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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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Legal Protection for *Nadzir* (*Waqf* Recipient) from Unregistered *Waqf* Land

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Abstract

Waqf in Indonesia that is carried out by the community is often not by the existing provisions and elements. As a result, there are many problems in *waqf*. One of the problems that can arise is the existence of *waqf* land that is not registered. This causes the recipient of the *waqf*, *nadzir*, as the manager of the donated land, to often get involved in disputes over the land. For this reason, legal protection and efforts are needed for *nadzir* from unregistered *waqf* land. In finding answers to these problems, researchers use certain legal theories as a basis for analyzing them. The method used in this research is normative legal research (normative juridical) and this research is descriptive analysis. The result is, the implementation of *waqf* in Indonesia is based on Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*, Government Regulation No. 24 of 1977 concerning Land Registration, Law No. 41 of 2004 concerning *Waqf*. These provisions are regulated to ensure certainty and protection for the implementation of *waqf*. Legal protection of the *waqf* land is very important considering that many parties want to control the donated land because the land is considered to have high economic value and is a very basic human need. For this reason, in obtaining legal strength and certainty, the *waqf* land must be registered so that it is legally registered as *waqf* property by the state. The donated land must obtain a *waqf* pledge deed which is then made a *waqf* certificate to ensure legal certainty. If the donated land does not have a *waqf* certificate, then it does not have legal force.

Keywords: Legal Protection, *Waqf* Land, *Nadzir*

Introduction

The land is very important in supporting human survival and is a very basic need for every human being. Land including immovable objects is found in Article 506 of the Civil Code, book II which regulates objects (*Van Zaken*). Land in the juridical sense is the surface of the earth. There is a structure or system in land tenure, one of which is land rights, namely rights containing the authority to be able to use and utilize the land. One of the rights to land, namely ownership rights over land, is meant by ownership rights to land is the right that can be owned by someone who is hereditary, strongest, and fulfilled by considering Article 6 of the UUPA (Basic Agrarian Law). The land has a social function.¹ In this case, land ownership rights are rights granted by the state to be owned by Indonesian citizens by registering land. Also, the method of obtaining land can be done through actions that give rise to legal relations such as buying and selling, inheritance, *hibah*, exchange, loans, and others, including through *waqf*.

Waqf is worship in the form of *shadaqah* which has many benefits for social interests. *Waqf* functions for the benefit of the people in the context of devotion to Allah Swt. *Waqf* is also one of the prioritized forms of worship in Islam because in addition to one's *taqarrub* (approach) to Allah Swt., it is also a form of other social welfare.²

Waqf itself is a form of worship that has spiritual and social aspects in Islam. From a spiritual perspective, *waqf* is a practice of worship or *shadaqah* that reflects the obedience of a Muslim in carrying out the commands of Allah Swt. and Rasulullah Saw. Meanwhile, from a social perspective, it can be seen from the existence of assets that are given up and used for the public interest. *Waqf* is closely related to the socio-economic community and as a support for the development of the Islamic community in Indonesia and has the aim of realizing the benefit of mankind.

In general, *waqf* in Indonesia is used for schools, Islamic boarding schools, orphanages, mosques, prayer rooms, tombs, and so on. *Waqf* is also related to the provisions of national agrarian law

¹Johan Duparc, *Verzameling van Nederlandsch-Indische Rechtspraak En Rechtsliteratuur 1898-1907*, Vol. 1 (n.c.: n.p., 1910), p. -.

²Hasbi ash-Shiddiq, "Perjalanan Wakaf HAKI dalam Koridor Hukum *Syara'* dan Perundangan Indonesia", *Al-Syakhshiyah: Jurnal Hukum Keluarga Islam dan Kemanusiaan*, 1(2), 2019, p. 128-142. Retrieved from <https://doi.org/10.35673/as-hki.v1i2.474>.

regulations governing legal relations with earth, water, and space as well as the wealth contained therein, referred to in this case, namely land, which is contained in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

Regarding land registration administration, *waqf* is included in the category of determining land rights. There are activities to determine land rights because there is an activity to determine the *waqf* land through a decision of the competent official. The issue of land ownership has its place in the law in the field of agriculture/land in Indonesia.

Waqf is carried out by a *wakif* by handing over the property to *nadzir* to be managed and developed for the public interest. Property that is most often used in *waqf* is usually land. However, in the implementation of land *waqf*, it is often carried out based on trust alone, namely *wakif* handing over the donated land to *nadzir* not in front of the authorized *waqf* deed maker and later the official will issue a *waqf* pledge deed as proof that the *waqf* has been done. In the absence of the *waqf* pledge deed, the *waqf* land cannot be registered with the authorized government agency and is not recorded as *waqf* property. With a lack of knowledge in the implementation of the *waqf*, *nadzir* as the recipient of the *waqf* often gets problems with the *waqf* land he manages. The problem that arises is because the donated land managed by *nadzir* is not registered so that it does not have a definite legal force. Moreover, if the *wakif* has passed away then the heirs do not recognize the existence of *waqf*, because there is no evidence regarding the provision of *waqf* and during the life of the *wakif* the heirs do not know the provision of *waqf*.

In this case, the reason for the writer to raise the issue is looking for legal efforts or protection against *nadzir* as the recipient of unregistered *waqf* land. Formulation of the problem in this research is, "How are the legal force and legal protection against *nadzir* from unregistered *waqf* land?"

Methodology

The research method used in this research is normative legal research (normative juridical). According to Soerjono Soekanto, research is generally differentiated according to data obtained directly from the public (primary data) and library materials (secondary data).³ Normative legal research or also known as library research is legal

³Soerjono Soekanto and Sri Marmudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT Raja Grafindo Persada, 2011), p. -.

research that is carried out by researching or examining secondary data.

Normative legal research is also called doctrinal legal research. In this type of legal research, whenever the law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as a rule or norm which is a benchmark for human behavior it is deemed appropriate.⁴ This research is descriptive-analytical. The nature of descriptive analysis research is to describe the results of the research with complete and detailed data.

In normative legal research, the data used are secondary. Secondary data is data obtained from library materials. Secondary data consists of primary legal materials and secondary legal materials. *First*, primary legal materials, are binding legal materials, consisting of basic legal norms or rules, basic regulations, statutory regulations, uncodified legal materials, jurisprudence, treaties, and legal materials from the colonial era which are still in use.⁵ The primary materials to be used in this research are in the form of laws and regulations, including: (1) Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA); (2) Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*; (3) Government Regulation No. 24 of 1997 concerning Land Registration; (4) Law No. 41 of 2004 concerning *Waqf*. *Second*, secondary legal materials, are legal materials that can assist in providing explanations for primary legal materials, such as draft laws, research results, and scientific works from legal circles, related to research problems.

Results and Discussion

Waqf is a legal action carried out by *wakif* by releasing or separating his/her property which is used forever or for a certain period, which has the aim of being in the public interest and is intended to get the reward and pleasure of Allah Swt. From this description, it can be concluded that *waqf* is a practice of worship that has *shadaqah jariyah* value for Muslims by releasing their property for the public interest.

The function of *waqf* is to perpetuate the benefits of the donated land, by the objectives of the *waqf* concerned. By making the land of the

⁴Qomaruddin, "Makna Zakat dan Pajak", *Jurnal QIEMA (Qomaruddin Islamic Economy Magazine)*, 4(2), 2018, p. 114-128. Retrieved from <http://ejournal.kopertais4.or.id/pantura/index.php/qiema/article/view/3354>.

⁵Soekanto and Marmudji, *Penelitian Hukum Normatif*, p. -.

ownership rights as a *waqf*, the ownership rights concerned are canceled. But the land does not become state land, but rather has a special status as *waqf* land, which is regulated by Islamic Religious Law.⁶

In Indonesia, the legal basis for the implementation of *waqf* is regulated in Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*, Government Regulation No. 24 of 1977 concerning Land Registration, and Law No. 41 of 2004 concerning *Waqf*.

In doing *waqf*, it must first fulfill the *waqf* elements which are listed in the Law No. 41 of 2004 Article 6, namely as follows: *wakif*; *nadzir*; *waqf* property; *waqf* pledge; the allocation of *waqf* objects; and *waqf* period.

A. *Wakif*

Wakif is the party who donates his property.⁷ *Wakif* includes individuals, organizations, and legal entities. The *wakif* requirements:

1. Individual *waqf* can only do *waqf* if it meets the following requirements: (a) Adult; (b) Common sense; (c) Not prevented from doing legal actions; and (d) The legal owner of the property.
2. The organization's *waqf* can do *waqf* if it is by the organization's provisions to donate the organization's *waqf* assets based on the articles of association of the organization concerned.
3. Legal entity *waqf* can perform *waqf* if it is by the provisions of the legal entity to donate the *waqf* property of the legal entity based on the articles of association of the legal entity concerned.

B. *Nadzir*

Nadzir is the party that receives *waqf* property from *wakif* to manage it according to its function or allotment. *Nadzir* consists of individuals, organizations, and legal entities. The *nadzir* requirements are contained in Law No. 41 of 2004 Article 10, namely:

1. An individual can only become a *nadzir* if he meets the following requirements: (a) Indonesian citizens; (b) Muslim; (c) Adult;

⁶Asri Agustiwi, "Hukum dan Kebijakan Hukum Agraria di Indonesia", *Ratu Adil*, 3(1), 2014, p. 1-7. Retrieved from <https://ejournal.unsa.ac.id/index.php/ratuadil/article/view/17>.

⁷Muammar Alay Idrus, "Keabsahan, Kepastian Hukum, dan Perlindungan Hukum atas Perwakafan yang Tidak Tercatat (Studi Kasus Praktek Perwakafan Tanah di Kecamatan Sukamulia)", *Jurnal IUS Kajian Hukum dan Keadilan*, 5(1), 2017, p. 30-48. Retrieved from <http://dx.doi.org/10.29303/ius.v5i1.342>.

- (d) *Amanah*; (d) Able physically and spiritually; and (e) Not prevented from doing legal actions.
2. An organization can become a *nadzir* if it meets the following requirements: (a) The management of the organization concerned meets the requirements of an individual *nadzir*; (b) Organizations that work in the social, educational, social and/or Islamic religious fields.
 3. A legal entity can become a *nadzir* if it meets the following requirements: (a) The management of the legal entity concerned meets the requirements of an individual *nadzir*; (b) Indonesian legal entity established by the applicable laws and regulations; and (c) The legal entity concerned is engaged in the social, educational, social, and Islamic religious fields.

Nadzir's duties are contained in Article 11 of Law No. 41 of 2004 concerning *Waqf* as follows: (1) Performing the administration of *waqf* assets; (2) Managing and developing *waqf* assets by their objectives, functions, and objectives; (3) Overseeing and protecting *waqf* property; (4) Report the implementation of tasks to the Indonesian *Waqf* Board.

C. *Waqf* Property

Waqf property is a property that has long-lasting durability and can be used in the long term and has an economic value according to the *sharia* which a *wakif* gives to *nadzir*. Also, the donated property must have the status of a *wakif's* property, the *waqf's* property must be free from all the burdens of bonds, guarantees, confiscation, and disputes. Land that contains imposition or is in the process of a case or dispute, cannot be donated until the problem is resolved first.⁸

According to Article 16 of Law No. 41 of 2004 concerning *Waqf*, assets can be classified into:

1. Immovable object. Inanimate objects that can be represented include: (a) Land rights by the provisions of the applicable laws and regulations, both registered and unregistered; (b) The building or part of the building consisting of land as referred to in letter a; (c) Plants and other objects related to soil; (d) Ownership rights of apartment units by the provisions of the applicable laws and regulations; (e) Other immovable objects by the provisions of the *sharia* and applicable laws and regulations.

⁸Agustiwi, "Hukum dan Kebijakan Hukum Agraria di Indonesia", p. -.

2. Moving objects. Movable objects that can be represented include: (a) Money; (b) Precious metal; (c) Securities; (d) Vehicle; (e) Intellectual property rights; (f) Lease rights; and (g) Other movable objects by the provisions of the *sharia* and applicable laws and regulations.

D. *Waqf* Pledge

A *waqf* pledge is a statement of *wakif*'s will that is spoken orally and in writing to *nadzir* to donate his property. According to the Law No. 41 of 2004 Article 17 states: (1) The pledge of *waqf* is carried out by *wakif* to *nadzir* before PPAIW and witnessed by 2 (two) witnesses; (2) The *waqf* pledge as referred to in Paragraph (1) shall be stated orally and/or in writing and outlined in the *waqf* pledge deed by PPAIW.⁹

If the *wakif* in the implementation of *waqf* is unable to attend to declare the *waqf* pledge verbally/in writing for reasons justified by law, then the *wakif* can appoint a proxy by providing a power of attorney which is strengthened by 2 (two) witnesses. To be able to carry out the *waqf* pledge, the *wakif* or its proxies provide proof of ownership of the *waqf* property to PPAIW. According to Law No. 41 of 2004 Article 20 states the requirements for witnesses in the *waqf* pledge as follows: adult; Islam religion; common sense; and not prevented from doing legal actions.¹⁰

E. *The Allocation of Waqf Objects*

In achieving the goals and functions of *waqf*, the allocation of property for *waqf* can only be designated for: (1) Religious facilities and activities; (2) Education and health facilities and activities; (3) Progress and increase in the economy of the people; and/or (4) Other public welfare advances that are not against the *sharia* and laws and regulations.

In the implementation of *waqf*, it must fulfill these elements, so that the *waqf* is considered valid by the state. However, the community often simply performs *waqf*, that is, only fulfills certain elements and conditions. The implementation is enough by pledging *nadzir* then witnessed by several witnesses. The implementation of *waqf* like this

⁹What is meant by PPAIW is the authorized officer appointed by the minister to make a *waqf* pledge deed.

¹⁰Solikhul Hadi, "Regulasi UU Nomor 41 Tahun 2004 Tentang Wakaf (Tinjauan Sejarah-Sosial)", *Jurnal Penelitian*, 8(2), 2014, p. 319-338. Retrieved from <http://dx.doi.org/10.21043/jupe.v8i2.840>.

is still widely practiced by the community because the procedure is very easy to carry out so that it can facilitate the implementation of *waqf* on their land.

Many lands have been donated but have not been registered according to the prevailing laws and regulations and in reality, *nadzir* or *wakif* ignore this. If the *waqf* land is registered and obtains the *waqf* pledge deed, the legal result will be guaranteed.

By not registering the donated land and implementing it only under the hands, it will cause problems in the future. Problems that arise are the cases of *waqf* land disputes that often occur, in which parties deny the existence of the *waqf* land because there is no strong evidence. Moreover, *wakif* (*waqf* giver) and *nadzir* (as manager) as well as the witnesses have passed away, it can cause problems due to the unclear status of the land as well as the function and designation of the land.

It can be seen that the issue of *waqf* land disputes in the case at the Surabaya High Religious Court Decision No: 332/Pdt.G/2011/PTA.Sby has examined and tried the case at the appeal level. In this case, the implementation of *waqf* is not by the existing rules or regulations. In the Intervention, the case stated that a plot of land and a school building on it located on Jl. Kedungsroko Gang V, Pacar Kembang Village, Tambaksari District, Surabaya, with an area of 800 m² (eight hundred square). Recorded in Petok D No. 107, Parcel 21 d, in the name of Abd. Wahab Baiman, with the following boundaries: North side (Yard of Simun/Abd. Salam/Alimun); South side (Jl. Kedungsroko V); West side (Yard of Ngateni/H.M. Toha); East side (Yard of P. Sari); is the property of K.H. Ardjo Usman who had been donated to Madrasah Nahdlatul Ulama Pacar Kembang, Surabaya in 1926.

And also stated that the statement of the *Waqf* Pledge Deed No: BA.03.1.5/99/III/2009, which was issued by the Head of the Tambaksari District Office of Religious Affairs in Surabaya was deemed not to have legal force. The *Waqf* Pledge Deed has no legal force because it is not implemented by existing regulatory procedures in Indonesia.

In such cases where the object of the disputed island, as represented by K.H. Ardjo Usman to Madrasah Nahdlatul Ulama without the heirs knowing or other parties who report to the head of the henna flower environment or the local government and has

not been registered with the local land office. Then the heir of K.H. Ardjo Usman, who did not know that the land had been donated to Madrasah Nahdlatul Ulama, instead of handed over the *waqf* land to another party, namely H. Moh Toha as *nadzir* and as chairman of the Diponegoro educational park foundation with Deed of Pledge No: BA.03.1.5/99/III/2009, issued by the Head of the Office of Religious Affairs in Tambaksari District, Surabaya. However, the *Waqf* Pledge Deed is considered invalid and has no legal consequences by the Religious High Court.

The High Religious Court thinks that all of K.H. Ardjo no longer has a legal relationship with the object of the *waqf* because the *waqf* property has been separated from the inheritance. And the land has been donated by K.H. Ardjo to Madrasah Nahdlatul Ulama as *nadzir*. Then the High Religious Court decided that the Taman Diponegoro foundation had illegally (against the law) occupied or utilized the donated land from K.H. Ardjo which had been given to the Nahdlatul Ulama Madrasah without *nadzir*'s permission was the Nahdlatul Ulama Madrasah.

