (public interest) and collective risk-sharing.⁴ Additionally, the execution of cryptocurrencies on blockchain technology requires actual assets that conform to the Islamic view of money as a medium of exchange that can store value.⁵

Cryptocurrencies were created to enable self-contained peer-to-peer transactions. They are not physical; they may resemble coins in digital platform. Additionally, they cannot be retracted. Owners are limited to transferring funds to the third parties. The application of cryptocurrency is a matter of withdrawing money and contributing to the financial market, as it is built on a blockchain that is independent of the present financial system based on fiat money. Meanwhile, fiat money is issued by each country's central banks; nevertheless, cryptocurrency operates on a global basis because it is

¹ Melanie Swan, 'Blockchain Economic Theory: Digital Asset Contracting Reduces Debt And Risk', 2019, 3-23 <https://doi.org/10.1142/9781786346391_0001>.

² Nathaniel Popper, *Digital Gold: Bitcoin And The Inside Story Of The Misfits And Millionaires Trying To Reinvent Money*, Bitcoin And The Inside Story Of The Misfits And Millionaires Trying To Reinvent Money, First Edit (New York, NY: Harper, An Imprint Of Harpercollins Publishers, 2015).

³ Luqman Nurhisam, 'Bitcoin: Islamic Law Perspective', *QIJIS (Qudus International Journal Of Islamic Studies)*, 5.2 (2017) <<https://doi.org/10.21043/Qijis.V5i2.2413>>.

⁴ Charles W Evans, 'Bitcoin In Islamic Banking And Finance', 2015.

⁵ Shodiq, 'Sharia Rulings On Cryptocurrencies. Retrieved From Pbagusristono*', "Design Of Reliable And Efficient Manchester Carry Chain Adder Based 8-Bit Alu For High Speed Applications", *Journal Of VLSI Circuits And Systems*, 2018.

not tied to any particular country or territory. There is no central authority in charge of the cryptocurrency process⁶

Cryptocurrency's value is determined by the establishment of a blockchain to store its data. Calculations are made using sophisticated algorithms. The more data and systems that a blockchain can create, the greater the miner's fees. Miner's fees are amounts of cryptocurrency given to incentivize miners (and their operators) to confirm transactions. Miners are the special pieces of hardware that confirm and secure transactions on the network. Miner fees pay miners for the service they provide. This is the technique by which the value of a coin is generated. Then, the supply and demand of consumers can also affect the price of cryptocurrencies.⁷ At the moment, many nations' currencies (including the US Dollar) are not backed by gold. This appears to be a double standard since it is extremely difficult to get kosher cryptocurrencies but not halal currency – at least not with the same degree of difficulty. Demand for kosher cryptocurrency also suggests that cryptocurrency is initially not *halal* (lawful) and further modification of system is required to make it *halal*.⁸

This emerging trend has garnered global attentions, including from the sharia scholars on whether cryptocurrencies are sharia-compliant. There have been differing opinions from scholars, not only on its sharia compliance, but also on its status as a currency. Additionally, beyond it, it is also wondered whether cryptocurrencies in its current form is in line with the ethical goals of Islam. As the sector grows larger and influential, verifying these issues would become more essential.

The cryptocurrency was formed in recent history with the use of blockchain technology and the SHA256 cryptographic hash

⁶ Miguel Angel Garcia-Ramos Lucero, 'Cryptocurrencies Regulation In The Islamic Environment: Onegram Case Study', *Journal Of The Sociology And Theory Of Religion*, 11 (2021) <<https://Revistas.Uva.Es/Index.Php/Socireli/Article/View/4899>>.

⁷ Chaker Aloui, Hela ben Hamida, and Larisa Yarovaya, "Are Islamic Gold-Backed Cryptocurrencies Different?," *Finance Research Letters* 39 (2021): 1-16, <https://doi.org/10.1016/j.frl.2020.101615>.

⁸ Shajahan K Kakkattil, *Halal Cryptocurrency Management, Halal Cryptocurrency Management* (Springer International Publishing, 2019), <https://doi.org/10.1007/978-3-030-10749-9>.

algorithm as a proof of work method. Although it is a decentralized digital currency supported by a peer-to-peer network, IOTA, one of the first issued cryptocurrencies, was not built on blockchain technology but rather on a tangle. Blockchain allows the existence of cryptocurrency (amongst other matters). A cryptocurrency becomes a payment instrument which includes the US dollar and other currencies.. However, it uses virtual encryption strategies to manipulate the creation of monetary gadgets and to verify the switch of price range. A peer-to-peer network's entire transactions are recorded in a blockchain which is a decentralized ledger. Participants can confirm transactions using this technology without the requirement for a central clearing organization. Applications might involve paying bills, concluding business deals, casting ballots, and a host of other things.

It is important, therefore, to think about blockchain technology as a new breed of business process improvement software from a commercial standpoint. Blockchain and other collaborative technologies promise to significantly reduce the "cost of trust" by enhancing the commercial activities that take place between firms. Because of this, it might provide much larger returns for every dollar invested than the majority of conventional internal investments.⁹

OneGram is a cryptocurrency created by a start-up company founded in May 2017 in Dubai with an ICO (initial coin offering) in which 12,400,786 OGC tokens were created and over USD 500 million was raised. OneGram is a blockchain-based cryptocurrency that is defined by the requirement that each unit is backed by at least one gram of actual gold at the moment of issuance, providing the crypto assets with a steady base price. This is a unique characteristic in that it blends traditional assets (such as gold) with developing assets (cryptocurrencies). Bitcoin trading supports parity with gold (per ounce) in 2017, capturing the attention of gold investors worldwide. As a result, there is a possibility of increasing investor interest in gold-backed cryptocurrencies.¹⁰

⁹ Rinku Raheja, Abhishek Agarwal, And Saurabh Vaish, 'Cryptocurrency And Its Usage As An Alternative Currency', 03, 2022, 2316-21.

¹⁰ Lucero, "Cryptocurrencies Regulation in the Islamic Environment: OneGram Case Study."

Several academic researchers have highlighted the good and bad elements of cryptocurrencies.^{11,12} Aside from its benefits and drawbacks, Muslims must consider another factor like shariah. The Shariah element of cryptocurrencies has received little attention. There is no agreement among Islamic scholars on the validity of cryptocurrencies. Muslim scholars hold two opposing viewpoints about cryptocurrency. The first group of Islamic scholars accepts cryptocurrencies as payment.¹³ They contended that bitcoin qualities are compatible with Islamic thought and will benefit society. They do not consider bitcoin to be *haram* (unlawful), but rather feel that a clear structure for cryptocurrencies is required.

The usage of Bitcoin as money was forbidden by the second group of Islamic scholars. The Grand Mufti of Egypt is the most vocal supporter of the second point of view.¹⁴ They contended that cryptocurrency is not issued by any competent authority which enables its use for money laundering, tax evasion, and corruption. Because of its significant price fluctuation, it is inappropriate for use as a currency. Cryptocurrency is a virtual money that is not absolute and functions similarly to Multi Level Marketing schemes. There is also some uncertainty around cryptocurrencies. They declared bitcoin as *haram* for Muslims on these reasons.

Based on the previous researches and studies, this study aims to capture the gold-backed cryptocurrency (OneGram) by using Islamic law view in comparison with fatwa from MUI & NU. The use of fatwa from MUI & NU is specific novelty of this paper as limited discussion of this fatwa. This study's goal is therefore to explore how Islamic law and fatwa of MUI & NU perceive the cryptocurrency. This study also expands the literature on Islamic cryptocurrency. Furthermore, the results of this study will help improve investors' understanding on the gold-backed cryptocurrency

¹¹ Baker, "In Blockchain We Trust," Available at: <https://nzbusiness.co.nz/>, 2019.

¹² Limon, "The Wild West: Understanding Cryptocurrencies and Their Implications on Financial Planning," *Journal of Financial Planning*, Vol. 1, pp (2018).

¹³ Ahmed, "Bitcoin: Shariah Complaint?," Working Paper," Available at: <https://afinanceorg.files.wordpress.com/2017/08/research-paper-on-bitcoin-mufti-faraz-adam.pdf>, 2017.

¹⁴ Abdel, "Fatwa on Bitcoin," Available at: <https://gate.ahram.org.eg/news/1764841.aspx>, 2018.

as Islamic investment. The understanding of the Islamic law in using cryptocurrency will make Muslim users comfortable in using Islamic cryptocurrency like OneGram. Fatwa of MUI & NU, on the other hand, is considered as important aspects to sharpen the diverse perspective cryptocurrency because both are two from the largest Islamic organization in Indonesian muslim society

Method

The study employs a qualitative research approach to have an in-depth understanding of the cryptocurrency backed-gold while analysing the position of OneGram in the Islamic law perspective and the fatwas. The qualitative approach is useful in this current research because it examines a subject matter with careful consideration of numerous factors and interprets it with a broader perspective and clearer understanding.¹⁵ The data used in this study were secondary data obtained from Qur'an, the Hadith, academic journals and fatwa from Islamic scholars, Indonesian Ulema Council (MUI) and Bahtsul Masail Nahdlatul Ulama (NU). The technique consists of selecting and identifying the idea, the study objectives, all uses of the concept of cryptocurrency, its features, the case model, antecedents, outcomes, then conclusions drawing from empirical references. The result and discussion are presented by some approach. The first is by presenting analysis of OneGram's sale and purchase transactions from Islamic law perspective. The second is by citing fatwa of Islamic scholars, MUI & NU.

Discussion and Result

Analysis of OneGram's Sale and Purchase Transactions from Islamic Law Perspective

The establishment of *dirhams* (silver coins) and *dinars* (gold coins) represented the old fact that all economic transactions were based on these two currencies. In this case, both *dirham* and OneGram have similar function in using value of gold to make transaction. According to this time, only stones with no benefits exist. People

¹⁵ Patrik Aspens and Ugo Corte, "What Is Qualitative in Qualitative Research," *Qualitative Sociology* 42 (June 2019), <https://doi.org/10.1007/s11133-019-9413-7>.

need currencies to buy food, clothes, and other essentials.¹⁶ According to Imam al-Ghazali, money isn't desired for its reason. Several Islamic jurisprudence scholars, such as Ibn Taymiyyah, agree with him, stating that money is only a payment instrument of transaction and not a desire in itself. Crowther¹⁷ defines one characteristic of money, which distinguishes it from all other commodities, is that it is not desired for its own sake.

Cryptocurrencies, like precious metals, have similar hedging features against financial and economic instability and are frequently likened to gold.¹⁸ The gold market is now utilizing Blockchain technology to boost cryptocurrency returns and attract gold bugs to cryptocurrency trading. Since the inception of Stablecoins, which are hybrid assets that bridge the divide between digital and traditional financial assets, numerous attempts have been made to produce digital coins backed by gold which can provide investors with a less volatile cryptocurrency.¹⁹ A Gold-Backed Cryptocurrency (GBC) is a form of digital currency whose value is determined by the value of its underlying physical asset (gold). This means that, while crypto coins are decentralized and easy to trade, gold-backed cryptocurrencies also have inherent value, which is a significant advantage than conventional cryptocurrencies²⁰

Science and technology advancements periodically demonstrate the existence of a progressively advanced society.

¹⁶ Al-Ghazali, *Ihya' Ulumudin (Terjemahan)* (Bandung: Pustaka, 2005).

¹⁷ Geoffrey Sir Crowther, "An Outline Of Money," 1940.

¹⁸ Debojyoti Das et al., "Does Bitcoin Hedge Crude Oil Implied Volatility and Structural Shocks? A Comparison with Gold, Commodity and the US Dollar," *Finance Research Letters* 36, no. C, (2020): S1544612319306725; Azharsyah Ibrahim and Abdul Jalil Salam, "A Comparative Analysis of DSN-MUI Fatwas Regarding Murabahah Contract and the Real Context Application (A Study at Islamic Banking in Aceh)," *Samarah* 5, no. 1 (January 1, 2021): 372-401, <https://doi.org/10.22373/SJHK.V5I1.8845>.

¹⁹ Adam Abdullah, "The Islamic Monetary Standard: The Dinar and Dirham" 6 (April 2020): 1-29, <https://doi.org/10.25272/ijisef.659330>; See Also Erie Hariyanto, "Public Trust in the Religious Court to Handle Dispute of Sharia Economy," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (2022): 185-208, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/26216/10512>.

²⁰ Shaen Corbet, Brian Lucey, and Larisa Yarovaya, "Datestamping the Bitcoin and Ethereum Bubbles," *Finance Research Letters* 26 (2018): 81-88, <https://doi.org/https://doi.org/10.1016/j.frl.2017.12.006>.

OneGram is a component of that evolution. This virtual currency makes use of cryptography and is based on supply and demand. Anyone interested in owning and using OneGram must have a virtual wallet capable of receiving and sending OneGram to other individuals, as well as making purchases. The website "https://onegram.org/" can be used to conduct transactions. When it comes to the purchasing and selling of OneGram's virtual currency, this transaction is identical to *bay al-sharf*. *Bay al-sharf* is technically a money-to-earn-money sale. This transaction is permissible in Islam as long as it complies with the rules and conditions outlined in the Qur'an, hadith, and *ijma'* ulama (agreement of Islamic scholars). *Al-Sharf* permits the following legal basis: Allah's word in Surah an-Nisa verse 29, namely,

"O believers! Do not devour one another's wealth illegally, but rather trade by mutual consent. And do not kill 'each other or' yourselves. Surely Allah is ever Merciful to you."

In Surah al-Baqarah verse 275, Allah says, "

Those who consume interest will stand 'on Judgment Day' like those driven to madness by Satan's touch. That is because they say, "Trade is no different than interest." But Allah has permitted trading and forbidden interest. Whoever refrains – after having received warning from their Lord – may keep their previous gains, and their case is left to Allah. As for those who persist, it is they who will be the residents of the Fire. They will be there forever

Additionally, other fatwas discuss the permissibility of *al-sharf* in the form of digital money, including the following Fatwa No. 21932 in Islam:

"In the digital age, electronic currency is currency. Although this currency is not in the same form as other currencies, it has the same status in terms of assured value. Thus, this electronic

*money is evaluated in terms of the amount of money (currency)
that can be saved.*²¹

Another relevant is the following Fatawa Syabakah Islamiyah No. 251170

*"Whoever has the digital money in a regulated manner
(acceptable), then utilizing it for permissible purposes is not an
issue."*²²

The verses above can be utilized as a guideline for Muslims while engaging in *al-sharf* transactions, as Allah justifies trade based on consent, yet Allah bans *usury* (gambling) and other vanity-based behaviours. Meanwhile, the Islamic *Fatwa* and the Syabakah Islamiyah *Fatwa* punish purchasing and selling digital currency in the same way as *al-sharf* through a specified manner.

Cryptocurrency has been proven to operate over a long period of time and survives to this day. Therefore, Cryptocurrency, including OneGram, is categorized as a sharia-compliant digital asset with economic value and ability to be stored and retrieved. As cryptocurrency is only digits on a public ledger, there are no reason to make them *haram*. Cryptocurrency is a digital representation of value that can be exchanged. Eventhough it has no underlying asset, the cryptocurrency itself is the valuable one. However, it does not qualify as money due to their lack of societal acceptance and extreme volatility. As previously indicated, the use of cryptocurrencies is still restricted both in terms of their acceptability as legal cash and in the market. Furthermore, the tremendous volatility of cryptocurrencies prevents their use as a reliable barometer of worth. Cryptocurrencies are also challenging to utilize as money due to the hazards of cyberattacks and heists that afflict them.

Some experts²³ require economically viable tools for addressing demands and carrying out human activities. Money

²¹ *Fatwa Syabakah Islamiyah 21932*, n.d.

²² *Fatwa Syabakah Islamiyah 251170*, n.d.

acquires that function when the requirement for its use is met. However, money serves no immediate purpose because when money is used to purchase products, the goods themselves serve a purpose/function.²⁴ Money's primary function in Islamic economics is to serve as a unit of account and a medium of exchange. Additionally, money can also function as storage of value and fulfill the standard.²⁵ To ensure that money is utilized and accepted at all levels of society, it is vital to understand some of the conditions and criteria to meet before something can be called money. These include the following points along with how they are relevant to OneGram:

First, there must exist any guarantee. Each money issued by a certain country should be backed by the government of that country. However, there are currently no restrictions governing OneGram. Members may rely on Government Regulation No. 99 of 2018 establishing a general policy for the implementation of cryptocurrency asset futures trading. However, this rule does not refer to the definition of Crypto Assets, including the term "cryptocurrency." Moreover, on January 13, 2018, Bank Indonesia released a press statement in which it defined virtual currency as "digital money issued by financial authorities and is gained through purchases, transfer purchases (rewards), or mining" (processes). The process of creating a fresh amount of virtual currency is quite complex mathematically. The developer community issues/controls this digital currency, which is then utilized and accepted by members of the virtual community.²⁶ OneGram is included in this sense because it is backed by commodity gold.

²³ Mufti Faraz Adam, "Bitcoin: Shariah Compliant," *Amanah Finance Consultancy* 2017 (2017): 1-54; Aloui, Hamida, and Yarovaya, "Are Islamic Gold-Backed Cryptocurrencies Different?"

²⁴ Hasan, *Al-Auraq Al-Naqdiyah Fi Al-Iqtishad Al-Islamy, Mata Uang Islami: Telaah Komprehensif Sistem Keuangan Islami* (Jakarta: Grafindo Persada, 2005).

²⁵ ISRA, *Sistem Keuangan Islam Prinsip & Operasi* (Jakarta: Grafindo Persada, 2015).

²⁶ Q&A, 'Tanya Jawab Siaran Pers Bank Indonesia No. 20/4/DKom, Bank Indonesia Memperingatkan Kepada Seluruh Pihak Agar Tidak Menjual, Membeli Atau Memperdagangkan Virtual Currency. 2018. Jakarta: Departemen Komunikasi'.

Second, it must be widely accepted to perform the function as a means of transaction. OneGram is still operational and is being used by a small number of users until it becomes a member. It means that non member of OneGram can neither access nor accept the digital currency of OneGram to make any transaction. The total users of OneGram is 1.400786 million per 2022. This second rule means that the currency used by a large number of individuals or community must also serve as a means of payment in transaction. However, some individuals are unable to accept it. In this context, this rule (widely accepted) can be applied if all countries agree that the OneGram can be used as a currency because it is backed by gold as something that is universally admired.

Third, it must be stable in value. Money's value must be stable with volatility kept to a minimum. Because OneGram is backed by gold, its price fluctuates in lockstep with gold which is mostly stable, though occasionally continuous gains appear.

Fourth, money must be stored in a variety of locations, including small spaces but significant quantities. This implies that money must be adaptable. About this criterion, the OneGram number is only easily stored because it is in digital form and can be stored via an e-wallet on a PC, smartphone, or tablet.

Fifth, it is convenient to carry. Because OneGram is saved in an e-wallet, it may be accessed and maintained indefinitely via PC, smartphone, or tablet.

Sixth, it is not readily damaged. When comparing the current rupiah money, for instance, OneGram appears to be more durable. However, both are indestructible. The Rupiah currency can be harmed by shredding, while the OneGram currency can be harmed or even lost as a result of malware, spam, or piracy.

According to some authorities, cryptocurrency is forbidden. The Egyptian "Grand Mufti" (Islamic jurists allowed to provide views on the non-binding character of Sharia, or fatwas), the Turkish government, and the Palestinian Authority Fatwas have all adopted this approach. Although not yet officially, the United Arab Emirates and Saudi Arabia have outlawed cryptocurrencies.²⁷ Both have issued

²⁷ Lucero, "Cryptocurrencies Regulation in the Islamic Environment: OneGram Case Study."

strong warnings about the acquisition of bitcoin. There are numerous causes for this:

First. Sharia law emphasizes the importance of the asset being a legal tender subject to government regulation. Cryptocurrencies do not meet this criteria because some cryptocurrencies do not use actual asset to back up the value of its digital currency.²⁸ OneGram has actual asset from gold and fulfill this rule.

Second. There are no issuers or central bodies to monitor or secure cryptocurrencies. Cryptocurrency proponents believe that legal certainty and security are derived from user-accepted standards and the fact that encryption and blockchain technology prevent manipulation, as occurred with the SWIFT network used for interbank transactions. Additionally, sharia places a priority on the preservation of property and wealth. Numerous times, the monetary authorities have destroyed value through inflation (such as today in Venezuela due to monetary policy and exchange rate interventions where many Venezuelans prefer cryptocurrencies as a unit of account of exchange and reserve of value over the official currency Bolivar).

Third. Other experts speculate on bitcoin volatility, stating that speculation is an external factor that should not be used to determine the value of assets or money. Additionally, other fiat currencies, financial assets, and commodities exhibit volatility. As a result, some critics say that cryptocurrencies have the potential to be used for money laundering and financing illegal activity. The use of cryptocurrencies for unlawful purposes is surely prohibited, but it is an external component of the currency. According to certain experts,²⁹ bitcoins like cryptocurrencies are *halal* as long as compliant with Islamic law. OneGram, on the other hand, is supervised and monitored by sharia supervisory board to ensure the transaction in line with Islamic law.

²⁸ R. A.E. Virgana, Mohd Haizam Mohd Saudi, And Obsatar Sinaga, 'Conceptual Research: Sharia-Based Cryptocurrency', *Journal Of Advanced Research In Dynamical And Control Systems*, 11.3 Special Issue (2019), 138-43.

²⁹ Ma And Billah; Aloui, Hamida, And Yarovaya.

According to the Islamic fatwa seminary centre in South Africa,³⁰ cryptocurrencies qualify as "*mall*" (property in Arabic) and can thus be used for trading (like gold for example). However, and this must be emphasized, a currency must be sanctioned by the appropriate government and regulatory agencies. Mostly, Muslim scholars allow individuals to utilize gold, silver, wheat, barley, salt, dates, even electronic money and cryptocurrency.³¹ When used as money, the laws of *sharf* (money changer) and forbidding *riba* (interest) must be applied. Most Islamic scholars believe that money is a means of trade. Money has been used to exchange goods and services for centuries. Currency has no inherent usefulness which distinguishes it from consumption and production items. Because cash cannot be treated as a good under Islamic law, it cannot be leased, unlike commodities, which may be leased with a rent payment. Many economists agree that the Islamic understanding of cash money is classified as currency instead of goods.³²

Preece³³ distinguished cryptocurrencies from Islamic principles by demonstrating that cryptocurrencies lack an issuer, monetary control, and transparency. Numerous Muslim scholars hold divergent views on this subject, including Bereau³⁴, who asserts that cryptocurrencies and tokens are permissible as money because they satisfy transactional habits in addition to other requirements such as *maal* (property), *manfa'ah* (usage), and *haqq* (verity & fact). Apart from that, coins and tokens have certain distinctions. Tokens, too, differ in appearance but serve a similar purpose as a medium of

³⁰ Mufti Muhammad Abu-Bakar, 'Shariah Analysis Of Bitcoin, Cryptocurrency, And Blockchain', *Blossom Labs, Inc*, 1 (2018), 21 <<https://Blossomfinance.Com/Bitcoin-Working-Paper>>.

³¹ Abu-Bakar.

³² Ma and Billah, *Halal Cryptocurrency Manag*.

³³ Abdul Shakour Preece and Popoola Kareem Hamed, "Journal of Islamic Thought and Civilization of the International Islamic University Malaysia (IIUM)," *Journal of Islamic Thought and Civilization of the International Islamic University Malaysia (IIUM)* 24, no. 1 (2019): 287-307.

³⁴ Elie Bouri, Rangan Gupta, And David Roubaud, 'Herding Behaviour In Cryptocurrencies', *Finance Research Letters*, 29 (2019), 216-21 <<https://Doi.Org/Https://Doi.Org/10.1016/J.Frl.2018.07.008>>.

exchange. Amalin³⁵ claims that cryptocurrencies are appropriate for money exchange due to their transparency and lack of usury³⁶

Azul Baidi and Abdullah³⁷ say that further research is needed to determine whether digital money is compatible with Islamic principles. This view is consistent with Asif³⁸ who asserts that this system is compatible with Islamic principles, but not with its variants. According to Siswanto³⁹, on the other hand, classical thinkers (such as Ibn Taymiyyah) did not elucidate on the concept of money. They just draw attention to user activity. Money should not be traded as a commodity; else, a crisis will result (stated by Imam Ibn al-Qayyim). Meanwhile, Imam Abu Hanifa and Imam Abu Yusuf permitted some restrictions on treating money as a commodity. Adam⁴⁰, meanwhile, highlighted three prerequisites for money. They are individuals who possess a high degree of frequency, *mal* (wealth), *taqawwum* (legal value), and *thamaniyyah* (monetary use). Based on the discussion above, the Muslim can use OneGram as payment system of digital transaction.

The Fatwa of The Indonesian Ulema Council (MUI) and Nahdlatul Ulama (NU) on Cryptocurrency

Regarding with Islamic views, both legal and non-legal sources such as the Qur'an, Sunnah, and other religious texts emphasize the prohibition of various prohibited economic behaviours, such as lending and borrowing transactions containing elements of interest (usury or *riba*) and transactions involving uncertainty, risk, asymmetric information, and moral hazard (*gharar*

³⁵ Gazi Amalin, 'The Legality Of Cryptocurrency Trade In Accordance', 2018, 108.

³⁶ Aloui, Hamida, And Yarovaya.

³⁷ Ibrahim Bassam Ibrahim Alzubaidi, 'Developing Digital Currency From An Islamic Perspective : The Case Of Blockchain Technology By Ibrahim Bassam Ibrahim Alzubaidi A Research Paper Submitted In Fulfilment Of The Requirement For The Degree Of Master Of Science (Islamic Banking And Finance)', September, 2017.

³⁸ Sudais Asif, *The Halal And Haram Aspects Of Cryptocurrencies In Islam*, 2018 <<https://doi.org/10.13140/RG.2.2.29593.52326>>.

³⁹ Dodik Siswanto, Rangga Handika, and Aria Farah Mita, "The Requirements of Cryptocurrency for Money, an Islamic View," *Heliyon* 6, no. 1 (2020): e03235, <https://doi.org/10.1016/j.heliyon.2020.e03235>.

⁴⁰ Adam, "Bitcoin: Shariah Compliant."

or risk).⁴¹ Islam does not dispute the market economy's strength⁴² by also permitting profit motives. Private ownership is not called as a stipulation. However, the fundamental distinction between capitalism and Islamic economics is that in secular capitalism, profit motives or private ownership are granted unrestrained economic decision-making authority. Muslims believe that this practice has enabled a variety of actions to contribute to social imbalance. Islam imposes several constraints on economic control.

Criticizing the interest rate system, on the other hand, is more dubious. With negative interest rates prevalent throughout the developed and capitalist world, the interest rate scenario fails to incentivize saving. This is as Deutsche Bank's Jim Reid phrased it in a research study last year titled "The Beginning of the End of Fiat Money,".⁴³ As a result, our current fiat-based monetary system may require reform. At the moment, proponents of digital currencies are suggesting a new transnational system of voting for global "digital gold." Legal certainty is quite tricky when it comes to cryptocurrencies, as there are thousands of them, each with its distribution, mining, and trading characteristics. This is because Islamic jurists struggle to comprehend the complexities of digital currency. However, experts have yet to definitively rule out the possibility that cryptocurrencies are in fact money. This is critical for zakat (2.5 per cent of wealth tax, according to OneGram) and inheritance.

Additional evidence is required to reach a final legal consensus, particularly in the case of blockchain. Not only is blockchain a platform for cryptocurrency, but it is also a broadly distributed digital ledger technology. In this situation, blockchain technology can be viewed as a solution to Islamic sharia's

⁴¹ Lucero, "Cryptocurrencies Regulation in the Islamic Environment: OneGram Case Study."

⁴² Md Uddin Akhter, "Principles of Islamic Finance: Prohibition of Riba, Gharar and Maysir," *Munich Personal RePEc Archive*, no. 67711 (2015): 1-8.

⁴³ <https://mises.org/power-market/deutsche-bank-fiat-money-world-may-be-coming-end>

requirements for transparency to avoid obscurity (*gharar*) and for increasing trust in commercial and economic transactions.⁴⁴

A *halal* cryptocurrency model will guarantee that its goals in line with *al-Maqasid al-Shari'ah* (divine objectives). If the platform's goal is to conform to *Shariah* principles on paper but not in practice, the system may violate the *Maqasid al-Shariah*. To be a *halal* model, one must adhere to *Shariah* in both theory and practice. A *halal* cryptocurrency model must follow *Shariah*-compliant standards, regulations, and methods. It must be rigorously overseen by a qualified *Shari'ah* board while and all activities must be *Shari'ah* compatible. Meanwhile, an advisory board should advise management on how to conduct business following *Shariah* principles and divine ethical standards.⁴⁵

Investing in crypto assets is currently being preferred by many people. The recent popularity of crypto assets such as Bitcoin and the upward trend in its price has made many people use crypto assets as a new investment alternative. Head of the Central Indonesian Ulema Council (MUI), Management Division, KH Cholil Nafis, revealed that the Indonesian Ulema Council (MUI) gave 11 notes related to Bitcoin like cryptocurrency. In the note, MUI mentions Bitcoin as an investment closer to *gharar* (uncertainty) and speculation that harms others.⁴⁶ However, MUI added explanation that cryptocurrency as a legal medium of exchange is permissible on condition that it must exist handover (*taqabudh*) and the same quantity if the type is the same. In different types cases, it is required to be handed over essentially or legally (there is money, there are bitcoins that can be transferred). Gold and silver are physically real and agreed to serve as currency and medium of exchange.⁴⁷ In this case, OneGram as gold-backed cryptocurrency matches the requirement and is allowed to be used in transaction.

⁴⁴ Houssemeddine BEDOUI and Aroua Robbana, "Islamic Social Financing Through Cryptocurrency," 2019, 259-74, https://doi.org/10.1007/978-3-030-10749-9_16.

⁴⁵ Ma and Billah, *Halal Cryptocurrency Manag.*

⁴⁶ "Cnbc Indonesia," 2021.

⁴⁷ <https://www.idxchannel.com/economics/menilik-bitcoin-haram-atau-halal-ini-11-catatan-mui>

The Fatwa decision of the Nahdlatul Ulama Conference which was held by the East Java PWNU on October 24, 2021 stated that cryptocurrency or digital currency does not meet *sil'ah* (commodity) standards according to sharia. Therefore, trading cryptocurrencies is legally *mamnu'* (*ghairujaizin* or forbidden). This does not rule out various considerations and explanations from competent experts in their fields, the results of research on cryptocurrency assets by the East Java LBM-NU Team is taken from the official regulation of the national state and a review of several items (*nusus asy-syariah*) contained in islamic classical books from the four imams. Cryptocurrency is considered as not fulfilling the *sil'ah* standard because the meaning of *sil'ah* is the same as *mabi'*, namely goods or commodities that can be traded with a sale and purchase agreement.⁴⁸

The fatwa decision of the Nahdlatul Ulama Conference which was held in Yogyakarta on November 21, 2021 stated that cryptocurrency or digital currency is the child of digital technology transformation whose use is increasingly extensive. As a medium of exchange and commodity, cryptocurrencies are permissible under Islamic law. This is because it fulfills the requirements both as a medium of exchange (*tsaman*) and as a commodity (*al-mustman*) including: having benefits (*muntafa'*), able be handed over (*maqdur ala taslimih*) accessible by both parties (*ma'luman lil 'aqidayn*).⁴⁹

Formally, the legal determination (*istinbāt*) used by the *Bahtsul Masa'il* Nahdlatul Ulama Institute (LBM-NU) includes three methods⁵⁰ as used by MUI⁵¹, namely *qauli*, *ilhaqi* and *manhaji*.^{52, 53, 54, 55}

⁴⁸ Fatwa Lembaga Bahtsul Masa'il Nahdlatul Ulama (LBM-NU) Jawa Timur. (2021)

⁴⁹ Fatwa Lembaga Bahtsul Masa'il Nahdlatul Ulama (LBM-NU) Yogyakarta, (2021)

⁵⁰ Tim PW LBM NU Jawa Timur. NU Menjawab Problematika Umat; Keputusan Bahtsul Masail PWNU Jawa Timur Jilid I : 1979 - 2009. Surabaya : PW LBM NU Jawa Timur, 2015.

