

# halkam

Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam

- Waqf Management For Education In SMK IT Smart Informatika (Case Study at Solo Peduli Foundation)
- The Impact of Producer Marketing Strategies Through E-Commerce on UMKM In The Perspective Of Sharia Economic Law
- Reformulation of Administrative Sanctions Against PPAT For Negligence In Requesting Proof of BPHTB Payment
- Implications Of Long Distance Marriage On Student Learning Motivation (Case Study at STDI Imam Syafi'i Jember)
- The Rules Of Ijtihad And Its Urgency In Islamic Justice In Indonesia (An Analysis of The Book al-Qawā'id al-fiqhiyyah bayna al-aṣālāh wa al-tawjīh by muhammad bakr ismail)
- Review of Maqāṣid al-Sharī'ah on The Performance And Professionalism of Productive Waqf Nadzir in Indonesia
- Reconstruction of Cultural Jurisprudence to Strengthen The Constitutional Guarantee of Local Culture In Indonesia
- Distribution Of Zakat Fitrah Through Shopee Ecommerce: Digital Transformation in the Modern Era
- Analysis of the Strategy For Distributing ZIS Funds Through The Teacher Care Program at LAZISMU, Surakarta City
- BUMDes' Contribution To The Acceleration Of MSME Halal Product Submission: A Study In Taman Village, Paiton District
- A Comparative Study of The Civil Rights of Biological Children In The Perspective of Islamic Law And Positive Law In Indonesia
- Child Protection In The Perspective Of Multiculturalism: Bridging Traditional Values And Modern Legal Policy

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## Table of Content

1	<b>WAQF MANAGEMENT FOR EDUCATION IN SMK IT SMART INFORMATIKA (Case Study at Solo Peduli Foundation)</b>	1 – 11
	Ardi Arman Syahada, Yusdi Haq Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember	
2	<b>THE IMPACT OF PRODUCER MARKETING STRATEGIES THROUGH E-COMMERCE ON UMKM IN THE PERSPECTIVE OF SHARIA ECONOMIC LAW</b>	12 – 26
	Dony Eko Prasetyo Universitas Islam Negeri Walisongo, Semarang	
3	<b>REFORMULATION OF ADMINISTRATIVE SANCTIONS AGAINST PPAT FOR NEGLIGENCE IN REQUESTING PROOF OF BPHTB PAYMENT</b>	27 – 42
	Syakir Prayoga, Shinta Hadiyantina, Arini Jauharoh Universitas Brawijaya Malang	
4	<b>IMPLICATIONS OF LONG DISTANCE MARRIAGE ON STUDENT LEARNING MOTIVATION (Case Study at STDI Imam Syafi'i Jember)</b>	43 – 58
	Ardian Bagus Armadi, Sabilul Muhtadin Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember	
5	<b>THE RULES OF IJTihad AND ITS URGENCY IN ISLAMIC JUSTICE IN INDONESIA (An Analysis of The Book al-Qawā'id al-fiqhiyyah bayna al-aşālah wa al-tawjih by Muhammad Bakr Ismail)</b>	59 – 71
	Ayus Permana, Muhammad Fikri Adrian, Asmuni Universitas Islam Indonesia Yogyakarta Indonesia	
6	<b>REVIEW OF MAQĀŞID AL-SHARĪ'AH ON THE PERFORMANCE AND PROFESSIONALISM OF PRODUCTIVE WAQF NADZIR IN INDONESIA</b>	72 – 86
	Akhmad Rudi Maswanto, Firma Yudha Universitas Islam Ibrahimy Banyuwangi	
7	<b>RECONSTRUCTION OF CULTURAL JURISPRUDENCE TO STRENGTHEN THE CONSTITUTIONAL GUARANTEE OF LOCAL CULTURE IN INDONESIA</b>	87 – 98
	Ivan Sunata, Duski Samad, Khairul Fahmi, Institut Agama Islam Negeri Kerinci, Univesitas Islam Negeri Imam Bonjol Padang, Universitas Andalas Kota Padang	
8	<b>DISTRIBUTION OF ZAKAT FITRAH THROUGH SHOPEE ECOMMERCE: Digital Transformation in the Modern Era</b>	99 – 117
	Shofa Robbani, Sabilla Putri Khairunisa, Nidaul Mahmudah, Linda Aprillia, Latifatus Syafi'iyah, Hakim Musthofa Habibulla Universitas Nahdlatul Ulama Sunan Giri Bojonegoro	
9	<b>ANALYSIS OF THE STRATEGY FOR DISTRIBUTING ZIS FUNDS THROUGH THE TEACHER CARE PROGRAM AT LAZISMU, SURAKARTA CITY</b>	118 – 132
	Ayub Makrub Islamudin, Irsan Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember	

- 10 **BUMDes' CONTRIBUTION TO THE ACCELERATION OF MSME HALAL PRODUCT SUBMISSION: A STUDY IN TAMAN VILLAGE, PAITON DISTRICT** 133 – 147  
Musthafa Syukur  
Nurul Jadid Paiton University, Indonesia
- 11 **A COMPARATIVE STUDY OF THE CIVIL RIGHTS OF BIOLOGICAL CHILDREN IN THE PERSPECTIVE OF ISLAMIC LAW AND POSITIVE LAW IN INDONESIA** 148 – 170  
Muhammad Busyra  
Universita Islam Indonesia, Indonesia
- 12 **CHILD PROTECTION IN THE PERSPECTIVE OF MULTICULTURALISM: BRIDGING TRADITIONAL VALUES AND MODERN LEGAL POLICY** 171 – 180  
Muhammad Zainuddin Sunarto, Humaidzatuz Zahro  
Universita Nurul Jadid Paiton, Indonesia

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## Waqf MANAGEMENT FOR EDUCATION IN SMK IT SMART INFORMATIKA (Case Study at Solo Peduli Foundation)

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### ABSTRACT

Waqf is a practice that is recommended by Islamic shari'a because it has many virtues in it. The purpose of waqf is to provide benefits from the property that is channeled for the good of the people. The purpose of this research is to find out related to the Management of Waqf for Educational Institutions at Smart Informatika Integrated Islamic Vocational School located in Banyuwangi, Banjarsari, Surakarta. The method used is qualitative with a descriptive approach of analysis. The activity carried out by the researcher is to conduct interviews with the administrators of the social institution concerned in addition to collecting data from various literature, articles, journals, and sites on the internet related to the focus of the research. The data source was obtained from primary data sourced from field studies at the Solo Peduli Foundation. Meanwhile, secondary data is obtained from various sources that contain various matters related to waqf management. Efforts made by the Solo Peduli Foundation in managing waqf in the field of education include: in obtaining waqf assets by making invitations on social media and holding social activity events; In transparency related to the use of waqf assets, namely by providing periodic reports related to the development of waqf management. The impact felt from the existence of a school built from waqf assets is: for waqf recipients: get jariyah rewards; for the community: creating jobs and reducing poverty rates; For students: Obtain a proper education and improve skills to be ready for work.

**Keywords :** *waqf, management, education*

### ABSTRAK

Wakaf merupakan amalan yang dianjurkan oleh syari'at Islam karena memiliki banyak keutamaan didalamnya. Tujuan dari wakaf adalah memberikan manfaat dari harta yang disalurkan untuk kebaikan umat. Tujuan penelitian ini untuk mengetahui terkait Pengelolaan Wakaf untuk Lembaga Pendidikan di SMK Islam Terpadu Smart Informatika yang berlokasi di Banyuwangi Banjarsari Surakarta. Metode yang digunakan adalah kualitatif dengan pendekatan deskriptif analisis. Aktivitas yang dilakukan peneliti adalah melakukan wawancara dengan pengurus lembaga sosial yang bersangkutan di samping pengumpulan data dari berbagai literatur, artikel, jurnal, dan situs di internet yang berkaitan dengan fokus penelitian. Sumber data diperoleh dari data primer yang bersumber dari studi lapangan di Yayasan Solo Peduli. Sedangkan data skunder diperoleh dari berbagai sumber yang berisi tentang berbagai hal yang berkaitan dengan pengelolaan wakaf. Upaya yang dilakukan Yayasan Solo Peduli dalam pengelolaan wakaf di bidang pendidikan meliputi: dalam memperoleh harta wakaf dengan membuat ajakan di media sosial serta mengadakan acara kegiatan sosial; dalam transparansi terkait penggunaan harta wakaf yaitu dengan memberikan laporan secara berkala terkait perkembangan dari pengelolaan wakaf. Dampak yang dirasakan dari adanya sekolah yang dibangun dari harta wakaf adalah: bagi pewakaf: mendapatkan pahala jariyah; bagi masyarakat: menciptakan lapangan pekerjaan serta mengurangi angka kemiskinan; bagi siswa: memperoleh pendidikan yang layak serta meningkatkan keterampilan untuk siap dalam bekerja.

**Kata Kunci:** *wakaf, pengelolaan, pendidikan*

## INTRODUCTION

Waqf according to the language is a word taken from the Arabic word "Al-Waqf" which means restraint. In Islam, waqf is the transfer of private property rights to public ownership that benefits the community at large. (Kasdi 2015) Waqf is a practice that is recommended in Islam because it is a field of jariyah rewards for the waqf giver as long as the waqf property is utilized. As the Prophet (peace and blessings of *be upon him*) said:

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ: إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

"When the son of Adam dies, his practice is cut off except for three things: (1) alms jariyah (waqf), (2) knowledge that is used and (3) righteous children who always pray to him." (Hadith Narrated by Muslim)

The above evidence shows that jariyah alms is a practice that will not be interrupted for a person even after death. And among the charities in question is waqf, especially if the waqf property is distributed to things needed by the community. In the distribution of waqf assets, optimal management is needed to distribute waqf assets properly to people in need.

Another evidence for the sunnah of waqf is also found in the words of Allah Ta'ala in Surah Ali-Imran verse 92 which reads:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

"You will never obtain (perfect) virtue until you give some of the wealth that you love. And whatever you give, Allah is All-Knowing.

This postulate reminds us that the way for Allah to give us perfect goodness is to give part of the wealth of what we love to others as a form of alms from our wealth and that includes giving alms to some of the wealth we love by expecting good rewards from Allah Almighty.

The history of the implementation of waqf in Indonesia was initially very simple, only a verbal pledge (statement) was made to the community without proper administration, so it is often found until now that waqf lands that do not have broad clarity, form, or land have been used by irresponsible people. (Mursyid 2023)

Developments related to waqf had improved in 1905, where during the Dutch East Indies government waqf land began to be regulated in a circular issued by the secretary of *the governor* on January 31, 1905. The content of the circular letter is an order to the Regent



to collect data related to Islamic houses of worship that stand on waqf land so as not to conflict with the interests of the government. (Suhadi 2002)

The implementation of waqf in Indonesia received more attention by the government 15 years after independence, precisely in 1960. In that year, Law No. 5 of 1960 concerning the Basic Regulations of Agrarian Principles was born. In the Law, discussions related to waqf can be found in articles 5, 14, and 49. These articles affirm that matters related to worship in agrarian law will receive due attention.

Until finally Law No. 41 of 2004 was born which regulates waqf in detail and renewables. The birth of the Law originated from a discourse related to cash waqf initiated by Prof. M. A. Mannan, who stated that cash waqf is a financial, financial and social banking instrument. (Islam and RI 2005)

The understanding of waqf in the community, which was initially only associated with the establishment of places of worship such as mosques or prayer rooms, now has various aspects that penetrate into efforts to utilize things that support productivity for the community at large. There are many aspects in supporting community productivity sourced from waqf, such as productive waqf for health, economic empowerment, and education. (Makhrus, Mukarromah, and Istianah 2021)

According to Jaih Mubarak, the meaning of productive waqf is the move from a professional waqf manager who aims to increase the benefits of waqf. Another meaning of productive waqf is as a process of managing waqf assets in producing goods or services to the maximum through minimal capital. (Kasdi 2015)

One of the efforts to support productivity for the community in the field of education is the establishment of educational institutions sourced from waqf funds. In improving educational services in the community, the role of waqf is certainly needed for the community. Many people who live below the poverty line are unable to receive education due to economic factors, therefore the existence of waqf programs in educational services is certainly needed to avoid social disparities in society and improve the quality of human resources. This is the wisdom of the sharia of waqf where waqf does not only focus on the relationship between humans and their gods but also related to the relationship between fellow humans in order to create the welfare of the people. (Siswoyo et al. 2019)

One of the implementations of waqf for education is the realization of free education for the underprivileged. And one of the educational institutions that has implemented this

program is the construction of a free school called SMK IT Smart Informatika. The school was built on the basis of the need for free education for the underprivileged.

SMK IT Smart Informatika was established in 2009 which is managed by the Solo Peduli Foundation which is intended for orphans and poor people or people below the poverty line. The purpose of the establishment of this school is to produce future generations who are high achievers and able to compete with the outside world even though they are from the underprivileged community. (Makhrus, Mukarromah, and Istianah 2021)

SMK IT Smart Informatika Surakarta is located on Jalan Pleret Number 9, Sumber Village, Banjarsari District, Surakarta City. The school is a school that stands with waqf land covering an area of 2,990 square meters. At first the school stood on leased land, then over time the land could be completely freed with the help of waqf assets from the community. In the process of building and developing its facilities, SMK IT Smart Informatika obtained funds sourced from two types of waqf, namely cash waqf given directly by the waqf, and productive waqf derived from the profits of waqf agricultural land management and health clinics managed by the Solo Peduli foundation. (Aminuddin 2013)

The purpose of the establishment of SMK IT Smart Informatika is to realize concern for the poor and poor in terms of education, as well as to provide facilities for waqf so that the funds that have been waqf can be useful for the needs of the people. Another purpose of the existence of these educational institutions is to empower the community, and to empower the poor and the poor in order to realize social welfare and help solve the snares of poverty with the knowledge obtained from what is learned in the school. The selection of vocational high schools or vocational schools aims to enable students to acquire the skills they are interested in and can be trained in working in accordance with the demands of work in the outside world.

The Solo Peduli Ummat Foundation or better known as Solo Peduli was established on October 11, 1999 against the background of the monetary crisis that hit in 1998 which resulted in a slump in the economy which had an impact on the increasing number of poverty in the community. Then in 2016, Solopeduli was officially recognized as an Amil Zakat Institution (LAZ) at the Central Java provincial level in accordance with the Decree of the Directorate General of Islamic Teaching Number 271 of the Ministry of Religion of the Republic of Indonesia. Solopeduli is committed to improving community services to care for the poor. This concern is conveyed through the ZISWAF Foundation (Zakat, Infaq,

Sadaqah, Waqf) and other halal and legal social funds from individuals as well as from companies or organizations that are oriented to the needs of the community.(Anindita 2017)

According to Azhar et al. (2020), productive waqf can be useful in establishing sustainable educational institutions, as well as providing the necessary facilities and resources to support the teaching and learning process. This emphasizes the importance of transparency and accountability in waqf management so that the community can contribute optimally. This research shows that with the right approach, waqf not only functions as a source of funds, but also as a driver of innovation in the field of education.(Furqon 2012)

Based on the data above, the author is interested in researching the management of waqf in the field of education at SMK IT Smart Informatika Surakarta. This research is expected to provide an in-depth understanding of how the efforts and impacts of waqf management in the field of education can be a solution in supporting the development of education in Indonesia which can be reflected in education at SMK IT Smart Informatika Surakarta. In addition, the results of this study are expected to be a source of reference for other educational institutions to adopt the model of waqf management to be more effective and efficient, in order to obtain a higher quality of education.

## **RESEARCH METHODS**

This field research uses qualitative methods. This method is used to provide explanations of complex phenomena that require detailed data collection. Phenomenological methods are used to understand the experiences of research subjects (phenomena, behaviors, perceptions, motivations, etc.) in the context of a particular language and natural environment. This study uses a qualitative approach to learn more about the phenomenon related to the management of productive waqf for education at the Solo Peduli Ummat Foundation. By using this method, the researcher can find out thoroughly about the practices, problems, difficulties, and solutions faced by managers in managing the educational waqf program at SMK IT Smart Informatika Surakarta.

The data obtained from this study is sourced from primary and secondary data. Primary data from this study was obtained from the results of interviews with waqf administrators at the Solo Peduli Ummat Foundation on education at SMK IT Smart Informatika Surakarta. Meanwhile, secondary data was obtained from various references related to themes such as related sites and journals from previous research that were relevant to the discussion.

## RESULTS AND DISCUSSION

### 1. Efforts to manage waqf assets in the field of education

The development of waqf in Indonesia has undergone significant changes, many social institutions are aggressive in campaigning for the distribution of waqf in various fields. Starting from the field of places of worship (mosques/musallas), education (schools/Islamic boarding schools), health (clinics/hospitals), and so on. In the field of education, the government is committed to supporting the progress of education by building educational institutions that stand on waqf land. As stated in Law Number 41 of 2004 concerning Waqf and its implementing regulations, it is an important legal basis in its use in the field of education. (Saprida, Raya, and Umari 2022)

Based on the results of research that has been conducted at the Solo Peduli Ummat Foundation, it is known that the management of productive waqf in Solo Peduli for education at SMK IT Smart Informatika has been running optimally and systematically. This is based on information obtained from the informant Mr. Harjito as the Director of Waqf Utilization Products of Solo Peduli who said that Solo Peduli has been committed to the waqf program in the field of education and has had its own management structure in the field of waqf consisting of chairman, nadhir, secretary, and treasurer. The management of waqf for education in Solo Peduli is carried out under the supervision and guidance of the Indonesian Waqf Board.

The development of SMK IT Smart Informatics has experienced an improvement in infrastructure and the quality of education, which can be seen from the school building which has now developed well and the school land covering an area of 2,990 square meters which was originally in the form of leased land has now turned into full waqf land. Coupled with the completion of the construction of the Joglo Kembar mosque which is located in one school area which can be used for students and the general public.

In obtaining waqf assets, Solo Peduli is committed to continuing to be active in inviting various circles of the community to set aside their assets for waqf in education at SMK IT Smart Informatika. There are various kinds of efforts made by the Solo Peduli Ummat foundation, including spreading invitation posts on social media, visiting companies or business owners to give waqf, and by making public events in which there is an invitation to waqf.

Solo Peduli has a commitment to be transparent in managing and distributing waqf assets from waqfs. The strategy carried out by Solo Peduli so that the waqf holders know the development of the assets that have been waqf is to provide reports related to the development of waqf that is managed continuously and provide the latest information on social media. In addition, Solo Peduli always provides reports related to the management of waqf to the Indonesian Waqf Board which is carried out from nadhir connected to the Solo Peduli institution.(Aminuddin 2013)

In its utilization, the waqf assets obtained from the waqf are used for the construction of school buildings, dormitories, and the fulfillment of educational support facilities and infrastructure at SMK IT Smart Informatika. Currently, the buildings that have been established include: two main school buildings, sports fields, and the Joglo Kembar mosque which stands in front of the school yard which is in one school complex, as well as a dormitory complex located in different locations.

SMK IT Smart Informatika until this year has 180 students with full scholarships. The criteria for students to get a scholarship must be a person who is entitled to receive a scholarship, as expressed by Mr. Harjito, which among the criteria are: (1) have academic intelligence, (2) have good reading and memorization of the Qur'an, (3) have a good personality and high enthusiasm for learning, and (4) are not students of parents who like to smoke, Because we often find many poor people but are still addicted to smoking, which of course is just a waste of money and is not a criterion for parents who are responsible for the needs of their families.

In the process of accepting students who are included in the poor and poor categories, it is necessary to have a strict selection process related to the financial situation of their families. The selection process carried out by the Solo Peduli institution in obtaining the criteria for eligible students is through interviews with the families of the prospective students and by conducting a survey to the place of residence of the prospective students, so that it can be known transparently for prospective students who meet the criteria for receiving educational scholarships.

In the implementation of teaching and learning activities in schools, school operational funds are used for teacher and employee salaries, food money during residence in the dormitory, monthly electricity operational costs and so on are obtained

from zakat, infaq and alms funds distributed through the Solo Peduli institution. So that the use of zakat, infaq and alms assets from the community can be channeled appropriately to educational institutions at SMK IT Smart Informatika.

On the other hand, the process of managing waqf assets in the field of education certainly has its own challenges, especially for ordinary people who do not know that waqf assets can also be distributed in the field of education. As stated by the foundation management, there is a lack of literacy for the community in waqf in the field of education and still considers that the distribution of waqf is only related to the construction of places of worship. Another challenge faced by Solo Peduli is the difficulty of arousing public awareness to waqf, on the other hand, the volatile economic factors of the community also affect the attractiveness of the community in waqf. (Saprida, Raya, and Umari 2022)

## 2. The Impact of Waqf Asset Management in the Field of Education

The management of waqf assets has various good impacts for waqf asset distributors, the surrounding community, and especially for students who come from underprivileged families who of course urgently need quality education. The following is a description of the impact of waqf asset management in the field of education that has been running at SMK IT Smart Informatika Surakarta:

### 1. Impact on waqf property distributors

The management of waqf assets carried out by the Solo Peduli institution has a good impact on waqf distributors. Waqf distributors will get jariyah rewards from the assets that have been waqf for education, especially in which Islamic religious education is taught properly and in accordance with the teachings spoken by the Prophet *Shalallahu Alaibi Wa Sallam*.

The person who helps in seeking knowledge will obtain great priority in the sight of Allah Ta'ala. As it is said to be a person who shows the way of goodness through the field of education. The virtue obtained for a person who shows kindness is that he will get the same reward from the person who seeks knowledge without reducing the reward of the seeker of knowledge. As the Messenger of Allah (ﷺ and ٢٠١٢ محمد) (*peace and blessings of Allaah be upon him*) said:

مَنْ دَعَا إِلَى هُدًى كَانَ لَهُ مِنَ الْأَجْرِ مِثْلُ أُجُورِ مَنْ تَبِعَهُ لَا يَنْقُصُ ذَلِكَ مِنْ أُجُورِهِمْ شَيْئًا وَمَنْ دَعَا إِلَى ضَلَالَةٍ كَانَ عَلَيْهِ مِنَ الْإِثْمِ مِثْلُ آثَامِ مَنْ تَبِعَهُ لَا يَنْقُصُ ذَلِكَ مِنْ آثَامِهِمْ شَيْئًا

"Whoever calls for a guide, for him the reward is like the reward of those who follow it, it does not diminish their reward in the least, and whoever calls for a mistake will be like the sins that follow it, it does not diminish their sins in the least." (Hadith Narrated by Muslim)

## 2. Impact on the surrounding community

The establishment of the free school of SMK IT Smart Informatika Surakarta has a positive impact on the surrounding community. Among the positive impacts of the school is the existence of new jobs for the surrounding community such as security officers, kitchen managers for students, cleaners, and so on. This certainly has a positive impact on economic growth for the community.

Another impact of the existence of this waqf school is that the community can be helped by the existence of quality educational institutions so that it can improve the quality of human resources, which for the poor and poor people it is certainly difficult to obtain. Thus, the poverty rate can also be reduced with graduates who are successful in receiving education at the school.

Another positive impact felt for the surrounding community is the existence of the Joglo Kembar mosque which is open for 24 hours in the SMK IT Smart Informatika complex. The existence of the mosque provides convenience for the surrounding community to worship and the existence of facilities available as a place to rest or just a stopover for workers and online motorcycle taxi drivers. In the future, the Joglo Kembar mosque will be filled with various community activities that are beneficial for the surrounding community. In addition, there is a plan to use a mosque that can be used as a wedding venue that can help the surrounding community.

## 3. Impact on students

Education is one of the main keys to achieving success in the world and salvation in the world. There are many people who live below the poverty line who want to get a decent and quality education. Therefore, with the establishment of a free school built with waqf assets, it can certainly provide quality education for students and get educational support facilities that are not inferior to other schools. With this, of course, it is very beneficial for the poor and poor people.

Another positive impact for students as conveyed by Mr. Harjito is to hone skills for students to be ready to face the world of work and be able to enter society and

become figures in society. As the alumni of the school have been successful in doing business, working in companies, and becoming figures in the community. The alumni are also expected to become ambassadors in concern and are expected to be directly involved in helping in campaigning for waqf for free education programs.

## **CONCLUSION**

The efforts made by the Solo Peduli Ummat Foundation in the management of waqf assets in the field of education to obtain waqf assets are by inviting various circles of the community to actively do waqf in the field of education by spreading posts through social media, visiting companies or business owners to do waqf, holding social events related to waqf invitations, and conducting campaigns in social activities. Meanwhile, the strategy to gain the trust of waqf holders is to provide reports related to the development of the continuous use of waqf assets and provide the latest information on social media and the foundation's official website.

The use of waqf assets that have been managed at SMK IT Smart Informatika to date include: the acquisition of waqf land covering an area of 2,990 square meters built on which a complex of classroom buildings, sports fields, mosques, and dormitory buildings located in different locations.

The impact of the existence of waqf in the field of education at SMK IT Smart Informatika Surakarta includes: (a) the impact of waqf: getting the reward of jariyah from the knowledge practiced by the students; (b) impact on society: creating jobs, improving the quality of human resources, reducing poverty; (c) Impact on students: obtaining proper and quality education for free, honing skills to be ready for the world of work, and obtaining good educational support facilities.



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## THE IMPACT OF PRODUCER MARKETING STRATEGIES THROUGH E-COMMERCE ON UMKM IN THE PERSPECTIVE OF SHARIA ECONOMIC LAW

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### ABSTRACT

The rise of e-commerce has revolutionized transaction patterns and marketing strategies in Indonesia. Its ease of access, extensive promotions, and operational efficiency provide significant advantages for large-scale producers in reaching consumers. However, this advancement poses serious challenges for Usaha Mikro, Kecil, dan Menengah (UMKM) that still operate traditionally. The imbalance in competitiveness, declining customer visits to offline markets, and threats to local economic sustainability emerge as key issues. This study adopts a qualitative approach through a literature review to analyze the impact of large producers' marketing strategies via e-commerce from the perspective of Islamic economic law. Findings indicate that Sharia principles—such as justice, transparency, and social responsibility—demand ethical standards in competition, ensuring that digital marketing practices do not marginalize MSMEs. Therefore, regulatory and educational interventions from the government are necessary to promote inclusive digital transformation while maintaining economic balance through the application of Islamic values in online business practices.

**Keywords:** *e-commerce, UMKM, marketing strategy, Islamic economic law, digital disparity*

### ABSTRAK:

Perkembangan e-commerce telah merevolusi pola transaksi dan strategi pemasaran di Indonesia. Kemudahan akses, promosi besar-besaran, dan efisiensi operasional menjadi keunggulan bagi produsen besar dalam menjangkau konsumen. Namun, kemajuan ini menimbulkan tantangan signifikan bagi UMKM yang masih beroperasi secara tradisional. Ketimpangan daya saing, penurunan pengunjung pasar offline, dan ancaman terhadap keberlanjutan ekonomi lokal menjadi sorotan utama. Penelitian ini menggunakan pendekatan kualitatif berbasis studi literatur untuk menganalisis dampak strategi pemasaran produsen besar melalui e-commerce dari perspektif hukum ekonomi syariah. Hasil kajian menunjukkan bahwa prinsip-prinsip syariah seperti keadilan, transparansi, dan tanggung jawab sosial menuntut adanya etika dalam persaingan, sehingga pemasaran digital tidak mengorbankan keberlangsungan UMKM. Oleh karena itu, perlu adanya intervensi regulatif dan edukatif dari pemerintah untuk mendorong digitalisasi inklusif, sekaligus menjaga keseimbangan ekonomi melalui penerapan nilai-nilai syariah dalam praktik bisnis daring.

**Kata Kunci:** *e-commerce, UMKM, strategi pemasaran, hukum ekonomi syariah, ketimpangan digital*

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## INTRODUCTION

The rapid progress of the times has triggered the development of various aspects of human life, one of which is information technology. The development of information technology encourages the realization of new spaces, one of which is in cross-place transactions related to products and services. (Wardah, 2024) Now customers are faced with various options to choose the goods and services provided. This situation then benefits customers because their needs can be met by a wide selection of goods and services. The proper and correct use of technology and information makes distance no longer a barrier in doing business. (Ardikha Putri & Ruhaeni, 2022) This economic opportunity is also supported by Law Number 11 of 2008 concerning Information and Electronic Transactions which states that trade and the development of the national economy that utilizes information technology have an important role in ensuring the welfare of the community. With the rapid advancement of technology and information, the evolving business classification is commerce, commonly referred to as virtual commerce or the current generation calls it with *E-commerce*. (Zahra Afina Mahran, 2023)

Since the presence of *E-commerce* in Indonesia, economic activities are faced with a new lifestyle in society. Now consumers prefer to conduct product surveys before online purchases rather than coming directly to MSME-owned stores in the market. (Nur'aeni et al., 2024) Addition of more complete features to the *E-commerce* helps make it easier for users to make a purchase or just observe the product they are about to buy. This convenience is further supported by the birth of the payment feature on *E-commerce* namely the payment feature *Cash On Delivery* (COD), this feature is one of the innovations offered in payment methods where buyers can make payments directly to the courier after the order is received. (Rokfa et al., 2022) Features on *E-commerce* which makes it easier for buyers, making the rise of manufacturers who switch from traditional buying and selling to digital buying and selling or *E-commerce*. Therefore, *E-commerce* It is a solution in overcoming various limitations in transactions in the domestic and international markets.

However, this positive side is also in contrast to the sale of Usaha Mikro Kecil dan Menengah (UMKM) that still use a direct buying and selling system (*Offline*). This is in line with research (Nur'aeni et al., 2024) that the decline in the number of customers in the traditional market occurred because there was sales competition in the *E-commerce* which provides consumers with huge discount offers, which has an impact on merchant sales in traditional markets. The cheaper the value of a product sold on *E-commerce* making customers

who are interested in shopping at the traditional market. Not only UMKM are affected by this, even parking attendants also experience a decrease in income, due to the lack of customers who come, this situation also occurs in the largest textile market in Southeast Asia, namely Tanah Abang Market. (Nur'aeni et al., 2024)

Launching data from the Association *E-commerce* Indonesia (idEA), (April, 2024) In 2024, there will be 25.4 million people who use *E-commerce* as a place to market its products. The rise of producer transformation using *E-commerce* exerts a significant influence on current economic activities. Usage growth *E-commerce* in Indonesia not only provides new opportunities for producers, but also creates serious challenges for Usaha Mikro Kecil dan Menengah (UMKM) producers who are still running their businesses *Offline* (Offline). Based on a press release issued by the Coordinating Ministry for Economic Affairs of the Republic of Indonesia, in 2024 UMKM will be one of the contributors to the national Gross Domestic Product (GDP) of up to 60.51%, and are also able to provide employment to 97% of the entire workforce in Indonesia. On the other hand, UMKM that do not take advantage of *E-commerce* as a platform to run its business is at risk of losing its market share, because large manufacturers that are involved in *E-commerce* Having more resources is able to implement more aggressive and innovative marketing strategies, which can result in inequality in market competition.

Based on the results of observations through previous research, (Nur'aeni et al., 2024) many UMKM are still using direct buying and selling (*Offline*) are concerned about the development and rapid use of services *E-commerce* which attracts many customers to switch to online trading. UMKM do not only compete with UMKM that transform in *e-commerce*, but also compete with large manufacturers who directly sell their products without going through a third party (Direct Distribution). This is also supported by the large number of large manufacturers that provide big discounts to attract users *E-commerce* buy the product. This phenomenon has a significant impact on UMKM (*Offline*), so that UMKM are increasingly marginalized if there is no solution to this phenomenon. In this context, it is important to explore the impact of such marketing strategies, especially from the perspective or point of view of Sharia economic law.

In marketing, Sharia principles emphasize to adjust marketing practices according to Islamic marketing ethics, this is a substitute/alternative to secular marketing. (Siregar, 2016) In marketing, justice is one thing that is closely related to *Fair Play* in transactions. To ensure that transactions take place in a fair and principled manner *Fair Play* In a trade contract, both

parties between the seller and the buyer must provide each other with accurate information regarding the product. The Prophet Muhammad encouraged all parties involved in trade to mention and explain every aspect of the trade contract to avoid misunderstandings that could result in lawsuits. (Siregar, 2016) Thus, the emphasis on transparency and clarity in contracts is expected to prevent potential conflicts and protect the rights of all parties involved.

Sharia principles as the main pillar in Sharia economic law emphasize the need for balance between parties in transactions, so that no party is harmed. The inequality of competition between large producers and UMKM can be considered as a violation of this justice. Islam views that safeguarding the interests of the community rather than personal interests is very important to do. Marketing strategies should not be viewed narrowly, namely only prioritizing the company's profits (profits). Producers (companies) that only focus on profiting in general will cause problems in the future, because the marketing strategies carried out by producers often serve the interests of the community. (Siregar, 2016)

As the results of previous research by (Nur'aeni et al., 2024) that the number of visitors at the Traditional Market is decreasing due to the presence of *E-commerce*, as a result, traders' income is declining due to low sales. The cheapness of the price of a product in *E-commerce* causing many consumers to not be interested in shopping at the traditional market. According to this study, *E-commerce* In general, it is not contrary to Islamic law if it fulfills Islamic law. This is also in line with the results of the research (Lindiawatie et al., 2024) which revealed that during 2017 to 2020 there was a tendency to increase online sales. The results of the study show that there is a dynamic of consumer behavior in shopping that is more online than shopping in person (Offline). Thus, in order to bring forth novelty (*Novelty*) in this study and contrasting with previous research, therefore the researcher varied this study by focusing on the phenomenon of marketing through *E-commerce* and its impact on UMKM, as well as Sharia principles assess the phenomenon. Looking at this background, this article can emphasize an in-depth interpretation of how sharia principles in assessing the phenomenon of large producers marketing directly to consumers through the platform *E-commerce*.

## RESEARCH METHODS

This research uses a qualitative approach with a literature study method to analyze the impact of marketing strategies implemented by large manufacturers through *e-commerce* with a focus on the perspective of sharia economic law. Data collection is carried out through

literature studies by collecting journal articles, books, and other documents relevant to marketing strategies through *e-commerce* and its impact on UMKM , as well as the principles of Sharia economic law. With literature studies, research does not rely on specific populations or samples, but instead focuses on data on previous research to provide new insights and perspectives. Article literature is a source of data and a reference for research. Literature studies are carried out by analyzing the results of previous research related to this research, and conducting studies on related events that have been published by various official media. The collected data was analyzed using descriptive analysis by providing a clear and systematic picture of the findings from the existing literature. Descriptive analysis is used to relate the findings to the principles of Sharia economic law, thus providing a broader perspective in the context of marketing strategies through *e-commerce*.

## **RESULTS AND DISCUSSION**

### **Producer Marketing Strategy Through *E-Commerce***

On modern marketing *E-commerce* is one of the important pillars for producers, both large companies and Usaha Mikro Kecil dan Menengah (UMKM). Effective and efficient marketing strategy through the platform *E-commerce* Not only increasing market reach but also strengthening competitiveness in an increasingly competitive industry. Term *E-commerce* Defined as buying and selling activities that are carried out indirectly (online) using electronic media and the internet, the buying and selling transactions are carried out entirely online, both from product orders to product payments. (Zahra Afina Mahran, 2023) Technological advances have led to the presence of various platforms that support *E-commerce* to reach a wider market. Through websites, social media, and mobile apps, manufacturers can access consumers not only in the domestic market, but also globally which has an impact on the potential for a significant increase in sales.

The existence of the business marketing sector through *E-commerce* is a necessity for every producer who wants their business to grow, this is because marketing through *E-commerce* has many advantages. One of the impacts felt is that users *E-commerce* There is no need to go to a store or market to buy the desired needs, while for manufacturers, all buying and selling transactions can still be done for 24 hours. When viewed from a financial perspective, manufacturers will save more on promotion costs, because they do not involve more human resources (HR) to operate *E-commerce*, while for consumers, they can save on

spending to travel to stores or markets that are far away. This is then looked at by large manufacturers to expand the market reach to a wider area. (Zahra Afina Mahran, 2023)

Marketing is classified into several types, including: B2B (*Business to Business*), there is a transaction between business people and companies; B2C (*Business to Consumer*), there is direct involvement of entrepreneurs or producers in buying and selling activities with end consumers. This type of transaction is a model that is growing rapidly today, this is the theory of *e-commerce* in buying and selling activities; and C2C (*Consumer to Consumer*), occurs when consumers carry out sales activities of goods or services directly to other consumers.

Marketing activities through *E-commerce* must provide a unique side to consumers, so that consumers can be interested in buying or using the product. Some things that manufacturers need to pay attention to in marketing through *E-commerce* that is:

- Special discounts and promotions, through this strategy manufacturers can attract the attention of consumers and can encourage the purchase of products. As research (Sari & Nuryadin, 2024) which shows that there is a 40% increase in sales for manufacturers who apply this strategy in sales.
- The use of social media, the use of social media such as Instagram and Facebook increases the opportunities for producers to interact directly with consumers. This then encourages communication between sellers and buyers, so that they can build closer relationships with consumers.
- Optimizing SEO (*Search Engine Optimization*), SEO or search engine optimization can increase product visibility on *e-commerce*. By using keywords that are relevant to the product, manufacturers can attract more visitors to their online toko, which has an impact on increasing sales potential.
- The development of digital branding, products that have a unique and strong branding can certainly help consumers recognize and distinguish their products from competitors. On the other hand, strong branding not only attracts consumer interest, but also creates customer loyalty.
- Location-Based Marketing (*Geotargeting*), manufacturers can target consumers according to the desired geographical location. This strategy is very effective for attracting local customers, as product promotion can adapt to the needs of the local market.

Market segmentation and effective and innovative marketing by manufacturers can increase consumer interest in products. Manufacturers can also integrate online sales with

the shopping experience with physical stores, e.g. options *click and collect* allows consumers to order products online and pick them up in stores. A unique shopping experience provides additional convenience for consumers, a pleasant shopping experience can provide additional convenience, thus increasing customer loyalty to the product. By using the right marketing strategy in *E-commerce*, manufacturers can benefit from *E-commerce* to strengthen their position in the market. The success of the marketing strategy depends on the ability of producers to adapt to the dynamics of consumer needs and the ever-evolving market.

### **The Impact of Marketing Through *E-Commerce* for UMKM**

Marketing through *E-commerce* has brought significant changes to Usaha Mikro Kecil dan Menengah (UMKM) in Indonesia. In the increasingly growing digital era, UMKM have new opportunities and challenges that arise due to the adoption of this technology. Research results (Ayem et al., 2024) shows that the significance of *E-commerce* UMKM income is very large. Through *E-commerce*, UMKM can expand their market reach and also contribute to increasing economic growth. On the other hand, the positive impact of *E-commerce* is an increase in operational efficiency. The online buying and selling process allows transactions to take place faster and more efficiently, thus reducing the time and costs required in marketing. Use *E-commerce* can help UMKM to display sales performance and adjust their marketing in real time, thereby increasing marketing effectiveness. (Ayem et al., 2024) This is also in line with research (Rezkie, 2024) that utilize digital platforms through *E-commerce* can help UMKM in selling their products, because previously several problems were encountered such as difficulty in finding a place to sell, difficulty in reaching the market, and lack of knowledge related to efficient and effective marketing strategies.

While in the research (Wahyuni et al., 2024) mentions that the use of *E-commerce* does not have a significant impact on their income, factors *Gaptek* (Technology Stuttering) both in knowledge and skills in operating *E-commerce* making it difficult for UMKM to develop their businesses. *Gaptek* hinder UMKM from utilizing technology and electronic platforms to the fullest, sometimes distrust of technology also adds to the difficulty of UMKM in using digital platforms. (Rezkie, 2024) In addition, the downstream of new technologies requires considerable costs, these costs can include the purchase of hardware, software, installation costs, and training of employees using the technology. This considerable cost then becomes a challenge for UMKM in applying technology in their business activities.



On the other hand, data security and privacy threats have also increased due to the use of digital platforms such as *E-commerce* which is also increasing. Business actors such as UMKM who lack the expertise to protect data from various cyber threats, such as website hacking, malware, and identity theft. Data security within the platform *E-commerce* It is an inseparable heart, because secure data can protect business and customer information, so that it can provide a sense of security and comfort for customers. Consumers will not hesitate to make online transactions if an UMKM ensures the system *E-commerce* Secure and able to protect customer data from possible leaks. This not only protects consumer and business data, but also builds trust in the brand (Loyalty).

This negative impact also arises when many business actors switch to *E-commerce*. UMKM that sell on *E-commerce* tend to provide large discounts on their products. (Sari & Nuryadin, 2024) This often forces UMKM that are still selling offline (Tradisional) to lower the price of their products in order to compete. This of course has a negative impact on business actors who still use a direct or face-to-face buying and selling system. The lower the price of the product sold on *E-commerce* attract consumers to shop online. (Nur'aeni et al., 2024) This phenomenon then has an impact on the decrease in the number of visitors who shop directly at offline stores, so that economic activities by UMKM (Offline) tend to be sluggish and result in a decrease in the number of UMKM opinions.

Some impacts *E-commerce* for UMKM , it shows that there is a disparity in the impact of use *E-commerce* which is felt by UMKM , because they are influenced by various factors. Positive impacts can be felt for UMKM that have switched to using *E-commerce* as a medium in selling their products. However, the negative impact is felt by UMKM that still use traditional marketing methods. This inequality is a challenge for UMKM (Offline) to be able to develop their businesses in the era of rapid technological development. The role of the Government as a regulator in providing solutions for UMKM is very important, considering that government policies are needed so that business competition continues to run healthy and economic activities can encourage the realization of welfare for all people.

### **Sharia Principles Regarding Marketing Strategy Through *E-Commerce***

In the context of marketing through e-commerce, sharia principles play an important role in determining the legitimacy and ethics of transactions carried out. Islam regulates various aspects of muamalah (social and economic interaction) to ensure that all transactions take place with the principles of justice, transparency, and compliance with sharia law.

Therefore, understanding these principles is very important for UMKM actors who want to be active in the e-commerce space. One of the fundamental principles in sharia buying and selling transactions is the existence of a clear contract between the seller and the buyer. In e-commerce, even though transactions are carried out virtually, the contract is still valid as long as both parties agree to the terms of the transaction consciously and without coercion. The checkout process in an e-commerce platform can be considered a form of contract, where the buyer agrees to purchase the item after getting enough information and making a payment.

