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Access To Justice of Citizenship Rights For Stateless Indonesian Migrant Workers' Children In Sarawak, Malaysia



Published by :

Faculty of Sharia IAIN Madura collaboration with
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Available online at <http://ejournal.iainmadura.ac.id/index.php/alihkam/index>



al-Ihkam: Jurnal Hukum dan Pranata Sosial, Vol. 16 No. 2 2021
ISSN: 1907-591X, E-ISSN: 2442-3084
Accreditation: 128/E/KPT/2021

al-Ihkâm

Jurnal Hukum dan Pranata Sosial

Journal Al-ihkam focuses on the issue of Islamic Jurisprudence and Law concerning plurality and living values in Indonesian and Southeast Asian society by publishing articles and research reports aiming to communicate original research and relevant current issues. Al-Ihkam Publish twice a year (June and December) has been indexed at DOAJ, DIMENSION and SINTA 1 (Accredited by the Directorate General of Research And Development of the Ministry of Research, Technology, and Higher Education of the Republic of Indonesia Number 128/E/KPT/2021). Al Ihkam has become a CrossRef Member since year 2015, therefore all articles published by Al Ihkam will have unique DOI number.

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ISSN: 1907-591X, E-ISSN: 2442-3084
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al-Ihkam: Jurnal Hukum dan Pranata Sosial, Vol. 16 No. 2 2021
ISSN: 1907-591X, E-ISSN: 2442-3084
Accreditation: 128/E/KPT/2021

PUBLISHED BY:

Faculty of Sharia IAIN Madura collaboration with The Islamic Law Researcher Association (APHI)

OFFICE:

Faculty of Sharia IAIN Madura
Asemanis Dua, Larangan Tokol, Tlanakan, Kabupaten Pamekasan, Jawa Timur, Indonesia 69371.

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ISSN: 1907-591X, E-ISSN: 2442-3084
Accreditation: 128/E/KPT/2021

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Jurnal Hukum dan Pranata Sosial

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, Vol. 16 No. 2 2021
ISSN: 1907-591X, E-ISSN: 2442-3084
Accreditation: 128/E/KPT/2021

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PEDOMAN TRANSLITERASI

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



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

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



al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 274-301
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5026>

Islamic Philanthropy and Poverty Reduction in Indonesia: The Role of Integrated Islamic Social and Commercial Finance Institutions

Azwar Iskandar

Sekolah Tinggi Ilmu Islam dan Bahasa Arab (STIBA) Makassar, Indonesia
email: azwar.iskandar@gmail.com

Bayu Taufiq Possumah

Universiti Malaysia Trengganu, Malaysia
email: btaufiq@gmail.com

Khaerul Aqbar

Sekolah Tinggi Ilmu Islam dan Bahasa Arab (STIBA) Makassar, Indonesia
email: khaerul@stiba.ac.id

Akhmad Hanafi Dain Yunta

Sekolah Tinggi Ilmu Islam dan Bahasa Arab (STIBA) Makassar, Indonesia
email: ahmadhanafi@stiba.ac.id

Article history: Received: August 25, 2021, Accepted: December 21, 2021,
Published: December 31, 2021

Abstract:

The recent studies about the role of Islamic philanthropy in addressing socio-economic problems have been growing and confirming its significant role in overcoming the problem. This is in line with the existence of regulations that support the effectiveness of its role in poverty reduction in Indonesia, such as Law No. 23 of 2011 on Zakat Management and Law No. 41 of 2004 on Waqf. This study has two objectives. First, to analyze the impact of Islamic philanthropy on poverty reduction as the socio-economic problems in Indonesia in the short and long run. Second, to analyze the effectiveness of integrated Islamic commercial and social-economic or finance

Author correspondence email: azwar.iskandar@gmail.com

Available online at: <http://ejournal.iainmadura.ac.id/index.php/alihkam/>

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to address the poverty compared to unintegrated one. This study used Auto-Regressive Distributed Lag (ARDL) approach to analyze annual data for the period of 2002-2019 while investigating the long and short-run relationships among variables. It found that Islamic philanthropy reduces poverty both in the short and long run, particularly in the integration of Islamic social and commercial finance in a single model. The government should therefore include Islamic philanthropy or other Islamic social finances as a fundamental strategy for building financial stability and sustainable development.

Keywords:

Philanthropy; Integration; Social and commercial finance; Poverty

Abstrak:

Menjamurnya studi-studi terbaru terkait peran filantropi Islam dalam mengatasi masalah sosial-ekonomi telah mengkonfirmasi peran pentingnya dalam mengatasi masalah ini. Hal ini sejalan dengan adanya regulasi yang mendukung efektivitas perannya dalam pengentasan kemiskinan di Indonesia, seperti Undang-Undang Nomor 23 Tahun 2011 tentang Pengelolaan Zakat dan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf. Penelitian ini memiliki dua tujuan. Pertama, untuk menganalisis dampak filantropi Islam terhadap penurunan tingkat kemiskinan sebagai sebuah permasalahan sosial-ekonomi di Indonesia, baik dalam jangka pendek maupun jangka panjang. Kedua, untuk menganalisis efektifitas integrasi atau antara filantropi dan komersial dalam kerangka ekonomi Islam dalam mengatasi permasalahan kemiskinan. Penelitian ini menggunakan pendekatan Auto-Regressive Distributed Lag (ARDL) untuk menginvestigasi hubungan jangka pendek dan jangka panjang antara filantropi Islam dan tingkat kemiskinan selama periode tahun 2002-2019. Penelitian ini menemukan bahwa filantropi Islam dapat menurunkan tingkat kemiskinan baik dalam jangka pendek maupun jangka panjang. Penelitian ini juga menemukan bahwa ketika filantropi dan komersial dalam kerangka ekonomi Islam diintegrasikan, tingkat kemiskinan dapat diturunkan baik

dalam jangka pendek maupun jangka panjang. Pemerintah seyogyanya menempatkan filantropi Islam sebagai kebijakan dan strategi fundamental dalam rangka mewujudkan stabilitas keuangan dan pembangunan berkelanjutan.

Kata Kunci:

Filantropi; Integrasi, Keuangan sosial dan komersial;
Kemiskinan

Introduction

For more than two decades, research on Islamic economics and finance has gained prominence. A recent survey paper by Paresh Kumar Narayan et al.¹ highlighted the development of Islamic economic or finance research while discussing the potential for future research in the field. The recent studies about the role of Islamic philanthropy system such as *zakāt* (payment made annually under Islamic law on certain kinds of property and used for charitable and religious purposes), *infaq* or *ṣadaqah* (voluntary charity), *waqf* (endowment) and others in addressing the socio-economic problems, most notably poverty and income inequality, have been growing and confirming its significant role in overcoming the problem.

This is in line with the existence of regulatory and statutory instruments that support the effectiveness of Islamic philanthropy's role in poverty reduction in Indonesia. Two of which are Law No. 38 of 1999 and Law No. 23 of 2011 on *Zakāt* Management and Law No. 41 of 2004 on *Waqf* as a result of Indonesian Muslims' struggle to strengthen regulations on *zakāt* since 1968. The former that was later updated with Law No. 23 of 2011 is considered very strategic and helpful to strengthen Islamic philanthropy. Meanwhile, the later that mainly aims to encourage the progress of *waqf* management is also considered able to support the maximization of *waqf* management in improving the socio-economic welfare of Muslim society.²

¹ Paresh Kumar Narayan et al., "Price Discovery and Asset Pricing," *Pacific-Basin Finance Journal* 40 (2016): 224-35.

² Abdurrohman Kasdi, "Filantropi Islam Untuk Pemberdayaan Ekonomi Umat (Model Pemberdayaan ZISWAF Di BMT Se-Kabupaten Demak)," *Iqtishadia: Jurnal Kajian Ekonomi Dan Bisnis Islam STAIN Kudus* 9, No. 2 (2016): 227-45.

The existence of legal certainty and legal products is very important in supporting the implementation of *zakāt*, *infaq*, *ṣadaqah*, and *waqf* for improving people's welfare and economic empowerment.³ Moreover, as a country with a Muslim majority population with 216.66 million people or 85 percent of its total population, Indonesia has *Badan Amil Zakat Nasional* (National Zakāt Agency of Indonesia) or so-called BAZNAS.

Islamic money and property management are supposed to bridge the gap between the have and the needy. *Zakāt*, for instance, enhances the circulation of wealth and ensures that the wealth does not idle and be hoarded. Nonetheless, from the macroeconomic perspective, *zakāt* is used to increase the aggregate demand due to the high spending of *zakat* recipients (*mustahiq*).⁴ Thus, it will boost economic growth and will encourage investment.⁵ It is also an instrument of fiscal policy that serves to ensure that economic activity can run at the level of primary needs fulfillment.⁶ Therefore, the governments of Muslim countries need to give serious attention to optimize *zakāt* as a source of growth and equitable distribution of wealth. There is a need for a big move to reconstruct the spirit of *zakāt* while preventing lack of focus as happened in past.⁷

Some progress has been made toward achieving this goal in several countries. However, there are still many development programs that have not been successful. Many works in effective programs are also needed. In fact, as a part of efforts towards reducing poverty in Islamic countries, *zakāt* is an important form of

³ Azwar Iskandar and Khaerul Aqbar, "Reposisi Praktik Ekonomi Islam: Studi Kritis Praktik Ekonomi Islam Di Indonesia.," *NUKHBATUL'ULUM: Jurnal Bidang Kajian Islam* 5, No. 1 (2019): 39-53.

⁴ Zainal Abidin, "Meneropong Konsep Pertumbuhan Ekonomi (Telaah Atas Kontribusi Sistem Ekonomi Islam Atas Sistem Ekonomi Konvensional)," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 7, No. 2 (2014): 113-26.

⁵ Juhari, "Reinstrumentasi Fungsi Zakat Menuju Pengentasan Kesenjangan Sosial Ekonomi Umat," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 1, No. 1 (2012): 113-26.

⁶ Muhammad Nejatullah Siddiqi, *Teaching Economics in Islamic Perspective* (Scientific Publishing Centre, 1996).

⁷ Faisal Faisal, "Sejarah Pengelolaan Zakat di Dunia Muslim dan Indonesia (Pendekatan Teori Investigasi-Sejarah Charles Peirce dan Defisit Kebenaran Lieven Boeve)," *Analisis: Jurnal Studi Keislaman* 11, no. 2 (2011): 241-72.

charitable funding.⁸ In the context of Indonesia, *zakāt* has promising potential for contributing to poverty and inequity reduction.⁹ This is clear from data on *zakāt*, *infaq*, and *ṣadaqah* in Indonesia that shows an increase in *zakāt* collection from 2002 to 2019 which is shown from table 1 below:

Table 1. Islamic Philanthropy Collection and GDP Per Capita in Indonesia (Period of 2002–2019)

Year	Islamic Philanthropy (IDR Billion)	Growth (%)	GDP Per Capita (US Dollar)	Growth (%)
2002	68.39	-	8,381,725.70	-
2003	85.28	24.70	9,140,209.04	9.05
2004	150.09	76.00	10,282,012.90	12.49
2005	295.52	96.90	12,259,877.14	19.24
2006	373.17	26.28	14,561,495.32	18.77
2007	740.00	98.30	17,002,285.26	16.76
2008	920.00	24.32	21,016,237.31	23.61
2009	1,200.00	30.43	23,494,217.33	11.79
2010	1,500.00	25.00	28,383,630.91	20.81
2011	1,729.00	15.27	31,951,073.85	12.57
2012	2,212.00	27.94	34,677,483.69	8.53
2013	2,639.00	19.30	37,910,608.80	9.32
2014	3,300.00	25.05	41,428,865.92	9.28
2015	3,650.00	10.61	44,609,441.72	7.68
2016	5,017.29	37.46	47,415,515.66	6.29
2017	6,224.37	24.06	51,350,980.38	8.30
2018	8,117.59	30.42	55,436,453.25	7.96
2019	10,070.00	24.05	58,508,674.98	5.54
Mean	2,682.87	36.24	30,433,932.73	12.23

⁸ Habib Ahmed, "Zakah, Macroeconomic Policies, and Poverty Alleviation: Lessons from Simulations on Bangladesh," *Journal of Islamic Economics, Banking and Finance* 4, no. 2 (2008): 81–105.

⁹ Evi Aninatin Ni'matul Choiriyah et al., "Zakat and Poverty Alleviation in Indonesia: A Panel Analysis at Provincial Level," *Journal of Islamic Monetary Economics and Finance* 6, no. 4 (2020): 811–32.

Source: BAZNAS;¹⁰ Irfan Syauqi Beik¹¹; Evi Aninatin Ni'matul Choiriyah et al.¹²

Table 1 shows that the collection of Islamic philanthropy including *zakāt*, *infaq*, or *ṣadaqah* (voluntary charity), *waqf* (endowment), and others increases every year from 17 years. In 2005 and 2007, there was an increase with almost 100 percent due to national disasters in the country (the Aceh Tsunami in 2004 and the Yogyakarta Earthquake in 2006). The average growth of the collection from 2002 until 2019 was 36.24 percent. Another important point is the high growth of Islamic philanthropy collection compared to GDP per capita growth (US Dollar). The increase in average annual Islamic philanthropy growth between 2002 and 2019 is higher than average GDP growth for the same period which only reached 12.23 percent.

Furthermore, the fact that the growth of Islamic philanthropy was not significantly affected by global economic shocks suggests that in the future, it has big potential to contribute to national development. Thus, national economic policy should include Islamic philanthropy in its efforts to reduce poverty or inequality while utilizing Islamic philanthropy as a fundamental strategy for financial stability and sustainable development.¹³

Using Indonesian experience, this paper will cover several aspects of Islamic philanthropy particularly in answering how Islamic philanthropy contributes to the socio-economic aspect, namely poverty reduction, and decrease income inequality in the country in both the short and long run. It, therefore, aims to contribute precisely in revealing the role of Islamic philanthropy in reducing poverty. Other than that, it aims to analyze the effectiveness of integrated Islamic commercial and social finance to build the welfare of people

¹⁰ Pusat Baznas, *Outlook Zakah Indonesia 2018* (Jakarta: Pusat Baznas, 2018).

¹¹ Irfan Syauqi Beik, "Potensi Zakah Nasional 2020 (Potential of 2020 National Zakah)," 18 (Jakarta, 2020).

¹² Imam Wahyudi Indrawan Evi Aninatin, Ni'matul Choiriyah, Abdul Kafi, Irma Faikhotul Hikmah, "Zakat and Poverty Alleviation in Indonesia: A Panel Analysis at Provincial Level," *Journal of Islamic Monetary Economics and Finance* 6, No. 4 (2020): 811–32.

¹³ Evi Aninatin Ni'matul Choiriyah et al., "Zakat and Poverty Alleviation in Indonesia: A Panel Analysis at Provincial Level," *Journal of Islamic Monetary Economics and Finance* 6, no. 4 (2020): 811–32

compared to unintegrated ones. Since relevant previous works have not yet thrown some light on such integration, this is the novelty of this paper.

Furthermore, this paper allows for possible symmetrical causality between the role of Islamic philanthropy and poverty reduction in Indonesia. The reason behind this is because Islamic philanthropy variants including *zakāt*, *infaq*, and *waqf* in Islam are largely working out to help people come out of poverty. In this sense, the combination between both commercial and social finance for this study is another novelty compared to the previous works that mostly focus on the social-economic/finance or commercial economic/finance only.

Moreover, in both classical and modern literature, *zakāt* collection is always seen as the responsibility of the government. It is regarded as an effective instrument to realize the purpose of financial goals that are expected to affect the development of the country as well as the social welfare of society as listed in *al-Amwāl* by al-Dawudi and Rawls' theory of social justice.¹⁴ Other previous studies were those of Irfan Syauqi Beik¹⁵, Rahmatina A Kasri¹⁶, and Qurroh Ayuniyyah et al.¹⁷ for the case of Indonesia; Fuadah Johari et al.¹⁸ for the case of a new convert (*muallaf*) in Malaysia; Hisham Handal

¹⁴ Mohamad Ramdon Dasuki, "Teori Keadilan Sosial Al-Ghazali dan John Rawls (Studi Perbandingan dalam Konteks Politik dan Hukum)," *Tangerang Selatan: Cinta Buku Media*, 2015; Ai Nur Bayinah, "Role of Zakat as Social Finance Catalyst to Islamic Banking and Economic Growth," *International Journal of Zakat* 2, no. 2 (2017): 55-70.

¹⁵ Irfan Syauqi Beik, *Economic Role of Zakah in Reducing Poverty and Income Inequality: A Case Study in the Province of DKI Jakarta, Indonesia* (Jakarta: LAP Lambert Academic Publishing, 2013).

¹⁶ Rahmatina A Kasri, "Effectiveness of Zakah Targeting in Alleviating Poverty in Indonesia," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah* 8, no. 2 (2016): 169-86.

¹⁷ Qurroh Ayuniyyah et al., "Zakat for Poverty Alleviation and Income Inequality Reduction: West Java, Indonesia," *Journal of Islamic Monetary Economics and Finance* 4, no. 1 (2018): 85-100.

¹⁸ Fuadah Johari, Muhammad Ridhwan Ab Aziz, and Ahmad Fahme Mohd Ali, "The Role of Zakat in Reducing Poverty and Income Inequality among New Convert (Muallaf) in Selangor, Malaysia," *Online Journal of Research in Islamic Studies* 1, no. 3 (2014): 43-56.

Abdelbaki¹⁹ for the case of Bahrain; Arif Widodo²⁰ about the role of integrated Islamic commercial and social finance in reducing income inequality in Indonesia; and Naziruddin Abdullah et al.²¹ using the Basic Needs Deficiency Index (BNDI) in Pakistan.

The earlier works have indeed made a huge contribution to the works of *zakāt* and the formulation of a coherent policy on *zakāt*, yet there are certain aspects that can further be developed. Given that most of the studies on the role of *zakāt* conducted by using primary data at the micro level, Irfan Syauqi Beik²², for instance, focused on the Jakarta area as an object of study, while Qurroh Ayuniyyah et al.²³ studied the effectiveness of *zakāt* distribution both for consumptive and productive purposes in three different regions in West Java. Hence, they have not yet covered the broader areas. This implies the need for using data that covers as many areas as possible aiming to provide a comprehensive analysis, especially from the macro context.

Accordingly, the previous works seem to focus mainly on the social aspect of Islamic finance like *zakāt* while excluding Islamic commercial finance in the analysis.²⁴ In regard to this, Ascarya²⁵ has stressed the fundamental principle which has been deeply embedded in the Islamic finance framework. Ascarya²⁶ explained that Islamic finance cannot accept the difference between social and commercial

¹⁹ Hisham Handal Abdelbaki, "The Impact of Zakat on Poverty and Income Inequality in Bahrain," *Rev. Integr. Bus. Econ. Res* 2, no. 1 (2013).

²⁰ Arif Widodo, "The Role of Integrated Islamic Commercial and Social Finance in Reducing Income Inequality in Indonesia," *Journal of Islamic Monetary Economics and Finance* 5, no. 2 (2019): 263–86.

²¹ Naziruddin Abdullah, Alias Mat Derus, and Husam-Aldin Nizar Al-Malkawi, "The Effectiveness of Zakat in Alleviating Poverty and Inequalities: A Measurement Using a Newly Developed Technique," *Humanomics*, 2015.

²² Beik, *Economic Role of Zakah in Reducing Poverty and Income Inequality: A Case Study in the Province of DKI Jakarta, Indonesia*.

²³ Qurroh Ayuniyyah et al., "The Comparison between Consumption and Production-Based Zakat Distribution Programs for Poverty Alleviation and Income Inequality Reduction," *International Journal of Zakat* 2, no. 2 (2017): 11–28.

²⁴ Arif Widodo, "The Role of Integrated Islamic Commercial and Social Finance in Reducing Income Inequality in Indonesia," *Journal of Islamic Monetary Economics and Finance* 5, no. 2 (2019): 263–86.

²⁵ Ascarya, "Integration of Islamic Commercial and Social Finance in Micro-Small Scale" (Surabaya, 2016).

²⁶ Ascarya.

finance in the system as applied to a conventional system. Thus, it is urgently needed to address the question of the surging inequality problem by considering the integration between these two aspects in Islamic finance.²⁷

On the other hand, Nazamul Hoque et al.²⁸ shows that developing entrepreneurship through *zakāt* for poverty reduction is a new approach to consider because instead of financing and resources, the cause of poverty is the lack of entrepreneurship. Another previous study by Nazamul Hoque et al.²⁹ investigated how the Gross Domestic Product of a Region (GDP) and the *zakāt* index can contribute to poverty reduction.

Accordingly, recent studies by Choiriyah et al.³⁰ investigated the significance of *Indeks Kesejahteraan* (Welfare Index) BAZNAS (IKB) as a measure of impactful *zakāt* towards poverty reduction at the provincial level in Indonesia. IKB is an instrument used by BAZNAS to identify how impactful *zakāt* distribution for the recipient of *zakat* (*mustahiq*) wellbeing is. The panel-data analysis in Choiriyah et al. (2020)'s study found that impactful *zakāt* is strongly linked to the reduction of poverty headcount ratio. The study found the role of *zakāt* contributing to improve human capital and quality of life of the poor and vulnerable. Such improvement can be seen in the provision of education, health facilities, and social services. In other words, *zakāt* has already played a big role in reducing the population living below the poverty line even though the IKB is still found not significant yet in improving *h* the quality of life of the needy at the provincial level in Indonesia.

²⁷ Arif Widodo, "The Role of Integrated Islamic Commercial and Social Finance in Reducing Income Inequality in Indonesia," *Journal of Islamic Monetary Economics and Finance* 5, no. 2 (2019): 263–86.

²⁸ Nazamul Hoque, Mohammad Aktaruzzaman Khan, and Kazi Deen Mohammad, "Poverty Alleviation by Zakah in a Transitional Economy: A Small Business Entrepreneurial Framework," *Journal of Global Entrepreneurship Research* 5, no. 1 (2015): 1–20.

²⁹ Nazamul Hoque, Abdullahil Mamun, and Abdullah Mohammad Ahshanul Mamun, "Dynamics and Traits of Entrepreneurship: An Islamic Approach," *World Journal of Entrepreneurship, Management and Sustainable Development*, 2014.

³⁰ Evi Aninatin, Ni'matul Choiriyah, Abdul Kafi, Irma Faikhotul Hikmah, "Zakat and Poverty Alleviation in Indonesia: A Panel Analysis at Provincial Level."

Method

To analyze the impact of Islamic philanthropy on poverty reduction as the socio-economic problems in the case of Indonesia both in the short and long run and as well as analyze the effectiveness of integrated Islamic commercial and social-economic or finance to address the poverty compared to unintegrated one, the study used annual data from the BAZNAS, Statistics Centre Agency of Indonesia (*Badan Pusat Statistik*, BPS), Financial Services Authority of Indonesia (*Otoritas Jasa Keuangan*, OJK), and the World Bank. The data set spans from the period 2002 to 2019.

One reliable measure of Islamic philanthropy is the total amount of *zakāt*, *infaq*, and *ṣadaqah* (ZIS) as Islamic philanthropy or charity collected by BAZNAS. It consists of individual *zakāt māl* (property alm), *zakāt fitr*³¹ (annual basic alm), *infaq* or *ṣadaqah*³², Corporate Social Responsibility (CSR), and other socio-religious funds. Another focus variable is poverty. The study measures the poverty using headcount ratio at national poverty lines (%).³³

In addition to this one core variable, the use of Islamic domestic credit or financing to the private sector such as *murābahah*,³⁴

³¹ It is another smaller charitable obligation which is mandatory for all Muslims, male or female, little or adult as long as he or she has the means to do so. Traditionally, it is paid at the end of the fasting in the Islamic holy month of Ramadan.

³² It is an Arabic word meaning spending or disbursement but also carrying the sense of doing so simply to please God without asking for any favor or hoping for any return.

³³ The poverty headcount ratio is measured based on national poverty lines. This may vary across rural and urban areas, across the different costs of living, or across differences in diets and consumption baskets. Poverty estimates at national poverty lines is computed from household survey data. National poverty lines reflect local perceptions of the level and composition of consumption or income needed to be non-poor. Almost all national poverty lines are inflation-adjusted and anchored to the cost of a food bundle - based on the prevailing national diet of the poor - that provides adequate nutrition for good health and normal activity, plus an allowance for non-food spending. Source: <https://www.indexmundi.com/facts/indicators/SL.POV.NAHC>.

³⁴It is originally a term of *fiqh* (Islamic jurisprudence) for a sales contract when the buyer and seller agree on the markup (profit) or "cost-plus" price for any successfully sold item(s).

muḍārabah,³⁵ *qard*,³⁶ *ijārah* (Islamic finance contracts)³⁷ working as a capital and investment scheme for Micro, Small, and Medium Enterprises (MSMEs) as a proxy of commercial finance also works. Financing to MSMEs provides more benefits to people in the area because one of its characteristics is that MSMEs tend to be labor-intensive rather than capital intensive. It expects the coefficient associated with financing MSMEs to be negative and significant. The Islamic domestic credit used in this study is not only from the Sharia Commercial Banks but is also extended to Sharia Business Units as this indicator measures the role of financial institutions in channeling funds to fund users in bank-based type.

Last but not least, the study also includes one control variable in its model. The control variable is a growth rate of annual percentage GDP per capita since it is highly correlated with poverty (see for instance by Clarke, Xu, and Fou³⁸). Another reason for using per capita GDP is because poverty relates to the person instead of aggregate, though a more accurate measure is when all funds allocated for public and potentially brings positive impact to the poor.³⁹

In order to examine the relationship between Islamic philanthropy and poverty, we propose following long-run estimation model that can be shown by equation 1:

$$POV = \alpha + \beta_1 IPT_t + \beta_2 ICF_t + \beta_3 (IPT * ICF)_t + \beta_4 GDP_t + \varepsilon_t \quad (1)$$

³⁵ It is a partnership or trust financing contract (similar to the Western equivalent of General and Limited Partnership) where a partner (*rabb-ul-māl* or “silent partner” or financier) gives money to another (*muḍārib* or “working partner”) for investing it in a commercial enterprise.

³⁶ It is the one without any collateral. However, some Islamic scholars deem it as a form of interest-free loan (fungible, marketable wealth) that is extended by a lender to a borrower based on benevolence (*ihsān*).

³⁷ It is a term of *fiqh* (Islamic jurisprudence) and product in Islamic banking and finance. In traditional *fiqh*, it means a contract for hiring persons or renting/leasing any services or the “usufruct” of a property, generally for a fixed period and price.

³⁸ G Clarke, L Xu, and H F Fou, “Financial and Income Inequality: Test of Alternatives Theories,” *World Bank Policy Research Paper*, WPS 2984 (2002).

³⁹ David Dollar and Aart Kraay, “Growth Is Good for the Poor,” *Journal of Economic Growth* 7, no. 3 (2002): 195–225.

Where *POV* represents a proxy for poverty, *IPT* represents Islamic philanthropy, *ICF* is Islamic Commercial Finance, and *GDP* represents the annual percentage growth rate of GDP per capita. All variables used in Equation (1) are in natural logarithm form for consistent and reliable results. The log-linear specification provides better results because the conversion of the series into logarithm reduces the sharpness in time series data.⁴⁰

Before proceeding with long-run estimation, we ascertain that our variables are cointegrated. To do so, we use ARDL bounds test approach for cointegration. The ARDL approach as developed by M. Hashem Pesaran, Yongcheol Shin, and Richard J Smith⁴¹ can be applied irrespectively of whether the variables are I(0) and/or I(1). Thus, we use the following specification for ARDL bounds test for cointegration with the estimation model which can be shown by Equation 2, 3, and 4:

$$\Delta POV_t = \alpha + \beta_1 POV_{t-1} + \beta_2 IPT_{t-1} + \beta_3 GDP_{t-1} + \beta_4 \Delta POV_{t-1} + \beta_5 \Delta IPT_{t-1} + \beta_6 \Delta GDP_{t-1} + \varepsilon_t \quad (2)$$

$$\Delta POV_t = \alpha + \beta_1 POV_{t-1} + \beta_2 ICF_{t-1} + \beta_3 GDP_{t-1} + \beta_4 \Delta POV_{t-1} + \beta_5 \Delta ICF_{t-1} + \beta_6 \Delta GDP_{t-1} + \varepsilon_t \quad (3)$$

$$\Delta POV_t = \alpha + \beta_1 POV_{t-1} + \beta_2 (IPT * ICF)_{t-1} + \beta_3 GDP_{t-1} + \beta_4 \Delta POV_{t-1} + \beta_5 \Delta (IPT * ICF)_{t-1} + \beta_6 \Delta GDP_{t-1} + \varepsilon_t \quad (4)$$

The study also uses the F-test statistics obtained from the bounds test in order to examine the long-run relationship between poverty or inequality and Islamic philanthropy. The F-test statistics examine the joint significance of the null hypothesis, that is $H_0: \beta_1 = \beta_2 = \beta_3 = 0$. The obtained F-test statistic is then compared against the upper and lower critical value bounds provided by Paresk Kumar Narayan.⁴² If the obtained F-test statistic exceeds the upper critical bound (UCB), then the series are cointegrated; if it is below the

⁴⁰ Muhammad Shahbaz and Faridul Islam, "Financial Development and Income Inequality in Pakistan: An Application of ARDL Approach," 2011.

⁴¹ M Hashem Pesaran, Yongcheol Shin, and Richard J Smith, "Bounds Testing Approaches to the Analysis of Level Relationships," *Journal of Applied Econometrics* 16, no. 3 (2001): 289-326.

⁴² Paresk Kumar Narayan, "The Saving and Investment Nexus for China: Evidence from Cointegration Tests," *Applied Economics* 37, no. 17 (2005): 1979-90.

lower critical bound (LCB), there is no cointegration. Likewise, if the calculated F-test statistic is between the UCB and the LCB, then a decision about cointegration is inconclusive.

For each application, there is a band covering all the possible classifications of the variables into I(0) and I(1). However, according to Paresh Kumar Narayan,⁴³ the existing critical values in Pesaran, Shin, and Smith⁴⁴ cannot be applied for small sample sizes as they are based on large sample sizes. Hence, Paresh Kumar Narayan⁴⁵ provides a set of critical values for small sample sizes, ranging from 30 to 80 observations. The critical values are 2.496 - 3.346, 2.962 - 3.910, and 4.068 - 5.250 at 90%, 95%, and 99%, respectively.

Discussion and Results

The term philanthropy comes from Greek, namely *philos* (loving) and *anthropos* (mankind). Literally, philanthropy is the conceptualization of the practices of voluntary giving, services, and association to help other people who are in need as an expression of the feeling of love. In general, philanthropy is defined as voluntary action for the public's good. There are two most common models of philanthropy, namely traditional philanthropy based on charity and social justice philanthropy.⁴⁶

Islam as a religion that teaches humans to love each other show affection and sympathy has a configuration of charity or philanthropy from its teachings.⁴⁷ Among the teachings are in the forms of orders to give *infaq*, *ṣadaqah*, *zakat*, and *waqf*, which can increase faith in God, foster a high sense of humanity, eliminate miserly greedy and materialistic human nature, foster peace of life, clean and develop possessions, and overcome various problems in

⁴³ Narayan.

⁴⁴ Pesaran, Shin, and Smith, "Bounds Testing Approaches to the Analysis of Level Relationships."

⁴⁵ Narayan, "The Saving and Investment Nexus for China: Evidence from Cointegration Tests."

⁴⁶ Ahmad Soleh Sakni, "Konsep Ekonomi Islam Dalam Mengentaskan Kesenjangan Sosial: Studi Atas Wacana Filantropi Islam Dalam Syari'at Wakaf," *Jurnal Ilmu Agama: Mengkaji Doktrin, Pemikiran, Dan Fenomena Agama* 14, No. 1 (2013): 151-66.

⁴⁷ Qurratul Uyun, "Zakat, Infaq, Shadaqah, Dan Wakaf Sebagai Konfigurasi Filantropi Islam," *Islamuna: Jurnal Studi Islam* 2, No.2 (2015): 218-34.

social life, economy, education, even environment.⁴⁸ This role is expected to overcome the economic shocks and facilitate the whole society, especially Muslims, to participate in contributing to recover these shocks.

In the basic concept of *zakāt* and poverty reduction, Islam regulates the practice of income redistribution. According to Magda Ismail A Mohsin and Magda Ismail,⁴⁹ *zakāt* aims to eradicate usury and eliminate hardship from Muslim society at micro and macro levels through its role in the state sector. Throughout the history of Islam, *zakāt* has been an important instrument of philanthropy in Muslim countries.

During the Caliphate of Umar bin Khattab and Umar bin Abdul Aziz, for instance, poverty was overcome through effective and efficient *zakāt* distribution. The population reached a standard of living above the poverty line so that the distribution of *zakāt* to the poor was not required because the population's basic needs had been met.⁵⁰ Thus, *zakāt* is an economic instrument in Islam that aims to build people's welfare as well as being an instrument of income equality.⁵¹ Eventually, the role of *zakāt* will be able to guide in creating a better and more prosperous life.⁵²

In Indonesia, *zakāt* institution is served separately with *Baitul Māl wa al-Tamwīl* (house of wealth and property) although both are under the category of Islamic social finance. The *Baitul Māl* is an Islamic microfinance institution (IMFI) registered as an Islamic cooperative in Indonesian financial regulation. Islamic social finance⁵³

⁴⁸ Abdurrohman Kasdi, "Filantropi Islam Untuk Pemberdayaan Ekonomi Umat (Model Pemberdayaan ZISWAF Di BMT Se-Kabupaten Demak.)"

⁴⁹ Magda Ismail A Mohsin and Magda Ismail, "Potential of Zakat in Eliminating Riba and Eradicating Poverty in Muslim Countries," *EJBM-Special Issue: Islamic Management and Business* 5, no. 11 (2013): 114–26.

⁵⁰ Mohsin and Ismail; Ahmed, "Zakah, Macroeconomic Policies, and Poverty Alleviation: Lessons from Simulations on Bangladesh."

⁵¹ Adel Sarea, "Zakat as a Benchmark to Evaluate Economic Growth: An Alternative Approach," *International Journal of Business and Social Science* 3, no. 18 (2012).

⁵² Evi Aninatin, Ni'matul Choiriyah, Abdul Kafi, Irma Faikhotul Hikmah, "Zakat and Poverty Alleviation in Indonesia: A Panel Analysis at Provincial Level."

⁵³ It is a category of financial services in the Islamic frame that aims to leverage private capital to address challenges in areas of social and environmental

is under the management of its *Baitul Māl* division while Islamic commercial finance is managed in the *Bait al-Tamwīl* division.⁵⁴ Islamic commercial finance is commonly offered by Islamic banks and Islamic rural banks as a part of the national banking industry.⁵⁵

The *Baitul Māl* division manages social funds including *zakāt*, *ṣadaqah* (voluntary charity), cash *waqf* (Islamic endowment), and other social funds. It acts as a cooperative IMFI for collecting deposits from its members for initial capital (principal and compulsory deposits) and saving deposits. When funding is in the short term, *Bait al-Tamwīl* can serve as a financial intermediary from external funding sources such as an Apex institution, Islamic banks, or foreign sources which provides liquidity for microfinance institutions.

The integration of Islamic commercial and social finance under one institution brings more benefits to stakeholders and may solve some most common problems of Islamic financial institutions like what the following figure shows.⁵⁶

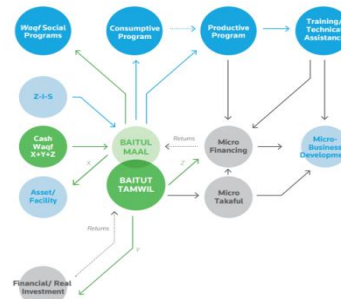


Figure 1. The integration of Islamic social and commercial finance in BMT. Source: Ascarya⁵⁷

need including *zakāt*, *ṣadaqah* (voluntary charity), cash *waqf* (Islamic endowment) and other social funds.

⁵⁴ Hans Dieter Seibel and Wahyu Dwi Agung, "Islamic Microfinance in Indonesia" (Working Paper, 2006); Mohammed Obaidullah, "Introduction to Islamic Microfinance," *IBF Net Limited*, 2008; Mohammed Obaidullah, "Role of Microfinance in Poverty Alleviation: Lessons from Experiences in Selected IDB Member Countries," *Islamic Development Bank*, 2008.

⁵⁵ Aqbar, "Reposisi Praktik Ekonomi Islam: Studi Kritis Praktik Ekonomi Islam Di Indonesia."

⁵⁶ Ascarya, "Baitul Māl Wat Tamwil (BMT): An Integrated Islamic Social and Commercial Financial Institution in Indonesia," 2018.

⁵⁷ Ascarya.

Figure 1 illustrates the integration of Islamic social and commercial finance in BMT. BMT, certified as *zakāt* personnel (*'āmil*), collects and manages *zakāt*, *infaq*, and *ṣadaqah* (ZIS) funds from members, employees, and the community. Afterward, it uses the funds accordingly for their designated purposes through various consumptive and productive programs including training, technical assistance, and *qard* (benevolent lending) financing to make the recipients (the poor and needy) as self-sufficient micro-entrepreneurs.

In another role as a certified administrator (*nazir*), BMT collects either directly or indirectly cash *waqf* and deposits funds. Direct cash *waqf* (X+Y in Figure 1) is used for non-profit generating assets (X) such as developing Islamic schools, hospitals, or mosque or generating profit assets (Y) such as investment in financial/real assets. Meanwhile, indirect cash *waqf* (Z) is used in commercial financing for micro and small enterprises or other purposes.

To mitigate the risks, *waqf* investments are insured by micro *takāful*.⁵⁸ Profits from *waqf* investments are partly used to fund social programs, while the other part is for reinvestment as cash *waqf*. The integration of Islamic social and commercial finance is helpful not only for *zakāt* and *waqf* recipients (*mawquf 'alayh*), but also for other recipients such as IMFIs with stronger financial standing. As a result, these IMFIs would be able to provide members with cheaper financing so that they would be more resilient to financial crises.

In the preliminary analysis, this study looks at some common descriptive statistics of all variables (namely POV, INE, IPT, ICF, and GDP) used in it. More specifically, we report mean, median, Standard Deviation (SD), Skewness, Kurtosis and Jarque-Bera test statistics for all variables in Panel A of Table 2. This table reports selective descriptive statistics of all variables in Panel A. All data are taken in natural logarithm form. Finally, * and ** denote statistical significance at 1% and 5% levels.

⁵⁸ It is a cooperative system of reimbursement or repayment in case of loss which is organized as an Islamic or sharia-compliant alternative for conventional one which is considered to contain *riba* (usury) and *garār* (excessive uncertainty).

Table 2. Descriptive Statistics and Unit Root Test

Panel A: Descriptive Statistics				
Variables:	IPT	ICF	GDP	POV
Mean	6.941875	11.10188	17.07000	2.370625
Std. Dev.	1.120180	1.265887	0.591642	0.625188
Skewness	-0.972708	-0.467040	-0.427199	-0.331669
Kurtosis	2.806585	1.961022	1.851242	1.657270
Jarque-Bera	2.548037	1.301321	1.366428	1.495293
Probability	0.279705	0.521701	0.504991	0.473480

Panel B: Unit Root Test				
Variables	ADF Test		PP Test	
	t-statistic	Prob.*	t-statistic	Prob.*
Level				
IPT	-0.496185	0.9723	0.021856	0.9927
ICF	2.166656	0.9885	3.811299	0.9996
GDP	-2.703652	0.2495	0.316067	0.9968
POV	-2.186604	0.4646	-2.269842	0.4247
1 st Difference				
IPT	-4.509023	0.0177**	-7.946463	0.0001*
ICF	-2.865233	0.0074	-2.865233	0.0074*
GDP	-3.745292	0.0490**	-3.745292	0.0490**
POV	-2.012713	0.5451	-5.167356	0.0049*

Based on Table 2 Panel A, the mean of IPT, ICF, GDP, POV, and INE for Indonesia over the period 2002-2019 are 6.94, 11.10, 17.07, 2.37, and 3.60. Moreover, according to Skewness and Kurtosis statistics, none of all variables follow a normal distribution. In addition, we also conduct the Jarque-Bera (JB) test which examines the null hypothesis of “normal distribution.” Specifically, we report JB test statistics and their corresponding p-values in the last two rows. For all variables, p-values are greater than 0.1 which implies that we do not reject the normal distribution of the null hypothesis. Therefore, we conclude from JB test results that IPT, ICF, GDP, POV, and INE follow a normal distribution.

Standard unit root tests, meanwhile, were conducted before running the estimation. The unit root test guides to ascertain whether

ARDL is applicable or not because it is only applicable to the analysis of variables integrated of order zero [I(0)] or order one [I(1)]. It is not applicable when higher order of integration such as I(2) variable is involved. Testing the stationarity of the variables is important to avoid spurious regression. Thus, the Augmented Dickey-Fuller (ADF) and Phillips-Perron (PP) test techniques were used to investigate the stationarity of the variables. The ADF and PP test results are showed in Panel B of Table 2. The null hypothesis of the unit root problem is rejected at the first difference.

This shows that all variables are found to be stationary at 1st difference implying that variables are integrated at I(1) and all variables used in this study are integrated of the same order, hence one may employ the ARDL approach to test for cointegration. Should we find one cointegration vector (i.e. the underlying equation), we will re-parameterize the ARDL model of the cointegration vector into ECM. This will provide us with the short-run dynamics (i.e. traditional ARDL) and long-run relationships of the variables of a single model. The re-parameterization is possible because the ARDL is a dynamic single model equation and of the same form as the ECM.

Finally, we discuss the results of the bounds cointegration test with the following approach: Each of the three variables from Equation (1) enters Equation (2) as a dependent variable in order to calculate F-statistics. This results in two cointegrating ARDL models that we report the results in Table 3.

Table 3. ARDL Bound Test for Cointegration

Model Specification	ARDL order	F-statistics
$F_{POV}(POV IPT, GDP)$	ARDL(2, 3, 3)	14.56213*
$F_{POV}(POV ICF, GDP)$	ARDL(4, 1, 3)	30.33842*
$F_{POV}(POV IPT * ICF, GDP)$	ARDL(4, 3, 3)	310.0146*

We note the model specification in the second column where the first variable refers to the dependent variable followed by explanatory variables. We also report lag orders of ARDL model specification the ARDL bounds tests F-statistics in columns 3 and 4 respectively. In order to examine the null hypothesis of no

cointegration, these F-statistics are compared against the critical values generated by Paresh Kumar Narayan.⁵⁹

Results of the study are not surprising. Significant evidence has found in cointegration in one out of two ARDL model specifications. More specifically, we find evidence of cointegration where we consider POV as a dependent variable and the other variables, namely IPT, ICF, IPT*ICF, and GDP, as explanatory variables in Equation (1). This finding supports our long-run empirical framework where POV is considered to be dependent variable.

Table 3 above reports ARDL bound test results for cointegration. The bounds cointegration test is examined by considering all variables as dependent one at a time within the above ARDL specification. The ARDL model specification is provided in column 2. We use the Akaike Information Criterion (AIC) to choose optimal lags of variables that enter the ARDL specification. We use the *F – test* statistics obtained from the bounds test. More specifically, the *F – test* statistics examine the joint significance of the coefficients on the one period lagged levels of the variables in the above ARDL model, that is $H_0: \beta_1 = \beta_2 = \beta_3 = 0$. Critical values are obtained from Narayan (2005). Finally, *, ** and *** denote statistical significance at 1%, 5% and 10% level.

This study discusses results obtained using the short and long-run estimation frameworks. *The first* is focusing on long-run elasticity by estimating Equation (1). Long-run estimation results in Panel A of

⁵⁹ Narayan, "The Saving and Investment Nexus for China: Evidence from Cointegration Tests."

Table 4.

Table 4. The short and Long-run Relationship

Panel A: Long-run elasticity						
Variables	Model 1		Model 2		Model 3	
	Coef.	Prob.	Coef.	Prob.	Coef.	Prob.
IPT	-0.406292	0.0084*				
ICF			-2.58638	0.0611***		
GDP	0.239696	0.0027*	1.926300	0.0583***	0.843816	0.0553***
IPT*ICF					-0.63111	0.0569***

Panel B: Short-run elasticity						
Variables	Model 1		Model 2		Model 3	
	Coef.	Prob.	Coef.	Prob.	Coef.	Prob.
D(POV(-1))	-0.38377	0.0233*	-0.53269	0.0108**	-0.2858	0.0697***
D(POV(-2))			0.104713	0.3786	0.22457	0.0633***
D(POV(-3))			-0.35081	0.054***	0.10128	0.1917
D(ICF)			-0.29058	0.094***		
D(IPT)	-0.09749	0.1443				
D(IPT (-1))	0.33851	0.0029*				
D(IPT (-2))	0.546597	0.00128				
D(GDP)	1.6058	0.0138**	-2.76486	0.0072*	-1.2909	0.0324**
D(GDP(-1))	1.158171	0.0528***	-1.10589	0.081***	-0.2068	0.2544
D(GDP(-2))	1.743992	0.0275**	-0.77621	0.079***	0.70580	0.0462**
D(IPT*ICF)					-0.2771	0.0451**
D(IPT*ICF (-1))					0.00919	0.6182
D(IPT*ICF (-2))					-0.1976	0.0454**
ECT(-1)*	-0.76603	0.0013*	-0.2855	0.0012*	-0.6447	0.0121**

Based on table 4, particularly in model 1, this study found that Islamic philanthropy has a statistically significant and positive effect on poverty reduction in the long run. In other words, we conclude

that Islamic philanthropy helps in reducing poverty in Indonesia. For instance, 1% increase in Islamic philanthropy collected from the richer people may lead to a poverty reduction in Indonesia by 0.41%. In contrast, the control variable such as growth does significantly affect poverty, withstanding the positive coefficient of the annual percentage growth rate of GDP per capita.

The significant impact of *zakāt* on tackling socio-economic problems such as poverty obtained in this study supports previous works by Irfan Syauqi Beik⁶⁰ and Qurroh Ayuniyaah et al.⁶¹ in Indonesia, as well as those of Johari, Ab Aziz, and Ali⁶² in Malaysia among *muallaf* (newly Moslem converts), even though their works were conducted using primary data in micro perspective. In other words, promoting in tackling poverty and promoting the welfare of the beneficiaries is qualitatively and quantitatively proven, even when the study is conducted from the macro perspective (growth).

Moreover, since *zakāt* collected from those in the middle and top income who have assets and income that exceed a certain threshold (2.5 percent) is defined as tax by some Islamic scholars as to the redefinition of *zakāt* in the contemporary era (see Latief⁶³), the result of this study is in agreement with the proposal of progressive taxation introduced by Thomas Piketty and Emmanuel Saez.⁶⁴ They argue that global capital taxation may certainly reduce the concentration of wealth among the few. Similarly, Anthony B Atkinson⁶⁵ brings forward the income and wage taxation.

⁶⁰ Beik, *Economic Role of Zakah in Reducing Poverty and Income Inequality: A Case Study in the Province of DKI Jakarta, Indonesia*.

⁶¹ Qurroh Ayuniyyah, Ataul Huq Pramanik, Norma Md Saad, and Muhammad Irwan Ariffin. "The Comparison between Consumption and Production-Based Zakat Distribution Programs for Poverty Alleviation and Income Inequality Reduction." *International Journal of Zakat* 2, no. 2 (2017): 11-28."

⁶² Johari, Ab Aziz, and Ali, "The Role of Zakat in Reducing Poverty and Income Inequality among New Convert (Muallaf) in Selangor, Malaysia."

⁶³ Hilman Latief, "Contesting Almsgiving in Post-New Order Indonesia," *American Journal of Islamic Social Sciences* 31, no. 1 (2014): 16-50.

⁶⁴ Thomas Piketty and Emmanuel Saez, "Optimal Labor Income Taxation," in *Handbook of Public Economics*, vol. 5 (Elsevier, 2013), 391-474.

⁶⁵ Anthony B Atkinson, "Can We Reduce Income Inequality in OECD Countries?," *Empirica* 42, no. 2 (2015): 211-23.

Model 2 then puts a great emphasis on the role of commercial finance for poverty reduction, as clear from the data that financing is able to cause a marked decline in poverty with its negative sign of the coefficient. Furthermore, when the commercial and social finance are integrated as in model 3, the finding demonstrates the same: an increase of 1 percentage point in the interaction between *zakāt*, Islamic financing and integrated Islamic finance such as BMTS causes a decrease of 0.843 percent in poverty. It indicates the superiority of the integrated model over the separated model.

As noted earlier by Ascarya,⁶⁶ the integrated finance model could benefit low-income families and those in need through consumptive and productive programs to stimulate consumption, distribute income more equitably, and at the same time through product distribution and encouragement of entrepreneurship. Hence, an Islamic bank that seems to focus on the business to gain more profit, through this model, can contribute substantially to combat income disparity. The stimulating idea of managing *zakāt* funds for socio-economic development is suggested also by Jennifer Bremer⁶⁷ in the case of Middle Eastern countries, notably Egypt, despite the debate among Muslim jurists (*‘ulamā*) regarding the possibility of *zakāt* to be distributed in such a scheme.⁶⁸

Through table 4, the study reported for long-run and short-run relationships in Panels A and B respectively. In the case of the short-run estimation model, we have included ECT which is simply the residual obtained from the long-run estimated model. In all estimations, we use Newey-West standard errors to control for autocorrelation in the residuals. Finally, *, **, and *** denote statistical significance at 1%, 5% and 10% levels respectively.

This study uses the ARDL lag order as stated in Table 3. Previously, this study has reported evidence of cointegration in the

⁶⁶ Ascarya, "Baitul Maal Wat Tamwil (Bmt): An Integrated Islamic Social And Commercial Financial Institution In Indonesia," 2017.

⁶⁷ Jennifer Bremer, "Zakat and Economic Justice, Emerging International Models and Their Relevance for Economic Growth," in *World Zakat Forum, WZF: New York*, 2014.

⁶⁸ Mek Wok Mahmud and Sayed Sikandar Shah, "The Use of Zakat Revenue in Islamic Financing: Jurisprudential Debate and Practical Feasibility," *Studies in Islam and the Middle East* 6, no. 1 (2009): 1-15.

model specification where POV is considered as the dependent variable with IPT, ICF, IPT*ICF, and GDP as explanatory variables. Therefore, now we have estimated the error correction model (ECM) within an ARDL framework. This study found that in the short run, there is evidence of the statistically significant relationship between Islamic philanthropy and poverty as socio-economic problems in Indonesia.

It also reveals that in the contemporaneous effect, one-lag of Islamic philanthropy, current of integrated of Islamic social and commercial finance and two-lag of integrated of Islamic social dan commercial finance have a statistically negative significant effect on poverty. On the other side, commercial finance has also a statistically negative significant effect on poverty.

In the pursuit of model consistency, it is necessary to undertake several sensitivity checks with different specifications though the model is still based on the baseline model. Table 4 below shows the results for long-run elasticities. We have used three estimators, namely FMOLS, DOLS, and CCR, in Cointegration Regression Estimation. Finally, * and ** denote statistical significance at 1% and 5% levels, respectively.

Table 5. Robustness Checks

Variables	FMOLS			DOLS			CCR		
	1 Coef. [Prob.]	2 Coef. [Prob.]	3 Coef. [Prob.]	1 Coef. [Prob.]	2 Coef. [Prob.]	3 Coef. [Prob.]	1 Coef. [Prob.]	2 Coef. [Prob.]	3 Coef. [Prob.]
IPT	-0.411 [0.023]**			-0.502 [0.015]**			-0.294 [0.038]**		
ICF		-0.819 [0.000]*			-0.732 [0.000]*			-0.657 [0.000]*	
GDP	0.299 [0.001]*	0.669 [0.000]*	0.568 [0.000]*	0.341 [0.000]*	0.615 [0.000]*	0.489 [0.000]*	0.242 [0.000]*	0.546 [0.000]*	0.440 [0.000]*
IPT*ICF			-0.403 [0.000]*			-0.327 [0.000]*			-0.307 [0.000]*

All specifications provided in Table 5 above are arranged systematically according to equation (2) which focuses solely on

Islamic philanthropy and mainly concerns the performance of Islamic financing and the integrated model with the interaction between social and commercial in equation (3). This confirms that the ARDL long-run elasticity coefficient is to be used in the formal analysis. Table 5 shows the estimation results as based on estimators include Fully-modified (FMOLS) and Dynamic OLS (DOLS) and Canonical Cointegration Regression (CCR) Models of the performance of Islamic philanthropy in addressing poverty in Indonesia respectively. The findings exhibit consistent coefficients as in the baseline model, indicating the role served by Islamic philanthropy in reducing poverty.

Conclusion

This study found that: (i) an increase in Islamic philanthropy will lead to a reduction in Indonesia's poverty number both in the short and long run; and (ii) when the Islamic commercial and social finance are integrated into a single model, poverty can be reduced more effectively. Therefore, it is highly crucial for several institutions encompassing regulatory authority, in this case, are Bank Indonesia and BAZNAS, to enact the regulation and pursue the collaborative endeavors. Encouragement for Islamic banks--which do not have *Baitul Māl* yet-- and any *zakāt* institution to establish *Baitul Māl* as mandated in Islamic Banking Act No. 21/2008 is also needed. Meanwhile, two interrelated limitations characterize this study. *First*, due to the unavailability of data, this study is constrained by a small sample period that restricts the analysis from using additional control variables. *Second*, future studies should consider alternative measures of poverty and Islamic philanthropy such as *waqf* whose data is still difficult to access. Given these limitations, this study should be treated as preliminary on which future studies may develop.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 302-326
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.4990>

The Common Goals of BAZNAS' Zakat and Sustainable Development Goals (SDGs) according to *Maqasid Al-Sharia* Perspective

Mazro'atus Sa'adah

Universitas Islam Negeri Sunan Ampel Surabaya
email: mazroatus.saadah@uinsby.ac.id

Uswatun Hasanah

Institut Agama Islam Negeri Madura
email: us_hasanah29@yahoo.com

Article history: Received: August 15, 2021, Accepted: December 18, 2021,
Published: December 31, 2021

Abstract:

This study aims to explain the common goals of zakat and Sustainable Development Goals (SDGs) from the perspective of maqasid al-Sharia. Zakat programs developed by the National Board of Amil Zakat (BAZNAS), especially in the economic, social and humanity, health, and education fields are in line with the SDGs programs launched by the United Nations, especially the programs number 1-4 namely no poverty, zero hunger, good health and well-being, and quality education. By using the maqasid al-Sharia approach, the SDGs programs that are included in the level of urgent needs (*daruriyyah*) and in accordance with the purpose of zakat, take precedence in its implementation such as the Mustahik Economic Empowerment Institute established by BAZNAS to improve the quality of life of *mustahik*.

Keywords:

Zakat; Maqasid al-Sharia; Sustainable Development Goals;
National Board of Amil Zakat

Author correspondence email: mazroatus.saadah@uinsby.ac.id
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Abstrak:

Penelitian ini bertujuan untuk menjelaskan tujuan umum zakat dan SDGs dari perspektif maqasid al-Sharia. Program-program Zakat yang dikembangkan oleh Badan Amil Zakat Nasional (BAZNAS) khususnya dalam bidang ekonomi, sosial kemanusiaan, kesehatan, dan pendidikan sejalan dengan program-program tujuan pembangunan berkelanjutan (SDGs) yang dicanangkan oleh PBB, khususnya program *no poverty, zero hunger, good health and weel-being, and quality education*. Dengan menggunakan pendekatan maqasid al-Sharia, maka program-program SDGs yang masuk dalam tingkat kebutuhan yang mendesak (*daruriyyah*) dan sesuai dengan tujuan zakat, diutamakan dalam pengimplementasiannya seperti Lembaga Pemberdayaan Ekonomi Mustahik yang didirikan BAZNAS dengan tujuan untuk meningkatkan kualitas hidup *mustahik*.

Kata Kunci:

Zakat; Maqasid al-Sharia; SDGs; BAZNAS

Introduction

Islam teaches a balance between relations to God and fellow humans as clear from the procedure of *zakat*. It is a form of religious and divinely obligation¹ as well socio-economic responsibility as it functions to help disadvantaged people.² *Zakat* is a type of generosity applied and found all through the Islamic world or countries. All Moslems who are qualified to pay must contribute at a 2.5 percent rate of their aggregated riches. Motivated by Moslem convictions, *zakat* is presently a worldwide marvel and not just in Moslem-dominant part nations.

As a religious obligation, provisions about zakat have been regulated in the Qur'an,³ one of them is mentioned in Q.S. al-Taubah (9): 60. Provisions of zakat in Q.S. al-Taubah (9): 60 concerning those

¹ "Undang-Undang Tentang Pengelolaan Zakat No. 23 Tahun 2011" (2011). In consideration point b, that point b mentioned that "menunaikan zakat merupakan kewajiban bagi umat Islam yang mampu sesuai dengan syariat Islam."

² Undang-Undang tentang Pengelolaan Zakat No. 23 Tahun 2011. In consideration point c mentioned that "zakat merupakan pranata keagamaan yang bertujuan untuk meningkatkan keadilan dan kesejahteraan masyarakat."

³ M. Abdullah and A.Q. Suhaib, "The Impact of Zakat on Social Life of Muslim Society," *Pakistan Journal of Islamic Research* 8 (2011): 85-91.

who are entitled to receive zakat (8 *asnaf*) needs to be practiced and applied to social, economic, empowerment, da'wah, and other programs. It is hoped that with zakat, a potential source of funds in the implementation of the zakat program can provide a framework for poverty alleviation.⁴

In Indonesia, zakat payments by *muzakki* (people who pay zakat) are still widely done directly to *mustahiq* (people who are entitled to receive zakat), and often in the form of goods rather than money. Even though if distributed to the Private Amil Zakat Institution and managed properly, the potential of zakat in Indonesia which is predominantly Moslem will be far more beneficial. Act No. 23 of 2011 concerning zakat management stated that the National Board of Zakat (BAZNAS) was appointed in the management of zakat nationally. Management of zakat by BAZNAS is managed by applying the principles of modern management. With institutionalized and integrated management, the effectiveness of zakat will be maximized for justice and public welfare.

The purpose of zakat management, in general, is to increase the effectiveness and efficiency in the management of zakat and to increase the use of zakat to improve community welfare and reduce poverty. Therefore, it must be reviewed or assessed whether the direction of zakat management has been in accordance with the objectives. BAZNAS as a government autonomous institution that is trusted to manage zakat has made innovations related to the ease of distribution of zakat, collection of zakat, and management of zakat so that zakat issued by muzakki is useful and efficient under the objectives of zakat provision (*maqasid al- Sharia*).

The distribution of zakat in Indonesia is circulated in several sectors, namely economy, education, da'wah, health, and social/humanity. Among these sectors, the social/humanity sector has the highest allocation at the national level in 2019, with 37% of the total zakat funds or Rp 2.3 trillion. The rest is 25.54% or Rp. 1.5 trillion is allocated for the da'wah sector, the education sector with an allocation of 19.3% or Rp. 1.2 trillion, the economic sector with an allocation of 13.5% or Rp. 841 billion, and the smallest proportion of

⁴ "Q.S. al-Ma'arij (70): 24-25" (n.d.). States that "dan di dalam harta-harta mereka ada hak bagi orang tidak mampu yang meminta-minta dan tidak meminta."

zakat distribution is 8.5% or Rp. 325 billion is allocated for the health sector.⁵

There are several studies about zakat including the research by Eko Suprayitno et al. about "Zakat and SDGs: Impact of Zakat on Human Development in the Five States of Malaysia" in 2017. This research intends to analyze the effect of zakat on human advancement programs in Malaysia utilizing the Autoregressive Distributed Lag (ARDL) bound test come nearer from 1980-2009. This research finds that zakat impacts human improvement in five nations in the short and long term.⁶ Then research by Mohamad Handi Khalifah et al. conducted a study entitled "Optimizing the BAZNAS Program on Sustainable Development Goals (SDGs): Analytic Network Process Approach (ANP)", in 2017. By using the Analytical Network Process (ANP) method, this study tried to find a comparison with 7 major BAZNAS programs on 17 Sustainable Development Goals (SDGs). The result of Analytical Network Process (ANP) measurements and statistics show some summary containing the Pillars of Environmental Development ($W=0.47783$), Partnerships for All Development Purposes ($W=0.00486$), and Zakat Community Development ($W=0.07367$).⁷ Saddam Rasanjani in his research entitled "Ending Poverty: Factors That Might Influence the Achievement of Sustainable Development Goals (SDGs) in Indonesia", examines poverty alleviation programs in Indonesia inside the structure of the worldwide advancement motivation, namely the Sustainable Development Goals (SDGs), which are centered around the first goal of SDGs (No Poverty). This investigation offers a basic audit of the first goal of SDGs in Indonesia. The results of this study indicate that the convergence of the agenda; collaborative partnership; established poverty alleviation programs, alternative funding such as Zakat;

⁵ BAZNAS, "Statistik Zakat Nasional 2019" (Jakarta: Sub Divisi Pelaporan Basnaz, 2019).

⁶ Eko Suprayitno, Mohamed Aslam, and Azhar Harun, "Zakat and SDGs: Impact Zakat on International Journal of Zakatuman Development in The Five States of Malaysia," *International Journal of Zakat* 2, no. 1 (2017): 61-69.

⁷ Mohamad Handi Khalifah, Mohammad Soleh Nurzaman, and Muhammad Cholil Nafis, "Optimization of BAZNAS Programs on Sustainable Development Goals (SDGs): Analytic Network Process Approach (ANP)," *International Journal of Zakat* 2, no. 1 (2017): 71-83.

database innovation; and learning from best practices, will be key factors that influence the achievement of SDGs.⁸ Another research was conducted by Ahmad in 2017, who analyzed the success of zakat in the SDGs program where this research was a descriptive study using a variety of existing literature that discussed the potential of zakat to answer the challenges and problems in achieving development goals. The results of the study explained that in terms of the *maqasid Sharia*, zakat has great potential to solve the main problems in development, namely poverty, education, and income disparities, economic growth, and hunger in the world.⁹

Starting from the criticism of Abdul Gaffar Ismail, that zakat does not need to be compared with the SDGs because zakat in Islam already has its purpose in *maqasid Sharia*,¹⁰ the authors think otherwise that there is the relevance of zakat with the SDGs from the perspective of *maqasid al-Sharia*. Therefore, this issue will be discussed in this paper. This study uses philanthropy as a theoretical framework. According to Webster, 'philanthropy' or 'philanthropos' is a craving to support the welfare of others by giving truly. Philanthropy is likewise portrayed as an office's movement or hierarchical association to advance something through blessing or reward.¹¹ The Qur'an introduces obligatory philanthropy, for example, zakat and circumcision for example waqf, infaq, sadaqah, awards, and blessings.

Philanthropy is a significant principle of Islam, since worry for the poor. In Islam, there is a word namely "alms". Alms is one of the five pillars that form the foundation of Islam. Islamic philanthropic requirements aimed at personal goods are given under the Islamic regulations regarding the provision of charity for general purposes. Philanthropy depends on the rule that everything on the earth has a place with Allah and humans are just guardians of such riches. Allah

⁸ Saddam Rasanjani, "Ending Poverty: Factors That Might Influence the Achievement of Sustainable Development Goals (SDGs) in Indonesia," *Journal of Public Administration and Governance* 8, no. 3 (2018): 114-28.

⁹ Ahmad Shaikh, "Role of Zakat in Sustainable Development Goals," *International Journal of Zakat* 2, no. 1 (2017).

¹⁰ Syuhelmaidi Syukur, "Zakat on SDGs or Maqasid Syariah?," March 16, 2017, <https://kumparan.com/syuhelmaidi-syukur/zakat-on-sdgs/full>.

¹¹ Meriam Webster, "Philanthropy," in *Oxford Dictionary*, 2018.

gives some wealth to certain individuals so they can express gratefulness and help other people in philanthropy.¹²

In Muslim society, Islamic philanthropy assumes a significant role in reinforcing the Muslim community. Philanthropic culture is required to improve the personal satisfaction of life and improve the budgetary of people and countries. Islamic emphasis on humanitarian practices can be seen with the presence of zakat, alms, and gifts. Philanthropy practices among Muslims can be the premise to satisfy human needs, reduce misery, and solve problems that can overcome human development in various aspects.¹³ This is where the purpose of zakat is contained (*maqasid al-Sharia*).

The term of *maqasid* alludes to a reason, objective, rule, intent, goal, end. *Maqasid* in Islamic law are the goals/purpose/reason/ends/principles behind the Islamic ruling.¹⁴ Auda, classified *Maqasid* of the Islamic law into some dimensions. There are (1) levels of need, which is the conventional arrangement; (2) extent of decisions intending to achieve purposes; (3) extent of individuals incorporated purposes; (4) level of all-inclusiveness of the reason.¹⁵

Conventional arrangement¹⁶ of *maqasid* partition them into three degrees of need, namely (1) the most numerous and most important needs (*daruriyyah*), that were viewed as basic issues for human life itself. If human needs are not met then it can cause a great risk of death. These necessities are additionally arranged into what preserves one's faith (*hifd al-din*), preserves souls (*hifd al-nafs*), preserves mind (*hifd al-'aql*), preserves offspring (*hifd al-nasl*), and

¹² Mohd Farhan Ahmad, et.al., "The National Model of Philanthropy Towards the Global Philanthropic Practices," in *Proceeding Book 6th Southeast Asia International Islamic Philanthropy Conference*, 2018, 167.

¹³ Erie Hariyanto et al., "Effectiveness of the Economic System to Zakat and Waqf for Empowerment of the Ummah in Indonesia," *International Journal of Advanced Science and Technology* 29, no. 06 (2020): 1910–16, <http://sersc.org/journals/index.php/IJAST/article/view/12895/6622>.

¹⁴ Jasser Auda, *Maqasid Al-Shari'ah: A Beginner's Guide* (London: The International Institute of Islamic Thought, 2008).

¹⁵ Auda, 4.

¹⁶ Traditional classification of *maqasid* was formulated by al-Ghazali in his book namely *al-Mustafa min 'Ilm al-Usul* and al-Shatibi in his book namely *al-Muwafaqat*.

preserves wealth (*hifd al-mal*); (2) important needs to be fulfilled but without their existence, a person's condition can still be maintained (*hajiyyah*); (3) needs that are to complete/luxury/beautifying purposes (*tahsiniyyah*).

Method

This research is a literature study, using the *usul fiqh* approach namely *maqasid al-Sharia* theory. *Maqasid al-Sharia* is a goal of the implementation of sharia (*Islamic law*) in everyday life. *Maqasid al-Sharia* is built on an assumption that the Islamic law that Allah has established through the Qur'an and Hadith, is built on the achievement of good, not only for individuals but also social.¹⁷ This research analyzes the SDGs points into three degrees of the need of *maqasid al-Sharia*, namely (1) The most numerous and most important needs (*daruriyyah*) that is, if human needs are not met, it can cause great risk or death. It contains preserves one's faith (*hifd al-din*), preserves souls (*hifd al-nafs*), preserves mind (*hifd al-'aql*), preserves offspring (*hifd al-nasl*), and preserves wealth (*hifd al-mal*); (2) important needs to be met but without the existence of a person's condition can still be maintained (*hajiyyah*); and (3) the need to complement/embellish (*tahsiniyyah*). This study also uses an empirical approach with structural functionalism theory.

Discussion and Result

Fund Collection and Distribution of Zakat in Indonesia

According to the act Number 23 the year 2011 concerning Management of Zakat, the definition of Management of Zakat is an activity of planning, implementing, and coordinating the collection, distribution, and utilization of zakat, infaq, sadaqah, dan other socio-religious funds. In consideration of the Law it is mentioned that "in order to increase the usefulness and results of use, zakat must be managed institutionally in accordance with Islamic sharia". Therefore, the National Board of Zakat (BAZNAS) is formed by the Government to manage zakat nationally. Zakat management by BAZNAS is managed by applying modern management principles. With

¹⁷ Muhammad Hashem Kamali, *Maqashid al-Syariah Made Simple* (London: The International Institute of Islamic Thought, t.t.)

institutionalized and integrated management, the effectiveness of zakat will be more maximal for justice and community welfare.

In the management of zakat carried out by BAZNAS, there are several zakat management organizations (Organisasi Pengelola Zakat/OPZ) both at the provincial level, city/district level, or related zakat management institutions like Private Amil Zakat Institution (Lembaga Amil Zakat/LAZ). In 2018 the zakat management organization in Indonesia amounted to 616. The number consisted of 548 BAZNAS (34 provincial BAZNAS and 514 BAZNAS districts/cities) and 68 LAZ (23 LAZ national, 12 LAZ provinces, and 33 LAZ districts/cities). Then, in 2019 the zakat management organization decreased in number amounted to 571. The number consisted of 490 BAZNAS (34 provincial BAZNAS and 456 BAZNAS districts/cities), and 81 LAZ consisting of 26 LAZ national, 18 LAZ provinces, and 37 LAZ districts/cities.¹⁸

Within 5 years (2015-2019)¹⁹, zakat fundraising in Indonesia conducted by OPZ both at BAZNAS and LAZ²⁰ increased from year to year. In 2015 funds collected almost 3.7 trillion, in 2016 collected 5 trillion, in 2017 collected 6.2 trillion, in 2018 collected 8.1 trillion, and in 2019 collected 10.2 trillion, as shown in table 1.

Funds that have been collected by BAZNAS and LAZ both in the form of zakat maal of individual, zakat maal of the institution, other zakat maals, infak/alms of individual, infak/alms/CSR/PKBL of institutions, zakat fitr, other socio-religious funds, and other funds, in every year have been distributed to 8 asnaf (fakir miskin, amil, muallaf, riqab, gharimin, fi sabilillah, ibnu sabil), and BAZNAS programs (economy, education, dakwah, health, and social and humanity).

Table 1. Funds Collection and Zakat Distribution in Indonesia From 2015-2019

¹⁸ BAZNAS, "Statistik Zakat Nasional 2018-2019" (Jakarta: Sub Divisi Pelaporan Baznas n.d.).

¹⁹ Data for 2020-2021 was not found on BAZNAS website, and when confirmed, the data in the last 2 years has not been published.

²⁰ OPZ is a zakat management organization. BAZNAS and LAZ are part of OPZ.

	Collection	Distribution	%	Baznas Programs	%
2015	3.650.369.012.964	2.249.160.791.526	62	2.085.471.980.888	93
2016	5.017.293.126.950	2.931.210.110.610	58	2.694.782.468.613	92
2017	6.224.371.269.471	4.860.155.324.445	78	4.341507.857.190	89
2018	8.117.597.683.267	6.800.139.133.196	84	5.490.441.370.915	81
2019	10.227.943.806.555	8.688.221.234.354	85	6.218.478.571.455	72

Taken from *Statistis Zakat Nasional 2015-2019*. <https://pid.BAZNAS.go.id/statistik/>

From table 1 it can be seen that zakat funds distributed to asnaf and BAZNAS programs are above 50% of the funds collected. The distribution of zakat is more used to BAZNAS programs in education, economy, da'wah, health, and social humanity. However, from the table, it appears that the distribution for BAZNAS programs every year has decreased.

SDGs and Zakat Goals Based on Maqasid al-Sharia

All the positive impacts of the implementation of zakat are very relevant to the efforts to achieve the contribution of sustainable development goals (SDGs). In the context of poverty alleviation, zakat in Indonesia has enormous potential. This can be understood because Indonesia has the largest Muslim population in the world, which is 85% of the total population in Indonesia or around 217 million inhabitants so that zakat funds can be collected optimally from Muslims.

The United Nations (UN) has initiated the Sustainability Development Goals (SDGs). SDGs are sustainable global development that has been agreed upon by 193 UN member states and is committed to achieving it. SDGs as a continuation of the MDGs (Millennium Development Goals/MDGs), prepared by considering various national realities, capacities, and development as well as respecting national policies and priorities. The SDGs jargon no left one behind (involving all parties without exception), is expected to be applied to all parties, both governments, private sector, to the community from all over the world community to build a more inclusive, sustainable, and resilient future. As a global agenda of sustainable development with a target of 15 years (2015-2030), SDGs

have 17 objectives that are complemented by 169 integrated and inseparable achievement targets.²¹

There are 17 points included in the Sustainable Development Goals (SDGs) as shown in fig. 1.



Fig. 1 SDGs

In Indonesia, given the enormous amount of zakat funding resources, policymakers see the potential for achieving the SDGs. Judging from the type of program carried out by zakat work, it inevitably has a clear slice of the SDGs achievement goals. Zakat's contribution to support SDGs is also supported by Law No. 23 of 2011 concerning the management of zakat, which states that zakat is a religious institution that aims to improve justice and welfare of the community. In addition, specifically, Article 3 of the same Act explains that the management of zakat aims: 1) Increasing the effectiveness and efficiency of services in managing zakat, 2) Increasing the benefits of zakat to realize public welfare and poverty reduction. For examples are poverty alleviation, and hunger, quality education, water, and sanitation. Therefore, as Chapra said that zakat plays a role in reducing the concentration of wealth, channeling funds

²¹ Divisi Riset dan Kajian BAZNAS, *Sebuah Kajian Zakat on SDGs: Peran Zakat Dalam Sustainable Development Goals Untuk Pencapaian Maqashid Syariah* (Jakarta: Tim Riset dan Pusat Kajian Strategi BAZNAS, 2017).

from the excess to the needy,²² then zakat can be said as one of the tools that play a role and contribute to the achievement of SDGs.

In my opinion, various empowerment programs carried out by BAZNAS and zakat institutions in Indonesia already exist in the SDGs framework, especially the problem of poverty. Until now, most of the zakat programs are aimed at poverty alleviation, because poverty is the biggest *asnaf* of zakat (the group that has the right to receive zakat) human resources, encouraging public health, and all other aspects of *mustahik* empowerment.

The goal of sustainable development (SDGs) proclaimed by the United Nations, in line with the principle of *maqasid al-Sharia*. According to research conducted by the BAZNAS team,²³ there is a relationship between SDGs, *Maqasid Sharia*, and the level of need as shown in table 2:

Table 2. Zakat on SDGs and *Maqasid al-Sharia*

No	SDGs	The Principle of <i>Maqasid al-Sharia</i>	The Level of Need
1	No Poverty	preserves wealth	Daruriyyah
2	Zero Hunger	preserves souls, preserves wealth	Daruriyyah
3	Good Health and Well-Being	preserves souls, preserves wealth	Daruriyyah
4	Quality Education	preserves mind	Daruriyyah
5	Gender Equality	preserves wealth, preserves mind, preserves souls, preserves offspring	Daruriyyah
6	Clean Water and Sanitation	preserves souls, preserves offspring	Daruriyyah
7	Affordable and Clean Energy	preserves offspring	Hajiyyah
8	Decent Work and Economic Growth	preserves wealth	Daruriyyah
9	Industry, Innovation, and Infrastructure	Preserves wealth	Hajiyyah
10	Reduced Inequalities	Preserves wealth	Daruriyyah
11	Sustainable Cities and Communities	preserves offspring, preserves souls, preserves wealth	Hajiyyah
12	Responsible Consumption and Production	preserves offspring, preserves souls	Hajiyyah
13	Climate Action	preserves offspring, preserves mind	Hajiyyah
14	Life Below Water	preserves offspring, preserves wealth, preserves mind	Hajiyyah
15	Life on Land Ecosystems	preserves offspring	Hajiyyah
16	Peace, Justice and Strong Institutions	preserves souls, preserves wealth,	Daruriyyah

²² M.U. Chapra, *Islam and the Economic Challenge* (Riyadh: The Islamic Foundation and the International Institute of Islamic Thought, 1992).

²³ BAZNAS, *Sebuah Kajian Zakat on SDGs: Peran Zakat Dalam Sustainable Development Goals Untuk Pencapaian Maqashid Syariah*, 27.

		preserves offspring	
17	Partnerships for the Goals	preserves wealth, preserves mind	Hajiyah

Taken from BAZNAS, *Sebuah Kajian Zakat on SDGs: Peran Zakat Dalam Sustainable Development Goals Untuk Pencapaian Maqashid Syariah*

From the relationship between SDGs, *maqasid al-Sharia*, and the level of need in table 2, it will be seen that the wealth aspect is very dominant in the SDGs, while the one's faith aspect is completely invisible in the SDGs. This is different from the *maqasid al-Sharia* which is more concerned with religion than wealth. Seeing this reality does not mean having to reject the SDGs program, but it needs to be synergized because development in Islam is not only centered on material factors such as education, health, and income, but development in Islam is more comprehensive because it places importance on religious responsibility as an integral part of human development.

Related to the relationship of zakat with *maqasid Sharia*, there are 5 focus categories of zakat fund distribution conducted by BAZNAS, namely (1) economy; (2) social and humanity; (3) health; (4) education; and (5) faith, each focus is in accordance with the *Maqasid al-Sharia* dimension ie successively preserves (1) one's faith; (2) soul; (3) wealth; (4) mind; and (5) offspring as shown in fig. 2.



Fig. 2. Five Focus Categories of Zakat by BAZNAS²⁴

The distribution of zakat funds for the 5 BAZNAS programs above, every year has increased. Among these sectors, the social/humanity sector has the highest allocation at the national level which can be seen from table 3.

²⁴ Taken from BAZNAS, 23.

Table 3. Distribution of Zakat Funds Based on the Field of BAZNAS Programs from 2015 to 2019

Fields of BAZNAS Programs	Zakat Distribution									
	2015	%	2016	%	2017	%	2018	%	2019	%
Economy	315,127,234,587	15	493,075,489,398	18,3	882,515,274,729	20	552,166,541,845	10,1	841,159,855,062	13,5
Education	432,068,068,508	21	842,980,341,134	31,3	941,865,099,137	22	1,438,512,064,225	26,2	1,201,622,002,187	19,3
Da'wah	303,553,206,946	14	418,454,281,897	15,5	979,468,717,694	22	1,288,101,574,916	23,5	1,553,693,450,575	25
Health	188,685,220,166	9	226,004,399,823	8,4	413,507,938,849	10	462,616,244,461	8,4	325,291,528,224	5,2
Social Humanity	846,038,250,681	41	714,267,956,361	26,5	1,124,150,826,782	26	1,749,044,945,469	31,8	2,296,711,735,408	37
Total	2,085,471,980,888	100	2,694,782,468,613	100	4,341,507,857,190	100	5,490,441,370,915	100	6,218,478,571,455	100

Taken from *Statistis Zakat Nasional 2015-2019*. <https://pid.BAZNAS.go.id/statistik/>

From table 3 it can be seen that funds for social humanity and education received the most allocation compared to other fields. For example in 2019, with 37% of the total zakat funds or Rp 2,3 trillion allocated for the social humanity program. The rest is 25% or Rp. 1.5 trillion is allocated for the da'wah sector, the education sector with an allocation of 19.3% or Rp. 1.2 trillion, the economic sector with an allocation of 13.5% or Rp. 841 billion, and the smallest proportion of zakat distribution is 5.2% or Rp. 325 billion is allocated for the health sector.²⁵

Thus, it can be argued that although SDGs only cover a portion of the substance of maqasid sharia outside of religion, SDGs can be used as a development platform through zakat developed by BAZNAS. It's just that not all SDGs programs can be funded using zakat funds. The reason is zakat has 8 *asnaf*, fixed and unchangeable. Zakat is more focused on the needs of *daruriyyah* even though there is no prohibition on channeling it for *hajiyyah* programs, and because zakat funds are also limited to distribution.

