

**LEGALITY OF ISLAMIC LAW AGAINST THE USE OF
PUBLIC ROADS FOR A WEDDING PARTY****Busyro Busyro***Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, busyro.pro18@gmail.com***Adlan Sanur Tarihoran***Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, adlansanur@uinbukittinggi.ac.id**Submission: August 14, 2022**Revised: December 13, 2022**Published: December 31, 2022*

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Abstract

The public road is a facility for those who passed by the public to support mobility. Islamic teachings determine that the public road is right to base humans who don't can in the sky by anyone. However, some people has utilise the public road for interest marriage party and events personal other so that disturb and hinder activity society. This paper aims to study the legality of Islamic law in middle take effect law positive in Indonesia regarding with use of public roads for doing marriage reception (walimah) with a focus on two questions: First, what difference among legalization of Islamic law with law positive in case usage the public road for interest carry out party marriage? Second, is regulation of government about settings use the public road for interest party marriage in accordance with the legalization of Islamic law? Type this study is a research library with an approach qualitative. Data collection is carried out with read news, books, and related articles with problem study and analysis with the deductive method. Results of this study show that Islamic law has considered legal when already ijthad by scholars, different with law positive that the legislation must be validated by the government, and government regulation that regulates using the public road for interest party marriage has produced benefits in accordance with the desired goal achieved in legalization Islamic law.

Keywords : Legalization of Islamic law, Public road, Marriage party

Abstrak

Jalan umum merupakan fasilitas bersama yang dilewati oleh masyarakat untuk menunjang mobilitas mereka. Ajaran Islam menentukan bahwa jalan umum merupakan hak dasar manusia yang tidak boleh dihalangi oleh siapa pun. Namun sebagian masyarakat telah memanfaatkan jalan umum untuk kepentingan pesta perkawinan dan acara-acara pribadi lainnya sehingga mengganggu dan menghambat aktifitas masyarakat. Tulisan ini bertujuan untuk mengkaji legalitas hukum Islam di tengah berlakunya hukum positif di Indonesia berkenaan dengan penggunaan jalan umum untuk melaksanakan resepsi pernikahan (walimah) dengan menfokuskan kepada dua pertanyaan: Pertama, apakah perbedaan antara legalisasi hukum Islam dengan hukum positif dalam kasus pemakaian jalan umum untuk kepentingan melangsungkan pesta perkawinan? Kedua, apakah peraturan pemerintah tentang pengaturan penggunaan jalan untuk kepentingan pesta perkawinan telah sesuai dengan legalisasi hukum Islam? Jenis penelitian ini adalah library research dengan pendekatan kualitatif. Pengumpulan data dilakukan dengan membaca berita, buku, dan artikel yang terkait dengan masalah penelitian selanjutnya dianalisis dengan metode deduktif. Hasil penelitian menunjukkan bahwa hukum Islam sudah dianggap legal ketika sudah diijtihadkan oleh ulama, berbeda dengan hukum positif yang legisasinya harus disahkan oleh pemerintah, dan peraturan pemerintah yang mengatur tentang penggunaan jalan untuk kepentingan pesta perkawinan telah menghasilkan kemaslahatan sesuai tujuan yang hendak dicapai dalam legalisasi hukum Islam.

Kata Kunci: Legalitas hukum Islam, Jalan umum, Pesta pernikahan

INTRODUCTION

One form of Islamic rule is to give people the same right to use public facilities that have been prepared by the government. When a life support facility has been designated as a shared facility, then the entire community has the right to use it in accordance with its designation. In Islam, public facilities can be exemplified by public baths, markets, places of worship, and highways.¹ In accordance with the progress of human civilization, forms of public facilities have also experienced developments such as parking lots, lactation (places for breastfeeding mothers), sidewalks, children's playgrounds, Wi-Fi free locations and so on, although to use these facilities, some must follow the regulations set by the government, for example parking lots and markets.²

One of the public facilities that will be focused on in this paper is the highway. The road is a shared facility passed by the community to support their mobility. Islamic teachings dictate that the highway is a basic human right that no one should inhibit. Even in the hadith of Prophet SAW narrated by al-Bukhari of Abi Sa'id al-Khudri Rasulullah SAW forbids the companions to sit and talk on the highway because it will hinder people who will pass through it.³ In other provisions, persons who deliberately obstruct the path of others for the purpose of frightening or with the aim of depriving them of their property are threatened with criminal penalties (hudud). Based on that, it seems that Islamic teachings do not give the slightest loophole to man to prevent a person from exercising his right through public roads.