Judging from the case, there must be legal protection against *nadzir*, from parties who want to claim the *waqf* land for personal gain. As for what is meant by legal protection according to experts is to protect human rights that have been harmed by others and protection is given to the people so that they can enjoy all the rights provided by law.¹¹

The existence of Law No. 5 of 1960 on Basic Agrarian Basic Regulations (UUPA) states "*Representation of owned land is protected and regulated by Government Regulation*".¹² Then the Indonesian government issued Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*. In Government Regulation No. 28 of 1997 concerning Freehold Land *Waqf*, there is a procedure that must be implemented, namely that *waqf* is not only carried out using a verbal contract but must also be done in writing in front of the Official *Waqf* Pledge Deed (PPAIW) to ensure legal certainty and protection law.

By law, the donation which is done orally is not sufficient to make the donated land legal. Indeed, in Islamic law, the way of a donation is by fulfilling the elements of a *wakif* (person who donates property), *mauquf bih* (goods or property that is *waqf*), *mauquf 'alaih*

¹¹Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000), p. -.

¹²Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

(the person that given *waqf*), and *shighat* (statement or pledge of *waqf*). In the elements of doing *waqf* according to Islam, by fulfilling these elements it is said to be valid. However, it needs to be remembered again, that we live in a country where our feet stand, so we also have to comply with the rules that apply in this country regarding the requirements so that the *waqf* process is legal both nationally and religiously. So that it will create legal certainty and assurance.

Waqf land as the object of land registration must be registered immediately so that it has legal force. Before being registered, you must prepare the "AIW - *Waqf Pledge*", the original certificate of ownership which will later be converted into a *waqf* certificate. Land registration is carried out by PPAIW (the Official of the *Waqf Pledge Deed*) on behalf of *nadzir* to the authorized agency no later than 7 (seven) working days from the signing of the *waqf* pledge deed. Then the authorized agency will issue proof of registration of the *waqf* land. What is meant by proof of registration of *waqf* land is a certificate issued by the competent government agency wherein the statement states the status of the land as *waqf* property and the *waqf* land has been registered and registered with the state. The government agency authorized in registering *waqf* land is the National Government Agency. The agency authorized to register *waqf* for movable objects other than money is the "Indonesian *Waqf Board*".¹³ As for the money itself, *wakif* can donate through the *sharia* financial institution appointed by the minister.¹⁴

From the start, the *waqf* land certification procedure must be completed with all the requirements, namely someone who is donating, someone who receives a *waqf*, and their existence must be clear. After that *wakif* registers the land with *nadzir*, then *nadzir* reports it to the head of the local KUA/PPAIW. After being investigated by the KUA/PPAIW regarding the existence of the land to be donated as *waqf*, they were asked to come to the KUA to read the *waqf* pledge in front of PPAIW and witnessed by two witnesses then signed the *waqf* pledge. All of these sets of requirements must be fulfilled to issue a *waqf* pledge.

Nadzir on behalf of the head of the KUA/PPAIW submitted to the Department of Religious Affairs the division of *zakat* and *waqf*

¹³C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta: Balai Pustaka, 1989), p. -.

¹⁴*Ibid.*

settlement. Furthermore, the office of the Ministry of Religion will submit to the land office for a certificate of *waqf*. Requirements that must be met for submission to the land office are photocopies of *nadzir*'s Identity Cards (KTP), *waqf* pledge deeds, a certificate from the village head, land certificate or seal, and *nadzir* endorsement letter. After it is processed by the land office and a *waqf* certificate is made, the *waqf* certificate is then submitted to the office of the Department of Religious Courts. Then the religious department office will submit it to the land office through *nadzir* to be recorded in the registration of the donated land.¹⁵

The implementation of *waqf* is inseparable from the existence of the *Waqf* Pledge Deed which becomes authentic evidence relating to the existence of the *waqf* land regarding the status, function, and allocation of the land to be managed and developed by *nadzir*.

The *Waqf* Pledge Deed, hereinafter abbreviated as AIW, is evidence of *wakif*'s will to donate his property to be managed by *nadzir* by the allotment of *waqf* assets as outlined in the form of a deed.¹⁶ The purpose of the issuance of the deed is to clarify the status and position of the land, provide clarity regarding *wakif* and *nadzir* and become evidence when there are heirs of the *wakif* who do not recognize the land as *waqf*, when a *waqf* land already has a *Waqf* Pledge Deed, the legal status is valid and can be protected. The contents in AIW according to the applicable regulations state that: "*The contents and form of the Waqf Pledge Deed are determined by the Minister of Religion*".¹⁷

The *Waqf* Pledge Deed (AIW) issued by the Official *Waqf* Pledge Deed (PPAIW) is legally recognized by the state so that it can become evidence of the implementation of *waqf* or the provision of *waqf*. If there is a provision of *waqf* carried out under the hand without a *Waqf* Pledge Deed, the provision of *waqf* is null and void and not legally recognized by the state.

In addition to the *Waqf* Pledge Deed, there is also the *Waqf* Pledge Replacement Deed, what distinguishes it is when the *waqf* implementation occurs. The Deed instead of the *Waqf* Pledge is used

¹⁵Mochammad Andre Agustianto, "Wakaf Sebagai Strategi Pemberdayaan Ekonomi Masyarakat", *El-Qist: Journal of Islamic Economics and Business (JIEB)*, 9(2), 2019, p. 143-163. Retrieved from <https://doi.org/10.15642/elqist.2019.9.2.143-163>.

¹⁶Dul Manan, "Wakaf Produktif dalam Perspektif Imam Madhab", *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam*, 1(2), 2016, p. 363-382. Retrieved from <https://journal.iaimnumetrolampung.ac.id/index.php/jm/article/view/46>.

¹⁷Neneng Hasanah, "Kontekstualitas Ayat-Ayat Hukum Wakaf di Indonesia", *Asy-Syari'ah*, 20(2), 2018, p. 133-144. Retrieved from <https://doi.org/10.15575/as.v20i2.3446>.

for *waqf* land that was carried out before the enactment of Government Regulation No. 28 of 1977, which is intended for *waqf* at the time that the *Waqf Pledge* of *wakif* has passed away. While the *Waqf Pledge Deed* is used for *waqf* land which is carried out after the enactment of Government Regulation No. 28 of 1977, which is intended for *waqf* at the time the *Waqf Deed* will be drawn up.

The *Waqf Pledge Deed* and the *Waqf Pledge Substitute Deed* are used as material for registering *waqf* land which will later be converted into a *waqf* certificate. This registration is based on Government Regulation No. 24 of 1997 on Land Registration. In which Article 9 states that the donated land is one of the objects of registration.¹⁸

Based on the case above No: 332/Pdt.G/2011/PTA.Sby, between *nadzir* and the *waqf* giver, they only carry out the *waqf* process orally, the *waqf* land is not legally registered by state law. As a result of the law, the *waqf* land which has been verbally donated does not gain legal force when the heirs of the donator of the *waqf* sue *nadzir*. Lack of conditions that must be met will make the *waqf* land not change its status to *waqf* land. *Waqif* (the person who gives the *waqf*) has indeed separated the *waqf* property from the inheritance, but a *nadzir* must register the *waqf* land with the KUA/PPIW so that its status changes to land *waqf* instead of freehold land.

Legal protection for *nadzir* who does not register the donated land, the law still does not regulate in detail and firmly. However, when a dispute occurs, such as a case No: 332/Pdt.G/2011/PTA.Sby, a *nadzir* has rights, namely the right to be able to consult with the heirs of *waqif* (*waqf*) so that the dispute can be resolved peacefully.

We can see the reasons for *nadzir*'s negligence in registering the donated land, including: (1) *Nazhir* does not understand the knowledge in the field of *waqf* land registration that has been carried out or a *waqf* pledge deed has been made, so that some *nazhir*'s neglect their duties regarding the registration of *waqf* land; (2) The unregistered *waqf* is due to limited funds from the government, while all this time *nazhir* has only hoped for programs held by the government; (3) Lack of facilities from the government in the form of *waqf* management funds that can be used as the main capital. So that it makes *nazhir* confused in managing and developing *waqf* which should be able to generate income which later from the management of the *waqf* can then continue to develop the *waqf* land;

¹⁸Government Regulation No. 24 of 1997 concerning Land Registration.

(4) The unregistered *waqf* is also due to the incompleteness of land administration to be realized, for example, the donated land island that has not been certified as the title;¹⁹ (5) There is *nazhir*'s concern that a third party controls the *waqf* land because the *waqf* land has not been registered so that in managing the donated land that has not been registered, tighter supervision is needed until the *waqf* is certified.²⁰

Waqf is a legal act. As a legal basis, it is necessary to realize the procedures or procedures outlined in the regulation regarding *waqf*. However, seeing that there are still donated land cases that are not registered, will lead to various conflicts. There are several factors why *wakif* implementing *waqf* does not register: (1) There is a kinship between *wakif* and *nadzir* so that *wakif* feels that it is sufficient to just make a verbal pledge without written evidence in donating his land. This family factor also encourages *waqif* not to feel worried about irregularities and misappropriation of the land that is being donated in the future; (2) The high sense of trust from *waqif* to *nazhir* to maintain the integrity of the donated land, where this is motivated by the culture of the community at that time, namely being able to uphold the trust given to others, so that *waqif* feels sufficient to carry out *waqf* orally; (3) *Waqif* knowledge about the importance of authentic documents is still minimal because *waqif* does not know the rules contained in Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf* and Law No. 41 of 2004 concerning *Waqf*; (4) The certificates of ownership of the *waqf* land are not clear so that completing the documents required to register the *waqf* land requires a large amount of money and time; (5) The number of administrative costs for registering *waqf* land and certifying it is a factor that causes *waqif* to carry out unregistered *waqf*.²¹

The absence of complete firmness in imposing sanctions for parties who do not carry out the mandate of *waqf*, such as whether it was deliberately or unintentionally did not register the *waqf* land,

¹⁹Ahmad Djalaluddin, "Legitimasi Fiqih bagi Optimalisasi dan Pendayagunaan Wakaf", *Iqtishoduna: Jurnal Ekonomi dan Bisnis Islam*, 3(1), 2007, p. 1-18. Retrieved from <https://doi.org/10.18860/iq.v2i1.210>.

²⁰Muhammad Yusuf Siddik, "Sistem Pendayagunaan Wakaf Tunai dalam Tinjauan Ilmu Fiqih", *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam*, 16(2), 2017, p. 221-236. Retrieved from <https://doi.org/10.15408/kordinat.v16i2.6440>.

²¹Idrus, "Keabsahan, Kepastian Hukum, dan Perlindungan Hukum atas Perwakafan yang Tidak Tercatat (Studi Kasus Praktek Perwakafan Tanah di Kecamatan Sukamulia)", p. -.

it has made weaknesses in the *waqf* law. If we look at Article 68 Paragraph 1 of Law No. 41 of 2004 reads “*The Minister can impose administrative sanctions for violations of non-registration of waqf assets by Islamic financial institutions and PPAIW as referred to in Article 30 and Article 32*”. However, in the next Article, there is no clarity about what administrative sanctions should be. This opens up opportunities for irregularities and violations that are likely to be neglected in the management of almsgiving. So when it is found that fraud by individuals, groups of people, or legal entities in *nadzir*, it is difficult to solve it because there is no public corridor in dispute advocacy or settlement of *waqf* misuse.

Conclusion

From the above discussion, it can be concluded that *waqf* itself is a practice of worship for a Muslim to get closer to Allah Saw. Where *waqf* functions to support the socio-economy in society. The existence of *waqf* can also improve the community's welfare. The implementation of *waqf* in Indonesia is based on Law No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Government Regulation No. 28 of 1977 concerning Freehold Land *Waqf*, Government Regulation No. 24 of 1997 concerning Land Registration, Law No. 41 of 2004 concerning *Waqf*. These provisions are regulated to ensure certainty and protection for the implementation of *waqf*. Legal protection of the *waqf* land is very important considering that many parties want to control the donated land because the land is considered to have high economic value and is a very basic human need. For this reason, in obtaining legal strength and certainty, the *waqf* land must be registered so that it is legally registered as *waqf* property by the state. The donated land must obtain a *waqf* pledge deed which is then made a *waqf* certificate to ensure legal certainty. If the donated land does not have a *waqf* certificate, then it does not have legal force.

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Effectiveness of Complete Systematic Land Registration (PTSL) Against Waqf Land Certification at Magelang Regency

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Abstract

The government's policy on Complete Systematic Land Registration (PTSL) is a policy initiated by the Ministry of Agrarian Affairs of the Republic of Indonesia in 2017, then further refined in 2018 as it still has problems in its implementation. The policy is expected to expedite the existing land certification process in Indonesia, including waqf land certification. However, this policy should be tested to measure the level of effectiveness against the facilities and acceleration of the certification process, especially the waqf land certification at Magelang Regency. The purpose of this study is to analyze the effectiveness of government policies on PTSL towards accelerating the certification of waqf land at Magelang Regency. Research methods are field research and qualitative approach by checking interview results, PTSL related regulations, regulations related to registration of waqf land certification, scientific journals related to soil certification, etc. The results of this study show that the implementation of government policies on PTSL towards accelerating the certification of waqf land is not optimally implemented in Magelang Regency. This can be seen from the percentage of waqf land certification levels at Magelang Regency still low, despite experiencing a decline after the birth of government policy on PTSL.

Keywords: *Effectiveness, Certification, Waqf Land*

Introduction

Every citizen deserves protection and justice in the eyes of the law. Legal justice is included in the ownership of land. Article 19 (1) of Law No. 5 of 1960 on the Basic Rules of Agrarian Principal mentions to ensure the certainty of the law by the government to hold land registration in all areas of the Republic of Indonesia in accordance with the provisions regulated by government regulations.¹ Regulations relating to the registration of land as specified in Article 19 Paragraph (2) of Law No. 5 of 1960 on the Basic Rules of the Agrarian Subject include: (a) Surveying of land acquisition and book storage; (b) Registration of land rights and transfer of such rights; and (c) The provisions of the letters of evidence of rights, which shall act as strong evidence.² The validity of the certificate is very important because *firstly*, the certificate provides valid certainty from the landowner. *Secondly*, the award of a certificate is aimed at avoiding land ownership disputes. *Thirdly*, with the ownership of the certificate, the landowner can take any legal action as long as it does not conflict with the law, public order, and decency, and has economic value.³

Registration of land or certification is a very important thing. This is a valid form of proof of ownership of a plot of land. The absence of a land certificate often causes problems for landowners, such as weak evidence if there is a dispute/seizure of land with another person, the status of land ownership is not clearly written on the person who actually owns it, etc.

The same applies to the issue of *waqf* land certification. If the *waqf* land does not have a *waqf* certificate, then it is very easy to cause problems in the future, such as the weak power of the *nadzir* if there is a dispute with the other party or it can be from the *wakif* (the person with the authorities) itself. Problems that are often faced in the process of registering *waqf* land certificates are due to the status of land rights certificates. Usually the status of land rights is still in the name of parents who have died or others (have not been transferred to *wakif*). While the function of *waqf* itself is to realize

¹Law No. 5 of 1960 concerning Basic Regulation for Agrarian Principle (UUPA).

²*Ibid.*

³Alfi Khairi and Raja Muhammad Amin, "Implementasi Program Pendaftaran Tanah Sistematis Lengkap (PTSL) di Kabupaten Kuantan Singingi Tahun 2017", *Jurnal Online Mahasiswa: Fakultas Ilmu Sosial dan Ilmu Politik*, 5(2), 2018, p. 1-14. Retrieved from <https://jom.unri.ac.id/index.php/JOMFSIP/article/view/22093>.

economic potential, worship, and also advance the welfare of society, with the need for legal clarity.⁴

The existence of a land certificate is considered very important so that there is legislative power in the status of ownership and land management. With proof of land certificate, the landowner has strong legal protection against the status of ownership of the land he controls. Registration of land in all territories of the Republic of Indonesia in accordance with the provisions regulated by government regulations.⁵ According to Mar'atus Shalihah and Eko Nur Cahyo, *waqf* wealth is one solution to the social wealth imbalance because the doctrine of capitalism on the national and global economic system (including in the Islamic world) needs to be strengthened in terms of law in the desecration of *waqf* land.⁶ Therefore, the wealth of Muslims in the form of *waqf* land will be guaranteed salvation.

During the current visit, the government has issued the Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 6 of 2018 on Complete Systematic Land Registration (PTSL) in an effort to expedite land registration. The Complete Systematic Land Registration program (PTSL) is a programme issued by the government through the Ministry of Agrarian Affairs. Complete Systematic Land Registry is the first time land registration activity carried out simultaneously for all objects of land registration throughout the territory of the Republic of Indonesia in one village/village area or another name of the same level. These activities include the collection of physical data and jurisprudic data on one or more land registration objects, for the purpose of their registration.⁷

The implementation of PTSL is the government's move to provide certainty and legal protection to the community in controlling a plot of land. PTSL is implemented in contrast to

⁴Selamet Hartanto, et. al., "Waqf in the Perspective of Waqf Rules in Indonesia", *Al-Iktisab: Journal of Islamic Economic Law*, 5(1), 2021, p. 37-49. Retrieved from <http://dx.doi.org/10.21111/al-iktisab.v5i1.6203>.

⁵Law No. 5 of 1960 concerning Basic Regulation for Agrarian Principle (UUPA).