SDGs Paradigm in Zakat Management and Programs from BAZNAS that link to SDGs Program

The Sustainable Development Goals (SDGs) of which there are 17 goals as explained above can be applied with zakat through good management so that it can provide benefits and a more maximal role for the community. The following will be explained how the SDGs

²⁵ BAZNAS, "Statistik Zakat Nasional 2019."

paradigm in the management of zakat in Indonesia and some programs of BAZNAS that accordance with SDGs programs.²⁶

1) No Poverty

Poverty is a problem in many countries. Indonesia as a developing country faces a serious problem of poverty.²⁷ Until 2030 it is targeted that the amount of poverty will decrease too very small. Reducing or eliminating poverty is the main goal of sustainable development. Likewise with zakat, one of the aims and functions of zakat is to eradicate poverty. Poor and poor people are one of the *Asnaf* who is entitled to get zakat (Q.S. Al-Taubah (9): 60). Therefore, zakat has a strategic role in reducing and eliminating poverty. Poverty data is the main reference for zakat managers so that the main functions and objectives of zakat can be carried out appropriately and effectively through collaboration between community groups and the government.

To relize this poin, BAZNAS have programs in social field, as *Konter Layanan Mustahiq* (Mustahiq service counter), *Tanggap Bencana* (Disaster Response), and *layanan aktif* (Active Service) BAZNAS. Mustahik service counter program is a zakat distribution program to fulfill of *mustahik* basic needs in the form of living expenses, payment of school/lecture, compensation for orphans and the elderly, payment of a consumptive debt, and transportation costs in the form of compensation implemented with fast, precise, and accurate principles. The disaster response program is a zakat distribution program to fulfill of assistance programs to communities affected by disasters shortly after

²⁶ Muhammad Maksum dkk., *Fikih Zakat on SDGs* (Jakarta: PPSDM UIN JKT-BAZNAS, Mumtaza Press, 2018), 20-30.

²⁷ The Central Statistics Agency (BPS) reported in March 2017, the number of poor people (residents with per capita expenditure per month below the Poverty Line) in Indonesia reached 27.77 million people (10.64%). The number of poor people this year increased by 6.90 thousand people compared to the conditions in September 2016 which amounted to 27.76 million people (10.70%) the level of rural and urban poverty also experienced serious changes. During the period September 2016-March 2017, the number of poor people in urban areas rose by 188.19 thousand people (from 10.49 million people in September 2016 to 10.67 million people in March 2017). Meanwhile, in rural areas, it fell by 181.29 thousand people (from 17.28 million people in September 2016 to 17.10 million people in March 2017). "<http://www.bps.go.id>," n.d.

disasters in the form of evacuation program, emergency health service assistance, food, and beverage provision assistance, and assistance in providing *temporary occupancy*.²⁸ Disaster response programs, such as natural disasters, floods, earthquakes, tsunamis, and fires. For example, BAZNAS opens donations through the BAZNAS disaster and humanitarian wallet. These programs are also related to the second, third, and fourth goals of sustainable development (SDGs).²⁹

2) Zero Hunger

The second goal of the SDGs is to end hunger, achieve food security,³⁰ improve nutrition, and promote sustainable agriculture. This goal is related to poverty eradication because they are most vulnerable to hunger and malnutrition. Zakat is managed to eradicate poverty and all forms that can lead to poverty, including hunger and malnutrition experienced by poor people. The majority of ulama (*jumhur 'ulama*) stated that zakat is given to the poor who lack in food needs, shelter and others. Food security and nutrition improvement are also major concerns in zakat management. Although they are not the same in principle but related to poverty and hunger, they have similarities in the principle of protecting human life.

To realize this point, BAZNAS has programs in the economic field as Zakat Community Development that spread across 8 provinces and 19 districts/cities in 2015.³¹ BAZNAS also has a Mustahik Economic Empowerment Institute (*Lembaga Pemberdayaan Ekonomi Mustahik/LPEM*) in 2019 which has the task

²⁸ BAZNAS, "Statistik Zakat Nasional 2015" (Jakarta: Sub Divisi Pelaporan Baznas, 2015).

²⁹ BAZNAS, "Statistik Zakat Nasional 2019."

³⁰ Food security is a translation of the term food security. Food security is a condition of adequate food availability for everyone at any time and every individual has access to obtain it both physically and economically. Food security is a complex concept and is related to the food and nutrition system chain, from distribution, production, consumption, and nutritional status. The concept of food security can be applied to express food security at several levels: global, national, regional, and household level at the household and individual level. The issue of the relationship between zakat and food security can be read more in Maksun et al., *Fikih Zakat on SDGs*, 2018, 84-98.

³¹ BAZNAS, "Statistik Zakat Nasional 2015."

and function to improve the quality of life of the poor (*mustahik*) through sustainable agriculture, animal husbandry, fisheries, marine, plantation, and forestry-based on the values of zakat empowerment and becomes one of the basic elements to fulfill BAZNAS' vision. The programs developed by LPEM are food barns (*lumbung pangan*), *mustahik* entrepreneurs, and Zmart.

3) Good Health and Well-Being

All health issues in the SDGs are integrated to goal number 3, which is to ensure a healthy life and promote prosperity for all people of all ages. The biggest challenge faced by Indonesia in implementing this third objective is the reformulation of integrated development concepts and the placement of health as a series of development management processes that include inputs, processes, outputs, outcomes, and development impacts and understand together the substance of health development that must be carried out together in an era decentralization and democratization nowadays. Good Health and Well-Being are the main essences of zakat management. The poor who are entitled to get zakat is expected to live healthier and more prosperous. In this case, zakat is directed not only for consumption needs but for the maintenance and prevention of health and economic independence to achieve a more sustainable prosperous life.

To realize this poin, BAZNAS has a program in health field as Rumah Sehat (hospital) located in Pangkal Pinang, Jakarta, Yogyakarta, Sidoarjo, and Makassar. In 2015 the number of patients reached 207,318³², and in 2019 reached 312.749.³³

4) Quality Education

Guaranteed quality of education that is inclusive and equitable and increases opportunities for learning throughout the week for all. Zakat is also managed for the advancement of education that is inclusive and equitable for all parties. Zakat management needs to ensure that all community groups get quality educational opportunities. Therefore, zakat can be used as

³² BAZNAS.

³³ BAZNAS, "Statistik Zakat National 2019."

a scholarship for underprivileged students to have the same opportunities as others in taking a good education.

To realize this poin, BAZNAS has a programs in education field as *Sekolah Cendekia* (Cendekia School), and *Lembaga Beasiswa* (BAZNAS scholarship). In 2015, BAZNAS has a program namely preparing 1000 ulama (*kaderisasi 1000 ulama*), that spread across 5 provinces in Indonesia which are DKI Jakarta, West Java, Central Java, DI Yogyakarta, and East Java; and 1 foreign country namely Malaysia. This program provides master scholarships which consist of 46 students and doctoral scholarships which consist of 27 students. In 2015, BAZNAS also has a *scholarship* program "*one family one bachelor*", as many as 329 students spread across the islands of *Java, Sumatera, Sulawesi, Kalimantan, Maluku, Papua, Bali, and Nusa Tenggara*.³⁴ In 2018 BAZNAS in collaboration with SPS UIN Jakarta and MUI gave scholarships for 20 students from various regions. This program is related to the first, second, and fourth goals of sustainable development (SDGs).

5) Gender Equality

Gender equality will fortify a nation's capacity to develop, reduce poverty, and administer adequately. Thereby promoting gender equality is the principles outline of advancement procedures to enable network (people) to free themselves of neediness and improve their way of life. Zakat management is also carried out to ensure the empowerment of women. Women get more roles in zakat management. The distribution of zakat also needs to pay attention to women who are closer to children and become the most vulnerable groups as victims of conflict.

6) Clean Water and Sanitation

Ensuring the availability and management of clean water and sustainable sanitation for all. The World Bank in 2014 reminded that 780 million people do not have access to clean water and more than 2 billion inhabitants of the earth do not have access to sanitation. Zakat is also distributed to ensure the availability of clean water and proper sanitation. Both of these aspects are the basic needs of public health which are an important part of the goals and targets of zakat.

³⁴ BAZNAS, "Statistik Zakat Nasional 2015."

In the context of realizing SDGs in the sixth goal, there is an agreement BAZNAS (the National Board of Zakat), BWI (Indonesian Waqf Board), and MUI (Indonesian Ulema Council) in providing support for the Clean Water and Sanitation program.³⁵

7) Affordable and Clean Energy

This part guarantees access to energy that is affordable, reliable, sustainable, and modern for all. Inclusive economic development is the most effective way to reduce poverty and improve welfare. But most economic activities are impossible without the availability of modern energy that is sufficient, reliable, and has a competitive price. Energy and how to use it must be efficient, sustainable, and as much as possible renewable. In the past 20 years, several countries have made major strides in reducing energy intensity. If all the available energy efficiency technologies are implemented, energy consumption could be significantly reduced by around one-third. However, only a small part of this potential is realized.

The management of zakat is carried out through a clean, efficient, and affordable energy paradigm for all. Muslim communities who give and receive zakat start to think about how the sustainability of life and environmental health is done through the use of clean, affordable, efficient, and effective energy for all walks of life.

8) Decent Work and Economic Growth

Increase in inclusive and sustainable economic growth, productive and comprehensive employment opportunities, and decent work for all. Placing the creation of employment opportunities as the center of economic policymaking and development plans, will not only produce decent employment opportunities but also stronger, inclusive, and poverty reduction growth. Zakat is managed in a productive direction so that it can create decent jobs and contribute to economic growth. This step has been taken by amil zakat bodies in government institutions and community organizations in Indonesia, although it has only

³⁵ Muhammad Maksum dkk., *Fikih Zakat on SDGs* (Jakarta, 2018: PPSDM UIN JKT-BAZNAS, Mumtaza Press, 2018), 84-98.

reached several areas. It is necessary to participate in the wider community both from the obligatory zakat, zakat managers, and community groups who are entitled to receive zakat.

9) Industry, Innovation, and Infrastructure

Infrastructures continuous investment and innovation play important roles in monetary development and improvement. At present, the greater part of the total populace lives in the urban areas; therefore mass transportation and renewable energy are very important. Additionally, the advancement of new industry as well as information and communication technology become crucial; such that it will boost new job vacancies and the efficiency of energy. Zakat is managed productively to create industrial innovation and strengthen infrastructure. Zakat can be used to build educational and research institutions so that innovation can be developed. Thus, zakat contributes to the growth of the industry and the development of infrastructure through technology which is continuously studied in the body of education and research.

There is a program from BAZNAS that builds an innovative partnership with UNDP (*United Nations Development Programs*). In this case, BAZNAS gathers assets as per its hierarchical command. BAZNAS gives awards to UNDP to execute undertakings, and UNDP actualizes extends as per the United Nations Charter and UNDP worldwide strategies. UNDP as per its standards and approaches doesn't own expressions about strict law and will never segregate dependent on religion. Just acknowledge gives as per worldwide standards.

The primary significant coordinated effort among BAZNAS and UNDP was the establishment of small-scale hydropower plants (PLTMH) for the poor in Jambi worth 350,000 US dollars from BAZNAS and other funding by UNDP which they obtained from the Global Environment Fund (GEV).³⁶ This PLTMH project brings power to in excess of 4,500 individuals in four remote networks. This is a piece of a bigger sustainable power source task upheld by the Global Environment Facility.

³⁶ "BAZNAS Kampanye Zakat Inclusion Di PBB," n.d., <https://www.tajuktimur.com/headline>.

Future arranged tasks utilizing Zakat assets incorporate help for jobs in networks with new access to power and biodiversity security. Cooperation will also be conducted to empower poor fishermen through the Zakat Community Development (ZCD) program as implemented in Parigi Moutong, Central Sulawesi; Langkat, North Sumatra, and ZCD for isolated tribes and so on.³⁷ This program realized Economic Program of BAZNAS.

Through such projects, it is possible to see the potential of Zakat to support the productive capacity of people and networks and not simply immoderate or philanthropic exercises, for example, installment of emergency clinic bills and catastrophe alleviation. Notwithstanding completing the task subsidizing by Zakat, UNDP can likewise give significant specialized help to zakat associations and the government to improve the effectiveness of Zakat collection and administration, and link Zakat with the overall SDGs strategy.

10) Reduced Inequalities

The income gap is on the rise, 10% of the richest people control 40% of total global income. Conversely, 10% of the poorest people only get between 2 to 7% of total global income. In developing countries, this gap has increased by 11% if we calculate based on population growth. Zakat is an important tool in Islam to reduce economic inequality in society. Zakat allows assets not to be collected and concentrated in one group because some others are given to groups of people who are entitled to get zakat. Thus, the gap is reduced through zakat.

11) Sustainable Cities and Communities

More than half of the world's population now lives in urban areas. The rapid growth of cities in developing countries has led to an explosion in the number of megapolitan cities. Poverty is increasing and concentrated in cities, and the government must struggle to accommodate the population growth in this region. One way is to create safe cities, create safe and affordable housing, improve slums, and create green land. The elimination of poverty is the target of zakat. Zakat managers not only provide food, drink, and consumer needs that are the

³⁷ "BAZNAS Kampanye Zakat Inclusion Di PBB."

basic rights of the poor but they are directed to alleviate poverty, break their dependency chains and make them more independent. If communities and settlements are strong and advanced, urbanization will be avoided, so that cities and settlements that are formed and sustainable will provide a place for all groups of people equally and inclusive.

12) Responsible Consumption and Production

Efficient management of the use of shared natural resources, and the way we dispose of toxic waste and pollutants are important targets for achieving this goal. Zakat which is managed, received from the community, and given to people who are entitled, is directed not only for good consumption but also has a productive function and role. The distribution of zakat is also carried out effectively, efficiently and reflects the spirit and sustainable life.

13) Climate Action

There is not a single country in the world that has not experienced the direct dramatic impact of climate change. Greenhouse gas emissions continue to increase, and global warming is causing prolonged changes in the climate system. Natural disasters that occur also require large investments in disaster risk management costs. Zakat is given to handling climate change, including people who are experiencing the effects of climate change. Zakat is given to victims of earthquakes and tsunami and all disasters due to climate change.

14) Life Below Water

SDGs make a sustainable structure to direct and shield marine and beachfront biological systems from land-based contamination, just as to know about the impacts of sea fermentation. Strengthening the protection and economic utilization of marine assets through universal law will likewise help beat the difficulties confronting our seas. Zakat management reflects the awareness of ecosystem protection and overcoming air, land, and sea pollution. Givers and recipients of zakat get information and understanding that maintaining a sustainable environment is crucial for marine and terrestrial ecosystems that are environmentally friendly and guarantee sustainable life.

15) Life on Land Ecosystems

Human life depends on the land. SDGs are trying to protect and improve the use of terrestrial ecosystems in 2020. Zakat is also managed to ensure the survival and sustainability of terrestrial ecosystems. Awareness of the giver and recipient of zakat in maintaining the quality of life on land is through forest management, efficient use of water in agriculture, and maintaining a healthy environment. Zakat is directed towards a cleaner, healthier, and more sustainable human future.

16) Harmony, Justice, and Strong Institutions

Harmony, steadiness, human rights, and viable administration dependent on the standard of law are important pathways towards supportable improvement. The SDGs try to diminish all types of violence significantly and work with governments and networks to discover the long-term answers for strife and uncertainty. Zakat is very strategic for preventing and overcoming conflict, supporting peace efforts, creating a just and prosperous life. Zakat is managed to strengthen institutions that are continually encouraged to maintain more permanent peace. Zakat is given to conflict victims without knowing their religious or ethnic background. Zakat guarantees socio-economic justice, distributes wealth and wealth more evenly for all strata of society.

17) Associations for the Goals

SDGs must be acknowledged with a solid duty to worldwide association and participation. Humanitarian crises due to conflict and cataclysmic events keep on requesting help and money-related assets from more developed countries. Zakat management will not be effective without the cooperation and partnership of the government and social organizations. Collaboration between the zakat management body will create broader and more effective management power and influence for a better, fairer, and more sustainable life. Wider public participation in increasing the acquisition of zakat, and more targeted distribution through cooperation between institutions makes the performance and management of zakat management more efficient and provides multiple and long-term benefits.

Of the several BAZNAS programs related to the SDGs, what is in accordance with sharia economic law is an economic program that

aims to reduce poverty and improve the quality of life of the poor (*mustahik*), such as the Mustahik Economic Empowerment Institute Program (*Lembaga Pemberdayaan Ekonomi Mustahik/LPEM*). This program relates to point number 2 of SDGs (zero hungry).

Conclusion

In the *maqasid al-Sharia* perspective, zakat as Islamic philanthropy can be implemented on the SDGs program. Given that zakat has a significant source of philanthropic funding for the Indonesian people, several things can be done: *First*, Muslims who pay Zakat are urged to do as such through zakat collecting organization (BAZNAS or LAZ), and instead of giving it to *mustahik* directly. *Second*, it is necessary to bring issues to light about the connection between *zakat* and SDGs goals by conversing with zakat associations and inquiring about their existing knowledge about SDGs and how their commitment bolsters the objectives of feasible advancement. *Third*, it is needed to urge *zakat* associations to investigate utilizing the assets raised to help gainful advancement exercises that improve individuals' occupations. *Fourth*, the zakat collecting organization can band together with advancement offices as actualizing accomplices and as a wellspring of in general specialized help. Improvement accomplices can connect with zakat gatherers and benefactors as new and elective wellsprings of financing and associations to arrive at the most destitute networks. *Fifth*, the Government can coordinate zakat into their SDGs financing plans, and benefactor offices can search for zakat specialists as new accomplices who see together. *Sixth*, of the several BAZNAS programs related to the SDGs, what is in accordance with sharia economic law is an economic program that aims to reduce poverty and improve the quality of life of the poor (*mustahik*), such as the Mustahik Economic Empowerment Institute Program (*Lembaga Pemberdayaan Ekonomi Mustahik/LPEM*). This program needs special attention and improvement.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 327-361
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5021>

Terrorism Eradication in ASEAN Countries: Human Rights Perspective

Satria Unggul Wicaksana Prakasa

Faculty of Law, University of Muhammadiyah Surabaya, Indonesia
email: satria@fh.um-surabaya.ac.id

Sholahuddin Al-Fatih

Faculty of Law, University of Muhammadiyah Malang, Indonesia
email: sholahuddin.alfath@gmail.com

Abdurrahman Raden Aji Haqqi

*Faculty of Sharia and Law, Universitas Islam Sultan Sharif Ali (UNISSA),
Brunei Darussalam*
email: abdurrahman.haqqi@unissa.edu.bn

Article history: Received: August 24, 2021, Accepted: December 23, 2021,
Published: December 31, 2021

Abstract:

This research aims to discuss ASEAN counter-terrorism policy and its impact on human rights protection. The terrorism act of Abu Sayyaf in the Philippines, the spread of terrorism in Indonesia by JAT and JAD, and the rebellion movement in Pattani-Thailand are the most heard of terrorism cases in Southeast Asian countries. The research focused on the regulatory through comparative approaches. The result found that ASEAN has an agreement known as ASEAN Convention on Counter-Terrorism (ACCT) for combating terrorism. ACCT implementation in national legal regulations of ASEAN members in the midst of the spread of terrorism plays a crucial role in combating terrorism and its impact on human rights protection. However, the effort of eradicating terrorism in Southeast Asian countries is not in line with the principles of peace and regional integrity. The practice of authoritarianism and militarism has instead become most prominent as a result

Author correspondence email: satria@fh.um-surabaya.ac.id

Available online at: <http://ejournal.iainmadura.ac.id/index.php/alihkam/>

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of perpetuating militarism-based legal regulations in resolving terrorism. Efforts for combating terrorism in Southeast Asia, therefore, leave a serious problem regarding the protection of human rights, the issue of impunity, attacks on civil society, and the involvement of the military which threatens territorial integrity. Those are at cross purposes with ACCT policies as well as national sovereignty, integrity, and security of ASEAN members.

Keywords:

ASEAN; Counter-Terrorism; Human Rights; Southeast Asia

Abstrak:

Penelitian ini bertujuan membahas kebijakan anti-terorisme ASEAN dan dampaknya terhadap perlindungan hak asasi manusia. Aksi terorisme Abu Sayyaf di Filipina, penyebaran terorisme di Indonesia oleh JAT dan JAD, serta pemberontakan di Pattani-Thailand adalah kasus-kasus terorisme terpopuler yang terjadi di Asia Tenggara. Penelitian ini fokus pada peraturan perundang-undangan dengan pendekatan komparatif. Hasilnya menunjukkan bahwa ASEAN memiliki kesepakatan yang disebut Konvensi ASEAN tentang Kontra-Terrorisme (ACCT) untuk memerangi terorisme. Penerapan ACCT dalam peraturan hukum nasional negara anggota ASEAN di tengah maraknya aksi terorisme sangat penting dalam upaya pemberantasan terorisme dan dampaknya terhadap perlindungan hak asasi manusia di ASEAN. Akan tetapi dalam praktiknya, pemberantasan terorisme di ASEAN masih belum sejalan dengan prinsip perdamaian dan keutuhan kawasan. Praktik otoritarianisme dan militerisme justru menjadi praktik paling menonjol yang dilakukan oleh negara-negara di ASEAN seiring dengan langgengnya regulasi hukum berbasis praktik militerisme dalam menyelesaikan kejahatan terorisme. Pemberantasan terorisme di Asia Tenggara menyisakan masalah serius terkait perlindungan hak asasi manusia, isu impunitas, serangan terhadap masyarakat sipil, dan keterlibatan militer yang mengancam integritas teritorial. Isu-isu tersebut bertentangan dengan Kebijakan ACCT serta kedaulatan, integritas nasional, dan keamanan anggota ASEAN.

Kata Kunci:

ASEAN; Pemberantasan Terorisme; Hak Asasi Manusia; Asia Tenggara

Introduction

As a dynamic region, Southeast Asia faces various political and security issues. The area is particularly facing a significant problem related to trans-border terrorist crimes. Since 2016, triggered by the operation of the Islamic States of Iraq and Syria (ISIS) network, regional security has worsened. The Abu Sayyaf network in the Philippines, the Pattani terrorism network in Southern Thailand, and the ISIS network through *Jama'ah Ansorul Daulah* (JAD) and *Jama'ah Ansorul Tauhid* (JAT) in Indonesia indicate a more critical spread of terrorism network and pose a threat at the regional level.¹

Additionally, the spread of the ISIS network across several regions in Southeast Asia has departed from various motives and backgrounds ranging from causing threats and national riots to instability. The group furthermore attempts to separate themselves from their native countries. For example, in the Philippines, the Moro Islamic Liberation Front (MILF) and the Abu Sayyaf terrorist group want to create an Islamic state separated from the Philippines in the southern province of Mindanao. It has become an insurgent group and has carried out numerous terrorism activities. Since the 1990s, the group had launched several attacks, including the significant attacks in February 2005² and new attacks emerging in 2016 and 2017.

The terrorism movement in Southern Thailand (Narathiwat, Pattani, and Yala Provinces), meanwhile, took place in 2003. It has overgrown and turned into a massive rebellion. Additionally, the terrorist groups namely PULO (Pattani United Liberation Organization) and Bersatu (*Barisan Kemerdekaan Pattani/United Front for the Independence of Pattani*) with direct links with Al-Qaeda key

¹ Marguerite Borelli, "ASEAN Counter - Terrorism Weaknesses," *International Centre for Political Violence and Terrorism Research* 9, no. 9 (2017): 14-20, <https://www.jstor.org/stable/pdf/26351552.pdf?refreqid=excelsior%3A4b7501f4cc5772d930ea229e7b1c942d>. 15.

² Jonathan T. Chow, "ASEAN Counterterrorism Cooperation Since 9/11," *Asian Survey* 45, no. 2 (2005), <https://doi.org/https://doi.org/10.1525/as.2005.45.2.302>. 303

persons such as Omar al-Farouk and Commander Ali Gufron³ had performed various terrorism acts and thus posing a big threat to regional stability.

Meantime, the terrorism movement in Indonesia also needs to be taken seriously as an alarming trend threatening regional stability. Bali bombing 1 and 2, bombings in Australian Embassy, the Ritz Carlton, Poso, and the bombing recently happening in Surabaya and Sidoarjo last 2018 are some cases worrying the country. Most recently, the repatriation of ISIS Foreign Terrorism Fighters (FTF) from Indonesian citizens sparks marked pros and cons. About 6 Indonesians who joined FTF in Syria, such as Al-Roj, Al-Hol, and Ainisa camps expected to return to Indonesia. The Indonesian government's official statement based on a special Cabinet meeting (11/2/2020) stated that they did not plan to repatriate the FTF to Indonesia.⁴

This stems response of ASEAN (Association of Southeast Asian Nations) as a regional organization in Southeast Asia that focuses on cooperation among member countries to create regional security and stability. For instance, one of ASEAN's commitments is stated in the ASEAN Political and Security Community (APSC) and set forth in the Charter of ASEAN as the constitutive charter of Southeast Asian countries. As a concrete averment of the ASEAN cooperation, ASEAN members regularly gather on the ASEAN Regional Forum (ARF) agenda, a regional meeting to discuss regional issues, including terrorism.⁵

Moreover, as a derivative of the ASEAN Charter and in the context of realizing the APSC, maintaining peace, security, and regional stability as well as realizing cooperative action or engagement among countries, ASEAN member countries agreed to form the ASEAN Convention on Counter-Terrorism (ACCT). ACCT was established in Cebu, Philippines, on January 13, 2007. This legal basis is evidence for the ASEAN community's agreement on the status

³ Kavi Chongkittavorn, "Thailand: International Terrorism and the Muslim South," *Southeast Asian Affairs*, 2004, 267-75.

⁴ CNN Indonesia, "Pemerintah Putuskan Tak Akan Pulangkan 689 WNI Eks ISIS. Retrieved from CNN Indonesia," CNN Indonesia, 2020.

⁵ Juergen Haacke and Noel M. Morada, *Cooperative Security in the Asia-Pacific: The ASEAN Regional Forum* (New York: Routledge, 2010). 25

of terrorism as an extraordinary crime. Simultaneously, a tremendous potential threat to regional sovereignty and security was getting more prominent due to terrorism crimes.⁶

On the other hand, there are several challenges to deal with in order to create regional political and security integration, particularly concerning with prevention of increasing intensity of terrorism. The challenges mainly come from the political stance of each member country who potentially do one of the following:⁷

- a. Refraining from criticizing any fellow countries related to various domestic problems policies, including those related to human rights violations;
- b. Criticizing any actions of fellow countries as a part of the intervention.
- c. Refusing recognition and sanction while supporting neighboring rebel groups.
- d. Providing political support and assistance for campaigns against national sovereignty

Therefore, ASEAN member countries' efforts should be made as an international political stance to overcome terrorism considering that so far, they have been limited and ineffective in countering terrorism or maintaining regional security. ASEAN member countries need thoughtful and effective steps to tackle terrorism and to protect human rights for their community.⁸

This research has a significant scientific contribution to upholding human rights through efforts in combating terrorism in Southeast Asia. More specifically, this research focuses on how terrorism eradication is supposed to follow legal and regulatory

⁶ A. Masuhara, *The SAGE Handbook of Asian Foreign Policy*, ed. Takeshi Inoguchi (California: SAGE Publications, 2020), <https://doi.org/10.4135/9781526436078.n54.113>

⁷ L Jones, *ASEAN, Sovereignty, and Intervention in Southeast Asia* (London: Palgrave Macmillan, 2011), [https://books.google.co.id/books?hl=id&lr=&id=DbKIGm7x64kC&oi=fnd&pg=PP1&dq=Jones,+L.+\(2012\).+ASEAN,+Sovereignty,+and+Intervention+in+Southeast+Asia.+London:+Palgrave+MacMillan&ots=Cr4M8e9lp-&sig=kCdXruKIq4-FA8q4qKPLFPPy86A&redir_esc=y#v=onepage&q=Jones%252.45](https://books.google.co.id/books?hl=id&lr=&id=DbKIGm7x64kC&oi=fnd&pg=PP1&dq=Jones,+L.+(2012).+ASEAN,+Sovereignty,+and+Intervention+in+Southeast+Asia.+London:+Palgrave+MacMillan&ots=Cr4M8e9lp-&sig=kCdXruKIq4-FA8q4qKPLFPPy86A&redir_esc=y#v=onepage&q=Jones%252.45)

⁸ Andrew Chau, "Security Community and Southeast Asia: Australia, the U.S., and ASEAN's Counter-Terror Strategy," *Asian Survey* 48, no. 4 (2008): 626-649, <https://doi.org/10.1525/as.2008.48.4.626>. 630

standards as well as the appreciation of human rights.⁹ It will furthermore help the scientific development of international humanitarian law, human rights law, and law on criminal acts of terrorism. Conceptually, the aim is to draw a comprehensive picture of how to overcome terrorism crimes in Southeast Asia through ASEAN's power as a regional organization and mutually beneficial cooperation for its member countries.

Method

The research focused on regulatory through a comparative approach. This is mainly because several countries in Southeast Asia have implemented counter-terrorism policies to fight against terrorism. Meanwhile, the method used to discuss terrorism eradication needs to analyze the operation of terrorist groups using several methods, including analysis of existing information.¹⁰

Electronic data were comprehensively collected to find out how dangerous the ideological doctrine of the terrorist network is. The data encompasses strategy formulation and terrorist attacks history records, including the form of bomb attacks, cyber attacks, and other armed attacks. With the nature of this research, its topic on terrorism deals with an approach to literature.¹¹

Discussion and Result

Terrorist Groups and Their Liability for the Law

The suppression of criminal acts of terrorism has always been targeting terrorist groups. A terrorist group is defined as a group of individuals with an awareness of their ideology and willingness to be trained, to budge (as FTF), and to act as combatants in the committed acts of terrorism. The consequences of individuals who are considered a part of a terrorist group network involve the prohibition of going

⁹ Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, ed. Ahsan Yunus (Yogyakarta: Mirra Buana Media, 2020). 95

¹⁰ A. Basu, "Social Network Analysis: A Methodology for Studying Terrorism," in *Intelligent Systems Reference Library*, vol. 65 (Basel: Springer Nature, 2014), 215–42.

¹¹ A. P. Schmid, "The Literature on Terrorism," in *The Routledge Handbook of Terrorism Research* (New York: Routledge, 2011), 460–62.

abroad, temporary confiscation of assets, and being included in red immigration records.¹²

The latest development in non-international armed conflict has responded to the times. It is the pressure from the international community to immediately enact counter-terrorism policies globally. This pattern is the same as the UN resolutions made after the 9/11 WTC bombing that staggered the international community. Allegedly, Osama bin Laden, Al-Qaeda, and Taliban networks who are expanding and developing rapidly in Iraq, Afghanistan, and Pakistan, were the perpetrators of the incident. Similarly, Israeli attacks on opposition factions in Palestine are often categorized as Hamas' terrorists, the same way with the terrorist group in Lebanon, Hezbollah. Until recently, terrorism networks based in Iraq and Syria, which today are the foremost executants, continue to grow. Islamic States of Iraq and Syria (ISIS), meanwhile, have become non-state actors who have either conflict with their native country or commit terrorist attacks in other countries.¹³ Therefore, the presence of FTF has become a distinctive and substantial issue globally.

The interpretation of the war on terror by the United States is likely a landmark decision for the war on terrorism, where the extra-territorial principle was carried out to find the perpetrators of 9/11. The US invasion of Afghanistan and Iraq has killed approximately 700,000 innocent civilians and destroyed infrastructure such as civil

¹² K. Roach, *Comparative Counter-Terrorism Law* (New York: Cambridge University Press, 2015). 78

¹³ Derek Jins and Jackson N. Maogoto, *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies: International and Domestic Aspects*, ed. Solon Solomon (Springer, 2014), [https://books.google.co.id/books?hl=id&lr=&id=8fosBAAAQBAJ&oi=fnd&pg=PP5&dq=Derek+Jins,+e.+\(2008\).+Applying+International+Humanitarian+Law+in+Judicial+and+Quasi-Judicial+Bodies%3B+International+and+domestic+aspect.+London:+Springer.&ots=2GY9Zlh3hK&sig=rGP6](https://books.google.co.id/books?hl=id&lr=&id=8fosBAAAQBAJ&oi=fnd&pg=PP5&dq=Derek+Jins,+e.+(2008).+Applying+International+Humanitarian+Law+in+Judicial+and+Quasi-Judicial+Bodies%3B+International+and+domestic+aspect.+London:+Springer.&ots=2GY9Zlh3hK&sig=rGP6). 234

and historical buildings. The invasion causes a bad precedent for international humanitarian law.¹⁴

Therefore, there needs to be a mechanism for recognizing and accounting for terrorism from parties involved in a non-international armed conflict based on international humanitarian law mechanisms. A more comprehensive mechanism and approach in eradicating terrorism need to be made upon human values. With that realization, innocent civilians will no longer be the victims of invasion and war. International security is the mandate of the international legal mechanisms under the United Nations resolutions.¹⁵

The United Nations, through the General Assembly and Security Council, has drafted international legal regulations derived from mechanisms intended to tackle terrorism. Moreover, the UN also promotes the protection of human rights while recognizing terrorism as an international crime followed by principles of protection for refugees who are the victims of terrorism in the UN General Assembly resolution 60/1, agreed on September 20, 2005.¹⁶ Also, Global Counter-Terrorism Strategy is ratified on September 8, 2006.¹⁷

Counter-terrorism strategy in the pillars compiled by the United Nations related to terrorism eradication encompasses: (Pillar I) - the counter of terrorism that spreads throughout the world. (Pillar II) - the prevention and eradication of terrorism crimes, (Pillar III) -

¹⁴ Roberta Arnold and Noelle Quenivet, *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* (Leiden and Boston: Martinus Nijhoff Publisher, 2008). 88

¹⁵ Ana María Salinas de Frías, Katja Samuel, and Nigel White, *Counter-Terrorism: International Law and Practice* (Oxford: Oxford University Press, 2012), [https://books.google.co.id/books?hl=id&lr=&id=mhC7TNRtGmcC&oi=fnd&pg=PP1&dq=Nigel+D.+White,+e.+\(2012\).+Counter-Terrorism:+International+Law+and+Practice.+Oxford:+Oxford+University+Press.&ots=DUQGBEL00K&sig=Oh7MYPm239TK9nn4b1CQ0UpSFRY&redir_esc=y#v=onepage.43](https://books.google.co.id/books?hl=id&lr=&id=mhC7TNRtGmcC&oi=fnd&pg=PP1&dq=Nigel+D.+White,+e.+(2012).+Counter-Terrorism:+International+Law+and+Practice.+Oxford:+Oxford+University+Press.&ots=DUQGBEL00K&sig=Oh7MYPm239TK9nn4b1CQ0UpSFRY&redir_esc=y#v=onepage.43)

¹⁶ United Nations, "UN Doc A/RES/60/1" (2005).

¹⁷ United Nations, "UNGA Res 60/288" (2006).

constructing the state's capacity in strengthening the role of combating terrorism under the UN mechanism; (Pillar IV) - the guarantee of protection of human rights and rules of law.¹⁸ In this case, the method of combating global terrorism must be carried out in line with international humanitarian law's objectives. The tactical attacks aimed to take down terrorism must uphold human rights values, respect legal principles, and protect civil society both at the regional and global levels so that terrorism can be handled properly and thoroughly.

ASEAN's Role to Conduct Counter-Terrorism Policy

As a response to terrorist actions in the ASEAN region, the ACCT was signed in 2007 then ratified by 6 ASEAN member countries in 2011. Only in 2013, all ASEAN member countries finally ratified the ACCT.¹⁹ As a regional legal instrument in combating terrorism, ACCT has the scope and recognition of terrorism types that are growing globally. In Article II, ACCT states that the types of recognized terrorism crimes are: (a) Crimes of terrorism and their relation to aircraft hijacking; (b). Terrorism and attacks on foreign diplomats; (c). Terrorism and prisoner protection; (d). Terrorism and the use of treacherous nuclear weapons; (e). Safety protocols on civil aviation; (f). Terrorism crimes that disrupt international shipping; (g). Terrorism crimes and the emphasis on bombers; (h). Terrorism crime financing.

However, a specific issue makes it difficult for the ACCT to integrate into the actions against terrorism in the region, namely points substantiated in Article III-IV of the ACCT. It explains that

¹⁸ María Jiménez Ramos, "The Impact of the Narrative of Victimization: An Experiment with University Students in Spain," *Behavioral Sciences of Terrorism and Political Aggression* 0, no. 0 (2020): 1-23, <https://doi.org/10.1080/19434472.2020.1856168>. 20

¹⁹ Borelli, "ASEAN Counter - Terrorism Weaknesses." 3

fellow countries are obliged to respect other country's sovereignty. Consequently, the exclusivity of law enforcement related to the prosecution of terrorism crimes has hampered ASEAN's steps in the eradication process. In Article V, furthermore, ACCT only focuses on preventing terrorism crimes as described in Article II ACCT.

Article V of the ACCT highlights how member countries strengthen global or cross-border cooperation considering a chance of terrorism activities in the point-like those committed by the Abu Sayyaf group. Through the series of terrorism acts, the group moved to the Sulu border location/Mindanao. Along with it, Sulawesi became a very strategic area for transit points, war logistics and weapons administration, and a base for the attack objects. Another significant attack was also committed by Abu Sayyaf group in mid-September 2013 and about 30,000 civilian prisoners were captured. This is not only a trouble for the Philippines, but also a regional problem since some fishermen from other countries also became hostages.²⁰ Those obvious matters do not only, therefore, require cooperative action, but also an establishment and placement of armed alliance.

The paradox of maintaining state exclusivity in dealing with terrorism on the pretext of sovereignty in Southeast Asia has presented an obstacle. It has made regional terrorism activities intensified. In addition to forming a defense alliance, ASEAN member countries need to get integrated into a specific criminal law and set regional jurisdiction for terrorism. This is necessary to be addressed

²⁰ Senia Febrica, "Securing the Sulu-Sulawesi Seas from Maritime Terrorism : A Troublesome Cooperation?," *Perspectives on Terrorism* 8, no. 3 (2014): 64-83, https://www.jstor.org/stable/26297173?seq=1#metadata_info_tab_contents. 68

because the impact of terrorism creates a worrying regional instability.²¹

To strengthen commitment in eradicating terrorism crimes in the region, raising awareness is needed to integrate criminal policies. Additionally, it needs unification of criminal acts of terrorism before the court and law enforcement officials among member countries that exceed the jurisdiction of each state or beyond each's national jurisdiction.²²

Deradicalization Practices in ASEAN

Deradicalization is the primary strategy in eradicating terrorism. It is a strategic step that a country can take to fight terrorism. Deradicalization relates closely to religious beliefs. Cognitive knowledge that both individuals and groups believe is justified in the activities of terrorism and violence. Additionally, the common perspectives of moderate peace and education are critical factors in efforts of deradicalization. However, it should be supported by strong policies so that deradicalization efforts can be realized, especially in Muslim countries with a great potential for radicalism.²³ For terrorism suspects, efforts to rehabilitate their radicalism within the prison scope are an effective strategy because it is right on the target. Besides, law enforcement for terrorism networks performed by

²¹ Sandy Gordon, "Regionalism and Cross-Border Cooperation against Crime and Terrorism in the Asia-Pacific," *Security Challenges* 5, no. 4 (2009): 75-102, https://www.jstor.org/stable/26460070?seq=1#metadata_info_tab_contents. 85

²² Satria Unggul Wicaksana Prakasa, Basuki Babussalam, and Agus Supriyo, "Transnational Corruption and Its Impact on Indonesian Jurisdiction," in *2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020)* (Atlantis Press, 2020), 43-53, <https://doi.org/10.2991/assehr.k.201209.266>. 46

²³ Sulistiyono Susilo and Reza Pahlevi Dalimunthe, "Moderate Southeast Asian Islamic Education as a Parent Culture in Deradicalization: Urgencies, Strategies, and Challenges," *Religions* 10, no. 1 (2019), <https://doi.org/10.3390/rel10010045>. p. 31

the authorities is another effective effort to prevent the widespread terrorist radicalization network in the future.²⁴

Various rehabilitation efforts in the deradicalization agenda for terrorist groups aim at eliminating the paradigm of violence justification that the groups believe. By equating perception and paradigm, further strategies for deradicalization can be implemented easily. Besides, amnesty efforts can also be given by the state as compensation for terrorist convicts who undergo the deradicalization program. These strategies will attest to terrorism networks, terrorism financing, doctrine models, and law enforcers as a strategy for eradicating terrorism in a country. Besides, with a social interaction approach, state repression diminution, and charismatic methods, jihadist groups will be fully aware that they perform delegitimizing actions for the violence they committed before.²⁵

ASEAN Countries' Best Practice to Counter Terrorism

Although the ACCT has become a legal instrument in combating terrorism in the ASEAN region, its requisite power and implementation in each ASEAN member country vary. This depends on the legal politics of terrorism eradication policies in each ASEAN member countries. The following table shows the comparison of the

²⁴ Jolene Jerard et al., *Deradicalisation and Terrorist Rehabilitation : A Framework for Policy-Making and Implementation*, ed. Rohan Gunaratna and Sabariah Hussin (Taylor & Francis, 2018), [https://books.google.co.id/books?hl=id&lr=&id=7U9tDwAAQBAJ&oi=fnd&pg=PT16&dq=Rohan+Gunaratna,+and+Sabariah+Hussin+\(ed\),+Deradicalisation+and+Terrorist+Rehabilitation+:+A+Framework+for+Policy-Making+and+Implementation,+Taylor+%26+Francis+Group,+2018.+ProQu.](https://books.google.co.id/books?hl=id&lr=&id=7U9tDwAAQBAJ&oi=fnd&pg=PT16&dq=Rohan+Gunaratna,+and+Sabariah+Hussin+(ed),+Deradicalisation+and+Terrorist+Rehabilitation+:+A+Framework+for+Policy-Making+and+Implementation,+Taylor+%26+Francis+Group,+2018.+ProQu.) 143

²⁵ Omar Ashour, *The De-Radicalization of Jihadists: Transforming Armed Islamist Movements*, 1st ed. (London: Routledge, 2009), [https://books.google.co.id/books?hl=id&lr=&id=h6pTaBDybkAC&oi=fnd&pg=PP1&dq=Ashour,+O.+\(2009\).+The+De-Radicalization+of+Jihadists:+Transforming+Armed+Islamist+Movements+\(1st+ed.\).+Routledge&ots=W9r2SjF2v2&sig=NuhX1bzOPZoTLu6iPSAEU0jjBkQ&redir_esc=y#v=onep.](https://books.google.co.id/books?hl=id&lr=&id=h6pTaBDybkAC&oi=fnd&pg=PP1&dq=Ashour,+O.+(2009).+The+De-Radicalization+of+Jihadists:+Transforming+Armed+Islamist+Movements+(1st+ed.).+Routledge&ots=W9r2SjF2v2&sig=NuhX1bzOPZoTLu6iPSAEU0jjBkQ&redir_esc=y#v=onep.) 231

application of the ACCT and the national laws of each ASEAN member country in combating terrorism:

Table 1. Practices of ASEAN Countries in Combating Terrorism^{26 27 28 29 30 31 32 33 34 35 36}

Nation	Terrorism Organization	Terrorism Acts	Anti-Terrorism Law Enforcement
Indonesia (BNPT and Densus 88)	1. Free Papua Movement (OPM) 2. Republic of South	Bali Bombing I, Bali Bombing II, Bombing at the Malaysian Embassy, Bombing	In 2018, Densus 88 arrested people unlawfully. This wrongly targeting arrest was experienced by Arifin, a resident of Malang, who

²⁶ Borelli, "ASEAN Counter - Terrorism Weaknesses." 4

²⁷ Leonard C. Sebastian, "The ASEAN Respond to Terrorism," *UNISCI Discussion Papers/SCI Discussion Paper* 2 (2003): 1-8, <https://www.redalyc.org/pdf/767/76711296010.pdf>. 5

²⁸ Sholahuddin Al-Fatih and Zaka Firma Aditya, "The Legal Protection Against Terrorism Suspects In Indonesia (Case Study of The Arrest Process of Terrorism Suspects By Densus 88)," *Legality: Jurnal Ilmiah Hukum* 27, no. 1 (2019): 14-26, <https://doi.org/10.22219/jihl.v27i1.8954>. 21

²⁹ AA Bagus Surya Widya Nugraha, "Singapura Dan Permasalahan Terorisme" (Denpasar, 2018), <http://erepo.unud.ac.id/id/eprint/21968/1/258d9fcbf781b6af3cf5bfb9b1fcdce5.pdf>. 33

³⁰ Stefanie Kam, "LAOS," in *Handbook of Terrorism in the Asia-Pacific* (Singapore: Nanyang Technological University, 2016), 71-84, https://doi.org/10.1142/9781783269969_0004. 74

³¹ Alfianti Dwi Rachma, "Perbandingan Hukum Pidana Terhadap Kejahatan Terorisme Di Indonesia Dan Filipina" (Universitas Pancasakti Tegal, 2020). p. 23

³² Aditya Putra and Diana Lukitasari, "Perbandingan Pengaturan Tindak Pidana Terorisme Di Indonesia Dan Malaysia," *Recidivie* 8, no. 1 (2019): 1-12, <https://jurnal.uns.ac.id/recidive/article/view/40611>. 5

³³ *Ibid.* Putra and Lukitasari.

³⁴ ICG, "Jihadism in Southern Thailand: A Phantom Menace," International Crisis Group, 2017, <https://www.crisisgroup.org/asia/south-east-asia/thailand/291-jihadism-southern-thailand-phantom-menace>.

³⁵ (BUREAU OF COUNTER-TERRORISM, 2020)

³⁶ Reuters Staff, "Vietnam Jails 20 for Terrorism over Police Station Bombs," Reuters, 2020.

	<p>Maluku (RMS; Republik Maluku Selatan)</p> <p>3. Free Aceh Movement (GAM; Gerakan Aceh Merdeka)</p> <p>4. DII (Darul Islam Indonesia)/TI I (Tentara Islam Indonesia)</p> <p>5. Jamaah Islamiyah (JI)</p> <p>6. Jamaah Ansharut Tauhid (JAT)</p> <p>7. Jamaah Ansharut Daulah (JAD)</p>	<p>at the Australian Embassy, Bombing at the Indonesian Stock Exchange, Bombing at the HKBP-Santa Anna Church, Bombing at Plaza Atrium Mall Senen, Bombing at KFC Makassar, Bombing at the Ritz Carlton Hotel, Bomb at JW Marriot Hotel, Bombing at Mapolresta Cirebon Mosque, and so on</p>	<p>was alleged to be a perpetrator or involved in bombing terror in Surabaya; In 2016, the community was agitated by the death of Siyono, a Muhammadiyah young man from Klaten who was the victim of Densus 88's arrest. Unfortunately, Siyono could not help to reveal in detail the chronology of the incident that happened to him because of his death. Then, National Police Chief, General Badrodin Haiti, explained that Densus 88 had violated the procedure of arresting suspected terrorists: including a) not handcuffing suspected terrorists, and b) only providing one bodyguard for suspected terrorists. In a report released by the Advocacy Division of PP Muhammadiyah along with Komnas HAM (National Human Rights Commission) and based on the autopsy results, Siyono died of a broken rib and chest, resulting in tissue damage in the heart organ. In addition, the autopsy result reported that there were no signs of resistance</p>
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			<p>from Siyono regarding the bruises around the wrist. This proof does not correspond to the statement of the National Police Headquarters stating that Siyono was fighting against it. c). Another arrest took place on Tuesday (12/29/2015) in Solo, Central Java. Two Solo residents, Ayom Penggalih and Nur Syafruddin, were on their way to the mosque when they were arrested by Densus 88, and it was found out that they were not terrorists. d). In mid-May 2014, Densus 88 made a wrongful accusation in Solo involving the arrest of Kadir from Banyu Harjo Village. e). Another similar case took place at the end of July 2013. Densus 88 also arrested two Muhammadiyah residents, who were finally released because they were later proven innocent. f). Other arrests against 14 Poso residents followed in 2012, but the arrested were proven to have no involvement and were released.</p>
Singapore (NSCS and	Singapore Jamaah	Bombing at McD in 1965, bombing	In 2001, ISD Singapore arrested 15 people, 13 of

ISD Singapura)	(affiliation of Jamaah Islamiyah)	at the Shell oil refinery complex on Bukom Island, the hijacking of Singapore Airline Flight 117 in 1991, and others.	whom were JI members. In August 2002, ISD recaptured 21 people, nineteen of whom were JI members under military training with China and the United States, as well as deradicalizing clerical Muslims by empowering the potentials of Muslims.
Malaysia (Pasgeras)	<ol style="list-style-type: none"> 1. Al-Maunah Movement 2. Malaysian Mujahidin Group 3. Malaysian Militants Group 	The hijacking of Malaysia Airlines Flight 653 and the hijacking of Malaysia Airlines Flight MH370.	The government provides deradicalization efforts for terrorist perpetrators or suspected terrorists. Deradicalization is carried out with the Human Development Program to eliminate the radical doctrine of terrorists as well as to train their social skills so that they have provisions to re-socialize with the community
Brunei Darussalam (Internal Security Department)	Not yet found	Terrorism act in Brunei Darussalam has been reportedly never happened. However, the Brunei Darussalam government was recorded to have deported 4 Indonesian citizens who were suspected of being affiliated	Brunei Darussalam is relatively safe from any terrorist acts even though it is close to Malaysia, Indonesia, and the Philippines, in which many terrors incidentally have occurred. To prevent terrorism, the Brunei government has made regulations outlining preventive measures.

<p>Thailand (Hanuman)</p>	<ol style="list-style-type: none"> 1. Thailand Pattani United Liberation Organization 2. Pattani Malay National Revolution Line (BRN) 	<p>with ISIS.</p> <p>Terrorism acts in Thailand mostly happen in the Pattani area where many ethnic Malay-Muslims live. Some deportation cases of Thai nationals in Malaysia were also dominated by Pattani residents.</p> <p>Overall, in a 2019 report by US Embassy, the number of insurgent terrorist attacks and related fatalities decreased from the previous year; However, a November 5 attack at a security checkpoint in Yala killed 15, making it the single deadliest attack attributed to southern insurgents since 2004. Attacks in 2019 were primarily</p>	<p>The government held a dialogue with several institutions, including those involving BRN (<i>Barisan Revolusi Nasional</i>), the National Council for Peace and Order (NCPO), and The Majelis Syura Patani (Patani Consultative Council, MARA Patani)</p>
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		<p>confined to Thailand's southernmost provinces, although a set of coordinated small-scale explosions in Bangkok in August is widely believed to be linked to the Deep South Insurgency. Terrorist methods primarily included shootings, arson, IEDs, and VBIEDs.</p>	
Vietnam	Not yet found	<p>In 2020, the Ho Ci Minh City Court sentenced 20 people involved in the terror bombing of the police station to imprisonment. Terrorism acts in Vietnam were not committed by militants or terrorist groups but were triggered by disappointment with the government, including the</p>	<p>Vietnam still relies on the 2009 Penal Code Amendment to combat terrorism and emphasizes criminal justice response to combat the threat of terrorism.</p>

		Communist Party.	
Philippines (<i>The National Counter-Terrorism Action Group (NCTAG) dan Anti-Terrorism Council</i>)	<ol style="list-style-type: none"> 1. New People's Army 2. Abu Sayyaf Group (ASG) 3. MNLF 4. Moro Islamic Liberation Front (MILF) 	<p>2001 killing of foreign tourists in Southern Philippines, 2001 attack in Manila, 2002 Bombing at Philippine military base at Zamoanga, 2003 Bombing at Davao City Airport, and 2004 ferry hijacking</p>	<p>The deployment of US troops in the Southern Philippines and adding funding to tackle terrorism in Mindanao</p>
Cambodia	<ol style="list-style-type: none"> 1. Khmer Rouge rebels 2. Cambodian Freedom Fighter (CFF) 	<p>Grenade throwing and establishment of Cambodian government agencies in the United States</p>	<p>Forming the Royal Cambodian Army Forces (RCAF) in collaboration with the US military in the form of information and intelligence sharing, supervision of financial transactions, and access to the use of US aircraft.</p>
Lao PDR	<ol style="list-style-type: none"> 1. Hmong minority ethnic 2. Anti-communist in exile 3. Disaffected member of Lao military 4. Laos Patriotic Front (LPF) 5. Meo Tribesmen 6. Ethnic Liberation 	<p>Bombing in public places and public facilities since 2000 and killings aimed at the Lao government</p>	<p>Using military force to oppress ethnic minorities, such as the Hmong. This method is deemed useful enough to narrow the movement of terrorism in Laos dominated by ethnic minorities and factions expecting to break free from the sovereign Laos government.</p>

	<p>Organization of Laos (ELOL)</p> <p>7. Laos United Liberation Front (LULF)</p> <p>8. United National Front for Liberation of Laos (LPNLUF)</p> <p>9. Lao National Liberation Front (LNLF)</p> <p>10. Royal Lao Democratic Government (RLDG)</p>		
Myanmar	<p>1. North Korea Agent</p> <p>2. United Liberations Front of Assam</p> <p>3. United National Liberation Front</p> <p>4. Arakan Rohingya Salvation Army (ARSA)</p> <p>5. Vigorous Burmese Student Warriors</p>	<p>Bombing in Rangoon 1983, in Yangon 2005 and 2010, killings and ethnic cleansing, and genocide against Rohingya Muslims in Rakhine, Arakan.</p>	<p>The Myanmar government establishes the terrorist label through law. The terrorist label is attached to the rebel group. Regarding the crackdown on terrorism in Myanmar, the government uses all forms of its military power, even when the cases in the Rohingya arose.</p>

The table shows that each ASEAN member country has its own characteristics whether in the model or form of terror they experience, affiliation with terrorist organizations to the prosecution of terrorists or suspected terrorists. Additionally, there are three models of methods or approaches that the ASEAN member countries take in eradicating terrorism, namely: 1) Preventive action in Brunei Darussalam and Vietnam; 2) Repressive action by the police in Indonesia (in an emergency condition, the military will also be accompanied by other elements of the National Armies and State Intelligence Agency like in Malaysia and Singapore; 3) Extra repressive action through full military force in the Philippines, Thailand, Cambodia, Myanmar, and Laos.³⁷

The table also implies that the definition of terrorism varies in each country. For example, in Indonesia, JI, JAD, and JAT are referred to as terrorist organizations, while OPM and RMS and their affiliates are only referred to as the Armed Criminal Group (*Kelompok Kriminal Bersenjata/KKB*). In fact, practically, both JI and OPM use violence and murder while justifying any means to oppose the government. The same thing happens in Myanmar, Laos, Thailand, and the Philippines. The terrorist label is pinned by the state with a variety of legal instruments that the state own. It is prone to be interpreted as an attempt of the state to silence their opponents or opposition while eliminating minorities. In fact, eliminating groups labeled as terrorists potentially violate human rights since it was performed arbitrarily.³⁸ Unfortunately, ASEAN countries have made regulations, bodies, or institutions in counter-terrorism actions according to their respective understandings and needs as clear in table 2 below.

³⁷ Ong Keng Yong, "Advancing Multilateral Efforts in Counter Terrorism and Security in Southeast Asia," *Military Technology* 31, no. 12 (2007): 18-23.

³⁸ Achmad Irwan Hamzani et al., "The Trend to Counter Terrorism in Asean," *Journal of Advanced Research in Dynamical and Control Systems* 12, no. 7 (2020): 105-13, <https://doi.org/10.5373/JARDCS/V12I7/20201990>. 110

Table 2. Regulations in ASEAN Countries in Combating Terrorism and Its Technical Team^{39 40}

No.	Country	Formal Policy
1.	Indonesia	<ol style="list-style-type: none"> 1. Instruction of President of the Republic of Indonesia Number 5 the Year 2002 2. Law of the Republic of Indonesia Number 5 the Year 2018 that amended Law Number 15 the Year 2003 concerning the Establishment of Government Regulation in Lieu of Law Number 1 the Year 2001 concerning the Eradication of Criminal Acts of Terrorism. 3. Cooperation with the United States Government. 4. Attorney General of the Republic of Indonesia established Terrorism and Transnational Crime Task Force (TTCTF). 5. Official Institution built for Counter-Terrorism, such as: <ol style="list-style-type: none"> a. Gegana Brimob Detachment b. Densus 88 (POLRI or <i>Polisi Republik Indonesia</i>) c. Counter Terror Desk d. National Agency for Counter-Terrorism (BNPT; <i>Badan Nasional Penanggulangan Terorisme</i>) e. TNI or <i>Tentara Nasional Indonesia</i> (Dengultor) and state intelligence agency.

³⁹ Hamzani et al.

⁴⁰ Kam, "LAOS."

2.	Thailand	<ol style="list-style-type: none"> 1. Supreme Command of the Royal Thai Armed Forces that move on the operational level of counter-terrorism. 2. Counter-Terrorism Program by Royal Thai Navy. 3. The National Security Council (NSC) is led by the Thai Foreign Ministry. 4. Thailand Maritime Enforcement Coordination Center (THAI-MECC). 5. Martial Law Against Insurgency in Southern Thailand (Military Emergency and Curfew in Pattani, Yala, and Narathiwat Areas, 2004). 6. Expansion of Counter-Terrorism Handling in the financial, Transnational Corporations/TNC, and drug sectors.
3.	Malaysia	<ol style="list-style-type: none"> 1. Internal Security Act (ISA). 2. Penal Code. 3. Special Motion Regimen under the training of British 22nd SAS.
4.	Myanmar	<ol style="list-style-type: none"> 1. Ratification of the ASEAN Convention on Counter-Terrorism in 2012. 2. The legalization of Strategic Counter-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Policy Deficiencies in 2011. 3. The Policy or Law on Counter-Terrorism is still limited to the Criminal Justice System.
5.	Singapore	<ol style="list-style-type: none"> 1. Internal Security Act. 2. Singapore Armed Forces Act, forming the special forces of the Air Marshal Unit. 3. Police MRT Unit. 4. Singapore Special Operations Force, Special Operations Command, Chemical, Biological, Radiological, and Explosive Defence Group. 5. Law concerning Money Laundering Elimination/Counter-Terrorist Financing Regimes. 6. Military Training with China and the United States. 7. STEBIS IGM-Indonesia. Deradicalization of Muslim clerics by empowering the potential of Muslims.

6.	Philippines	<ol style="list-style-type: none"> 1. National Plan to Address Terrorism and its Consequences (2002). 2. Autonomous Region of Muslim Mindanao (ARMM), 3. Freedom Eagle Operation, 2002 in the form of the deployment of U.S. military personnel in the Southern Philippines. 4. \$92 million funding support for military assistance in Mindanao in 2001. 5. A mixed anti-terror Unit between the Armed Forces of the Philippines and the Philippines National Police. 6. Establishment of Special Force Regiment to deal with terrorism.
7.	Cambodia	<ol style="list-style-type: none"> 1. Cooperation with the UN by Supporting UN Security Council Resolution Number 1368 and 1373 on the War on International Terrorism. 2. The formation of Royal Cambodian Army Forces (RCAF) in cooperation with the United States Military in the form of information sharing and intelligence, supervision of financial transactions, and access to the use of United States aircraft. 3. The formation of Royal Cambodian Armed Forces '911 consisting of Commander Battalion. 4. Ratification of 4 International Conventions to fight Terrorism. 5. Inauguration of the establishment of the secretariat of the Cambodian National Counter-Terrorism Committee (NCTC).
8.	Brunei Darussalam	<ol style="list-style-type: none"> 1. Anti Terrorism (Financial and other Measures) Act. 2. Prevention and suppression of terrorist acts. 3. National security-related program. 4. Travel and border safety. 5. Generating awareness. 6. Cooperation on information exchange. 7. Biological attack.
9.	Vietnam	<ol style="list-style-type: none"> 1. Amendment of Penal Code Year 2009. 2. Emphasis on criminal justice response to combat the threat of terrorism.

10.	Laos	<ol style="list-style-type: none"> 1. Collaboration with UNODC in 2012 2. Participation in pro-counter terrorism initiatives at a bilateral level with the US and multilateral level with the UN and ASEAN 3. Military suppression in progress
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The differences in regulations and practices of eradicating terrorism shown by countries in ASEAN ultimately provide a clear pattern of response. ASEAN countries have not handled terrorism in the same way. For example, Malaysia and Thailand have relied on more coercive and militaristic responses, whereas Indonesia and Singapore have mostly adopted a non-militaristic, especially law enforcement approach to tackling the problem.⁴¹ The difference in the pattern of prosecution against terrorism also has an impact on pledging the protection of human rights during the process of combating terrorism in each country.⁴²

Human Rights Protection Related to Terrorism in ASEAN

Human rights are fundamental rights of individuals to be protected and not repressed by the state, since its nativity is based on the Universal Declaration of Human Rights in 1998. Categorically, human rights are divided based on: (1) Civil and political rights as regulated under the International Convention on Civil and Political Rights (ICCPR); (2) Economic, social and cultural Rights regulated under the International Convention on Economy, Social and Cultural

⁴¹ See Seng Tan, "After Marawi: Military 's Regional Role in Counter-Terrorism?," *RSIS Commentary*, no. 016 (2018): 2016-18, <https://www.rsis.edu.sg/wp-content/uploads/2018/01/CO18016.pdf>. 218

⁴² Ridwan Arifin and Muhamad Adji Rahardian Utama, "Future Impact of the Asean-Russia Law Declaration to the International Terrorism: Can We Combat Terrorist without War?," *Russian Law Journal* 8, no. 2 (2020): 4-27, <https://doi.org/10.17589/2309-8678-2020-8-2-4-27>. 23

Rights (ICESCR), as well as; (3). The rights for development⁴³ as the third generation of human rights.

Efforts to protect human rights in the eradication of terrorism are a key issue for the United Nations in establishing standards and mechanisms for combating terrorism. This is as mandated in the Universal Declaration of Human Rights and various derivative Human Rights Covenants. In addition, the acts to avoid repression and extra-judicial killings and to prioritize the due process of law are determinants in the eradication of global terrorism.⁴⁴ Prioritizing the eradication of terrorism with a human rights paradigm is the key to realize human rights protection.

Respect for human rights in ASEAN has become an imperative norm. Furthermore, it has Human Rights Bodies as regulated in Article 14 of the ASEAN Charter. However, the effectiveness of the Agency has not been felt by people of the region, especially victims of terrorism. Likewise, there is a lack of concern about how to get recovered from terrorism with zero loss and victims as well as a little guarantee for a sense of security at a place to live in the area.⁴⁵

In order to conduct equal values in eradicating terrorism and protecting human rights, there are at least four conditions, according to Alex Conte, for ASEAN member countries need to establish and apply: (1). Laws concerning the eradication of terrorism and its full compliance with human rights law; (2). Limited rights and freedoms in terrorism eradication by means of restrictions protected by legal

⁴³ D. Stewart, *Terrorism and Human Rights: The Perspective of International Law* (Washington DC: Middle East Institute, 2018), <https://doi.org/10.2307/resrep19954.7>. 112

⁴⁴ Axel Dreher, Martin Gassebner, and Lars-H. Siemers, "Does Terrorism Threaten Human Rights? Evidence from Panel Data," *Journal of Law & Economics* 53, no. 1 (2010): 65-93, <https://doi.org/10.1086/596021>. 68

⁴⁵ Victor Asal, K Deloughery, and A Murdie, "Responding to Terrorism? Human Rights Organization Shaming and Terrorist Attacks," *Studies in Conflict & Terrorism* 39, no. 3 (2016): 240-59, <https://doi.org/10.1080/1057610X.2015.1093887>. 245

norms; (3). Legislation concerning terrorism eradication and its practice prioritizing legal processes; (4). Legislation concerning terrorism eradication with the right to consider human rights depending on the factual situation and conditions; (5) Legislation concerning terrorism eradication in terms of restricting human rights with proportional enforcement.⁴⁶

Currently, ASEAN had already worked on the ASEAN Inter-Governmental Commission on Human Rights (AICHR) as a body that monitors the implementation of principles on promoting and protecting human rights for all member countries. The establishment of this body is a mandate of The Charter of ASEAN. AICHR is supposed to be a significant carrier for all member countries in order to promote the development of strong human rights and to eradicate terrorism in the region.⁴⁷

Under the Charter of ASEAN mechanism, ASEAN member countries agreed on the ASEAN Convention on Counter Terrorism (ACCT) which was signed in Cebu, the Philippines in 2007. At the regional agreement agenda, it has been agreed for cooperative means among ASEAN member countries to (a). take strategic steps to prevent terrorism act, including the exchange of information; (b). discontinue funding, plans, and facilities that support terrorist activities in the region; (c). hinder the movement of terrorist groups through effective border surveillance, including the identification of travel documents held through the Foreign Terrorism Fighters (FTF) mechanism; (d). build capacity and cooperative techniques among member countries to counter terrorism; (e). promote public awareness

⁴⁶ A. Conte, *Handbook on Human Rights Compliance While Countering Terrorism* (London: Global Center on Cooperative Security, 2008), <https://doi.org/10.2307/resrep20370>. 78

⁴⁷ Abubakar Eby Hara, "The Struggle to Uphold a Regional Human Rights Regime: The Winding Role of Asean Intergovernmental Commission on Human Rights (AICHR)," *Revista Brasileira de Politica Internacional* 62, no. 1 (2019), <https://doi.org/10.1590/0034-7329201900111>. 54.

in terrorism eradication in the region through peace dialogue; (f). enhance the strategy to guard the border areas both land and sea; (g). increase intelligence activities, exchange and sharing information among member countries; (h). increase cooperative activities among member countries by enhancing the database of terrorism groups through ASEAN's special agency appointed by the parties; (i). strengthen the capacity of the state in anticipating the use of chemical, biological, radiological, and nuclear (CBRN) weapons, cyber terrorism, and various developed models; (k). build research capacity related to counterterrorism; (l). utilize video conferences and teleconferences for prosecution; (m). ensure that parties suspected of being actively involved in terrorism crimes have access to justice under the law.

The issue of eradicating terrorism in the region does not only stop at regional agreements but also relates to efforts to build political commitment.⁴⁸ This eradication continues to build an integrated culture among ASEAN member countries in the context of building a stronger commitment to eradicate terrorism.⁴⁹ However, exclusive perspectives and reluctance to cooperate on the grounds of defending national sovereignty and jurisdiction often become common obstacles. In fact, an open and inclusive paradigm in political security matters and is a priority to carry out immediately.⁵⁰

⁴⁸ Niklas Swanström, "Southeast Asia's War on Terror: Who Is Cooperating across Borders?," *Harvard Asia Quarterly* 9, no. 1 (2005), <https://web.a.ebscohost.com/abstract?direct=true&profile=ehost&scope=site&authType=crawler&jrnl=15224147&AN=18820016&h=O8lb27VqaImHxUMzj5qWG1GiEPakNbfByGFsKUMrj5yzqlxAkef5Y1LBA4F%2B90RCPbCrliNidmEFXanZPG4Q%3D%3D&crl=c&resultNs=AdminWebAuth&resultLocal=E>. 65.

⁴⁹ A. Acharya, *Constructing a Security Community in Southeast Asia: Asean and the Problem of Regional Order* (ProQuest Ebook Central, 2014). 98.

⁵⁰ Rizal Sukma, "The ASEAN Political and Security Community (APSC): Opportunities and Constraints for the R2P in Southeast Asia," *The Pacific Review* 25, no. 1 (2012), <https://doi.org/10.1080/09512748.2011.632975>. 43.

Conclusion

Barriers among ASEAN member countries in eradicating terrorism on the pretext of sovereignty and exclusive jurisdiction need to be taken down by establishing defense alliances so that regional solidity and security integrity will increase. In addition, awareness and willingness to integrate criminal policies, the unification of criminal acts of terrorism court, and prosecution by law enforcers among member countries that exceed the jurisdiction of the state (beyond the national jurisdiction) are essential. More importantly, it is vital to ensure that human rights are not violated in the eradication of terrorism. The implementation of counterterrorism should also guarantee the security and peace of civil society, promote law enforcement, and give access to justice for victims of terrorism. Sharpening the effectiveness of Human Rights Bodies' role in ASEAN as a regional body that guarantees the eradication of terrorism is compulsory to protect human rights in Southeast Asia.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 362-392
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5314>

The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia

Lego Karjoko

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
email: legokarjoko@staff.uns.ac.id

I Gusti Ayu Ketut Rachmi Handayani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
email: ayu_igk@staff.uns.ac.id

Abdul Kadir Jaelani

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
email: jaelaniabdulkadir@staff.uns.ac.id

Jaco Barkhuizen

Department of Criminology and Criminal Justice, University of Limpopo, Limpopo, South Africa
email: jaco.barkhuizen@ul.ac.za

Muhammad Jihadul Hayat

Faculty of Sharia and Law, Universitas Islam Negeri Sunan Kalijaga, Yogyakarta, Indonesia
email: mjhayat27@gmail.com

Article history: Received: November 11, 2021, Accepted: December 21, 2021,
Published: December 31, 2021

Abstract:

Medical disputes in Indonesia are regulated by a host of laws. However, the important question that needs to be asked is whether the laws have guaranteed justice for patients and doctors. This normative legal study aims to analyze the urgency of restorative justice in medical disputes. It examines secondary data which is collected through a literature study. The study focuses on legal principles with a doctrinal approach. It

Author correspondence email: legokarjoko@staff.uns.ac.id

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concludes that restorative justice is urgent to use in medical disputes for both criminal and civil cases. This is evident in the will of the Health Law which prioritizes mediation as the first mechanism before being brought to trial. Furthermore, the use of restorative justice in medical dispute resolution is driven by the presence of three conditions: First is structural challenges among law enforcers and their limited capabilities in dealing with complex medical cases; Second is the condition of Indonesian correctional institutions which is overburdened and unable to provide maximum output, and the third is the relatively low number of Indonesian health workers.

Keywords:

Medical Disputes; Restorative Justice; and Health Law

Abstrak

Sengketa Medis di Indonesia telah diatur dalam beberapa peraturan perundang-undangan. Namun, pertanyaan penting yang perlu diajukan yaitu apakah peraturan yang ada telah menjamin kedilan bagi pasien dan dokter. Penelitian ini bertujuan untuk menganalisis urgensi prinsip keadilan restoratif dalam penyelesaian sengketa medis. Penelitian ini merupakan penelitian hukum normatif yang mengkaji data sekunder. Pengumpulan data dilakukan dengan studi pustaka (*library research*), yaitu kegiatan pengumpulan data yang berasal dari berbagai *literatur*. Penelitian ini fokus pada asas-asas hukum dengan pendekatan dokrinal. Kesimpulan dari penelitian ini adalah bahwa prinsip keadilan restoratif penting diterapkan dalam kasus medis, pidana, maupun perdata. Ini misalnya dapat dilihat dari i'tikad baik dalam Hukum Kesehatan yang mempriorotaskan mediasi sebagai mekanisme pertama sebelum dibawa ke pengadilan. Dalam konteks sengketa medis, prinsip keadilan restoratif menjadi urgen untuk diterapkan sedikitnya karena tiga hal; *pertama* adalah tantangan struktural di kalangan para penegak hukum serta kemampuan mereka yang terbatas dalam menghadapi kasus medis yang biasanya kompleks. *Kedua*, kondisi lembaga pemsayarakatan Indonesia yang over kapastias sehingga tidak mampu memberikan *output* yang maksimal; dan *ketiga* adalah jumlah tenaga kesehatan di Indonesia yang relatif rendah.

Kata Kunci:

Introduction

Doctors are required to work to the best of their abilities, giving their all to each patient. If the results of the doctor's efforts are not the same as what the patient expected, the patient can claim them.¹ This can result in filing a claim and lawsuit to the police and even filing a civil lawsuit against the doctor because the doctor has committed negligence.²

Data from the Indonesian Medical Discipline Honorary Council (MKDKI) show that 80% of the 135 cases that have been reported are due to poor communication between doctors and patients. This demonstrates that medical disputes start from patients' dissatisfaction because some doctors are considered not completing their work as promised or expected. This makes the patients or their family members look for the cause of the dissatisfaction. It may be due to violations that indicate an unlawful act was committed in the process of performing the medical treatment. This may occur if there is an assumption that the therapeutic contract is not fulfilled or violated by the doctor.³

The increasing number of claims and lawsuits filed by the people is usually considered as a failure of treatment performed by doctors, although an increasing number of lawsuits against doctors and hospitals shows that people are starting to realize their rights in

¹ M. Flynn, 'Medical Malpractice - Medicolegal Perspectives: Negligence, Standard of Care', in *Encyclopedia of Forensic and Legal Medicine: Second Edition*, ed. by Jason Payne-James and Roger W B T - *Encyclopedia of Forensic and Legal Medicine (Second Edition)* Byard (Oxford: Elsevier, 2015), pp. 365-69 <<https://doi.org/10.1016/B978-0-12-800034-2.00284-6>>.

² Yuan Li and others, 'A Comparison of Malpractice Lawsuits Mediated and Judged in Court in China', *Journal of Forensic and Legal Medicine*, 54 (2018), 109-13 <<https://doi.org/10.1016/j.jflm.2018.01.002>>.

³ Matías Eduardo Díaz Crescitelli and others, 'Relational Dynamics Involved in Therapeutic Discordance among Prescribers and Patients: A Grounded Theory Study', *Patient Education and Counseling*, 2021 <<https://doi.org/10.1016/j.pec.2021.05.041>>.

the health sector. The claims are commonly based on the negligence of doctors in performing their duties. This can be seen in many cases.⁴

First, the medical case in the Cassation Decision of Supreme Court Number 365 K/Pid/2012, which sentenced dr. Dewa Ayu Sasiary Prawani and two of her friends. *Second*, the medical dispute case in the Cassation Decision Number 1110 K/Pid.Sus/2012 experienced by dr. Bambang Suprpto. He was charged with practicing medicine without a license and failing to fulfill his obligations to provide medical services in accordance with professional standards and standard operating procedures. *Third*, the case of dr. Arif Mustika Jufriansya and dr. Rudy Eko Fitranto in the decision of the Central Jakarta District Court Number 1760/Pid.Sus/2016/PN.Jkt.Pst. They were detained by the police officers for negligence and practicing medicine without a permit. *Fourth*, the medical case of dr. Harun Rosidi in Blitar District Court Decision Number 233/Pid.B/2016/PN.Blt. dr. Harun Rosidi was charged with practicing medicine without a registration certificate. *Fifth*, Suharto's medical case in the Singkawang District Court Decision Number 16/Pid.Sus/2017/PN.Skw. The verdict stated that defendant Suharto had been legally and convincingly proven guilty of committing a criminal act using tools, methods, or other means of providing services to the public that gave the impression that he was a qualified doctor.

The cases above were resolved through litigation and led to a long legal process through all levels of legal remedies.⁵ This makes it inefficient in addition to the ending in which some accusations were proven while some others were dropped. Meanwhile, not all parties benefited from the process. For this reason, it is essential to conduct a study on the issue of medical dispute resolution and ways for all parties to obtain justice without focusing on bringing each other

⁴ Rajkumar Cheluvappa and Selwyn Selvendran, 'Medical Negligence - Key Cases and Application of Legislation', *Annals of Medicine and Surgery*, 57 (2020), 205-11 <<https://doi.org/10.1016/j.amsu.2020.07.017>>.

⁵ Charles M. Balch and others, 'Personal Consequences of Malpractice Lawsuits on American Surgeons', *Journal of the American College of Surgeons*, 213.5 (2011), 657-67 <<https://doi.org/10.1016/j.jamcollsurg.2011.08.005>>.

down. In this case, restorative justice⁶ is the lens through which we should examine this problem.

Restorative justice is a victim-centered response to crime that allows the victim, the offender, their families, and community representatives to address the harm caused by the crime. This concept emphasizes the interests of victims and their families by seeking to recover the damage and losses suffered by victims of criminal acts. Restorative justice is a concept of resolving a particular crime that involves both parties to jointly seek solutions.

Studies on medical disputes resolution in Indonesia have been conducted for a long time. Scholars have discussed medical dispute resolution from a variety of perspectives. For instance, Novianto wrote about the medical dispute resolution model out-of-court. He focuses on the ideal model of medical dispute resolution in Indonesia, which involves the establishment of an alternative dispute resolution body.⁷ Yuniza, on the other hand, conducted research on the direction of health regulation policy during the era of autonomy in Indonesia. Yuniza's research focused on the regional decentralization of health budgeting.⁸ A more pertinent subject for this paper is Mulyadi's work. Mulyadi's research examines the process of resolving medical malpractice cases via litigation and non-litigation.^{9,10} Apart from the three studies mentioned previously, Herlianto's work discusses the use of penal mediation as a means of resolving medical malpractice cases.¹¹ Researches mentioned above are devoted to medical disputes.

⁶ Ahmad Syaafi, Diana Haiti, and Mursidah, 'Application of Restorative Justice Values in Settling Medical Malpractice Cases', *International Journal of Criminology and Sociology*, 10.7 (2021), 103-10 <<https://doi.org/10.6000/1929-4409.2021.10.14>>.

⁷ Widodo Tresno Novianto, *Alternatif Model Penyelesaian Sengketa Medik Di Luar Pengadilan Melalui Lembaga Penyelesaian Sengketa Medik Dalam Pelayanan Kesehatan* (Surakarta: Sebelas Maret University Press, 2014).

⁸ Mailinda Eka Yuniza, 'Arah Kebijakan Pengaturan Bidang Kesehatan Pada Era Otonomi Luas' (Yogyakarta: Universitas Gadjah Mada, 2016).

⁹ Mulyadi Deri, 'Penyelesaian Kasus Kelalaian Medik Melalui Litigasi Dan Non Litigasi Di Indonesia' (Padang: Universitas Andalas, 2019).