The phenomenon that has occurred recently seems to be different from the provisions of Islam. Some people are used to using the highway to hold wedding receptions. Some use part of the road body, so people can still pass it even though it is a bit choked on the way. However, some of them actually use

the entire body of the road so that people cannot get through it and are forced to find an alternative way to the intended place. Worse still, sometimes the road closures are carried out for more than one day without asking permission from those who have the right to close them. The reasons stated vary, ranging from the absence of vacant land to hold a wedding reception, no cost if done elsewhere,⁴ The wedding reception (walimah) must be notified to the crowd, some even with a certain purpose want to show the community that they are a distinguished family as evidenced by the large number of guests who come so that the highway must be closed.

In relation to the execution of the wedding reception (walimah), the Messenger of Allah SAW has ordered to invite others and feed them even if only by slaughtering a goat.⁵ In addition, the Messenger of Allah also ordered to enliven the walimah event by beating the drums,⁶ so that the public would know that there had been a marriage in the family. The order of the Prophet Muhammad SAW was intended so that the public would not be prejudiced against the bride and groom. Viewed from this side, enlivening and informing the walimah event is a form of obedience to the Messenger of Allah SAW. But on the other hand there is a neglected problem, namely the obstruction of others from exercising their rights through the highway. Thus, this paper aims to find out the legality of Islamic law in the midst of the enactment of positive law in Indonesia regarding the use of highways to carry out wedding receptions (walimah). To lead to the discussion and discovery of answers, the research question is how does the legality of Islamic law respond to government regulations governing the categorization of highways and their use for weddings?

Furthermore, studies related to this issue can be grouped into two categories; the first relates to the practice of using highways for

personal gain without following the procedures set by the government,⁷ and secondly a review of positive law and Islamic law against the use of public roads for personal gain.⁸ The two categories of research above have not clearly revealed the relationship between the legalization of Islamic law and the legislation that has been carried out in positive law regarding the regulation of the use of public roads for personal interests.

METHOD

This research is a qualitative research in the form of a discourse of Islamic legal thought with data sources derived from news, books and articles. Data collection is carried out by reading and sorting out data according to research interests. The data analysis is carried out using a descriptive method, which is to explain the data obtained more broadly. This research also uses a deductive method, namely data analysis based on general provisions which are then used to assess special events, and in this case it is the social behavior of the community in carrying out wedding parties by utilizing the highway.

DISCUSSION

Interpreting Legality

The principle of legality is usually discussed in criminal law. The meaning that is often stated by criminal law experts is that no act can be punished unless it has been pre-regulated by law. Montesqueau was the first originator of this principle of legality in 1748 to criticize the behavior of kings who arbitrarily punish someone in the absence of any prior legal provisions.⁹ According to Stoian and Theodora, this principle of legality should be reflected in the constitutional principle of law and constitutional administration.¹⁰ In Indonesia itself, the principle of legality used in criminal law today is the principle of formal legality (written law), but in the draft criminal law (RKUHP) it does not only pay attention to formal legality, but has included material legality, so that an act can be considered a

criminal act if it violates customary law or other laws that live in the community, for example Islamic law. However, Nella Sumika disagrees with this because she thinks the law needs certainty (formal legality). Including the legality of the material will only open up the opportunity for an arbitrary verdict.¹²

According to Islamic law, the legality of the law is already written in the Quran and there are no criminal acts except those regulated by nash¹ (al-Quran and Sunnah) Hafizah at.al. said that in Islamic criminal law there is an opportunity for analogy (ijtihad), and this is contrary to Indonesian criminal law which does not allow it.² According to Nofaldi, legality of Islamic law is not rigid, but develops in accordance with the times. There are four Sunni schools of law that still survive today, namely the Hanafi, Maliki, Shafi'i, and Hanbali schools with slightly different legal thoughts. The support of power politics has made these four schools of law studied and developed to date.³ Some of the provisions of these schools have been legalized (made into law), such as Law No. 1 of 1974 on Marriage and the Saudi Arabian Criminal Law which is generally taken from the provisions of the Hanbali school, and others.

The Concept of Walimah in Islam

Walimah means gathering people to eat food prepared by the bride and give prayers to the bride and groom for carrying out the marriage contract. In accordance with the word 'awlama" (food), then in the walimah event food is prepared which will be eaten by

¹ Andi Sofyan, "Reformulasi Asas Legalitas Menurut Hukum Islam Dalam Pembaharuan Hukum Oidana Islam Di Indonesia," *Legal Pluralism* 6, no. 1 (2016): 1–21.