⁶Mar'atus Shalihah and Eko Nur Cahyo, "Cash *Waqf* Auction for the Establishment of Islamic Institution on the Perspective of Islamic Law and Positive Law (A Case Study on Trensains Islamic Institution, Sragen, 2018-2019)", *Al-Iktisab: Journal of Islamic Economic Law*, 4(1), 2020, p. 44-65. Retrieved from <http://dx.doi.org/10.21111/al-iktisab.v4i1.4351>.

⁷The Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL).

previous government programmes such as Land Administration Projects (PAP), Land Management And Policy Development Projects (LMPDP) or Adjudication Projects, Larasita and National Agrarian Program (*Prona*). PTSL differs from previous programs because the president monitors, evaluates, and also plays a direct role in the distribution of his certificates to the public.⁸

The PTSL programme is also an implementation of the current government's political promises implicitly contained in the "*nawacita*" program. Previously, the government through the Minister of Agrarian Affairs had issued the Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 2 of 2017 concerning the *Waqf* Land Registration Procedure at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency then further strengthened in relation to the PTSL program in 2018.

The implementation of *waqf* land certification at Magelang Regency can be a joint evaluation material, since the amount of *waqf* land that has not been certified is still quite high. According to data from the Director General of the Department of *Waqf* and Guidance of the Islamic Community of the Ministry of Religious Affairs of the Republic of Indonesia Magelang Regency in 2019 there are 5.387 *waqf* lands, 4.174 have been certified, and 1.213 have not been confirmed. Based on this data, the number of those who have not been certified is still quite high. The unconfirmable *waqf* land is disseminated to three groups, some of which are already in the BPN process, still being processed in KUA, and a new *waqf* pledge.⁹

Therefore, based on the above description, this study is important as it aims to analyze the PTSL program triggered by the government whether it has the effectiveness to improve the *waqf* land certification process in Indonesia. As we know that the PTSL program is a government effort to expedite land certification, in addition, the potential of *waqf* land in Indonesia is very high. The long-term and short-term goal of this study is to analyze the effectiveness of government policies on PTSL, especially in *waqf* land certification to support acceleration in the *waqf* land certification process in Magelang Regency.

⁸Isdiyana Kusuma Ayu, "Problematika Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap di Kota Batu", *Legality: Jurnal Ilmiah Hukum*, 27(1), 2019, p. 27-40. Retrieved from <https://ejournal.umm.ac.id/index.php/legality/article/view/8956>.

⁹Martijo, *Data Jumlah Tanah Wakaf Kabupaten Magelang* (n.c.: n.p., 2019), p. -.

Methodology

The focus of this study is the analysis of the importance of the level of government policy acquisition related to the PTSL program in the certification of *waqf* land in Magelang Regency. This research uses field research methods with a qualitative approach. The object used in this study is the Office of the Ministry of Ehwal Ugama Magelang Regency. The legal material used in the study was the result of an interview with the Director of *Waqf* Administration Chief Director of Islamic Community Guidance. Ministry of Religious Affairs of the Republic of Indonesia Magelang Regency, UUPA, *Waqf* Law, Agrarian Ministerial Regulations on PTSL, Agrarian Ministerial Regulations regarding *Waqf* Land Registration Procedures, and related legal journals. Existing legal materials will be selected according to the topic of research. It will then be analyzed in jury based on the norms or rules of the law used to be a comprehensive analysis of the description. In addition, it made conclusions in the form of arguments related to the level of basic interests of PTSL against the certification of *waqf* land in Magelang Regency.

Result and Discussion

A. Systematic Land Registry

Studies on land registration issues are quite a lot to review, especially in relation to PTSL programs initiated by the government. This is in line with the various problems that continue to arise in the midst of society. One of the studies discussing the issue of registration of land certificates was written by Ngangi, in a study discussing petting land registration. Basic Agrarian Law with a set of implementation rules aims to realize the guarantee of legal certainty against land rights throughout Indonesia. If in connection with the government's efforts to realize the use of ownership and ownership of land, then registration of land rights is an important way to realize the certainty of the law.¹⁰

Research conducted by Ismail discusses that Basic Agrarian Law has traditional social values/local wisdom that live in the heart of

¹⁰Sherley Veralin Kamurahan, et. al., "Evaluasi Pelaksanaan Program Nasional Agraria dan Pendaftaran Tanah Sistematis Lengkap dalam Pembangunan Wilayah Desa Kinabuhutan, Kecamatan Likupang Barat, Kabupaten Minahasa Utara", *Agri-Sosioekonomi*, 14(1), 2018, p. 389-408. Retrieved from <https://doi.org/10.35791/agrsosek.14.1.2018.19608>.

society. Basically the Basic Agrarian Law contains legal principles that are a jab at social values in *Pancasila*, so it is referred to as a prismatic law (a law that combines traditional social values/local wisdom).¹¹

In Article 1 Paragraph (1) of the Minister of Agrarian Affairs and Spatial Planning Regulations/Head of the National Land Agency of the Republic of Indonesia No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL) that land registration is a series of activities carried out by the government on an ongoing, continuous and regular basis, including the collection, processing, storage of books, and the presentation and maintenance of physical data and legal data, in the form of maps and lists, on a plot of land and units of flats, including the provision of proof of their rights against an existing plot of land, and property rights to flat units and certain rights that burden them.¹² This land is intended to create legal protection for landowners.

While Article 1 Paragraph (2) of the Minister of Agrarian Affairs and Spatial Planning Regulations/Head of the National Land Agency of the Republic of Indonesia No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL), states that PTSL is the first time land registration activity carried out simultaneously for all land registration objects throughout the territory of the Republic of Indonesia in one village/village area or other names of that level, which includes the collection of physical data and juridic data on one or more land registration objects for the purpose of their registration.¹³ The PTSL programme aims to expedite the process of verifying land belonging to all Indonesian citizens.

Article 2 Paragraph (2) Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL), states that PTSL aims to realize the provision of legal certainty and legal protection of the right to land based on simple, fast, smooth, safe, fair, open, and responsible principles, to enhance the welfare and prosperity of the people and the economy of the country, reduce and prevent land disputes and

¹¹Nurhasan Ismail, *Prinsip-Prinsip Hukum Agraria Indonesia: Adakah Kesenjangan dengan Fiqih Agraria?* (Yogyakarta: n.p., 2019), p. 18.

¹²The Regulations of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL).

¹³*Ibid.*

conflicts.¹⁴ While its scope includes: (1) The implementation of PTSL; (2) The implementation of PTSL activities; (3) Completion of PTSL activities; and (4) Financing.

B. *Waqf* Land Certification

Waqf should be protected from problems and disputes that could eliminate the potential for the benefit of the people. One of the efforts that can be made to protect it is through formal legal management (certification) related to the status of *waqf* land.

Waqf has a very important role in religious social life in various countries, including Indonesia. *Waqf* is no longer a source of state finance, but rather a source of funding for the civil society movement. This movement is mainly in the effort to develop mosques, educational institutions, health, and other religious institutions. This institution was born out of the movement of both individuals and organizations abroad.¹⁵

A *waqf* is a legal act to segregate and/or surrender part of its property for use indefinitely or for a certain period of time in accordance with its interest for the purpose of worship and/or general welfare in accordance with *sharia*.¹⁶ In Article 3 Paragraph (1) of the Minister of Agrarian Affairs and Spatial Planning Regulations/Head of the National Land Agency of the Republic of Indonesia No. 2 of 2017 concerning the Procedure for Registration of *Waqf* Lands at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency that *waqf* land can be: (1) Property rights or customs assets that have not been registered; (2) Right to business; (3) Right to build and right to use state land; (4) Right to use the building or right to use in the right to management of land or property rights; (5) Property rights to flat units; and (6) State land.¹⁷

Elements and conditions of *waqf* that must be fulfilled in accordance with Articles 217 and 218 Islamic Law Compilation as

¹⁴*Ibid.*

¹⁵Muh Zumar Aminuddin, "Kontribusi Zakat, Infak, Sadaqah, dan Wakaf Terhadap *Civil Society* (Studi Kasus di Yayasan Solopeduli Surakarta)", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 13(2), 2013, p. 198-218. Retrieved from <https://doi.org/10.18326/ijtihad.v13i2.198-218>.

¹⁶The Minister of Agrarian Affairs and Spatial Planning Regulations/Head of the National Land Agency of the Republic of Indonesia No. 2 of 2017 concerning the Procedure for Registration of *Waqf* Lands at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.

¹⁷*Ibid.*

follows: (1) Indonesian legal entities and persons or persons who have matured and reasonable and who by law are not prevented from committing legal action, their own will may represent their property taking into account applicable laws and regulations; (2) In the case of a legal entity, the person acting for and in his name is his legal administrator; (3) Objects of *waqf* as mentioned in Article 215 Paragraph (4) shall be property free from all unloading, bonds, loot, and disputes; (4) The declaring party shall pledge clearly and unequivocally to *nazhir* before the office of making a *waqf* pledge as mentioned in Article 215 Paragraph (6), which then absolutizes it in the form of a *waqf* pledge, witnessed by at least 2 witnesses.¹⁸

In accordance with Articles 217 and 218, the Islamic Law Compilation registration (certification) of the *waqf* pledge act is mandatory in the *waqf* process. Therefore, *waqf* actors should pay attention to the insistence to obtain the certification of *waqf* pledge. Generally, the procedure of administration and registration of *waqf* objects is contained in Articles 223 and 224 Islamic Law Compilation. Article 223 of the Islamic Law Compilation describes it as follows: (1) Parties wishing to represent may declare a pledge of *waqf* before the *waqf* pledge to carry out the *waqf* pledge; (2) The content and form of *waqf* pledge is determined by the Minister of Religious Affairs; (3) The implementation of the pledge, as well as making the *waqf* pledge is considered valid if attended and witnessed by at least 2 (two) witnesses; (4) In carrying out the *waqf* pledge as mentioned in Paragraph (1) the parties represented shall submit to the officer referred to in Article 215 Paragraph (6), the following letters: (a) Proof of ownership of property; (b) If the object represented in the form of an object is immobile, it must be accompanied by a certificate from the village head reinforced by the local *camat* describing the ownership of the immovable object; (c) Written letter or document which is the completeness of the immovable object in question.¹⁹

Although Article 224 of the Islamic Law Act makes it clear that, after the deed of *waqf* is executed in accordance with the provisions of Articles 223 Paragraphs (3) and (4), the Head of the District Religious Affairs Office on behalf of the *nazhir* is required to apply to the relevant party to register the representation of the object in order to

¹⁸Islamic Law Compilation.

¹⁹*Ibid.*

maintain its integrity and sustainability.²⁰

Registration of *waqf* property in accordance with Article 32 of Article 39 of Law No. 41 of 2004 concerning *Waqf*, explained as follows: (1) PPAIW on behalf of *nazhir* registers the *waqf* property to the competent authorities not later than 7 (seven) working days since the *waqf* deed was signed (Article 32); (2) In the registration of *waqf* property as mentioned in Article 32, PPAIW submits (Article 33): (a) A copy of the *waqf* deed; (b) Letter and/or proof of ownership and other relevant documents; (3) Competent agency issues proof of registration of *waqf* property (Article 34); (4) Proof of registration of *waqf* property as mentioned in Article 34 submitted by PPAIW to *nazhir* (Article 35); (5) If the property of the *waqf* is changed or changed its provision through PPAIW re-register with the competent authority and the Indonesian *Waqf* Agency for *waqf* property is changed or changed in accordance with the provisions applicable in the *waqf* property registration procedure (Article 36); (6) The Minister and the Indonesian *Waqf* Agency administer the registration of *waqf* property (Article 37); (7) The Minister and the Indonesian *Waqf* Agency announce to the public the property of the registered *waqf* (Article 38); (8) Further provisions regarding PPAIW, procedures for registration and announcement of *waqf* property are regulated by Government Regulations (Article 39).²¹

C. Implementation of *Waqf* Land Certification at Magelang Regency

The legal status of the land rights certificate issued is the result of the regulations of the Minister of Spatial Planning/Head of National Land Agency No. 6 of 2018 concerning Complete Systematic Land Registration (PTSL). This regulation is one of the rules for the technical implementation of land registration and the mandate of the Main Agrarian Law of Article 19, that is, to ensure the legal certainty for land rights throughout Indonesia.²²

Waqf instrument development activities still require some aspects to be considered and need to be refined. One such instrument is the certification of *waqf* land, which until now remains a problem in the field of administration. *Waqf* land is a contribution of property from society for the public interest as well as general welfare, should

²⁰*Ibid.*

²¹Law No. 41 of 2004 concerning *Waqf*.

be fully supported by the government, both in terms of regulation and certification.²³

Based on the data obtained from the Director of Empowerment *Waqf* Director General of Islamic Community Guidance Ministry of Religious Affairs of the Republic of Indonesia Magelang Regency can be seen as follows:

Table. 1: Amount of *Waqf* Land in Magelang Regency, Central Java (Before PTSL Policy)

No	Year	Total <i>Waqf</i> Land	Certified	Not Certified	Percentage of Certification
1	2015	3.563	2.933	630	82,31%
2	2016	4.025	3.316	709	82,38%
3	2017	4.776	3.887	889	81,38%

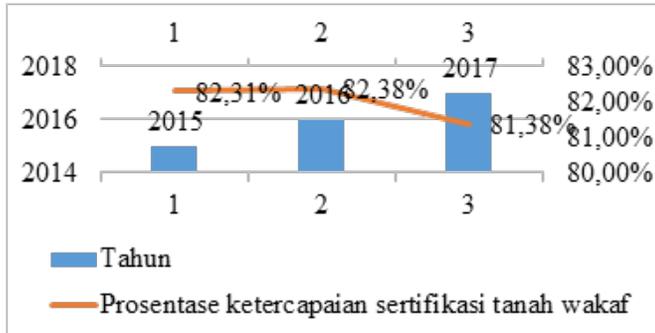
Source: *Director of Empowerment Waqf Director General of Islamic Community Guidance Ministry of Religious Affairs of the Republic of Indonesia Magelang Regency*

Based on the data in Table. 1 the above shows that, the percentage of *waqf* land that was certified prior to the issuance of PTSL policy by the Minister of Spatial Planning/Head of the National Land Agency in 2015 reached 82.31%. In 2016, it was 82.38%. The percentage increase in the total certified *waqf* land from 2015-2016 was only 0.07%. While in 2017, the percentage of *waqf* land certification reached 81.38%. The percentage of *waqf* land certification in 2017 decreased by 01.00% compared to 2016.

The percentage of *waqf* land certification level at Magelang Regency prior to the issuance of PTSL policy by the Minister of Spatial Planning/Head of National Land Agency can be described in the following curve.

²³Siska Lis Sulistiani, "Analisis Hukum Islam Terhadap Pengembangan Wakaf Berbasis Sukuk untuk Pemberdayaan Tanah yang Tidak Produktif di Indonesia", *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 18(2), 2018, p. 175-192. Retrieved from <http://dx.doi.org/10.18326/ijtihad.v18i2.175-192>.

Figure. 1: Waqf Land Certification Percentage Curve on Magelang Regency of Central Java (Before PTSL Policy)



Like a Figure. 1 above, it appears that red lines connected from 2015 to 2016 saw an increase. The red lines connected from 2016 to 2017 decreased. Therefore, before the existence of government policies related to PTSL was actually quite good. Even in the last year he has declined.

As an illustration of the level of *waqf* land certification at Magelang Regency we need to look at data on the percentage of *waqf* land certification at Magelang Regency from 2017 to 2019. The success of the *waqf* land certification process based on data from the Director of Empowerment *Waqf* Director General of Islamic Community Guidance Ministry of Religious Affairs of the Republic of Indonesia Magelang Regency after the PTSL policy was issued by the Minister of Spatial Planning/Head of National Land Agency can be seen in the following table.

Table. 2: Amount of Waqf Land in Magelang Regency, Central Java (After PTSL Policy)

No	Year	Total Waqf Land	Certified	Not Certified	Percentage of Certification
1	2017	4.776	3.887	889	81,38%
2	2018	5.126	4.057	1.069	79,14%
3	2019	5.387	4.174	1.213	77,48%

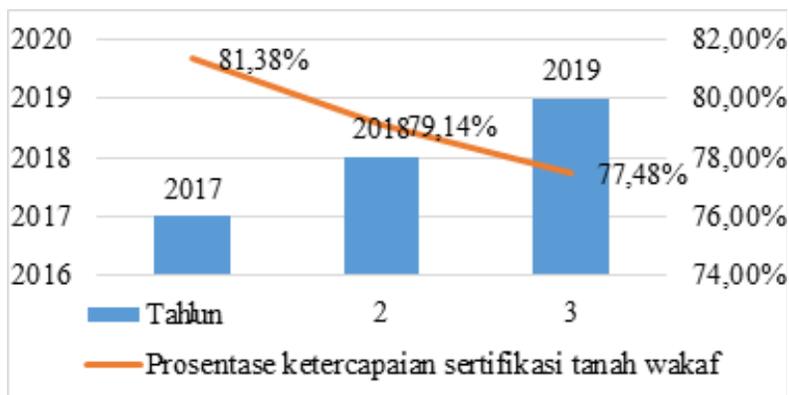
Source: Director of Empowerment *Waqf* Director General of Islamic Community Guidance Ministry of Religious Affairs of the Republic of Indonesia Magelang Regency

Based on the data in Table. 2 above, shows that the development of *waqf* land certification level at Magelang Regency is very different from the development of *waqf* land certification level at Magelang Regency before PTSL policy was issued. According to the data in Table. 2 it can be concluded that in 2017 to 2018 experienced a decrease in the level of *waqf* land certification by 2.24%.