¹⁰ Deri Mulyadi and others, 'Medical Negligence Dispute Settlement in Indonesia', *Indian Journal of Forensic Medicine and Toxicology*, 14.4 (2020), 4229-33 <<https://doi.org/10.37506/ijfmt.v14i4.12304>>.

¹¹ S Herlianto, 'Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Malpraktik Kedokteran' (Semarang: Faculty of Law, Diponegoro University, 2015).

Apart from those described above, there are still many works in Health law, for example, the works of Susila (2020),¹² Pakpahan (2021),¹³ and Irfan (2019).¹⁴

However, none of the works comprehensively establish restorative justice as a basis for resolving medical disputes. Indeed, Herlianto made numerous references to resolving medical disputes through mediation. However, his research is limited to the application of penal mediation in cases of medical malpractice. In the gap of that, this work focuses on examining why restorative justice should be applied in the resolution of medical disputes in Indonesia. This is significant given that previous works did not include restorative justice as a model or principle of medical conflict resolution.

Substantively, medical dispute resolution based on restorative justice is very essential for several reasons. *First*, the quantity of medical disputes has increased significantly throughout the years.¹⁵ *Second*, based on normative juridical perspective, there are inconsistencies in the norms governing the rights of patients to file a claim for alleged violations of professional standards or malpractice in the health sector.¹⁶ *Third*, an empirical study of medical cases shows that the settlement procedure is not taken through the Indonesian Medical Discipline Honorary Council (MKDKI). *Fourth*, the complexity of the medical case is not easily understood by law enforcers, such as investigators (POLRI), public prosecutors, and judges who implement the *ius curia novit* principle. Medical

¹² Muh Endriyo Susila, 'Implementing Dispute Resolution Mechanisms for RESOL Ving Medical Malpractice Cases in Indonesia: Problems and Prospects' (Kuala Lumpur: Ahmad Ibrahim Kulliyah of Law, International Islamic ..., 2020).

¹³ Kartina Pakpahan, O K Isnainul, and Emir Syarif Fatahillah Pakpahan, 'Mediation As An Alternative For Medical Dispute Resolution Between Doctors And Patients In Approval Of Medical/Medical Actions', *South East Asia Journal of Contemporary Business, Economics and Law*, 24.3 (2021), 173–86.

¹⁴ Mohammad Irfan, 'Mediation as A Choice of Medical Dispute Settlements in Positive Law of Indonesia', *Sociological Jurisprudence Journal*, 2.2 (2019), 116–21.

¹⁵ Garry Shewan, 'A Business Case for Restorative Justice', *London: Restorative Justice Council*. [Http://Www. Restorativejustice. Org. Uk/Resource/The_business_case_for_restorative_justice_and_policing](http://www.restorativejustice.org.uk/Resource/The_business_case_for_restorative_justice_and_policing), 2010, 1–15.

¹⁶ B. M. Dickens, 'Patients' Rights', in *Encyclopedia of Applied Ethics*, ed. by Ruth B T - Encyclopedia of Applied Ethics (Second Edition) Chadwick (San Diego: Academic Press, 2012), pp. 370–79 <<https://doi.org/10.1016/B978-0-12-373932-2.00160-5>>.

complexity, for instance, relates to the task of distinguishing the actions of a medical professional whether it falls into the category of malpractice or medical risk—that exists in every medical action with different levels.¹⁷

Method

This is normative legal research. The data was gathered through library research which consisted of numerous publications.¹⁸ The study focuses on legal principles, legal systematics, and legal synchronization related to restorative justice-based medical dispute resolution. It is descriptive and prescriptive analysis research aiming to analyze the medical dispute resolution model based on restorative justice.¹⁹ This study uses a doctrinal approach, considering that the focus of research on medical dispute resolution is restorative justice-based. The data analysis technique in this study uses the principle of logical deduction, namely, concluding a general problem to concrete issues. The data obtained in this study are derived from literature studies on primary, secondary, and tertiary legal materials and analyzed by deductive logic, taking into account the concept of law as positive norms in the national legislation system.²⁰

Discussion and Result

Medical Dispute Resolution in Indonesia

The resolution of medical disputes in Indonesia is basically the same as other disputes in general. Medical disputes can be resolved through litigation mechanisms (procedural law and judicial administration) and non-litigation approaches (non-procedural law

¹⁷ Gagan Grewal and others, 'Does Knowledge of Medical Risk Influence Patient Decision for Same Day Discharge Following Primary Shoulder Arthroplasty: A Randomized Control Trial', *Seminars in Arthroplasty JSES*, 31.2 (2021), 353–59 <<https://doi.org/10.1053/j.sart.2021.02.008>>.

¹⁸ Lego Karjoko, Zaidah Nur Rosidah, and I Gusti Ayu Ketut Rahmi Handayani, 'Refleksi Paradigma Ilmu Pengetahuan Bagi Pembangunan Hukum Pengadaan Tanah', *Bestuur*, 7.2 (2020), 1 <<https://doi.org/10.20961/bestuur.v7i1.42694>>.

¹⁹ Zaidah Nur Rosidah, 'Coherence of the Rules of Sharia Against Pancasila', *Bestuur*, 8.1 (2020), 40 <<https://doi.org/10.20961/bestuur.v8i1.42723>>.

²⁰ Triwanto Triwanto and Esti Aryani, 'The Urgency of Granting Authority to Assess Corruption Justice Collaborators', *Bestuur*, 8.1 (2020), 60 <<https://doi.org/10.20961/bestuur.v8i1.42720>>.

and non-court procedures). Medical dispute resolution through litigation can be taken in the form of both criminal cases and civil cases.²¹ The medical dispute resolution through litigation in criminal cases begins with a medical malpractice claim which is then justified as a medical crime by police officers. A medical crime is an act performed by a doctor by using his professional abilities incorrectly and fulfills the criteria of a crime, such as negligence and intentionally.²²

A medical action cannot only be filed to the criminal court, but also to the civil court. Unlike the criminal mechanism case settlement mechanism, the civil mechanism does not involve the police and prosecutor's office. It runs between parties, i.e., the doctor (midwife, nurse, or hospital) and the patient or his/her family. Therefore, the civil litigation mechanism focuses on the legal relationship between doctors and patients. This means that a medical action will be viewed from the point of view of the legal relationship between doctor and patient.²³

The legal relationship begins when the treatment process occurs. Indirectly, there has been a mutual agreement between the doctor and the patient, as a "transaction" between the two parties in terms of Health called a therapeutic transaction. Transaction means an agreement that gives birth to a reciprocal relationship between two parties regarding a matter. It contains so-called informed consent, namely a statement of accepting or refusing treatment after receiving information from the doctor before giving consent for medical action. This relates to the right to individual autonomy and self-determination as the basis of human rights. In addition, this can also

²¹I.G.A.K. Rachmi Handayani, Lego Karjoko, and Abdul Kadir Jaelani, 'Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia', *Bestuur*, 7.1 (2019), 36-46 <<https://jurnal.uns.ac.id/bestuur/article/view/42700>>.

²²Ity Shurtz, 'The Impact of Medical Errors on Physician Behavior: Evidence from Malpractice Litigation', *Journal of Health Economics*, 32.2 (2013), 331-40 <<https://doi.org/10.1016/j.jhealeco.2012.11.011>>.

²³Siti Rahma Novikasari, Duc Quang Ly, and Kerry Gershaneck, 'Taxing Micro, Small and Medium Enterprises in Yogyakarta: Regulation and Compliance', *Bestuur*, 9.1 (2021).

prevent fraud or coercion, or in other words, the approval of medical action is a doctor's permission for the patient's interests.²⁴

In addition to the litigation settlement of cases above, medical dispute resolution can also be performed through a non-litigious mechanism. Among such methods is medical dispute resolution through the Medical Ethics Honorary Council (MKEK), the Indonesian Medical Discipline Honorary Council (MKDKI), the Consumer Dispute Settlement Agency (BPSK), and Alternative Dispute Resolution (ADR). Procedures consist of mediation, consultation, negotiation, and reconciliation.

Nearly all disputes can be resolved with ADR, both civil and criminal disputes. In Indonesia, however, criminal cases tend to be resolved through litigation involving the police and the Attorney General's Office. The ADR tends to accommodate civil cases along with the investigation process. It can also be resolved by non-litigation, e.g., through penal mediation by utilizing the principle of opportunity in Article 35 letter c of Law of the Republic of Indonesia Number 16/2004 concerning Prosecution of the Republic of Indonesia.²⁵

It is theoretically justified that mediation should be able to be performed at the prosecution level as well as at a court hearing with considerations on legal certainty, legal benefits, and legal justice.²⁶ The argument is that if penal mediation is performed at the prosecution level, the principle that can be used is the principle of opportunity, i.e., an idea that gives the prosecutor the authority to set aside cases, even though there is sufficient evidence, for the public interest, both

²⁴ Anna Kawalek, 'A Tool for Measuring Therapeutic Jurisprudence Values during Empirical Research', *International Journal of Law and Psychiatry*, 71 (2020), 101581 <<https://doi.org/10.1016/j.ijlp.2020.101581>>.

²⁵ Nur Putri Hidayah, Quincy R Cloet, and David Pradhan, 'The Implementation of Labor Development Principles According to Job Creation Law as a Reason to Protect Wages Rights', *BESTUUR*, 9.1 (2021), 94-105.

²⁶ Solmaz Khodapanahandeh and Siti Naaishah Hambali, 'Efficiency of Using "Alternative Dispute Resolution" Method in Medical Negligence Claims', *Advanc* However, the phrase 'public interest' needs comprehensive interpretation, including on whether the interests of both parties are included in the category of public interest. The law itself mentioned that "public interest" is the interest of the nation and state and/or the interest of the wider community. The implementation of the principle of opportunity *es in Natural and Applied Sciences*, 8.October (2014), 1-5.

with and without conditions, as normatively set out in Article 35 letter c of Law of the Republic of Indonesia Number 16/2004 concerning Prosecution of the Republic of Indonesia.

However, the phrase 'public interest' needs comprehensive interpretation, including whether the interests of both parties are included in the category of public interest.²⁷ The law itself mentioned that "public interest" defines as the interest of the nation and state and/or the interest of the wider community. The implementation of the principle of opportunity in the article can only be performed by the General Attorney after receiving advice and opinions from state agencies that have relations with the case. Therefore, any form of medical dispute (civil or criminal dispute) can be resolved with ADR, especially mediation.²⁸

The Urgency of Restorative Justice in Medical Dispute Resolution

Dissatisfaction and disappointment with the formal criminal justice system foster a desire to return to old values and traditional justice practices. This leads to the notion of allocating opportunities to each party involved in criminal acts and the community to play an active role in resolving conflicts.²⁹ This is the main principle of restorative justice, i.e., prioritizing the active involvement of the parties in resolving the conflicts. Restorative justice is a concept that responds to the development of the criminal justice system by focusing on the involvement of the community and victims who feel excluded from the mechanisms that work in the traditional criminal justice system.³⁰ Restorative justice is carried out through a cooperative process that involves all parties (stakeholders) and is an

²⁷ Murji Iswanty and others, 'Maladministration as Doctor Medical Malpractice: A Health Law Perspective in Indonesia', *JL Pol'y & Globalization*, 67 (2017), 167.

²⁸ Murji Iswanty and others, 'Maladministration as Doctor Medical Malpractice: A Health Law Perspective in Indonesia', *JL Pol'y & Globalization*, 67 (2017), 167.

²⁹ Lois Presser and Patricia Van Voorhis, 'Values and Evaluation: Assessing Processes and Outcomes of Restorative Justice Programs', *Crime and Delinquency*, 48.1 (2002), 162-88 <<https://doi.org/10.1177/001128702048001007>>.

³⁰ Daniel W Van Ness and Karen Heetderks Strong, '3 - Restorative Justice: Justice That Promotes Healing BT - Restoring Justice (Fifth Edition)', ed. by Daniel W Van Ness and Karen Heetderks B T - Restoring Justice (Fifth Edition) Strong (Boston: Anderson Publishing, Ltd., 2015), pp. 43-60 <<https://doi.org/https://doi.org/10.1016/B978-1-4557-3139-8.00003-0>>.

alternative system of criminal justice by prioritizing an integrated approach to perpetrators on the one hand and victims/communities on the other, as a unit to seek and restore good relations in society.³¹

In the traditional concept of punishment, the victim is always silent, always accepting, and does not interfere in the criminal process. Fundamentally, the idea of restorative justice wants to reorganize the roles of victims, so they have an interest in participating in the criminal process.³² In several studies on restorative justice, it is highlighted that “empowerment” relates to the parties in criminal cases (victims, perpetrators, and community). Concretely, empowerment in the context of restorative justice is a process of building bridges between perpetrator(s) and victim(s) or community to discuss and actively participate in the resolution of the criminal matter.³³

The concept of restorative justice aims to integrate the principle of deliberation in the settlement of criminal cases and is more in line with the basic values of the Indonesian state ideology called Pancasila. The concept of restorative justice theory furthermore offers three answers to important issues in the settlement of criminal cases as follows.

Restorative justice aims to integrate the principle of deliberation in the settlement of criminal cases and is more in line with the basic values of the Indonesian state, known as *Pancasila*. Restorative justice theory offers answers to important issues in the settlement of criminal cases. *First*, criticism of the criminal justice system that does not provide opportunities, especially for victims (the criminal justice system disempowers individuals). *Second*, eliminating conflicts, especially among perpetrators, victims, and the community (taking away the conflict from them). *Third*, the fact that the feeling of powerlessness experienced as the result of a crime must be overcome to achieve reparation. This is in line with the development of the

³¹ Shih Ya Kuo, Dennis Longmire, and Steven J. Cuvelier, ‘An Empirical Assessment of the Process of Restorative Justice’, *Journal of Criminal Justice*, 38.3 (2010), 318–28 <<https://doi.org/10.1016/j.jcrimjus.2010.03.006>>.

³² Yusriando Yusriando, ‘Konstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan’, *Bestuur*, 7.2 (2019), 122 <<https://doi.org/10.20961/bestuur.v7i2.41538>>.

³³ Kerry Clamp, *Restorative Justice in Transition, Restorative Justice in Transition* (Routledge, 2013) <<https://doi.org/10.4324/9780203715192>>.

theory of Law on Pancasila, which emphasizes the engineering of policies and behavior that must be based on the values of Pancasila. In the development of the Indonesian legal system, one of the most relevant concepts to use is restorative justice.³⁴

Included in the Pancasila value is coherence with a religious point of view. This means that restorative justice-based dispute resolution is the same as, for example, the *islah* – one of the theories of dispute resolution in Islamic law. *Islah* is rooted in the word صلح which means "good." Its base form, *islah* (اصلاح), means to repair, refine, and reconcile (dispute settlement). *Islah* is usually used specifically to end disputes that occur among people.³⁵ Besides, it is also understood as the opposite of the word *fasad* (فساد) which means damage. The concept of *islah* as a dispute resolution method seeks to restore conditions or justice from the damage.³⁶ The word *ishlah* has several synonyms, among which are *tajdīd* (renewal) and *taghyir* (change), both of which lead to progress and improvement of the situation.³⁷ Hasan Sadily defines *ishlah* as a form of problem-solving between the parties concerned to settle disputes amicably and peacefully.³⁸ Whereas in *fiqh*, the word *ishlah* is defined as peace, which is an agreement established to eliminate disputes between humans, both as individuals, and groups.³⁹

In Islamic law, *islah* is mostly performed when a dispute occurs in the household between husband and wife, for example, in the case of *nusyuz* (disobedience of a wife)⁴⁰ which causes *syiqaq* (continuous bickering). However, in some cases, it also occurs during conflicts or

³⁴ Syaafi, Haiti, and Mursidah.

³⁵ Al-Rāghib al-Ashfahani, 'Al-Mufradāt Fī Gharīb Al-Qur' An' (Beirut: Beirut: Dar al-Ma'rifah), p. 284.

³⁶ Ibn Manzūr, 'Lisān Al-'arab, Vol. 3-4' (Mesir: al-Dār al-Mishriyyah Lita'lif wa al-Tarjamah), p. 348.

³⁷ Ibn Manzūr, 'Lisān Al-'arab, Vol. 3-4' (Mesir: al-Dār al-Mishriyyah Lita'lif wa al-Tarjamah), p. 348.

³⁸ Hassan Shadily, *Ensiklopedi Indonesia* (Jakarta: Ichtiar Baru-Van Hoeve, 1980).

³⁹ Abu Muhammad Mahmud Ibn Al-Aynayni, 'Ahmad. Al-Bidāyah Fi Syarh Al-Hidāyah Vol-9' (Beirut: Dar al-Fikr), p. 3.

⁴⁰ Ibn Kathir, 'Tafsir Al-Quran Al Adhim Vol 2' (Beiru: Dar El-Fikr, 1999), p. 296.

wars, for example, during *Siffin* and *Jamal* war.⁴¹ Its regard for restorative justice is apparent. *Islah* is a method of dispute resolution in Islam that is based on peace. Peace itself is oriented for recovery and any effort to build it must be conducted fairly. In the normative view, this *islah* goes hand in hand with justice as confirmed in al-Hujurat verse 9. Therefore, it can be said that Islam is in harmony with restorative justice. Theoretically, restorative justice-based medical dispute resolution is the same as *islah*-based medical dispute resolution because both emphasize peace and fair restoration of the situation.

Practically, restorative justice is a process that involves all parties in a crime to find a way to recover from the impact of the crime while choosing a mechanism to overcome it. This concept already resembles the practice of penal mediation carried out at various practical levels.⁴² To get a simpler explanation, the following table enlists the difference between restorative justice and retributive justice.⁴³

Table 1
Differences between the Principles of
Retributive Justice and Restorative Justice

No	Retributive Justice	Restorative Justice
1	Crime is defined as a violation of the (law) of the state	Crime is defined as a violation among individuals
2	The position of the parties is contradictory and emphasizes the legal process	The position of the parties is to engage in dialogue and emphasize the negotiation process
3	Making use of suffering for	Restitution as a means of

⁴¹ Abu Abdullah Muhammad bin Al-Qurtubi and Ahmad bin Abu Bakr Al-Ansari, 'Al-Jami'li Ahkam Al-Qur'an' (Beirut: Muassasah al-Risalah, 2003), 323.

⁴² Daniel W. Van Ness and Karen Heetderks Strong, '2 - A Brief History of Restorative Justice: The Development of a New Pattern of Thinking', in *Restoring Justice*, ed. by Daniel W Van Ness and Karen Heetderks B T - Restoring Justice (Fifth Edition) Strong (Boston: Anderson Publishing, Ltd., 2015), pp. 23-41 <<https://doi.org/https://doi.org/10.1016/B978-1-4557-3139-8.00002-9>>.

⁴³ Michele R. Decker and others, 'Defining Justice: Restorative and Retributive Justice Goals Among Intimate Partner Violence Survivors', *Journal of Interpersonal Violence*, 2020, 0886260520943728 <<https://doi.org/10.1177/0886260520943728>>.

	sentencing and prevention	improving both parties; the goal is to make reconciliation/recovery
4	Justice is defined rigidly according to law	Justice is defined according to the rights that arise because of the relationship with other parties
5	Crime is seen as a conflict between the individual and the state	Crime is seen as a conflict among individuals
6	The suffering of the community member (victim) is replaced with the suffering of other members of the community (the perpetrator).	Reconciliation or recovery of damage/suffering of the community
7	The community is not actively involved in the legal process because it is already represented by the state.	The community serves as the facilitator in the recovery process
8	Encouraging (spirit of) competition	Encouraging the spirit of belongingness by prioritizing the values of mutual help
9	Conflict resolution is performed by the state to the perpetrators (the victim is neglected, and the perpetrator is passive)	Aiming at solving problems; the roles of the victim and the perpetrator are both recognized (victim's rights/interests are recognized and the perpetrator is encouraged to take responsibility to fulfill it)
10	The perpetrator's accountability is realized by punishment	The perpetrator's responsibility is given the understanding as to the realized consequences of his/her fault and the perpetrator is helped to decide how things may go back as it is
11	Misconduct is only limited by law regardless of the moral, social, economic, or political dimensions	Misconduct is misunderstood in its entirety of context, fine morals, economics, and politics
12	The perpetrator's accountability is given to the state and society abstractly	The perpetrator's responsibility aims at the victim

13	Reaction to conflict is focused on the perpetrator's past actions	Reaction to conflict is focused on the suffering caused by the perpetrator's actions
14	The stigma of crime cannot be removed	The stigma of crime can be removed through remedial action
15	There is no encouragement (against the perpetrator) to regret his/her actions and (towards the victim) to forgive the perpetrator	Making the emergence of the perpetrator's remorse and forgiveness from the victim possible
16	Conflict resolution is only carried out by law enforcement officers.	Conflict resolution is performed by involving the parties (victim, perpetrator, and community)

Reasons for Mainstreaming Restorative Justice on Medical Dispute Resolution

Legal regulations in the health sector have anticipated if a dispute occurs in the health sector. In Law of the Republic of Indonesia Number 29/2004 concerning Medical Practice *jis*, Law of the Republic of Indonesia Number 36/2014 concerning Health Workers, and Law of the Republic of Indonesia Number 36/2009 concerning Health contain the basics of sentencing if there is a deviation (*dollus*) in medical action. These actions can be categorized as medical crimes if they meet the criminal elements stated in the criminal article in the law.⁴⁴ The articles above can be briefly seen in the following table.

⁴⁴ Wulandari Berliani Putri and others, 'Medicolegal Perspective on Physician-Induced Demand Issue', *BESTUUR*, 9.1 (2021), 106-24.

Table 2
Categories of Medical Measures in Health-related Laws

No	Types of Penalized Medical Actions	Article Terms
1	Practicing medicine without having a Registration Certificate (STR)	Law of the Republic of Indonesia Number 29/2004 Article 75 (1), (2), (3) <i>jo</i> Law of the Republic of Indonesia Number 36/2014 Article 85 (1) (2)
2	Medical practice without having a Practice License (SIP)	Law of the Republic of Indonesia Number 29/2004 Article 76
		<i>jo</i> Law of the Republic of Indonesia Number 36/2014 Article 80, Article 86 (1), (2)
3	Deliberately giving the impression as if a doctor who has a Registration Certificate (STR) and Practice License (SIP)	Law of the Republic of Indonesia Number 29/2004 Article 77 and Article 78
4	Deliberately not putting up a nameplate, not making medical records, and not fulfilling obligations set out by law	Law of the Republic of Indonesia Number 29/2004 Article 79
5	Hiring doctors who do not have a Practice License (SIP)	Law of the Republic of Indonesia Number 29/2004 Article 80
6	Deliberately not providing first aid to patients in an emergency situation	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 190 (1), (2)
7	Opening traditional health service using tools and technology without a permit that results in property loss, serious injury or death	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 191

8	Trading one's organs or body tissues	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 192
9	Making plastic and reconstructive surgery for the purpose of changing one's identity	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 193
10	Performing abortion	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 194
11	Trading blood	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 195
12	Producing or distributing pharmaceutical stocks and/or medical devices that do not meet the standards and/or requirements for safety, efficacy or benefit, and quality	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 196
13	Producing or distributing pharmaceutical stocks and/or medical devices that do not have a distribution permit	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 197
14	Interfering the exclusive breastfeeding program	Law of the Republic of Indonesia Number 36/2009 concerning Health, Article 200

The priority of restorative justice in medical disputes is based on three reasons, including:

First is an unprepared structure of the criminal justice system in Indonesia in handling medical cases. The structural problems of the criminal justice system towards mechanism of medical dispute resolution in Indonesia include the paradigmatic problem of law enforcement officers as they generally dwell on the principle of positivism. Besides, it is also about their capacity and capability in handling medical criminal cases as well as their orientation that has not mainstreamed alternative approaches, i.e., restorative justice.

The apparatus referred to in this case include sub-systems with their respective scopes in the criminal justice process, such as police officers, prosecutors, courts, correctional institutions, and advocates. From a positivist perspective, the focus of attention of these officers tends to be towards enforcing regulations, structures, and procedures that are typically not human-oriented for both victims and perpetrators.⁴⁵ This is a part of the characteristic of paradigmatic change from the order of justice to the order of laws and procedures with legal rationalization, structure, formulation, and bureaucratization. The focus of attention shifts from people or humanity towards an emphasis on rules, structures, and procedures.⁴⁶ Therefore, the concept of this application is only normative in the orientation. Alternative approaches, such as strengthening mediation based on restorative justice or alternative non-litigation dispute resolution become secondary mechanisms. In fact, officers, especially investigators, have difficulties in resolving medical cases because the process of investigating medical crimes requires special abilities in the field of medical and law science altogether. It is fair to say, therefore, that this type of dispute needs a special court such as a special court for terrorism, corruption, or cases engaging children.

Second is the problem of correctional institutions. It is well known that Indonesia's Correctional Institutions (known as *Lembaga Pemasyarakatan/Lapas*) are facing a capacity crisis. The higher population growth is accompanied by the complexity of life and the opening of various new modes of crime which have boosted the increase in the number of criminal acts in many sectors. In the end, this has an impact on the increase in the number of residents of *Lapas*. Conceptually, the *Lapas* is a place or facility for fostering prisoners, but it seems less efficient because of the number of prisoners. This problem may occur in all prisons in Indonesia.

⁴⁵ Brian Z. Tamanaha, 'Legal Positivism', in *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*, ed. by James D B T - International Encyclopedia of the Social & Behavioral Sciences (Second Edition) Wright (Oxford: Elsevier, 2015), pp. 762-66 <<https://doi.org/10.1016/B978-0-08-097086-8.86074-2>>.

⁴⁶ Satjipto Rahardjo, *Hukum Dan Perubahan Sosial Suatu Tinjauan Teoritis Serta Pengalaman-Pengalaman Di Indonesia*, Yogyakarta: Genta Publishing (Genta Publishing, 2009).

Currently, both detention centers and prisons throughout Indonesia are facing overcapacity. The Director General of Corrections revealed that the problem of overcapacity in detention centers and prisons is a common phenomenon in Indonesia. The capacity of prisons throughout Indonesia consists of no more than 136,000 people, but the *Rutan* and *Lapas* are currently inhabited by more than 272,000 people. This means that the prison's situation is two-fold of its standard capacity. The development of the prison situation as of July 2021 is listed in the following table.

Table 3
Total Capacity of Detainees and Convicts 2021

No	Regional Office	Detainees and Convicts	Capacity	% Overcapacity
1	Aceh	9,366	4,105	128
2	Bali	3,701	1,518	144
3	Bangka Belitung	2,523	1,311	92
4	Banten	10,694	5,197	106
5	Bengkulu	2,689	1,742	54
6	Yogyakarta	1,787	2,039	0
7	Jakarta	18,140	5,791	213
8	Gorontalo	1,009	1,078	0
9	Jambi	4,958	2,391	107
10	West Java	23,030	16,761	37
11	Central Java	13,961	9,459	48
12	East Java	28,662	13,246	116
13	West Kalimantan	5,983	2,579	132
14	South Kalimantan	9,990	3,657	173
15	Central Kalimantan	4,545	2,271	100
16	East Kalimantan	12,712	3,586	254
17	Kepulauan Riau	4,830	2,733	77
18	Lampung	9,051	5,348	69
19	Maluku	1,671	1,409	19
20	North Maluku	1,221	1,417	0
21	West Nusa Tenggara	3,430	1,929	78

22	East Nusa Tenggara	3,076	2,903	6
23	Papua	2,630	2,267	16
24	West Papua	1,121	980	14
25	Riau	14,122	4,455	217
26	West Sulawesi	1,209	1,022	18
27	South Sulawesi	10,929	6,109	79
28	Central Sulawesi	3,730	1,711	118
29	Southeast Sulawesi	2,923	2,146	36
30	North Sulawesi	2,482	2,145	16
31	West Sumatra	6,352	3,217	97
32	South Sumatra	15,162	6,605	130
33	North Sumatra	34,988	12,854	172
	Total	272,677	135,981	101

Source: <http://smslap.ditjenpas.go.id/public/grl/current/monthly>
data updated Juli 2021

Based on the table above, putting the paradigm of retributive justice is the same as adding to the congestion of the number above. This means that based on the infrastructure of the Correctional Institution, the choice of litigation path with the aim of punishing criminal offenders is not the main choice in solving the problems.⁴⁷ Herein lies the urgency of restorative justice on dispute resolution mechanism as the most reasonable approach in dealing with medical disputes.

Civil litigation can also actually be taken as a choice because it has a legal basis for implementing integrated mediation in courts that is more applicable, unlike criminal litigation. For example, there is Supreme Court Regulation Number 1/2008 which was amended by Supreme Court Regulation Number 1/2016 concerning Mediation in Courts as well as Law of the Republic of Indonesia Number 30/1999 as the main basis for non-litigation Alternative Dispute Resolution. The considerations above are physical ones instead of managerial

⁴⁷ Saidah Fasihah Binti Che Yussoff and Rohaida Nordin, 'Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard Saidah', *Bestuur*, 9.1 (2021), 44-59.

considerations and do not include the conditions of other supporting facilities.⁴⁸

The third is the condition of medical personnel in Indonesia. A health worker is every person who devotes himself to the health sector and has the knowledge and/or skills through education in the health sector which for certain types, requires the authority to do health efforts.⁴⁹ The law classifies health workers into several clumps and sub-clusters, i.e., medical personnel, clinical psychology staff, nursing staff, midwifery personnel, pharmaceutical workers, public health workers, environmental health workers, nutritionists, physical therapy personnel, medical technicians, biomedicine technical personnel, traditional health workers, and other health workers. In terms of quantity, the number of health workers in Indonesia is listed in the following table.

Table 4
Number of Doctors in Indonesia 2021

No	Province	Number of Doctor
1	Aceh	3114
2	North Sumatra	6464
3	West Sumatra	3116
4	Riau	3120
5	Jambi	1769
6	South Sumatra	2857
7	Bengkulu	927
8	Lampung	2595
9	Kepulauan Bangka Belitung	855
10	Kepulauan Riau	1376
11	Jakarta	17032
12	West Java	16705

⁴⁸ Loresta Cahyaning Lintang, Adriano Martufi, and J W Ouwerker, 'The Alternative Concepts of Blasphemy Law in Indonesia: Legal Comparison with Ireland and Canada', *BESTUUR*, 9.1 (2021), 17-33.

⁴⁹ Teguh Dartanto and others, 'Enrolment of Informal Sector Workers in the National Health Insurance System in Indonesia: A Qualitative Study', *Heliyon*, 6.11 (2020), e05316 <<https://doi.org/10.1016/j.heliyon.2020.e05316>>.

No	Province	Number of Doctor
13	Central Java	13625
14	Yogyakarta	3648
15	East Java	15239
16	Banten	5037
17	Bali	4225
18	West Nusa Tenggara	1575
19	East Nusa Tenggara	1234
20	West Kalimantan	1407
21	Central Kalimantan	1101
22	South Kalimantan	1799
23	East Kalimantan	2233
24	North Kalimantan	482
25	North Sulawesi	2203
26	Central Sulawesi	1153
27	South Sulawesi	4050
28	Southeast Sulawesi	1053
29	Gorontalo	555
30	West Sulawesi	481
31	Maluku	724
32	North Maluku	494
33	West Papua	475
34	Papua	968
Total		123691

Source: http://bppsdmk.kemkes.go.id/info_sdmk/info/index?rumpun=101

Meanwhile, the ratio of doctors, including general practitioners and dentists, and patients is as follow:

Table 5
Ratio of General Practitioners and Dentists
(1:100,000 population)

No	Region	Population	Ratio of General Practitioners	Ratio of Dentists
1	Aceh	5281314	1:30	1:06
2	North Sumatra	14415391	1:23	1:06
3	West Sumatra	5382077	1:20	1:08
4	Riau	6814909	1:24	1:07
5	Jambi	3570272	1:28	1:07
6	South Sumatra	8370320	1:15	1:03
7	Bengkulu	1963300	1:23	1:06
8	Lampung	8370485	1:21	1:04
9	Kepulauan Bangka Belitung	1459873	1:269	1:51
10	Kepulauan Riau	2136521	1:26	1:06
11	Jakarta	10467629	1:65	1:19
12	West Java	48683861	1:11	1:03
13	Central Java	34490835	1:17	1:04
14	Yogyakarta	3802872	1:54	1:19
15	East Java	39500851	1:22	1:06
16	Banten	12689736	1:11	1:04
17	Bali	4292154	1:36	1:10
18	West Nusa Tenggara	5013687	1:27	1:05
19	East Nusa Tenggara	5371519	1:14	1:03
20	West Kalimantan	5001664	1:17	1:03
21	Central Kalimantan	2660209	1:19	1:04
22	South Kalimantan	4182695	1:21	1:06
23	East Kalimantan	3648835	1:30	1:08
24	North Kalimantan	716407	1:35	1:07
25	North Sulawesi	2484392	1:37	1:04
26	Central Sulawesi	3010443	1:18	1:04
27	South Sulawesi	8771970	1:19	1:09

No	Region	Population	Ratio of General Practitioners	Ratio of Dentists
28	Southeast Sulawesi	2653654	1:17	1:06
29	Gorontalo	1185492	1:27	1:05
30	West Sulawesi	1355554	1:12	1:04
31	Maluku	1773776	1:14	1:02
32	North Maluku	1232632	1:20	1:03
33	West Papua	937458	1:26	1:04
34	Papua	3322526	1:23	1:03

Source: http://bppsdmk.kemkes.go.id/info_sdmk/info/renbut

Based on the data above, it can be observed that the ratio of the population and the availability of health personnel (practitioners and dentists) is uneven and has a wide gap. For example, Aceh has 30 general practitioners and 6 dentists per 100,000 people. In the DKI Jakarta area, there are 65 general practitioners per 100,000 population and 19 dentists per 100,000 population. In West Sulawesi, there are 12 general practitioners and 3 dentists per 100,000 population. These data are sufficient to illustrate that the quantity of medical personnel in Indonesia is still lacking.⁵⁰ Therefore, it is common that public perception of health problems is still poor. Furthermore, based on data from the World Bank, the number of doctors in Indonesia is the second-lowest after Cambodia, i.e., 0.4 doctors per 1,000 people. This means that Indonesia only has 4 doctors serving 10,000 people. This number is much lower than that of Singapore which has two doctors per 1,000 people.⁵¹

These Indonesia's statistical data show the availability of doctors' resources amidst Indonesian society. In simple terms, the communities need for medical personnel is still not being fulfilled. Such a situation also represents the underdevelopment of medical resources in Indonesia compared to other Southeast Asian countries,

⁵⁰ Agung Dwi Laksono, Ilham Akhsanu Ridlo, and Ernawaty Ernawaty, 'Distribution Analysis of Doctors in Indonesia', *Jurnal Administrasi Kesehatan Indonesia*, 8.1 (2020), 29 <<https://doi.org/10.20473/jaki.v8i1.2020.29-39>>.

⁵¹ Agung Dwi Laksono, Ilham Akhsanu Ridlo, and Ernawaty Ernawaty, 'Distribution Analysis of Doctors in Indonesia', *Jurnal Administrasi Kesehatan Indonesia*, 8.1 (2020), 29 <<https://doi.org/10.20473/jaki.v8i1.2020.29-39>>.

except Cambodia. In addition to numerical and legal data as mentioned above, there are social phenomena that adequately illustrate that the condition of Indonesian medical personnel still needs further attention.⁵²

For instance, there had been a massive demonstration by doctors accompanied by a strike in November 2013. It is the aftermath of a medical dispute that befell dr. Dewa Ayu Sasiary and her two colleagues. Many doctors in various regions united to criticize the cassation decision which stated that dr. Ayu and her two colleagues are guilty. As a result, patients who need their medical services at that time were cared less than optimal. For example, a patient from Ciamis-West Java had to cancel the scheduled operation of an appendectomy at a hospital because the doctor took part in the solidarity action.⁵³ It means that mechanism for criminal litigation-based medical dispute resolution is a serious problem among doctors in Indonesia. As a result, it is not only the doctors who feel worried but the patients, who at the same time, may indirectly become victims. These conditions reinforce that in terms of resolving medical cases, it is essential to mainstream restorative justice in non-litigation approaches.

Conclusion

The application of restorative justice to medical dispute resolution in Indonesia deserves consideration based on several reasons and circumstances, such as the presence of relevant legal loopholes. Although not clearly and literally stated in various health law regulations, Article 29 of Law of the Republic of Indonesia Number 36/2009 concerning Health mentioned that medical disputes

⁵² Hendry Julian Noor and others, 'Application of Sanctions Against State Administrative Officials Failing to Implement Administrative Court Decisions', *Bestuur*, 9.1 (2021), 73-93.

⁵³ P. B. Murdi and W. T. N. Supanto, "The Role of Indonesian Honorary Council of Medical Discipline in Upholding Indonesian Medical Code of Ethics," *Proceeding Adv. Soc. Sci. Educ. Humanit. Res. Atl. Press*, vol. 358, 2019. See also P. B. Murdi, "The Application of the IPSA Loquitur Principle in the Regulation of Medical Malpractice Resolution," *Int. J. Innov. Creat. Chang.*, vol. 12, no. 12, pp. 756-764, 2020. Compare with E. Sutrisno and E. K. Dewi, "Dampak Putusan Mahkamah Agung Nomor 365 K/PID 2012 Terhadap Kinerja Dokter di Wilayah III Cirebon," *J. Media Huk.*, vol. 23, no. 2, pp. 162-170, 2016.

should be resolved by mediation. This shows that the legislators indeed want the dispute resolution process to use non-litigation approaches before leading to litigation.

Three pressing reasons exist for implementing restorative justice in medical dispute resolution. *First*, the need for mixed capabilities on medical and law science in the midst of law enforcement officers' competence is not well established. *Second* reason is the overcapacity condition of Indonesia's Correctional Institutions (*Lapas*) while imprisonment will only add to the congestion of prison. *Third*, the unbalanced ratio of Indonesia's health workers compare to the patients. The concept of criminalizing doctors is not an option because it may lead to fidgetiness for health workers themselves, as in the case of dr. Dewa Ayu Sasiary sparked mass action among doctors.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 393-420
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.4817>

Meta-Analysis the Root of Terrorism from the Perspective of Islamic Movement in Indonesia

Dinda Rosanti Salsa Bela

Department of Government Affairs and Administration, Jusuf Kalla School of Government, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia
Email: dindarosantisalsabela@gmail.com

Achmad Nurmandi

Department of Government Affairs and Administration, Jusuf Kalla School of Government, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia
Email: nurmandi_achmad@umy.ac.id

Isnaini Muallidin

Department of Government Affairs and Administration, Jusuf Kalla School of Government, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia
Email: muallidin@umy.ac.id

Danang Kurniawan

Department of Government Affairs and Administration, Jusuf Kalla School of Government, Universitas Muhammadiyah Yogyakarta, Yogyakarta, Indonesia
Email: kurniawand949@gmail.com

Article history: Received: June 30, 2021, Accepted: December 21, 2021,
Published: December 27, 2021

Abstract:

This paper aims to map the root of terrorism in Indonesia from the Islamic movement perspective. The authors want to know how the root of terrorism has strengthened in Indonesia. A qualitative method approach was taken through a literature study regarding the delivery of research map information while the data was exported in the RIS Export file format. Then, the authors exported the data and processed it using VOSviewer to find out a bibliometric map of research development based on significant themes of Indonesian

Author correspondence email: dindarosantisalsabela@gmail.com

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terrorism cases. Nvivo 12 plus provided exploration and description of terrorism in Indonesia to get an efficient explanation of the data. The findings are, the first to map the issue of terrorism in Indonesia. First, there was a correlation between terrorism, radicalism, and Islam. Different views of religious teachings eventually led to the terrorism movement. Several radical Islamic organizations in Indonesia have portrayed Islam as a terrorist religion. Second, the factors causing the strengthening of terrorism in Indonesia were due to injustice, oppression, and discrimination leading to terrorism and radicalism using the concept of *jihād*. This research suggests that the government can handle terrorism cases in Indonesia and neutralize ideas that are considered radical with a de-radicalization approach.

Keywords:

Terrorism; Islamism; Indonesia

Abstract:

Tulisan ini bertujuan memetakan akar terorisme di Indonesia dari aspek gerakan Islam. Penulis ingin mengetahui bagaimana akar terorisme menguat di Indonesia. Pendekatan metode kualitatif ditempuh melalui studi pustaka sedangkan untuk penyampaian informasi peta penelitian, data diekspor dalam format file Ekspor RIS. Kemudian, penulis mengekspor data dalam format (RIS), mengolahnya menggunakan VOS viewer untuk mengetahui peta bibliometrik pengembangan penelitian berdasarkan tema signifikan kasus terorisme di Indonesia dan menggunakan Nvivo 12 plus untuk memberikan eksplorasi dan deskripsi terorisme di Indonesia demi mendapatkan penjelasan yang efisien dari data. Temuan penelitian ini adalah; *Pertama*, pada tahap pemetaan isu terorisme di Indonesia, terdapat korelasi antara terorisme, radikalisme, dan Islam. Perbedaan pandangan terhadap ajaran agama pada akhirnya memunculkan gerakan terorisme. Beberapa organisasi Islam radikal di Indonesia telah mencitrakan Islam sebagai agama teroris. *Kedua*, diketahui faktor penyebab menguatnya terorisme di Indonesia adalah rasa ketidakadilan, penindasan dan diskriminasi yang berujung pada gerakan terorisme dan radikalisme dengan mengusung konsep *jihād*.

Saran dari penelitian ini adalah agar pemerintah dapat menangani kasus terorisme di Indonesia dan menetralkan ide-ide yang dianggap radikal dengan pendekatan deradikalisasi.

Keywords:

Terorisme; Islamisme; Indonesia

Introduction

Terrorism is increasingly becoming a scourge for modern civilization.¹ The nature of actions, actors, objectives, motivations, expected and achieved results, targets, and methods of terrorism are now increasingly broad and varied.² This research aims to map terrorism in Indonesia from the Islamic movement perspective. Furthermore, the authors want to know how terrorism can be stronger in Indonesia. In contrast to war, acts of terrorism are not subject to war procedures, such as the execution time which is always sudden, and the victim which is typically random and coming from civilians.³ The act of terrorism also implies that terrorist attacks carried out are inhumane and have no justification and therefore the perpetrators of "terrorists" deserve cruel retribution.⁴

The problem of terrorism requires broad and simultaneous handling in the fabric of close cooperation between the state, religions, and all components of society.⁵ Each has an important role and needs to

¹ Firmansyah Firmansyah and Arief Hidayat, "Pendekatan Advokasi Muhammadiyah Dalam Penanganan Terorisme Di Indonesia," *Journal of Political Issues* 2, no. 1 (2020): 10-20.

² Ahmad Rizky Mardhatillah Umar, "Melacak Akar Radikalisme Islam Di Indonesia," *Jurnal Ilmu Sosial dan Ilmu Politik* 14, no. 2 (2010): 169-186, <https://jurnal.ugm.ac.id/jsp/article/view/10935>.

³ Siti Ruhaini Dzuhayatin, "Islamism and Nationalism among Niqabis Women in Egypt and Indonesia," *Indonesian Journal of Islam and Muslim Societies* 10, no. 1 (2020): 49-77.

⁴ Reni Windiani, "Peran Indonesia Dalam Memerangi Terorisme," *Jurnal Ilmu Sosial* 16, no. 2 (2018): 135.

⁵ Nurul Faiqah and Toni Pransiska, "Islamic Radicalism Vs Islamic Moderation: Efforts to Build the Face of Peaceful Indonesian Islam," *Al-Fikra: Jurnal Ilmiah Keislaman* 17, no. 1 (2018): 33-60, <http://ejournal.uin-suska.ac.id/index.php/al-fikra/article/view/5212>.

fulfill in a persuasive, educative, and transformative manner.⁶ The government, for instance, needs to acknowledge its role and responsibility to protect all citizens and create a sense of security and peace.⁷ Along with that, law enforcement is a must that every citizen has the same access to justice.⁸ A wrongdoer should receive a fair punishment. Besides, legal justice needs to be accompanied by welfare or equitable distribution of interest⁹. The absence of prosperity can lead to social movements with violent means and actions in demanding for justice.¹⁰

Indonesia is still prone of terrorism action because the terror perpetrators are well-organized in society.¹¹ By spreading terrorist members and remaining in one-way command, it is difficult for both public and the police to track them down.¹² Here, the perpetrators of terrorism are misguided because they feel innocent with what they do like killing people, committing suicide, injuring others, and spreading false knowledge or belief.¹³ According to them, they do the right thing and follow the order.¹⁴ Although the activities or actions also harmed

⁶ M. Affan, "The Threat of Is Proxy Warfare on Indonesian Millennial Muslims," *Indonesian Journal of Islam and Muslim Societies* 8, no. 2 (2018): 199-224.

⁷ Aria Nakissa, "Security, Islam, and Indonesia An Anthropological Analysis of Indonesia's National Counterterrorism Agency," *Bijdragen tot de Taal-, Land- en Volkenkunde* 176, no. 2-3 (2020): 203-239.

⁸ Ilyas Mohammed, "De-Radicalisation and Humanitarianism in Indonesia," *Social Sciences* 10, no. 3 (2021): 1-17.

⁹ Anastasia Yuni Widyaningrum and Noveina Silviyani Dugis, "Terorisme Radikalisme Dan Identitas Keindonesiaan," *Jurnal Studi Komunikasi (Indonesian Journal of Communications Studies)* 2, no. 1 (2018): 32-67.

¹⁰ Sekolah Tinggi et al., "Jurnalis Dan Terorisme (Studi Pustaka Etika Jurnalis Dalam Meliput Dan Memberitakan Kasus Terorisme Di Media Siber)" 1, no. c (2020).

¹¹ A S Mufid, "Radikalisme Dan Terorisme Agama, Sebab Dan Upaya Pencegahan," *Harmoni* 12, no. 1 (2013): 7-17, <https://jurnalharmoni.kemenag.go.id/index.php/harmoni/article/view/190>.

¹² Muchamad Sholakhuddin Al Fajri, "The Construction of Indonesian Muslims and Islam in Australian Newspapers: A Corpus-Assisted Critical Discourse Analysis," *Discourse and Interaction* 13, no. 1 (2020): 5-24.

¹³ Sidratahta Mukhtar, "Strategi Pemerintah Indonesia Menghadapi Terorisme Dalam Era Demokratisasi," *Jurnal Reformasi* 6, no. 2 (2016): 143-153.

¹⁴ Faiqah and Pransiska, "Islamic Radicalism Vs Islamic Moderation: Efforts to Build the Face of Peaceful Indonesian Islam."

many parties, they typically have no willingness to stop their actions or correct themselves for what they had done.¹⁵

Indonesia has been facing an internal security crisis marked by the emergence of terrorism movements that the anti-ideological spirit of *Pancasila* (nation's five basic pillars), The State of Republic Indonesia (NKRI), and *Bhinneka Tunggal Ika* is the motto of the Indonesian nation which is written on the symbol of the Indonesian state.¹⁶ The threat of terrorism in Indonesia is real, even though only a Muslim minority is radicalized and deciding to do the violence.¹⁷ When terror in Indonesia occurs in a row followed by the arrest of terrorists based on the testimonies and networks formed by the perpetrators, at the same time, many people have dedicated their lives to becoming terrorists. Some others galvanize future terrorists, teach the science of terrorism, and convince people to follow.

Various studies and researches were conducted to explore the factors behind acts of terrorism that have emerged in almost all parts of the world. Some intellectuals and researchers have concluded that the trigger for terrorism is ideology or religion.¹⁸ In this case, the radical Islamic movement is often accused of being the trigger as well as the perpetrator of various acts of terror.¹⁹ Specifically in Indonesia, acts of terror or terrorist activities associated with Islam have shocked the world because most of Indonesia's population, approximately 87%, is Muslim.²⁰

¹⁵ (Mahfud et al., 2018)

¹⁶ Nakissa, "Security, Islam, and Indonesia An Anthropological Analysis of Indonesia's National Counterterrorism Agency."

¹⁷ G Yumitro et al., "The Modalities and Roles of Local Governments to Face Terrorism Issues in Indonesia: The Case Study of Malang Raya Region," *Revista UNISCI* 2020, no. 53 (2020): 9-21, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85087831775&doi=10.31439%2FUNISCI-80&partnerID=40&md5=943c5405d2ee062184a5d43c071b48f4>.

¹⁸ (Hatta et al., 2019)

¹⁹ Mohammed Ilyas, "Decolonising the Terrorism Industry: Indonesia," *Social Sciences* 10, no. 2 (2021): 1-16.

²⁰ S Priyanto, M K Dermawan, and A J S Runturambi, "Islah as the Key Success of Terrorist Disengagement Process in Indonesia," *Journal of Al-Tamaddun* 15, no. 1 (2020): 157-168, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85090700861&doi=10.22452%2FJAT.vol15no1.11&partnerID=40&md5=aceff3c3f769ce5bfeca9244a7dec5>.

Indonesia, initially referred to as the concentration of calm and peaceful Muslims, was suddenly touched by the spread of terrorism.²¹ The connection between Indonesian jihadist fighters and other foreign jihadists leads to Al Qaeda and Jemaah Islamiah's broader relationship and network.²² The close relationship with international terrorism networks then becomes inevitable.²³ Furthermore, the limited quality and capacity of intelligence institutions in handling terrorism make it hard to reveal the perpetrators and motives behind terrorism and the root of the problems.²⁴ As a consequence, several acts of terrorism in Indonesia have not been fully disclosed by Indonesia's security forces.²⁵ Therefore, this study seeks to answer the substantive questions: How is the mapping of terrorism in Indonesia from the Islamic movement's side?; How can terrorism be multiplied and stronger in Indonesia?

Method

Related to the purpose of this research to analyze terrorism cases in Indonesia and counter-terrorism by the government during the last five years, a literature review is considered as an appropriate research method. This research's data source comes from internationally accredited articles while data collection was done by searching through the database of Scopus at <https://www.scopus.com/>. Scopus is one of the most extensive citations and abstract databases of the reviewed literature such as scientific journals, books, and conference proceedings.

Search for articles through the <https://www.scopus.com/> site by selecting several terms by ticking the access button "show open access journals" and depository institutions through the search column "Search for documents". For keywords in the Scopus search column, it is written as (TITLE-ABS-KEY (((TERRORISM and

²¹ Zulkhaidir Zulkhaidir, "Islam Dan Terorisme," *Jurnal Ilmiah Islam Futura* 7, no. 2 (2018): 49.

²² Agus Handoko, "Analisis Kejahatan Terorisme Berkedok Agama," *SALAM: Jurnal Sosial dan Budaya Syar-i* 6, no. 2 (2019): 155-178.

²³ (Sahasad et al., 2020)

²⁴ Mukhtar, "Strategi Pemerintah Indonesia Menghadapi Terorisme Dalam Era Demokratisasi."

²⁵ Imam Mustofa, "TERORISME: ANTARA AKSI DAN REAKSI (Gerakan Islam Radikal Sebagai Respon Terhadap Imperealisme Modern)," *Religia* 15, no. 1 (2017).

INDONESIA))) AND (LIMIT-TO (SUBJAREA, "SOCI")) AND (LIMIT-TO (OA, "all"))). Some of the data were analyzed descriptively based on the year of publication, the publishing institution, the issuing countries, the name of the journal/publication, the type of document, and the research topic.

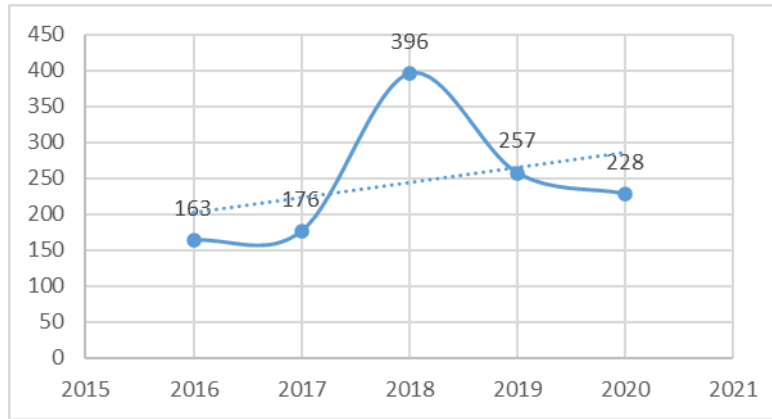
Later on, for delivering research map information, the data is exported in the Export RIS file format. In the first discussion, the authors processed the data using VOSviewer to find out the bibliometric map of research development based on the big theme of terrorism cases in Indonesia. This means observing the frequency of words in the discussion as well as visualizing the relationship between the main themes and the most recent literature. In the second discussion, the authors processed data using Nvivo 12 for exploring and describing terrorism in Indonesia to explain the data efficiently.

Discussion and Result

A. Indonesian Terrorism Case and Its Academic Trends

Another factor that makes terrorism action in Indonesia gets increased is the use of high technology²⁶ which makes it far easier to commit the action. Unsurprisingly, despite the ups and downs, the record shows that terrorism does exist in the country as clear the graph 1;

²⁶ S R Dzuhatin, "Islamism and Nationalism among Niqabis Women in Egypt and Indonesia," *Indonesian Journal of Islam and Muslim Societies* 10, no. 1 (2020): 49-77, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85086372317&doi=10.18326%2Fijims.v10i1.49-77&partnerID=40&md5=afe1d4cd4042018624cb86a852d450ae>.



Graph 1. Number of Terrorism Cases in Indonesia
(source by <https://www.scopus.com/>)

As a result, Indonesia is considered a dangerous country. Indonesia, which was once a friendly population, has now become a country whose inhabitants are considered dangerous to other nations.²⁷ In this context, Indonesian identity is at stake. The millions of innocent Indonesian people who are not involved in terrorism activities share the consequences of radicalism accusations leading to terrorism carried out by relatively small certain groups.²⁸

Indonesian terrorism has a comprehensive and global network that threatens national peace and security. As a country with the largest Muslim population globally, Indonesia continues to be a part of the international conversation with ongoing events related to radicalism and terrorism. Starting with the Bali Bombings incident that intentionally sent a message to the international community about sentiment towards the United States, the event became a success with various following bombings in Jakarta and the Bali Bombing II. Such events with the background of radicalism made Indonesia one of the centers of world attention.²⁹

The development of terrorism cases in Indonesia from 2016 to 2020 gets much attention among researchers as can be seen from the percentage of academic discussion themes. The figure below shows

²⁷ (Mahfud et al., 2018)

²⁸ Sahrasad et al., "Indonesian Terrorism: Wahabism and the 'Imagined Caliphate.'"

²⁹ Hatta et al., "The Impact of Terrorism on Indonesia's Economic Stability."

that terrorism is the most frequently indicated thing in the literature with a percentage of 17%. In this regard, religious points are also topics related to terrorism with a percentage of 12%. Then other things related to Indonesia, media, radicals, the state, education, Islam, and issues have an average percentage below 10%. All of these topics are certainly interrelated and influence each other with the strengthening of terrorism cases that occur in the Chart 1.

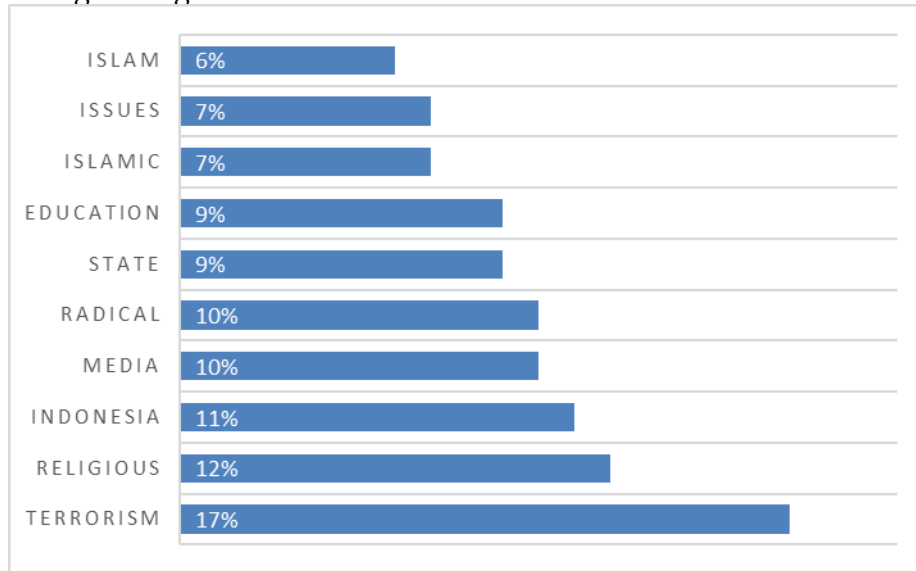


Chart 1. Literature Analysis Based on (Discussion Theme) Terrorism Issues

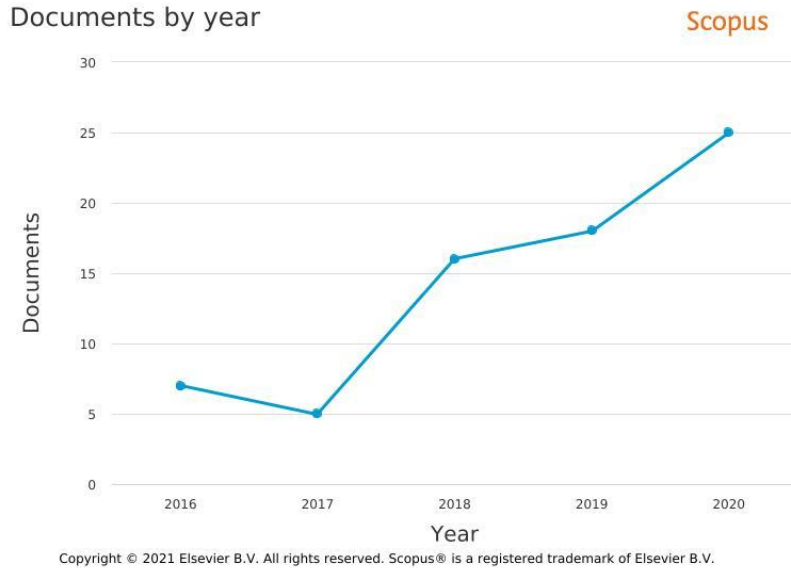
(source by <https://www.scopus.com/>)

The literature analysis in chart 1 shows that terrorism becomes an essential item. Terrorism cases certainly have a strong relationship with religious matters, namely Islam. The ideas considered radical have also had something to do with the Muslim community as the most Indonesia's population.³⁰ In a pluralistic society where conflicts of interest are constant, democratic values become the hope for peaceful conflict resolution. In the name of democracy, every human being should ideally get recognition and respect for himself.³¹

³⁰ Windiani, "Peran Indonesia Dalam Memerangi Terorisme."

³¹ Muhaimin Zulhair Achsin, "Culture and Role of Woman in Terrorism in Indonesia. Case Studies: Suicide Bombings in Surabaya and Sibolga," *International Journal of Engineering and Advanced Technology* 8, no. 5 (2019): 873–876.

Following the last five year record of Indonesian terrorism, the development of research on terrorism cases in Indonesia also experienced a growth trend with fluctuating dynamics as shown at the Graph 2 below;



Graph 2. Trends of Terrorism Issues Research in Indonesia

Graph 2 shows the trend of annual publications related to terrorism cases occurring in Indonesia. In this study, the data were taken from 2016 to 2020. The number of detected data was 73 documents in which the authors selected 51 samples of it based on social science studies clustering. There are five documents in 2016, 2 in 2017, 11 in 2018, 13 in 2019, 16 for 2020, and 2 for 2021. From the graph 2 result a literature analysis based on the theme that processed data from 51 literature documents using Nvivo12 Plus.

B. The Root of Terrorism Act in Indonesia

Democracy is often identified with freedom of expression. On the other hand, freedom of self-expression and the right of every human being has become the key theme in the debate on the practice of radicalism growing at various societal levels. The method of radicalism is then considered the same as a form of self-expression as a part of human rights. When every individual and group has found a

space for expression, the notion of radicalism begins to enter and be played by some actors with specific interests.

Terrorism, on the other hand, is essentially an act contradictory to the principles of human life whose emergence is often due to injustice among society and the lack of understanding of the scriptures as the basis of legal law in religion.³² Having that kind of seed, terrorism organizations commonly develop massively with the background of specific groups' interests and the legalization of superpower countries such as the United States and Israel to expand their wings of power or interests.³³

Due to the negative meanings of "terrorist" and "terrorism," terrorists generally refer to themselves as separatists, liberation fighters, militants, mujahideen, and others.³⁴ When they get caught either alive or killed, they often relate their struggle with *jihad fi sabilillah* teaching although, in a deeper analysis, their actions do not reflect religious teachings' values, especially Islam.³⁵ In the Qur'an. For example, there is no commandment to kill a man unless the person commits a considerable crime and results in the destruction of human civilization.³⁶

The teachings of any religion, especially Islam, do not justify acts of terrorism under any pretext. Religion is only a shield to carry out plans and acts of terrorism. However, most of the recruitment of terrorist members is based on religious doctrine, making them believe that their deeds are a sacred mission that can deliver them to God's blessing.³⁷

³² Widyaningrum and Dugis, "Terorisme Radikalisme Dan Identitas Keindonesiaan."

³³ Muh Wajdi, "Islam Dan Radikalisme (Mengurai Makna Terorisme)" (2017).

³⁴ I Mohammed, "De-Radicalisation and Humanitarianism in Indonesia," *Social Sciences* 10, no. 3 (2021): 1-17, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85102570665&doi=10.3390%2Fsocsci10030087&partnerID=40&md5=286b44129019b918821b3ab5f9c490bf>.

³⁵ U Sumbulah, "Preventing Radicalism by Family and Civil Society Organizations in Indonesia," *Pertanika Journal of Social Sciences and Humanities* 27, no. 1 (2019): 391-403, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85072395321&partnerID=40&md5=edfcbcd935f368b4fcc492cf9d6a722>.

³⁶ Zulkhaidir, "Islam Dan Terorisme."

³⁷ Firmansyah and Hidayat, "Pendekatan Advokasi Muhammadiyah Dalam Penanganan Terorisme Di Indonesia."

The acts of terrorism in Indonesia must furthermore have disturbed the peace and tranquility of its people. Even so, the government does not easily eradicate these acts. The development of terrorism in Indonesia shows the weak condition of the state and the absence of the state apparatus's role in maintaining defense and security.³⁸ Acts of terror continue to occur in Indonesia with a different number of cases every year.

By involving various actors, including politicians, religious leaders, people in business, and other community leaders, radicalism is increasingly being ordained as the only way to make Indonesia change for the better (Wajdi 2017). Various religious adages were also called on the altar of radicalization to ignite public emotion, especially among a group of people affiliated with this movement. Therefore, although Indonesia has caught the world's attention with the rampant cases of terrorism, at the same time, terrorists are recruiting militant people to make their goal come true and in the name of *jihād*, they conceal their evil plans.³⁹

The visualization of terrorism cases in Indonesia can be seen in Figure 1 below;

³⁸ N G Rogozhina, "The struggle against islamic terrorism in southeast asia," *World Economy and International Relations* 64, no. 8 (2020): 27-36, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85090638343&doi=10.20542%2F0131-2227-2020-64-8-27-36&partnerID=40&md5=efc58c71c00d5950be2deba5ba32f897>.

³⁹ Mohammed, "De-Radicalisation and Humanitarianism in Indonesia."

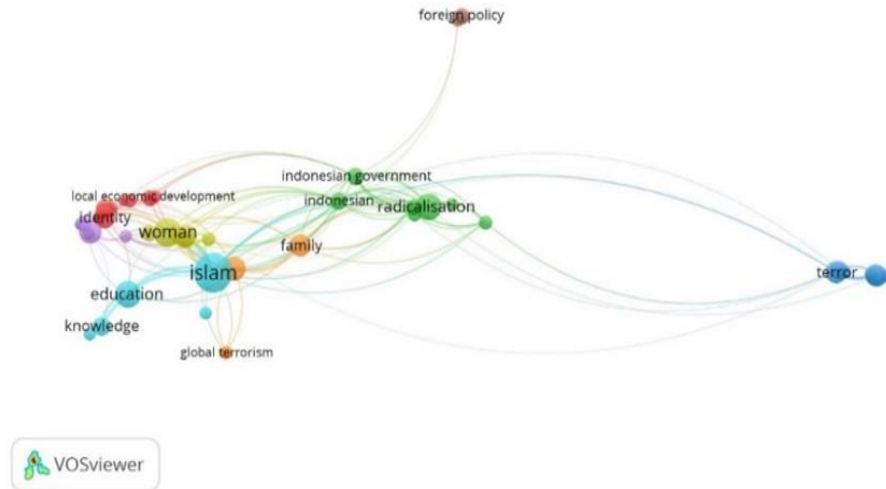


Figure 1. The Root of Terrorism Visualization in Indonesia

The Figure 1 shows an apparent correlation between terrorism, radicalism, and religion. Islam is the most prominent item that has a relationship with terrorism. Furthermore, literature review data processed with VOSviewer reveals that women also have the most intersecting relationship with Islam and education affecting Indonesia's development of terrorism cases. VOSviewer organizes them into 8 groups based on keywords like terrorism, situations, factors, causes, country, product, countermeasures, and Indonesia. It can be seen in the table of contents for each cluster below:

Cluster 1 (9 Items)	<i>Expressions, Identity, Local Development, Local Government, National Identity, Pesantren, Responder, Securitization, Terrorism Issue</i>
Cluster 2 (8 Items)	<i>Civil Society Organization, Indonesian, Indonesian Government, Moderate Islam, Muslim Population, Radicalization, Radicalization Program, Youth Radicalization.</i>
Cluster 3 (7 Items)	<i>Indonesian Millennial Muslim, Jihad, Radical, Terror, Terror Attack, Terrorist Group, Terrorist Organization.</i>
Cluster 4 (6 Items)	<i>Democracy, Islamism, Nationalism, Niqabi, Niqabis, Woman</i>

Cluster 5 (5 Items)	<i>Counter-terrorism, Domestic Security Dilemma, Human Right, Political Right, Religious Leader.</i>
Cluster 6 (5 Items)	<i>Education, Indonesian Muslim, Islam, Knowledge, Terrorism Industry.</i>
Cluster 7 (4 Items)	<i>Family, Global Terrorism, Radicalism, Religious Radicalism.</i>
Cluster 8 (3 Items)	<i>Foreign Policy, International Relations, Middle Power.</i>

Table 1. VOSviewer Cluster Analysis

Table 1 of the bibliometric analysis using VOSviewer shows a relationship between Islamic views, Islamic teachings, terrorism acts, and radicalism movements in Indonesia. This movement can cause terror mainly because of its distinctive opinions and understanding of democracy and nationalism.⁴⁰ Muslim population in Indonesia the terrorist groups freely oppose democracy using the *jihād* concept.⁴¹ They base their action on the strong will to fight for Islam using the *jihād* so that they tend to justify any means to realize it including even though using violence such as physical attacks and bombings.⁴²

The cluster analysis above also shows how women's presence becomes a critical spotlight. Women and the *niqab* are synonymous with the religious radicalism movement although it is generally believed that not all women with the *niqab* are terrorists. This situation seems to explain the relationship between religiosity and terrorist behavior in Indonesia. General understanding of the Indonesian terrorism act needs to be put in the context of the larger terrorism

⁴⁰ Windiani, "Peran Indonesia Dalam Memerangi Terorisme."

⁴¹ A Fenton and D Price, "ISIS, Jihad and Indonesian Law: Legal Impacts of the January 2016 Jakarta Terrorist Attacks," *Issues in Legal Scholarship* 14, no. 1 (2016): 1-26, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85002574593&doi=10.1515%2Fils-2016-0255&partnerID=40&md5=16c2bd387b78347b2701d71d90bbeca8>.

⁴² I E Putra et al., "Tackling Islamic Terrorism and Radicalism in Indonesia by Increasing the Sense of Humanity and Friendship," in *Violent Extremism: Breakthroughs in Research and Practice* (Persada Indonesia University, Indonesia: IGI Global, 2018), 280-301, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85059711271&doi=10.4018%2F978-1-5225-7119-3.ch016&partnerID=40&md5=fd2f86eefb01ac5df0c5fbc04165da00>.

movement.⁴³ These acts of violence are typically motivated by specific thoughts or justification that they claim as religious teachings. Other terrorism movements do not have a direct relation to certain spiritual teachings ⁴⁴ like terrorism act occurring because of political, and cultural motivations.⁴⁵ Unfair and non-ideal situations such as unfair treatment, discrimination, and marginalization in the political and cultural fields often encourage the occurrence or development of terrorism as well.⁴⁶ Thus, whether driven by a belief in certain religious propositions or other motivations, the terrorism movement aims to defend a specific value be it religion, justice, or cultural ones.⁴⁷

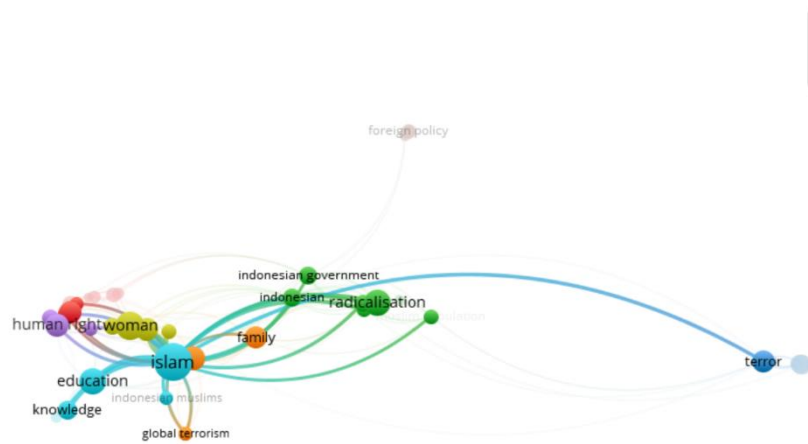


Figure 2. The Relation Between Terrorist and Islam

Meanwhile, Figure 2 above shows how on one hand, religion is a place where people find peace, depth of life, and firm hope but on the other hand, it is often associated with violence and various conflict

⁴³ Faiqah and Pransiska, "Islamic Radicalism Vs Islamic Moderation: Efforts to Build the Face of Peaceful Indonesian Islam."

⁴⁴ Firmansyah and Hidayat, "Pendekatan Advokasi Muhammadiyah Dalam Penanganan Terorisme Di Indonesia."

⁴⁵ Zulkhaidir, "Islam Dan Terorisme."

⁴⁶ Amra Sabic-El-Rayess, "Epistemological Shifts in Knowledge and Education in Islam: A New Perspective on the Emergence of Radicalization amongst Muslims," *International Journal of Educational Development* 73, no. November 2019 (2020): 102148, <https://doi.org/10.1016/j.ijedudev.2019.102148>.

⁴⁷ Nakissa, "Security, Islam, and Indonesia An Anthropological Analysis of Indonesiaâs National Counterterrorism Agency."

incidents.⁴⁸ Specific religious mechanisms are vulnerable to violence and conflict.⁴⁹ This symptom particularly can occur when love for a particular value system develops to have political implications.⁵⁰ By cornering other people for their religious or ethnic ownership, acts of hatred are commonly taking place in the form of resistance, especially targetting ideas and institutions that are considered contrary to their beliefs.⁵¹

C. Factors Causing the Growing of Terrorism in Indonesia

A terrorist movement is a symptom of a revival in fighting injustice, oppression, and slander committed by some parts of the local community and the world against other parts of society. Based on the 51 literature review documents. The image below is the result of the word frequency analysis using Nvivo from the 51 papers.



Figure 3. Word Frequency of Terrorism in Indonesia

⁴⁸ Dzuhayatin, "Islamism and Nationalism among Niqabis Women in Egypt and Indonesia."

⁴⁹ Widyaningrum and Dugis, "Terorisme Radikalisme Dan Identitas Keindonesiaan."

⁵⁰ Priyanto, Dermawan, and Runturambi, "Islah as the Key Success of Terrorist Disengagement Process in Indonesia."

⁵¹ Sabic-El-Rayess, "Epistemological Shifts in Knowledge and Education in Islam: A New Perspective on the Emergence of Radicalization amongst Muslims."

The literature analysis results based on the theme show that terrorism is the most highlighted issue. Terrorist groups in Indonesia can be fairly associated with radical groups. It turns out that both are found to overlap with the religion believed by the majority of Indonesia's population, namely Islam. This also shares the same with most of international society, especially the Western world with democratic ideology, who oppose Islam because considering it as a totalitarian ideology that rejects democracy, personal freedom, and religion⁵².

The assumption leads to a general perspective to always associate terrorism with Islam.⁵³ Acts of terrorism are widely believed to contain political elements that use unhealthy forces, including religious weapons.⁵⁴ Religion, therefore, becomes fragile because its adherents can do anything against the applicable law by hijacking religion itself.⁵⁵ Religion, for instance, teaches people to humanize people so that any actions that harm and destroy man's civilization are not original religious teachings.⁵⁶

D. Mapping of Terrorism Issues from the Aspects of the Islamic Movement

Religion, on the one hand, is a place where people can find serenity, meaning, and steadfast hope; on the other hand, religion is frequently associated with violence and many conflicts. When it comes to violence and war, religious mechanisms are particularly vulnerable.⁵⁷

When a person's love for a certain set of values gets politicized, it can turn violent and cause conflict. When individuals feel cornered for their religious or ethnic ownership, especially when it comes to components of concepts and institutions that are seen antagonistic to

⁵² Mayur Suresh, "The Social Life of Technicalities: 'Terrorist' Lives in Delhi's Courts," *Contributions to Indian Sociology* 53, no. 1 (2019): 72-96.

⁵³ Wajdi, "Islam Dan Radikalisme (Mengurai Makna Terorisme)."

⁵⁴ Mustofa, "TERORISME: ANTARA AKSI DAN REAKSI (Gerakan Islam Radikal Sebagai Respon Terhadap Imperealisme Modern)."

⁵⁵ Affan, "The Threat of Is Proxy Warfare on Indonesian Millennial Muslims."

⁵⁶ Dzuhayatin, "Islamism and Nationalism among Niqabis Women in Egypt and Indonesia."

⁵⁷ Widyaningrum and Dugis, "Terorisme Radikalisme Dan Identitas Keindonesiaan."

their beliefs, acts of hatred take the form of resistance and resistance. The core reasons for mass violence are typically rejection and hatred. Efforts to build value systems and points of view that refer to specific ideological levels will strengthen the foundation of belief in the superiority of certain ideologies in the end⁵⁸.

Terrorism is a violation of human life's principles, with terrorism movements originating as a result of social injustice and a lack of understanding of religious law's foundation, the scriptures. Terrorist organizations expand in size as a result of individual group interests and the permission of powerful countries such as the United States and Israel to spread their wings of power or national interests. Terrorists who are captured or executed frequently claim to be fighting for Jihad fi sabilillah, despite the fact that their actions violate religious values, particularly Islamic ones. Murder is prohibited in the Koran unless the victim commits a severe crime that results in the annihilation of human civilization⁵⁹.

Indonesia has caught the world's attention with the rampant cases of terrorism, and terrorists are recruiting militant people to be targeted to smooth their desires and goals⁶⁰. In the name of Jihad, they concealed their evil plans⁶¹. The teachings of any religion, especially Islam, do not justify acts of terrorism under any pretext. Religion is only a shield to carry out plans and acts of terrorism. Every recruitment of terrorist members is based on religious doctrine, making them believe that their deeds are a sacred mission that can deliver them to the Lord's Ridho⁶²

Initially, Islam in Indonesia was highly praised for its tolerance.⁶³ However, the greatness of this reputation has been

⁵⁸ Firmansyah and Hidayat, "Pendekatan Advokasi Muhammadiyah Dalam Penanganan Terorisme Di Indonesia."

⁵⁹ Zulkhaidir, "Islam dan Terorisme."

⁶⁰ Windiani, "Peran Indonesia dalam Memerangi Terorisme."

⁶¹ A J Fenton, "Faith, Intolerance, Violence and Bigotry: Legal and Constitutional Issues of Freedom of Religion in Indonesia," *Journal of Indonesian Islam* 10, no. 2 (2016): 181-212, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85020534637&doi=10.15642%2FJIIS.2016.10.2.181-212&partnerID=40&md5=1ea76536c2fb91e00e09d978641aa8f1>.

⁶² Wajdi, "Islam Dan Radikalisme (Mengurai Makna Terorisme)."

⁶³ Firmansyah and Hidayat, "Pendekatan Advokasi Muhammadiyah dalam Penanganan Terorisme Di Indonesia."

damaged by several bloody incidents involving religion as one of the triggering factors.⁶⁴ Slowly but surely, several radical Islamic organizations in Indonesia have made the image of Islam as a terrorist religion.⁶⁵ In plain view, many parties suspect that only Islamic groups commit violent acts of terror.⁶⁶ In fact, anyone from any background can potentially commit acts of terror⁶⁷. The majority of terrorist acts are committed by radical Islamic groups as a result of official repression. As a result, they feel arbitrarily treated, discriminated against, and social and political rivalry in the fight for public office in order to sway the ultranationalist extreme Islamic movement from the Middle East.⁶⁸ On the other hand, there are only a few terrorists from different religions and this makes terrorist stigmatization appears mostly in Muslim groups.⁶⁹

E. Factors Causing the Growing Issue of Terrorism in Indonesia

Terrorism is the most prominent concern, according to the results of the literature study based on the subject (figure 3). Extremist organizations can potentially be labeled as terrorist organizations in Indonesia. Terrorism and extremism in Indonesia are thought to be linked to the majority of the country's population's religion, Islam. Islam is viewed as a totalitarian doctrine that rejects democracy,

⁶⁴ N Nuraniyah, "Not Just Brainwashed: Understanding the Radicalization of Indonesian Female Supporters of the Islamic State," *Terrorism and Political Violence* 30, no. 6 (2018): 890-910, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85049639421&doi=10.1080%2F09546553.2018.1481269&partnerID=40&md5=85b63bd11afb8838a24fbd5f4c33444d>.

⁶⁵ Affan, "The Threat of Is Proxy Warfare on Indonesian Millennial Muslims."

⁶⁶ M Haripin, C R Anindya, and A Priamarizki, "The Politics of Counter-Terrorism in Post-Authoritarian States: Indonesia's Experience, 1998-2018," *Defense and Security Analysis* (2020): 1-25, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85088250885&doi=10.1080%2F14751798.2020.1790807&partnerID=40&md5=8918e6714f1e15dd3eb68807ed75a52c>.

⁶⁷ Faiqah and Pransiska, "Islamic Radicalism Vs Islamic Moderation: Efforts to Build the Face of Peaceful Indonesian Islam."