⁵¹ Pedoman Penetapan Fatwa Majelis Ulama Indonesia dan Himpunan Fatwa MUI, Jakarta: Departemen Agama (2003).

⁵² Habib Bawafi, 'Dinamika Metode Istimbath Ahkam Lembaga Bahtsul Masail Nu', *Jurnal Al-Fikrah*, 8.5 (2019), 55.

⁵³ Hilmy Pratomo, "Transformasi Metode Bahtsul Masail Nu Dalam Berinteraksi Dengan Al-Qur'an," *Jurnal Lektur Keagamaan* 18, no. 1 (2020): 109-34, <https://doi.org/10.31291/jlk.v18i1.620>.

Qauli method is used by NU scholars by studying the problems they deal with then looking for answers through *fiqh* books of the four schools of thought by directly referring to the literal text. In other words, this current method enables them to follow the opinions that already exist within the scope of certain imams. Meanwhile, the *ilhaqi* method is used if there is no textual answer found from any reliable Islamic classic books in Islamic law (*mu'tabarrah*). The use of this method is by equating (*qiyas*)⁵⁶ any new case that is similar and does not yet exist in classic books with a similar case mentioned in the books. The last method, *manhaji*, is a way of solving religious problems pursued by Lajnah Bahtsul Masa'il (LBM) with the way of thinking and rules for establishing laws that have been compiled by the Imam of Mazhab. In other words, this method can be said as means of collective *ijtihad* carried out by *ulama* of NU. As with *qauli* and *ilhaqi*, the *manhaji* method has been applied by previous scholars, although not with the term *manhaj* and neither has it been formalized through a decree.

From explanation above, it can be concluded that the method used by PWNu East Java and PWNu Yogyakarta regarding cryptocurrency as a transaction tool has similarities, namely using the *ilhaqi* method. This method equates cases where there has been a legal decision with the problem for which a legal answer is sought. This is based on the mindset of NU scholars who analogize cryptocurrencies with *sil'ah* (commodities) included in buying and selling transactions.

The *ilhaqi* method was chosen after considering that there were no direct references found in the Islamic classical books on cryptocurrency which is a contemporary problem of transaction (*muamalah*). However, this problem is divinely similar to the concept of commerce in Islam, both in terms of *sil'ah* (commodities) as well as

⁵⁴ Darmawati H, "Manhaj Bahsul Masail Menurut Nahdatul Ulama (NU)," *Sulesana: Jurnal Wawasan Keislaman* 6, no. 2 (2011): 98-112.

⁵⁵ Sukron Ma'mun, 'Ilhaq Dalam Bahtsul Masa'il Nu; Antara Ijtihad Dan Ikhtiyat', *Al Qalam*, 28.1 (2011), 63-86.

⁵⁶ Ahsan Lihasanah, *Al-Fiqh Al-Maqashidi Indal Al-Syathibi*, (Kairo: Darus Salam, 2000), 15. As cited in Abdul Mukti Thabrani, "Maqashid Revitalization in Global Era: Istidlâl Study from Text to Context," *Al Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 2 (2018): 327, <https://doi.org/https://doi.org/10.19105/al-ihkam.v13i2.1814>.

in buying and selling transactions because they are considered the same as goods (*mabi'*) that can be traded. Therefore, the *qauli* method by referring directly to the text of the book cannot be done.⁵⁷

Methodologically, the *ilhaqi* method is almost the same as the *qiyas* method. However, the fundamental difference lies in the references used. In the *qiyas* method, the analogy used refers directly to the Qur'an and Hadith, whereas in the *ilhaqi* method, the analogy used refers to the Islamic law books of the four imams of *fiqh* school (*madzhab*). Regarding the reference to *ilhaqi*, the PWNU of East Java equates (make *qiyas*) cryptocurrency to *sil'ah* (commodity). If the elements of the *sil'ah* (commodity) are not fulfilled, then its use as a medium of exchange is also not permissible. Meanwhile, PWNU of Yogyakarta equates (*qiyas*) directly to the medium of exchange (*tsaman*) and is proven to fulfill the elements both as a medium of exchange (*tsaman*) and commodity (*al-mutsman*), so that the law is permissible.

By the discussion above, the use of OneGram as a gold-backed cryptocurrency is permissible because OneGram is backed by real asset (gold) and fits the criteria of *sil'ah*. OneGram also fits the medium of exchange (*tsaman*) by using value of cryptocurrency and fit the commodity (*mutsiman*) by using gold and its value to maintaining the value of cryptocurrency. As the growth of cryptocurrencies in the world is increasingly extensive, it is the duty of the Indonesian government to make regulations that regulate cryptocurrencies as a medium of exchange (*al-tsaman*) and commodities (*al-mutsiman*) in Indonesia. In the end, with digital blockchain technology and cryptography, it also has a high level of security enabling it to avoid any fraud and manipulation attempts.

Conclusion

Based on this discussion, it can be concluded that gold-backed cryptocurrencies such as OneGram are allowed. Islamic law does not regulate the type of payment instrument that should be used except that it needs to fit with the custom of a community (*'urf*). Historically, gold was utilized as currency, namely the *dinar*.

⁵⁷ Zahro, Ahmad. Tradisi Intelektual NU, Lajnah Bahtsul Masa'il 1926-1999. Yogyakarta : LKiS, (2004).

However, because gold coins in their physical form are inflexible when applied today, OneGram may be a viable alternative to the *dinar* currency. Although it cannot be denied that risks always exists, it requires rigorous supervision to ensure that no aspects prohibited by religion are used, such as usury, *maysir*, *gharar*, speculation, or gambling. Fatwa of MUI states that cryptocurrency is prohibited if no real asset back up the value of it. Otherwise, MUI allows the use of cryptocurrency which has real asset, like OneGram with goals as its real asset. Further, OneGram is permissible based on Fatwa of NU which states cryptocurrency backed by real asset is allowed and classified as *tsaman* (medium of exchange) in its value and *mutsiman* (commodity) in its goods. If cryptocurrency contains *gharar*, *dharar*, and *qimar* and does not meet the conditions of *syar'i sil'ah*—namely having physical form, value, being known for certain, having property rights, and ability to be given to the buyer—cryptocurrency cannot be legally traded as a commodity or digital asset. Moreover, OneGram whose real asset qualifies *sil'ah* can be used in legal transaction. Finally, because the value on OneGram is backed by gold, the danger of speculation and *gharar* is extremely low; therefore, it is acceptable to utilize the OneGram platform as a virtual currency for transaction purposes.

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Vigilantism among the Community in Aceh Against the Accused of Violating the Shariah Criminal Law

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Abstract:

This article aims to study triggering factors to make vigilantism against perpetrators of *jinayat sharia* law violation in Aceh and analyze vigilantism based on the same law. This qualitative research uses literature study and field research as the approach methods. Relevant books, journals, newspapers, and laws and regulations are the primary references while the field study was conducted by interviewing respondents from Islamic criminal law enforcement officers in Aceh. This study found

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that the emotional attitude of the community, the attitude of joining in, the length of the trial process, the experience of freeing the perpetrators from punishment, and fights between the community and the perpetrators are factors that encourage people to take vigilante actions. The research also found that the punishment of being married off, being bathed in dirty water, as well as beating the accused before being tried in the court were acts that violated the procedures for the Aceh criminal law (*Qanun Jinayat*). It thus recommends further research related to the reflection of the implementation of *Qanun Jinayat* in Aceh for the sake of achieving the purpose beyond the *qanun*.

Keywords:

Citizen Participation; Qanun Jinayah Shariah; Vigilantism; Aceh; Violation Perpetrators

Abstrak:

Artikel ini bertujuan mengkaji faktor pemicu tindakan main hakim sendiri terhadap pelaku pelanggaran *Qanun Jinayat* syariah di Aceh serta menganalisisnya menurut *qanun* tersebut. Penelitian ini bersifat kualitatif. Metode penelitiannya adalah kajian kepustakaan dan penelitian lapangan. Buku, jurnal, surat kabar, dan peraturan perundang-undangan yang relevan menjadi referensi utama sedangkan studi lapangan dilakukan dengan mewawancarai responden dari aparat penegak hukum pidana Islam di Aceh. Kajian ini menemukan bahwa sikap emosional masyarakat, sikap ikut-ikutan, lamanya proses pengadilan sehingga keluarnya keputusan terhadap terdakwa, pengalaman kebebasannya terdakwa dari hukuman, dan pertelingkahan antara masyarakat dengan tertuduh pelanggar *Qanun Jinayat*, merupakan faktor yang mendorong masyarakat melakukan tindakan main hakim sendiri. Penelitian ini juga menemukan bahwa hukuman menikahkan, memandikan tertuduh pelanggar *Qanun Jinayat* dengan air kotor, serta memukuli terdakwa sebelum diadili di pengadilan adalah tindakan yang melanggar hukum acara pidana (*Qanun Jinayat*). Penelitian ini merekomendasikan penelitian lebih lanjut terkait refleksi penerapan *Qanun Jinayat* di Aceh dari sudut pencapaian maksud pelaksanaannya.

Kata Kunci:

Partisipasi Warga; *Qanun* Jinayah Shariah; Main Hakim Sendiri; Aceh; Pelanggar *Qanun* Jinayat

Introduction

Vigilantism is defined as an act committed by a person who tries in an unofficial way to prevent crime or to catch and punish someone who has committed a crime, especially because they do not think that official organizations, such as the police, are controlling crime effectively.¹ Taking the law into one's own hands is generally considered to be a harmful and unlawful act. In a society governed by the rule of law, it is important that individuals respect the legal process and leave the administration of justice to the proper authorities, such as the police and the courts.² Vigilantism can take many forms, such as taking revenge on someone who has wronged the doer, enforcing one's own sense of justice, or trying to correct a perceived injustice.³ However, these actions often result in further harm and can create chaos and disorder in society.

On the other hand, implementation of *Qanun Jinayat* (Islamic Criminal Law) aims to ensure that society can control behavior contrary to societal and religious norms. However, the rights of the accused violators of the Criminal Law must be well protected, i.e. they are innocent until proven guilty in the sharia court. This practice is in line with the principle of *usul fiqh* "The original state is freedom from liability".⁴ It is to make sure that legal justice is valid for all parties and to avoid members of the community from imposing their own punishment for rule of *shariah* crimes.⁵ Clearly, the enactment of laws

¹ K K e Silva, "Vigilantism and Cooperative Criminal Justice: Is There a Place for Cybersecurity Vigilantes in Cybercrime Fighting?," *International Review of Law, Computers & Technology* 32, no. 1 (2018): 21-36.

² Jocelyn Simonson, "The Place of 'The People' in Criminal Procedure," *Columbia Law Review* 119, no. 1 (2019): 249-308.

³ Jeffrey M Osgood, "Is Revenge about Retributive Justice, Detering Harm, or Both?," *Social and Personality Psychology Compass* 11, no. 1 (2017): e12296.

⁴ Abu Bakar as-Sarakhsi, *Ushul Al-Sarkhisi* (Hyderabad: al-Maarif an-Na'mamiyah, n.d.).

⁵ Ahyar Ari Gayo, "Aspek Hukum Pelaksanaan Qanun Jinayat Di Provinsi Aceh," *Jurnal Penelitian Hukum De Jure* 12, no. 2 (2017): 131-154.; Simon Butt,

creates justice and opposes actions that violate the basic rights of a person, even if he is a criminal. Protection from tyranny and achievement of justice can be achieved with the existence of laws.

Practically, the practices of a few communities have broken law enforcement. Communities gave different punishments to those accused of violating the *Qanun Jinayat* (Islamic Criminal Law) in Aceh, such as beating, marrying unmarried *khalwat* (seclusion) partners, or washing the accused in dirty water. News detik.com⁶ reports that a group of youths in the village in Babahrot Subdistrict, South West Aceh, have beaten the accused of a criminal breach of privacy, resulting in the death of the accused. In another report, the residents of the village of Paya Bujok Seulemak, Langsa Baro subdistrict, Langsa City East Aceh on June 28, 2018, have bathed the accused violator of the crime of seclusion (*khalwat*) using the dirty water.⁷ Acts of vigilantism are feared to cause injustice to the accused for receiving punishments other than those stipulated in the *Qanun Jinayat Aceh* (Aceh Criminal Code) in Aceh.⁸ Some tragedies above show the existence of punishments outside the *Qanun Jinayat Shariah* (Sharia criminal law) enforced in Aceh (Table 1).⁹

Table 1: Cases of Vigilantism and Perpetrators of Shariah Crimes in Aceh

Year	Number of cases	Case	Punishment
2018	27	Seclusion, gambling, transvestites	Married, beaten, bathed in dirty water

"Religious Conservatism, Islamic Criminal Law and the Judiciary in Indonesia: A Tale of Three Courts," *The Journal of Legal Pluralism and Unofficial Law* 50, no. 3 (2018): 402-34.

⁶ <https://news.detik.com/berita/d-4017879/berbuat-mesum-dengan-istri-warga-pemuda-di-aceh-tewas-dihajar>, accessed on 15 January 2022.

⁷ <https://news.detik.com/berita/d-4017879/berbuat-mesum-dengan-istri-warga-pemuda-di-aceh-tewas-dihajar>, accessed on 15 January 2022.

⁸ Pudjo Suharso, "Pro Kontra Implementasi Perda Syariah (Tinjauan Elemen Masyarakat)," *Al-Mawarid Journal of Islamic Law* 16 (2006): 56630.

⁹ Sana Jaffrey, "Right-Wing Populism and Vigilante Violence in Asia," *Studies in Comparative International Development* 56, no. 2 (2021): 223-49.; Daniel Zizumbo-Colunga, "Community, Authorities, and Support for Vigilantism: Experimental Evidence," *Political Behavior* 39, no. 4 (December 2017): 989-1015, <https://doi.org/10.1007/s11109-017-9388-6>.

2019	23	Seclusion, gambling, drunk, adultery	Married, beaten, bathed in dirty water
2021	17	Seclusion, gambling, drunk	Married, beaten, bathed in dirty water, fine
2022	28	Seclusion, gambling, drunk, adultery	Married, beaten, bathed in dirty water, fine

Compiled from reliable sources.

Sometimes, vigilantism occurs because of panic, attempts to get the perpetrators of crimes to be punished, and to uphold justice in society.¹⁰ A transparent court process is important to make sure that public trust in the court continues to grow.¹¹ Acts of vigilantism have a negative effect on efforts to create a good national government.¹² Any vigilantism against the accused perpetrators of shariah crimes stemming from the actions of individuals or the community¹³ will give other punishments outside of the Sharia criminal law¹⁴ and therefore violates the law or a criminal act of sharia and customary law.¹⁵ Although the act of vigilantism is based on a response to an alleged violation of the Shariah Criminal Law or claimed to be carried out to protect the dignity and maintain the good name of the village,

¹⁰ Mark Gross, "Vigilante Violence and 'Forward Panic' in Johannesburg's Townships," *Theory and Society* 45, no. 3 (2016): 239-63.

¹¹ Colin C Ife et al., "Bridging Information Security and Environmental Criminology Research to Better Mitigate Cybercrime," *ArXiv Preprint ArXiv:1910.06380*, 2019.; Adam Konto Kyari, "Managing Urbanisation through Planned Government Expenditure Evidence from Nigeria," in *Urbanization and Its Impact on Socio-Economic Growth in Developing Regions* (IGI Global, 2018), 107-29.

¹² Eleanor Drago-Severson and Jessica Blum-DeStefano, "The Self in Social Justice: A Developmental Lens on Race, Identity, and Transformation," *Harvard Educational Review* 87, no. 4 (2017): 457-81.

¹³ Ishaq M Abu Yusuf, Ishaq and Abdul Razak, "Tindak Pidana Main Hakim Sendiri Terhadap Pelaku Asusila Menurut Hukum Pidana Indonesia Dan Hukum Pidana Islam (Studi Kasus Di Desa Teluk Kulbi Tanjung Jabung Barat)" (UIN Sulthan Thaha Saifuddin Jambi, 2019).; Beridiansyah Beridiansyah, "Kajian Kriminologi Dan Hukum Pidana Terhadap Perilaku Vigilantisme Pada Masyarakat," *Wajah Hukum* 3, no. 1 (2019): 89-96.

¹⁴ Martina Keitsch, "Structuring Ethical Interpretations of the Sustainable Development Goals—Concepts, Implications and Progress," *Sustainability* 10, no. 3 (2018): 829.

¹⁵ Interview with the Director of the Aceh Traditional Council (MAA) on May 13, 2018.

this is against the law in Aceh.¹⁶, the punishment outside the *Qanun Jinayat Aceh* (Criminal Code) is injustice to the accused.¹⁷

Little research has studied the driving factors on why people commit acts of vigilantism.¹⁸ Likewise, vigilantism against accused violations of the *Qanun Aceh* before being found guilty in court led to additional penalties against the accused is of little interest.¹⁹ Thus, we conduct this current research on vigilantism actions against perpetrators of sharia criminal offenses. This study therefore wants to identify triggering factors for community to do vigilantism on perpetrators of violations of sharia crime on laws in Aceh. Additionally, it also analyzes vigilantism on sharia offenders according to sharia criminal law.

Method

This study is descriptive qualitative with a phenomenological type of study. We consider it relevant to apply it in understanding and analyzing the phenomenon of vigilantism in the midst of Shariah Criminal Law enforcement. Emphasis on the process and the meaning of an action seen from a holistic point of view is the main point of the qualitative method.

There are several phases in conducting this study. They began with determining the theme then formulating the research questions. After that, the data was obtained by interview using purposive sampling techniques. We interviewed 10 informants (Table 2) as follow:

¹⁶ Interview with the Head of the Department (Kabid) of District Regulation Enforcement (PERDA) at the Pamong Praja Policy Unit and Wilayatul Hisbah of Bireun Regency on May 11, 2018; Interview with a lecturer at Ar-Raniry State Islamic University Banda Aceh, on May 14, 2018.

¹⁷ Fuadi Isnawan, "Pandangan Yuridis Sosiologis Fenomena Street Justice Di Dalam Kehidupan Bermasyarakat," *Jurnal Hukum Novelty* 9, no. 1 (2018): 17-35.; Mahrus As' ad and Abdul Mujib, *Konflik Sosial Di Lampung Tengah: Akar Geneologis, Identitas Sosial, Dan Penanganannya* (Pustaka Pranala, 2020).

¹⁸ Beridiansyah, "Kajian Kriminologi Dan Hukum Pidana Terhadap Perilaku Vigilantisme Pada Masyarakat."

¹⁹ Syarifah Rahmatillah and Amrullah Bustamam, "Tindakan Main Hakim Sendiri (Eigenrichting) Terhadap Pelaku Khalwat Sebagai Dalih Kebiasaan Masyarakat Di Aceh," *Tazkir: Jurnal Penelitian Ilmu-Ilmu Sosial Dan Keislaman* 7, no. 1 (2021): 1-18.

Table 2: List of Informants

No	Informant's Name	Position
1	Misran	Chief Judge of the Banda Aceh Syar'iyah Court
2	Amir Khalis	Chief Judge of the Court of Syar'iyah Kutacane
3	Danil Rahmatsyah	Head of the Division of National Security and Public Order and Other Public Criminal Actions, Banda Aceh High Prosecutor's Office
4	Syukri Bin Muhammad Yusuf	Head of the Islamic Sharia Law Building and Human Rights Division
5	Fikri Sulaiman	Legal Division Officer of the Aceh Islamic Sharia Service
6	Marzuki	Head of Investigation of the <i>Pamong Praja</i> Police Unit (<i>Satpol PP</i>) and <i>Wilayatul Hisbah</i> (WH) of Banda Aceh
7	Lidiawati	Head of District Regulation Enforcement (PERDA; Peraturan Daerah) at the <i>Pamong Praja</i> Police Unit and <i>Wilayatul Hisbah</i> Police Unit in Bireun Regency
8	Badruzzaman Ismail	Director of the Aceh Traditional Council (Majelis Adat Aceh or MAA)
9	Teuku Amrullah Bin Nurdin	Staff member of the PERDA Legislation and Enforcement Division at the <i>Pamong Praja</i> and <i>Wilayatul Hisbah</i> Policy Unit in Bireun Regency
10	Safiril Syah	Lecturer at Ar-Raniry Banda Aceh State Islamic University

Next, we analyzed the legal documentation enforced in Aceh, namely *Qanun Jinayat* Aceh No. 6 of 2014 and the *Qanun* of the Aceh Customary Council which discuss the designation of punishment for criminal offenses. We also got the data from with newspaper clippings, books, and websites about vigilantism. In the next stage, we described the data through narration as a characteristic of the

qualitative method with the aim of achieving the objective of the study. From the narrative, we concluded it because of the research findings.

Result and Discussion

We divide the discussion in this section into two in line with the aim of this study, namely the triggering factor of vigilantism against accused violations of Sharia offenses in Aceh and the assessment of vigilantism based on the laws in force in Aceh.

Triggering Factors for Vigilantism against the Accused Perpetrators of Sharia Criminal Offences

Society's action that imposes its own punishment by punishing criminal offenders according to their discretion are worrying. This is becoming more and more troubling to all parties, including the enforcement agencies. It made various suggestions to curb this symptom. Therefore, various pressures arise from academics, community, and the government to discuss and find a solution to vigilantism actions against perpetrators of sharia crimes.²⁰ Therefore, triggering factors beyond this problem needs to be identified first.

In some cases, it was found that emotional sentiments influenced the society. This was clear from the act of vigilantism by beating and marrying a celibate couple (seclusion) in 2009.²¹ In addition, the actions of a few people in South West Aceh in 2018 by beating men on accusations of celibacy have caused the death of the accused.²² The act of vigilantism against the accused with a criminal offense was intended to enforce the Criminal Law. However, the action on that way possibly causes tyranny and conflict with the accused's right to defend himself in court.

As a part of violence outside the law, vigilantism is categorized as uncivilized act. Not only ignoring the existing law, it also triggers an uncontrollable situation because of sentiments and

²⁰ Erik Mortensen, "The Mode of Lynching: One Method of Vigilante Justice," *Canadian Review of American Studies* 48, no. 1 (2018): 20-39.

²¹ <https://www.hrw.org/id/report>, accessed on 5 June 2022.

²² <https://news.detik.com/berita>, accessed on 5 June 2022.

feelings of anger.²³ In fact, the Prophet's hadith warned that the judge should not be angry when sentencing²⁴ while decision on punishment from arbitrary acts is often seen as a result of anger and not through the legal and evidentiary procedures in the Aceh law.²⁵ The punishment itself is outside the law, such as forced marriage, beatings that cause injury, and death. Therefore, giving the punishment of forced marriage or beating the accused on the offender of *khalwat* (seclusion) conflicts with the provisions in the the *Qanun Jinayat Aceh* (Criminal Code). In the the *Qanun Jinayat Aceh* (Aceh Criminal) Code, the provision of punishment for the offense of *khalwat* (seclusion) is '*uqubat ta'zir* (discretionary punishment) with a lashing of not more than 9 lashes and not less than 3 lashes or a fine of not more than Rp.10,000,000,- (ten million rupiahs) and not less from Rp.2,000,000,-(two million rupiahs).²⁶

Relating to the cause, the staff of the PERDA (local regulation) Legislation and Enforcement Division at the *Pamong Praja* and *Wilayatul Hisbah* Policy Unit of Bireun District said that people tend to be easily influenced emotionally to punishing violators of the Sharia once their friend do so. He mentioned that the community tends to easily follow the actions of friends and acts together to punish the accused perpetrators of shariah crimes without a motion to investigate. This sort of uncontrolled atmosphere easily causes a person to get carried away with his emotions and be dominated by the sentiments that are happening.

The government and enforcement institution have indeed the responsibility to control and educate community to comply with the law and the valid legal process. This is important to make sure that justice and the rule of law are respected.²⁷ His Majesty the Prophet Muhammad has emphasized the need to put the rule of law above

²³ Abu Dawud Sulaiman bin Asy'ath al-Sijisfanial-Azdi. *Sunan Abu Dawud*. Dar al-Hadith, Syria, vol. 4, (1973): 16.

²⁴ Ibid.

²⁵ Rahmatillah and Bustamam, "Tindakan Main Hakim Sendiri (Eigenrichting) Terhadap Pelaku Khalwat Sebagai Dalih Kebiasaan Masyarakat Di Aceh."

²⁶ Qanun Aceh No. 14 Tahun 2003.

²⁷ Monika Zalnieriute, Lyria Bennett Moses, and George Williams, "The Rule of Law and Automation of Government Decision-making," *The Modern Law Review* 82, no. 3 (2019): 425-55.

anyone else's position in judicial matters.²⁸ In another hadith, His Majesty the Prophet Muhammad also said that the damage and destruction of a nation occurs when the riches commit guilty and are not punished, while the weak who commit fault will be punished by the law.²⁹ Thus, the enforcement of the law on everyone fairly and according to the rules and provisions of the current law are supposed to harmonize the life of a country.³⁰

The lengthy sentencing process in the court on those accused of violating the sharia crime law has become another triggering factor for vigilantism. According to a study by Zizumbo-colunga (2017), the factor of lack of trust in the law has pushed people to act on their own. The low level of satisfaction with law enforcement also influences the public to take vigilante action against accused perpetrators of Sharia criminal violations. Any possibility of the accused being acquitted of any punishment, the potential of disproportionate imposed punishment and the slowness of trial process give the emotional impact of the community which lead them to do vigilantism.³¹

The effect of weakening public trust in the law's legality and enforcement causes certain parties to put the law in their own hands. In line with it, the study of Zizumbo-colunga found that acts of vigilantism often occur in a society whose members trust each other in the midst of less enforced law among the authorities.³² As a result, the society will typically hand down its own sentence without bringing the criminals before a judge. This is due to the consideration that direct punishment can provide a deterrent effect to perpetrators. Therefore, the ability of officers in upholding justice and

²⁸ I Tirmizi, *Sunan Al-Tirmizi* (Beirut: Darul Kutub Al-Ilmiyah, 1980).

²⁹ Ibid.

³⁰ Saldi Isra, Feri Amsari, and Hilaire Tegnan, "Obstruction of Justice in the Effort to Eradicate Corruption in Indonesia," *International Journal of Law, Crime and Justice* 51 (2017): 72-83.

³¹ F Panjaitan, C., & Wijaya, "Penyebab Terjadinya Tindakan Main Hakim Sendiri Atau Eigenrichting Yang Mengakibatkan Kematian (Contoh Kasus Pembakaran Pelaku Pencurian Motor Dengan Kekerasan Di Pondok Aren Tangerang).," *Jurnal Hukum Adigama* 1, no. 1 (2018): 809-38.

³² Zizumbo-Colunga, "Community, Authorities, and Support for Vigilantism: Experimental Evidence."

accountability attitude of court officials as well as the fairness of punishment for all parties, affect the acceptance of society to comply with the laws enforced.³³

On the other hand, the community's experience of witnessing the accused perpetrators of criminal offenses not being subjected to any punishment after being charged in the court has an influential impact on the decision-making to do vigilantism. The law can actually be changed by the enforcement authorities. Therefore, this assumption, according to the chief judge of the Banda Aceh Syar'iyah Court, is not entirely true, because the sentencing and proof verification require firm evidence to convict.³⁴ The factor of ignorance about legal procedures and the judgment process in court also positively affect vigilantism. The head of the Islamic Sharia Law Building and Human Rights Division of the Aceh Islamic Sharia Office and the legal department officer of the Aceh Islamic Sharia Office also supported the statement.³⁵

Vigilantism can also occur when there is a verbal dispute between an individual or community group and the accused perpetrator of a shariah crime. A verbal argument may affect the emotions of both parties and cause a physical fight³⁶ which can lead into vigilantism or other types of violence. Therefore, the decision on a punishment requires a calm atmosphere so that the accused may defend himself and answer every charge presented to him/her.³⁷

³³ Michael E Newell, "How the Normative Resistance of Anarchism Shaped the State Monopoly on Violence," *European Journal of International Relations* 25, no. 4 (2019): 1236-60.; Brett Crawford and M Tina Dacin, "Punishment and Institutions: A Macrofoundations Perspective," in *Macrofoundations: Exploring the Institutionally Situated Nature of Activity* (Emerald Publishing Limited, 2020).

³⁴ Interview with the Chief Judge of the Banda Aceh Syar'iyah Court on Jun 10, 2018.

³⁵ Interview with the staff of the PERDA Legislation and Enforcement Division of Bireun District on May 12, 2018.

³⁶ Antoinette Verhage et al., "Force, Stress, and Decision-Making within the Belgian Police: The Impact of Stressful Situations on Police Decision-Making," *Journal of Police and Criminal Psychology* 33, no. 4 (2018): 345-57.

³⁷ Verhage, Antoinette, Jannie Noppe, Yinthe Feys, and Eva Ledegen. "Force, stress, and decision-making within the Belgian police: the impact of stressful situations on police decision-making." *Journal of Police and Criminal Psychology* 33, no. 4 (2018): 345-357.

The whole causes or factors keep leading the vigilantism to continue to grow and develop unless any serious effort or solution is arranged between the state and society.³⁸ Therefore, the act of vigilantism against accused perpetrators of shariah criminal offenses deserve much concern and cooperation from various parties to minimize and prevent it from happening. It does not only contradict to the legislation enforced in Aceh, but also can cause injustice to the accused. In fact, the purpose of the law is to create justice while legal justice is based on the accuracy of the facts in the case and the provisions of the punishment specified in the applicable law. In this case, it is the enforcement institution which has been given the responsibility to uphold the supremacy of the law in order to create legal justice in the community.³⁹ One of its responsibilities is to prevent or minimize public's assumption and attitude of dissatisfaction with slow legal action in the court which can lead into vigilantism.⁴⁰

Legal Assessment in Aceh Against Acts of Vigilantism on Accused Perpetrators of Shariah Criminal Offenses

Exploitation of the law by certain parties is rampant. Light and severe beatings that cause death, bathing the accused with dirty water, forcing marriages, and imposing high fines that contradict the current law are violations of the law in the country.⁴¹ This indicates that acts of violence are becoming more daring. The community needs to be escorted in carrying out their function of assisting law enforcement. Otherwise, it can bring into wrong decisions through

³⁸ Zachary A Russell et al., "High Performance Work Practice Implementation and Employee Impressions of Line Manager Leadership," *Human Resource Management Review* 28, no. 3 (2018): 258-70.

³⁹ Interview with a lecturer at Ar-Raniry Negeri Islamic University Banda Aceh, on May 14, 2018.

⁴⁰ Eduardo Moncada, "Varieties of Vigilantism: Conceptual Discord, Meaning and Strategies," *Global Crime* 18, no. 4 (2017): 403-23.

⁴¹ Butarbutar Elisabeth Nurhaini, "Sistem Peradilan Satu Atap Dan Perwujudan Negara," *Mimbar Hukum* Volume 22, no. 4 (2004): 188-200.; Mahdi, "Sistem Hukum Penegakan Qanun Jinayah Di Aceh," 2009, 179-92.; Panjaitan, C., & Wijaya, "Penyebab Terjadinya Tindakan Main Hakim Sendiri Atau Eigenrichting Yang Mengakibatkan Kematian (Contoh Kasus Pembakaran Pelaku Pencurian Motor Dengan Kekerasan Di Pondok Aren Tangerang)."

vigilantism due to short judgments based on the perception on the current situation.