The principle of transparency is strongly emphasized in sharia. The seller is obliged to provide complete and accurate information about the product, including prices, specifications, and return policy. This aims to prevent fraud and ensure buyers have a clear understanding of the item to be purchased. In the context of e-commerce, this transparency becomes more complex because the interaction is not done directly. The strict prohibition in Islam is *riba* (interest or excess profit). Therefore, payment systems in e-commerce must comply with sharia rules by ensuring that all transactions are free from usury. (Latifah et al., 2024) The use of payment methods based on Islamic banks or other halal alternatives is important to ensure compliance with this principle.

*Gharar*, or uncertainty, is a factor that must be avoided in sharia buying and selling transactions. In e-commerce, potential uncertainty can arise when buyers only see product images or descriptions without checking directly. To avoid *gharar*, sellers should provide accurate product descriptions and provide a fair return policy if the product is not as promised. (Rahmawati & Elisa, 2024) Islam emphasizes the importance of ethics in business. Sellers operating on e-commerce platforms must adhere to Islamic business ethics, including not excessively raising prices or manipulating product reviews for personal gain. Such practices are contrary to the principles of justice and honesty as stipulated in the sharia.

The halal-haram principle is also very important in determining the products sold through e-commerce. The goods or services offered must be halal, both in terms of the substance and the acquisition process. UMKM actors need to ensure that all their products meet halal criteria so that they can be accepted by Muslim consumers. Justice is one of the main principles in Islamic muama. Pricing must be done fairly without monopoly or fraudulent practices. In the context of e-commerce, UMKM must set reasonable and transparent prices so as not to harm consumers or themselves.

The principle of social responsibility is also part of sharia business ethics. UMKM in the e-commerce sector are expected to pay attention to the social impact of their business, such as not hoarding goods needed by the community and contributing to the welfare of the community. This reflects their commitment to the social values embraced in Islam. A fatwa from the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI) provides guidance on e-commerce practices in accordance with sharia. The fatwa emphasizes that online buying and selling transactions are allowed as long as they meet the conditions of buying and selling set in Islam, such as the clarity of *ijab* and *qabul* and compliance with sharia law. (Latifah et al., 2024)

For UMKM actors, understanding sharia principles in marketing through e-commerce is not only important for legal compliance, but also for building reputation and trust among Muslim consumers. By consistently applying these principles, UMKM can increase their competitiveness in the digital market while maintaining business integrity in accordance with Islamic teachings. (Rahmawati & Elisa, 2024) Overall, the application of sharia principles in marketing strategies through e-commerce provides a clear framework for UMKM actors to operate ethically and responsibly. By following these guidelines, UMKM can not only improve their business performance but also contribute to the development of sustainable economy in accordance with Islamic values.

### **Recommendations by the Government for UMKM**

The Indonesian government is aware of the importance of Usaha Mikro Kecil dan Menengah (UMKM) in the national economy, which contributes about 61.97% to the Gross Domestic Product (GDP) and absorbs nearly 96.9% of the workforce. (Lasmi, 2023) Therefore, the government has developed various policies and programs aimed at empowering UMKM to compete better and adapt quickly to market changes. In this context, a number of recommendations have been compiled that cover important interrelated aspects. One of the main recommendations is the development of adequate infrastructure to support UMKM operations. Good infrastructure, including road access, internet network, and logistics facilities, is essential to improve operational efficiency. With adequate infrastructure, UMKM can expand their market reach and reduce distribution costs, thereby increasing their competitiveness in the market.

The government also highlighted the importance of financing programs that are more accessible to UMKM. Although the People's Business Credit (KUR) has provided

significant support, there are still many UMKM who have difficulty obtaining formal financing. Therefore, the expansion of the KUR program and the introduction of alternative financing such as Ultra Micro are crucial to ensure that all levels of UMKM can obtain the necessary capital for their business growth. Digitalization is the main focus in the government's recommendations. With the increasing use of digital technology in business transactions, the government encourages UMKM to transform to digital platforms. Program Gerakan Nasional Bangga Buatan Indonesia (Gernas BBI) program is one of the initiatives to help UMKM "on board" to digital platforms, which is expected to increase productivity and significantly expand market access. (Lasmi, 2023)

Improving training and human resource development is also an important concern. Many business actors still have limitations in managerial knowledge and skills. Therefore, the government needs to provide a comprehensive training program to improve the skills of UMKM actors in managing their businesses more effectively. In addition, complicated regulations are often an obstacle to the development of UMKM. The government's recommendations include simplifying the licensing process and eliminating regulatory overlap between the central and regional governments. With the Job Creation Law, the government hopes to create a better business climate for UMKM by providing ease of licensing and legal protection.

Support for innovation and creativity among UMKM is also very important. Product and service innovation is key to competing in the global market. Therefore, the government needs to provide incentives for UMKM to innovate and facilitate collaboration between business actors and research institutions to create new products that suit market needs. Increasing market access through export activities is also part of the recommendation. The government encourages UMKM to explore international markets by providing information on export opportunities as well as technical assistance to meet international standards. Programs such as the ASEAN Online Sale Day (AOSD) can be used by UMKM to introduce their products to foreign markets.

Strengthening cooperation networks between business actors is also an important recommendation. Through this collaboration, UMKM can share information and resources, as well as experience in facing business challenges. The formation of associations or business communities can help strengthen the bargaining position of UMKM in the market. To ensure the effectiveness of empowerment programs for UMKM, the government needs to periodically monitor and evaluate all policies and programs implemented. With a good

monitoring system, the government can identify emerging problems and adjust strategies so that empowerment programs run as expected.

Finally, a sustainable commitment from the government is needed to support the empowerment of UMKM in the long term. The government should continue to invest in initiatives that support the growth of the sector and ensure that these policies can be effectively implemented in all regions of Indonesia. (Lasmi, 2023) Overall, the government's recommendations for UMKM cover various aspects, ranging from infrastructure development to strengthening cooperation networks between business actors. By implementing these recommendations comprehensively, it is hoped that UMKM in Indonesia can grow stronger and contribute more to the national economy, as well as create new jobs for the community.

## CONCLUSION

The above phenomenon shows that the implementation of effective marketing strategies in e-commerce, taking into account sharia principles and support from the government, is very important for the development of UMKM (Usaha Mikro, Kecil, dan Menengah) in Indonesia. Sharia principles, such as justice, transparency, and the prohibition of usury, provide an ethical foundation that can enhance consumer trust and business reputation. Meanwhile, government recommendations, including infrastructure development, better access to financing, and digitalization programs, aim to empower UMKM to adapt to market changes and increase competitiveness. Thus, the combination of the right marketing strategy, compliance with sharia principles, and public policy support is expected to strengthen the contribution of UMKM to the national economy and create wider jobs.

The development of e-commerce offers significant opportunities for producers to expand their market reach efficiently. However, it also creates a substantial disparity for MSMEs that have not yet adapted to digital transformation. This disparity threatens not only their competitiveness but also the sustainability of local economies and the welfare of small-scale communities. From the perspective of Islamic economic law, marketing practices must adhere to the principles of justice, transparency, and social responsibility to prevent exploitation or imbalance among market actors. Large producers employing e-commerce strategies must consider the broader social and economic impacts of their business policies. Furthermore, government support through affirmative policies, digital literacy training, and

infrastructure development is essential to bridge the digital gap between large enterprises and MSMEs. Thus, applying Sharia principles in digital marketing practices not only ensures sustainable business ethics but also fosters an inclusive and equitable economic ecosystem.

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## REFORMULATION OF ADMINISTRATIVE SANCTIONS AGAINST PPAT FOR NEGLIGENCE IN REQUESTING PROOF OF BPHTB PAYMENT

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### ABSTRACT

This study aims to examine the reformulation of administrative sanctions imposed on the Land Deed Official (PPAT) who neglects to request proof of payment for the Land and Building Acquisition Duty (BPHTB) before signing the deed of land transfer. As a public official authorized to create authentic deeds, PPAT is responsible for ensuring the completeness of administrative requirements related to BPHTB. However, the administrative fine of IDR 10,000,000 for a PPAT's negligence is deemed disproportionate, considering the amount of honorarium received by the PPAT based on the applicable regulations. Based on a literature review and interviews with PPAT in Malang Regency, this study highlights the injustice of imposing sanctions on PPAT, which essentially only fulfills administrative obligations in the preparation of the deed of land transfer. Meanwhile, the obligation to pay BPHTB lies with the taxpayer. This study offers a reformulation of administrative sanctions that is fairer by considering the PPAT's authority, in line with the principles of legal justice. It is hoped that the findings of this study will contribute to the improvement of regulations related to taxation and land registration in Indonesia. Reformulation, Administrative Sanctions, PPAT, BPHTB.

**Keywords :** *Reformulation, Administrative Sanctions, PPAT, BPHTB.*

### ABSTRAK

Penelitian ini bertujuan untuk mengkaji reformulasi sanksi administratif yang dikenakan kepada Pejabat Pembuat Akta Tanah (PPAT) yang lalai dalam meminta bukti pembayaran Bea Perolehan Hak atas Tanah dan Bangunan (BPHTB) sebelum menandatangani akta peralihan hak atas tanah. Sebagai pejabat umum yang berwenang membuat akta otentik, PPAT bertanggung jawab untuk memastikan kelengkapan administrasi yang berkaitan dengan BPHTB. Namun, sanksi denda administratif sebesar Rp 10.000.000,00 bagi PPAT yang lalai dianggap tidak proporsional, mengingat besaran honorarium yang diterima oleh PPAT berdasarkan peraturan yang berlaku. Berdasarkan kajian literatur dan wawancara dengan PPAT di Kabupaten Malang, penelitian ini menyoroti ketidakadilan yang terjadi dengan pengenaan sanksi pada PPAT, yang pada dasarnya hanya menjalankan kewajiban administratif dalam pembuatan akta peralihan hak. Sementara kewajiban pembayaran BPHTB adalah tanggung jawab wajib pajak. Penelitian ini menawarkan reformulasi terhadap sanksi administratif yang lebih adil dengan mempertimbangkan kewenangan PPAT, agar sesuai dengan prinsip keadilan hukum. Diharapkan, hasil penelitian ini dapat memberikan kontribusi dalam perbaikan regulasi terkait perpajakan dan pendaftaran pertanahan di Indonesia.

**Kata Kunci:** *Reformulasi, Sanksi Administratif, PPAT, BPHTB.*

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## INTRODUCTION

The Land Deed Making Officer or PPAT (Pejabat Pembuat akta Tanah) is a “general official appointed and dismissed by the government, in this case the Minister of Land and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia who is given the authority to provide public services to the community who perform certain legal acts regarding land rights or property rights to apartment units” (Santoso, 2016) . Regarding the act of transferring land rights, the act of buying and selling is included in the collection of taxes in Indonesia. Taxes are “a mandatory commitment to the state owed by individuals or coercive elements in the view of regulations”, without obtaining direct rewards and being used for the needs of the state for the greatest benefit of individuals. To control the levy requires the regulation of levies, in particular: a set of guidelines that govern the relationship between public authorities as fee collectors and individuals as citizens. (Amalia, 2023)

According to R. Santoso Br, who quoted the opinion of Rochmat Someitro, he argues that taxes are “people's contributions to the state treasury under the Law (which can be enforced) without receiving any services (counter-achievements), which can be directly shown and which are used to pay for public expenses”. (Brotodihardjo, 1958) In tax collection, the government has a reciprocal legal relationship with taxpayers. The government has the right to collect taxes from taxpayers, while taxpayers are obliged to pay taxes to the government. From the above understanding, the term tax debt that must be paid or borne by taxpayers emerges. The definition of tax debt has been regulated in the laws and regulations in Indonesia, namely Law Number 7 of 2021 concerning the Harmonization of Tax Regulations”, explained in Article 1 number (10), providing a definition that tax payable is “tax that must be paid at a certain time, in the tax period, in the tax year or in part of the tax year in accordance with the provisions of tax laws and regulations”. (Effendi, 2010)

According to Bohari, the Tax Debt arises because of the law, where there is absolutely no alliance between the state and the people that underlies the debt. Rights and obligations between the state and the people are not the same. The state can force the debt to be paid if a taxpayer owes (tax) to the state (Bohari, 2018). Based on the authority of the collector, taxes are divided into two, namely central taxes and regional taxes. Central Tax/State Tax is “a tax collected by the state that is one of the sources of state revenue and is used to finance state spending”, which in the implementation of its collection is represented by the state-appointed state apparatus, namely the Directorate General of Taxes under the auspices of the Ministry of Finance of the Republic of Indonesia. Meanwhile,

regional taxes are “taxes collected by local governments (Provinces, Cities and Regencies) which are one of the sources of local original revenue (PAD) and are used to finance regional spending, in this case the local government is represented by the Regional Revenue Office”. (Stuttgart, 2015)

According to Muhammad Djafar Saidi, BPHTB imposes taxes on the acquisition of land and building rights, which means that the Land and Building Rights Acquisition Duty imposes a tax on legal acts or events that result in the acquisition of land and building rights (Saidi, 2018) . Based on Article 1 number (37) of Law Number 1 of 2022, BPHTB is a tax on the acquisition of land and/or building rights, which is the main requirement for the transfer of land rights. The process of transferring this rights is regulated through provisions issued by the National Land Agency, which requires documents such as an application form, a copy of identity, a deed of incorporation of a legal entity, an original certificate, a deed of sale and purchase from PPAT, and proof of BPHTB payment. Based on Article 18 Paragraph 2 Letters (a) and (b) of Government Regulation Number 35 of 2023, BPHTB is payable at the time of land and/or building acquisition, which is marked by a sale and purchase agreement or deed of exchange, grants, and others. Article 60 of the same Government Regulation stipulates that the land deed making official or notary is obliged to ask for proof of BPHTB payment before signing the deed and reporting the making of the deed to the Regional Head. Violations of this obligation will be subject to administrative sanctions in the form of a fine of IDR 10,000,000 for the first violation and IDR 1,000,000 for late reporting.

With regard to administrative sanctions, administrative sanctions essentially function as a tool of power that is public law that can be used by the government as a reaction to non-compliance with obligations contained in state administrative law norms. The purpose of the imposition of this administrative sanction is to realize legal order in order to protect the public interest. Based on the explanation above, PPAT is a public official who is authorized to make authentic deeds related to the transfer of land rights. According to Article 123 of Malang Regency Regional Regulation Number 7 of 2023, PPAT is required to ask for proof of BPHTB payment before signing the deed and reporting the creation of the agreement or deed to the Regent no later than the 10th of the following month. However, the imposition of administrative sanctions in the form of fines to PPAT is considered inappropriate, because PPAT's task is only to make a deed of transfer of land rights. The imposition of this administrative fine is considered detrimental to PPAT which only carries out its obligations in accordance with the provisions of government regulations. (Aprlita, 2021) (Tjandra, 2018)

The first research conducted with previous research is research conducted by I Nyoman Agung Mas Dinata, Putu Gede Seputra, Luh Putu Suryani, In this study focuses on the regulation of reporting duties on the acquisition of land and building rights and legal consequences if the Land Deed Making Officer does not report the duty on the acquisition of transfer of land rights, namely in the form of the imposition of administrative sanctions. Then what distinguishes from the research that the researcher wrote is that it focuses on the implications of the application of administrative sanctions in the form of fines for PPAT that neglects to ask for proof of BPHTB payment before the deed is signed. Then in the research conducted by Ayaturrohman Fijihadi, Nynda Fatmawati, In the previous research from Ayaturrohman Fijihadi and Nynda Fatmawati, focused on the role of PPAT in the status of BPHTB Tax payable which must be paid off when the rights have not been fully transferred and discussed related to interest and fines for notaries or PPAT and taxpayers while the difference with the research that the researcher wrote is that it focuses on the implications of the application of fines for PPAT. Yunita Midia Wahyuana, in her previous research, namely Yunita Midia Wahyuana, the focus of her research was to discuss the regulation of signing a sale and purchase deed according to the applicable law and the consequences of the law of PPAT signing the Sale and Purchase Deed before the payment of BPHTB, while this research focuses on the implications of the application of administrative sanctions with fines against PPAT who neglect to ask for proof of BPHTB payment before signing the Deed of Transfer of Rights soil. (Dinata Et Al., 2020)(Ayaturrohman São Paulo & Nynda Fatmawati, 2024) (Wahyuana, 2022)

Based on the problems mentioned above, this journal will discuss “Reformulation of Administrative Sanctions for PPAT Who Neglect to Ask for Proof of BPHTB Payment”.

Based on the description mentioned above, the problems to be studied are as follows:

1. What are the legal consequences if PPAT does not implement the provisions to request proof of BPHTB payment before signing the transfer of rights deed?
2. How is the reformulation of administrative sanctions for land deed making officials who neglect to ask for proof of payment of land and building rights acquisition duties?

## RESEARCH METHOD

The research to be used in this study is a normative legal approach. The normative legal research method is a legal research approach that focuses on the analysis of laws and

regulations and legal doctrines in order to gain an understanding of applicable legal principles. According to Satjipto Rahardjo's view, normative legal research is an effort to understand legal norms by investigating laws and regulations, court decisions, and existing legal doctrine concepts. Normative legal research can also be carried out by analyzing legal concepts, legal systems, and applicable legal principles. (Rahardjo, 2012)

### **Legal Implications of PPAT Negligence on BPHTB Payment Verification**

Article 23A of the 1945 Constitution stipulates that taxes and other mandatory levies for state needs must be regulated through law. This provision aims to ensure that the state cannot arbitrarily take a portion of the wealth of the people, even if the purpose is in the public interest. Tax revenue plays an important role in realizing community welfare, although it is not the only source of state revenue. In addition to taxes, the state also receives income from various sources, such as natural resource revenues, customs, levies, contributions, contributions, profits from state-owned enterprises (SOEs), and other sources of income. Law Number 23 of 2014 mandates local governments to prepare regional regulations (PERDA) related to taxes and levies, including BPHTB, as a legal basis to optimize regional revenue. This regulation supports the implementation of decentralization and encourages regions to improve budget management to finance government operations and sustainable development. BPHTB is an important potential source of taxes in regional development, which is further regulated in Law Number 1 of 2022 concerning Financial Relations Between Central and Regional Governments (HKPD Law). Article 4 Paragraph (2) of the HKPD Law states that BPHTB is fully managed by the Regency/City government, emphasizing the division of fiscal authority between the central and regional governments. Thus, BPHTB is not only a source of income, but also a symbol of regional independence in developing sustainable and equitable development strategies. (Suandy, 2000)

BPHTB is a tax levy imposed on the acquisition of land and/or building rights. The BPHTB payment obligation is charged to the party who obtains the right as a prerequisite for the creation and ratification of documents such as deeds, auction minutes, or decrees granting rights by authorized officials. Notaries as PPAT and also public officials who serve the community, in their daily activities, especially when drafting land deeds, are related to tax aspects. Notaries interact directly with people who have the status of prospective taxpayers. Therefore, as a public servant, Notaries need to actively educate or direct the prospective taxpayer to fulfill the obligation to pay BPHTB Tax. This tax obligation is inherent in the

duty of the Notary as a PPAT, especially in the context of making a land sale and purchase deed which is the basis for determining BPHTB. (Siahaan, 2013) (Laughter) Et Al. , 2022)

Notaries and PPAT have a crucial role in ensuring the smooth running of legal activities, especially related to the preparation of deeds. As a Public Official, Notaries are given attributive authority by the state to carry out public functions in the field of civil law, including the service of making authentic deeds and other duties that fall within the scope of their authority. Meanwhile, in matters of land administration, the government assigns the National Land Agency (BPN) of the Republic of Indonesia as the authorized institution. At the district/city level, BPN is represented by the land office which in its operations is assisted by PPAT, Notaries, and other related officials. The main task of PPAT is to carry out part of the land registration process by compiling deeds as legal evidence and the basis for registration. PPAT's responsibilities include the making of deeds related to the transfer of land rights, the granting of new land rights, and land binding as debt collateral. All of these processes must be carried out under the supervision of PPAT to ensure the legality and validity of the documents. (Soedjendro, 2001)

Basically, BPHTB is a type of objective tax or property tax, where the determination of tax obligations is mainly based on the tax object (land/building) first, then considering the tax subject (the party who obtains the right). The BPHTB collection process can be carried out through a self-assessment system, which is a tax system that places the initiative to fulfill tax payment obligations entirely on Taxpayers. The main characteristics of the self-assessment system include: 1) The right to determine the amount of tax is in the hands of the Taxpayer, where they are responsible for assessing the amount of tax that must be paid. 2) The active role of the Taxpayer in the entire tax process, starting from calculation, payment, to independent tax reporting. 3) The tax body (Fiscus) is not directly involved in the determination process, but functions as a supervisor to ensure compliance. (Serendipity, 2003) (Pudiatmoko, 2002)

BPHTB collection, which adheres to the principle of a self-assessment system, requires the recipient of land and building rights as taxpayers to independently calculate, estimate, and pay taxes owed. This system requires high legal awareness and integrity from the public in fulfilling tax obligations. On the other hand, an active role of tax officials is needed in monitoring taxpayer compliance and supervising the process of receiving and managing the tax. (Murjiyanto & Ismaya, 2016)

The process of transferring ownership of land and buildings through a sale and purchase transaction must be carried out before the PPAT to ensure the legal validity of the transfer of rights. In carrying out its duties, PPAT is obliged to explain in detail the contents of the deed of transfer of rights and obligations that must be fulfilled by the parties, including including original documents of proof of payment of related taxes, such as Income Tax (PPh) and BPHTB. In addition, PPAT is also responsible for ensuring that all legal and administrative procedures related to transactions have been fulfilled to avoid disputes in the future. (Ravianto & Purnawan, 2017)

As a PPAT, professional activities in the preparation of deeds cannot be separated from the tax aspect. PPAT directly interacts with prospective taxpayers, so it is a moral and professional responsibility for PPAT to actively educate and remind these parties about tax settlement obligations. In the context of practice, BPHTB is the type of tax that is most relevant to the duties of a Notary/PPAT. This connection arises because of the process of transferring land and building rights, especially in buying and selling transactions, into the realm of PPAT's work as well as the moment BPHTB is payable according to tax provisions. (Huda, 2022)

The sale and purchase agreement is consensual, meaning that this agreement is considered valid and legally binding since an agreement is reached between the seller and the buyer regarding the essential elements, namely goods (including immovable goods) and prices. This is in line with Article 1458 of the Civil Code which states: "Buying and selling is considered to have occurred at the time when both parties reach an agreement on goods and prices, even if the goods have not been handed over or the price has not been paid". In this agreement, the seller is obliged to transfer and surrender the ownership rights to the goods, while the buyer is obliged to pay the price according to the agreement. If the sale and purchase is carried out in a transparent and cash manner (transparent and paid in full immediately), the making of a deed before a notary is a mandatory requirement. After that, the process continues with the signing of the Sale and Purchase Deed (AJB) in front of the Land Deed Making Office (PPAT) to ratify the transfer of rights, especially over land or buildings. (Subekti, 2012)

PPAT can only sign the deed after the Taxpayer has paid off the BPHTB owed. However, reporting of SSB with a value of zero is not mandatory, although reporting must be done no later than the 10th of each month and includes important information such as deed number and date, rights status, land location, NJOP, transaction price, identity of

related parties, and tax deposits. If the taxpayer fails to pay the tax, administrative sanctions may be imposed, and the PPAT is obliged to provide limited data related to the acquisition of land and building rights to the authorities without disclosing confidential information to the unentitled parties.

In land and/or building purchase and sale transactions, PPAT is responsible for ensuring that the transaction is in accordance with the provisions of the law and objective market value. Although PPATs are not involved in the determination of prices between sellers and buyers, they still have an obligation to conduct an assessment of the price of the land. PPAT serves as a liaison between the tax authorities and the Taxpayer, ensuring that the transaction meets the tax prerequisites before the deed is ratified.

The PPAT does not have the authority to collect taxes, and the tax duty arises as a legal consequence of the transaction of transfer of land and building rights. As an official responsible for the preparation of the sale and purchase deed, PPAT only delegates the obligation to pay BPHTB to the Taxpayer in accordance with applicable regulations. Negligence in carrying out this task can lead to legal sanctions, so integrity and compliance with administrative procedures are essential to avoid the risk of administrative and criminal violations. In current practice, there are still often procedural violations by PPAT in making sale and purchase deeds that are not in accordance with the provisions of applicable regulations. This condition has the potential to cause losses for related parties. One of the common forms of violation is the signing of a sale and purchase deed before it is confirmed that the BPHTB payment has been paid off by the buyer.

This condition has the potential to cause legal consequences in the form of cancellation of the deed through a court decision or a deed that initially has perfect legal force can change its status to a deed under hand due to the negligence of PPAT in compiling the document without meeting the legal requirements, especially the subjective conditions that have been set. As a public official, PPAT is required to continue to develop its professionalism and quality of performance in order to provide legal certainty and protection for clients and the public. On the other hand, the increasing growth in the number of PPATs every year creates increasingly fierce competition, encouraging each PPAT to not only maintain professional standards, but also actively improve self-competence. This dynamic ultimately has positive implications for the community, because healthy competition between PPAT practitioners will produce more accurate, transparent, and integrity services in accordance with applicable legal principles.



In the HKPD Law in Article 49, it is explained that BPHTB is payable at the time the sale and purchase deed is signed. PPAT who signs the deed before the buyer pays off the BPHTB has violated legal procedures, because BPHTB payment is a prerequisite for the validity of the transaction. This negligence can be considered a form of neglect of administrative obligations, resulting in the deed having the status of legally defective. PPAT is personally responsible for the integrity of the documents it publishes. Article 159 of the HKPD Law affirms that Regional Heads or authorized officials can demand PPAT liability if their negligence causes fiscal non-compliance. For example, if the deed is issued without BPHTB repayment, PPAT can be forced to bear legal fees or compensation to the state. This responsibility includes financial losses and the reputation of the relevant government agency.

PPAT that deliberately ignores BPHTB's obligations can be considered to help regional tax evasion. Article 184 of the HKPD Law threatens criminal penalties for officials who violate the confidentiality or integrity of tax data. If proven, PPAT can be sentenced to up to 1 year in prison or a fine of IDR 500,000,000 (five hundred million rupiah), depending on the level of intentionality. For example, PPAT that cooperates with buyers to postpone BPHTB reporting may be subject to this article. Article 184 also prohibits officials or experts from leaking taxpayer data, so collusion in tax evasion is included in the scope of this sanction. PPAT or notary has a legal obligation to ensure that the Taxpayer has completed the BPHTB payment before the transfer of rights deed is signed. This is explicitly regulated in Article 60 Paragraph 1 of Government Regulation of the Republic of Indonesia Number 35 of 2023 concerning General Provisions of Regional Taxes and Regional Levies, hereinafter referred to as PP PDRD. The BPHTB payment proof requested can be in the form of a Duty Deposit Letter (SSB) or other official documents issued by banks or authorized agencies. This obligation aims to ensure fiscal compliance in land and/or building rights transactions, prevent potential state losses, and protect the validity of deeds in the eyes of the law. If the PPAT/notary neglects to verify this evidence, they may be subject to administrative sanctions and even criminal charges according to the provisions of the law.

Based on Article 60 Paragraph (2) letter a PP PDRD, PPAT or notaries who do not ask for proof of BPHTB payment to the Taxpayer before signing the deed of transfer of land and/or building rights are subject to administrative sanctions in the form of a fine of Rp10,000,000.00 (ten million rupiah) for each violation. This provision aims to ensure compliance in the process of making land and/or building rights transaction deeds, so that BPHTB as a regional tax obligation has been paid off before the legal document is issued. In

addition to ensuring BPHTB payments, PPAT/notaries are required to report all transactions related to the binding sale and purchase agreement (PPJB) or sale and purchase deed (AJB) to the local Regional Head. This reporting must be made no later than the 10th of the following month after the deed is made, as mandated by Article 60 Paragraph 1 letter b.

The impact on the legality of the deed is regulated in Article 61 Paragraph 1, which states that a deed of transfer of rights to land or buildings signed without proof of BPHTB payment is considered legally invalid. This invalidity can result in the cancellation of the transaction by the courts, the return of the object of land or building rights to the original owner, as well as a claim for damages. In addition, the PPAT or notary involved can be subject to criminal sanctions according to Article 266 of the Criminal Code regarding document forgery. For buyers, the absence of a valid deed hinders the registration of rights at the Land Office, so that ownership rights are not recognized by the state.

Unlike the previous regulation in the PDRD Law, Article 91 of the PDRD Law requires PPAT or Notaries not to sign a deed of transfer of land or building rights before the taxpayer submits proof of BPHTB payment. This aims to ensure fiscal compliance in land and building rights transactions. Violation of this provision, as stipulated in Article 93 Paragraph 1, is subject to administrative sanctions in the form of a fine of IDR 7,500,000 per case. In addition, PPAT is required to report the making of deeds or auction minutes to the Regional Head within 10 working days after the deed is signed, with a fine of IDR 250,000 per report for late reporting. This regulation is strengthened in Article 60 Paragraph 2 of the PP PDRD, which states that PPAT must ensure that BPHTB payments have been made before the deed is signed. Violations of this provision are subject to a fine of IDR 10,000,000 per case, which shows an increase in the weight of sanctions compared to the provisions in the PDRD Law.

### **Reformulation of Administrative Sanctions for PPAT Negligence in Verifying BPHTB Payments**

To ensure legal certainty, the sale and purchase agreement should be formalized in an authentic deed made by a notary. A notarized deed that has been signed and legalized serves as authentic evidence, which has legally binding power. This means that all clauses in the deed are considered correct and must be recognized by the judge, unless there is valid evidence that denies it. The transfer of land rights is a legal action carried out to transfer

ownership of land rights to other parties through several mechanisms. The role of PPAT in the imposition of BPHTB has a functional relationship with its duties as an extension of the government in land registration. One of the main contributions of PPAT is to prepare authentic deeds, especially AJB, which is the legal basis as well as a crucial instrument to maintain the accuracy of land registration data. In the context of BPHTB, PPAT acts as a mandated party by the Taxpayer to calculate the amount of tax and facilitate the related administrative process. However, the obligation to pay BPHTB is entirely in the hands of the Taxpayer, not PPAT.(Ocean, 2014) (Fadhil Yazid, 2020)

Based on Article 4 Paragraph (2) Letter b of the HKPD Law, BPHTB is determined as a type of tax collected by the regency/city government. Furthermore, Article 48 Paragraph (2) of the HKPD Law emphasizes that the obligation to pay BPHTB applies in the area where the land and/or building is located. To implement this provision, the government issued Government Regulation Number 25 of 2023 concerning General Provisions for Regional Taxes and Regional Levies - Pajak Daerah dan Retribusi Daerah, hereinafter referred to as PP PDRD. This PP aims to provide guidance for Regional Governments (Pemda) in drafting Regional Regulations (Perda) related to BPHTB collection governance.(Rachman, 2023)

However, the existence of the PP PDRD does not fully guarantee the smooth implementation of the policy, because there are potential legal problems both theoretically and practically. This is due to the inconsistency or deviation of the established legal principles in several clauses of the PP. For example, ambiguity in the interpretation of norms or overlapping authority between institutions can create legal uncertainty in the implementation of BPHTB at the regional level. The process of buying and selling land and/or buildings can be canceled due to several legal factors, such as the non-fulfillment of the objective conditions of the agreement, the absolute or relative inability of one of the parties to act legally, violations of the law, public order, or moral norms. Cancellation can also occur if there is a void clause that is met, defects in the agreement (e.g. coercion or fraud), abuse of certain conditions by either party, default (failure to fulfill obligations), and incompleteness of formal requirements set forth in the agreement.(Mala, 2017)

As a public official who is given the authority to make authentic deeds regarding the transfer of land rights, PPAT should not be burdened with sanctions that are not commensurate with its obligations. The main task of PPAT is to ensure that the deed made is in accordance with the provisions of the applicable law. In this case, the obligation to ask

for proof of BPHTB payment should be directed more to the taxpayer, not PPAT. The reformulation of sanctions must take into account that this obligation is part of the administrative supervision of taxpayers.

PPAT is also defined as a public official who is given the authority to make land-related deeds, in accordance with the provisions of the applicable laws, in Article 1 number 24 of Government Regulation 24 of 1997. This authority includes the making of a deed of transfer of rights, the encumbrance of land rights, the ownership of a flat, and a deed of power of attorney to impose the right of dependency. As a public official, PPAT is appointed by an authorized agency and is tasked with providing public services in certain fields, especially in the settlement of legal documents related to land and land and/or building rights.

According to Harlow and Rawlings, administrative law is defined as *the law relating to public administration*. This includes aspects related to the methods or methods used by the government in carrying out its duties, including the nature of state power, the obligations attached to it, and the mechanism for controlling the use of this power. (Asshiddiqie, 2013)

The formulation of administrative sanctions in the law must clearly regulate the type of violations subject to sanctions, so that there is no different interpretation between the norms of administrative sanctions and criminal sanctions. Therefore, there needs to be clarity about certain administrative actions that if violated will result in administrative sanctions, not other sanctions such as criminals. The formation of *general and abstract legal norms* in the form of written regulations (*statutory form*) is generally based on two main considerations: (1) Constitutional Order: Its formation is mandated by the 1945 Constitution. (2) Legal Needs: The establishment of these norms is necessary to answer the demands of legal developments in society. (Asshiddiqie, 2014)

Based on the theory of justice that has been explained by the researcher, sanctions must be applied fairly, proportionately, and in accordance with the ability of the party to be sanctioned. In this case, PPAT's obligation to ask for proof of BPHTB payment before signing the deed is an administrative task that should not be used as a basis to burden officials with large financial sanctions. The imposition of fines that are too high risks causing injustice, especially for PPAT who perform their duties in accordance with procedures.

The reformulation of administrative sanctions to PPAT needs to be focused on adjusting fines to be more reasonable and proportionate. One alternative is to transfer these administrative obligations to a more appropriate party, namely the taxpayer, who knows and

is more responsible for BPHTB payments. This will also reduce unnecessary administrative burdens on PPATs, while ensuring that the tax system runs more efficiently. The reformulation of this sanction also aims to increase legal certainty in the implementation of PPAT's duties. With clearer and fairer sanctions, PPAT can focus more on the implementation of its duties without worrying about an unbalanced burden, which will ultimately increase the effectiveness of the land registration and transfer of rights system.

The reformulation of administrative sanctions against PPAT that is negligent in requesting proof of BPHTB payment must pay attention to the balance between authority, responsibility, and justice. Administrative fines must be adjusted to the proportion of PPAT's duties and focus more on taxpayer responsibilities. By making these changes, it is hoped that the taxation and land registration system can run more fairly and efficiently, without burdening PPAT with sanctions that are not in accordance with its capacity.

The procedure related to PPAT's obligation to request proof of BPHTB payment must be clearer and more detailed in each existing regulation. This procedure should be easy for PPATs to follow and not interfere with the smooth running of their tasks. The government must provide training and socialization related to this obligation to PPAT to reduce unintentional negligence.

To ensure that the administrative obligations implemented can run effectively, local governments need to conduct periodic monitoring and evaluation of the implementation of this rule. This can be done by involving relevant parties in the taxation and land registration system to ensure there is no abuse or negligence that is detrimental to PPAT.

If a dispute arises related to an administrative breach or an obligation carried out by PPAT, there needs to be a clear mechanism for the resolution of the dispute. This can be done through an adequate administrative forum, where PPAT can submit clarifications or objections regarding the sanctions imposed.

PPAT who feel that the fine or sanction is unfair can file an objection through the administrative channels that have been provided by the local government. The dispute resolution process must be done quickly and transparently, taking into account all existing evidence and circumstances. In the event of minor or administrative negligence, the local government can provide an opportunity to PPAT to reduce the amount of fines by correcting the negligence within a certain time.

Simplification of procedures also needs to be introduced to facilitate the implementation of administrative obligations by PPAT. This reform can be done by

increasing understanding and training for PPAT regarding their obligations in requesting proof of BPHTB payment. In addition, the enforcement of rules against taxpayers who do not meet BPHTB payment obligations must also be tightened, so that PPAT is no longer the burden in this case. This will increase the effectiveness of the taxation and land registration system, as well as create justice and legal certainty for PPAT.

Taxpayers who are late or negligent in making BPHTB payments should be the main party subject to sanctions, not PPAT. PPAT is responsible for ensuring that the transfer of rights deed document is made in accordance with the provisions, but the obligation to pay BPHTB is the responsibility of the taxpayer.

## **CONCLUSION**

PPAT that does not carry out the obligation to ask for proof of BPHTB payment before the signing of the transfer of rights deed, this will cause violations that can be subject to administrative sanctions. In accordance with Article 60 Paragraph (2) of PP 35 of 2023, PPAT that does not carry out these obligations can be subject to a fine of IDR 10,000,000 (ten million rupiah) for each violation. This emphasizes the importance of PPAT's obligation to ensure that BPHTB has been paid before the deed is signed to ensure the legality and validity of the transaction of transfer of land and/or building rights. Therefore, this negligence can have a direct impact on the legal protection for the parties involved in the transaction of land and/or building rights.

The reformulation of administrative sanctions to PPAT that is negligent in requesting proof of BPHTB payment before the signing of the transfer of rights deed needs to be focused on the implementation of more proportionate and fair sanctions. The fine of Rp10,000,000 (ten million rupiah) applied in the current PP PDRD is considered unfair because it is too heavy for PPAT, which acts as an administrative implementer in the process of transferring land/building rights. Therefore, administrative sanctions should not be solely imposed on PPAT, but more appropriate if they are distributed to Taxpayers who are parties who have the obligation to pay BPHTB. This reformulation aims to ensure that sanctions are more proportionate and in accordance with the role of each party in the transaction, so that PPAT is not burdened with sanctions that are not proportionate to its obligations.

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## IMPLICATIONS OF *LONG DISTANCE MARRIAGE* ON STUDENT LEARNING MOTIVATION (Case Study at STDI Imam Syafi'i Jember)

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### ABSTRACT

Humans are social beings who in essence cannot live and meet their own needs. One manifestation of humans as social creatures is to get married. The couple Long Distance Marriage (LDM) who decided to live in different places and separated by distance cause each individual to need a role that should be obtained by a partner who lives one roof. Long Distance Marriage (LDM) will also interfere with the concentration of students in receiving education in lectures and motivation that tends to be unstable. This study aims to analyze the factors causing the occurrence of long distance marriage and impact as well as efforts made by STDI Imam Syafi'i students in maintaining learning motivation. This study uses a qualitative approach with the type of case study research. Factors causing the occurrence of long distance marriage in STDI students academic factors, economic factors, and work factors. Negative impacts include difficulty focusing, emotional burden, difficulty setting time. The positive impact includes better time management, motivation to complete studies. Solutions for couples Long Distance Marriage in maintaining their learning motivation include routine contacting couples, asking for family support, letting intentions, manage time well..

**Keywords :** *Implication Long Distance Marriage, Motivation to Learn*

### ABSTRAK

Manusia merupakan makhluk sosial yang pada hakikatnya tidak dapat hidup dan memenuhi kebutuhannya sendiri. Salah satu wujud manusia sebagai makhluk sosial adalah dengan menikah. Pasangan *long distance marriage* (LDM) yang memutuskan tinggal di tempat yang berbeda dan terpisahkan oleh jarak menyebabkan masing-masing individu membutuhkan peran yang seharusnya didapat oleh pasangan yang tinggal satu atap. *Long distance marriage* (LDM) juga akan mengganggu konsentrasi mahasiswa dalam mengenyam pendidikan di bangku perkuliahan dan motivasi yang cenderung tidak stabil. Penelitian ini bertujuan untuk menganalisis faktor penyebab terjadinya *long distance marriage* dan dampak serta upaya yang dilakukan mahasiswa STDI Imam Syafi'i dalam mempertahankan motivasi belajar. Penelitian ini menggunakan pendekatan kualitatif dengan jenis penelitian studi kasus. Faktor penyebab terjadinya *long distance marriage* pada mahasiswa STDI faktor akademik, faktor ekonomi, dan faktor pekerjaan. Dampak negatif meliputi sulit fokus, beban emosional, kesulitan mengatur waktu. Adapun dampak positif meliputi pengelolaan waktu yang lebih baik, motivasi untuk menyelesaikan studi. Solusi bagi pasangan *long distance marriage* dalam mempertahankan motivasi belajarnya antara lain rutin menghubungi pasangan, meminta dukungan keluarga, mengikhlaskan niat, manajemen waktu dengan baik.

**Kata Kunci:** *Implikasi, Long Distance Marriage, Motivasi Belajar*

## INTRODUCTION

Humans are social creatures who are inherently unable to live and meet their own needs. Man meets his needs with the help of others through socializing. One of the forms of human beings as social beings is by getting married. According to Indonesian law number 1 of 1974 regarding the meaning and purpose of marriage, namely “marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal household, family based on the One Godhead” (Hatul Lisaniyah Et al., 2021). Thus it is clear that human beings can achieve the goal of life together by marriage. However, marriage cannot survive except with knowledge. With knowledge, a person can seek factors that support the maintenance of a marriage and prevent every factor that leads to separation (Rustam, 2024).

There are various ways to study, one of which is by attending college (Hidayah, 2024). Studying in college is different from studying outside of formal institutions. Lectures have rules that need to be obeyed by students, such as full attendance, tasks that must be completed responsibly as academic assessments and extra activities outside of lecture hours. Thus, every individual student, especially for married students, must manage their time in order to complete their lectures well (Rustam, 2024).

When a marriage contract occurs, there will be a transfer of the burden of responsibility from a father to his husband in the form of fulfilling the obligation to provide sustenance as Allah says:

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ

It means: “It is the duty of the father to bear their food and clothing in a good manner.” (Q.S Al-Baqarah: 233).

According to explaining that the demands of education that are being pursued by the husband and wife at different universities, as well as the demands for providing alimony, are what cause the husband and wife to have to run a *long distance marriage* (Hayati, 2024).

Spouse *Long Distance Marriage* (LDM) who decide to live in a different place and are separated by distance causes each individual to need the role that should be obtained by a couple who live under the same roof or *Proximal Marriage*, so that it causes stress (Wakhidah et al., 2020). *Long distance marriage* (LDM) also causes disturbances in sleep quality, stress levels and cortisol levels. This impact will interfere with students' concentration in receiving education in college and motivation that tends to be unstable (Wakhidah et al., 2020). As evidenced by a previous study at one of the universities in East Java, 9 students who

underwent a long-distance marriage out of 10 who were married, 8 of them had difficulty concentrating (Wakhidah et al., 2020).