⁶⁸ Dzuhayatin, "Islamism and Nationalism among Niqabis Women in Egypt and Indonesia."

⁶⁹ Rogozhina, "The struggle against islamic terrorism in southeast asia."

personal freedom, and other religions by the majority of people in democratic Western countries.⁷⁰

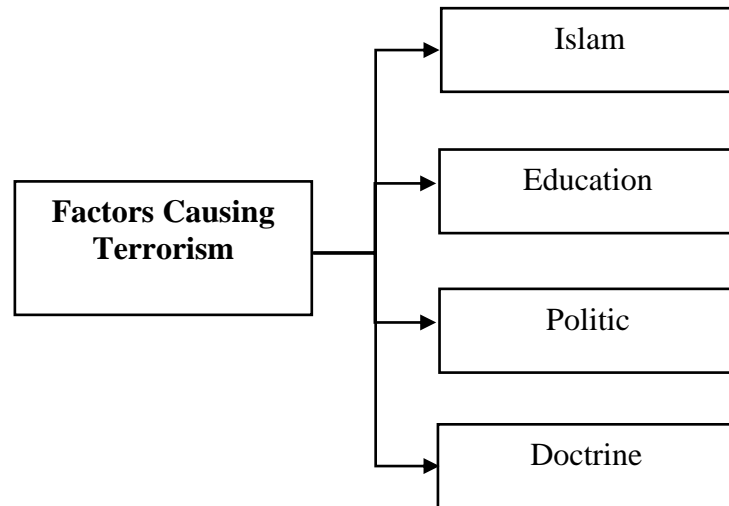


Chart 2. Model Factors Causing the Growing Issue of Terrorism in Indonesia

Chart 2 shows that terrorism action is widely believed to contain political elements that use violent force, including religious weapons. Religion as believing in power is straightforward because human religion can do things contrary to applicable law. The human being is the reason for humans who always discuss Islam. Acts that harm and damage humans make it a habit of actual religious teachings, even if the adherents are weak. Committing crimes will only cause destruction. This kind of doctrine has resulted in the growth of terrorism issues in Indonesia.

Apart from the ideological motivations mentioned above, two critical factors have contributed to the occurrence of terrorism in Indonesia. *First*, the weakness of Muslims is caused by the radicalism of the leaders, caused by the moral decline of the Muslim ruling elite.⁷¹ Radicals accuse the Muslim ruling elites as puppets of the

⁷⁰ Sahrasad et al., "Indonesian Terrorism: Wahabism and the 'Imagined Caliphate.'"

⁷¹ Ilyas, "Decolonising the Terrorism Industry: Indonesia."

Western state not only because of the secular system of government but also their government policies which are considered more beneficial to the West. People who do not have any power and cannot solve their problems are the most prospective targets for radicalists to do brainwashing while oppressing and recruiting them.⁷² *Second*, the objective recognition of radicalism for non-Muslims has reached its peak, both in science and politics. However, their progress used to exploit other nations globally, causing a disharmonious relationship between East (Islam) and West for quite a long time.⁷³

Thus, two leading factors that cause radicalism are: *First*, Muslims historical legacy is conflicted with the regime due to modes of Islamic political oppression in several states.⁷⁴ *Second*, in a global context, the marginalization of Islamic politics by hegemony in international politics (the Uni⁷⁵ Transnationalism) brought this awareness to Indonesia in Islamic political movements.⁷⁶

Apart from political oppression, the argument of this article is the existence of political pressure. With this argument, radicalism arises because capitalism's excesses create those who do not have access to capital sources.⁷⁷ In the political economy language, this approach is known as the "class approach," meaning that the response to radicalism is a class response against the oligarchic hegemony of capital with the state.⁷⁸

Today, at least three factors can explain the emergence of terror: *First* is the global constellation of world-class terrorism with Al-Qaeda

⁷² Handoko, "Analisis Kejahatan Terorisme Berkedok Agama."

⁷³ Nakissa, "Security, Islam, and Indonesia An Anthropological Analysis of Indonesia's National Counterterrorism Agency."

⁷⁴ Dzuhayatin, "Islamism and Nationalism among Niqabis Women in Egypt and Indonesia."

⁷⁵ J Regan, "The Piracy Terrorism Paradigm: An Interlinking Relationship," *Behavioral Sciences of Terrorism and Political Aggression* 11, no. 2 (2019): 149-157, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85044043006&doi=10.1080%2F19434472.2018.1445120&partnerID=40&md5=987c6a771cdccb1e8a2969197e433717>.

⁷⁶ Widyaningrum and Dugis, "Terorisme Radikalisme Dan Identitas Keindonesiaan."

⁷⁷ Nakissa, "Security, Islam, and Indonesia An Anthropological Analysis of Indonesia's National Counterterrorism Agency."

⁷⁸ Widyaningrum and Dugis, "Terorisme Radikalisme Dan Identitas Keindonesiaan."

and ISIS movements.⁷⁹ Both have become international issues. This condition is associated with the world leader's slanted policy towards Palestine.⁸⁰ *Second* is the socio disparities in Muslim countries and Western culture expansion which are considered successful to destroy Islamic values through a new paradigm of hedonism and materialism. *The third* is the Islamic world leaders who are considered powerless and subject to the will of the West. This issue quickly spreads to all corners of the world through virtual networks in both Islamic and Western countries due to many countries' policies that protect rebellion groups who have fled from their respective countries.

Conclusion

Based on the analysis, some factors that strengthen terrorism in Indonesia include Islamism, politics, education, and doctrine. Furthermore, it is often assumed that the action has political aspects of nonviolent power, including theological weapons. Because human religion has the ability to accomplish things that are against the law, religion might be defined as a belief in power. The human being takes on the role of reason. Acts that harm and harm humanity make it a habit of actual religious doctrines to lead to destruction, even if the adherents are weak. As a result of this concept, terrorism has become more prevalent in Indonesia.

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⁷⁹ Firmansyah and Hidayat, "Pendekatan Advokasi Muhammadiyah Dalam Penanganan Terorisme Di Indonesia."

⁸⁰ A Nakissa, "Security, Islam, and Indonesia An Anthropological Analysis of Indonesia's National Counterterrorism Agency," *Bijdragen tot de Taal-, Land- en Volkenkunde* 176, no. 2-3 (2020): 203-239, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85093514803&doi=10.1163%2F22134379-bja10004&partnerID=40&md5=c3a4cf6cd8ca7b5a9c2cbe70540cfe96>.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 421-449
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5250>

Changes in Congregational Prayer Practices During the Covid-19 Pandemic in Aceh from *Maqashid al-Sharia* Perspective

Salman Abdul Muthalib

Universitas Islam Negeri Ar-Raniry, Banda Aceh
Jl. Syekh Abdul Rauf Darussalam Banda Aceh
Email: salman@ar-raniry.ac.id

Tarmizi M. Jakfar

Universitas Islam Negeri Ar-Raniry, Banda Aceh
Jl. Syekh Abdul Rauf Darussalam Banda Aceh
Email: tarmizi@ar-raniry.ac.id

Muhammad Maulana

Universitas Islam Negeri Ar-Raniry, Banda Aceh
Jl. Syekh Abdul Rauf Darussalam Banda Aceh
Email: muhammad.maulana@ar-raniry.ac.id

Lukman Hakim

Universitas Islam Negeri Ar-Raniry, Banda Aceh
Jl. Syekh Abdul Rauf Darussalam Banda Aceh
Email: lukmanhakim@ar-raniry.ac.id

Article history: Received: October 15, 2021, Accepted: December 15, 2021, Published: December 31, 2021

Abstract:

Covid-19 has changed the habits of almost all activities of human life, including religious matters. The worship practices have also changed, such as performing prayers at home, keeping distant rows, and wearing masks. This paper is empirical legal research that seeks to examine the living law in the Aceh society with a maqashid shari'a perspective during a pandemic. The data collection techniques were interview, observation, and document study. It concludes that the

Author correspondence email: salman@ar-raniry.ac.id

Available online at: <http://ejournal.iainmadura.ac.id/index.php/alihkam/>

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government policies, including the 2020 Large-Scale Social Restrictions (PSBB), the 2021 Implementation of Community Activity Restrictions (PPKM), fatwas of Indonesian Ulema Council (MUI) and Tausiyah of Acehese Ulema regulating and calling for restrictions on religious activities are rules with benefit values and in accordance with the principle of maqasid al-shari'a. Despite some people's rejection, the policies are, in fact, based on maqasid al-shari'a, namely protecting the life (*hifz al-nafs*) so that people will not get infected by the virus. Moreover, public safety is the highest law purpose to maintain. The policies also prove the state's role through the rule when conditions endanger the community in addition to avoiding harms as a part of Islamic law orders.

Keywords:

Covid-19; Worship Practices; Islamic Law; Maqashid

Abstract:

Covid-19 telah mengubah kebiasaan hampir seluruh aktivitas kehidupan manusia, mulai dari ekonomi, sosial, budaya, pendidikan bahkan agama. Pada aspek agama aktivitas ibadah juga mengalami perubahan misalnya himbauan shalat di rumah, menjaga jarak saf dan memakai masker. Tulisan ini merupakan penelitian hukum empiris yang berupaya menelaah hukum sebagaimana yang terjadi dalam realitas masyarakat dengan pendekatan hukum Islam saat pandemi. Sedangkan teknik pengumpulan data yang dipakai adalah wawancara, observasi dan studi dokumen. Kajian ini menyimpulkan bahwa pada awalnya himbauan sebagai pemerintah tidak secara menyeluruh diikuti oleh masyarakat karena setiap daerah berbeda tingkat penularan dan kondisi covid terjadi. Setelah aturan PPKM 2021 diterapkan hal ini relatif teratur termasuk di Aceh karena dibedakan empat level dan berdasarkan tingkat penularan dan korban yaitu, merah, orange, kuning dan hijau. Kebijakan pemerintah agar tidak salat jamaah di masjid pada saat kondisi penularannya tinggi sebenarnya mengacu pada konsep maqashid syari'ah yaitu menjaga jiwa (*hifz al-nafs*) agar masyarakat tidak tertular virus. Meskipun sebagian masyarakat khusus daerah atau kabupaten yang tingkat penularannya rendah menganggap bahwa shalat berjamaah di masjid tetap harus dilakukan dengan pertimbangan menjaga agama (*hifz al-*

din) sesuai protokol kesehatan. Namun patut dicatat kebijakan pemerintah tersebut mengandung kemaslahatan yang bertujuan untuk menghindari kemudharatan dan menolak bahaya sebagaimana disebutkan dalam kaidah fikih. Sehingga menghindarkan diri dari kemudharatan dan taat kepada pemerintah juga merupakan perintah syariat Islam.

Keywords:

Covid-19; Praktik Ibadah; Hukum Islam; Maqashid

Introduction

Covid-19 that hits hard the whole world has changed several orders and activities of human life ranging from social, economic, cultural, educational, to religious issues.¹ In religion, various legal issues have arisen related to Covid-19, such as the legal status of vaccines.² Additionally, due to the Pandemic, some worships have different procedures from the normal rules that make some Muslims doubt the validity of the new worship practices. This phenomenon has invited the pros and cons among the public and *ulemas* (Islamic scholars).³

Along with it, as an early attempt to handle the Pandemic, the Indonesian Government had issued a regulation, namely

¹Muhammad Kumaidi and Evi Febriani, 'Implementasi Kaidah La Yunkiru Tagayyur Al-Ahkam Bitagayyur Al-Azman Wa Al-Ahwal Dalam Ibadah Di Masa Pandemi', *Asas: Jurnal Politik, Hukum Dan Ekonomi Islam*, 12 (1) (2020), 64-81. Shubhan Shodiq, 'Penanganan Covid-19 Dalam Pendekatan Fikih Dan Ushul Fikih: Analisis Kebijakan Pembatasan Sosial Berskala Besar Di Bidang Keagamaan', *Al-Adalah*, 5, (2) (2020), 113-34.

²Asrorun Ni'am Sholeh, 'Toward a Progressive Fatwa: MUI's Response to the Covid-19 Pandemic', *Ahkam*, 20, No. 2 (2020), 281-98. Asrorun Ni'am Sholeh and Muhammad Ishar Helmi, 'The Covid-19 Vaccination: Realization on Halal Vaccines for Benefits', *Samarah*, 5, No. 1 (2021), 171-90.

³Prita Priantini NC. Jujun Junaedi, Mukhlis Aliyudin, Dede Sutisna, 'Konflik Interpretasi Fatwa MUI Dalam Pelaksanaan Ibadah Selama Pandemi Covid-19', *Al-Tadabbur: Jurnal Kajian Sosial, Peradaban Dan Agama*, 6, No. 2, (2020), 175-189. S. Samsuduha, 'Masalah Kebijakan Pencegahan Wabah Pandemi Covid-19 Dalam Islam', *Jurnal Al-Tafaquh*, 1, No. 2 (2020), 117-27.

Government Regulation (PP; *Peraturan Pemerintah*) No. 21 of 2020 concerning Large-Scale Social Restrictions (PSBB; *Pembatasan Sosial Berskala Besar*). The regulation restricts social activities related to school and workplace settings, religious activities, and public facilities. In addition, *fatwas* (ruling of Islamic law) of the Indonesian Ulema Council (MUI; *Majelis Ulama Indonesia*) No. 14 of 2020 were also issued regarding the procedures for worship during the Pandemic.⁴ Particularly in Aceh, there issued Circular Letter of the Governor of Aceh No. 440/4820 2020 as well as the Recommendations of the *Muzakarah* (exchange of thoughts) of Acehese Charismatic Ulemas initiated by the Aceh Ulema Consultative Assembly (*Majelis Permusyawaratan Ulama*/MPU, like the MUI) in August 2020.⁵

Since the Covid-19 outbreak at the end of 2019 until August 18, 2021, the number of Covid-19 cases in Aceh has reached 28,547 cases. Of these, 21,521 cases were cured, 1,212 were death cases, and 5,814 are still being treated.⁶ The spike in Covid-19 cases has caused the Aceh Government and *ulema* institutions to issue several rules to reduce the outbreak ranging from regulations related to worship procedures, restrictions on opening coffee shops, closures of tourist sites, rearrangements of working hours for civil servants, maintenance of health protocols, preparation of health facilities, and recitation of *qunoot nazilah*.⁷

The government regulations, MUI *fatwas*, and Aceh MPU recommendations are deemed as necessary steps in accordance with

⁴Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus WRUS Disease 2019 (Covid-Ig). https://jdih.setkab.go.id/PUUdoc/176085/PP_Nomor_21_Tahun_2020.pdf. Fatwa MUI No 14 tahun 2020 tentang Penyelenggaraan Ibadah dalam Situasi Terjadi Wabah Covid-19, <https://mui.or.id/berita/27674>.

⁵Circular Letter of the Governor No. 440/4820 of 2020. https://ppid.acehprov.go.id/assets/uploads/31E1/informasipublik/qSbl/Surat_Edaran_Gubernur_Aceh.pdf. <https://aceh.antaranews.com/berita/161406/ulama-kharismatik-aceh-lahirkan-rekomendasi-penanganan-covid-19>.

⁶<https://covid19.acehprov.go.id>.

⁷Circular Letter of the Governor No. 061.2/7309 of 2021. <https://jdih.acehprov.go.id/dih/detail>.

Islamic law to maintain the main objectives of religion (*al-dharuriyat al-khams*). Therefore, the newly determined way to practice worship is also considered an effort to minimize virus transmission.⁸ In this regard, the main argument in the government policies related to Covid-19, which implicates the changing of worship, is based on the benefit aspect as viewed from the *maqasid al-shari'a*. In this context, *maqasid al-shari'a*, which prioritizes benefit, is an effort to protect human life (*hifz nafs*) from harm or the danger of viruses.

The regulations, mainly relating to worship practice, are in accordance with Islamic law under certain situations and conditions⁹, and as a consequence, they temporarily cause some changes in worship practices. The aim is to provide benefits and maintain the safety of people despite some people having discomfort while performing worshipping in a new way. As one of the areas affected by Covid-19, Acehese is supposed to follow the rules and policies. However, some people disagree and disobey regulations that restrict congregational prayers at mosques, set up distant rows, and oblige mask-wearing during prayers. The reason that their worship will not be perfect and even invalid is that these applied rules are not in accordance with religious teachings. The effort to limit worship activities is a part of measures to protect people from the dangers of the virus. This contains benefits in accordance with the main objectives of Islamic law or *maqasid al-shari'a*, which is *hifz al-nafs*.

In light of these explanations, it can be understood that the government policies and the MUI Fatwa followed by the Aceh Governor's Circular Letter and Recommendation of the Acehese Charismatic Ulama *Muzakarah* on worship practices during the Pandemic have not been discussed in-depth, let alone linked to the government policies. Thus, this study finds it necessary to describe some information on how the Acehese understand the procedures for Islamic worship in unusual circumstances. This study focuses on three problems: first, a review of Islamic law on the practices of

⁸Hudzaifah Achmad Qotadah, 'Covid-19: Tinjauan Maqasid Al-Shariah Terhadap Penanggulangan Pelaksanaan Ibadah Shalat Di Tempat Ibadah (Hifdz Al-Nafs Lebih Utama Dari Hifdz Al-Din?)', *Salam: Jurnal Sosial & Budaya Syar-I*, 7, No. 7 (2020), 659-672.

⁹Muhammad Kumaidi and Evi Febriani.

congregational prayers during the Covid-19 Pandemic in Aceh; *Second*, changes and dynamics of congregational prayer practices in the time of Covid; and *third*, three perspectives of *maqasid al-shari'a* on the government policies during the Covid-19 Pandemic. In short, the study aims to examine changes in the practices of congregational prayers within Acehnese society during the Covid-19 Pandemic from the perspective of *maqasid al-shari'a*.

The government policies that regulate prayer activities are an important theme in this study. To date, research has been carried out on changes in prayers and other worship practices during the Covid-19 period. Junaedi et al. discussed the MUI fatwa No. 14 of 2020 regarding worship practices during the Pandemic, including recommendations for observing health protocols. They mentioned that this *fatwa* was made based on the purpose of *maqasid al-shari'a*, which is for the benefit and protection of the community instead of negating worship.¹⁰ Another research by Sirajuddin et al. examined the Circular Letter of the Governor of South Sulawesi regarding the abolition of Friday prayers in accordance with Islamic law, namely *maqasid al-shari'a*, which puts the benefit of mankind as the main principle.¹¹

Next, research by Arsad investigated the effectiveness of *rukhsah* (exception law) in carrying out worship during the Covid-19 Pandemic. He explained that the use of *rukhsah* in worship had already been implemented in society, such as congregational prayers in mosques with spaced rows, no physical contact as well as the special treatment of the deceased.¹² Meanwhile, Syandri and Akbar concluded that the use of masks in prayers is allowed during unusual circumstances to prevent the virus from spreading, although the original law of wearing a mouth cover is *makruh* (the avoidance of

¹⁰ Jujun Junaedi, Mukhlis Aliyudin, Dede Sutisna.

¹¹ Abdul Wahid Haddade Sirajuddin, Kasjim Salenda, 'Peniadaan Shalat Jumat Dalam Surat Edaran Gubernur Sulsel Nomor: 451.11/2057/2020 Selama Pandemi Covid-19 Perspektif Maqasid Al-Syariah.', *Nukhbatul 'Ulum: Jurnal Bidang Kajian Islam*, 6 (2) (2020), 289–309.

¹² Muhammad Arsad Nasution, 'Efektivitas Rukhsah Dalam Pelaksanaan Ibadah Masa Pandemi Covid-19', *Yurisprudencia: Jurnal Hukum Ekonomi*, 6, No. 1 (2020), 59–74.

which yields merit but the performance of which is not sinful) and does not invalidate the prayer.¹³ Another study by Qotadah also explained that protecting life is more important in the Covid-19 condition as emphasized by *maqasid al-shari'a*; thus, restrictions, suspensions, and temporary prohibitions on the implementation of worship are policies that follow the Islamic law.¹⁴ On a similar note, Shodiq (2020) concluded that restrictions on worship during Pandemic are not against Islamic law because in Islamic law, protecting life holds more importance than protecting property.¹⁵ Similarly, Samsuduha described that the government policies in preventing and handling Covid-19 have a beneficial aspect, which is to maintain one's life and offspring.¹⁶

Some of the aforementioned studies have discussed the practices of worship, especially prayers, during the Covid-19 period in Indonesia. However, they were normative legal studies or literature studies based on legal rules, articles, and media reports regarding worship practices during the pandemic period. This present study, however, in addition to using document study, also conducted interviews and observation to collect the data needed.

Method

This study used empirical legal research that seeks to examine the law as it lives in the real life of society.¹⁷ Data were collected by means of interviews, observation, and document study. Interview with *ulemas*, academics, community leaders, mosque administrators, and same members of the community. Observation aimed to examine the legal facts in the community so that the study could illustrate the level of understanding of the procedures for carrying out worship during the Pandemic in Acehese society. Further, a document study

¹³ Syandri dan Fadlan Akbar, 'Penggunaan Masker Penutup Wajah Saat Shalat Sebagai Langkah Pencegahan Wabah Coronavirus Covid-19.', *Salam: Jurnal Sosial & Budaya Syar-I*, 7, No. 3 (2020), 261-268.

¹⁴ Hudzaifah Achmad Qotadah.

¹⁵ Shubhan Shodiq.

¹⁶ Hudzaifah Achmad Qotadah.S. Samsuduha.

¹⁷ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Jakarta: Kencana, 2016). Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2014).

was used to collect data related to the government regulations or policies on the procedures for carrying out worship.

The study utilized the approach and analysis based on Islamic law.¹⁸ The results of the interview, observation, and document study were then analyzed from the perspective of *maqasid al-shari'a* as social reality in the form of worship practices during the Pandemic cannot be separated from the point of view of Islamic law. Specifically, this study used *maqasid al-shar'ia*, *rukhsah*, *dar'u al-mafasid* and obedience to the government in terms of the theories or approaches of Islamic law.

The first theory is *maqasid al-shari'a* (the objectives of sharia) or also referred to as the secrets set by Allah in every law.¹⁹ The objectives predetermined by Allah and the Messenger, according to this theory, are for the benefits of mankind as sharia is regulated to achieve such purposes either directly or indirectly. Thus, it can be ascertained that all laws stipulated and formulated must contain benefits, although sometimes they cannot be clearly comprehended. Understanding *maqasid al-shari'a* is deemed necessary for everyone, especially *mujtahids* (expert in Muslim Law) who seek to explore the laws from the texts of the Qur'an and the Prophet's hadith,²⁰ in order the results of their *ijtihad* (independent reasoning) in accordance with the objectives of the sharia. To ensure an objective of the sharia, *ulemas* have arranged several requirements, including that the objectives of the sharia must be fixed, clear, and measurable.²¹

The *maslahah* (the best choice in Islamic Law) that the sharia aims to achieve is classified into three categories. Firstly, the *maslahah daruriyyat* or primary benefits essential to human life are related to both the world and the hereafter. If such a *maslahah* is neglected, it will disrupt and create chaos in the order of human life. This category has five elements: the maintenance of religion, life, mind, offspring,

¹⁸Juhaya S. Praja, *Teori Hukum Dan Aplikasinya* (Bandung: Pustaka Setia, 2014).

¹⁹Wahbah Al-Zuhayli, *Usul Al-Fiqh Al-Islami, Juz 2 (2nd Ed.)* (Damaskus: Dar al-Fikr, 2004).

²⁰Thahir Ibn 'Asyur, *Maqasid Al-Syari'ah Al-Islamiyyah (1st Ed.)* (Tunisia: Al-Faniyyah). p. 11-12.

²¹ Al-Zuhayli, *Usul Al-Fiqh Al-Islami, Juz 2 (2nd Ed.)*. p. 1047

and wealth. This category is the most vital one to take care of in order to maintain the continuity of human life.²² Secondly, the *maslahah hajiyyat* or secondary benefits. This *maslahah* is necessary to relieve difficulties in life. If this is neglected, it will not impede human life but rather cause hardship and trouble. For example, leniency allows for travelers to shorten (*qasar*) prayers and the sick may be allowed to not fast. Thirdly, *maslahah tahsiniyyat* or tertiary benefits which serve as a complement in one's life, such as wearing presentable clothes in prayers and wearing fragrances when going to the mosque. Yet, if this is ignored, it will not interfere with their lives.

The second theory, *rukhsah* (exception law), is a part of the given law (*wadh'i*) in Islam, which is defined as leniency or concession provided by religion to a Muslim under certain conditions.²³ Allah's specific provisions are based on certain obstacles or hardships in order to protect their people's needs without eliminating the basic law.²⁴ The concessions in Islam include procedures for worship in a certain situation, such as the permissibility of combining two prayers at one time (*jama'*) and the permissibility of *qasar* prayers for travelers.²⁵ In addition, other forms of concessions for sick people are abolition on the obligation of Friday and congregational prayers. If a person is ill and finds it difficult to perform those two prayers or is worried that his/her pain will elevate if he/she prays at the mosque,²⁶ it is permissible to pray at home and leave the congregation. This situation was experienced by the Prophet Muhammad when he was ill, in which he requested Abu Bakr to change his position as *imam* (leader) of the prayers at the

²²Abdul Wahab al-Khallaf, *Ilmu Ushul Fiqh (12th Ed.)* (Kuwait: Dar al-Qalam, 1978).

²³Mahmudin, 'Rukhsah (Keringanan) Bagi Orang Sakit Dalam Perspektif Hukum Islam', *Jurnal Ilmiah Al Qalam*, 11 (23) (2017), 65-85.

²⁴ Al-Zuhayli, *Usul Al-Fiqh Al-Islami, Juz 2 (2nd Ed.)*. p. 108

²⁵ Mahmud Syaltut, *Al-Islam 'Aqidah Wa Syari'ah (3rd Ed.)*. (Dar al-Qalam, 1996).

²⁶Mahmudin.

mosque even though the Prophet's residence was situated very close to the mosque.²⁷

The third theory, *dar'u al-mafasid* (resisting any damage), is one of the concepts in Islamic law which aims to prevent damage. Islamic law assesses that efforts to stay away from things that can lead to damage or harm are better than doing those that bring benefit. In other words, leaving out a prohibition is more important than carrying out obligations.²⁸ This concept is applied to certain cases as an effort to prevent the spread of harm in society so that people can avoid difficulties and will eventually be benefited.²⁹ One of the basic arguments of *ulemas* in formulating this concept is the hadith of the Prophet, which reads:

فَإِذَا نَهَيْتُكُمْ عَنْ شَيْءٍ فَاجْتَنِبُوهُ وَإِذَا أَمَرْتُكُمْ بِأَمْرٍ فَأَتُوا مِنْهُ مَا اسْتَطَعْتُمْ³⁰

What I have forbidden for you, avoid. What I have ordered you [to do], do as much of it as you can.

It implies that doing a good deed in Islam will remain applicable if the circumstances allow and as long as there is no negative impact that can interfere Muslims. However, if conditions change and doing good will harm someone, then Islam strictly forbids this deed.³¹

The fourth theory is obedience to the Government or, in this case, the ruling leaders who control society. Islam suggests that society needs to obey their leaders who take care of various interests for their lives so that the order of life can work well in an orderly manner. This also implies that a leader is a person who commands

²⁷Muhammad bin Idris Al-Syafi'i, *Al-Umm Vol. 1* (Beirut: Dar al-Ma'rifah, 1973). Zakariya Ali Yusuf Al-Syirazi, *Al-Muhadhdhab Fi Fiqh Al-Imam Al-Syafi'i* (Beirut: Dar al-Ma'rifah).p. 101.

²⁸Ali Hasballah, *Usul Al-Tasyri' Al-Islami* (Cairo: Dar al-Ma'arif).

²⁹ Adib Hamzawi, 'Qawa'id Usuliyah & Qawa'id Fiqhiyyah (Melacak Konstruksi Metodologi Istinbath Al-Ahkam)', *Inovatif*, 2, No. 2 (2016), 104.

³⁰ Muhammad ibn Ismail Al-Bukhari, *Sahih Al-Bukhari, Vol. 6*. (Beirut: Dar Ibn Katsir, 1987).

³¹Fahmi Hasan Nugroho Ayi Yunus Rusyana, Dedi Supriyadi, Ali Khosim, 'Fatwa Penyelenggaraan Ibadah Di Saat Pandemi Covid-19 Di Indonesia Dan Mesir', *Digital Library UIN Sunan Gunung Djati*, 2020, 5.

goodness and forbids evil.³² Leaders have an important position in Islam in directing the society, whether related to social, political, religious, or other matters. Islam has set the obligation of obedience to a leader as long as he/she does not invite disobedience to Allah.³³

Obedience and compliance to the Government is, therefore, a part of Islamic teachings. This compliance is not only limited to religious matters but also to various matters regulated by the Government.³⁴ Moreover, Islam regulates not only the relationship between humans and God but also between humans and their environment.³⁵ In terms of obedience to the leader, Islam gives the rights for leaders that society needs to fulfill. Among their rights are getting the prayer from people, to be respected and honored, as well as getting their orders obeyed as long as they are not involved in disobedience.³⁶

Discussion and Result

Changes in Performing Prayers during the Covid-19 Period in Aceh

a. Suggestions for Praying at Home during the Pandemic

The Covid-19 outbreak in Indonesia has prompted the Government to issue several rules to prevent the wider spread of the virus.³⁷ Among the regulations is the issuance of government

³²Khairunnas Jamal and Kadarusman., 'Terminologi Pemimpin Dalam Alqur'an (Studi Analisis Makna Ulil Amri Dalam Kajian Tafsir Tematik)', *An-Nida': Jurnal Pemikiran Islam*, 39, No. 1 (2014), 127.

³³ Jumratul Mubibah and Ummul Faizah Sulaiman Kurdi, 'Konsep Taat Kepada Pemimpin (Ulil Amri) Di Dalam Surah an-Nisa : 59, Al-Anfal :46 Dan Al-Maidah : 48-49 (Analisis Tafsir Al-Qurthubi, Al-Mishbah, Dan Ibnu Katsir', *Journal of Islamic Law and Studies*, 1, No. 1 (2017), 33-45.

³⁴ Analiansyah, 'Ulil Amri Dan Kekuatan Produk Hukumnya (Kajian Terhadap Perspektif Teungku Dayah Salafi Aceh Besar).', *Analisa*, 21, No. 2 (2014), 269.

³⁵Manna Khalil Al-Qattan, *Al-Tasyri' Wa Al-Fiqh Fi Al-Islam: Tarikhan Wa Manhajan.*, 1976, p. 10. (Maktabah Wahbah, 1976).

³⁶Kaizal Bay, 'Pengertian Ulil Amri Dalam Al-Qur'an Dan Implementasinya Dalam Masyarakat Muslim', *Jurnal Ushuluddin*, 7, No. 1 (2011), 120.

³⁷Imam Fahrudin, 'Pengguguran Kewajiban Shalat Berjama'ah Sebagai Upaya Pencegahan Penyebaran Covid-19', *SALAM: Jurnal Sosial & Budaya*

regulations such as PSBB/2020, PPKM/2021, and Circular Letter of the Minister of Religious Affairs, which prohibit citizens from gathering to avoid any crowd. Several prohibitions include congregation prayers in mosques, and as an alternative, Muslims are encouraged to worship individually or with their families at their respective homes.³⁸

Fauzi Saleh, a member of the MPU of Banda Aceh City, explained that *fiqh* rule reading *taghayyar al-Ahkam bi taghayyur al-zaman wa al-makan* (changes in the law occur because of changes in time and place) indicates that the law can alter due to changes in situations and places. Thus, having a change in the procedure for carrying out worship due to certain conditions is common thing. In this case, the concept of legal provisions in normal circumstances (*azimah*) has shifted to legal provisions with concessions (*rukhsah*). Saleh added that under the *fiqh* law, the condition of a person who performs prayer might change. In normal circumstances, one prays while standing up while in a weak state. One may do it while sitting or even lying down. Therefore, he concluded that there are no obstacles in practices of worship as long according to the circumstances, needs, and *maslahah*.³⁹ Additionally, according to Imam Nawawi, Islamic law can make the obligation to perform Friday prayers invalid on the grounds of troublesome illness.⁴⁰ Hence, the pandemic conditions that possibly endanger the community at large are more of a strong reason for not allowing Friday and congregational prayers.⁴¹

Furthermore, the MUI as an institution with authority to issue legal *fatwas* (No. 14 of 2020) has also promulgated a *fatwa* regarding the Implementation of Worship in the Situation of the Covid-19 Outbreak. The fatwa stipulates that in conditions of uncontrolled

Syar-I, 7, No. 10, (2020), 939-948.

³⁸Circular Letter of the Minister of Religious Affairs No. 15 of 2020.

³⁹Interview with Fauzi Saleh, Member of Banda Aceh MPU'

⁴⁰Abu Zakaria Yahya bin Syarf al-Nawawi, *Al-Majmu' Syarh Al-Muhadhdhab, Jilid IV* (Dar al-Fikr, n.d).

⁴¹Sirajuddin, Kasjim Salenda, dan Abdul Wahid Haddade, 'Peniadaan Salat Jumat Dalam Surat Edaran Gubernur Sulsel Nomor: 451.11/2057/2020 Selama Pandemi Covid-19 Perspektif Maqāsid AlSyariah,'" *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam*, 6 no. 2 (2020), 289-309.

spread of the virus in any life-threatening area, Muslims are not allowed to hold Friday prayers until the situation returns to normal. As an alternative, it is obligatory to replace it with the *dhuhur* (noon) prayer at their respective homes. Likewise, it is also not permissible to hold worship activities that involve large numbers of people and are deemed as a possible epicenter for the spread of Covid-19 virus. It includes congregational five daily prayers, *rawatib* prayers, *taraweeh* prayers, and Eid al-Fitr or Eid al-Adha prayers in mosques or other public places as well as gathering for the mass Qur'anic recitations and *majelis taklim* (learning gathering).⁴²

However, the MUI *fatwa*, as well as *tausiyah*, in the context of Islamic law, is non-binding and non-coercive which is slightly different from the Aceh MPU. Despite it, the consideration of the *ulamas* will usually be noticed by the Aceh government as part of the autonomy and privileges of Aceh regulated in Act No. 11 of 2006,⁴³ particularly on matters of religion and Islamic law, as *ulemas* play a vital role in the life and development of Aceh.

Unfortunately, most Acehnese tend not to care about the regulation in performing their daily worship practices as they are still doing the same as in normal times. Some of them seem to have not been well educated about the practices of worship in unusual conditions and keep thinking that worship must still be done in a perfect form and therefore should not be made easy. In fact, in Islamic *fiqh*, several concepts ease Muslims to practice their religion or perform worship,⁴⁴ including when they are worried about certain conditions or risks to their health if they, for instance, keep doing prayers in the congregation such as Friday prayers.⁴⁵ This concept is a reflection of the characteristics of Islamic law, which are universal, systematic, realistic, flexible, and not burdensome.⁴⁶

⁴²Fatwa MUI No 14 of 2020 on the Implementation of Worship in the Covid-19 Situation, <https://mui.or.id/berita/27674>

⁴³Law Number 11 of 2006 on the Government of Aceh. <https://pih.kemlu.go.id/files/UU%2011-%202006.pdf>. Abidin Nurdin, *Reposisi Peran Ulama dalam Pelaksanaan Syariat Islam di Aceh*, *Jurnal al-Qalam* 18, No. 1 (2012), 54-65.

⁴⁴Muhammad Arsad Nasution.

⁴⁵Mahmudin.

⁴⁶Hendra Gunawan, 'Karakteristik Hukum Islam.', *Jurnal Al-Maqasid*, 4,

Relating with this, Moch. Fajarul Falah, a member of the Aceh Province MPU, explained that in regards to the call for people to pray at home, it should be related to the Acehnese culture. In Aceh, such a case is very sensitive because people tend to think that the regulations are certain efforts to keep people away from worship. Therefore, he added that if Acehnese disagreed, it would be good to let them be. Therefore, Falah believed that there was no need to close the houses of worship as long as Muslims could comply with proper health protocols.⁴⁷

The prohibition of performing congregational prayers at mosques and efforts to close mosques are furthermore considered a ploy to keep Muslims away from their religion.⁴⁸ This assumption becomes exacerbated when some random information from social media says that various regulations issued by the Government were influenced by foreign interests. The unreliable information has further fueled people's rejection of the Government's appeal. Moreover, some *ulemas* have emerged to provide different information coming from the official Government that the controversy at the grass-root is inevitable.

In responding to the situation, the Aceh government has asked the *ulemas* to provide support to the Government in tackling the Pandemic and ensuring people comply with related regulations. On August 26, 2020, for instance, the Aceh Ulemas *Muzakarah* was held and resulted in several recommendations for mitigating Covid-19. Among the recommendations related to worship, the *ulemas* requested the Mosque Prosperity Bodies (*Badan Kemakmuran Mesjid/BKM*) to remind worshipers to always obey health protocols when carrying out Friday prayers, to limit the duration of the *khutbah* (sermon), and to recite *qunoot nazilah* at every five daily prayers. However, the recommendations do not work at all urging people to pray at home with their families.

Consequently, government regulations that urge people not to carry out worship in mosques are not very well obeyed by the

No. 2, (2018), 105–25.

⁴⁷Interview with Moch. Fajarul Falah, Member of Aceh MPU, August 3, 2021.

⁴⁸ Hudzaifah Achmad Qotadah.

community. In addition to religious sentiment, another reason is the low level of the transmission of Covid-19 in the early days of the Covid outbreak in Aceh. However, when many people were getting infected and passed away, people started to consciously not pray at the mosques or continue to pray but with rows far apart.

b. Spacy Row Arrangement in Congregational Prayers

Another suggestion issued to cope with the Covid-19 outbreak in Indonesia is the arrangement of rows in congregational prayers with distance. Before the Pandemic, rows were culturally set close according to Islamic teachings and based on the hadith of the Prophet Muhammad. The close arrangement is even considered as a part of prayers' perfection. However, during the Pandemic, the rows in congregational prayers are obliged to be spaced so that the distance between one person and those next to him/her is not too close. This is also a part of the compliance with the Government's program for social distancing, which is required in daily activities, including when performing worship or prayers.⁴⁹

Regarding this, the Aceh Government urges worshipers to keep their distance in rows. During the Eid al-Fitr and Eid al-Adha prayers, the Indonesian National Armed Forces (TNI; *Tentara Nasional Indonesia*) through the Military District Command (Koramil or *Komando Rayon Militer*) also wrote to the BKM (Badan Kemakmuran Masjid or mosque administrator) to urge worshipers to wear masks while praying, keeping distance, bringing own prayer mats, and prohibit handshakes after the prayers as it usually becomes a habit.⁵⁰ This method seemed to be quite effective as all mosque administrators received the Government's message. Meanwhile, the Government also monitors the mosques to ensure compliance with the instruction by delegating civil servants and security forces from the sub-district police and *Koramil*.

However, based on several observations, only several mosques in Aceh obeyed the aforementioned instruction, especially the mosques under the supervision of the Government like mosques in

⁴⁹Circular Letter of the Minister of Religious Affairs No. 15 of 2020

⁵⁰Appeal of Koramil in Ulee Kareeng Subdistrict, Banda Aceh, on Eid al-Fitr 2021

the TNI and the Indonesian National Police (Polri) compounds Baiturrahman Mosque and the Polda (Regional Police) Mosque.⁵¹ Other mosques ignored the rule and the process for performing worship still ran as usual without any distance among worshipers even though the emergency status had not been lifted by the Government.

They regard the instruction to keep distance in prayers, Moch. Fajarul Falah explained that according to legal principles, changes in worship procedures do not matter, including wearing masks in prayers and the distant space among worshipers. As long as the worshippers are still inside the mosque, he added, the prayers will be considered valid. Therefore, he mentioned that in this case, it is necessary to educate the public in order not to suffer anxiety because, in current conditions, health protocols must be maintained in all situations, including when performing prayers. As long as the changes do not violate the rules of sharia law, it does not become any problem.⁵²

Nevertheless, Abdullah, a congregation member in Dayah Tanoh, Pidie District, said that the disobedience to maintain distance in prayer was because of a lack of understanding of the rules of closing rows. Some consider it as a necessity and consequently assume that without the close row, it is deemed the same as reducing rewards of congregational prayers. A few others even consider that their prayers invalid.⁵³ In line with that Syukur Gade, a mosque congregation in Banda Aceh City, said that people who pray at the mosque by wearing masks and keeping their distance are part of the human effort to prevent the spread of Covid-19. While we are ordered by Allah to make efforts, so endeavor is part of religious teachings.⁵⁴

⁵¹Observation result, around January-August 2021

⁵²Interview with Moch. Fajarul Falah, Member of Aceh MPU, August 3, 2021

⁵³Interview with Abdullah, a local of Pidie District, August 10, 2021

⁵⁴Interview with Syukur Gade, a local of Banda Aceh City, August 12, 2021.

This particular view refers to a hadith of the Prophet Muhammad, which is often recited by the *imams* when they are about to start the prayers, which reads:

أقيموا صفوفكم وتراصوا⁵⁵

Meaning: Straighten your rows and stand closer together.

The community understands this hadith in a general context literally without relating it to certain situations and conditions regardless of when and how the context was when the Prophet delivered the hadith. In fact, according to the books of *fiqh* in the Shafi'i school, following the *imam* in congregational prayer with a distance of 3 *zira'* (about 1.5 meters) is considered valid. It goes the same with the distance among a worshiper and others his/her right or left.⁵⁶ Imam Nawawi even stated that the distance between the *imam* and the worshippers and between one worshiper to another is 300 *zira'* (150 meters) as long as the worshippers know the *imam's* prayer and do not stand in front of him.⁵⁷

The row arrangement as described above is valid under normal circumstances, let alone under certain conditions such as in the midst of a Pandemic with the big spread of the virus that endangers Muslims. Indeed, all *ulemas* agree that a tight and close row in prayers is better (*afdhal*) because it follows the guidance of the Prophet. However, considering the rule that rejecting harm is more important than seeking benefit, it can be concluded that avoiding the deadly virus by keeping a distance in prayer is more prioritized than getting the rewards of performing congregational prayers in the usual arrangement. The relevant principle of *fiqh* rule in this condition is rejecting harm which is taken precedence over seeking benefit (*tark al-mafasid muqaddam ala jalbi al-masalih*).

It is important to take a note, however, that although various government efforts continue to be made against non-compliance in

⁵⁵Muhammad ibn Ismail al-Bukhari, *Sahih Al-Bukhari*, Vol. 1.

⁵⁶Abdul Karim Al-Rafi'i, *Al-'Aziz Syarh Al-Wajiz*, Vol. II (1st Ed.) (Beirut: Dar al-Kutub al-Ilmiyyah, 1977).

⁵⁷Abu Zakaria Yahya bin Syarf al-Nawawi, *Al-Majmu' Syarh Al-Muhadhdhab*, Jilid IV, (Dar al-Fikr, n.d.). p. 303-305.

maintaining health protocols, they still do not give any sanctions for activities related to worship. As an alternative, through the TNI (Koramil) and Polri (Sectoral Police), the Government provides counseling programs and socialization of health protocols to the BKM (*Badan Kemakmuran Masjid* or mosque administrator). Procurement of hand sanitizers, distribution of masks, and spraying disinfectants to mosques are also carried out periodically to maintain the cleanliness and comfort of the congregation when performing worship. In addition, the worshipers are requested to provide their own prayer mats to avoid the use of carpets.⁵⁸

c. Wearing Masks in Prayers

Wearing a mask aims to avoid any dust, odor, or other purposes. During the Covid-19 period, in order to avoid transmission of the virus, people were advised to wear masks, especially clinical masks, so that water droplets as a means of transmitting the virus do not enter their mouth and nose. To campaign the use of masks, the local Government has promoted it through various advertisements, i.e., mass media, electronic media, and banners displayed in almost all corners of the villages in the Aceh region. This attempt is to ascertain that all citizens know about the recommendations for the use of masks, especially when they are outside of their homes to carry out daily activities.

The rule for wearing masks, in fact, should not be a specific issue to discuss because it is something very reasonable and logical that everybody can simply agree and accept without further thinking or rejection. However, the problem arises when someone prays in a congregation at a mosque or *meunasah* (small mosque in Aceh). People start to question whether religion allows the use of masks considering that it can cover nose when performing *sujud* (prostration), one of the obligatory moves in the prayer. They also ponder whether using masks can disrupt the implementation of prayers by either eliminating the virtue of prayers or even making it invalid due to covering the face when doing *sujud*.

The above understanding relates closely to the literal meaning of a hadith of the Prophet, which reads:

⁵⁸Observation result, around Januari-Agustus 2021

نهى النبي صلى الله عليه و سلم أن يغطي الرجل فاه في الصلاة

The Prophet forbids men to cover their mouths while praying.⁵⁹

The *ulemas* explain that covering one's mouth without any need while doing prayers is *makruh*, but it does not invalidate a prayer.⁶⁰ To this end, in pandemic conditions where the virus can threaten a person's life, wearing a mask to protect oneself in prayers is certainly allowed.⁶¹ The phenomenon in Acehese society has shown two groups of people in responding to this problem. In urban areas, it was found that some worshipers use masks in congregational prayers, but the numbers were not many. In contrast, people in the rural areas were hardly found wearing masks when praying in the congregation. They even did not seem to care about this suggestion both when praying and even when in a crowd. If there were people who wore masks in prayers, they would be judged to have a lack of understanding about religion and unnecessary fear in dealing with Covid-19.

In addition, for some Acehese, a mosque is a place that is considered quite safe, comfortable, and clean. Moreover, worshippers must have previously purified through *wudu* (ablution). The purification process in performing *wudu* is considered to exceed the standards recommended by the Government with only washing hands, whereas in *wudu*, the face, hands, and even feet are also purified so that being close to other worshipers is not considered worrisome. In addition, the space of mosques in Aceh is mostly open for enabling air circulation to run well and negating any air sediment that endangers worshipers.

Covid-19 and the Changes on Practices of Prayers in the Perspective of *Maqasid al-Shari'a*

Covid-19 as a social phenomenon posing a threat to society has been responded to in several ways. People of Aceh interpret

⁵⁹Abu Abdullah Muhammad bin Yazdi Al-Quzwayni, *Sunan Ibn Majah, Volume I* (Beirut: Dar Ihya' al-Kutub al-'Arabiyyah, n.d.).

⁶⁰Abu Zakaria Yahya bin Syarf al-Nawawi, *Al-Majmu' Syarh Al-Muhadhdhab, Jilid 3*.

⁶¹Syandri dan Fadlan Akbar.

Covid-19 differently from other regional communities in Indonesia due to their religiosity. Several studies have shown that the public lacks trust in Covid-19, even judges this virus as a farce or conspiracy.⁶² While several places in the country have implemented social distancing, until early 2021, Aceh people still lived as usual. The assumption that Covid-19 is a farce does not only come among Muslims but also Christians who believe that the Covid-19 issue is engineered to keep the congregation away from the church.⁶³ In addition, there is also a growing debate that this Pandemic is a conspiracy aiming at disrupting the world's economic order.⁶⁴

The belief that life and death are all arranged by Allah⁶⁵ is deeply rooted in Acehnese society as depicted in a popular saying in the Acehnese (*Hadih Maja*) which reads, "*Hak sikai hanjuet si cupak, beurangkaho tajak dumnan syit kada.*" The saying implies that if Allah has determined something for someone, then wherever he/she goes, that fate will not change. The proverb in a religious view can be interpreted that Allah's destiny (*taqdir*) will not change if Allah wills. This belief is what makes some Acehnese ignore health protocols when they respond to Covid-19, and thus, some people do not heed various regulations issued by the Government.

Concerning this matter, Moch. Fajarul Falah emphasized that in the early period of the Covid-19 Pandemic, some people were really afraid of the Covid-19 Pandemic and several mosques in Aceh arranged rows in a distance because they received terrible information, such as seeing videos of people dying in the middle of the road in China. The propaganda made by the media is even more

⁶²Y.A. Anjar, Aceh dalam Pandemi: Antara Rasialisme dan Ketidakpatuhan. In W. U. Arifah Rahmawati (Ed.), *Kekerasan di Masa Pandemi*, Yogyakarta: Fakultas Ilmu Budaya Universitas Gadjah Mada, 2021.

⁶³Djone Georges Nicolas, 'Analisis Anggapan Rekayasa Di Balik Pandemi Covid-19, Vaksin Covid-19 Berkaitan Dengan Microchip 666 Dan Antikristus', *Jurnal Revolusi Indonesia*, 1, No. 3 (2021), 173-180.

⁶⁴H. Nursatyo, 'Pertarungan Wacana Pemerintah Dan Publik Tentang Pandemi Covid-19', *Jurnal Penelitian Sosial Ilmu Komunikasi*, 5, No. 1 (2021), 37-45.

⁶⁵Ika Amalia, Ella Suzanna dan Liza Adyani, 'Peran Religiusitas Bagi Masyarakat Dalam Menghadapi Pandemi Covid-19', *Jurnal Diversita*, 7, No. 1 (2021), 79-84.

terrible. However, as Aceh was one of the latter areas infected by the Covid-19, most Acehnese people were still not sure about the virus when other areas, such as Jakarta, had applied closures of several public places, including worship houses. Many Acehnese still did not care because thinking that the information about this virus implied a hidden mission to keep people away from their religions. It makes very much sense to find them not paying attention to the Government's appeals.⁶⁶

Furthermore, it is understandable to find some people who do not strictly follow the Government's advice. One main reason is that Aceh is among the last areas impacted by the Covid-19 virus outbreak, in addition to the low-density level in Aceh of around 5.3 million people.⁶⁷ In contrast, other places in Java, such as West Java (49.5 million), East Java (40.5 million), Central Java (36.5 million), Banten (11.8 million), and Jakarta (10.5 million)⁶⁸ with high-density levels, have become the epicenter of virus spread. As a result, the Acehnese people feel that the disease they cope with is not as severe as what has happened on the island of Java.

In a similar vein, Bustami, The Head of the BKM of the Sabilil Jannah Mosque in Banda Aceh City, described that geographically, only a small proportion of people in urban areas comply with health protocols when compared to people in rural areas. Furthermore, because the mobility of residents in urban areas is much higher along with many people who travel to and from outside the area, the level of concern in interacting with fellow residents goes the same. On the other hand, those who live in rural areas seem never to worry about

⁶⁶Interview with Moch. Fajarul Falah, Member of Aceh MPU, August 3, 2021

⁶⁷<https://aceh.bps.go.id/indicator/12/55/1/jumlah-penduduk.html>, accessed on October 7, 2021.

⁶⁸<https://jabar.bps.go.id/indicator/12/133/1/jumlah-penduduk-menurut-kabupatenkota.html>, <https://jateng.bps.go.id/statictable/2021/04/08/2226/jumlah-penduduk-di-provinsi-jawa-tengah-2020.html>, <https://jatim.bps.go.id/indicator/12/375/1/jumlah-penduduk-provinsi-jawa-timur.html>, <https://banten.bps.go.id/indicator/12/46/1/penduduk-provinsi-banten.html>, <https://jakarta.bps.go.id/indicator/12/111/1/jumlah-penduduk-provinsi-dki-jakarta.html>, diakses tanggal, 7 Oktober, 2021.

the virus because their mobility is only around their own area as they rarely travel outside.⁶⁹

Another relevant factor is the impression that the Aceh government was late in embracing the *ulemas* to provide education and information to the public about the dangers of Covid-19 and the need for vigilance against it. In fact, as socially religious people, Acehnese are quite fanatical about *ulemas* as religious leaders or *Tengku* that makes them an influential factor in the success of the Government's policies.⁷⁰ For the Acehnese, *ulamas* are a central figure to follow as they are put as good examples by making their knowledge and morals as the community guides in carrying out any activities in daily life.⁷¹ In the context of the Pandemic, Acehnese tends to consider *ulemas* as the objective figures who have no interests. Therefore, their advice and appeals through the mosque and the *meunasahs* pulpits are more accepted by the community. When the Aceh government has finally realized the situation, several charismatic *ulemas* had been invited to provide information about the dangers of Covid-19, including several big *dayahs* (traditional Islamic boarding schools) in Aceh.

This is in line with the comments of Muhajir Al Fairusy, an academic from the Institute for Islamic Studies of Teungku Dirundeng Meulaboh, West Aceh. He explained that the religious practices of the Acehnese people are largely influenced by the understanding of *dayahs*. The people of Aceh are quite obedient to the *fatwas*, and advice is given by the *ulemas* and *tengku* from Dayah. Indeed, he added, this situation is in accordance with the social system and religious order in Aceh, which is still strong in obeying the advice of the *ulemas*.⁷²

⁶⁹Interview with Bustami, Head of BKM of Sabilil Jannah Mosque, Banda Aceh, August 12, 2021.

⁷⁰ Abidin Nurdin, 'Reposisi Peran Ulama Dalam Penerapan Syariat Islam Diaceh', *Al-Qalam*, 18.1 (2016), 54.

⁷¹Furqan Amri dan Bukhari Ali Salman Abdul Muthalib, 'Practices of the I'adah Zuhur after Friday Prayers in Aceh Besar District: An Analysis with The Perspectives of Islamic Law Approaches', *Samarah*, 5, No. 1 (2021), 338-356.

⁷²Interview with Muhajir al-Fairusy, Lecturer of STAIN Teungku Dirundeng, Meulaboh, August 10, 2021

In addition, public compliance with the government policies to always maintain health protocols, including in the implementation of worship, is in fact, an obligation because obedience to leaders in Islam covers various problems that arise in society.⁷³ Islam is a teaching that not only regulates the relationship between humans and God but also regulates the relationship between humans and their environment.⁷⁴ Moreover, regarding conditions and circumstances that can endanger human lives, such as the Covid-19 case, Islamic law has its own concept called the rules of *fiqh* of *qa'idah fihiyyah*. Some of those relevant as efforts to keep away from harm are as follow:

لا ضرر و لا ضرار

Meaning: There should be neither harming nor reciprocating harm

درء المفاسد مقدم علي جلب المصالح

Meaning: Warding off evil takes precedence over bringing benefits

الضرورات تبيح المحظورات⁷⁵

Meaning: Dire necessities permit prohibitions

The aforementioned rules are considered sufficient to explain that not performing congregational prayers at a mosque is not a part of any legal problem. Moreover, the order to pray at home is a recommendation instead of an obligation. Likewise, it is a recommendation to have a distant row and to wear a mask when praying. Therefore, if someone is unwell or be in a situation in the midst of a virus outbreak that cannot be detected by the naked eye

⁷³Analiansyah.

⁷⁴Manna Khalil Al-Qattan, *Al-Tasyri' Wa Al-Fiqh Fi Al-Islam: Tarikhan Wa Manhajan*. p.10.

⁷⁵Zayn al-'Abidin ibn Ibrahim ibn Nujaym, *Al-Asybah Wa Al-Naza'ir, Jilid 1* (Beirut: Dar al-Kutub al-Ilmiyyah, 1980).

while the possibility of transmission is very large, praying at home with family is deemed better than in congregation at mosques.⁷⁶

The controversy of performing prayers in Aceh during the current Pandemic is, therefore, a common thing. Moreover, the government policies apply for all regions in Indonesia no matter each of them deals with different situations and dan danger levels. Some areas coped with the high number of infections, such as Java, parts of Sumatra, Sulawesi, and Bali. However, in Aceh, the number of Covid-19 infections and fatality is relatively low compared to the areas mentioned above. Fortunately, later, the Government issued detailed and complete arrangements through the Implementation of Community Activity Restrictions (PPKM) based on the Instruction of the Minister of Home Affairs in July 2021 due to each situation. In these regulations, there are four levels. At areas identified with levels 1 and 2, places of worship may be opened for 50 percent capacity at maximum, while at level 3 areas, the allowed number is only 25 percent, and at the level 4 area, the houses of worship are prohibited from opening.⁷⁷ Since the issuance of the regulations in July 2021, the implementation of worship is relatively in order because differences in the level and the color of each area matter, such as red, orange, yellow, and green. This is an advanced improvement considering that the arrangements in the early period of the spread of Covid-19 had not been regulated explicitly, including the rules for the places of worship.

To this end, the government policies are indeed relevant to one of *maqasid al-shari'a* points, namely the protection of life (*hifz al-nafs*) by avoiding contact with the virus. This is particularly because the policies implied benefits that aim to avoid any harm and reject the danger.⁷⁸ Nevertheless, some communities, especially in the districts

⁷⁶Yusran M. Hasibuan, E. M., 'Hukum Shalat Berjamaah Di Masjid Dengan Saf Terpisah Karena Wabah Covid-19', *Bustanul Fuqaha: Jurnal Bidang Hukum Islam*, 2020, 106-24.

⁷⁷<https://www.kompas.com/tren/read/2021/07/31/150000165/ini-perbedaan-aturan-ppkm-level-1-2-3-dan-4>, accessed on October 8, 2021

⁷⁸ Y.A. Anjar, Aceh dalam Pandemi: Antara Rasialisme dan Ketidapatuhan. In W. U. Arifah Rahmawati (Ed.), *Kekerasan di Masa Pandemi*, Yogyakarta: Fakultas Ilmu Budaya Universitas Gadjah Mada, 2021.

with low transmission rates, think that congregational prayers at mosques must still be carried out with consideration of maintaining religion (*hifz al-din*) along with their willingness to comply with health protocols.

Conclusion

This study concludes that the change of worship in Aceh, particularly the congregational prayer during the Pandemic, is because in the early days of the Covid-19 outbreak until mid-2020, the government policies on PSBB were not perfectly stipulated until the PPKM rules were issued in July 2021 followed by the MUI Fatwa and Aceh Ulama Tausyiah (MPU). The new style of worship practices due to Covid-19 is a common thing in Islamic law perspective because it is considered as a form of *maslahah* with *rukhsah* while avoiding harm. Furthermore, policies for not allowing congregational prayers at mosques when the transmission numbers are high refer to *maqasid al-shari'a* in terms of *hifz al-nafs* so that people do not get infected by the virus and therefore can save their life. This study recommends that the central and local governments engage the key social figures in promoting the rule through, for instance, cooperating with religious institutions such as MUI and other mass organizations such as NU and Muhammadiyah. The involvement can help people to have far-sighted so that they do not easily believe any unreliable news.

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Interviews

Interview with Mohd. Fajarul Falah (Member of Aceh MPU), on August 3, 2021

Interview with Fauzi Saleh (Member of Banda Aceh MPU) on August 5, 2021

Interview with Muhajir Al-Fairusy (Lecturer of STAIN Teungku Dirungden Meulaboh) on August 10, 2021

Interview with Bustami (Head of BKM of Sabilil Jannah Mosque, Banda Aceh City) on August 12, 2021

Interview with Abdullah, member of congregational prayer at a mosque in Dayah Tanoh, Pidie District on August 10, 2021

Interview with Syukur Gade, a local of Banda Aceh City, August 12, 2021.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 450-475
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5329>

Islamic Legal Analysis of Obligation for Swab Tests as a Requirement for Marriage in the Era of Covid-19 Pandemic in Indonesia

Shofiatul Jannah

University of Islam Malang Jl. MT Haryono 193 Dinoyo Malang
Email: shofia@unisma.ac.id

Mohammad Afifulloh

University of Islam Malang Jl. MT Haryono 193 Dinoyo Malang
Email: mohammad.afifulloh@unisma.ac.id

Article history: Received: November 05, 2021, Accepted: December 15, 2021, Published: December 31, 2021

Abstract:

The Covid-19 pandemic gives many impacts on various aspects, including marriage service requirement. During the pandemic, it is required to comply with government policies, namely submitting negative Covid-19 Swab test results for prospective brides, witnesses, and marriage guardians. Due to the high spending for taking the test, some prefer to unregister the marriage and delay the schedule. This research is a literature study with a normative type. The data was obtained qualitatively through observation and analysis of the policy of the Ministry of Religious Affair, its impact on Indonesian society, and how Islamic law perceives the policy. The results show that the policy of the Ministry of Religious Affair number: P-001/DJ.III/Hk.007/07/2021 aimed to cope with the spread of Covid-19 virus which is increasingly rampant. Meanwhile, according to the Islamic law, it is a temporary requirement formulated to prevent harm and therefore, it is not a part of marriage pillar. Islamic law furthermore puts it as an effort to maintain the soul's safety (*hifdun al-nafs*).

Author correspondence email: shofia@unisma.ac.id
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Keywords:

Swab Test; Marriage; Covid-19 Pandemic

Abstract:

Pandemi Covid-19 memberi dampak pada berbagai macam aspek kehidupan, termasuk persyaratan layanan pernikahan. Selama pandemi, pasangan yang akan menikah, saksi, dan walinya diwajibkan menyerahkan hasil negatif test Swab sesuai kebijakan pemerintah. Karena mahalnya biaya test tersebut, ada beberapa pasangan yang memilih pernikahan sirri atau menunda pernikahannya. Penelitian ini adalah penelitian pustaka yang berjenis normatif. Data-data di dalamnya diperoleh secara melalui pengamatan dan analisis terhadap kebijakan Kementerian Agama nomor P-001/DJ.III/Hk.007/07/2021 yang bertujuan menanggulangi penyebaran virus Covid-19 yang sempat menggila. Sementara itu menurut hukum Islam, persyaratan tersebut sifatnya sementara dan bertujuan untuk mencegah munculnya hal-hal yang tidak diinginkan sehingga bukan merupakan rukun nikah. Hukum Islam melihat kebijakan tersebut sebagai salah satu upaya untuk menjaga keselamatan jiwa.

Keywords:

Tes Swab; Perkawinan; Pandemi Covid-19

Introduction

The Covid-19 pandemic has hit countries in the world, including Indonesia. The virus entered Indonesia in March 2020¹ and has reached its peak at the midst of 2021. Responding the situation, the government issued policies to prevent the spread of virus and protect the citizens from the contagion attack. These policies include large-scale social restrictions (PSBB; *Pembatasan Sosial Berskala Besar*) and implementation of micro community activities (PPKM; *Pemberlakuan Pembatasan – Kegiatan Masyarakat*). The policies prohibiting community activities indeed aims to suppress the high number of Covid-19 spread in Indonesia. Along with it, they also give

¹ Susan Olivia, John Gibson, and Rus'an Nasrudin, "Indonesia in the Time of Covid-19," *Bulletin of Indonesian Economic Studies* 56, no. 2 (2020): 143–74, <https://doi.org/10.1080/00074918.2020.1798581>.

impacts on various aspects, including the requirement of marriage² services during the pandemic.³

Marriage services in pandemic times are undoubtedly different from those held before the pandemic or in the normal era. The government restricts marriage with several policies such as suggesting a delay of marriage,⁴ prohibiting wedding reception (*walimatul ursy*) to avoid bad things happening,⁵ and requiring negative Covid-19 Swab tests result in submission for future brides-to-be, witnesses, and guardians.

Obligation to submit negative Swab test results is a newly set requirement for marriage settlement. In Islamic teaching, it is not included in the terms and requirements of marriage. However, practically today, the formal marriage settlement couldn't be organized unless there found the result. The high spending for taking the Swab test gives people only two choices, either delaying marriage or having unregistered marriage or so-called *nikah sirri*.⁶

Before the Covid-19 outbreak, two future brides have been obliged to submit negative results from narcotic tests through the Policy of the Ministry of Religious Affairs office aiming to prevent the negative impacts of the drugs.⁷ In addition, some local KUA (*Kantor*

² Muhammad Roy Purwanto Reza Maulida Anatasya, Fela Sufah Aidatul Izzah, Rizqah Nur Aini, "Impact of Covid 19 Pandemic on Increasing Number of Marriages (Case Study In Kua Jekulo Kudus Regency)," *At-Thullab Journal* 3, no. 1 (2021): 673–81.

³ Sitti Arafah, "'Understated' Marriage During the Covid-19 Pandemic in the Bugis Community of Palopo City," *Mimikri Journal of Religion and Culture* 6, no. 2 (2020): 171–88.

⁴ Widiyanto Day, "The Concept of Marriage in Islam (Phenomenological Study of Delays in Marriage In Pandemic Times)," *Journal of Islam Nusantara* 04, no. 01 (2020): 103–10, <https://doi.org/10.33852/jurnalin.v4i1.213>.

⁵ M. Nur Kholis Al Amin, "Assessing the Expediency Value of the Suspension of Walimat Al- 'Ursy In the COVID-19 Emergency Period Through Sadd Adz-Dzari'Ah," *Ulumuddin: Journal of Islamic Sciences* 10, no. 1 (2020): 27–38.

⁶ Mohd Rafi Riwayi, "Penundaan Perkawinan Di Masa Pandemi Covid-19 Prespektif Teori Masalahah," *Legitima: Jurnal Hukum Keluarga Islam* 3, no. 2 (2021): 160–76, <https://doi.org/https://doi.org/10.33367/legitima.v3i1>.

⁷ Gusmat, "Surat Keterangan Bebas Narkoba Sebagai Syarat Nikah Perspektif Saad Adz-Dzari'ah Berdasarkan Surat Edaran Kemenag RI NO.B-7030/KW.13.6.1/PW.01/12/2019," *Sakina: Journal of Family Studies* 5, no. 3 (2021): 1–15.

Urusan Agama; Religious Affair Office) organize pre-marital medical tests such as KUA Jatirejo, Mojokerto, for the sake of maintaining offspring.⁸ Generally speaking, all obligations, both narcotics and medical tests before marriage settlement have the same goal, namely to prevent any damage or unexpected situation.

Unlike the wedding service before the pandemic, the future bride and groom, witnesses, and guardians are required to submit the negative Swab test result beforehand. It is based on the instruction of the Director-General of the Islamic Society number: P-001/DJ. III/Hk.007/07/2021 on implementing marriage services at the religious affairs office sub-district during the PPKM levels 4 and 3. This is one of the most obvious impacts of the COVID-19 pandemic in the Indonesian marriage service.

Meanwhile, according to the four main schools of Islamic jurisprudence, the terms and pillars of marriage must be fully fulfilled so that the settlement can be considered legal. They only consist of the bride, the groom, the guardian, two witnesses of marriage, and marriage settlement (*akad*).⁹ The existence of additional administrative requirements to submit the negative results of the Swab test has just existed since the hit of the current pandemic and is required for the sake of marriage settlement validity.¹⁰

Interestingly, although the whole tests respectively aim to prevent any unexpected consequences of infectious diseases before the marriage takes place, they are different in fees. The fee for taking both drug and medical tests is relatively lower than that of the Swab test. Furthermore, those who are declared positive as drug users deserve free rehabilitation. This is different from the requirement for taking the Swab test which is not facilitated by the government and thus burdens people.

Based on the above problems, the focused issues in this study are

⁸ Hana Ayu Aprilia, "Tes Kesehatan Pra Nikah Bagi Calon Mempelai Laki-Laki Di Kantor Urusan Agama (Kua) Jatirejo Mojokerto," *Al-Hukama* ' 7, no. 2 (2018): 333–58, <https://doi.org/10.15642/alhukama.2017.7.2.333-358>.

⁹ Abdurrahman Al-Jazairi, *Kitaabul Fiqhi 'Alal Mazaahib Al-Arba'Ah*, Beirut (Beirut: Darul Kutub al-Ilmiah, 2010). 712

¹⁰ Sudirman Hasan Shofiatul Jannah, Nur Syam, "Urgensi Pencatatan Pernikahan Dalam Prespektif Hukum Islam Dan Hukum Positif Di Indonesia," *Al-Ulum* 8, no. 2 (2021): 190–99.

marriage service during the Covid-19 pandemic, the impact of new policy of negative Swab test result submission, and overview of the policy according to the Islamic law. It wishes to give contribution to the government in policy making process as well as raising legal awareness among Indonesian people so that they can know the purpose of new marriage service policy during the Covid-19 pandemic.

Research Methods

This library research¹¹ examines various data related to the research topic. It ranges from the policy of the Ministry of Religious Affairs regarding marriage services during the pandemic as the primary data to supporting one such as online news, magazines, newspapers, and other relevant data. Furthermore, this is normative research that observes the rule of law, legal principles, and legal doctrines to answer any relevant legal issue.¹² It also portrays living phenomena among society in responding to the policy.

The compilation data method of this study is qualitative which seeks a deep understanding of any symptom, problem, fact, or reality that includes actions and their consequences in the relationship of community life.¹³ The data will be further reduced, displayed, and analyzed for making the conclusion or verification.¹⁴ The unit of analysis of this research is Islamic law which is used to analyze the mandatory Swab test as a condition of marriage during the covid-19 pandemic. In this context, the research observes the policy, its impact on the wedding among Indonesian people during the pandemic, and how Islamic law perceives it.

¹¹ Noeng Muhajir, *Qualitative Research Method* (Yogyakarta: Rakesarasia, 1996), 157.

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2010), 35.

¹³ J.R Raco, *Qualitative Research Methods of Types, Characters and Advantages* (Jakarta: PT Gramedia Widiasarana Indonesia, 2010), 9.

¹⁴ I Lexy Moleng, *Qualitative Research Methodology, I* (Bandung: Adolescent Rosda Karya, 1995), 178.

Discussion and Result

Policy of the Ministry of Religious

Affairs on Marriage Services during the Covid-19 Pandemic

The government's policy on marriage services during the pandemic to comply with health protocols is stated in the instruction of the Director-General of Muslims number: P-001/DJ.III/Hk.007/07/2021 in the PPKM period. This policy was set in Jakarta on July 26, 2021, by Director-General Kamaruddin Amin, as an effort to prevent further contagion by providing protection to employees of KUA and the public from the transmission of the COVID-19 virus. The implementation of this policy does not only cover obligation to wash hands, wear masks and maintain distance, but also take the Swab tests. In addition to the future couple, marriage guardian, and witnesses are also obliged to take the test before the marriage settlement occurs. This policy is typically conveyed by the officer of KUA in the process of marriage registration. As a new policy, it is certainly not immediately accepted by Indonesians. On the contrary, it caused a lot of controversies.¹⁵

Since the pandemic hit Indonesia, there are several relevant policies from the government, including delays in marriage in the Ministry of Religious Affairs of the Republic of Indonesia Number: P-004/DJ.III/Hk.00.7/04/2020 concerning controlling the marriage services in the emergency period of the disease outbreak due to Covid-19. Delaying marriage is not a good choice, but pandemic makes it an available choice to protect Indonesian people.¹⁶ Another policy is about the marriage service policy in the PPKM period that requires Swab tests before the wedding. In general, the function of the Swab test is to ensure either existence or absence of viral infections for protecting people and reducing the spread of the Covid-19 virus.¹⁷

¹⁵ Amin Kamaruddin, "Instruksi Direktur Jenderal Bimbingan Masyarakat Islam Nomor P-001/DJ.III/Hk.007/07/2021 Tentang Pelaksanaan Layanan Nikah Pada Kantor Urusan Agama (KUA) Kecamatan Masa Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Level 4 Dan Level 3" (2021).

¹⁶ Shofiatul Jannah, "Penundaan Perkawinan Ditengah Wabah Covid-19," *Jurnal Ilmiah Ahwal Syakhshiyah (JAS)* 2, no. 1 (2020): 41, <https://doi.org/10.33474/jas.v2i1.6840>.

¹⁷ Via Anjalina Tambunan Nurhidayanti, Enderia Sari, "Penyuluhan Masyarakat Mengenai Efektivitas Pemeriksaan Rapid Test Antibodi Dan Antigen

The benefits of the mandatory Swab test are to support the government's effort in reducing the spread of the Covid-19 virus or, in other words, avoiding harm while creating benefits (*maslahah*).¹⁸

Both the policy on delaying marriage and the Swab test obligations have a positive and negative impact on Indonesian people, especially the Islamic community. The positive impact is to assist the government in preventing the spread of the covid-19 virus. In contrast, the negative is the psychological impact on those who plan to get married during the pandemic. They need to comply with various new rules following the government's policy, including taking the Swab test with a self-funded scheme.¹⁹

Some people, particularly those who come from the lower-middle economic class, typically feel strongly objected to the policy. Therefore, they will likely protest against the local KUA as the institution which implements the policy and this often leads to conflict between people and KUA officers. Unfortunately, the new policy has not been well disseminated so that people tend to misunderstand the policy and have no idea about the importance of the Swab test before the marriage process.

This happened in some areas. In Bojonegoro district, East Java, Mitroatin as the deputy chairman of People's Representative Council (DPRD; *Dewan Perwakilan Rakyat Daerah*), admitted that he often received complaints from prospective brides because of the policy to take the Swab test. Therefore, he suggested that the government give concessions to low-income families who are going to get married.²⁰ The same happened in Purworejo, Central Java. Several assistants of marriage registrar officers (P3N; *Pembantu Pegawai Pencatata Nikah*)

Dalam Mendeteksi Covid-19," *Khidmah: Jurnal Pengabmas IKesT Muhammadiyah Palembang* 3, no. 1 (2021): 294–300, <https://doi.org/10.52523/khidmah.v3il.346>.

¹⁸ Riwayi, "Penundaan Perkawinan Di Masa Pandemi Covid-19 Presfektif Teori Masalah."

¹⁹ Muhammad Zulfa Alfaruqy, Finda Kalina Putri, and Sara Imanuel Soediby, "Dinamika Psikologis Menikah Pada Masa Pandemi COVID-19," *Jurnal Psikologi TALENTA* 6, no. 2 (2021): 55, <https://doi.org/10.26858/talenta.v6i2.19695>.

²⁰ Tulus Addarma, "Dinilai Memberatkan, DPRD Bojonegoro Minta Pemkab Bisa Fasilitasi Swab Antigen Bagi Calon Pengantin," *beritajatim.com*, 2021, <https://beritajatim.com/pendidikan-kesehatan/dinilai-memberatkan-dprd-bojonegoro-minta-pemkab-bisa-fasilitasi-swab-antigen-bagi-calon-pengantin/>, diakses pada tanggal 15 Desember 2021.

came to the Purworejo DPRD office. They asked to loosen marriage requirements during PPKM level 4 in the area because the existing requirements are considered burdensome that some marriages are planned for cancellation.²¹ Meanwhile, in Indramayu, the local KUA proposed to the local government to free the cost of Swab tests taking for future brides, especially from low-income families.²²

All the cases show that this sort of dissemination is really helpful to increase people's understanding of government policies. In nowadays era, it can also be done either *online* using social media or *offline*. The government should be fully responsible for the dissemination of the policy so that they can monitor and analyze the effectiveness of the policy in determining future policies. At least, people need to know the consideration beyond the policy, namely the increasing number of marriages during the pandemic, along with domestic and sexual violence²³ as well as mortality and pregnancy rates²⁴ that makes complying with health protocols becomes a must in everyday life, such as washing hands and keeping your distance.²⁵ In addition to avoid misunderstanding on the policy or any protest on it so that people can be more cooperative in its implementation, the dissemination also works to reduce public anxiety in facing Covid-19 pandemic. More importantly, people need to understand that the

²¹ Muhammad Ansori, "Pembantu Pegawai Pencatat Nikah, Datangi Dewan Minta Kelonggaran Aturan Nikah," <https://purworejo.sorot.co/>, 2021, <https://purworejo.sorot.co/berita-11213-pembantu-pegawai-pencatat-nikah-datangi-dewan-minta-kelonggaran-aturan-nikah.html>, diakses pada tanggal 15 Desember 2021.

²² Handhika Rahman, "Aturan Swab Antigen Beratkan Calon Pengantin, Kemenag Indramayu Akan Usulkan Swab Antigen Gratis," 2021, n.d., <https://jabar.tribunnews.com/2021/07/26/aturan-swab-antigen-beratkan-calon-pengantin-kemenag-indramayu-akan-usulkan-swab-antigen-gratis>, diakses pada tanggal 15 Desember 2021.

²³ Komnas Perempuan National Commission Against Violence Against Women, "Women In Pandemic Violence: Spike in Sexual Violence, Cyber Violence, Child Marriage And Limited Handling Amid the Covid-19 Pandemic."

²⁴ Tuti Marjan Fuadi and Irdalisa, "Covid 19: Between Mortality And Birth Rate," *Journal of Sociology of Indonesian Religion (JSAI)* 1, no. 3 (2020): 199–211, <https://doi.org/10.22373/jsai.v1i3.767>.

²⁵ Reza Maulida Anatasya, Fela Sufah Aidatul Izzah, Rizqah Nur Aini, "Dampak Pandemi Covid 19 Terhadap Peningkatan Jumlah Pernikahan (Studi Kasus Di KUA Jekulo Kabupaten Kudus)."

policy aims to protect KUA officers and Indonesian people in general from the spread of the Covid-19 virus. Dissemination of the mandatory Swab test policy before marriage can furthermore lead people to be more aware and obedient to the obligation because knowing the purpose beyond.²⁶

Swab Test: Between Marriage Pillars and Administrative Terms

Taking Swab tests before marriage during the current pandemic has become an obligation for Indonesian society. It applies through the decision of The Ministry, The Body of Islamic society guidance, following the PPKM. As a consequence, the officer does not legalize the marriage and go through a marriage settlement or registration process unless this requirement is fulfilled.

The obligation to take any test before marriage is not a new thing. Before the obligation for taking the Swab test, a previous policy required drug testing as one of the marriage requirements. The later mentioned policy is a result of the memorandum of understanding between the National Narcotics Agency (BNN; *Badan Narkotika Nasional*) and some local governments. They consist of several regions in Indonesia, such as North Kalimantan,²⁷ East Java, Binjai, and other areas.²⁸ The policy aims to overcome the use of drugs among Indonesian society, especially the youth.

This sort of innovation on the additional requirements for marriage is an effort to make it contextual and fit with people's needs. What was mentioned in Law No. 1 of 1974 concerning marriage mainly requires registration of marriages as one of the legal conditions of marriage formally. Consequently, unregistered

²⁶ Ririn Noviyanti Putri, "Indonesia Dalam Menghadapi Pandemi Covid-19," *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 2 (2020): 705–9, <https://doi.org/10.33087/jiubj.v20i2.1010>.

²⁷ Fatma Amilia and Faiq Tobroni, "Surat Keterangan Pemeriksaan Narkoba Sebagai Syarat Permohonan Kehendak Nikah Inovasi Penataan Administrasi Perkawinan Di KUA Kecamatan Nunukan Kalimantan Utara," *Al-Ahwal* 12, no. 2 (2019): 117–29.