² Annisa Hafizah, Madiasa Ablisar, and Rafiqoh Lubis, "Asas Legalitas Dalam Hukum Pidana Indonesia Dan Hukum Pidana Islam," *Mabadi: Indonesia Journal of Law* 1, no. 1 (2022): 1–26.

³ Nofaldi, "Asas Legalitas Pembentukan Mazhab Hukum Dalam Sunni," *EL-Hekam: Jurnal Studi Keislaman* 6, no. 1 (2021): 72–79.

invited guests.¹⁶ Another term used for this word is wedding reception. Walimah was instructed by the Prophet SAW to inform the people that a marriage had taken place, and in its execution it was recommended to hit a tambourine (musical instrument). In addition, walimah is also held to strengthen the silaturrahmi relationship between the two bridal families, even to strengthen relations with the surrounding community.¹⁷ Thus walimah is a very important feast for Muslims to do by inviting people to come and eat the food that has been prepared.

The existence of the prophet SAW's command about the importance of walimah consequently to the law of carrying it out. Although scholars agree on the existence of orders and the importance of walimah being carried out, in assessing the quality of these orders there are differences. In general, the majority of scholars say the law is sunnat, but shafi'i school scholars say sunnat muakkad, in contrast to Zahiriyah scholars who mandate the implementation of the marriage guardian.¹⁸

Legal talks are not only related to its implementation, but also the law for people invited to the walimah event. In this case Shafi'iyah clerics obliged to be present, unless there was a reason justified by religion. As for the scholars in other schools, such as Hanafiyah, they only say sunnat muakkad. Although Malikiyah scholars divide the law of attending a multi-tiered marriage walimah (compulsory, sunnatmubah, haram, and makruh), the mandatory law still exists when all the requirements of the mandatory attendance are met,¹⁹ for example, it has no obstacles such as illness, the walimah carried out does not contain the element of maksiat, walimah by inviting everyone (rich and poor) and others.

Roads in Government Regulation and Fiqh Studies

A highway is a road owned by the government and everyone can pass through it.

In Indonesia, this classification of highways is divided into five categories, in accordance with PP No. 34 of 2006, namely national roads, provincial roads, regency roads, and village roads and all of them are roads that can be passed by anyone. National roads are those that connect between provincial capitals, national strategic roads, and expressways. This road is coded K1 and is managed by the PUPR ministry. Provincial roads are the main roads connecting provincial capitals with district/city capitals (code K2), or between district/city capitals, and provincial strategic roads (code K3).

The person in charge of provincial roads is the governor. A district road is a road that connects the district capital with the subdistrict capital, the district capital with the village center, between the subdistrict capital, the subdistrict capital with the village, and between villages (Code K4), and the person in charge of this road is the Regent or Dinas associated with it. Meanwhile, the village road is a road that connects community settlements in a village and the context road in the village. This road is managed by the village. The alley or alley in the village is one example.²⁰ All categories of roads can be used for public purposes and national events while for personal interests such as wedding parties are only allowed on district and village roads; even then they must be with the permission of the police. The legal basis is Law No. 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) and Police Chief Regulation No. 10 of 2012 concerning Traffic Regulation in Certain Circumstances and Use of Roads Other Than for Traffic Activities.

In Islamic fiqh, the division of road categories is not as detailed as above. Islamic fiqh studies only divide the paths into two categories, namely public roads and special roads. A public road is the right of everyone to pass through it, while a special road is a privately owned road that is only entitled to be

used by the owner or by the person who gets a permit to use the road.

From these two categories of roads then emerged the study of fiqh known as haq al-murur (right to pass the road). Haq al-murur is the right for a person to pass through a road to lead to his land, house, or property, either a public road or a road privately owned by a person. At least that was the original definition of the right of al-murur according to Wahbah al-Zuhayli and Muhammad Yusuf Musa.²¹ Thus, even privately owned roads should not be closed if the closure of the road can prevent others from going to their property or their homes. In its development, haq al-murur is not only with such a limited sense, but is interpreted by the right of a person to pass the road to the place he wants to go, such as a place of work, school, and others. The point of this discussion of haq al-murur is that one should not hinder others from getting to the place where he is going or the prohibition of closing the road so that people who use the road cannot get through.

