



# Islamic Economics and Politico-Legal Policy: Defining The Fundamental Role of Government In Creating Prudential Business System

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## Abstract

This study aims to examine in depth the role of the government in stabilizing, allocating and distributing nation-wealth by minimizing monopoly from Islamic economics views as well as contemporary legal practices. The research method used is phenomenological-qualitative and empirical legal study. Data collected by observing the models formulated by fiqh experts and their implications for economic justice based on literature studies and empirical practices. The findings prove that in the discourse of fiqh and Islamic history, the government has strategic position in combating monopoly by its intervention in overcoming unfair economic practices. It has supreme political power and strong duty to create nation-welfare by paving the way towards social prosperity based on religious moral principles. The duty of government to stabilize, allocate and distribute nation-wealth must run on the notions of social justice and fair treatment for all. The existing rules of anti-monopoly may be compared and referred. The arguments that are in line to the conclusion: First, the historical facts at the beginning of Islam are in conformity of such a model. Second, there are some supportive legal arguments of fiqh scholars and existing present example. From these findings, it can be concluded that the study of Islamic economics has an important contribution in encouraging the role of the government to overcome the practice of monopolistic behavior or unfair business practices. In practical sense, such a policy must be realized in the type of checked and balanced social system that lead to social justice and good governance.

**Keywords:** Islamic Economics, Legal Policy, the Role of Government, Prudential Business System

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## I. Introduction

The market allows sellers and buyers to make supply and demand. In the Industrial Revolution era, market practices entered a new digital transformation era where sellers could easily sell their wares online (Roongta, 2019). The study states that market practice until the modernization era experienced various complicated problems that raised several pros and cons from Muslim scholars, primarily related to the role of government in the economy, so there were concerns about how market practices should actually be carried out by Muslim economic actors (Kayed & Hassan, 2011). What is clear is that most previous studies recognize that the role of government is crucial in keeping the economy stable. For example, research conducted by Sobaya et al., (2021) found that the role of the relevant government must be in accordance with the goals of Islamic economics, especially in terms of its enormous benefits, i.e., the stopper of Muamalah, which is prohibited and a determinant of fair prices.

One of the main problems prohibited in market practice is market distortion because it can only benefit a small part of society. The research explains the practice of distortion and states that some Muslim scholars do not support subsidies for goods since they tend to distort the distribution of people's income. On the other hand, market distortion must be anticipated by involving government intervention as it is a common enemy that can harm many people (Khan, 1997). One form of distortion often occurs is engineering on the supply side, namely *ihlikar* (monopoly) behavior. Monopoly is considered a big mistake that creates suffering, illegitimate profits and guarantees inequality (Ali & Al-Owaidan, 2008). The latest study asserts that many factors cause market distortion, but the factor most often carried out by irresponsible parties is monopoly (Mauludin, 2021). The analysis of *qawa'id al-fiqhiyyah* also clearly prohibits monopolistic practices, unhealthy market competition (Fikri, 2021).

Most research studies elucidate the importance of the views of Muslim scholars on how to realize market justice, and it is not enough to only abolish the usury, gharar, tadbis, and maysir systems; it will also require special attention from the government, namely the issue of monopoly (Mulyana, 2017). The study also states the contribution of Muslim scholars to thinking about the economy, primarily market and monopoly practices. Muslim scholars are deemed to have deep insight into the analysis of their market forces, which plays a vital role in the survival and growth of the mainstream (Islahi, 2005). Further, the problem of monopoly behavior can be answered by Islamic economists so that later, they can narrow the space for unfair monopoly behavior (Benić, 2016; Chapra, 2001). The Muslim scholars who formulated this concept included Mohammad Hatta, Sritua Arief, Sri-Edi

Swasono, Umer Chapra, Monzer Kahf, Ahmad Sa'ad, Muhammad Firdaus, and Salih Salihi. The literature has explained that the solution to the problem of unfair monopoly is to include government instruments in the economy to organize and arrange (Abdeldayem & Aldulaimi, 2018). Based on this, the role of government must be minimized and replaced by individuals (private). Deregulation and privatization are used as solutions to overcome various socioeconomic problems, pursue growth, and improve people's welfare (Almarzoqi et al., 2018). However, other studies have expressed a different opinion. Specifically, Lawal & Bashar (1997) stated that the role of the government would kill individual creativity and negatively impact the economy and the welfare of society as a whole. For them, economic growth will be optimal if rules or regulations do not control the traffic of goods, services, and capital. Optimization will only occur when goods, services, and capital are owned and controlled by individuals driven to obtain the maximum profit.