Meanwhile, the level of *waqf* land certification in 2018 to 2019 decreased by 1.66%. From 2017 to 2018, the same decrease as in 2017 to 2018. Although the rate of decline in 2018 to 2019 is less than the decline that occurred in 2017 to 2018.

The percentage of *waqf* land certification at Magelang Regency after the issuance of PTSL policy by the Minister of Spatial Planning/Head of National Land Agency can be explained in the following curve.

Figure. 2: Waqf Land Certification Percentage Curve on Magelang Regency of Central Java (After PTSL Policy)



Unlike the number of Figure. 1 which indicates a rise and fall, in the Figure. 2 this deteriorates continuously every year. View from the red line in 2017 to 2019 is moving downwards continuously.

Based on the discussion on *waqf* land certification data at Magelang Regency, both before and after PTSL policy it can be understood that the existence of PTSL policy actually has no influence on the improvement of *waqf* land certification at Magelang Regency. In fact, according to the data in Table. 2. It shows a constant decline. This means that PTSL policy is not optimally implemented, but can even prevent the acceleration of *waqf* land certification level at Magelang Regency.

According to Martijo, the PTSL policy has not shown a positive impact in expediting the registration of *waqf* land certification at Magelang Regency. This is because in this process, *nazhir* in carrying out *waqf* land certification is the same as before PTSL program. *Nazhir* still has to pay a certain amount of funds to carry out the *waqf* land certification process and follow the same procedure as the allocation applied for.²⁴

Meanwhile, on Thursday, April 19, 2018, the Office of the Ministry of Religious Affairs of Magelang Regency and the Magelang Regency Land Office signed a memorandum of cooperation to expedite the certification of *waqf* land held at the Multipurpose Building of the Ministry of Home Affairs Complex in Magelang. Head of Office of the Ministry of Religious Affairs Megelang Regency said the memorandum of cooperation aims to expedite the *waqf* land certification process to ensure and provide legal certainty on *waqf* rights, achievement of timelines, benefits and targets to achieve optimization and cost efficiency.²⁵

The program to expedite the certification of *waqf* land at Magelang Regency also received positive response from the National Land Agency Magelang Regency. Suwito, head of the Magelang Regency Land Office, said the cooperation with the Ministry of Religious Affairs was a follow-up to the president's *Nawacita* program of the President of the Republic of Indonesia to complete the certification of *waqf* lands. The signed collaborative text is expected to be followed up immediately with the actual form.²⁶

However, in practice the *waqf* land certification process at Magelang Regency has not progressed well. In fact, after the PTSL programme and the memorandum of cooperation between the Ministry of Religious Affairs Office of Magelang Regency and the Magelang Regent's Land Office experienced a decrease in the level of *waqf* land certification at Magelang Regency.

Productivity increase and expedite registration of *waqf* land should be strengthened with the cooperation of various related

²⁴Martijo, Interview about the Achievement Level of *Waqf* Land Certification in Magelang Regency with the Directorate of *Waqf* Empowerment, Directorate General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, Magelang Regency, 2020.

²⁵Kemenag Magelang, "Kemenag Kab. Magelang Tandatangani Naskah Kerjasama Percepatan Sertifikasi Tanah Wakaf", 2018. Retrieved from <https://jateng.kemenag.go.id/kemenag-kab-magelang-tandatangani-naskah-kerjasama-percepatan-sertifikasi-tanah-wakaf/>.

²⁶*Ibid.*

parties. According to Prihatini, the security of *waqf* land and the development of *waqf* assets value require cross-sectoral cooperation and active role of society, especially the *nazhir waqf* group itself. The program to expedite the certification of *waqf* land is a concrete effort by the government to realize the rule of law in the field of agrarian and representation.

According to him, the PTSL programme issued by the Minister of Planning Spatial Agrarian/Head of National Land Agency could not have a positive impact on expediting the registration of *waqf* land in Magelang Regency until now. The existence of PTSL policy as well as the addition of a memorandum of cooperation in expediting the registration of *waqf* land in Magelang Regency still needs to be evaluated so that it can be implemented effectively.

Conclusion

The appearance of PTSL policy by the Minister of Spatial Planning/Head of the National Land Agency is predicted by the government to provide an accelerated land swap, especially *waqf* land not effectively implemented at Magelang Regency. Meanwhile, the PTSL programme is a symbol of the government's programme to realise the *Nawacita* encouraged. The implication is that the *waqf* land certification process at Magelang Regency actually experienced a decrease in the percentage of its affordability rate. All parties in this matter need to make assessments and alignments once again so that the PTSL program initiated by the Minister of Spatial Planning/Head of the National Land Agency can be carried out effectively. Therefore, it can really benefit all parties, especially the *waqf* land manager in Magelang Regency.

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The Role of BMT NU Ngasem Jampet Branch in Increasing MSME Income in Jampet Market Through *Rahn* Financing

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Abstract

The purpose of this research was to describe the role of BMT NU Ngasem Jampet Branch in increasing the income of MSMEs in Jampet Market through Rahn Financing. The method used was qualitative. The results showed that the role of financing applied by BMT NU Ngasem Jampet Branch is in accordance with the objectives of Islamic financial institutions in general, namely improving the quality of the community's economic business for the welfare of the community and its members. Especially in financing products, because the existence of this financing makes it a solution for MSMEs or market traders in the capital used to develop and improve their business than before. So that financing is one way for MSMEs or market traders to increase their business income. The success of BMT NU Ngasem Jampet Branch in carrying out work programs related to financing realized for MSMEs or market traders. This is evidenced by the implementation of financing carried out by BMT NU Ngasem Jampet Branch with several MSMEs or traders in Jampet Market who carry out financing totaling 22 members, but there are some members who have difficulty in terms of installments because their sales are still quiet unlike other traders. So that it makes the installments delay and makes the installment time longer. Meanwhile, members who experience business development and are smooth in financing installments and make the repayment time according to maturity. From the application of financing to 11 MSMEs

in the Jampet Market, there was an increase in income for rahn financing with an average of 3.4% of income per month of May 2021.

Keywords: BMT, MSME, Rahn Financing

Introduction

Lately, many Islamic financial institutions have sprung up in Indonesia, one of which is the *Baitul Maal wa Tamwil Sharia* Savings and Loans Cooperative (KSPPS) or usually called BMT. That is an institution that is not only business oriented but also socially oriented.¹ BMT is an integrated independent business center whose core content is *bayt al-mal wa al-tamwil* with activities to develop productive businesses and investment in increasing productive businesses and investment in improving the quality of small, medium, and small scale economic activities, with activities including encouraging saving activities and support the financing of economic activities.²

With the optimization of *Baitul Maal Wattamwil* (BMT) it can help small and medium communities to improve their economy through financing in the form of additional capital that can help people who have the desire to establish or develop MSMEs (micro, small, and medium enterprises) in order to meet their needs and improve their economy.³ MSMEs themselves play an important role in the economy and also contribute to economic development in Bojonegoro. So far, the number of MSMEs has reached 3.450 businesses with a contribution to Gross Regional Domestic Product (GRDP) reaching 54%.⁴ However, despite contributing to developments in Indonesia, the MSME sector has not grown without problems. Problems that often grow in MSMEs are problems of human resources, management capabilities, and access to capital. This is something that needs to be addressed by MSME entrepreneurs on an ongoing basis.⁵

¹Lely Ana Ferawati Ekaningsih, *Lembaga Keuangan Syariah Bank & Non Bank* (Surabaya: Kopertais, 2016), p. 59.

²Andri Soemitra, *Bank dan Lembaga Keuangan Syariah* (Depok: Kencana, 2009), p. 473.

³Renny Oktavia, "Peranan *Baitul Maal wat Tamwil* (BMT) Terhadap Upaya Perbaikan Moral Masyarakat di Kawasan Dolly Surabaya", *An-Nisbah: Jurnal Ekonomi Syariah*, 1(1), 2014, p. 119-137. Retrieved from <https://doi.org/10.21274/an.2014.1.1.119-137>.

⁴Amelia, *Kontribusi Koperasi dan UMKM ke PDRB*. Retrieved from <http://www.nusadaily.com>.

⁵Reni Susanti, *Masalah Utama yang Dihadapi UMKM di Indonesia*. Retrieved from

To overcome this problem, Islamic financial institutions are needed which are considered to be able to help overcome the problems that exist in the financial sector of MSMEs, one of these institutions is BMT. This is because Islamic banks have not reached all corners of the small business community and specifically small microfinance institutions that are more concerned directly with MSME business actors. Thus, the existence of (BMT) can be a solution for Micro, Small and Medium Enterprises (MSMEs) to borrow funds used as business capital with easy borrowing procedures. MSMEs usually find it difficult to get access to banking related to collateral and others.⁶ BMT is present as a vehicle for economic transformation from the *aghniya'* (owners of money) to the poor, small traders who need business capital. BMT is built on a community basis, because it is formed from, by and for the community, solutions for empowering micro, small, and medium enterprises.⁷

In addition, BMT is also one of the *sharia* microfinance institutions that protects the lower middle class from the interest system applied by conventional institutions and from loan shark services that charge high interest to their customers. BMT is different from other financial institutions that provide consumptive financing so that the community's economy tends to be consumptive.⁸ BMT itself tends to provide financing in the form of working capital to people who have micro, small, and medium enterprises (MSMEs) or traders in order to develop their business and increase their income. In this case, there is a uniqueness of BMT NU Ngasem Jampet Bojonegoro Branch, namely giving gifts to its members in order to maintain members' trust in BMT NU Ngasem Jampet Bojonegoro Branch.⁹

With the existence of BMT NU Ngasem Jampet Bojonegoro Branch, MSMEs or traders really hope to be helped in their business

<http://www.kompas.com/bandung>.

⁶Miftakhul Khoir, *Peran Pembiayaan Baitul Maal wa Tamwil Mandiri Sejahtera dalam Meningkatkan Pendapatan Usaha Mikro Kecil Menengah (UMKM) di Pasar Sugio Lamongan*, Skripsi (Surabaya: UINSA, 2019), p. 2.

⁷Ahmad Rodoni and Abdul Hamid, *Lembaga Keuangan Syari'ah* (Jakarta: Zikrul Hakim, 2008), p. 68-69.

⁸Fitriani Prastiawati and Emile Satia Darma, "Peran Pembiayaan Baitul Maal wat Tamwil Terhadap Perkembangan Usaha dan Peningkatan Kesejahteraan Anggotanya dari Sektor Mikro Pedagang Pasar Tradisional", *Journal of Accounting and Investment*, 17(2), 2016, p. 197-208. Retrieved from <https://doi.org/10.18196/jai.2016.0055.197-208>.

⁹Nur Ilya Muharom, *Interview*, Bojonegoro, January 25, 2021.

financial problems for economic needs in business development. With the existence of BMT NU Ngasem Jampet Bojonegoro Branch, MSMEs or traders really hope that they can be helped in their business financial problems for economic needs in developing their business.¹⁰ BMT NU Ngasem Jampet Branch is one of the financial institutions with the Islamic spirit of *Ahlusunnah wal Jama'ah* in accordance with its mission, namely to build and develop the people's economy with the concept of Islamic *sharia* and create *wata'awanu alabirri wat taqwa* through the people's economy. As in BMT in general, BMT NU Ngasem Jampet Branch also has several financing products including *mudharabah* financing (profit sharing), *musyarakah* financing (participation), *murabaha* financing (buying and selling), *ba'i bitsamanil ajil* financing (buying and selling with an installment system), *rahn's* financing (mortgage). From some of the financing mentioned above, the type of financing that is most in demand by MSME actors is *rahn* financing. Because the *rahn* contract is easier and less complicated when compared to other types of financing.¹¹

Rahn financing is a guarantee in an agreement with a loan or also holds the property of the borrower as collateral for the loan it receives, the party withholding obtains a guarantee to take back all or part of the debt.¹² In this case, BMT holds movable goods as collateral for the debts of members/customers.¹³

Table. 1: Number of Market Traders and *Rahn* Financing Members at BMT NU Ngasem Jampet Bojonegoro Branch 2019-2020

Year	Traders at Jampet Market	<i>Rahn</i> Financing Member at Jampet Market
2018	68	17
2019	73	19
2020	82	22

Source: Data collected

¹⁰Ngarsini (chrips traders at Pasar Jampet who are also members of the *rahn* financing), *Interview*, Bojonegoro, January 28, 2021.

¹¹Wicen Andrayani, *Interview*, Bojonegoro, January 22, 2021.

¹²Soemitra, *Bank dan Lembaga Keuangan Syariah*, p. 403.

¹³Nur Ilya Muharom, *Interview*, Bojonegoro, January 25, 2021.

This table explains that the increase in the number of members from 2018 to 2020 was triggered because the BMT NU Ngasem Branch Jampet Bojonegoro was good at marketing financing to members or prospective members. It is proven that in 2018, the number of traders who used *rahn* financing reached 17 traders, while in 2019 it increased to 19 traders, and increased again in 2020 to 22 traders who became members of *rahn* financing. This was also offset by the increase in the number of traders in the Jampet market, which was initially 68 traders in 2018 and increased to 82 in 2020, most of the new traders asked for a capital loan at BMT NU Ngasem Jampet Bojonegoro Branch by using *rahn* financing to start their business.¹⁴

The development of MSMEs can be measured by business capital, the amount of business income and the number of workers. A business is declared to be developing if a lot of capital is spent then the business is running smoothly and the income earned increases, when income increases it means the number of customers also increases, when the number of customers increases the MSME will increase the number of workers to serve customers.¹⁵

Methodology

This type of research is qualitative research using an inductive approach. Qualitative research is a research aimed at describing and analyzing phenomena, events, social activities, attitudes, beliefs, perceptions, thoughts of people individually and in groups. Several descriptions are used to find the principles and explanations that lead to the conclusion. Qualitative research is inductive in that the researcher allows problems to emerge from the data or is left open to interpretation. The data were collected with careful observation, including descriptions in a detailed context accompanied by notes from in depth interviews, as well as the results of analysis of documents and notes.¹⁶

Data analysis technique is the process of collecting data systematically to facilitate researchers in obtaining conclusions. Data analysis according to Bogdan in Sugiyono is the process

¹⁴*Ibid.*

¹⁵Prastiawati and Darma, "Peran Pembiayaan *Baitul Maal wat Tamwil* Terhadap Perkembangan Usaha dan Peningkatan Kesejahteraan Anggotanya dari Sektor Mikro Pedagang Pasar Tradisional", p. 197-208.

¹⁶Nana Syaodih Sukmadinata, *Metode Penelitian Pendidikan* (Bandung: PT Remaja Rosdakarya, 2007), p. 60.

of systematically searching and compiling data obtained from interviews, field notes, and other materials so that they can be easily understood and the findings can be informed to others.¹⁷ Qualitative data analysis is inductive, namely analysis based on the data obtained. According to Milles and Huberman, the analysis consists of three streams of activities that occur simultaneously, namely data reduction, data presentation, conclusion drawing/verification.¹⁸

Result and Discussion

According to the term *baitul maal wa tamwil* is a formal financial institution or institution that is run according to Islamic *sharia* whose main business is to collect and provide financing to productive and profitable businesses. This institution operates in two ways at once, namely the social system (*baitul maal*) and the business system (*baitul tamwil*).^{19,20,21} *Rahn* according to language is called *al-tsubut* (الثبوت) and *al-habs* (الحبس) namely determination and detention or *rahn* means to hold things as collateral or debt.²² In terms of *rahn* is to make goods of value according to *syara'* as collateral for debt, with the goods being guaranteed, all or part of the debt can be accepted.²³ It can also be interpreted as a guarantee against a debt that may be used as a payer if the debtor is unable to pay it off.²⁴

According to *fiqh* terms, *rahn* is to make property as collateral for a debt dependent when it is difficult to pay it off. The property is used

¹⁷Sugiyono, *Memahami Penelitian Kualitatif* (Bandung: Alfabeta, 2009), p. 334.

¹⁸Milles and Huberman, *Analisis Data Kualitatif* (Jakarta: Universitas Indonesia Press, 1992), p. 16.

¹⁹Ana Kholifatul Mar'ah, et. al., "Effect of *Mudharabah* Financing toward Sellers Members' Income at BMT Usaha Artha Sejahtera Bojonegoro", *Shahih: Journal of Islamicate Multidisciplinary*, 5(1), 2020, p. 15-36. Retrieved from <https://dx.doi.org/10.22515/shahih.v5i1.2283>.

²⁰Khoiriyah Muthmainnah, et. al., "Mekanisme Bagi Hasil Simpanan Berjangka Syariah (Si Jaka) di BMT Nurul Ummah Ngasem Jawa Timur (The *Sharia* Futures Deposit (Si Jaka) Profit Sharing Mechanism in BMT Nurul Ummah Ngasem East Java)", *Qawānīn: Journal of Economic Syariah Law*, 4(1), 2020, p. 40-70. Retrieved from <https://doi.org/10.30762/q.v4i1.1971>.