The Phenomenon of Using Highways for Wedding Parties

The use of highways for weddings occurs throughout the territory of Indonesia, both state roads, provincial roads, district roads, and village roads. Tribunnews reported that the use of the highway for even three days is troubling to the road user community. Various comments emerged from netizens, one of which was from twitter @seputar neighbors as follows:

"3 days the road is closed this way and it's the main road. Mentang-mentang became one of the village officials and felt that he was able to do this. Tobat has neighbors like this. Please anyone don't be like this, there will be a lot of prayers and bad judgments about you".²²

"If there are many roads, it is not a problem but it is usually closed only for a day after the event, not up to 3 days, if there are no other roads and it is closed for up to 3 days, it is

*really bad. In the village, there is also no one who makes events until the road is covered, this is indeed a strange village device" (@Irm***).*

*"The main road for days is conscientiously dead. Hopefully, those of you who will be married to the reception will be given a fortune for renting a building" (@same***).²³*

From the above statement, it can be understood that the custom of using public roads for wedding parties was carried out by officials, and this condition angered the public by issuing unkind swears and prayers. The wedding party is actually to ask for prayers of blessing from the community, but the opposite happens, the community prays for the bad and has a bad view of the have. However, there is another side to it, which it is better for party owners to think about alternative paths that can be passed by the road user community and do not close the public road for more than one day.

Public complaints were also reported by suaralira.com, because the use of the highway has caused a long traffic jam of 200 meters. One road user said:

"the hot days of the market day again, a lot of cars, a lot of people, crowds of course, or it is mandatory for the host to use the services of local transportation department employees, so that this traffic arrangement is normal".²⁴

The above statement also illustrates the annoyance of road users who experience congestion due to wedding parties wearing the road body. From his statement, it can be understood that the owner only uses part of the road body, while some can still be passed by vehicles in turn. Under these conditions road users expect there to be traffic arrangements there as there is an open and closed road during the party.

People who are upset by the disruption of their roads sometimes recklessly break through and into tents full of invited guests, while party owners can't do anything except just look and be careful with the passing of

vehicles in their party tents.²⁵ Of course, this is very dangerous for invited guests and makes them uncomfortable while at the party location.²⁶ Ditlantas Polda Metro Jaya AKBP Fahri Siregar said that the regulations are in Law Number 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) and Police Chief Regulation Number 10 of 2012 concerning Traffic Regulation in Certain Circumstances and Road Use Other Than for Traffic Activities. According to him, the rule affirms the prohibition on the use of highways for personal gain and must not allow anyone to close access to highways, except for state activities.

The roads that may be used are only district roads and village roads, and even then they must obtain permission from the police, starting from the police level to the police station, depending on the condition of the road to be used and the number of crowds. If it does not cause congestion and there is an alternative road, then permission is given.²⁷ Thus it can be concluded that the use of public roads for personal interests is not allowed in principle by state rules, in this case Law No. 29 of 2009.



Figure 1: Trucks and cars can be seen passing under the wedding party tent



Figure 2: A party tent partially closes the body of the road



Figure 3: A wedding party that closes the entire body of the street



Figure 4: The party tent closes the entire body of the road

In figure 1, it can be explained that there is a wedding party that uses the entire body of the road, and the guests present are enjoying a party meal in the middle of the traffic of the vehicle in front of it. In figure 2, you can see the use of part of the highway to set up a party tent. Judging from the size and markings of the road (the white stripes in the middle), it seems that this is a provincial road, and the

party owner still gives road users access to pass through. As for figure 3, it seems to be a village road, this is marked by a small road size, and it has no road markings. The implementation of the party has closed the entire body of the street, leaving only a little for pedestrians.

The existence of arrangements by members of the police and Satpol Pamong Praja there indicated that the person who was carrying out the party was one of the officials in the area. In figure 4, it can be seen that the size of the road is larger than figure 3 and has road markings. Judging from the size and markings, it seems that this is a county road. In this picture, there is not the slightest gap for road users, including pedestrians, to pass.

The Use of Highways for Walimah in the Legality of Islamic Law

Islamic law is a set of rules ordered by Allah Almighty to regulate the deeds and utterances of mukallaf human beings by telling or prohibiting, giving the option to do and not do, and other supporting rules to ensure the implementation of these rules. From that understanding, the discussion of Islamic law includes the law of taklifi (the burden that must be carried by mukallaf) called the law of taklifi, and the rules that support the implementation of the law of taklifi called the law of wadh'i. The discussion of taklifi law gave birth to compulsory, circumcision, mubah, haram, and makruh laws. Meanwhile, the discussion of wadh'i law gives birth to legal, void, conditional, harmonious, cause, seminal' (barrier), 'azimah (law of origin), and rukhsah (leniency) laws.²⁸

Ulama ushul fiqh and ulama fiqh have conducted studies on all aspects of Islamic law, both in the fields of worship, marriage, muamalah (business law), jinayah (criminal), and siyasah (politics) to produce legal determinations related to the two forms of law above, taklifi and wadh'i. The legal determination produced by these scholars has

resulted in the legality of Islamic law; although between one ulama (school of law) is different from other schools of law. Therefore the establishment of Islamic law in a particular field is produced by ijtihad or thought based on their understanding of the verses of the Quran and the hadiths of the Prophet SAW.