The occurrence of differences of opinion from Muslim scholars about the government's role in monopolistic practices can lead to an unclear perspective on the picture of the real role of government in preventing monopolistic behavior. Therefore, this study has novelty from the opinion of Muslim economists to draw conclusions based on the research gap from previous studies on the role of government in monopoly behavior. Based on the description above, the big question formulated in this study is: What is the role of the government in monopoly behavior from an Islamic economic point of view?

## **II. Literature Review**

### **2.1. The Market and Governmental Policy**

The role of the government is to regulate the rules that apply in society so that a comfortable, fair, and directed atmosphere is formed. The government has a prominent role: (1) maintaining domestic security and defense; (2) administering justice; (3) providing goods that are not provided by the private sector. In the economy, the government has three leading roles: regulator, consumer, and producer, to overcome market failures so that no externalities harm many parties (Baum, 1992). The role of the government is also highly dependent on the conditions of each country. In addition, the government's role as provider and manager is highly dependent on market conditions. If the market is effective, the role of the government tends to be below. On the other hand, if the market has not been effective, the government will inevitably have to enter as a market player. The study explains that the effectiveness of a market will change along with economic development so that the role of government will also be adaptive (Stiglitz, 1997).

Further, the government is essential in protecting economic actors from the natural abuse of monopolies and avoiding market failures. On the other hand, the government is also trying not to damage the effectiveness of setting market prices. The government's roles in controlling the negative impact of the existence of a monopoly company include (1) preventing the emergence of the monopoly itself; (2) granting licenses to new companies with the same products as those produced by monopolists; (3) increasing the supply of domestic goods by way of imports so that monopoly companies have to work extra in terms of effective and efficient production; and (4) setting the highest retail price so that monopolists no longer have the power to raise prices (Jordan, 1972). Several studies related to the role of government in the market are, for example, the research proposed by Falahat et al., (2021) on the role of the government in significantly increasing the intensity of internationalization and the development of fundamental capabilities and the financial and strategic performance of SMEs. Angulo-ruiz et al., (2018) also revealed that the government plays a vital role in influencing the internationalization of emerging market companies. In addition, the government can promote bilateral agreements to support developing markets internationally.

## **2.2. Market Monopoly: Combating Systemic Illness**

In general, a monopoly can be defined as a market condition in which only one particular company or person is the provider or seller of certain goods. This condition is further marked by the absence of economic competition in producing and selling specific goods or services, the unavailability of substitute goods that can replace the product, and the high prices the seller enjoys (Papandreou, 1949). Monopoly also refers to a situation where one player dominates the market. A perfectly competitive market is usually characterized by several producers or sellers, each providing a certain number of products in relatively equal quantities so that they cannot affect the market price (Williamson, 1971). Previous studies have investigated various cases of monopoly, such as government monopoly as an instrument for public welfare (Room & Örnberg, 2019), transportation monopoly (Tsyganov, 2020), and market monopoly triggers price discrimination that only benefits the monopolist (Deo, 2019).

A monopoly is also a form of market in which only one firm produces goods that do not have very close substitutes. The holder of monopoly rights has the right to produce his business goods according to his will so that at certain times, the stock in the company may be held and not marketed to increase prices and boost demand from consumers, increasing the scarcity of an item (Bresnahan & Reiss, 1990). Three kinds of monopoly occur in the market: first, natural monopoly, which occurs naturally or because of a pure market

mechanism (Lerner, 1934). The monopoly actors are parties that naturally control the production and distribution of certain products. Second, a monopoly by struggle occurs after a relatively long and tight competition. The competition runs fairly, and no processes violate the open market rules. Various business actors in this sector have been in a long and tight competition through various situations and obstacles. Lastly, monopoly by decree happens due to government intervention giving certain economic actors special rights to dominate the market for a specific product.