²¹Imada Ulinnuha, "Pengaruh Kepribadian, Pembelajaran, Kemampuan, dan Karakteristik Biografis Terhadap Komitmen Organisasi pada Karyawan BMT UGT Sidogiri Surabaya", *Journal of Sharia Economics*, 2(2), 2020, p. 130-157. Retrieved from <https://doi.org/10.35896/jse.v2i2.88>.

²²Muhammad Yazid, *Ekonomi Islam (Fiqh Muamalah)* (Surabaya: IMTIYAZ, 2016), p. 119.

²³Mardani, *Hukum Sistem Ekonomi Islam* (Jakarta: Rajawali Press, 2015), p. 246.

²⁴Ismail, *Perbankan Syariah* (Jakarta: Kencana, 2011), p. 209.

as a tool to guard when debts cannot or are difficult to pay or pay off. Then you can use *rahn's* property to pay debts.²⁵ Some *fiqh* scholars also define *rahn* in terms. According to Malikiyah scholars, *rahn* is a property that is used as a debt guarantee that is binding. Meanwhile, according to Hanafiyah scholars, *rahn* is to make something (goods) as a guarantee of rights (receivables) that may be the payer of rights (receivables), either in whole or in part. Syafiiyah and Hambaliyah scholars also define *rahn* by making goods as collateral for debts that can be used as debt payments if the debtor cannot pay the debt.²⁶

The goods that may be pawned are valuable and can be traded, because the pledge includes selling the value of the goods. The pawned goods (*marhun*) must be available at the time of the contract, so that they can be handed over to the person receiving the pledge. And in *rahn* financing, the debtor must clearly state the desired amount of debt. So if on another day the person who pledged the mortgage asks for additional debt with collateral for the goods that have been pawned, then it is not allowed.²⁷

According to the Big Indonesian Dictionary (KBBI), income comes from the word "*can*", while the understanding of income is the result of work (efforts and so on).²⁸ According to Soemarso, income is an increase in economic benefits during the accounting period in the form of a decrease in liabilities or an increase in assets that causes an increase in equity that does not originate from investment contributions.²⁹ In general, income is the amount of money received by a company from an activity it does, and most of these activities are the activity of selling products or selling services to consumers.

BMT NU Ngasem Jampet Branch provides financing as additional business capital to MSMEs and traders in Jampet Market who need it. The granting of financing from BMT NU Ngasem Jampet Branch is distinguished between old members and new members. The provision of financing for old members reaches 50% of the total value of the collateral guaranteed to BMT NU Ngasem Jampet Branch. The provision of 50%

²⁵Habib Wakidatul Ihtiar, "Analisis Fatwa Dewan Syariah Nasional No: 92/DSN-MUI/IV/2014 Tentang Pembiayaan yang Disertai *Rahn*", *An-Nisbah: Jurnal Ekonomi Syariah*, 3(1), 2016, p. 23-38. Retrieved from <https://doi.org/10.21274/an.2016.3.1.23-38>.

²⁶Wangsawidjaja, *Pembiayaan Bank Syariah* (Jakarta: Gramedia, 2012), p. 306.

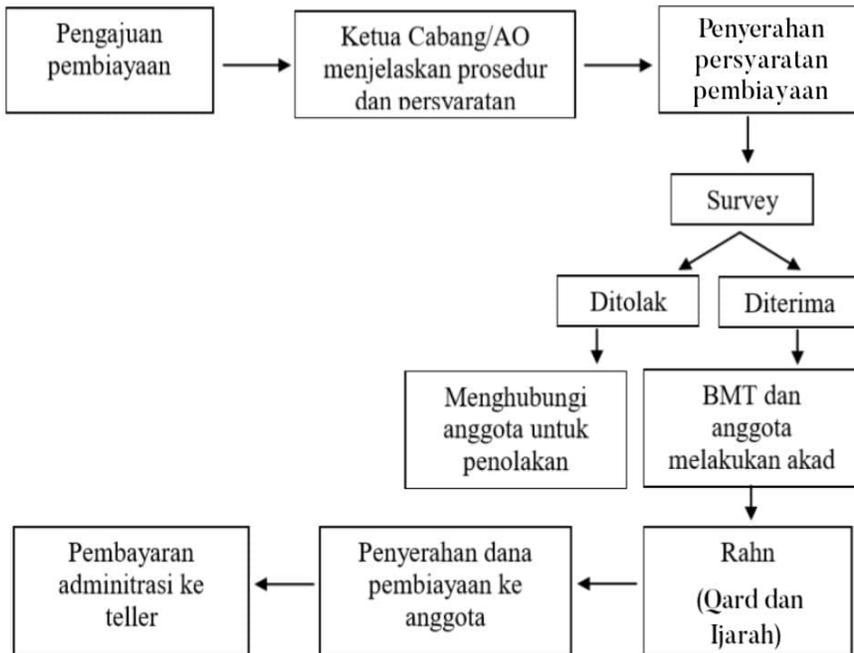
²⁷Ihtiar, "Analisis Fatwa Dewan Syariah Nasional No: 92/DSN-MUI/IV/2014 Tentang Pembiayaan yang Disertai *Rahn*", 23-38.

²⁸Hestanto, *Pengertian Pendapatan*. Retrieved from <https://www.hestanto.web.id/pengertian-pendapatan/>.

²⁹Soemarso, *Akuntansi: Suatu Pengantar* (Jakarta: Salemba Empat, 2003), p. 230.

financing is not only given to old members, but members must also have an ongoing business. Meanwhile, new members of BMT NU Ngasem Jampet Branch can only provide financing of 40% of the total value of collateral guaranteed to BMT. This is because BMT NU Ngasem Jampet Branch does not yet know the ability of members to pay the installments that have been determined. BMT NU Ngasem Jampet Branch serves financing to its members a maximum of Rp 30.000.000,- that's all because BMT NU Ngasem Jampet Branch in terms of financial cash is still relatively small so adjust it and there is also a regulatory limit from the central BMT. The distribution of financing at BMT NU Ngasem Jampet Branch uses a *rahn* contract, in terms of distribution, it is prioritized for residents of Jampet Ngasem and its surroundings. If there are residents from outside the area outside Jampet's location who apply for financing, they will still be served. Meanwhile, the period applied by BMT NU Ngasem Jampet Branch in the distribution of financing is about 3 months to 3 years. BMT also offers the option to return the principal, namely the principal is returned at maturity (seasonal) or in monthly installments.

Figure. 1: Financing Scheme for *Rahn* BMT NU Ngasem



Source: Documentation of BMT NU Ngasem

The picture above can be explained that the *rahn* financing system at BMT NU Ngasem Jampet Branch, where the members apply for financing to the Branch Manager or Account Officer, then the BMT explains the procedures and requirements that must be met by members. After the requirements are met, the member submits the file to the office, after which the BMT conducts a friendly relationship at the house of the member who applies for financing. In this survey, there are two possibilities for acceptance or not, before deciding on this, the BMT usually considers several factors to accept the application or reject it, including economic factors (income before applying for financing) and the personality (honesty) of members who will apply for financing. If the financing application is accepted, the BMT will contact the applicant to make the *rahn* contract at the office. Before the contract takes place, the BMT will hold one of the member's property as collateral for the loan it receives. The *rahn* financing at BMT NU Ngasem Jampet Branch uses two contracts, namely the *qardh* contract (debt) and the *ijarah* contract (depositing services), the *qardh* contract is used to provide cash, while the *ijarah* contract is used as a place to rent services to store *marhun* (collateral). For the profit sharing applied by BMT NU Ngasem Jampet Branch in *rahn* financing, there are two payment options in installments, namely monthly and seasonal. For monthly installment payments, the BMT gets a percentage of Rp 20.000,-/Rp 1.000.000,- of the amount of financing. Meanwhile, for seasonal installment payments, the BMT gets an *ujrah* of Rp 25.000,-/Rp 1.000.000,- of the amount of financing. This *ujrah* is obtained from a financing collateral depository service (*marhun*). The following are the number of *rahn* financing members in Jampet Ngasem Market and the time period for MSMEs or market traders who have done financing and whether or not the financing carried out by market traders is healthy.

Table. 2: Number of Members of *Rahn* Financing and Realization of Financing and Monthly Income of MSMEs in Jampet Market Before Submitting Financing

No	Name	Financing Realization	Income per Month	Duration
1	Siti Kamilah	Rp 20.000.000,-	Rp 7.000.000,-	24
2	Jarnik	Rp 4.000.000,-	Rp 1.500.000,-	12
3	Liswati	Rp 3.000.000,-	Rp 750.000,-	12

No	Name	Financing Realization	Income per Month	Duration
4	Martini	Rp 6.000.000,-	Rp 1.500.000,-	12
5	Siti Muyasaroh	Rp 8.000.000,-	Rp 3.000.000,-	24
6	Mat Adji	Rp 5.000.000,-	Rp 2.500.000,-	12
7	Khoirul Muin	Rp 8.000.000,-	Rp 2.000.000,-	24
8	Samijan	Rp 1.500.000,-	Rp 500.000,-	6
9	Kaswari	Rp 5.000.000,-	Rp 2.000.000,-	12
10	Sulistianik	Rp 6.000.000,-	Rp 2.500.000,-	12
11	Lailatul Mukaromah	Rp 3.000.000,-	Rp 2.000.000,-	12

Source: Data collected

The data display in the table above shows that the traders in the Jampet market propose a financing realization of a maximum of Rp 20.000.000,- and at least with a nominal value of Rp 1.500.000,- with an average monthly income of Rp 2.570.000,- before getting *rahn* financing at BMT NU Ngasem Jampet Branch. To find out the success of BMT NU Ngasem Jampet Branch in carrying out work programs related to financing realized for market traders. Whether it can increase the income of MSMEs in the Jampet Ngasem Market or not, the researchers have collected data and conducted a survey by interviewing several members who did *rahn* financing at BMT NU Ngasem Jampet Branch as shown in Table. 2 which is data traders and income per month before getting *rahn* financing. In addition to playing a role in providing capital through financing BMT NU Ngasem also does several things that aim to improve Human Resources (HR). This is intended so that MSME actors are able to increase their income and so that members are able to carry out installment payments smoothly. The following are some of the efforts made by the BMT:

1. *Sharpening Entrepreneurial Ability*

Financing program to the community with the aim of empowering members and making their business better than before. And also provides an understanding of Islamic economics. The main target of BMT NU Ngasem Jampet Branch is MSMEs in

Jampet Market who need additional capital in order to improve their business based on Islamic principles, besides that BMT NU Ngasem also provides business management training and workshops about entrepreneurship conducted by the BMT Division of the institut, it is intended that MSME actors are able to run their business and most importantly in accordance with Islamic teachings.

2. *Helping Market Member Products*

The BMT NU realizes that for the economic welfare of the people it is not enough to only provide capital loans but also to provide assistance and also increase income, especially for members who are involved in MSMEs. Therefore BMT NU Ngasem offers product marketing services through NU Swalayan which is part of BMT NU Ngasem itself. For example, there are members from BMT NU Ngasem who have products such as coffee grounds, snacks and others that can be deposited at NU Swalayan which is a supermarket owned by BMT NU Ngasem itself.

3. *Instilling the Importance of Worship*

In addition to providing insight and guidance on business and MSME governance management, BMT NU Ngasem also invites its members to increase their faith and piety to Allah Swt. The invitation was conveyed to customers when they met or during a financing survey, besides that it was also conveyed through NU *Da'wah* Radio which is a radio channel managed by BMT NU Ngasem to preach about Islamic teachings and also about NU. The following is a description of MSMEs or traders at Jampet Ngasem Market after doing and getting *rahn* financing.

Table. 3: Overview of MSMEs After Getting *Rahn* Financing and Percentage of Income Increase as of May 2021

No	Name	Income per Month	Increase of Income	Percentage of Increase
1	Siti Kamilah	Rp 7.000.000,-	Rp 7.500.000,-	14%
2	Jarnik	Rp 1.500.000,-	Rp 1.750.000,-	3,75%
3	Liswati	Rp 750.000,-	Rp 800.000,-	3,75%
4	Martini	Rp 1.500.000,-	Rp 1.800.000,-	4,5%
5	Siti Muyasaroh	Rp 3.000.000,-	Rp 3.250.000,-	7,5%

No	Name	Income per Month	Increase of Income	Percentage of Increase
6	Mat Adji	Rp 2.500.000,-	Rp 2.500.000,-	0%
7	Khoirul Muin	Rp 2.000.000,-	Rp 1.800.000,-	-4%
8	Samijan	Rp 500.000,-	Rp 500.000,-	0%
9	Kaswari	Rp 2.000.000,-	Rp 2.100.000,-	2%
10	Sulistianik	Rp 2.500.000,-	Rp 2.750.000,-	6%
11	Lailatul Mukaromah	Rp 2.000.000,-	Rp 2.000.000,-	0%

Source: *Data collected*

The table above can explain that this increase in income comes from the difference between income before financing and after financing at BMT NU Ngasem Jampet Branch and the percentage result is obtained from the increase in income divided by the value of the amount of income after doing the financing. The above income is the result of the sale of goods that have not been deducted by other deduction costs, usually referred to as gross income. Based on the results of interviews with MSMEs or traders at Pasar Jampet, it was found that there were several reasons for increasing their business income after receiving financing at BMT NU Ngasem Jampet Branch, according to Siti Muyasaroh, who is one of the members of BMT , if (the same) add more types of clothes, *mas*, he said. He is a clothing seller (distro), he has also been a long time member of BMT NU Ngasem Jampet Branch and he also does *rahn* financing as additional business capital of Rp 8.000.000,-. Then the researcher asked the condition of his business before doing the financing: “*Before I got a capital loan from BMT Jampet, I found it difficult to add merchandise, and that made those who wanted to stop by at my distro, didn’t come, because the item they were looking for was not there. But after I got a capital loan from BMT Jampet I was able to add more merchandise, bro, even though my income often fluctuated due to the pandemic*”. However, after doing financing at BMT NU Ngasem Jampet Branch, his income increased from Rp 3.000.000,- now becomes Rp 3.250.000,- every month. The existence of a financing product implemented by BMT NU Ngasem Jampet Branch, he felt helped. Because when there was no financing from BMT NU Ngasem Jampet Branch, he was confused about finding a capital loan as additional business capital, but after the

rahn financing from BMT NU Ngasem Jampet Branch he became no longer difficult in terms of finding a loan for additional business funds and how to pay it it can also be weekly, monthly or seasonal this is in accordance with the contract between the BMT and the members, although there are a few difficulties during the current Covid-19 pandemic situation.

This is different from Mat Adji, regarding his business income, namely Meatballs and *Mie Ayam*, he financed the BMT NU Ngasem Jampet Branch of Rp 5.000.000,- with a maturity of 12 months. The following is a response regarding the state of its business income: "It's the same as before, mas, the loan at BMT Jampet was only for additional capital, before making a loan at BMT my income was Rp 2.500.000,- until now, that's the same, mas, you know, I'm the one who sells Meatballs & Mie Ayam, I'm not alone, mas, so it's like there is competition between traders, especially now that it's the corona season, sometimes it can even go down, mas". Based on the results of interviews with all members of BMT NU Ngasem Jampet Branch who did the above financing, that all the reasons for financing at BMT were to use additional capital for their respective businesses, while the average percentage increase in the income of MSMEs or traders in Jampet Ngasem Market was doing financing at BMT NU Ngasem Jampet Branch was 3,4%. So it can be seen that MSMEs or market traders experienced a significant increase in monthly income.

The financing applied by BMT NU Ngasem is a financing product that is in accordance with Islamic principles, because *rahn* financing is in accordance with Islamic principles because there are pillars of *rahn*, namely *ijab qabul*, and also in accordance with the provisions of the *fatwa* of the National Sharia Council (DSN), because the collateral and margins have been explained in the contract, and has been agreed by the BMT NU Ngasem Jampet Branch with its members. BMT NU Ngasem Jampet Branch has a role in increasing the income of MSMEs or traders in the Jampet Market, including:

1. *Providing Financing*

With the financing from BMT NU Ngasem Branch Jampet, it is hoped that these MSMEs or market traders will not make additional business capital through money lender services that charge high interest and make MSMEs or market traders feel burdened with the interest. Even though Islam has prohibited or forbids any activities that contain elements of usury that can have a negative impact on him.

This is what Allah Swt. says in the Qur'an surah al-Baqarah verse 275:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۗ
 ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ
 مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ
 النَّارِ هُمْ فِيهَا خَالِدُونَ

2. Welfare of Members

Social welfare is often defined as a condition of well being (first conception), which is a condition of the fulfillment of all forms of life, especially the basic ones such as food, clothing, housing, education, and health care.³⁰ BMT NU Ngasem helps realize the welfare of members through the provision of capital, in the form of loans, providing insight through training provided by BMT NU Ngasem through the BMT Institute division. As well as helping to market products owned by members through NU Swalayan which is a super market owned by BMT NU Ngasem.

3. Empowering Members

Community empowerment is an effort to provide power (empowerment) or strengthening (strengthening) to the community. Community empowerment is also defined as the ability of individuals who combine with the community in building the empowerment of the community concerned so that it aims to find new alternatives in community development.³¹

BMT NU Ngasem in addition to providing financing in the form of capital to the community, the BMT also empowers the community or members and makes the member's business better than before. Through entrepreneurship workshops organized by the BMT Instut division, BMT also provides an understanding of Islamic economics. The main target of BMT NU Ngasem Jampet Branch is MSMEs or traders in Jampet Market who need additional capital in order to improve their business better based on Islamic principles.³²

³⁰Edi Suharto, *Membangun Masyarakat Memberdayakan Rakyat* (Bandung: Refika Aditama, 2005), p. 3.