It turns out to be ironic to find the fact that vigilante actors assume that they are taking part to administer justice. In fact, they commit illegal acts even if the perpetrators of Sharia criminal offenses are found guilty by the court.⁴² Therefore, to control the vigilante action, the Aceh government has provided a law enforcement agency to prosecute perpetrators of criminal violations of Sharia. The jurisdiction of Religious Courts in Aceh prior to 2006 was limited to dealing with personal legal offences such as divorce, inheritance or child custody (*hadhanah*). For instance, Law No. 7 of 1989 Clause 1(1) provides that the Religious Court is a court for Moslem people. The law also provides that Religious Courts are one of the executors of judicial power for Muslims in relation to civil offences.⁴³ The provisions explain the position of civil legislation relating to marriage offenses, heirs, wills and grants, endowments and alms as the jurisdiction of religious courts.⁴⁴

The administrative jurisdiction of Aceh's Islamic criminal law was expanded when Law No. 44 of 1999 was enacted which provides for the privilege to implement Shari at Islam in Aceh. Then, after the promulgation of Law No. 18 of 2001, Aceh was given the power to implement Islamic Shari'ah and the Syariah Courts are empowered to adjudicate criminal matters of Islamic crimes.⁴⁵ However, this law does not provide anything for criminal legislation under the administrative jurisdiction of Aceh. Although Aceh was given jurisdiction to establish a Sharia Court based on this law,⁴⁶ the power to try criminal legislation is still under the administration of the Civil Court.⁴⁷ The alignment was made with the outline of *Garis Besar*

⁴² Mukhammad Irkham, R B Sularto, and A M Endah Sri Astuti, "Perlindungan Korban Perbuatan Main Hakim Sendiri Dengan Pendekatan Rertorative Justice (Studi Di Kabupaten Demak)," *Diponegoro Law Journal* 6, no. 2 (2017): 1-18.

⁴³ Clause 2 of Law No. 7 year 1989.

⁴⁴ Clause 49 (1) of Law No. 7 year 1989.

⁴⁵ A Rahmat Rosyadi, *Formalisasi Syariat Islam Dalam Perspektif Tata Hukum Indonesia* (Ghalia Indonesia, 2006).

⁴⁶ Law No. 18 of 2001 concerning special autonomy for the province of Aceh as the province of Nanggroe Aceh Darussalam.

⁴⁷ Clause 25 (1,2,3), Law No. 18 of 2001.

Haluan Negara (GBHN) of the government of Indonesia in 1999-2004, where Law No. 18 of 2001 repealed and the government of the Republic of Indonesia enacted law No. 11 of 2006 concerning the administration of Aceh.⁴⁸ Through the provision of Law No. 11 of 2006, the provincial administration of Nanggroe Aceh was given the power to administer Islamic criminal legislation. In addition, the Sharia Court is also authorized to prosecute Islamic criminals.⁴⁹

The Government of Aceh gives jurisdiction to adjudicate Sharia criminal offenses in Aceh to the Syar'iyah Court as stated in *Qanun* Aceh No. 11 of 2006 Article 128 (2):

"The *Syar'iyah* Court is a court for everyone who is Muslim and is in Aceh."

The jurisdiction of the Syar'iyah Court based on the Aceh *Qanun* above which regulates authority to judge and decide *jarimah* cases (criminal acts), such as the spread of heresy (field of faith), not praying of Jumah three times in a row without a shar'i excuse (field of worship), providing opportunities to Muslims without syar'i excuse not to fast (field of worship), or eating and drinking in public places during the Ramadhan month (field of worship). The Syar'iyah Court is also authorized to adjudicate cases related to criminal offenses related to *zakat* management as in *Qanun* No. 7 of 2004 concerning *Zakat* Management. The *crime* of *zakat* management includes not paying *zakat* after it is due, making a false letter or forging a *baitul mal* letter, and deviating *zakat* management.

Today, complete and comprehensive sharia criminal law provisions have been enacted and enforced in Aceh. The authority of criminal offences reserved for trial in the Aceh Syar'iyah Courts covers all criminal offences of Islamic Sharia such as adultery (*zina*), *khalwat* (seclusion), *qazaf* (offense of making an accusation of *zina*), drinking alcohol, apostasy, theft, or gambling.⁵⁰ In addition, the Shar'iyah Court also has the authority to hear matters that cover the field of *ahwal al-syakhsiyah* (family law) and *muamalah* (civil law)

⁴⁸ Clause 24 (1), Law No. 18 of 2001.

⁴⁹ Clause 128 (3), Law No. 11 of 2006.

⁵⁰ *Qanun* Jinayah Syariah Aceh No. 6 Tahun 2014.

which is based on Islamic shari'a (Clause 128 (3) Law of the Republic of Indonesia No. 11 Year 2006). Any vigilantism by the community will therefore be a trigger for the injustice of the law because the the *Qanun Jinayat Aceh* (The Aceh Criminal Code) has provided punishment for *hudud offences*, as well as *takzir* (discretionary punishment) for every offense under its jurisdiction.

The legal implication of vigilantism is that it can disrupt public order. At the same time, the *Qanun Jinayah* Shariah as well as Aceh Customary Law will be seen as incompetent to deal with sharia crime. As a result, other criminal problems will arise such as punishing the accused perpetrators of sharia crimes without any reliable proof and the crime of murder because of vigilantism. When there is an invasion in the jurisdiction of the law, it will turn into uncertainty from the enforcement of the Sharia criminal law itself.⁵¹ This is in line with the view of Aceh Islamic Sharia Law Department officials that such actions can challenge the criminal law enforced in Aceh.⁵²

According to Islamic law, before being sentenced, the accused must first be proven to be truly guilty. A hadith narrated by Ibn Abbas states: "Evidence is upon those who claim, while oath is upon those who deny".⁵³ Imam al-Nawawi in his commentary of this hadith said: This hadith is a greater maxim than the maxims of *syara'* rulings. It means that any claim made by a person is not easily accepted because it is just a mere claim. In fact, (claim) needs evidence or a confession from the defendant. If the defendant is asked to take an oath to deny the accusation, then he may do so (take an oath).⁵⁴

Meanwhile, according to the provisions of the law in Aceh, there is no provision of authority for the community to punish accused perpetrators of sharia crimes. Likewise, the punishment of

⁵¹ Ryan D King, "Hate Crimes: Perspectives on Offending and the Law," in *Handbook on Crime and Deviance* (Springer, 2019), 437-58.

⁵² Interview with the legal department officer of the Aceh Islamic Sharia Office at the office of the Islamic Sharia Office on April 6, 2017. See also Dahlia Darida et al., "Legal Protection for Disputing Parties through the Aceh Customary Court," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial*, 2020, 40, <https://doi.org/10.19105/al-ihkam.v15i1.2250>.

⁵³ Ahmad bin Husain Al-Baihaqi and Abu Bakar, *Sunan Al-Kubra Li Al-Baihaqi, Tahqiq: Muhammad Abdul Qadir*. (Beirut: Dar al-Kutub al-Ilmiyah, 2003).

⁵⁴ Yahya bin Syaraf (al) Nawawi, *Al-Minhaj Fi Syarhi Shahih Muslim Bin Hajjaj* (Beirut: Dar al-Fikr, 1981).

beating or bathing with dirty water on accused criminals is also not provided in the Shariah Criminal Law and the Law of the Aceh Customary Assembly. Therefore, the community needs to be careful in committing acts of violence against the accused perpetrators of sharia crimes. It is more likely to be violent behavior that is influenced by emotions. The Chief Justice of the Banda Aceh Syar`iyah Court⁵⁵ and the Chief Justice of the Syar`iyah Court Kutacane⁵⁶ affirmed that the acts of violence on accused perpetrators of sharia crimes in Aceh are actions that are not in line with the law in Aceh.

In addition, self-imposed punishment often ignores the principle in the enforcement of Islamic criminal law. The important principle is *al-asl bara'ah al-dhimmah* (a person is innocent of every charge until proven guilty).⁵⁷ This is in line with the hadith narrated by Ibn Abbas: "If it was given to people simply by following their claims, the people would surely claim other people's blood and property (as theirs).⁵⁸ However, the oath is on those who are accused". It shows that before being sentenced, the accused needs to be proved for their mistakes. A narration from Ibn Abbas states: "Evidence is against the person who accuses, while oath is for the person who denies the accusation against himself".⁵⁹

Acts of vigilantism furthermore conflict with the principles of Islamic law. In legal principles, there must be a proof of guilt out first before sentencing.⁶⁰ The the *Qanun Jinayat Aceh* (Aceh Criminal Code) also provides for the standard operating procedure (SOP) of proof before the sentence is decided (Clause 132 (1), 132 (2a, 2b) Law No. 11 Year 2006). It has also set procedures and time periods for investigation and trial for proving an offense (Clause 7 (1a, b, c) *Qanun Aceh* No. 7 Year 2013). Therefore, reckless actions in sentencing before the offense can really be proven is the same as

⁵⁵ Interview with the Chief Judge of the Banda Aceh Syar`iyah Court.

⁵⁶ Interview with the Chief Judge of the Court of Syar`iyah Kutacane.

⁵⁷ Ibn Rajab, *Al-Qawa'Id* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.).

⁵⁸ A. A. H. M. A Muslim, *Sahih Muslim* (Beirut: Dar al-Jayl, 2007).

⁵⁹ A. B. A. H Al-Baihaqi, *Al-Sunan Al-Kubra* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2003).

⁶⁰ Muhammad Hazim Ahmad et al., "Alternative Evidence Using Forensic Science Towards Sodomy and Tribadism Cases in Syariah Court," *Perdana: International Journal of Academic Research* 6, no. 2 (2019): 11-25.

violating the law.⁶¹ The enforcement of Islamic criminal law aims to repay crimes with appropriate punishments while preventing the crimes from being repeated.⁶² Nevertheless, vigilantism violates the principles of Islamic law that uphold the values of justice in the proof of guilt.

Reported vigilantism cases were found at both village and city level.⁶³ Sociologically, there are positive aspects in society's actions of giving punishment, namely to recognize guilt for violating societal norms. However, the act of punishing without going through the process of proof can cause actions beyond reasonableness. This is because the community cannot control emotions due to violations of Sharia criminal offenses and violations of moral norms. Such judgments in an emotional state can lead to decisions that ignore the value of justice and fairness.⁶⁴

The Aceh community's vigilantism actually aims to prevent people from falling into doing sinful actions. However, the noble purpose cannot justify all means. The method of jurisprudence provides that for each goal to achieve, the law is also subject to the way it is done whether or not it is recognized by the law (*syar'i*).⁶⁵ Thus, the method of jurisprudence reveals that any form of intention and good purpose must be in line with the means required by *shari'ah*. The good will of the community to work together to protect people from violating Islamic criminal norms and laws is good, but it may not legalize any means by violating the procedures that have been set in the *Qanun Jinayat Aceh*. The enforcement of criminal offenses must still follow established procedures to make sure that the principles of justice and human rights in punishment can be upheld.

⁶¹ Budi Suhariyanto, "Kedudukan Perdamaian Sebagai Penghapus Pidana Guna Mewujudkan Keadilan Dalam Pembaruan Hukum Pidana," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 1-19.

⁶² M. A Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islami* (Egypt: Maktabah Al Angelo Al Misriyah, n.d.).

⁶³ Rahmatillah and Bustamam, "Tindakan Main Hakim Sendiri (Eigenrichting) Terhadap Pelaku Khalwat Sebagai Dalih Kebiasaan Masyarakat Di Aceh."

⁶⁴ Kristján Kristjánsson et al., "Phronesis (Practical Wisdom) as a Type of Contextual Integrative Thinking," *Review of General Psychology* 25, no. 3 (2021): 239-57.

⁶⁵ Y. A. W Al-Bāhusayn, *Al-Mufaṣṣal Fi Al-Qawā'id Al-Fiqhiyyah* (Riyadh: Dār Al-Tadamuriyyah, 2011).

Although the act of vigilantism has the potential to reduce crime by instilling fear in criminals with cheaper costs and direct retribution, it is not justified by law.⁶⁶

Furthermore, Neither the Aceh Criminal Law nor the Aceh Customary Assembly Law offer any violence as solution against perpetrators of law violation.⁶⁷ This needs to get attention and be a guide for community for the enactment of laws against accused perpetrators of shariah crimes. On the other hand, differences in views on acts of violence against accused perpetrators of shariah crimes actually demand for a spesific legislation to formulate and enact. Nowadays, resolving vigilantism still refers to the Penal Code (KUHP; *Kitab Undang-undang Hukum Pidana*) Article 351 which state as follow:

(1) Persecution is punishable by imprisonment for a maximum of two years and eight months or a maximum fine of Rp. 4,500,-. (2) If the act causes serious injury, the offender shall be punished with imprisonment for a maximum of five years. (KUHP 90). (3) If the act results in the death of the person, s/he is punished with a maximum imprisonment of seven years. (KUHP 338). (4) Persecution is equated with intentionally destroying someone's health. (KUHP 37, 53, 184 s, 353 s, 356, 487).⁶⁸ Updating and completing the *Qanun* Aceh for acts of vigilantism is a necessity to make sure the sustainability of sharia criminal legislation in Aceh run well and better.

Other than that, in order to ensure that acts of violence can be controlled and do not continue to spread into a cancer in society, all parties need to play their respective roles. Among them, the community needs to be exposed to the procedures for proving sharia criminal offences. Enforcers also need to be concerned about showing

⁶⁶ Interview with the head of the National Security and Public Order (Kamnektibum) and Other Public Criminal Actions at the Banda Aceh High Prosecutor's Office on May 14, 2018.

⁶⁷ Interview with the Head of the Islamic Sharia Law and Human Rights Building Division at the Aceh Islamic Sharia Office at the Islamic Sharia Office on April 6, 2017.

⁶⁸ *Kitab Undang-undang Hukum Pidana (KUHP) 1982 (Penal Code of Indonesia 1982) Section 351.*

an attitude of upholding the supremacy of the prevailing law and complying with the set SOP (Standard Operating Procedure). The attitude of the integrity of the enforcement officers needs to be improved in order to become a good example to the people in implementing Sharia Criminal Law. The anti-discrimination campaign against perpetrators of criminal offenses must also continue to be carried out to make sure that sharia criminal law is respected.

Conclusion

Triggering factors for society to take vigilantism action against accused perpetrators of sharia crime is the emotional attitude towards violations of *Qanun Jinayat Aceh*. Apart from that, the attitude of following other people and the lengthy process of legal rulings on accused perpetrators have also caused people to make vigilantism. Another one is seeing the perpetrators of jinayat wrongdoing free from any punishment. However, the act of vigilantism actually violates procedures of the sharia criminal law implemented in Aceh because imposing punishment before being proven wrong in the court is contrary to the sharia criminal law. Therefore, the community needs to be careful in efforts to prevent sharia criminal law. At the same time, they should not impose any penalty out of sharia criminal laws. The perpetrators of sharia crimes should be handed over to the authorities. Law enforcers (government) need to educate the public about sharia crime laws and announce its procedures in the court. Finally, community cooperation assisting the government in a way justified by the law is expected to create justice and goodness for all parties.

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State Authority for Management of Zakat, Infaq, and Sadaqah as Locally-Generated Revenue: A Case Study at Baitul Mal in Aceh

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Abstract:

Aceh is a region with an autonomy in implementing Islamic law (sharia) and Baitul Mal is one of the institutions formed by the local government to support it. This article aims to discuss the authority of the state in managing zakat, infaq, and sadaqah (ZIS), and describe the authority of the Baitul Mal in managing

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ZIS as locally-generated revenue (PAD) in Aceh. The study used a case study approach by using the theory of authority as an analytical tool. Data collection techniques were carried out through interviews and document studies. The informants interviewed were the staff of the Baitul Mal and the staff management of the Ulema Consultative Council (MPU) in Pidie Regency and Sabang City. It found that the state, in this case, Baitul Mal, has the authority to manage ZIS which can be treated as PAD. This practice has contributed to poverty alleviation, scholarships, business capital, and community economic empowerment in Aceh. To facilitate the management of zakat funds, *lex specialis* can be applied as a position of Islamic law in the national legal framework.

Keywords:

State Authority; Zakat; Baitul Mal; Locally-Generated Revenue

Abstrak:

Aceh merupakan wilayah yang memiliki otonomi untuk menerapkan syariat Islam dan Baitul Mal menjadi salah satu lembaga yang dibentuk oleh Pemerintah Aceh untuk mendukung tujuan tersebut. Artikel ini bertujuan membahas kewenangan negara dalam mengelola zakat, infak dan sedekah (ZIS) dan otoritas Baitul Mal dalam mengelola ZIS sebagai Pendapatan Asli Daerah (PAD). Kajian ini menggunakan pendekatan studi kasus dengan teori kewenangan sebagai alat analisisnya. Teknik pengumpulan data dilakukan dengan wawancara dan studi dokumen. Informan yang diwawancarai adalah para pengurus Baitul Mal dan Pengurus Majelis Ulama Aceh (MPU) di Kabupaten Pidie dan Kota Sabang. Penelitian ini menyimpulkan bahwa Negara dalam hal ini Baitul Mal memiliki kewenangan dalam mengelola ZIS. Dijadikannya ZIS sebagai bagian dari PAD tidak dapat dipungkiri telah berkontribusi untuk pengentasan kemiskinan, pemberian beasiswa, modal usaha, dan pemberdayaan ekonomi umat di Aceh. Untuk lebih memudahkan proses, pengelolaan dana zakat dapat diperlakukan secara *lex spesilis* sebagaimana kedudukan syari'at Islam dalam kerangka hukum nasional.

Kata Kunci:

Kewenangan Negara; Zakat; Baitul Mal; Pendapatan Asli Daerah

Introduction

In the history of Islamic law, the state has the authority to manage religious assets such as *zakat* (obligatory charity), *infaq* (voluntary disbursement), *sadaqah* (alms), and even *waqf* (endowment), *jizyah* (yearly tax), *ghanimah* (spoils of war), *kharaj* (agricultural tax), and grants. For that purpose, the state usually forms an institution that manages these assets known as *Baitul Mal*.¹ This institution functions to regulate state finances, support the poor, and create various forms of community economic empowerment.²

In Indonesia, meanwhile, both government and non-governmental institutions carry out the management of *zakat*, *infaq*, and *sadaqah* (ZIS) funds. The government established the National Amil Zakat Agency (*Badan Amil Zakat Nasional/Baznas*) at the central level and Zakat Management Unit (*Unit Pengelola Zakat/UPZ*) at the regional level.³ On the other hand, non-governmental organizations such as institutions, community organizations, mosques and *musalla* (small mosques), and even companies have institutions that manage *zakat*, *infaq*, and *sadaqah*.⁴ These non-governmental institutions then

¹ Misri Abdul Muchsin and Abdul Manan, "Historical Development of Tax During the Early Islamic Period: Jizyah and Kharaj," *Journal of Tamaddun* 14, no. 2 (2019): 187–198.

² Abdurrohman Kasdi, "Development of Waqaf in the Middle East and Its Role in Pioneering Contemporary Islamic Civilization: A Historical Approach," *Journal of Islamic Thought and Civilization (JITC)* 12, no. 1 (2022): 187–198. See also Mazro'atus Sa'adah and Uswatun Hasanah, "The Common Goals of BAZNAS' Zakat and Sustainable Development Goals (SDGs) According to Maqasid Al-Sharia Perspective," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* (2021): 304.

³ Syaikhu, "The Empowerment of Infaq and Waqaf Evaluation in Light of Maqashid Al-Sharia Perspektive in Mosques in Palangka Raya, Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum* 5, no. 2 (2021): 1003–1020.

⁴ Ellimartati, "Strengthening Family Resilience Through the Tradition of Agricultural Zakat Payment in Nagari Lima Kaum in Tanah Datar District

formed *Baitul Mal wa al-Tamwil* (BMT) which manages funds from the community.⁵

Currently, there are around 3,874 BMTs operating throughout Indonesia managed by non-governmental institutions or organizations. BMTs have been around for more than ten years, starting with BMT Salman in the 1980s and BMT Ridho Gusti in West Java in the 1990s. Subsequently, the Small Business Incubation Center (*Pusat Inkubasi Bisnis Usaha Kecil/PINBUK*) was formed as a sharia cooperative and began to promote sharia cooperatives with the new label BMT in 1995; the number of BMTs increased rapidly until the end of 2010. The rapid growth of the BMTs began in 1995 with a large spike in numbers during the world and Asia's monetary crises in 1997 and 1998.⁶ BMTs have been proven to empower people in various productive businesses and have reduced the poverty rate in Indonesia; still, it is undeniable that many of the poor come from Muslims.⁷

Therefore, as a country with the largest Muslim population in the world, Indonesia should have a large state income to assist the country in overcoming social inequality in society. For example, in terms of *zakat*, the number of the Indonesian Muslim population is directly proportional to the magnitude of the potential for *zakat*. *Zakat* potential in Indonesia reaches IDR 327.6 trillion, and the amount will be even greater when added with *infaq*, *sadaqah*, and *waqf*. In terms of *waqf*, there are Islamic scholars allowing it as long it is not for the construction of houses of worship (mosques).⁸

of West Sumatera," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021): 496-513.

⁵ Mahdi Syahbandir, "State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022).

⁶ Muhammad Akhyar Adnan, "The Effectiveness of Baitul Maal Wat Tamwil in Reducing Poverty," *Humanomics* 31, no. 2 (2015): 160-182.

⁷ Euis Amalia, *Keadilan Distributif Dalam Ekonom Islam* (Jakarta: Grafindo Persada, 2009).

⁸ Siska Lis Sulistiani, "The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia," *Samarah* 5, no. 1 (January 2021): 357-371.

Likewise in Aceh, after the conflict and tsunami, the level of economic well-being continued to decline. Therefore, *zakat*, *infaq*, and *sadaqah* managed by *Baitul Mal* have duties and functions for development and economic empowerment for the poor. In this context, the Government of Aceh has established *Baitul Mal* which has the authority to manage ZIS based on *Qanun Aceh* Number 10 of 2007.

The Aceh Government through the *Baitul Mal* institution has empowered the community's economy in the form of distributing ZIS. *Zakat* not only functions as a vertical worship Allah but also functions as a horizontal form of worship. *Zakat* has vital and strategic benefits from the point of view of Islamic teachings as well as from the aspect of community economic development. Paying *zakat*, sociologically, is a form of social solidarity obligation.⁹

Baitul Mal is an institution established by the government to store and manage ZIS, especially in Aceh. Referring to Aceh *Qanun* Number 10 of 2007, *Baitul Mal* is a Non-Structural Regional Institution that is given the authority to manage and develop *zakat*, *waqf*, and religious assets, with the aim of benefiting people and serving as guardians/supervisors towards orphans and/or their assets as well as managing inherited assets with no guardianship based on Islamic law.¹⁰ Nonetheless, *Baitul Mal* as an institution authorized by the state to manage ZIS is still questionable for its contribution. This is especially valid for economic development and community empowerment and *Baitul Mal*'s contribution to the Regional Original Revenue (*Pendapatan Asli Daerah/PAD*) for Aceh.

Several studies have existed on the management of ZIS by *Baitul Mal*. Mas'udi, for example, concluded that the state has the legal authority to manage *zakat* as an instrument for social welfare and justice.¹¹ Musa, meanwhile, emphasized that ZIS funds which can be used as PAD will clearly provide added value economically for Aceh

⁹ Rizki Azhari, "Peran Pemerintah Dalam Pemberdayaan Ekonomi Masyarakat Melalui Baitul Mal Aceh," *Jurnal Al-Madaris* 2, no. 1 (2021).

¹⁰ Qanun Aceh, "Qanun Aceh No. 10 of 2007 Concerning Baitul Mal" (Banda Aceh, 2008).

¹¹ Farid Masdar Mas'udi, *Agama Dan Keadilan: Risalah Zakat (Pajak) Dalam Islam* (Jakarta: P3M, 1993).

which has special autonomy,¹² though he did not mention the authority of the state. Likely, Nasrullah explained that *zakat* funds managed by *Baitul Mal* contribute to economic empowerment in the form of business capital loans that function to improve people's welfare.¹³ Syahbandir et.al. also emphasized that *zakat* can also be used as a tax deduction as stipulated in Aceh Government Law number 11 of 2006 and is currently still waiting for regulations from the Minister of Finance.¹⁴

The above research partially discusses the authority of the *Baitul Mal* as a state institution in managing ZIS as PAD but without explicitly explanation. Therefore, based on this, this study aims to discuss state authority in managing ZIS. It used the theory of authority in constitutional law while paying attention to several relevant new legal regulations and *qanuns* in Aceh. It therefore aims to complement existing previous studies.

Method

This research is an empirical legal study using a case study approach, namely research that focuses on one particular object that studies it as a case.¹⁵ A case study is an approach that focuses on locations, and cases that occur at a certain time, making the cases more specific. Likewise, research on *Baitul Mal* in the management of ZIS in several districts/cities is certainly different.

The theory used in this study is the theory of authority. Authority (*gezag*) is formal power that comes from the power granted

¹² Armiadi Musa, "Kontribusi Pemerintah Dalam Pengelolaan Zakat Di Aceh (Kontestasi Penerapan Asas Lex Specialis Dan Lex Generalis)," *Media Syariah* 16, no. 1 (2014): 349-350.

¹³ Nasrullah, "Regulasi Zakat Dan Penerapan Zakat Produktif Sebagai Penunjang Pemberdayaan Masyarakat (Studi Kasus Pada Baitul Mal Kabupaten Aceh Utara)," *Inferensia: Jurnal Penelitian Sosial Keagamaan* 9, no. 1 (2015).

¹⁴ Syahbandir, "State and Islamic Law: A Study of Legal Politics on Zakat as a Tax Deduction in Aceh."

¹⁵ Hadari Nawawi, *Metode Penelitian Bidang Sosial*, 1st ed. (Yogyakarta: Gajah Mada University Press, 2003).

by law. Within authority, there are powers (*rechtsbe voegdheden*).¹⁶ Therefore, the theory of authority examines the power of government to exercise their authority, both in the public and private law domains.¹⁷ Through this theory, the study discussed the authority of the state, especially the *Baitul Mal* Aceh institution in managing ZIS.

The data collection techniques consisted of in-depth interviews and documents study. Interviews were conducted with 5 respondents from the staff of the *Baitul Mal* of Pidie Regency and the *Baitul Mal* of Sabang City, as well as the management staff of the Ulama Consultative Assembly (MPU) of Pidie Regency and Sabang City. The documents examined included the laws, *qanun*, or legal rules as well as reports on *Baitul Mal*'s activities and finances.

Discussions and Result

Baitul Mal as a State Institution

The management of *zakat* by the state has a historical basis of Islamic law starting from the time of the Prophet Muhammad to the time of the caliphate of Islam to this present time. At the time of the Prophet, Mu'az ibn Jabal was ordered to collect *zakat* in Yemen. Likewise, Caliph Abu Bakr fought against those who did not want to issue their *zakat* in the city of Medina. Caliph Umar ibn Khattab then professionally established *Baitul Mal* as an institution that managed sources of state finances and funds.¹⁸

Zakat was very well-managed during the Umayyad Caliphate of Damascus under the leadership of Caliph Umar ibn Abdul Aziz. At that time in the Islamic dominion, it was difficult to find the needy and the poor who were entitled to receive *zakat*.¹⁹ Likewise, during the Abbasid period, the management of *zakat* through *Baitul Mal* was increasingly widespread, and then Abu Yusuf, a *qadhi* (Islamic judge) during the time of Caliph Harun al-Rashid, authored the book of *al-*

¹⁶ Ateng Syafrudin, "Menuju Penyelenggaraan Pemerintahan Negara Yang Bersih Dan Bertanggungjawab," *Jurnal Pro Justisia Edisi IV* (2000).

¹⁷ Salim, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: Rajawali Press, 2017).

¹⁸ Musa, "Kontribusi Pemerintah Dalam Pengelolaan Zakat Di Aceh (Kontestasi Penerapan Asas Lex Specialis Dan Lex Generalis)."

¹⁹Ibid.

Kharaj (tax).²⁰ Furthermore, during the al-Ayyubid dynasty, Salahuddin al-Ayyubi in Egypt granted state-owned land for the development of educational institutions for the *Ahlusunnah wa al-Jama'ah* school of thought such as Maliki, Hanafi, Shafi'i, and Hanbali.²¹

Therefore, the authority of the state in managing *zakat*, *infaq*, and *sadaqah* continued during the Islamic empire in Indonesian *Nusantara*, starting from Aceh, Palembang, Banten, Mataram, Demak, Banjar, Goa-Tallo, Bone, and Ternate. The state through the Islamic scholars, who acted as *qadhi*, *mufti* (Islamic jurist), *penghulu* (headman), and *petta kalie* (advisors to the sultans), managed religious assets.²² This shows that the state in the sense of the Islamic kingdom at the time had the authority to manage ZIS assets.

This practice has then continued until Indonesia became independent from colonialists. Various legal rules have been made by the state to regulate and manage ZIS.²³ The management of religious assets in Aceh has entered a period of transformation of independence since the Religious Assets Supervision Agency (*Badan Penertiban Harta Agama/BPHA*) was promulgated in 1973 based on the Governor's Decree Number 5 of 1973.²⁴ The institution was later changed into the Religious Assets Agency (*Badan Harta Agama/BHA*) in 1975, from

²⁰ Muchsin, "Historical Development of Tax During the Early Islamic Period: Jizyah and Kharaj."

²¹ Kasdi, "Development of Waqaf in the Middle East and Its Role in Pioneering Contemporary Islamic Civilization: A Historical Approach"; See Also M. Haris Hidayatulloh, "Peran Zakat Dan Pajak Dalam Menyelesaikan Masalah Perekonomian Indonesia," *Al Huquq: Journal of Indonesian Islamic Economic Law* 1, no. 2 (October 1, 2019): 102-121.

²² M. B. Hooker, "Southeast Asian Shari'ahs," *Studia Islamika* 20, no. 2 (2013): 183-242.

²³ Ridhwan, "The Petta Kalie's Contribution in The Development of Islamic Law During the Kingdom of Bone," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021): 64-87.

²⁴ Sarkowi, "Akar Historis Formalisasi Hukum Islam Di Nusantara," *Jurnal Sejarah Citra Lekha* 5, no. 1 (2020): 14-27; See Also Erie Hariyanto and Moh Ali Al-humaidy, "Pelaksanaan Corporate Social Responsibility Dan Zakat Perusahaan Perbankan Syariah Di Madura," *Jurnal Hukum & Pembangunan* 49, no. 3 (2019): 688-709.

which it was again changed into Bazis and Bazda institution (*Badan Amil Zakat Infaq dan shadaqah/Bazis*) and (*Badan Amil Zakat Daerah/Bazda*) based on the Governor's Decree Number 2 of 2003. This institution became the *Baitul Mal* Agency based on the Governor's Decree Number 18 of 2003, and then based on the Aceh *Qanun* Number 10 of 2007, it became *Baitul Mal*. Later, the *Qanun* Number 10 of 2018 changed the name to *Baitul Mal Aceh*, shortened as BMA.

Previously, Law Number 11 of 2006 concerning the Government of Aceh states that the *Baitul Mal* Aceh and District/City *Baitul Mal* manage *zakat*, *waqf* assets, and religious assets. In this context, the role of *Baitul Mal* is closely related to the implementation of Islamic law in Aceh since 2001. One of the objectives of Islamic law is the economic empowerment of the people through *Baitul Mal*, in addition to Islamic banks.

Baitul Mal was established based on clear legal rules to manage *zakat*, *infaq*, and *sadaqah* funds. Likewise, the procedures for managing *zakat* as PAD by *Baitul Mal* are also regulated in *qanun* and governor regulations. The expenditure or distribution of *zakat* is adjusted to the guidance of Islamic law. The form of *zakat* distribution consists of the provision of business capital to productive *zakat* recipients through the Productive Zakat Management Unit (*Unit Pengelola Zakat Produktif*).²⁵ Therefore, *Baitul Mal* is an institution that manages religious wealth received by the state and distributes it to those who are entitled to receive it. In this sense, the funds managed by *Baitul Mal* can be categorized as state income.

The financing provided by *Baitul Mal* is not only consumptive but also productive in the fields of education, religion, and economy. The application of productive *zakat* is the provision of business capital loans based on *qardh al-hasan* to motivate business properly and maximally. This program has a significant impact on improving

²⁵ Armiadi Musa, "Zakat Sebagai Pendapatan Asli Daerah Dalam Undang-Undang Pemerintahan Aceh," *Kanun: Jurnal Ilmu Hukum* 18, no. 3 (2016): 403–415.

people's welfare²⁶, for example, though providing business capital to the poor for farming, animal husbandry, small traders, home industries, and assistance with working tools.