²⁸ M P Aprian, "Eksistensi Tes Narkoba Pranikah Dalam Peraturan Walikota Binjai Nomor 39 Tahun 2017 Ditinjau Dari Maqasid Asyasyari'ah," 2020, <http://repository.uinsu.ac.id/9973/>.

marriages are not considered valid.²⁹ This dynamic implies that the development of marriage law follows the dynamics of the times along with each situation and place, such as the fast development of information technology which also affects the law of marriage.³⁰

The new policies of marriage in Indonesia seem to be temporary following the current situation. Obligation for taking the drug test, for instance, has just been replaced by the Swab test following the hit of the Covid-19 attack. Drug tests for future brides are very beneficial in helping the government's effort to handle drug abuse among young people. Likewise, the Swab test requirement seems to be valid only in a short period so that as soon as the pandemic is over, it will not be applied anymore. Moreover, the policy on the Swab tests during the pandemic does not have any binding power for the community as there is no punishment for violators except unavailability to register the marriage formally. Because of the temporariness, the Swab test result can't be included in the category of marriage pillar. Furthermore, recently, it is required to submit another document, namely vaccine certification.³¹

Practically, wedding practice and marriage service in the pandemic period are quite diverse from one area and another. In Purbalingga, especially at Bojongsari sub-district and Rembang sub-district, weddings are still carried out following the situation and conditions of the local community. Local people are also obedient in submitting the negative Swab test results of Covid-19.³² Meanwhile, the new marriage services during the pandemic also occurred in the city of Medan Marelan. Research results from Alfi Syahri showed that the change in Medan KUA offices applies to marriage registration

²⁹ Government Regulation of the Republic of Indonesia, "PP No. 9 of 1975 concerning the Implementation of Law No. 1 of 1974 on Marriage" (1975), Chapter 1 verse 2.

³⁰ Mahardika Putera Emas, "Problem of Marriage Agreement Via Online and Maintenance of Walimah During the Covid-19 Pandemic," *Batulis Civil Law Review* 1, no. 1 (2020): 68, <https://doi.org/10.47268/ballrev.v1i1.387>.

³¹ Zulham Wahyudani, "Sertifikat Vaksin Covid 19 Sebagai Syarat Permohonan Kehendak Nikah Dalam Perspektif Maqāsid Syari ' Ah," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial* 9, no. 02 (2021): 319–32, <https://doi.org/10.30868/am.v9i0>.

³² Teguh Anindito, "Pelaksanaan Perkawinan Di Masa Pandemi Covid-19 Di Purbalingga," *Cakrawala Hukum* 12, no. 1 (2016): 95–110.

which can be done both offline and online. This aims to anticipate the lack of skill and facilities of accessing online service in one hand and the physical crowd in another. All in all, it aims to make it easier for people in organizing marriage during the pandemic.³³ In both ways, people are told about the newest policy regarding negative Swab test Covid-19 results submission as a requirement for settling the marriage.³⁴

Marriage services at the Banjarmasin KUA are still carried out by complying with government policies to carry out wedding activities by following the health protocols that have been determined by the government, including complying with the mandatory Swab test policy. However, in holding a wedding ceremony, the people of Banjarmasin had lack of discipline. Unmasked people were still found while most of them likely gathered without keeping their distance each others.³⁵ Organizing wedding services during the Covid-19 pandemic therefore needs cooperation with *stakeholder*, particularly KUA, considering that they have significant influence among society like what occurred in Jambi.

Implementing marriage policies during the pandemic in Jambi province has been going well with strict control from the Jambi provincial and Religious Affairs Offices. Still, there are obstacles both from the negligence of the bride and groom and the local culture which usually facilitates people to make a crowd. In fact, at the era of pandemicall should take precautions independently so that efforts are made respectively to stop the spread of COVID-19.

Meanwhile, in Sumbawa, local people keep assuming that although in the pandemic, they still need to maintain marriage customs. Therefore, the local government is supposed to tell them that

³³ Alfi Syahri et al., "Layanan Pelaksanaan Akad Nikah Di Kantor Urusan Agama Medan Marelan (Studi Efektivitas Dan Hambatannya Pada Masa Pandemi Covid-19)," *Al-Fikru: Jurnal Ilmiah* 15, no. 1 (2021): 1–13, <https://doi.org/10.51672/alfikru.v15i1.47>.

³⁴ Syahri et al.

³⁵ Muhammad Jamili, "Dampak Pandemi Covid-19 Terhadap Pelayanan Pernikahan Dan Permohonan Pernikahan Di Kantor Urusan Agama (KUA) Banjarmasin Tengah Kota Banjarmasin," *Jurnal Al 'Idara Balad* 2, no. 2 (2020): 36, <http://ojs-al-iidara-balad.web.id/index.php/ANE2018/article/view/79/76>.

traditional custom is not a part of mandatory Islamic obligation and therefore can be skipped for the sake of people's safety.³⁶

The same thing happened to the Lombok Montong Bongor Sasak community which led the local government to issue the circular letter number 338/18/HUMAS prohibiting people to organize any crowded activities, including the "*nyongkolan*" in the marriage custom. "*Nyongkolan*" involves all members of the groom's family and the community to give a visit to the bride's residence. It aims to show off the groom in front of her parents and family, even to the whole community, while apologizing and paying respects to the bride's parents. The bride and the groom dressed like kings and queens by wearing luxurious outfits according to customary provisions. The activity is usually accompanied by various traditional arts, such as *gamelan*, *klentang*, and other traditional Lombok arts.

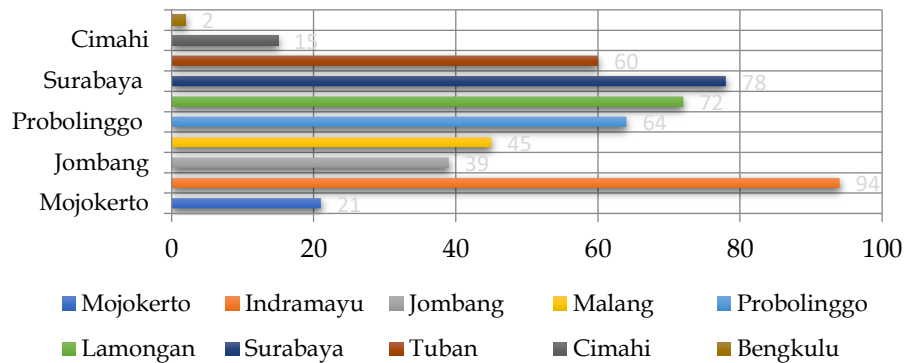
However, the issuance of the letter is even considered reducing local custom ranging from a decrease of cultural touch of Sasak tribe, eliminating once in a life opportunity for the couple to be one day king and queen, to lessen people's income.³⁷

The mandatory of Swab test policy before marriage impacts not only on the wedding or marriage customs, but also causes marriage delay in several regions in Indonesia as clear from the following diagram:

³⁶ Afnan Riani Cahya Ananda Fatihatul Anhar Azzulfa, "Dilema Perkawinan Adat Sumbawa Di Masa Pandemi Covid-19," *Al-Hukama* 10, no. 02 (2020): 372–98.

³⁷ H Azhari and A Sugitanata, "Dampak Larangan Adat Nyongkolan Bagi Masyarakat Sasak Montong Bongor Pada Masa Pandemi Covid-19," *Sosial Budaya* 18, no. 1 (2021): 1–11, <http://ejournal.uin-suska.ac.id/index.php/SosialBudaya/article/view/12396>.

Data on Marriage Delays in the Pandemic Period



The data above shows a delay in marriage caused by the mandatory Swab test as a condition of formal marriage settlement. In the city of Mojokerto, from 535 prospective couple who have registered, 21 candidates decided to delay the marriage.³⁸ The same thing happened in several areas in Indonesia, namely Indramayu West Java with 94 couples,³⁹ Jombang with 39 couples,⁴⁰ Malang with 45 couples,⁴¹ Probolinggo 64 couples,⁴² Lamongan⁴³

³⁸ Sayma Aslah, “Gara Gara PPKM Darurat, 21 Calon Pengantin Di Mojokerto Ini Tunda Nikah,” [suaramojokerto.com](https://suaramojokerto.com/2021/07/14/gara-gara-ppkm-darurat-21-calon-pengantin-di-mojokerto-ini-tunda-nikah/), 2021, <https://suaramojokerto.com/2021/07/14/gara-gara-ppkm-darurat-21-calon-pengantin-di-mojokerto-ini-tunda-nikah/>, diakses pada tanggal 17 Desember 2021.

³⁹ Ciremaytoday, “94 Calon Pengantin Di Indramayu Tunda Nikah Gara-Gara Tak Sanggup Bayar Tes Swab,” <https://kumparan.com/>, 2021, <https://kumparan.com/ciremaytoday/94-calon-pengantin-di-indramayu-tunda-nikah-gara-gara-tak-sanggup-bayar-tes-swab-1wDQgrb0iFv/full>, diakses pada tanggal 17 Desember 2021

⁴⁰ Zain Arifin, “Imbas PPKM Darurat Di Jombang, Pernikahan 39 Calon Pengantin Ditunda,” <https://www.idntimes.com/>, 2021, <https://www.idntimes.com/news/indonesia/zain-arifin/imbasp-ppkm-darurat-di-jombang-pernikahan-39-calon-pengantin-ditunda>, diakses pada tanggal 17 Desember 2021.

⁴¹ Muhammad Aminudin, “PPKM Darurat Bikin 45 Calon Pengantin Di Kota Malang Tunda Pernikahan,” <https://news.detik.com/>, 2021, <https://news.detik.com/berita-jawa-timur/d-5648857/ppkm-darurat-bikin-45-calon->

Surabaya 78 couples,⁴⁴ Tuban 60 couples,⁴⁵ Cimahi 15 couples,⁴⁶ and Bangalore 2 couples.⁴⁷ Further data implies that marriage delays during the pandemic are mainly caused by very strict marriage policies, such as mandatory Swab tests before marriage, bans on holding wedding receptions, fear of taking the Swab tests, and high cost of the Swab test taking that the couple cannot afford it.

However, in a larger scale, the policy does not influence much on the marriage number during the pandemic. Most of prospective couple keep organizing the wedding by making a small change and relevant adjustment. This is clear from the following diagram;

pengantin-di-kota-malang-tunda-pernikahan, diakses pada tanggal 17 Desember 2021.

⁴² Choirul Arifin, "PPKM Darurat Bikin 64 Calon Pasangan Di Probolinggo Tunda Nikah, Takut Swab Test," *Tribunnews.com*, 2021, <https://www.tribunnews.com/regional/2021/07/21/ppkm-darurat-bikin-64-calon-pasangan-di-probolinggo-tunda-nikah-takut-swab-test.%0A%0A>, diakses pada tanggal 17 Desember 2021.

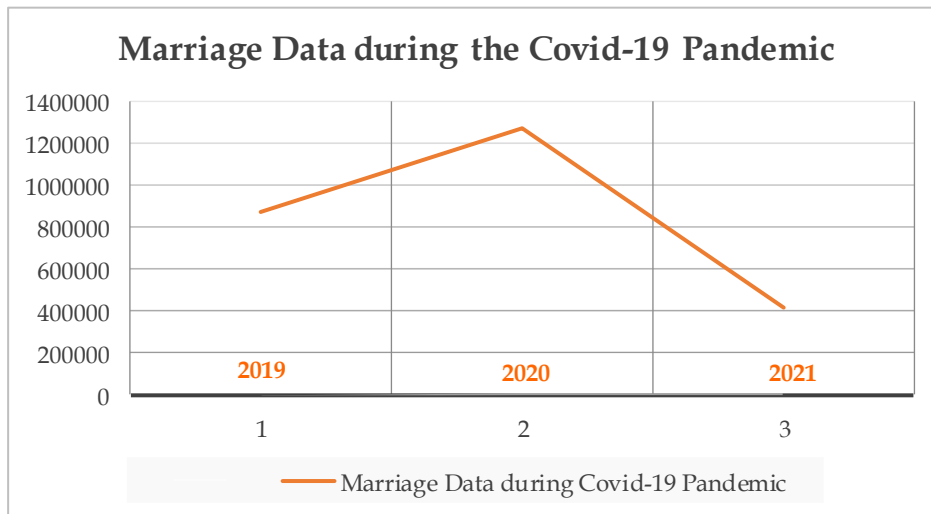
⁴³ M. Naufal Hafizh, "Sebelum Nikah Wajib Tes Antigen, 72 Calon Pengantin Di Lamongan Tunda Pernikahan," <https://surabaya.ayoindonesia.com/>, 2021, <https://surabaya.ayoindonesia.com/regional/pr-78842505/Sebelum-Nikah-Wajib-Tes-Antigen-72-Calon-Pengantin-di-Lamongan-Tunda-Pernikahan?page=all>, diakses pada tanggal 17 Desember 2021.

⁴⁴ Dwi Lindawati, "Selama PPKM Level 4, Sebanyak 78 Catin Di Surabaya Tunda Pernikahan," <https://tugujatim.id/>, 2021, <https://tugujatim.id/selama-ppkm-level-4-sebanyak-78-catin-di-surabaya-tunda-pernikahan/>, diakses pada tanggal 17 Desember 2021.

⁴⁵ Hidayat, "PPKM Darurat Bikin 60 Calon Pengantin Di Tuban Tunda Pernikahan, Gegara Wajib Tes Antigen," <https://ronggo.id/>, 2021, <https://ronggo.id/ppkm-darurat-bikin-60-calon-pengantin-di-tuban-tunda-pernikahan-gegara-wajib-tes-antigen/>, diakses pada tanggal 17 Desember 2021.

⁴⁶ Adi Haryanto, "Patuhi PPKM, 15 Pasangan Calon Pengantin Di Cimahi Tunda Akad Nikah," <https://www.inews.id/>, 2021, <https://jabar.inews.id/berita/patuhi-ppkm-15-pasangan-calon-pengantin-di-cimahi-tunda-akad-nikah>, diakses pada tanggal 17 Desember 2021.

⁴⁷ *BengkuluToday.com*, "Dampak PPKM, 2 Pasang Catin Di Kota Bengkulu Tunda Akad Nikah," *BengkuluToday.com*, 2021, <https://www.bengkulutoday.com/dampak-ppkm-2-pasang-catin-di-kota-bengkulu-tunda-akad-nikah>, diakses pada tanggal 17 Desember 2021.



The number of marriage during the pandemic has fluctuated in the last three years. In 2019, marriages number in Indonesia reached 877,209, increased to 1,271,321 at 2020, then decreased to 416,545 in 2021.⁴⁸ This likely relates closely to various policies regarding marriage which regulate the wedding reception quite detail. It seems to be problematic for some people who plan to organize marriage settlement or wedding ceremony.

On the contrary, the mandatory Swab test policy does not seem to affect unregistered or so called *sirri* marriages. This is certainly because it has nothing to do with formal requirement. The number of this type of marriage even increase during the pandemic. It mostly occurs for the sake of avoiding adultery and targetting immature couple.⁴⁹

⁴⁸ SIK/E-Dupak Kementerian Agama Republik Indonesia, “Data Nikah,” <https://simbi.kemenag.go.id/>, 2021, <https://simbi.kemenag.go.id/simpenghulu/hasil-data-nikah>, diakses pada tanggal 17 Desember 2021.

⁴⁹ Wardatus Sholihah, “Maraknya Praktik Perkawinan Siri Pada Masa Pandemi,” [Kompasiana.com](https://www.kompasiana.com/wardatus1128/6167e1099dc02955ef380432/maraknya-prak), 2021, <https://www.kompasiana.com/wardatus1128/6167e1099dc02955ef380432/maraknya-prak>, diakses pada tanggal 17 Desember 2021.

Taking the Swab Tests before Marriage from the Perspective of Islamic Law

In the context of marriage, Islamic law sets the conditions (*syarat*) and pillars (*rukun*) to fulfill so that the settlement can be considered valid.⁵⁰ Meanwhile, the Indonesian government requires two things, namely material and formal requirements.⁵¹ The former covers marriage pillars according to Islamic jurisprudence, while the later includes conditions formally related to administrative documents that need to fulfill before the d-day of settlement, such as drug tests result, medical tests result, marriage registration administration, and most recently, Swab test result. The negative Swab test result does not only aim for marriage validity, but also for maintaining the safety of engaged staff in the process and related parties.

A Swab test is one of the methods used to take mucus in the nasopharynx (back wall of the nose) or oropharynx (back wall of the mouth) as a sample by inserting a special tool. The mucus will then be examined using special equipment. The test is believed to be able to detect whether a person is infected with the virus or not with a validity number of 97%.⁵² The essential benefit of doing a Swab test is to quickly find out whether or not the Covid-19 virus infects someone. Therefore, when the results of the test are known, the person can be either assigned for further process (like when submitting marriage registration or to go traveling) or not. Additionally, he/she can adjust the interaction and daily activities to maintain the family's safety and the surrounding environment.

Among others, the procedure to submit the negative results of the Covid-19 Swab test submission is an effort of the Ministry of Religious Affairs to prevent and reduce the high flow of the virus

⁵⁰ Ghufron Maksum, "Telaah Kritis Terhadap Praktik Di Bawah Tangan Di Indonesia," *Kordinat* xiv, no. 01 (2017): 63–86, <https://doi.org/10.15408/kordinat.v16i1.6455>.

⁵¹ R. Otje Salman Soemadiningrat, *Reconception of Contemporary Customary Law: Critical Review of Customary Law as a Living Law In Society* (Bandung: Alumni, 2002), 175.

⁵² Velika Devina, "What is the Definition of Antigen Swab Test?," *alodokter.com*, 2021, <https://www.alodokter.com/komunitas/topic/swab-tes-antigen>, accessed on September 16, 2021.

spread. Along with it, it is also required for citizens who want to organize a wedding reception to comply with health protocols strictly. It covers wearing a mask, keeping a physical distance, avoiding handshakes, and using hand sanitizer/doing hand washing regularly.

In the perspective of Islamic law, the Swab test policy is compatible with the concept of *maqasid al-shari'ah* because it aims to maintain the safety of both marriage officers and people from the virus. The concept itself requires the meanings intended by *shari'* (Allah and the Prophet) to be applied in the community through law codification (*tasyri'*).⁵³ The concept also obliges implementation not only based on a textual reading of the Qur'an and hadith, but also by paying attention to other related factors in the process of law formation. It further puts the benefit for humans as the summit of a purpose beyond the whole existing law.⁵⁴ Particularly to the obligation for taking Swab test, the policy also fits another principle in Islamic jurisprudence called *dar'u al-mafasid muqaddam ala jalb al-masalih* (avoiding harm is put first before getting the benefit) for both policymaker (KUA officers) and policy target (bride, groom, and related parties.)

Furthermore, according to Jasser Auda's view on *maqasid al-shari'ah*, to achieve the purpose of *shari'ah*, the classical theory of Islamic law needs expansion. In this context, the obligation to take a Swab test for the bride and groom and related parties does not only target a particular goal, namely maintaining the soul (*hifd an-nafs*), but also to protect human rights to be more flexible in responding to cases of *fiqh*, such as the obligation to take a Swab test as one of the conditions for having formal marriage settlement. *Maqasid's* goal, according to Auda's system theory, is to maintain openness, renewal, realism, and flexibility in the Islamic legal system.⁵⁵

⁵³ Jasser Auda, *Maqasid Al-Shari'ah as Philosophy of Islamic Law: A System Approach* (London & Washington: International Institute of Islamic Thought, 2008), 2.

⁵⁴ Holilur Rohman, "Batas Usia Ideal Pernikahan Perspektif Maqasid Shariah," *Journal of Islamic Studies and Humanities* 1, no. 1 (2017): 67, <https://doi.org/10.21580/jish.11.1374>.

⁵⁵ Retna Gumati, "Maqasid Al-Syari'ah Menurut Jasser Auda (Pendekatan Sistem Dalam Hukum Islam)," *Jurnal Al-Himayah* 2, no. 1 (2018): 217–30, <https://www.journal.iaingorontalo.ac.id/index.php/ah/article/view/575/477>.

Likewise, Jasser Auda who makes *maqasid al-shari'ah* as a fundamental principle in Islamic law reform also believes that the effectiveness of a policy is clear from the achievement of its objectives. In other words, he stressed on whether the policy can solve the problems happening in the community. In one hand, the policy has helped the government to break the chain of the spread of Covid-19, minimize the possible cause of the transmission, and spend less on wedding expenses due to the absence of minimum package of *walimatul ursy* or wedding reception. On the other hand, the policy undoubtedly results in a new problem in society. Rich people can easily undergo the policy, but the poor one does differently. To organize a wedding party or marriage settlement, they are still obliged to seek additional money for taking the test that surely makes the policy burdensome.

Therefore, it makes sense to find some people who choose to delay the marriage or unregister it. The unregistered marriage, so-called *sirri*, might cause trouble in the next few days considering that the marriage is not formally recorded.⁵⁶ It is only by performing *isbat* marriage (marriage settlement) in the KUA that a marriage can have authentic evidence and the legal force.⁵⁷ This indicates that the policy leads to some further problems in people's households. The government, therefore, needs to reconsider the policy while taking the realm of Islamic family law into account.

This is mainly because from the perspective of Islamic law, marriage settlement can be carried out without any Swab test and involving KUA officers. Marriage will remain valid as long as it meets the conditions and pillars according to Islamic law although not formally registered and recorded at the KUA. Culturally, if the family of both parties agrees, unregistered marriage settlement can take place, particularly during the pandemic with the new requirements.

⁵⁶ M Yusuf, "Dampak Nikah Siri Terhadap Perilaku Keluarga," *Jurnal At-Taujih* 2, no. 2 (2019): 96–108, <https://doi.org/http://dx.doi.org/10.22373/taujih.v2i2.6530>.

⁵⁷ Ahmad Cholid Fauzi, "Kedudukan Hukum Itsbat Nikah Poligami Sirri," *Jurnal Usm Law Review* 1, no. 1 (2018): 94, <https://doi.org/10.26623/julr.v1i1.2234>.

Therefore, marriage settlement can still happen in economic hardship and new policy in Indonesia.⁵⁸

Policies related to the implementation of marriages during the pandemic significantly affect the community's economic activities, especially in the business field of wedding organizers and makeup or makeup artists. During the pandemic, government policy prohibits wedding receptions from preventing people from creating crowds. So that, wedding organizers and makeup artists are the economic actors who are most affected by the marriage policy, in addition, to the families of the bride and groom. The latter is affected by the Swab test policy as a condition of marriage.⁵⁹ Later after the pandemic ends, those choosing unregistered marriage can legalize their marriage by submitting a marriage certificate in the Religious Courts.

Conclusion

Marriage service during the current pandemic requires the future bride and groom, guardians, and witnesses to submit negative results of the Swab test as one of the mandatory requirements. However, the obligation seems to be temporarily valid unlike material law in Islamic *fiqh* law and formal legislation. It is only required during the Covid-19 pandemic. From the perspective of Islamic law, the policy aims to maintain the safety of the community's life (*hifdun an-nafs*) from the spread of the Covid-19 virus. However, the noble purpose turns out to be burdensome when it comes to policy. The government, therefore, needs to pay attention to the impact of the policy on society from various perspectives, such as sociology, economics, anthropology, and psychology.

⁵⁸ Sudirman et al., "The Family Corner for the Post-COVID 19 Revitalization of Family Function," *Samarah* 5, no. 1 (2021): 88–107, <https://doi.org/10.22373/sjkh.v5i1.9122>.

⁵⁹ Sitti Marwah, "Masalah Pembatasan Pernikahan Di Tengah Pandemi Covid-19 (Studi Di KUA Kec. Tiworo Tengah, Kab. Muna Barat)," *SAHAJA: Indonesian Journal of Sharia and Humanities* 1, no. 1 (2021): 1–16.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 476-502
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5285>

Access To Justice of Citizenship Rights for Stateless Indonesian Migrant Workers' Children In Sarawak, Malaysia

Yayan Sopyan

*Universitas Islam Negeri Syarif Hidayatullah, Jakarta
Jl. Ir. H. Djuanda No. 95, Ciputat, Tangerang Selatan
Email: yayan_sopyan@uinjkt.ac.id*

Article history: Received: September 28, 2020, Accepted: December 21, 2021,
Published: December 27, 2021

Abstract:

As one of the countries that ratified the United Nations Convention on the Rights of the Child in 1990 which was subsequently promulgated into the Child Protection Act, Indonesia is still unsuccessful in protecting children. This mainly occurs in the context of protection illegal migrant workers' children who were born in the country where their parents work. In Sarawak, Malaysia, for instance, there are 43,445 stateless children. This study aims to portray the stateless children in Sarawak, Malaysia, and the efforts of the Indonesian government to protect their right to access justice. This research is normative-qualitative with observations and in-depth interviews with consultant general staff and Indonesian volunteers In Sarawak as one of the main research methods. The results of this study indicate that stateless condition makes it possible for the children to get other rights, such as education. Meanwhile, the Indonesian government has already made regulations and efforts to provide access to basic human rights for children of stateless migrant workers, including itsbat nikah abroad to legalize unregistered marriage among workers. However, it has not been fully successful because the problems are so complex that it needs to involve several parties, especially the Malaysian government, and plantation owners as employers of the migrant workers.

Author correspondence email: yayan_sopyan@uinjkt.ac.id
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Likewise, harder and more coordinated efforts are also needed to fulfill their citizenship right.

Keywords:

Stateless children; Migrant workers; Malaysia; Access to Justice

Abstract:

Sebagai salah satu negara yang meratifikasi Konvensi PBB tentang Hak Anak pada 1990 dan kemudian dikristalkan menjadi Undang-undang Perlindungan Anak, Indonesia ternyata belum sepenuhnya berhasil melindungi hak-hak anak. Ini utamanya berlaku dalam konteks perlindungan terhadap anak para buruh migran yang lahir dan tinggal di negara tempat orang tuanya bekerja. Di Sarawak, Malaysia, ada 43.445 anak-anak tanpa kewarganegaraan. Penelitian ini bertujuan memotret kondisi anak buruh migran ilegal tanpa kewarganegaraan di Sarawak, Malaysia, serta menjelaskan upaya pemerintah Indonesia untuk melindungi hak-hak mereka. Penelitian ini bersifat normatif-kualitatif dengan observasi dan wawancara mendalam kepada pegawai Konsulat Jenderal dan relawan Indonesia sebagai salah satu metode penggalan data utamanya. Hasil dari penelitian ini menunjukkan bahwa status tanpa kewarganegaraan menghalangi anak-anak tersebut mengakses hak-haknya yang lain, semisal pendidikan. Sementara itu, pemerintah Indonesia sudah memiliki beberapa aturan tertulis dan berupaya memberikan akses keadilan bagi anak para buruh migran tersebut, termasuk melalui program itsbat nikah di luar negeri. Namun demikian, situasi belum sepenuhnya terkendali karena permasalahan yang begitu kompleks dan mengharuskan keterlibatan banyak pihak, utamanya pemerintah Malaysia dan para pemilik perkebunan. Perlu juga dilakukan upaya yang lebih keras dan terkordinasi agar hak-hak tersebut dapat terpenuhi.

Keywords:

Anak tanpa kewarganegaraan; Buruh migran; Malaysia; Akses pada keadilan

Introduction

Indonesia got involved in the ratification of the United Nations Convention on the Rights of the Child in 1990 which was subsequently followed by Law Number 23 of 2002 concerning Child Protection and was revised into Law No. 35 of 2014. However, it is still not quite successful in protecting children, particularly stateless children of illegal migrant workers in the country where their parents work. Providing legal protection to unlucky children with no citizenship status should be a concern and a top priority for the Indonesian government because it involves the good name and pride of the nation.

Nowadays, tens of thousands of Indonesian children in Sarawak, Malaysia, do not have any citizenship because their parents came to Sarawak as illegal immigrant workers.¹ Sarawak is distinctive for various reasons. First, it is quite close and directly adjacent to Indonesia. Second, the number of both illegal migrant workers and stateless children is very large. Fourth, Itsbat (marriage settlement) court services are relatively small compared to other places like Sabah.

In general, Malaysia is a home for Indonesian migrant workers from year to year. The data from BP2MI (*Badan Perlindungan Pekerja Migran Indonesia*/Indonesian Migrant Workers Protection Agency) in 2020 shows as follow:²

¹ Sri Wiyanti Eddyono, *Research Report: The Profile of Trafficking in Persons in The Border Area of Kalimantan, Studies of The Districts of Sanggau, Sambas, Kapuas Hulu and Nunukan*, ed. oleh Counter-Trafficking Unit IOM Indonesia (Jakarta: International Organization for Migration (IOM) Indonesia, 2020), hlm. 23. https://indonesia.iom.int/sites/indonesia/files/publication/The_Profile_of_Trafficking_in_Persons_in_The_Border_Area_of_Kalimantan.pdf.

² BP2MI, "Data on Placement and Protection of Indonesian Migrant Workers," Pusat Data dan Informasi, BP2MI, Periode tahun 2020. file:///C:/Users/dryay/Downloads/data_27-02-2021_Laporan_Pengolahan_Data_Th_2020.pdf

Table 1
The number of Indonesian Migrant Worker In Malaysia.

No.	Year	Total
1	2017	88.991
2	2018	90.671
3	2019	79.663
4	2020	16.542

Source: Data taken from BP2MI, 2020

Some determining factors influence Indonesian migrant workers to choose Malaysia even though an illegal scheme. They are higher income than working in their own country,³ strong solidarity among fellow workers,⁴ and information about the success of Malaysian migrant workers through channels of friendship, brotherhood, neighbourhood, and ethnic communities.⁵ Particularly in Sarawak, companies in the plywood industry and oil palm plantation sector are even dependent on Indonesian migrant workers. 95% of their foreign workers come from Indonesia⁶ scattered across approximately 135 palm oil companies.⁷

It has been three generations of illegal migrant workers in Sarawak, Malaysia. The majority come from Sulawesi, East Nusa Tenggara and West Nusa Tenggara.⁸ Their departure process is

³ Douglas S. Massey and others, *Theories of International Migration: A Review and Appraisal*. *Population and Development Review*, 1993.

⁴ Ridwan Wahyudi, 'Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia.', *Populasi*, 25.2 (2017), 24.

⁵ Dimas Teguh Prasetyo, Tarma, and Vera Utami Gede Putri, 'Aku Masih Cinta Indonesia : Study of Nationalism in Family Character Education on Children of Indonesian Migrant Workers in Malaysia', *Journal of Family Welfare and Education*, 7.1 (2020).

⁶ BNP2TKI, Data on the protection and placement of Indonesian migrant workers. Accessed via site http://www.bn2tki.go.id/uploads/statistik/images/data_22-04-2020_Laporan_Pengolahan_Data_BNP2TKI.

⁷ Feby Dwi Sutianto, *400.000 WNI Di Sarawak, Legal Atau Ilegal?*, 2018.

⁸<https://nasional.kompas.com/read/2020/08/05/> A strong indication that labor entering Malaysia is illegal is the low number of

facilitated by unscrupulous *cukong* or *tekong* (labor brokers) who work with the company and automatically make them low-income as well as illegal labors. They have no official document and sometimes, the brokers cheat on them⁹ by robbing their passports¹⁰ so that they can't go home.¹¹ As illegal workers, they are placed in workers' barracks on plantations area which is located remotely in the middle of the forest and are closely guarded by the security forces.¹²

While working on the plantation, they interact with each other, including between men and women which sometimes leads to the marriage relationship. However, because Malaysian Immigration Act Number 1154A/2002 obliges migrant workers to have legal documents while prohibiting them to bring their families along and get married during the employment contract period, they choose unregistered marriage. The settlement is usually carried out by those who are considered to have sufficient religious understanding.¹³

Responding to this situation, in the last 2011, the Supreme Court of the Republic of Indonesia initiated a Circuit Court (*Sidang Keliling*)

migrant worker placements by district/city: except for East Lombok. The highest is Indramayu district, then East Lombok and Kab. Cirebon. From East Nusa Tenggara and South Sulawesi, they are not included in the regencies/cities that send large numbers of workers. See Data on protection and placement of Indonesian migrant workers in year. 2019. page. 10.

⁹ <https://www.antaraneews.com/berita/2075754/pekerja-migran-dan-praktik-penipuan-yang-menyelimutinya>. Baca juga : <https://koran.tempo.co/read/berita-utama-jateng/408909/cerita-tipu-tipu-calo-buruh-migran>.

¹⁰ <https://buruhmigran.or.id/2010/06/24/tki-jangan-berikan-paspor-anda-kepada-siapapun/>.

¹¹ Republik Indonesia, *Naskah Akademik RUU Tentang Pengesahan Asean Convention Against Trafficking in Persons, Especially Women and Children (Konvensi Asean Menentang Perdagangan Orang Terutama Perempuan Dan Anak-Anak)* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2016).

¹² Yayan Sopyan, 'The Access to Justice for Indonesian Migrant Workers (In Malaysia, Saudi Arabia and Hongkong)', *International Journal of Advanced Science and Technology*, 29 No (2020), 95-108.

¹³ Alfian Faizin, Alfitra, and Ali Mansur, 'Legalizing Unofficial Marriage For Indonesian Migrant Workers In Malaysia', *Jurnal Cita Hukum*, 7.1 (2020).

for organizing the marriage settlement (*itsbat*). It was then followed by Supreme Court Regulation Number 1 of 2015 concerning Integrated Services for Circuit Courts of District Courts and Religious Courts/Sharia Courts in the Context of Issuing Marriage Certificates, Marriage Books, and Deeds of Birth. Particularly related to unregistered marriage, this program targets migrant workers who cannot return to Indonesia in close time to legalize their marriage formally. The only court authorized to organize *itsbat* abroad is the Central Jakarta Religious Court. However, the *itsbat* takes place at the Indonesian Embassy in Malaysia or the consul general's office as Indonesia's executorial area. According to international law, it refers to an area under the jurisdiction of a country (Indonesia, in this case) located within the territory of another country (Malaysia). The following table shows the result of the program in the last ten years.

Table 2
Recapitulation Of Acceptance Of *Itsbat* (The Determination Of Marriage) Trials Abroad At Central Jakarta Religious Courts

No	Place and Time	Appr oved	Remo ved	Cancel ed	Acce pted	Rejec ted	Withdrawn from Register	Total
1	Consulate General of the Republic of Indonesia in Kinabalu, June 18-25, 2011	332	0	29	5	0	0	266
2	Consulate General of the Republic of Indonesia in Kuching,	101	0	43	0	0	0	144
3	Consulate General of the Republic of Indonesia in Kinabalu, December 17-21, 2012	147	1	147	0	0	0	295
4	Consulate General of the Republic of Indonesia in Tawau, December 17-21, 2012	474	2	18	0	0	0	494
5	Consulate General of the Republic of Indonesia in Jeddah, October 8-10, 2013	67	5	56	0	0	0	128
6	Consulate of the Republic of Indonesia in Tawau, December 8-10,	284	1	37	0	0	0	322

No	Place and Time	Approved	Removed	Cancelled	Accepted	Rejected	Withdrawn from Register	Total
	2014							
7	Consulate of the Republic of Indonesia in Tawau, December 21-23, 2015	274	5	13	0	0	0	292
8	Consulate General of the Republic of Indonesia in Kuching, September 26-28, 2016	106	1	84	0	0	0	191
9	Consulate General of the Republic of Indonesia in Jeddah October 3-5, 2016	42	44	42	0	0	0	127
10	Consulate General of the Republic of Indonesia in Kinabalu, October 17-19, 2016	187	2	25	0	0	0	200
11	Consulate of the Republic of Indonesia in Tawau, November 7-10, 2016	245	6	12	0	0	0	263
12	Consulate General of the Republic of Indonesia in Kinabalu, December 5-7, 2016	183	2	25	0	0	0	210
13	Consulate General of the Republic of Indonesia in Kuching, May 16-18, 2017	221	0	33	0	1	0	255
14	Consulate General of the Republic of Indonesia in Kinabalu, May 22-24, 2017	231	1	18	0	0	0	250
15	Consulate General of the Republic of Indonesia in Kinabalu, October 9-10, 2017	293	0	8	0	0	0	301
16	Consulate of the Republic of Indonesia in Tawau, December 4-7, 2017	272	3	20	0	0	0	295
17	Consulate General of the Republic of Indonesia in Kinabalu, April 2-4, 2018	251	0	9	0	0	0	260
18	Consulate General of the Republic of Indonesia in	240	8	12	0	0	0	260

No	Place and Time	Approved	Removed	Cancelled	Accepted	Rejected	Withdrawn from Register	Total
19	Kinabalu, December 3-5, 2018 Embassy of the Republic of Indonesia in Kuala Lumpur, January 15-16, 2019	71	1	17	0	0	0	89
20	Consulate General of the Republic of Indonesia in Kinabalu, November 25-27, 2019	245	0	5	0	0	0	250
21	Consulate of the Republic of Indonesia in Tawau December 2-6, 2019	301	1	0	0	0	0	202
22	Consulate General of the Republic of Indonesia in Johor Bahru December 17-18, 2019	38	3	6	0	0	0	47
		4605	86	644	5	1	0	5341

Source: Data taken From The Central Jakarta Religious Court

Although the *itsbat* was not held in the last two years due to the Covid 19 pandemic, the table clearly shows that the total number of *itsbat* abroad from 2011 to 2019 is quite high numbering 5341. 4,986 cases were in Malaysia with 590 of them from Sarawak. This program mainly aims to facilitate a husband and wife from unregistered marriage to have marriage certificates so that they can further get birth certificates and passports for themselves and their children. However, the program does not solve the problem because the numbers of stateless children, particularly in Sarawak, were increasing year by year. Most of them come from unregistered marriages so that they don't have any legal citizenship identity.¹⁴ This condition is quite alarming not only because they do not have official citizenship documents, but also access to their basic right, including education. There are at least three reasons why stateless children get difficulty in

¹⁴ Disca Betty Viviansari and Zandy Wulan Ayu Widhi Prameswari, 'State Responsibilities of Rights to Education for Indonesian Migrant Worker's Children in Malaysia', *Jurnal HAM*, 10.2 (2019), 182.

accessing education: First, Malaysian Immigration Act Number 1154A/2002 the Malaysian government makes it difficult for children of migrant workers to get education in any public schools. Second, there is a lack of teaching and learning facilities available for stateless children. The number of CLC (Community Learning Center) built by plantation owners and the Indonesian government as a place to study for migrant workers' children is not sufficient. Third, the awareness of migrant workers toward children's education is still low. The three factors lead the children to prefer to help their parents rather than go to school.¹⁵

The topic of the rights of migrant workers' children to get basic rights in obtaining citizenship status has not been widely discussed. However, some researches have been conducted and the results are close to or almost the same as Benjamin Harkins' research. He writes *Access to Justice for Migrant Worker in South-East Asia* but does not talk about Indonesian migrant workers at all.¹⁶ Hidayat, meanwhile, wrote an article titling *The Protection of Indonesian Workers' Rights in Taiwan and Malaysia in Human Rights Perspective*¹⁷ but did not discuss the issue of migrant workers' children obtaining citizenship status and rights. Another research result from Child Rights International Network Rights, Remedies & Representation called *Global Report on Access to Justice for Children* didn't cover children's rights in obtaining citizenship. Accordingly, Catherine Allerton in her article titling *Statelessness and the Lives of the Children of Migrants in Sabah, East Malaysia*,¹⁸ explains the fate of Indonesian and Filipino stateless children in Sabah. She found that those children may be recognized by the country of their parents although families often prefer not to have official documents of them and instead expect to become Malaysian citizens.

¹⁵ Benjamin Harkons and Meri Ahlberg, *Access to Justice for Migrant Worker Ins South-East Asia* (Bangkok: ILO, 2017).

¹⁶ Hidayat, 'Protection of Indonesian Workers Rights in Taiwan And Malaysia in Human Rights Perspective', *Jurnal HAM*, 8.2 (2017), 106.

¹⁷ Hidayat, 'Protection of Indonesian Workers Rights in Taiwan And.

¹⁸ Cetherine Allerton, 'Statelessness and the Lives of the Children of Migrants in Sabah, East Malaysia.', *Tilburg Law Review: Journal of International and European Law*, 19.1-2 (2014), 26-34.

Filling the gap of those previous researches, this research aims to portray how Indonesian illegal migrant workers' stateless children in Sarawak have citizenship status as their basic right and how the Indonesian government makes efforts to protect them and their basic rights.

Method

This is legal research that combines two methods, namely juridical normative¹⁹ and socio-legal research aiming to see the implementation of the normative law to provide guarantees of justice for children to get their basic rights as citizens. It was conducted to find a solution to the problem of Indonesian migrant workers' children who were born and live in Malaysia and having no citizenship as well as access to their basic rights. The approach used is a qualitative one²⁰ while primary legal sources come from Indonesian laws and regulations. Secondary sources, meanwhile, are from books, journal articles, in-depth interviews, and direct observations. All legal materials are arranged systematically before being processed and researched as well as evaluated and analyzed descriptively-analytically.

Discussion and Result

Indonesia and the Problem of Malaysian Migrant Workers

Data from the Indonesian Migrant Workers Protection Agency (BP2MI; *Badan Pelindungan Pekerja Migran Indonesia*)²¹ reveals that the number of Indonesian migrant workers in 2019 was 276,553 spreading in more than 26 countries in the world. It consists of 133,993 people working in the formal sector and 142,560 people working in the

¹⁹ Soejono Soekanto and Sri Mamudji, *Penelitian Hukum Noermatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Perdana, 2001).

²⁰ A. M. D. Ali and H Yusof, 'Quality and Qualitative Studies: The Case of Validity, Reliability, and Generalizability. Issues in Social and Environmental Accounting', *Journal ICSEARD*, 5.1 (2011), 25-26.

²¹ Republik Indonesia, *Peraturan Presiden No. 90 Tahun 2019 Tentang Badan Pelindungan Pekerja Migran Indonesia*, 2019.

informal sector.²² The number of migrant workers is directly proportional to the foreign exchange generated by the state from the remittances of its migrant workers. *Bank Indonesia* recorded the number of remittances from Indonesian migrant workers abroad in 2018 numbered USD 10,971 billion or equivalent to IDR 153.6 trillion.²³ Of these, as much as USD 3,223 billion or 29.38% of remittances came from migrant workers in Malaysia.

Relating to this, the Indonesian government has set the minimum age limit to become an Indonesian migrant worker at least 18 years old²⁴ which is also called a sexually active person.²⁵ As a consequence, they typically have sexual urges, especially for those who previously had a spouse in Indonesia.²⁶ This likely leads to a willingness to find a marriage partner although most of them choose unregistered marriages because the Malaysian government prohibits migrant workers from bringing their families along, getting married, and or giving birth in Malaysia considering that it is supposed to interfere with their working performance.²⁷ Therefore, the ban of the Malaysian government certainly raises another bigger problem, namely children born in Malaysia to illegal migrant workers who will

²² Information Research and Development Center BNP2TKI, 2020 “*Data Penempatan dan Perlindungan Pekerja Migran Indonesia Tahun 2019*”, Jakarta, page. 2

²³ Vinna Dinda Kemala and Enny Kusdarini, ‘Legal Protection of Indonesian Migrant Workers (TKI) Overseas (Case Study of BP3TKI North Sumatera Province)’, *Fiat Justitia: Jurnal Ilmu Hukum*, 14.1 (2020), 25.

²⁴ Law No. 18 of 2017, article 5 a.

²⁵ Number of PMI based on Marital Status: Married 110,393 people, Not Married 97,621 people and Divorced 68,539 people. See Data on the Placement and Protection of Indonesian Migrant Workers (PMI) for 2019, BNP2TKI page 2.

²⁶ A total of 59.36% of Indonesian Migrant Workers in 2018 were single, and divorced, see Information Research and Development Center BNP2TKI, 2020 “*Data on Placement and Protection of Indonesian Migrant Workers Year 2019*”, Jakarta, page. 3.

²⁷ Interview with First Secretary of BNP2TKI Hermono on August 03, 2016 in accordance with Malaysian government regulations via *Malaysian Immigration Act Number 1154A/2002*.

also become illegal children because they cannot have official citizenship documents.

Access to Justice for Children of Migrant Workers

Justice is abstract that it needs appropriate operational definition to turn the concept into reality.²⁸ Justice is equivalent to fairness as the main virtue in social institutions.²⁹ Social justice here involves efficiency, coordination, and stability. Rawls further said that everyone has a right to justice that no one can interfere. Therefore, everyone should be treated equally. The right to justice, Rawls added, cannot be used as a political tool or a social interest.³⁰ Rawls' statement clearly emphasizes how important access to justice for everyone is without any restrictions and conditions. Francesco Francioni, meanwhile, defines access for justice as a person's right to obtain legal protection and the availability of legal remedy mechanisms, both in the court and protection mechanisms quasi-judicial equivalent.³¹

Access to justice is therefore a fundamental right that is inseparable from the enforcement of human rights. It further becomes an important prerequisite for the protection and promotion of all other human rights.³² Meanwhile, access to justice for children is a specific right as well as the main pillar to fulfill human rights, promote good governance, and support sustainable development

²⁸ Bahder Johan Nasution, 'A Philosophical Study of the Concept of Justice from Classical Thought to Modern Thought', *Journal of Yustisia*, 3.2 (2014).

²⁹ John Rawls, *A Theory of Justice* (United State of America: Twentieth Printing, 1971), hlm. 3-4.

³⁰ Rawls.

³¹ Fransesco Francioni, 'Acces to Justice, Denial Of Justice and International Investment Law', *The European Journal of International Law*, 20.3 (2020).

³² United Nations General Assembly, Human Rights Councils, Access to Justice for Children, Annual report of the United Nations High Commissioner for Human Rights, and reports of the Office of the High Commissioner and the Secretary-General. 16 December 2013.

programs.³³ Children's human rights reflect their dignity as well as provide the legal guarantees because they can have their rights as long as the law protects them.³⁴ Human rights are the basic needs of children and to protect it, it is necessary to strive for creating a situation that supports the right fulfillment while facilitating them to do their obligation in any place or nation they live.³⁵

Every child has the right to get protection and guidance from an early age. They also deserve equal opportunities to grow and develop optimally in physical, mental, and social. This particularly applies in their golden period so that in the next days, they are supposed to have the strength and ability to stand on their own. The previous generation should therefore guarantee, maintain and secure children³⁶ as the next generation of a nation, particularly in guaranteeing their protection.³⁷ Legal protection, additionally, is another part of children's human rights so that this obliges child protection to be regulated in relevant laws and regulations.³⁸

Children's access to justice also requires legal empowerment. They should be enabled to access relevant information to claim their rights, including legal service, education, counseling or advice, and support from knowledgeable adults. In addition, access to justice for children requires consideration on the development of their maturity and understanding when exercising their rights.³⁹

³³ Julian Fleet, *Permanent Observer to the United Nations in Geneva, In Anticipation of the 40th Session of the United Nations Human Rights Council in Geneva*, 2019.

³⁴ Beni harmoni Harefa, *Kapita Selektta Perlindungan Hukum Bagi Anak* (Yogyakarta: Deepublish, 2012).

³⁵ Harefa.

³⁶ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesi* (Bandung: Refika Aditama, 2008).

³⁷ Ratri Novita Erdianti and Sholahudin M. Fatih, 'Mewujudkan Desa Layak Anak Sebagai Nentuk Perlindungan Hukum Terhadap Anak Di Indonesia', *Jurnal Justitia Junral Hukum*, 3.2 (2019).

³⁸ Harefa.

³⁹ United Nations General Assembly, human Rights Council, *Access to Justice for Children, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General*. 16 December 2013.

Children's Right to Citizenship

As mandated by the constitution, every citizen deserves rights that the state needs to recognize, respect, protect, facilitate, and fulfill with all of its power and efforts. On the other hand, citizens as one of the most important elements of a country⁴⁰ holding special position⁴¹ must recognize, respect, and obey the government or the state.⁴² The relationship between the two is therefore reciprocal.⁴³ This goes the same at the juridical relationship between individuals and the state in the sense of fulfilling each other's rights.⁴⁴ Among others, the most basic right of citizens is the right to live and the right to get citizenship status. This is mainly because citizenship will lead to other rights that a person deserves to get.⁴⁵

Indonesian laws and regulations have guaranteed the protection of children's rights, especially in obtaining self-identity and citizenship status.⁴⁶ It reads: Every child has the right to a name as self-identity and citizenship status (Article 5 paragraph (1) and Article 27 paragraph (1) and (2) of Law No.23/2000). Meanwhile, Law Number 39 of 1999 concerning Human Rights in Article 53 consists of two following points: (1) Every child, since in the womb, has the right to live, maintain life, and improve his/her standard of living. (2)

⁴⁰ Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

⁴¹ Koerniatmanto Soetoprawiro, *Hukum Kewarganegaraan dan Keimigrasian Indonesia, second edition* (Jakarta: PT. Gramedia Pustaka Utama, 1996), hlm. 1.

⁴² Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II* (Jakarta: Konsitusi Pers, 2006), hlm. 132.

⁴³ Elucidation of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

⁴⁴ Shaila Tieken, 'Ketiadaan Kewarganegaraan Pada Anak-Anak Rohingya Sebagai Bentuk Kekerasan Struktural Berbasis Etnis: Studi Kasus Anak-Anak Pengungsi Rohingya Di Community Housing Wisma YPAP Medan', *Jurnal Kriminologi Indonesia*, 9.1 (2013).

⁴⁵ Supriyadi A Arief, 'Unraveling Dual Citizenship in Indonesia in the Perspective of Human Rights and the Welfare State', *Sasi Journal*, 26.42020, 527-39.

⁴⁶ Yunanci Putri Sugeha, "Children's Right to Obtain Citizenship from Mixed Marriages," *Jurnal Lex Et Societatis* 26, no. 4 (2020), hlm. 527-39.

Every child, from birth, has the right to a name and citizenship status. Likewise, at the broader scope, the Convention on the Rights of the Child approved by the United Nations General Assembly on November 20, 1989, Article 7, states: (1) The child will be registered immediately after his/her birth and since the birth has the right to a name, to acquire citizenship and as far as possible, to know and be cared for by his/her parents. (2) Fellow nations shall ensure the implementation of these rights under national law and their respective obligations under relevant international instruments in this field, particularly if the child becomes stateless.⁴⁷

Therefore, it is clear that the state is obliged to fulfill and protect its citizens' rights, including the right of citizenship status. The status will make it easier for citizens to live their lives either in their original country or other countries. However, the problem arises because, in the context of Indonesia, the fulfillment of citizenship rights is quite rigid because according to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, it is disapproved to hold dual or bipartite citizenship. Bipartite is a condition of a person who has dual citizenship as a result of different nationalities.

The Limited Access for Children of Indonesian Migrant Workers in Sarawak Malaysia

Referring to the research results of the Civil Society Consortium for the Access to Justice Index, portraying the limited access among illegal Indonesian migrant workers' stateless children can be seen from these following six types of measurement:⁴⁸

1. The Root and Beginning of Unjust Access

Indonesian migrant workers in Sarawak Malaysia are in trouble from various causes of a problem, mainly entering Malaysia through illegal procedures, having an expired residence and work permits, or

⁴⁷ Directorate of Information System of Human Right Republic Indonesia, 'Convention on The Right of The Child', p. 10.

⁴⁸ Hasril Ertanto, *Access to Justice Index in Indonesia 2019* (Jakarta: Civil Society Consortium for Access to Justice Index, 2020).

doing overstay.⁴⁹ Another cause of the trouble is children born and living in the country. At Sarawak itself, there are approximately 20,000 children without citizenship status.⁵⁰ The number is likely showing an iceberg phenomenon while the real and original number is greater than the recorded one. The problem of justice for the children begins when they are about to go to school. They cannot study in any schools in Malaysia without official citizenship documents. Observations in the field show that there are at least two main things beyond this phenomenon, namely coming to Malaysia along with illegal migrant workers, who are their parents, and those who were born to Indonesians who got married to Malaysians but are not yet registered in Malaysia citizenship.⁵¹

2. Legal Framework

The United Nations issued the International Convention on the Rights of the Child in 1989 on the protection of children. This convention was later ratified by the Indonesian government through Presidential Decree No. 36 of 1990 as a law product in Indonesia that binds all Indonesian people. Furthermore, the Indonesian government confirmed Act No.23 of 2002 concerning Child Protection. Then, it was revised into Law No. 23 of 2002 with Law No. 35 of 2014 concerning child protection. The law is furthermore in line with the constitution, namely Article 28 B paragraph (2) of the 1945 Constitution which states that "every child has the right to survive, grow and develop as well as protection from any violence and discrimination". The mention of children's rights in the constitution shows that protection of children's rights is crucial, urgent, and mandatory that it needs regulation in technical legislation to ensure the children's right protection really works.

⁴⁹ Data on Overstayed Migrant Workers recorded is that in 2017 there were 237 people, in 2018 there were 42 people and in 2019 there were 805. Health Center from the Placement and Protection of Indonesian Migrant Workers (PMI) in 2019, BNP2TKI page. 38.

⁵⁰ Data CLC Se Sarawak diperoleh dari Nasrullah Ali Fauzi (Kordinator CLC se -Sarawak Malaysia).

⁵¹ Disca Betty Viviansari and Zendy Wulan Ayu Widhi Prameswari, 'State Responsibility for the Right to Education of Indonesian Migrant Workers in Malaysia', *Journal of Human Rights*, Volume 10 (2019).

Meanwhile, access for obtaining official birth certificates among the children of Indonesian migrant workers has actually been regulated. Among others, it is mentioned at The Law No. 23 of 2002, The Law No. 35 of 2014 concerning Child Protection, The Law No. 18 of 2017 concerning the Protection of Migrant Workers, The Law No. 6 of 2012 concerning Ratification of the International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families, The Law No. 37 of 1999 concerning Foreign Relations, The Law No. 23 of 2006 concerning Population Administration, and The Presidential Regulation No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration. Those legal frameworks have been relatively complete and theoretically able to provide protection for children. However, when it comes to practice, there are still found many obstacles because the legal enforcement requires the involvement of many institutions with respective roles as policymakers.

3. Legal Dispute Resolution Mechanism

Law No. 23 of 2002 and Law No. 35 of 2014 concerning Child Protection are the basis for children's protection. They cover the rules of criminal sanctions for those who violate the children's rights as well as mention those who are responsible for fulfilling the right, namely parents, family, government, and the state. In contrast to many other legal instruments that regulate human rights, the norms of the Child Protection Law oblige the state to do something (using the phrase "state is obliged to") instead of giving rights to individuals (using the phrase "everybody has a right to"). The first diction, according to the rules of statutory science, is considered stronger than the second one.⁵²

However, practically, many Indonesian children in Malaysia do not have any birth certificates for various reasons. *First*, the registration fee at the National Registration Department (NRD) office is considered not cheap along with the complicated procedures. *Second*, the requirements are relatively difficult to fulfill, such as doing registration 42 days after the birthday at maximum. *Third*, procedures for making a late birth certificate are different in each office of NRD.

⁵² Yayan Sopyan.

Fourth, children whose parents have lack official documents will find it difficult to complete the required documents.⁵³

Knowing this situation, The Indonesian government has provided a legal breakthrough through the cooperation between the Ministry of Religious Affair, the Ministry of Foreign Affairs, and the Supreme Court in the Decision of the Chief Justice of the Supreme Court No. 084/KMA/SK/V/2011 concerning the permit for the *Itsbat Nikah* (formal marriage settlement) Trial at the Representative Office of the Republic of Indonesia at Malaysia. The documentation of *Itsbat Nikah* in Sarawak can be seen in Figure 1 below. The policy was then refined with the issuance of Supreme Court Regulation Number 1 of 2015 concerning Integrated Services for Circuit Courts of District Courts and Religious Courts/Sharia Courts in the Framework of Issuing Marriage Certificates, Marriage Books, and Birth Certificates. This integrated activity enables migrant workers to easily get two important documents, namely the Marriage Book and Birth Certificate so that children from such marriages can be protected for their basic rights such as having citizenship status and education.⁵⁴ These two documents also enable them to register to the immigration office for obtaining a passport.⁵⁵

⁵³ Child Rights Coalition Malaysia. Status Report on Children's Rights in Malaysia. Kuala Lumpur: Malaysian Child Resource Institute. 2012. page. 10.

⁵⁴ <https://www.antaranews.com/berita/774190/260-wni-di-kinabalu-malaysia-ikuti-itsbat-nikah>.

⁵⁵ Yusron Ambar, *Head of the Consular Function of the Indonesian Embassy in Kuala Lumpur, Head of the Consular Function of the Indonesian Embassy in Kuala Lumpur*, 2020.

Figure 1.
The situation of the *itsbat* trial at The Sarawak Consul
General's Office.



Source: Tribunnews.com

Due to the implementation of this policy, there carried out *itsbat* trial as many as 144 cases in 2012.⁵⁶ It then found 110 couples at 2013⁵⁷ and 107 couples at 2016⁵⁸ of 191 who registered but due to several obstacles, they could not attend the trial. In 2017, it increased to 255 couples.⁵⁹ Two years after, at 2019, there launched Marriage Information Management System (SIMKAH; *Sistem Manajemen Informasi Nikah*) aiming to make it easier for migrant workers to get the service. SIMKAH is planned to get integrated with the WNI care

⁵⁶ Mahkamah Agung, *Annual Report of Central Religious Court Central Jakarta*, 2012.

⁵⁷

<https://regional.kompas.com/read/2016/09/27/06070031/kisah.tki.yang.baru>.

mempunyai.buku.nikah.setelah.30.tahun.menikah?page=all

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<https://regional.kompas.com/read/2016/07/19/23502661/september.100>.

pasang.wni.akan.jalani.itsbat.nikah.di.sarawak.malaysia?page=all.

⁵⁹ Annual report of the Central Jakarta Religious Court, page 23. The details are that 221 cases were granted, 1 case was rejected and 33 cases were aborted.

portal so that it can then be used by all Indonesian Representatives abroad.⁶⁰

Beyond all the system and procedure, it still finds various obstacles when it comes into practice, mainly at the problem of distance and travel cost, one of them happened in Kuching City. The situation after *Istbat Nikah* in Kuching can be seen in Figure 2 below.

Figure 2.

The Situation After *Istbat* Ceremony in Kuching



Source: *The documentation of the Consul General of the Republic of Indonesia in Kuching*

The distance between the Indonesian Consul General's Office in Kuching City, the location of the marriage settlement trial, and the residences of Indonesian migrant workers are relatively far away. Most of them live in the area of Bintulu, Galasah, to Miri next to Brunei Darussalam border. To reach the destination in Kuching city, Indonesian migrant workers in Miri, for example, take about 12 hours by bus and have to travel as far as + 650 Km with a bus ticket cost of RM. 90 to RM. 140 or around IDR 350.000,- up to IDR 500,000,-⁶¹

4. Legal Aid

The issue of stateless children in Malaysia has been around for a long time and is still becoming a serious problem for the Malaysian government. The Malaysian Home Affairs Minister, Muhyiddin

⁶⁰ '41 Pasangan WNI Ikuti Sidang Isbat Nikah Di Wisma Indonesia KJRI Johor Bahru'.

⁶¹ data obtained from direct observations and in-depth interviews with Nasrullah Ali Fauzi, an Indonesian volunteer for education.

Yassin, said that he would pay very much and serious attention while speeding up the process of managing citizenship registration. Additionally, *Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM)*, together with the same Indonesian-level institution, *Komnas HAM* (National Commission for Human Rights), and the Commission on Human Rights (CHR) of the Philippines have signed a memorandum of understanding to try to solve the problem of stateless children.⁶²

The memorandum becomes important basically because the fulfillment of citizens' rights is the responsibility of the origin country. When they live in another country, however, they will certainly need assistance from the country they live in. The Indonesian representative in Sarawak Malaysia has made various efforts to reach out to migrant workers in the palm oil fields. Among the efforts is disseminating relevant information to Indonesian migrant workers. This aims to reduce the costs that the migrant workers need to pay in the processing administration of civil registration.

The problem of distance and time also matters. Indonesian migrant workers in Sarawak plantation usually pay for services to a fellow worker who helps the administration process, including travel documents, birth certificates, and other citizenship documents, by visiting Indonesian representatives in Kuching. This fellow typically waits for several people who use his/her service before making one single visit to reduce travel costs.⁶³

5. Birth Certificate Process

In general, issuing birth certificates for children of Indonesian migrant workers born in Sarawak, Malaysia, requires birth authentic evidence so that the competent authority can issue a birth certificate.⁶⁴ This is the enforcement from the rule mentioning that birth registration for Indonesian citizens living outside the territory is carried out by the Representative of the Republic of Indonesia in the country where the child was born by fulfilling the following

⁶² 'Keturunan WNI Tanpa Kewarganegaraan: "Saya dipukul oleh Bapak, Lari Dan Merantau Ke Malaysia" - BBC News Indonesia'.

⁶³ 'Pelayanan Jemput Bola KJRI Kuching Di Bintulu, Sarawak'.

⁶⁴ Victor M. Situmorang dan Cormentyna Sitanggang, *Aspects of Civil Registry Law in Indonesia* (Jakarta: Sinar Grafika, 2006), hlm.41.

requirements: 1) Quotation of the child's birth certificate from the local country. 2) Indonesian travel document of the parents.⁶⁵ However, in the context of Serawak or Malaysia, the process needs the following requirements: (1). Application letter from parents. Every parent who will apply for a birth certificate for their child must apply to the Indonesian Representative. (2) Passport of the Republic of Indonesia or Letter of Agreement as Passport (SPLP; *Surat Perjanjian Laksana Pasport*), working visa, & a valid stay permit of the parents. (3) Indonesian identity card/Malaysian identification card (KP/IC) of the parents. (4) Marriage certificate of the parents. (5) Birth certificate of the parents. (6) 2 (two) passport-sized photographs of the child (7) Administration fee of RM 103.00 (Malaysian Ringgit One Hundred Three) paid to the Consulate General of the Republic of Indonesia at Kuching after all documents and letters are verified correct and complete. Payment can be made in cash or transferred to a predetermined account. (8) Photocopy of Malaysian Passport/Kd Identification (KP/IC) of 2 (two) witnesses. A copy of the passport and Identity Card of the two is also required if the child is not born at the hospital.

When the documents are complete, their copy needs to be delivered to the authorized official of the Indonesian Representative in Kuching, Malaysia. A special officer who handles the issuance of birth certificates will continue the process. If all of the requirements have been met, the birth certificate can be awaited and immediately available on the same day.

However, a serious problem usually occurs when the migrant workers have no stay permit or get their passport lost, taken by the *cukong*, stuck in the old workplace, or expired. They will likely be afraid to deal with the police or the Indonesian Consul General for getting help to meet all requirements so that the children of those illegal migrant workers are unable or difficult to complete the above requirements and obtain their citizenship identity.

⁶⁵ President of Republic Indonesia, *Article 24 of the Law on Foreign Relations* (Indonesia, 2018).

6. Community Capability

Indonesian migrant workers in Sarawak Malaysia typically have just been aware of the issue of children's birth registration when the child is about go to school. This is because Malaysian government prohibits migrant workers' children without official documents to attend Malaysian schools. What makes it difficult in the process of making birth certificates for migrant workers is due to parental documents, distance, time, and cost, plus the weak knowledge of migrant workers about the importance of birth certificates.

This negligence becomes worse by the absence or lack of education about this issue among the migrant workers. Therefore, the government should be more progressive to provide education about the issue as well as facilitate them to obtain legal documents by engaging several relevant institutions. It also needs to consider for creating a system with an easy and quick process without requiring the workers to spend a lot of money to obtain official documents needed.

Conclusion

As an obligation, the Indonesian government has made various efforts to protect the children of illegal migrant workers in Sarawak in obtaining their basic right namely citizenship status. However, this effort has not been effective due to several obstacles as follows: *First*, illegal migrant workers in Sarawak have existed for three generations. *Second*, they spread over a very wide area and were not recorded because they came illegally. *Third*, the number of children who do not have citizenship is very large. *Fourth* obstacle is the lack of strict supervision from both the Indonesian and the Malaysian governments about the entrance of Indonesian workers. *Fifth*, what has been done by the government in recent years is still on a very small scale that it has not been able to reach all Indonesian children in Sarawak. *Sixth*, the education level of migrant workers is relatively low and they do not realize the importance of citizenship, especially for their children. *Seventh*, there is still weak socialization from the government about the importance of having a state identity for migrant workers. Therefore, this condition obliges continual controlling, evaluation, and improvement from the community and the government, particularly KPAI (*Komisi Perlindungan Anak Indonesia*; Indonesian Commission for Child Protection).

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 503-524
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5320>

Shahadah 'Ilmy; Integrating Fiqh and Astronomy Paradigm in Determining The Arrival of Lunar Months in Indonesia

Muh. Arif Royyani

Universitas Islam Negeri Walisongo, Semarang
Email: arif.royyan@walisongo.ac.id

Abdul Mufid

STAI Khozinatul Ulum Blora
Email: mufid.prof@gmail.com

M. Ihtirozun Ni'am

Universitas Islam Negeri Walisongo, Semarang
Email: Ihtirozun_n@walisongo.ac.id

Alfian Qodri Azizi

Universitas Islam Negeri Walisongo, Semarang
Email: alfianazizi@walisongo.ac.id

Achmad Azis Abidin

Universitas Islam Negeri Walisongo, Semarang
Email: abiedquotes@walisongo.ac.id

Article history: Received: November 03, 2020, Accepted: December 25, 2021,
Published: December 27, 2021

Abstract:

Formulating the fixed methodology for determining the beginning of Ramadan month and Islamic Feast in Indonesia is still ongoing. This article attempts to offer an integration between sharia and scientific views through 1) the concept of shahadah (witnessing) in the paradigm of fiqh and astronomy, and 2) the integration of those paradigms in determining the beginning of lunar months, particularly Ramadan and Syawal.

Author correspondence email: arif.royyan@walisongo.ac.id

Available online at: <http://ejournal.iainmadura.ac.id/index.php/alihkam/>

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This study uses qualitative methods in gaining the data then analyzes it using the approach of Miles & Huberman on interdisciplinary study. The findings of this research are as follows: 1) the concept of shahadah in the paradigm of fiqh is based on religious vows and factual evidence, while the astronomical paradigm perceives it from the certainty of external factors (weather, climate, environment, etc.). 2) Integration of those two paradigms results in better methods. It can turn the shahadah into the quality of qat'i (fixed) while the astronomic perspective gains more legitimacy. The integration is therefore called shahadah-'ilmi which potentially integrates the criteria of crescent visibility (imkan al-rukyah) in Indonesia to minimize the common occurrence on differences in determining those days.

Keywords:

Integration; Astronomy; Fiqh;
Shahadah al-'Ilmi

Abstract:

Penetapan awal bulan Ramadhan dan Hari Raya di Indonesia masih terus dirumuskan metodologinya. Artikel ini menawarkan integrasi antara sudut pandang syari'ah dan saintifik melalui kajian atas 1) konsep syahadah dalam paradigma fiqh dan astronomi, 2) integrasi paradigma fiqh dan astronomi dalam menetapkan awal bulan Islam, utamanya Ramadhan dan Syawal. Penelitian ini menggali data dengan metode kualitatif kemudian menganalisisnya dengan pendekatan Miles & Huberman tentang kajian interdisipliner. Temuan penelitian ini adalah sebagai berikut: 1) Konsep shahadah dalam paradigma fiqh adalah penglihatan yang disertai dengan sumpah dan bukti faktual, sementara dalam paradigma astronomi, shahadah didasarkan pada kepastian ukuran dari faktor-faktor eksternal meliputi cuaca, iklim dan lingkungan. 2) Integrasi dua paradigma tersebut menghasilkan metode yang lebih baik dalam penentuan awal Ramadhan dan Syawal. Shahadah dalam sudut pandang fiqh berubah menjadi qath'i (pasti), sementara hasil persaksian astronomi semakin memperoleh legitimasi. Integrasi kedua paradigma melahirkan konsep shahadah-'ilmi yang dapat digunakan untuk menentukan tampaknya hilal (rukyah hilal) awal Ramadhan

dan Syawal di Indonesia sehingga perbedaan yang kerap terjadi dalam menentukan dua awal bulan tersebut dapat diminalisir.

Keywords:

Integrasi; Fiqh; Astronomi; Shahadah 'ilmi

Introduction

Determining the first day of Ramadan and Syawal (Islamic Feast) is an annual event where the Indonesian mass organizations typically release different decisions.¹ It is mainly based on diverse methods in deciding the criteria for lunar months. Some use the *rukyyat hilal* (eye watching of the crescent) while some others choose *hisab* (calculating the calendar). Furthermore, they even have respective calendars, such as Muhammadiyah Calendar, PBNU Almanac, Indonesian Standard Taqwim, MABIMS Taqwim, PERSIS Islamic Almanac, *Menara Kudus*, LDII Calendar, and Hijri Syamsi Calendar (Ahmadiyah).²

As a consequence, they tend to favor their respective decision based on the understanding of *fiqh* with either considering scientific instruments or not. This is clear from the way they highlight their identity and existence through the issued decision while maintaining the chosen method. Furthermore, they usually like to announce the decision while urging each follower to massively comply with it.

¹ Nihayaturrohmah, "Hukum Sumpah Bagi Orang Yang Melihat Hilal Kurang Dari Dua Derajat," *El-Wasathiya: Jurnal Studi Agama* 1, no. 1 (2013): 112–36. Compare to Sakirman Sakirman, "MENELISIK METODOLOGI HISAB-RUKYAT DI INDONESIA," *HUNAF: Jurnal Studia Islamika* 8, no. 2 (2011): 341, <https://doi.org/10.24239/jsi.v8i2.368.341-362>. Thomas Djamaluddin, "Menggagas Fiqh Astronomi," *Kaki Langit, Bandung*, 2005. Syamsul Anwar, "Metode Usul Fikih Untuk Kontekstualisasi Pemahaman Hadis-Hadis Rukyyat," *Tarjih: Jurnal Tarjih Dan Pengembangan Pemikiran Islam* 11, no. 1 (2013): 113–30.

² Fadholi, Ahmad. 2019. "Akseptabilitas Draf Kriteria Baru Penentuan Kalender Hijriah Menurut Ahli Falak Di Indonesia". *Edugama: Jurnal Kependidikan Dan Sosial Keagamaan* 5 (1), 101-14. <https://doi.org/10.32923/edugama.v5i1.961>. 103. Qulub, Siti Tatmainul. 2015. "Telaah Kritis Putusan Sidang Itsbat Penetapan Awal Bulan Qamariyah di Indonesia dalam Perspektif Ushul Fikih." *Jurnal Al-Ahkam* 25(1): 109–32. DOI: <http://dx.doi.org/10.21580/ahkam.2015.1.25.196>

On the other hand, the government as the institution that decides *itsbat* (formal determination of the first days of lunar months) has not yet been able to comprehensively accommodate the ideas of all Islamic mass organizations. They even seem unable to create a basic formula for either accepting or rejecting the *shahadah rukyah* (the witnessing of eye watching) result. This can be seen from several relevant cases which often lead to controversy.

Two clearest examples are the Decree of the Indonesian Minister of Religious Affair in accepting the *shahadah rukyah hilal* for determining days of Islamic Feast or *Idul Fitri* at 1413 H/1993 AD and 1418 H/1998 AD. In those two cases, the position of the crescent was surely known to be below the horizon according to accurate astronomical *hisab* and *shahadah* of *hilal* from Bawean and Cakung. The government, however, decided to determine the Feast at the days when the crescent was still in the position.

Another controversy over the witnesses of the new moon occurred in determining the first day of Dzulhijah in 1422 H/2002 AD. At that time, the position of the new moon was the same as previously mentioned. However, the Minister of Religious Affair accepted the *shahadah rukyah* result because the witnesses (*shahid*) had been sworn in or had fulfilled the requirement of *syar'i*.³

Even so, the government continues to make efforts to find the right method and criteria so that it can be accepted by all parties. They established the Hisab Ru'yah Agency (BHR; *Badan Hisab Rukyat*) on January 20, 1972, based on the Decree of the Minister of Religious Affair No. 76. Its membership consists of astronomical experts, mass organization figures, *hisab* (mathematical calculation) experts and representatives from related government agencies. They range from the National Aeronautics and Space Agency (LAPAN; *Lembaga Penerbangan dan Antariksa Nasional*), the Meteorology, Climatology and Geophysics Agency (BMKG; *Badan Meteorologi, Klimatologi dan Geofisika*), to the Geospatial Information Agency (BIG; *Badan Informasi*

³ Asadurrahman, *Kebijakan Pemerintah Indonesia Tentang Hisab Dan Rukyat* (Jakarta, 2013).

Geospasial)⁴ and academics. One of its achievements is formulating a criterion called *imkan al-ru'yah* (hilal visibility).⁵

Upcoming the Eid Al-Adha, another Islamic Feast, in March 1998 AD (Dzulqa'dah 1418 H), experts, on *hisâb* and *rukayah* as well as representatives of Islamic organizations held a meeting on *imkan al-ru'yah* and resulted in some verdicts. *First*, the determination of lunar months' beginning is based on *imkan al-rukayah*, even though there is no report of *rukayah al-hilal*. *Second*, the *imkan al-ru'yah* is based on the height of the crescent which is 2 degrees above the horizon while its duration at the position is at least 8 hours from the time of *Ijtima'* to the sunset. *Third*, the height in question is based on the calculation results of the *Haqiqi Tahqiqi* reckoning system. *Fourth*, the report of *rukayah al-hilal* which is less than 2 degrees can be rejected.⁶

Unfortunately, it is considered only a means of confirming another method, namely *hisab*, which was commonly used in Indonesia. The criteria for *imkan al-ru'yah* as the legal basis for determining the arrival of new lunar months is also deemed still referring to those formulated by MABIMS (*Menteri-menteri Agama Brunie Darussalam, Indonesia, Malaysia dan Singapura*; Ministers of Religious Affairs from various countries in Southeast Asia).

In line with it, Nihayaturrohmah assumed that one point of the verdict is not quite clear and firm. She stressed on the last point particularly to the word "can" which, according to her, does not imply firmness but provides concessions instead. In addition, she suggested that the criteria for *imkan al-rukayah* need scientific legitimation instead of relying solely on customs. Thus, an alternative solution is needed to formulate the criteria for *imkan al-ru'yah* which is scientifically compatible.⁷

⁴ Bakosurtanal, "Rapat Koordinasi Penyusunan Rencana Aksi Nasional Informasi Geospasial," 2015.

⁵ Badan Hisab & Ru'yah. Islam, *Almanak Hisab Ru'yah* (Jakarta: Proyek Pembinaan Badan Peradilan Agama Islam, 1981). Compare to Ibnu Hajar Al-Haitami, *Ithāfu Ahli Al-Islām Bi Khusūsiyyāt Al-Shiyām*, Cet.1 (Madinah: Maktabah Thoyyibah, 1990).

⁶ Nihayaturrohmah, "Hukum Sumpah Bagi Orang Yang Melihat Hilal Kurang Dari Dua Derajat."

⁷ Nihayaturrohmah. 113

This is mainly important considering that the witness result of the crescent eye watching may not always be absolutely true. The human's sense of sight can be wrong at any time. Another object can be possibly seen as the moon. Therefore, the assumption for watching the moon needs to be strengthened by scientific knowledge and long-time experience. Moreover, the state of the crescent is indeed very dim and sometimes difficult to identify because it may only appear like a thin line.⁸

From the *fiqh* perspective, the decision is deemed valid because the witness has taken a vow. However, in terms of the truth of the object he/she saw, it needed further proof to decide whether it was the new moon or another bright object. Therefore, relying only on the vow is not enough. It needs scientific evidence mainly because, in the current context, pollution, climate, and weather disturbances on the western horizon can make it difficult to observe and identify celestial objects.⁹

Furthermore, in accordance with the vow-taking mechanism of the *shahadah rukyah hilal* in the *Rukyah* Technical Guidelines issued by the Ministry of Religious Affair in collaboration with the General Development of Islamic Religious Institutions and the Directorate of Development of the Islamic Religious Courts 1994/1995, witness' testimony needs a future inspection to ensure its suitability with the truth.¹⁰ This was pivotal considering the difficulty to watch the crescent, the frequent deceits by clouds resembling the crescent, or illusions (sensory error) coming from a strong desire to see the crescent successfully. Meanwhile, things to consider carefully in the witness examination are the time of watching and the crescent's position.¹¹ Therefore, the government needs to formulate the crescent criteria to comply with the concepts of *fiqh* and astronomy.

As far as we can say, the *imkan al-rukyah* criteria based on *fiqh* requirement integrated with factual astronomical data throughout the Month Observatory Center (POB; *Pusat Observatorium Bulan*) had not

⁸ Ibid. 113

⁹ Nihayaturohmah.

¹⁰ Islam, *Almanak Hisab Ru'yah*.

¹¹ Nihayaturohmah, "Hukum Sumpah Bagi Orang Yang Melihat Hilal Kurang Dari Dua Derajat." 134

been structurally confirmed yet. Therefore, the formulation of integrated scientific *shahadah rukyah hilal* was significant given the existence of *shahadah* as the basis for determining the beginning of the lunar months.

In general, research on the determination of the new moon using *hisab* and *rukayah* methods in Indonesia has been carried out by some previous researchers.¹² In addition, another study completely compares the method of determining the beginning of the Islamic months in Indonesia and Malaysia.¹³ Most of those previous studies illustrate that the two methods can be integrated and are strengthening each other.¹⁴

The research that specifically focuses on methodological aspects of *rukyyatul hilal* in determining the beginning of lunar months in Indonesia is still limited. Therefore, this article offers the concept of *shahadah 'ilmi* as a methodology in an effort to determine the *rukyyat hilal* at the beginning of lunar months in Indonesia by combining the paradigms of *fiqh* and astronomy.

Based on the above background, it becomes urgent to formulate an objective and proportional integration between *fiqh* and astronomical perspective in determining the first days of lunar months, particularly Ramadhan and Syawal.

Method

This research uses an integrative-interdisciplinary descriptive method in analyzing the concept of *syahadah rukyah al-hilal*. At first, the existing concept of *shahadah* was explained from the paradigm of

¹² Anwar, “Metode Usul Fikih Untuk Kontekstualisasi Pemahaman Hadis-Hadis Rukyat.” See also Niki Alma Febriana Fauzi, “Syamsul Anwar Dan Pemikirannya Dalam Bidang Hisab-Rukyat,” *Al-Marshad: Jurnal Astronomi Islam Dan Ilmu-Ilmu Berkaitan* 1, no. 1 (2017): 104–33. See also Fathor Rahman, Pujiono, and Siti Muslifah, “Penentuan Awal Bulan Kamariah Untuk Ibadah (Sebuah Pendekatan Terpadu)” 12, no. 2 (2020): 107–38, <https://doi.org/http://doi.org/10.21093/fj.v12i2.2264>.

¹³ Ahmad Wahidi, Noer Yasin, and Ali Kadarisman, “THE BEGINNING OF ISLAMIC MONTHS DETERMINATION IN INDONESIA AND MALAYSIA: Procedure and Social Condition,” *ULUL ALBAB Jurnal Studi Islam* 20, no. 2 (2019): 322–45, <https://doi.org/10.18860/ua.v20i2.5913>.