Based on that, the legality of Islamic law is different from the legality of law which is understood in positive law. In positive law, a legal provision is considered legal if it has been determined by the state (formal legal). Meanwhile, in Islamic law, a law is considered legal if it has been determined by fiqh scholars. Although today some Islamic laws have been legalized into positive laws, they are only limited to certain civil matters such as marriage, waqf, zakat, and hajj laws.²⁹ As for other civil matters such as business law in general, it still refers to the Civil Code and to the Criminal Code to the Criminal Code. Thus the legality of the use of highways for personal interests is a civil domain that has been legally regulated by the state, while the legality of Islamic law is written in the fiqh books of various schools.

Basically, when the state has regulated something and the rules are aimed at generating benefits and can refuse emergencies, then in fact the provisions are in accordance with Islamic law. This is because the purpose of establishing Islamic law is to produce benefits in all respects.³⁰ The rules for the use of public roads as in Law No. 22 of 2009 and Regulation of the Chief of Police No. 10 of 2012 have clearly regulated the categories of public roads and the restrictions on their use. One of the regulated ones is the use of the highway for personal gain, both to carry out wedding parties and others that must obtain permission from the police. Road use permits that are allowed to be used privately are only district and village roads, even if they do not cause congestion, disturbance to the road user community, and there must be

alternative routes that can be passed by the community. Thus, national roads and provincial roads should not be used for personal gain, only for national-scale activities, meaning that road closures should not be arbitrary and known or carried out by responsible parties, in this case the police.

The arrangements for the use of roads in the new book of fiqh are limited to public roads and private roads, not as detailed as the arrangements made by the state. The fiqh rules on the use of public roads for personal gain are not uniform, some clerics prohibit absolutely and some allow if they obtain the permission of the ruler and do not use the road body as a whole, and there are other roads that can be passed by the community.³¹ At first glance, it can be seen that there is an opinion of fiqh scholars that is similar to the existing regulations in Indonesia, namely the ability to use public roads when obtaining the permission of the ruler.

When it comes to the purpose of Islamic law, *maslahah*, then this second opinion seems to be more moderate with a record of following the boundaries set by the government. It is understood that some of the legalization of Islamic law previously written in the fiqh books on the use of roads for personal gain has become a formal legalization in the regulations made by the government. Thus, the regulation made by the government in Law No. 22 of 2009 concerning the use of the road is already a middle ground to overcome difficulties for people who do not have land for the location of the wedding party.

On the other hand, the rule also wants to avoid traffic on the highway in the form of not causing congestion, there are alternative lanes nearby, and certainly not closing other people's access to the place they are going. The government regulation has produced *maslahah*, and is in accordance with the provisions of Islamic law. The public, of

course, is obliged to comply with the procedures set by the government if they need a public way to carry out the wedding, because when the procedures are not followed, the *maslahah* to be achieved will not be realized at all.

CONCLUSION

The rule of Islamic law against the use of public roads for personal purposes such as to hold marriage parties has been legalized in the *ijtihad* ulama fiqh written in their fiqh books, while positive law is only considered legal if it has been stated in laws or government regulations (formal legal). The provision of use of public roads for personal gain, including wedding parties, is not allowed in principle by either the *ijtihad* ulama fiqh legislation or the rules in Indonesia. However, to overcome the difficulties of the community in terms of the availability of land for the location of the party, an exception rule was held. This exclusion rule is permitted with very strict requirements. The existence of exceptions with this strict requirement can result in *maslahah* which is the goal to be achieved by Islamic law if the community complies with the government's rules. Thus the government regulation is indirectly in accordance with Islamic law because it has implemented the enactment of Islamic law (legalization of material law in some *ijtihad* ulama) in terms of the use of public roads for personal gain.

This paper has corroborated previous studies related to the use of public roads for personal gain. With different purposes, this paper is able to synchronize between the legality of Islamic law and positive law. This paper has limitations in terms of data that only comes from news, books, and articles, has not seen it fully in the field. In line with that, research with the same theme can still be continued with goals and broader ones in the field.

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