Concentration is a person's ability to focus on an activity or task at hand, concentration is one of the most important factors that can affect a student's learning outcome (Fatchuroji et al., 2023). According to his research, it found a relationship between concentration and student learning motivation, students who have high learning motivation increase their learning efforts by concentrating more. In line with the definition, learning motivation is an entire effort in students that arouses the desire to learn, ensuring learning to achieve a goal. Based on the definition above, learning motivation is a factor that affects student achievement or learning outcomes (Basri Et Al., 2022). This is in line with the opinion of an expert who stated that “motivation determines the level of success or failure of students' actions. Learning without high motivation can be difficult to succeed” (Mediawati, 2020).

Etymologically, the word motivation comes from the word “motiv,” which means drive, will, reason, or will. Thus, motivation is a force that awakens and directs individual behavior. Motivation is not the behavior itself, but rather a complex internal condition that cannot be directly observed, but has an effect on behavior. The interpretation of motivation is based on behavior, verbal or non-verbal (Nurjan, 2016).

Sekolah Tinggi Dirasat Islamiyah Imam Syafi'i Jember (STDIIS Jember) is an Indonesian private Islamic university located in Jember Regency. This college offers two undergraduate programs, the S1 Islamic Family Law Study Program and the S1 Hadith Science Study Program (Hadith Bachelor's Degree). Learning activities are entirely carried out in Arabic. Most of its curriculum is adopted from the Islamic University of Medina. STDI Imam Shafi'i also provides a pre-graduate program, known as P'dad Lughowy (Language Preparation), for students who are still beginners in Islamic Knowledge and Arabic.

Based on the results of initial observations, it was found that not a few students of STDI Imam Syafi'i Jember were married and came from various regions in Indonesia. This is a factor in students running *Long Distance Marriage* (long-distance marriage). Psychosocial impact on couples undergoing *Long Distance Marriage* (LDM) is quite significant. However, there is limited literature on the implications of distance marriage on student learning motivation to attract researchers to conduct further research.

Based on this phenomenon, the researcher is interested in conducting further research and research related to the implications of *long distance marriage* on the learning

motivation of STDI Imam Syafi'i students. This research is expected to provide an in-depth understanding of the causative factors and efforts made by STDI Imam Syafi'i students in maintaining learning motivation when in a long-distance relationship with their partner. In addition, this research is expected to be a source of reference and solutions for couples who are running *long distance marriages* to maintain learning motivation to remain consistent.

This study is different from previous studies because previous studies have not addressed the implications *Long Distance Marriage* on the motivation of students. It is hoped that the results of this study can provide an overview to the general public, especially students, regarding the implications *Long Distance Marriage*. Learning motivation is also a reference for future research.

Based on previous research, no research has been found that discusses the implications of *long distance marriage* on student learning motivation (a case study at STDI Imam Syafi'i Jember), which focuses on the impact of the implications of *long distance marriage* on student learning motivation, and solutions to the implications of *long distance marriage* on the motivation of students. Among the previous studies are as follows:

*First*, (Renaldi Saputra, 2024) which researches "Problematika Long Distance Marriage Anak Buah Kapal (ABK) dalam Menjaga Ketahanan Rumah Tangga Prespektif Hukum Keluarga Islam" which will be carried out in 2024. This type of research is *Field Research* (field research) with a phenomenological approach. Technique for determining informants using the *purposive sampling*, Data collection techniques using observation, interviews and documentation. The results of the study revealed the household problems of Crew Members (ABK) in undergoing *Long Distance Marriage* namely the research reveals the factors that affect the households of ABK in *Long Distance Marriage*, including communication barriers at sea, jealousy, family longing, unfulfilled obligations, and toxic work environments. However, the resilience of the ABK household depends on commitment, honesty, conflict management, and emotional control of the couple. The side of the equation is on the side of the discussion about *Long Distance Marriage*. Meanwhile, the difference is that this study examines the impact and solutions of couples *Long Distance Marriage* to the learning motivation of STDI Imam Syafi'i Jember students.

*Second*, (Adila et al., 2024) which researches "Upaya Pasangan Long Distance Marriage (LDM) Dalam Menjaga Ketahanan Keluarganya di Desa Darungan Rambipuji" which will be carried out in 2024. The approach used in this study is qualitative. The results of the study show that the efforts made to make the household safe and peaceful despite the

distance separating them are understanding each other, being honest with their partners, accepting each other, trusting each other, maintaining commitment, and being able to control each other's emotions. The similarity side is in the discussion of *long distance marriage* while the difference is the impact and solution of *long distance marriage couples* on the learning motivation of STDI Imam Syafi'i Jember students.

*Third*, (Bianti Deva Cesaria, 2022), which researched “Gambaran Trust Pada Istri Pegawai Bea Cukai Yang Menjalani Long Distance Marriage Description Of Trust On Bea Cukai Officer's Wife Who Undergo Long Distance Marriage” which was carried out in 2022. The type of research used was qualitative using a phenomenological approach using interview techniques on four wives of customs employees with a minimum of 5 years of marriage. The analysis technique used is thematic analysis with an approach *theory driven*. The results of the study showed that the three components of trust appeared in the four respondents. The five aspects of forming trust are also owned by the four respondents. However, each respondent showed a different picture of beliefs caused by factors such as differences in background and communication patterns. The side of the equation is on the side of the discussion about *Long Distance Marriage*. Meanwhile, the difference is that this study examines the impact and solutions of couples *Long Distance Marriage* to the learning motivation of STDI Imam Syafi'i Jember students.

*Fourth*, (Rosyadi B. R et al., 2022) which researched “Resolusi Konflik pada Keluarga Long Distance Marriage (Studi Fenomenologi)” which was conducted in 2022. The type of research used is a qualitative method for phenomenology. Data collection uses interviews, observations, and documentation. The data analysis in this study using Miles and Huberman & Saldana included data condensation data summaries, data presentations and conclusion images. This study was conducted on 5 married couples who underwent a long distance marriage in Bloro village in KEC. The results of the study showed that there are several factors that make married couples experience long-distance marriages, including work, education, and living needs, namely the desire to have their own house. While efforts to maintain marriage are by positive thinking, openness, certainty, on social networks and distributing tasks. The side of similarity is on the side of the discussion about *Click or tap here to enter text.long distance marriage*. Meanwhile, the difference is that this study examines the impact and solutions of *long distance marriage couples* on the learning motivation of STDI Imam Syafi'i Jember students.

*Fifth*, (Neni dewi, 2021) which researched the “Analisis Artikel Metode Motivasi dan Fungsi Motivasi Belajar Siswa” article conducted in 2021. Data collection is to find empirical studies including: quantitative, qualitative, mixed methods, and literature reviews published in per-review journals since 2000 to identify methods and functions of student learning motivation in education. Databases used for literature research include *Science and Technology Index* (Sinta). The problem is embracing student learning motivation that identifies from the methods and functions of student learning motivation. Based on the analysis carried out on some of the articles used, it can be concluded that motivation is indispensable to increase interest in learning and improve student achievement. Student motivation in learning can be increased through various models and approaches, and can also be influenced by several factors. The side of the equation is on the side of discussion about learning motivation. Meanwhile, the difference is that this study examines the impact and solutions of couples *Long Distance Marriage* to the learning motivation of STDI Imam Syafi'i Jember students.

## RESEARCH METHODS

This study uses a qualitative approach. Qualitative research is a research process to understand human or social phenomena by creating a comprehensive and complex picture that can be presented in the form of a narrative, reporting detailed views obtained from informant sources, and carried out in a natural setting (Walidin Et Al., 2015). Qualitative research aims to gain a deep understanding of problems related to humans and society. (Fadli, 2021).

The type of research is a case study. A case study is an intensive, detailed and in-depth scientific activity about a program, event, and activity, whether at the level of an individual, group, institution or organization (Ridlo, 2023). Case study research aims to analyze ongoing events and how the research object interacts with the surrounding environment (Sahir, 2021).

The data collection techniques used were observation, observation, document utilization and interviews with informants. In general, the type of interview used is a structured interview, where the interview is conducted by asking a number of questions with predetermined alternative answers (Sahir, 2021). The criteria for informants selected in this study are STDI Imam Syafi'i Jember students who are or have had a long-distance relationship with their partners while undergoing studies at STDI Imam Syafi'i Jember. The determination of informants was carried out through the results of observation through an

online questionnaire distributed to STDI Imam Syafi'i Jember students who had or were in long-distance relationships. By determining these criteria, the researcher hopes to get a complete picture of the circumstances and problems of couples undergoing *Long Distance Marriage*, which is the formulation of the problem in this study.

## RESULTS AND DISCUSSION

### Factors Causing Long Distance Marriage in STDI Students

Long distance marriage is a common phenomenon in some circles, including students. There are many factors that are the reasons why students do *long distance marriages*. Among the factors that encourage students to do long distance marriages are due to various backgrounds. Among these factors are:

**Academic Factors;** One of the important causes of long-distance marriage is the educational factor. Education often encourages individuals to change locations, either to continue their studies or to pursue better career opportunities. This was conveyed by an informant named Muhammad Farhan Hadi Kusumawijaya (25 years old), a student of the final semester of the Islamic Family Law study program who had undergone a long-distance marriage for one month at the beginning of the marriage before bringing his wife to Jember, Farhan said “One of the main reasons I have been in this LDM relationship is the education factor, and this reason I have planned in advance even before making a marriage contract, At that time I got married on a quiet Sunday and it was not possible to bring my wife to Jember.”

This factor is supported by another informant named Rahmatullah Ramdhani (24 years old), an eighth-semester student of the Islamic Family Law study program who has undergone *a long distance marriage* for one semester due to academic factors. The informant said “I am undergoing LDM because I am still continuing my studies outside the city, precisely in Jember, East Java, we took this decision because we want to continue to pursue our dreams while remaining committed to living our marital relationship.” In addition, Yunus Ilham Saputra (24 years old) is an informant from the eighth semester of the Hadith study program who is undergoing a long distance marriage. Yunus said, “The reason my wife and I are committed to this long-distance relationship is an academic factor, because yes I am still in college and my wife is also busy so it is not possible to bring my wife to Jember.”

This factor was also corroborated by an informant named Moh Diki Purwanto (27 years old), a student of the Islamic Family Law study program who was in a long distance

marriage. Diki Purwanto said, “At that time, what was my driving factor for long distance marriage was the education factor, because I wanted to be more flexible in learning and at that time with the intention of also minimizing displacement.” Education is one of the reasons for long-distance relationships is when individuals strive to reach a higher level of education so that their relationship must be separated by distance (Tanjung & Ariyadi, 2021).

**Economic Factors;** Long-distance relationships, especially in marriage, face various challenges. One of the main problems that often arise is the financial or economic aspect. This issue can have an impact on the quality of the relationship, the way of communication, and the emotional stability of the couple. This was conveyed by an informant named Ibnu Zaid (24 years old), a student of the Islamic Family Law study program who was in a long distance marriage with his wife due to economic factors. Ibnu Zaid said, “For me, economic factors are also the reason for me to do LDM, indeed at first before marriage I had a small side to wash shoes, but after the marriage I decided to resign to focus on college because I was afraid of not being able to balance work and study so I was afraid of not being able to do both.”

A similar statement was also conveyed by Rahmatullah Ramdhani, the informant said, “Another factor that is the reason why I am in a long-distance relationship is economic problems, because at the beginning of marriage the economy was still unstable, and I did not work when I was in college, so my wife and I decided to separate first while maintaining our marriage commitments.”

Marriage is a lifelong worship that requires careful preparation. One of the main challenges is financial issues. Economic instability can trigger domestic conflicts, especially since men have a great responsibility to provide for the family both physically and mentally, including meeting basic needs such as clothing, food, and decent housing for his wives and children (Rozak et al., 2020).

**Employment Factors;** One of the main causes of long-distance marriage is work or career factors. Some couples are forced to live in different places because of their jobs (Qorifah et al., 2023). This is as conveyed by an informant named Ibnu Zaid (24 years old) who said, “the second factor that prompted me to undergo this LDM was the wife's work factor, where at that time my wife was already bound by a teaching contract at one of the schools in the area where we lived, besides that my wife was already a permanent teacher at the school and it was not possible to bring her wife.”



A similar statement was conveyed by an informant named Yunus Ilham Saputra. The informant said, “My reason besides academic problems is that my wife is teaching at *Ma'had* and already has a work relationship from the beginning of marriage until the end of August, so I am forced to not be able to bring my wife to Jember.”

Based on the explanation above, it can be concluded that the factors that cause *long distance marriage* in STDI students include: academic factors, economic factors, and employment factors.

### **The Impact of Long Distance Marriage on STDI Students**

*Long distance marriage* on students has various impacts, both negative and positive impacts. The following will describe the **negative impacts**:

**Difficulty focusing;** Some students feel the impact of this *long distance marriage*, among the impacts felt by students is that it makes it difficult to focus on studying. This was conveyed directly by an informant named Ibnu Zaid (24 years old) who said “this long-distance relationship also had a negative impact on me who often felt lazy in studying and had difficulty controlling focus.”

The same statement was also conveyed by David Sanjaya (28 years old), David said “what I often feel when in this relationship is that it is more difficult to control the focus in studying, because of the lack of communication between me and my wife, even though this LDM relationship needs good communication between husband and wife.”

Another informant named Rahmatullah Ramdhani also said, “at first I had difficulty focusing because I was often worried and missed my partner, but it didn't make me lose my enthusiasm for learning because there was support from my partner.”

**Emotional burden;** One of the negative impacts of *long distance marriage* is the appearance of emotional burdens. When a partner is separated by distance, feelings of longing and loneliness can cause stress and learning disruptions. Limited communication can also worsen a person's emotional state. This was conveyed by Rahmatullah Ramdhani (24 years old), the informant said, “At first I felt quite sad and lonely because I had to be away from my partner, and it caused my motivation to study to decrease. However, I try to divert those feelings by focusing on studies so as not to dissolve in emotions.”

This statement was also conveyed by Kemal Luthfi (24 years old) an STDI student, Kemal said, “The first feeling when I was in LDM was mixed, sad and lonely. And as time went by, these feelings were disrupted in my learning process.” Ibn Zaid also said, “At the

beginning of establishing a long-distance relationship, I felt heavy and often felt missed by my wife and felt lonely because of the absence of my wife and that made my studies unmotivated.”

**Difficulty managing time;** One of the negative impacts of *long distance marriage* (LDM) is the challenge of managing time between studying and spending time with your wife. Time constraints often make individuals feel stressed, as they have to divide attention between academic responsibilities and emotional needs in relationships. This situation can result in an imbalance that affects the quality of learning and interaction with the partner. This statement as conveyed by an informant named Muhammad Farhan Hadi Kusumawijaya (25 years old) a student of the Islamic Family Law study program, Farhan said, “I have to divide my time between time with my partner and time to study which makes a lack of time to study and do campus assignments. And on the other hand, we also have to prepare our own meals and provide for our own needs.”

The same statement was also conveyed by an informant named David Sanjaya (28 years old), the informant said, “*long distance marriage* (LDM) requires communication between couples, but what I have experienced when my wife needs me again, *qaddarullah* I am busy or studying, but when I have free time my wife has affairs, and that is also one of the reasons why my motivation to study has decreased.”

Meanwhile, the **positive impacts** of long distance marriage on students are as follows:

**Better time management;** *Long distance marriage* on students also has a positive impact, one of which is better time management, this as conveyed by an informant named Muhammad Farhan Hadi Kusumawijaya (25 years old), Farhan said, “by getting used to determining the conditions between our wives and college time, it will foster a sense of responsibility and direction in time management.” Such things were also conveyed by David Sanjaya (28 years old), David said, “the positive impact I feel is that I can make the best use of my time because LDM is able to complete assignments from campus.” Diki Purwanto said, “this relationship actually makes me more focused and better at using time for *murajaah*, studying together and working.”

**Motivation to complete studies;** Among the positive impacts of *long distance marriage* is the motivation to complete studies faster. This is as conveyed by an informant named Rahmatullah Ramdhani, the informant said, “precisely because of the distance separation, I

am more motivated to quickly complete my studies so that I can immediately get together with my partner.”

The same statement was also conveyed by an informant named Muhammad Nadhif (24 years old), Nadhif said, “because of this relationship, it does not make me want to postpone lectures, but rather it becomes an encouragement for me to study more actively and become a motivation to graduate faster because there are wives who must be educated and nourished both physically and mentally.”

The above opinion is also strengthened by the opinion of Yunus Ilham who stated, “I am motivated to finish my studies immediately because there is a wife who must be accompanied and accompanied.”

Based on the explanation above, it can be concluded that the impact of *long distance marriage* on learning motivation in STDI Imam Syafi'i students is divided into negative impacts and positive impacts. Negative impacts include difficulty focusing, emotional load, difficulty managing time. The positive impacts include better time management, motivation to complete studies.

### **Long Distance Marriage Couples Solution Maintains Learning Motivation**

In establishing a marital relationship, there will always be problems and trials, especially for those who are in a long-distance relationship. STDI Imam Syafi'i students who are undergoing *long distance marriages* have their own solutions in facing problems and trials due to living far away from their partners. These solutions include:

**Regularly contact your partner;** Regular activities of contacting a spouse is one way or solution for couples who are undergoing a *long distance marriage*. This solution was conveyed by Ibn Zaid who said, “the most important and most important thing in a long-distance relationship is to establish good communication with your partner, dedicate time to your partner, and confide in your partner, because it will help us in doing something, including in terms of studying.”

A similar solution was also put forward by Muhammad Nadhif. The informant said, “I usually take the time to contact my wife, give each other support and motivation.” Rahmatullah Ramdhani said, “the key is good communication with your partner, taking the time to make regular video calls with your partner to give each other enthusiasm and motivation in learning and other things.”

Contacting a spouse is one solution if a couple is going through *a long distance marriage* who is feeling lazy in studying. Yunus Ilham said, “communication and confiding with your partner is a strategy to be more enthusiastic in learning, and so that there is no gap between couples.”

**Asking for family support;** is one of the solutions for couples who are going through *a long distance marriage*. This solution was conveyed by Muhammad Farhan Hadi Kusumawijaya. Farhan said, “A wife is a *support system* for me in everything, both from prayer, words and actions, in terms of prayer, of course the wife prays for her husband to be facilitated in all his affairs, in terms of words my wife always gives support and encouragement when calling, from actions also my wife often helps me with my college assignments.”

This is corroborated by Ibn Zaid's statement. The informant said, “My wife's role in my learning success is very important, in terms of giving encouragement my wife always encourages her enthusiasm in college. And usually in the afternoon and evening I always take time to communicate with my wife, not just a story, but there my wife always provides support and motivation. And no less important is the support of my parents who always support me and give me encouragement.”

For couples who are undergoing *a long distance marriage*, the solution that can be done is to ask for support from their families. Rahmatullah Ramdhani said, “I am very helped by the support of my family, especially couples who often provide motivation. Many college friends also helped me in the learning process.”

**Sincere intention;** in learning is an important factor to maintain motivation. When we learn with sincere intentions, unburdened by expectations or outside pressures, the learning experience becomes more meaningful. By giving up our intentions, we can enjoy every stage of learning, feel the happiness of knowledge, and face challenges more lightly. This solution was conveyed by Kemal Luthfi. The informant said, “the trick is to sincerely study for the sake of Allah, the intention to increase knowledge to educate children and wives because it is a mandate from Allah *Almighty*.”

A similar statement was also conveyed by David Sanjaya. David said, “pray and be sincere in seeking knowledge, because something difficult will be easy by praying to Allah, because *long distance marriage* is very hard.” Nadhif said, “a student of knowledge must be sincere because of Allah, the intention to increase knowledge because there is a family that we must educate.”

**Managing time;** well is one of the effective ways to maintain motivation to learn. With efficient timing, we can form regular routines, reduce stress, and increase productivity. When time is used wisely, we can focus more on the material being studied, thus deepening our understanding and interest. In addition, good time management allows us to set realistic goals, celebrate small achievements, and maintain a high spirit of learning. An informant named Muhammad Farhan Hadi Kusumawijaya said, “you have to be smart to manage your time, when to study, family and work.”

The same solution was also conveyed by Moh. Diki Purwanto. The informant said, “smarter in seeing opportunities and taking advantage of time, because you are not with your wife, do not have to divide time with your children and wife and can focus more on studying and *murajaah*.” David Sanjaya said, “make the best use of time as possible for LDM, so that college assignments can be completed.”

Based on the explanation above, it can be concluded that solutions for *long distance marriage* couples in maintaining learning motivation include: regularly contacting their partner, asking for family support, sincere intentions, and managing time well.

## CONCLUSION

This research reveals that the phenomenon of long distance marriage (LDM) among STDI Imam Syafi'i Jember students is a complex and challenging social reality, especially in the context of maintaining learning motivation. The main causative factors of long distance marriage among students include three dominant aspects, namely academic demands, economic conditions, and spouses' work obligations. Although LDM often causes emotional distress, impaired concentration, and difficulties in time management, this study also shows that some students are able to respond positively to the situation by strengthening time management and making the LDM situation a trigger to complete their studies more quickly.

Furthermore, this study highlights that the success of students in maintaining learning motivation in the midst of LDM relationships is strongly influenced by the adaptive strategies they carry out. These strategies include regular and meaningful communication with spouses, getting support from family as the main support system, cultivating sincere intentions in studying, and effective time management skills. With these strategies, students are not only able to maintain their enthusiasm for learning, but also improve the quality of their marital relationship despite geographical separation.

This research contributes a new understanding in the discourse of education and family relations, especially in the context of students undergoing long-distance marriage. Not many previous studies have explicitly examined the implications of LDM on student learning motivation in Islamic higher education institutions. Therefore, this finding opens space for new contributions to the academic literature and can be used as a reference for educational institutions, counselors, and students who face similar conditions. Follow-up research with a quantitative or mixed approach is needed to test the strength of the relationship between variables found in this study more broadly and representatively.

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# THE RULES OF IJTIHAD AND ITS URGENCY IN ISLAMIC JUSTICE IN INDONESIA

(An Analysis of The Book *al-Qawā'id al-fiqhiyyah bayna al-aṣṣālah wa al-tawjīh* by muhammad bakr ismail)

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## ABSTRACT

This research discusses the rules of fiqh related to ijtihad in the context of Islamic justice, with reference to the paper entitled *al-Qawā'id al-Fiqhiyyah Bayna al-Aṣṣālah wa al-Tawjīh* by Muhammad Bakr Ismail. Rules of Fiqh are a basic principle in Islamic law that serves as a methodological guideline in understanding and applying law contextually. In judicial practice, ijtihad plays an important role in resolving cases that are not explicitly regulated in the nash, including in the process of evaluating evidence and making legal decisions. This study uses a literature study method with a descriptive-analytical approach to identify and analyze the relevance of fiqh principles to the ijtihad process in Islamic courts. The results of the study show that principles such as *al-ijtihādū lā yunqadhu bi al-ijtihād*, *al-tarjih lā yaqū bikasrat al-'ilal*, *lā hujjata ma'a al-ihtimāl al-nāshi* 'an dalil, *al-waṣfu fī al-ḥaḍir laghwun wa fī al-ghā'ib mu'tabar*, and *al-ṣulḥu jā'izun bayna al-muslimin illā ṣulḥan ḥarrama ḥalālan aw aḥalla ḥarāman* play a role in maintaining objectivity, rigor, and fairness in decision-making. Thus, a deep understanding of the rules of fiqh becomes an important foundation in directing the practice of ijtihad that is not only valid according to sharia, but also relevant to the dynamics of the law and the need for justice in contemporary society.

**Keywords:** Rules of Fiqh, ijtihad, Islamic justice

## ABSTRAK

Penelitian ini membahas kaidah-kaidah fikih yang berkaitan dengan ijtihad dalam konteks peradilan Islam, dengan merujuk pada karya tulis berjudul *al-Qawā'id al-Fiqhiyyah Bayna al-Aṣṣālah wa al-Tawjīh* oleh Muhammad Bakr Ismail. Kaidah fikih merupakan prinsip dasar dalam hukum Islam yang menjadi pedoman metodologis dalam memahami dan menerapkan hukum secara kontekstual. Dalam praktik peradilan, ijtihad berperan penting dalam menyelesaikan kasus-kasus yang tidak secara eksplisit diatur dalam nash, termasuk dalam proses evaluasi alat bukti dan pengambilan keputusan hukum. Penelitian ini menggunakan metode studi kepustakaan dengan pendekatan deskriptif-analitis untuk mengidentifikasi dan menganalisis relevansi kaidah fikih terhadap proses ijtihad dalam peradilan Islam. Hasil penelitian menunjukkan bahwa kaidah-kaidah seperti *al-ijtihādū lā yunqadhu bi al-ijtihād*, *al-tarjih lā yaqū bikasrat al-'ilal*, *lā hujjata ma'a al-ihtimāl al-nāshi* 'an dalil, *al-waṣfu fī al-ḥaḍir laghwun wa fī al-ghā'ib mu'tabar*, dan *al-ṣulḥu jā'izun bayna al-muslimin illā ṣulḥan ḥarrama ḥalālan aw aḥalla ḥarāman* berperan dalam menjaga objektivitas, ketelitian, dan keadilan dalam pengambilan putusan. Dengan demikian, pemahaman mendalam terhadap kaidah-kaidah fikih tersebut menjadi landasan penting dalam mengarahkan praktik ijtihad yang tidak hanya sah secara syar'i, tetapi juga relevan dengan dinamika hukum dan kebutuhan keadilan dalam masyarakat kontemporer.

**Kata Kunci:** kaidah fikih, ijtihad, peradilan Islam

## INTRODUCTION

Islamic jurisprudence is a branch of science that has a central role in the lives of Muslims. The Rules of Fiqh (*Al-Qawā'id al-Fiqhiyyah*) are universal principles used to understand, interpret, and apply Islamic law in various aspects of life, including in the judiciary. Word *Al-Qawaid* in Arabic is the plural form of *al-qā'idah* which is defined as *Al-Asas* which means the base, foundation, or foundation of what is built on it. (Ibn al-Manzhur, 1994) Adapaun in terms *Al-Qawā'id al-Fiqhiyyah* is defined as a comprehensive legal provision/principle, covering all or most of its branches and useful to know the law of the branch based on such comprehensive provisions/principles. (Ibn Nujaim, 1999). Fiqh legal rules or principles can help judges and witnesses in determining the validity of evidence and the validity of a legal decision based on sharia principles. Therefore, an in-depth study of the rules of fiqh related to ijihad in the judiciary is very important to ensure that Islamic law remains relevant and applicable.

In the Islamic judicial system, ijihad plays a crucial role in interpreting and applying the law to cases that are complex and do not have precedents in classical texts. Judges are often faced with situations where they have to study the sharia postulates and use the rules of fiqh to ensure justice in their decisions. (Lubis, 2020) In addition, the principles of testimony in Islam also require a deep understanding of the rules of fiqh, especially in assessing the validity and weight of a testimony. The complexity of the application of Islamic law in the judiciary requires an academic study that can explain how the rules of fiqh can be a guideline in the legal decision-making process.

Book *Al-Qawā'id al-Fiqhiyyah Bayna al-Aṣalāh wa al-Tanjīl* The work of Muhammad Bakr Ismail (d. 1426 H) is one of the important references in the study of Rules of Fiqh. This book not only systematically outlines the rules of fiqh but also highlights the relationship between the originality of the rules and the contextual approach in their application. (Ismail, 1996) The study of this book is relevant because it can provide a deeper insight into how the rules of fiqh can be applied to ijihad activities in the context of Islamic justice in the modern era. Thus, the analysis of this book is important in understanding the development and application of Rules of Fiqh in the dynamic Islamic legal system.

The study of the rules of fiqh in the judiciary is something very important, considering that the dynamics of the law are developing day by day. The many new problems that have arisen in the judicial system encourage judges to always be ready to ijihad in order to determine decisions that are in accordance with sharia principles. (Gunawan et al., 2024)

In addition, in the modern judicial system, there are challenges in harmonizing the principles of Islamic testimony with the prevailing positive law. In this context, a better understanding of how the rules of fiqh can be used as a guideline in Islamic justice are urgently needed. This is important so that the legal decision remains in line with the *Maqashid al-Syariah* and meet the aspects of justice expected by the community. (Ismail, 1996)

So far, research related to the application of fiqh principles in judicial ijihad and testimony is still limited. Many studies focus more on the normative aspects of Islamic law without highlighting how the rules of fiqh can be used practically in the judicial and witness systems. Therefore, this study seeks to fill this gap by specifically analyzing the rules of fiqh in the book *Al-Qawā'id al-Fiqhiyyah Bayna al-Aṣālah wa al-Tanjih* (Ismail, 1996) and how relevant it is in the current Islamic legal rulings. By studying more deeply the concept and application of Rules of Fiqh in Islamic justice. This research is expected to make a significant contribution to the development of Islamic law, both in terms of theory and practice.

## RESEARCH METHODS

This research uses a library research method that aims to analyze the concept of ijihad in the judiciary and testimony based on the rules of fiqh in the book *Al-Qawā'id al-Fiqhiyyah Bayna al-Aṣālah wa al-Tanjih* by Muhammad Bakr Ismail. This study was carried out by examining various relevant literature sources, both from classical books and from contemporary studies that discuss the application of fiqh principles in the Islamic judicial system. (Hasanah, 2023) This approach allows researchers to explore in depth the rules or principles underlying ijihad in the context of justice, as well as to examine their applicability in today's Islamic legal system. The data collected was in the form of texts from papers on *Al-Qawā'id al-Fiqhiyyah*, scientific journals, books, and other documents relevant to the research topic. The analysis technique used is content analysis (*content analysis*), where the texts are explored and interpreted to find patterns and principles that can be used as a foundation in Islamic judicial practice. (Murdiyanto, 2020)

## DISCUSSION

Rules of Fiqh are a collection of general norms or principles in Islamic law that function as a guide in understanding and applying the rules in fiqh. (Abu Ashi, 2023) With the existence of fiqh principles, various problems of Islamic law that have similarities can be summarized in one principle, making it easier to understand and apply Islamic law in daily

life. (Zaidan, 2019) The history of the formulation of Rules of Fiqh itself has undergone gradual development, starting from the time of the Prophet PBUH to the modern era, this development requires the discussion of Rules of Fiqh to be increasingly systematic and comprehensively codified in special writings.

### **History of Rules of Fiqh**

*First*, the Period of Emergence, which is from the Prophetic period to the 4th Century Hijri. Currently, the rules of fiqh are still in the form of basic principles derived from the Qur'an and hadith. The Prophet (saw) conveyed the teachings of Islam with simple rules but has a wide scope, such as the principle that Islam does not burden its people and the principle of ease of worship. These principles became the basis for Islamic law that later developed in various fields of jurisprudence. (Syibir, 2006)

In the period of the Companions and Tabi'in, the seeds of Rules of Fiqh began to appear more explicitly. The Companions often give fatwas based on a general understanding of Islamic law, which is then used as a guideline in formulating the rules of fiqh. One example of Rules of Fiqh that comes from the words of friends is *"Every thing depends on its intention"* which is sourced from the hadith of the Prophet PBUH regarding the urgency of intention in every charity. (Helim, 2024) (al-Bukhari, 2002)

In the 2<sup>nd</sup> century Hijri, some scholars of the madhhab began to formulate legal principles that resembled the rules of fiqh in their books. A concrete example of this is Imam Malik in his work entitled *al-Mudawwanah*. (al-Madani, 1994) He collected various legal opinions that have a thought pattern of Rules of Fiqh, one of which is the principle *"it is not a person who inherits another person on a doubtful basis"*. Similarly, Imam Abu Yusuf – one of Abu Hanifah's companions and disciples – in his book entitled *al-Kharraj*. (Abu Yusuf, 1979) He also wrote down the principles of Islamic law that are close to the rules of fiqh. However, at that time, the rules of fiqh had not been codified systematically. These rules are still scattered in fiqh books and often appear in the form of brief statements that are used as guidelines in making legal decisions. (al-Burnu, 1997)

*Second*, the period of preparation and codification began from the end of the 3rd century to the 10th century Hijri. During this period, scholars began to formulate and record the rules of fiqh systematically according to the methods of each sect. In the Hanafi madhhab, Abu Thahir al-Dibasi compiled 17 rules perfected by Abu al-Hasan al-Karkhi into 37 rules. Ibn Nujaym then compiled *Al-Asybah wa an-Nazair* which contains 25 rules,

including five basic rules such as intention, ease, elimination of harm, belief, and customs. (Ibn Nujaim, 1999) In the Shafi'i madhhab, Imam Izz ad-Din ibn Abd as-Salam wrote the book *Qawa'id al-Ahkam* (Ibn Abd Al-Salam, 2020) which emphasizes the concept of maslahat, and Al-Suyuthi compiles *Al-Asybah wa al-Nazhair* Shafi'iyah version. (al-Suyuthi, 1983) In the Maliki madhhab, al-Qarafi wrote *Anwar al-Buruq/ Al-Furuq* (al-Qarafi, t.t.), and in the Hanbali madhhab, Ibn Rajab wrote *Taqrir al-Qawaid wa Tabrir al-Fawaid* which contains more than 160 rules. (Ibn Rajab al-Hanbali, 2019)

In modern times (19<sup>th</sup> century to the present), the rules of fiqh are increasingly developed as a systematic tool for analyzing Islamic law. The Ottoman Empire's majallah al-Ahkam al-'Adliyah is an important example of a codification containing 99 main rules of fiqh. Modern scholars such as Mustafa Az-Zarqa, Sayyid Mahmoud Hamzah, and Muhammad Bakr Ismail have formulated the rules with a contextual approach. In Indonesia, the rules of fiqh are taught in various Islamic universities and continue to develop in academic discourse. This historical journey shows that the rules of fiqh developed gradually, from basic principles to a discipline that was able to respond to the problems of contemporary Islamic law. (Helim, 2024)

The history of Rules of Fiqh shows that this science developed from the basic principles in the Quran and Sunnah, then codified by scholars from various sects, until finally it became a systematic science that can be applied in various problems of Islamic law. This shows that the development of fiqh is a gradual development. (Djazuli, 2007) The development of Rules of Fiqh in the modern era indicates that the science remains relevant and should be discussed and developed in order to become a general principle for the process of determining a law.

## **Ijtihad and Hakim**

Ijtihad is a very vital methodological instrument in the development of Islamic law, especially in dealing with contemporary problems that are not explicitly found in the Qur'an or hadith. Terminologically, Al-Amidi defines ijtihad as devoting all one's abilities to exploring the laws of sharia *Dẓanni*, that is, the law whose postulates are uncertain and open to interpretation. (al-Amidi, 1967) Thus, the results of ijtihad are relative, meaning that they are not absolutely right or wrong, but still have value in the scientific space and the benefit of the people. This view is in line with Al-Ghazali's thought which states that ijtihad is a sincere effort by a mujtahid to understand and establish sharia law through the analysis of

the available evidence. (al-Ghazali, 1997) Ijtihad is a form of actualization of reason in understanding revelation, which in Islam is highly emphasized as a means of approaching the truth. The Qur'an itself repeatedly mentions the importance of using reason and encourages Muslims to think critically in capturing divine messages. One of the important verses that is the foundation of ijthihad is QS. al-Nisa' (4:59), which commands obedience to Allah, the Messenger, and *ulil amri*, and to return disputed matters to revelation. In the modern context, *ulil amri* also includes state institutions and legal apparatus, including judges who are given the authority to establish laws based on sharia principles and applicable laws.

Ijtihad in the treasures of Islamic law has various forms and methods. Judging from its form or approach, ijthihad is divided into three main types. *First, A Heroic Sacrifice*, That is, ijthihad which is carried out by analyzing the nash textually and linguistically to understand the implicit and explicit meanings in the Qur'an and hadith. *Second, And then there's the fact that we're going to have to wait*, i.e. ijthihad based on legal analogy, where the mujtahid uses the rule of qiyas to equate the law of a new case with the old case that has '*illah* (legal reasons) the same. *Third Ijtihad Istislaby*, namely the determination of the law based on considerations of benefits or public benefits, which prioritizes the public interest as long as it does not conflict with the basic principles of sharia. (al-Khadimi, 1998) Apart from its form, ijthihad can also be classified based on the way it is implemented. In this case, three other forms are known. First, *ijthihad intiqai*, namely the selection of various scholars' opinions to choose the most powerful and relevant to the context. Second *Ijtihad insbahi*, namely the creation of new laws that have no direct precedent, but are still based on the principles of maqashid sharia and the valid method of ushul fiqh. Third, *comparative ijthihad*, which is a combination of the *Conclusion* and *Inshallah*. by comparing and formulating new laws based on several different sources and approaches. (Hasunah, 2005)

In the modern Islamic legal system, especially in Indonesia, the position of judges is very important as an ijthihad perpetrator in the courtroom. Based on the Republic of Indonesia Law Number 3 of 2006 concerning Religious Courts, judges are officials who exercise judicial power and have the obligation to give rulings on every case submitted to them, especially in cases related to Islamic law, such as marriage, inheritance, waqf, and so on. In carrying out their duties, judges are required not to postpone or reject a case, even though there is no written rule that explicitly governs the case. In such a situation, the judge is required to perform ijthihad as a form of his scientific and professional responsibility.

In practice, a sharia judge in Indonesia is considered qualified as a mujtahid within the scope of his authority if he or she has a sharia scientific background and a deep understanding of Islamic law. Therefore, in cases that are complex or not answered by positive regulations, judges can use ijihad methods—both *bayaniy*, *qiyasiy*, and *istislahiy*—to formulate a fair and proportionate legal solution.

Furthermore, the role of judges is not only as an implementer of rules, but also as an active interpreter of legal texts and social realities that continue to develop. Creativity and ability *Istinbath Law* It is an important capital that a judge must have in determining a decision that is not only legally valid, but also has the power of moral and social legitimacy. This principle is strengthened by the hadith of the Prophet Muhammad PBUH which states that a judge who is ijihad and correct will get two rewards, while if he is wrong, he will still get one reward. (Fouda, 2014) This hadith shows that ijihad is a scientific activity that has the value of worship and has a big role in the dynamics of Islamic law. Thus, the synergy between the concept of ijihad and the role of judges in the judiciary is a very important framework to understand how Islamic law can be applied contextually, rationally, and still based on the values of justice and the benefit of the ummah.

### **Analysis of Rules of Fiqh Related to Ijihad**

The first rule of fiqh that is closely related to the judicial system is the rule of *lawal-ijtibādu lā yunqadhu bi al-ijtibādu* that means *Ijihad cannot be cancelled with other ijihad*. (Ismail, 1996) This rule is a fundamental principle in Islamic law which emphasizes that the results of ijihad that have been legally applied cannot be canceled just because other different ijihad opinions appear. This rule is based on the understanding that ijihad is within the jurisdiction of the jurisdiction *Zannī*, that is, things that do not have evidence *qath'ī* and therefore open to differences of opinion. Although ijihad is a flexible and developmental intellectual product, when a decision has been produced through a legal ijihad process and officially enforced in the judicial system, the decision has legal force that must be respected in order to maintain legal stability and certainty. This rule also has a strong rational basis, if every result of ijihad can be dropped by other ijihad freely, then the legal system will become inconsistent and vulnerable to uncertainty that disturbs social order.

In the context of Islamic justice in Indonesia, this rule has significant practical implications, especially in ensuring the sustainability of a fair and stable legal system. A judge's decision resulting from the ijihad process cannot be immediately canceled just because there is a different opinion or decision of another judge, especially in the appeal or

cassation process. This is a guarantee of judicial independence, that every judge has the authority to explore and establish the law according to his competence through the legal *ijtihad* method.

Thus, the difference in the results of the verdict between one judge and another judge in a similar case is still acceptable as long as it is rooted in the method of *ijtihad* that can be accounted for. This rule also serves to ensure that the possibility of legal reform in the future is not closed, especially if different social realities arise or things are found that are considered more relevant and beneficial. Therefore, this rule is an important foundation in maintaining a balance between the flexibility of Islamic law through *ijtihad* and the need for legal certainty in the judicial system, while affirming that Islamic law is dynamic, but still upholds stability, justice, and legitimate legal authority.

The next rule of *fiqh* is the rule of *al-Tarjih la yaqa'u bikatsrat al'ilal* Meaning *An opinion does not become stronger just because it has many reasons*. (Ismail, 1996) This rule is an important principle in *ijtihad* activities that emphasize that the strength of a legal opinion is not measured by the number of reasons stated, but seen from the quality, relevance, and validity of the opinion itself. In *ijtihad* discourse, opinions often appear that seem strong because they are supported by various arguments, both textual and rational. However, if the opinion is not substantially solid or out of context, then the conclusions built on it are still considered weak. Therefore, the number of reasons or references is not a guarantee for the strength of an opinion, because the more important thing is the accuracy of the methodology and the depth of analysis of the postulate used.

In the context of Islamic justice in Indonesia, this rule has direct implications in the process of assessing and determining the law by judges. A judge should not be influenced by the many arguments or quotes of opinions from various sources if it turns out that the opinion is not strong or irrelevant to the case being handled. Legal decisions should be born from careful consideration of the quality of the evidence and its conformity with existing social conditions and legal facts, not based on scientific impressions alone. This rule is also a reminder that the legal reasoning process is not trapped in the quantity of arguments, but remains based on the principles of prudence and accuracy in making decisions. Thus, the application of this rule in the Islamic judicial system not only strengthens the quality of decisions, but also maintains the integrity of Islamic law so that it is always relevant, fair, and unbiased against forms of argument that appear to be outwardly convincing but methodologically weak.



Then the third one is the rule *Al Qaeda in Al Qaeda* Meaning *No opinion is considered strong if there are still other possibilities supported by postulates/evidence*. (Ismail, 1996) This rule is an important principle in *ijtihad* discourse which emphasizes prudence in establishing the law when a proposition contains a non-singular meaning. This rule shows that if a proposition has more than one possible interpretation, then it cannot be used as a strong legal basis unless the other possibilities have been eliminated or ruled out by more definite evidence. In the epistemological framework of Islamic law, certainty is the main factor in determining *Stuttgart*, therefore, as long as there is still a potential for other meanings that are feasible and supported by stronger postulates, then the arguments built on these postulates become weak or invalid to be used as the main foothold in the process of giving birth to law.