³¹Mardikanto, *CSR (Corporate Social Responsibility): Tanggung Jawab Sosial Korporasi* (Bandung: Alfabeta, 2014), p. 200.

³²Nur Ilya Muharom (Branch Manager BMT NU Ngasem Jampet Bojonegoro

4. Member Development

Coaching is a process by which people achieve certain abilities to help achieve organizational goals.³³ The guidance carried out by BMT NU Ngasem includes several things including religion in the form of invitations to worship and continue to pray so that they are always given fluency in business. In terms of entrepreneurship, members are trained to manage their business independently and with *sharia* principles such as workshops held by the BMT Institute division for members for the development of their business. So that members not only get additional capital assistance but also get guidance on entrepreneurship material.³⁴ This is not only aimed at helping increase the income of MSME actors but also to instill a love for local products and introduce products owned by its members.

5. Member Product Marketing

Marketing is a social and managerial process by which individuals and groups obtain what they need and want through creating, offering and exchanging products of value with others.³⁵ In addition to several forms of business carried out by BMT NU Ngasem to increase MSME income, BMT NU Ngasem also helps market its members' products through NU Swalayan. So every member who has a product can be entrusted to NU Swalayan because sometimes MSMEs have difficulty marketing their products, then BMT Nu Ngasem also provides a marketing platform for each member of BMT NU Ngasem.³⁶ This not only aims to help increase the income of MSME actors but also to instill a love for local products and introduce products owned by their members.

Based on the description above, the role of financing applied by BMT NU Ngasem Jampet Branch is in accordance with the objectives of Islamic financial institutions in general, namely improving the quality of community economic business for the welfare of the community and its members. Especially in financing products, because the existence of this financing makes it a solution for MSMEs

Branch), *Interview*, Bojonegoro, May 29, 2021.

³³Mathis Robert and Jackson Jhon, *Manajemen Sumber Daya Manusia* (Jakarta: Salemba Empat, 2002), p. -.

³⁴Wicen Andrayani (Account Officer BMT NU Ngasem Jampet Bojonegoro Branch), *Interview*, Bojonegoro, May 29, 2021.

³⁵Philip Kotler, *Manajemen Pemasaran* (Jakarta: Salemba Empat 1992), p. -.

³⁶Hamdan Habibi, *Interview*, Bojonegoro, May 29, 2021.

or market traders in the capital used to develop and improve their business than before. So that financing is one way for MSMEs or market traders to increase their business income.

The success of BMT NU Ngasem Jampet Branch in carrying out work programs related to financing realized for MSMEs or market traders. This is evidenced by the implementation of financing carried out by BMT NU Ngasem Jampet Branch with several MSMEs or traders in Jampet Market who carry out financing totaling 22 members, but there are some members who have difficulty in terms of installments because their sales are still quiet unlike other traders. So that it makes the installments delay and makes the installment time longer. Meanwhile, members who experience business development and are smooth in financing installments and make the repayment time according to maturity. From the application of financing to 11 MSMEs in the Jampet Market, there was an increase in income for *rahn* financing with an average of 3.4% of income per month of May 2021.

Conclusion

Based on the research that has been done by the author on “*The Role of Rahn Financing at BMT NU Ngasem Jampet Branch in Increasing the Income of Micro, Small, and Medium Enterprises (MSMEs) in Jampet Market*” it is concluded that with the existence of *rahn* financing carried out by BMT NU Ngasem Jampet Branch to MSMEs or traders in Jampet Market have an impact on increasing their business income by 3,4% from the previous month’s income. This is inseparable from the role of BMT NU Ngasem, which is not only providing capital loans, but BMT NU Ngasem also providing empowerment, coaching, and also helping market products from these members so that their business has increased 3,4% from last month’s income. By increasing the income of MSMEs or traders in Jampet Market, they become prosperous, because the necessities of life and the desire to increase their business have been fulfilled.

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A Historical Review of the Development of the Islamic Banking System (An Analytical Study)

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Abstract

This paper tries to investigate the historical development of Islamic banking in the world. The formation of Islamic banking was inspired by the incompatibility between conventional banks and Islamic teachings based on the Qur'an and al-Hadith. Islamic economists are trying to replace and improve the traditional system of banking that has developed rapidly with the Islamic banking system. The establishment of Mit Ghamr marked the emergence of Islamic banking. Since then, many Islamic banks have been established and have proliferated. The primary purpose of this study is to analyze and determine the historical development of the Islamic banking system in various countries. Thus, this research can provide further information for Muslim economic actors as a guide in carrying out economic activities, especially those related to banking. This study using the historical analysis method and at the end of this paper, confirm that the Islamic banking system was preceded by applying a profit-sharing approach to avoid interest in banking. The development of Islamic banks cannot be separated from the efforts made by the Organization of the Islamic Conference (OIC), which since 1970 has issued many recommendations and encouraged its member countries to improve the people's economy in their respective countries. Then, Islamic banks developed in various countries, including Pakistan, Egypt, Iran, Cyprus, Kuwait, Bahrain, United Arab Emirates, Malaysia, Turkey, and Indonesia.

Keywords: *Historical, Development, Islamic Banking*

Introduction

M*uamalat* activities are broadly grouped into three major groups, namely political, social, and economical. From an economic point of view, the Qur'an has provided guidance and motivation to encourage the creation of a consumption surplus in the form of savings that are collected and used to finance investment, both trade, products (manufacture), and services.¹ Required a financial institution to regulate and manage it.

In the conventional system, there is an institution known as the central bank. This institution functions to regulate the smooth intermediation process, currency distribution and become the lender of the last resort. Nevertheless, historically the central bank was an institution born of the need to finance military expansion in Europe in the early 20th century.² So some people are starting to worry that banks will not function in an Islamic economy. It is undeniable that current banking is against the teachings of Islam because it is built on usury or interest. So the Muslims began to create an Islamic banking system based on cooperation without involving interest.³

The term Islamic banking is a new phenomenon in modern economics. Its emergence is in line with the efforts of Islamic experts in supporting Islamic economics to replace and improve the conventional economic system based on interest. Many kinds of literature written about Islamic banking state that although the performance of Islamic banking almost resembles that of conventional banks in terms of its function, the approach taken by Islamic banking is very different. This difference is because Islamic banking has its uniqueness and characteristics.⁴ So this triggers the emergence of Islamic banking in various worlds.

The emergence of Islamic banking was marked by the establishment of Mit Ghamr in the 1960's. Besides that, its existence was also supported by the oil wealth of the gulf region. With this, the development of banks began to increase sharply, from only one

¹Muhammad, *Bank Syari'ah: Analisis Kekuatan, Kelemahan, Peluang, dan Ancaman* (Yogyakarta: Ekonesia, 2006), p. 16.

²Mustafa Edwin Nasution, et.al., *Pengenalan Eksklusif Ekonomi Islam* (Jakarta: Kencana Prenada Group, 2015), p. 265.

³Muhammad Syarif Chaudhry, *Prinsip Dasar Sistem Ekonomi Islam* (Jakarta: Kencana Prenada Group, 2016), p. 332-334.

⁴Gustina, "Islamic Banking System: Studi Analisis Perkembangan Perbankan Syariah di Indonesia", *Jurnal Akuntansi dan Manajemen*, 6(1), 2011, p. -. Retrieved from -.

bank in the 1970's, increasing to nine banks in 1980. Furthermore, between 1981-1985, about 24 Islamic banks and other Islamic financial institutions were established in Qatar, Sudan, Bahrain, Malaysia, Bangladesh, Senegal, Guinea, Denmark, New Zealand, Turkey, United Kingdom, Tunisia, and Mauritania.⁵ The history of the development of Islamic banking law and its formation will be the subject of this paper.

Methodology

This paper is prepared using historical analysis. In education, historical analysis is critical to research for several reasons. The historical study intends to make a systematic and objective reconstruction of the training period by collecting, evaluating, verifying, and synthesizing evidence to support the facts to obtain firm conclusions.

Result and Discussion

A. *The Beginning of the Emergence of the Islamic Banking System*

Banks are intermediary financial institutions or commonly called financial intermediaries, meaning that bank institutions are institutions whose activities are related to money matters. To avoid operating banks with an interesting system, Islam introduced the principles of *muamalah*. One form of the principle of *muamalah* lies in Islamic banks, born as part of the solution to the problem of conflict between bank interest and usury contained in Islamic economics.⁶

Islamic banking in Islamic economics is an institution based on Islamic requirements based on the Qur'an and Hadith. Islamic banks are certainly different from conventional banks, which tend to be secular, where their economic activities are separated from religion.⁷ Refreshing Islamic thought by resurrecting a wave of *ijtihad* is very necessary, which is used as a means of obtaining relevant ideas from the Qur'an and as-Sunnah and then trying to formulate legal requirements based on principles. Therefore, Islamic economics

⁵Abdullah Saeed, *Bank Islam dan Bunga: Studi Kritis Larangan Riba dan Interpretasi Kontemporer* (Yogyakarta: Pustaka Pelajar, 2008), p. 25.

⁶*Ibid.*, p. 14-15.

⁷Yadi Janwari, *Pemikiran Ekonomi Islam: Dari Masa Rasulullah Hingga Masa Kontemporer* (Bandung: Remaja Rosdakarya, 2016), p. 308.

makes efforts to understand that interest is usury and replace interest with a profit sharing system. These two movements became one of the influences of the birth of Islamic banks.⁸

Initial efforts in implementing a profit-sharing system were recorded in Malaysia in the 1940's and in Pakistan in the late 1950's, namely the efforts to manage pilgrims' funds unconventionally.⁹ Other Institutional pioneers were the Islamic Rural Bank in Mit Ghamr Village in 1963 in Cairo, Egypt, and the Nasser Social Bank in 1971.¹⁰ After the initial pioneering, which was quite simple, Islamic banking grew very rapidly. Following the analysis of Prof. Khursid Ahmad and reports from the International Association of Islamic Banks, until the end of 1999, there have been more than two hundred Islamic financial institutions operating worldwide, both in Muslim populated countries and in Europe, Australia, and America.¹¹

The Asia Pacific region is also not left behind in contributing and making a very valuable contribution in this pilot trial of interest-free banking. An interest-free bank was established under the name Philippine Amanah Bank (PAB) in 1973 through a presidential decree as a special banking intuition, although without reference to the Islamic character in its bank charter. This banking is specifically designed to serve the needs of the Muslim community.¹²

One thing that should also be noted is that currently, many big names in international finance such as Citibank, Jardine Fleming, ANZ, Chase Chemical Bank, Goldman Sachs, and others have opened branches and subsidiaries based on *sharia*. Even in the world of capital markets, Islamic funds are now heavily traded, which has prompted the world capital market lion, Dow Jones, to publish the Islamic Dow Jones Index. Therefore, it is not surprising that Scharf, the former president director of the Danish Islamic Bank, a Christian, stated that Islamic banks are new partners of development.¹³

⁸Mairijani, "Analisis SWOT Perkembangan Bank Syariah di Negara Megara-Negara Muslim", *Jurnal Hukum Islam*, 10(2), 2012, p. 201-220. Retrieved from <http://ejournal.iainpekalongan.ac.id/index.php/jhi/article/view/565/752>.

⁹Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik* (Jakarta: Gema Insani, 2010), p. 18.

¹⁰Mervin K. Lewis and Latifa M.A. Algaoud, *Perbankan Syariah: Prinsip, Praktik, dan Prospek* (Jakarta: Serambi Ilmu Semesta, 2003), p. 15.

¹¹Antonio, *Bank Syariah*, p. 18.

¹²Mohamed Ariff, "Islamic Banking", *Asian-Pacific Economic Literature*, 2(2), 1988, p. 48-64. Retrieved from <https://doi.org/10.1111/j.1467-8411.1988.tb00200.x>.

¹³Antonio, *Bank Syariah*, p. 19.

Efforts to realize the establishment of Islamic financial institutions only materialized in the 1940's, namely with the establishment of the first financial institutions that were established as follows:¹⁴

1. *Mit Ghamr Bank*

Islamic banking pioneers began to exist in Egypt in the 1960's and operate as rural social banks (such as financial institutions of village units in Indonesia) along the delta on the Nile. The institution under the name Mit Ghamr Bank, which Prof. Dr. Ahmad Najjar fostered, operates in rural Egypt and is small in scale.¹⁵ This bank received a warm welcome in Egypt, especially among farmers and rural communities. Mit Ghamr's success was marked by the opening of 9 branches in four years with a total of one million customers.¹⁶ Although small in scale, this intuition can become a very meaningful trigger for developing the Islamic financial and economic system.¹⁷

Unfortunately, due to political turmoil in Egypt, Mit Ghamr began to decline, so its operations were taken over by the National Bank of Egypt and the Central Bank of Egypt in 1967. This takeover caused the interest free principle of Mit Ghamr to be abandoned. In 1971 the practice of no interest was reapplied during the Sadat regime by establishing the Nasser Social Bank. This bank aims to re-run the business based on the concepts that have been practiced by Mit Ghamr Bank.¹⁸

Mit Ghamr has inspired Muslims around the world, thus raising awareness that Islamic law can be applied to modern business. When the Organization of the Islamic Conference (OIC) was formed, many international conferences began to be held. Namely, one of the economic agendas was the establishment of an Islamic bank.¹⁹

¹⁴Andri Soemitra, *Bank dan Lembaga Keuangan Syariah* (Jakarta: Kencana, 2017), p. 59-60.

¹⁵Amir Machmud and Rukmana, *Bank Syariah: Teori, Kebijakan, dan Studi Empiris di Indonesia* (Bandung: Erlangga, 2010), p. 17.

¹⁶Mairijani, "Analisis SWOT Perkembangan Bank Syariah di Negara Megara-Negara Muslim", p. 13.

¹⁷Machmud and Rukmana, *Bank Syariah*, p. 17.

¹⁸Gemala Dewi, *Aspek-Aspek Hukum dalam Perbankan dan Perasuransian Syariah di Indonesia* (Jakarta: Kencana, 2006), p. 53.

¹⁹Mairijani, "Analisis SWOT Perkembangan Bank Syariah di Negara Megara-Negara Muslim", p. 213.

2. *Islamic Development Bank*

At the foreign ministerial session of the Organization of Islamic Conference (OIC) countries in Karachi, Pakistan, December 1970. Egypt submitted a proposal to establish an international Islamic bank for trade and development (International Islamic Bank for Trade and Development) and a proposal to establish a federation of Islamic Banks. (Federation of Islamic Banks), which experts from eighteen Islamic countries reviewed. The bank uses a profit and loss sharing system. The proposal was accepted, with approval of the plan to establish an International Islamic Bank and a Federation of Islamic Banks.²⁰

After the establishment of the International Islamic Bank, at the foreign ministerial sessions of the OIC member countries (the organization of the Islamic Conference) in Pakistan (1970), Libya (1973), and Jeddah (1975), the OIC Finance Minister's Session in Jeddah in 1975 approved the draft for the establishment of an Islamic Development Bank (IDB) with an initial capital of 2 billion Islamic dinars and using a profit sharing system. In the early years of its operation, the IDB encountered many obstacles due to political problems. However, the number of its members has increased from 22 to 43 countries. The IDB can also meet the needs of the Islamic state in the field of development by providing interest-free loans.²¹

3. *Islamic Research and Training Institute*

IDB plays a role in assisting the establishment and development of Islamic banks in various countries. This institution also builds research and training institutes to develop research and training in Islamic economics, both in banking and general finance. This institution is called IRTI (Islamic Research and Training Institute).²²

B. *Establishment of Islamic Banks*

Many Islamic countries are motivated by the existence of the IDB to establish Islamic financial institutions. Therefore, the IDB expert committee established guidelines on the establishment, regulation, and supervision of Islamic banks. In the late 1970's and early 1980's, Islamic banks in Egypt, Sudan, the Gulf States, Pakistan,

²⁰Antonio, *Bank Syariah*, p. 19.

²¹Saeed, *Bank Islam dan Bunga*, p. 19.

²²*Ibid.*

Iran, Malaysia, Bangladesh, and Turkey emerged. These banks are divided into two categories, namely commercial Islamic banks and investment institutions.

Banks in the commercial Islamic bank category are Faisal Islamic Bank in Egypt and Sudan, Kuwait Finance House, Dubai Islamic Bank, Jordan Islamic Bank for Finance and Investment, Bahrain Islamic Bank, Islamic International Bank for Investment and Development. The second category is investment institutions consisting of *Daar al-Maal al-Islami* in Geneva, Islamic Investment Company of the Gulf, Islamic Investment Company (Bahama), Islamic Investment Company in Sudan, Bahrain Islamic Investment Bank in Manama, Islamic Investment House in Amman.²³

The first commercial Islamic bank was established, the Dubai Islamic Bank, established in March 1975. Then in 1975, the Dubai Islamic Bank was established, a little private business with an initial capital of 50 million *dirham*'s. The Kuwaiti government contributed 20% of the total capital. Since then, many Islamic banks have been established in various countries.²⁴

In 1984 there were about 38 Islamic banks in the world and about 20 Islamic financial and investment institutions conducting their activities based on Islamic *sharia*. Of these 38 Islamic banks, 28 are in Islamic countries, Arab countries have 20 Islamic banks, while eight other Islamic banks are in non-Arab Islamic countries. The development of Islamic banks cannot be separated from the efforts made by the Organization of the Islamic Conference (OIC), which since 1970 has issued many recommendations and encouraged its member countries to improve the people's economy in their respective countries.²⁵

C. *Development of Islamic Banks in Various Countries*

1. **Pakistan**

Pakistan is a pioneer in the field of Islamic banking. In early July 1979, the interest system was abolished from the operations of three institutions, the National Investment (unit trust), House Building Finance Corporation (financing the housing sector), and the

²³Antonio, *Bank Syariah*, p. 22.