In a market-oriented economic system, the study of monopoly lies in discussing the market structure contained in industry. Furthermore, market structure is a characteristic related to the organizational aspect of an industry that serves a particular market of consumers (Bresnahan & Reiss, 1990). Market structure refers to firms' identity and relative size in an industry. In detail, the characteristics commonly used in analyzing market situations are the number of sellers and buyers (producers and consumers), the nature of cost, and product differentiation (Umiński, 2020). In addition, several factors cause a monopoly situation in a market. First, economic factors can cause a monopoly in a market because of economic causes that become limitations and hinder the entry of potential competitors. Second, legal factors can cause a monopoly in a market due to the rules or regulations that limit the entry of potential competitors into the market. Third, the intentional factor in the context of the occurrence of a monopoly can be seen in a negative context where a company that controls the market lobby and collude with certain authorized parties to create an atmosphere that does not allow the entry of potential competitors into the market (Papandreou, 1949).

### **III. Methodology**

#### **3.1. Research Design**

The research design used was phenomenological-qualitative, focusing on the role of government, monopoly behavior, and classical and contemporary Islamic economic studies. The data collection technique used observation and document methods adapted from the research method of Singleton et al., (1988). The design of this study was employed to analyze the propositions made by Muslim scholars from the fields of Fiqh and history in the early days of Islam in response to the problem of unfair monopoly behavior at that time. These propositions would then be tested for validity in answering the problem of monopoly based on Islamic economic studies. In addition, it would also be used to find out the social changes that occurred during the Islamic government to provide a clear understanding of the reactions of experts, authorities, and society in the face of unfair monopolies. The level of validity generated would determine the model of economic justice that prevailed in

the early days of Islam, which is then applied to the present. To strengthen the analysis, the empirical approach was utilized through the comparative legal method. It was done either vertically, horizontally, or diagonally. Vertically, it was compared between opinions in hierarchical legal sources (e.g., the hadith against the Qur'an). Horizontally, the material of Islamic law was compared with positive law. It diagonally compared the existing legal opinions across legal traditions and sources of law through multi-dimensional perspectives: philosophical, juridical, and socio-empirical.

### **3.2. Data Source**

Generally, the data used in this study are primary and secondary. The primary data can be from books or daily legal practices concerning anti-monopoly (empirical cases). The primary data derived from the book were from Fiqh books written in the early days of Islam. The books were taken as data sources containing direct thoughts from the author or representing the opinions of schools of thought. The books that became the primary data sources in this study were: (1) *al-Muwatta' and al-Mudawwanah al-Kubra* by Malik ibn Anas (712-795 AD/93-179 H); (2) *Tarikh al-Umam wa al-Muluk* by Muhammad ibn Jarir al-Tabari (224-310 H); (3) *al-Talqin fi Fiqh al-Maliki* by Abu Muhammad 'Abd al-Wahhab ibn 'Ali ibn Nasr al-Din al-Tha'labi (d 422 H); (4) *al-Ahkam al-Sultaniyyah wa al-Wilayat al-Diniyyah*, *al-Rutbah fi Talab al-Hisbah*, *al-Hawi fi Fiqh al-Shafi'i*, *al-Nukat wa al-'Uyun*, and *al-Ansaf fi Ma'rifat al-Rajih min al-Khilaf* by 'Ala' al-Din Abu al-Hasan 'Ali ibn Sulayman al-Mawardi (364-450 H); (5) *al-Muntaqa Sharh al-Muwatta'* by Abu al-Walid Sulayman ibn Khalaf ibn Sa'ad al-Baji al-Andalusi (1022-1113 AD/403-494 H); (6) *al-Muhalla* by Ibn Hazm Abu Muhammad 'Ali ibn Sa'id ibn Hazm (d 1075 AD/456 H); (7) *al-Istidhkar al-Jami' li Madhahib Fuqaha' al-Amsar*, and *al-Kafi fi Fiqh Ahl al-Madinah al-Maliki* by Abu Yusuf ibn 'Abd Allah ibn ' Abd al-Barr al-Namiri al-Qurtubi (w 463 H); (8) *al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i* by Ibrahim ibn 'Ali ibn Yusuf al-Shirazi (d 1096 AD/476 H); (9) *al-Muntaqa Sharh al-Muwatta'* by Abu al-Walid Sulayman ibn Khalaf ibn Sa'ad al-Baji al-Andalusi (403-494 H); and (10) *Ihya' 'Ulum al-Din* and *al-Wajiz fi Fiqh Madhhab al-Shafi'i* by Abu Hamid al-Ghazali (450-505 H). Secondary data came from history books and the results of previous studies relevant to the research. Meanwhile, as the empirical legal data were taken from positive regulations related to anti-monopoly, the role of government was as it was formulated in regulation and its enforcement to solve practical cases.