In the context of the Islamic justice system in Indonesia, this rule has great relevance, especially in the decision-making process by judges. When the judge is faced with a postulate or argument that still leaves room for double interpretation, he must be careful and not immediately take one of the meanings as the basis of the law, unless a thorough clarification of the possibilities has been made. This aims to avoid mistakes in determining the verdict, as well as to maintain the principle of justice which is the spirit of the sharia court. This rule also emphasizes the importance of prudence in issuing fatwas and imposing legal verdicts, so as not to be hasty in using ambiguous or multi-interpretation postulates as the basis for final law. Therefore, the application of these rules in the Islamic judicial system functions as a guardian of methodological integrity, as well as a preventive principle so that the established law truly stands on clear, strong, and undoubted evidence.

The next rule is the rule *Al-Waṣfu fi al-hadir laghwun wa fi al-ghaib mu'tabar*. The rule states that a description or explanation of an object is not considered relevant if the object can be seen or presented directly, but the description becomes important when the object is invisible or cannot be presented. (Ismail, 1996) This rule is rooted in the principle that direct observation (*musyabadah*) has a higher level of validity than mere verbal or narrative information. When something can be seen in real terms, then a description of it or a verbal claim cannot change that objective reality. However, in situations where an object cannot be presented—for example, because it is missing, lost, or physically inaccessible—description becomes an important tool for understanding and assessing the veracity of a claim, especially in the context of legal proof.

In the Islamic judicial system, this rule has real implementation in the evidentiary process in court, especially in cases involving objects, people, or events. If evidence can be

presented directly before the judge, then the oral evidence or description of the disputing party cannot invalidate the existing physical reality. However, if the object in dispute is not present in court, then descriptive testimony from witnesses, relevant parties, or supporting documents becomes an important tool in legal consideration. In this context, the judge needs to assess the credibility and consistency of the description in order to arrive at a fair conclusion. This rule also teaches the importance of objectivity in making decisions, as well as placing direct evidence as the main basis in the judicial process. Thus, this rule reinforces the principle of prudence in deciding cases and emphasizes that legal judgment must be based on solid facts, either through direct observation or valid testimony when observation is not possible.

The last rule is *Al-sulhu jā'izun bayna al-muslimin illā sulhan barrama halālan aw aballa haraman*. This rule is an important principle in Islamic law that regulates the limits of one's ability to make peace (sulh). This rule emphasizes that all forms of peace between fellow Muslims are basically permissible and even encouraged in order to maintain social harmony and reduce conflicts, as long as the peace does not deviate from the provisions of sharia law. (Ismail, 1996) That is, if in a peace agreement there is an attempt to legalize something that is legally clearly haram, or on the contrary prohibits something that has been determined to be halal, then the agreement becomes null and void. This shows that the principles of deliberation and compromise in Islam must still be based on non-negotiable signs of sharia.

In the context of the Islamic justice system in Indonesia, this rule has strong practical relevance, especially in dispute resolution through non-litigation channels such as mediation or out-of-court peace. The judge, mediator, or the parties involved in the settlement of the case must ensure that the content of the agreement does not conflict with the basic principles of Islamic law. For example, in the case of inheritance, peace is allowed as long as no party consciously removes the rights of the heirs that have been specified in the Qur'an, because that would mean forbidding what is halal. Similarly, in cases of *mu'amalah* or other civil cases, a peace agreement must not legitimize the practice of usury, fraud, or any form of transaction that is prohibited by sharia. Thus, this rule provides a clear boundary that the spirit of reconciliation and social justice must not sacrifice the principles of sharia that are permanent, and ensure that the peace achieved is truly legally and religiously valid.

From the various analyses of the rules of fiqh that have been described, it is clear that a deep understanding of these rules has a very high urgency. The rules of fiqh are not just a tool in legal *istinbath*, but are a methodological foundation that keeps the legal reasoning

process within the framework of *maqashid al-shari'ah*—that is, realizing justice, benefits, and social order. For judges, mastery of these rules allows them to make decisions that are not only procedurally valid, but also substantially and contextually appropriate. This is very important in the dynamics of the judiciary that demands a balance between text, context, and the needs of society.

Meanwhile, for mujtahids, understanding the rules of *fiqh* helps in filtering evidence, sorting out opinions, and compiling solid and accountable legal arguments. In the midst of the complexity of contemporary problems whose answers are often not found explicitly in the *nash*, the rules of *fiqh* are present as a rational-theological instrument that bridges text and reality. Therefore, strengthening competence in understanding and implementing the rules of *fiqh* is an absolute requirement for anyone involved in the process of enforcing Islamic law, so that the resulting law is not only based on normative truth, but also on analytical maturity and applicative justice.

## CONCLUSION

This study emphasizes that the rules of *fiqh* have a very crucial role in framing the implementation of *ijtihad*, especially in the context of Islamic justice. Principles such as *al-ijtihadu la yunqadhu bil ijtihad; al-tarjih la yaqa'u bi kasrat al-ilal; la hujjata ma'a al-ibtimal al-nashi 'an dalil; al-wasfu fi al-hadir laggun wa fi al-ghaib mu'tabar; and al-sulhu ja'izun bayna al-muslimin illa sulhan harrama halalan* not only serve as a theoretical guide, but also provide clear and ethical direction in legal decision-making.

In this context, the urgency of the role of judges becomes very prominent. Judges not only serve as executors of the law, but also as mujtahids who must be able to explore, interpret, and apply Islamic law in a contextual and fair manner. *Ijtihad* carried out by judges must be based on the rules of *fiqh* so that the decisions taken do not deviate from the principles of *sharia* and remain relevant to the social reality at hand. By paying attention to these rules, judges can carry out *ijtihad* responsibly and measurably, while preventing subjectivity and potential deviations in legal reasoning. Therefore, strengthening the capacity of *ijtihad* for judges and a deep understanding of the rules of *fiqh* is an urgent need in the development of an Islamic justice system that is fair and responsive to the challenges of the times.

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## REVIEW OF MAQĀSID AL-SHARĪ'AH ON THE PERFORMANCE AND PROFESSIONALISM OF PRODUCTIVE WAQF NADZIR IN INDONESIA

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### ABSTRACT

Waqf is one of the instruments of Islamic philanthropy that has great potential in improving the welfare of the people. Nadzir holds a central role as the party responsible for the management and development of waqf assets. This article aims to examine the professionalism and ethics of waqf nadzir from the perspective of Islamic law, using the theory and analysis of *maqāsid al-sharī'ah* on the practice of productive waqf in Indonesia. This research uses a qualitative-descriptive approach through the method of literature study, referring to classical and contemporary Islamic law sources as well as national waqf regulations. The results of the study show that efforts to improve the professionalism of a waqf nadzir are to prioritize the principles of Islamic law. Commitment to justice and transparency is a moral-legal responsibility in the management of waqf property. Therefore, strengthening the capacity and integrity of a nadzir is essential to make waqf an instrument for sustainable economic development of the ummah.

**Keywords:** Nadzir, Waqf, Islamic Law

### ABSTRAK

Wakaf merupakan salah satu instrumen filantropi Islam yang memiliki potensi besar dalam meningkatkan kesejahteraan umat. Nadzir memegang peran sentral sebagai pihak yang bertanggung jawab dalam pengelolaan dan pengembangan aset wakaf. Artikel ini bertujuan untuk mengkaji profesionalisme dan etika nadzir wakaf dalam perspektif hukum Islam, dengan menggunakan teori dan analisis *maqāsid al-sharī'ah* terhadap praktik wakaf produktif di Indonesia. Penelitian ini menggunakan pendekatan kualitatif-deskriptif melalui metode studi pustaka, mengacu pada sumber-sumber hukum Islam klasik dan kontemporer serta regulasi perwakafan nasional. Hasil kajian menunjukkan bahwa upaya dalam meningkatkan profesionalisme seorang nadzir wakaf adalah dengan mengedepankan prinsip-prinsip hukum Islam. Komitmen tentang keadilan dan transparansi menjadi tanggung jawab moral-hukum dalam pengelolaan harta benda wakaf. Oleh karena itu, penguatan kapasitas, integritas seorang nadzir sangat esensial untuk menjadikan wakaf sebagai instrumen pembangunan ekonomi keummatan secara berkelanjutan.

**Kata kunci:** Nadzir, Wakaf, Hukum Islam

## Introduction

In the face of today's global economic challenges, productive waqf has emerged as a strategic instrument that not only has spiritual value but also significant economic potential. As part of Islamic teachings, waqf is not only a practice that has the value of worship, but also as a means to create social and economic welfare for the people. Productive waqf allows waqf assets, such as land and buildings, to be managed professionally to generate sustainable economic benefits. For example, the management of waqf land for agriculture or micro businesses can improve the welfare of the surrounding community. Research by Sundana (2023) shows that productive waqf management in the agricultural sector can empower rural communities through increased income and job skills. However, the implementation of productive waqf in Indonesia still faces various challenges, including low public literacy about waqf and lack of supportive regulations. Syaripudin and Nurhuda (2025) emphasized the importance of strengthening regulations and increasing public understanding in order to optimize the potential of productive waqf in Indonesia.

Waqf regulations in Indonesia have been regulated through Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 as its implementation rules. However, this regulation needs to continue to be refined to accommodate the development of productive waqf, including money waqf and digital assets. The government and related institutions need to encourage innovation in waqf management, such as the use of digital technology for transparency and efficiency. Kholim et al. (2024) suggest the use of digital platforms to make it easier for the community to do waqf and monitor the management of waqf assets. With professional management and adequate regulatory support, productive waqf has great potential to be a solution in overcoming economic and social problems in Indonesia, as well as realizing a just and prosperous society.

Nazhir comes from the Arabic language, which is from the fi'il (verb) *form nadẓara-yandẓuru-nadẓaran* which has a basic meaning: to maintain, manage, maintain, and supervise. In the form of isim fā'il, the word becomes nazhir, which in Indonesian can simply be translated as "supervisor" or "guard." In the context of waqf, nazhir is a party who is given a mandate by the wakif (the person who endows the property) to manage, maintain, and distribute the benefits of the waqf property in accordance with the provisions and objectives that have been set by the waqf.

Nazhir can be an individual, a group of people, or a legal entity. The position of nazhir is very strategic in the waqf system, because although in the view of classical scholars

it is not used as a pillar in waqf, almost all jurists agree that the appointment of nazhir is very necessary so that waqf assets can be managed sustainably and on target. Therefore, in practice, the existence of nazhir is an important condition in maintaining the continuity of the benefits of a waqf property (Ministry of Religion of the Republic of Indonesia, 2022).

Nazhir has the main responsibility in the management of waqf assets which includes aspects of physical management of waqf objects, maintenance so that they are not damaged or lost, and development to provide wider and sustainable benefits. This role is crucial considering that the challenge of waqf management in Indonesia is not only an administrative matter, but also involves strategic management that must be carried out professionally and accountably.

Normatively, the legal basis that regulates nazhir in Indonesia is contained in Law Number 41 of 2004 concerning Waqf, and strengthened by Government Regulation Number 42 of 2006. In the regulation, it is explained that nazhir is an individual, organization, or legal entity that is in charge of managing and developing waqf property in accordance with its purpose, function, and designation. In its implementation, nazhir is not allowed to carry out actions that are contrary to the intention of the waqf, including pawning or making waqf assets as debt collateral (Law No. 41 of 2004 Article 12).

It should be understood that the success of waqf management is highly dependent on the quality of human resources who play the role of nazhir. In many cases, weaknesses in waqf management are often rooted in low professional capacity, weak productive waqf literacy, and lack of innovation from the nazhir. As a result, many waqf lands are abandoned, not well managed, or even become a cost burden for the institutions that manage them (Supriyadi, 2023).

This phenomenon can be seen from the fact that most waqf in Indonesia is still dominated by waqf for mosques, prayer rooms, madrasas, orphanages, and cemeteries. Although in terms of religion, this has important value, but in the context of economic empowerment of the people, its influence has not been significant. In fact, if the waqf land is managed productively and innovatively, the potential contribution to the social, educational, and economic welfare of the community will be very large (Nurhidayat, 2022).

Therefore, efforts are needed to revitalize the role of nazhir with a professionalism approach, strengthening managerial capacity, and increasing accountability in waqf management. This is in line with the idea of productive waqf that has begun to be encouraged by many modern Islamic economic experts. With this approach, waqf property is not only



an instrument of worship that is purely spiritual, but also a real socio-economic instrument in improving the standard of living of the people (Hasanah, 2023).

Since the time of the Prophet Muhammad SAW, the practice of waqf has been part of the economic system of Muslims. During the time of the Prophet, the form of waqf developed more in the realm of worship, such as land for mosques and public facilities. However, with the development of the times, the orientation of waqf began to shift, from a ritual one to a more social and productive direction. This transformation certainly requires adaptation of regulations and management to remain in accordance with maqashid al-shari'ah, namely maintaining the benefit of the ummah (Aziz, 2022).

Nazhir does not have absolute power over the waqf assets he manages. The power given is limited, which is limited to the management so that the waqf remains in accordance with the intention of the waqf and brings benefits to the mauquf 'alaih (beneficiaries). In practice, supervision of nazhir actions also needs to be strengthened, both through a transparent reporting system, the involvement of the Sharia Supervisory Board, and periodic audits from local waqf authorities (Khasanah, 2024).

Differences of opinion on who has the right to be a nazhir does exist in the jurisprudence literature, but the substance of all opinions remains the same: that the nazhir is a party that is trusted to maintain the mandate of waqf as best as possible. In the context of positive Indonesian law, this is accommodated through regulations that allow individuals, socio-religious organizations, and legal entities such as foundations or Islamic financial institutions, to act as nazhir (Anwar, 2023).

Therefore, assessing and strengthening the performance of nazhir is very important in order to answer the challenges of waqf modernization. Periodic training, professional incentives, and digital system integration are needed to support transparency and accountability in waqf management. If waqf management is carried out optimally, then the potential of waqf as an instrument for the welfare of the people can be realized in real terms, not only as a symbol of spirituality, but also as a strong and sustainable economic foundation of the community (Rahman, 2023).

## **Research Methods**

This research uses a qualitative approach with the library *research* method, which aims to explore and analyze the role of waqf nadzir in the perspective of Islamic law. This approach was chosen because the research is normative-conceptual, focusing on the study

of Islamic legal norms and laws and regulations governing waqf, especially related to the position and responsibilities of nadzir. (Rivera-Aguilera, A. B., et al., 2025)

The main sources studied in this study include classical and contemporary literature in the field of waqf jurisprudence from various major schools in Islam, as well as primary documents such as the Qur'an, Hadith, and scholarly works that discuss waqf specifically. In addition, secondary literature in the form of academic books, scientific journal articles, and dissertations is also used to enrich perspectives and analysis.

This research also examines waqf regulations that apply in Indonesia, such as Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006, and fatwas from the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The study of this regulation aims to identify the extent to which sharia principles are accommodated in the national legal system, especially in terms of the role and function of nadzir (Republic of Indonesia, 2004; DSN-MUI, 2011). The analysis technique used is descriptive-analytical, namely by explaining and interpreting the content of Islamic legal texts and positive regulations systematically, then critically analyzing them to see the level of conformity between sharia normative principles and empirical practices of waqf management. (Sahroni, M. 2022) This analysis is also carried out comparatively on various views of fiqh, so that it can be known that there are variations in interpretations of the role of nadzir and how sharia values can be used as a basis in building a strong, trustworthy, and professional nadzir institution.

### **The Urgency of Nadzir's Role in the Waqf Law**

In Law No. 41 of 2004 concerning Waqf, it is explained that a nadzir is a party who receives waqf property from the waqf to be managed and developed in accordance with its purpose and designation (Law No. 41 of 2004, Article 1 paragraph 4). A similar affirmation can be found in Government Regulation No. 42 of 2006, which emphasizes that nadzir has the responsibility of managing the benefits of waqf to be sustainable (Government Regulation No. 42 of 2006, Article 1 paragraph 4). Meanwhile, in the Compilation of Islamic Law (KHI) Article 215 paragraph (5), nadzir is described as a group of people or a legal entity that is mandated to maintain and manage waqf assets (KHI, 1991).

In order for its function to be optimal, nadzir is required to meet a number of conditions, including being Muslim, having legal skills (mukallaf), trustworthy, physically and spiritually healthy, and not being prevented from doing legal acts (Law No. 41 of 2004,

Article 10 paragraph 1). In addition to the legal-formal aspect, nadzir in the modern era also needs to have the ability to innovate and think strategically. In the history of Islam, Umar bin Khattab once appointed Hafshah bint Umar as the nadzir over his waqf property—showing that considerations of competence and integrity have been part of the practice of waqf since the early days of Islam (Abu Ubaid, *Kitab al-Amwāl*, p. 608; Anwar, 2021, p. 92).

The requirements to become a nadzir as explained in the KHI that a nadzir must meet the following requirements: 1) be an Indonesian citizen; 2) Muslims; 3) adulthood; 4) have a trustworthy nature; 5) physically and spiritually healthy; and 6) have no obstacles in carrying out legal acts. In Article 219 paragraph (4) of the KHI, it is explained that the nadzir before officially carrying out his duties is obliged to take an oath in front of the Head of the District Religious Affairs Office (KUA) witnessed by at least two witnesses. This provision emphasizes that the management and development of waqf assets is not only a spiritual mandate, but also a legal responsibility that requires professionalism. Unfortunately, the reality on the ground often shows that the duties of nadzir are carried out on a part-time basis, not as the main job, so that many waqf assets become abandoned and not used optimally.

The requirements to become a nadzir as explained in the Compilation of Islamic Law (KHI) include several important aspects, namely: 1) Indonesian citizenship; 2) Muslims; 3) adulthood; 4) have a trustworthy nature; 5) physically and spiritually healthy; and 6) have no obstacles in carrying out legal acts (KHI, Article 219 paragraph [3]). This provision shows that the position of nadzir is not an arbitrary position, but a mandate that requires integrity, legal skills, and physical and mental readiness. Furthermore, in Article 219 paragraph (4) it is emphasized that before officially carrying out his duties, nadzir is obliged to take an oath before the Head of the District Religious Affairs Office (KUA) witnessed by at least two witnesses (KHI, 1991). This oath-taking procedure is a symbol of the legal and spiritual responsibilities inherent in the position of nadzir.

The provision underlines that the management and development of waqf assets is not only related to aspects of worship or spirituality, but is also a legal responsibility that demands professionalism and public accountability. However, the reality on the ground shows that the role of nadzir is still often carried out unprofessionally. Many nadzir only manage waqf as a part-time task, not as the main job, resulting in stagnation, even the abandonment of waqf assets that should be productive and provide socio-economic benefits for the ummah (Indonesian Waqf Agency, 2022)

In the Compilation of Islamic Law (KHI) Article 219 paragraph (5) also regulates the number of individual nadzir members, namely a minimum of three people and a maximum of ten people, who must receive a recommendation from the District Ulema Council and the local sub-district head. In Law No. 41 of 2004 in conjunction with Government Regulation No. 42 of 2006, it is stated that nadzir can be in the form of individuals, organizations, or legal entities.

**a. Nadzir Singles**

Individual nadzir is defined as a group consisting of a minimum of three people. They must meet the requirements: Indonesian citizens, Muslims, adults, trustworthy, physically and spiritually healthy, and not legally hindered. Government Regulation No. 42 of 2006 stipulates that individual nadzir is appointed directly by the wakif and must be registered with the Minister and BWI through the local KUA. One of the members of the nadzir must be domiciled in the sub-district where the waqf assets are located.

**b. Nadzir Organization**

Nadzir in the form of an organization is an institution engaged in the social, educational, religious, and social fields of Islam. The requirements include: The organization's management must meet the criteria for individual nadzir; One of the administrators is domiciled in the district/city area where the waqf property is located. Must have complete documents such as a notary deed of establishment, management structure, AD/ART, work programs, a list of waqf assets separate from the institution's assets, and a statement of willingness to be audited. Just like individual nadzir, nadzir organizations must be registered with the Minister and BWI through KUA.

**c. Legal Entity Nadzir**

A legal entity as a nadzir is a legal entity formed based on the provisions of the law and has an orientation of activities in the social, educational, community, or religious fields of Islam (Law No. 41 of 2004, Article 9 paragraph 3). In this case, the status of a legal entity guarantees better sustainability, institutional accountability, and administrative capabilities than an individual. The requirements that must be met by a legal entity as a nadzir are basically identical to other nadzir organizations, including the need to register and obtain legality through the registration mechanism at the

Indonesian Waqf Agency (BWI) or the local Religious Affairs Office (PP No. 42 of 2006, Article 14).

In the practice of waqf management, there are provisions regarding obligations and prohibitions that must be complied with by nadzir. These provisions are classified into two groups, namely general provisions and special provisions. General provisions include requiring that all waqf property must be registered in the name of the nadzir in accordance with the content of the Waqf Pledge Deed (AIW), but does not make the nadzir the owner of the property (Law No. 41 of 2004, Article 15). The status of ownership remains in the power of Allah SWT and waqf is tamlik mu'abbad (eternal ownership) for the benefit of the ummah. Therefore, from the perspective of fiqh, the nadzir only acts as the manager (mutawallī) and not the owner (mālik) of the waqf property, so he is obliged to maintain, develop, and allocate the benefits of the property according to the purpose of the shari'i and the content of the waqf pledge (Al-Kasani, Bada'i al-Shana'i, juz 6; Al-Sarakhsi, Al-Mabsuth, juz 12).

#### **d. Nadzir's Devotional Period**

According to Government Regulation Number 42 of 2006 Article 14 paragraphs 1 and 2, the term of office of an individual nadzir is set for five years and can be extended, provided that in the previous term of office the person concerned has carried out his mandate properly, in accordance with sharia principles and applicable legal provisions (Government Regulation No. 42 of 2006, Article 14). This provision means that the responsibility of the nadzir is not only administrative, but also ethical and spiritual. A nadzir is not enough to only understand the legal-formal aspects, but also to internalize the values of sincerity (ikhlaṣ), responsibility (mas'ūliyyah), and professionalism in managing waqf assets.

In the perspective of fiqh al-awqāf, nadzir is positioned as a representative of shari'i (legal representative) of the purpose of shari'i waqf, which is to maintain the continuity of the use of waqf property for the public benefit. Therefore, it is not an exaggeration to say that nadzir is a central actor in the waqf system, which determines the success or not of waqf in answering the socio-economic challenges of the ummah (Al-Zuhayli, 2007). The existence of nadzir should not be underestimated or just a formality. Quite the opposite, it must be filled by a trustworthy, competent, and well-managerial figure or institution.

## **Challenges in Maximizing the Role of Waqf Nadzir**

Although it has a strong legal basis, both in the form of Law No. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006 concerning the Implementation of the Waqf Law, the practice of waqf management in Indonesia still faces various structural and functional challenges, especially in the context of the role of nadzir. Structurally, many nadzir in Indonesia do not have adequate institutional capacity, both in terms of human resources, access to technology, and a professional managerial system. This causes potential waqf assets to become unproductive or abandoned. Data from the Indonesian Waqf Agency (BWI) notes that of the thousands of registered nadzir, only a small number are able to manage waqf productively and accountably.

Functionally, challenges also arise in the form of low waqf literacy among the community and weak coordination between nadzir, the government, and Islamic financial institutions. Many individual or traditional nadzir carry out their duties voluntarily without adequate training, so they do not have a sufficient understanding of the principles of asset management, waqf business planning, and financial accountability. This is exacerbated by the weak monitoring and evaluation system for the performance of nadzir, thus causing an imbalance between the huge potential of waqf and the realization of its benefits in the field. As emphasized by Suhrawardi K. Lubis, "One of the main problems in waqf management in Indonesia is the lack of an effective coaching and supervision system for nadzir, both in terms of morality and professionalism" (Lubis, 2024).

Some of the key challenges identified in various studies and institutional reports include:

- a. Limited human resource (HR) capacity. Many nadzir do not have an educational background in the field of sharia economics, asset management, or waqf law, so their ability to manage and develop waqf assets is not optimal.
- b. Lack of institutional support. Most of the nadzir operate individually or in small groups that have not been members of professional institutions or are not formally integrated with the coordination system of the Indonesian Waqf Agency (BWI), which is supposed to be the center of strengthening the national waqf institutional system.
- c. Lack of access to technology and financing. Nadzir often faces obstacles in obtaining funding for productive waqf projects, especially from Islamic financial

institutions. In addition, the use of digital technology to support transparency, financial reporting, and monitoring of waqf management is still very low.

- d. Lack of oversight and accountability. Not all nadzir compile periodic financial statements or account for the results of management to the public and the wakif. This has an impact on declining public trust in waqf institutions, and hinders public participation in productive waqf.

### **Nadzir in the Perspective of Maqashid Shariah**

In managing waqf property, a nadzir must understand the principles of *maṣlaḥah* (utility), *istiḥsān* (preference for the best solution), and *sadd al-dharī'ah*, which is the prevention of potential damage. These three principles are part of the *ijtihād* approach in *uṣūl al-fiqh* which allows for the flexibility and adaptability of Islamic law to social dynamics. In the context of waqf management, *maṣlaḥah* is the main orientation that directs that all policies and programs carried out by nadzir must provide real benefits for the ummah, both in social, economic, educational, and health aspects (Muchlis, 2023; Ma'arif, 2023).

Waqf should not only be a symbol of religiosity, but should be a means of empowerment that raises the dignity and welfare of the community at large. By making these three principles as normative and operational foundations, the management of waqf will be more directed towards achieving *maqāṣid al-sharī'ah*, namely realizing benefits and preventing damage. These principles also affirm that waqf is not just a worship of property, but a social instrument that requires professional governance and is oriented towards the long-term welfare of the people. (Fajri et al., 2022; Sahidin, 2022).

By upholding professionalism, integrity, and strong managerial capacity in nadzir, the potential of waqf can be maximized as a strategic instrument in alleviating poverty, encouraging the economic independence of the people, and strengthening social infrastructure in a sustainable manner. Nadzir's task is not only as a guardian of waqf property, but also has a responsibility in developing waqf assets through productive business ventures, of course this requires courage and analysis in reading every potential that can be developed. Therefore, a nadzir is also encouraged to try to understand the concept of *maqāṣid al-sharī'ah*, especially in the aspects of *ḥifẓ al-māl* and *ḥifẓ al-nafs*. Therefore, coaching, certification, and increasing the capacity of nadzir is an important agenda in order to strengthen the role of waqf as an instrument for sustainable development of the people (Nurul Huda, 2022; BWI, 2025; Anam et al., 2024).

## **Ethics and Morality of Nadzir Waqf in Islam**

In classical fiqh studies, the manager of waqf property is known as nadzir, which means someone who manages, maintains, and is responsible for waqf assets. Although in various jurisprudence books there is no mention of nadzir as the pillars of waqf, scholars agree that the waqf must appoint a nadzir, either himself, the recipient of the waqf, or others. Most scholars are of the opinion that the wakif is responsible for managing waqf assets during his lifetime, including building, renting, repairing, and distributing them to those who are entitled. (Ed. Supriyadi. 2023)

The wakif can act as a nadzir or appoint someone else to replace his duties. If the wakif does not appoint a nadzir, then the government as the ruler of the law has the right to become a nadzir for the benefit and preservation of waqf property. This shows that nadzir plays an important role in waqf. For example, Umar bin Khattab when he endowed his land, he himself became a nadzir during his lifetime. After his death, the management of waqf was handed over to his daughter Hafsa, then to Abdullah bin Umar, and so on based on Umar's will. This proves that the existence of nadzir is very necessary to achieve the purpose of waqf. Nadzir is in charge of managing, maintaining, and developing waqf assets. In fiqh terms, waqf managers are known as nadzir waqf or mutawalli waqf. Because waqf assets are the mandate of Allah in the hands of the nadzir, the nadzir is responsible for the waqf property and the results of its development. Every nadzir activity must consider the continuity of waqf assets so that the benefits can be distributed to mauquf alaih. Thus, the sustainability of waqf assets is guaranteed in the hands of the nadzir. (B Syafuri - Al Ahkam, 2018)

Waqf assets as an asset of the ummah must be managed properly and trusted so that their potential can be explored and distributed according to the purpose of waqf. In addition to the form of the waqf property, its management and designation, as well as the selection of nadzir by the waqf are an important part in optimizing the role of waqf for the welfare of the people. Nadzir is the central party in the management of waqf because the success of management is highly dependent on the capacity and integrity of nadzir. Therefore, as an important instrument in waqf management, nadzir must meet the criteria that allow waqf assets to be managed properly. In order to carry out his duties properly and professionally, the nadzir must meet the following criteria and requirements: First, honest and fair ('adālah), that is, carrying out religious commands and staying away from its prohibitions. The majority of scholars, except Hanabilah, require this. Second, having expertise (al-kifāyah), namely personal abilities such as puberty and reason, as well as the ability to maintain, manage, and



develop waqf assets to achieve optimal results. Third, they must be Muslim. However, Hanafiyah scholars do not require Islam for nadzir, on the grounds that professionalism and trust can be possessed by anyone. ( K Kamariah, N Nirwana - *Ats-Tsarwah: Legal Journal*, 2021)

## **Conclusion**

Nazhir is a party that receives waqf property from the waqf to be managed and developed in accordance with its designation. Nazhir's position as the party in charge of preserving and managing waqf property has an important position in waqf. So important is the position of Nazhir in waqf, that the functioning of waqf for mauquf alaih is highly dependent on Nazhir waqf. The role of nadzir in the management of waqf is not only limited to administrative and managerial aspects, but also includes a deep ethical and spiritual dimension, which must be based on the principles of maqāṣid al-sharī'ah. In Islamic law, nadzir bears a great mandate in managing the property of the people who are waqf as the property of Allah SWT for the common good. Therefore, every action and policy taken by the nadzir must be judged not only in terms of the efficiency and success of the program, but also in terms of sincerity of intention, honesty, and conformity with the principles of Islamic law.

Within the framework of maqāṣid al-sharī'ah, nadzir plays an important role in maintaining and developing waqf assets so that they not only provide worldly benefits but also bring ukhrawi rewards. Thus, nadzir is not only an asset manager, but a guardian of the sacred values of waqf that bridges the interests of this world and the hereafter. Therefore, increasing professionalism and understanding of nadzir ethics based on the principles of maqāṣid al-sharī'ah is very important so that the management of waqf in Indonesia can run optimally, transparently, and provide sustainable benefits for the ummah.

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## RECONSTRUCTION OF CULTURAL JURISPRUDENCE TO STRENGTHEN THE CONSTITUTIONAL GUARANTEE OF LOCAL CULTURE IN INDONESIA

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### ABSTRACT

This article aims to reconstruct the cultural fiqh approach as an integrative strategy to strengthen constitutional guarantees for local culture in Indonesia. This study uses a qualitative method with a juridical-conceptual and philosophical-cultural approach to examine the relationship between Islamic law (fiqh), local culture, and state legal norms. The analysis is carried out through a literature study of classical and contemporary fiqh texts, constitutional documents, and the thoughts of progressive fiqh figures. The research findings show that fiqh has epistemological flexibility that allows accommodation to local culture through rules such as al-‘ādah muhakkamah and maqāṣid al-syarī‘ah. The Indonesian Constitution, especially Article 28I and Article 32 of the 1945 Constitution, provides a strong legal basis for the preservation of regional culture. This article formulates an integrative model between fiqh and constitutional guarantees that allows the preservation and strengthening of local culture harmoniously within the framework of Islamic values and national law.

**Keywords:** Cultural Jurisprudence, Constitutional Guarantees, Local Culture

### ABSTRAK

Artikel ini bertujuan untuk merekonstruksi pendekatan fikih kebudayaan sebagai strategi integratif untuk memperkuat jaminan konstitusional terhadap budaya lokal di Indonesia. Penelitian ini menggunakan metode kualitatif dengan pendekatan yuridis-konseptual dan filosofis-kultural guna menelaah relasi antara hukum Islam (fikih), kebudayaan lokal, dan norma hukum negara. Analisis dilakukan melalui studi literatur terhadap teks-teks fikih klasik dan kontemporer, dokumen konstitusi, serta pemikiran para tokoh fikih progresif. Temuan penelitian menunjukkan bahwa fikih memiliki fleksibilitas epistemologis yang memungkinkan akomodasi terhadap budaya lokal melalui kaidah seperti al-‘ādah muhakkamah dan maqāṣid al-syarī‘ah. Konstitusi Indonesia, khususnya Pasal 28I dan Pasal 32 UUD 1945, memberikan landasan hukum yang kuat bagi pelestarian kebudayaan daerah. Artikel ini merumuskan model integratif antara fikih dan jaminan konstitusional yang memungkinkan pelestarian dan penguatan budaya lokal secara harmonis dalam bingkai nilai-nilai Islam dan hukum nasional.

**Kata Kunci:** Fikih Kebudayaan, Jaminan Konstitusional, Budaya Lokal

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## Introduction

This research raises the theme of cultural fiqh reconstruction as an integrative approach that aims to strengthen constitutional guarantees for local culture in Indonesia. Fiqh in Islam is the result of the *ijtihad* of dynamic scholars, who should be able to adjust to space and time as well as the social reality of their society. In the context of a plural and culturally diverse Indonesia, fiqh has the strategic potential to form a pattern of harmonious relations between religions and local traditions. However, the approach to fiqh that has been developed tends to be universalistic and normative-textual, without much consideration of the cultural context of the people of the archipelago. Therefore, methodological reconstruction efforts are needed so that fiqh is not only a source of worship law, but also an instrument that protects and preserves local culture within the framework of Islamic values and the state constitution.

The purpose of this study is to analyze the relationship between fiqh and local culture in Indonesia's multicultural society, as well as identify the forms of constitutional guarantees provided by the 1945 Constitution for the existence of local culture. This research also aims to formulate an approach to cultural fiqh reconstruction based on *maqāṣid al-shari'ah* and the principles of *al-'urf* as the normative foundation of fiqh, as well as to develop an integrative model between Islamic values and constitutional principles to strengthen the sustainability of local culture in the national legal system.

Socially, Indonesia is faced with a major challenge in maintaining local cultural identity in the midst of globalization, transnational cultural penetration, and rigid religious ideological waves. Many expressions of local culture such as *tahlilan*, *selametan*, or traditional arts are considered incompatible with sharia by groups that understand fiqh narrowly. In fact, these cultural expressions not only reflect the noble values of society, but also become a medium of *da'wah* and social glue in the lives of Muslims in Indonesia. The tension between normative fiqh and local culture often leads to social conflicts and blurring of national identity. Therefore, an inclusive and contextual approach to fiqh is needed in order to maintain a balance between Islamic teachings and the cultural reality of local communities.

In terms of literature, a number of previous studies have shown that there is an early awareness of the importance of the relationship between fiqh and local culture. Riadi (2017) study Sasak Islam as a form of fiqh that synergizes with the local culture, while Junaedi (2018) offers a socio-cultural socio-cultural epistemological approach to Indonesian fiqh. Zuhri (2015) develop the discourse of fiqh *madhhab* Indonesia through the use of *al-'urf*, while

Rajafi (2016) emphasizing the urgency of dialogue between Islam and local wisdom. Kaco (2019) even commenting on Gus Dur's ideas about fiqh locality as a response to cultural diversity. However, the majority of these studies are still partial and have not touched deeply on the aspects of constitutionalism, and have not developed a methodological framework that is able to systematically synergize fiqh, local culture, and the national legal system. Therefore, this research offers a new approach that seeks to fill this void, namely by developing a framework for the reconstruction of cultural fiqh based on *maqāṣid al-syarī'ah* and in line with the constitutional guarantees of local culture in the 1945 Constitution.

## Research Methods

This research uses a normative qualitative approach with a juridical-conceptual and philosophical-cultural approach. This approach was chosen to examine the relationship between Islamic legal norms (*fiqh*), local culture, and state legal norms (constitution) in depth and reflectively. The juridical-conceptual approach is used to examine the norms in the 1945 Constitution that provide constitutional guarantees for local culture, especially Article 28I paragraph (3) and Article 32 paragraph (1), as well as other regulations such as the Law on the Promotion of Culture. Meanwhile, Islamic philosophical and hermeneutic approaches are used to reinterpret the principles of fiqh in the socio-cultural context of Indonesia based on *maqāṣid al-sharī'ah* and the principle of *al-'urf*.

The data sources in this study are in the form of secondary data, including literary literature such as classical and contemporary fiqh books, constitutional documents and laws and regulations, academic journals, and the thoughts of figures such as KH. Sahal Mahfudh, Abdurrahman Wahid, and other contemporary scholars who developed social fiqh and cultural fiqh.

The analysis techniques used are *content analysis* and *critical analysis* of Islamic legal texts, constitutional texts, and the results of previous research. With this method, the research is expected to be able to formulate conceptually an integration model between cultural fiqh and the constitutional guarantee of local culture within the framework of Indonesian national law.

## Fiqh and Local Culture

**Fiqh and local culture** is a concept that shows the relationship between Islamic teachings (fiqh) and the traditions or culture of the local community (Mubaroq, 2024). Fiqh is a science that regulates the practical aspects of the life of Muslims, including laws related to worship, muamalah, and social relations (Iftitah et al., 2022). Fiqh is sourced from the Qur'an, Hadith, Ijma' (the agreement of scholars), and Qiyas (analogy).

According to Squirrels (2016) Local culture encompasses all forms of traditions, customs, art, language, and values that grow and develop in a particular society. This culture not only becomes a part of daily life, but also serves as a marker of the collective identity of a social group. In this context, Islam as a universal religion shows flexibility in interacting with local cultures, as long as the culture does not conflict with the basic principles of sharia (Utari et al., 2019). The history of the development of Islam in various regions such as Arabia, Persia, India, Indonesia, and Africa shows that accommodation to local culture is part of the strategy of da'wah and the formation of an adaptive Islamic civilization. In the treasures of fiqh, there are a number of rules that support this accommodation, such as *Al-'ādah Muḥakkamah* (custom can be used as a legal basis) and *By Lā Yatimmu al-Wājib illā bihi fa huwa wājib* (Everything that is a means to carry out obligations is mandatory). These rules are the basis for argumentation that customs or traditions that do not conflict with the sharia can be integrated into religious practice. Furthermore, the principle *Tasāmuh* (tolerance) in Islam is also an important foundation in accepting local cultural diversity, as long as it does not contain elements that are contrary to monotheism or the main values of Islamic teachings.

Local culture that is contrary to the principles of sharia is a challenge to be straightened out, it can be seen as a tradition that involves superstition or shirk (Stuart, 2021). In fiqh, customs or customs that do not conflict with the sharia can be used as a legal basis. For example, in muamalah, local customs are often taken into consideration (al-'urf / accepted customs). Fiqh and local culture complement each other as long as the basic principles of Islam are maintained. The wisdom of understanding both allows Islam to remain relevant in various cultural contexts without losing its identity as a universal religion.

In Islam, the marriage contract has certain principles and conditions. However, traditional processions such as traditional Javanese, Sundanese, or Minang wedding ceremonies can still be carried out as long as they do not contradict the sharia (for example, they do not involve shirk matters). In addition, Muslim clothing in Indonesia tends to use traditional fabrics such as batik or songket which are adapted to the principle of covering the



awrah. Then there is also the celebration of the Prophet's Birthday or tahlilan which is part of the tradition of Indonesian society, although not explicitly taught by the Prophet, considered as part of an effort to remind the people to stay close to religion.

## **Constitution and Culture**

The Constitution is a legal framework that establishes the fundamental rules of state life, while culture reflects the values and identity of the people (Sihotang et al., 2019). The Constitution is the basic law that is the basis for the administration of the state. The constitution and culture are closely linked, especially in shaping and maintaining public governance (Widyastuti & Anam, 2024). The Constitution provides a framework for protecting and advancing culture, while culture provides legitimacy and the values that shape the content and implementation of the constitution. According to Collins (2024) Harmonious integration between the Constitution and culture is essential to maintain the stability and identity of a nation.

According to Sardjono (2019) The Constitution is the main reference in lawmaking. The Constitution protects the freedoms and basic rights of citizens. The Constitution provides a framework to prevent abuse of power. According to Dianto (2020) The Constitution reflects the national consensus on the basic principles of state life. Culture encompasses values, norms, customs, traditions, and practices that are passed down from generation to generation in society. Culture shapes the collective identity and way of life of a nation.

The constitution is drafted based on the values and norms that apply in the culture of a nation. For example, the first precept of Pancasila (The One Godhead) reflects respect for the religious values of the Indonesian people. The implementation of the constitution in Indonesia is influenced by local traditions and customs. This is reflected in Article 32 of the 1945 Constitution which affirms the state's obligation to advance national culture (Pragata, 2023). The challenge in the integration of the constitution and culture is the influx of foreign cultures that affect traditional values and the challenge of adapting them to the constitution. Thus, it is important to harmonize efforts between various local cultures and constitutional principles.

## **Strengthening Local Culture Through Fiqh Perspective**

Strengthening local culture through a fiqh perspective is an effort to maintain local identity and wealth while ensuring that Islamic values remain the main guide. **Fiqh** is the

study of Islamic law that discusses the issues of worship, muamalah, and various aspects of daily life based on the Qur'an, Hadith, Ijma', and Qiyas. Islam respects local culture as long as it does not contradict the basic principles of sharia. This principle is called **the rule of "Al-'Adah Muhakkamah"** (custom can be used as a law as long as it does not contradict the sharia). Fiqh can be used as a framework to assess, adapt, and strengthen elements of local culture, so that it remains relevant to Islamic values. Fiqh accommodates cultural differences through a diverse approach to madhhab. Example: The dominant Shafi'i school in Southeast Asia shows flexibility in dealing with local traditions.

**Local culture** refers to the customs, traditions, and values that grow in an area, which are the result of social and environmental interactions. Local traditions that are in harmony with the maqashid sharia (goals of sharia) such as justice, welfare, and humanity can be strengthened. With a thoughtful approach, local culture can not only be preserved but also empowered to strengthen harmony in community life. If a particular culture contains elements that are contrary to Islam (e.g., practices that are close to shirk), fiqh can be used to provide alternative guidance that is more in line with Islamic teachings.

The fiqh approach emphasizes the value of togetherness and prayer, while directing that its implementation be in accordance with monotheism. An example of strengthening local culture through a fiqh perspective is that in Javanese society, the "slametan" event is often carried out on various occasions. Gamelan or traditional dance is acceptable as long as it does not contain immoral elements or is contrary to Islamic values. Traditional processions such as siraman or other customs can be maintained, provided that they do not contradict the sharia.

The strategic approach of scholars and religious leaders provides a comprehensive knowledge of how Islam views culture. In addition, it involves artists and cultural experts to maintain local cultural identity within the framework of sharia, as well as involving Muslim scholars to study customs and culture according to the context of the times.