²⁴Abd. Salam Arief, "Bank Islam: Suatu Alternatif Pemberdayaan Ekonomi Umat", *Asy-Syir'ah Jurnal Ilmu Syari'ah*, 7(-), 2000, p. -. Retrieved from -.

²⁵*Ibid.*

Mutual Funds of the Investment Corporation of Pakistan (investment cooperation). In 1979-1980, the government socialized an interest-free loan scheme to farmers and fishers.

In 1981, in line with the enactment of the *Mudharabah* and *Murabaha* Companies Act, it started operating seven thousand branches of a national commercial bank throughout Pakistan using a profit sharing system. In early 1985, the Pakistan government converted the banking system in Pakistan into an Islamic banking system.²⁶

2. *Egypt*

The first Islamic Bank to be established in Egypt was Faisal Islamic Bank, and this Bank was operational in 1978. This Bank managed to record impressive results with total assets of around 2 billion US dollars in 1986 and a profit rate of 106 million US dollars. Apart from Faisal Islamic Bank, another bank, the Islamic International Bank for Investment and Development, operates using Islamic financial instruments with an extensive network. The bank operates as an investment, trade, and commercial bank.²⁷

3. *Iran*

The idea of developing Islamic banking in Iran started during the Iranian Islamic revolution led by Ayatollah Khomeini in 1979, while development in a real sense only started in January 1984.²⁸ The first step taken by the new rulers was to take over all commercial banks in Iran. According to Mehdi Barzagan, the Prime Minister of Iran, the takeover process was inevitable because the banks were not making a profit and showing signs of being unhealthy. This policy is taken to protect the country's rights and wealth and for the country's economic progress. As a result of the takeover and reorganization of these banks, the banking system was represented by only six commercial banks and three specialized banks.²⁹

Following the promulgation of a law in August 1983 as the Law for Usury Free Banking, it obliges banks in Iran to completely change their business activities following *sharia* principles and change

²⁶Antonio, *Bank Syariah*, p. 22.

²⁷*Ibid.*, p. 23.

²⁸*Ibid.*, p. 24.

²⁹Sutan Remy Sjahdeini, *Perbankan Syariah* (Jakarta: Jayakarta Agung Offset, 2010), p. 80.

outstanding interest based customer deposits within three years deposits into interest free deposits within one year from the date, the Law is enacted. As a result, since March 21, 1984, depositors are not allowed to place their money into usury based accounts, and banks are not allowed to provide credit facilities based on interest. Starting in March 1985, Iran changed the entire banking system to an Islamic banking system.³⁰ Thus, since the promulgation of the 1983 Islamic Banking Law, the entire banking system in Iran has automatically run according to *sharia* under the full control of the government.

4. Cyprus

Faisal Islamic Bank of Kibris (Cyprus) started operations in March 1983 and established the Faisal Islamic Investment Corporation, which has two branches in Cyprus and one branch in Istanbul. In the first ten months of its operation, the Bank has financed a *murabaha* scheme worth approx TL 450 Million (Turkish Lira/Turkish currency).

This bank also carries out financing with *musyarakah* and *mudharabah* schemes with profit levels that are competitive with non Islamic banks. The presence of Islamic banks in Cyprus has moved people to save. This bank operates by visiting villages, factories, and schools using mobile cash offices to collect people's savings. In addition to the above activities, they also manage other funds such as *al-qardhul hasan* and *zakat*.³¹

5. Kuwait

Since its inception, the Kuwait Finance House was founded in 1977 and has been based on an interest free system. This institution has dozens of branches in Kuwait. The development was fast. In just two years, the public funds collected increased from KD 149 million to KD 474 million. In 1985 the total assets were KD 803 million, and the profit was KD 17 million (one Kuwaiti *dinar* is equivalent to 4-5 US dollars).

6. Bahrain

Bahrain is the largest off-shore banking haven in the middle east. In a country with only 660.000 people (December 1999), there

³⁰*Ibid.*, p. 80-81.

³¹Antonio, *Bank Syariah*, p. 23.

are around 220 local and off shore banks. No less than 22 of them are based on *sharia*. Among them are Citi Islamic of Bahrain, Faisal Islamic Bank of Bahrain, and *al-Barakah* Bank.³²

Bahrain has become a global Islamic finance leader by primarily hosting middle eastern Islamic financial institutions. In the end, September 2007, all the banks' assets in Bahrain reached the amount of US 20,1 billion. In addition, Bahrain has occupied a significant market for *sukuk* (*sharia* bonds), including short term government *sukuk*. Currently, there are 29 Islamic banks, 50 Islamic mutual funds, and 18 *tafakul* (Islamic insurance companies) in Bahrain. It is estimated that the Islamic finance industry in Bahrain will grow by 20%.

It is estimated that the Islamic finance industry in Bahrain will grow by 20%.²⁷ The Central Bank of Bahrain (CBB) is in charge of regulating and supervising the entire financial sector in Bahrain, both conventional and Islamic banking. Both conventional and Islamic banks are subject to the same provisions, including the conditions set out by the basel agreements. CBB was the first central bank to implement the Accounting and Auditing Organization Standards for Islamic Financial Institutions (AAOIF) for the local market and later adopted by Sudan, Jordan, and Qatar.³³

7. *The United Arab Emirates*

Dubai Islamic Bank, founded in 1975, is one of the pioneers in developing Islamic banking. Its investments include housing, industrial projects, and commercial activities. For several years, its customers have received greater profits compared to conventional banks.³⁴

8. *Malaysia*

Bank Islam Malaysia Berhad (BIMB) is the first Islamic bank in southeast Asia. The bank was founded in 1983 with 30% of the capital owned by the federal government. By the end of 1999, BIMB had more than 70 branches spread across almost all cities in Malaysia.³⁵

Meanwhile, the Islamic financial system was first introduced

³²*Ibid.*, p. 24.

³³Ali Syukron, "Dinamika Perkembangan Perbankan Syariah di Indonesia", *Economic: Jurnal Ekonomi & Hukum Islam*, 3(2), 2013, p. 28-53. Retrieved from <http://ejournal.kopertais4.or.id/tapalkuda/index.php/economic/article/view/785/550>.

³⁴Antonio, *Bank Syariah*, p. 23.

³⁵*Ibid.*, p. 24.

in Malaysia in 1963, establishing the Pilgrimage Board or the *Tabung Haji* institution. However, the *Tabung Haji* Institution is not a bank. After establishing the *Tabung Haji* Institution, a movement arose in Malaysia, which was influenced by the revival movement of its intellectuals in the 1970's to establish an Islamic bank in Malaysia. There have been many calls by various people, groups, and government agencies for an Islamic bank to be established in Malaysia to meet the needs of Muslims in Malaysia.³⁶

Finally, the Malaysian government created a steering committee called the National Steering Committee on Islamic Banking on July 30, 1981. The committee was chaired by Tan Sri Raja Mohar bin Raja Badiozaman. The secretarial function is entrusted to the *Tabung Haji* Institute. And to pave the way for the establishment of Islamic banks, the Islamic Banking Act 1983 has been promulgated, which will take effect **on April 7, 1983**. This law emphasizes the rules that Islamic banks must comply with that will operate in Malaysia and the authority of Islamic banks to operate in Malaysia. The state of Malaysia in supervising and regulating Islamic banks in Malaysia. At the same time, the Malaysian government also issued the Government Investment Act 1983, which authorized the Malaysian government to issue Government Investment Certificates based on *sharia* principles until the establishment of BIMB.³⁷

The Malaysian government's commitment to advancing the Islamic banking system can be seen from the ongoing plans that have not been implemented until now. Malaysia has not only developed a dynamic Islamic banking system at home but has also begun to export Islamic banking models to neighboring countries.

9. Turkey

As a secular ideology, Turkey is one of the first countries to have Islamic banking.³⁸ The issuance of a special law, namely Decree 83/7506 on December 16, 1983, promulgated in Official Gazzate No. 18256, has paved the way for establishing Islamic banks in Turkey. In 1984, the Turkish government permitted *Daar al-Maal al-Islami* (DMI) to establish a bank operating on the principle of profit sharing. According to the provisions of the Central Bank of Turkey,

³⁶Sjahdeini, *Perbankan Syariah*, p. 68.

³⁷Syukron, "Dinamika Perkembangan Perbankan Syariah di Indonesia", p. 44-45.

³⁸Antonio, *Bank Syariah*, p. 24.

Islamic banks are regulated in a special jurisdiction. After DMII was established in December 1984, the Faisal Finance Institution began operating in April 1985. The development of Islamic banking continues to be considered from year to year, especially during the reign of the Prime Minister of Turkey, Turgut Ozal, who was very enthusiastic about realizing his promise to the public. Its followers are devout Muslims. Even though there are many criticisms from hard line secular parties, special laws governing the operational system of Islamic banks continue to be legalized.

At the end of 2008, there were four participating banks in Turkey, namely Albaraka Turk, Bank Asya, Kuvyet Turk, and Turkiye Finans. In 2007, these banks jointly controlled 4,2% of total deposits and 3,3% of total loans in the Turkish banking system.³⁹

10. *Indonesia*

As an initial step in the development of Islamic banking in Indonesia, in the mid 1970's, discussions were held on Islamic banks at the Indonesia Middle East Relations seminar held in 1974 and 1976 at a seminar held by the Institute for the Study of Social Sciences (LSIK) and Unity in Diversity Foundation. Since then, the development of broad thinking regarding the need for Indonesian Muslims to have their Islamic banking began to blow. However, efforts to realize the idea of Islamic banking were hampered by several reasons, namely operations of Islamic banks based on profit sharing principles have not been regulated. Therefore they are not in line with the applicable banking principal law, namely Law No. 14 of 1967.

In the early 1980's, discussions about Islamic banking as a pillar of Islamic economics began to be carried out with the parties involved, in 1983 with the release of the December 1983 Package (*Pakdes '83*), which contained regulations that allowed banks to provide loans with 0% interest (zero interest). In 1988, the idea of Islamic banks re emerged, motivated by the issuance of the October Policy Package (*Pakto*), which contained banking liberalization. The banking liberalization allowed the establishment of new banks in addition to the existing ones.⁴⁰

Based on the MUI National Conference IV mandate, MUI

³⁹Sjahdeini, *Perbankan Syariah*, p. 66.

⁴⁰Dewi, *Aspek-Aspek Hukum dalam Perbankan dan Perasuransian Syariah di Indonesia*, p. 53.

formed a working group to establish an Islamic bank in Indonesia, which was named the MUI Banking Team. The team is tasked with approaching and consulting with all relevant parties. As a result of the work of the MUI Banking Team, Bank Muamalat Indonesia was born on November 1, 1991. At the signing of the Deed of Establishment of PT Bank Muamalat Indonesia, a commitment to purchase shares of eighty four billion *rupiah*'s was collected. Then on November 3, 1991, in the presidential gathering at the Bogor Palace, it was fulfilled with a total initial commitment of Rp 106.126.382.000,00 which with the initial capital, Bank Muamalat Indonesia began operating.⁴¹

In the reform era in Law No. 10 of 1998, banking law policy in Indonesia adopted a dual banking system. This policy essentially provides an opportunity for conventional commercial banks to provide *sharia* services through the Islamic window mechanism by first establishing a *Sharia* Business Unit (UUS). As a result, after this law, many conventional banks took part in providing *sharia* services to their customers.⁴²

At the beginning of the birth of Islamic banks in Indonesia in 1992 to 1998, there was still one Islamic bank, and this is because the legal system in Indonesia does not recognize the existence of a *sharia* banking system and only recognizes a profit sharing system in its banking business as reflected in Law No. 7 of 1992. Finally, in 2008, Law No. 21 of 2008, the law on *sharia* banking brought a new wind to the Islamic finance industry in Indonesia. During this period, Indonesian Islamic banking had a separate arrangement from conventional banking.⁴³

Conclusion

Sharia financial institutions in Islamic economics are institutions that are based on Islamic requirements based on the Qur'an and Hadith. Early attempts to establish Islamic financial institutions in implementing a profit and loss sharing system were recorded in Malaysia in the 1940's and in Pakistan in the late 1950's. Other institutional pioneers were the Islamic Rural Bank in Mit Ghamr

⁴¹Antonio, *Bank Syariah*, p. 25.

⁴²Abdul Mujib, "Dinamika Hukum dan Perkembangan Perbankan Islam di Indonesia", *Al-Ahkam*, 23(2), 2013, p. 167-182. Retrieved from <https://doi.org/10.21580/ahkam.2013.23.2.21>.

⁴³*Ibid.*

Village in 1963 in Cairo, Egypt, and Nasser Social Bank 1971. After the initial pioneering is quite simple, Islamic banks multiply in Muslim populated countries and Europe, Australia, and America. The establishment of the Islamic Development Bank (IDB) motivated Islamic countries to establish Islamic financial institutions. Therefore, the IDB expert committee established guidelines on the establishment, regulation, and supervision of Islamic banks. The first commercial Islamic bank established was the Dubai Islamic Bank established in March 1975, which was a limited private venture with an initial capital of 50 million *dirham*'s. In 1984 there were about 38 Islamic banks in the world and about 20 Islamic financial and investment institutions that carried out their activities based on Islamic law and were spread in various Islamic countries, Arab countries, and non Arabs. The development of Islamic banks cannot be separated from the efforts made by the Organization of the Islamic Conference (OIC), which since 1970 has issued many recommendations and encouraged its member countries to improve the people's economy in their respective countries. *Sharia* banks are developing in various countries, including Pakistan, Egypt, Iran, Cyprus, Kuwait, Bahrain, United Arab Emirates, Malaysia, Turkey, and Indonesia.

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Sharia Economic Views on *Tabzir* Behavior

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Abstract

Tabzir behavior is a form of deviation in economic behavior, especially consumption. The purpose of this study is to describe the concept of tabzir in Islamic economic studies and to provide an ideal behavioral offer for consumer behavior. The research method used is qualitative-descriptive-library. Data were collected by documentation method, then processed by data editing and compilation method. Next, the analysis process was carried out by deduction method using the concept of tabzir in Islamic economic studies. Conclusions drawn from this study. First, tabzir behavior is a form of malpractice and deviation in economic behavior, especially in consumption. Second, the law of tabzir behavior for certain definitions is haram. Third, the wisdom avoid of tabzir behavior is to build an awareness of collective solidarity, avoid debt, disorientation of life loss of critical power and economic education. The social concept about consumption based on sharia is a social care which concern on tauhid and love for fellow human beings, thus forming a just and civilized society.

Keywords: *Tabzir, Behavior, Haram, Economic Education*

Introduction

In economic studies, the problem of human wants (including needs). Human is a central theme in the paradigm structure.¹ There are some people think that happiness and welfare can be get if all their needs are met.² In the conventional economics perspective that discusses human behavior to the complete that the unlimited needs of limited resources..

In terms of *sharia* economic perspective, improper spending is a wasteful and excessive consumption behavior, this behavior is prioritize wants over needs and will encourage luxurious lifestyle .

The waste or *tabzir* although only found in surah al-Isra' verse 26-27 but the attitude of *tabzir* is strictly said to be a friend of the satan. (تَبْذِيرًا إِنَّ الْمُبْدِرِينَ كَانُوا إِخْوَانَ الشَّيَاطِينِ وَلَا تُبْدِرْ) Word (اخوان) plural of (اخ) which means equality and harmony. While in other verses as a whole mentions the prohibition of making Satan a friend. Satan is the worst of friends³. Satan is also a real enemy that should be shunned. Then the prohibition of following in the satan's steps.⁴ Thus, the effect of *tabzir* in the aspect of Islamic economics has a significant effect both micro and macro.

Human needs, wants, desires, and wants will not be controlled without a standard and universal value system. Ignorance of the value system results in a deterioration in the quality of human life. Even if the value system originates from human thought, it is still distorted, it remains biased, partial, and subjective. So the only source of objective and universal values. The values that come from the universal values of *aqidah*.

Tabzir's behavior is not good but in society there are still many who do it. Although this behavior is part of social mental illness behavior, and in Islam terms this behavior includes the satan's friends. The Prophet Muhammad Saw. said that the behavior of *tabzir* is disgraceful act, transgressing limits and at the same time doing *dzalim*. The discussion of *tabzir* is excavated from the Qur'an and Hadith which is then followed by explanations of scholars and

¹Misbahul Munir, *Ajaran-Ajaran Ekonomi Rasulullah* (Malang: UIN Press, 2007), p. 24.

²Pusat Pengkajian dan Pengembangan Ekonomi Islam (P3EI), *Ekonomi Islam* (Jakarta: Rajawali Press, 2015), p. 1.