¹⁴ Sakirman, “MENELISIK METODOLOGI HISAB-RUKYAT DI INDONESIA.”

fiqh and astronomy. After that, it tries to integrate the two paradigms in an effort of formulating a new concept with a certain formula that can make it justified by *fiqh* and accepted from the scientific perspective.

The concept of *shahadah al-'ilmi* that we propose is based on an interdisciplinary study approach namely the interfield theory developed by Lindley Darden and Nancy Maull. This theory requires the principles of interdisciplinary integration through the following elements: 1) the main problem, 2) a domain consisting of some data taken into facts related to the main problem, 3) the facts to explain in the general scope containing possibility to overcome the problem, 4) the techniques and methods, and 5) various concepts, laws, and theories related to research problems and explanation of their use in accordance with research purpose.¹⁵

Discussion and Result

Shahadah Rukyah Hilal from *Fiqh* Perspective

As a product of Islamic law, *fiqh* deals with the issue of legal certainty over the *shahadah rukyah hilal* for the arrival of lunar months. In this context, according to as-Subki,¹⁶ *fiqh* needs to formulate a decision in terms of rejecting or accepting the *shahada rukyah hilal* result based on four conditions.

First, the witness must comply with the criteria of *hudhur* (present), *'adl* (fair) and *dhabit* (trustworthy) convincingly. *Second*, minimum criteria of witness acceptability according to the experts of *hisab*¹⁷ must be fulfilled so that the witness report can be convincing without any *tuhmah* (interest). *Third*, instead of based on the dispute on *shahadah*, the judge's decision must rely on explanation and proof as a requirement from the *ayqana* (convincing) point.

Relating to this, the history recorded Prophet Muhammad as an *ummi* (illiterate) figure who can't write or count (*la naktubu wa la*

¹⁵ Lindley Darden and Nancy Maull, "Interfield Theories," *Philosophy of Science* 44, no. 1 (1977).

¹⁶ As-Subki, *Kitab Al-'Alam Al-Mansyur Fi Isbat Asy-Syuhur* (Mesir: Mathba'ah Kurdistan al-'Ilmiyyah, 1911).

¹⁷ Nizar Mahmud Qasim, *Al-Ma'ayir Al-Fiqhiyyah Wal Falakiyyah Fi I'dad at-Taqa'wim Al-Hijriyyah* (Beirut: Dārul Basyāir al-Islāmiyyah, 2009).

nahsubu). However, this implies deep wisdom because Allah wants to show that the Qur'anic verses that the Prophet conveyed were not made by him, but were sourced directly from Allah.

In a different context, because the Prophet Muhammad could not count, Muslims at that time did *rukyyah* in determining the beginning of the Ramadan and Syawwal. Sayyid Uthman in the book titling *Iqodh an-Niyam fi Ma Yata'allaq bi al-Ahillah wa as-Shiyam* mentioned that the *rukyyah* command aimed to eliminate difficulties in determining the beginning of the months.¹⁸ However, this does not mean that any *rukyyah* result can be randomly accepted by the Prophet.

Historically, there was a companion who claimed to have seen the new moon even though at the same time, other companions did not do the same. The Prophet then came to him and asked, "Have you seen the new moon?" "Yes," replied the companion. The Prophet then took his eyelashes that fell right in front of his eyelids. "Are you still seeing the moon?" asked the Prophet. "No, O Prophet," replied the companion. "What you saw earlier was not the new moon, but your falling eyelashes," the Prophet explained.

The story clearly shows that the Prophet paid attention to the proof in either accepting or rejecting any *rukyyah* result of the new moon or crescent. He did not just accept the results randomly, but also helped to ensure that the object was the real new moon instead of other objects.

In another case, it is narrated that when the Prophet had confirmed that what the witness saw was the new moon, the Prophet then asked him with a creed, "*Atasyhadu an laa ilaha illa Allah wa anna Muhammad ar-rosul Allah?* (Do you confess that no God but Allah and that I (Muhammad) am his prophet?)" When the companion testified this, the results of his witness were then accepted.¹⁹

It is clear, therefore, that according to *fiqh* perspective, the existence of *shahadah* or scientifically convincing witness is very important as a prerequisite for the judges in either accepting or

¹⁸ Anwar, "Metode Usul Fikih Untuk Kontekstualisasi Pemahaman Hadis-Hadis Rukyat."126

¹⁹ Nihayaturrohmah, "Hukum Sumpah Bagi Orang Yang Melihat Hilal Kurang Dari Dua Derajat."134

rejecting *rukayah hilal* result from anybody.²⁰ *Shahadah* furthermore becomes a part of the *hujjah syar'iyah* (argument of law) and therefore a provision in all aspects of Islamic law. In the context of the first days of lunar months determination, *shahadah* is highly dependent on the witness' understanding of the crescent according to *fiqh* and scientific perspective as well as the physical look and movement of the Earth, the Moon, and the Sun both theoretically and practically.

In addition to it, *fiqh* conceptually requires two elements, namely *tahammul* (receiving specific information) and *adah* (forwarding the information). The former element depends on the existence of a burden or obligation to witness the *rukayah hilal*. Meanwhile, the later is optional, namely whether the *rukayah al-hilal* activity is based on either request or self willingness of the witness. Both *tahammul* and *ada'*, in this case, require the same conditions, namely the criteria of '*adil*, *dhabit*, '*adalah*, and *tsiqah*' *adamu at-tuhmah* which must be fulfilled.

Among the criteria, both the strong memory to remember or to memorize (*dhabit*) and religious integrity ('*adalah*) are deemed as a foundation to lead into the criteria of credibility (*tsiqahi*). *Dhabit* indicates the ability to well understand and record the thing that has just been hard as well as convey it other people. This can be tested through *i'tibar* (comparing what anyone tells) with the same trusted news.

While the *dhabit* criteria is relatively easy to measure, the '*adalah* is different due to its 'abstract' measurement. Like in the context of the hadith transmission, '*adalah* means a character which encourages a person to do positive things, consistent in goodness, and be religiously very committed. It also closely relates to consistent piety, integrity for the truth, avoidance of both major and minor sins as well as unpleasant yet permissible attitudes. Additionally, it obliges Islam

²⁰ Al-Asqalanī, 2014). See Nidham, *Al-Fatawa Al-Hindiyyah Fi Mazhabī Al-Imām Al-A'dham Abī Hanīfah Al-Nu'man* (Beirut: Darul Fikir, 1991). Compare to Ahmad Dasuqy, *Hāshiyah Al-Dāsuqy 'ala Al-Sharh Al-Kabīr*, Juz V (Beirut: Dar al-Kutub Ilmiah, 1996).

as the religious affiliation of the witness and maturity (*aqil baligh* in the context of age and behavior) as other requirements.²¹

Shahadah Rukyah Hilal from Astronomical Perspective

From the astronomical perspective, *shahadah* can be justified and deemed valid as long as it meets and takes into account to the following factors:

The first is weather factor.²² It, therefore, needs data from the Meteorology, Climatology, and Geophysics Agency (BMKG). Ahmed and Aziz also required data on the temperature and humidity of where the *rukya* takes place using the Sky Quality Meter.²³

The second is a possible tricking factor which can be discovered by relying on astronomical data.

Third is empirical factors or the setting of observation location. To find out this, an image or photo is required. Nawawi also paid attention to the sky's illumination factor and its measurement using a light meter.²⁴ Meanwhile, Shariff emphasized the light pollution in *rukya al-hilal*.²⁵

Fourth is a suitability with the logical reason or general knowledge (*al-'adah*) that the crescent's position is above the horizon with a certain distance and height according to the agreed criteria for *imkan al-ru'yah*.²⁶

²¹ Khairil Ikhsan Siregar and Sari Nurulita, *Ulumul Hadis Kompilasi* (Jakarta: LPP Press Universitas Negeri Jakarta, 2015).

²² Ahmed Kamil Aziz, Abdul Halim Abdul dan Ahmed, "A Unified Islamic Calendar Proposal for the World," *Middle-East Journal of Scientific Research* 22 (1) (2014): 115–20.

²³ Ahmed Kamil Ahmed, Abdul Halim, and Abdul Aziz, "Young Moon Visibility Criterion Based on Crescent Illumination and Sky Brightness Contrast Model," *Middle-East Journal of Scientific Research* 21, no. 9 (2014): 1–4, <https://doi.org/10.5829/idosi.mejsr.2014.21.09.21740>.

²⁴ Mohd Saiful Anwar Mohd Nawawi, "Application of Scientific Approach to Determine Lunar Crescent's Visibility," *Middle-East Journal of Scientific Research* 12 (1) (2012): 96–100.

²⁵ Dkk Shariff, Nur Nafhatun Md Shariff, "The Impact of Light Pollution on Islamic New Moon (Hilal) Observation," *International Journal of Sustainable Lighting* 19 (2017): 10–14.

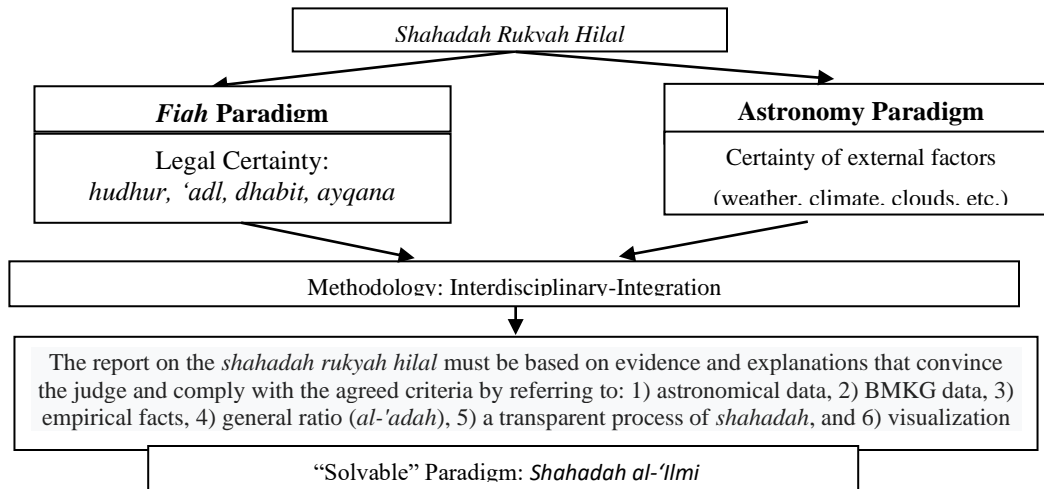
²⁶ Thomas Djamaluddin, *Hisab Rukyat Dan Perbedaannya* (Jakarta: Depag RI, 2004).

However, according to T. Djamaluddin, the criteria for *Imkan al Rukyah* of the Indonesian Ministry of Religious Affair still needs revision. According to him, while the height of the new Moon is supposed to be 2 degrees above the horizon, its distance from the Sun must also be at least 3 degrees. Additionally, if theof the crescent at the position is at least 8 hours long, the minimum height of the new Moon must be no longer uniform. Therefore, it needs to pay attention to the difference in azimuth of the Sun and the Moon.²⁷

Apart of it, if only there was a collective willingness of Indonesian people to observe the crescent from several spreading places, the result can serve as the main instrument in fulfilling scientific conditions for the *ruk yah hilal*. In the international context, meanwhile, Odeh had given an example of the proposed *hilal* visibility criteria based on the results of previous observations.²⁸ This scientific requirement is crucial to get attention, particularly from Indonesian Islamic mass organizations so that they can consider astronomical aspects during observation of the crescent.

The Concept of *Shahadah al-'ilmi*

The interdisciplinary model that this research offers can be illustrated in the following scheme:



²⁷ Djamaluddin, "Menggagas Fiqih Astronomi."

²⁸ Mohammad Odeh, "New Criterion for Lunar Crescent Visibility," *Journal Experimental Astronomy* 18 (2004): 39–64.

Figure. 2.1. Integration of *Fiqh* and Astronomy in the *Shahadah Rukyah al-Hilal*

The *shahadah 'ilmi* can be practically further applied by taking the following points into account:

1. Practical Facts on *Shahadah al-'Ilmi*

Interviews with selected correspondents convey that the concept at least covers the following things;

a. Witness (*shahid*)

According to five witnesses whom we successfully interviewed, the common obstacle in conducting *hilal rukyah* when the position of the *hilal* had fulfilled the *imkan ar-ru'yah* criteria was the weather factor in sunset time.²⁹ However, even though the weather conditions have played a significant role in determining the results of *rukayah*, it had not really been taken into account in the preparation of the *rukayah* process.³⁰ The existence of BMKG, for instance, was still considered not giving much influence on the success of *rukayah*. As explained by Reni Kraningtyas, the data can really help the process because it has been very important to understand the foreground of the crescent. Additionally, considering that the weather data presented by BMKG was very detailed, it also becomes important in minimizing errors in watching crescent objects due to covering cloud gaps.³¹

Therefore, we believe that witnesses should be sensitive and knowledgeable about the relevant data whether regarding the position, character, or the foreground covering the crescent. Based on this fact, we also consider it necessary for them to hold the certification in fulfilling the requirements of *shahid* of *rukayah hilal* on both *'adl* and *dhabith* criteria.

²⁹ Interview, December 2020.

³⁰ Taufiq Hidayat, "Developing Information System on Lunar Crescent Observations," *ITB Journal of Science* 42 A (1) (2010): 67–80.

³¹ BMKG, "Data Prakiraan Cuaca Terbuka," 2021.

b. Judge Criteria

Regarding the controversial case of *hilal rukyah* report on August 29, 2011, by Saiful Mujab from POB (Pos Observasi Bulan, *Moon Observatory Post*) Kartini Beach, Jepara, Central Java, which as-Subki includes it as *istihalah ar-ru'yah* (invisibility of crescent), it is known that the result should not have been approved. This is mainly because according to *qath'i* calculations, the position of the *hilal* was under the horizon so that it is supposed to count that the new month had not yet to come. However, it had been eventually approved because not all parties provided support regarding the real position of the crescent. Therefore, although *hisab* system still matters, the *itsbat* procedure must also consider logical consequence to the *shahid* who have ventured to take their vows.

The case furthermore discovers that even though there was a verification procedure before a witness takes a vow, there were still remaining problems. Therefore, it is necessary for *hisab* experts and other relevant experts to formulate joint decisions on the condition of the crescent in both *imkan-al-ru'yah* and *istihalah ar-ru'yah* situation according to certain time and place either at the beginning or the end of *Ramadan*. Thus, it was hoped that the judge's decision in accepting or rejecting the *rukayah hilal* report based on *ijtihad* does not contradict public knowledge and the logical truth (*mustahil' aqlan*) as well as compatible from both *fiqh* and scientific perspectives.

In relation to this, As-Subki in his book titling *al-'Alam al-Mansyur fi Isbatasy-Shuhur*³² emphasized that in the case of assessing *rukayah hilal* result for *Ramadan* and The Feast, the judges need asses the witness based on the following criteria:

- 1) Morally fair
- 2) Ability to distinguish between the convincing and the dubious
- 3) Ability to distinguish between enthusiastic and non-enthusiastic ones

³² As-Subki, *Kitab Al-'Alam Al-Mansyur Fi Isbat Asy-Syuhur*.

- 4) Ability to distinguish which ones are physically healthy and not by using certain parameters.
- 5) Ability to distinguish between those who master the science about the horizon and those who do not
- 6) Ability to specifically identify the point of crescent location from the *rukayah* tool used (such as the location goalpost, telescope, or others)
- 7) Ability to identify the *manzilah* (moon's coordinates) position where the crescent will appear from
- 8) Ability to predict the possibility of crescent visibility and the impossibility

c. Reporting Mechanism of *Shahadah Rukyah Hilal*

The reporting mechanism for *shahadah rukyah hilal* had been via telephone, including when determining the beginning of *Ramadan* and the two Islamic feasts. However, as noted by Ahmad Izzuddin, the caller in charge of reporting the results of the *shahadah rukyah hilal* in POB spreading throughout Indonesia had not been a person who is good at astronomy, but merely office boys. Seeing such conditions, Ahmad Izzuddin then assigned a team of students from IAIN Walisongo Semarang for the Undergraduate and Postgraduate Program in Astronomy Major to take over the task.

It later turns out that the search for information on the result of *rukyah hilal* as the basis for determining the beginning of *Ramadan* and The Feasts in the *isbat* trial is still not optimal. This is mainly clear from very limited available facilities. It also needs to reexamine the procedure considering that not all POBs had been contacted by caller officers. In fact, it is possible for POBs who had not been contacted to watch the *hilal* successfully and convincingly.

d. *Imkan al-Rukyah* Criteria

The commonly used criteria for the guidelines in *hilal rukyah* practices has been *Imkan al-Rukyah* criteria from Cisarua II which was ratified after the meeting on 19-21 September 2011. It consists of; *first, hisab haqiqi* (real count of the calendar) *bi at-tahqiq hilal mar'i* (verification with eye-watching of the crescent) which is at least 2 degrees height above the horizon *Second*, the crescent's duration at the position is at least 8 hours

or 3⁰ elongations. This is in accordance with the Circular Letter of the Ministry of Religious Affair, Regional Office of Central Java Province.

As time went by, the issue of change in the criteria on *Imkan al ruhyah* had ever occurred from 2015 to 2017. There was a long discussion about the draft of new criteria for determining lunar months in Indonesia, namely those of MUI (*Majelis Ulama' Indonesia*; Indonesian Ulema Council) and MABIMS. They set 3 degrees of the crescent's height with elongation of 6, 4 degrees aiming to create common benefit and mutual agreement for the sake of unification of the lunar calendar in Indonesia.³³ Both rukyat and *hisab* proponents accepted these criteria very well.³⁴

This is in line with the shift of MABIMS criteria. Initially, the *rukkyat* witnesses can be accepted if the height of the new moon is 2 degrees with at least 8 hours duration of the Moon at the position since the *ijtima'* to the sunset.³⁵ However, it then changed to 3 degrees with an elongation of 6.4 degrees.³⁶ This shows how the development of criteria always refers to empirical factual data. As far as we can observe, until this research was completed, there were no new criteria except that called by "LAPAN Criteria" by Thomas Djamaluddin.

Thomas Djamaluddin's concept mainly relies on the redefinition of the new moon, the validity of the *rukayah al-hilal* or *matla'*, and the criteria for the visibility of the new moon (*imkan al-rukayah*) ratified in 2000 and 2011. The criteria for

³³ Thomas Djamaluddin, "Naskah Akademik Usulan Kriteria Astronomis Penentuan Awal Bulan Hijriyah", diakses 26 Septamber 2016, <http://tdjamaluddin.wodpress.com>

³⁴ Ahmad. Fadholi, "Akseptabilitas Draf Kriteria Baru Penentuan Kalender Hijriah Menurut Ahli Falak Di Indonesia," *Eduagama: Jurnal Kependidikan Dan Sosial Keagamaan* 5, Nomer 1 (2019): 101-14.

³⁵ wahidi, Yasin, And Kadarisman, "The Beginning Of Islamic Months Determination In Indonesia And Malaysia: Procedure And Social Condition."

³⁶ Fadholi, "Akseptabilitas Draf Kriteria Baru Penentuan Kalender Hijriah Menurut Ahli Falak Di Indonesia."

LAPAN 2000 consists of: (a) The duration of the moon at the determined position must be > 8 hours, (b) The Moon-Sun angular distance must be > 5.6°, but if the azimuth difference is < 6°, a higher height difference is required. If the azimuth difference is 0°, the height difference must be > 9°. These criteria were updated by Thomas Djamaluddin in 2011 into (a) Moon-Sun angular distance must be > 6.4°, and (b) Moon-Sun height difference must be > 4°. ³⁷

The LAPAN criteria therefore needs support from various related parties. A set of the criteria occupies an important position as a scientific standard for the witness of *rukayah hilal*, especially at the beginning of *Ramadan* and the Feasts in Indonesia. The criteria proposed by Thomas Djamaluddin should be considered as a temporary solution.

2. Supporting System of *Shahadah al-Ilmi* and the Conceptual Offer

The existing supporting system for *shahadah rukyah hilal* in Indonesia consists as follow:

- a. Guide to *Rukyah Hilal*
- b. *Hilal* imagery
- c. Indonesian Center for The Moon Observatory (POB; *Pusat Observasi Bulan*)

On the basis of it, we offer some relevant suggestions relating to the basic concept of *shahadah al-'ilmi*.

First, the witness' reports must be in accordance with the standard of *hisab qath'i* or fulfilling the *imkan al-rukayah* criteria approved by the Indonesian Ministry of Religious Affair.

Second, the witnesses must be able to explain: 1) position of *hilal*, 2) sky background, 3) weather conditions, and 4) position of celestial bodies other than the Moon.

Third, the witnesses must prove the form of *hilal* light by showing the visualization of the *hilal*.

³⁷ R Amri, "UPAYA PENYATUAN KALENDER ISLAM DI INDONESIA (Studi Atas Pemikiran Thomas Djamaluddin)," no. 3 (2012): 1-23.

Based on the suggestion and the existing procedure of eye-watching the crescent, the concept of *rukayah shahadah al-'ilmi* can be well described in the following form:

Table. 3.1. Blueprint of Form of *Shahadah al-'Ilmi* Crescent Eye-Watching Report.

<p style="text-align: center;">REPORT OF CRESCENT EYE-WATCHING RESULT THE ARRIVAL OF RAMADAN..... / 1 SHAWAL.... YEAR.... HIJRIYAH FROM THE RELIGIOUS COURT OF</p> <p>REPORTER: NAME: AGE: OCCUPATION: ADDRESS: AFFILIATION/INSTITUTION: EYE HEALTH: NORMAL / MINUS (...) CRESCENT EYE-WATCHING EXPERIENCE: times CONTENTS OF THE REPORT: HILAL VISIBLE/NOT SEEN <i>IF SUCCESSFUL, CONTINUE:</i> PLACE TO EYE-WATCH THE CRESCENT: TIME TO START EYE WATCHING THE CRESCENT: DURATION OF EYE-WATCHING HILAL: HEIGHT OF THE CRESCENT: WEATHER CONDITION: VERY GOOD / GOOD / FAIRLY GOOD / LESS GOOD / BAD. CRESCENTVISUALIZATION: DOCUMENTED / NOT DOCUMENTED WITNESSES WHO EYE WATCH THE CRESCENT 1. NAME:</p>

AGE:
 OCCUPATION:
 ADDRESS:
 2. NAME:
 AGE:
 OCCUPATION:
 ADDRESS:
 (etc).
 The testimony has been examined and certified by the judges of the Religious Court.

Meanwhile, functionally, the *shahadah 'ilmi* can be described in the following figure:

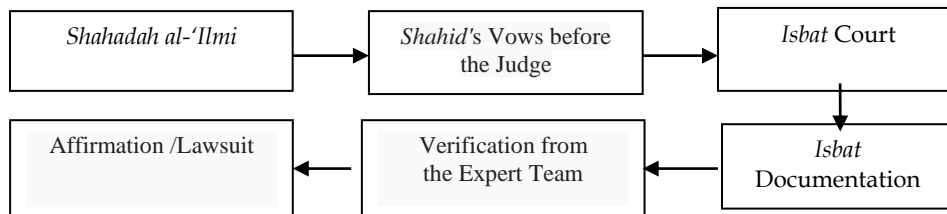


Figure. 3.2. Syahaadah al-'Ilmi Scheme

Additionally, both the form and the figure must comply with the following condition.

1. The witness, the judges, and the coordinators of *rukyyat al-hilal* must come from those who know and understand the discipline of astronomy well.
2. Any data about the crescent must be from the result of accurate calculations (ephemeris *hisab*) and is supported by data from BMKG.
3. The Moon Observatory Center (POB; *Pos Observasi Bulan*) as a place for making *rukyyat al-hilal* must be those certified by the Hisab Rukyah Team (THR).
4. The guided criteria used during the process must be those based on factual-empirical data from Indonesia.

5. The accepted witness (*shahadah*) must be accompanied by visual evidence in the form of a live streaming data record so that the Analysis Team which consists of astronomers can be convinced.

In short, the concept of *shahadah 'ilmi* that we offer is projected to help the Indonesian government in determining the arrival of lunar months, particularly Ramadhan and Syawal. By integrating the two most commonly used paradigms for the purpose, namely *fiqh*, and astronomy; it is wished that the confusion and controversy over the D-day of the first lunar months can be eradicated. Practically, the concept aims to help government in either accepting or rejecting the result of *rukyat al-hilal*.

Conclusion

Shahadah according to *fiqh* paradigm is the combination of factual evidence and religious vows. The witness, additionally, is required to fulfill some qualifications. Meanwhile, the astronomical paradigm requires scientifically proven empirical evidence to accept the *shahada*. Integration of those two paradigms through the concept of *shahadah 'ilmi* is projected to work well in determining the arrival of lunar months, particularly Ramadhan and Syawal which routinely leads to controversy among Indonesian Islamic mass organizations. In addition to it, the integration can strengthen the legitimacy of each paradigm.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 525-557
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i1.5159>

**Al-Tahlîl al-Qânûnî Li Himâyati al-Qânûniyah wa
Mihnati al-Mu'allim fî Adâi wajibâtihim:
Dirâsah Muta'addidah al-Mawâqî' li al-Madâris al-
Dîniyah al-Dâkhilah fî Bîati al-Ma'âhid al-Islâmiyah
Pamekasan**

Mohammad Muchlis Solichin

*IAIN Madura, Jln Raya Panglegur, Km. 4 Pamekasan
Email: muchlissolichin@iainmadura.ac.id*

Ali Nurhadi

*IAIN Madura, Jln Raya Panglegur, Km. 4 Pamekasan
Email: alinurhadi@iainmadura.ac.id*

Achmad Muhlis

*IAIN Madura, Jln Raya Panglegur, Km. 4 Pamekasan
Email: achmad.muhlis@iainmadura.ac.id*

Wahab Syakhirul Alim

*IAIN Madura, Jln Raya Panglegur, Km. 4 Pamekasan
Email: wahab-alhabsy@iainmadura.ac.id*

Moh. Zaiful Rosyid

*IAIN Madura, Jln Raya Panglegur, Km. 4 Pamekasan
Email: zaifulrosyid@gmail.com*

Article history: Received: September 30, 2021, Accepted: December 24, 2021,
Published: December 27, 2021

Abstract:

Protection for teachers means an effort to avoid them from any kind of violence, threat, discrimination, injustice, criminalization, and deviant treatment coming from whether students, parents, or society. This study aims to examine three forms of protection for teachers in serving the job as educators

Author correspondence email: muchlissolichin@iainmadura.ac.id

Available online at: <http://ejournal.iainmadura.ac.id/index.php/alihkam/>

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namely in the realm of law, profession, and intellectual properties. It uses a juridical-sociological method in the qualitative data compilation technique. The data was obtained through in-depth interviews and desk study. Meanwhile, the data analysis is through reduction and conclusion making. It results in three conclusions. 1) The law protection for teachers comes in the form of advocacy, law dissemination, protection from any type of violence, friendly students' education format, students' character building, and good communication with students' parent. 2) The protection for teacher in the realm of profession is through reasonable earning and freedom of speech. 3) The protection for teachers' intellectual property is through motivating them to be productive even though the results have not been well patented.

Keywords:

Protection; Teachers; Madrasa; Islamic Boarding Schools

ملخص:

حماية مهنة التدريس هي محاولة لحماية المعلمين من مختلف أشكال العنف والتهديدات والمعاملة التمييزية والظلم والتجريم والمعاملة المنحرفة من الطلاب وأولياء الأمور والمجتمع. تهدف هذه الدراسة إلى فحص أشكال حماية المعلمين في أداء واجباتهم كمعلمين. وطريقة البحث المستخدمة هي المنهج الاجتماعي القانوني في إطار البحث النوعي. وكان جمع البيانات عن طريق المقابلات المتعمقة والتوثيق. يتم تحليل البيانات بخطوات مع تقليل البيانات واستخلاص النتائج. من البحث المنفذ. تظهر نتائج هذه الدراسة أن هناك: (1) الحماية القانونية للمعلمين من خلال المناصرة القانونية والتنشئة الاجتماعية القانونية، والحماية من العنف ضد المعلمين، وتنسيق التعليم الملائم للأطفال، وتشكيل شخصية الطالب، وإجراء التواصل الجيد مع أولياء أمور الطلاب (2) الحماية المهنية مع لائقة الدخل وحرية التعبير عن الآراء (3) حماية الملكية الفكرية من خلال تشجيع المعلمين على الإبداع والتصنيف، ولكن هذه المصنفات لم يتم تسجيلها ببراءة اختراع.

الكلمات المفتاحية:

الحماية؛ المعلمين؛ المدرسة؛ المعاهد الإسلامية

مقدمة:

اليوم، غالبًا ما يكون عالمُ التعليم مصدرَ قلق، مع ظهور العديد من التجريم ضد مهنة التدريس. وكثيرا ما يواجه المعلمون أثناء قيامهم بواجباتهم تحديات وعقبات ليست سهلة. يتم الرد على تصرفات المعلمين المختلفة في تأديب طلابهم أثناء الدراسة بدعوى تجريم المعلم من قبل الطلاب وأولياء الأمور والمجتمع. وفي السنوات الثلاث الماضية، لا تزال تحدث حالات العنف ضد المعلمين. في عام 2015م، كان لا بد من سجن نورماياني، وهي معلمة في المدرسة الثانوية الحكومية 1 بانتائغ، جنوب سولاويزي، لقرص طلابها الذين تسببوا في الكثير من الضوضاء في الفصل. وفي عام 2016، في نفس المدرسة، كان على الأستاذ أسرال أن يقبع في السجن لضربه طالبًا شوّش الآخرين في صلاة الجماعة. وبالمثل مع الأستاذ سامهودي، مدرّس المدرسة الإعدادية رادين رحمت سيدوارجو الذي حُكم عليه بالسجن لمدة 6 أشهر لمجرد قرص ذراع طالبه لأنه غالبًا ما كان يتغيب عن حضور أنشطة صلاة الضحى. ناهيك عن المساة التي حلت بالأستاذ داسرول (2017)، وهو مدرس في المدرسة الثانوية المهنية الحكومية 2 ماكاسار الذي وبّخ الطالب لعدم أداء واجباته المدرسية. وفي تلك اللحظة ركل الطالب الباب وهو يقول كلمات قذرة. غضب الأستاذ داسرول بشكل عفوي وصرخ طالبه ذاك. ثم يقوم الطالب بإبلاغ والديه. فتعرض الأستاذ داسرول

للإيذاء من قبل الطالب ووالديه حتى نرف رأسه دما. بالطبع، هناك العديد من الحالات المماثلة في مختلف المجالات التي لا تتعرض لها وسائل الإعلام.¹ توضح الأحداث المختلفة المذكورة أعلاه كيف تواجه مهنة التدريس تحديات مختلفة ليست سهلة. لذلك، من الضروري جداً أن يحصل المعلمون على الحماية القانونية أثناء قيامهم بواجباتهم.² تقع مسؤولية الحماية القانونية للمدرسين في أداء واجباتهم على عاتق الحكومة والحكومات المحلية والمنظمات المهنية للمدرسين والمدارس.³ ويتم تفسير الحماية القانونية للمعلمين على أنها جهود تبذلها الحكومة لحماية المعلمين وغيرهم من العاملين في مجال التعليم في أداء واجباتهم المهنية، سواء في الحماية القانونية والاحترافية والاجتماعية أو السعادة النفسية.⁴ تنص الفقرة 1 من المادة 41 من اللائحة الحكومية رقم 74 لعام 2008 على ما يلي: "للمعلمين حق في الحصول على الحماية القانونية من أعمال العنف، أو التهديد أو المعاملة التمييزية أو التخويف أو المعاملة غير العادلة من جانب الطلاب وأولياء أمور الطلاب والمجتمع أو البيروقراطية أو أطراف أخرى". ومع ذلك، لم تُقدّم اللائحة الحكومية رقم 74 لعام 2008 صياغة واضحة لتعريف الحماية القانونية لمهنة التدريس مع السلطة الكاملة في المدارس في إنفاذ اللوائح المدرسية المختلفة بشأن

¹ Muhammad Makhdom, "Tragedi Pak Budi Dan Dilema Guru Indonesia," 2018, <http://disdik.banjarmasinkota.go.id/2018/02/tragedi-pak-budi-dan-dilema-guruindonesia>.

² Muhammad Makhdom, "Tragedi Pak Budi Dan Dilema Guru Indonesia," 2018, <http://disdik.banjarmasinkota.go.id/2018/02/tragedi-pak-budi-dan-dilema-guruindonesia>.

³ Harun, "Perlindungan Hukum Profesi Guru Dalam Perspektif Hukum Positif," *Law and Justice* 1, no. 1 (2016): 74-84, <https://doi.org/10.23917>.

⁴ Saihu and Taufiq, "Perlindungan Hukum Bagi Guru," *Al Amin: Jurnal Kajian Ilmu Dan Budaya Islam* 2, no. 2 (2019): 105-16.

الأمر التي تتداخل مع عملية التدريس وتعليم طلابهم على النحو الذي يرغب فيه أهداف التعليم الوطنية.

بالإضافة إلى ذلك، تم التأكيد على حماية المعلمين في لائحة وزير التربية والتعليم والثقافة رقم 10 لسنة 2017 بشأن حماية المعلمين والعاملين في مجال التعليم. في المادة 2، الفقرة 1 إلى الفقرة 5 تشرح بالتفصيل حماية المعلمين وموظفي التعليم، الحماية المشار إليها في الفقرة 1 تشمل الحماية: أولاً، القانون الذي يتكون من الحماية من أعمال العنف والتهديدات والمعاملة التمييزية والترهيب والمعاملة غير العادلة من طرف الطالب، و / أو والدي الطالب، والمجتمع، والبيروقراطية، و / أو الأطراف الأخرى ذات الصلة بتنفيذ المهام.⁵ ثانياً، الحماية المهنية، والتي تشمل إنهاء التوظيف الذي لا يتوافق مع أحكام التشريع القانوني، وتقديم تعويض غير معقول، وفرض قيود على التعبير عن الآراء، ومضايقة المهنة وغيرها من القيود أو المحظورات التي يمكن أن تعيق المعلمين عن أداء واجباتهم. ثالثاً، الحماية من أخطار اضطرابات العمل والحوادث والحرائق في العمل، والكوارث الطبيعية، وصحة بيئة العمل، ومخاطر أخرى. رابعاً: حماية حقوق الملكية الفكرية بحماية حقوق المؤلف وحقوق الملكية الصناعية.⁶

يجب أن تحظى أحكام التشريع أعلاه باهتمام جاد من مقدمي خدمات التعليم، بدءاً من الحكومة المركزية والحكومات المحلية والمدارس. وتتم حماية المعلمين في المدارس، لا سيما في المدارس الموجودة في كنف المعاهد الإسلامية. تلك المدرسة هي مؤسسة تعليمية خاصة تحت رعاية المؤسسة والتي تقع داخل بيئة المعاهد الإسلامية.

⁵ Harpani Matnuh, "The Legal Protection of Teacher Professionalism," in *Proceedings of the Annual Civic Education Conference (ACEC 2018)* (Atlantis Press, 2018), 346-49, <https://doi.org/https://doi.org/10.2991/acec-18.2018.80>.

⁶ Joko Sutopo and Krismiyarsi, "Legal Protection of Professional Teacher in Criminal Law Perspective," *International Journal of Business, Economics and Law* 20, no. 5 (2019), 258-64, https://www.ijbel.com/wp-content/uploads/2020/06/IJBEL20_502.pdf.

وبشكل عام، يتم تنسيق المؤسسات التعليمية الإسلامية بنماذج وأساليب حديثة تتبنى جوانب الجدارة دون التخلي عن القيم التربوية التقليدية السابقة. بل تحاول المؤسسات التعليمية الإسلامية تقديم شكل جديد من التوليف الذي يتعاون بين أهداف التعليم العام وأهداف التعليم الإسلامي (الديني) المتكافئ. ويرافق هذا الشكل من التوليف بعد ذلك دعم الجودة الأكاديمية والموارد البشرية والبنية التحتية ومصادر التمويل القوية وخلق بيئة جيدة. تتبنى المدارس الدينية نظام التعليم الحديث للمعلمين والممارسين المسلمين بإضافة جزء كبير من المواد الدينية الإسلامية.⁷

لكي يصبحوا معلمين في المدارس الدينية الداخلة في بيئة المعاهد الإسلامية، يخضع ترشيح المعلمون لعدة مراحل من الاختبار، مثل اختبارات القدرات العلمية في مجالاتهم والعلوم الإسلامية، واختبارات الشخصية، واختبارات قراءة القرآن، والمقابلات وغيرها. وبعد أن أصبحوا معلمين، يتلقون التدريب والتطوير المهني. بالإضافة إلى ذلك، تعمل المدارس على تطوير قدرات وخبرات المعلمين بهدف إنتاج موارد مدرسين محترفين.

في الواقع، اتضح أن ليس كل المدارس تحمي معلمها في أداء واجباتهم كمعلمين. على سبيل المثال، الدخل المنخفض للمعلمين، وعدم حيافة براءة الاختراع لبعض أعمال المعلمين كملكية فكرية، ومرافق التعلم غير المكتملة بحيث لا يدعمون عملية التعلم الجيدة وما إلى ذلك.⁸

⁷ Nanang Budianto, "Implementasi Pengembangan Madrasah Dan Sekolah Islam Unggulan Sebagai Upaya Peningkatan Kualitas Pendidikan Islam," *FALASIFA: Jurnal Studi Keislaman* 8, no. 1 (2017): 109-26, <https://doi.org/https://doi.org/10.36835/falasifa.v8i1.42..>

⁸ مقابلة مع مجلس العلماء الإندونيسي، ومدرس المدرسة الإعدادية، ١٣ سبتمبر ٢٠٢١.

تعزز الظروف المذكورة أعلاه اهتمام الباحث على دراسة حماية المعلمين في ممارسة مهنتهم. تهدف هذه الورقة إلى التعمق في موضوع الحماية القانونية ومهنة التدريس في أداء واجباتهم في عملية التعلم في المدارس الإسلامية، وخاصة في المدارس الداخلة تحت إطار المعاهد الإسلامية.

منهجية البحث

ينهج هذا البحث نهج اجتماعي قانوني أو بعبارة أخرى نوع اجتماعي من البحث القانوني الذي يبدأ من وجهة نظر أن القانون هو نمط مؤسسي للسلوك الاجتماعي ويوجد كمتغير اجتماعي تجريبي. النهج القانوني الاجتماعي هو تحديد وتصور القانون كمؤسسة اجتماعية حقيقية وعملية في الحياة. ويهدف نهج هذا البحث بالتأكيد إلى فهم القانون تجريبياً من خلال الذهاب مباشرة إلى موضوع البحث، أي حماية المعلمين في أداء واجباتهم. هذا البحث هو بحث ميداني يفحص الأحكام القانونية المعمول بها مع الواقع الذي يحدث في المجتمع. وهذا النوع من البحث هو نوع من البحث القانوني الاجتماعي الذي يريد قياس فعالية بعض القوانين واللوائح.

تم جمع البيانات من خلال مقابلات متعمقة. كانت مواقع البحث عبارة عن مدرسة نور الجديد الإعدادية في إطار المعهد نور الجديد الإسلامي في بانجلغور بامكاسان، ومدرسة الجبرا الإعدادية في إطار المعهد المنورة الإسلامي غانديغ سومنب، والمدرسة الإعدادية مطالع الأنور في إطار المعهد مطالع الأنور سومنيب. يعتمد اختيار المدارس الثلاث المذكورة أعلاه على اعتبار أن تلك المدارس الثلاثة الموجودة في بيئة المعاهد الإسلامية في مادورا قد أحدثت ابتكارات مختلفة في عملية التعلم. زار الباحث

وأجرى مقابلات متعمقة مع مصادر البيانات البشرية، وتحديدًا المديرين والمعلمين في المدارس الثلاثة لفهم الظاهرة المبحوثة. كما استعرض الباحث الوثائق اللازمة لدعم بيانات المقابلة. ثم بعد ذلك، قام الباحث بتحليل البيانات التي تم جمعها عن طريق تقليل البيانات وعرضها واستخلاص النتائج.

النتائج والمناقشة

الحماية القانونية لمعلمي المدرسة الموجودة في بيئة المعاهد الإسلامية

يمكن تفسير الحماية بمعنى بسيط على أنها محاولة لاكتساب الشعور بالأمان، بعيدًا عن التهديدات والكوارث والخوف. وبالتالي، يمكن تفسير الحماية القانونية للمدرسين على أنها حماية يوفرها القانون للمعلمين، من مختلف أعمال العنف والتهديدات والمعاملة التمييزية والترهيب والمعاملة غير العادلة. الحماية القانونية للمعلمين في مهنتهم تستلزم أن المعلمين كمهنة يتطلبون في عملهم ضمانات وحماية لبعض القوانين واللوائح. هذا مهم جدًا بحيث أنه بالإضافة إلى الشعور بالأمان، فإن لديهم أيضًا نظرة واضحة بشأن حقوقهم والتزاماتهم، ما يمكنهم وما لا يمكنهم فعله، ما يسمح وما لا يسمح للأطراف الأخرى فعله بهم، سواء كإنسان عادي أو معلمين أو العاملين.⁹

تعتبر حماية المعلمين في أداء واجباتهم أمرًا ملحقًا للغاية؛ نظرًا لما وقع في السنوات الأخيرة في العديد من الحالات، أصيب عالم التعليم بالصدمة بسبب مقاومة أولياء أمور الطلاب لمهنة التدريس. هذا الأمر وقع في شكل إبلاغ الوالدين للشرطة

⁹ Ateng Sudibyo, "Perlindungan Hukum Terhadap Guru Dalam Melaksanakan Tugas Keprofesionalannya Dikaitkan Dengan Punishment Dalam Mendisiplinkan Siswa," *Journal Presumption of Law* 1, no. 2 (2019), <https://doi.org/10.31949>.

عن معاملة المعلمين لأطفالهم. وهذا هو الحال في سيدوارجو، جاوة الشرقية الذي تحول من قضية تأديب المعلم بقرص الطالب على أنه طالب شقي، مما أدى في النهاية إلى جر المعلم إلى المحكمة. وهي القضية التي حدثت بسمبودي (خمسة وأربعون عامًا) أحد المدرسين في المدرسة الإعدادية رادين رحمة في بالوغبندو، سيدوارجو، جاوة الشرقية. وظهرت حالة أخرى في مدينة بانوانجي بجاوة الشرقية، وهي قضية تحليق شعر الطالب بشكل جانبي بنموذج معاصر. فقام المدرس بقص شعر الطالب بالقوة. وفي النهاية، أبلغ والد الطالب الشرطة بسلوك المعلم.¹⁰

الحماية القانونية للمعلمين في أداء واجباتهم من خلال توفير المحامين المستعدين لمرافقة المعلمين إذا واجهوا مشاكل قانونية. يتم تنفيذ المناصرة القانونية وفقًا للمقابلات التالية:

"فيما يتعلق بموضوع المناصرة القانونية، يوجد لدينا في المؤسسة قسم قانوني، وهو تطبيقات تساعدنا في حل المشكلات، خاصة الحماية القانونية، وتحديدًا من جميع خطوط الاحتياجات الموجودة في المؤسسة، ولكن من الممكن أن يكون لدينا أيضًا تعاون مشترك مع PGRI (اتحاد المدرسين بإندونيسيا). ويساعدنا أيضًا فريق المناصرة القانونية بالنسبة للمسائل الحاسمة للغاية. ولقد أجرينا مرة واحدة إرشادات الحماية القانونية المؤسسية التي تشمل شركة المحاماة PGRI (اتحاد المدرسين بإندونيسيا). بالإضافة إلى توفير البصيرة القانونية للمعلمين في هذه المدرسة الثانوية، قمنا بتنظيم التنشئة الاجتماعية للحماية القانونية للمعلمين.¹¹

¹⁰ M. Sidik, "Perlindungan Hukum Bagi Guru Yang Melakukan Kekerasan Terhadap Siswa," *Jurnal As-Said* 1, no. 1 (2021): 67-74.

¹¹ مقابلة مع مرزوقي، رئيس مدرسة PGRI الإعدادية في منطقة بامكاسان، 15 سبتمبر 2021.

المساعدة في المناصرة القانونية هي شكل من أشكال التأييد القانوني للمعلمين والعاملين في مجال التعليم، سواء من الحكومة أو وكالات المراقبة التربوية. ستعمل هذه المؤسسة على التواصل الاجتماعي حول أهمية فهم القانون أو حركة الوعي القانوني بحيث يمكن استخدامها كعلامات للمعلمين وموظفي التعليم في أداء واجباتهم. والغرض الآخر من إنشاء هذه المؤسسة هو أنه يمكنها تقديم المساعدة القانونية فيما بعد عند حدوث حالات تتعلق بالمدرسين أو العاملين في مجال التعليم.¹²

أصبح مديرو المدرسة والمعلمون وموظفو التعليم بحاجة إلى حصول الحماية والمساعدة القانونية ترافقهم جسدياً ونفسياً بسبب قلة معرفتهم بالقانون. الجهل بظاهرة القانون والقواعد الملزمة، أدى إلى تخوف سكان المدرسة من الأفخاخ القانونية إذا أساءوا التعامل مع الطلاب. لذلك، فإن تحسين دور المناصرة في المنظمات التي يشارك فيها المعلمون يجب أن يتم تمكينه لإقامة الحق والعدالة لأعضائها. هذا يتماشى مع الهدف الأساسي للقانون التقدمي، وهو خلق السعادة الجسدية والنفسية. وتهدف جهود المناصرة هذه إلى توفير الفهم القانوني للمعلمين أو حل القضايا القانونية التي قد تصيب المعلمين.

ومن ناحية أخرى، تُؤوِّد المدارس الحماية القانونية للمعلمين من خلال تشكيل فريق لتطبيق القواعد، والذي يتكون من رئاسة المدارس، ومعلمي التوجيه والإرشاد، والعديد من موظفي إدارة المدرسة المسؤولين عن الإشراف وتطبيق اللوائح، ليعتاد الطلاب بتطبيق القواعد والالتزام بأنشطة المدرسة. ينفذ هذا الفريق واجباته من خلال تقديم معلومات عن قواعد المدرسة وعواقب انتهاك هذه القواعد للآباء عند دخولهم المدرسة لأول مرة.

¹² Saihu and Taufiq, "Perlindungan Hukum Bagi Guru."

ويقدم الفريق أحياناً قوانين أو عقوبات لتنفيذ القانون ولأجل تأديب الطلاب، عندما ينتهك الطلاب قواعد المدرسة. إن القيام بعقوبة الأطفال (العقوبة البدنية) لتأديبهم لا يعتبر شكلاً من أشكال العنف ضد الأطفال، ولكنها من باب سد الذريعة ومنع الوقوع إلى المحرمات والمفاسد.¹³ والسبب هو أن الظروف الاجتماعية والثقافية الإندونيسية تميل إلى دعم استخدام العقاب البدني والتسامح معه باعتباره الوسيلة الأكثر فعالية للتعليم لأجل مصلحة الأطفال.¹⁴

تماشياً مع ما سبق، من أجل توفير الحماية للمعلمين من أعمال العنف، يرم معلمو المدرسة عقود التعلم التي يجب تنفيذها أثناء الدراسة والتعليم. وفي بداية الدرس ناقش المعلمون "القواعد والعواقب" مع الطلاب. وباستخدام هذا النموذج، شرح المعلم إلى طلابه القواعد التي يجب التزامها عليهم أثناء الدراسة.

"لا يعاقب المعلمون أبداً. نحن لا نعرف أية عقوبة كانت. بل الشيء الذي نعرفه ونتعامل معه هو تطبيق القواعد والعواقب. وسيشرح المعلم في بداية الدراسة

¹³ Abdul Jalil and Muhammad Taufiq, "Al-Âtsâr Al-Mutarattibah 'Âla PERPPU (Lawâih Al-Hukûmiyyah Al-Badaliyyah) Min Al-Munazhhamât Al-Mujtama' Iyyah Raqm 2 Li 'Âm 2017 Dliida Wujûd Hizb Al-Tahrîr Indûnisiyâ Min Manzhûr Saddi Al-Dzarî'Ah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 144, <https://doi.org/10.19105/al-ihkam.v14i1.1982>; Ahmed Salem and Muhammad Taufiq, "Manâfidu Al-Muharramât Ilâ Muntijâti Al-Halâl: "Dirâsah Tahlîliyah Fî Dhaw'i Ma'âyir Majma' Al-Fiqh Al-Islâmî Al-Dawli Wa Al-Ma'âyir Al-Mâlayziah"," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 230-50, <https://doi.org/10.19105/AL-LHKAM.V16I1.3050>.

¹⁴ وفي الأساس كانت هناك سلسلة من القوانين واللوائح المقررة في إندونيسيا التي تحظر جميع أشكال العنف ضد الأطفال. ينشأ الرأي القائل بأن إندونيسيا لم تحظر ممارسة العقاب البدني بسبب عدم وجود قاعدة واحدة في إندونيسيا تذكر بوضوح العقاب البدني باعتباره أحد أشكال العنف الجسدي ضد الأطفال. ومن أشكال العنف الجسدي المخطور في كل من القانون الجنائي وقانون حماية الطفل هو الاعتداء الجسدي على الأطفال. في حين أن مفهومي الاضطهاد والعقاب البدني مختلفان من حيث السياق، على الرغم من أنه في Muhammad Taufiq, "A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text," *Millati: Journal of Islamic Studies and Humanities* 5, no. 2 (2020): 121-28, <https://doi.org/10.18326/mlt.v5i2.121-128>.

القواعد أو المعايير التي تنطبق وقت الدرس والعواقب التي تترتب عن انتهاك هذه القواعد. على سبيل المثال، هناك بعض القواعد لوضع الحقائق المدرسية في الأماكن المتوفرة، وإلقاء القمامة في سلتها المخصصة. وسيشرح المعلم العواقب عندما ينتهكها الطلاب، كالوقوف أمام الفصل لبضع دقائق، وقراءة بعض السور القصيرة من القرآن.¹⁵

ولأجل توفير الحماية القانونية للمعلمين في أداء واجباتهم، يتوسط قادة المدرسة في حل المشكلات المختلفة مع الطلاب، عندما لا يتمكن المعلم من حلها بنفسه. تقوم هذه المدرسة بالوساطة في حل المشاكل التي تواجه المعلمين مع طلابهم وأولياء الأمور. ويمكن أن تأخذ الوساطة باشتراك المعلمين الآخرين أو معلمي الإرشاد (BP) أو رئاسة المدارس، والتي تهدف إلى إيجاد نقطة الالتقاء والتوافق للنزاعات بين المعلمين والطلاب أو أولياء الأمور. وفي المستوى الأدنى، يتم تنفيذ الوساطة وإجرائها لحل مشاكل المعلم والطلاب المختلفة. ويمكن مساعدة المعلمين من قبل معلمي الصف لإيجاد الحلول لهذه المشاكل. وفي الوقت نفسه، عندما لا تتمكن الوساطة في المستوى الأدنى من حل المشكلة، يمكن إجرائها إلى المستوى المتوسط، أي حل المشكلات الذي يقام من قبل المعلمين ومعلمي الصف ومعلمي الإرشاد. وبعد ذلك يتم تنفيذ العديد من القضايا التي لم يوجد لها حل في المستوى المتوسط إلى المستوى الأعلى، وذلك بمشاركة معلمي الإرشاد ورئاسة المدرسة. ويحصل المعلمون في القضايا الحاسمة التي تشمل الآباء والمجتمع على خطوات التوسط أو الوساطة من المؤسسات بصفتهن صانعي القرار.¹⁶

¹⁵ مقابلة مع م. حاز رئيس المدرسة الإعدادية الفلاح بامكاسان، ١٢ سبتمبر ٢٠٢١

¹⁶ مقابلة مع مو. معلم المدرسة الإعدادية، 19 سبتمبر 2021.

الحاجة الملحة للوساطة هي أن يكون المتقاضون في سلام وعدم رفع قضاياهم إلى المحكمة. إذا كانت هناك أشياء تم حظرها وكانت تمثل مشكلة، فيجب حلها وديًا عن طريق المشاورة والاتفاق. الهدف الرئيسي للوساطة هو تحقيق السلام بين الأطراف المتحاربة. عادة ما يكون من الصعب جدًا على المتنازعين التوصل إلى الاتفاق عندما يجتمعون بمفردهم. الوساطة هي وسيلة للجمع بين الأطراف المتنازعة يقومها وسيط واحد أو أكثر للتوصل إلى الحل الأفضل ويكتسب الأطراف المتصارعة بعد ذلك وعيًا بأهمية السلام بينهم.¹⁷

صرح غاري جودباستر، وفقًا لما نقله كوراه، أن الوساطة ستنتج أو تعمل بشكل صحيح إذا كانت متوافقة مع الشروط، والتي منها قوة المساومة المماثلة لكل الأطراف المتنازعة، وكل منهم يهتمون بشأن العلاقات المستقبلية، وهناك قضايا تسمح بحدوث التبادلات (المقايضات)، وضرورة ملحة أو حد زمني لحلها، ولا يوجد عداء طويل وعميق، وتقديم حل المشكلات العاجلة على الدفاع عن الحقوق.¹⁸

يمكن أيضًا إنشاء حماية المعلمين من أعمال العنف من خلال بناء شخصية الطالب.¹⁹

نؤكد على تنمية شخصية الطالب، وفقًا لمهمة مدرستنا، وهي غرس الشخصية النبيلة في طلابنا. نمارس القيم الأخلاقية في حياة الطلاب في المدرسة. نُعوِّد طلابنا على الصدق، واحترام المعلمين، والمشاركة مع الأصدقاء واحترامهم، والشخصية المستقلة من خلال تعويد طلابنا على ترتيب أدوات الكتابة الخاصة بهم، والطابع

¹⁷ Dedi Afandi, "Mediasi: Alternatif Penyelesaian Sengketa Medis," *Majalah Kedokteran Indonesia* 59, no. 5 (2009): 189-93.

¹⁸ Revy S M Korah, "Mediasi Merupakan Salah Satu Alternatif Penyelesaian Masalah Dalam Sengketa Perdagangan Internasional," *Jurnal Hukum UNSRAT* 21, no. 3 (2013).

¹⁹ Yenny Serah and Rini Setiawati, "Fulfillment of Teacher Protection Rights," *Annual Program of International Conference on Human Rights* 1, no. 1 (2019): 1-10.

الديني من خلال التعود على قراءة الدعاء قبل الدرس في الفصل، وصلاة الضحى والظهر في الجماعة، وإلقاء السلام كلما يلتقي بالمعلم، وتشخيص الصبر والاستسلام للأصدقاء، والتسامح للصديق عند صدور الخطأ والاعتذار عندما يشعر بالذنب. ومع التعود على حسن الخلق، سوف يعتاد الطلاب على فعل الخير وممارسة القيم الأخلاقية.²⁰

سيؤثر تعليم الشخصية على سلوك الطالب.²¹ لذلك، من الضروري جداً غرس الشخصية في نفوس الطلاب²² من خلال التدريس والقُدوة الحسنة والتعود.²³ ويمكن القيام بذلك كله عن طريق إلزام الطلاب بالانضباط والامثال لقواعد المدرسة. فعندما يتم غرس الأخلاق الحسنة في نفوس الطلاب، سوف يتصرفون بسهولة وطوعية وبطريقة منضبطة ويحترمون المعلمين، ويكونون صادقين، ومتحابين، ومهذبين، حتى يتمكنوا من تنفيذ قواعد المدرسة بسهولة،²⁴ وفقاً لغرض تنظيم المدرسة وهي تكوين أفراد متميزين في مختلف المجالات، يفهمون ويمارسون قيم التعاليم الدينية و / أو يصبح مؤمناً وخبيراً بأمر دينه، ورعاً، ذا شخصية نبيلة، عالماً، ومستقلاً، ويجب مساعدة

²⁰ مقابلة مع أ.ج. بامسكاسان 13 سبتمبر 2021.

²¹ Tatang Muhtar and Ruswan Dallyono, "Character Education From The Perspectives of Elementary School Physical Education Teachers," *Cakrawala Pendidikan: Jurnal Ilmiah Pendidikan* 39, no. 2 (2020), <https://doi.org/10.21831/cp.v39i2.30647>.

²² Marvin W. Berkowitz, "Understanding Effective Character Education," the Center for Spiritual and Ethical Education, 2012, <https://silo.tips/download/what-is-character-education#>.

²³ Aynur Pala, "The Need For Character Education," *International Journal of Social Sciences and Humanity Studies* 3, no. 2 (2011): 23–32.

²⁴ Maskun, Rinaldo Adi Pratama, and Sumargono, "Implementation of Character Education in Historical Learning in the Industrial Revolution Era 4.0," *International Journal of Multicultural and Multireligious Undersanding* 6, no. 6 (2019): 487–96, <https://doi.org/10.18415>.

الآخرين ومبادلتهم، ورجلا متوازنا. وسيقوم المعلمون مع طاعة الطلاب لقواعد المدرسة بسهولة التعلم دون الحاجة إلى معاقبتهم.²⁵

كما يتم بذل الجهود لحماية المعلمين من أعمال العنف أثناء أداء واجباتهم من خلال بناء تواصل جيد بين المدرسة والمعلمين وأولياء أمور الطلاب. ومع التواصل الجيد، يتم إنشاء التفاهم والعمل الجماعي بين المعلمين وأولياء الأمور. عقدت رئاسة المدرسة في بداية الدراسة جنبًا إلى جنب مع المعلمين اللقاء مع أولياء الأمور بهدف التنشئة الاجتماعية على برامج المدرسة، وإعداد الآباء للتكيف مع خطط الدروس التي سيتم تنفيذها، واستيعاب تطلعات أولياء الأمور لإعداد التعلم لتحقيق نجاح برنامج المدرسة.

عقدنا جلسة اجتماعية مع أولياء الأمور في بداية الفصل الدراسي، قبل بدء الدرس. وفي تلك الجلسة، نقوم باستعراض برامجنا فيما يتعلق بالأنشطة التي سيتم تنفيذها. وأجرينا أيضًا حوارًا مع أولياء أمور الطلاب. ثم إنهم يطرحون الأسئلة بحماس، ويقدمون اقتراحات لنجاح التعليم الدراسي الذي سيتم تنفيذه فيما بعد. وأنا نقبل اقتراحاتهم بانسراح الصدور والاهتمام لقدراتنا.²⁶

فالتواصل الجيد ضروري لبناء التآزر بين المدرسة وأولياء الأمور. وعُرف التواصل بأنه عملية نقل الأفكار أو المعلومات من شخص إلى آخر عبر وسائط معينة. يمكن إجراء التواصل الجيد من خلال نظام إدارة التعليم المطبق في المدرسة، أي من خلال

²⁵ Undang-Undang Republik Indonesia Nomor 18 Tahun 2019 Tentang Pesantren, <https://peraturan.go.id/common/dokumen/ln/2019/uu18-2019bt.pdf>, تم التصفح عليه 20 نوفمبر 2021.

²⁶ مقابلة مع إم، سبتمبر 2021.

استخدام وظيفة قسم العلاقات العامة فيها. تتمثل إحدى وظائف هذا القسم في إقامة تواصلات وعلاقات مع الجمهور، أي المتمثل في المجتمع وأولياء أمور الطلاب.²⁷ يتم إجراء التواصل أيضًا بين معلمي الفصل وأولياء الأمور في مجموعة واتساب (WhatsApp)، يمكنهم التواصل المكثف مع أولياء الأمور كل يوم، بحيث يكون هناك شعور بالألفة وجوّ عائلي بين المعلمين وأولياء الأمور. ويقوم المعلم دائمًا بتقديم برامج التعليم وأنشطة الدراسة مع أولياء الأمور في تلك المجموعة. بالإضافة إلى ذلك، كنا نقبل كل الاقتراحات والشكاوى من أولياء الأمور. وفي الوقت ذاته تشاور المعلم مع أولياء الأمور فيما يتعلق بصعوبات الدراسة وتطويرها.

بالإضافة إلى ذلك، أقام المعلمون في المدارس عملية التعليم على أساس المادة وترك العنف، وتحاول المدارس من خلال هذا النموذج تقديم عملية تعليمية لائقة للأطفال²⁸ والبيئة وفقًا للشعار الذي يردد "رحمة للعالمين". التعليم اللائق للأطفال هو التعليم الذي يُطبّق التوفير والحماية والمشاركة. أما توفير الأموال فهو حق يتعلق باحتياجات الأطفال مثل الحب / المادة والغذاء والصحة والدراسة والترفيه²⁹. وأما الحماية فهي تعني الحقوق المتعلقة بحماية الأطفال من جميع التهديدات والتمييز

²⁷ Saihu and Taufiq, "Perlindungan Hukum Bagi Guru."

المدرسة الملائمة للطفل (نموذج المدرسة الصديقة للأطفال) هي نموذج مدرسي تم تطويره من قبل اليونيسف والذي يجعل²⁸ مفهوم صديقة للأطفال كأساس من خلال توفير مدارس مريحة وأمنة ومحمية ووجود المعلمين المدربين والموارد وبيئة مناسبة. تم التصديق على المدارس الملائمة للأطفال في إندونيسيا من خلال اتفاقية حقوق الطفل في عام 1990 وهي قرارات للوفاء بحقوق الطفل. تُعرّف المدارس الملائمة للطفل بأنها برامج لتهيئة الظروف للأطفال أثناء تواجدهم في وحدات تعليمية آمنة ونظيفة وصحية ورعاية ومثقفة بيئيًا، قادرة على ضمان أعمال حقوق الأطفال وحمايتهم من العنف والتمييز وغيرها من سوء المعاملة، وكذلك دعم مشاركة الأطفال، خاصة في Nuri Rohmawati and Endang Hangestinarsih, "Kajian Program Sekolah Ramah Anak Dalam Pembentukan Karakter Di Sekolah Dasar," in *Prosiding Seminar Nasional PGSD UST*, 2019.

²⁹ Mare Leino, "The Child Friendly School: An Idea Versus Reality," *Problems of Education in the 21st Century* 29 (2011): 82-88, <http://journals.indexcopernicus.com/abstract.php?icid=942641>.

والعقاب وسوء المعاملة وجميع أشكال المضايقة والسياسات غير الملائمة التي تؤثر بشكل مباشر أو غير مباشر على العنف ضد الأطفال. وأما المشاركة فهي حق للمشاركة والتصرف الذي يستخدمه الطلاب للتعبير عن حريتهم في الرأي وطرح الأسئلة والمناقشة ولعب دوره في الفصل والمدرسة.³⁰

يؤكد وجود المفهوم أعلاه أن دور المعلمين يجب أن يتمثل في إظهار موقف ودي ومهني في تعليم طلابهم، لأن المعلمين يُعتبرون حماةً آمنين، بالإضافة إلى واجباتهم الأساسية التي هي تعليم الطلاب أثناء وجودهم في المدرسة. ومن ناحية أخرى، عندما لا يعمل المفهوم جيداً ويكون هناك عدم التلاؤم الأمثل مع المعلم في المدرسة، فسيكون هذا تهديداً للطلاب في الواقع. ولتوضيح الصورة هناك بعض الأحداث التي وقعت في بيت التحفيظ الإخلاص، ومدرسة أُناباني ومدني الداخلية باندونغ، ارتكب أحد المعلمين عنفاً جنسياً ضد 12 طالباً خلال الفترة 2016-2021.³¹

لذلك، من خلال إنشاء المدارس الدينية الملائمة للأطفال، يتم التعامل مع الطلاب بالرحمة والعدالة، بحيث يقوم المعلمون بحماية طلابهم من العنف والسلوك المنحرف³² والتهديدات والترهيب والمعاملة غير الإنسانية.³³ ويجب على الطلاب أن

³⁰ Muhlasin Amrullah and Khizanatul Hikmah, "Pendidikan Ramah Anak Dalam Standar Nasional Pendidikan Indonesia," *PEDAGOGIA: Jurnal Pendidikan* 8, no. 1 (2019), <https://doi.org/10.21070>.

³¹ Aru Lego Triono, "Guru Perkosa 12 Murid di Rumah Tahfiz Bandung, PBNU: Jauh dari Ajaran Pesantren," 2021, <https://nu.or.id/nasional/guru-perkosa-12-murid-di-rumah-tahfiz-bandung-pbnu-jauh-dari-ajaran-pesantren-IGanp>.

³² Alif Muarifah, Nurul Hidayati Rofi'ah, and Elli Nur Hayati, "Embodying Children-Friendly School Through Nganggung Culture," in *Proceedings of the 1st International Conference on Early Childhood Care Education and Parenting (ICECCEP 2019)*, vol. 503, 2020, 152-58, <https://doi.org/10.2991/assehr.k.201205.103>.

³³ Somariah Fitriani, Istaryatiningtias, and Lelly Qodariah, "A Child-Friendly School: How the School Implements the Model," *International Journal of Evaluation and Research in Education (IJERE)* 10, no. 1 (2021): 273-84, <https://doi.org/10.11591/ijere.v10i1.20765>.

ينظروا إلى معلمهم على أنه أبوه الذي يجب تقليده وتقديره واحترامه، حتى يتمكن المعلم من تنظيم الدراسة في جو آمن ومريح وممتع.³⁴

التعليم الملائم للأطفال هو مظهر من مظاهر قانون حماية الطفل. تنص المادة 54 من القانون رقم 35 لسنة 2014 بشأن التعديلات على القانون رقم 23 لسنة 2002 بشأن حماية الطفل على ما يلي: (1) يُطلب من الأطفال البيئيين في وحدات التعليم الحصول على الحماية من أعمال العنف الجسدي والنفسي والجنسي والجرائم الأخرى التي يرتكبها المعلمون وموظفو التعليم والزلاء الطلاب و / أو الأطراف الأخرى. (2) يتم تنفيذ الحماية المشار إليها في الفقرة (1) من قبل المعلمين وموظفي التعليم والمسؤولين الحكوميين و / أو الجمهور. ويمكن للطلاب مع هذا القانون الحصول على الحق في قبول التربية والتعليم في سياق التنمية الشخصية وفقا لاهتماماتهم ومواهبهم. ويحق للأطفال الحماية في وحدة التعليم من الجرائم الجنسية والعنف الذي يرتكبه المعلمون وموظفو التعليم وزملائهم الطلاب و / أو أطراف أخرى. وبالتالي، يتم تصنيف الطلاب الذين لهم الحق في التعبير وإسماع آرائهم وتلقي المعلومات وطلبها وتقديمها وفقاً لمستوى الذكاء والعمر لتطورهم. أي أن عملية التعليم يجب أن تتحقق من خلال تطبيق الدراسة المساعدة في التنمية الذاتية للطفل،³⁵ وتوسيع الفرص للأطفال للتعبير عن آرائهم، والبحث عن المعلومات وفقاً للقيم المناسبة ولأعمارهم المتطورة. وعند تطوير أنفسهم، يتمتع الأطفال أيضاً بأخذ حقوقهم من الراحة والاستفادة في وقت الفراغ واللعب مع غيرهم من الأطفال والاستمتاع

³⁴ Wahida Sukma, Mohammad Afifulloh, and Muhammad Sulistiono, "Implementasi Pendidikan Ramah Anak Madrasah Di MI Tarbiyatul Ulum Batu Malang," *JPMI: Jurnal Pendidikan Madrasah Ibtidaiyah* 1, no. 3 (2019).

³⁵ Fatma Cobanoglu and Suadiye Sevim, "Child-Friendly Schools: An Assessment of Kindergartens," *International Journal of Educational Methodology* 5, no. 4 (2019): 637-50, <https://doi.org/10.12973/ijem.5.4.637>.

والإبداع.³⁶ علاوة على ذلك، فيما يتعلق بالحماية القانونية للمعلمين، تلغي المدارس الدينية المعاملة التمييزية بين المعلمين.

ليس لرئاسة مدرستنا أي عمل تمييزي في تطبيق المعلمين، كما هو مكتوب ومنصوص في اللوائح القانونية بالمدرسة، فإن تلك اللوائح كلها نطبق على الجميع، بما في ذلك من مدير المدرسة. ومن قواعدها أن على المعلمين عدم التأخر عن الوقت المحدد، فيجب أن يكونوا في المدرسة قبل الساعة 7:00. لذلك عندما يتأخر المعلم، فإنه ملزم بدفع المال إلى صندوق المدرسة. فبمجرد تأخر رئيس المدرسة عن القدوم إليها، قام بدفع المال طواعية. وهناك تقرير أنه عندما يعطي والد الطالب هدية من الطعام للمعلم، يجب تقسيمها بالتساوي بين جميع المعلمين. وهذا عمل جيد جدًا في بناء التآزر والتضامن بين المعلمين في المدارس الدينية.³⁷

تفرض مدرستنا مُدَوَّنَاتٍ أخلاقيات للمعلم مكتوبة في الدليل، وتنطبق تلك المدونة على جميع المعلمين في مدرستنا. لا يوجد فرق في المعاملة في تنفيذ هذه القواعد. يُطلَبُ تنفيذها من جميع المعلمين والطلاب والعاملين في مجال التعليم، وعندما ينتهكها أحد منهم يجب أن يُعاقب عليها.³⁸

من الناحية القانونية، فإن المعاملة غير التمييزية مكرّسة في الدستور من خلال المادة 28 والقانون رقم 39 لعام 1999م بشأن حقوق الإنسان والتي تضمن حق كل فرد في الحصول على نفس المعاملة. هذا يعني أنه لا ينبغي أن يتعرض أي شخص للتمييز بأي شكل من الأشكال وبأي سبب من الأسباب. المعاملة التمييزية انتهاك

³⁶ Amanda Tikha Santriati, "Perlindungan Hak Pendidikan Anak Terlantar Menurut Undang-Undang Perlindungan Anak," *ELWAHDAH* 1, no. 1 (2020).

³⁷ مقابلة مع ستن، 18 سبتمبر 2021.

³⁸ مقابلة مع أس، 18 سبتمبر 2021.

لحقوق الإنسان ومخالفة لمفهوم حقوق الإنسان المتعلقة بالمساواة والعدالة التي يحق لكل فرد التمتع بها. لذلك، فإن التمييز هو عمل محظور بموجب سيادة القانون، وحيث يوجد فعل تمييزي فسيكون هناك انتهاك لحقوق الإنسان.³⁹

وكذلك فإن المادة 3 من القانون رقم 39 لعام 1999 بشأن حقوق الإنسان تصبح أيضاً أساساً للحماية القانونية لكل شخص أيا كان، ليحصل على نفس المعاملة والحماية بموجب القانون وعدم التعرض للتمييز. تنص هذه المادة على أن كل فرد يولد أحراراً ويتمتع بنفس الكرامة الإنسانية ويتمتع بالعقل والضمير للعيش في المجتمع والأمة والدولة بروح الأخوة (الفقرة 1). لكل فرد حق في الاعتراف والضمان والحماية والحصول على اليقين القانوني والمعاملة المتساوية أمام القانون (فقرة 2). لكل فرد حق في حماية حقوق الإنسان والحصول على حرياته الأساسية دون تمييز (الفقرة 3). كما تحمي هذه المادة كل فرد يصبح مواطناً دون أي تمييز. لذلك، فإن هذه المادة تصبح أيضاً الأساس القانوني للمعلمين للحصول على الحماية من أعمال التمييز التي يوجهونها.

الحماية المهنية لمعلمي المدرسة الإسلامية الداخلة في بيئة المعاهد الإسلامية في الأساس، تعتبر الحماية المهنية أمراً ضرورياً للمعلمين للقيام بواجباتهم بسلاسة. يتمثل المعلمون المحترفون في تنفيذ المهام الذي يتميز بالخبرة، بناءً على المعرفة

³⁹ Merryany B Bawole, "Kajian Hak Asasi Manusia Terhadap Perlakuan Diskriminasi Kepada Pekerja Seks Komersial," *Jurnal Hukum UNSRAT* 21, no. 3 (2013), [https://www.neliti.com/publications/870/kajian-hak-asasi-manusia-terhadap-perlakuan-diskriminasi-kepada-pekerja-seks-kom#cite](https://www.neliti.com/publications/870/kajian-hak-asasi-manusia-terhadap-perlakuan-diskriminasi-kepada-pekerja-seks-kom).

النظرية⁴⁰. بالإضافة إلى ذلك، يظهرون أيضاً في تنفيذ جميع خدماتهم بفخر ومسؤولية⁴¹. وبالتالي، فإن مهنة التدريس هي وظيفة أو نشاط يقوم به المعلم حتى صار مصدر دخل حيث يتطلب الخبرة أو الكفاءة أو المهارات⁴² التي تلي معايير جودة معينة وتتطلب أيضاً تعليماً مهنيًا للمعلم.⁴³

يجب أن يحصل المعلمون عند القيام بواجباتهم على الحماية من إنهاء العمل والمكافآت غير المتلائمة والحجر في التعبير عن الآراء.⁴⁴

وتنفذ المدارس الدينية المذكورة أعلاه نظامًا للرواتب من حيث توفير دخل مناسب يعتمد على سنوات خدمة المعلم، ومناصب المعلمين مثل مدير المدرسة، وأمناء الخزانة، وإنجازات المعلمين في المجالات الأكاديمية وغير الأكاديمية، والأدوار الاجتماعية والمجتمعية.

حتى الآن، رواتب المعلمين في هذه المدارس بشكل عام أقل من الحد الأدنى الإقليمي للأجور. يحصلون على دخل منخفض لأن المدرسة ليس لديها مصدر

⁴⁰ Geoff Whitty, "Teacher Professionalism In New Times," *Journal of In-Service Education* 26, no. 2 (June 1, 2000): 281-95, <https://doi.org/10.1080/1367458000200121>.

⁴¹ Bahtiar Agung Pambudi and Imam Gunawan, "Instructional Leadership as an Effort to Increase Teacher Professionalism in the Industrial Revolution Era 4.0," in *Proceedings of the 4th International Conference on Education and Management (COEMA 2019)* (Atlantis Press, 2019): 216-20, <https://doi.org/https://doi.org/10.2991/coema-19.2019.43>.

⁴² Nur Kholis and Murwanti, "Teacher Professionalism in Indonesia, Malaysia, and New Zealand," *TARBIYA: Journal of Education in Muslim Society* 6, no. 2 (2019), <https://doi.org/https://doi.org/10.15408/tjems.v6i2.11487>.

⁴³ J Heystek and M Lethoko, "The Contribution of Teacher Unions In The Restoration of Teacher Professionalism and The Culture of Learning and Teaching," *South African Journal of Education* 21, no. 4 (2001).

⁴⁴ Fahriza Marta Tanjung and Restu Darwin, "Implementation of Private Teacher Protection Policies," in *Proceedings of the 4th Annual International Seminar on Transformative Education and Educational Leadership (AISTEEL 2019)* (Atlantis Press, 2019): 139-43, <https://www.atlantis-press.com/article/125928415>.

التمويل يمكن أن يغطي جميع احتياجاتها التشغيلية. يأتي المصدر الوحيد لتمويل أنشطة التعليم في المدارس من المساعدة التشغيلية للمدرسة من الحكومة.

الأساس القانوني للالتزام بتقديم دخل مناسب للمعلمين هو مواد دستور عام 1945 التي تنظم حقوق الإنسان: (1) توضح المادة 28 أ أن كل إنسان له نفس الحقوق في الحفاظ على الحياة والعيش بحيث يكون لكل فرد حق في العمل والحصول على أجر لائق من أجل البقاء. (2) لكل فرد حق في التنمية من خلال تلبية احتياجاته الأساسية، وحق في الحصول على التعليم والاستفادة من العلم والتكنولوجيا والفنون والثقافة، لتحسين نوعية حياته ورخاءها.⁴⁵

حق المعلمين في الحصول على دخل لائق موضح أيضا في القانون رقم 14 لسنة 2005م بشأن المعلمين والمحاضرين في القسم الثاني عن الحقوق والواجبات من المادة 14 التي تبحث عن حقوق وواجبات المعلمين في تنفيذ مهمتهم. للمعلمين حق في: أ) كسب دخل أعلى من الحد الأدنى ليتغذى احتياجات المعيشة وضمانات الرعاية الاجتماعية. ب) الحصول على ترقية وجوائز تتناسب مع واجباتهم وأدائهم في العمل. ج) الحصول على الحماية في أداء الواجبات وحقوق الملكية الفكرية. د) اكتساب الفرص لتحسين الكفاءة.⁴⁶

المعلم الخصوصي / المعلم الفخري هو أحد الموظفين في مجال التعليم غير موظفي الحكومة ويتقاضى رواتبه كل ساعة. وغالبًا ما يتم دفع رواتب المعلمين الخصوصيين طوعًا، حتى لو كانت أقل من الحد الأدنى من الراتب الرسمي، مما أدى ذلك إلى أن رفاهم لا يزال منخفضًا بحيث يختار بعضهم وظائف أخرى لسد

⁴⁵ Wandu Arifin and Ridwan Arifin, "Asas Keadilan Upah Guru Honorer Dalam Perspektif Hukum," *Riaw Law Journal* 3, no. 1 (2019), <https://doi.org/http://dx.doi.org/10.30652/rlj.v3i1.6956>.

⁴⁶ Saihu and Taufiq, "Perlindungan Hukum Bagi Guru."

احتياجاتهم اليومية. وفي الوقت نفسه، فإن المعلم الخصوصي إلى جانب كونه مشغولاً في مجال التعليم هو أيضاً يمنح وقته للعمل أو تعليم الطلاب. وبصفتهم عاملين، يجب أن يتمتعوا بنفس الحق في الحصول على الراتب، على الرغم من أنه ليس من نفس راتب المعلم الحكومي، ولكن يجب أن يكون راتب المعلم الخصوصي على الأقل وفقاً للحد الأدنى الإقليمي للأجور (UMR) في المنطقة التي يعمل فيها، بحيث يعيش المعلمون الخصوصيون في رخاء.⁴⁷

يمكن تحسين أداء المعلمين في التدريس من خلال القيام بمهمة التعليم بجدية أكبر وبالالتزام عالٍ بتحقيق رفاهيتهم، مما أدى ذلك أيضاً إلى تحسين جودة التعلم،⁴⁸ والذي سيؤدي بدوره في النهاية إلى تحسين نتائج تعلم الطلاب.⁴⁹

وفي الوقت نفسه. كما توفر حماية مهنة التدريس للمعلمين حرية التعبير عن آرائهم. تعقد المدارس الدينية اجتماعات بين المعلمين مرة واحدة في الأسبوع، وفاءً لحقهم في التعبير عن الآراء.