### **The Relevance of Fiqh to the Progress of Local Culture**

The relevance of fiqh to the advancement of local culture lies in the ability to adapt and accommodate positive cultural values while maintaining sharia principles. With this approach, fiqh not only supports the preservation of local culture, but also encourages its progress within an ethical and religious framework. The relevance of fiqh to the advancement of local culture can be seen from the discipline of Islamic law, how to interact with local culture in harmony without compromising the basic principles of sharia.

Fiqh is a discipline of Islamic law that has the principle of flexibility (*tasamuh*) and is oriented towards benefits (*mashlahah*). In its application in society, fiqh is able to adapt to local culture by considering applicable customs or customs, as long as it does not conflict with the principles of Islamic law. This flexibility is reflected in a number of rules of fiqh, such as *al-'adah muhakkamah* which states that customs can be used as a legal basis as long as they do not conflict with the sharia, and *dar'ul mafasid muqaddamun 'ala jalbil mashalih* which prioritizes the prevention of damage rather than the acquisition of benefits. Thus, fiqh is not only normative, but also contextual, responding intelligently to socio-cultural dynamics.

Islam values the diversity of local cultures and traditions. In the practice of fiqh, customs that do not contradict Islamic principles are often accommodated. For example: Local traditions such as traditional ceremonies, art, and traditional clothing can be preserved if they do not involve things that are contrary to the faith and worship. In the context of *muamalah* (social relations), fiqh adopts rules that are in harmony with the customs of the local community. Fiqh is a medium to strengthen universal values such as justice, compassion, solidarity, and cleanliness in local culture. This helps the community maintain traditions while integrating the positive values of Islamic teachings.

In the face of new problems that arise due to social and cultural changes, fiqh allows for a contextual process of *ijtihad* (legal reasoning). Thus, local culture can develop according to the times without having to abandon Islamic principles. Examples: the use of local languages in *da'wah* or religious lectures and the development of Islamic art that integrates elements of local culture, such as calligraphy and mosque architecture. Fiqh serves as a tool to protect local culture from negative influences that are contrary to Islamic values. In this case, fiqh provides guidance so that traditions that are in line with morality and morals are maintained. In the archipelago, fiqh law has adjusted to customs, such as: marriage contracts using local customs. In addition, the *halal bihalal* tradition as a form of gathering after Eid al-Fitr is the result of acculturation between Islamic teachings and local culture.

### **The Role of Fiqh in Preserving Cultural Heritage and Local Wisdom**

According to Hijriyana et al., (2023) Fiqh provides space for local traditions that do not conflict with the basic principles of Islam. In fiqh terms, this is known as the concept of *'urf* (custom or tradition). If a local custom does not conflict with the sharia, then the tradition can be accepted and even integrated into the practice of Muslim life. This principle is often

referred to as the rules of fiqh: "*Al-'adah muhakkamah*" (customs can be used as a legal basis). Example: the management of zakat is adjusted to the needs of the local community. In addition, the determination of worship times or muamalah adjustments that are relevant to the local culture. The following is presented what are the roles of fiqh:

**Table 1**  
**The Role of Fiqh in Maintaining Cultural Heritage and Local Wisdom**

No.	The Role of Fiqh on Culture
1	Adapting Islamic Law to the Local Context (Urf)
2	Increasing the Value of Cultural Diversity
3	Protecting Cultural Identities That Do Not Conflict with Sharia
4	Mediating Conflicts between Tradition and Sharia
5	Maintaining the Sustainability of Local Traditions with Worship Value

According to Huda (2019) Fiqh serves as a tool to spread Islamic universal values, such as justice, peace, and solidarity, through the medium of local traditions and culture. Thus, Islam does not exist as a force that replaces local culture, but reinforces existing positive values. Example: the use of local traditions to promote welfare, such as the use of local wisdom in environmental management. Fiqh also encourages the preservation of cultural values with Islamic values in society. Local culture that has long been inherent and aligned with Islam can be preserved and inherited as part of the identity of Muslim society.

According to Khomsinnudin et al., (2024) Fiqh serves as a tool to harmonize cultural differences and traditions in society, especially in pluralistic communities. With a flexible but still sharia-based approach, fiqh is a solution to maintain unity in the midst of diversity. Fiqh helps transform local wisdom to remain relevant in the modern era without losing its spiritual and traditional values. With this approach, fiqh is not only a legal instrument, but also a guardian of local cultural heritage and wisdom, as well as a tool to build harmony between Islam and community traditions. This role proves that Islam is very flexible and capable of coexisting with various cultures around the world.

**Constitutional Guarantees and Challenges of Cultural Fiqh in Indonesia**

The Indonesian Constitution (1945 Constitution) guarantees freedom of religion in Article 28E Paragraph 1 and Article 29 Paragraph 2. This provides a legal basis for a diversity of religious practices, including space for the interpretation of Islamic law (fiqh) that is

appropriate to the local cultural context. Indonesia is a pluralistic country, with a variety of ethnicities, religions, and cultures. The Constitution encourages the spirit of *Bhinneka Tunggal Ika*, which means respecting diversity in unity.

The main challenge of cultural jurisprudence is the emergence of groups that reject the pluralism of sharia interpretation and impose a single understanding. The influence of globalization can erode local cultural values that are the basis of cultural fiqh. A lack of understanding of cultural jurisprudence among the public and policy makers can hinder the development of this approach. The strategy of strengthening cultural fiqh can be carried out by increasing dialogue to build a common understanding of the importance of fiqh that is adaptive to culture. In addition, by encouraging Islamic educational institutions to teach contextual and culture-based fiqh. Meanwhile, those who play a role in this matter are Ulama and academics need to develop relevant and applicable cultural fiqh studies. Constitutional guarantees in Indonesia related to freedom of religion, the practice of Islamic law (fiqh), and culture include the following:

**Table 2**  
**Constitutional Guarantees in Indonesia**

No.	Constitutional Guarantees	Article	Fill
1	Freedom of Religion	Article 28E paragraph (1) of the 1945 Constitution	Guaranteeing the right of everyone to embrace religion and worship according to their religion.
		Article 29 paragraph (2) of the 1945 Constitution	The state guarantees the freedom of every citizen to worship according to his religion and beliefs
		Law No. 39 of 1999	Strengthening religious freedom as a human right
2	Cultural Diversity	Article 32 paragraph (1) of the 1945 Constitution	The state advances Indonesia's national culture by respecting and protecting regional culture.
		Article 28I paragraph (3) of the 1945 Constitution	Cultural identity and traditional people's rights are respected in line with the times.
3	Application of Islamic Law	Islamic jurisprudence can be applied through positive legal arrangements, such as the Compilation of Islamic Law (KHI) in certain civil matters (marriage, inheritance, waqf).	
		The existence of institutions such as the Sharia Court in Aceh as a form of special autonomy	

According to Ghoniah & Rohmah (2023) Cultural jurisprudence refers to an approach to Islamic law that considers the local cultural context. This principle is often associated with *maqashid sharia* (sharia goals) which emphasizes *maslahat* (common good). As a country with cultural richness, Indonesia needs *fiqh* that is not only textual, but also contextual. This includes the adaptation of Islamic law to local customs, arts, and traditions. The role of the state in this case ensures that the space for cultural expression is maintained while still promoting social harmony. Policies that support inclusivity and diversity of Islamic legal interpretations are essential.

## Conclusion

This study found that *fiqh* has a strategic role in maintaining and strengthening the existence of local culture, as long as it is based on the principles of *maqāṣid al-syarī'ah* and the rules of *al-'ādab mubakkamah*. The cultural *fiqh* approach is able to be a bridge between Islamic teachings and local traditions, so as not only to avoid socio-cultural conflicts, but also to strengthen national identity and social harmony. The constitutional guarantees contained in the 1945 Constitution have provided a clear legal framework to protect regional culture, and can be synergized with Islamic law constructively.

Methodologically, this research makes an important contribution to the development of a *fiqh* reconstruction model that is more contextual, dialogical, and relevant to the conditions of pluralistic societies such as Indonesia. The use of juridical-conceptual and philosophical-cultural approaches allows for an in-depth analysis of the relationship between Islamic law, local culture, and the constitution.

However, this study has limitations in empirical aspects and does not include field studies on the implementation of cultural *fiqh* in concrete society. Therefore, further research with a sociological or anthropological approach is needed to test the effectiveness of the integrative models offered in the social dynamics of Indonesian society.

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## DISTRIBUTION OF ZAKAT FITRAH THROUGH SHOPEE E-COMMERCE: Digital Transformation in the Modern Era

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### ABSTRACT

This study examines the practice of zakat fitrah distribution through digital platforms, particularly marketplaces like Shopee, from the perspective of Islamic law. The phenomenon of zakat digitalization has emerged as a response to technological developments and the modern need for convenience in religious obligations. The purpose of this research is to assess the validity of such practices based on the principles of zakat jurisprudence and to identify the challenges and impacts of digital zakat fitrah implementation. This study uses a normative-juridical approach with qualitative descriptive methods, collecting data through literature review of classical and contemporary sources as well as observation of marketplace practices. The findings indicate that from an Islamic legal standpoint, online zakat fitrah distribution is permissible as long as it fulfills the elements of intention, time, zakat form, and proper distribution to eligible recipients (*mustahik*). However, challenges such as lack of transparency, the possibility of zakat not reaching local beneficiaries, and misuse of zakat funds remain issues. In conclusion, digital zakat fitrah is legally valid in Islam if it involves official zakat institutions and maintains accountability. This study recommends stricter oversight, public education on digital zakat, and development of location-based systems for more equitable and effective distribution.

**Keywords :** *zakat fitrah, digitalization, Islamic law, marketplace, zakat validity*

### ABSTRAK

Penelitian ini membahas praktik penyaluran zakat fitrah melalui platform digital, khususnya *marketplace* seperti Shopee, dalam tinjauan hukum Islam. Fenomena digitalisasi zakat ini muncul sebagai respons terhadap perkembangan teknologi dan kebutuhan masyarakat modern akan kemudahan dalam menunaikan ibadah. Tujuan penelitian ini adalah untuk mengkaji keabsahan praktik tersebut berdasarkan prinsip-prinsip fiqh zakat, serta mengidentifikasi tantangan dan dampaknya terhadap pelaksanaan zakat fitrah. Studi ini dilakukan dengan pendekatan normatif yuridis dan menggunakan metode kualitatif deskriptif, dan data diperoleh melalui studi pustaka dari literatur klasik maupun kontemporer, serta observasi terhadap praktik *marketplace*. Hasil penelitian menunjukkan bahwa secara hukum Islam, penyaluran zakat fitrah secara online diperbolehkan selama memenuhi unsur niat, waktu, bentuk zakat, dan distribusi yang tepat sasaran kepada *mustahik*. Namun, ditemukan beberapa tantangan, seperti kurangnya transparansi, potensi tidak tersalurkannya zakat ke wilayah domisili *muzakki*, serta risiko penyalahgunaan dana zakat. Kesimpulannya, zakat fitrah digital sah dilakukan dalam syariat Islam dengan syarat melibatkan lembaga amil zakat resmi dan menjaga akuntabilitas pelaksanaan. Penelitian ini merekomendasikan adanya pengawasan ketat dan edukasi zakat digital bagi masyarakat serta pengembangan sistem berbasis lokasi untuk distribusi zakat yang lebih adil dan efektif.

**Kata Kunci:** *zakat fitrah, digitalisasi, hukum Islam, marketplace, keabsahan zakat*

## Introduction

Zakat fitrah is an obligation that must be fulfilled by every Muslim individual ahead of Eid al-Fitr. This obligation is not only ritual, but also has high social value as a form of purification of the soul after fasting during the month of Ramadan. From the perspective of Islam, zakat fitrah functions as a means to purify oneself from small sins and imperfect things during fasting, as well as a form of social concern for others, especially for the underprivileged. (Muhammad Allan Ginastiar, 2024)

As for the surah that explains the obligation of zakat, one of them is found in Surah *al-Baqaraj* (2): 43, which reads: "And establish prayer, pay zakat, and bow down with those who bow."

This verse shows the close relationship between individual worship (Prayer) and social worship (zakat), both of which are the main foundations in the life of a Muslim. Zakat in this verse is understood not only as a financial obligation, but also as a means of purification of souls and property, as well as a tool to create social justice and solidarity between people. In this context, zakat not only functions as a form of spiritual obedience to Allah, but also as a wealth distribution system that aims to reduce economic disparities and help underprivileged communities. Thus, this verse emphasizes that paying zakat is an integral part of the implementation of holistic Islamic teachings. (Tafsir of Surah Al-Baqarah Verse 43, n.d.)

In the socio-economic context, zakat has a very important and strategic role. It is not only an individual obligation, but also a social instrument in order to build economic justice and solidarity between members of society. The targeted distribution of zakat fitrah can help reduce economic disparities, strengthen a sense of togetherness and social concern, and improve the collective welfare of the community, especially for the poor who urgently need a helping hand ahead of the victory day of Muslims. Zakat, in this case, is one of the concrete efforts in realizing social justice in accordance with Islamic values. (Muhammad Allan Ginastiar, 2024)

Along with the progress of the times and the rapid development of information technology, the ways of carrying out worship, including zakat fitrah, have also undergone significant changes. The digital transformation that occurs in almost all aspects of human life also affects the way Muslims fulfill their religious obligations. One of the tangible forms of these changes is the emergence of a method of distributing zakat through digital platforms or (P. Verdianti, 2023) *e-commerce applications*, such as Shopee. The use of technology in

religious activities reflects the adjustment of the Muslim community to the times, as well as a form of modernization in the implementation of Islamic teachings.

This digital transformation in religious practices cannot be separated from the change in the behavior of modern society who are increasingly accustomed to online or online-based activities. Many people are now more comfortable conducting financial transactions through digital platforms because they are considered more practical, fast, and accessible anytime and anywhere. The COVID-19 pandemic that has hit the world over the past few years has also become the main driving factor in accelerating the use of digital technology in various aspects of life, including in the implementation of worship such as zakat fitrah. Social restrictions, concerns about the spread of the virus, and the increasing use of digital devices, strengthen people's desire to use technology as a practical solution in fulfilling their religious obligations. (Rafi Rabbani et al., 2024) (Isman & Wahid, 2022)

Through digital features such as Shopee Barokah, users now have access to pay zakat al-Fitr more easily, quickly, and flexibly. With just a few steps through the application, zakat can be paid and distributed to those in need, without having to have a physical meeting or a long process. This certainly provides great convenience for the community, especially in an all-digital era like today. This phenomenon also marks a shift from conventional and manual methods of distributing zakat to a digital system that promises efficiency, speed, convenience, and transparency in its management. (Regita Cahya Gumilang, 2020) (Musa Ali, 2024)

However, this digital transformation also presents various new challenges and questions, especially in terms of the suitability and validity of these methods according to Islamic law. Although technology provides various conveniences, it is necessary to review in depth whether the implementation of zakat fitrah through *e-commerce* platforms such as Shopee has met the terms and conditions set by sharia. Is the distribution still on target? How is the accountability and transparency of the distribution? Are all the processes in accordance with the principles of zakat fiqh? (Regita Cahya Gumilang, 2020)

Departing from this background, this study formulates several important questions that are the basis for the preparation of the study, namely how is the mechanism of distributing zakat fitrah through *e-commerce platforms* such as Shopee?; what is the impact of digital transformation on the trust, transparency, and effectiveness of zakat fitrah distribution?; and how is the review of Islamic law on the practice of distributing zakat fitrah through these digital platforms?

Research on the digitization of zakat is actually not completely new in academic studies. Several previous studies have discussed technology-based zakat, online zakat implementation, and zakat management through digital applications. These studies highlight the potential for digitalization in improving the efficiency of zakat management and expanding public access to religious services. However, studies that specifically discuss the integration of commercial (Hafizah & Muhaimin, 2023a) *market places* such as Shopee in the context of the distribution of zakat fitrah are still relatively rare and have not been discussed comprehensively, especially from the perspective of Islamic law.

The vacancy of the study shows that there is a significant knowledge gap. Previous research has focused more on the general aspect of zakat digitization or from the perspective of official zakat management institutions. There have not been many studies that have specifically highlighted the active role (Alwi et al., 2023) *of large marketplaces* with a wide user base and advanced technology in distributing zakat fitrah. Therefore, this study seeks to fill this gap through a more in-depth and specific study of the practice of distributing zakat fitrah through Shopee as a representation of digital transformation in the religious practices of contemporary Muslim communities. (Ridho, 2024)

The purpose of this study is to explain how digital transformation occurs in the mechanism of distributing zakat fitrah through the Shopee *e-commerce platform*. This study also aims to assess the suitability of the practice with the applicable Islamic legal principles, as well as analyze the effectiveness and social impact of the digitization of zakat fitrah in the midst of the Indonesian Muslim community which is now increasingly familiar and adaptive to the development of digital technology.

## **Research Methods**

This study uses a juridical empirical method with a case study approach. This method was chosen because the research aims to directly observe the practice of distributing zakat fitrah through digital platforms such as Shopee, as well as analyze its conformity with the provisions of Islamic law. This approach allows researchers to describe the socio-religious reality that develops along with the advancement of digital technology, especially in terms of the distribution of zakat fitrah. This research is focused directly on activities that take place on the Shopee platform, by observing a number of online stores that provide online zakat fitrah distribution services.

The existence of researchers in this activity is active as direct observers, interviewers, and data collectors in the field. The research subjects consist of online store owners who offer zakat fitrah products through Shopee, as well as buyers or *muzakki* who distribute their zakat using the digital service. Key informants in this study include shop owners, service users (*muzakki*), zakat practitioners from amil institutions, and academics in the field of Islamic law.

Data collection was carried out through several techniques, including in-depth interviews with sellers and buyers, observation of the zakat transaction process through the Shopee application, study of documents related to the national zakat policy, fatwa of the Indonesian Ulema Council (MUI), as well as literature reviews from relevant journals, books, and articles. The results of the interviews show that each store has a different method of distributing zakat, ranging from direct distribution by the store, based on the buyer's request, with a certain schedule, to flexible distribution according to the buyer's chosen time. This difference in mechanism illustrates the diversity in the digital adaptation of zakat fitrah, although it still refers to sharia principles such as the intention, timing, form, and clarity of the zakat recipient. The data that has been collected is analyzed using qualitative descriptive techniques, through the stages of data reduction, data presentation, and conclusion drawn. In the analysis stage, the field data was compared with the principles of zakat in Islamic law, including the opinions of fiqh scholars and the MUI fatwa Number 23 of 2020 concerning the use of information technology for zakat payments.

In addition to using an empirical approach, this study also utilizes a normative-theological approach by examining the postulates from the Qur'an, hadith, and the opinions of *the fuqaha* (jurists) regarding the provisions of the validity of zakat, its distribution, and the conditions for zakat recipients. Thus, the results of this study are expected to be able to provide a complete and valid picture of the effectiveness, public trust, transparency, and validity of the practice of zakat fitrah through digital platforms from the perspective of Islamic law.

### **Zakat Fitrah Distribution Mechanism Through *Shopee* E-Commerce Platform**

Etymologically, the word *zakat* comes from the Arabic word "*zaka*" which means blessings, goodness, purity, and growth. In the sense of the term, zakat is property or staple food that must be spent by a person to be given to those who are entitled to receive it. Zakat brings elements of blessings and goodness, so as to make wealth cleaner and develop. Every

Muslim who has property and has reached the minimum limit (*nisab*) is obliged to pay zakat, including children who have not reached *puberty* or people who are not reasonable. If they have property that reaches *nisab*, then their guardian is responsible for paying their zakat. Similarly, if a person dies and has not had time to pay his zakat, then the obligation must be paid by the heirs before the inheritance is divided. (Sultan Mubarak et al., 2022)

Along with the advancement of digital technology and the increase in financial literacy among the public, worship practices such as the distribution of zakat have also undergone a transformation. One form of innovation in this regard is the distribution of zakat fitrah through the platform *E-commerce*, such as Shopee. This platform does not play a direct role as a zakat manager, but acts as an intermediary that bridges the community with official amil zakat institutions that have been registered with the National Amil Zakat Agency (BAZNAS) or recognized by the Ministry of Religion of the Republic of Indonesia. This collaboration makes it easier for people to fulfill their zakat fitrah obligations quickly, efficiently, and still in accordance with sharia principles in the current digital era. (Harisuddin & Hartono, 2022)

In today's digital era, technological advances have had a significant impact on various aspects of life, including in the implementation of religious obligations such as zakat fitrah. One of the tangible forms of digital transformation is the emergence of online zakat fitrah distribution services through the platform (Hafizah & Muhaimin, 2023b) *E-commerce* like Shopee. The study found that a number of online stores (Muhammad Rizaludin As, 2022) *Online Shop*) at Shopee provides a zakat fitrah payment feature in the form of digital products that can be purchased like ordinary products. The process is very simple, where *muṣakki* (zakat givers) only need to choose zakat fitrah products available in the storefront, make payments using bank transfer methods or digital wallets (*e-wallet*), Then the zakat will be processed and distributed by the store in accordance with the predetermined mechanism.

In general, there are three patterns of zakat fitrah distribution mechanisms implemented by online stores on Shopee. First, the model of distributing zakat fitrah based on buyer requests. In this mechanism, the buyer (*muṣakki*) is given the flexibility to determine to whom zakat fitrah will be distributed. This system allows personalization of zakat goals by staying within the distribution corridor determined by the store and their partner zakat amil institutions. Based on the results of interviews with online store owners who use this method, the following are the stages of ordering and distributing zakat fitrah in full: (Dhuafa Orphanage, 2025)

1. *Zakat Fitrah Product Selection*: The buyer first chooses the amount of zakat fitrah that he wants to pay according to the number of lives insured. Each package generally represents zakat for one person.
2. *Checkout and Payment Process*: After selecting the package amount, the buyer proceeds to the *checkout* process. The payment method used is bank transfer, which must be done to process the order automatically.
3. *On-Demand Delivery Arrangements*: After the payment is confirmed, the buyer can submit a special request regarding the recipient of zakat. This request is made by sending a direct message through the message home feature (chat) in the Shopee application to the store owner. In the message, the buyer is required to include the full name of the zakat recipient and the full address of the recipient. Systemically, the delivery address is still written as the buyer's address at *checkout*, but the store will process the delivery of zakat based on additional information sent through the personal message.
4. *Distribution Coverage Area Requirements*: The distribution request can only be fulfilled if the zakat recipient is in the area that is the scope of work of the store partner's *amil* zakat institution. If there are no partner institutions in the region, the store will inform the buyer to adjust the address or follow the store's alternative distribution policy.
5. *Distribution Documentation*: As a form of transparency and responsibility, after zakat is distributed to the intended recipient, the store will send proof of documentation in the form of photos or videos to the buyer. This documentation shows that zakat has been received by *mustahik* (zakat recipients) legally and on target.
6. *Distribution Time and Price*: Unlike some stores that only distribute zakat during the month of Ramadan, in this model the distribution can be done around the clock according to the buyer's request. The store provides zakat in the form of rice weighing 2.5 kilograms per person, at a price of IDR 45,000 per package. The rice used is generally of medium to premium quality, adjusted to store standards.

Second, the mechanism for distributing zakat fitrah implemented by online stores on Shopee is distribution with a certain schedule. In this system, the distribution of zakat fitrah is carried out only at the time set by the store, namely before Eid al-Fitr, although orders can be made long before, even outside the month of Ramadan. The purpose of implementing this system is to ensure that the distribution of zakat is carried out at the main time in accordance with the provisions of Islamic law and to support the operational effectiveness of zakat distribution. Based on the results of observations and interviews, the following are

the stages of ordering and distributing zakat fitrah with this scheduling system: (LKS Bandung, 2025)

1. Zakat Fitrah Product Selection: The buyer chooses the amount of zakat fitrah according to the number of souls incurred. Each package represents zakat for one person, and in this store, each package contains 3.5 liters of rice at a price of Rp47,000.
2. Checkout and Payment Process: Once the amount is selected, the buyer proceeds to the *checkout* process with the bank transfer payment method, which is the only method available in the store. Successful payments will automatically confirm the order to the store's system.
3. Fixed Distribution Schedule: One of the main features of this system is the fixed and inflexible distribution time, which will only be done before Eid al-Fitr, according to the schedule set by the store. Even though buyers place orders in advance, the distribution is still carried out during the zakat fitrah period, so there is no option to accelerate distribution outside of that time.
4. Distribution by the Store Without Special Request: The buyer cannot determine the recipient of zakat or the distribution area. The entire distribution process is fully managed by the store based on their network and internal policies.  
Thus, the buyer only plays a role in the payment, while the entire process of mustahik selection and distribution is left to the store.
5. Distribution Documentation: To ensure accountability and provide trust to buyers (*muzakki*), after zakat is distributed, the store will send proof of documentation in the form of a photo of the zakat recipient through the personal message feature in the Shopee application. This is part of the store's form of accountability for transactions and the implementation of the mandate that has been paid by the buyer.

This distribution system is suitable for buyers who want practicality and full trust in the store in managing zakat fitrah. Although it does not provide flexibility in terms of time and determination of recipients, this system still guarantees the implementation of zakat according to the main time provisions and can be accounted for documentally.

Third, the third model of the zakat fitrah distribution mechanism applied by online stores on Shopee is flexible distribution according to the time desired by the buyer. In this model, buyers are given the flexibility to determine when zakat will be distributed, but cannot determine who the recipient is. This system relies on buyers' trust in the integrity of the store in distributing zakat to the right mustahik. Stores usually have regular partnerships with



distribution agencies such as foundations or certain communities. Thus, even though the distribution time can be adjusted, the distribution process is still carried out by the store according to their internal policies. Based on the results of observation and analysis, the following are the complete stages in the mechanism for ordering zakat fitrah with a flexible distribution system: (Source of Smooth Fortune, 2025)

1. Buyers choose zakat fitrah products according to the number of lives insured. In this store, one zakat fitrah package consists of 2.7 kilograms of rice at a price of IDR 40,100 per person, in accordance with the generally applicable zakat fitrah standards
2. After determining the package amount, the buyer proceeds to the *checkout* process and makes the payment using the bank transfer method. Currently, only bank transfer methods are available as payment options in those stores.
3. Timing of Distribution by Buyers: The main advantage of this model lies in the flexibility of distribution times. Buyers can determine when zakat wants to be distributed, without having to wait for the month of Ramadan. Distribution can be done at any time according to the buyer's request, as long as it has been agreed through direct communication with the store through the message feature in the Shopee application.
4. Distribution by the Store Party to Fixed Distribution Partners: Although the time can be determined, the buyer has no control over who will receive zakat. The distribution will be carried out by the store to foundations or social institutions that have become their permanent partners. This is done to ensure smooth distribution and ensure that zakat is distributed to *legitimate mustahik* according to Islamic law.
5. After the zakat is successfully distributed, the store will send proof of documentation in the form of photos or videos of distribution through the Shopee messaging feature to the buyer.

**Table 1: Methods of Distributing Zakat Fitrh at Shopee and Estimated Profits**

No .	Distribution model	Key characteristics	Weight of rice / package	Selling price (Rp.)	Estimated Capital Price (Rp)	Estimated Profit of Store/ Package (Rp)	Additional Details
1	Based on Buyer's Request	The buyer determines the recipient and the time of distribution	2.5 kg	45.000	35.000-38.000	±7,000 - 10,000	There is a chat feature for recipient info, documentation is sent
2	Scheduled Distribution (Ahead of Eid al-Fitr)	At the end of the day, you can't choose to make a decision	3.5 liters (±2.5 kg)	47.000	35.000-38.000	±9,000-12,000	More practical for buyers, mass distribution
3	Flexible Time, Not Acceptance	Time can be selected, recipient is determined by the store	2.7 kg	40.100	34.000-36.000	±4,000-6,000	Cooperation with Permanent Distribution Partners

The digital transformation in the distribution of zakat fitrah clearly provides convenience and efficiency, especially for urban people who have limited time and access to conventional amil zakat institutions. However, this convenience also poses its own challenges, such as the issue of transparency in distribution, the accountability of stores as distributors, and the conformity of this mechanism with the principles of Islamic law. Therefore, it is necessary to conduct further studies to assess the legal validity and effectiveness of the zakat fitrah distribution system through (Stuart Alpha, 2024) (Annisa Salsabila, 2024) *e-commerce platforms* such as Shopee in the context of digitizing religious services in the modern era.

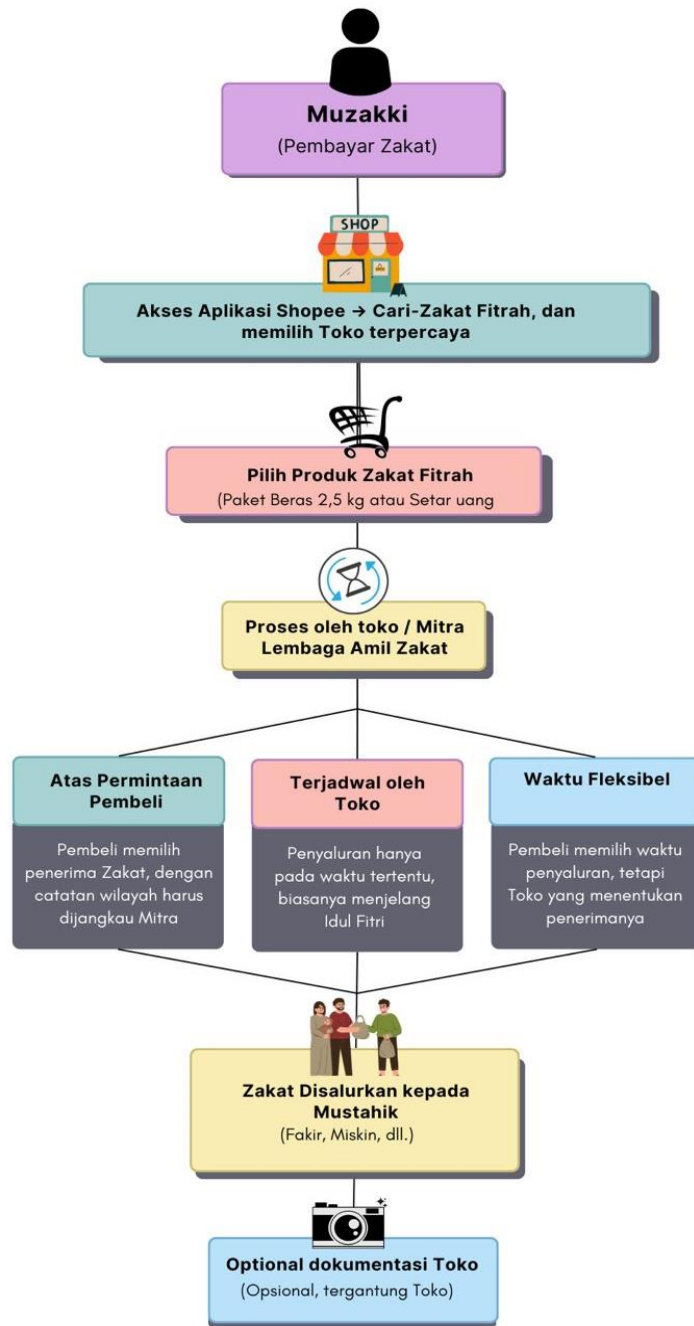


Image: 1 Online Zakat Distribution Flow

### The Impact of Digital Transformation in the Distribution of Zakat Fitrah

Digital transformation in the management of zakat fitrah has had a significant impact in terms of the ease and speed of the zakat payment process. Use of digital platforms such as *e-commerce*, One of them is Shopee, which allows people to pay zakat fitrah practically without having to come directly to the zakat institution. This is certainly very relevant to the

needs of modern society that prioritizes efficiency and accessibility in transactions. Technology has shortened the path between *muzakki* and the amil zakat institution, so that the process of collecting zakat becomes faster and has a wider reach, even abroad.

Public trust or *muzakki* in the digital system has also increased. Users feel safe and comfortable using platforms like Shopee because of the integrated payment system and have a good reputation for managing digital transactions. Accountability and transparency play a major role in building public trust in zakat management institutions. When the digital system supports this aspect, the trust of muzakki tends to increase. However, not all aspects of zakat digitization run ideally. One of the obstacles that is quite striking is the lack of clarity of information about amil zakat institutions that are partners in digital platforms. Not all stores or online sellers that offer zakat services cooperate with official zakat institutions such as BAZNAS or LAZ that are recognized by the government. There are also those who do not provide evidence that zakat has really been distributed to the right person. This raises doubts whether zakat really reaches the (Ustanti & Zihanti, 2023) *mustahik* (recipient of zakat), or is actually misused. Therefore, some scholars such as Yusuf al-Qaradawi and Wahbah az-Zuhaili suggested that zakat be distributed through official institutions so that it is safer, more orderly, and can be accounted for.

Transparency in zakat management is a very important aspect. With a digital system, transparency should be easier to realize through digital reporting, donation tracking systems, and documentation of zakat distribution *Real-time*. Unfortunately, the reality on the ground still shows that there is a variation in transparency between digital stores. Transparency has a direct effect on user trust in using digital platforms. Therefore, improvements in information presentation and reporting are urgently needed. In addition to transparency, the effectiveness of zakat distribution is also positively affected by digitalization. Wide access allows zakat institutions to reach mustahik more evenly, including in areas that were previously difficult to reach. The use of database systems and tracking aids speed up the distribution process and minimize errors in distribution. Digitalization is able to increase the effectiveness of zakat collection through the Shopee platform because the process becomes more structured and efficient. (Kasim, 2023)

However, digital transformation is not free from challenges. Some important issues are the limitations of people's digital literacy, especially for *muzakki* from the elderly or areas that have not been touched by technology evenly. In addition, concerns in the distribution of zakat (Hani Fatmawati, 2024) *Online* is zakat is not distributed in the area of residence

*muzakki* (the person who pays zakat). In Madhhab Shafi'i, it is highly recommended that zakat be distributed at the place of residence *muzakki*, so that the poor around him can be helped. But in the digital system, zakat can be sent to distribution centers in big cities, while *Squirt* in the village or area of origin did not get assistance. This can make the distribution of zakat unfair and actually widen the gap between regions. (Hafizah & Muhaimin, 2023a)

Second, the reduction of the social and spiritual value of zakat. Traditionally, zakat fitrah is not only a worship of property, but also a form of social concern. With manual zakat, *the muzakki* can meet directly with *the mustabik*, which strengthens social relationships and empathy. However, when zakat is done completely *online*, this interaction disappears and zakat becomes like an ordinary transaction, no longer a worship that strengthens friendship. Third, the lack of public understanding of digital zakat. Not everyone understands how to distribute zakat online (V. Verdianti & Puja, 2023) correctly. For example, there are those who do not know the deadline for distributing legal zakat fitrah (must be before the Eid prayer), or do not know whether the zakat product chosen is in accordance with the provisions (must be in the form of staple food or its value). This can cause zakat to be invalid or not accepted according to the law.

Therefore, even though zakat fitrah online is allowed in Islam, it must still meet the conditions that have been determined, such as clear intentions, the right time, the appropriate form of zakat, and distribution to the right people. In order to avoid irregularities, it is recommended to use zakat services from official institutions, and the government or religious authorities also need to provide digital zakat education to the public so that its implementation remains in accordance with sharia (Haliza Nur Madhani et al., 2025)

### **A Review of Islamic Law on the Practice of Distributing Zakat Fitrah Through the Shoppe Platform**

Zakat fitrah is a worship that must be fulfilled by every Muslim in the month of Ramadan until the implementation of the Eid prayer. In Islamic law, zakat fitrah has fixed provisions, both in terms of time, type, and *Squirt* (recipient of zakat) who is entitled to receive it. Along with the development of technology, a new phenomenon has emerged in the form of the practice of distributing zakat fitrah through digital platforms, especially e-commerce such as Shopee, which integrates religious services with electronic commerce systems. (Hafizah & Muhaimin, 2023) (Citra Indriani et al., 2024)

The results of the study show that the practice of distributing zakat fitrah digitally has developed with various models, such as: direct distribution by stores, distribution based on buyer requests, distribution with a certain schedule by stores, and flexible distribution based on buyers' choice time. These three models in principle fulfill the elements of intention, implementation, and distribution which are essential parts in the implementation of zakat, but still raise questions about the conformity with the principles of zakat fiqh in Islam. From the perspective of Islamic law, there are at least three main aspects that are a reference in assessing the validity of the digital distribution of zakat fitrah: (1) the validity (O'Neill, 2023) of *wakalah* (representation in zakat), (2) the timeliness and form of zakat, and (3) the validity of the distribution to *mustahik*. (Ratu Aisyah, 2024)

First, the aspect of *wakalah* (representative). In fiqh, the submission of zakat through representatives or intermediaries, such as amil zakat institutions or trusted individuals, is permissible. This refers to the rule of "*al-wakalah ja'izah*" (representation is allowed), as explained by scholars from the Shafi'i and Hanafi schools. Therefore, as long as the online store acts as a representative or collaborates with an authorized amil zakat institution, then the distribution of zakat through them can be considered legal according to sharia. However, the validity depends on the clarity of the contract between the *muzakki* and the store as a representative, as well as the existence of evidence of distribution (e.g. documentation or reports). (Ratu Aisyah, 2024)

Second, the aspect of time and the form of zakat fitrah. Zakat fitrah must be issued in the month of Ramadan and no later than before the Eid prayer. In the digital distribution model, it is found that there are stores that distribute zakat only at certain times (for example, only in the month of Ramadan), but there are also those that allow distribution outside of that time. This practice must be observed because distribution outside the mandatory time can cause zakat fitrah to be invalid, unless it is only limited to transactions and the distribution is still carried out before the time determined by the sharia. In addition, the form of zakat fitrah in general must be in the form of staple food, and in the Indonesian context, this is usually in the form of rice as much as 2.5 kg per person. If the digital store distributes zakat fitrah in the form of rice and according to the measurement, then the valid requirements for zakat fitrah have been met. (Mahzan & Ismail, 2023) (Muiz et al., 2022)

Third, the aspect of clarity of distribution to *mustahik*. One of the valid conditions of zakat is the distribution of zakat to those who are entitled to receive, as mentioned in the Qur'an. At-Taubah verse 60. In digital practice, clarity about who receives zakat is crucial.

Distribution models that do not provide detailed information about zakat recipients have the potential to raise doubts about the validity of distribution. Therefore, digital zakat service providers need to provide a reporting system or transparency as a form of accountability to muzakki. This is in accordance with the principle of trust in Islam. (Muiz et al., 2022)

In addition, in terms of the intention and implementation of worship, the scholars agree that zakat is a *maliyah* (property) worship that requires the intention of the *muzakki* when handing over the zakat. In digital transactions, intentions can be made when making payments, and it doesn't have to be verbally. As long as the muzakki has the awareness that the payment is for zakat fitrah, then his intention is considered valid. Therefore, digital practices that allow shoppers to choose specific "zakat fitrah products" in store storefronts can help clarify the intent and purpose of the transaction.

Thus, it can be concluded that under Islamic law, the practice of distributing zakat fitrah through digital platforms is permissible (*mubah*) as long as it meets the basic principles of zakat, namely the existence of intention, clarity of form and time of distribution, and targeted distribution to *mustahik*. This practice is a form of sharia adaptation to the development of information technology. However, to avoid deviant practices, supervision from religious authorities is needed and the need to increase digital zakat literacy for the community so that its implementation remains in accordance with sharia values. (Haliza Nur Madhani et al., 2025)

## Conclusion

Based on the findings and discussion, it can be concluded that the practice of distributing zakat fitrah through digital platforms is a form of adaptation of the implementation of zakat worship to the development of information technology. In the review of Islamic law, the distribution of zakat fitrah online is allowed as long as it meets the basic elements of zakat, namely the intention of the *muzakki*, the distribution within the time determined by the sharia, the appropriate form of zakat (staple food or its value), and clear distribution to *mustahik*. The distribution of zakat through digital platforms is also legal if it is carried out with a *wakalah mechanism*, namely representatives through trusted and licensed amil zakat institutions.

However, this digital practice cannot be separated from challenges, such as the lack of transparency in distribution, the potential for zakat not being distributed to *local mustahik*, and the loss of social value from direct interaction between *muzakki* and recipients. In

addition, there are still many people who do not understand how to pay zakat fitrah online correctly, both in terms of time, form, and other legal requirements. Therefore, there is a need for active involvement of official zakat institutions and the government in providing digital zakat education and supervision of the practice of distributing zakat through online platforms. This research opens up space for further study of the effectiveness of the digital zakat distribution system based on *the location of the muzakki's domicile*, as well as the development of a zakat distribution model based on artificial intelligence or spatial data to improve the fairness of distribution and efficiency of zakat services.



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## ANALYSIS OF THE STRATEGY FOR DISTRIBUTING ZIS FUNDS THROUGH THE TEACHER CARE PROGRAM AT LAZISMU, SURAKARTA CITY

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### ABSTRACT

Poverty is a major problem in Indonesia that continues to be faced to this day. Lazismu Surakarta City comes with a program that provides solutions in the midst of the void of things that escape the government's attention. This study aims to analyze the strategy of distributing ZIS funds through the teacher care program at Lazismu Surakarta. The method used in this research is a qualitative method, the data source of this research uses primary and secondary data, primary data collected by interview, observation and documentation directly at the Surakarta lazismu office while secondary data is obtained from various kinds of journal literature, lazismu official web, articles and others. The results of this study indicate that the strategy of channeling ZIS funds carried out by Lazismu Surakarta is among others: cooperating with the Education Council of the Regional Leadership of Aisyiyah Surakarta to survey, each teacher is given an account number on behalf of the teacher, using BPRS HIK Surakarta bank as a distribution, gathering all selected teachers at the beginning of the year and certain moments. Sharia review of the strategy of distributing ZIS funds through the teacher care program in the lazismu of Surakarta city is generally in accordance with the guidance of the Qur'an and As sunnah, teachers can receive subsidies from zakat funds as part of the *fisabilillah* group, because their role in preparing cadres of people is a form of jihad in the way of Allah and efforts to uphold the sentence of Allah, the use of banks as wasilah in transferring zakat is permissible because there is no element of forbidden, lazismu feedback to the BPRS HIK bank should not be necessary because this can diminish or weaken the sincerity of those who give zakat.