Theoretically, based on the rule of law, the authority of the State, in this case, the Aceh Government that forms the *Baitul Mal* has historical, juridical, and Islamic law-based powers. According to Mas'udi, the government shall go through official institutions that regulate and manage the affairs of ZIS. The main purpose of *zakat* is not only to worship Allah, but also to be a medium to enforce social justice in the economic context; the main part of *zakat's* objective. The state as a political institution that has legal authority is present as *amil* (*zakat* collector) to uphold justice and to provide welfare for the poor.²⁷

In practice, the collection of *zakat* and *infaq* is directly carried out by deducting employee salaries. The issue of *zakat*, in principle, is not a problem for the people as *zakat* is an obligation, unlike *infaq*, which is voluntary. *Zakat* is an act of worship and a social obligation for *aghniya'* (rich) after their assets meet the minimum limit (*nishab*) and a span of one year (*haul*).²⁸ The purpose of *zakat* is to manifest equitable distribution of justice and the economy. This is different from *infaq* because *infaq* is a voluntary expenditure that someone makes as much as he/she wants whenever one gets sustenance.²⁹

Furthermore, with the enactment of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989, the state has the authority to regulate issues of ZIS and *waqf* as well as sharia economics through Religious Courts. This means that the issue of sharia economic disputes can be resolved in the Sharia Court in Aceh,

²⁶ Nasrullah, "Regulasi Zakat Dan Penerapan Zakat Produktif Sebagai Penunjang Pemberdayaan Masyarakat (Studi Kasus Pada Baitul Mal Kabupaten Aceh Utara.)"

²⁷ Mas'udi, *Agama Dan Keadilan: Risalah Zakat (Pajak) Dalam Islam*.

²⁸ Ahmad Rofiq, *Fiqh Kontekastual: Dari Normatif Ke Pemaknaan Sosial* (Yogyakarta: Pustaka Pelajar, 2004).

²⁹ Bagus Setiawan, "Infaq Dalam Tafsir Al-Qur'an Surat Al-Baqarah Ayat 261," *Jurnal Islamic Banking* 1, no. 1 (2015): 61.

aside from the cases of marriage, inheritance, wills, and grants that have always been the court's authority.³⁰

Hence, historically, *Baitul Mal* from the past to modern times had been under state authority.³¹ Then, theoretically, the management of religious assets in the form of ZIS carried out by the state will be well managed based on Islamic law.

The Authority of *Baitul Mal* in the Management of Zakat, Infaq, and Sadaqah in Aceh

Aceh *Qanun* Number 10 of 2018 stipulates that *Baitul Mal* Aceh has the authority to: a) make and formulate policies related to planning, management, development, evaluation, monitoring, reporting, verification, control, socialization, supervision of trustees, and certification; b) submit a general policy plan for the implementation of BMA to Sharia Advisory Board (*Dewan Pertimbangan Syariah/DPS*) for approval; c) submit a plan for the collection and distribution of *zakat* and/or *infaq* to DPS for approval; d) supervise the management and development as well as certification by the BMA Secretariat; e) determine the amount of *zakat* and/or *infaq* that must be distributed; f) establish and strengthen UPZ in SKPA and BUMD Aceh; g) facilitate the establishment and inauguration of UPZ in government agencies, state-owned enterprises, private enterprises, and cooperatives in Aceh; h) conduct guidance on the management of *waqf* and *nazir* assets; i) develop BMK institutional administration; and j) provide an approval of financing for certification and/or salvage of *waqf* assets.³²

Baitul Mal institutions in Aceh at the provincial, district/city, sub-district, and even village levels, therefore, have the authority to

³⁰ Idri, "Religious Court in Indonesia: History and Prospect," *Journal of Indonesia* 3, no. 2 (2009): 279–313; See Also Erie Hariyanto, "Public Trust in the Religious Court to Handle Dispute of Sharia Economy," *AHKAM: Jurnal Ilmu Syariah* 22, no. 1 (2022): 185–208, accessed October 22, 2022, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/26216/10512>.

³¹ Abidin Nurdin, "The Implementation of Meunasah-Based Sharia in Aceh: A Social Capital and Islamic Law Perspective," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 2 (2021).

³² *Qanun Aceh, Qanun Aceh Number 10 of 2018 Concerning Baitul Mal Aceh* (Banda Aceh, 2018).

manage religious assets. Such authority is strengthened by the legal rules, both the Laws and the Aceh *Qanun* and Regency/City *Qanun*. *Qanun* is a special legal rule that applies in Aceh as an autonomous region with formal Islamic law. For example, the authority of the *Baitul Mal* of Sabang City is regulated by the Mayor of Sabang Regulation Number 67 of 2017. It is a derivative of Law Number 10 of 1965 concerning the Establishment of the Municipality of Sabang, Law Number 11 of 2014 concerning the Management of *Zakat*, and the Aceh *Qanun* Number 10 of 2007 concerning *Baitul Mal*. Based on these regulations, it is necessary to have an organizational structure and work procedure for the *Baitul Mal* which is regulated by Sabang Mayor Regulation Number 67 of 2017 concerning the Organizational Structure and Work Procedure of the *Baitul Mal*.

The authority of *Baitul Mal* in managing *zakat* is furthermore explained by Zuhilmi, the Head of *Baitul Mal* of Sabang City. He said that the current *Baitul Mal* structure was still based on the previous 2007 *Qanun*, and that the structure of *Baitul Mal* in Sabang and West Aceh had not been screened at all because the term of office had not yet ended. Once the term of office is due, the structure will have to take another test to conform to the current applicable *Qanun*. The *Qanun* Number 10 of 2007 mandates that the establishment of *Baitul Mal* in the City District is regulated in Mayor Regulation (*Peraturan Wali Kota/PERWAL*), and so there will be only *PERWAL* under the *Qanun*. The *PERWAL* concerning the establishment of *Baitul Mal* is Number 67 of 2017. In this case, all districts and cities have the same legal basis, namely *Qanun* and *PERWAL*.³³

In addition, *Baitul Mal* in Pidie District has exercised their authority in the latest regulations, as conveyed by the Head of *Baitul Mal* Pidie. He stated that in terms of *zakat* management, the institution followed the guidance of *PERGUB* (*Peraturan Gubernur*, Governor Regulation) Number 08 of 2022. Further, the *Qanun* Number 10 of 2018 concerning *Baitul Mal* had been updated into *Qanun* Number 3 of 2021.³⁴ *Baitul Mal* Pidie has applied the rules of *PERGUB* of 2022 and

³³Interview with Zuhilmi, Head of *Baitul Mal* Sabang, August 12, 2022.

³⁴Interview with Head of *Baitul Mal* Pidie, Tgk. Zulkifli, August 29, 2022.

Qanun Number 3 of 2021, which is a refinement of *Qanun* Number 10 of 2018. The use of the latest rules will certainly affect the authority of *Baitul Mal* in the management of *zakat* and *infaq*. The Chairman of *Baitul Mal* Pidie also added that professional *zakat* (*zakat profesi*) since 2013 was the issuance of *Qanuns* and Governor *Circulars* regarding *zakat* and *infaq* which emphasized that all civil servants are required to issue *zakat* as income. Yet, in 2018, the Aceh *Qanun* concerning the *Baitul Mal* was issued, which requires professional *zakat* to be paid. In turn, *Baitul Mal* faced an obstacle in *infaq* management because from 2017 to 2020, there was no professional *zakat* in Pidie District, whereas there were only three areas of *infaq* that they could prosper, for example, economic empowerment, achievement, and poverty alleviation. *Infaq* is still subject to the Governor Regulation of 2013 because it has not been revoked.³⁵

The findings of the interview showed that there has been a change in the authority to manage *zakat* and *infaq* by *Baitul Mal* in Pidie District. There was a change regarding the non-compatibility of professional *zakat* in the old 2013 Governor *Circulars* regarding *zakat* and *infaq* to become compulsory in the latest 2018 regulation.

Likewise, the Chairman of the MPU Pidie disagrees that civil servant salaries are categorized as professional *zakat*. Furthermore, he argued that salaries cannot be handed over to *Baitul Mal* even though all civil servant salaries are still deducted by 2.5%, as professional *zakat*. For more details, the authority of the Provincial and Regency/City *Baitul Mal* in Aceh based on the rule of law can be seen in table 1 below:

³⁵Interview with Head of *Baitul Mal* Pidie, Tgk. Zulkifli, August 29, 2022.

Table 1
The Legal Basis of the Authority of the *Baitul Mal* in Aceh

No	Rule of Law
1	Aceh <i>Qanun</i> Number 10 of 2007 concerning <i>Baitul Mal</i>
2	Aceh <i>Qanun</i> Number 10 of 2018 concerning <i>Baitul Mal</i>
3	Aceh <i>Qanun</i> Number 3 of 2021 concerning changes to the Aceh <i>Qanun</i> Number 10 of 2018 concerning <i>Baitul Mal</i>
4	Governor's Circular Letter of 2013 concerning Direct <i>Zakat</i> and <i>Infaq</i> Collections to the Government of Aceh
5	Governor Regulation Number 08 of 2022 concerning <i>Zakat</i> and <i>Infaq</i> Management at <i>Baitul Mal</i>
6	Pidie Regent Regulation Number 49 of 2021 concerning the Structure and Authority of the <i>Baitul Mal</i>
7	Sabang Mayor Regulation Number 67 of 2017 concerning the organizational structure of the <i>Baitul Mal</i>

Based on the legal provisions in table 1 above, it can be emphasized that the *Baitul Mal* institution in Aceh has the authority to manage ZIS. This authority is based on the mandate regulated by laws, for instance, the state laws, *qanuns*, mayor, and regent regulations. Although there are two opinions about funds from civil servants, namely which categorize them as professional *zakat* and as *infaq*, all these funds are still managed by *Baitul Mal*.

Zakat, Infaq, and Sadaqah as Locally-Generated Revenue in Aceh

Aceh is a region with special authority based on Law Number 18 of 2001 and Law Number 11 of 2006 concerning the Governance of Aceh and therefore has special authority to regulate the issue of *zakat*.³⁶ Both laws have stated that ZIS is affirmed as one of the Locally-Generated Revenue sources.³⁷ If *zakat* has been declared a

³⁶ Mursyid Djawas, "Implementasi Pengelolaan Zakat Di Aceh," *Mazahib: Jurnal Pemikiran Hukum Islam*, *Mazahib: Jurnal Pemikiran Hukum Islam* 14, no. 1 (2016): 90-103.

³⁷Armiadi Musa, "Zakat as Locally-Generated Revenue: Its Accounting Treatment At Baitul Mal Aceh," *Share: Jurnal Ekonomi dan Keuangan Islam* 9, no. 2 (2020): 184-205; See Also Syukri Iska et al., "Implications of the Pagang Gadai Contract on Disharmony Social Actors in

source of locally-generated revenue, *zakat* shall be deposited into the regional treasury. Then, *zakat* distribution must be subject to the regulations on regional financial management, including Law Number 17 of 2003 concerning State Finance, Government Regulation Number 58 of 2005 concerning Regional Financial Management, Permendagri No. 13 of 2006 concerning Guidelines for Regional Financial Management, and other regulations related to locally-generated revenue.³⁸

Based on these laws, the funds received by *Baitul Mal* can be used as locally-generated revenue which functions to assist the Aceh government in developing the economy and empowering the community.³⁹ For example, *Baitul Mal* in Sabang City is in charge of not only managing ZIS but also empowering, socializing, and developing the funds in accordance with the provisions of the sharia. Additionally, in terms of collecting *zakat*, *Baitul Mal* prioritizes people who have a source of income from the City Expenditure Revenue Budget (*Anggaran Pendapatan Belanja Kabupaten/APBK*) including State Civil Apparatus (*Aparatur Sipil Negara/ASN*) and business entities whose budget sources come from the APBK.

Baitul Mal manages *zakat* and *infaq* collected according to the *qanun* orders. This means that ASN and business entities as well as the public are obliged to pay *zakat* to the *Baitul Mal* institution. Therefore, many people have paid their *zakat* to *Baitul Mal* suggesting that public awareness to pay *zakat* is high. However, some people do not pay *zakat* through such institutions; still, income from *zakat* funds from the community provides great contributions to the regions.⁴⁰ In other words, according to the *Baitul Mal* management staff, the funds from ASN are professional *zakat*, while according to the MPU, it is a voluntary *infaq*.

Minangkabau Community," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 27-37, accessed December 28, 2022, <https://ojs.iainbatusangkar.ac.id/ojs/index.php/Juris/article/view/5647>.

³⁸ Musa, "Zakat Sebagai Pendapatan Asli Daerah Dalam Undang-Undang Pemerintahan Aceh."

³⁹ *Ibid.*

⁴⁰ Interview with Zuhilmi, Head of *Baitul Mal*, Sabang, August 12, 2022.

The Head of the Sabang Ulama Consultative Council explained that other than people whose income comes from the APBK, such as ASN and business entities, not all elements of society are required to pay *zakat* toward *Baitul Mal*. Meanwhile, the employee is not obliged to issue *zakat*, because it is included in the *infaq* scheme even though in practice, part of the employee's salary is deducted collectively to become *zakat* or *infaq*.⁴¹

Further, the Sabang Regional Secretary described that if the salaries of civil servants were not only deducted for *zakat* but also *infaq*, it would certainly cause a polemic within the community. This is mainly because of legal differences in which *zakat* was obligatory in accordance with the law and regulated in amount, whereas *infaq* was voluntary. In addition, he said that there has been PERWAL related to such deduction. He also did not agree that employees' salaries are categorized as *infaq* because *infaq* is free or voluntary with no fixed amount, and the salary deductions should be monthly, not annually like *zakat*.⁴² Even so, this is not a problem because, in fact, the deduction of funds from ASN is still carried out by 1% and goes into the *Baitul Mal* account every month which can be categorized as professional *zakat* or *infaq*.

In *Baitul Mal* of Pidie, the realization of revenue coming from the community, including from employees based on *qanuns*, has already followed the religious rules. The Head of *Baitul Mal* Pidie mentioned that the *infaq* collection has originated from ASN and entrepreneurs, which they took 1% from ASN and 0.5% from entrepreneurs every month. The deductions have been stated in the *qanun*, which was promulgated based on Islamic law. The basis of the *qanun* took into account the values of Islamic law. The funds are used for people who are entitled to receive them.⁴³

In relation to this, *Baitul Mal* at the provincial level has the authority to manage religious assets from the community, institutions,

⁴¹Interview with Tgk. Baharuddin, Head of MPU Sabang, August 12, 2022.

⁴²Interview with Drs. Zakaria, Regional Secretary of Sabang, August 12, 2022.

⁴³ Interview with Tgk. Zulkilfli, Head of *Baitul Mal* Pidie, August 29, 2022.

and companies. Although there are different views between the regions regarding the permissibility of civil servants to pay *zakat* or *infaq*, the difference has not shown any significant problem, especially since the Acehnese people's awareness and trust of *Baitul Mal* are high. These funds have been able to contribute to locally-generated revenue in Aceh.

The locally-generated revenue from *zakat* in Aceh is enormous. The main goal of *zakat* management is to support the government in efforts to empower and alleviate poverty and reduce regional financial burdens. *Zakat* has been part of Aceh's locally-generated revenue, which is projected to keep increasing and becomes a significant source of income. Table 2 below is the revenue report for *Baitul Mal* Aceh for five years (2017-2021) sourced from *zakat*:

Table 2
Zakat Revenue in Five Years (2017-2021)

No	Year	Target	Revenue	Percentage
1	2021	73,600,000,000.00	59,169,323,476.55	80.39
2	2020	50,248,000,000.00	57,556,552,816.62	114.54
3	2019	50,248,000,000.00	59,551,675,959.85	118.52
4	2018	50,248,000,000.00	53,928,676,345.25	107.33
5	2017	35,864,400,000.00	52,180,580,303.10	145.49

Source: Report of *Baitul Mal* Aceh, 2021

The report, in table 2⁴⁴, shows that during five years, realization of regional original income from *zakat* in the *Baitul Mal* numbered IDR 282,386,808,901.3 or an average of IDR 56,477,361,780.27 annually.⁴⁵ Meanwhile, *zakat* funds regulated in the *qanun* are distributed to those who are entitled to receive them, including the needy, the poor, *amil* (administering *zakat*), converts, *gharimin* (owes), *fisabilillah* (in Allah's way), and *Ibn Sabil* (on a religious journey). The following table 3 shows the distribution of *zakat* in 2021:

⁴⁴ Baitul Mal Aceh, *Laporan Keuangan Baitul Mal Aceh Tahun Anggaran 2021* (Banda Aceh, 2021).

⁴⁵ Baitul Mal Aceh, *Laporan Akuntabilitas Kinerja Instansi Pemerintah/Laporan Kinerja 2020* (Banda Aceh, 2020).

Table 3
Realization of Zakat Distribution in 2021

No	Recipient	Budget Ceiling in IDR	Realization Rp in IDR	Percentage
1	The needy	15,120,000,000.00	8,581,000,000.00	56.75
2	The poor	68,196,000,000.00	54,029,854,845.00	79.23
3	Amil	800,000,000.00	709,630,350.00	88.70
4	Converts	4,666,455,585.00	3,589,910,200.00	76.93
5	<i>Riqab</i>	-	-	0.00
6	<i>Gharimin</i>	4,600,000,000.00	1,888,000,000.00	41.04
7	<i>Fi Sabilillah</i>	5,050,000,000.00	1,073,965,000.00	21.27
8	<i>Ibn Sabil</i>	23,741,700,000.00	22,569,827,287.00	95.06
Total		122,174,155,585.00	92,442,187,683.00	75.66

Source: Report of *Baitul Mal Aceh*, 2021

The groups of recipients mentioned in table 3 are recorded, verified, and analyzed for eligibility to receive *zakat* according to Islamic law. The needy refer to people over the age of 60 who are old, chronically ill, and have neither income nor family to support. The poor refers to people who have income but are not sufficient, and do not get help from other parties. *Amil* refers to an individual or a non-governmental institution serving as *zakat* volunteers. Converts are those converting to Islam, receiving *zakat* in the form of scholarships and economic empowerment assistance. *Gharimin* allocation is usually in the form of incidental natural disaster assistance while *fi sabilillah* refers to assistance to individuals or Islamic institutions who are unable to carry out activities such as developing *da'wah* and Islamic activities and increasing human resources. *Ibn Sabil*, at last, refers to the allocation of scholarships for poor students from elementary to college levels.⁴⁶

In general, assistance and distribution to the groups mentioned above are conducted in two forms: the first is consumptive in nature, such as providing scholarships and medical expenses as well as building houses for the poor and needy, and the second is

⁴⁶ Aceh, *Laporan Keuangan Baitul Mal Aceh Tahun Anggaran 2021*.

productive *zakat*, such as business capital assistance or business equipment, and business capital in the form of soft loans (*qardul hasan*). This program fosters recipients, namely individuals or small business groups in Banda Aceh and Aceh Besar by providing business capital to poor farmers, small traders, home industries, livestock farmers, and providing goods such as motorized tricycles and work tools. Business capital assistance revolves around *Gampong* (village) Baitul Mal (in collaboration with *Gampong*) which aims to increase small and medium enterprises within the community.⁴⁷ The process of distributing and providing assistance is carried out by submitting a proposal that is strictly verified.

The management of religious assets carried out by *Baitul Mal* Aceh has got recognition and appreciation from many parties. It is clear from some awards not only at the provincial level but also at the national level. This can be seen in table 4 as follows:

Table 4
Baitul Mal Aceh Awards

No	Award Name	Awarding Agency	Year
1	Aceh Province Leading ZISWAF Institution	Bank Indonesia Aceh Branch	2022
2	The Best Zakat Distribution Impact in Indonesia	Central Baznas	2022
3	Innovative Aceh Regional Apparatus Work Unit (SKPA)	Aceh Governor	2021
4	Supporter of the Zakat Awakening Movement	Central Baznas	2020
5	The Best National Zakat Distribution Province	Central Baznas	2020
6	The Third Best Booth of MSME Exhibition at Aceh Provincial Level	SME Cooperative Office	2019
7	National Best Zakat Institution	Central Baznas	2018

Source: <https://baitulmal.acehprov.go.id/penghargaan>, 2022.

⁴⁷ Baitul Mal Aceh, *Laporan Tahunan Baitul Mal Aceh Tahun Anggaran 2017* (Banda Aceh, 2017).

Table 4 describes that the management of *zakat*, *infaq*, and *sadaqah* funds has received recognition at the regional and national levels. The awards are an acknowledgment of the commitment, contribution, achievement, and partisanship of *Baitul Mal* in managing, distributing, fostering, and empowering groups in need based on the legal rules.

According to the legal rules in Aceh, *zakat* has become locally-generated revenue and has been included in the state financial management system managed by *Baitul Mal*. This institution is an official *amil zakat* established by the Aceh Government as a non-structural and independent institution. However, there are polemics and regulatory conflicts, and therefore *zakat* as locally-generated revenue should be specifically treated and regulated which differentiates it from other sources of regional income. The mechanism offered is to place *zakat* funds in a special account that is not delegated to other recipients.⁴⁸

Further, to avoid any polemics, the use of *zakat* should not be equated with other funds. It is the awareness of the Acehnese people to pay *zakat*, and the order to pay *zakat* is not only a religious one but it also a state order as it has been stipulated in the laws and *qanuns*. These laws and *qanuns* were made possible because Aceh has implemented Islamic law whose rules are *lex specialist* (specificity). Because of this, the regulation on *zakat* in Aceh should also be treated as a *lex specialist* within the framework of national law, such as the implementation of sharia (Islamic law) in Aceh but it remains within the framework of the Unitary State of the Republic of Indonesia.

Furthermore, it should be noted that *Baitul Mal* as an institution legally mandated to manage ZIS has provided assistance to the poor and the economic empowerment. Although there are still technical and juridical issues (for example, different legal rules are understood by districts/cities), *Baitul Mal* has already contributed to the economic development of the people in Aceh.

⁴⁸ Musa, "Zakat Sebagai Pendapatan Asli Daerah Dalam Undang-Undang Pemerintahan Aceh."

Conclusion

Baitul Mal as a state institution has the authority to manage ZIS based on legal rules that are specifically enforced in Aceh as an autonomous region. It has contributed to the economic development of the people in Aceh as proven by various awards received. The management of *zakat* fund, furthermore, is not only for consumptive such as assistance to the poor, scholarship assistance, and homes for the poor, but also productive such as business capital and assistance for Small and Medium Enterprises. Therefore, the management of ZIS carried out by the *Baitul Mal* is based on the authority granted by laws and regulations including PAD. On the other hand, based on Islamic law, the management of *zakat* must be viewed *lex specialist* according to the national legal system in Indonesia.

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Al-'Unfu fî al-Tarbiyah min Mandzûr al-Tashrî' al-Indûnîsî wa al-Sharî'ah al-Islâmiyah

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Abstract:

Violence on children has become a big unsolvable problem in Indonesian education. In fact, the government has ratified some Laws to protect them from any form of violence. Likely, Islam as the mostly followed religion in the country does the same through its mission called *rahmatan li al-alamîn* or blessing for all. This research relies on a question on how far the Indonesian rules and Islamic law concern on this issue by protecting children from any violence. Using qualitative method in the law research and documentary analysis, it is found that the Indonesian Laws have been sufficient for that purpose as they prohibit all forms of violence against students. Along with it, the perpetrators deserve for punishment due to the mistakes level while the victims deserve for recovery and trauma healing to grow their optimism. In line with that, Islamic law also prohibits any violence because it breaks the purpose of shariah, namely enforcing the goodness (*maslahah*) and avoiding the

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harm (*mudarat*). However, Islamic law still tolerates hitting a child for the sake of education and their goodness as long it is performed softly and becoming the very last option. Both laws, therefore, strengthen each other to protect children from any form of violence mainly at the education sphere.

Keywords:

Violence; Education; Students; Law; Shariah

ملخص البحث

لا يزال العنف نحو الأطفال في عالم التربية مشكلة كبيرة لم يتم حلها، وخاصة في إندونيسيا. في الواقع، وضعت الحكومة عددا من القوانين واللوائح لحماية الأطفال من العنف. وبالمثل، فإن الإسلام – وهو دين غالبية سكان إندونيسيا – موجود ليكون رحمة للعالمين. والسؤال الذي نركز عليه في هذا البحث هو، كيف تحمي القوانين واللوائح الحالية الطلاب من أعمال العنف، وكيف تولى الشريعة الإسلامية اهتماما للحد من العنف على الأطفال؟ ومن خلال المنهج النوعي مع البحوث القانونية وتحليل الوثائق، تبين أن القوانين واللوائح الموجودة كافية لحماية الأطفال من العنف. فالأنظمة القائمة، تمنع جميع أشكال العنف ضد الطلاب، حيث يجب معاقبة الجناة وفقا لدرجة الخطأ والذنب، ويجب تقديم المساعدة للضحية للقضاء على الصدمة وتعزيز التفاؤل، ويجب التعاون من جميع الأطراف التصدي للعنف معا. من جهة أخرى، فإن الشريعة الإسلامية تمنع وتحظر العنف ضد الأطفال لأنه يتعارض مع الغرض من الشريعة الإسلامية، وهو تحقيق الصلاح ورفع الضرر. ومع ذلك، فإن الشريعة الإسلامية تنص على السماح باستخدام العنف للأغراض التربوية من أجل مصلحة الطفل، ولكن يجب أن يتم ذلك بحذر بعناية وكما لاذ أخير بعد استخدام جميع الأساليب الأخرى. إن القوانين واللوائح في إندونيسيا والشريعة الإسلامية تعزز بعضها البعض بشكل أساسي لحماية الأطفال من العنف، وخاصة في مجال التربية.

الكلمات المفتاحية:

العنف؛ التربية؛ الطلاب؛ القانون؛ الشريعة الإسلامية

المقدمة

العنف ضد الطلاب مشكلة تعليمية رئيسية لم يتم حلها حتى الآن. ويتضح ذلك من البيانات العالية المتعلقة بالعنف ضد الأطفال في العديد من البلدان. أثبتت نتائج بحث سوزان هيليس وآخرون لعام ٢٠١٦ بشأن ٣٨ تقريرا عن إساءة معاملة الأطفال من ٩٦ دولة أن ما معدله ٥٠٪ أو حوالي ١ مليار طفل تتراوح أعمارهم بين ٢-١٧ سنة في العالم تعرضوا للعنف الجسدي والجنسي والعاطفي والإهمال الذي حدث في مناطق آسيا وأفريقيا وأمريكا الشمالية^١. أفادت منظمة الأمم المتحدة للطفولة (اليونيسف) في عام ٢٠٢١ أن ٤,٤ مليون طفل من ١٢٩ دولة تعرضوا للعنف، خاصة في جنوب آسيا وشرق آسيا وآسيا الوسطى. ارتفع هذا الرقم بنسبة ٨٠٪ عن عام ٢٠١٧^٢. في عام ٢٠٢٢، ذكرت مراكز السيطرة على الأمراض والوقاية منها أن حالات العنف ضد الأطفال هي بالفعل مشكلة عالمية. ما يقدر بنحو ١ مليار طفل هم ضحايا العنف كل عام. وهذا يعني أن نصف جميع الأطفال في جميع أنحاء العالم يتعرضون للعنف كل عام^٣.

¹UNICEF, *Global Annual Results Report 2021: Every Child Is Protected from Violence and Exploitation*, <https://www.unicef.org/reports/global-annual-results-2021-goal-area-3>.

² Adaugo Amobi & Howard Kress Susan Hillis, James Mercy, 'Global Prevalence of Past-Year Violence Against Children: A Systematic Review and Minimum Estimates', *Pediatrics* 137 (3), 2016, <https://doi.org/https://doi.org/10.1542/peeds.2015-4079>.

³ Centers for Disease Control and Prevention, *Preventing Violence against Children and Youth Globally*,

جأوة الشرقفة (٤٤٣ ضفةفة)، و جأوة الوسطى (٣٨١ ضفةفة)، و جأوة الغربفة (٣٦٦ ضفةفة) هف المفاطعات الف لفبها أكبر عدد من حالات العنف ضد الأطفال فف فندونفسفا^٦.

فف أوائل عام ٢٠٢٢م، أبلغت اللجنة الفندونفسفة لءمافة الطفل (KPAI) أفضا عن عدد شكأوى العنف ضد الأطفال الف بلغت ٢,٩٨٢ حالة مع تفاصيل العنف الجسدف (٥٧٤ حالة)، والعنف النفسف (٥١٥ حالة)، والعنف الجنسي (٨٥٩ حالة)، وضحافا المأد الإباففة (٣٤٥ حالة)، وضحافا الإهمال (١٧٥ حالة)، وضحافا الاستغلال (١٤٧ حالة)، وارتكاب الجرائم القانونفة (١٢٦ حالة)، والقفل (٣٥ حالة)، وضحافا المشاجرات (١٤ حالة). وقعت جمفع هذه المألل خلال عام ٢٠٢١.

والبفانال المذكورة أعلاه معززة أفضا بالفلأف الف فولل إلفها "لوفف بوذرفاهافو ونوفرف سوسان" الللأن درسلا العنف ضد الأطفال فف المءارس. ومن بفن ٤٠٠ عفةة من الطلاب فلل دراسلها، قال معظم الطلاب إنهم تعرضوا للعنف. وكان معظم مرلكف العنف وضحافاه من زملائهم من الطلاب أفضا (٨٢,٢٥ فف المألفة)، فلفهم العنف الفف فمارسه المعلمون ضد الطلاب (٤٤,٢٥ فف المألفة)، والعنف الفف فمارسه موظفوا المءارس ضد الطلاب (٠,٤٩ فف المألفة). ولشمل أشكال العنف المرلكب العنف اللفظف/الجسدف العنف ففر المباشر (٩٤,٥٪)، والعنف الجسدف بنسبة

^٦Ibid.

^٧ Komisi Perlindungan Anak Indonesia (KPAI), 'Catatan Pelanggaran Hak Anak Tahun 2021 dan Proyeksi Pengawasan Penyelenggaraan Perlindungan Anak Tahun 2022', <https://www.kpai.go.id/publikasi/catatan-pelanggaran-hak-anak-tahun-2021-dan-proyeksi-pengawasan-penyelenggaraan-perlindungan-anak-tahun-2022>.

٨٥,٥٪ (سواء الذي يتم مباشرة أو باستخدام الأدوات)، والعنف غير المباشر (٦٩,٥٪)، والعنف القمعي (٢٨٪)^٨.

إن العنف الذي يحدث في المؤسسات التربوية، إلى جانب مختلف الآثار السلبية التي يعاني منها الضحايا، سوف يتداخل إلى حد كبير مع مسار تعليم الأطفال في المدارس. حيث يصبح الأطفال خائفين ومصدومين من المجيء إلى المدرسة، و كذلك بفعل العنف لا تعتبر المدرسة مكانا آمنا ومريحا للدراسة، كما يشعر الآباء بالقلق على سلامة أطفالهم أثناء وجودهم في المدرسة. وعلاوة على ذلك، فإن المدارس التي تبذل جهدا كبيرا وتلعب دورا فعالا على نطاق واسع في تنمية الإمكانيات، وتشكيل الشخصية، وتعزيز إنجازات الطلاب، تصبح معاقبة وغير قادرة على أداء واجباتها وأدوارها. ولذلك، فإن الطريقة الأفضل والأمثل للقضاء على العنف ضد الطلاب في المدارس يستحق أن يكون التزاما مشتركا، بحيث تتم حماية الطلاب من مختلف أشكال العنف والتمييز، مما يؤدي في نهاية المطاف إلى إنشاء مدارس صديقة للأطفال.