³Surah al-Baqarah verse 186.

⁴Surah al-Baqarah verse 208.

the opinions of experts in both *tafsir* and economics, exploring the law of *tabzir* and the wisdom of prohibiting the *tabzir's* behavior in the Islamic economics perspective.

Methodology

The type of research used in this research is qualitative-descriptive-literature. That is, the researcher will describe the research results from research sources with the purpose of describing the data in a qualitative descriptive.

Result and Discussion

A. *The Introduction of Tabzir*

Tabzir linguistically is taken from three words (ذبر) which means to sow. The means to sow which originally meant to sow a seed which then grows a crop. However, the *tabzir* meant in this study is sowing/wasting property which results in the destruction of the property itself. The difference between sowing seed and property is that if the seed sown will grow, on the other hand if the property is wasted it will be wasted and end up with the destruction of the property itself.

The term *syara' tabzir* according to al-Raghib al-Ashfahani is waste of property. This is in accordance with the words of the Prophet صلى الله عليه وسلم عن إضاعة المال نهى النبي That is, the Prophet forbade wasting wealth. What is meant by wastage of assets is the allocation of expenditure that does not meet the target which results in assets not functioning optimally and even assets becoming redundant. This understanding is in line with the meaning of property in the language which means waste of property that causes Prof. Dr. Quraish Shihab in *Tafsir al-Misbah* states that *tabzir* is waste or improper expenditure.⁵ Sayyidina Abu Bakr gave up all his property and Umar spent half of his property for jihad is not an act of *tabzir* because the property is used for benefit, even if the amount is whole or half. The action considered *tabzir* lies in its quantity but also its quality.

Ibn Mas'ud and Ibn Abbas who said that *tabzir* is spending wealth beyond justified needs. In this sense *tabzir* is interpreted as

⁵Quraish Shihab, *Tafsir al-Misbah*, Vol. 7 (Jakarta: Lentera Hati, 2004), p. 451.

excessive behavior in consumption and has the potential to damage property due to spending that exceeds needs. *Tabzir* in this sense is seen from the point of view of the property itself.

Fakhrur Razi defines *tabzir* as wasting wealth and spending it with luxury, spending wealth for luxury and boasting is not in accordance with the principles of moderation and justice. There are many warnings that luxury causes human beings to default and go overboard.

In *al-Ma'ani's* dictionary, *tabzir* is spending wealth on things that are not beneficial. Wasting wealth without any benefit or without getting reward. In Indonesian terms this is included in extravagant attitudes. That is, people who exceed the limits of reasonableness, so that the behavior of *tabzir* in the Qur'an is equated with the infidels who exceed the limits.

Using property in a wrong way i.e. towards a prohibited goal.⁶ That is, using property for the purpose of showing off or in religious terms is *riya'*, that is, using property for the purpose of being praised by people, to improve his social status and confirm his status with what he wears and uses.

B. *The law of Tabzir Behavior*

The law of *tabzir* behavior is *haram* with certain definitions and provisions. Among them. The word *tabzir* is also understood by scholars in the sense of non right expenditure. According to as-Subuki al-Kabir, if money is wasted not for the sake of religion and the legal world, it is *haram*. In this case, the use of property is detrimental to the consumer, because something that is forbidden in the Qur'an and Hadith is definitely something that is detrimental to himself.

Az-Zajjaj's define about *tabzir*, that the *tabzir* behavior is to spend wealth for other than obedience to Allah.⁷ Ibn al-Arabi quoted a narration from Asyhab who came from Malik that *tabzir* is to prevent/divert the use of property from things that are right, transferring its use to things that are not right. Spending property outside the provisions allowed by Islamic law. So much so that the use of these assets becomes futile and even has a negative impact on the perpetrators

⁶M. Nur Rianto Al Arif, *Pengantar Ekonomi Syariah* (Bandung: Pustaka Setia, 2015), p. 188.

⁷Idris, *Makna Tabzir dalam al-Qur'an Surat al-Isra' Ayat 26-27*, Skripsi (Surabaya: IAIN Sunan Ampel, 2012), p. 33.

According to Ashhab as narrated from Ibn Mas'ud, what is meant by *tabzir* is *israf*. Ashhab even punished the behavior of *tabzir* to the point of *haram*.⁸ In this sense, Ashhab equates the meaning of *tabzir* with the meaning of *israf*, which means excessive use of assets. In the context of religious behavior the name is *ghuluw* and in the context of young people it is "lebay" behavior.

Thus, from some of the above understandings, the behavior of *tabzir* is *haram* with the provision of expenditure in matters prohibited by religious provisions even a little.

C. The Behavior of *Tabzir*

Rasulullah Saw. prohibits *tabzir* behavior, with the understanding of excessive in using something. This once happened when a friend performed *wudhu* in a flowing river. When the companions washed their faces more than three times, this behavior was *tabzir* behavior even though *wudhu* was in a flowing river.⁹ It was narrated when the Prophet passed by and saw Sa'ad bin Abi Waqqas performing *wudhu*. He said, "don't be wasteful", Sa'ad asked "is there a wasteful attitude in using water, O Messenger of Allah" he said "yes, even though you are in a flowing river".¹⁰ In this moment, Prophet Muhammad Saw. taught his people to be proportional even though the water was abundant and free at that time, but the Prophet ordered to use it fairly according to the rules, not wasteful or excessive. The incident was when the companions washed their faces more than three times, this behavior is the behavior of *tabzir* despite performing *wudhu* in a flowing river. The Prophet not only gave prohibitions but also gave examples of the use of water when *wudhu* and bathing. Even the messenger of Allah gave concrete and applicable examples in terms of bathing and ablution.

عن أنس بن مالك قال قال كان النبي صلى الله عليه وسلم يتوضأ بالماء ويغتسل بالصاع إلى خمسة أمداد رواه البخار ومسلم

"The Prophet performed *wudhu* with one mud, and bathed with one sha', up to five muds" (Bukhari dan Muslim).¹¹

⁸*Ibid.*, p. 51.

⁹*Ibid.*, p. 39.

¹⁰Yusuf Qardhawi, *Norma dan Etika Ekonomi Islam* (Jakarta: Gema Insani Press, 1997), p. 149.

¹¹*Ibid.*

Specifically, the Prophet also gave an example in terms of *wudhu*:

جاء أعرابي إلى النبي صلى الله عليه وسلم يسأله عن الوضوء فأراه ثلاثا ثلاثا قال
هذا الوضوء فمن زاد على هذا فقد أساء وتعدّ وظلم رواه أحمد والنسائي

“An Arab Bedouin came to the Prophet Muhammad. Then he asked about wudhu to the Prophet, he also showed him wudhu (by washing the limbs) three times three times. Then he said, “This is the correct way of wudhu. Whoever (washes) more than this, then indeed he has done bad, spill over, and dzalim (Ahmad dan Nasa’i).

Prophet Muhammad Saw. has taught his people a noble moral example by acting proportionally. And stop doing the actions that destroy the values of efficiency.¹²

The behavior of *wudhu* can be drawn in a wider scale and context, that maximizing the value of goods and services is a necessity. While excessive behavior in ablution is an act that is contrary to the values of efficiency and the use of goods or services is not in its portion and position.

In the Hadith, it can be understood that *wudhu* more than three times contains three evils, namely bad deeds, behavior that exceeds the limit, and finally includes *dzalim*.

D. *Tabzir Based on Qur’an Perspective*

Tabzir in the Qur’an is only mentioned three times. And even then it is only found in surah al-Isra’ verse 26-27:

وَاتِ ذَا الْقُرْبَىٰ حَقَّهُ وَالْمِسْكِينَ وَابْنَ السَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا إِنَّ الْمُبَذِّرِينَ كَانُوا
إِخْوَانَ الشَّيْطَانِ ۗ وَكَانَ الشَّيْطَانُ لِرَبِّهِ كَفُورًا

“And give to close families their rights, to the poor and those who are on the way (musafir) and do not waste wealth lavishly. Indeed, the spenders are the brothers of satan, and the satan is a complete disbeliever in his Lord”.

Zamaksyari said that the verse is an example of a despicable act. This example is the culmination of the expression of a very despicable act, because the source of the despicable act is from the devil.¹³ *Tabzir’s*

¹²Dawood, *Moderat dan Prinsip Kemudahan* (Yogyakarta: Idea Press, 2017), p. 31.

¹³Idris, *Makna Tabzir dalam al-Qur’an Surat al-Isra’ Ayat 26-27*, p. 34.

behavior is categorized as a brother and friend of satan because they obey (follow) what he instructs him to do, namely doing *israf*.¹⁴

The meaning of satan's friend resembles satan in bad deeds and disobeys Allah's commands and prohibitions. Satan always invites to do damage on the earth, whether it damages consumers or goods or services consumed. Overeating is an example of doing damage to consumers because overeating has an effect on the mental and spiritual health of consumers. Meanwhile, in terms of goods or services, the benefits and use values are not optimal and even become useless and damaged.

Islamic law considers any unnecessary use of wealth as a form of waste. Dr. Santillana in his states that waste is a form of mental illness. Islamic law does not require exaggeration.¹⁵ The Qur'an explicitly explains that humans can use all of Allah's creations on earth as food for consumption. It's just that the fulfillment of consumption must be carried out in a fair and balanced manner.

Humans as caliphs are given the mandate and freedom by Allah Swt. to manage assets based on instructions from the text embodied in the form of the Qur'an. Therefore, humans as the holder of the mandate to manage assets, the consequence of which is that in the future they will be held accountable.

"Then you will certainly be asked that day about the pleasures (which you boast in that world)".

In another verse, Allah Swt. also provides guidelines for spending wealth fairly. Or in terms of Javanese culture "*sak madya*".

Among the forms of wasteful attitudes that are most visible in our time today are waste in public and primary facilities and are very much needed by people's lives. Such as water, electricity, etc. All of this is contrary to the *sharia* revealed by Allah Swt. because it contains elements that disturb public order.¹⁶

E. Wisdom Prohibits *Tabzir* Behavior in Islamic Economic Studies

Islamic *sharia* has provided guidelines and instructions in which there are commands and prohibitions. It has become a rule of *ushul fiqh* that everything that is ordered must have its benefits. And vice versa that everything that is prohibited must have a danger. So the

¹⁴*Ibid.*, p. 50.

¹⁵M. Abdul Mannan, *Teori dan Praktek Ekonomi Islam* (Yogyakarta: Dana Bhakti Wakaf, 1997), p. 43.

¹⁶Dawood, *Moderat dan Prinsip Kemudahan*, p. 30.

task of human reason is to explore and find out why this case was ordered, and why this case was forbidden. If excavations and searches have been found, in Islamic terminology wisdom or wisdom has been found. So in this study the author will show the wisdom or wisdom of the prohibition of *tabzir* behavior.

1. Building Awareness of Collective Solidarity

Individualism and selfish are not Islamic behavior. Social solidarity is an important part of people's lives, not organic solidarity. In a narration, Umar bin Khattab asked Jabir if any of you wanted to tie his waist and then give the meat to his uncle's son and his neighbor. That is, in spending their wealth, humans must look at the condition of the surrounding community.¹⁷ *So it has become a shared responsibility to implement the values of ukhuwah, insaniah, and ta'awun as the internal obligations of Muslims as socio economic responsibilities to each other.*¹⁸ Meanwhile, *tabzir's* behavior does not care about his community environment because he is covered by an attitude of egoism that only cares about his own socially excessive people will lose their social sensitivity. He couldn't feel how difficult it was for people who were completely deprived. In this case, Allah Swt. prescribes fasting, one of which aims to foster a sense of social conscience.¹⁹ So that people who have abundant assets are also responsible for the basic needs of their environment.

2. Avoiding Debt

Debt is an act that should be avoided. Until there is a prayer that one of the points is to avoid debt. A person will not be forced to spend on goods that are beyond his ability, even though it can be in debt. Even though at this time, basically someone doesn't want to go into debt because of credit card facilities, cheap installments, promo prices and others are the main factors for someone to get into debt.

3. Causing to Povert

Following a lifestyle causes poverty in both the short and long term.²⁰ Falling into poverty in the short term is caused by

¹⁷Qardhawi, *Norma dan Etika Ekonomi Islam*, p. 162.

¹⁸M. Arifin Hamid, *Membumikan Ekonomi Syari'ah di Indonesia* (Jakarta: Elsas, 2008), p. 295.

¹⁹Ahmad Munir, *Harta dalam Perspektif al-Qur'an* (Ponorogo: STAIN Po Press, 2010), p. 67.

²⁰Zaki Fuad Chalil, *Pemerataan Distribusi Kekayaan dalam Ekonomi Islam* (Jakarta: Penerbit Erlangga, 2009), p. 217.

consumption patterns that continue to be followed, so that basic and basic things that should be fulfilled are ignored. Meanwhile, in the long term, *tabzir*'s behavior becomes poor, because long term savings are not saved and unexpected needs cause existing assets to be sold so that he falls into the abyss of poverty.

4. Life Disorientation

Psychologically, people who are excessive in consumption tend to have the nature of following their passions and forget the nature and purpose of consumption itself. Even in the Qur'an this kind of person is like an animal that eats, drinks, and has fun without any direction.²¹ A very bad parable for someone who only indulges his lust so that he forgets the purpose of consumption itself.

The performer of *tabzir* at least describes the character of someone who does not have a life orientation. It even weakens one's personality.²² Disoriented and nothing to do sublimation and transcendence as destructive superstitious functions of people's lives. It's not just asking for prestige, but it has gone public, has become more populist and belongs to the cultural class of society. The occurrence of cultural urbanization and the global situation of cultural narcotics in post modern society.²³ As a result of the influence of cultural transformation, a person is so carried away with the products of the culture industry, the orientation of life is only to follow the latest trends. Believing in contemporary superstitions in the form of brands of the latest cultural and fashion products has resulted in people to the extent of "idolizing material". And forget the nature and function of property. Where property ownership has become a goal for fun, no longer as a means of fulfilling needs.

5. Loss of Critical Power

Preference or power of choice for something is lost because of *tabzir* behavior. He lost his critical power and ability to make brilliant decisions in economic life.²⁴ In the era of industrial revolution, workers are objects of human exploitation. In

²¹Munir, *Ajaran-Ajaran Ekonomi Rasulullah*, p. 69.

²²Chalil, *Pemerataan Distribusi Kekayaan dalam Ekonomi Islam*, p. 219.

²³Emha Ainun Nadjib, *Kiai Bejo, Kiai Untung, Kiai Hoki* (Jakarta: Kompas, 2016), p. 194.

²⁴Save M. Dagus, *Pengantar Filsafat Ekonomi* (Jakarta: Rineka Cipta, 1992), p. 1.

contrast to the current post modern era or there is also a mention of the post industrial era. Where consumers are the object of exploitation, advertising is the means, and malls are the factories.

6. Education

Economic education and wealth management that can be used more for capital and provisions towards a productive society.²⁵ Meanwhile, *tabzir* behavior is a form of counter productive pattern, because the assets it has are only for consumptive purposes and live extravagantly.

Conclusion

Tabzir behavior is a form of consumption behavior deviation. The indicators are, consuming what is prohibited by *sharia*, wasting wealth, spending extravagantly, and damaging property. In certain definitions, the behavior of *tabzir* is *haram*. The wisdom of the prohibition of *tabzir* behavior is an effort to build awareness of collective solidarity with togetherness and social care, avoid debt, disorientation in life, namely without knowing the purpose of creating humans as caliphs, one of which is to prosper the earth, loss of critical power and economic education, as well as maintaining mental and spiritual health.

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²⁵Qardhawi, *Norma dan Etika Ekonomi Islam*, p. 162.

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Transliteration Guidelines

Arabic romanization in *Al-Iktisab* refers to the transliteration system of Library of Congress (LC) combined with the model of Department of Religious Affairs of Indonesia which based on Joint Decree Letter between Ministry of Religious Affairs and Ministry of Education and Cultural.

b =	ب	dz =	ذ	ṭ =	ط	l =	ل
t =	ت	r =	ر	ẓ =	ظ	m =	م
ts =	ث	z =	ز	‘ =	ع	n =	ن
j =	ج	s =	س	gh =	غ	w =	و
ḥ =	ح	sy =	ش	f =	ف	h =	ه
kh =	خ	ṣ =	ص	q =	ق	’ =	ع
d =	د	ḍ =	ض	k =	ك	y =	ي

1. The transliteration system of Library of Congress (LC) and Department of Religious Affairs of Indonesia:

For *madd* and diphthongs:

ā	=	a long
ī	=	i long
ū	=	u long
او	=	aw
او	=	uw
اي	=	ay
اي	=	iy

2. Examples:

√ The person's name is written in Indonesian without transliteration.

Example: al-Syahrastani, not as-Syahrastāni, written as usual and not italic.

- √ For the foreign terms are not entered into the Indonesian language, written as the original and italics, instead of the underscore.

Example: *al-qawā'id al-fiqhiyyah*; *isyāriyyah*; *'urwah al-wutsqā*

While foreign terms that have been popular and entry into the Indonesian language, written in plain, without transliteration.

Example: al-Qur'an, not al-Qur'ān; objektif, not objektive.

- √ The title of the book is written as the original and italics.

Example: *Irsyād al-Fuḥūl*.