**Keywords :** *Analysis, Distribution of ZIS Funds, Teacher Care Program, Surakarta City*

### ABSTRAK

Kemiskinan merupakan permasalahan yang besar di negara Indonesia yang terus di hadapi hingga saat ini. Lazismu Kota Surakarta hadir dengan program yang memberikan solusi di tengah tengah kekosongan atas hal hal yang luput dari perhatian pemerintah. Penelitian ini bertujuan untuk menganalisis strategi penyaluran dana ZIS melalui program peduli guru di lazismu kota surakarta. Metode yang digunakan dalam penelitian ini adalah metode kualitatif, sumber data penelitian ini menggunakan data primer dan sekunder, data primer dikumpulkan dengan hasil wawancara, observasi dan dokumentasi secara langsung di kantor lazismu Surakarta adapun data sekunder diperoleh dari berbagai macam literatur jurnal, web resmi lazismu, artikel dan yang lainnya. Hasil penelitian ini menunjukkan bahwa strategi penyaluran dana ZIS yang dilakukan lazismu Surakarta adalah antara lain: berkerjasama dengan Majelis Dikdas Pimpinan Daerah Aisyiyah Kota Surakarta untuk mensurvei, setiap guru diberikan nomer rekening atas nama guru tersebut, menggunakan bank BPRS HIK Surakarta sebagai penyalurannya, mengumpulkan semua guru yang terpilih di awal tahun dan momen momen tertentu. Tinjauan syariat terhadap strategi penyaluran dana ZIS melalui program peduli guru di lazismu kota Surakarta secara umum sesuai dengan panduan Al Qur'an dan As sunnah, para guru dapat menerima subsidi dari dana zakat sebagai bagian dari golongan *fisabilillah*, karena peran mereka dalam menyiapkan kader umat merupakan bentuk jihad di jalan Allah dan upaya menegakkan kalimat Allah, penggunaan bank sebagai wasilah dalam tranfer zakat diperbolehkan karena tidak ada unsur keharaman, hendaknya *feedback* lazismu kepada bank BPRS HIK tidak perlu karena hal ini dapat memudahkan atau melemahkan keikhlasan dari pihak yang berzakat

**Kata Kunci:** *Analisis, Penyaluran Dana ZIS, Peduli Guru, Kota Surakarta*

## INTRODUCTION

Islam is a perfect religion, perfect in all aspects of life, all things are regulated in great detail, even small matters are regulated. This is what Allah ta'ala says in His glorious book:

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا (المائدة: ٣)

"Today I have perfected for you your religion, and I have fulfilled for you My favor, and I have accepted Islam as a religion for you" (QS. Al-Maidah:3)

Ibn Kathir (may Allah have mercy on him) said of this verse: "This is the greatest blessing of Allah 'azza wa jalla for this people in which Allah has perfected their religion, so that they no longer need any other religion besides this religion, nor do they need any other prophet besides their prophet Muhammad (peace and blessings of Allaah be upon him). Therefore, Allah made the Prophet Muhammad (peace and blessings of Allaah be upon him) the cover of the prophets, and sent him to the jinn and mankind. So what is lawful is what he shallallahu 'alaihi wa sallam is lawful and what is unlawful is what he shallallahu 'alaihi wa sallam forbid."(Kastir, 2009)

Islam has 5 pillars that every Muslim is obliged to do, among those pillars is zakat. As one of the pillars of Islam, zakat is paid to be given to those who are entitled to receive it. There are so many benefits obtained in paying zakat, for the giver Allah ta'ala will raise his degree and will give blessings to his property, while for the recipient of zakat will feel helped in his daily needs.(Markom BAZNAS, 2022) because this zakat is indeed a command of Allah Ta'ala to His servants, as He said:

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ (التوبة : ١٠٣)

"Take zakat from some of their wealth, with it you cleanse and purify them and pray for them. Indeed, your prayer is peace of mind for them. And Allah is All-Hearing, All-Knowing." (QS. At-Taubah:103)

Zakat is the third pillar of Islam after prayer. Zakat has such a big impact on the lives of Muslims in general. Zakat has a huge potential for the welfare of the people, so it is certain that zakat is distributed and managed properly by the authorities. So it is hoped that the distribution of zakat funds can be distributed optimally.(Riadi, 2020)

Poverty is a problem faced by all countries, especially in developing and underdeveloped countries. (Adawiyah, 2020) The role of the government in dealing with rampant poverty in all corners of Indonesia is very large, but in its implementation there are

still many families, especially a teacher who works to educate the nation's children, who need attention in this problem. Even though with teachers a golden generation is born, a generation that can change civilization, but there are still many teachers who have not been able to meet their needs, even though teachers have the right to be happy at least by meeting their daily needs, as the 1945 Constitution reads, namely getting a decent job and livelihood.

Lazismu Solo City comes with a program that provides solutions in the midst of a vacuum for things that have escaped the attention of the government in order to contribute to increasing the welfare of teachers in educating the nation's children. Among the things that the city of Solo does is provide additional subsidies every three months.

The distribution of assistance in this program, the city of Solo uses ZIS funds. The Lembaga Amil Zakat, Infaq dan Shodaqoh Muhammadiyah (Lazismu) Solo received the lazismu award in the best social program category in 2020 in the virtual Lazismu national meeting (Revelation, 2020)

Lazismu was named the best humanitarian fundraising by IFA 2021 and again won the 2022 BAZNAS Award. Lazismu Wins 4 Indonesia Fundraising Awards 2022 in the Category; Best of the Best Zakat Fundraising, Best of the Best Humanitarian Fundraising, Best of the Best Fundraising Best Qurban, and Best Best Fundraising Infaq (Lazismu, 2022)

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ (التوبة : ٦٠)

"Indeed, zakat is only for the poor, the poor, the amil zakat, the one who softens his heart (convert), for (liberating) the righteous servant, for (freeing) the debtor, for the way of Allah, and for the one who is on the way, as an obligation from Allah. God is All-Knowing, All-Wise." (QS. At-Taubah:60)

It is appropriate that zakat can help the 8 groups mentioned in the Quran, so with the existence of lazismu Surakarta City is hoped that it can maximally distribute zakat funds so that all groups can feel welfare or at least be helped in their daily lives.

Zakat is one of the five pillars of Islam that must be carried out for Muslims who have met the conditions. Allah ta'ala said:

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَارْكَعُوا مَعَ الرَّاكِعِينَ ... (البقرة : ٤٣)

"And establish prayer, pay zakat and ruku'lah with those who are ruku". (Al-Baqarah:43)

Zakat etymologically means an-namaa' (growing), az-ziyadah (increasing), ash-sholah (improvement), purifying something and something that is taken out of the owner to purify himself. (Tuasikal, 2012)

In terminology, zakat is a certain amount of property that is issued to a certain person (mustahik) in accordance with what Allah ta'la commands to those who are able and have achieved *Nishab* and *Haul*. *Nishab* is a certain measure of the property owned while *Haul* is property that has reached one year, these two conditions are conditions that cannot be separated, so a person who has reached *Nishab* and *Haul* For one year, it is obligatory for him to pay zakat. (O'Neill, 2015)

Zakat has many benefits for all Muslims, as an important financial source for the Muslim economy and has a profound impact on socio-economic development for the nation. (Bahri & Arif, 2020)

Zakat has the purpose of alleviating poverty in a place or country, not just to support the poor in a consumptive manner. With zakat, it can realize the well-being of the people and poverty alleviation (Amymie, 2019)

Lazismu Solo City is located on Jl. Popda, Nusukan, Banjarsari District, Surakarta City, Central Java, 57138. Banjarsari District is one of the five sub-districts in Surakarta City, Central Java Province, Indonesia. This sub-district is the only one in the city of Surakarta which before Indonesian independence was part of the royal city of the Praja Duchy of Mangkunegaran; the other four sub-districts are the territory of the king city of Kasunanan Surakarta.

Interesting facts about lazismu winning the award for the best social program category in 2020 in the virtual lazismu national meeting is a research factor to analyze more deeply with the title "*Analysis of the Strategy for the Distribution of ZIS Funds Through the Teacher Care Program at Lazismu Surakarta City*" with the following problem formulation: What is the strategy for distributing ZIS funds through the teacher care program at Lazismu Surakarta City? And What is the sharia review of the strategy for distributing ZIS funds through the teacher care program at lazismu Surakarta City?

Based on previous research searches, no research has been found that discusses the analysis of the strategy for distributing ZIS funds through the teacher care program at lazismu Surakarta city which specifically discusses the strategy in distributing ZIS funds by lazismu Surakarta through the teacher care program. Among the previous studies are as follows:

*First* Siti Khiyarotus Sholikhah, who researched "Strategies for Distributing Productive Zakat Funds Through Economic Empowerment Programs" which was carried out in 2022. This research uses a descriptive qualitative approach with the type of field research. The data sources used are primary data sources and secondary data sources. The primary data source was obtained from observations and interviews conducted with the management of the Central Java Lazis Solo Branch and mustahiq, then for secondary data sources obtained from important documents as support. The results of this study show that the strategy for distributing productive zakat funds at the Central Java Solo Branch is distributed through the economic empowerment program. Then the implementation of the strategy that has been formulated has stages that are carried out, namely the stages of survey, file submission, verification, business capital rollover to the form of coaching and mentoring. The similarity side is on the side of discussing strategy. While the difference is that this study examines the analysis of the strategy for distributing ZIS funds through the teacher care program in Lazismu city of Surakarta. (Sholikhah & Efendi, 2022)

*Second* Miftakul Nur Mardiyah which researches the "Strategies for Collecting Zakat Maal in Increasing Muzakki Trust" which will be carried out in 2023. The type of research used is qualitative field research using data sources consisting of primary and secondary data. The sampling technique used purposive sampling and the data collection technique used interview, observation and documentation methods. Then for data analysis, it is carried out with three flows, namely data reduction, data presentation, and verification and conclusion drawn. The results of this study show that Lazismu Sragen Regency zakat maal fundraising requires a fundraising strategy as well as fundraising dialogues, corporate fundraising, multichannel fundraising, retention and development. The similarity side is on the side of discussing strategy. While the difference is that this study examines the analysis of the strategy for distributing ZIS funds through the teacher care program in Lazismu city of Surakarta. (Miftakul Nur Mardiyah, 2023)

*Third* Julaihah Manis Anggraini which examines the "Analysis of the Strategy for Collecting Zis Funds During the Covid-19 Pandemic in Zakat Management Organizations" which was carried out in 2022. This type of research uses the qualitative with a case study approach. Data collection techniques used through interviews and documentation. Data analysis uses an inductive approach to explain the results of research obtained based on facts in the field. The results of the research obtained are that LAZ SOLOPEDULI Central Java



in the collection strategy is divided into 3 processes, namely formulation, implementation and evaluation of strategies. Strategy during the Covid-19 pandemic by giving rise to various innovations such as donor maintenance, collaboration and new programs. The similarity side is on the side of discussing strategy. While the difference is that this study examines the analysis of the strategy for distributing ZIS funds through the teacher care program in Lazismu city of Surakarta. (Anggraini, 2022)

*Fourth* Angga Saputra who researched "Lazismu Strategy of Metro City in Building Awareness of Paying Zakat Maal" which will be carried out in 2025. This type of research is qualitative field research with the nature of qualitative descriptive research, and the nature of this research is qualitative descriptive, namely the analysis of situations and events in a systematic, factual, and accurate manner. The results of this study show that: , there are five strategies prepared by the Amil Zakat Muhammadiyah Institute (Lazismu) Metro City. The strategies are: socialization: direct socialization and indirect socialization, establishing several service offices, front office/pay to the office directly, online (via account transfer or via application), and collecting zakat. The similarity side is on the side of discussing strategy. While the difference is that this study examines the analysis of the strategy for distributing ZIS funds through the teacher care program in Lazismu city of Surakarta. (Saputra, 2025)

*Fifth* Sefia Nur Aini which researched "Persuasive Communication Strategy of Lazis Al Ihsan Central Java in Increasing Interest in Zakat, Infaq and Shodaqoh (ZIS) in Pekalongan City" which will be carried out in 2024. This type of research is with a field research approach and a type of descriptive qualitative research equipped with data collection techniques by conducting interviews, observations and documentation, as well as data analysis research methods by including data reduction, data display and conclusion drawn. The results of the study can be concluded that the persuasive communication strategy of Melvin L. DeFleur and Sandra J. Ball-Rokeach carried out by LAZIS Al ihsan Central Java Pekalongan City is by providing education about zakat, infaq, shodaqoh (ZIS), conducting socialization and inviting collaboration. The similarity side is on the side of discussing strategy. While the difference is that this study examines the analysis of the strategy for distributing ZIS funds through the teacher care program in Lazismu city of Surakarta.(Sefia Nur Aini, 2024)

## RESEARCH METHODS

The method used in this study is a qualitative method based on the constructivist paradigm, which assumes that reality is not single, but plural, there is a dynamic and interactive relationship between individual actors. Qualitative research is presented in narrative form. In this method, the researcher went directly to the field, namely the Lazimu Solo office with the aim of exploring the information and data that wanted to be researched directly. The research was conducted on Jl. Popda, Nusukan, Banjarsari District, Surakarta City, Central Java 57138. The data sources of this research use primary and secondary data, primary data is collected with the results of interviews, observations and documentation directly at the lazismu Solo office, while secondary data is obtained from various kinds of journal literature, lazismu's official website, articles and others. The technical data analysis of this study is the collection of primary and secondary data, data analysis, data presentation and drawing conclusions.

### **Lazismu Fund Distribution Strategy Through the Teacher Care Program at Lazismu Surakarta City**

Among the main goals of Muhammadiyah in its movement are in the socio-religious field and efforts to solve poverty. In 2022, the potential for zakat in Indonesia is Rp. 327 trillion. Zakat in Indonesia has experienced quite significant development. Year 2020 Lazismu Muhammadiyah Central Committee succeeded in releasing the results of the Zakat Literacy Index for Muhammadiyah Citizens at an average of 76.58 (medium). In 2022, the results of the Zakat Literacy Index based on survey results were 77.37 (medium) or an increase of around 0.79 points. (Taut, 2025)

Researchers have conducted research in Lazismu The city of Solo is located on Jl. Popda, Nusukan, Banjarsari District, Surakarta City, Central Java, 57138 and found data in the form of interviews from informants, observation and documentation. From the results of the research conducted, the researcher divided into two parts about analysis of the strategy for distributing ZIS funds through the teacher care program in Lazismu Surakarta City.

Based on the results of the interview, the researcher found data from the head of the finance division and admin of lazismu Surakarta Nurul Aieni, S.Pd that ZIS funds were collected offline and online. The collection of ZIS funds offline through Muhammadiyah schools which are socialized is then also collected from outside Muhammadiyah residents *door to door*, individual to individual, through communities or community groups, mosques to

shops through infaq boxes. As for the online collection of ZIS funds, Lazismu Make 2-3 flyers every day which are posted on social media, websites and sent to existing permanent donors. The collection of ZIS funds is carried out without coercion and lure for those who distribute, but is given motivation to do good deeds starting from zakat, infaq and shodaqoh.

The sources of funds obtained by lazismu in each month are different, there are months that receive high funds such as the month of Ramadan, Eid al-Qurban, the month of Muharrom and the end of the year. As for other than the month, the month is classified as standard. ZIS fundraising in 2024 touches IDR10.596.521.411 With 15 programs, 2,512 registered donors and 47,786 mustahik.(Solo, 2024)

Lazismu Surakarta City is very committed to following the instructions of the Quran and Al Hadith in distributing ZIS funds, especially in zakat, as Allah says in the Quran:

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ  
وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ (التوبة : ٦٠)

"Indeed, zakat is only for the poor, the poor, the amil zakat, the one who softens his heart (convert), for (liberating) the righteous servant, for (freeing) the debtor, for the way of Allah, and for the one who is on the way, as an obligation from Allah. Allah is All-Knowing, All-Wise. At-Taubah:60)

Based on the results of an interview by the head of the finance division and admin of lazismu Surakarta Nurul Aieni, S.Pd on November 29, 2024, the main priority is the poor and this is the largest group as *mustahik* zakat. The distribution of zakat is prioritized in the Solo city area and then the surrounding cities. The ZIS funds in addition to zakat such as infaq and shodaqoh in the form of lazismu sacrificial animals Surakarta City established relationships and cooperation with other lazismu regions to distribute the sacrificial animals.

The city of Surakarta has 6 pillars with more than 15 programs in it. The 6 pillars are education, health, economy, social humanity, da'wah and the environment. The existing programs range from teacher care programs, solar scholarships, health care to MSME empowerment and others. The teacher care program is a program that has existed since the establishment of Lazismu Surakarta City. Lazismu Surakarta City has consistently provided subsidies to teachers, especially kindergarten teachers, in the last 2 years. Lazismu Surakarta City collaborates with the Aisiyah Regional Leadership Dikdas Council of Surakarta City together with the Lazismu PDA Service Office in the Bakti Guru Paud/TK Aisiyah in Surakarta in providing welfare in the form of additional honorariums every 3 months with a

nominal amount of 100,000 per month. Even if it's a little at least it can help teachers. The background of the teacher care program is as follows:

- The teacher care program is one of the flagship programs of Lazismu Surakarta  
As for other flagship programs in the form of MSME empowerment, solar scholarships, and *save our school*, this program is more inclined towards education because it follows the focus of the Muhammadiyah program, namely Education.
- Teacher well-being  
The problem regarding the welfare of teachers, both kindergarten and elementary school teachers as honorary teachers who do not have certifications, positions and is not an ASN, is very minimal in salary. So Lazismu Surakarta wants to help improve their welfare.

The teacher care program is one of the programs that lazismu Surakarta has been implementing regularly since the last 2 years. The funds used in the teacher care program are zakat funds of 75% and 25% use infak funds, as explained by the head of the finance division and admin of lazismu Surakarta Nurul Aieni, S.Pd. ZIS funds obtained in the teacher care program are zakat or sodaqoh funds from institutions or agencies. Lazismu Surakarta classifies this teacher care program into the *fai sabiilillah group*. The criteria for teachers who receive subsidies are teachers who earn below the average UMR and pass the results of the survey of the Aisiyyah Regional Leadership Council of Surakarta City with interviews, looking at daily conditions to the economy, so that not all teachers get subsidies from ZIS funds.

The distribution of ZIS funds to selected teachers lasts for 1 year, then the Aisiyyah Regional Leadership Council of Surakarta City will update the next mustahik. The strategy for distributing ZIS funds carried out by lazismu Surakarta is as follows:

- Collaborating with the Aisiyyah Regional Leadership Council of Surakarta City to survey.
- Each teacher is given an account number in the name of the teacher, this account is specifically just to receive subsidies from Lazismu Surakarta.
- The bank used in opening an account is the Bank Pembiayaan Rakyat Syariah Harta Insan Karimah (BPRS HIK) the reason why using the bank is because of the feedback of lazismu Surakarta to the BPRS HIK Surakarta bank which distributes its zakat through lazismu Surakarta, then lazismu Surakarta provides an offer of zakat funds to be sent to the teacher care program.

- Gather all teachers who were selected at the beginning of the year and certain moments such as the moment of the Muhammadiyah milad by providing motivation and advice and providing compensation to the selected teachers.

The teacher care program carried out by lazismu surakarta is generally running well and smoothly, although there are several obstacles such as opening an account takes a long time because the collection of files needs to be completed. The solution carried out by lazismu Surakarta is to coordinate with the branch branches of Aisyiyah Kindergarten, each branch is selected by one coordinator to conclude the files of the selected teachers so that it is easier to file.

Based on the explanation above, it can be concluded that the strategy for distributing ZIS funds carried out by lazismu Surakarta includes: 1). Collaborating with the Aisyiyah Regional Leadership Council of Surakarta City to survey. 2). Each teacher is given an account number in the name of the teacher. 3). Using the BPRS HIK Surakarta as the distribution. 4). Gather all teachers who are selected at the beginning of the year and at certain moments by providing motivation and advice and providing compensation to the selected teachers.

### **Sharia Review of the Strategy for Distributing ZIS Funds through the Teacher Care Program at Lazismu Surakarta City**

In general, Lazismu Surakarta is very committed to distributing zakat in accordance with the postulates of the Quran and As Sunnah, this is the right step in making decisions. Allah ta'ala says in the Qur'an:

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمَوْلَّةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَرَمِينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

"Indeed, zakat is only for the poor, the poor, the amil zakat, the one who softens his heart (convert), for (liberating) the righteous servant, for (freeing) the debtor, for the way of Allah, and for the one who is on the way, as an obligation from Allah. Allah is All-Knowing, All-Wise. At-Taubah:60)

Tafsir as sa'di interprets this verse in his tafsir *Taisirul Karimirrahman fi Tafsiri Kalamil Mannan*: Allah ta'ala says (إِنَّمَا الصَّدَقَاتُ) What is meant by "shadaqah" here is obligatory zakat, based on the evidence that sunnah shadaqah can be given to anyone, not limited only to certain people. Meaning: Indeed, zakat is only for the people mentioned in this verse, not for

other than them. Because Allah has limited (specialized) the giving of zakat only to them. And they are the eight groups. The first two groups: the poor and the poor Both are two groups with different levels of needs.

- The poor are the people who are in great need, because Allah has begun His words by mentioning them, and Allah cannot mention except the most important or needy, the interpretation of the poor is that they have nothing, or have only a small part of their needs less than half.
- Poor are people who have more than half of their needs, but are not able to meet all their needs. If he has met all his needs, then he is considered a rich man. (As-Sa'di, 2000)

Therefore, both of them are entitled to receive a share of zakat to eliminate their conditions of poverty and poverty. Please note:

The eight groups of zakat recipients can be divided into two major groups:

- Those who are given zakat for their needs and benefits for them, such as the poor, the poor, and the like.
- Those who are given zakat because of their important role and the benefits they provide for the benefit of Islam. Allah has obligated the zakat portion of the wealth of the rich to cover the needs of the people whom Allah has designated and the general needs of the Muslims. If the rich pay zakat on their wealth according to the guidance of the Shari'ah, there will be no more poor among the Muslims, and sufficient funds will be collected to meet the needs of famine, wage jihad against the infidels, and meet all the essential needs of religious affairs." (As-Sa'di, 2000)

### **Classification of teachers into *asnaf fiisabiilillah***

Lazismu Surakarta classifies teachers who receive subsidies from zakat funds as part of the *fiisabilillah*. This classification is based on the postulates of the Qur'an with the understanding that preparing the cadres of the ummah, compiling and publishing religious books, as well as all forms of efforts aimed at upholding the words of Allah Ta'ala are included in the meaning *fiisabilillah* or jihad in the way of Allah in the broadest sense. The meaning of jihad in the way of Allah is not limited to physical warfare alone, but also includes struggles in the fields of education, da'wah, and coaching or producing cadres of the people. However, not all forms of good deeds are automatically included in the category that is

entitled to receive zakat through *fiisabilillah*. There should be a direct connection with the purpose of upholding the religion of Allah and jihad in the way of Allah. **So the distribution of zakat to help teachers in producing a generation of people is allowed.**(Official, 2022)

Using banks as executors in distributing zakat

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَيُّهَا النَّاسُ اتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ، فَإِنَّ نَفْسًا لَنْ تَمُوتَ حَتَّى تَسْتَوِيَ رِزْقُهَا وَإِنْ أَبْطَأَ عَنْهَا، فَاتَّقُوا اللَّهَ وَأَجْمِلُوا فِي الطَّلَبِ، خُذُوا مَا حَلَّ، وَدَعُوا مَا حَرَّمَ. رواه ابن ماجه (٢١٤٤) وصححه الألباني.

Means; From Jabir ibn 'Abdillah (may Allah be pleased with him), the Messenger of Allah (peace and blessings of Allaah be upon him) said, "O mankind, fear Allah, and work well in earning sustenance, for indeed a soul will not die, until it receives all its sustenance, even if it is late. So keep fearing Allah, and take a good path in earning sustenance. Take what is lawful and leave what is haram." (HR. Ibn Majah no. 2144. Al-Albani considers this hadith to be authentic).

The above evidence shows that to take what is halal and leave what is haram, while the transfer is a *wasilah* that does not contain elements of haram such as *riba*, *ghoror*, and *kedzoliman*, then as long as there is no element of haram, then it is permissible and halal.

#### **Feedback from Lazismu Surakarta to BPRS HIK Surakarta bank**

Sincerity in worship and reciprocity in charity should be due to Allah ta'la. So in all worship it should be done sincerely because Allah ta'la is not only to obtain reciprocity from humans.

لَا نُرِيدُ مِنْكُمْ جَزَاءً وَلَا شُكْرًا

Meaning: "We do not want from you any reply nor thanks." (QS. Al-Insan: 9)

It is mentioned in the commentary of Ibn Kastir in the verse:

لَا نَطْلُبُ مِنْكُمْ مُجَازَاةً تُكَافِئُونَنَا بِهَا، وَلَا أَنْ تَشْكُرُونَا عِنْدَ النَّاسِ

Meaning: "We do not ask of you a reward that you give us, nor do we praise you before men."(Kastir, 2009)

Therefore, your feedback to the BPRS HIK bank should not be necessary because this can weaken or weaken the sincerity of the zakat party.

Based on the explanation above, it can be concluded that the sharia review of the strategy for distributing ZIS funds through the teacher care program in the city of Surakarta includes: 1. In general in accordance with the guidelines of the Qur'an and As Sunnah. 2. Teachers can receive subsidies from zakat funds as part of the *fi sabilillah group*, because their role in preparing the ummah cadres is a form of jihad in the way of Allah and an effort to uphold the word of Allah. 3. The use of banks as executors in zakat transfers is allowed because there is no element of harat. 4. Your feedback to the BPRS HIK bank should not be necessary because this can fade or weaken the sincerity of the party who gives zakat

## CONCLUSION

The strategy for distributing ZIS funds carried out by lazismu Surakarta includes: Collaborating with the Aisyiyah Regional Leadership Council of Surakarta City to survey, each teacher is given an account number in the name of the teacher, using the BPRS HIK Surakarta bank (Bank Pembiayaan Rakyat Syariah Harta Insan Karimah) as the distribution, gathering all teachers who were selected at the beginning of the year and certain moments by providing motivation and advice and providing compensation to the selected teachers.

The sharia review of the strategy of distributing ZIS funds through the teacher care program in Lazismu Surakarta includes: In general, in accordance with the guidelines of the Qur'an and As Sunnah, teachers can receive subsidies from zakat funds as part of the *fisabilillah group*, because their role in preparing the cadres of the ummah is a form of jihad in the way of Allah and an effort to uphold the word of Allah, 'The use of banks as a wasilah in zakat transfers is allowed because there is no element of haraman, should not be necessary to give feedback to BPRS HIK bank because this can fade or weaken the sincerity of the party who gives zakat



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## **BUMDes' CONTRIBUTION TO THE ACCELERATION OF MSME HALAL PRODUCT SUBMISSION: A STUDY IN TAMAN VILLAGE, PAITON DISTRICT**

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### **ABSTRACT**

This study aims to analyze the contribution of Village-Owned Enterprises (BUMDes) in accelerating the halal certification application for MSMEs in Taman Village, Paiton District. Halal certification is crucial for MSMEs as it opens up wider market access, especially in modern retail and export markets. However, many MSME actors in Taman Village are still unaware of the halal certification process and face various administrative obstacles. This study employs an empirical legal research approach with interviews and field observations. The findings show that BUMDes plays a significant role as a facilitator by providing assistance, information, and acting as an intermediary between MSMEs and relevant agencies such as BPJPH. However, BUMDes' contribution in expediting the halal certification process is still limited by human resource capacity and a lack of inter-agency coordination. The study recommends enhancing BUMDes' internal capacity and collaborating with universities to strengthen their role in facilitating halal certification.

**Keywords:** BUMDes, MSMEs, Halal Certification, Taman Village, Paiton.

### **ABSTRACT**

This study aims to analyze the contribution of Village-Owned Enterprises (BUMDes) in accelerating the submission of MSME halal certification in Taman Village, Paiton District. Halal certification is important for MSMEs because it opens up wider market access, especially in the modern retail and export markets. However, many MSME actors in Taman Village do not understand the halal certification mechanism, and face various administrative obstacles. This study uses an empirical legal approach with interview and field observation methods. The results of the study show that BUMDes play an important role as facilitators who provide mentoring, information, and liaison services between MSMEs and related agencies, such as BPJPH. However, the contribution of BUMDes in accelerating the halal certification process is still limited by human resource capacity and lack of inter-agency coordination. This research suggests increasing the internal capacity of BUMDes and collaborating with universities to strengthen their role in facilitating halal certification.

**Keywords:** BUMDes, MSMEs, Halal Certification, Taman Village, Paiton.

## INTRODUCTION

The micro, small, and medium enterprises (MSMEs) sector is the main pillar of the national economy that plays a significant role in labor absorption, income distribution, and strengthening the local economy.<sup>1</sup> Data from the Ministry of Cooperatives and MSMEs shows that MSMEs account for more than 60% of Indonesia's Gross Domestic Product (GDP) and absorb more than 97% of the national workforce. At the village level, MSMEs not only function as an economic mechanism, but also as a support for family welfare and an important instrument in reducing poverty. However, the fundamental problem that continues to arise in the development of MSMEs is the low level of compliance with product legality standards, including compliance with halal product assurance regulations. In fact, since the enactment of Law No. 33 of 2014 concerning Halal Product Assurance (JPH), the obligation of halal certification has become an integral part of business governance that must be followed by all business actors, especially the food, herbal, cosmetics, and other consumer products sectors.

Halal certification is not only a religious demand, but also an economic and market need. Indonesian consumers are the majority of Muslims, so the preference for halal products is very high and has a direct effect on purchasing decisions. In the context of the global market, halal certification has even become an instrument of competitiveness and a prerequisite for product marketing in many countries. In addition to providing certainty for consumers, halal certification opens up opportunities for MSMEs to enter a wider distribution network, such as modern retail, large e-commerce, and export markets that apply strict halal standards.<sup>2</sup>

However, in the field, most village MSMEs find it difficult to fulfill halal certification obligations because they face a number of structural and technical obstacles. These challenges include low regulatory literacy, lack of access to information related to halal certification procedures, limited administrative capabilities in preparing required documents, and low quality of production management needed in the halal assurance system. Many MSME actors in rural areas still view halal certification as a complex, expensive, and time-

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<sup>1</sup> Anindita Trinura Novitasari, "Kontribusi Umkm Terhadap Pertumbuhan Ekonomi Era Digitalisasi Melalui Peran Pemerintah," *JABE (Journal of Applied Business and Economic)* 9, no. 2 (2022): 184–204.

<sup>2</sup> Reza Arviciena Sakti et al., "Analisis Produk Halal Dalam Ekonomi Syariah Global," *Jesya (Jurnal Ekonomi Dan Ekonomi Syariah)* 8, no. 2 (2025): 1568–82.

consuming process.<sup>3</sup> This condition causes the pace of halal certification submission to run slowly and unevenly in various regions, including in Paiton District.

Taman Village, one of the villages in Paiton District, Probolinggo Regency, is an area with quite dynamic MSME activities, especially in the processed food, traditional snacks, and micro-scale home production sectors. Despite having great economic potential, most of the MSME products in Taman Village do not have halal certification. This has an impact on limited market access and low product added value. The absence of halal legality also makes village MSME products not eligible to be sold on various digital platforms and modern stores, thus narrowing business development opportunities. This phenomenon shows that there is a gap between the economic potential of Taman Village MSMEs and their ability to meet the demands of halal regulations.

In the midst of these challenges, the existence of Village-Owned Enterprises (BUMDes) has a strategic opportunity to make a real contribution in accelerating the process of applying for halal certification for MSME actors.<sup>4</sup> BUMDes is a village institutional entity formed to manage assets, develop local economic potential, and improve community welfare through various business units. Regulatively, BUMDes not only play a role as an economic driver, but also as a socio-economic institution that can provide empowerment, mentoring, and administrative facilitation services for villagers. In the context of accelerating MSME halal certification, BUMDes can carry out their functions as information centers, companion institutions, consulting service providers, and liaison between MSMEs and the Halal Product Assurance Agency (BPJPH), as well as certified PPH companions.<sup>5</sup>

The contribution of BUMDes is important because this institution has an emotional and structural closeness to the village community. BUMDes can map the real needs of MSMEs, identify specific obstacles in the certification application process, and design intervention programs that are contextual and easily accessible to business actors. In various regions in Indonesia, BUMDes has successfully initiated business legality assistance programs, packaging training, and licensing facilitation such as Business Identification Numbers (NIB) and PIRT. However, the involvement of BUMDes specifically in

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<sup>3</sup> (Prince, 2024)

<sup>4</sup> Sahlan Hasbi et al., "PENGUATAN POTENSI EDUWISATA HALAL DAN DAYA SAING PELAKU USAHA MIKRO DI DESA WATES JAYA MELALUI SERTIFIKASI HALAL," in *Prosiding Seminar Nasional Pengabdian Kepada Masyarakat*, vol. 6, 2025, SNPPM2025EK-38.

<sup>5</sup> Syamsul Hadi et al., *Pemberdayaan Ekonomi Masyarakat Pesisir: Strategi Pengembangan Badan Usaha Milik Desa (BUMDes)* (Yogyakarta: PT. Star Digital Publishing, Yogyakarta-Indonesia, 2025).

accelerating halal certification is still rarely studied scientifically, especially in rural areas whose economic structure is highly dependent on small and micro MSMEs.

So far, academic studies related to halal certification have highlighted the issue of halal literacy for MSMEs, the role of local governments, the effectiveness of PPH companions, and the dynamics of OSS-RBA implementation.<sup>6</sup> Meanwhile, the role of village institutions, especially BUMDes, in accelerating the submission of halal certification is still a research gap that has not been widely revealed in the scientific literature. In fact, in the framework of community empowerment, BUMDes are key actors that have the potential to integrate halal value chain programs at the village level through a collaborative and participatory institutional approach.

The involvement of BUMDes in the halal acceleration program is very relevant to the development of national policies, especially after the enactment of the self-declare scheme for eligible MSMEs. The self-declare scheme provides a great opportunity for MSME actors to obtain halal certificates at no cost, as long as they are able to meet the documentation requirements and consistency of halal raw materials.<sup>7</sup> In this context, BUMDes can act as facilitators to ensure that MSMEs meet these requirements, including assisting in the preparation of documents, preparation of forms, registration of electronic systems, and monitoring the implementation of a simple halal assurance system at the household production level.

In Taman Village itself, the existence of BUMDes opens up opportunities to create an integrated village halal ecosystem. BUMDes can develop halal service units (Halal Center Desa), hold regular training programs, provide consulting services, and collect data and map the readiness of MSMEs. Through the village's social network and its structural authority, BUMDes are the actors most likely to mobilize MSMEs effectively compared to external institutions. Thus, this study is important to explore the forms of contribution of BUMDes, analyze their supporting and inhibiting factors, and formulate institutional intervention patterns that can accelerate the submission of MSME halal certification in Taman Village.

This research departs from the understanding that accelerating halal certification requires multi-actor synergy, but the role of local institutions such as BUMDes is often overlooked. In fact, the success of the village-based MSME empowerment program shows

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<sup>6</sup> Salihah Khairawati et al., "Kendala Sertifikasi Halal Pada UMKM Di Indoneisa: Sebuah Kajian Literatur," *Jurnal Akuntansi, Manajemen Dan Ilmu Ekonomi (Jasmien)* 5, no. 02 (2025): 242–56.

<sup>7</sup> (Rain, 2024)

that local institutional support is a determinant of the sustainability of the program. Thus, the urgency of this research is not only academic, but also practical to provide strategic recommendations that can be implemented by village governments, BUMDes, and halal companion institutions in building an inclusive and community-based halal ecosystem.

Based on this description, this study aims to analyze the contribution of BUMDes in accelerating the submission of MSME halal certification in Taman Village, Paiton District, as well as identify factors that affect the effectiveness of this role. The results of this study are expected to make a theoretical contribution to the development of literature related to the role of village institutions in halal governance, as well as become an empirical basis for the formulation of MSME empowerment policies based on BUMDes.

## RESEARCH METHOD

This study uses **Empirical Legal Research** (*empirical legal research*), which is research that studies how the law works in society and how the effectiveness of regulations and policies is implemented by the subject of the law.<sup>8</sup> Empirical legal research looks not only at the legal text, but also the social realities that emerge as a result of the application of the law. In the context of this study, an empirical approach is used to find out **BUMDes' contribution in accelerating the submission of MSME halal certification**, including how legal norms (Village Law, JPH Law, PP related to BUMDes, BPJPH regulations) are applied in practice in Taman Village, Paiton District.

This research Using **pendekatan konseptual (conceptual approach)** in an empirical framework. The conceptual approach aims to explore relevant legal concepts,<sup>9</sup> such as: The institutional concept of BUMDes in village law; The concept of halal product assurance; The concept of empowering MSMEs in regulations; The concept of public policy implementation at the village level

This approach helps to formulate a theoretical framework for analyzing field findings, so that empirical realities can be linked to applicable legal constructions.

Source of Data The research in this study consists of primary data and secondary data. Primary data was obtained directly from the field through: *In-depth interview* with: Taman Village BUMDes Administrator; MSME actors who are or have applied for halal

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<sup>8</sup> I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya Jurnal Hukum* 1, no. 1 (2013): 21–30, <https://doi.org/https://doi.org/10.37637/kw.v1i1.419>.

<sup>9</sup> I Made Pasek Diantha and I Made, "Metode Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum," *Jakarta: Prenada Media Grup*, 2017.

certification; Related Halal Product Process Companions (PPH); Village Government Officials; and community leaders who understand the dynamics of local MSMEs. Apart from that, field observations are also carried out, to find out: The process of applying for MSME certification; Mentoring activities carried out by BUMDes; Institutional and administrative conditions of BUMDes; and MSME production processes related to the fulfillment of halal standards

Secondary data were obtained from legal materials and other literature sources, including: Law Number 6 of 2014 concerning Villages; Law Number 33 of 2014 concerning Halal Product Assurance; PP on the Implementation of JPH; Permendes related to BUMDes; BPJPH regulations on halal certification and self-declaration; Books on BUMDes, MSMEs, and halal law; Articles from scientific journals and previous research results; and Official BPJPH/PPH Guidelines and SOPs

## FINDINGS AND DISCUSSION

The implementation of Law Number 33 of 2014 concerning Halal Product Assurance (JPH Law) and Government Regulation Number 39 of 2021 has significant legal consequences for all business actors, including MSMEs in rural areas. The regulation emphasizes that all products circulated in Indonesia, especially those related to human consumption (food, beverages, herbal medicines, cosmetics, and similar products), are required to have a halal certificate as a form of ensuring safety and consumer protection. With the transfer of certification authority from LPPOM MUI to BPJPH, the halal certification mechanism has become more structured, systematic, and encouraged to cover all business actors without exception.<sup>10</sup>

In this context, MSMEs in Taman Village, Paiton District, are in a position that demands quick adaptation to changes in the regulatory structure. Non-compliance with halal regulations will have an impact on limited market access for MSMEs, especially in the context of digital marketing and modern retail which now strictly requires product legality. Therefore, accelerating halal certification is not just an administrative obligation, but a strategy to increase the competitiveness of village MSMEs.

However, the findings of the study show that this progressive national regulation is still not followed by the readiness of village MSME actors. The majority of MSME actors in

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<sup>10</sup> Indah Dwi Lestari, Suriansyah Murhaini, and Andika Wijaya, "Sertifikasi Halal: Analisis Hukum Dan Implementasinya Pada UMKM Kuliner Di Palangka Raya," *Palangka Law Review* 4, no. 1 (2024): 35–46.



Taman Village do not understand the obligation of halal certification and do not have awareness of its strategic value. This indicates the existence of *gap* between the national legal framework and the social reality of the village, which demands the intervention of village institutions such as BUMDes to bridge the gap.<sup>11</sup>

This research reveals that institutionally, the Sumber Sejahtera BUMDes in Taman Village has had legal force since February 2025. This legality is marked by official recognition from the Ministry of Law and Human Rights, as well as the preparation of a complete and formal organizational structure. Prior to the legalization of legal entities, a number of community empowerment activities had actually been carried out by BUMDes, such as the management of confectionery units (sewing) and cooperation with the village PKK in the production and marketing of secang tea, coconut sugar and ant sugar industries. This ant sugar commodity is one of the leading commodities of Probolinggo Regency. Ant sugar commodities are indeed widely produced by most villages in Paiton District, including Taman village. Most of the ant sugar industry in Paiton District also involves various parties. For example, in Sumberanyar Village, Sukodadi, Karanganyar has collaborated with PT. Coco Sugar as a company willing to become a collector of ant sugar products. These activities have been running even though they have not been formally institutionalized administratively.

The big vision carried out by BUMDes is to increase Village Original Income (PAD) through productive business units. The 50:50 profit sharing model between village cash and BUMDes cash is the basis of their financial operations. BUMDes has also developed several new business units, such as catfish farming and cattle fattening, which are managed with a structured division of tasks. The village head acts as the main supervisor, assisted by the Village Secretary as the coach and the director of BUMDes as the main implementer, besides the above there is also the tempeh industry, cassava chips and londry tap whose ingredients are made of cassava.

The results of observations in the field and also from village data of 14 MSMEs show that most MSME actors in Taman Village have not yet pocketed halal certificates. Lack of understanding of the importance of halal legality is one of the dominant factors. Some business actors do not even know how the procedure for applying for halal certification is

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<sup>11</sup> Deni Setiawan, "BUMDes Untuk Desa: Kinerja BUMDes Dalam Meningkatkan Perekonomian Di Yogyakarta," *Journal of Social and Policy Issues*, 2021, 11–16.

carried out. The lack of socialization and lack of optimal assistance by related institutions are the main obstacles in this process.<sup>12</sup>

Although there have been efforts from the sub-district to facilitate the submission of halal certificates collectively, this program has not been maximally utilized by MSMEs in Taman Village. This is due to weak coordination, information that is not conveyed well, and the consistency of MSMEs in running their businesses is relatively low. Of the approximately 14 active MSMEs, only a small percentage operate sustainably throughout the year. The role of BUMDes is still not maximized as its function is an institution that is expected to lift and improve the economic welfare of the community.

BUMDes Sumber Sejahtera shows its intention and initiative to take the role of the main facilitator in the submission of halal certification in the future. One of the planned strategies is to establish partnerships with universities, so that the development of MSME and village programs can be based on academic research and innovation. This concept refers to successful practices such as those applied in Ponggok Village, Klaten, which is able to collaborate with universities in designing and implementing village programs based on local potential.