وكشكل من أشكال التزام الحكومة بالقضاء على العنف في عالم التربية، تم إصدار العديد من اللوائح. من ناحية أخرى، فإن الإسلام - الذي يعتنقه غالبية السكان الإندونيسيين - موجود ليكون رحمة للعالمين ولينشر المحبة والسلام في أرجاء الكون. فالإسلام، بوصفه دين الرحمة، يمنع منعاً باتاً جميع أشكال العنف، ولا سيما العنف ضد الأطفال. ومع ذلك، في الواقع، لا يزال العنف ضد الأطفال في المؤسسات التربوية شائعا. لذلك، من المثير للاهتمام مواصلة استكشاف كيف تحمي

⁸Tuti Budirahayu & Novri Susan, *Violence at School and Its Root Cause*, <https://www.atlantis-press.com/proceedings/icocspa-17/55909019>

القوانين واللوائح القائمة الأطفال من العنف في الوحدات التربوية؟ سيتم الجمع بين هذا السؤال أيضا وما هو رأي الشريعة الإسلامية فيما يتعلق بالعنف ضد الطلاب؟

منهج البحث

يستخدم هذا البحث المنهج النوعي في البحث، وهو يعتمد في الأساس على نوع الدراسة المكتبية،⁹ وبالنظر إلى أن هذه الدراسة تعتمد على الاطلاع في القوانين والأنظمة، فإن نوعيه البحوث القانونية تستخدم فيه أيضا، وهي البحوث القانونية المعيارية التي تجرى من خلال استعراض ومقارنة مضمون التشريعات المتعلقة بالعنف ضد الأطفال. يتم الحصول على بيانات البحث من البيانات الأولية والثانوية. تتضمن مصادر البيانات الأولية نسخا من القوانين واللوائح المتعلقة بالعنف على الطلاب والمتعلمين كما هو موضح في الجدول التالي:

الجدول: مصادر البيانات الأولية من التشريعات الإندونيسية

رقم	أنواع التشريعات	أسماء التشريعات	اختصار
١	الدستور الأساسي	دستور عام ١٩٤٥	دستور عام ١٩٤٥
٢	قانون	قانون رقم ٣٩ عام ١٩٩٩ بشأن حقوق الإنسان	القانون رقم ٣٩-١٩٩٩

⁹ Robert Bogdan & S.K. Biklen, *Qualitative Research for Education* (Boston: MA Allyn and Bacon, 1992).

٣	قانون	قانون رقم ٢٠ عام ٢٠٠٣ بشأن نظام التربية الوطني	القانون رقم ٢٠٠ - ٢٠٠٣
٤	قانون	قانون رقم ٣٥ عام ٢٠١٤ بتعديل القانون رقم ٢٣ عام ٢٠٠٢ بشأن حماية الطفل	القانون رقم ٣٥ - ٢٠١٤
٥	الوائح الرئاسية	اللائحة الرئاسية رقم ١٠١ عام ٢٠٢٢ بشأن الاستراتيجية الوطنية للقضاء على العنف ضد الأطفال	المرسوم الرئاسي رقم ١٠١ - ٢٠٢٢
٦	الوائح الوزارية	نظام وزير التربية والثقافة رقم ٨٢ عام ٢٠١٥ بشأن منع العنف والتخفيف من حدته في بيئة الوحدة التعليمية	اللائحة الوزارية رقم ٨٢ - ٢٠١٥

وبالإضافة إلى ذلك، فإن المصادر الرئيسية الأخرى لهذا البحث هي الآيات القرآنية الكريمة والأحاديث الشريفة المتعلقة بحماية الأطفال من أعمال العنف. وفي الوقت نفسه، فإن مصادر البيانات الثانوية هي آراء الخبراء في مراجعة القوانين واللوائح التي هي المصدر الأساسي وآراء العلماء في فهم الآيات والأحاديث المتعلقة بحماية الأطفال من أعمال العنف.

جمع البيانات في هذا البحث يعتمد على تقنيات التوثيق، في حين أن تحليل البيانات تعتمد على تحليل الوثائق، وهو إجراء منهجي لمراجعة و/أو تقييم الوثائق، سواء الوثائق المطبوعة أو الوثائق الإلكترونية على حد سواء^{١٠}. الخطوات المتبعة في

¹⁰ Glenn A. Bowen, 'Document Analysis as a Qualitative Research Method', *Qualitative Research Journal*, 9 (2), 2009: 27-48, DOI.10.3316/QRJ0902027.

ذلك هي كما يلي: (١) تحديد موضوع وكلمات الوثيقة المراد دراستها، (٢) إعطاء معنى للموضوع والكلمات الرئيسية، و (٣) إجراء تفسيرات داخلية^{١١}.

نتائج البحث ومناقشتها

العنف في التربية من منظور التشريع الإندونيسي

العنف ضد الطلاب، الذي لا يزال يحدث في كثير من الأحيان في عالم التربية، هو مصدر قلق خطير للحكومة. وقد بذلت الحكومة ولا تزال تجري الكثير من الجهود لحماية الطلاب والدارسين من السلوك العنيف في المدارس وخارجها، بما في ذلك من خلال وضع قوانين وأنظمة كأساس لمنع العنف والتغلب عليه. وهناك ما لا يقل عن ستة قوانين وأنظمة، على النحو المبين في الجدول، تنظم منع العنف ضد الأطفال والتدابير المضادة له. هناك أربع لوائح قابلة للتطبيق بشكل عام (دستور عام ١٩٤٥، القانون ٣٩-١٩٩٩، والقانون ٣٥-٢٠١٤، اللائحة الرئاسية ١٠١-٢٠٢٢) وتنطبق لائحتان على وجه التحديد في المؤسسات التربوية (القانون ٢٠-٢٠٠٣ واللائحة الوزارية ٨٢-٢٠١٥).

أولاً، في (ديباجة) دستور عام ١٩٤٥ في الفقرة الرابعة، يذكر أن الغرض من إنشاء دولة إندونيسيا هو "حماية الشعب الإندونيسي بأكمله وجميع أشكال الكفاح بإراقة الدماء الإندونيسية وتعزيز الرفاه العام، وتثقيف حياة الأمة والشعب، والمشاركة في تنفيذ النظام العالمي القائم على الاستقلال والسلام الدائم والعدالة الاجتماعية...". ومن أجل تحقيق هذا الهدف الوطني، يتم وضع المزيد من الأحكام وفقاً للمجالات المختلفة. ففي مجال التربية على وجه التحديد، تنظم الحكومة جهودها

¹¹ Noeng Muhadjir, *Metodologi Penelitian Kualitatif* (Yogyakarta: Rake Sarasin, 2000).

الرامية إلى "حماية" و "تعليم" أطفال الأمة في الفقرة (١) من المادة ٣١ من دستور عام ١٩٤٥، التي تنص على أن "لكل مواطن الحق في التربية" والفقرة (٢) بآء من المادة ٢٨ التي تنص على أن "لكل طفل الحق في البقاء والنمو والنماء والحق في الحماية من العنف والتمييز".

وتشير المادتان ٣١ و٢٨ أعلاه إلى أن حق الأطفال في التربية يجب أن يكون مصحوبا بالحق في الحماية من العنف والتمييز. ويظهر إدراج هذه الحقوق في الدستور الأساسي لجمهورية إندونيسيا - باعتباره أعلى تشريع - أن كلا الحقين مهمان وخطيران. وهو أمر مهم لأن التربية بدون حماية (من العنف والتمييز) سيحدث حالات غير مريحة من انعدام الأمن والاطمئنان. فالموضوع خطير لأن العنف والتمييز لا يزالان يطاردان النواحي التطبيقية من مجالات التربية الوطني، لذلك يجب تضمين لوائح الوقاية في أعلى مستوى من التنظيم، وهو الدستور الأساسي.

ثانيا، القانون رقم ٣٩-١٩٩٩ بشأن حقوق الإنسان. ويتألف القانون من ١١ فصلا و١٠٦ مادة. وترد حقوق الطفل في الحماية بشكل منفصل في الفرع العاشر الذي يتضمن ١٦ مادة (من المادة ٥٢ إلى ٦٦). وتبدأ هذه الحقوق من حقوق الطفل أثناء وجوده في الرحم وصولا إلى حقوق الطفل قبل سن ١٨ عاما (الحد الأقصى لسن فئة الأطفال). وتشمل الحقوق في حماية الأطفال من العنف المباشر إليها في المواد ٥٢-٦٦ "الحق في الحماية من جميع أشكال العنف البدني أو العقلي والإهمال وسوء المعاملة والاعتداء الجنسي" (المادة ٥٨ الفقرة ١)؛ "الحق في الحماية من الاستغلال والاعتداء الجنسي، والاختطاف، والاتجار بالأطفال، وكذلك من مختلف أشكال إساءة استعمال المخدرات، والمنشطات، وغير ذلك من المواد المسببة للإدمان" (المادة ٦٥)؛ "الحق في عدم التعرض للاضطهاد أو التعذيب أو الأحكام اللاإنسانية"

(المادة ٦٦ الفقرة ٢). وبدل إدراج حقوق الطفل في قسم منفصل يضم ما مجموعه ١٦ مادة على أن الحكومة تنظر إلى مشكلة العنف ضد الأطفال باعتبارها مشكلة خطيرة في مجال حقوق الإنسان يجب معالجتها بجدية أيضا.

ومن أجل التنفيذ الفعال للقانون ٣٩-١٩٩٩، أنشأت الحكومة اللجنة الوطنية لحقوق الإنسان. في الواقع، تم تشكيل هذه اللجنة قبل وقت طويل من صدور القانون ٣٩-١٩٩٩ واعتماده، وتحديدًا في ٧ يونيو ١٩٩٣ الذي تم تشكيله بناء على المرسوم الرئاسي رقم ٥٠ لعام ١٩٩٣. وهذا يدل على أن مشاكل حقوق الإنسان هي مشاكل عالمية تحتاج إلى معالجة جادة وفورية. وعلى المستوى العملي، فإن عمل اللجنة الوطنية لحقوق الإنسان يتسم بالوضوح الشديد وهو ملموس في التعامل مع انتهاكات حقوق الإنسان. وقد ساعد وجود هذه اللجنة المستقلة المجتمعات المحلية المتضررة من انتهاكات حقوق الإنسان والمكافحين من أجل الحصول على حقوق الإنسان مساعدات كبيرة. وقد تمت معاقبة العديد من منتهكي حقوق الإنسان حيث تمت محاكمتهم وفقا للأحكام القانونية المنطبقة والسارية المفعول. ومع ذلك، فإن وجود هذه اللجنة والتي ينحصر تواجدها في العاصمة الوطنية لا يصل إلى العديد من قضايا حقوق الإنسان الموجودة في المناطق المختلفة من جمهورية إندونيسيا. وفي الوقت نفسه، لا تزال المكاتب التمثيلية في المناطق تقتصر على ٧ مقاطعات من أصل ٣٧ مقاطعة قائمة.^{١٢}

ثالثًا، القانون رقم ٢٠-٢٠٠٣ المتعلق بنظام التربية الوطني. وفي هذا القانون، لا يرد الاهتمام بحماية الأطفال من العنف إلا في المادة ٤ الفقرة (١) التي تنص على ما يلي: "ينظم التعليم بطريقة ديمقراطية ومنصفة ولا ينطوي على تمييز من خلال

¹²Komnas HAM, 'Struktur Organisasi Komnas HAM', <https://www.komnasham.go.id/index.php/about/3/struktur-organisasi.html>.

التمسك بحقوق الإنسان والقيم الدينية والقيم الثقافية وتعددية الأمة". ويبين العدد المحدود من المواد التي تتضمن الحماية من عنف الأطفال أن قانون التربية هذا لا يولي اهتماما كافيا لحالات عنف الأطفال في الوحدات التعليمية. في حين أن القوانين واللوائح السابقة، دستور عام ١٩٤٥، والقانون ٣٩-١٩٩٩ والقانون ٢٣-٢٠٠٢ (الذي نصح وعدّل إلى القانون ٣٥-٢٠١٤)، قد أولت اهتماما كبيرا لحماية الأطفال من العنف.

رابعا، القانون رقم ٣٥-٢٠١٤ وهو تنقيح للقانون رقم ٢٣-٢٠٠٢. كما يوحي الاسم، قانون حماية الطفل، هناك العديد من المواد التي تنظم حماية الأطفال من العنف والتمييز. ففي هذا القانون، وعلى الرغم من أن موضوعه ينظم حماية الطفل بشكل عام، فإن حماية الطفل في الوحدات التعليمية تشكل شاغلا هاما. ويبين ذلك في المادة ٩ الفقرة (أ١) التي تنص على أن "لكل طفل الحق في الحماية في الوحدة التعليمية من الجرائم الجنسية والعنف الذي يرتكبه المعلمون وموظفو الوحدة التعليمية وزملائهم من الطلاب و/أو الأطراف الأخرى". وهذا يدل على أنه عندما تمت صياغة هذا القانون، حتى قبل ذلك بوقت طويل، كانت حالات العنف ضد الأطفال في الوحدات التعليمية متفشية بالفعل، لذلك كانت هناك حاجة إلى لوائح واضحة للتغلب على المشكلة.

ومن أجل التنفيذ الفعال لحماية الطفل، أنشأت الحكومة لجنة مستقلة لحماية الطفل وهي لجنة حماية الطفل الإندونيسي. تأسست هذه اللجنة في عام ٢٠٠٣م بناء على المرسوم الرئاسي رقم ٧٧ لعام ٢٠٠٣م، بعد إنشاء القانون ٢٣-٢٠٠٢م. وتلقى وجود البرنامج استجابة إيجابية من شتى أطراف المجتمع المحلي للتغلب على مختلف أشكال العنف ضد الأطفال. ويتضح ذلك من العدد الكبير من الشكاوى

المتعلقة بحالات العنف، لا سيما وأن لجنة حماية الطفل الإندونيسي تفتح خدمات الشكاوى مباشرة وعبر الإنترنت. ¹³ على سبيل المثال، استمرت البيانات المتعلقة بشكاوى عنف الأطفال في الزيادة من عام ٢٠١٦م إلى عام ٢٠٢٠م والتي وصلت إلى ٢٤,٩٧٤ حالة، مع تفاصيل في عام ٢٠١٦ (٤,٦٢٢ حالة)، و عام ٢٠١٧ (٤,٥٧٩ حالة)، و عام ٢٠١٨ (٤,٨٨٥ حالة)، و عام ٢٠١٩ (٤,٣٦٩ حالة)، و عام ٢٠٢٠ (٦,٥١٩ حالة).^{١٤}

بيد أن عمل اللجنة ليس فعالا بالشكل الكافي لأن هذه المؤسسة متمركزة في العاصمة الوطنية فقط، ولا تتوازن جهودها وامكانياتها مع حالات العنف ضد الأطفال التي تظهر يوميا تقريبا في تقارير وسائط الإعلام. ومن الناحية المثالية، ينبغي تشكيل لجان مماثلة في كل مقاطعة/مدينة حتى على مستوى المقاطعات الفرعية. ومع ذلك، حتى الآن لم تشكل تلك اللجنة المسؤولة عن حماية الأطفال سوى في عشرات المناطق. ولا تتضمن البيانات الواردة في صفحة البرنامج سوى ٣٥ لجنة إقليمية لحماية الطفل^{١٥}. وفي الوقت نفسه، على موقع وزارة تمكين المرأة وحماية الطفل على شبكة الإنترنت، فإنه يحتوي فقط على ٣٤ مقاطعة/مدينة لديها بالفعل وحدات لحماية المرأة والطفل^{١٦}.

خامسا، اللائحة الرئاسية ١٠١-٢٠٢٢ موجودة بسبب ارتفاع معدل العنف ضد الأطفال، مما يعني أن عمل الحكومة في حماية الأطفال من العنف لم تأت بالنتائج

¹³ Komnas HAM, 'Struktur Organisasi Komnas HAM', <https://www.komnasham.go.id/index.php/about/3/struktur-organisasi.html>.

¹⁴KPAI, 'Data Kasus Perlindungan Anak 2016-2020', <https://bankdata.kpai.go.id/tabulasi-data/data-kasus-perlindungan-anak-2016-2020>.

¹⁵KPAI, 'Komisi Perlindungan Anak Daerah', <https://www.kpai.go.id/kpad>.

¹⁶Kementerian P3A, 'Komisi Perlindungan Perempuan dan Anak Daerah', <https://www.kemenpppa.go.id/index.php/page/view/151#>.

المرجوة. ولذلك، صدرت هذه اللائحة الرئاسية لتصبح مرجعا مشتركا (للوزارات/المؤسسات، وحكومات المقاطعات، وحكومات المقاطعات/المدن) لزيادة الجهود الرامية إلى منع العنف ضد الأطفال ومعالجته. ولأنها استراتيجية، فإن محتوى اللائحة الرئاسية ٢٠٢٢-١٠١ هو أكثر نحو القواعد التقنية التي تحتوي على توجهات السياسة العامة والاستراتيجيات واستراتيجيات التركيز والتدخلات الرئيسية، فضلا عن أهداف وأدوار ومسؤوليات الوزارات/المؤسسات، وحكومات المقاطعات/المقاطعات، وحكومات المقاطعات/المدن، والمجتمع المحلي لتحقيق القضاء على العنف ضد الأطفال.

سادسا، في اللائحة الوزارية لوزارة التربية والثقافة رقم ٨٢ لعام ٢٠١٥، تنظم الحكومة الجهود المبذولة لمنع أعمال العنف ضد الطلاب في الوحدات التعليمية والتغلب عليها بطريقة أكثر عملية من الناحية التقنية. في هذه اللائحة، إن ما يشمل العنف ضد الطلاب المتعلمين هو "السلوك الذي يتم تنفيذه جسديا أو نفسيا أو جنسيا أو عبر الإنترنت أو من خلال الكتب المدرسية التي تعكس الأعمال العدوانية والاعتداءات التي تحدث في بيئة الوحدة التعليمية وتؤدي إلى الخوف والصدمة النفسية وتلف الأشياء والجروح / الإصابات والعجز و / أو الوفاة" (المادة ١ الفقرة ١).

وتنظم المادة ٦ أنواع أعمال العنف التي يجب تجنبها في الوحدات التربوية والتي تشمل: (١) التحرش، (٢) التنمر، (٣) الاضطهاد، (٤) الشجار، (٥) التعارك، (٦) الابتزاز، (٧) الاعتداء الجنسي، (٨) الاغتصاب، (٩) أعمال العنف على أساس التمييز ضد الإثنية والدين والعرق وبين الجماعات، و (١٠) أعمال العنف الأخرى على النحو المنصوص عليه في القوانين واللوائح. في اللائحة الوزارية ٨٢-٢٠١٥، يتم تنظيم عقوبات متعددة المستويات أيضا للمعلمين والطلاب والموظفين التعليميين في

الوحدات التعليمية الذين ثبت أنهم ارتكبوا أعمال عنف داخل الوحدة التعليمية أو ثبت أنهم أهملوا القيام بواجباتهم ووظائفهم مما يؤدي إلى أعمال عنف في الوحدة التعليمية (المادة ١٢ الفقرة ١ أ).

بالإضافة إلى القوانين واللوائح المذكورة أعلاه، تبذل الجهود لمنع العنف في المدارس والتغلب عليه أيضا من خلال إنشاء برنامج المدارس الصديقة للطفل، وهو برنامج لتحقيق ظروف مدرسية آمنة ونظيفة وصحية ومثقفة بيئيا، وقادرة على ضمان حقوق الطفل وإعمالها واحترامها وحماية الأطفال من العنف والتمييز وغير ذلك من ضروب المعاملة السيئة^{١٧}. تم إطلاق برنامج المدارس الصديقة للطفل في عام ٢٠١٤ بناء على لائحة وزير تمكين المرأة وحماية الطفل رقم ٨ لعام ٢٠١٤ بشأن سياسة المدارس الصديقة للطفل. ومن الناحية المفاهيمية، يمكن تحقيق تنفيذه من خلال ٦ عناصر، هي: (١) سياسة المدارس الصديقة للطفل؛ (٢) المعلمون وموظفو التعليم المدربون لمتابعة اتفاقيات حقوق الطفل؛ (٣) عملية التعلم الصديقة للطفل؛ (٤) البنيات الأساسية والمرافق الملائمة والصديقة للأطفال؛ (٥) مشاركة الأطفال؛ و (٦) مشاركة أولياء الأمور والمؤسسات المجتمعية وعالم الأعمال والمسؤولين الآخرين والخريجين^{١٨}.

ومع ذلك، منذ إنشائها حتى عام ٢٠١٩، تم تشكيل برنامج المدارس الصديقة للطفل فقط في ٢٢,١٧٠ وحدة تعليمية في إندونيسيا^{١٩}. وبطبيعة الحال، فإن عدد هذه البرامج ما زال صغيرا جدا مقارنة بعدد الوحدات التعليمية التي يبلغ عددها مئات

¹⁷ Kementerian P3A, *Panduan Sekolah Ramah Anak* (Jakarta: Deputi Tumbuh Kembang Anak KP3A, 2015).

¹⁸Ibid.

¹⁹ Kementerian P3A, *Siaran Pers Kementerian P3A Nomor: B-184/Set/Rokum/MP 01/09/2019*

الآلاف في جميع أنحاء إندونيسيا، وهي ١٤٨,٢٤٤ مدرسة ابتدائية، و ٣٨,٩٦٠ مدرسة إعدادية، و ١٣,٤٩٥ مدرسة ثانوية، و ١٣,٧١٠ مدرسة مهنية^{٢٠}. لذلك، من الصعب على الحكومة الإسراع في إنشاء برامج المدارس الصديقة للطفل بشكل كبير، بالإضافة إلى الاضطرار إلى مواصلة السعي لتلبية معايير الجودة الحالية لبرامج المدارس الصديقة للطفل، حتى يتمكن هذا البرنامج من لعب الدور الأمثل في تحقيق الراحة والسلامة والجمال في المدرسة بحيث يكون الأطفال أكثر حماسة وسعادة للتعلم في المدرسة، كما يشعر الآباء بالهدوء والراحة في اصطحاب أطفالهم إلى المدرسة. لأنه مع ارتفاع حالات العنف في المدارس، بين الطلاب - وخاصة الأطفال في سن المدرسة الابتدائية - بدأ ظهور رفض الذهاب إلى المدرسة، أو خشية الذهاب إلى المدرسة لأنهم يشعرون بعدم الأمان من مضايقات زملائهم في المدرسة ويسبب عقاب معلمهم^{٢١}.

ويبين الوصف الوارد أعلاه أن القوانين واللوائح التي تحكم حماية الأطفال من العنف في الوحدات التعليمية كافية تماما لأنها منظمة من أعلى مستوى من التشريع إلى المستوى التنفيذي (من الدستور الأساسي والقوانين واللوائح الرئاسية إلى اللوائح الوزارية). في الأساس، تمنع هذه اللوائح جميع أعمال العنف ضد الطلاب لأن هذا

²⁰ Kementerian Pendidikan dan Kebudayaan, 'Statistik Sekolah SD, SMP, SMA, SMK', <https://statistik.data.kemdikbud.go.id>.

²¹ Rizki Ailulia & Aan Widiyono, "Studi Kasus: Penangan Masalah School Refusal Melalui Teknik Self Instruction Pada Anak Sekolah Dasar," *JKI (Jurnal Konseling Indonesia)* 7 (1) (2022): 29-38, <https://doi.org/https://doi.org/10.21067/jki.v7i1.5728>; Mirta Dwi Lestari & Mochammad Nursalim, "Studi Kepustakaan Faktor-Faktor Penyebab School Refusal di Sekolah Dasar", *Jurnal BK Unesa*, 11 (4), 2020, 565-582, <https://jurnalmahasiswa.unesa.ac.id/index.php/jurnal-bk-unesa/article/view/34438>

ينتهك حقوق الإنسان للأطفال، وله تأثير جسدي ونفسي سلبي على الأطفال، ويمكن أن يؤثر سلبا على حماس الأطفال للتعلم والإنجاز، بل يمكن أن يقضي عليه. وترد في القوانين واللوائح أنواع مختلفة من أشكال العنف وعقوباتها (الجزاء الإدارية والجنائية والمدنية) بحيث يسهل معرفتها من قبل الأطراف المختلفة وبالتالي يمكن لجميع الجهات المعنية تجنبها وعدم الوقوع فيها. ولا يقتصر الأمر على التحقيق مع مرتكبي العنف، بل يمكن أيضا إغلاق الوحدات التعليمية إذا ارتكب المسؤولون أعمال العنف أو قاموا بالسكوت على أعمال العنف الموجودة في المؤسسة التعليمية. وتنص القوانين واللوائح على مواصلة تنفيذ وتطوير برامج المدارس الصديقة للطفل وعدد من الجهود الأخرى لمنع حدوث العنف ضد الأطفال. وبالمثل، فإن تعاون الأطراف المعنية (الآباء والمعلمين والطلاب ومديري المدارس والحكومة والمجتمع) هي أمانة مهمة من الأمانات القانونية للتشريع في إندونيسيا لمواصلة تنفيذها للحد من عدد ضحايا ومرتكبي العنف وإساءة معاملة الأطفال. وبالإضافة إلى إعداد جزاءات ضد المعتدين، يجب معالجة الأطفال ضحايا العنف فورا من تأثير الصدمات النفسية وبناء التفاؤل حتى يتمكنوا من العودة إلى الانخراط في العملية التعليمية في المدرسة بهدوء وراحة وأمان.

وعلى الرغم من ذلك، هل يمنع المعلمون من معاقبة الأطفال في العملية التعليمية؟ لا تزال هناك حاجة إلى معاقبة الطلاب لمنع الانتهاكات وفرض القواعد وتوفير تأثير العقاب الرادع. وبالمثل، لا تزال هناك حاجة إلى المكافآت لتعبير عن التقدير والتحفيز للطلاب، من أجل الاستمرار في التفوق والمنافسة. وبالتالي، فإن العقاب والثناء هما جزء من الأدوات التربوية التي يجب تطبيقها من أجل تحقيق

الأهداف التربوية^{٢٢}. ومع ذلك، من الضروري أن نفهم أن العقاب ليس مرادفا للعنف. لأنه، في كثير من الحالات، لا يزال المعلمون يعتقدون أن العقاب البدني لا يزال ضروريا لتأديب الطلاب^{٢٣}.

العنف في التربية من منظور الشريعة الإسلامية

إن تاريخ العنف بين الناس مستمر منذ فترة طويلة، وتحديدًا منذ أن قتل قابيل ابن النبي آدم أخاه (هابيل) لأنه كان يعتبره عاقبا لرغبته الشديدة في الزواج من محبوبته. ومنذ ذلك الحين، استمرت أنواع العنف في الظهور بمختلف الأشكال والأنواع حتى يومنا هذا. حتى أنه قد سجل في حطبات من تاريخ الحياة البشرية تطبيق قانون الغاب الذي ينص على أن "القوي هو الذي ينتصر، والمنتصر هو الذي يحكم" لتحقيق الغرض من حياة الإنسان. لذلك، وجد الدين لتنظيم حياة البشرية - من بين أمور أخرى - وترتيب التفاعل بين الناس ليكون متناعما ومتناسبا، ويدخل في ذلك وجود الإسلام كدين الوسطية^{٢٤} مع مجموعة التشريعات الربانية مصاحبة من القوانين.^{٢٥}

²² Mohammad Mohammad Kosim, *Pengantar Ilmu Pendidikan* (Jakarta: RajaGrafindo Persada, 2021); Firdaus, "Esensi Reward Dan Punishment Dalam Diskursus Pendidikan Agama Islam," *Jurnal Pendidikan Agama Islam Al-Thariqah* 5 (1) (2020): 19-29, <https://doi.org/DOI>: [https://doi.org/10.25299/al-thariqah.2020.vol5\(1\).4882](https://doi.org/10.25299/al-thariqah.2020.vol5(1).4882).

²³ Harly Stanly Muaja, "Dilema Hukuman Fisik Oleh Guru Terhadap Murid Di Sekolah," *Lex et Societatis* 9 (2) (2021): 1-13, <https://doi.org/DOI>: <https://doi.org/10.35796/les.v9i2.35091>.

²⁴ Maimun and Mohammad Kosim, *Moderasi Islam Di Indonesia*, LKiS, vol. 7, 2019, https://www.researchgate.net/publication/269107473_What_is_governance/link/548173090cf22525dcb61443/download%0Ahttp://www.econ.upf.edu/~reynal/Civil_wars_12December2010.pdf%0Ahttps://think-asia.org/handle/11540/8282%0Ahttps://www.jstor.org/stable/41857625;

الشريعة الإسلامية هي مجموعة من القواعد والأحكام الربانية التي جاء بها رسوله النبي محمد صلى الله عليه وسلم كدليل للبشر في المعاملة الوسطية مع الله ومع إخوانهم من البشر ومع الكائنات الأخرى في كل مجالات الحياة من العبودية والمعاملة والسياسية.^{٢٦} والغرض من الشريعة الإسلامية هو تحقيق مصالح الحياة البشرية في الدنيا والآخرة.^{٢٧} ويرى الغزالي أن "المصالح" أشبه بمحاولة لتحقيق المنافع دفع ورفض الضرر على أساس مبادئ الشريعة الإسلامية. المنافع والمصالح المتوافقة مع الشريعة الإسلامية هي المصالح والمنافع الموجهة نحو تنفيذ الأهداف الخمسة للشريعة (المقاصد الشرعية)، وهي حفظ الدين، وحفظ النفس، وحفظ العقل، وحفظ النسل، وحفظ المال.^{٢٨} كل الجهود المؤدية إلى الحفاظ على المبادئ الأساسية الخمسة هي مصالح أساسية، وكل محاولة للقضاء على المبادئ الأساسية الخمسة هي مفسد، بحيث تكون محاولة رفض وتجنب المفسدة جزء من المصلحة،^{٢٩} ومع ذلك فإن رأي الشاطبي يقول إن تحقيق هذه

Husni Mubarak, "Demokrasi, Politik Identitas, Dan Kohesi Sosial," *Jurnal Bimas Islam* 11, no. 2 (June 30, 2018): 365-400, <https://doi.org/10.37302/JBI.V11I2.57>.

²⁵ Siska Lis Sulistiani, "The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia," *Samarah*, 2021, <https://doi.org/10.22373/sjhk.v5i1.9161>.

²⁶ Muhammad Taufiq, "Moderasi Dalam Jihad Perspektif Fikih Siyasa: Analisis Kritis Terhadap Terorisme Dan Radikalisasi Jihad," *As-Shahifah: Journal of Constitutional Law and Governance* 2, no. 1 (2022): 1-14, <http://ejournal.iainmadura.ac.id/index.php/asshahifah/article/view/6294>.

²⁷ Muhammad Taufiq, "Istishhâb Sebagai Teori Hukum Islam Sebuah Tinjauan Historis," *Ijlil* 1, no. 1 (2019): 33-44, <https://doi.org/10.35719/ijl.v1i01.74>.

²⁸ Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqāṣid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020): 331-60, <https://doi.org/10.15408/AJIS.V20I2.18333>.

²⁹ Imam Al-Ghazālī, *Al-Mustashfā Min `Ilm Al-Uṣūl* (Madinah: Dal al-Kutub al-Ilmiah, 1993); Muhammad Taufiq, "A Critique against the

المبادئ الخمسة يعني تحقيق مصلحة الدين والدنيا، لأن هذه المبادئ الخمسة هي أهداف جميع الأديان.^{٣٠}

كما ذكر الغزالي كذلك أن تحقيق المبادئ الأساسية الخمسة هي على مستوى الاحتياجات الضرورية، وهي داخلة في أعلى مستوى من تحقيق المصلحة. في حين أن المستوى الثاني من المصالح هو تلبية الحاجيات، مثل منح السلطة لولي الأمر لتزويج ابنته الصغيرة. وهذا في حقيقته لا يصل إلى مستوى الاحتياجات الضرورية، بل هو ضروري لفائدة البنت للحصول على شريك متساو (الكفاءة). والثالث هو إشباع الاحتياجات الكمالية التحسينية، وهذه الاحتياجات لا تصل إلى مستوى الاحتياجات الضرورية والحاجيات، بل تنتمي إلى نوع الاحتياجات الكمالية لغرض التحسين والتزيين والتيسير^{٣١}. يتم تنفيذ المصالح الثلاثة على مبدأ مقياس الأولوية، وخاصة فيما يتعلق بالاحتياجات الكمالية. حيث يجب تقديم الأولوية للاحتياجات الضرورية على الاحتياجات الثانوية ناهيك عن الاحتياجات التحسينية. وبالمثل، فإنه يقدم الاحتياجات الثانوية على الاحتياجات التحسينية^{٣٢}.

وبذلك فإن الإسلام قد وضع أساسا واضحا لحياة الإنسان يجب العمل على حمايته من قبل جميع الأطراف. فإذا تم انتهاك هذا الأسس الرئيسي، فيستلزم ذلك معاقبة الجاني. وهكذا، يمكن تصنيف حالات العنف ضد الأطفال في الوحدات التربوية بأشكالها المختلفة على أنها تنتهك الاحتياجات الإنسانية الأساسية التي

Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text," *Millati: Journal of Islamic Studies and Humanities* 5, no. 2 (2020): 121-28, <https://doi.org/10.18326/mlt.v5i2.121-128>.