لتلبية احتياجات المعلمين في حرية التعبير على النحو المنصوص عليه في القانون، فإننا في هذه المؤسسة نقدم أكبر قدر ممكن من حرية التعبير، حتى في بعض برامجنا توجد أنشطة أسبوعية تتداول على أوجه التقصيرات أو المشاكل التي يواجهها المعلمون، حتى يتمكن من حلها معاً على الرغم من وجود الآراء المتعارضة بين موافق

⁴⁷ Arifin and Arifin, "Asas Keadilan Upah Guru Honorer Dalam Perspektif Hukum."

⁴⁸ Waspodo Tjipto Subroto, "Income and Implications of Teacher Performance to Improve the Quality of Education in The Elementary School of Surabaya," *International Journal of Business, Humanities and Technology* 3, no. 2 (2013): 112-22, www.ijbhtnet.com.

⁴⁹ José María Cabrera and Dinand Webbink, "Do Higher Salaries Yield Better Teachers and Better Student Outcomes?," *Munich Personal RePEc Archive*, no. 86972 (2018), <https://mpa.ub.uni-muenchen.de/86972/>.

ومنازع، ولكن الحمد لله تكون النتائج في النهاية مبنية على أساس المشاورة الجماعية المؤسسية.⁵⁰

حتى الآن، كنا في المدرسة نشعر بأن هناك حرية رأي في تحقيق الأهداف، لا سيما في الأنشطة التي يقوم بها المعلمون مع إدارة المدرسة، أو في حل المشاكل ووجود التقصيرات في أداء واجباتهم حتى يتم بعض المدخلات والاقتراحات فيما بعد بيننا بشكل جماعي وبشكل مباشر يمكن التغلب عليه معًا.⁵¹

يتم تنظيم حرية الفكر والتعبير في التعديل الرابع لدستور جمهورية إندونيسيا لعام 1945، المادة 28 هـ (2) لكل فرد حق في حرية تكوين الجمعيات والتجمع والتعبير. وحرية التعبير بما في ذلك حرية الرأي، من أهم الحقوق الأساسية في حياة الدولة. قانون رقم 9 لسنة 1998 بشأن حرية التعبير عن الرأي في الأماكن العامة المادة 1 فقرة (1) حرية التعبير هي حق كل مواطن في التعبير عن أفكاره بالقول والكتابة وما إلى ذلك بحرية ومسؤولية وفقا لأحكام القوانين المعمول بها.⁵²

وحرية الرأي في المنظور الإسلامي تعرف بمصطلح المشاورة التي تحتوي على عدد من العناصر: وهي المشاركة والحرية والمساواة. تشارك هذه العناصر الثلاثة بنشاط عند المشاورة لاتخاذ قرار، ولها معنى المشاركة الحقيقية بحد ذاتها. وستعقد المشاورة بمشاركة أعضاء المنظمة مصحوبة بحرية التعبير عن الآراء على أساس روح المساواة.

تم تطبيق حرية الرأي هذه في تاريخها منذ عهد رسول الله صلى الله عليه وسلم وفي عهد الخلفاء الراشدين. وفي ذلك الوقت، كان بإمكان الناس التعبير عن آرائهم

⁵⁰ مقابلة مع م و، 17 سبتمبر 2021.

⁵¹ مقابلة مع م ح ز، 21 سبتمبر 2021.

⁵² Titis Anindyajati, "Limitation of the Right To Freedom of Speech on the Indonesian Constitutional Court Consideration," *Indonesian Law Journal* 14, no. 1 (2021): 19-36, <https://doi.org/10.33331/ilj.v14i1.45>.

مباشرة للحكام الذين قادوهم. ولا يوجد هناك تدخل ولا ضغط في الممارسة القضائية بحيث يكون لجميع الأطراف حرية في التعبير عن آرائهم طالما يمكن اعتمادها. ومن المعروف أيضًا في التاريخ أن العديد من الأحزاب حاولت فرض آرائها حيث ينقلبون على السلطة من خلال الشعور بحرية التعبير، بما في ذلك حرية الرأي هذه. وكانت هناك امرأة في عهد أمير المؤمنين عمر بن الخطاب أعربت عن رأي مخالف لما فعله عمر، ولكنه رآه أمرًا عاديًا منها.⁵³

يجب استخدام حرية التعبير في منظور الشريعة الإسلامية لنشر الخير، لا لنشر الشر والظلم. ويجوز لأي شخص التعبير عن رأيه بحرية، طالما أنه لا يخالف القانون كالتجديف، والقذف، ومحاربة الحق، وإهانة معتقدات الآخرين. لن يسمح الإسلام بالشر والرجاسات أبدًا تحت أي ظرف من الظروف، كما أنه لا يجوز لأي شخص استخدام لغة بذيئة أو مهينة باسم النقد. ولذلك، يجب أن تكون حرية الرأي متوافقة مع المبادئ العامة للشريعة الإسلامية، أي إلزام كل إنسان على التمسك بالحق واجتناب الباطل.⁵⁴

حماية حقوق الملكية الفكرية

لم يتم تنفيذ حماية حقوق الملكية الفكرية في المدارس الدينية. قد تُشجّع المدارس الدينية معلميها على كتابة الكتب المدرسية وجمعها للطلاب. ومع ذلك، فإن تلك المدارس لم تحصل بعد على براءة الاختراع لعمل المعلمين. ولقد شجعت المدارس

⁵³Abd Rahman, "Kebebasan Berpendapat: Tinjauan Filosofis Pasal 22 Deklarasi Kairo Tentang HakAsasi Manusia Dalam Islam," *AL HURRIYAH: Jurnal Hukum Islam* 3, no. 1 (2018), <https://doi.org/10.30983/alhurriyah.v3i1.531>.

⁵⁴Muh. In'amuzzahidin, "Konsep Kebebasan Dalam Islam," *At-Taqaddum* 7, no. 2 (2017): 259, <https://doi.org/10.21580/at.v7i2.1206>.

الدينية معلمها على كتابة الكتب المدرسية، وخاصة موضوعات الدرس المحلي، لاستخدامها كمواد تعليمية

قام المعلمون هنا منذ بضع سنوات بكتابة الكتب بأنفسهم لا سيما دروس المحتوى المحلي. ومنها دروس التربية الدينية الإسلامية، مثل الفقه، والعقيدة، والتاريخ الإسلامي، تولى المعلمون على تلك المواد باستخدام المقررات التي كتبت بأيديهم، وكذلك كتب اللغة الإنجليزية وأجهزة الحاسوب. وبدأنا هذا العام في تصميم كتب الرياضيات، ولم يتم تسجيل العلوم في ISBN و HAKI. وأعتقد لسنوات قادمة أنه من المهم الحصول على براءة الاختراع أو الحماية لهذه الملكية الفكرية.⁵⁵

تستند حقوق الملكية الفكرية من منظور قانوني إيجابي في إندونيسيا إلى القانون رقم 6 لعام 1989م بشأن براءات الاختراع من قبل رئيس جمهورية إندونيسيا في 1 نوفمبر 1989، والتي دخلت حيز التنفيذ في 1 أغسطس 1991م. وقد أنهى التصديق على قانون براءات الاختراع لعام 1989م نقاشًا طويلًا حول أهمية نظام البراءات ومنافعها للشعب الإندونيسي.

إن حماية الملكية الفكرية مهمة للغاية، لأنه كان هناك العديد من الانتهاكات في هيكل المجتمع الإندونيسي. وفيما يتعلق بتلك الانتهاكات التي حدثت، فإن البديل الذي قدمته الحكومة من خلال المديرية العامة للملكية الفكرية التابعة لوزارة القانون وحقوق الإنسان بجمهورية إندونيسيا قد شجع الجمهور والجهات التجارية في مجال الملكية الفكرية على تسجيل الموارد الطبيعية والبيولوجية لتحصل على الحماية القانونية لملكيتها الفكرية. ويعد تسجيل حقوق الملكية الفكرية شكلاً من أشكال الاهتمام

55 مقابلة مع م أ ج، 17 سبتمبر 2021.

الخاص من قبل الحكومة لزيادة الوعي العام بأن منتجات الملكية الفكرية لديها قيمة اقتصادية يمكن أن تحسن رفاهيتهم.

ويمكن تقريب الفهم من آلية حماية الملكية الفكرية في منظور الشريعة الإسلامية من خلال المقاصد الشرعية التي تغطي شكلين من أشكال الحماية، وهما؛ الحماية الإيجابية أو من ناحية الوجود والحماية السلبية أو من ناحية العدم. فأما الحماية الإيجابية (من ناحية الوجود) فهي تعويض اقتصادي حصل عليه مالك حقوق الملكية الفكرية من جهوده في إنتاج عمل فكري، حيث يضحى مبدعو الأعمال الفكرية بالكثير من الوقت والمال والطاقة والأفكار. وأما الحماية السلبية (من ناحية العدم) فهي تعويض عقابي على دفع المفسدة أو على انتهاك حقوق الملكية الفكرية، أو بعبارة أخرى يتم فرض العقوبات الجنائية والمدنية على حد سواء، على من يرتكب جرائم العلم والمعرفة. ولذلك، من المناسب أن تُمنح هذه الحماية لصاحب الإنتاج الفكري.⁵⁶

الخاتمة

تم تنفيذ حماية المعلمين في أداء واجباتهم في العديد من المدارس الدينية في المدارس الداخلة تحت بيئة المعاهد الإسلامية في بامكاسان في عدة نقاط، وهي: (1) الحماية القانونية، في مساعدة الدفاع القانوني، والتنشئة الاجتماعية التشريعية المتعلقة بواجبات ووظائف المعلمين . بالإضافة إلى ذلك، تبذل المدارس الدينية جهوداً مختلفة لمنع العنف من قبل المعلمين ضد الطلاب أثناء الدراسة من خلال تشكيل فريق تطبيق القواعد، بحيث لا يشارك المعلمون في معاقبة الطلاب الذين ينتهكون قواعد المدرسة،

⁵⁶ Akhmad Hulaify, "Perlindungan Dan Pengelolaan Hak Atas Kekayaan Intelektual Sebagai Harta Kekayaan Dalam Perpektif Ekonomi Islam," *Al-Iqtishadiyah: Jurnal Ekonomi Syariah Dan Hukum Ekonomi Syariah* 1, no. 1 (2014): 21-35.

مما أدى إلى متعة التعلم بدون عنف، وإنشاء التواصل الجيد مع أولياء الأمور، وبناء شخصية جيدة للطلاب.

وفي الوقت نفسه، يوفر مدير المدرسة من أجل تحقيق الحماية لمهنة التدريس فرصًا للمعلمين لتقديم الاقتراحات والانتقادات في اجتماع المعلمين الذي عقد كل أسبوع، وتوفير دخل مناسب، ومعاملة المعلمين بعدم التمييز بينهم لا سيما في إقامة قواعد المدرسة للمعلمين، وتوفير الفرص.

في حين أن حماية المعلمين على سلامتهم من حوادث العمل وصحتهم لم تتحقق بالكامل. ومع ذلك، قامت بعض المدارس الدينية بتأمين صحة معلميهما من خلال البحث عن بيئة عمل صحية.

أخيرًا، لم يتم تنفيذ حماية الملكية الفكرية للمعلمين بشكل كامل. ومع ذلك، كانت هناك جهود من قبل المدير لتشجيع المعلمين على الابتكار من خلال تأليف الكتب المدرسية بأنفسهم.

أوصت نتائج هذه الدراسة إلى المدارس الدينية بتوفير الحماية القانونية الكاملة، والحماية المهنية، والحماية من المخاطر المهنية، وحماية الملكية الفكرية بشكل ملائم، بحيث يؤدي المعلمون واجباتهم بشكل مهني وأفضل.

كما يتم توجيه التوصيات إلى الحكومة، لا سيما وزارة التربية والتعليم والثقافة لصنع القرارات التي توفر الحماية للمعلمين في أداء واجباتهم وتشجع رؤساء المدارس على توفير هذه الحماية.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 558-594
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5112>

Al-Manhâj al-Fiqhî ‘Inda Jamâ’ah “Muassah al-Da’wah al-Islâmiyah al-Indûnîsiyah” (Lembaga Dakwah Islam Indonesia) wa Âtsâruhu fî Istinbâth al-Ahkâm al-Syar’iyyah

Moh. Abdul Kholiq Hasan

UIN Raden Mas Said Surakarta, Indonesia
Email: hasanelqudsy@iain-surakarta.ac.id

Iskandar Dzulkarnain

Universitas Islam Indonesia, Yogyakarta, Indonesia
Email: solehandar@gmail.com

Muh. Nashirudin

UIN Raden Mas Said Surakarta
Email: muh.nashirudin@iain-surakarta.ac.id

Article history: Received: September 17, 2021, Accepted: December 24, 2021,
Published: December 27, 2021

Abstract:

Indonesian Islamic Da’wa Institution or Lembaga Dakwah Islam Indonesia (LDII) tends to embrace exclusivity and takfiri ideology. This article attempts to reveal the fiqh manhaj (method) that LDII employs and its influences on the legal decisions LDII takes by employing the library research method in descriptive qualitative type. The content analysis in tandem with document triangulation and structured interviews were applied to investigate the textual references LDII uses. The findings indicate that LDII employs a fiqh manhaj called manqul. This influences the law istinbath of LDII. Mandatory to remain in the congregation (jamaah), taking the oath of allegiance to the leader of the jamaah, the claim by the jamaah leader of the right to construct sharia law, license to lie, and

Author correspondence email: hasanelqudsy@iain-surakarta.ac.id
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takfiri are some controversial products of the manqul. With takfiri as the most dangerous product of the manqul, it befalls the government of Indonesia to watch over this jamaah.

Keywords:

LDII, Fiqh Manhaj, Manqul, Law Istimbath

ملخص:

اشتهرت مؤسسة الدعوة الإسلامية الإندونيسية أو ما يسمى (LDII) بتكفيرها على جميع المسلمين سوى جماعتهم. وتهدف هذه الدراسة لمعرفة أصل المنهج الفقهي عند هذه الجماعة وآثاره في استنباط الأحكام الشرعية عندهم. واعتمدت الدراسة على منهج البحث الوصفي التحليلي، بطريقة تحليل المحتوى أو ما يسمى (content analysis) وقد توصلت الدراسة إلى القول بأن أصل المنهج الفقهي عند هذه الجماعة هو ما يسمى بـ"المنقول". وإن لهذا المنهج الفقهي آثار كبير في استنباط الأحكام الشرعية عند هذه الجماعة. ومن بينها: لزوم الناس لجماعتهم، وجوب البيعة لإمامهم، وجوب الإنفاق، ادعاء إمامهم أن لهم حق في تشريع الأحكام، إباحة التقية أو الكذب على الآخرين. ومن أخطر هذه المخالفات تكفيرهم لجميع المسلمين ممن ليسوا من جماعتهم. لأن هذا الاستنباط له أثر سيئ لوحة الشعب، ولذا على حكومة إندونيسيا أن تتنبه دائما تجاه هذه الجماعة المنحرفة.

الكلمات المفتاحية:

هيئة الدعوة الإسلامية الإندونيسية، المنهج الفقهي، منقول، استنباط الأحكام

مقدمة:

إن جماعة "إسلام جماعة إندونيسيا" أو ما تعرف الآن باسم هيئة الدعوة الإسلامية الإندونيسية "LDII" وهي مختصرة من Lembaga Dakwah Islam

Indonesia من إحدى الفرق التي قد منعت أنشطتها سنة 1971 م من قبل الحاكم الأكبر (Jaksa Agung) إندونيسيا في قراره برقم kep-089/D.A/10/1971، وقد حذر عنها مجلس العلماء إندونيسيا بمنطقة جاكرتا وأصدر عنها الفتوى سنة 1979 وبيّن فيه بعض انحرافاتهما. 1 ولكن بعد مرور الزمان وخاصة بعد تحول أحوال السياسية الحادثة في جمهورية الأندونيسية بما يسمى بعهد الإصلاح (Reformasi)، ادعت هذه الجماعة بتغير مناهجها الدينية. 2 وتؤكد الجماعة الجديدة "LDII" بعدم علاقتها بجماعة "إسلام جماعة إندونيسيا" المنحرفة. ولديها منهج جديد تسمونه. 3 ولكن برغم ذلك، لا يزال يرى كثير من الناس 4 وبعض المهتمين بهذه الجماعة تجاه تلك التغييرات أنها شكلية فقط كسياسة لهذه الجماعة لمواجهة منتقديها. 5 ويعتبر بعض الباحثين أنها من ضمن الجماعة المنغلقة 6 والمتطرفة. 7 ولا تزال هذه الجماعة سرا تمارس

1 Dimiyati Sajari, "Fatwa MUI Tentang Aliran Sesat Di Indonesia (1976-2010)," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 39, no. 1 (2015): 44-62, <https://doi.org/10.30821/miqot.v39i1.38>.

2 Zaki Fadad Syarif Zain, "The Efforts of Islamic Splinter Movements to Withstand from Heretical Issue in Indonesia: Study of LDII, MTA and Jam'iyatul Islamiyah," *Jurnal Studi Sosial Dan Politik* 3, no. 2 (2019): 97-113.

3 Limas Dodi, "Metamorfosis Gerakan Sosial Keagamaan: Antara Polemik, Desiminasi, Ortodoksi, Dan Penerimaan Terhadap Ideologi Lembaga Dakwah Islam Indonesia (LDII)," *Al-Tahrir*, Vol. 17, No. 1 Mei 2017, pp. 239-242, DOI : 10.21154/altahrir.v17i1.880.

4 Wakhid Sugiyarto, ed., *Direktori Kasus-Kasus Aliran, Pemikiran, Paham, Dan Gerakan Keagamaan Di Indonesia* (Jakarta: Kementerian Agama RI Badan Litbang Dan Diklat Puslitbang Kehidupan Keagamaan Jakarta, 2010), 144-145. <https://adoc.pub/direktori-kasus-kasus-aliran-pemikiran-paham-dan-gerakan-kea.html>.

5 Budimansyah Budimansyah, "Gerakan Islam Jama'ah Tabligh Dalam Tinjauan Maqâshid Al-Dîn," *Al-'Adalah* 10, no. 3 (2012): 255-65.

6 Finsa Adhi Pratama, "TINJAUAN 'URF TERHADAP TRADISI MEMBACA NASIHAT PASCA SHOLAT JUMAT (Studi Kasus Pada Jamaah Lembaga Dakwah Islam Indonesia (LDII) Di Desa Lambusa Kecamatan Konda Kabupaten Konawe Selatan)," *Al-'Adl* 13, no. 1 (2020): 27-40, <https://doi.org/http://dx.doi.org/10.31332/aladl.v13i1.1728>.

7 Fauziah Fauziah, "Upaya Pemerintah Dan Masyarakat Dalam Menyikapi Kegiatan Lembaga Dakwah Islam Indonesia (LDII) Di Kota Pontianak," *Jurnal Al-*

مفاهيمهم الدينية بتكفير غيرهم من المسلمين ممن ليسوا من جماعتهم. وهذه المفاهيم تكفيهم أن تضم من ضمن الجماعات المتشددة.8

وقد انتشرت هذه الجماعة أنحاء إندونيسيا، بل إلى خارج إندونيسيا،9 ودخل فيها كثير من الناس جهلا وتقليدا، حتى قيل إن عددهم بلغ أربعة عشر ونصف مليون نسمة.10 واشتهرت عند الناس، أن هذه الجماعة تقوم عقيدتها بتكفير جميع المسلمين سوى أعضائهم أو من دخل في جماعتهم، وأوجبت على الرعية البيعة والسمع والطاعة للإمام، وادعوا أن لإمامهم الإسناد المتصل إلى رسول الله ﷺ ولا يصح أخذ أي العلم من علوم الدين إلا من طريق إمامهم، وأوجب الإنفاق 10% من كسبهم شهريا للإمام، وغير ذلك من الانحرافات.11

وهذه الجماعة قد أسست بزعمهم بداية في سنة 1941 م، بعد رجوع مؤسسها الأول وهو نور حسن عبدة لوبيس من مكة المكرمة، وقد درس هناك حوالي عشر سنين. وتغيرت أسماء هذه الجماعة مرة بعد مرة سياسة عندهم، ففي أول

Hikmah 9, no. 2 (2015): 218-31, <https://doi.org/https://doi.org/10.24260/al-hikmah.v9i2.325.g275>.

8 Dwi Aprilianto and Salman Zahidi, "Tarjih Maqashidi of Granting Remission for Terrorist Convict in Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 2021): 77-95, <https://doi.org/10.19105/al-lhkam.v16i1.4517>.

9 DPD LDII Surabaya, "Legalitas Ormas LDII," n.d.

10 Tempo.co, "Ahmadiyah Diminta Mencontoh LDII," *TEMPO Interaktif, Surabaya* (Surabaya, 2011).

11 M. Amin Djamaluddin, *Kupas Tuntas Kesesatan Dan Kebohongan LDII (Jawaban Atas Buku Direktori LDII)* (Jakarta Pusat: Lembaga Penelitian dan Pengkajian Islam (LPPI), 2008), 14-26.

12 Sulaiman Sulaiman, "Radikalisme Kelompok Keagamaan Dalam Kontelasi Kebangsaan Di Indonesia (Studi Kasus LDII Di Kota Kediri, Jawa Timur)," *Laporan Penelitian* (Jawa Timur, 2016).

التأسيس كان اسمه "دار الحديث" أو "جماعة قرآن حديث" أو "إسلام جماعة"، ثم
YAKARI ثم LEMKARI، وأخيرا LDII.13

ومن خلال قراءة الباحث ظهرت أن لهذه الجماعة المنهج الفقهي الغريب
حيث يقوم هذا المنهج بتلقي العلوم ونيلها عن إمامهم فقط، وتقليده واقتصار على
ذلك، ثم رفض كل ما جاء من خارج هذه الجماعة من العلوم الشرعية ولو كانت
صوابا. وقالوا: إنه لا يصح العمل إلا إذا كان العلم مأخوذ من إمامهم، وهذا المنهج
سموه ب"المنقول".14 وزعموا أن لإمامهم السند المتصل إلى رسول الله ﷺ، وهو
صاحب السند الوحيد في العالم.15 ولهذا المنهج "المنقول" آثار كبيرة في استنباط
الأحكام الشرعية عندهم، ومن أمثلة ذلك أنهم أوجبوا البيعة والطاعة لإمامهم16
ولزوم جماعتهم وتكفير من ليس منهم، والإنفاق لإمامهم مقدرا -حسب أموالهم-
شهريا. لأن هذا البيان منقول عن إمامهم، وهكذا في زعمهم.

وقد كثرت الدراسات السابقة حول جماعة "LDII"، منها ما يتعلق بنشأة
الجماعة وتطورها ومعتقداتها،17 وأصول أفكارها الدينية،18 وعن هيمنتها على

13 Ottoman, "Asal Usul Dan Perkembangan Lembaga Dakwah Islam Indonesia (L D I I)," *Tamaddun: Jurnal Kebudayaan Dan Sastra Islam* 14, no. 2 (2014): 147-62, <https://doi.org/https://doi.org/10.15642/teosofi.2018.8.1.1-27>.

14 Darman Fauzan Dhahir, "Manqul: Communicating the Message of God To the Diverse Islamic Disciples," *Al-Qalam* 24, no. 2 (2018): 202, <https://doi.org/10.31969/alq.v24i2.523>.

15 Murtono Martono, "Konsep Manquul Dalam Perspektif Lembaga Dakwah Islam Indonesia (LDII)" (Surakarta, 2014).

16 Faizin Faizin and Wan Zailan Kamaruddin Wan Ali, "Konsep Imamah Dan Baiat Dalam Pemikiran Lembaga Dakwah Islam Indonesia Dilihat Dari Perspektif Siyasa Syari'ah," *Al-Risalah* 15, no. 01 (December 2018): 1, <https://doi.org/10.30631/al-risalah.v15i01.374>.

17 Ottoman, "Asal Usul Dan Perkembangan Lembaga Dakwah Islam Indonesia (L D I I)."

18 Faizin and Wan Ali, "Konsep Imamah Dan Baiat Dalam Pemikiran Lembaga Dakwah Islam Indonesia Dilihat Dari Perspektif Siyasa Syari'ah.", Faizin Faizin, "Pemikiran Lembaga Dakwah Islam (LDII): Analisis Praktik Keagamaan Dan

بعض القطع الشعبي،¹⁹ ومعاملة الجماعة تجاه الآخرين من المسلمين،²⁰ ودور الجماعة في نشر الدعوة،²¹ والنزاعات بين الجماعة مع طرف آخر،²² وعن ادعاء الجماعة بالتغيرات في مناهجها الدينية،²³ وبرغم ذلك كله، لم نعثر الدراسة عن منهج الفقه التي تتبعها الجماعة مع أن هذا المنهج الفقهي يبدو أن له أثر كبير في استنباط بعض الأحكام الشرعية لتلك الجماعة.

وهذه الدراسة تحاول معرفة ما هو أصل المنهج الفقهي التي تتبناه جماعة "LDII"؟، وما هي آثار ذلك المنهج في استنباط الأحكام الشرعية عند الجماعة؟ و ذلك، برغم وجود ادعاءات من أن الجماعة قد غيرت مفاهيمها الدينية وأنها لا صلاة مع جماعة "إسلام جماعة إندونيسيا"،²⁴ ولكن حسب التقارير العلمية و تصريحات من بعض أعضاء الجماعة الذين قد تابوا منها ورجعوا إلى السنة، تظهر أن الجماعة "LDII" مازالت تتمسك ببعض مفاهيمها الدينية التي لها صلة بجماعة "إسلام جماعة

Pengaruhnya Di Kabupaten Kerinci," *Islamika* 16, no. 2 (2016): 59-78, <https://doi.org/https://doi.org/10.32939/islamika.v16i2.124>.

19 Limas Dodi, "Ideologi Agama Dalam Praktik Dominasi Antara LDII Versus Non-LDII Di Jombang," *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam* 6, no. 1 (2018): 1-8.

20 Adi Permana Sidik and Diah Amalia, "Pola Komunikasi Anggota LDII Dengan Non-LDII Di Desa Manteos Kecamatan Cobleng Bandung," *Al-Tadabbur: Jurnal Kajian Sosial, Peradaban Dan Agama* 5, no. 2 (2019): 149-59.

21 Sulasmi Sulasmi, "Peranan Lembaga Dakwah Islam Indonesia (Ldii) Desa Dandang Sebagai Lembaga Sosial Masyarakat Di Bidang Dakwah (Masjid Nurul Barokah)" (IAIN Palopo Sulawesi Selatan, 2016).

22 Limas Dodi, "SENTIMENT IDEOLOGY: MEMBACA PEMIKIRAN LEWIS A. COSER DALAM TEORI FUNGSIONAL TENTANG KONFLIK (Konsekuensi Logis Dari Sebuah Interaksi Di Antara Pihak Jamaah LDII Dengan Masyarakat Sekitar Gading Mangu-Perak-Jombang) Antara Pihak Jamaah LDII Dengan Masyarakat," *Jurnal Al-'Adl* 10, no. 1 (2017): 104-24.

23 Limas Dodi, "Metamorfosis Gerakan Sosial Keagamaan: Antara Polemik, Desiminasi, Ortodoksi, Dan Penerimaan Terhadap Ideologi Lembaga Dakwah Islam Indonesia (LDII)," *Al-Tahrir: Jurnal Pemikiran Islam* 17, no. 1 (2017): 227, <https://doi.org/10.21154/altahrir.v17i1.880>.

24 Dewan Pimpinan Pusat LDII, "Surat Keterangan Fatwa MUI Terkait LDII," n.d.

إندونيسيا" المنحرفة.²⁵ وأخرج مجلس العلماء الإندونيسي توصيته تجاه هذه الظاهرة.²⁶ وهذا ليس عجباً لأن "LDII" وليدة جماعة "إسلام جماعة إندونيسيا" وهي تعتبر امتداداً لها وإن كانت شكلها الظاهرة قد تغيرت مما كانت عليها سابقاً. أو بعبارة أخرى مازالت هناك بعض سمات جماعة "إسلام جماعة إندونيسيا" التي تحتضنها جماعة "LDII"، بشكل قريب أو بعيد²⁷ وما زالت هناك أمور مثير للجدال حول حقيقة هذه الجماعة ومفاهيمها الدينية.²⁸

منهج البحث

تعتمد هذه الدراسة على منهج البحث الوصفي التحليلي، بطريقة تحليل المحتوى أو ما يسمى بـ (content analysis). وذلك باستقراء وجمع البيانات الأساسية المتمثلة في المؤلفات والمنشورات التي أصدرتها الجماعة. ثم جمع البيانات الثانوية من كل المعلومات التي لها صلة بموضوع البحث سواء كان من المراجع المكتبية والمجلات المحكمة والمعلومات من التائبين من هذه الجماعة. ثم عرض تلك البيانات الأساسية والثانوية وإجراء دراسة وصفية تحليلية بالاستنباط والاستنتاج تلك البيانات ونقدها واستنتاجها وعرضها بصورة علمية.

25 Tison Haryanto, *Teologi Lembaga Dakwah Islam Indonesia (LDII) Dalam Literasi Paham Radikalisme Di Indonesia*, ed. Sirajuddin and Abudllah Idi (Bengkulu: CV. Zigie Utama, 2020), 190.

26 Dewan Pimpinan MUI, "Taushiyah Dewan Pimpinan MUI Terhadap Pelaksanaan-Paradigma Baru LDII" (Jakarta Pusat, 2021).

27 Muh. Hilmi, "Pergulatan Komunitas Lembaga Dakwah Islam Indonesia Di Kediri Jawa Timur" (Universitas Indonesia, 2012).

28 Dodi, "Metamorfosis Gerakan Sosial Keagamaan: Antara Polemik, Desiminasi, Ortodoksi, Dan Penerimaan Terhadap Ideologi Lembaga Dakwah Islam Indonesia (LDII)."

المباحث والنتيجة

نبذة عن مؤسس "إسلام جماعة إندونيسيا"

مؤسس هذه الجماعة هو نور حسن عبيدة لوبيس. وكان اسمه الأصلي (عندما كان صغيراً) هو مديخال أو مديغال أو محمد مديغال، واسم أبيه هو عبد العزيز بن طاهر بن إرشاد. ولد في قرية باعي - بورواساري - كديري - جاوى الشرقية - إندونيسيا سنة 1915 م. (وقال منذر طاهر وهو ابن أخيه: أنه ولد في سنة 1908 م). 29

درس مديغال في معهد سيويلو - عانجوك - جاوى الشرقية، وهذا المعهد قريب من طريقة التصوف. ثم انتقل إلى معهد جامسارين - سولو - جاوى الوسطى، ومكث هنا في مدة سبعة أشهر فقط. وقال مدير هذا المعهد وهو كياهي حاج علي دركة: "أن مديغال ليس له أي امتياز في هذا المعهد إلا أنه يحبّ عمل الابتداع". كان قد درس أيضا في معهد ليربويو - كديري وتبو إيرنغ - جومبانغ - جاوى الشرقية. 30

وفي سنة 1929 م ذهب إلى مكة لأداء الحجّ. وبعد رجوعه إلى إندونيسيا، غيّر اسمه (كما هو العادة في إندونيسيا حينذاك) إلى الحجّ نور حسن، وأضاف بعد هذا الاسم ب"العبيدة" فأصبح اسمه نور حسن العبيدة. أما اسمه الأخير وهو لوبيس (Lubis)، فهذا من اختراع تلاميذه، وهو اقتصار من كلمة luar biasa. ولاظهار

29 Hilmi Muhammadiyah, "Renewal Paradigm of The LDII Community in Kediri," *Al-Albab* 8, no. 1 (2019): 119, <https://doi.org/10.24260/alalbab.v8i1.1119>.

30 Ottoman, "Asal Usul Dan Perkembangan Lembaga Dakwah Islam Indonesia (L D I I)."

مكانته بين الناس أضيف في الأول بـ"إمام" وفي الأخير بـ"أمير". فصار اسمه: إمام حاج نور حسن العبيدة لوبيس أمير. 31
ففي سنة 1933 م ذهب إلى مكة لأداء الحج مرة ثانية. ودرس هنا صحيح البخاري وصحيح مسلم عند الشيخ عمر حمدان المغربي. ودرس أيضا في معهد دار الحديث الذي وقع بجانب المسجد الحرام. واسم هذا المعهد هو الذي سيكون اسم معهده الأول بعد رجوعه إلى أرض إندونيسيا (وهو معهد دار الحديث ببورينجان - كديري - جاوى الشرقية). 32

تاريخ تأسيس هذه الجماعة

الكلام عن تاريخ تأسيس هذه الجماعة جدير لنا أن نجعله في الروايتين. الرواية الأولى وهي مروية عن أعضاء هذه الجماعة وتناقلت هذه الرواية من جيل إلى جيل حتى يومنا هذا. ولصحة هذه الرواية فيها نظر. والرواية الثانية وهي مروية عن بعض أناس ليسوا من أعضاء هذه الجماعة الذين قد بحثوا وفتشوا حقيقة هذه الجماعة، وهم علماء أهل السنة في إندونيسيا المتجردين عن الهواء - إن شاء الله -، وهي أقرب إلى الصواب.

31 Budimansyah, "Gerakan Islam Jama'ah Tabligh Dalam Tinjauan Maqâshid Al-Dîn.", Muhammadiyah, "Renewal Paradigm of The LDII Community in Kediri.", Fauziah, "Upaya Pemerintah Dan Masyarakat Dalam Menyikapi Kegiatan Lembaga Dakwah Islam Indonesia (LDII) Di Kota Pontianak."

32 Hilmi, "Pergulatan Komunitas Lembaga Dakwah Islam Indonesia Di Kediri Jawa Timur.", Muttaqin Al-Zam Zami, "Kontributor Pemikiran Hadis Di Indonesia: Studi Kajian Hadis Di Indonesia Dari Perorangan Hingga Lembaga," MISYKAT: Jurnal Ilmu-Ilmu Al-Quran, Hadist, Syari'ah Dan Tarbiyah 4, no. 1 (2019): 145, <https://doi.org/10.33511/misykat.v4n1.145-162.>, Sarifudin Zuhri, "Proses Perjudohan Dan Kriteria Kafa'Ah Dalam Perkawinan Anggota Ldii Desa Medaeng Kecamatan Waru Kabupaten Sidoarjo," Al-Hukama: The Indonesian Journal of Islamic Family Law 8, no. 1 (2018): 53-86, <https://doi.org/10.15642/alhukama.2018.8.1.53-86>.

الرواية الأولى تقول: إن في سنة 1940 م حدث الحرب العلمية الثانية، فاضطرّ المقيمون في مكة إلى الرجوع إلى بلادهم، وكان منهم نور حسن ونور أسنوي، 33 ففي تلك المراجع أنه كان يتذكر أسرته والمسلمين في إندونيسيا عموماً حيث إنهم كانوا في ضلال، فرجع إلى إندونيسيا بقصد دعوتهم "الأمر بالمعروف والنهي عن المنكر" امتثالاً لقوله تعالى: { يَا أَيُّهَا الَّذِينَ آمَنُوا قُوا أَنفُسَكُمْ وَأَهْلِيكُمْ نَارًا } [التحريم: 6]، وذلك في عام 1940 م. وبعد رجوعه إلى إندونيسيا كان يعلم الناس أحاديث رسول الله كما يعلمهم فنون الدفاع عن النفس والقتال الذي كان يتعلمها من أبيه عبد العزيز. وفي أوائل دعوته كان يدعو أقاربه وأصدقائه أولاً، 34 فمنهم من يقبل ومنهم من يرفض، ومن استجاب لدعوته: نور أسنوي. وفي سنة 1943 م تزوج نور حسن بأرملة غنية، اسمها السونتيكة بنت الحاج علي بنت الحاج يوسف. واستفاد نور حسن من أموال السونتيكاه للدعم في دعوته. وبويع نور حسن في سنة 1941 م كأمرير المؤمنين في إندونيسيا. 35 فقبل إنه قد بايعه اثنان، وقيل ثلاثة، وقيل خمسة. 36

ثم بنى نور حسن معهداً في بانغي سنة 1941 م، وفي عام 1951 م أنشأ فرعاً لمعهد الأول بحي بورينجان (Burengan) بمدينة كديري، 37 وسمّاه بدار الحديث ولقب نفسه بأمرير المؤمنين، فجعل الناس يتكلمون في أمره. وكانت الدعوة شاقّة عليه

33 هو زميل نور حسن خلال مكثه في مكة وتزوج بأخت نور حسن، كما ذكر إمام نسائي (Alif Harisman) صاحب الكتاب *Ibu Mengapa Kau Kafirkan Aku* للطبعة: Pustaka Al Kautsar Jakarta، سنة 2016 م. و إمام نسائي هذا أحد التائبين الذي خرج من هذه الجماعة سنة 2010 م.

34 Muhammadiyah, "Renewal Paradigm of The LDII Community in Kediri."

35 وبعد تنبع الأخبار عن أحوال هذه الجماعة تبين للباحث أن هذه البيعة لم تعقد بعد، بل إنه كذب وافترأ مؤسسها نور حسن عبادة لاختداعه لأتباعه، ليظنوا أن هذه البيعة التي عقدها هي أول بيعة عقدت في إندونيسيا وأنها موجودة معقودة في سنة 1941 م من قبل استقلال هذه الدولو سنة 1945 م - كما زعموا-.

36 Anonim, *Cinta Alam Indonesia (CIA) (Keimanan LDII, 2001)*, 112.

والنشرات التي أصدرها إمامة هذه الجماعة كل سنة. وعلى كل أعضاء هذه الجماعة الاستماع لهذه المقالة سنوياً تقوية لعقيدتهم.

37 Zami, "Kontributor Pemikiran Hadis Di Indonesia: Studi Kajian Hadis Di Indonesia Dari Perorangan Hingga Lembaga."

لأن الناس قد حَبَّب إليهم البدع والخرافات والتخيلات وقراءة الكتب المصطنعة (kitab karangan).³⁸ وقالوا في شأن نور حسن حينئذ: أستاذ مجنون أو وهَّابي أو معتزلي أو خارجي أو دجال وغير ذلك.

ولما رأى أكثر الناس قد رفضوا عن دعوته، أيس ونوى أن يذهب مرّة أخرى إلى مكة. ولكن نور أسنوي ومن معه من المستجيبين لدعوة نور حسن نصحوه ألا يذهب إلى مكة وأن يستمر في دعوته، فزاد أتباعه كالحاج رفاعي ومحمد صفوان وغيرهما. وقد كان يشارك في جهاد المستعمرين اليابانيين في سنة 1944 م وجهاد الهولنديين سنة 1948 م. وفي هذه المرحلة كانت دعوة نور حسن محصورة في ثلاث أماكن: حي بانجي بمدينة كديري وما حوله، وحي موجو دوور بمدينة جومبانج، وحي غادينج ماعو بمدينة جومبانج. وفي هذه المرحلة قالوا عنه إنه يأتي بدين جديد. ونور حسن من أشد الناس تمسكا بالقرآن والحديث، وأما أغلب علماء جاوا حينذاك فهم يتمسكون بالكتب المصطنعة.³⁹

وعندما اشتد غضب الناس عليه، منع نور حسن من إلقاء المحاضرات. فاختر العزلة هو وأهله في حافة الغابة، وأنهى العزلة في سنة 1949 م. فمن سنة 1950 م إلى 1960 م بدأ بالدعوة مرة ثانية، وغيّر أسلوب دعوته من أسلوب الرفق إلى أسلوب الشدة والجهر. فصار كثير من العلماء يستيقظون من غفلتهم، ويعرفون أن أعمالهم لم تتوافق مع القرآن والسنة.

38 زعمت هذه الجماعة بأن الكتب سوى القرآن والحديث هي بمثابة الكتب المصطنعة التي لا تجوز قرائتها ولا تعليمها.

39 Sulaiman, "Radikalisme Kelompok Keagamaan Dalam Kontelasi Kebangsaan Di Indonesia (Studi Kasus LDII Di Kota Kediri, Jawa Timur).", Faizin and Wan Ali, "Konsep Imamah Dan Baiat Dalam Pemikiran Lembaga Dakwah Islam Indonesia Dilihat Dari Perspektif Siyasa Syari'ah."

بدأت دعوة نور حسن تنتشر إلى مناطق أخرى كمدينة كديري وتولونج أغونج وسورابايا وسيدوارجو ولاموعان وكلاطين ومانادو وغيرها. ثم انتقل نور حسن وزوجته إلى حي بوريعان في كديري سنة 1953م، واستأجر بيتا هناك مدة ثلاث سنوات، وقبلت دعوته طائفة من الناس، مثل: كاسون من باعسال وتاسريفين من بانديان ومصيبون من بوريعان ونور الدين وصفوان ونور أحمد وأحمد صالح، ودائم، وأبو يامين، وغيرهم.

ولما رأى ازدياد الأتباع بهذا الأسلوب فتح دورة القرآن للمرة الأولى سنة 1954 م في بوريعان. وكان الحاضرون أربعين شخصا، ثلاثين من الرجال وعشرة من النساء. وفتح دورة القرآن للمرة الثانية لهدف زيادة الفهم سنة 1956 م في سورابايا، وكان الحاضرون مئة شخص. وفي أثناء الدورة للمرة الثالثة في حي كالي أوين - بليماهان - كديري، وحضر فيها ثلاث مئة شخص، سنة 1956م، قبض نور حسن من قبل الشرطة بتهمة إحداث الفوضى. وسجن عدّة أيام ثم أطلق لعدم وجود البينة. وبعد ذلك قام لمثل هذه الدورة في كلّ شهرين. 40

وفي سنة 1960م بعد أن حضر حفل يوم استقلال إندونيسيا في جاكرتا، رجع إلى غادينج ماعو ليواصل درس صحيح البخاري، وكان المجلّد الأخير متعلقا بالإمامة والبيعة والطاعة، فبدأ الناس يبائعونه وطلبوا بأن يكون إماما لهم. علما بأن هذه البيعة ليست بطلب من نور حسن، بل لأنهم علموا أن البيعة والإمامة من ضرورة هذا الدين الذي يجب على المسلمين تطبيقه والعمل به. 41 فانطلاقاً من هذا، انتشرت دعوة نور حسن إلى أنحاء إندونيسيا، بل إلى خارج البلاد. ودخل جمّ غفير

40 Anonim, *Cinta Alam Indonesia (CIA)*, 131.

41 Ottoman, "Asal Usul Dan Perkembangan Lembaga Dakwah Islam Indonesia (L D I I)."

من الناس إلى هذه الجماعة وصاروا من أتباع نور حسن جيلا بعد جيل إلى يومنا هذا. وهذه القصة معروفة ومشهورة بين أعضاء هذه الجماعة.42

أما الرواة الثانية فتحكي لنا، إن مديغول بعد رجوعه في سنة 1940م من مكته بمكة المكرمة حوالي عشر سنين، بدأ عمل دعوته الأول وهو نشر علم المنقول (منقول – مسند – متصل). وهو العلم الذي نقل وروي من مديغول من معاني القرآن والأحاديث، ويعرف هذا المنهج بـ"قرآن حديث منقول". وفي هذه السنوات علم أيضا علوم القراءات والدفاع عن النفس. وحبب إليه زواج النساء لا سيما الثيبات الأثرياء. وحتى إنه تزوج بامرأة مادورية قبل وفاته بأربعة أشهر، وعمرها 15 سنة.

ومن عاداته في هذه السنوات أنه قام بتكفير كثير من العلماء الذين ليسوا من جماعته ويشتمهم بأنواع الشتم الخبيث، وشتتم أيضا الإمام الغزالي والشيخ بويها مكا. وكثيرا ما حرق كتب التراث (kitab kuning) المعروفة عند علماء جاوى، وشتماها بالكتب المقترفة (kitab karangan) التي لا يصح الإعتماد عليها عنده. وقال إن هذه الكتب التي ألفتها أناس: ضالة مضلّة، وقام بتحريق هذه الكتب أمام تلاميذه.

أقام نور حسن بعض الدروس في بعض معاهده: في جومبانج – كديري وفي ساباعان جاكرتا (دروس دار الحديث / Pengajian Darul Hadist) إلى أن لقي بإمام جماعة المسلمين حزب الله واسمه: ولي الفتح.43 ونال منهج الإمامة والبيعة لمرة أولى منه. وقد بايع نور حسن هو وجماعته ولي الفتح سنة 1953 م في جاكرتا.44

42 Zain, "The Efforts of Islamic Splinter Movements to Withstand from Heretical Issue in Indonesia: Study of LDII, MTA and Jam'iyatul Islamiyah."

43 ولي الفتح كان هو رئيس شؤون السياسة بوزارة الشؤون الداخلي بجمهورية إندونيسيا سنة 1953 م في عصر سوهارنو. انظر: Dodi, "Metamorfosis Gerakan Sosial Keagamaan: Antara Polemik, Desiminasi, Ortodoksi, Dan Penerimaan Terhadap Ideologi Lembaga Dakwah Islam Indonesia (LDII)."

44 وبعد تتبع البيانات، تبين أن هذه البيعة (سنة 1960) هي البيعة الأولى التي أقام بها نور حسن، وأما ادعاء نور حسن أنه قد بوع في سنة 1941 فهذا غير صحيح. عرف نور حسن منهج الإمامة والبيعة في سنة 1960 م بعد أن لقي رجلا اسمه ولي الفتح سنة 1953م. ولم يكن لنور

وكان بامبانج إيراوان 45 من أشخاص الذين يبايعون ولي الفتح سنة 1960 م بجاكرتا.

من خلال هذه السنوات إلى أن تصل إلى سنة 1960 م قام نور حسن بتقوية البناء وأسس العقيدة في هذه الجماعة. وحدثت حينئذ البيعة 46 من مئات أشخاص من أتباع نور حسن بعد أن درسوا القرآن والحديث بطريقة "منقول"، وطلبوا منه بأن يكون إماما لهم. وأقروا بأن يطيعوا ما أمره الإمام بعد أن يصفح يد هذا الإمام بنطق كلمة "سمعنا وأطعنا ما استطعنا". وكان بامبانج إيراوان من أتباعه البارزين حيث استطاع أن ينشر ويدعو كثيرا من الناس لاتباع هذه الجماعة، مثل نور هاشم ورادين إيدي ماسيادي وموديونو وهاشم رفاعي.

وكان تطور هذه الجماعة لا ينفك عن رعاية جنرالين وتحت إشرافهما، وهما جنرال سوجونو هومورداني وجنرال علي مورتوبو. وهذه الرعاية بقرار BAPILU SEKBER GOLKAR: SK No. KEP. 2707/BAPILU/SKB/1971 إلى أن منعت حركة هذه الجماعة في جميع ولاية جاوى الشرقية من محكمة العليا للقضاء

حسن معرفة وعلم بقضايا البيعة والإمارة والجماعة قبل هذا. وكان من سياسة سوكارنو أن أمر بإنشاء جماعة منافسة لـ DI TII باسم "جماعة المسلمين حزب الله". انظر:

Hartono Ahmad Jaiz, "Aliran Dan Paham Sesat Di Indonesia" (Jakarta Timur: Pustaka Al-Kautsar, 2012), 78.

[https://ia600607.us.archive.org/30/items/BukuAliranDanPahamSesatDiIndonesiaLDII_201312/Buku Aliran dan paham sesat di Indonesia_LDII.pdf](https://ia600607.us.archive.org/30/items/BukuAliranDanPahamSesatDiIndonesiaLDII_201312/Buku%20Aliran%20dan%20paham%20sesat%20di%20Indonesia_LDII.pdf).

هو أحد التائبين من هذه الجماعة ورجع إلى السنة، وكان ذو شأن ودور عظيم في نشر هذه الجماعة إلى أنحاء إندونيسيا. وبعد خروج 45 بامبانج إيراوان من هذه الجماعة اشتغل نفسه بالدعوة ونشر الحرفات هذه الجماعة وبينها للناس. وهو من المصادر الأساسية في تأليف كتاب Bahaya Islam Jama'ah Lemkari LDII (Lembaga Penelitian dan Pengkajian Islam) الذي طبعه LPPI (Lembaga Penelitian dan Pengkajian Islam)

Roy Grafika Panataran، وهذه البيعة قامت بعد أن نقض نور حسن بيعته من ولي الفتح سنة 1960 م. انظر: 46
Firqa Islâm Jama'âh: 'Ard Wa Naqd" (Islamic University of Madinah, 2017), 50 .

بجاوى الشرقية، وهذا بسبب ضغط من مجلس العلماء الإندونيسي برئاسة كياهي الحاج
المصباح.47

وعندما منعت هذه الجماعة بصدور هذا الحظر، غيروا اسمها في 3 يناير
1972 م باسم YAKARI اختصاراً من Yayasan Lembaga Karyawan Islam.
وبعد ذلك أصيب نور حسن بألم شديد الذي يسببه بعدم القدرة على الكلام. وفي
سنة 1974 م ذهب إلى مكة للعلاج. وفي سنة 1981 م غيروا اسم YAKARI ب
LEMKARI اختصاراً من Lembaga Karya Dakwah Islam. ففي سنة 1982 م
توفي نور حسن وكان عمره 74 سنة. ودفن في راوا غابوس بمدينة كراوانج ، جاوى
الغربية. فصار ابنه عبد الظاهر بن نور حسن إماماً لهم بعده وبابوعوه. وفي نوفمبر
1990 م بناءً على قرار مؤتمر LEMKARI الرابع غيّرُوا الاسم مرّة أخرى ب LDII
اختصاراً من Lembaga Dakwah Islam Indonesia.48

وكل هذه التغييرات بقصد تخديع الناس ومحو الصورة القديمة السيئة عند
الناس وحتى يقبل الناس بدعوة هذه الجماعة وانتشرت بالسهولة. وبعد تغيير
LEMKARI ب LDII (وهذا باقتراح جنرال روديني)49؛ ازدادت هذه الجماعة قوة
وتساعية وحتى دخلت دعوة هذه الجماعة إلى سينغافورا وملايزيا والمملكة العربية
السعودية و أمريكا وأوروبا وأستراليا.50

47 Budimansyah, "Gerakan Islam Jama'ah Tabligh Dalam Tinjauan Maqâshid Al-Dîn.", 4

48 Panataran, "Firqah Islâm Jama'âh: 'Ard Wa Naqd.", 48, Faizin and Wan Ali, "Konsep Imamah Dan Baiat Dalam Pemikiran Lembaga Dakwah Islam Indonesia Dilihat Dari Perspektif Siyasa Syari'ah."

49 Sulaiman, "Radikalisme Kelompok Keagamaan Dalam Kontelasi Kebangsaan Di Indonesia (Studi Kasus LDII Di Kota Kediri, Jawa Timur).", Faizin and Wan Ali, "Konsep Imamah Dan Baiat Dalam Pemikiran Lembaga Dakwah Islam Indonesia Dilihat Dari Perspektif Siyasa Syari'ah."

50 Dhahir, "Manqul: Communicating the Message of God To the Diverse Islamic Disciples."

وتوفي نور حسن يوم السبت 13 مارس 1982 م (وكان عمره 74 سنة) في جيريون إثر حادث مروري عندما أراد أن يحضر حملة GOLKAR لانتخاب الرئيس بجاكرتا. 51 ودفن في راوا غابوس - كاراوانج - جاوا الغربية. 52 وبموته تتولى الرئاسة هذه الجماعة وتغيرات أسمائها تباعا لأحوال السياسة ومصالح الجماعة 53 تفاديا من قبل منتقديها. 54 ومن الأمور التي مازالت نالت اهتمام الباحثين والمهتمين لهذه الجماعة هي ما يتعلق بأصول منهجها الفقهي، ولذا أجريت هذه الدراسة لأجل ذلك.

منهج الاستنباط عند جماعة "إسلام جماعة إندونيسيا" أو ما يسمى (LDII)

وضع نور حسن منهجا فقهيا غريبا في هذه الجماعة حيث إنه لا يتلقى العلم إلا عن طريق نور حسن فقط، وأن العلوم التي تؤخذ من غيره فهي باطلة لا تصح،

51 Ottoman, "Asal Usul Dan Perkembangan Lembaga Dakwah Islam Indonesia (LDII)."

52 Hartono Ahmad Jaiz, ed., *Bahaya Islam Jamaah Lemkari LDII* (Lembaga Penelitian dan Pengkajian Islam (LPPi), 2008), 166.

53 Muhammad Taufiq, "A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text," *Millati: Journal of Islamic Studies and Humanities* 5, no. 2 (2020): 121-28, <https://doi.org/10.18326/mlt.v5i2.121-128>; Abdul Jalil and Muhammad Taufiq, "Al-Âtsâr Al-Mutarattibah 'Âla PERPPU (Lawâih Al-Hukûmiyyah Al-Badaliyyah) Min Al-Munazhhamât Al-Mujtama'Iyyah Raqm 2 Li 'Âm 2017 Dlidida Wujûd Hizb Al-Tahrîr Indûnîsiyâ Min Manzhûr Saddi Al-Dzarî'Ah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 144, <https://doi.org/10.19105/al-ihkam.v14i1.1982>; Ahmed Salem and Muhammad Taufiq, "Manâfidu Al-Muharramât Ilâ Muntijâti Al-Halâl: "Dirâsah Tahlîliyah Fî Dhaw'i Ma'âyir Majma' Al-Fiqh Al-Islâmi Al-Dawli Wa Al-Ma'âyir Al-Mâlayziah"," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 230-50, <https://doi.org/10.19105/AL-LHKAM.V16I1.3050>.

54 Zain, "The Efforts of Islamic Splinter Movements to Withstand from Heretical Issue in Indonesia: Study of LDII, MTA and Jam'iyatul Islamiyah."

وهذا المنهج الفقهي يسمونه بعلم "المنقول".⁵⁵ وهذا المنهج الغريب مخالف لما قرره العلماء حيث إنه لا يوجد دليل شرعي يوجب الفرد أن يتلقى العلم عن طريق شيخ معين دون غيره، والعكس صحيح.⁵⁶ بل في القضايا الفقهية لا يجب التقييد بمذهب معين.⁵⁷

وقد ورد في كتاب أسئلة وأجوبة لهذه الجماعة (LDII DIREKTORI)، المراد بـ"المنقول" هو نقل العلم من الشيخ إلى تلميذه، أي تعلم التلميذ الحديث مختصراً من الشيخ الذي عنده السند المتصل إلى رسول الله ﷺ.⁵⁸ ولا بدّ في تطبيق هذا المنهج الفقهي أن يكون منقولاً من عند نور حسن عبيدة فحسب، وإذا كان طريق تلقّي العلم ليس من عنده فلا يسمى بـ"منقول". ويتربّب من هذا: عدم صحة العلم بدون "المنقول" ثم عدم قبول العبادة والعمل. بدعوى أن نور حسن عبيدة هو صاحب السند الوحيد في الدنيا الذي اتصل سنده إلى رسول الله ﷺ (منقول – مسند – متّصل إلى رسول الله ﷺ). وزعم نور حسن عبيدة أنه قد أخذ علومه – حتى يكون متصلاً إلى رسول الله ﷺ عندما مكث في مكة طوال عشر سنين – عن طريق الشيخ

55 Abd. Hadi, "Hermeneutic Analysis of Manqul Method in Understanding the Qur'an in LDII and Its Implications," in *Proceedings of the 1st Borobudur International Symposium on Humanities, Economics and Social Sciences (BIS-HESS 2019)*, vol. 436 (Paris, France: Atlantis Press, 2020), 32–37, <https://doi.org/10.2991/assehr.k.200529.007>.

56 Cut Linda Marheni, "Jabr Al-Ahādīs Al-Mursalāt Bi Ta'adud Turuq 'Ahādīs; Kitāb Faḍāil Qurān Fi Musanaf 'Abd Al-Razzāq Namudzajan," *Al-Bukhari : Jurnal Ilmu Hadis* 2, no. 1 (October 2019): 19–38, <https://doi.org/10.32505/al-bukhari.v2i1.1129>.

57 Fajar Rachmadani, "Al-Ijtihād Al-Istiṣlāhī And Its Impact In Contemporary Juristic Inference: Majelis Tarjih's Perspective Of Muhammadiyah," *IJISH (International Journal of Islamic Studies and Humanities)* 1, no. 2 (October 2018): 97–116, <https://doi.org/10.26555/ijish.v1i2.557>.

58 DPP LDII, *Direktori LDII* (Jakarta Barat: Lembaga Dakwah Islam Indonesia (LDII), 2006), 10.

عمر حمدان والشيخ محمد سراج والشيخ أبو سماح والشيخ سيّد علوي والشيخ سيّد أمين. 59

واستدلّ نور حسن عبيدة على منهج "المنقول" بعدّة أدلة، منها 60 : قول الله تعالى: { وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَئِكَ كَانَ عَنْهُ مَسْئُولًا } [الإسراء: 36] وبقول الرسول ﷺ: (من قال في كتاب الله عزّ وجلّ برأيه فأصاب فقد أخطأ)، 61 وقول ابن المبارك -رحمه الله-: "الإسناد من الدين ولولا الإسناد لقال من شاء ما شاء". 62

ومن استدلالاتهم المذكورة يمكن الردود على أخطاء منهجية "المنقول" بعدّة الأجوبة: أولاً: لا يصحّ دعوى نور حسن عبيدة أنه صاحب السند الوحيد في الدنيا، بل أن أصحاب الأسانيد كثيرة جدّاً، فمن تيقّن أن نور حسن عبيدة هو صاحب السند الوحيد في الدنيا فهو جاهل مخدوع. ثانياً: الشيخ عمر حمدان -حفظه الله تعالى- (كما زعم نور حسن عبيدة أنه قد أخذ السند منه) فإنه قد روى عنه الكثير من أهل العلم، وليس نور حسن عبيدة فقط. ومن أهل العلم الذين أخذوا السند منه بعضهم جاءوا من إندونيسيا. وجميع تلاميذ الشيخ عمر حمدان لم نسمع منهم أنهم يذهبون كما ذهب به نور حسن عبيدة في مسألة هذا المنهج الفقهي. ثالثاً: ليس هناك بيّنة تثبت أن نور حسن عبيدة هو من تلاميذ الشيخ.

59 H.M.C. Shodiq, *Akar Kesesatan LDII Dan Penipuan Triliunan Rupiah* (Jakarta Pusat: Lembaga Dakwah Islam Indonesia (LDII), 2004), 41, <https://www.docdroid.net/wKSLCx9/akar-kesesatan-ldii-dan-penipuan-triliunan-rupiah-by-lppi-pdf#page=10>.

60 Jaiz, *Bahaya Islam Jamaah Lemkari LDII*, 45.

61 Abû Dâud, *Sunan Abû Dâud*, Vol. 3 (Bairut: Dâr al-Kitâb al-'Arabî, n.d.), 358.

وقد قال الشيخ محمد ناصر الدين الألباني في صحيح وضعيف سنن أبي داود : إنه ضعيف.

62 Abû al-Hasan Muslim al-Naisâbûrî, *Shahîh Muslim*, Vol.1 (Bairut, Libanon: Dâr al-Jail, n.d.), 9.

وأما حجيتهم بقول الرسول ﷺ: (من قال في كتاب الله عزّ وجلّ برأيه فأصاب فقد أخطأ)،⁶³ فالمقصود من هذا الحديث هو التحذير من تفسير القرآن بغير علم لا بغير سند.⁶⁴ والسند ليس معيارا لسلامة عقيدة صاحبه. وقد كان من أسلافنا رجالا من أصحاب الأسانيد وهم منحرفو العقائد. فمثلا: عمران بن حطان،⁶⁵ فقد قال الحافظ بن الحجر فيه أنه رأى رأي الخوارج.⁶⁶ ثم إن هذه الجماعة أباحت الكذب على الآخرين واستحلّت التقية وسمّوه ب"فطانة-بطانة-بودي لوهور"،⁶⁷ 68 فلو التزموا بهذا المنهج لردّ كلّ روايتهم. وقد ذهبت طائفة من أهل العلم إلى قبول رواية أهل الأهواء ما دام لا يعرف منهم استحلال الكذب.⁶⁹

فالمنقول في الحقيقة ليس له إلا بيان معاني القرآن أو الأحاديث بفهم نور حسن عبيدة. أو بعبارة أخرى أن المنقول هو فهم القرآن بتفاسير وأراء نور حسن عبيدة. وأتباع هذه الجماعة يقلّدون كلّ أراء نور حسن في تفاسير القرآن والسنة.

63 Dâud, *Sunan Abû Dâud*, Vol. 3, 358.

64 Moh. Abdul Kholiq Hasan, "The Tafsîr Bi Al-Ma'sûr and Bi Al-Ra'yî in The Commentary of Abû Ja'far Al- Ṭahâwî (Study in Aḥkâm Al-Qur'ân Al-Karîm," *Jurnal Studi Al-Qur'an* 17, no. 2 (2021): 179-206.

65 عمران بن حطان بن ظبيان بن لودان بن عمرو بن الحارث بن حدوس وقيل غير ذلك في نسبة السلدوسي أبو سماك ويقال أبو شهاب البصري ويقال غير ذلك روى عن أبي موسى الأشعري وابن عباس وابن عمر وجماعة وعنه يحيى بن أبي كثير وقتادة ومخارب بن دثار وغيرهم قال العجلي Ibn Hajar Al-'Asqalâni, *Tahdzîb At-Tahdzîb*, Vol.8 (India: Dâ'irah al-Ma'ârif al-Nidzâmiyyah, 1326), 127.

66 Ibn Hajar Al-'Asqalâni, *Fath Al-Bârî*, Vol. 1 (Bairut, Libanon: Dâr al-Ma'rifah, 1379), 432.

67 Djamaluddin, *Kupas Tuntas Kesesatan Dan Kebohongan LDII (Jawaban Atas Buku Direktori LDII)*, 40.

68 Jaiz, *Bahaya Islam Jamaah Lemkari LDII*, 10.

69 Al-Khathîb Al-Baghdâdî, *Al-Kifâyah Fî 'Ilm Al-Riwâyah*, ed. Abu Abdullâh Al-Surqî and Ibrâhîm Hamdî al-Madanî (al-Madînah al-Munawwarah, Saudi Arabia: al-Maktabah al-'Ilmiyyah, n.d.), 120.

وبالطبع أنّ آراء نور حسن عبيدة قد يصيب وقد يخطئ، ولا سيما أن نور حسن ليس من أهل الاجتهاد.

وطريق "المنقول" ليس شرطا لصحة العلم، وقد يتعلّم شخص العلم بدون "المنقول". وليس كما زعم نور حسن عبيدة أن العلم لا يصح إلا بطريق المنقول. فمن الممكن أن يتعلّم الطالب من شيخه بطريق الإجازة، أو المناولة، أو الوجدادة، أو قراءة الطالب على كتب شيخه، وغير ذلك مما أبيض به في الإسلام. 70 وقد حكى من هذه الجماعة أن كلّ أوراق أسانيد نور حسن التي قد حصلها طوال مكثه في طلب العلم بمكّة قد ضاعت في العربة (becak) عندما رجع إلى إندونيسيا.

ولعدم صوابهم في طرق الاستدلال والمنهج الفقهي، تكون الأخطاء كذلك في كثير من أنواع استنباطات الأحكام الشرعية عندهم، منها:

الأولى: مسألة لزوم الجماعة

إن الجماعة أوجبوا كلّ أناس الالتزام والدخول إلى جماعتهم وبيعة إمامهم، وزعموا أن لزوم جماعتهم هو شرط لصحة إسلام المرء، وأن من لا يدخل في جماعتهم ولا يبايع إمامهم فهو كافر. واستدلّوا على وجوب الالتزام بجماعتهم بعدّة الأدلة، منها: قول الرسول ﷺ: (إنه لا إسلام إلا بجماعة ولا جماعة إلا بإمارة ولا إمارة إلا بطاعة) 71 وقوله ﷺ: (من أراد مجبوحة الجنة فليلزم الجماعة)، 72 وقوله ﷺ: (ألا

70 Zain al-Dîn Al-'Irâqî, *Al-Taqyîd Wa Al-Idhâh Syarh Muqaddimah Ibn Al-Shalâh*, ed. 'Abd Al-Rahmân Muhammad Ustmân and Muhammad 'Abd Al-Muhsin, Vol. 1 (al-Madînah al-Munawwarah, Saudi Arabia: al-Maktabah al-Salafiyyah, 1969), 163.

71 والصواب أنه ليس من قول الرسول ﷺ بل هو أثر موقوف من عمر بن الخطاب -رضي الله عنه- الذي أخرجه سنن الدارمي، انظر: Al-Dârimî, *Sunan Al-Darimî*, Vol. 1 (Bairut, Libanon: Dâr al-Kitâb al-'Arabî, 1407), 91 قال حسين سليم أسد: في إسناده علتان: الأولى جهالة صفوان بن رستم والثانية الانقطاع (عبد الرحمن بن ميسرة لم يدرك تيمما الداري).

إن من قبلكم من أهل الكتاب افترقوا على ثنتين وسبعين ملة وإن هذه الملة ستفترق على ثلاث وسبعين ثنتان وسبعون في النار وواحدة في الجنة وهي الجماعة)، 73 وقوله ﷺ: (ويد الله مع الجماعة، ومن شذ شذ إلى النار). 74

فاستدلوا بهذه الأحاديث المذكورة على وجوب الالتزام والدخول إلى جماعتهم، وأن جماعتهم أصح الجماعات الموجودة في العالم، وأن المراد بلفظ "الجماعة" في كل هذه الأحاديث المذكورة هي جماعتهم، أي الجماعة التي يبايع إمامهم.

وإذا قرأنا ولاحظنا شروح هذه الأحاديث السابقة فلا يوجد أي قول بأن معنى "الجماعة" هو جماعة "إسلام جماعة" (LDII) فقط، كما زعموا. بل أن من فهم وتيقن أن المراد للفظ "الجماعة" هو جماعتهم فقط فقد أخطأ خطأ فاحشا. فالمعنى للفظ "الجماعة" – كما ذكره الشاطبي -: أهل الإسلام أو السواد الأعظم، جماعة أئمة العلماء المجتهدين، الصحابة على الخصوص، جماعة أهل الإسلام إذا أجمعوا على أمر، جماعة المسلمين إذا اجتمعوا على أمر. 75

ومن نظر إلى هذه الأقوال الخمسة سيجد أنها هذه كلها ترجع إلى معنيين، وهما: الأول، الجماعة هي ما اجتمع عليه النبي ﷺ وأصحابه من عقيدة وعمل، ففي حديث الافتراق أن الصحابة سألوه عن الفرقة الناجية فقال ﷺ: (وإن بني إسرائيل تفرقت على ثنتين وسبعين ملة، وتفترق أمتي على ثلاث وسبعين ملة، كلهم في النار

72 الحديث رواه الترمذي Al-Tirmidzî, Sunan Al-Tirmizî, Vol. 1(Bairut: Dâr al-Gharb

429 al-Islâmî, 1998). وجاء بلفظ آخر: "فمن أحب منكم أن ينال بمجوحة الجنة فليزِم الجماعة)

73 Dâud, Sunan Abû Dâud, Vol. 2, 608, وهو صحيح عند الألباني

74 Al-Tirmidzî, Sunan Al-Tirmizî, Vol. 4, 36, (ومن شذَّ شذَّ إلى النار), وهو صحيح عند الألباني، دون (ومن شذَّ شذَّ إلى النار)

75 Al-Syâthibî, Al-I'tishâm, Vol. 2 (Bairut, Libanon: al-Maktabah al-Tijâriyyah al-Kubra, n.d.), 264.

إلا ملة واحدة، قالوا: ومن هي يا رسول الله؟ قال: ما أنا عليه وأصحابي). والثاني، أن الجماعة هي الاجتماع على أمير واحد، وسيأتي بيان وتفصيل لمعنى الأمير أو الإمام في مكانه إن شاء الله.

الثانية: وجوب البيعة لإمامهم.

هذه الجماعة زعمت بأن البيعة هي شرط لصحة إسلام المرء، والبيعة تكون لإمامهم فقط. ولكن من العجائب أن الإمام الذي يبايع عند هذه الجماعة إمام ليس له سلطة ولا ولاية ولا يعرف عند أكثر الناس ببلاد إندونيسيا. واستدلوا على وجوب البيعة لإمامهم بعدة الأحاديث، منها: قول الرسول ﷺ: ((إنه لا إسلام إلا بجماعة ولا جماعة إلا بإمارة ولا إمارة إلا بطاعة)). قالوا: بأن لا يصح الإسلام بلا جماعة ولا يصح الجماعة بلا إمارة ولا يصح الإمارة بلا بيعة. 76 وبقوله ﷺ: (ولا يحل لثلاثة نفر يكونون بأرض فلاة إلا أمروا عليهم أحدهم) 77 قالوا بأن: كل مسلم في هذه الأرض لا تحلّ حياتهم ولا يحلّ أكلهم ولا يحلّ تنفسهم، وكلّ مسلم الذين حرمت حياتهم فلا بأس بأخذ أموالهم وسفك دمائهم، لأنهم لا فرق بينهم وبين الكفار، لأنهم لم يبايعوا إماما، فلا يصحّ إسلامهم. 78 وهذه الجماعة قد بايعوا نور حسن عبيدة ليكون الأمير الأول عندهم. 79

ويمكن الردود على استدلالاتهم السابقة بعدة الأجوبة، منها:

76 Jaiz, *Bahaya Islam Jamaah Lemkari LDII*, 25.

77 Ahmad bin Hambal, *Musnad Imâm Ahmad*, ed. Syu'aib Al-Arnauth and 'Âdil Mursyid at all, Vol. 2(Bairut: Muassasah al-Risâlah, 2001), 176.

78 Djamaluddin, *Kupas Tuntas Kesesatan Dan Kebohongan LDII (Jawaban Atas Buku Direktori LDII)*, 16.

79 Muhammadiyah, "Renewal Paradigm of The LDII Community in Kediri.", Dodi, "Metamorfosis Gerakan Sosial Keagamaan: Antara Polemik, Desiminasi, Ortodoksi, Dan Penerimaan Terhadap Ideologi Lembaga Dakwah Islam Indonesia (LDII).", Ottoman, "Asal Usul Dan Perkembangan Lembaga Dakwah Islam Indonesia (L D I I)."

أولاً، هذا الحديث (إنه لا إسلام إلا بجماعة ولا جماعة إلا بإمارة ولا إمارة إلا بطاعة) ليس من قول الرسول ﷺ - كما زعموا-، بل هو أثر موقوف عن عمر بن الخطاب -رضي الله عنه-. والحديث كما أخرجه الدارمي في سننه. وأيضاً فالحديث حديث ضعيف موقوف لعنتين 80 : الأولى: جهالة صفوان بن رستم، والثانية: الانقطاع، لأنّ عبد الرحمن بن ميسرة لم يدرك تلميذاً للدارمي.

ثانياً، لو فرضنا صحّة الحديث لكان المعنى لهذا الحديث هو نفي الكمال لا نفي الصحة، لأنّ حمله إلى نفي الصحة ممتنع فصار إلى نفي الكمال.

ثالثاً، البيعة والطاعة للإمامة الحزبية السرية التي أقامتها هذه الجماعة فلا شكّ أنه من تطبيق باطل الذي يخالف الحقّ. لأنّ الإمامة التي أمرنا بطاعتها هي الإمامة الموجودة الظاهرة التي لها قدرة في سياسة الناس والتي لها سلطة، ولا يأمرنا بطاعة معدوم ولا مجهول ولا من ليس له سلطان ولا قدرة على شيء أصلاً. 81

رابعاً، وأما الحديث الثاني: (ولا يحل لثلاثة نفر يكونون بأرض فلاة إلا أمروا عليهم أحدهم). 82 هذا الحديث فقد اختلف العلماء في صحّته، وقد ضعّفه الشيخ الألباني في السلسلة الأحاديث الضعيفة. فهذا الحديث إنّما سيق في شأن السفر، وإنّ المراد بهذا الحديث في السفر وفي المواضع التي لا يأمن الرجل فيها صاحبه ولا يعرفه ولا يثق به ويخشى غدره. 83

80 Al-Dārimī, *Sunan Al-Darimī*, Vol. 1, 91.

81 Ibn Taimiyyah, *Minhāj Al-Sunnah Al-Nabawiyyah Fī Naqd Kalām Al-Syi'ah Al-Qadariyyah*, Vol. 1 (Riyādh Saudi Arabia: Jāmi'ah al-Imām Muhammad bin Sa'ud al-Islāmiyyah, 1986), 115.

82 Hambal, *Musnad Imām Ahmad*, Vol. 2, 176.

83 Zain al-Dīn Abd al-Rahīm Al-'Iraqī, *Tharh Al-Tatsrīb Fī Syarh Al-Taqrīb*, Vol. 8 (Egypt: Dār al-Fikr al-'Arabī, n.d.), 462.

خامسا، معنى لفظ "لا يحل" في هذا الحديث ليس كما زعمت هذه الجماعة أنه بمعنى لا تحل حياتهم ولا يحل أكلهم ولا يحل تنفسهم،⁸⁴ فهذا لا شك من سوء الفهم لحديث رسول الله ﷺ. فهذا اللفظ مثل ما قال الله تعالى في كتابه العزيز: {يَأْتِيهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرِهًا} [النساء: 19]، بمعنى لا يجوز،⁸⁵ أي بمعنى أن هذا أمر محظور أو ممنوع لا يجوز فعله، فحسب. ولا يتأتى إلى أن يكون المعنى حرام حياتهم وحرام أكلهم وحرام تنفسهم – كما زعموا-.

سادسا، وإذا فرضنا أن هذا الحديث دلّ على وجوب نصب الإمامة – كما استدللّ به بعض العلماء على وجوب نصب الإمامة-، ففرض الإمامة على الكفاية لا على عين – كما زعمت هذه الجماعة- ولا يتأتى إلى تكفير من لا يبايع إمامهم.⁸⁶ كما صرح به الإمام الماوردي في كتابه الأحكام السلطانية بأن وجوب الإمامة إذا ثبت ففرضها على الكفاية كالجهاد وطلب العلم لا على عين.⁸⁷

الثالثة: وجوب الإنفاق لإمامهم مقدرا شهريا.

إن هذه الجماعة أوجبوا الإنفاق لإمامهم مقدرا شهريا⁸⁸ واستدلوا بعدة الأدلة، منها:⁸⁹ قوله تعالى: {وَمِمَّا رَزَقْنَاهُمْ يُنْفِقُونَ} [البقرة: 3]، وبقوله تعالى:

84 Djamaluddin, *Kupas Tuntas Kesesatan Dan Kebohongan LDII (Jawaban Atas Buku Direktori LDII)*, 16.

85 Jamâ'ah min Ulamâ' Al-Tafsîr, *Al-Mukhtashar Fî Tafsîr Al-Qur`ân Al-Karîm* (Riyâdh Saudi Arabia: Markaz Tafsîr li al-Dirâsât al-Qur`âniyah, 2018), 80.

86 Khalimi, *Ormas-Ormas Islam: Sejarah, Akar Teologi Dan Politik* (Jakarta: Gaung Persada Press, 2010), 253.

87 Al-Mâwardi, *Al-Ahkâm Al-Sulthâniyyah* (Kairo: Dâr al-Syurûq, n.d.), 4.

88 نظم أمير هذه الجماعة الإنفاق على كل أعضاء الجماعة كالتالي: "نصيحة الإمام للجماعة أن على كل أعضاء الجماعة إذا رزق برزق فالينفق في سبيل الله أقل شيء مما يلي: من 10,001 إلى 100,000 روية أقل شيء 2,5 % ، من 100,001 إلى 1,000,000 روية أقل شيء 5 % ، من 1,000,001 إلى 10,000,000 روية أقل شيء 7,5 %، من 10,000,001 روية إلى الفوق أقل شيء 10 %." وكل هذه الأموال تعطى لإمامهم شهريا من كل أنحاء إندونيسيا وخارج إندونيسيا من كل أتباع هذه

{انْفِرُوا خِفَافًا وَثِقَالًا وَجَاهِدُوا بِأَمْوَالِكُمْ وَأَنْفُسِكُمْ فِي سَبِيلِ اللَّهِ ذَلِكُمْ خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ} [التوبة: 41].

ويمكن الردود على استدلالاتهم السابقة بعدة الأجوبة، منها:

أولاً، لم يوجد أي تفسير من جميع كتب التفاسير بأن معنى الإنفاق لهذه الآية هو الإنفاق لإمامهم – كما زعمته هذه الجماعة –، فهذا من افتراء نور حسن عبيدة حيث حمل معنى هذه الآية إلى غير موضعه. فالإنفاق المقصود لهذه الآية هي بمعنى الزكاة أو النفقات للعيال لا للإمام.

ثانياً، أن الإنفاق في هذه الجماعة الذي أعطاه كل أتباع هذه الجماعة لإمامهم شهرياً يشبه المكس أو العشار، وهو من الكبائر حيث قال النبي ﷺ: (لا يدخل صاحب مكس الجنة) يعني العشار. 90

ثالثاً، أن الله – سبحانه وتعالى – قد حذر عباده المؤمنين من أخذ أموال الناس بالباطل، قال تعالى: {يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ} [النساء: 29]، وأنه أيضاً من فعل الأحرار والرهبان لليهود والنصارى حيث قال تعالى: {يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ كَثِيرًا مِّنَ الْأَحْبَارِ وَالرُّهْبَانِ لَيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ} [التوبة: 34]. فإنهم يأكلون الدنيا بالدين بمناصبهم ورياستهم في الناس. 91

الجماعة. وقد بلغ إلى الباحث أن مجموع الأموال المدفوع إلى إمامهم شهرياً بلغ إلى خمسة وعشرين ملياً روبية، وبعض النقود بالعملة الأخرى سوى روبية (Peraturan Lima-Lima، فهي من إحدى المراجع عندهم ضمن فيها الأنظمة والنصائح من الإمام لأتباع هذه الجماعة وعدده خمسة وخمسين)

89 كما ذكره كل من محمد إمام نسائي والأستاذ فوزي جنيدي وهما من التائبين الذين قد خرجوا من

هذه الجماعة

90 Hambal, *Musnad Imâm Ahmad*, Vol. 28, 286.

91 Ibn Katsîr, *Tafsîr Al-Qur'ân Al-'Adzîm*, ed. Sâmî bin Muhammad Salâmah, Vol. 4 (Dâr al-Thaiyyibah li al-Nasyr wa al-Tauzî, 1999), 138.