The results of this study indicate that BUMDes has a strategic position in encouraging the acceleration of halal certification for village MSMEs. With a legal entity and a clear organizational structure, BUMDes have a strong institutional foundation to take on the role. However, this potential is still not fully utilized due to various obstacles, both internal and external.<sup>13</sup>

Internally, one of the biggest challenges is the limitation of human resources. BUMDes managers generally focus more on developing productive businesses without having sufficient capacity in terms of facilitating product legality, especially halal certification. The lack of training and the absence of intensive assistance cause a lack of readiness for BUMDes to take on the role of halal certification facilitators. In fact, halal certificates play a significant role in increasing the credibility and competitiveness of products, especially in the food and beverage sector.

External factors that also hinder are the lack of information and lack of intensive socialization from related institutions, such as BPJPH or the agency in charge of MSMEs.

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<sup>12</sup> Novitasari, "Kontribusi Umkm Terhadap Pertumbuhan Ekonomi Era Digitalisasi Melalui Peran Pemerintah"; Danarti Hariani and Sutrisno Sutrisno, "Potensi Dan Strategi Pengembangan UMKM Halal Di Indonesia," *Ilmu Ekonomi Manajemen Dan Akuntansi* 4, no. 1 (2023): 76–91.

<sup>13</sup> Hariani and Sutrisno, "Potensi Dan Strategi Pengembangan UMKM Halal Di Indonesia."

This is in line with the opinion of Astuti & Nurul, who stated that many MSME actors do not understand the strategic value of halal certification due to a lack of education from related parties. The certification procedure, which is considered complicated and requires a lot of documents, is also the reason why most MSME actors are not interested in applying for it

Interestingly, this finding also shows the great potential of collaboration between BUMDes and higher education institutions. If this cooperation can be realized, then internal challenges related to human resource capacity can be overcome through academic-based training and mentoring. Students and lecturers can participate in the process of identifying potential, preparing documents, and counseling to MSME actors regarding halal certification. This can also increase the sustainability of the program and open up opportunities for research-based product development innovation.<sup>14</sup>

In the perspective of literature, the position of BUMDes as a driver of the village economy has been widely recognized. However, the aspect of facilitating the legality of MSME products is still rarely used as the main focus in the BUMDes work program. Therefore, the findings in this study provide novelty value, namely encouraging BUMDes not only as a business unit, but also as an institution that is able to bridge the administrative aspects and legality of MSME products.

Practically, synergy between BUMDes and MSMEs can be an effective strategy in increasing the added value of local products. Products that have been certified halal have a greater chance of penetrating a wider market, both domestic and international. However, this can only be achieved if there is concrete support from various parties, including village governments, sub-districts, and academics who are ready to become strategic partners.<sup>15</sup>

The limitations of this study lie in its scope which still focuses on one village and the limited involvement of respondents. For this reason, it is recommended that there be a follow-up study that covers a wider area and more respondents in order to provide a more representative picture of the practice of BUMDes in facilitating MSME halal certification.

By understanding the potential and challenges that exist, it is hoped that the results of this research can contribute to strengthening village policies in supporting the halal business ecosystem. Strict regulations, routine training, technical assistance, and village budget allocation are needed in favor of MSME empowerment so that the synergy between

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<sup>14</sup> Dewa Putu Oka Prasiasa, "Pendampingan Perguruan Tinggi Dalam Pengembangan Desa Wisata Baha, Mengwi, Badung, Bali," *Bina Cipta* 1, no. 2 (2022): 34–49.

<sup>15</sup> D W Astuti and A Nurul, "Strategi Pengembangan UMKM Melalui Sertifikasi Halal Di Indonesia," *Jurnal Ekonomi Dan Kebijakan Publik* 11, no. 2 (2020): 100–115, <https://doi.org/10.22212/jekp.v11i2.2020>.

BUMDes and local business actors can really be realized in a sustainable manner and have a wide impact.

One of the main findings of the study is that BUMDes Sumber Sejahtera has had a strong legal foundation since February 2025. The recognition of legal entities from the Ministry of Law and Human Rights and the formally structured organizational structure provide a basis for legitimacy to expand institutional functions, including the role of halal certification facilitators. Before formal legality was obtained, BUMDes had been active in various empowerment programs, such as: **confectionery units (sewing-sewing); The production and marketing of secang tea in collaboration with the PKK; and Management of the coconut sugar and ant sugar industry.**

The ant sugar commodity has a strategic position because it is Paiton's flagship product, and has even been connected to the wider market through collaborations with companies such as PT Coco Sugar. This fact shows that the village product ecosystem actually has great potential to penetrate a wider market—as long as it is supported by halal legality. The 50:50 profit-sharing model between village cash and BUMDes cash provides BUMDes with a financial basis that allows business development. In addition, BUMDes also manages other units such as catfish cultivation, cattle fattening, and small industries made from cassava (tempeh, cassava chips, tap).

This institutional strength should be strategic capital for BUMDes to take on the role of a driver of halal certification. However, research shows that legality and organizational structure alone are not enough to drive optimal contribution; A clearer technical capacity and vision of empowerment are needed.<sup>16</sup>

However, despite having adequate institutional strength, BUMDes have not taken advantage of their legal position to make a significant contribution to accelerating halal certification for MSMEs. The strength of the organizational structure—which includes directors, supervisors, and coaches from the village apparatus—has not been synergized to form a structured program related to the facilitation of product legality, including halal certification.<sup>17</sup>

Further analysis shows that there is a tendency for BUMDes to focus attention on the development of physical business units, such as catfish cultivation, cattle fattening,

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<sup>16</sup> Putri Yuni Astuti, Yuri Fitriyani Tamala, and Ade Yunita Mafruhah, "Tantangan Dan Peluang Percepatan Pengembangan BUMDES Menuju Status Berkembang Dan Maju Di Kabupaten Cilacap," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 7, no. 1 (2022): 127–42.

<sup>17</sup> Setiawan, "BUMDes Untuk Desa: Kinerja BUMDes Dalam Meningkatkan Perekonomian Di Yogyakarta."

confectionery, and food production. Meanwhile, non-economic functions, namely administrative assistance, legal education, and facilitation of the legality of MSMEs, have not been touched optimally. In other words, **BUMDes already have a strong "institutional platform" but do not yet have a "programmatic platform" aimed at halal certification.**

In fact, with the status of a legal entity, BUMDes has a greater opportunity to establish partnerships with external institutions such as BPJPH, PPH assistants, universities, and technical offices. Strong institutions should be the main capital to accelerate the empowerment of MSMEs, especially in fulfilling halal regulations which are now a national obligation.

MSMEs spread across Taman Village show a diversity of commodities, such as ant sugar, processed cassava products, snacks, and sappang tea. Some commodities such as ant sugar are even the flagship products of Paiton District and are connected to the export industry through PT Coco Sugar. This shows that Taman Village has **very strong economic potential**, both in terms of raw materials and market involvement.

However, this potential is not balanced by the awareness and competence of MSME actors in meeting halal legality standards. Most business actors are not aware of the obligation of halal certification after the establishment of BPJPH as the sole institution of JPH organizers. In fact, more than half of MSME actors do not understand what a halal certificate is, what economic benefits will be obtained, and how the application process is.

The low level of halal literacy can be seen from several phenomena:

1. MSME actors do not know the *self-declaration* mechanism.
2. No one understands the function of the OSS-RBA system in halal registration.
3. MSME actors do not know the requirements for raw material documents, production processes, and equipment storage.

In addition, inconsistent production sustainability is an additional barrier. Some MSMEs only operate in certain seasons, especially those that use agricultural raw materials. This inconsistency causes them to be reluctant to take care of halal certification because they feel that they will not produce stably.

At this point, there is a large gap between **the production capacity** and **the administrative capacity of** MSMEs. This gap is what hinders the acceleration of halal certification in Taman Village, and becomes an intervention space that should be filled by BUMDes as a village driving institution.

On several occasions, the sub-district has initiated halal certification facilitation activities collectively. This program is actually ideal for villages that have limited capacity for assistance and administrative documents. However, based on field findings, the program is not running effectively due to several critical factors: Many MSME actors are not aware of the existence of a collective program, or know but do not understand the requirements that need to be prepared; The halal certification program requires assistance before registration, such as recording raw materials, recording the production process, and ensuring the halalness of production tools. The absence of a companion causes MSMEs to be unprepared; Without monitoring, many MSMEs stop in the middle of the process or do not complete follow-up documents; and BUMDes, villages, MSMEs, sub-districts, and PPH companions should form a coordination structure, but it is not well formed.

Collective programs that are supposed to be a solution do not bear fruit because there is no alignment of roles between actors. This phenomenon shows that: **Cross-agency coordination is the main key to the success of halal certification, and this is where BUMDes should take a more active role.** Although it has not run optimally, research reveals that BUMDes Sumber Sejahtera has **the political will** to take on the role of a facilitator of halal certification. This intention can be seen from: partnership plans with universities; the desire to develop a research-based MSME empowerment program; and awareness that product legality is an important part of increasing village income.

The overall findings of the study show that BUMDes Sumber Sejahtera is at a strategic crossroads. On the one hand, BUMDes have **legality, structure, business units, economic vision, and village support**. However, on the other hand, BUMDes face **limited capacity, lack of mentoring experience, and weak inter-institutional synergy**.

This situation creates an important transition space: If BUMDes are able to build institutional capacity and strengthen strategic partnerships with universities, then BUMDes can play a central role in accelerating the halal certification of Taman Village MSMEs. But if not, then BUMDes have the potential to remain stuck in the old pattern, which is limited to managing business units without expanding the function of empowering MSME legality.

## CONCLUSION

BUMDes Sumber Sejahtera, as a village economic institution that has legal legitimacy and organizational capacity, has a strategic position to become a driving actor in the acceleration of halal certification. The strong legality of BUMDes since 2025 actually opens

up great opportunities for this institution to develop the role of facilitation, mentoring, and education for MSME actors. However, the findings of the study show that this institutional potential has not been utilized optimally.

This is due to several main factors. Internally, BUMDes still have limited human resource capacity, there is no special unit that handles MSME empowerment and halal certification management, and the focus is still focused on the operation of productive business units. Meanwhile, externally, the low halal literacy of MSME actors, the lack of socialization from the government and BPJPH, and weak coordination between institutions have made the acceleration of certification not possible properly.

On the other hand, this study also reveals that Taman Village MSMEs have great economic potential, especially in ant sugar commodities, processed cassava products, and other processed foods. However, this potential has not been maximized because most products do not have halal certificates, even though halal certification is an important instrument to increase product competitiveness, expand market access, and meet regulatory demands.

Another significant finding is the willingness of BUMDes to transform into village halal facilitators, through a collaboration plan with universities. This collaboration is seen as a very potential strategy to answer the challenges of the internal capacity of BUMDes and improve the halal literacy of MSMEs. With the support of academics, MSME programs can be directed based on research, innovation, and more structured technical assistance.

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## A COMPARATIVE STUDY OF THE CIVIL RIGHTS OF BIOLOGICAL CHILDREN IN THE PERSPECTIVE OF ISLAMIC LAW AND POSITIVE LAW IN INDONESIA

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### ABSTRACT

This study examines the comparison of the civil rights of biological children according to Islamic law and Positive law in Indonesia. The difference of means and perspectives between Islamic Law and Positive Law in Indonesia towards biological children will have an impact on the existence or absence of civil rights for biological children themselves. In Islamic law in Indonesia, biological children only have a nasab relationship with their biological mother and mother's family. But positive law recognizes a civil relationship with both parents and their families. This research was conducted to answer the need for a more comprehensive material legal rule related to the civil rights of biological children, both in Islamic law and positive law in Indonesia, considering the lack of clear regulations and their impact on people's lives. The type of research method used in this study is library research, using qualitative research methodology with four approach models, namely statute approach, conceptual approach, analytical approach and comparative approach. This study yielded two main conclusions: first, biological children in Islamic law have only a civil relationship with their mother and her mother's family. While in Positive law, his status is to have a civil relationship with his father and mother as well as the families of both. Second, in Islamic law, even though a biological child does not have a civil relationship with his biological father, he still has the right to receive living, health, and education expenses as well as the right to obtain property in the form of a mandatory will from his biological father through the institution of *ta'zir*. While in Positive law, biological children get rights like legitimate children.

**Keywords :** Civil Rights, Biological Child, Islamic Law, Positive Law

### ABSTRAK

This study examines the comparison of the civil rights of biological children according to Islamic law and Positive law in Indonesia. The difference in views and perspectives between Islamic Law and Positive Law in Indonesia towards biological children will have an impact on the existence or absence of civil rights for biological children themselves. In Islamic law in Indonesia, biological children only have a nasab relationship with their biological mother and mother's family. In contrast, positive law recognizes a civil relationship with both parents and their families. This research was conducted to answer the need for a more comprehensive material legal rule related to the civil rights of biological children, both in Islamic law and positive law in Indonesia, considering the lack of clear regulations and their impact on people's lives. The type of research method used in this study is *library research*, using qualitative research methodology with four approach models, namely *statute approach*, *conceptual approach*, *analytical approach* and *comparative approach*. This study yielded two main conclusions: *first*, biological children in Islamic law have only a civil relationship with their mother and her mother's family. While in Positive law, his status is to have a civil relationship with his father and mother as well as the families of both. *Second*, in Islamic law, even though a biological child does not have a civil relationship with his biological father, he still has the right to receive living, health, and education expenses as well as the right to obtain property in the form of a mandatory will from his biological father through *the institution of ta'zir*. While in Positive law, biological children get rights like legitimate children.

**. Keywords:** *Civil Rights, Biological Child, Islamic Law, Positive Law*

## INTRODUCTION

Basically, every child born into this world can be sure to have a father and mother, because based on science *Science* and *biology*, a child is formed from meeting him *spermatozoa* with *Ova*, further develops naturally in the most important part of a woman's body called the "womb" (Ani et al., 2021, p. 26). Without the contribution of a father as a representation of men and mothers as representatives of women, there would be no process of conception in the womb of women. *Hatta* The IVF fertilization process definitely requires *spermatozoa* and *Ova*, even though the fertilization process is outside the womb (@humas.fku, 2022). This process is commonly called a biological process, so the child born is called a biological child.

This kind of breeding process does not only occur in humans, but animals also do similar things, so there is no difference between animals and humans in biological activities. Nevertheless, man is *Hayawanu al-Nathiq* (thinking being) and also *Hayawanu al-ijtima'* (makhluk social)(Albina & Aziz, 2021) who have values, morals and responsibilities with each other, so that in order to bind these values, morals and responsibilities to run in an orderly manner and provide benefits to future descendants, humans need marriage as an institution. This marriage is actually a differentiator between humans and animals in continuing to preserve life, so that whatever the religion and whatever the form of culture must have a marriage system as a form of agreement or alliance between men and women, even though the ordinances have differences between religions and each other, between one culture and another.

From the explanation mentioned above, it can be interpreted that marriage is very important for human survival, because that is where values, morals and responsibilities are carried out, so that if viewed from the existence or absence of a marriage, a child born from a biological relationship between a man and a woman can be divided into two, namely: 1) Children born from a legal principle in the form of a marriage bond or can be called a juridical child or a legal child. 2) Children born to a father and mother without a marital bond or called biological children. For juridical children or legal children, there is not much difference between Islamic Law and Positive Law in Indonesia, while for biological children there are different views and perspectives between Islamic Law and Positive Law in Indonesia in responding to it. In Islamic law, biological children only have a nasab (civil) relationship to their mother and their mother's family, while in Positive law, biological children have a civil relationship with their father and mother as well as their father's and mother's family.

The difference in views and perspectives between Islamic Law and Positive Law in Indonesia towards biological children will also have an impact on the existence or absence of civil rights for biological children themselves. In the perspective of Islamic Law, since a biological child does not have a nasab relationship with his biological father, he is not entitled to inheritance or the right to get a marriage guardian from his biological father if the child is his daughter. However, in Positive Law in Indonesia, especially after the Constitutional Court decision Number 46/PUU-VIII/2010, biological children still have civil rights that can be prosecuted through legal channels, especially related to the fulfillment of alimony and responsibilities of their biological father.

In Indonesia, the enforcement of Islamic law is specifically carried out by the Religious Court, while for positive law it is carried out by the District Court. The Religious Court has the authority to absolve the case handled, as well as the District Court has absolute authority related to the case handled, of course it will have implications for the validity of the decisions made by each of the judicial institutions and have an impact on the life of the community at large, especially the Muslim community. This is because the material law applied in the two judicial institutions has different substance and of course will have different legal implications. For this reason, the researcher is interested in conducting research related to this because the possibility of norm conflicts is very large due to the lack of comprehensive rules governing the civil rights of biological children, which results in an overlap of authority between the two courts and various legal implications that will be caused in society.

## RESEARCH METHOD

The types of research used in this study are *document study* (document study) or it can also be called *library research* (Literature Research), which is a study that focuses on the analysis or interpretation of written materials based on their context in the library (Abdussamad, 2021). Materials can be in the form of legal texts and other supporting literature. Data from classical fiqh books, Compilation of Islamic Law, legal fatwas issued by the Indonesian Ulema Council, fatwas of religious organizations such as Nahdhatul Ulama, Muhammadiyah and others represent Islamic Law, as well as books that discuss the understanding and interpretation of legal items and articles in laws and regulations in Indonesia represent a positive legal side.

The nature of this research is normative legal research (*normative legal research*), which is a legal research that places law as a system of norms, including principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings) (Fajar ND & Achmad, 2010). In this study, the researcher used several approaches, including the legislative approach (*statute approach*), conceptual approach (*conceptual approach*), Analytical Approach (*analytical approach*) and comparative approach (*comparative approach*) Because to get a normative research it will be more accurate if one or more other approaches are suitable (Ibrahim, 2006).

## FINDINGS AND DISCUSSION

In Islamic legal literature, especially in fiqh books or Hadith books, the term is not found “biological child” (The biological child), because this term is a contemporary term that has not been invented before. However, in terms of its meaning in hadith books or fiqh books, “biological child” can be found in the discussion *Haddu al-Zina* And in this chapter it is usually mentioned also about children who are the result of adultery called *waladu al-zina* (Al-Jaziri, 2003) or discussed in the chapter *Scarlet Witch* which also alludes to *waladu al-mula'in* (child of the case *Scarlet Witch*) (Al-Jaziri, 2003).

Term *waladu al-zina* In the hadith we can find in the hadith narrated by *Al-Tirmidhi* (Ma'ruf, 1996) The editorial of which reads as follows:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ أَيُّمَا رَجُلٍ عَاهَرَ بَجْرَةً أَوْ أَمَةً فَالْوَلَدُ وَلَدُ زَنَّا لَا يَرِثُ وَلَا يُورَثُ.  
(رواه الترميذی)

The Prophet PBUH said, “Any man who commits adultery with a free woman or a slave is a child of **adultery**. la not inherited and not inherited”. (HR. Tirmizi).

In the *Qur'an*, biological activity between a man and a woman outside of marriage is called “adultery” and the person who commits the act is called “*zani*” or “*zaniyah*”. This term can be seen in Surah *Al-Isra'* Verse 32 and *Al-Nur* Verse 3 as follows:

وَلَا تَقْرَبُوا الزَّانِيَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: “Do not approach adultery. Indeed, it is an abominable deed and the worst way.” (Q.S. 17:32).

الزَّانِي لَا يَنْكِحُ إِلَّا زَانِيَةً أَوْ مُشْرِكَةً وَالزَّانِيَةُ لَا يَنْكِحُهَا إِلَّا زَانٍ أَوْ مُشْرِكٌ وَحُرِّمَ ذَلِكَ عَلَى الْمُؤْمِنِينَ.

It means: “A male adulterer may not marry except with a female adulterer, or with a polytheistic woman, and a female adulterer may not marry except with a polytheistic male or male adulterer and thus it is forbidden for the believers.” (Q.S. 24:3).

In this verse, Muhammad ‘Ali Al-Sabuni and Al-Qurtubi interpret “adultery” As a sexual intercourse between a man and a woman that is not based on the existence of marriage or shubhat marriage (Ma’ruf, 1996). Based on this opinion, intercourse between a man and a woman can be called an act of adultery depending on the existence or absence of a marriage. Wahbah Zuhaily in his book *Fiqhu Al-Islamiy Waadillatuhu* discuss *waladu al-zina* and *waladu al-mula’in* in the chapter of inheritance. He explained that the child *adultery* and children *Scarlet Witch* is a child who does not have a father *Syar’iy* or it can be stated that the child does not have a father juridically (Al-Zuhaily, 1985).

In Indonesia, the term “biological child” or “biological father” became popular after the Constitutional Court issued a decision number 46/PUU-VIII/2010 dated February 17, 2012. In society, this ruling is considered to threaten the institution of marriage and revive the practice of adultery and gathering, because relationships can be determined only by biological relationships without marital ties (Musawwamah, 2013). In response to the controversy in the community, the Indonesian Ulema Council (MUI) has issued Fatwa Number 11 of 2012. The fatwa affirms the position of biological children in Islamic law and the nomenclature used is “child adulterer” or child resulting from adultery not “biological child”. However, the terms adulterous child and biological child in this case have the same meaning and meaning.

Although the biological child (*waladu al-zina*) Born because of the act of adultery, it does not mean that the child born from the act of adultery is also the splash of the sin of his parents, because Islam has declared that every child born into this world is *Fitrah* (holy), a child cannot choose from which womb he will be born, whether from a father and mother who have a valid marriage bond or born from a father and mother who commit adultery. The Prophet PBUH said as narrated by Imam Bukhari (Al-Bukhari, 2002).

قال النبي صلى الله عليه و سلم ( كل مولود يولد على الفطرة فأبواه يهودانه أو ينصرانه أو يمجسانه  
كمثل البهيمة تنتج البهيمة هل ترى فيها جدعاء ).(رواه البخارى)

Meaning: The Prophet (Muhammad) PBUH said: “Every child is born in a state of *fitrah* (purity), then it is his parents who will make the child a Jew, a Christian, or a Magi like a farm animal that gives birth to a farm animal perfectly. Do you see any flaws in him?”. (H.R. Al-Bukhari, Hadith 1385).

The act of adultery is a type of criminal act in Islamic law called *Jarimah*, and the perpetrators deserve the law *Limit* Or *ta'zir* (Muslich, 2006). *Limits* In Islamic law is a punishment that has been prescribed in the Qur'an and Sunnah about its limits, types and amounts, and it is the right of Allah (Surya, 2019). While *ta'zir* The punishment is not determined by the Qur'an and the Sunnah, but the determination is left entirely to the ruler (government) in accordance with the benefit of mankind (Darsi & Husairi, 2018).

The act of adultery has a significant impact on the determination of the fate between the biological child and the father. According to Abu Zahra, the act of adultery cannot be the basis for determining nasab, because nasab is a blessing that is only given in a legitimate relationship. On the other hand, adultery is a despicable act (*jarimah*) who do not deserve favor, but should receive retribution for their transgressions (Zahrah, 1957).

Abu Zahra's words about the act of adultery not determining nasab is also a *kaidah fiqhiyah* with editorial (Adultery does not prove a lineage). Based on this rule, there are two opinions, including: *first*, biological child (*waladu al-zina*) is cut off from either the biological father or the mother who gave birth to him. This opinion is widely held by the Shi'a Imamiyah scholars, including Muflih al-Shaimiri, Al-Syahidu Al-Stani and Al-Muhaqqiq Al-Irdibiliy. *Second*, biological child (*waladu al-zina*) attributed to the mother who gave birth to him not with his biological father. This opinion is famous among the fiqh scholars of the Muslim ummah in addition to the Shia Imamiyah fuqaha (Al-Khasyan, 2020).

The position and status of biological children in Islamic Law in Indonesia can be seen in Article 100 of the Compilation of Islamic Law in Indonesia. In this article, KHI uses the term "child out of wedlock" instead of *waladu al-Zina* (biological child), but nevertheless the researcher argues that what is meant by "child out of wedlock" is *waladu al-zina* (biological child), although there are also interpretations that "child out of wedlock" also includes children born from an unregistered marriage, in the sense that the child is born from a legally valid marriage, However, administratively the state has not been recorded.

In KHI, biological children (*waladu al-zina*) only has a nasab relationship with his mother and his mother's family not with his biological father. This provision shows that KHI prefers the opinion of the majority of fiqh scholars, although there are also references to fiqh books from other madhhabs (COMPILER TEAM, 2011). Similar to KHI, MUI Fatwa Number 11 of 2012 concerning the status and position of biological children also follows the opinion of the majority of scholars, especially the opinions of madzhab scholars of Shafi'i madzhab which is mostly followed by Indonesian Muslims.

A different opinion was expressed by Hasan Al-Basri quoted by Al-Daqilan regarding the status and position of biological children in the event that the mother does not have a marital bond. Al-Basri stated that a biological child whose mother is not married to another person is attributed to his biological father. The same opinion was also expressed by ‘Urwah bin Zubairi and Sulaiman bin Yasar who stated: *“Any man who admits that a child is his child as a result of adultery with the child’s mother, when in fact there is no other man who recognizes the child as his child, then the child is his child”* (Al-Daqilan, 1425).

This opinion is based on arguments including: *first*, the birth of a biological child with his biological father while the mother is not in a marriage bond with another person is an effort to keep the child’s fate from being lost so that he is not harmed and humiliated due to a crime he did not commit. According to him, this is in line with the Qur’an Surah Al-An’am Verse 164 which states that a person will not bear the sins of others. *Second*, the Hadith about (الولد للفراش...) Discussing the determination of *firasy* due to the existence of the cause of *firasy* (marriage), then if a biological child is born to a woman who is not bound by *firasy*, then the hadith cannot be determined in this case, so the biological child should be married to his biological father.

This argument was refuted by Al-Daqilan by stating that *nasab* is maintained based on the *shari’a* according to the methods and postulates determined by Al-Sharia’, excluding adultery which is forbidden. Then the understanding of the hadith of the prophet is weak, not in accordance with the hadith editing, the continuation of the hadith contains a sentence (... And for the prostitute the stone) The meaning is that adulterers are not entitled to a *nasab* but rather *Al-Hajr* (punishment) (Al-Daqilan, 1425).

Regarding this opinion, the researcher agrees more with the opinion contained in the KHI and the MUI Fatwa or with what is explained by Daqilan, in addition to taking the evidence clearly and the argument is more reasonable and stronger because the understanding is not too far from the meaning and intent of the text that has been determined by *the Shari’*, while the opinions expressed by Hasan Al-Bashri, Urwah and Sulaiaman tend to be forced so that there is a contradiction with other postulates.

Regarding humanitarian issues or for the protection and guarantee of life of children born from adultery so that they are not abandoned, it should be rethought by not changing the clear and obvious laws that have been recorded with two sources of Islamic law, namely the Qur’an and Hadith. So the researcher agrees with the law stated by the MUI in its fatwa,



which explains the law about the status and position of biological children as they are even though it looks detrimental to the mother and biological child, on the other hand the fatwa also guarantees the survival of the biological child (*hifdz al-nafs*) through the punishment of *ta'zir* to his biological father in the form of fulfilling the needs of life and giving a mandatory will, because basically the sins committed by his parents should not be a burden on the biological child.

### **The Position of Biological Children in the Realm of Positive Law in Indonesia**

The status of a child in positive law in Indonesia still depends on whether or not there is a marital bond between his parents. If a child is born from a valid marriage, it is referred to as a legal child (juridical child), while a child born out of wedlock is categorized as a biological child. However, biological children are not only caused by an extramarital relationship, but also by marriages that are legally religious or customary, but are not recorded in accordance with the provisions of applicable laws and regulations (Maulina et al., 2013).

Based on articles 250 and 272 of the Civil Code, Kharlie distinguishes children out of wedlock (biological children) into two: a) Children born to a man and a woman who are not bound by a valid marriage such as children resulting from adultery. b) Out-of-wedlock children who are not caused by adultery or incestuous children (Kharlie et al., 2020).

Harun Utuh, as quoted by Siska Lis Sulistiani has almost the same opinion as Kharlie. If the opinion of Harun Utuh is rearranged, children out of wedlock can actually be divided into 3 (three) parts (Siska Lis Sulistiani, 2021): Children born as a result of sexual relations between a man and a woman who are still bound by marriage to another or are called adulterous children; Children born as a result of sexual relations between a man and a woman who have a prohibition on marriage (*incest*), so the child is called a crooked child; and Children born from sexual relations between a man and a woman who are still single and there is no prohibition on marriage.

Of the three types of children out of wedlock mentioned above, based on article 272 of the Civil Code, those who can change their status to juridical children (legal children) are the children listed in letter (c) by using the institution of “recognition”. This is in accordance with the opinion of Siska Lis Sulistiani who states that in civil law in Indonesia, children out of wedlock do not have a civil relationship either with the woman who gave birth to them or with the man who gave birth to them, unless they admit it (Siska Lis Sulistiani, 2021).

Meanwhile, adulterous children and delinquent children cannot change their status to full juridical children (legal children) despite the recognition of their father and mother (Manan, 2008).

Based on the explanation mentioned above, it can be concluded that biological children in a positive legal view are children who have the status of adulterous children, incestuous children, and children out of wedlock who are not recognized by their parents. Adultery in positive law in Indonesia is different from zina referred to in Islamic law, adultery in positive law as stated in article 411 of the Civil Code is called *overspel*, namely intercourse between a man and a woman who are not husband or wife.

Of the three laws and regulations that regulate the civil relationship of biological children (adulterous children, incestuous children and illegitimate children who are not recognized or authorized by their parents) with their mothers and fathers, there are differences, including:

- a. The Civil Code clearly states that biological children do not have a civil relationship with their father and mother.
- b. Meanwhile, the Marriage Law states that biological children only have a civil relationship with their mother and mother's family.
- c. The Constitutional Court's decision instead provides a civil relationship between the biological child and the mother and his mother's family and also has a civil relationship with the father and the father's family which caused the birth of the child.

In the event that there is a difference between one legal norm and another, there are three principles in the law that can be used as a benchmark to assess the applicability of these norms to others, including: first, "*Asas Lex Superior derogat legi inferiori*" which means that the higher law (norm/rule of law) negates the applicability of the lower law. Second "*Lex posterior derogat legi priori*" which means that the new law (norms/legal rules) negates the enactment of the old laws (norms/legal rules). And third, "*lex specialist derogate legi general?*" which means a law (norm/legal rule) that specifically negates the applicability of general laws (Irfani, 2020).

In this case, the Civil Code and the Marriage Law have an equal position as a law, so that the position in the hierarchy of laws and regulations has the same power and does not defeat each other. Although the Civil Code is a translation of *Burgerlijk Wetboek* which took effect during the Dutch rule on May 1, 1848 based on *Official journal* Number 23 of 1847 (Mangara & Al-Djufri, 2022). However, until now the Civil Code is still valid based on Article

II of the Transitional Rules of the Constitution of the Republic of Indonesia in 1945, because there has been no new law to replace its position.

Meanwhile, related to the Constitutional Court's Decision, in accordance with its authority contained in Article 24C paragraph (1) of the 1945 Constitution and strengthened in Article 10 paragraph (1) letter a of Law number 24 of 2003 concerning the Constitutional Court, the Constitutional Court is an institution where laws are tested against the 1945 Constitution (*judicial review*). This authority places the Constitutional Court as the guardian of the constitution (*the guardian of the constitution*), the consequence is that the Constitutional Court functions as an interpreter of the constitution (*the sole interpreter of the constitution*) (MPR RI Review Agency 2017, 2017). Regarding the authority of the Constitutional Court, Jimly Asshiddiqie argued that in every decision on a case submitted to the Constitutional Court, especially in the case of *judicial review* laws against the 1945 Constitution, so in essence the Constitutional Court always carries out constitutional interpretation activities (Palguna, 2021).

Mukhlis et al. argue that the Constitutional Court Decision is a rule that has a role at the same level as the law to be implemented. Because the two can revoke each other's enforcement. However, from legal certainty, the Constitutional Court's decision is higher than the law, because the nature of the Constitutional Court's decision is binding on the subsequent Constitutional Court decision (Mukhlis et al., 2019). Andri Setiawan et al. argue that the Constitutional Court's decision is declarative and constitutional. The Constitutional Court's decision contains a statement about the composition of the law, as well as being able to eliminate the legal situation (*negative legislator*) and create new legal conditions (*positive legislator*) (A. Setiawan et al., 2021).

From some of the opinions mentioned above, it can be concluded that, in terms of the hierarchy of the laws and regulations, the position of the Civil Code, the Marriage Law and the Constitutional Court Decisions have an equal position, so that no one defeats each other's enforcement.

However, from the three legal norms mentioned above, the principle "*Lex posterior derogat legi priori*" should be applied, so that it is the Constitutional Court Decision that should be declared as the latest norm than others, especially since the Constitutional Court's decision comes into effect from the moment after it is read in the plenary session of the reading of the decision which is open to the public. For the decision that grants the application, this means that after the reading of the decision, the provisions of the canceled law no longer apply so that every State administrator and citizen can no longer use it as a legal basis for

policies or actions (Sambuari, 2013). Therefore, based on this reason, positive law recognizes that biological children have a civil relationship with their biological father.

### **Civil Rights of Biological Children.**

The word Civil can formally mean that regulates rights, property, and relationships between people on the basis of logic, while materially it means that regulates rights, property, and relationships between people on material grounds (E. Setiawan, 2023). Taufiq Hidayat Nazar and Nita Rismawati argue that civil rights are rights that govern persons and legal entities as an extension of the concept of one legal subject to another, both in family relations and in public relations (Nazar & Rismawati, 2022). Moreover Robby Bagus Indrawan and Risti Dwi Ramasari stated that civil rights are human rights that are inherent in everyone's individuality. Civil rights are personal human identities that cannot be lost or disappear. This identity will only be lost or disappear if the person concerned dies. Civil rights are different from public rights, public rights exist because they are given by the state, while civil rights are given by nature (Indrawan & Ramasari, 2022).

Based on this explanation, it can be drawn that civil rights can be interpreted as an authority to regulate and/or demand something between a person or legal entity and another, either in family relations or in community relations based on formal and material interests. Every person who is declared to have a civil relationship with another person, especially the civil relationship is determined by law, then of course each of these people has legal rights and if their rights are violated, then the aggrieved party can file a lawsuit against the other.

As previously explained, civil rights are natural, this means that every human child born into the world, by nature he or she has civil rights, especially to both parents who caused him to be born into the world unless his legal interests require otherwise. (R. Subekti & R. Tjitrosudibio, 1992).

Regarding the natural rights of children in Islam, M. Abdul Fatah Santoso has quoted from the thoughts of Hasan bin Khalid Hasan Al-Sindy who divides these rights into three categories (Santoso, 2017): *Social Rights*, Social rights are divided into two categories: *first*, before birth, including the right to have noble parents with character and the right to life of a fetus which should not be aborted for any reason except in certain circumstances that are permitted by the sharia'. *Second*, rights after childbirth include the right to genealogy or nasab, the right to breastfeed and nutrition and the right to be accepted by the Muslim community.

*Educational rights*. The right to education is divided into six parts: the right to life, the right to public care, the right to socialize Islamic values, the right to basic education, the right to fair and equal treatment and the right to physical education). *Financial rights* include: *nafaqa* and the right to prosperity and inheritance.

Ibrahim Rahmani and Al-Sa'id Abkhathi also divided the natural rights of children into three parts, including (Rahmani & Abkhathi, 2017): *Huququ Al-Thifli Al-Ijtima'iyyati fi Al-Islam* (children's social rights in Islam) include: a) children's rights in survival), children's rights in terms of nasab, children's rights in obtaining a good name, children's rights in obtaining nutrition/breast milk, and children's rights in maintenance. *Huququ Al-Thifli Al-Tarbiyyati fi Al-Islam* includes: children's educational rights related to faith or belief, children's rights related to moral education, children's educational rights related to intelligence, children's educational rights related to children's physicality. *Huququ Al-Thifli Al-Maliyyati fi Al-Islam* (rights of children's property in Islam) include: the rights of children related to maintenance, the right to be treated fairly between the child and his siblings, and the rights of children related to inheritance.

The compilation of Islamic Law, especially in Article 45, states that parents are responsible for maintaining and educating their children until the child is married or independent, even though he or she has been divorced. Children also have the right to have their parents become special marriage guardians for girls, as mentioned in article 21 paragraph 1 of the KHI in Indonesia. In addition, getting an inheritance from their parents is also a child's right as mentioned in article 174 paragraphs (1) and (2) of the KHI in Indonesia. If it is concluded that the natural rights of children in KHI in Indonesia are three, including: the right to maintenance and education, the right to get a guardian from a special marriage for girls and the right to inherited property.

Children's rights as explained above certainly only apply to juridical children, unlike biological children. As previously explained, in Islamic law in Indonesia, biological children have a nasab relationship only with their mother and mother's family, not with their biological father, so they do not have civil rights with their biological father.

However, it is worth considering the MUI Fatwa on the treatment of biological children. Although the MUI firmly states that biological children do not have a civil relationship with their father, they even explain in detail the types include: nasab, guardian marriage, heirs and alimony. However, in order to protect biological children who factually

in Indonesia receive undue treatment, such as biological children who are usually abandoned because they do not get support and inheritance from their biological fathers, and also get stereotype of haram children so that the identity of their biological father is covered up, and many other bad things experienced by biological children in society. Therefore, the Indonesian Ulema Council through its fatwa has concluded a law that has not been found in previous Islamic legal literature, namely that the Government is authorized to impose the punishment of *ta'zir* on adulterous men who result in the birth of children by obliging him to: Meet the child's living needs; and Giving property after he dies through a mandatory will.

Mukti Arto in his article argues that "*Sir'zir*" in the context of the MUI fatwa must be interpreted as an obligation according to the Islamic civil law system so that it can be processed through the civil court, not as a punishment in the criminal law system (*Jinayah*) Islam so that it must be processed through criminal justice. Giving obligations to the biological father to meet the child's living needs also means giving the child the right to receive a guarantee of life needs from his biological father. The relationship of rights and obligations between two persons in the civil law system is part of the civil relationship (Arto, 2013). Furthermore, Mukti Arto explained that the MUI fatwa basically has three objectives, including: To protect law and justice for children born of their fathers; Giving responsibility to the biological father for his actions that gave birth to a child; and It provides a deterrent effect for the perpetrator and also for others not to commit such adultery.

Changes in the law in Islamic law are something that usually happens, because basically the essence of Islamic law, especially in criminal matters, is not retribution, but repentance and forgiveness. One of the hadiths of the Prophet tells about Ma'iz bin Malik who admitted to committing adultery and asked the Prophet for punishment. However, the Prophet ignored the statement of the companion and told him to go home and ask for forgiveness from Allah, although in the end the Prophet sentenced him to stoning for the fourth time (Al-Nisaburiy, 1998). *Case* We can see in the Qur'an Surah Al-Baqarah Verses 178-179, the criminal case of murder, the punishment does not have to be legally jurisprudence in the form of punishment *qisas*, but through the application of *restorative justice* so that the punishment can be in the form of *Düsseldorf* (payment of fines) with certain conditions. This principle is in line with Mukti Arto's opinion regarding the meaning of *ta'zir* mentioned in the MUI fatwa.

From the explanations mentioned above, it can be concluded that the civil rights of biological children against their biological father in Islamic law in Indonesia include: The right to adequate children's living needs is general, so that all children's natural rights in Islamic law related to the needs of life are also included, at least including: children's living expenses, health expenses, and education costs. The right to obtain property through a mandatory will from his biological father who has passed away, Regarding the amount of a mandatory will, it has been regulated in Article 195 Paragraph (2) of the KHI in Indonesia, which is as much as one-third of the inheritance. However, H. Abdul Rasyid As'ad prefers to use the nomenclature of obligatory hibbah on the grounds that it can be fulfilled while the biological father is still alive (As'ad, 2013). According to the researcher, basically the opinion of MUI and As'ad has the same principle, namely giving an obligation to the biological father to provide a maximum of 1/3 of the property owned by his biological father, either through a mandatory will or a mandatory grant with the aim that the biological child has a life guarantee until he grows up.

The Constitutional Court did not state in detail what form of civil relationship a child out of wedlock has with his biological father. However, the norm set by the Constitutional Court is related to the provisions of the marriage law article 43 paragraph (1) of Law Number 1 of 1974 which is the basis for constitutional demands, so that the civil relationship is the same as the civil relationship between the child and the biological mother intended by the marriage law. Civil relations as referred to in Article 43 paragraph (1) of the Civil Code are civil relations that have been used by Article 280 of the Civil Code, namely legal relations that result in the arising of inherent rights and obligations between the child and his father and mother (Baihaki, 2023).

The norm built in the Constitutional Court Decision related to biological children is general, which only explains the civil relationship between the biological child and his father, does not explain further what civil rights the biological child has against his father, so that the norm is difficult to apply in the practical realm. Therefore, the Constitutional Court Decision requires a more detailed and practical explanation norm so that the Constitutional Court Decision is still dependent and related to other laws and regulations that regulate the civil rights of children in general or the civil rights of biological children in particular.

As previously explained, civil rights are natural because they are personal human identities that cannot be lost or disappeared unless the person concerned dies. Regarding the natural rights of children, the State of Indonesia based on the Decree of the President of the

Republic of Indonesia Number 36 of 1990 has ratified the *Convention on the Rights of the Child* established by the United Nations, and based on the principles in the convention, the Child Protection Law Number 23 of 2002 has been born which has been amended twice by Law Number 35 of 2014 and Law Number 17 of 2016. which contains the civil rights of children against their parents, including: 1) The right to self-identity and knowing their parents; 2) The right to obtain upbringing, maintenance, education and protection; and 3) The right not to be determined by blood relationship between the child and his or her biological parents;

Meanwhile, the civil rights of children against their parents according to the Civil Code include: 1) The right to receive alimony, although it is not the same as that of a juridical child (stated in articles 298 and 867 of the Civil Code); 2) The right to get guardianship (stated in article 345 of the Civil Code); 3) The right to manage the child's property (stated in article 307 of the Civil Code); and 4) The right to inheritance (contained in Article 832 of the Civil Code).

In Law Number 1 of 1974, the civil rights of children against their parents can be found in articles 45, 46 and 50, including: 1) The right to maintenance and education from both parents. Even though the parents concerned are deprived of their rights, they are still obliged to provide maintenance costs to the child; 2) Guardianship rights and representation to act legally in or out of court.