³⁰Abū al-Ishāq al-Shāthibī, *Al-Muwāfaqāt fī Usūl al-Sharī'ah*, Juz II (Dār ibn 'Affan, 1997), 17-22.

³¹Al-Ghazālī, *Al-Mustashfā min 'Ilm al-Usūl*, 175.

³²Abd al-Wahhab al-Khallaf, *Ilmu Usūl al-Fiqh* (Kuwait: Dār al-Qalam, 1982), 194.

تشكل أعلى المصالح (الضروريات)، أو على الأقل انتهاك لمصلحة حفظ النفس (مثل الضرب الذي يؤدي إلى الجروح ويسبب كسور العظام ويقضي على الأرواح)، ومصصلحة حفظ العقل (مثل الترهيب لدرجة تخويف الطفل) ومصصلحة حفظ المال (مثل الإضرار/الاستيلاء على الممتلكات).

لذلك، من أجل تحقيق المصالح ورفع الضرر، يمنع الإسلام جميع أشكال العنف. وتشير العديد من الأدلة النقلية إلى ذلك، من بين الأدلة في القرآن الكريم والحديث الشريف؛ أولاً: "وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَعَظِيبَ اللَّهُ عَلَيْهِ وَلَعْنَةُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا" (النساء: ٩٣). ثانياً: "مَنْ أَجَلَ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا" (المائدة: ٣٢). ثالثاً: "لا ضرر ولا ضرار من ضار ضاره الله ومن شاق شاق الله عليه" رواه البيهقي^{٣٣}. رابعاً: "مَا شَيْءٌ أَثْقَلُ فِي مِيزَانِ الْمُؤْمِنِ يَوْمَ الْقِيَامَةِ مِنْ خُلِقَ حَسَنٍ وَإِنَّ اللَّهَ لَيُبْغِضُ الْفَاحِشَ الْبَدِيءَ" رواه الترمذي^{٣٤}. خامساً: عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِيمَا رَوَى عَنْ اللَّهِ تَبَارَكَ وَتَعَالَى أَنَّهُ قَالَ "يَا عِبَادِي إِنِّي حَرَمْتُ الظُّلْمَ عَلَى نَفْسِي وَجَعَلْتُهُ بَيْنَكُمْ مُحَرَّمًا فَلَا تَظَالَمُوا" رواه مسلم^{٣٥}. سادساً: "دَخَلَتْ امْرَأَةٌ النَّارَ فِي هِرَّةٍ فَقِيلَ لَا أَنْتِ أَطْعَمْتَهَا وَسَقَيْتِهَا وَلَا أَنْتِ أَرْسَلْتَهَا فَتَأْكُلِ مِنْ حَشَاشِ الْأَرْضِ" رواه مسلم^{٣٦}.

تظهر الأدلة النقلية أعلاه كيف أن الإسلام مناهض للعنف ويمنع جميع أشكاله. إن منع العنف في الإسلام لا يقتصر فقط منعه بين البشر فحسب، ولكن

³³ Imam al-Baihaqi, *Sunan al-Qubra*, Juz 6 (Beirut: Dār al-Kutub al-Ilmiyah, 2003), 115.

³⁴ Imam al-Tirmidzi, *Sunan al-Tirmidzi* (Riyadh: Maktabah al-Ma'arif, 1996), 439.

³⁵ Imam Muslim, *Sahih Muslim* (Riyadh: Dār al-Taybah, 2006), 1199.

³⁶ Ibid., 1068.

يشمل أيضا مخلوقات الله الأخرى مثل الحيوانات. حتى أن المرأة يمكن أن تدخل النار بسبب تعذيب الحيوانات. إن حالات الحرب التي وقعت في التاريخ الإسلامي - إذا كان الحرب ينظر إليه على أنها تنويج للعنف - فإن الحرب في الإسلام أجري على أنه شكل من أشكال الحماية أو الاستجابة للدفاع عن النفس، وليس كمحفز للحرب. كما أن كل حرب خاضها المسلمون تكون عادة مصحوبة دائما بأوامر ذات بعد إنساني³⁷. وهذا على سبيل المثال ما جاء في وصية النبي صلى الله عليه وسلم لأصحابه عند خوض الحرب على العدو: "اغزوا باسم الله في سبيل الله، قاتلوا من كفر بالله، اغزوا ولا تغلوا، ولا تعدوا، ولا تملوا، ولا تقتلوا وليدا، أو امرأة، ولا كبيرا فانيا، ولا منعزلا بصومعة" رواه أبو داود³⁸ والترمذي³⁹.

وبالتالي، فإن الجهود المبذولة لمنع أعمال العنف والتغلب عليها تستحق أن تكون محل عناية واهتمام لجميع أطراف المجتمع. كما يجب على الحكومة اتخاذ إجراءات صارمة ضد مرتكبي أعمال العنف وفقا للقوانين المعمول بها في أي بلد. وبالمقارنة، إذا طبقت دولة ما الشريعة الإسلامية، فإن نوع العقوبة على المعتدين يمكن أن يكون الحدود والقصاص والديات، أو التعزير اعتمادا على نوع الخطأ ودرجته⁴⁰. كلمة الحدود هي جمع لكلمة الحد وهي شكل من أشكال العقاب الذي تم تعيينه من عند الله وهو من حقوق الله تعالى. القصاص والديات هما نوعان من أنواع العقاب الذي يستحق بين البشر، بمعنى أن عقوبة القصاص يمكن أن تتحول إلى ديات إذا

³⁷Syahidin, 'Teks dan Konteks Perang dalam al-Qur'an; Sebuah Pendekatan Sirah Nabawiyah dan Hadis', *El-Afkar Jurnal Pemikiran Islam dan Tafsir Hadis*, 4 (2), 2015: 127-40, <https://ejournal.iainbengkulu.ac.id/index.php/elafkar/article/view/1581>.

³⁸Imam Abū Dāud, *Sunan Abī Dāud* (Riyadh: Maktabah al-Ma'arif, 2003), 459.

³⁹Al-Tirmidzī, *Sunan al-Tirmidzī*, 332.

⁴⁰Abdul Qadir Audah, *Al-Tashrī' al-Jinā'ī al-Islāmī* (Beirut: Muassasah al-Risalah, 1992), 78-79; A. Hanafi, *Asas-Asas Hukum Pidana Islam* (Jakarta: Bulan Bintang, 1989), 9.

كان هناك عفو من الضحية. وفي الوقت نفسه، فإن التعزير هو نوع من العقاب الذي ليس له أساس قانوني في النص القرآني أو الحديث النبوي، لذلك يترك شكل العقوبة للحاكم^{٤١}.

يجب أن يكون مفهوما أن القوانين التي تطبق في العالم، بما في ذلك الشريعة الإسلامية، لها في الأساس ثلاثة مبادئ في تطبيق العقوبات، وهي المبادئ الوقائية والمبادئ الجزائية والمبادئ التأهيلية. ويهدف المبدأ الوقائي إلى منع الأشخاص من ارتكاب الجرائم وتكرارها وحتى يرتدع غيرهم ممن لم يتركبوا تلك الجرائم من ارتكاب الجرائم المماثلة. والمبدأ الجزائي هو إنفاذ الأحكام على مرتكبي الجرائم، ودعم سيادة القانون، ومعاينة الجناة وفقا لنوع الجريمة المرتكبة. وفي الوقت نفسه، فإن المبدأ التأهيلي، هو في حقيقته إعادة التأهيل للجاني حتى لا يعود إلى ارتكاب نفس الجريمة بعد قضاء مدة الحكم طيلة بقائهم على قيد الحياة، أو لتوعيه الأشخاص الذين لم يتركبوا تلك الجرائم حتى لا يرتكبونها. وتنطبق هذه المبادئ الثلاثة بشكل متكامل في كل قانون، حيث يقترن كل جهد وقائي دائما بجهود جزائية قمعية في حالة وقوع جريمة، ويستمر بجهود إعادة التأهيل إذا كان مرتكب الجريمة لا يزال على قيد الحياة^{٤٢}.

في الأساس فإن الإسلام هو دين المحبة واللطف ويسعى إلى نشر الرحمة في جميع أنحاء العالم. تشير العديد من الأدلة الناقلية التي تدل على ذلك، بما في ذلك، **أولا:** "وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ" (الأنبياء: ١٠٧). **ثانيا:** "إن الله رفيق يحب الرفق في الأمر كله" رواه البخاري^{٤٣}. **ثالثا:** "ارحموا من في الارض يرحمكم من في

⁴¹Khusnul Khotimah, 'Hukuman dan Tujuannya dalam Perspektif Hukum Islam', *Jurnal Ilmiah Mizani; Wacana Hukum, Ekonomi, dan Keagamaan*, 1(2), 2014: 1-9, <https://doi.org/http://dx.doi.org/10.29300/mzn.v1i2.57>.

⁴²Ibid.

⁴³ Imām al-Bukhārī, *Sahīh al-Bukhārī* (Beirut: Dār ibn Katsīr, 2002), 1713.

السماء" رواه الترمذي^{٤٤}. رابعاً: "من رحم ولو ذبيحة رحمه الله يوم القيامة" رواه البخاري^{٤٥}. خامساً: بَيْنَمَا كَلْبٌ يُطِيفُ بِرَكِيَّةٍ كَادَ يَقْتُلُهُ الْعَطَشُ إِذْ رَأَتْهُ بَغِيٌّ مِنْ بَعَايَا بَنِي إِسْرَائِيلَ فَانزَعَتْ مُوقَهَا فَسَقَّتَهُ فَعَفَّرَ لَهَا بِهِ" رواه البخاري^{٤٦}.

تظهر الأدلة النقلية أعلاه أن الرحمة والمودة هي الرسالة الرئيسية للإسلام لا يتم تطبيقها بين البشر فقط، بل يجب تطبيقها على جميع الكائنات في العالم. حيث إن امرأة دخلت النار بسبب تعذيبها للحيوان حتى مات من الجوع. فإنه في الحديث أعلاه، ذكرت امرأة غفر الله ذنوبها وخطاياها لمساعدة الحيوانات التي تكاد تموت من العطش.

في مجال التعليم، فإن ذكر تعاليم الرحمة والوداعة ذكرت كثيراً في القرآن الكريم. كما في سورة لقمان (١٣): "وَإِذْ قَالَ لُقْمَانُ لِابْنِهِ وَهُوَ يَعِظُهُ يَا بُنَيَّ لَا تُشْرِكْ بِاللَّهِ إِنَّ الشِّرْكَ لَظُلْمٌ عَظِيمٌ". كلمة يا بني في هذه الآية، وفقاً لقريش شهاب، هي عبارة للتصغير. كلمة بنية هي في الأصل ابني من كلمة ابن (الولد). فالكلمة التي تحتوي على صيغة التصغير تدل على اللطف والمودة والرحمة^{٤٧}. هذا يدل على أنه في تعليم الأطفال، يجب أن في أثناء ذلك اللطف والمودة، سواء في اختيار الكلمات أو معاملة الأطفال. كما تظهر رسالة الرفق والرحمة في التربية في العديد من الأحاديث النبوية، ومنها: "ان الله لم يبعثني معنيتاً ولا متعنيتاً، ولكن بعثني معلماً ميسراً" رواه مسلم^{٤٨}. وفي حديث آخر، يروي الصحابي معاوية بن حكم السلمي عن شخصية النبي صلى

⁴⁴ Al-Tirmidzî, *Sunan al-Tirmidzî*, 439.

⁴⁵ Imām Al-Bukhārī, *Al-Adab al-Mufrad* (Kairo: Al-Matba`ah al-Salafiyah wa Maktabatuhā, 2011), 104. Al-Bukhārī. Al-Bukhārī. Al-Bukhārī. Al-Bukhārī. Al-Bukhārī. Al-Bukhārī. Imām Al-Bukhārī, <i>Al-Adab Al-Mufrad</i> (Kairo: Al-Matba`ah al-Salafiyah wa Maktabatuhā, 2011).

⁴⁶ Al-Bukhārī, *Sahīh al-Bukhārī*, 659.

⁴⁷ M. Quraish Shihab, *Tafsir al-Mishbah*, Vol. 11 (Jakarta: Lentera Hati, 2003), 127.

⁴⁸ Muslim, *Sahih Muslim*, 681.

الله عليه وسلم: "فما رأيتُ معلماً قطُّ أرفق من رسول الله صلى الله عليه وسلم" رواه أبو داود⁴⁹. لذلك، وتطبيقاً للرفق والرحمة في الممارسات التربوية، يتطلب عدد من خبراء التربية الإسلامية أن يكون للمعلمين شخصية رحيمة وتوجيهية وصبورة في تعليم الأطفال حتى يتم إنجاز المهام التربوية بسهولة أكبر. ذكر ذلك الغزالي⁵⁰، وعبد الرحمن النحلوي⁵¹، وأسماء حسن فهمي⁵²، والقلقشندي⁵³.

ومع ذلك، من ناحية أخرى، هناك حديث يسمح، بل في الواقع حتى يأمر بضرب الأطفال في التربية. والحديث المذكور هو: "مروا اولادكم بالصلاة وهم أبناء سبع سنين واضربوهم عليها وهم أبناء عشر ورفقوا بينهم في المضاجع" رواه أبو داود⁵⁴. يوضح الحديث أعلاه التزام الوالدين (الأب والأم) أو الأشخاص المسؤولين عن تعليم الأطفال بتعليمهم كيفية الصلاة حتى يتمكن الأطفال من أداء الصلاة بشكل صحيح ومستمر. الصلاة هي أحد أركان الإسلام التي يجب القيام بها وهي أول عبادة يسأل عنها الإنسان يوم القيامة، كما يقول الحديث: "إن أول ما يحاسب به العبد يوم القيامة من عمله صلاته فإن صلحت فقد أفلح وأنجح وإن فسدت فقد خاب وخسر" رواه الترمذي⁵⁵. وعلى الرغم من أهمية الصلاة، فقد صلى النبي إبراهيم خصيصاً من أجل أن يكون نسله مجتهداً في الصلاة، كما ذكر في القرآن: "رَبِّ اجْعَلْنِي مُقِيمَ الصَّلَاةِ وَمِنْ ذُرِّيَّتِي" (إبراهيم ٤٠).

⁴⁹Dāud, *Sunan Abī Dāud*, 162.

⁵⁰Imam al-Ghazālī, *Iḥyā' `Ulūm al-Dīn*, Juz 1 (Semarang: Toha Putera, n.d.), 55-58.

⁵¹ Abd al-Rahman al-Nahlāwī, *Usūl al-Tarbiyah al-Islāmīyah wa Asālibuhā fi al-Bait wa al-Madrasah wa al-Mujtama'* (Damaskus: Dār al-Fikr, 2010), 171-196.

⁵²Asma Hasan & Ibrahim Husein Fahmi, *Sejarah dan Filsafat Pendidikan Islam* (Jakarta: Bulan Bintang, 1979), 167-169.

⁵³Zuhairini, *Filsafat Pendidikan Islam* (Jakarta: Bumi Aksara, 1995), 169-170.

⁵⁴ Dāud, *Sunan Abī Dāud*, 367.

⁵⁵ Al-Tirmidzī, *Sunan al-Tirmidzī*, 112.

لذلك لكي نحفز الأطفال على الصلاة، أمر النبي الآباء بأن يأمرُوا أبناءهم من الأطفال بأداء الصلوات في سن السابعة. تحتوي هذه الوصية على رسالة إلى الآباء مفادها أنه قبل سن السابعة، يتم تعليم الطفل طريقة أداء الصلاة (الشروط وأركان الصلاة بما في ذلك أمر الطهارة والوضوء)، بحيث أنه عندما يبلغ الطفل سن السابعة ويصل إلى حد التمييز (وهو قدرة الطفل على فعل بعض الأشياء بنفسه مثل الأكل، الشرب، والاستنجاء. اشترط العلماء أن يبلغ الطفل عمر سبعة سنوات ويكون قادرا على التمييز، ليكون شرطا أساسيا في الأمر بالصلاة. لو بلغ الطفل سبع سنوات ولكنه لا يميز، فلا ينبغي أن يؤمر بأداء الصلاة)⁵⁶، يمكن له تنفيذ الأمر بأداء الصلاة علاوة على ذلك، لا يزال هناك حوالي ثلاث سنوات (من سن السابعة إلى العاشرة) لمواصلة توجيهه (يتضمن معنى الأمر استخدام عبارات "التهديد" مثل؛ "لو لم تصل لأطردك"، "إذا لم تصل سأحبسك في الغرفة"، وما إلى ذلك من العبارات حتى يشعر الأبناء بأهمية الصلاة ويخافون من تركها)⁵⁷ الطفل والإشراف عليه ليكون مجتهدا في أداء الصلاة. بحيث أنه إذا بلغ الطفل سن العاشرة وامتنع عن أداء الصلاة، يؤمر الآباء بضرب أبنائهم لأداء الصلاة. في سن ١٠ سنوات، من الممكن أن يكون الطفل قد أصبح بالغاً بحيث تنطبق عليه أحكام الشريعة الإسلامية. حتى لو أنه لم يصبح بالغاً بعد فإن سن العاشرة قد جعلته اقترَب من سن البلوغ، لذلك يجب أن يكون الطفل مستعداً بشكل صحيح لتنفيذ الأوامر الدينية. وفي أحكام الفقه الإسلامي، يصل الطفل سن البلوغ إذا استوفى أياً من العلامات الثلاث الآتية: (١) إذا بلغ عمره ١٥ سنة للرجال/النساء، (٢) إفرازات الحيوانات المنوية، إما بسبب الاحتلام أو لأسباب

⁵⁶Muhammad Umar ibn Nawawî al-Jawî, *Nihāyat al-Zain fî Irshād al-Mubtadi'în* (Lebanon: Dār al-Kutub al-Islamiyah, 2002), 13.

⁵⁷ Ibid. ; Alexander Guci, 'Ganjaran dalam Pendidikan Perspektif al-Qur'an' (Disertasi: Institut PTIQ Jakarta, 2022), 320.

أخرى، للرجال/النساء في سن ٩ سنوات، و(٣) خروج دم الحيض للنساء في سن ٩ سنوات^{٥٨}.

ومع ذلك، في ضرب الطفل لا ينبغي أن يتم بتهور. يجب أن تتجنب الضربة الوجه، كما هو الحال في الحديث الذي ينص على أنه "إذا ضرب احدكم اخاه فليجتنب الوجه" رواه البخاري^{٥٩}. لذلك، في فهم الحديثين أعلاه (الأمر بالضرب وتجنب الوجه في الضرب)، أعرب عدد من العلماء عن آرائهم. ذكر الشيخ عبيد الله بن محمد عبد السلام المباركفوري أن الضربة المسموح بها هي "ضرباً غير مبرح متقبن عن الوجه"^{٦٠}. وبالمثل قال الشيخ عبد المحسن العباد إن معايير الضرب "... ضرباً غير مبرح ينفعه ولا يضره، ينفعه في الزجر والتخويف والردع، ولا يضره بأن يلحق به ضرراً في جسمه أو في أعضائه"^{٦١}. كما أبدى الإمام السيوطي حول سبب عدم السماح بضرب الوجه "... وذلك إكراماً له ولأنه فيه محاسن الإنسان وأعضائه اللطيفة وإذا حصل فيه شين أو أثر كان أقبح"^{٦٢}.

ذكر محمد عطية الأبراشي عدة شروط في فرض العقوبة، وهي: (أ) عدم ضرب الطفل قبل بلوغه ١٠ سنوات، (ب) عدم ضربه أكثر من ٣ ضربات، (ج) إعطاء الابن أو الطفل الفرصة للتوبة عما فعله وتصحيح أخطائه، وليس ضربه مباشرة أو الإعلان عن أخطائه^{٦٣}. يقول ابن سينا كما نقل عنه الأبراشي أن تربية الطفل تتم من

⁵⁸ Ahmad ibn Umar al-Syāthirī, *Nail al-Rajā' bi Sharh Safīnat al-Najā'* (Lebanon: Dār al-Minhāj, 2007), 74-75.

⁵⁹ Al-Bukhārī, *Sahīh al-Bukhārī*, 619.

⁶⁰ Mulla Ali al-Qāri, *Mirqāt al-Mafātih Sharh Mishkāt al-Mashābih*, Jilid 2 (Beirut: Dār al-Kutub Ilmiyah, n.d.), 277.

⁶¹ Badruddīn al-Aini, *'Aun al-Ma'būd Sharh Sunan Abi Dawūd* (Dār al-Ihyā' Turats, n.d.), 69.

⁶² Imam al-Suyūthi, *Al-Dībāj `alā Sahīh Muslim Ibn al-Hallāj*, Jilid 4 (Dār Ibn 'Affān li al-Nashr wa al-Tauzī', 1996), 255.

⁶³ Muhammad `Athiyah al-Abrāshī, *Al-Tarbiyah al-Islāmiyah wa Falāsifatuhā* (Beirut: Dār al-Fikr, 1969), 155.

خلال تعويده السلوك الجيد والجدير بالثناء منذ سن مبكرة، قبل نشوء الصفات السيئة المرتبطة بالردائل في روحه. إذا أجبر المرء على استخدام العقاب، فلا بأس من القيام بذلك طالما أنه ليس قاسيا وخشنا للغاية، ولكن يكون العقاب بالين والنعمومة. لأن النصيحة أو الدافع أو الثناء من المعلمين أفضل للطفل من العتاب أو التعنيف أو أي شيء يمكن أن يؤذي قلبه⁶⁴.

يوضح الوصف أعلاه أنه في الإسلام، يسمح بضرب الطفل لغرض التربية للحفاظ على مصلحة الطفل، بل ويؤمر المرء بذلك إذا لم تنجح الأساليب اللينة واللطيفة. إن أمر الصلاة، على سبيل المثال، فيها يكون واضحا جدا مصلحة الطفل في الدنيا لأن الصلاة يمكن أن تمنع الأعمال السيئة والمنكرة، وبالنسبة لأولئك الذين يتركون الصلاة، فإن جزاءهم نار جهنم في الحياة الآخرة والعياذ بالله. ولكن في ضرب الطفل يجب اتباع القواعد التالية، وهي: (١) أن يبلغ الطفل سن العاشرة من عمره، (٢) يتجنب ضرب الوجه والأجزاء الحيوية الأخرى، (٣) تكون الضربات ليست قاسية وغير خشنة، و (٤) يجب ألا يضرب على الفور. يتم إعطاء الطفل أولا الفرصة للتوبة عما فعله وتصحيح أخطائه. وبعبارة أخرى، ينبغي أن يكون الضرب لأغراض تعليمية الملاذ الأخير بعد أن فشل الوسائل الأخرى. وقد أمر الخليفة هارون الرشيد بهذه الطريقة التدريجية عندما سلم ابنه إلى عبد الله بن المبارك الملقب بالأحمر (معلم ابنه المستقبلي) ليتم تعليمه على النحو التالي: "يا أحمر، إن أمير المؤمنين قد دفع إليك مهجة نفسه وثمره قلبه، فصير يدك عليه مبسوطة، وطاعته لك واجبة؛ فكن له بحيث وضعك أمير المؤمنين. أقرئ القرآن، وعرفه الأخبار، وروّه الأشعار، وعلمه السنن، وبصره بمواقع الكلام، وامنعه من الضحك إلا في أوقاته، وخذه بتعظيم بني هاشم إذا

⁶⁴Ibid.

دخلوا عليه، ورفع مجالس القواد إذا حضروا مجلسه، ولا تَمَرَّن بك ساعة إلا وأنت مغتتم فيها فائدة تفيده إياها من غير أن تحزنه، فتميتَ ذهنه، ولا تمنع في مسامحته، فيستحلي الفراغ ويألفه، وقومَه ما استطعت بالقرب والملاينة، فإنَّ أباهما فعليك بالشدة والغلظة⁶⁵.

وهكذا، ففي الشريعة الإسلامية، يمنع تماما أي شكل من أشكال العنف لأنه ينتهك الاحتياجات الأساسية للإنسان (الأصول الخمسة)، وهي الاحتياجات التي توصف بالاحتياجات الضرورية. إن انتهاك حقوق واحتياجات الإنسان الأساسية يعني أن الابتعاد عن تحقيق المصالح وهو هدف الشريعة الإسلامية. لذلك، يجب معاقبة المعتدين ومعاقبتهم وفقا لدرجة الجرم أو الذنب. ولكن، ومن أجل الأغراض التعليمية ومن أجل مصلحة الطفل، مثل الأمر بأداء الصلاة كأحد أركان الإسلام، تسمح الشريعة الإسلامية للوالدين بضرب الأبناء إذا لم تنجح الطرق الأخرى. لكن الضرب يجب أن يتم بحذر وكملاذ أخير. وهكذا، فإن النهج الرحيم له الأسبقية في التربية من أجل التدريب على الامتثال والطاعة في أداء تعاليم الإسلام، زيادة على ذلك لأن الإسلام دين جعله الله حاضرا لنشر الرحمة في جميع أنحاء الكون.

نتيجة البحث

تبين البيانات المتعلقة بالعنف في الوحدات التعليمية أن الطلاب يحتلون المرتبة الأعلى كجناة للعنف وكضحايا له أيضا. يليهم المعلمون بوصفهم مرتكبي العنف ضد الأطفال، وفي بعض الحالات، يصبح المعلمون ضحايا لعنف الطلاب. دون إهمال العنف من قبل زملائهم الطلاب، يجب أن يكون فعل العنف الذي يرتكبه المعلم ضد

⁶⁵Ibn Khaldūn, *Muqaddimah Ibn Khaldūn*, 2nd (Damaskus: Maktabah al-Hidayah, 2004), 356-357.

الطلاب أو العكس مصدر قلق مشترك. علاوة على ذلك، فإن الأخبار المنتشرة في وسائل الإعلام عن بعض الحالات التي تبين وقوع العنف الجسدي من جانب المعلمين ضد الطلاب أو العكس إلى حد التسبب في دخول الضحايا إلى المستشفى وحتى موت الضحية. إن المؤسسات التربوية هي مكان لتطوير الإمكانيات، وتشكيل الشخصية، وتعزيز إنجازات الطلاب. لتحقيق ذلك، يجب أن يكون المعلمون أفراداً ذات شخصيات نبيلة، ومعرفة واسعة، ويكونون محبين للعمل التربوي. وفي الوقت نفسه، يجب على الطلاب أيضاً وضع أنفسهم كمتعلمين متعطشين للمعرفة ومحترمين لمعلميهم. وبالتالي، يمكن بناء علاقة قوية بين المعلم والطالب مبنية على أساس التعاطف والإخلاص والاحترام.

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Dawru Al-Waqf al-Mu'qqat fî al-Tamwîl al-Ijtimâ'i fî al-Mashrîfiyah al-Islâmiyah Bî Malayziyâ

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Abstract:

This research paper aims to study the "temporary endowment" (Waqf Muaqqat) and its role in activating social financing in Islamic banking in Malaysia, such as the oriental study in the light of the purposes of Islamic law. This article has adopted the qualitative method in its research which correlates to the theorization and regulation of the concepts of the issues in hand in their different dimensions which is jurisprudence, *Maqasid*, and banking. For the case study "Maybank Islamic" has been selected for viewing and assessing the various aspects related to the said topic. The study also included interviews with some experts of Islamic banking in Malaysia. The study has stemmed the following conclusions and recommendations, which are as follows: 1) Islamic banks have a significant role in intermediating between both the sources of voluntary social financing and the deprived classes of the society, 2) Bank endowments (Waqf) through May Islamic Bank has shown

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substantial contributions in the social financing. The study further has found many possibilities of making it more effective and expand its reach using the tool of temporary endowment, 3) Temporary bank endowment contributes to achieving the objectives of social cooperation (Takaful), financial growth, and social justices through the medium of Islamic banks. The article concludes by stating that social financing of banks needs various other tools of temporary endowment (Waqf Muaqqat) to help the deprived classes and to extend its reach to meet the requirements for a comprehensive and inclusive development of the overall society.

Keywords:

Temporary Endowment (*Waqf Muaqqat*); Islamic Social Banking Finance; Maqasid Shari'ah; Maybank Islamic Malaysia

ملخص البحث

تهدف هذه الورقة البحثية إلى دراسة "الوقف المؤقت" ودوره في تفعيل التمويل الاجتماعي في المصرفية الإسلامية بمليزيا كالدراسة الاستشرافية في ضوء مقاصد الشريعة الإسلامية. ولقد استخدمت هذه الورقة البحثية المنهج الكيفي في مباحثها المتعلقة بالتأصيل والضبط لمفهوم الوقف المؤقت وما يتعلق به من القضايا في أبعادها الشرعية والمصرفية في ضوء مقاصد الشريعة؛ واعتمدت الدراسة في الجانب الميداني على اختيار "ماي بنك الإسلامي" كعينة تطبيقية لدراسة الموضوع في جوانبه المتعددة. وخلصت الدراسة إلى جملة من النتائج والتوصيات، من أهمها: (١) فإن الوقف المؤقت في التجربة الماليزية أنه لا يزال الاهتمام به في مرحلة التشريعات النظرية في التقنين له ويحتاج إلى إيجاد آليات جديدة لتفعيله في واقع الممارسة. (٢) "الوقف المؤقت" النقدي آلية استشرافية يقترحها البحث في سدّ عجز التمويل الاجتماعي في منتجات الوقف المصرفي لمصرف "ماي بنك الإسلامي" كعينة مختارة في هذه الدراسة والتي تسعى إلى تحقيق خطة تنمية اجتماعية إلى تفعيله وتوسيعه. (٣) النظر المقاصدي في التمويل الاجتماعي المصرفي يدعم اقتراح آلية الوقف المؤقت النقدي كوسيلة فعالة

نظرا لما يحققه من مقاصد تنموية اجتماعية؛ ومنها التكافل الاجتماعي، النماء المالي، والعدالة الاجتماعية من خلال وساطة المصارف الإسلامية للمصارف الإسلامية كفاءة في أن يكون لها دور مهم في الوساطة بين مصادر التمويل الاجتماعي التطوعي والطبقات الاجتماعية المحرومة وما يؤهلها لذلك كونها مؤسسات لها إمكانيات في نظم الإدارة والحوكمة.

الكلمات المفتاحية:

الوقف المؤقت؛ التمويل الاجتماعي المصرفي الإسلامي؛ مقاصد الشريعة؛
ماي بنك الإسلامي بماليزيا

المقدمة

يمثل الوقف والصدقات إلى جانب الزكاة أهم أدوات التمويل الاجتماعي في الشريعة الإسلامية،¹ والمقصد العام من ذلك هو تحقيق العدالة في توزيع الثروات بين الأغنياء والطبقات الاجتماعية المحرومة التي تتوسع يوما بعد يوم نظرا لقلّة موارد الثروات الطبيعية إلى جانب الحروب والأوبئة في كثير منها.²

¹ Institute Islamic Research and Training, *Islamic Social Finance Report 2015*, 2015; Ahmad Mukriaji, Harisah, and Syarifah Gustiawati Mukri, 'Position of Kyai in Traditions and Ideologies of Traditional Waqf in Maduranese Communities', *International Journal of Advanced Science and Technology*, 2020; Erie Hariyanto and others, 'Effectiveness of the Economic System to Zakat and Waqf for Empowerment of the Ummah in Indonesia', *International Journal of Advanced Science and Technology*, 29.6 (2020), 1910-16.

² Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, 'Maqāsid Al-Sharī'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law', *Ahkam: Jurnal Ilmu Syariah*, 20.2 (2020), 331-60 <<https://doi.org/10.15408/AJIS.V20I2.18333>>; Khaled Nour Aldeen, Inayah Swasti Ratih, and Risa Sari Pertiwi, 'Cash Waqf from the Millennials' Perspective: A Case of Indonesia', *ISRA International Journal of Islamic Finance*, 2022 <<https://doi.org/10.1108/IJIF-10-2020-0223>>.