الرابعة، مسألة حق التشريع للإمام ويسمونه باجتهادات الإمام، بمعنى أن هذه الجماعة ادعوا أن لإمامهم حق في التشريع، أي: أن الإمام له حق في إصدار حكم جديد باجتهاده، ولو كان هذا الحكم خارجا عن الكتاب والسنة. ومن أنواع اجتهادات الإمام لأتباع هذه الجماعة مثل وجوب الإنفاق لإمامهم مقدرا شهريا - كما قد سبق ذكره- 92. واستدلوا بعدة الأحاديث منها: قوله ﷺ: ((أبما وال ولي شيئا من أمر المسلمين، فلم ينصح لهم، ولم يجهد لهم لنصحهم وجهده لنفسه كبه الله على وجهه يوم القيامة في النار)) 93، بقوله ﷺ: ((إذا حكم الحاكم فاجتهد ثم أصاب فله أجران وإذا حكم فاجتهد ثم أخطأ فله أجر)). 94 وعلى الرعية السمع والطاعة لكل اجتهادات الإمام. 95

ويمكن الردود على استدلالهم السابقة بعدة الأجوبة، منها:

أولا، من مصادر انحرافات هذه الجماعة لمسائل الاجتهاد هو جهلهم باللغة العربية وفهم المصطلحات الشرعية، حتى سهل لإمامهم أن يخذعهم. 96 مع أن معرفة اللغة العربية هي من أساسيات الاجتهاد في الأحكام الشرعية. 97 فالاجتهاد لغة بمعنى الصحيح هو استفراغ الوسع في أي فعل كان. واصطلاحا بمعنى استفراغ الفقيه

92 Djamaluddin, *Kupas Tuntas Kesesatan Dan Kebohongan LDII (Jawaban Atas Buku Direktori LDII)*, P. 23-24., Jaiz, *Bahaya Islam Jamaah Lemkari LDII*, 35-36.

93 Al-Thabrâni, *Al-Mu'jam Ash-Shaghîr*, ed. Muhammad Syakûr and Mahmûd Al-Hâj, Vol. 1 (Beirut: al-Maktab al-Islâmi Dâr 'Ummân, 1985), 283.

94 Al-Bukhârî, *Al-Jâmi' Al-Shahîh*, Vol. 133(Kairo, Mesir: Dâr al-Sya'b, 1987), 133.

95 المعلومات ذكرها كل من إمام نسائي وفوزي جنيدي وهما من التائبين الذين قد خرجوا من هذه

الجماعة.

96 Muhammad Taufiq, *Filsafat Hukum Islam; Dari Teori Ke Aplikasi*, ed. Abd. Jalil, I (Pamekasan: Duta Media, 2019), 88.

97 Syamsul Anwar, "The Relation between Arabic Linguistics and Islamic Legal Reasoning: Islamic Legal Theory Perspective," *Al-Jami'ah* 55, no. 2 (2017): 463-92, <https://doi.org/10.14421/ajis.2017.552.463-492>.

وسعه في طلب العلم بالأحكام الشرعية بطريق الاستنباط من أدلة الشرع. 98 فالمراد للاجتihad إذن ليس كما زعمت هذه الجماعة بأن لإمامهم حق في إصدار حكم جديد الذي ليس في كتاب الله ولا سنة رسول الله، ولكن المراد بالاجتihad هو مخصوص ببذل الجهد لطلب العلم بالأحكام الشرعية.

ثانياً، الاجتihad هو سبيل من سبل بقاء الدين واستمراريته، ويرى الشاطبي أن منزلة المجتهد منزلة رفيعة في الشريعة، وبالاجتihad يحمى الدين، فالمجتهدون -إذن- هم حماة الدين. 99 ولهذا المنزلة الرفيعة كان الاجتihad شرطاً لنيل الإمامة العظمى ولنيل منزلة القضاء. 100 وللمجتهد شروط معتبرة 101 التي لا تتوفر في شخصية نور حسن عبيدة ومن بعده من أئمة هذه الجماعة.

ثالثاً، التشريع هو حق لله، 102 أي تشريع الأحكام التي يكون سير العباد في عباداتهم ومعاملاتهم وسائر شؤون حياتهم هو حق لله تعالى فمن ادعى أن له حق التشريع فقد أشرك نفسه مع الله، فهذا شيء خطير جداً وقد يخرج العبد من دائرة الإسلام، قال تعالى: {أَمْ لَهُمْ شُرَكَاءُ شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ} [الشورى: 21] فمن أطاع العلماء أو الأُمراء في تحريم ما أحله الله أو تحليل ما حرم الله فقد اتخذهم أرباباً من دون الله.

98 'Abdullâh Al-'Anzi, *Taisîr 'Ilm Ushûl Al-Fiqh* (Bairut, Libanon: Muassasah ar-Rayyân, 1997), 379.

99 Ibid.

101 وشروط المجتهد : إحاطته بمدارك الأحكام المثمرة لها، وهي: الكتاب والسنة، والإجماع، واستصحاب الحال، والقياس التابع لها، وما يعتبر في الحكم في الجملة، وتقديم ما يجب تقديمه منها، ويحتاج إلى معرفة نصب Ibn Qudâmah الأُدلة وشروطها، ومعرفة شيء من النحو واللغة، يتيسر به فهم خطاب العرب. انظر: Al-Maqdisi, *Raudhah Al-Nâdzir Wa Jannah Al-Manâdzir Fî Ushûl Al-Fiqh* Vol. 2 (Bairut, Libanon: Muassasah ar-Rayyân, 2002). 334.

102 Khadim Hussain Ilhi Bakhsh, "The Right of Legislation Between Democratic System and Islam," *Al Basirah* 1, no. 1 (2012): 218-67.

الخامسة: إباحة التقيية أو الكذب على الآخرين.

من المعلوم عند هذه الجماعة أنهم يبيحون الكذب على الآخرين أو التقيية ويسمونه ب"فطانة-بطانة-بودي لوهور".¹⁰³ وقد جاء من بعض المصادر أن أتباع هذه الجماعة يستحلون السرقة والاختلاس والتزوير والقتل والرشوة على الآخرين.¹⁰⁴ واستدلّت هذه الجماعة بعدّة الأدلة منها: قول الله تعالى: {مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ عَذَابٌ مِّنَ اللَّهِ وَهُمْ عَذَابٌ عَظِيمٌ} [النحل: 106]، وبعض القصص الواردة في القرآن والسنة: مثل قصة كذب إبراهيم عليه السلام مع امرأته على الملك الظالم حينما سأله هذا الملك: "من هذه؟" قال: "أختي"،¹⁰⁵ وأيضاً في قصة كذب الغلام على الساحر في قصة أصحاب الأخدود.¹⁰⁶

103 Muhammadiyah, "Renewal Paradigm of The LDII Community in Kediri."

104 Jaiz, *Bahaya Islam Jamaah Lemkari LDII*, 154.

105 عن أبي هريرة رضي الله عنه: (لم يكذب إبراهيم عليه السلام إلا ثلاث كذبات ثنتين منهن في ذات الله عز وجل قوله {إني سقيم} الصافات: 89، وقوله {بل فعله كبيرهم هذا} الأنبياء: 63، وقال بينا هو ذات يوم وسارة إذ أتى على جبار من الجبابرة فقيل له إن ها هنا رجلا معه امرأة من أحسن الناس فأرسل إليه فسأله عنها فقال من هذه قال أختي فأتى سارة قال يا سارة ليس على وجه الأرض مؤمن غيري وغيرك وإن هذا سألتني فأخبرته أنك أختي فلا تكذبيني فأرسل إليها فلما دخلت عليه ذهب يتناولها بيده فأخذ فقال ادعي الله لي ولا أضرك فدعت الله فأطلق ثم تناولها الثانية فأخذ مثلها أو أشد فقال ادعي الله لي ولا أضرك فدعت فأطلق فدعا بعض حجبه فقال إنكم لم تأتوني بإنسان إنما أتيتوني بشيطان فأخدمها هاجر فأنته وهو قائم يصلي فأوماً بيده مهياً قالت رد الله كيد الكافر أو الفاجر في نحره وأخدم هاجر قال أبو هريرة تلك أمكم يا بني ماء السماء. (رواه البخاري في صحيحه)

106 حدثنا هدا بن خالد حدثنا حماد بن سلمة حدثنا ثابت عن عبدالرحمن بن أبي ليلى عن صهيب: أن رسول الله صلى الله عليه وسلم قال كان ملك فيمن كان قبلكم وكان له ساحر فلما كبر قال للملك إني قد كبرت فابعث إلي غلاماً أعلمه السحر فبعث إليه غلاماً يعلمه فكان في طريقه إذا سلك راهب فقعده إليه وسمع كلامه فأعجبه فكان إذا أتى الساحر مر بالراهب وقعد إليه فإذا أتى الساحر ضربه فشكا ذلك إلى الراهب فقال إذا خشيت الساحر فقل حبسني أهلي وإذا خشيت أهلك فقل حبسني الساحر فبينما

ويمكن الردود على أخطائهم في مسألة التقية بعدة الأجوبة، منها:
أولاً، الأصل في التقية عند أهل السنة هو قوله تعالى: {لَا يَتَّخِذِ الْمُؤْمِنُونَ
الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ وَمَنْ يَفْعَلْ ذَلِكَ فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ إِلَّا أَنْ تَتَّقُوا
مِنْهُمْ تُقَاةً وَيُحَذِّرْكُمْ اللَّهُ نَفْسَهُ وَإِلَى اللَّهِ الْمَصِيرُ} [آل عمران: 28]، بينما تفسير التقية
الصحيحة لهذه الآية كما ذكره ابن جرير الطبري -رحمه الله تعالى- هي: {إِلَّا أَنْ
تَتَّقُوا مِنْهُمْ تُقَاةً} [آل عمران: 28] أي إلا أن تخافوا منهم مخافةً، فالتقية التي ذكرت
في هذه الآية إنما هي تقية من الكفار لا من المسلمين. 107

هو كذلك إذ أتى على دابة عظيمة قد حبست الناس فقال اليوم أعلم الساحر أفضل أم الراهب أفضل؟ فأخذ حجراً فقال اللهم إن كان
أمر الراهب أحب إليك من أمر الساحر فاقتل هذه الدابة حتى يمضي الناس فرماها فقتلها ومضى الناس فأتى الراهب فأخبره فقال له
الراهب أي بني أنت اليوم أفضل مني قد بلغ من أمرك ما أرى وإنك ستبتلى فإن ابتليت فلا تدل علي وكان الغلام يرى الأكمة والأبرص
ويداوي الناس من سائر الأدواء فسمع جليس للملك كان قد عمي فأتاه بهدايا كثيرة فقال ما ههنا لك أجمع إن أنت شفيتني فقال إني لا
أشفي أحداً وإنما يشفي الله فإن أنت آمنت بالله دعوت الله فشفاك فأمن بالله فشفاه الله فأتى الملك فجلس إليه كما كان يجلس فقال له
الملك من رد عليك بصرك؟ قال ربي قال ولك رب غيري؟ قال ربي وربك الله فأخذه فلم يزل يعذبه حتى دل على الغلام فجاء بالغلام
فقال له الملك أي بني قد بلغ من سحرِكَ ما تبرئ الأكمة والأبرص وتفعل وتفعل فقال إني لا أشفي أحداً وإنما يشفي الله فأخذه فلم يزل
يعذبه حتى دل على الراهب فجاء بالراهب فقيل له ارجع عن دينك فأبى فدعا بالمشمار فوضع المشمار على مفرق رأسه فشقه حتى وقع
شقاه ثم جئ بجليس الملك فقيل له ارجع عن دينك فأبى فوضع المشمار في مفرق رأسه فشقه به حتى وقع شقاه ثم جئ بالغلام فقيل له
ارجع عن دينك فأبى فدفعه إلى نفر من أصحابه فقال اذهبوا به إلى جبل كذا وكذا فاصعدوا به الجبل فإذا بلغت ذروته فإن رجع عن دينه
وإلا فاطرحوه فذهبوا به فصعدوا به الجبل فقال اللهم اكفنيهم بما شئت فرجف بهم الجبل فسقطوا وجاء يمشي إلى الملك فقال له الملك ما
فعل أصحابك؟ قال كفانيهم الله فدفعه إلى نفر من أصحابه فقال اذهبوا به فاحملوه في قرقور فتوسطوا به البحر فإن رجع عن دينه وإلا
فاقذفوه فذهبوا به فقال اللهم اكفنيهم بما شئت فانكفأت بهم السفينة فغرقوا وجاء يمشي إلى الملك فقال له الملك ما فعل أصحابك؟ قال
كفانيهم الله فقال للملك إنك لست بقاتلي حتى تفعل ما أمرك به قال وما هو؟ قال تجمع الناس في صعيد واحد وتصلبني على جذع ثم
خذ سهماً من كنانتي ثم ضع السهم في كبد القوس ثم قل باسم الله رب الغلام ثم ارمي فإنك إذا فعلت ذلك قتلني فجمع الناس في صعيد
واحد وصلبه على جذع ثم أخذ سهماً من كنانته ثم وضع السهم في كبد القوس ثم قال باسم الله رب الغلام ثم رماه فوق السهم في صدغه
فوضع يده في صدغه في موضع السهم فمات فقال الناس أماناً برب الغلام أماناً برب الغلام فأتى الملك فقيل له رأيت ما
كنت تحذر؟ قد والله نزل بك حذرِكَ قد آمن الناس فأمر بالأخدود في أفواه السكك فخذت وأضرم النيران وقال من لم يرجع عن دينه
فأحموه فيها أو قبل له اقتحم ففعلوا حتى جاءت امرأة ومعها صبي لها فتقاعست أن تقع فيها فقال لها الغلام يا أمه اصبري فإنك على

الحق. (رواه مسلم في صحيحه)

107 Al-Thabari, *Jâmi' Al-Bayân Fî Ta'wîl Al-Qur'ân*, ed. Ahmad Muhammad Syakir, Vol. 6(Bairut, Libanon: Muassah al-Risâlah, 2000), 316.

ثانياً، تسمية التقية بـ "فطانة-بطانة-بوديلوهور" هي من التسمية الباطلة لغرض تليبس مؤسس هذه الجماعة على أتباعه بناء على اعتقاده بأن كل أناس الذين لا يدخلون في هذه الجماعة هم كافرون، فيجوز الكذب عليهم أي على الكافرين – كما زعموا- 108.

ثالثاً، التقية المباحة للمؤمنين هي رخصة في حالة الضرورة فقط وليس في كل الأحوال، لأن منهج أهل السنة والجماعة قائم على الصدق والعدل لا على الكذب. فقد نقل ابن بطال تبعاً لابن المنذر الإجماع بأن من أكره على الكفر حتى خشي على نفسه القتل فكفر وقلبه مطمئن بالإيمان: أنه لا يحكم عليه بالكفر. 109.

رابعاً، أن التقية عند هذه الجماعة يشبه التقية عند الشيعة التي هي من أصول دين الشيعة. كما قال بذلك ابن تيمية -رحمه الله-: تَتَّقُوا مِنْ هُمْ نُقَاةً أَيْ إِلَّا أَنْ تَخَافُوا مِنْهُمْ مَخَافَةً، فالتقية التي ذكرت في هذه الآية إنما هي تقية من الكفار لا من المسلمين. "لأن الرافضة هم أجهل الطوائف وأكذبها وأبعدها عن معرفة المنقول والمعقول وهم يجعلون التقية من أصول دينهم ويكذبون على أهل البيت كذباً. فالتقية هي شعار النفاق، فإن حقيقتها عندهم أن يقولوا بألسنتهم ما ليس في قلوبهم وهذا حقيقة النفاق." 110.

الخاتمة

108 Muhammadiyah, "Renewal Paradigm of The LDII Community in Kediri."

109 *Ibid.*

110 Ibn Taimiyyah, *Majmû' Al-Fatâwa*, Abd al-Rah, Vol. 13 (al-Madinah al-Munawwarah, Saudi Arabia: Majma' al-Malik Fahd Li Thiba'ah al-Mushhaf al-Syarif, 1995), 263.

توصلت الدراسة إلى القول بأن أصل المنهج الفقهي عند هذه الجماعة (LDII) هو ما يسمى بـ"المنقول"، وهو أن العلم لا يتلقى ولا يؤخذ إلا عن طريق نور حسن فقط، وأن العلوم التي تؤخذ من غيره فهي باطلة لا تصح، بدعوى أن نور حسن هو صاحب السند الوحيد في الدنيا. وهم يتوارثون هذا المنهج الفقهي من جيل إلى جيل حتى يومنا هذا. وهذا هو أصل الزيغ والانحراف لهذه الجماعة حيث إنهم يقلّدون إمام ومؤسس هذه الجماعة في كلّ مسائل الأحكام الشرعية الدينية تقليدا أعمى، حتى أن كل أتباع هذه الجماعة منعوا في سماع الكلام أو قراءة الكتب الذي جاءت من غيرهم، لأنّ كلّ العلوم ليست عن طريق نور حسن فلا تسمّى بـ"منقول" فلا تجوز أخذها.

لقد أثار هذا المنهج الفقهي "منقول" آثارا كبيرة في استنباط الأحكام الشرعية عند هذه الجماعة. ومن الأحكام الشرعية المستنبطة عند هذه الجماعة التي تخالف أهل السنة، منها: مسألة لزوم الناس لجماعتهم، ووجوب البيعة لإمامهم، وجوب الإنفاق لإمامهم مقدّرا شهريا، وادعاء إمامهم أن لهم حقّ في تشريع الأحكام، وأخيرا مسألة إباحة التقية أو الكذب على الآخرين.

ومن أخطر هذه المخالفات تكفيرهم لغيرهم من المسلمين ممن ليسوا من جماعتهم لما فيه أثر خطير على وحدة الشعب. وإن كان هذا التكفير لم تسجعهم حاليا على عملية الإرهاب والتخريب ضد الآخرين، فلربما كان هذا من سياساتهم، إلا أن ذلك لا يضمن في المستقبل البعيد إذا قويت شوكتهم. وعلى حكومة إندونيسيا أن تتنبه دائما تجاه مثل هذه الجماعة المنحرفة.

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al-Ihkam: Jurnal Hukum dan Pranata Sosial, 16 (2), 2021: 595-623
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v16i2.5309>

Al-Wasatîyah al-Intiqâiyah al-Taqlîdiyah: Dirâsat Haula Harakâti wa Afkâri Kiâi Hâjî Hâsyim Asy'arî fî Fiqh al- Siyâsah al-Ijtimâ'iyah bi Indûnîsiâ

Mohammad Hasan

State Islamic Institute of Madura (IAIN Madura), Pamekasan, Indonesia
moh.hasan@iainmadura.ac.id

Article history: Received: October 31, 2021, Accepted: December 25, 2021,
Published: December 31, 2021

Abstract:

This article explores moderate and eclectic traditionalism beyond Kiai Haji Muhammad Hashim Ash'ari's contribution in the shariah and Islamic jurisprudence of social politic (*Fiqh al-Siyâsah al-Ijtimâ'iyah*) in Indonesia. It is conceptual research referring to some of his works as well as discussion about his thought among Islamic scholars. Based on definition of moderation from the Qur'an, hadith, and some scholars' opinion, Hashim can be best categorized as Islamic traditionalist figure who enforced both moderation and eclecticism. However, he maintained distinctive features compared to both traditionalist and modernist Islamic figures. It is mainly clear from both his thought and movement which rely on the *Ahlus Sunnah wal Jama'ah* in theology, four fiqh school leaders (*Hanafiyah, Malikiyah, Syafi'iyah dan Hambaliyah*), and *thariqah sufiyah mu'tabarah*. Additionally, he showed appreciation and promoted for adaptation to both local and foreign idea that later inspired distinctive religiosity in Indonesia. This particularly applies in the concept of relation between Islamic law and nationalism, jihad, political fiqh and governmental system in Islam.

Keywords:

Moderate; Eclectic; Traditionalism; Movement; *Fiqh al-Siyâsah al-Ijtimâ'iyah*

Author correspondence email: moh.hasan@iainmadura.ac.id
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ملخص البحث

تستكشف هذه الورقة الوسطية التقليدية والانتقائية التي ساهمها كياهي حاجي محمد هاشم الأشعري في الشريعة الإسلامية وفقه السياسة الاجتماعية. إنه بحث مفاهيمي يشير إلى بعض أعماله وكذلك مناقشة حول أفكاره كعلماء المسلمين. بناءً على تعريف الوسطية من القرآن والحديث وبعض آراء العلماء، يمكن تصنيف هاشم بشكل أفضل على أنه الشخصية الإسلامية التقليدية التي فرضت الوسطية والانتقائية. ومع ذلك، فقد حافظ على سمات مميزة مقارنة بكل من الشخصيات الإسلامية التقليدية والحداثية. يتضح بشكل أساسي من فكره وحركته اللذين يعتمدان على أهل السنة والجماعة في العقيدة، قادة المذاهب الفقهية الأربعة (حنفية، المالكية، الشافعية والحنبلية) والطريقة الصوفية المعتبرة. بالإضافة إلى ذلك، أظهر التقدير والترويج للتكيف مع الأفكار المحلية والأجنبية التي أهدمت لاحقاً التدين المميز في إندونيسيا. وهذا ينطبق بشكل خاص على مفهوم العلاقة بين الشريعة الإسلامية والوطنية والجهاد وفقه السياسة والنظام الحكومي في الإسلام.

الكلمات المفتاحية:

الوسطية؛ الانتقائية؛ التقليدية؛ الحركة؛ فقه السياسة الاجتماعية

المقدمة

في المرحلة التاريخية لحركة الاستقلال الإندونيسية، ظهرت ثلاث مجموعات وتطورت في وقت واحد ضمن خلفيات مختلفة من التقاليد والمنح الدراسية وتوجه الفكر، وهي (1) مجموعة النخبة التي نتجت عن تدريب المدارس الهولندية، (2) الجماعات الإسلامية الحديثة، و(3) الجماعات الإسلامية التقليدية.¹ كل مجموعة تؤسس منظماتها الاجتماعية الخاصة. المجموعة الأولى، على سبيل المثال، أسست بودي أوتومو (Boedi Oetomo) في يوجياكارتا في عام 1907م، بقيادة وحيد الدين سوديرو هوسادا (Wahidin Sudiro Husada). تألفت المجموعة من علماء تابعين

¹ Humaidy Abdussami and Ridlwan Fakla, *Biografi 5 Rais 'Am Nahdlatul Ulama* (Yogyakarta: LTN & Pustaka Pelajar, 2005), 12.

للمؤسسات التعليمية الهولندية.² المجموعة الثانية أسست جمعية الخير في عام 1905م، وجمعية رابطة العلماء في جاوة الغربية عام 1911م، والمحمدية في يوجياكرتا عام 1912م، والإرشاد عام 1915م، والوحدة الإسلامية عام 1923. أما المجموعة الثالثة فقد أسست جمعية نخضة العلماء (NU) في عام 1926م وهي: ممثل بيسانترين (Pesantren) كرباط العلم والعلماء للوسطية الإسلامية في إندونيسيا.³

بشكل عام، تطمح جميع المنظمات الاجتماعية إلى النهوض بالشعب الإندونيسي في جوانب الدين، والتعليم، والاقتصاد، والسياسة. ومع ذلك، فقد اتبعوا طرق بعضهم البعض والتي تسببت جزئيًا في احتكاكات قوية بين جيرانهم، لا سيما في جانب فهم وممارسة الطقوس الدينية. من ناحية أخرى، ترى المجموعة الحداثية أن تقدم الإسلام والشعب الإندونيسي يمكن تحقيقه من خلال تحديث التعاليم الإسلامية من خلال تشجيع الإصلاحات (التجديد) والتطهير وتعظيم الاجتهاد مع ترك التقليد الذي يأتي من شعار العودة إلى القرآن. والسنة. من ناحية أخرى، تعتبر المجموعة الحداثية فكر وحركة الجماعات الحداثية، وخاصة برنامج التطهير، تهديدًا وانحرافًا عن استمرارية الأفكار والممارسات الدينية الإسلامية، خاصة في جاوا، وهو فهم سائد ومستمر. لوقت طويل.

² Haji Muhammad Syoedja, "Cerita Tentang Haji Ahmad Dahlan: Catatan Haji Muhammad Syoedja," n.d., 57, [http://mpi.muhammadiyah.or.id/muhfile/mpi/download/Cerita tentang KHA Dahlan-catatan_HM_Syoedjak.pd](http://mpi.muhammadiyah.or.id/muhfile/mpi/download/Cerita_tentang_KHA_Dahlan-catatan_HM_Syoedjak.pd).

³ Achmad Muhibbin Zuhri, *Pemikiran KH. M. Hasyim Asy'ari Tentang Ahl Al-Sunnah Wa Al-Jama'ah* (Surabaya: Khalista, 2010), 147; Chairul Anam, *Pertumbuhan Dan Perkembangan Nahdlatul Ulama* (Solo: Jatayu, 1985). Syamsun Ni'am, "Pesantren: The Miniature of Moderate Islam in Indonesia," *Indonesian Journal of Islam and Muslim Societies* 5, no. 1 (2015): 111-34, <https://doi.org/10.18326/ijims.v5i1.111-134>.

تم التعبير عن هذا الرأي والموقف الأخير، من بين أمور أخرى، من قبل الشيخ محمد هاشم أشعري (1871-1947م)،⁴ الذي كان شخصية رئيسية بين الجماعات الإسلامية التقليدية. ومع ذلك، غالبًا ما يُساء فهم المجموعات وتقليديتها فقط على أنها تفاهات تمتلكها مجموعة واحدة متخلفة، قديمة الطراز، مناهضة للتغيير، محافظة، نصية، مقلدة، غير عقلانية، مناهضة للحدثة.⁵ وفي الوقت نفسه، بين الجماعات الإسلامية التقليدية نفسها، تتجلى التقليدية في اتجاهات صغيرة مختلفة تختلف عن بعضها البعض. يظهر هذا بوضوح في أفكار وتحركات الشيخ هاشم أشعري في مجال العقيدة والصوفية والفقهاء الإسلامي والسياسي الاجتماعي، وخاصة الفقه السياسي. من جوانب مختلفة، تتجلى التقليدية في يديه على أنها انتقائية تجمع بين التقاليد الفكرية للنسخة الإسلامية الكلاسيكية لأهل السنة والجماعة والتقاليد المحلية والأفكار الأجنبية.

منهج البحث

تنهج هذه الورقة على منهج البحث الوصفي التحليلي، بطريقة الاستقراء وجمع البيانات الأساسية المتمثلة في المؤلفات والمنشورات التي أصدرها الشيخ محمد هاشم أشعري. ثم جمع البيانات الثانوية من كل المعلومات التي لها صلة بموضوع البحث سواء كان من المراجع المكتبية والمجلات المحكمة والمعلومات من الشيخ. ثم

⁴ Muhammad Hashim Ash'ari, "Risalah Ahl Al-Sunnah Wa Al-Jama'Ah," in *Irshad Al-Sari Fi Jam'i Musannafat Al-Shaykh Hashim Ash'Ari* (Jombang: Maktabah al-Turath al-Islami, 2007), 9-11.

⁵ Abdul Hamid, "Dakwah Dalam Perspektif Paradigma Tradisionalisme Dan Reformisme," *Kordinat* XV, no. 1 (2016): 93.

عرض تلك البيانات الأساسية والثانوية وإجراء دراسة وصفية تحليلية متعلقة بالفقه الإسلامي.

المباحث والنتيجة

لمحة الحياة الفكرية لحضرة الشيخ هاشم أشعري

ولد الشيخ هاشم أشعري في 14 فبراير 1871م في جيدانج، وهي منطقة صغيرة شمال مدينة جومبانج (Jombang). وهو ابن الزوجين الأشعري وحليمة. أشعري هو مؤسس ومدير رباط كيراس (Pesantren Keras)، بينما أبو حليمة، عثمان، مؤسس ومدير رباط كيدانج (Pesantren Gedang). كان عثمان ابن صحة، مؤسس ومدير رباط تنباك بيراس (Pesantren Tambak Beras).⁶ وفي سند النسب، أصبح هاشم أشعري مرثياً بشكل متزايد لأن أشعري وحليمة ينحدرون من جاكا تنكير (Jaka Tingkir) أو السلطان هادي ويجايا (Sultan Hadi Wijaya). من خط حليمة نسب ينحدر هاشم أشعري من سلالة برابو براويجايا (Prabu Brawijaya)، بينما ينحدر من سلالة أشعري النسب من سلالة سنان جيرى (Sunan Giri) وسنان جونونج جاتي (Sunan Gunung Jati).⁷ يُعرف هذان الواليان من الأولياء التسعة (Wali Songo) بأحدهما من عطرة النبي محمد.

⁶ Herry Muhammad, *Tokoh-Tokoh Islam Yang Berpengaruh Abad 20* (Jakarta: Gema Insani, 2006), 70.

⁷ Zuhri, *Pemikiran KH. M. Hasyim Asy'ari Tentang Ahl Al-Sunnah Wa Al-Jama'ah*, 67; Aguk Irawan, *Penakluk Badai: Novel Biografi KH. Hasyim Asy'ari* (Surabaya: Khalista, 2010), 67; Latiful Khuluq, *Fajar Kebangunan Ulama: Biografi KH. Hasyim Asy'ari* (Yogyakarta: LKiS, 2000), 14-15.

نشأ هاشم أشعري في بيئة دينية. في سن الطفولة، تعلم هاشم أشعري أولاً التوحيد والشرح والحديث والعربية والدراسة الإسلامية الأخرى من والده.⁸ بعد ذلك، تعلم من رباط إلى رباط في جاوا الشرقية مثل رباط وونوكرومو وبروبولينغكو (Wonokromo Probolinggo)، رباط كاديمانغان بغانالان مادورا (Kademangan Bangkalan Madura) ورباط سيوالان فانجي سيدوهارجو (Siwalan Panji Sidoarjo) تحت رعاية المدير كياهي يعقوب.⁹ إلى جانب ذلك، ذهب إلى مكة المكرمة للدراسة مع علماء بارزين من العلماء المكيين والجاويين الذين استقروا في مكة؛ كالسيد بكري شطا الدمياطي، سعيد اليماني، السيد عباس المالكي، أحمد خطيب المينانجكباوي، نووي البنتاني ومحمد محفوظ الترمسي.¹⁰ وقام أيضا بتدريس التعاليم الإسلامية للطلاب الدوليين في مكة. ومن أشهر طلابه سعد الله الميمني مفتي الهند، عمر حمدان المحدث في مكة، كياهي عبد الوهاب حسب الله تمباك براس (Tambak Beras)، كياهي أسنوي قدس (Kudus)، كياهي صالح تايو (Tayu).¹¹

هاشم أشعري هو كياي غزير الإنتاج. خلال حياته المزدهمة في المجالات الدينية والاجتماعية والسياسية، مثل تأسيس وإدارة رباط تيبو إيرينج (Pesantren Tebuireng)، وتأسيس وتطوير جمعية نخضة العلماء، ومقاومة الاستعمار، نجح في صب أفكاره في العديد من الأعمال التي تضمنت مجالات اللاهوت والحديث والصوفية والفقهاء الإسلاميين والسياسة الاجتماعية. كتب معظم الأعمال باللغات العربية والإندونيسية والجاوية. جمعت أعماله المختلفة فيما بعد في مختارات كتبها محمد عصام

⁸ Zuhri, *Pemikiran KH. M. Hasyim Asy'ari Tentang Ahl Al-Sunnah Wa Al-Jama'ah*, 74.

⁹ Khuluq, *Fajar Kebangunan Ulama: Biografi KH. Hasyim Asy'ari*, 20.

¹⁰ Zuhri, *Pemikiran KH. M. Hasyim Asy'ari Tentang Ahl Al-Sunnah Wa Al-Jama'ah*, 76.

¹¹ Mukani, *Biografi Dan Nasihat Hadratussyaikh KH. M. Hasyim Asy'ari* (Jombang: Pustaka Tebuireng, 2015), 16.

الدين حاذق في إرشاد الساري في جمع مصنفات الشيخ هاشم أشعري. من خلال أعماله، نجح في تقديم شخصية دينية إندونيسية فريدة كانت قادرة على التكيف مع التقاليد المحلية وأصبحت مصدر إلهام أربطة المعاهد الإسلامية في نظام التعليم.¹² أخيراً، لخدماته العظيمة في مجالات الدين والتعليم والاجتماعية والسياسة الوطنية، أطلق عليه علماء آخرون كياهي هاشم أشعري في دور حضرة الشيخ (معلم كبير) كما سجلها زمخشري ظفير.¹³ اعتبرها عبد الرحمن مسعود بمثابة خطة رئيسية لرباط العلم.¹⁴ ومنحته حكومة جمهورية إندونيسيا لقباً مرموقاً كبطل قومي. حتى جيمس جيه فوكس (James J. Fox)، عالم الأنثروبولوجيا من الجامعة الوطنية الأسترالية (Australian National University)، وصفه بأنه ولي من أولياء الله مؤثر على جاوا بسبب عمق معرفته ويعتقد أنه يجلب البركات لأتباعه.¹⁵ أصبحت أفكاره وتحركاته مصدر إلهام للسمات المميزة لإندونيسيا وهي نتيجة اختيارية مختلفة التفاهات الإسلامية والتقاليد المحلية والأفكار الأجنبية التي كانت منسجمة مع الشريعة الإسلامية عامة والفقهاء الإسلامي خاصة من أجل تحقيق المصالح العامة.¹⁶

¹² Zuhairi Misrawi, *Hadratussyaikh Hasyim Asy'ari: Moderasi, Keumatan, Dan Kebangsaan* (Jakarta: Kompas, 2010), 94.

¹³ Zamakhsyari Dhofir, *Tradisi Pesantren Studi Pandangan Hidup Kyai Dan Visinya Mengenai Masa Depan Indonesia* (Jakarta: Pustaka LP3ES, 2011), 137.

¹⁴ Abdurrahman Mas'ud, *Intelektual Pesantren: Perhelatan Agama Dan Tradisi* (Yogyakarta: LKiS, 2004), 207.

¹⁵ Misrawi, *Hadratussyaikh Hasyim Asy'ari: Moderasi, Keumatan, Dan Kebangsaan*, 27.

¹⁶ Muhammad Taufiq, "A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text," *Millati: Journal of Islamic Studies and Humanities* 5, no. 2 (2020): 121-28, <https://doi.org/10.18326/mlt.v5i2.121-128>.

وسطية حضرة الشيخ محمد هاشم أشعري في مجالات الشريعة

قبل مناقشة مزيد من التفكير الوسطي لدى كياهي هاشم أشعري، يقدم هذا القسم وصفاً للمصطلحات المعتدلة. يمكن رؤية المصطلحات من جانبيين، وهما المصطلحات كحاوية والمصطلحات كمحتوى. عند النظر إليها على أنها حاوية، يمكن استخدام مصطلحات معينة في تخصصات معينة. على العكس من ذلك، عند مشاهدته من محتوى مصنف في مصطلحات معينة، يجب فهمه بعناية ونقد. فيما يتعلق بالمصطلحات كمنتدى، هناك تعبير مشهور يعرفه علماء المسلمين، وهو "لا ينبغي مقاضاة استخدام المصطلحات والكلمات"، مما يدل على أنه يمكن لأي شخص استخدام المصطلحات بغض النظر عن البيئة الثقافية، أو الإطار العقلي، أو نظرية المعرفة أو الفلسفة والأيدولوجيا التي ولدت هذا المصطلح، لأن المصطلح هو إرث كل حضارة في مختلف التخصصات في المجتمع.

مصطلح "الوسطية" هو الحال أيضاً. كحاوية، يمكن استخدام هذه المصطلحات في بعض التخصصات العلمية. ومع ذلك، كقارئ، يجب أن يكون ملاحظاً لمحتويات هذه المصطلحات. في الدراسات الإسلامية، على سبيل المثال، يحتوي مصطلح "الوسطية" على معاني مختلفة. يربط غالبية علماء الدراسات الإسلامية هذا المصطلح من الغرب بمصطلح "الوسطية". معجمياً، هو اسم نهائي يشير إلى جذر كلمة "وسط". هذه الكلمة لها معاني مختلفة. فسرها ابن منظور على أنها "بين الطرفين"،¹⁷ فسرها مؤلف المعجم الواسط على أنها "بسيطة" و "مختارة"،¹⁸ وفسرها

¹⁷ Ibnu Manzur, *Lisanu Al-'Arab*, Dar al-Ma' (Kairo, 1994), 4831.

¹⁸ Sha'ban 'Abd Al-'Ati, *Al-Mu'jam Al-Wasit* (Kairo: Majma' al-Lughah al-'Arabiyah, 2004), 1031.

الراغب الأصفهاني على أنها "ما له طرفان متساويا القدر" و"استعمال القصد المصون
عن الإفراط والتفريط".¹⁹

الإفراط مفرطة في الدين، بينما التفريط تختزل التعاليم الدينية. تأتي هذه من
نفس الكلمة الجذرية مع مصطلح "تطرف"، أي "طارف" (حافة)، على عكس
مصطلح "توسط"، وهو الوسطية، المشتق من نفس جذر كلمة "واسطية". هاتان
الكلمتان مذكورتان في القرآن. يستخدم القرآن كلمات "طَرَف" و "طَرْف" و "أطرف"
في إحدى عشرة آية، وبالتحديد في سورة ال عمران [3]: 128، وسورة هود [11]:
114، وسورة الرعد [13]: 41، وسورة إبراهيم [14]: 43 وسورة طه [20]:
130، وسورة الأنبياء [21]، 44، وسورة النمل [27]: 40، وسورة الصافات
[37]: 48، وسورة ص [38]: 52، وسورة الشورى [42]: 45، وسورة الرحمن
[55]: 56.²⁰ بالإضافة إلى ذلك، فإن كلمة "وسط" ومشتقاتها وهي وسطى و
أوسط ووسط مذكورة في خمس آيات، وهي بالتحديد في سورة البقرة [2]: 143 و
238، وسورة المائدة [5]: 89، وسورة القلم [68]: 28، وسورة العاديات
[100]: 5.

وعلى وجه التحديد، فإن الآيات الخمس التي تستخدم كلمة "وَسَطَة"
واشتقاقها قد تم تفسيرها باختلاف بعض الشروح مثل الشيخ محمد الطاهر ابن عاشور
"التحرير والتنوير"،²¹ في أيسر التفسير لكلام العلي الكبير،²² وإرشاد العقل السالم إلى

¹⁹ Al-Raghib Al-Asfahani, *Al-Mufradat Fi Gharibi Al-Qur'an* (Damaskus: Dar al-Qalam, 2009), 869.

²⁰ Muhammad Fu'ad 'Abd al-Baqi, *Al-Mu'jam Al-Mufahras Li Alfaz Al-Qur'an Al-Karim* (Kairo: Dar al-Hadith, 1364), 425.

²¹ Muhammad al-Tahir Ibnu 'Ashur, *Al-Tahrir Wa Al-Tanwir* (Tunis: al-Dar al-Tunisiyah, 1984), 17-18.

²² Abu Bakr Jabir Al-Jaza'iri, *Aysar Al-Tafasir Li Kalam Al-'Ali Al-Kabir* (Jeddah: Racem Advertising, 1990), 125-26.

مزايا الكتاب الكريم.²³ ومع ذلك، على وجه الخصوص، فإن تفسيرهم هو نفسه، أي الوسط بين إفراط والتفريط. بشكل عام، تشير الآيات الخمس إلى الجودة والسلوك وطريقة التفكير التي تعتبر جيدة في الإسلام، أي كونها الجماعة الرئيسية، وتكريس أسمى وأقدر عقل، وصلاة العصر، والأنشطة الملائكية.

بصفته أول متلقي ومفسر وممارس للقرآن، فإن النبي محمد ﷺ يشجع هذه الوسطية كما يقدم مثالاً مباشراً على رفاقه. ففي الحديث مثلاً، يشجعهم بقوله: "خير الأمور أوساطها". كلمة أوساط هنا تعني "الطبيعة الجديرة بالثناء للجانبين الحقيير".²⁴ وكما روى الإمام البخاري "ما خير رسول الله صلى الله عليه وسلم بين أمرين قط إلا أخذ أيسرهما، ما لم يكن إثماً، فإن كان إثماً كان أبعد الناس منه".²⁵

في خطاب الفكر الإسلامي المعاصر، يتم تفصيل النصوص المعيارية للاعتدال الإسلامي أعلاه بمزيد من التفصيل من قبل العلماء وفقاً لتطور ديناميكيات الجماعات الإسلامية، على مستوى الخطاب والعمل، في أجزاء مختلفة من العالم. وكان خالد أبو الفضل من بين صفوف العلماء المهتمين بهذا الخطاب. في رأيه، فإن الحديث الذي يروي قصة النبي اختار الوسيط عند مواجهة الخيارين المتطرفين أعلاه هو أصل الاعتدال الذي غرسه. بالنسبة له، فإن مصطلح "الوسطية" يتماشى مع مصطلح "الحداثي" و "التقدمي" و "الإصلاحي". ومع ذلك، فهو يفضل "الوسطية"، لأنه يُنظر إليه على أنه أكثر ملاءمة لوصف الجماعات التي يواجهها بجماعات مترزمة.²⁶

²³ Abu al-Su'ud Al-'Imadi, "Irshadu Al-'Aql Al-Salim Ila Mazaya Al-Kitab Al-Karim," 2015, 123.

²⁴ Majd al-Din Abu alSa'adat al-Mubarak Muhammad ibn al-Athir al-Jazari, *Jami' Al-Usul Fi Ahadith Al-Rasul*, 1969, 399.

²⁵ Al-Bukhâri, *Al-Jâmi' Al-Shahîh* (Kairo, Mesir: Dâr al-Sya'b, 1987), 1530-31.

²⁶ Khaled Abou El Fadl, *Selamatkan Islam Dari Muslim Puritan* (Jakarta: Serambi, 2006), 27.

يستخدم مصطلح "الحداثي" للإشارة إلى الجماعات التي تحاول التغلب على تحديات الحداثة والمشكلات المعاصرة، ويستخدم المصطلحين "التقدمي" و "الإصلاحي" لإظهار موقف النخبة الفكرية، المتعلقة بمسألة الليبرالية وعلاقتها بالإصلاحات والتقدم التي لا تمثل غالبية المسلمين. على عكس مصطلحات "الحداثي" و "التقدمي" و "الإصلاحي"، فإن مصطلح "معتدل" يشير إلى الاعتدال الذي هو المؤسسة الدينية لغالبية المسلمين اليوم. بدلاً من ذلك، يستخدم مصطلح "المتزمت" مع معاني مشابهة لمصطلحات "أصولي" و "متشدد" و "متطرف" و "راديكالي" و "متعصب" و "جهادي" ولكن بنقاط ضغط مختلفة. ومع ذلك، فهو يفضل استخدام مصطلح "المتزمت"، لأنه يرى أن خصائص هذه الجماعات المتزمنة تميل إلى أن تكون غير متسامحة، واختزالية، وحرفية، وترى الواقع الجماعي كشكل من أشكال تلويث الحقيقة الحقيقية.²⁷

بشكل أوضح، خصائص الفهم الوسطية وممارستها في الإسلام ، وهي (أ) اختيار الطريق الوسطي بالتخلي عن الموقف المفرط في الدين (الإفراط) وموقف تقليص التعاليم الدينية (التفريط) ، (ب) الموازنة (التوازن بين الشؤون العالمية والآخرة ويمكنه التمييز بين الانحرافات والاختلافات (ج) الاستقامة والثبات بقبول الحقوق والوفاء بالالتزامات بشكل متناسب، (د) التسامح من خلال الاعتراف بالفروق واحترامها، (هـ) المساواة من خلال ترك الأعمال التمييزية، (و) الشورى في حل المشكلات مع مبدأ المنفعة قبل كل شيء، (ز) إجراء إصلاحات على أساس المصلحة العامة،²⁸ الحفاظ على التقاليد القديمة التي لا تزال ذات صلة، واتخاذ أشياء جديدة

²⁷ El Fadl, 29-32.

²⁸ Taufiq, "A Critique against the Perspective of Al-Thufy on the Contradiction of Maslahat and the Holy Text."

أكثر صلة، (ح) إعطاء الأولوية، (ط) أن تكون دينًا ميكانيكيًا مفتوحًا للعصر، (ي) أن تكون مبتكرًا. بإحداث اختراقات جديدة في المنفعة والتقدم، و(ك) التحضر من خلال التمسك بالشخصية النبيلة والنزاهة الذاتية.²⁹

بناءً على ذلك، فإن كياهي هاشم أشعري تنعكس أفكار وحركات الوسطية في مجالات العقيدة والصوفية والفقهاء الإسلاميين والسياسة الاجتماعية، والتي تختلف بشكل عام عن الجماعات الإسلامية الحديثة. إذا رددت الجماعة الإسلامية الحديثة مصطلح "الرجوع إلى القرآن والسنة" كأساس رئيسي لفكرهم وحركتهم، فإن فكر كياهي هاشم أشعري وحركته هو بناءً على تفسير العلماء لهذين المصدرين الرئيسيين للإسلام لأن فهمهما لا يزال يتطلب تفسيرهما. ويستند هذا إلى حقيقة تاريخية مفادها أن حفنة من الناس فقط قادرون حقًا على الاجتهاد، في حين أن البقية، المعترف بهم والمحرومون، هم فقط مقلد ومتبع.³⁰

أ. مجال العقيدة

في مجال العقيدة، كياهي هاشم أشعري ملتزم بعقيدة أهل السنة والجماعة. مصطلح "أهل السنة والجماعة". قبل تسمية مدرسة العقيدة، كانت المصطلحات "سنة" و "جماعة" شائعة الاستخدام في الكتابات العربية. يظهر هذا على سبيل المثال في رسائل المأمون إلى واليه إسحاق بن إبراهيم عام 218 هـ قبل أبي الحسن الأشعري (260-324 هـ)، الرقم المذكور سلف ولد أهل السنة والجماعة. تتضمن الرسالة

²⁹ Afrizal Nur and Lubis Mukhlis, "Konsep Wasathiyah Dalam Al-Quran (Studi Komparatif Antara Tafsir Al-Tahrîr Wa at-Tanwîr Dan Aisar at-Tafâsîr)," *An-Nur* 4, no. 2 (2015): 212-13.

³⁰ Hasyim Asy'ari, *Al-Qanun Al-Asasi: Risalah Ahlus Sunnah Wal Jama'ah* (Jember: Darus Sholah, 2006), 7.

عبارة "ونصب أنفسهم إلى السنة" وعبارة "أهل الحق والدين والجماعة" - الحق والدين والجماعة.³¹

أكد كياهي هاشم أشعري أن "أهل السنة والجماعة" عند "نخضة العلماء" اتباع أبي الحسن الأشعري وأبو منصور الماتريدي في مجال العقيدة.³² في أحد مؤلفاته رسالة أهل السنة والجماعة، أوضح أنه في البداية كان أغلب أهل جاوا يتمسكون بأهل السنة والجماعة، ولكن خلال عام 1330هـ كان التسلسل من تعاليم مختلفة، حيث دخلت إليها عقيدة لا تتفق مع غالبية سكان جاوا؛ مثل تعاليم محمد بن عبد الوهاب، محمد عبده، محمد رشيد رضا، شيعة رافضة، والطريقة الصوفية المنحرفة كأتباع الحلول والاتحاد. وانتقد من زعم أنهم من أتباع محمد بن عبد الوهاب الذين استخدموا النموذج الوثني (التكفير) ضد أتباع المدارس الأخرى، وأتباع التصوف، والشيعة رافضة، وأتباع الصوفية المنحرفة.³³

كياهي هاشم أشعري من علماء الوسطية وليس متطرفاً. كما أنه ينقد فكرة التجسيم والتكفير على المذاهب الأخرى، ويهمش القرآن والسنة، ويجس إنكار صفات الله. على عكس الفكرتين اللتين لا تتناسبان بنفس القدر في هذا الدين. فيما يتعلق بهذه النقطة، قال كياهي هاشم أشعري أن كل جماعة الإسلام لا تزال في ممر الدين الإسلامي. كما في مقدمة مقالة الإسلاميين واختلاف المصلين. وادعى أن:

³¹ Said Aqil Siradj, *Ahlussunnah Wal Jama'ah: Sebuah Kritik Historis* (Jakarta: Pustaka Cendekia Muda, 2008), 6; Harun Nasution, *Teologi Islam: Aliran-Aliran, Sejarah Analisa Perkembangan* (Jakarta: UI Press, 2008), 65.

³² Ash'ari, "Risalah Ahl Al-Sunnah Wa Al-Jama' Ah," 9.

³³ Ash'ari, 9.

"البشر على خلاف بعد نبيهم في نواح كثيرة، حيث يضللون بعضهم البعض، لدرجة أن يصبحوا طوائف ومجموعات مختلفة. فقط، ما زالت تجمعهم الإسلام".³⁴ على الرغم من تعليقاته الانتقادية للغاية على العديد من الجماعات الإسلامية المضللة الأخرى، إلا أنه لم يكفرها أبدًا لأن القاعدة الأساسية لفكرته "لم يكفر أهل القبلة وأهل الشهادتين". فهذه هي عقيدة أهل السنة والجماعة، عقيدة وسطية تمسك إليها كياهي هاشم أشعري وجمعية نهضة العلماء.

ب. مجال الفقه

كما في مجال العقيدة، أكد كياهي هاشم أشعري أن جمعية نهضة العلماء ستبوع إحدى المذاهب الفقهية الأربعة، وهي الحنفية، والمالكية، والشافعية، والحنبلية في الفقه لأن في اتباعها مصلحة عظيمة والاعراض عنها مفسدة كبيرة.³⁵ ومع ذلك، بناءً على تاريخ حياته، فقد كان أقرب إلى مذهب الإمام النفيش الشافعي وهو المذهب النبيل، لأن هذا المذهب كان مذهب غالبية المسلمين في جاوا خلال حياته.³⁶ كما أن غالبية العلماء الذين أصبحوا أساتذته هم علماء الشافعية، مثل السيد بكرى شطا الدمياطي، وكياهي نووي البنتاني، وكياهي محمد محفوظ الترمسي. في التعامل مع القضايا الفرعية الخلافية، يجب استخدام أفكار هاشم أشعري كمثال. بصفته مؤسس جمعية نهضة العلماء، فهو معروف بشدة بالأفكار التي تعتبر

³⁴ Ahmad Ath-Thayyib, *Jihad Melawan Teror: Meluruskan Kesalahpahaman Tentang Khilāfah, Hākimiyyah, Jahiliyah Dan Ekstremitas* (Jakarta: Lentera Hati, 2016), 97-115.

³⁵ Muhammad Hashim Ash'ari, "Al-Tibyan Fi Al-Nahy 'an Muqata'ah Al-Arham Wa Al-Aqarib Wa Al-Ikhwan Wa Yalihi Al-Qanun Al-Asasi Li Jam'iyati Nahdlati Al-Ulama, Wa Risalat Al-Mawa'id," in *Irshad Al-Sari Fi Jam' Musannafat Al-Shaykh Hashim Ash'Ari* (Jombang: Maktabah al-Turath al-Islami, 2007), 28.

³⁶ Ash'ari, "Risalah Ahl Al-Sunnah Wa Al-Jama'Ah," 9.

منحرفة عن أهل السنة والجماعة، ولكنها تدعو إلى أهمية الأخوة الإسلامية والوطنية والإنسانية. لذلك، حذر المسلمين من أن يكونوا متعصبين في المسألة الفقهية الفرعية. حيث قال كياهي هاشم أشعري: "يا علماء المتعصبين لبعض المذاهب أو بعض الأقوال، دعوا تعصبكم في أمر الفروع الذي العلماء فيه على القولين، فقاتل: كل مجتهد مصيب، وقاتل: المصيب واحد، ولكن المخطئ يؤجر، ذروا التعصب، ودعوا هذه الأهوية المردية، ودافعوا عن دين الإسلام، واجتهدوا في رد من يطعن في القرآن وصفات الرحمن، ومن يدعي العلوم الباطلة والعقائد الفاسدة، والجهاد في هؤلاء واجب، فهلا شغلتم أنفسكم به."³⁷

إن هذا الكلام يثبت بوضوح بأنه شخصية معتدلة وسطية، يحترم الاختلاف في الرأي في الفقه وعدم التعصب المفرط في المسائل الفقهية حيث يفرق صفوف الأخوة بين المسلمين. فهذه الدعوة للتخلي عن التعصب تجاه نتيجة الاجتهاد في مجال الفقه هي طريقة لتجميع قوة الفكر في سطر واحد. بمعنى آخر، يحظر بشدة السلوك المسيء تجاه الناس من مختلف المذاهب الفقهية، لا سيما في مسائل الفقه. وهذا يختلف عن فكيره في مسائل العقيدة حيث ينتقد ويضلل أتباع العقيدة الباطلة ولا يكفرهم ما داموا من أهل القبلة والشهادتين.

على الرغم من التسامح في المسائل الخلافية الفقهية، لا يزال كياهي هاشم متمسكاً بقاعدة المذهب. وذكر أسباب دفاعه عن قاعدة المذهب على ما يلي؛ أولاً: الرجوع إلى رأي علماء السلف إجماع العلماء لأنه لا يمكن فهم القرآن مباشرة دون الرجوع إلى رأيهم. ثانياً: أمر النبي محمد قومه باتباع الجماعة الغالبة (السواد الأعظم)

³⁷ Ash'ari, "Al-Tibyan Fi Al-Nahy 'an Muqata'ah Al-Arham Wa Al-Aqarib Wa Al-Ikhwan Wa Yalihi Al-Qanun Al-Asasi Li Jam'iyati Nahdlati Al-Ulama, Wa Risalat Al-Mawa'id," 33.

في الدين. ثالثًا: اتباع رأي مذهب الفقه الأصح والأعلم، لأن لديهم فقيه النفس والملكة الفقهية في الاجتهاد بناء على قاعدة المذهب.³⁸

فوسطية كياهي محمد هاشم أشعري يظهر في النقطتين الأساسيتين. الأولى: يختلف عن موقف غالبية الجماعات الإسلامية الحداثية التي ترفض التقليد في الفقه من خلال الترويج للاجتهاد. الثانية: يختلف الأمر عن موقف بعض المسلمين المتعصبين على المذهب الفقهي المعين وينكرون المذاهب الفقهية الأخرى. كانت فكرته وحركته في الوسط بين هذين الاتجاهين كما أنه يمثل تأسيس غالبية المسلمين في العالم عبر تاريخه. فبعد وفاته، تكون أفكاره وحركته الوسطية في مجال الفقه أساسا لجمعية نهضة العلماء حتى الآن، لا سيما في لجنة بحث المسائل لحل المسائل الواقعية والموضوعية والقانونية لحل الوقائع المسائل المستجدة سواء في مجال العبادة أو المعاملة والاجتماعية والسياسية.

ج. مجال التصوف

على عكس الجماعات الإسلامية الحداثية التي تميل إلى رفض جميع أنواع الممارسات الصوفية التي تعتبر منحرفة عن طهارة الإسلام بسبب البدعة في العبادة والشرك، أكد كياهي هاشم أشعري أن أهل السنة والجماعة عند نهضة العلماء التمسك إلى الإمام الغزالي والجنيد البغدادي.³⁹

³⁸ Mat Solikhin, "GERAKAN PEMIKIRAN DAN PERAN TIGA ULAMA NU (K.H. HASYIM ASY'ARI, K.H.R. ASNAWI KUDUS, K. H. WAHHAB HASBULLAH) DALAM MENEGAKKAN AHL AL-SUNNAH WAL-JAMA'AH ANNAHDLIYAH DI JAWA TAHUN 1926 - 1971," *Jurnal THEOLOGIA* 27, no. 2 (2016): 351, <https://doi.org/10.21580/teo.2016.27.2.1071>.

³⁹ Ash'ari, "Risalah Ahl Al-Sunnah Wa Al-Jama'Ah," 9.

يهدف أفكاره في التصوف إلى تحسين سلوك المسلمين بشكل عام، وهو من نواح كثيرة تكرر لمبدأ الغزالي. ووفقاً له، هناك أربعة قواعد يجب أن يقوم بها من يريد أن يكون من أهل الطريقة. الأول: تجنب الحاكم الظالم، الثاني: احترام أولئك الذين يسعون لتحقيق السعادة في الآخرة، الثالث: مساعدة الفقراء. الرابع: أداء صلاة الجماعة.⁴⁰

توضح هذه النقاط الأربع أفكار الصوفية لدى كياهي هاشم أشعري الوسطية والتوازن بين الحياة في الدنيا والآخرة، لأن الفكر الصوفي لا يتجه نحو الآخرة فقط كالصلاة، بل يتجه أيضاً إلى المصلحة الدنيوية، مثل مساعدة الفقراء، ولكن أيضاً تجنب الحكام التعسفين لشعوبهم. من هذه النقطة يبدو أن كياهي هاشم أشعري أكد على الصوفية الخالصة. يريد أن يُنظر إلى الصوفية من جوهرها وليس من جوانبها الثقافية. وهذا من عظمة فكرته في التصوف.⁴¹

وهكذا رغم أن فكر التصوف لدى كياهي هاشم أشعري تأثر كثيراً بفكر الغزالي، فلا يمكن فصله عن تأثير حركة الإصلاح الصوفية الجديدة التي تركزت في مكة والمدينة في نهاية القرن التاسع عشر والتي قام بها عبده في جهوده. صياغة العقيدة الإسلامية لتلبية احتياجات الحياة الحديثة، بحيث يمكن للإسلام أن يلعب مسؤوليات أكبر في المجالات السياسية والاجتماعية والتعليمية. لهذا السبب، أطلق عبده أفكاره للمسلمين للابتعاد عن التعلق بعقلية أئمة المدرسة وللمسلمين للتخلي عن جميع أشكال ممارسات الطريقة الصوفية.⁴² الهدف الآخر لحركة النهضة هو إزالة الصوفية من التطرف والافراط والغلو. حيث أوضح التزام جميع المسلمين بالشريعة، بحيث إذا ادعى

⁴⁰ Khuluq, *Fajar Kebangunan Ulama: Biografi KH. Hasyim Asy'ari*, 53.

⁴¹ Syamsul Munir Amin, *Ilmu Tasawuf* (Jakarta: Amzah, 2014), 371.

⁴² Dhofir, *Tradisi Pesantren Studi Pandangan Hidup Kyai Dan Visinya Mengenai Masa Depan Indonesia*, 140.

شخص ما أنه ولي ثم فعل أشياء غريبة ونفى الشريعة، فإنه لم يكن ولياً، ولكنه زنديق. كما قال قائل منصوب إلى الإمام مالك: "من تفقه ولم يتصوف فقد تفسق ومن تصوف ولم يتفقه فقد تزندق ومن جمع بينهما فقد تحقق".

يوضح الوصف أعلاه أن أفكار هاشم الصوفية هي تفكير صوفي معتدل يقع في الوسط بين أفكار مجموعتين متعارضتين في التعامل مع التصوف، وهما من ينقضون التصوف ومن يلتزمون بالتصوف ويخالفون الشريعة الإسلامية. فشلت المجموعة الأولى في فهم طبيعة مفهوم الإحسان في الشريعة الإسلامية وهو جوهر الصوفية، بينما فشلت المجموعة الثانية في فهم الشريعة كأساس للصوفية ومصدرها. هاتان المجموعتان غير متناسبتين بنفس القدر في النظر إلى التصوف الذي طوره علماء الصوفية من أهل السنة والجماعة على أساس القرآن والسنة.

فكر التصوف كياهي هاشم أشعري وموقفه مع تعاليم الصوفية التي لها نمط الصوفية السنية الأخلاقية العمالية كما طورها علماء الصوفية من أهل السنة والجماعة خاصة في المرحلة التاريخية من التطور. التصوف في القرن الثالث الهجري ومرحلة التوطيد في القرن الخامس الهجري. فهذه أفكار كياهي هاشم أشعري وحركته أهدمت تأسيس جمعية أهل الطريقة المعتبرة لنهضة العلماء (JATMAN NU) كلجنة خاصة في نهضة العلماء لتنظيم الطريقة الصوفية، وتألفت غالبيتها من الأخويات الصوفية من الطريقة القادرية والنقشبندية. كما بحث مارتن فان بروينسين (Martin Van Bruinessen) أن معظم علماء بسنتيرين (Pesantren) في جاوا طوروا التعاليم الإسلامية الحنيفة وتجنبوا المذاهب الصوفية الضالة التي لا تزال مزدهرة خارج جاوا.⁴³

⁴³ Martin Van Bruinessen, *Kitab Kuning, Pesantren, Dan Tarekat: Tradisi-Tradisi Islam Di Indonesia* (Bandung: Mizan, 1995), 164.

الوسطية التقليدية الانتقائية لدى كياهي هاشم أشعري في فقه السياسة الاجتماعية

بإندونيسيا

ظهرت أفكار كياهي هاشم أشعري الوسطية في مجال العقيدة والفقهِ والتصوف في تطبيقاته في المجال الاجتماعي السياسي، خاصة بعد عودته إلى إندونيسيا عام 1899م بعد سبع سنوات من العيش في مكة. في نفس العام، بدأ بالتركيز على تدريس سنتري (Santri) طلاب أربطة العلم من خلال إنشاء رباط تبو إيرينغ (Pesantren Tebuireng) الإسلامية الداخلية وتم الاعتراف بها رسميًا من قبل الهولنديين في 6 فبراير 1906 م.⁴⁴ شارك كياهي هاشم أشعري بشكل كبير في الحفاظ على أربطة العلم وتطويرها في القرن العشرين الميلادي وأصبحت المورد الأكثر أهمية في قيادة أربطة العلم في جميع أنحاء جاوا ومادورا منذ عام 1910م. لعب دورًا رئيسيًا في تأسيس وتطوير جمعية نهضة العلماء، والتي لعبت منذ تأسيسها في عام 1926 م دورًا مهمًا في الحياة الاجتماعية السياسية في إندونيسيا.⁴⁵

منذ تأسيسها، كان لكياهي هاشم أشعري تأثير كبير على الحياة الاجتماعية السياسية، على المستوى المحلي والوطني. أصبح المؤسس والمدير لتبو إيرينغ دائمًا تقريبًا جزءًا من شخصية النخبة الوطنية، في كل من مجلس الوزراء والبرلمان. وكان كياهي هاشم نفسه كمؤسس ورئيس الأكبر لجمعية نهضة العلماء بشكل مباشر في الجهود المبذولة للقضاء على المشكلات الاجتماعية والسياسية بناءً على أفكاره في مجالات الإيمان والصوفية والفقهِ. في المجال الاجتماعي الديني، بعد تسلسل تعاليم مختلفة كانت

⁴⁴ M. Ridlwan Nasir, *Mencari Tipologi Format Pendidikan Ideal Pondok Pesantren Di Tengah Arus Perubahan* (Yogyakarta: Pustaka Pelajar, 2010), 249-53.

⁴⁵ Dhofir, *Tradisi Pesantren Studi Pandangan Hidup Kyai Dan Visinya Mengenai Masa Depan Indonesia*, 100.

مختلفة عن التعاليم السائدة لسكان جاوا،⁴⁶ انتقد وتقوم ودعا المسلمين لتتماشى مع تعاليم أهل السنة والجماعة وللإتحاد ضد الاستعمار الهولندي والتخلص من الاستعمار. كما حاول القضاء على الجريمة والفجور في بيئة رباط تبو إيرينغ، بحيث نجح في تغيير مجتمع رباط تبو إيرينغ.⁴⁷ وفي مجال السياسة الوطنية، كان له دور فاعل في معارضة الاحتلال الهولندي والياباني الذي توج بإصدار فتوى قرار الجهاد للدفاع عن الوطن هو جهاد سبيل الله، فاندلعت المعركة البطولية في 10 نوفمبر 1945م.⁴⁸ وبالتالي، فإن الأهداف الرئيسية لدى كياهي هاشم أشعري في تأسيس جمعية نهضة العلماء ثلاثة: (أ) الحفاظ على الورثة الدينية الوسطية التي سلكتها الأولياء التسعة، لظهور حركة التجديد من الجماعات الإسلامية الحديثة التي تقدم الافراط والتفريط وتعرض الخطر في البيئة الدينية في جاوا،⁴⁹ (ب) توحيد الوحدة الإسلامية مع العلماء للمصلحة الدينية، والاجتماعية السياسية والاقتصادية⁵⁰ لأن المسلمين يتفرون ويعيشون في أسوأ أحوال بسبب الاستعمار وظهور الفرقة الوهابية و(ج) مقاومة الاستعمار الهولندي الذي يضعف تطور الإسلام في إندونيسيا.⁵¹ في تعامله مع هذه المشكلات الاجتماعية والسياسية. وقام كياهي هاشم أشعري في تحقيق هذه الأهداف عن منهج الوسطية والاعتدال والتسامح والتوازن حتى يحترمها أصدقائه وخصومه. نقطة مهمة، إن أفكار وحركات كياهي هاشم أشعري في مجال الاجتماعية السياسية هي أفكاره حول القومية الوطنية والجهاد وأشكال الحكم التي تعكس أفكاره

⁴⁶ Ash'ari, "Risalah Ahl Al-Sunnah Wa Al-Jama'Ah," 9-10.

⁴⁷ Supriadi, *Ulama Pendiri Dan Penggerak Intelektual NU* (Tebuireng: Pustaka Tebuireng, 2005), 28.

⁴⁸ Irawan, *Penakluk Badai: Novel Biografi KH. Hasyim Asy'ari*, 388.

⁴⁹ Mukani, *Biografi Dan Nasihat Hadratussyaikh KH. M. Hasyim Asy'ari*, 26.

⁵⁰ Anam, *Pertumbuhan Dan Perkembangan Nahdlatul Ulama*, 15.

⁵¹ Alwi Sofwan and Muslich Miftach, *Ahlusunah Wal-Jama'ah Nahdlatul Ulama* (Semarang: Pustaka al-Alawiyah, 1993), 15.

وتحركاته الوسطية في مجالات الشريعة عامة وفي الفقه خاصة. بالنسبة له، القومية ليست مجرد مصطلح، لكنها تعبير عن حب الإنسان لوطنه، والذي يجب إثباته بالجهاد في سبيل الله.⁵² إن روح القومية لم تهدأ أبدا. حتى قبيل وفاته، كان العديد من الزعماء الوطنيين مثل بونج تومو (Bung Tomo) والقائد الكبير سويديرومان (Panglima Besar Sudirman) يزورون تيبو إيرينج كثيرا لطلب النصيحة حول كيفية النضال من أجل الاستقلال وطرد المستعمر من إندونيسيا.⁵³

كما ألقى كياهي هاشم أشعر خطابًا عن الوطنية والمقاومة عن الاستعمار: "لقد قاومنا الاستعمار لعدة سنوات، خاصة خلال الخمسين عامًا الماضية، حيث قاومنا المستعمر في حرب قضت على العديد من شخصياتنا وأطفالنا. لقد ضحينا بكل ما لدينا، ونواجه من أجله العديد من الصعوبات والآلام والبؤس. نقوم بذلك كخطوة لإعلاء كلمة الله، وعزة الإسلام والمسلمين، والشريعة الإسلامية. كل الجهود المبذولة لتضييق الأنشطة السياسية للمسلمين هي في الأساس محاولة لتهديم الشريعة الإسلامية. على هذا الأساس فإن الحرب والمقاومة على الاستعمار جهاد في سبيل الله. الحرب في سبيل الإسلام ودين الإسلام."⁵⁴

فهذا يثبت أن كياهي هاشم له أفكار وحركة في فقه السياسة الاجتماعية على منهج أهل السنة والجماعة في العقيدة ومذهب الإمام الشافعي في الفقه. فهذا يتصور في فكرته عن مكانة إندونيسيا دار الإسلام أو دار الكفر حين الاستعمار؟ فقرر في المؤتمر لجمعية نخضة العلماء 1936م في بنجار ماسين (Banjarmasin) أن

⁵² Khuluq, *Fajar Kebangunan Ulama: Biografi KH. Hasyim Asy'ari*, 127.

⁵³ Anam, *Pertumbuhan Dan Perkembangan Nahdlatul Ulama*, 58.

⁵⁴ Gugun El-Guyanie, *Resolusi Jihad Paling Syar'i* (Yogyakarta: Pustaka Pesantren, 2010), 146.

إندونيسيا دار الإسلام وإن استعمر هولندا لأن المسلمين في إندونيسيا يمكن أن يطبقوا الشريعة الإسلامية.⁵⁵

فيظهر جانب الوسطية في فكر كياهي هاشم أشعري في فقه السياسة حيث قرر أن إندونيسيا دار الإسلام لا دار الحرب. فهذه الفكرة تختلف تماما عن موقف الجماعات الجهادية التي اتهمت أن إندونيسيا دار الحرب، بل اتهمت أن الديمقراطية كفر لأنها دين. فالصحيح أن الديمقراطية ليست دينا، بل إنما هي نظام الدولة. وإن كانت جمهورية إندونيسيا تجري على نظام الديمقراطية البنجشاشيلاوية (Demokrasi Pancasila) فإن الدولة تحافظ على تطبيق الشريعة الإسلامية.⁵⁶ فعلى هذا، إندونيسيا دار الإسلام لأن الدولة تحافظ على تطبيق الشريعة الإسلامية.

وقرر كياهي هاشم أشعري أيضا أن الدفاع عن الوطن جهاد في سبيل الله بعد إعلان الاستقلال الإندونيسي للحفاظ على مكانة الدولة الموحدة لجمهورية إندونيسيا (NKRI). محتويات قرار الجهاد هي كما يلي: (أ) يجب الحفاظ على استقلال إندونيسيا المعلن في 17 أغسطس 1945م، (ب) جمهورية إندونيسيا باعتبارها الحكومة الوحيدة القانونية، يجب الدفاع عنها وإنقاذها، (ج) عدو جمهورية إندونيسيا، وخاصة هولندا، الذي جاء متحملاً مهام جيش الحلفاء (البريطاني) في مسألة أسرى الحرب اليابانيين، وبالتأكيد من خلال الاتفاقات السياسية والعسكرية لإعادة استعمار

⁵⁵ هذه الفتوى تبنى على كتاب بغية المسترشدين لفضيلة الحبيب عبد الرحمن محمد حسين المشهور، أنظرا! Abdurrahaman Al-Masyhur, *Bughyatu Al-Mustarsyidin* (Tarim: Markaz al-Nur li Dirasat wa Abhast, 2009), 4-330.

⁵⁶ Muhammad Taufiq, Akhmadul Faruq, and Ibnu Khaldun, "Implementation of 'The Madina Charter' in a Democratic Country: Indonesia as a Model," in *Proceedings of the 6TH International Prophetic Heritage Conference (SWAN 2018) Istanbul, Turkey* (Istanbul: SWAN, 2018), 523; Ahmed Salem and Muhammad Taufiq, "Manâfidu Al-Muharramât Ilâ Muntijâti Al-Halâl: "Dirâsah Tahlîiyah Fi Dhaw'i Ma'âyir Majma' Al-Fiqh Al-Islâmî Al-Dawî Wa Al-Ma'âyir Al-Mâlayziah"," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 16, no. 1 (June 27, 2021): 230-50, <https://doi.org/10.19105/AL-LHKAM.V16I1.3050>.

إندونيسيا، (د) المسلمون، وخاصة أعضاء نخضة العلماء، يجب أن يحملوا السلاح ضد الهولنديين وأصدقائهم الذين يريدون إعادة استعمار إندونيسيا، و(هـ) هذا الالتزام هو أحد الجهاد الذي يجب على كل مسلم (فرض عين) على مسافة 94 كيلومترا ، في حين أن من هم خارج تلك المسافة ملزمون بمساعدة إخوانه الذين هم في نطاق 94 كيلومترا.⁵⁷

بشكل عام، تشمل محتويات قرار الجهاد القومية الوطنية، والنظام الدستوري في شكل جمهورية والجهاد الذي يختلف عن الجماعات الإسلامية الأخرى، وخاصة دار الإسلام (DI) - الجيش الإسلامي الإندونيسي (TII)، حزب التحرير الإندونيسي،⁵⁸ والدولة الإسلامية في العراق والشام. في موضوع الوطنية، فهو يختلف عن حزب التحرير الذي يرفض للوطنية. وبدلاً من ذلك، فإنهم يحملون عبارة للحدود الوطنية تتمثل رؤيتها السياسية في توحيد أنواع مختلفة من الهويات الإسلامية في جميع أنحاء العالم تحت حكم الخلافة باعتبارها السلطة الوحيدة لنظام الدولة القومية في شكل جمهورية إندونيسيا الموحدة التي تعتبر المعاهدة الوطنية النهائية.⁵⁹ في السابق، على الرغم من اختلافها قليلاً عن حزب التحرير الوطني وفشلها، حاول وحارب دار الإسلام والجيش الإسلامي الإندونيسي من أجل جعل إندونيسيا دولة إسلامية.⁶⁰

⁵⁷ Mukani, *Biografi Dan Nasihat Hadratussyaikh KH. M. Hasyim Asy'ari*, 43.

⁵⁸ Abdul Jalil and Muhammad Taufiq, "Al-Ātsār Al-Mutarattibah 'Āla PERPPU (Lawāih Al-Hukūmiyyah Al-Badaliyyah) Min Al-Munazhhamāt Al-Mujtama'īyyah Raqḡ 2 Li 'Ām 2017 Dliḡḡ Wujūd Hizb Al-Tahrīr Indūnīsīyā Min Manzhūr Saddi Al-Dzarī'Ah," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 14, no. 1 (2019): 144, <https://doi.org/10.19105/al-ihkam.v14i1.1982>.

⁵⁹ Nilda Hayati, "KONSEP KHILAFAH ISLĀMIYYAH HIZBUT TAHRIR INDONESIA: Kajian Living Al-Qur'an Perspektif Komunikasi," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 12, no. 1 (2017): 175, <https://doi.org/10.21274/epis.2017.12.1.169-200>.

⁶⁰ Syafuan Rozi, "Nasionalisme, Demokratisasi, Dan Sentimen Primodialisme Di Indonesia," 2010, 89-90.

وفي مسألة الجهاد، ففكرة كياهي هاشم أشعري مختلف تماما عن داعش أو الدولة الإسلامية في العراق والشام. إنهم يعترفون فقط بنوع واحد من الجهاد، وهو الجهاد الإرهابي، باعتباره التفسير الوحيد لآيات الجهاد. لأنهم يعتقدون أن آيات السلام قد تم استجوابها بآيات السيف.⁶¹ فإنهم يفسرون الجهاد فقط على أنه عمل هجومي، بينما يعرف هاشم الجهاد بأنه عمل دفاعي.

تظهر أفكار وحركات كياهي هاشم أشعري نفسه كشخصية وسطية انتقائية تقليدية. ولد من بسنترين المعروفة بالتقليد إلى التمسك إلى أهل السنة والجماعة في العقيدة والمذاهب الأربعة في الفقه والطريقة الصوفية المعتبرة في التصوف. حيث جعل هذه الثوابت الثلاثة قانونا أساسيا لجمعية نهضة العلماء. فتحركت هذه الجمعية على يد كياهي هاشم أشعري جمعية وسطية تقليدية انتقائية، ليست جمعية تقليدية جامدة وغير قابل للتغيير والإصلاح. على يده نهضت وتطورت الأفكار والحركات في فقه السياسة الاجتماعية المناسبة لحالة إندونيسيا سواء كان عند الاستعمار أو عند الاستقلال.⁶²

⁶¹ Masdar Hilmy, "Genealogi Dan Pengaruh Ideologi Jihadisme Negara Islam Iraq Dan Suriah (NIIS) Di Indonesia," *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam* 4, no. 2 (2014): 414.

⁶² Lathiful Khuluq, "K.H. Hasyim Asy'ari's Contribution to Indonesian Independence," *Studia Islamika* 5, no. 1 (2014), <https://doi.org/10.15408/sdi.v5i1.760>; Lathiful Khuluq, "Kyai Haji Hasyim Asy'ari's Religious Thought and Political Activities (1871-1947)," *McGill University*, 1997, http://www.ebp.aaykpn.ac.id/kitab/kitab2_ke_nu_an/KYAI_HAJI_HASWM_ASY%27ARI%27S.pdf; Faisal Ismail, "The Nahdlatul Ulama: Its Early History and Contribution to the Establishment of Indonesian State," *Journal of Indonesian Islam* 5, no. 2 (2011): 247-82, <https://doi.org/10.15642/JIIS.2011.5.2.247-282>; Muhammad Noor Harisudin, "Islām Wa Fiqh Nusantara: Al-Tanāfus 'alā Al-Huwīyah Wa 'Alāqat Al-Sultah Wa Al-Ramz Al-Dīnī Li Jam'iyah Nahdlatul Ulama," *Studia Islamika* 24, no. 3 (2017): 503-54, <https://doi.org/10.15408/sdi.v24i3.4324>.

في سياق إندونيسيا وعناصرها الخارجية، قام كياهي هاشم أشعري في الوسط بين التطرف والافراط. قام بالجهاد والمقاومة على الاستعمار بتقرير أن إندونيسيا دار الإسلام. وهذا القرار لأجل دعم عسكر حزب الله ضد الاستعمار والمحاولة للاستقلال. فبعد الاستقلال قام بتقرير قرار الجهاد أن الدفاع عن الوطن جهاد في السبيل الله. فهذه هي وسطية تقليدية انتقائية في فقه السياسة الاجتماعية لدى كياهي هاشم أشعري تحت نظام جمعية نهضة العلماء لأجل المصلحة العامة لجميع المواطنين الإندونيسيين ولحماية الدولة الموحدة لجمهورية إندونيسيا ولتحقيق السلام العالمي.

الخاتمة

وإن ولد كياهي هاشم أشعري من بسترين المعروفة بالتقاليد والممارسة الدينية، ولكن أفكاره وحركاته في فقه السياسة الاجتماعية متطورة لا جامدة. حيث قام والتزم كياهي هاشم أشعري بمنهج الأفكار والحركات الوسطية الانتقائية التقليدية بين الإفراط والتفريط. تتجلى هذه الأفكار والحركات حينما وضع القانون الأساسي لجمعية نهضة العلماء أن الوسطية في مجالات الشريعة الإسلامية هي التمسك إلى أهل السنة والجماعة في العقيدة والمذاهب الأربعة في الفقه والطريقة الصوفية المعتبرة في التصوف. وقام بتطبيق هذه الوسطية الانتقائية التقليدية في فقه السياسة الاجتماعية بإندونيسيا بحب الأوطان والوحدة والمقاومة على الاستعمار ومكانة إندونيسيا دار الإسلام، والدفاع عن الوطن جهاد في سبيل الله، وشكل نظام الدولة الموحدة لجمهورية إندونيسيا وتحقيق الأمن والمصالح العامة لجمهورية إندونيسيا. وهذا كله بعض أفكار وحركات كياهي هاشم أشعري في فقه السياسة الاجتماعية في إندونيسيا.

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