From the description mentioned above, the question is whether the civil rights of biological children can be equated with the civil rights of juridical children. Muh. Jufri Ahmad and Fahmi Nabil argued that the Constitutional Court's Decision actually affirmed that the civil rights of children out of wedlock are no different from legal children (juridical children), so in their conclusion it was stated that the child has civil rights as stipulated in the civil rights between father and child mentioned in the Civil Code, such as guardianship rights, maintenance rights and inheritance rights (Ahmad & Nabil, 2022).

Baihaki argued that normatively after the Constitutional Court's decision number 46/PUU-VIII/2010, children born as a result of a relationship between a man and a woman, as long as it can be proven by science or technology, then children outside marriage, whether recognized or not, including children resulting from adultery or blood transfiguration, have a civil relationship with their biological mother and father. This means that legally the child has the right to obtain basic rights to the child, including the right to know the child's origin, the right to receive maintenance and education from his parents including alimony, the right



to be represented in all legal actions in and outside the court and the right to manage the child's property, as well as the right to inherit (Baihaki, 2023).

Taufik Hidayat Nazar and Nita Rismawati argued that the decision of the Constitutional Court can be understood that the relationship between a child out of wedlock and his father is a blood relationship in a biological sense that is confirmed based on legal process. Thus, a biological father cannot refuse to be responsible and provide a decent livelihood or give his rights like legitimate children in general, including the right to know his origin, the right to maintenance and education, the right to be represented in all legal acts in and out of court and the right to take care of the child's property, and the right to inherit (Nazar & Rismawati, 2022b).

In addition, Hijawati and Rizayusmanda stated that the rights and position of out-of-wedlock children towards the inheritance of parents who recognize them and followed by the legalization of children are basically the same as legal children. A recognized and legalized out-of-wedlock child is truly an heir who has the same rights as a child born in a legal marriage. Based on the provisions of Articles 863 to 865 of the Civil Code, the distribution of inheritance based on the heirs has been determined. Likewise, the distribution of land inheritance can be seen from the way it is divided (Hijawati & Rizayusmanda, 2021).

Based on some of the opinions mentioned above, it can be concluded that the civil rights of children that must be fulfilled by their biological fathers and mothers are as stated in the applicable laws and regulations, namely the civil rights of children out of wedlock recognized and ratified by their fathers and mothers whose position is equated with the rights of juridical children (legal children), including: The right to know the origin of the child; The right to maintenance and education from their parents includes alimony; The right to be represented in all legal proceedings in and out of court; The right to manage the child's property; And the right to inheritance.

It has been explained in the previous discussion about the position and civil rights of biological children in Islamic law and Positive law in Indonesia. Of course, the approach used in Islamic law in Indonesia is different from the approach used in Positive law in Indonesia, so the two have different views on this matter.

Conceptually, the status of biological children in Islamic law is determined by the existence of adultery committed by their father and mother and the existence and absence of a valid marriage between the father and mother, so that in Islamic Law biological children are known as *Waladu al-zina*. The act of adultery in Islamic law is the measure of the existence

or absence of a marriage, the meaning is that if a man and a woman have conjugal relations without the existence of a marriage bond, then the act is included in adultery. If the act of adultery gives birth to a child, then the child born is *waladu al-zina* (biological child), unless after committing the act of adultery, the man and woman enter into a valid marriage and the child is born within the minimum gestation specified in Islamic law, which is six months from the time the marriage contract process is carried out (Al-Zuhaily, 1985).

In contrast to the concept of biological children according to Positive Law in Indonesia, there are three types that are declared as biological children in the law, including:

- a. An out-of-wedlock child who is not recognized or endorsed by his father and mother. In positive law, the relationship between husband and wife between a man and a woman outside of marriage does not include an act of adultery (*overspel*) but cohabitation (*kumpul kebo*), so that the child born can possibly become a legitimate child if recognized or legalized. If not, the child remains a biological child.
- b. Children of adultery, the act of adultery in the Positive Law only occurs in couples who have a marriage bond with another person and then have a conjugal relationship with another man or woman. This provision is very different from the act of adultery intended in Islamic Law which focuses on any conjugal relationship outside of marriage, regardless of whether one of them is married or not with another person.
- c. Incest children, in positive law, incest children are absolute as biological children. There are no specific conditions or conditions to change the status of a legal child in this case, whether the child's father and mother know that they have a blood relationship from the beginning or not. This condition is different from Islamic Law which considers the knowledge of the father and mother of the child, whether the two have known the blood relationship between the two before the marriage or at the time of the marriage.

The difference in the concept of interpreting biological children between Islamic Law and Positive Law has implications for the position of biological children towards their biological father and mother. Islamic law is still consistent with an approach focused on moral and religious values. Islamic law still views marriage as the only institution that can guarantee the validity of a child to his parents, because in marriage there is *maqasid al-shari'ah* in the form of *hifz al-nasl* (safeguarding offspring), so Islamic law still views that biological children only have a *nasab* (civil) relationship with their mother and not with their biological

father. This means that the biological child does not have a civil relationship with his biological father in the form of an obligation to provide for each other, the obligation to be a marriage guardian if the biological child is a woman and there is also no law of mutual inheritance between the two.

In contrast to Positive Law in Indonesia, the approach used is more oriented towards the protection of children's rights in the context of legal relations and social welfare. Positive Law does not look at the moral wrongdoing made by parents in determining the status of the biological child's position against his biological mother and father. In determining the civil relationship of biological children, Positive Law only considers parental recognition and marital legality, even the latest developments in positive law are enough to look at the suitability of DNA in the bloodstream flowing in the body of a biological child, whether it is really sourced from his biological mother and father or not, so that the biological child can be declared to have the same civil rights as those owned by the legal child.

The difference in the position of biological children in Islamic law and Positive law in Indonesia can have implications for differences in the application of the law and can even cause legal clashes in the midst of society. The position of biological children who, according to Positive Law, have a civil relationship with their biological father, will have an impact on mutual support status, mutual inheritance, and even the right to become a marital guardian. If viewed from the aspect of child protection, this provision will have a positive impact on the interests of child protection and also social welfare in Indonesia, because with the status of civil relations, biological children already have a guarantee for their future just like legal children in general.

However, on the one hand, this provision will clash with Islamic law which has *de jure* been recognized by the constitution regarding the freedom to practice religious teachings as contained in the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights, and Islamic law itself has been applied in the midst of society as contained in Law Number 3 of 2006 concerning the first amendment to Law Number 7 of 2006 1989 concerning the Religious Court and Law Number 1 of 1974 concerning Marriage, and even the majority of Muslims in Indonesia, which is around eighty percent of the Indonesian people, still recognize and follow the Islamic law. Therefore, this difference in legal status requires legal harmonization efforts to avoid conflicts of norms in society and ensure the sustainability of a fair and inclusive legal system.

In order to harmonize the law, Islamic Law in Indonesia basically recognizes that biological children must be protected from their souls and the certainty of their future in living life, because these actions are in line with one of the *maqasid al-shari'ah* in Islamic law, namely *hifz al-nafs*. It is not appropriate to let biological children struggle alone in navigating their life journey, because in fact biological children are victims of mistakes made by their parents in the form of adultery. This should be done but does not undermine other principles of Islamic law, especially in terms of the provisions of nasab.

In order to do all that, Islamic law in Indonesia has imposed responsibility on his biological father through the punishment *of ta'zir* in the form of paying enough living needs for biological children and biological children also get property in the form of a mandatory will from their biological father. With this, Islamic Law in Indonesia has actually sought to provide protection for the basic rights of biological children in the form of *hifz al-nafs* (safeguarding the soul) without mixing it with the provisions of nasab (civil) relationships. Because the nasab (civil) relationship in Islamic Law can give rise to a reciprocal relationship, the biological father is obliged to provide maintenance to the child, and vice versa the child is obliged to provide support to his father when the father is no longer able to earn a living. The biological father and child will also inherit each other's property and even the biological father has the right to be the guardian of the marriage for his biological daughter who is female, and this is contrary to the principles of Islamic law in terms of nasab. In contrast to *ta'zir*, there is no reciprocal relationship for the fulfillment *of ta'zir*, so the biological child is not obliged to provide maintenance to the biological father when the biological father is no longer able, and the biological father does not get a mandatory will for the property left by the biological child and the biological father is not entitled to be a marriage guardian if the biological child is a girl.

## CONCLUSION

From the discussion mentioned above, it can be concluded that biological children in Islamic law in Indonesia are children born from the relationship of a man and a woman without the existence of a marriage bond or an adulterous child (*waladu al-zina*). The position of an adulterous child in Islamic law only has a juridical (civil) relationship with his mother, not with his father. Meanwhile, there are three biological children according to positive law in Indonesia, namely children born out of wedlock without the recognition and endorsement

of their biological parents, adulterous children and *incest* children. The status and position of biological children in positive law in Indonesia is to have a juridical (civil) relationship with their biological mother and father.

Although in Islamic law in Indonesia, biological children do not have a juridical (civil) relationship with their biological father, but on the basis of child protection in the context of *hifz al-nafs*, through *the institution of ta'zir* for the act of adultery committed by biological parents, biological children are entitled to receive sufficient living expenses from their biological father, including the child's living expenses, health expenses, and education costs as well as the right to property through a mandatory will from his deceased biological father. Along with the civil rights of biological children in positive law in Indonesia, they include: The right to know the origin of the child, the right to receive maintenance and education from their parents including maintenance, the right to be represented in all legal acts inside and outside the court, the right to manage the child's property and the right to inheritance.

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## CHILD PROTECTION IN THE PERSPECTIVE OF MULTICULTURALISM: BRIDGING TRADITIONAL VALUES AND MODERN LEGAL POLICY

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### ABSTRACT

This study aims to analyze how child protection principles can be reconciled with traditional values through a multiculturalism approach. In Indonesia, which is rich in ethnic, cultural, and religious diversity, child protection often faces significant challenges due to the differences between positive law and local cultural practices. Some traditional values, such as child marriage and corporal punishment as a form of discipline, often conflict with the child rights principles outlined in national and international law. This approach suggests the need for reconciliation between existing social norms in society and proactive legal policies that protect children. Through inter-cultural dialogue, reinterpretation of child-friendly religious values, and education based on universal human rights, child protection policies can become more contextual and effective. This study reveals that to create an ideal child protection system, cooperation between positive law and traditional values is required. The research is expected to contribute to the development of inclusive, just, and sustainable child protection policies that ensure children's rights in a safe, fair, and dignified environment.

**Keywords:** Child Protection, Multiculturalism, Traditional Values, Modern Law, Child Rights.

### ABSTRAK

Penelitian ini bertujuan untuk menganalisis bagaimana prinsip-prinsip perlindungan anak dapat dijembatani dengan nilai-nilai tradisional melalui pendekatan multikulturalisme. Di Indonesia, yang memiliki keberagaman etnis, budaya, dan agama yang sangat kaya, perlindungan anak sering kali menghadapi tantangan besar terkait perbedaan antara hukum positif dan praktik-praktik budaya lokal. Beberapa nilai tradisional, seperti pernikahan anak dan kekerasan sebagai bentuk disiplin, seringkali bertentangan dengan prinsip-prinsip hak anak yang diatur dalam hukum nasional dan internasional. Pendekatan ini menyarankan perlunya rekonsiliasi antara norma sosial yang ada dalam masyarakat dengan kebijakan hukum yang proaktif melindungi anak. Melalui dialog antarbudaya, reinterpretasi nilai keagamaan yang ramah anak, serta edukasi masyarakat berbasis nilai-nilai hak asasi manusia yang universal, kebijakan perlindungan anak dapat dibuat lebih kontekstual dan efektif. Penelitian ini mengungkapkan bahwa untuk menciptakan sistem perlindungan anak yang ideal, diperlukan kerjasama antara hukum positif dan nilai-nilai tradisional yang ada di masyarakat. Penelitian ini diharapkan dapat memberikan kontribusi terhadap pengembangan kebijakan perlindungan anak yang lebih inklusif, berkeadilan, dan berkelanjutan, yang dapat menjamin hak-hak anak dalam lingkungan yang aman, adil, dan bermartabat.

**Kata Kunci:** Perlindungan Anak, Multikulturalisme, Nilai Tradisional, Hukum Modern, Hak Anak.

## INTRODUCTION

Biologically, a child can be understood as an individual born as a result of the relationship between a man (father) and a woman (mother). Thus, in simple terms, a child is someone who has both parents. However, this kind of general definition does not fully represent the essence of the meaning of the child in the context of legal protection. Basically, children are individuals who are vulnerable to improper actions, such as violence or discriminatory treatment, which are generally carried out by adults.<sup>1</sup>

Differences in children's age limits in various regulations can have consequences for the process of handling cases related to child protection. This has the potential to give rise to differences in interpretation in resolving cases involving children as victims of law violations. However, this problem has actually begun to unravel since the issuance of Law No. 23 of 2002 concerning Child Protection, which specifically regulates the rights and protection of children in Indonesia. Over time and social dynamics, the regulation then underwent several changes, namely through Law No. 35 of 2014, and most recently through Law No. 17 of 2016 which stipulated Government Regulation in Lieu of Law No. 1 of 2016 as a Law. It should be noted that the change is partial and does not necessarily repeal the previous law, but only revises some provisions to adapt to the development of child protection needs more comprehensively.

Law enforcement against perpetrators of sexual violence must be carried out firmly and consistently by the authorities. In addition, the top priority must also be given to efforts to protect children who are victims of sexual violence. This form of support is manifested, among others, through the readiness of the Witness and Victim Protection Institute (LPSK) of the Republic of Indonesia in providing protection for victims' children, as stipulated in Article 5 and Article 6 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. The high rate of violence against children that has recently occurred, both in physical, psychological, and sexual forms, shows the weak legal and human rights protections that should be given to children, so that they are often repeated victims. Cases of criminality that befell minors, such as rape and molestation, even in some cases ending in murder by the perpetrator, are still often found.

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<sup>1</sup> M Nasir Djamil, "Anak Bukan Untuk Dihukum, Jakarta," *Sinar Graf. Cetakan, Maret*, 2013.

Ironically, one of the forms of sexual violence against children actually occurred in the immediate environment, namely within the scope of a small community.<sup>2</sup>

Responding to the enactment of the Child Protection Law, Hadi Supeno stated that this regulation should be positioned as a *lex specialis* in the hierarchy of laws and regulations. This means that all other legal provisions governing the definition of a child must be aligned with this Law, including policies related to the fulfillment of children's rights. Therefore, law enforcement officials who handle cases involving children—both as victims and perpetrators of criminal acts—are required to prioritize the principles of child protection as stated in the Law.<sup>3</sup>

This principle is in line with the principle of *lex specialis derogat legi generali*, which is the principle that special legal provisions override general provisions when they are in the same regulatory realm. In addition, the maximum age of children in the Child Protection Law also refers to international provisions that have been ratified by Indonesia, namely the *Convention on the Rights of the Child* through Presidential Decree No. 36 of 1990. The Act not only adopts the age limit, but also internalizes the main principles of the convention, including the principle of non-discrimination, the principle of the best interests of the child, the principle of the right to survival and development, and the principle of participation that guarantees respect for the views of the child.

Children have the same rights as adults and are entitled to legal recognition and protection, given their vulnerability due to physical and mental immaturity. UNICEF emphasizes the importance of having special regulations governing children's rights, as children begin their lives in a state of full dependence on adults. Children's welfare greatly determines the future of a society, because experiences and the environment in the early days of life will have a great influence on individual development and the formation of social order in the future. Therefore, in the process of political decision-making, the opinions and interests of children must be taken into account, including in assessing the potential negative impact of social change on them.<sup>4</sup>

Although children need adult guidance to grow up to be independent individuals, they are neither the private property of adults nor the state. To ensure the protection of

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<sup>2</sup> I Nyoman Adi Susila et al., "Urgensi Perlindungan Anak Dari Kejahatan Seksual Dalam Perspektif Hukum Adat Di Kabupaten Buleleng," *Kertha Wicaksana* 18, no. 1 (2024): 46–68.

<sup>3</sup> Hadi Supeno, *Kriminalisasi Anak* (Gramedia Pustaka Utama, 2013).

<sup>4</sup> Fadli Andi Natsif, "Problematisasi Perkawinan Anak (Perspektif Hukum Islam Dan Hukum Positif)," *AL-Qadun* 5, no. 2 (2018): 175–86.

children's rights, various legal instruments have been developed both at the international and national levels. In the international arena, the United Nations Convention on the Rights of the Child (UNCRC) is the main document that comprehensively guarantees and promotes the rights of the child. The Convention has been ratified by many countries around the world and defines a child as any individual under the age of 18 with inherent rights. The UNCRC covers the fundamental rights of the child which include the right to survival, protection from violence and exploitation, self-capacity development, as well as the right to participate in social and cultural life.<sup>5</sup>

However, the application of child protection principles often faces challenges in the context of multicultural societies, especially in developing countries such as Indonesia. In societies rich in ethnic, cultural, and religious diversity, traditional values and customary practices often differ significantly from national or international legal standards. For example, some local cultural practices related to gender roles, education, and child marriage, are still considered legitimate or even valued in certain communities, even if they are contrary to universally applicable principles of children's rights.<sup>6</sup>

This creates a paradox and tension between the preservation of local cultural values and the state's efforts to mainstream child protection based on modern law. For example, in the case of child marriage in some regions of Indonesia, local customs or norms are often used to legitimize the practice, while national law has established a minimum age for marriage based on the principles of children's rights and reproductive health. In such situations, a purely legalistic approach is not enough. A multiculturalism approach is needed that accommodates local values while still encouraging social transformation towards practices that better protect children.<sup>7</sup>

Multiculturalism in this case is not just an acknowledgment of diversity, but also demands a reconciliation between traditional norms and modern legal policies. Multiculturalism is also a relevant framework to explain how the state and civil society can build constructive cross-cultural dialogue in order to formulate contextual, inclusive, and

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<sup>5</sup> Tazkia Tunnafsia Siregar, Ika Rachmawati Sukarno Putri, and Laura Sharendova Gunawan, "Peran Hak Asasi Manusia Dan Hukum Adat Dalam Mencegah Pernikahan Dini Di Indonesia," *INNOVATIVE: Journal Of Social Science Research* 3, no. 5 (2023): 11050–64.

<sup>6</sup> Rahman Mantu, "Multikultural Dan Kesetaraan Gender Equality in Multicultural Society," *SPECTRUM: Journal of Gender and Children Studies* 2, no. 2 (2022): 105–13, <http://journal.iain-manado.ac.id/index.php/SPECTRUM>.

<sup>7</sup> Muhammad Ikhsanudin and Dan Siti Nurjanah, "Dampak Pernikahan Dini Terhadap Pendidikan Anak Dalam Keluarga," *Jurnal Pendidikan Islam*, no. 1 (2018): 38–44.

equitable child protection policies. In this context, child protection cannot be separated from the cultural dimensions and social identity of the society in which the child is raised.<sup>8</sup>

Therefore, this research is significant because it aims to analyze how child protection principles can be bridged with traditional values through a multiculturalism approach. This study also seeks to answer normative and practical challenges that arise in the implementation of child protection policies in a multicultural society, especially in Indonesia. This research not only contributes theoretically to the development of legal discourses and multiculturalism, but also has applicative value for policymakers, children's rights activists, and community leaders in developing holistic and contextual child protection strategies.

## RESEARCH METHOD

The method applied in the analysis of this article is a literature study that focuses on the literature, including books and legal documents relevant to the main issue. This approach, as explained by Peter Mahmud Marzuki,<sup>9</sup> is known as the statute approach in legal research. In this context, the main problem regarding child marriage is analyzed through reference to primary sources of law, namely laws and regulations and provisions in Islamic law or fiqh. In addition, secondary legal sources are also used, which include legal literature such as textbooks and other legal documents. This approach is commonly referred to as a normative legal research method, which is an approach that relies on an internal perspective with legal norms as the object of study. The legal norms analyzed in this study include provisions in Islamic law (fiqh), the Marriage Law, and the Child Protection Law.<sup>10</sup>

## FINDINGS AND DISCUSSION

In essence, children are a mandate as well as a gift from Allah SWT that must be taken care of and maintained as well as possible, because in children are inherent dignity, dignity, and various rights as human beings that must be respected and protected. Children's rights are an integral part of human rights as recognized in the 1945 Constitution of the Republic of Indonesia, the United Nations Convention on the Rights of the Child, and further regulated in Law Number 39 of 1999 concerning Human Rights. In the context of

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<sup>8</sup> Bhikhu Parekh, "Rethinking Multiculturalism: Cultural Diversity and Political Theory," *Ethnicities* 1, no. 1 (2001): 109–15.

<sup>9</sup> Peter Mahmud Marzuki, "Penelitian Hukum," *Jakarta: Kencana Prenada Media* 55 (2005).

<sup>10</sup> I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya Jurnal Hukum* 1, no. 1 (2013): 21–30, <https://doi.org/https://doi.org/10.37637/kw.v1i1.419>.

the life of the nation and state, children are seen as pillars of the future and the next generation who will continue the struggle and ideals of the nation. Therefore, every child has the right to live, grow and develop optimally, to actively participate in social life, and to be protected from all forms of violence, discrimination, and violations of civil rights and fundamental freedoms.<sup>11</sup>

Referring to the provisions of Article 1 paragraph (1) of Law Number 23 of 2002 as amended by Law Number 35 of 2014, a child is defined as an individual under the age of 18. This age restriction reflects the basic principle that individuals in that age range are in a phase that requires special protection from the state. Although at that age the child is able to make his own decisions based on his intellect, feelings, and will, he is still greatly influenced by the conditions and pressures of the surrounding environment, making him vulnerable to various risks. On the other hand, individuals who have reached the age of 18 are considered to have the psychological and mental maturity to deal with external influences, as well as being able to account for their actions legally. Therefore, the age of 18 is the final limit for legal protection of children, because at this point a person already has legal standing to take legal action and can be sanctioned if he violates the provisions of the applicable law.<sup>12</sup>

The protection of children's rights is a very important aspect and is guaranteed through various legal instruments, both at the international and national levels. This effort not only aims to protect the current young generation, but also contributes to the protection of future generations. The way children are treated today will shape their behavior and parenting patterns in the future, which ultimately affects the quality of a country's human resources. Therefore, the impact is immediate and long-term. Thus, various steps must be taken to ensure that the young generation can grow and develop in a safe, healthy environment, and obtain their basic rights comprehensively.

The Constitution of the Republic of Indonesia, namely the 1945 Constitution, regulates the existence of children in Article 34 which states that "the poor and abandoned children are cared for by the state". This provision affirms that children are legal subjects who receive state attention and protection within the framework of national law. Children must be guaranteed their right to be nurtured, fostered, and directed to achieve a decent level

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<sup>11</sup> Muh S Risal Risandi and Muhammad Sabir Maidin, "Perlindungan Hukum Terhadap Anak Jalanan Akibat Perceraian Orang Tua Di Kabupaten Pangkep; Studi Komparatif Hukum Positif Dan Hukum Islam," *Shoutuna* 2, no. 1 (2021): 293–308.

<sup>12</sup> Saadatul Maghfira, "Kedudukan Anak Menurut Hukum Positif Di Indonesia," *Jurnal Ilmiah Syari'ah* 15, no. 2 (2016): 218–20.

of welfare. In this context, the responsibility for children is not only on the shoulders of the state, but also the obligation of all elements of society. Failure to meet a child's basic needs can have a serious impact on aspects of their physical growth as well as their intellectual, emotional, and social development. This condition not only causes physical vulnerability, but also causes psychological and behavioral disorders, such as autistic tendencies, delinquency, difficulties in socializing, and even involvement in criminal acts. As a result, not a few children end up choosing to live life on the streets as a form of escape and search for a living space that they consider more liberating.<sup>13</sup>

As explained earlier, the government has established a comprehensive legal framework, both nationally and internationally, to guarantee children's rights. This policy aims to prevent various forms of abuse, including those related to exploitation, violence, and neglect of children. However, reality shows that cases of physical, psychological, and sexual violence against children are still common, despite the progress in social and economic welfare that has been achieved. This act of violence can take place in various environments, such as at home, school, or public spaces, and perpetrators can come from parents, family members, peers, and other people around the child.

It is important to realize that the experience of violence or neglect of children negatively affects various aspects of their lives. These impacts include developmental barriers, learning difficulties that lead to decreased academic achievement, self-esteem disorders, depression, and a tendency to self-destructive behavior and high-risk activities. In addition, violence against children also has significant social and economic impacts, including the loss of individual potential and decreased productivity that ultimately harms society at large.

As a country of law (*rechtstaat*), Indonesia has a fundamental goal to ensure the welfare of all its citizens, including the protection of children's rights which are an integral part of human rights. The recognition and guarantee of human rights is not only an integral aspect of the national legal system, but also reflects the main purpose of the existence of the rule of law itself. In this context, child protection is interpreted as an effort to place children's rights within the framework of the social structure of society, in order to ensure the fulfillment of the interests of children facing social problems. This protection includes

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<sup>13</sup> Avelinus Lefaan, Fitrine Christiane Abidjulu, and Rima Nusantriani Banurea, "Pendidikan Seksual Komprehensif Pada Masa Pandemi COVID-19 Di SMA Gabungan Jayapura," *Jurnal Abdi Masyarakat Indonesia* 2, no. 2 (March 9, 2022): 595–600, <https://doi.org/10.54082/jamsi.266>.

support for children who do not have the skills to understand and carry out their social roles in their entirety.

Child protection efforts are directed at creating a conducive and humane situation to ensure the balanced implementation of children's rights and obligations. This protection covers all aspects of children's development as a whole, both physical, psychological, and social, with the aim of ensuring that their growth takes place reasonably and optimally. The implementation of child protection is a manifestation of the principle of social justice in society and therefore must be carried out comprehensively in various sectors of the life of the nation and state. Child protection activities also have juridical implications, both in the context of positive (written) and unwritten (customary) law. Therefore, legal certainty is an absolute requirement so that the implementation of child protection runs effectively and avoids potential abuse or violations that are detrimental to the interests of children.<sup>14</sup>

Legal protection of children can be interpreted as a series of efforts to guarantee and protect fundamental rights and freedoms of children, including various interests related to the welfare of children as a whole. Therefore, the issue of legal protection for children covers a very wide and multidimensional scope. In practice, child protection can be classified into two main categories: first, protection of a juridical nature, which includes aspects of public law as well as civil law; and second, non-juridical protection, which includes social, health, and educational aspects. These two forms of protection synergize to create conditions that allow children to grow and develop optimally in a safe, healthy environment, and support the fulfillment of their rights.<sup>15</sup>

Child protection is a strategic and urgent step that must be implemented immediately, because it concerns the development of the foundation of a nation's civilization in the future. Children are the most valuable asset, so if they continue to be victims of violence in various forms, then when they grow up they have great potential to become perpetrators of crimes that burden the social system of a country. On the other hand, if they grow up in a loving environment and receive proper treatment from an early age, then the negative impact of pathological and psychosocial pressure can be minimized, thus encouraging them to grow into individuals with positive character. Basically, child protection is oriented towards the recognition of children as individuals who deserve special respect and attention. Therefore,

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<sup>14</sup> Arif Gosita, "Masalah Perlindungan Anak," (*No Title*), 1985.

<sup>15</sup> Liza Agnesta Krisna, *Hukum Perlindungan Anak: Panduan Memahami Anak Yang Berkonflik Dengan Hukum* (Deepublish, 2018).



the solution to the problem of child protection is not enough only through a juridical approach, but also needs to be strengthened with a multidisciplinary approach that includes economic, social, and cultural aspects.<sup>16</sup>

### **Between traditional values and modern law**

Customary law can be interpreted as a set of rules that originate from human habits in social life. Since humans first lived on earth and formed families, social interaction has developed into community life and finally state. In the process of interacting with others, humans naturally form certain patterns that become guidelines in their social relationships. When these patterns are followed and widely applied by the community, they develop into the social customs or habits that govern the behavior of the members of the group.

Customs themselves reflect the norms of behavior that are accepted in a certain community. Over time, this habit becomes a must that must be carried out by members of the social group. When a customary custom begins to be enforced with sanctions for its violation, the custom is transformed into customary law. Therefore, the fundamental difference between customary and customary law lies in the existence of sanctions. If a custom is not accompanied by sanctions, then it is still categorized as a mere custom. However, if the violation of the custom is followed by the imposition of sanctions, then the custom has changed to customary law. Law, as part of a system of norms, is essentially the result of cultural processes. Therefore, every society that has a culture will automatically form a certain legal system. On the contrary, the existence of a legal system in a society shows that it also has elements of underlying culture.<sup>17</sup>

As with positive law, customary law has three main elements that underlie its force of enforceability. First, sociological enforceability, which shows that the legal norms are truly recognized and complied with by members of society. Second, juridical enforceability, which means that the law has a valid coercive force to be applied to the community, because its formation is carried out by the authority or authorized institution. Third, philosophical applicability, which refers to the foundation of the common goals to be achieved by the

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<sup>16</sup> Rika Saraswati, *Hukum Perlindungan Anak Di Indonesia* (PT. Citra Aditya Bakti, 2015).

<sup>17</sup> Mahmud Marzuki Peter, "Pengantar Ilmu Hukum," *Kencana, Jakarta*, 2008.

community, which is usually contained in the consideration or "weighing" section of a product of laws and regulations.<sup>18</sup>

In the consideration of Law Number 23 of 2002 concerning Child Protection, it is stated that children are a mandate as well as a gift from God Almighty, who inherently has the dignity and dignity of being a fully human being.<sup>19</sup> The legal system in Indonesia provides guarantees for children's rights as part of human rights. Therefore, it is important to first understand the definition of a child, including the age restrictions that distinguish between children, minors, and adults. Age is the main indicator in determining this status. Based on Article 1 number 5 of Law Number 39 of 1999 concerning Human Rights, a child is defined as any individual under the age of 18 years and unmarried, including children in the womb if it is in his or her interests. The corresponding provisions are also regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which in Article 1 number 1 states that a child is someone who is not yet 18 years old, including those who are still in the womb.

Meanwhile, the Civil Code (KUHPerdata) provides a slightly different definition. According to Article 330 of the Civil Code, a person is categorized as an immature if he has not reached the age of 21 and is not married. This shows that in the civil context, individuals under the age of 21 and unmarried are still classified as children. On the other hand, the Criminal Code (KUHP) has its own provisions in determining the age limit for children. Article 45 of the Criminal Code states that in the criminal prosecution process, a person who commits a criminal act before the age of 16 is considered a child. Thus, there are variations in regulations regarding the age limit of children in various Indonesian legal instruments, which are adjusted to the context of their use.<sup>20</sup>

In various legal provisions in Indonesia, the regulation of the age limit for children still shows inconsistencies. This condition in legal theory is known as the vague legal norm. The term refers to a situation in which a norm already exists but does not have clarity of meaning, or even contains double meaning and ambiguity, thus causing ambiguity in its application. Such a situation has the potential to harm people who need justice, because legal uncertainty opens up space for the emergence of various different interpretations. Legal certainty is a fundamental principle that aims to ensure legal protection for every citizen

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<sup>18</sup> Dominikus Rato and Husen Alting, *Hukum Adat: (Suatu Pengantar Singkat Memahami Hukum Adat Di Indonesia)* (LakBang Pressindo, 2011).

<sup>19</sup> Djamil, "Anak Bukan Untuk Dihukum, Jakarta."

<sup>20</sup> Djamil.

against arbitrary acts of power. Therefore, the state has a constitutional responsibility to uphold legal certainty as a form of protection of the rights of its citizens. In this context, there appears to be a close relationship between the problem of legal certainty and the role of the state in ensuring the consistent applicability of norms.<sup>21</sup>

Law enforcement is defined as a process to ensure that legal norms are truly implemented and function in real life in various behaviors and legal interactions in the midst of community life and in the context of the state.<sup>22</sup> Another opinion also explains that law enforcement is an effort to balance the relationship of values that have been formulated in standard norms and manifested in concrete actions. This process is the final stage of the application of these values with the main goal of creating, maintaining, and maintaining order and peace in the order of social life.<sup>23</sup>

Law enforcement functions as a code of conduct that must be applied in community life to ensure that legal norms are implemented as they should. The success of law implementation cannot be separated from the active role of law enforcement officials themselves. In the context of preventing and handling cases of sexual violence against children, community participation is also an important element that supports the effectiveness of law enforcement strategies.

Social life and law are two entities that cannot be separated, as reflected in the legal principle of *ubi societas ibi ius* which means "where there is a society, there is a law". Therefore, the existence of the rule of law is needed to regulate the social order in order to achieve public order. Indonesia, as a country with a heterogeneous and culturally diverse society, places society as a central element in the law enforcement process. In carrying out their duties, law enforcement officials are required to understand the social structure of the community in their area of duty. In Indonesia, the social structure is often divided into upper-layer and lower-class groups of society, each of which has a different mindset and understanding of the law. Therefore, law enforcement officials need to provide legal education to the public, especially to groups that have limited access to legal information, so that they are able to understand and internalize the values and legal norms that apply in their environment.<sup>24</sup>

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<sup>21</sup> E Fernando M Manullang, *Legisme, Legalitas Dan Kepastian Hukum* (Prenada Media, 2017).

<sup>22</sup> Satjipto Rahardjo, "Masalah Penegakan Hukum," *Bandung: Sinar Baru*, 1983.

<sup>23</sup> Soerjono Soekanto, "Faktor-Faktor Yang Mempengaruhi Penegakan Hukum," 2011.

<sup>24</sup> Anastasia Hana Sitompul, "Kajian Hukum Tentang Tindak Kekerasan Seksual Terhadap Anak Di Indonesia," *Lex Crimen* 4, no. 1 (2015): 46–56.

Effective law enforcement cannot be separated from the active role of law enforcement officials. In efforts to prevent and handle cases of sexual violence against children, community involvement is a key factor, especially the participation of local communities such as traditional villages. Children are God's gift that must be protected and given the opportunity to grow and develop optimally, both from physical and mental aspects.

Ironically, most acts of sexual violence against children are actually committed by the closest people known to the victim. Data from the Indonesian National Police (POLRI) and the Integrated Service Center for Women's and Children's Empowerment (P2TP2A) show that perpetrators of violence against children generally come from the child's immediate environment. This condition emphasizes the importance of comprehensive legal protection so that children do not experience discriminatory treatment and their rights are guaranteed.

In order to optimize the implementation of child protection from sexual violence, various strategies are needed that are preventive and curative and involve the active role of the community. Community participation is regulated in Article 6 of the Regulation of the Minister of Women's Empowerment and Child Protection (Permen PPPA) Number 2 of 2017, which states that the community can contribute in various environments, including in the scope of households, public spaces, service institutions, training institutions, educational institutions, religious institutions, and other relevant institutions in supporting the protection and fulfillment of children's rights.

Sexual crime is a form of criminal act that has received serious attention in the context of child protection, considering that children are a very vulnerable group, easily targeted by threats, and do not yet have the ability to protect themselves from potential lurking dangers. The protection of children from various forms of violence is expressly regulated in Article 15 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that every child has the right to be protected from: a) abuse in political activities; b) involvement in armed conflict; c) involvement in social unrest; d) involvement in events that contain elements of violence; e) involvement in war; and f) sexual crimes.

This provision affirms the position of children as legal subjects who require special treatment, both as victims and, in certain cases, as perpetrators of crimes. The phenomenon that occurs on social media shows that children are not only victims of sexual violence, but in some cases are also involved as perpetrators. Sexual crimes against children in society are regulated through various legal provisions that apply locally and nationally. This crime

includes various forms of violations of religious and moral norms, such as obscenity, rape, sexual torture, sexual harassment, sexual slavery, sexual exploitation, and forced pregnancy. These actions, which are clearly contrary to religious values and morality, provoke a strong reaction from the public. Therefore, the existence of a strict law to sanction perpetrators of sexual crimes is very important to ensure protection and justice for victims.

Indonesia has ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, which affirms the country's commitment to protecting children's rights. In addition, Law No. 23 of 2002 on Child Protection, which was later updated to Law No. 35 of 2014, became the basis of national law in child protection. The law emphasizes the principles of non-discrimination, the best interests of the child, the right to live, grow, and develop, and respect for the opinion of the child.

However, the implementation of these laws often faces challenges on the ground, especially when dealing with cultural practices that are contrary to these principles. For example, the practice of child marriage that still occurs in some regions shows that there is a discrepancy between national law and traditional values embraced by the local community. Traditional values that live in Indonesian society have an important role in shaping social norms and behaviors, including in terms of parenting and child protection. However, not all traditional values are in line with the principles of child protection as set out in modern law. Some cultural practices, such as child marriage, violence as a form of discipline, and gender discrimination, can harm children's well-being and rights.

According to research by Ana Suheri, education in the family plays a big role in providing protection and character formation of children. However, in some cases, traditional values embraced by families are actually a barrier in providing optimal protection for children. Therefore, it is important to take a culturally sensitive approach in child protection efforts.<sup>25</sup>

Multiculturalism offers a framework that allows for the recognition and appreciation of cultural diversity, while still upholding the universal principles of human rights, including the rights of the child. This approach emphasizes the importance of intercultural dialogue and community participation in formulating contextual and inclusive policies. Child protection in a multicultural society like Indonesia requires a culturally sensitive approach, while adhering to the universal principles of children's rights. The traditional values that live

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<sup>25</sup> Jurnal Sociopolitico and Ana Suheri, "Kajian Sosiologi Hukum Terhadap Efektivitas Perlindungan Anak Melalui Pendidikan Dalam Keluarga," *Jurnal Sociopolitica* 6, no. 2 (2024): 166–71.

in society must be respected, but they need to be adapted to modern legal policies that aim to protect children's rights. The multiculturalism approach offers a framework that allows for recognition of cultural diversity, while still upholding the principles of child protection. Through dialogue, education, and contextual policy development, it is hoped that child protection in Indonesia can be improved effectively and inclusively.

Indonesia as a multicultural and religious country faces its own challenges in the implementation of child protection policies. Traditional values and religious teachings are still very strongly attached to the social life of the community. On the other hand, the state has established a progressive positive legal system through the ratification of the Convention on the Rights of the Child (CRC) and the ratification of Law No. 35 of 2014 on Child Protection. These tensions between these two poles often create dilemmas in child protection policies and practices, especially on issues such as child marriage, violence in education, and parenting patterns.<sup>26</sup>

Traditional values often place children in hierarchical and patriarchal social structures. In some indigenous and religious communities, children's rights are closely associated with obligations to parents and their communities. For example, child marriage in some cultures is seen as an effort to maintain family honor or solve economic problems.<sup>27</sup> In fact, from a positive legal perspective, child marriage is a violation of children's rights to education, health, and protection from exploitation (Law No. 16 of 2019 jo. Law No. 1 of 1974).

This is where normative dissonance occurs—the incompatibility between social norms and legal norms. The state, in many cases, faces cultural resistance that slows down the implementation of child protection laws. Dialogue between legal stakeholders and customary/religious leaders is very important in building mutual understanding. The principle of "maslahah" in Islam or "local wisdom" in the culture of the archipelago can be used as a common point in strengthening child protection. For example, the value of *rahmatan lil 'alamin* can be used to internalize the spirit of protection in Islamic parenting. Many practices that are considered "cultural" are actually alterable historical interpretations.

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<sup>26</sup> Mohd Rafi Riyawi and Jumni Nelli, "Reinterpretasi Hukum Keluarga Dalam Hukum Nasional (Studi Tentang Kompilasi Hukum Islam Di Indonesia)," *HUKUMAH: Jurnal Hukum Islam* 4, no. 2 (2021): 137–60.

<sup>27</sup> I Dewa Ayu Maythalia Joni and Endang R. Surjaningrum, "Psikoedukasi Pendidikan Seks Kepada Guru Dan Orang Tua Sebagai Upaya Pencegahan Kekerasan Seksual Pada Anak," *JURNAL DIVERSITA* 6, no. 1 (June 2, 2020): 20–27, <https://doi.org/10.31289/diversita.v6i1.3582>.

Deconstructing patriarchal culture in the family and contextually reinterpreting religious teachings can help build a religious interpretation that is more in favor of children's rights.<sup>28</sup>

Multiculturalism in Indonesia cannot be interpreted as passive tolerance of all forms of cultural practices, but needs to be encouraged in transformative multiculturalism—that is, multiculturalism that opens up space for negotiation and value transformation for the sake of social justice and the protection of vulnerable groups such as children.

Bridging traditional values and positive laws in child protection does not mean getting rid of traditions or religion, but rather reorienting values towards the principles of justice, dignity, and child welfare. Synergy is needed between the government, local communities, religious leaders, and civil society institutions in building child protection based on transformed local wisdom, progressive national laws, and humanist religious values. Thus, Indonesia has the potential to become a model country with a fair, inclusive, and sustainable multicultural-based child protection system.

## CONCLUSION

This study confirms that child protection in Indonesia cannot be separated from the complexity of the social and cultural structure of a multicultural and religious society. Although the state has established progressive positive legal policies that are in favor of the principles of children's rights through the Child Protection Law and the ratification of international instruments such as the Convention on the Rights of the Child, their implementation still faces challenges due to the strong influence of traditional and religious values in people's daily practices.

Traditional values that live in communities often contain norms that are contrary to modern legal principles, such as justification for the practice of child marriage, violence as a form of discipline, or restrictions on girls' access to education. This tension between cultural and legal norms shows that there is a normative gap that needs to be bridged systematically and inclusively.

The multiculturalism approach provides the right conceptual framework in bridging these differences. Through this approach, the state can build synergy between national law and local values by encouraging cultural transformation with a perspective of children's

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<sup>28</sup> Law Muhammad Arya Syandika et al., "Protection of Children and Women in the Perspective of Islamic Law and Indonesian Positive," *Istidal: Jurnal Studi Hukum Islam* 12, no. 1 (2025), <https://doi.org/https://doi.org/10.34001/ijshi.v12i1.81116>.

rights, without negates the collective identity of the community. Strategies such as intercultural dialogue, child-friendly reinterpretation of religious values, involvement of indigenous and religious leaders, and community education based on universal values of human rights, are crucial to creating policies that are contextual, socially acceptable, and effective in protecting children.

Thus, the ideal child protection in the Indonesian context must move towards a normative convergence between positive law and traditional values. It is not only a matter of law enforcement, but also of social reconstruction and the formation of a collective awareness that children are subjects of the law who have the right to grow and develop in a safe, fair, and dignified environment. Building a bridge between law and culture is not just an option, but a necessity in an effort to create a holistic and sustainable child protection system in the midst of a pluralistic society.



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