وعطفا على ما سبق، تقدم هذه الورقة البحثية دراسة جوانب من سبل تطوير دور المصرفية الإسلامية الماليزية تجاه المسؤولية الاجتماعية³ - باعتبارها مؤسسات مالية- في التمويل الاجتماعي وتختار ماي بنك الإسلامي عينة للدراسة لكونه أحد أكبر المصارف في البلاد. و تختار الدراسة الوقف المؤقت كنموذج جديد مقترح في صيغ التمويل الاجتماعي فتقوم ببحث الجوانب الشرعية والمقاصدية الاجتماعية والتنمية في العمل به وذلك باعتباره من أنواع الأوقاف التي لم تكن معتبرة عند أكثر المذاهب لخلوه من شرط "التأييد، والبحث في هذا الموضوع محاولة تسعى إلى تقديم إضافة علمية جديدة إلى ماتم إنجازها من الدراسات السابقة المتعلقة بالوقف المؤقت في التجربة الماليزية والتي لا تزال لا تعدو في حدودها دراسة الجوانب التشريعية العامة ولم تتطرق إلى آليات عملية في تطبيقه ولعل ذلك راجع إلى حداثة التجربة في الأخذ بالوقف المؤقت، ونجد من تلك الدراسات بحث فردوس عبد الرحمن و محمد أمان الله بعنوان تجربة الوقف المؤقت: دراسة مقارنة بين دولة الكويت ودولة ماليزيا (٢٠١٧)،⁴ تناولت بالمقارنة الجانب التشريعي القانوني من الوقف المؤقت بين الدولتين من حيث ما تم التنصيص عليه في الموقوفات و مدة التأقيت دون التطرق للجانب التطبيقي في استعماله كآلية في التمويل الاجتماعي المصرفي. ولنفس الباحثين نجد مقالة أخرى بعنوان التحديات والإشكالات التي تواجه تطبيق صيغة الوقف

³ Ali Muiddin Al-Qarradaghi, 'Mabda' Al-Masrafiyya Al-Ijtimaiyyah, International Shari'ah Research Academy for Islamic Finance', in *14th Conference of Shariah Scholars on Islamic Finance*, 2019, 7.

⁴ Muhamad Firdaus Ab Rahman and Muhammad Amanullah, 'Implementation of Temporary Waqf: A Comparative Study Between Kuwait and Malaysia', *Jurnal Fiqh*, 2017, 75-98 <<https://doi.org/10.22452/fiqh.vol14no1.4>>.

المؤقت في ولايات مختارة في ماليزيا (٢٠١٧)^٥ والتي تناولت إشكالات تطبيقه من حيث الحاجة إلى وجود نظام تشريعي شامل يخص الفتاوى المتعلقة به في الولايات التي تأخذ به لضبط تطبيقاته، ولقد تناولت أيضاً الضوابط المتعلقة بمدة التأقيت والموقوفات ولم تتعرض للوقف المؤقت كآلية في التمويل الاجتماعي المصري. ولفس الباحثين مقال بعنوان حقيقة الوقف المؤقت وحكمه ومصالحه؛ هذه الورقة تناولت موضوع الوقف المؤقت ومشروعيته والاختلاف فيه لكن لم يتناوله كآلية في التمويل الاجتماعي المصري (2017)^٦، وهناك مقال آخر بعنوان شروط الواقف في دولة ماليزيا: دراسة تحليلية في ضوء مقاصد الشريعة لمحمد فردوس بن عبد الرحمن وآخرون (٢٠١٩)^٧ لكن لم يتطرقوا فيه أيضاً إلى موضوع تطبيقه من خلال تقديم مقترحات في ذلك. ومن الدراسات التي لم تتعد أيضاً عن الجانب التشريعي القانوني للوقف مقالة الباحث يعقوب بعنوان تاريخ الوقف وتشريعه بماليزيا: رؤية معاصرة (٢٠١٣)^٨ وكذلك ما كتبه رملي وجليل حول مؤسسة الوقف الماليزية كوكيل لإدارة الوقف والزكاة والحج وتعاونها مع المصارف

⁵ Muhamad Firdaus Bin Abdul Rahman and Muhammad Amanullah, 'Challenges and Problems Facing the Application of Temporary Waqf in Selected States of Malaysia: New Issues and Their Guiding Rules', *Journal of King Abdulaziz University, Islamic Economics*, 2017, 291-314 <<https://doi.org/10.4197/Islec.30-3.12>>.

⁶ Muhamad Firdaus Ab Rahman and Muhammad Amanullah, 'The Nature of Temporary Waqf, Its Ruling and Public Interest', *Global Journal Al-Thaqafah*, 2017, pp. 175-87 <<https://doi.org/10.7187/gjat122017-11>>.

⁷ Muhamad Firdaus Ab Rahman and others, 'Right of Waqif to Determine The Conditions of Waqf in Malaysia: An Analytical Study in the Light of Purposes of Waqf', *Journal of Fatwa Management and Research*, 16.2 (2019), 220-36 <<https://jfatwa.usim.edu.my/index.php/jfatwa/article/view/259/245>>.

⁸ Hisham Yaacob and Hisham Yaacob, 'Waqf History and Legislation in Malaysia: A Contemporary Perspective', *Journal of Islamic and Human Advanced Research*, 2013, 387-402.

ومجالس الشؤون الدينية (٢٠١٤)،^٩ وما كتبه عبد الحميد إيمان بعنوان أموال الوقف: المفهوم والإدارة والتنمية والتمويل (٢٠١٤)^{١٠} وكذلك مقالة فارس جعفري وآخرون بعنوان تطور الحوكمة وإطار العمل القانوني والمؤسسي للوقف بماليزيا (٢٠٢٢)^{١١} حيث توسعوا في العرض التاريخي للتطور التشريعي القانوني للوقف بماليزيا على مستوى المؤسسات ورغم أن البحث تناول بالتتابع الإصلاحات التي يعرفها تطور نظام الوقف من خلال بيان أنواع الموقوفات لكن لم يتطرق إلى الوقف المؤقت كآلية للتطوير في مجال التمويل المصرفي الاجتماعي.

وعطفا على ما سبق، تبحث هذه الدراسة فيما مدى كفاءة المصارف الإسلامية في العمل بالوقف المؤقت في التمويل الاجتماعي؟ وذلك لما تتمتع به من نظام تشريعي ومن بنية تحتية ومن نظام الحوكمة الإدارية ومن الإمكانيات الوظيفية والمهنية ما يؤهلها للقيام بدور الوساطة في تقديم التمويلات بين هؤلاء المتبرعين من الواقفين وبين الموقوف عليهم من أفراد الطبقات المحرومة على وجه الخصوص والتي تفتقد إلى شروط الحصول على التمويل بالقروض. تمّ اختيار ماي بانك الإسلامي بماليزيا عينة تطبيقية للدراسة.

⁹ Asharaf Mohd Ramli and Abdullaah Jalil, 'Model Perbankan Wakaf Korporat: Analisis Wakaf Selangor Muamalat', *Jurnal Pengurusan (UKM Journal of Management)*, 42.0 (2014), 159-67 (159-67) <<http://ejournal.ukm.my/pengurusan/article/view/9218>> [accessed 30 December 2022].

¹⁰ Abdul Hamid Mar Iman, *Waqf Property: Concept, Management, Development, and Financing* (Kuala Lumpur: UTM Press, 2014) <<https://penerbit.utm.my/booksonline/waqf-property-concept-management-development-and-financing/>>.

¹¹ Fares Djafri, Mohamad Akram Laldin, and Sharifah Zubaidah Syed Abdul Kader, 'Tathawwur Al-Hukumah Wa Itharu Al-'Amal Al-Qanuni Wa Al-Muassasati Li Al-Waqf Bi Malayzia', *Sultan Qaboos University of Legal Studies Journal*, 1.1 (2022), 3-30 (3-30).

منهج البحث

استخدمت الدراسة في الموضوع المنهج الكيفي وذلك في تحليل ما تمّ استقراؤه من مادة علمية بعد تتبع وجمع ما تعلق بالجانب التأصيلي الشرعي للوقف المؤقت من المصادر الفقهية والمراجع المعاصرة ذات العلاقة وخصوصا في بيان اختلاف علماء المذاهب في حجته، والمنهج التحليلي في بيان كيفية استدلالهم في ذلك حتى يتسنى المناقشة والترجيح بما يحقق أهداف البحث، و الاعتماد على التحليل مهم في بيان هيكله الكيفية التي تتحقق بها الوساطة المصرفية في التمويل بالوقف المؤقت و في توضيح العلاقة بين أطرافه. وفي الجانب الميداني من المنهجية تمّ اختيار عيّنة بنك "ماي بنك إسلام" بماليزيا لمعرفة إسهامه في التمويل الاجتماعي، و في تسويق اقتراح تفعيل أدائه بما يحقق أهدافه الاجتماعية بمنتج الوقف المؤقت. واستند كل من التحليل والمناقشة في مباحث الدراسة على البعد المنهجي المقاصدي وذلك لما تمثله مقاصد الشريعة من مفاهيم تشريعية و ضوابط في تقييم مايتعلق بالوقف المصرفي المؤقت من حيث: التكييف الشرعي للوساطة و تحديد ضوابط الأموال الموقوفة والواقفين ومصارف الوقف و طبيعة من يتولى النظارة وفي رسم الحوكمة الرشيدة في إدارة الأوقاف والتي تعمل على حفظ الأموال بما يحقق مقاصدها الخاصة في الشريعة في انتشارها ونمائها و التحوّط من المخاطر المتوقعة، وأيضاً في بيان أهمية مراعاة الحوكمة والتي لايزال الاهتمام بالتشريعات واللوائح المتعلقة بها قائما في ماليزيا؛ فلها أهمية في تحديد وضبط وساطة المصارف الإسلامية من الناحية التشريعية للقوانين الإدارية و للمهام والصلاحيات لأطراف العملية التمويلية، وللمقاصد دور في تقييم مدى فعالية أداء المصارف في تحقيق المقاصد الخاصة بالوساطة في التمويلات الوقفية المؤقتة كمنتج مصرفي مقترح

كآلية لتحقيق التوازن بين مصالح مقاصد المساهمين في التمويل بالمال الوقفي المؤقت (الواقفين) و الفئات الاجتماعية المستفيدة من التمويل بالمال الموقوف (مصارف الوقف).

نتائج البحث ومناقشتها

"الوقف المؤقت" ومقاصده ومسوغاته في التمويل الاجتماعي

قبل البحث في المشروعية، يجدر المقام تناول المفاهيم لكل من الوقف والوقف المؤقت مع المقارنة والتقييم في ضوء المقاصد الشرعية المتعلقة بهما حيث نجد تعدد أقوال الفقهاء في ماهية الوقف فعرفه الحنفية بأنه "حبس المملوك عن التملك من الغير".¹² وعند المالكية: "جعل منفعة مملوك ولو بأجرة أو غلته لمستحق بصيغة، مدّة ما يراه المحبس".¹³ وعند الشافعية: "حبس مال يمكن الانتفاع به مع بقاء عينه بقطع التصرف في رقبته على مصرف مباح موجود".¹⁴ بينما عرفه الحنابلة: "تحييس مالكٍ مطلقٍ ماله المنتفع به، مع بقاء عينه بقطع تصرفه وغيره في رقبته يصرف ريعه إلى جهة بر تقريباً إلى الله تعالى".¹⁵ ويظهر من تعريف المالكية تجوزهم الوقف المؤقت، ودلّ على القيد في التعريف ذكرهم لمدّة ما يراه المحبس .

¹² Shamsuddin Al-Sarkhusi, *Al-Mabsoot* (Beirut: Dar al-Marifah, 1089), 27.

¹³ Ahmad bin Muhammad bin Ahmad Al-Darder, *Aqrab Al-Masalik Li Madhab Al-Imam Malik* (Kano: Maktabah Ayyub, 2000), 124.

¹⁴ Shamsuddin Muhammad bin Khateeb Al-Sharbeeni, *Mughni Al-Muhtaj Ila Ma'rifati Alfaz Al-Minhaj*, ed. by Muhammad Khalil Eitani (Beirut: Dar al-Marifah, 1997), 485.

¹⁵ Mansoor bin Yunus bin Idrees Al-Bahuti, *Sharh Muntaha Al-Iradat*, ed. by Abdullah Abdul Muhsin Al-Turki (Beirut: Muassasah al-Risalah Nashirun, 2000), 329-30.

وما يعزز من أهمية إحياء العمل بالوقف وتطوير آلياته هي مقاصده العامة وآثارها الاجتماعية، لقد تفردت الأمة الإسلامية بالوقف عن غيرها من الأمم وسبقتهم إليه، وقال الشافعي في ذلك: "لم تحبس أهل الجاهلية فيما علمت وإنما حبس أهل الإسلام."¹⁶ وتشريع الوقف كغيره من التشريعات يقتضي إنابته بتحقيق مقصد الشارع الحكيم في الحفاظ على المقاصد الضرورية الكلية الخمسة. وعند إمعان النظر في مقاصد الوقف التي يرنو إلى تحقيقها نجد ارتباطاً لا ينفصل عن حفظ المقاصد الكلية الضرورية الخمسة، فمثلاً وقف المدارس والكليات والمعاهد والجامعات عند تعسر شراء الأرض، أو جمع تكاليف البناء يحفظ مقصدي الدين والعقل بنشر العلم الشرعي أو الديني بصورة تتوافق مع شريعة الإسلام وأحكامها وبشكل يظهر البعد الحضاري للأمة الإسلامية من كون مجتمعاتها مثقفة واعية، وبطريق يمنع انتشار الجهل والخرافات بين المجتمع المسلم. وتمويل المشاريع السكنية ووقفها على قاصدي الزواج يحفظ مقصدي النسل والنفس بتوفير المسكن اللائم للفرد، واعفاهه عن الولوج في طريق الحرام. ويظهر دور الوقف وأحكامه في مقصد حفظ المال والمقاصد الخاصة المرتبط به من شيوع المال وتداوله في القول بإباحة استثمار أموال الوقف في مشاريع تنموية استثمارية تدر على الوقف عوائد مالية تصرف في وجوه الخير في المجالات الاجتماعية. ولقد أسهم مراعاة مقاصد الشريعة في الاستدلال على مشروعية أنواع الوقف باعتبار التأقيت لمدته والترجيح في الاختلاف الفقهي حوله، فمما هو ثابت عند الفقهاء في الوقف أنه يجري في مدته على التأيد، لكن ظهر من العلماء القدامى من جوز التأقيت فيه (سيأتي بيان ذلك). وباعتبار تحديد مدّة التأقيت يقسم إلى نوعين: النوع الأول هو الوقف المؤبد وهو الأصل في الوقف.

¹⁶ Abu Abdullah Muhammad Al-Khurshi, *Sharh Al-Khurshi Ala Mukhtasar Khalil* (Egypt: al-Matba' al-Amiriyyah), 78.

النوع الثاني هو الوقف المؤقت والذي ثبت تعريفه كالاتي: الحبس المؤقت للمال في كل صورته المعروفة في الوقف المؤبد، بنية الانتفاع منه أو من غلته على وجوه البر عامة كانت أو خاصة وفي آراء الفقهاء في الوقف المؤقت وأدلتهم مع الترجيح المقاصدي؛ الرأي الأول: للجمهور من المتقدمين ويشترطون التأيد في الوقف ولا يطلقون صفة الوقف إلا إذا كان مؤبداً. ومعتمدتهم في ذلك هو حقيقة زوال الملك عن المالك إلى لا حد، وثانياً الغرض من الوقف هو العبادة لله والتقرب إليه عز وجل وهولا يتحقق بزوال الملك كالإعتاق.¹⁷

الرأي الثاني: ذهب الفقهاء المالكية، وبعض فقهاء الشافعية مثل ابن سريج وبعض الحنفية مثل أبي يوسف إضافة إلى رأي عند الحنابلة ووجه عند الجعفرية إلى القول بجواز الوقف المؤقت وصحته بقطع النظر هل الوقت طويل أو قصير. ويقول الشيخ أحمد الدردير: "ولا يشترط التأيد، فيصح مدة ثم يرجع ملكاً".¹⁸ ويزيد الدسوقي في حاشيته على الشرح الكبير فيقول: "قوله (ولا يشترط) أي في صحة الوقف (التأيد) أي ويؤخذ منه أن اشتراط التغيير، والتبديل والإدخال والإخراج معمول به".¹⁹ ويقول صاحب فتح الجليل: "ولا يشترط في صحة الوقف التأيد".²⁰ ويقول الخطاب: "الوقف لا يشترط فيه التأيد".²¹ ويقول الخرشبي: "ولا يشترط في

¹⁷ Alauddin Abu Bakr bin Masud bin Ahamd Al-Kasani, *Badayi Al-Sanayi Fi Tarteeb Al-Sharae* (Beirut: Dar al-Kutub al-Ilmiyah, 1986), 22; Al-Sharbeeni, 535; Al-Bahuti, 492.

¹⁸ Ahmad Al-Darder, *Al-Sharh Al-Kabir Ma' Hashiyah Al-Dassuqi* (Beirut: Dar al-Fikr, 1998), 870.

¹⁹ Ahmad Al-Darder, 870.

²⁰ Muhammad Khaled Al-Syayab, 'Jadalu Al-Din Wa Al-Daulah Fi Al-Fikr Al-Arabi Al-Mu'ashir: Burhan Ghilyun Wa Muhammad Arkun Wa Rashed Al-Ghanusyi Namudzajan', *Dirasat: Al-Ulum Al-Insaniyah Wa Al-Ijtima'iyah*, 38.3 (2011), 890-904 (649).

²¹ Abu Abdullah Muhammad bin Abdurrahman al-Rayini Al-Hattab, *Mawahib Al-Jalil Sharh Mukhtasar Khalil* (Beirut: Dar al-Fikr, 1992), 21.

صححة الوقف التأييد أي التخليد، بل يصح ويلزم بمدة سنة، ثم يكون بعدها ملكاً^{٢٢}. ونقل عن أبي يوسف قوله: "إذا وقف على رجل بعينه جاز، وإذا مات الموقوف عليه رجع الوقف إلى ورثة الواقف، وعليه الفتوى في المذهب"^{٢٣}. وجاء في هداية الأنام: "إذا وقف على من ينقرض، كما إذا وقف على أولاده، واقتصر على بطن أو بطون ممن ينقرض غالباً، ولم يذكر المخرج بعد انقراضهم، من حيث صحته وقفاً أو حبساً أو بطلانه، وفي ذلك أقوال، والأقوى: هو أن يصح الوقف المنقطع الأجل بأن يكون وقفاً حقيقةً إلى زمان الانقراض والانتقطاع، وينقضي بعد ذلك، ويرجع إلى الواقف أو ورثته"^{٢٤}. ولقد استدلل هؤلاء الفقهاء على هذا الرأي بأنه لا يوجد دليل من كتاب وسنة على إيجاب التأييد في الوقف أو الصدقة، فالصدقات تجوز مؤقتة وتجوز مؤبدة، فكما أن للإنسان أن يتصدق بكل ماله و ببعضه فكذلك يجوز له أن يتصدق به في كل الزمان وفي بعضه^{٢٥}. ومما استدلوا به أيضاً أن حقيقة الوقف هو إما تملك منفعة أو إعطاء حق في الانتفاع، والفقهاء لا يرون بأساً في أن يقيد الواقف بشرطه أوجه الانتفاع بغلات الوقف وأعباءه، فكذلك له أن يقيد في مدة هذا الانتفاع^{٢٦}. ورأوا أن ما نقل عن الصحابة الكرام من الأحاديث والآثار التي تدل على أن الوقف كان مؤقتاً، وما ورد في بعض النصوص التي تدل على اشتراط التأييد على الوقف، فإن هذه النصوص و تلك الآثار في حقيقتها حكاية وقائع كان الوقف فيها مؤقتاً، وقد ارتضى ذلك الواقفون وورثتهم، لأن ذلك من عمل الخير الذي يستدام به الثواب،

²² Al-Khurshi, 92.

²³ Ibn al-Humam Al-Hanafi, *Fath Al-Qadeer Sharh Al-Hidayah* (Beirut: Dar al-Kutub al-Ilmiyah), 214.

²⁴ Muhammad al-Hasan al-Baghdadi Al-Najafi, *Hidayatul Anam* (Iraq: Matba' al-Najaf), 221.

²⁵ Abul Hasan Ali bin Muhammad bin Habib Al-Mawardi, *Al-Hawi Al-Kabir Fi Fiqh Al-Imam Al-Shafi* (Beirut: Dar al-Kutub al-Ilmiyah, 1994).

²⁶ Al-Mawardi.

وليس فيه دليل على عدم جواز رجوع الواقف في وقفه ولا على عدم التوقيت في الوقف.²⁷

وفي الترجيح الفقهي العام بين مذهب جمهور من العلماء المعاصرين - أمثال أحمد إبراهيم،²⁸ الشيخ محمد أبو زهرة،²⁹ الشيخ مصطفى الزرقاء³⁰ - إلى ترجيح الرأي الثاني وهو جواز الوقف المؤقت وصحته. وقد احتجوا لذلك بقوة الأدلة التي استند إليها المالكية ومن أقواهم من المذاهب الأخرى على جواز الوقف المؤقت، فلا يوجد نصّ يحرم اشتراط التأقيت، واشتراطه هو من المباحات التي تدخل في حرية الواقف فيما يشترطه في وقفه.

والترجيح في ضوء مقاصد الوقف المؤقت، يستند إلى مصالح الوقف المؤقت فهو يشجع الإقبال على التطوع بالوقف للأموال مؤقتة فمن لا يستطيع الوقف لماله مؤبدا لحاجته إليه في الآجل يمكنه أن يوقفه لوقت محدد، كما أن الواقع يشهد أن كثيرا من الأموال منقولات أو عقارات مثل المباني والأراضي والنقود أو منافع مثل الإجارة لا يحتاجها مالكوها في العاجل القريب (مثاله: سنة أوسنتين) فلهم أن يوقفوها للانتفاع بها في تلك المدّة المؤقتة وهذا أفضل من كنزها وتجميد الانتفاع بها وفي هذا النظر تتحقق به عدة مقاصد دنيوية وأخروية، ومن حيث مقاصد الواقف، ففيه تيسير وتشجيع وتوسيع في العمل الخيري التطوعي وفي هذا تتحقق مقاصد تعبدية قربة إلى الله تعالى. وتتوسع بهذا مصادر التمويل الاجتماعي ولا تقتصر على الجهات الحكومية فقط، حيث يمكن لكل أفراد ومؤسسات المجتمع أن تكون مصدرا لوقف

²⁷ Al-Mawardi.

²⁸ Al-Mawardi.

²⁹ Muhammad Abu Zuhra, *Muhadhrat Fi Al-Waqf* (Beirut: Dar al-Fikr al-Arabi, 1971), 72.

³⁰ Mustafa Ahamd Al-Zarqa, *Ahkam Al-Auqaf* (Jordan: Dar Ammar, 1998), 28.

الممتلكات التي تصلح للتأقيت، منافع كوقف الإيجارات وأموال كوقف النقود. ومن حيث مقاصد المال الموقوف نجد أن شرط التأقيت يتعلق بالمال الموقوف، و الشرط عند المجتهدين يتعلق بالمشروط لمقصد مهم وذلك من حيث أنه يقوي حصول مقصده الأصلي لمحل الشرط (المشروط) ويفعله من جهة وقد يدفع عنه تعطيل الانتفاع به ويسد ذرائع دخول ما قد يفسده ويضر به ويهلكه. وهذه هي وظيفة المقصد المكمل في الاجتهاد المقاصدي، فالمقصد في شرط التأقيت ينزل في مرتبة المقصد المكمل ووظيفته تقوية النفع من محل الوقف، فبه تتحقق الكثير من المقاصد الشرعية الخاصة بالمال ومن أظهرها: الانتشار والدوران والنماء، فلا يبقى المال غير المستعمل جامدا مكنوزا تأكله الزكاة ويحرم من الانتفاع به، فوقفه مؤقتا يحقق تفعيل مصالح نماءه فيما يعود بالمنافع للموقوف عليهم في المجتمع وتزيد في النماء بركة نفعه الدنيوية لمصارف الوقف والأخروية للواقف. ومن حيث مقاصد الموقوف عليهم: يتوجه الواقفون في الغالب بأوقافهم إلى المحتاجين من الفقراء والمساكين، وتتنوع مقاصد الوقف باعتبارات مجالاته إلى الضروريات المقاصدية الخمسة، حيث ينتفع الموقوف عليهم بما يحقق مصالحهم في احتياجاتهم في المجال المالي بالانتفاع النقدي في دعم الفقراء والمساكين (ووجوه الدعم؛ إما بتمويلات للمشاريع الصغيرة التي يستفيد منها المحرومون من الدعم الحكومي و المصرفي أو الصدقات من ريع الاستثمارات الوقفية المعتبرة) أو الاجتماعي والأسري في التكافل تجاه المستضعفين من اليتامى والأرامل والمسنين و المتشردين، أو التعليمي بكفالة طلاب العلم الشرعي و غيره من العلوم النافعة أو للتداوي بكفالة المرضى. وغير ذلك مما تمس الحاجة إليه.

ولقد أخذ الوقف يستقر في تعريفه عند كثير من المعاصرين³¹ باشماله على كل من الوقفين: المؤبد والمؤقت، فتوسع بذلك مفهومه نظرا لجملة الأسباب في الاستدلال التي تمّ عرضها سابقا.

لا تخفى مبررات التفعيل لمصادر التمويل في السياق المعاصر وأهمية الوقف عموما والوقف المؤقت على وجه الخصوص ومقاصده في التنمية جعلت منه محل اهتمام من طرف المصارف الإسلامية في تحقيق دورها الاجتماعي في تحقيق المسؤولية الاجتماعية نحو الإسهام في خدمة الطبقات المحرومة. ولذلك، فإن البحث في التمويل الاجتماعي من حيث وسائل تحقيقه وتنميته يتطلب دراسة علاقته بالمسؤولية الاجتماعية ووسائلها وفي هذا السياق يقوم مقام تبرير القول بدور المصارف الإسلامية في ذلك باعتبارها مؤسسات مطالبة بأن تقوم بمسؤوليتها الاجتماعية.³²

وما يؤطر شرعيا ومنهجيا للعلاقة الوظيفية بين المصارف والتمويل الاجتماعي هو اتخاذ البعد المقاصدي في التأسيس والربط والمناقشة والبناء الشرعي لمباحث وقضايا العلاقة الوظيفية بينهما، وذلك على النحو التالي من مباحث الدراسة والتي نستهل البحث في قضايا المفاهيمية والشرعية باعتبارها منطلقات البحث في جوانبه التطبيقية. فتظهر أهمية البعد المقاصدي في بحث بعض قضايا الوقف في سياقها المعاصر وأحكامها ذات العلاقة بالتمويل المصرفي، ونظراً لكثرة الأحكام المتعلقة بباب الوقف

³¹ من نماذج تلك التعاريف: "الوقف هو حبس مؤبد أو مؤقت لمال، للانتفاع المتكرر به أو بثمرته، في وجه من وجوه البر العامة والخاصة على مقتضى شروط الواقف وفي حدود أحكام الشريعة" نمنذر. انظر- Monzer Kahf, *Al-Waqf Al-Islami* (Beirut: Dar al-Fikr al-*Mu'ashir*, 2000).

³² Younus Soulahi, 'Al-Itar Al-Maqasidi Li Istismar Al-Masul Ijtimayyian Wa Al-Wisatah Al-Maliyyah Al-Qaima Ala Al-Qiyam', in *13th Conferences of International Shari'ah Research Academy for Islamic Finance*, 2018, 13-14.

يتمّ الاقتصار على بعض أحكامه المرتبطة بجوانب أساسية في تطبيقه في واقعنا المعاصر والمتوافقة مع سياق موضوع البحث، وهما: هل يجوز استثمار أموال الوقف؟ وهل يجوز وقف النقود؟ وذلك بالاكْتفاء بذكر قرارات المجامع الفقهية الصادرة بخصوصهما وما ثبت في ذلك في التشريعات في ماليزيا منغاً من الخروج بالاستطراد عن مقصود البحث.

المسألة الأولى: استثمار أموال الوقف وضوابطه

استثمار أموال الوقف يعتبر من قبيل تحقق مقصد الانتفاع من غلة الوقف المحبوس، ولا خلاف في كل التجارب البلدان في ذلك؛ ومع ذلك يبقى الانتفاع في صورته المعاصرة وضوابطها محلّ بحث واجتهاد، ومن ذلك ما ثبت في قرار مجمع الفقه الإسلامي الدولي في دورته الخامسة عشرة حقيقة استثمار أموال الوقف بأنه: تنمية الأموال الوقفية سواء أكانت أصولاً أم ريعاً بوسائل استثمارية مباحة شرعاً، وأجاز المجمع في قراره استثمار أموال الوقف المختلفة، ووضع عدة ضوابط تحكم طبيعة استثمار الأموال وتضبطه، وهي:

أ - أن تكون صيغ الاستثمار مشروعة وفي مجال مشروع.

ب - مراعاة تنوع مجالات الاستثمار لتقليل المخاطر وأخذ الضمانات والكفالات، وتوثيق العقود، والقيام بدراسات الجدوى الاقتصادية اللازمة للمشروعات الاستثمارية.

ج - اختيار وسائل الاستثمار الأكثر أماناً وتجنب الاستثمارات ذات المخاطر العالية بما يقتضيه العرف التجاري والاستثماري.

د - ينبغي استثمار أموال الوقف بالصيغ المشروعة الملائمة لنوع المال الموقوف بما يحقق مصلحة الوقف³³ وبما يحافظ على الأصل الموقوف، ومصالح الموقوف عليهم. وعلى هذا، فإذا كانت الأصول الموقوفة أعياناً فإن استثمارها يكون بما لا يؤدي إلى زوال ملكيتها، وإن كانت نقوداً فيمكن أن تستثمر بجميع وسائل الاستثمار المشروعة كالمضاربة والمراجحة والاستصناع.. الخ.

هـ - الإفصاح دورياً عن عمليات الاستثمار ونشر المعلومات والإعلان عنها حسب الأعراف الجارية في هذا الشأن.³⁴ ويظهر من خلال هذه الضوابط المرونة في الاجتهاد الوقفي وفتح باب الاجتهاد في تفعيله بما يناسب حاجة العصر في التنمية الاجتماعية. وهي بهذا ضوابط داعمة للقول بمشروعية الاستثمار في الأموال الوقفية على اختلاف أصنافها.

المسألة الثانية: وقف النقود

تعتبر المسألة محل بحث في بعض جوانب تطبيقها، وأجاز مجمع الفقه الإسلامي الدولي وقف النقود واستند في قراره إلى المقصد الشرعي من الوقف وحدّه الاصطلاحي من كونه حبس للأصل وتسبيل للمنفعة، وهو ما يتحقق في وقف النقود لأن النقود لا تتعين بالتعيين وإنما تقوم أبدالها مقامها. وأجاز المجمع وقف النقود بطريق القرض الحسن أو الاستثمار وطرح عدة طرق لاستثماره مثل استثماره بطريق مباشر، أو بطريق

³³ Muhammad Taufiq, 'A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text', *Millati: Journal of Islamic Studies and Humanities*, 5.2 (2020), 121-28 <<https://doi.org/10.18326/mlt.v5i2.121-128>>.

³⁴ ينظر: قرار مجمع الفقه الإسلامي الدولي بشأن الاستثمار بالوقف وغلاته وربيعه، سلطنة

عُمان: الدورة الخامسة عشرة، ١٤٢٥هـ/٢٠٠٤م. <<http://www.iifa.aifi.org/2157.html>> [accessed 3 July 2022].

المشاركة لعدد من الواقفين في صندوق واحد، أو بإصدار أسهم وقفية. وأوضح المجمع بأن المبلغ النقدي يعتبر أصل الوقف، في حين يجوز بقصد الاستثمار واستمراره بيع الأصول والأعيان من عقار أو مصنع المملوكة من المال المستثمر ولا تعد وفقاً بعينها يقوم مكان النقد^{٣٥}

ونظراً لأهمية النقد في تسهيل التنمية عموماً والاجتماعية على وجه الخصوص نجد التشريعات الوقفية في ماليزيا تصدر قرار جواز الوقف النقدي من مجلس الفتوى الوطني في جلسته رقم ٧٧ عام ٢٠٠٧. وباعتبار النقد هو آلية أساسية في تنمية أعمال البنوك التمويلية، جعل منها تهتم بالوقف النقدي لتفعيل نشاطاتها في تحقيق المسؤولية الاجتماعية.

أما مسوغات المصارف الإسلامية في تبني آلية " الوقف المؤقت " فعلى ثلاثة أقسام، وهي:

أ. العلاقة الوظيفية بين التمويل الاجتماعي المصرفي والمسؤولية الاجتماعية

حيث أخذت المؤسسات المالية الإسلامية وعلماءها يهتمون بالتنظير للمفاهيم التأسيسية والوظيفية لكل من "التمويل الاجتماعي" و "المسؤولية الاجتماعية" كمدخل تأسيسي للتشريعات العملية التي يقوم عليها تنفيذها، حيث أصبح التمويل الاجتماعي من المطالب التي توجبها المسؤولية الاجتماعية لأن التمويلات تعتبر أهم الوسائل في تحقيقها على مستوى الأفراد والجماعات، إذ أنّ المسؤولية الاجتماعية هي "مسؤولية الفرد والمؤسسات المدنية والمالية والشركات نحو المجتمع لتحقيق التنمية

^{٣٥} ينظر: قرار مجمع الفقه الإسلامي الدولي بشأن الاستثمار بالوقف وغلاته وربيعه، سلطنة

عُمان: الدورة الخامسة عشرة، ١٤٢٥هـ/٢٠٠٤م. <<http://www.iifa-aifi.org/2157.html>> [accessed 3 July 2022].

المستدامة في جميع الجوانب التعليمية والصحية والاقتصادية ونحوها.³⁶ فهي مفهوم عام يشمل المؤسسات المالية وغيرها، وما يعنينا في سياق موضوع الدراسة هو المسؤولية الاجتماعية للمؤسسات المالية الإسلامية عموماً و البنوك الإسلامية على وجه الخصوص والتي تعرّف على أنّها: "التزام البنك الإسلامي بالمشاركة في بعض الأنشطة والبرامج والأفكار الاجتماعية لتلبية المتطلبات الاجتماعية للأطراف المترابطة به والمتأثرة بنشاطه سواء بداخله أو خارجه بهدف رضا الله والعمل على تحقيق التقدم والوعي الاجتماعي للأفراد بمراعاة التوازن والعدالة والاهتمام بمصالح مختلف الفئات.³⁷ وأصبح التمويل الاجتماعي في التشريعات التنموية يقوم في موضوعه و أهدافه على الإنسان كمحور للنشاط الاقتصادي، ويركز على كل ما من شأنه أن يثمن القيم الاجتماعية والبيئية والأخلاقية في ممارسة المؤسسة الاقتصادية لنشاطها بما يجمع بين المصالح الكلية للمجتمع والمصالح الخاصة للمؤسسة وأصحابها.³⁸ ويعتبر أيضاً طريقة لإدارة الاستثمارات المولدة للعائدات المالية ذات التأثير الإيجابي الاجتماعي والبيئي القابل للقياس.³⁹

وفي التشريعات التنموية الإسلامية تمّ ضبط التمويل الاجتماعي الإسلامي من حيث وسائله وأهدافه ومقاصده، وفي ذلك نصّ معهد البحوث والتدريب الإسلامي في تقريره الصادر عنه بأنه: تمويل يغطي الأدوات التقليدية القائمة على الإحسان مثل

³⁶ Al-Qarradaghi, 7.

³⁷ Abdul Hamid Abdul Fattah Al-Maghribi, *Al-Idarah Al-Istiratijiyyah Fi Al-Bunuk Al-Islamiyyah* (Jeddah: Manshurat al-Bank al-Islami li al-Tanmiyah, 2004), 421.

³⁸ Haidar Nasir, 'Al-Tamweel Al-Ijtimayi: Qawaed Wa Mabadi' Wa Tatbeeqat', in *13th Conference of Shariah Scholars on Islamic Finance* (Finance, International Shari'ah Research Academy for Islamic, 2018), 3.

³⁹ 'Al-Tamweel Al-Ijtimayi: Ma Huwa? Wa Limadha Yuhimmu?' <<https://www2.deloitte.com/global/en/pages/financial-services/articles/social-finance.html>> [accessed 3 July 2022].

الزكاة والصدقة الوقف، والقائمة على التعاون مثل القرض والكفالة، ويشمل أيضاً مؤسسات التمويل الصغير المعاصرة الهادفة إلى التخفيف من شدة الفقر.⁴⁰

٢. الحاجة في تطوير آليات جديدة في تحقيق أهداف التمويل الاجتماعي الإسلامي ومقاصده في التنمية⁴¹

سبق الإشارة في معرض الحديث عن حقيقة المسؤولية الاجتماعية أن التمويل الاجتماعي يعتبر نتيجة مترتبة على شعور المؤسسات والشركات بالمسؤولية الاجتماعية وأنه لا بد لها من أن تساهم في ذلك، والمساهمة تتطلب رسم خطة عملية تحدد فيها أهم أهداف التمويل الاجتماعيين والتي يمكن عرضها فيما يلي:

- ١- تمكين الفئات الاجتماعية المحرومة من الاستفادة من منتجات المؤسسات المالية الإسلامية في التمويل.
- ٢- إبطال التهم الموجهة إلى المصرفية الإسلامية من قصورها بعدم مراعاة هذا الجانب.
- ٣- دعم التنمية المجتمعية المحلية والإسهام في تطوير اقتصاد الدولة.
- ٤- توفير فرص عمل للفئات الاجتماعية بتمليكهم رؤوس أموال، وتشجيعهم على الاستثمار والربح في المشاريع المصغرة.
- ٥- تفعيل المقاصد الأموال الخاصة بتداول المال بين جميع فئات المجتمع، وشيوعه وعدم استئثار جهة معينة به مصداقاً، لقوله تعالى: {كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ} (الحشر: ٧). وبذلك تحدد من الطبقة و تتحقق العدالة بين أفراد المجتمع.

⁴⁰ Institute Islamic Research and Training.

⁴¹ Abdurrahman Binjalun, *Al-Riyayah Al-Ijtimaiyyah Wa Al-Tanmiyah Min Mandhour Maqasidi* (Cairo: Dar al-Kalima, 2022).

ويظهر البعد المقاصدي لأهداف التمويل الاجتماعي المنشود تحقيقها من خلال إدراجه في عمل المصرفية الإسلامية في أن منتجاته تعمل على تحقيق التنمية الشاملة للمقاصد الضرورية الخمسة وما يرتبط بها من برامج ومشاريع اجتماعية تسعى إلى تحقيق مصالح شاملة لكل المجالات الحياتية، و باعتبارها مقاصد الشارع؛ تقرّر طلب العمل على تحقيقها وحفظها في نصوص الشريعة التفصيلية وهي تعود على عامة الناس ضرورة في قيام شؤون حياتهم في كل المجالات الاجتماعية التنموية على مستوى الأفراد والجماعات: الأسرية والاجتماعية والتعليمية والتربوية والاقتصادية و الطبية، فعلى سبيل المثال: مقصد حفظ العقل: تمويل الفئات الاجتماعية في الجانب التعليمي بطرح منتج تمويلي يغطي رسوم المقاعد الدراسة للطلاب، و يعتبر من وسائله تشييد الأوقاف الخاصة بالتعليم وما يتطلبه من الخدمات للقائمين عليه في المدارس والمعاهد والكليات والجامعات. مقصد حفظ النفس: تشييد المشاريع الإسكانية لأصحاب الدخل المحدود والعاطلين عن العمل، وتوليد الأموال بالتمويلات المصغرة لديهم لتلبية احتياجاتهم الحياتية والطبية. مقصد حفظ النسل: توفير منتجات خاصة بتيسير الزواج لغير القادرين على تحمل أعباءه المالية. مقصد حفظ المال: فتح تمويلات مصغرة للأغراض المتعلقة بالمشاريع الاستثمارية الصغرى والمتوسطة ويمكن توظيف التبرعات بواسطة المصارف، واستثمارها، وصرف ريع عوائدها على فئات التمويل الاجتماعي.

٣. الحاجة إلى تطور أبعاد الاهتمام بعناصر آليات وساطة المصرفية الإسلامية للمساهمة في تفعيل التمويل الاجتماعي

يعتبر المكلف عنصرا مهما من حيث تعدد موقعه في نظام الوقف: واقفا أو مشرعا أو عميلا منفذا لتلك التشريعات في المسؤولية ، فهو العنصر الرئيسي المنشط لعمل المؤسسات المالية، والثابت الذي تدور حوله المتغيرات، ومع الأخذ بعين الاعتبار أن البناء المجتمعي يتألف من عدة فئات من أهمها وأبرزها الفئة الاجتماعية من محدودي الدخل والعاطلين عن العمل، وهي بطبيعة الحال فئات محرومة وغير مؤهلة من الاستفادة من منتجات المصرفية الإسلامية لعدم توفر شروط التمويل فيهم، وهو ما أدى إلى انتفاع فئة محدودة من فئات المجتمع من خدمات المصرفية الإسلامية المتعلقة بالتمويل ، وهو ما يشكل تحدياً في الوقت ذاته مع أهداف النظام الاقتصادي الإسلامي ومقاصده من ضمان العدل في الكفاية لجميع أفراد المجتمع، ومنع احتكار المال بيد طبقة أو فئة معينة خلافاً للأنظمة الوضعية الأخرى، الأمر الذي استدعى توجه الاجتهاد الفردي والجماعي لمعالجة هذا الخلل ، فلوحظ مؤخراً الاهتمام الواضح من الهيئات المعنية بتفعيل التمويل الاجتماعي وتفعيله كأحد مكونات الصناعة المالية الإسلامية، وعلى سبيل المثال نجد اهتماماً واضحاً من الأكاديمية العالمية للبحوث الشرعية في المالية الإسلامية (إسرا) في بحث قضايا وإشكالات ومثارات هذه القضية. وبجثت هيئة المراجعة والمحاسبة للمؤسسات المالية الإسلامية (AAOFI) في مؤتمرها الحادي عشر للعمل المصرفي والمالي الإسلامي التمويل الزراعي، والذي يتعبر أحد أنواع التمويل الاجتماعي، بالإضافة إلى صدور بعض القرارات المنظمة لبعض صيغ التمويل الاجتماعي عن المجامع الفقهية، مثل: جواز استثمار أموال الزكاة والأوقاف، والدعوة إلى تطوير الأوقاف العامة من خلال عقود البناء والتشغيل والإعادة (B.O.T) وغيرها. بالإضافة إلى صدور المؤلفات والكتب التي تبحث هذه القضية، مثل: كتاب المسؤولية الاجتماعية للمصارف الإسلامية طبيعتها وأهميتها، وتقويم الدور الاجتماعي

للمصارف الإسلامية.⁴² ويمكن تخريج التكييف الفقهي لإلزام الدولة المؤسسات المالية بالمسؤولية الاجتماعية وبمقتضى مبادئ السياسة الشرعية ومقاصدها في حق الحاكم أن يشرع من السياسيات ما يحقق به حفظ مصالح الأفراد بإلزام أصحاب اليسار بالإعانة المجتمعية عند عجزها عن تحقيق الاكتفاء الذاتي لكل أفراد المجتمع، وهو ما نتج عنه مساءلة المصارف الإسلامية بتحمل دورها في المسؤولية الاجتماعية من قبل الدولة، وهو ما يعتبر وجهًا من وجوه مقصد التعاون على البر والخير، وتفعيلًا لمقصد التيسير ورفع الحرج عن المكلفين مصداقًا لقوله تعالى: ﴿وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى﴾ [المائدة: ٢].

الوقف المؤقت والتشريعات القانونية في التمويل الاجتماعي المصرفي بمليزيا

نجد اهتمام تشريعات هيئات تنظيم الصناعة المالية الإسلامية بمليزيا بذلك، حيث اهتم البنك المركزي الماليزي بتعزيز دور التمويل الإسلامي وتأثيره في المجتمع الماليزي بإصداره عدة قرارات وتوجيهات للمؤسسات المالية الإسلامية العاملة في السوق الماليزي، كان من أبرزها ما صدر عنه تحت مسمى: "الوساطة القائمة على القيمة (VBI) Value-based intermediation" والتي تهدف إلى تقديم النتائج المرجوة والمتوقعة من الشريعة من خلال الممارسات والسلوك والعروض (المنتجات) لتوليد تأثير إيجابي مستدام على الاقتصاد والمجتمع والبيئة، وبصورة تتناسب مع عوائد

⁴² See also: Proceedings of 13th and 14th Conferences of International Shari'ah Research Academy for Islamic Finance; proceedings of Doha 1st 3rd and 4th conferences on Islamic wealth; third session of 11th conference of AAOIFI on Islamic banking and finance; resolutions of International Islamic Fiqh Academy in 3rd, 15th and 19th sessions. Muhammad Salih Ayyash, 'Al-Masuliyah Al-Ijtima'iyyah Li Al-Masarif Al-Islamiyyah: Tabiatuha Wa Ahmiyyatuha', in *Manshurat Al-Bank Al-Islami Li Al-Tanmiyah*, Taqweem al (IIIT Press, 2010).

المساهمين المستدامين، والمصالح طويلة الأجل، ما يؤدي إلى إعادة تنظيم عمل المؤسسات المالية الإسلامية وتركيزها على إحداث تأثير اجتماعي اقتصادي بشكل أكبر. وتهدف أيضًا إلى ضمان تطبيق المؤسسة المالية الإسلامية للمفاهيم والقيم بصورة تتوافق مع الشريعة ومبادئها ومقاصدها. وتمكين المجتمع من خلال العمل على تطوير حلول مالية مبتكرة تعالج القطاعات غير المخدومة أو المحرومة من المصرفية الإسلامية، مثل: توفير المنازل حيث قام أحد البنوك الإسلامية الماليزية (بنك إسلام) ببناء وقف في ولاية بينانغ على مساحة أرض بلغت تسعة فدان (٩) بواقع ستة وسبعين بناية سكنية (٧٦) وتسعة محلات تجارية (٩) بتكلفة مالية بلغت أربعة وعشرين مليون رنجت ماليزي (٢٤).^{٤٣}

أما فيما يتعلق بالوقف كمصدر للتمويل الاجتماعي فقد أصدر المركز الماليزي العالمي للمالية الإسلامية (MIFC) في العام ٢٠١٤م توجيهًا للمؤسسات المالية الإسلامية أوضح فيه أهم الأمور التي يحتاج الوقف إلى تطويرها من خلال الأراضي والمباني والتجارية والعقارات، تمثل ذلك في ثلاث توجيهات؛ وهي:

- ١- توفير السيولة من خلال الوقف النقدي وتوسعة نشاطات الأوقاف النقدية
- ٢- توفير رأس مال بعيد الأجل من خلال الأوقاف الجديدة وتطوير المشاريع.
- ٣- إدارة الوقف من قبل الخبراء في إدارة الصناديق الاستثمارية، لتوليد العائدات المالية.^{٤٤}

⁴³ 'Central Bank of Malaysia, Value-Based Intermediation: Strengthening the Roles and Impact of Islamic Finance', 11-14 <<https://www.bnm.gov.my/index.php?ch=57&pg=137&ac=612&bb=file>>.

⁴⁴ Soulahi, 13-14.

ويظهر ممّا سبق إرادة السلطة السياسية في تفعيل موارد التمويل الاجتماعي في الشريعة الإسلامية، وتبيّن التشريعات أعلاه بدايات قوية في الاهتمام بتطبيق تلك التشريعات. وذلك كما في تطبيق التشريعات القانونية عن الوقف بإندونيسيا.⁴⁵ ومن حيث الوقف المؤقت في التشريعات القانونية في ماليزيا، نلاحظ أن الوقف وما يتعلق به من تشريعات عامة أمر متوقف على مجلس الدولة للشؤون الإسلامية لأنه يمثل المرجعية العليا للوقف على مستوى البلاد لكل المجالس الدينية للشؤون الإسلامية في كل ولاية، وذلك تبعا للنظام الفدرالي الولائي القائم في ماليزيا، وللمجلس الولائي الديني للشؤون الإسلامية الاستقلالية في الإدارة للأوقاف ويمثل هذا المجلس الناظر أي شخصية اعتبارية لولي للوقف. ويمكن رصد⁴⁶ ظهور الاهتمام بالوقف المؤقت على مستوى محاولات جادة في تطوير التشريعات واللوائح الخاصة به في أربع ولايات؛ ولاية سيلانجور؛ وولاية جوهور؛ وولاية ملاقا؛ وولاية نيجري سيمبلان، والتي لاتزال تعرف التطوير المتواصل فيما يجعلها تطبق وتحيي قطاع الأوقاف كمورد مهم في التمويل الاجتماعي الإسلامي.

ولقد حُصّ الوقف عموما في تشريعاته بقوانين خاصة وفيها بعض التفاصيل الإدارية والإجرائية تخص المجلس الديني في كل ولاية، كأن يتمّ التنصيص في نص القانون على حق الواقف في أن يذكر شروطه لوقفه، لكن في البعض الآخر لا يذكر هذا في نص القانون لأن للواقف أن يضع شروطه على مستوى ناظر الوقف في المجلس الديني الولائي. ونصّت بنود قانون الوقف الاسترشادي ٢٠١٤ و١٩٨٣ على جواز

⁴⁵ Siska Lis Sulistiani, 'The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia', *Samarah*, 2021 <<https://doi.org/10.22373/sjhk.v5i1.9161>>.

⁴⁶ ينظر للتوسع فيما ثبت في الدراسات السابقة التي تمّ عرضها.

الوقف المؤقت إذا تعلق بالخيرى، (لأن الذرى هو فى أصله مؤقت بطبقات الموقوف عليهم)

اقترح الوقف المؤقت النقدي فى تفعيل التمويل الاجتماعى من خلال ما يجرى العمل به من إسهامات فى "ماى بنك الإسلامى" كأنموذج

الوقف المؤقت آلية مقترحة فى تفعيل منتجات ماى بنك الإسلامى فى الاستجابة إلى الامتثال إلى المسؤولية الاجتماعية وذلك للمشاريع الوقفية التى يخطط لإنجازها ولاتزال تحتاج إلى آليات لجمع أكبر من التمويلات من المتبرعين. ويصنف ماى بنك ضمن أفضل خمسة بنوك عاملة فى جنوب شرق آسيا، حيث بلغت قيمة أصوله المالية مئة وخمسة وستين مليارا دولار أمريكى (مليارا 165 USD)، كما يُعد أكبر شركة فى البورصة الماليزية من حيث القيمة السوقية. تأسس فى عام (١٩٦٠م)، وبلغ إجمالى عدد فروع ومكاتبه ألفين وأربعمئة (٢٠٠٤) موزعين على عشرين دولة حول العالم.

يقدم البنك مجموعة من فرص التمويل بشروط عادلة وبناء على احتياجاتهم المجتمعية.^{٤٧} ويختص بالخدمات والمنتجات المصرفية المبنية على أساس الشريعة الإسلامية. يمتد عمل ماى بنك الإسلامى خارج ماليزيا إلى خمسة دول، وهى: (إندونيسيا، سنغافورة، هونغ كونغ، بريطانيا -لندن-، لابوان).^{٤٨} و تناوله كعينة لاستشراف تطبيق الوقف المؤقت كمورد فى تمويلاتها الاجتماعية. وانطلاقاً من الشعور بالمسؤولية الاجتماعية تجاه فئات التمويل الاجتماعى، وتوافقاً مع رؤية البنك المركزى

⁴⁷ 'Official Website May Bank' <<https://www.maybank.com/en/about-us/who-we-are/overview.page?>> [accessed 11 March 2022].

⁴⁸ 'Official Website May Bank'.

الماليزي في التمويل الاجتماعي، له عدة مشاريع مع ولاية بيرك (إحدى ولايات ماليزيا الأربع عشرة)، حيث يتعهد بوقف مبلغ عشرة مليون رنجت ماليزي (RM/M 10)، موزعاً على مشروعين وقفين وكل منهما وعلى حسب ما تبينه لغة الأرقام في حاجة إلى آليات في التطوير، فرغم اعتماد البنك على "سهم الوقف" وهو وقف نقدي (تبرع مؤبد) كآلية تبرعات يساهم فيها كل الأفراد والمؤسسات و الحد الأدنى بقيمة ١٠ رنجت للأفراد و ١٠٠ رنجت للمؤسسات في صندوق اجتماعي وقفي ويتم استثمار^٩ تلك التبرعات في مشاريع اجتماعية تعود بالنفع على الفئات المعوزة، إلا أن العجز موجود في جمع التبرعات الوقفية لغرض التغطية المالية لما تخططه من مشاريع اجتماعية عديدة، ومنها وقف السكن الجامعي في جامعة السلطان أزلن شاه (WAQF FOR SULTAN AZLAN SHAH UNIVERSITY (USAS) RESIDENTIAL BUILDING)

وانسجاماً مع ما سبق الإشارة إليه أعلاه، خصصت ماي بنك الإسلامي في العام (٢٠١٦م) مبلغ خمسة مليون رنجت ماليزي (RM/M 5) لبناء وقف سكني خاص بطلاب المرحلة الجامعية، ووقع اختيارهم على جامعة السلطان أزلن شاه في ولاية بيرك، وهو ما يغطي ثلث المبلغ المرصود للمشروع الكلي والمقدر بخمسة عشرة مليون رنجت ماليزي (RM/M 15) الذي تنشده الجامعة الوصول إليه.^{١٠} وشرع البنك في

^٩ واستندوا في ذلك على من يشترط في جواز الوقف النقدي أن يتم استخدامه في إنشاء

منافع دائمة أي توقف عوائده. انظر في ذلك *Ibnu Nujaim, Al-Bahr Al-Raiq Syarh Kanz Al-Daqa'iq* (Cairo: Dar al-Kutub al-Ilmiyah), 219.

^{١٠} بلغ إجمالي الأموال المحصلة لدى إدارة الوقف (RM/M 5,574,441.28) وهو ما يمثل

نسبة (37.16%) من إجمالي المبلغ الكلي والمقدر بخمسة عشرة مليون رنجت ماليزي (M (RM/15). أنظر! 'Al-Majlis Al-Dini Li Al-Islam Wa Al-'Adat Al-Malawi' <<http://wakafperak.gov.my/portal/index.php/en/>> [accessed 3 July 2022].

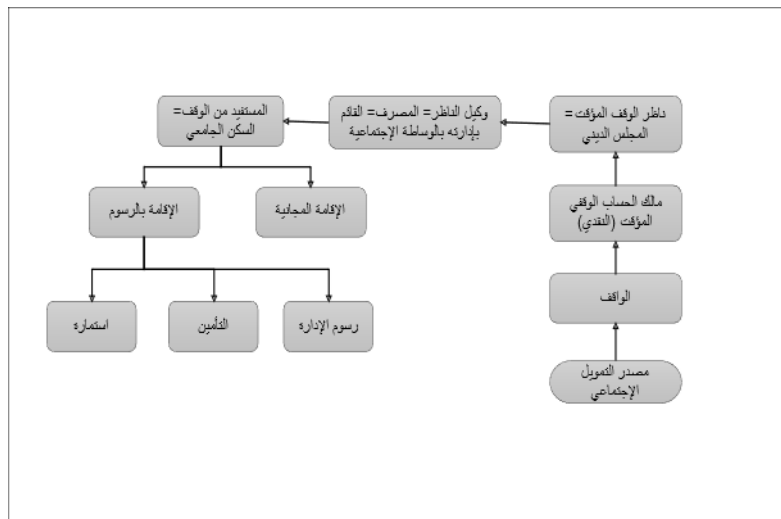
التنفيذ في أبريل من نفس العام ببناء اثنين من المباني بقدره استيعابية ألف طالب (١٠٠٠ طالب)، حيث يتكون المبنى الواحد من أربعة طوابق. استمرت مراحل البناء حتى افتتاح الوقف السكني في الرابع عشر من مايو من العام ألفين وثمانية عشرة (١٤/٠٥/٢٠١٨م).^{٥١} ويعتبر أول مشروع وقفي ينفذه البنك في سبيل خدمة الفئات الاجتماعية ضمن إطار التمويل الاجتماعي. وفي هذا السياق يمكن اقتراح الوقف المؤقت النقدي لتغطية العجز في تحصيل ميزانية المشروع وذلك من خلال إيجاد المنتج المقترح وهو: **منتج الوقف المؤقت المصرفي النقدي "Temporary Cash Waqf BankAccount**، وصورته الشرعية المقترحة باعتبار أركان الوقف كالآتي:

يتم بإنشاء حساب بنكي خاص بالوقف النقدي المؤقت يحمل اسم الواقف وهذا يمثل ركن: المال الموقوف. ثم يتطوع ذوو الأموال المدخرة (لهم أموال جامدة دون استثمار، ومثلها مدخراتهم) أفراد أو مؤسسات، ويمثلون ركن: الواقف. ثم تحديد مدة زمنية لوقف المال: تمثل وقتنا يضع الواقف ماله في حساب الوقف المؤقت في المصرف، كأن يخصص له صندوق خاص لمدة زمنية كافية لتمويل مشاريع استثمارية قصيرة تناسب طبيعة المشاريع الاستثمارية والتمويلات المصغرة إما من أموال الودائع أو من أموال أخرى خاصة إضافية: وهذا يمثل شرط الواقف.

المقصد من هذا الوقف هو التمويل النقدي لغرض استثماره من طرف المصرف ذاته أو من طرف مؤسسات استثمارية أو بنفسية مشاركة. فالناظر لحسابات الوقف المؤقت: هو المجلس الديني للولاية (بحسب قانون ماليزيا الخاص بالأوقاف). فالوكيل في

⁵¹ May Bank, *MAY BANK SUSTAINABILITY REPORT 2016* (Kuala Lumpur, 2016), LI <<https://www.maybank.co.id/-/media/Downloaded-Content/CSR-Sustainability-Report/Sustainability-Report-Maybank-Indonesia-2016.pdf>>.

الاستثمار في أموال حسابات الوقف المؤقت: هو المصرف ذاته، فله دور الوساطة بين الأموال الموقوفة وتحقيق المشاريع التنموية الاجتماعية لصالح الموقوف عليهم. المستفيد من العائدات الربحية للاستثمار هو مشروع وقف بناء السكن الجامعي للطبقة الاجتماعية المحرومة من الطلاب التي تستفيد من هذا السكن الجامعي بالإقامة المجانية فيه. أو بالأجرة والتي ستكون عائدا ماليا استثمارا يستفيد من ريعه في: نسبة منه لتسديد مستحقات الإدارة الخاصة بهذا المنتج في المصرف. نسبة لخدمة الطلاب المحتاجين ماديا. نسبة لإدارة أخطار تحول دون الوفاء باسترجاع الأموال الموقوفة بحلول الأجل وانتهاء المدة المحددة. وتوضيح النموذج المقترح لهيكله الوقف النقدي المصرفي المؤقت في الرسم البياني أدناه:



الرسم البياني ١ - نموذج هيكل الوقف النقدي المصرفي المؤقت

المرجع: الباحثون

وكما جرى الاتفاق بين إدارة البنك والمجلس على آليات المنتج الوقفي واستثماره، ولمعرفة آليات المنتج الوقفي أجرى البحث مقابلة مع أحد فروع ماي بنك في العاصمة الماليزية كوالالمبور، يمكن إجمالها في النقاط التالية حسب الجدول الآتي:

منتج الوقف	المنتج المقترح الداعم: الوقف المؤقت
١	إنشاء حساب وقفي باسم الوقف لتجميع المال الموقوف من قبل وساطة البنك في عملية جمع تبرعات الأشخاص الاجتماعيين
٢	تسهيل وقف النقود بالوسائل الإلكترونية أمام الأشخاص
٣	يلتزم البنك بوقف ما يماثل قيمة ما أوقفه العميل بواقع رنجت من الشخص يقابله رنجت من البنك
٤	لا يلتزم البنك بأي بمقابلة أي مبلغ موقوف بعد الوصول إلى المبلغ المتفق عليه خمسة مليون رنجت ماليزي (RM/M 5)
٥	يتولى ماي بنك الإسلامي (Maybank Islamic) الوساطة في إدارة الأموال الموقوفة في الحساب الوقفي ويكون في ذلك وكيلًا للناظر و هو المجلس الديني

<p>الأفراد المحرومين.</p>	<p>للإسلام والعادات الملاوي في ولاية بيراك وصيًا (Trustee) على مدير الصندوق - البنك-</p>	
<p>٦- الاقتراح نفسه ولكن شرط أن تخصص نسبة معتبرة من الأرباح الاستثمارية لفائدة الطبقة الاجتماعية المحروم، (B40) ومنتجات ذلك كثيرة، كأن تكون تمويلات : لمشاريع مصغرة (MICROFINANCING). أو تمويلات شخصية Personal financing: وغيرها من التمويلات التي يستفيد منها الأفراد المحتاجين، وخصوصا الذين لا تتوفر فيهم شروط التمويلات المصرفية. ب- يمول المصرف المستفيدين من المال الموقوف مباشرة.</p>	<p>يتولى البنك استثمار الأموال الموقوفة بطريقة متوافقة مع الشريعة الإسلامية، وتصرف أرباح الاستثمار في مشاريع تدعم التعليم، وريادة الأعمال، والصحة، ويتولى المجلس الديني للإسلام والعادات الملاوي في بيراك صرفها على مستحقيها. بلغت عائدات استثمار أموال الوقف مائة وسبعة عشرة ألف رنجت ماليزي (117 RM/K</p>	<p>٦</p>
<p>الاقتراح نفسه مناسب ولا يمنع من أن يستفيد من نسبة من الأرباح التي تعود من استثمارات الوقف التي</p>	<p>لا يتقاضى البنك أي رسوم إدارية لقاء جهوده في تنظيم وإدارة هذا الوقف.</p>	<p>٧</p>

يباشرها المصرف .	
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وبحسب الموقع للبنك فقد بلغ إجمالي المال الموقوف في حساب المشروع من قبل العملاء مليون ومئة ألف رنجت ماليزي (RM/M ١,١٠٠,٠٠٠) أوقفت إدارة البنك مبلغًا مماثلًا ومقابلًا له: مليون ومئة ألف رنجت ماليزي (RM/M ١,١٠٠,٠٠٠) ليصل إجمالي المبلغ الموقوف في صندوق الوقف إلى مليونين ومائتي ألف رنجت ماليزي (RM/M ٢,٢٠٠,٠٠٠).⁵² ولهدف تغطية العجز في تحقيق جمع المبلغ الوقفي الذي رسمه المصرف كهدف يمكن اقتراح الوقف النقدي المؤقت كمنتج موازي يدعم منتج الوقف النقدي في تحقيق الأهداف المتعلقة بالتمويل الاجتماعي.

خاتمة البحث

حُلص البحث إلى أنّ "الوقف المؤقت" آلية يمكن اقتراحها موردا مهما في التمويل الاجتماعي الإسلامي و الوقف النقدي منه يعتبر آلية مناسبة في توسع تطبيقاته وتفعيل منتجاته في التمويل الاجتماعي المصرفي لغرض خدمة فئات التمويل الاجتماعي المحدودة الدخل. ومع إثبات الدراسة لقيام المبررات و المسوّغات في كل أبعادها الاجتماعية وتوفر المتطلبات التشريعية و القانونية في كل أبعادها في إنجاح تطبيقه بما يحقّق المقاصد الشرعية والتنموية الاجتماعية. ويمكن اقتراح الأخذ به كآلية في التمويل المصرفي الإسلامي الاجتماعي ضمن أنشطة المصارف الإسلامية نظرا

⁵² May Bank, 'Waqf Perak Ar-Ridzuan' <https://www.maybank2u.com.my/WebBank/waqf180518_eDM.pdf> [accessed 4 March 2022].

لامتلاكها الكفاءة الإدارية و التشغيلية في ذلك. ويقدم البحث اقتراح منتج وقفي نقدي مؤقت مصري كآلية في ماي بنك الإسلامي باعتبار مشاريعه التنموية الاجتماعية الواسعة و التي لايزال يسعى إلى ابتكار آليات جمع التمويلات ليغطي العجز ويحقق الأهداف التي رسمها في مشاريعه.

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