### **3.3. Data Analysis Technique**

Data analysis in this study referred to the theory of qualitative data analysis and empirical comparison of legal cases proposed by Miles et al., (1994) and Ehrlich (1998). Miles et al., (1994) explained that qualitative analysis was carried out interactively and continuously until it was completed so that the

data were saturated. The measure of data saturation was indicated by the absence of new data or information related to the research theme. This qualitative analysis included data reduction, presenting research data, drawing conclusions, and verifying data. In reducing the data related to Fiqh thought, they were placed chronologically; then, its correlation was tested with historical writers' historical records. Ehrlich (1998) emphasized empirical research used in the study of law. Positive regulation regarding anti-monopoly and samples of solving cases were referred to as living data. In addition, issues regarding the government's role in resolving unfair monopolistic behavior, according to Fiqh records, were constructed as models. Finally, conclusions and verification were drawn after identifying the role of the government in monopoly behavior based on Islamic economic studies.

## **IV. Results and Analysis**

### **4.1. Islamic Economics and the Role of Government: Theoretical and Classical Arguments**

The findings revealed that Muslim economics in the field of Fiqh and Islamic history have contradictory perspectives regarding the role of the government in monopoly practices. The first view is eliminating the government's role in the monopoly market. In his work *Al-Muhalla*, Ibn Hazm (384-456 H) stated that government intervention in monopolistic behavior would lead to inefficiency and economic injustice. Ibn Hazm denies the validity of the legal basis used by those who advocate government intervention in monopolistic behavior. The source of the law they use is the words of Umar, narrated by Sa'id ibn Musayyab. According to Ibn Hazm, Sa'id did not hear the words of 'Umar directly; thus, there may be an error in what was narrated by Sa'id (Brague, 2020). Opinion of Abu Ishaq al-Shirazi (w 476 H) in his work *Al-Muhadhdhab fi Fiqh al-Shafi'i* explained that the source of law that forms the basis of Abu Ishaq al-Shirazi's opinion is the hadith of the Prophet, which states that a Muslim is free to do anything against property he owns. He can sell or hold it if it does not harm himself or others. He also has the right to refuse someone's request to sell his property, including rejecting the government's request to sell his property at a specific price (a price determined by the government). If the government imposes its will so that the owner of the property sells his property, the government has perpetrated and violated the rights of its people (Hafiz & Mohd, 2018).

Abu Hamid al-Ghazali (450-505 H) disagreed with government intervention in excessive monopoly behavior because, in his view, the economy would be on the path of justice if the principle of free competition could be applied effectively (Al-Ghazali, 1979). The economy does not require intervention

from any party, including the government through the pricing authority or the private sector with a monopoly or other activities (Scott, 2021). Al-Ghazali also believes the market does not require significant power to determine what should be consumed and produced. Instead, let each individual choose what is needed and how to fulfill it. It is the basic pattern of the market or, in Al-Ghazali's terms, the market's evolution. The basis of the decisions of economic actors is consensual and does not require authority and command from any party, including the government. Thus, the cost of maintaining authority can be minimized. Al-Ghazali's view indicates that the price of a commodity (goods and services) in the market is determined based on supply and demand, and changes in market prices are determined by changes in demand and supply (Medias, 2018).

Al-Ghazali's opinion (450-505 H) was reinforced by Ibn Katsir (555-630 H), who stated that the government did not have the authority to intervene in monopolistic behavior as long as it did not harm the community. Islam does not provide space for intervention from any party against monopolistic behavior except in an emergency that requires certain parties to intervene against monopoly behavior (Katsir, 1986). The definition of emergency here indicates an effort to minimize government interference with monopolistic behavior. Government intervention is only justified when the market is imperfect because conditions prevent fair competition (market failure). When a market failure occurs, one thing that needs to be considered is whether intervention must be carried out and whether the intervention will lead to government failure because government failure may cause more significant damage than market failure.

Ibn Taimiyah (661-728 H), in his work *Al-Hisbah*, asserted that if people carry out buying and selling transactions under normal conditions without any form of distortion or persecution and there is a change in price due to a lack of supply or a large number of requests, neither party is included. Government intervenes because this is the will of Allah or *Sunnatullah* (Islahi, 2015). Al-Ghizzi confirms this opinion of Ibn Taymiyah in his work *Tanwir al-Absar* and Ibn Juzi in his work *Qawanin al-Ahkam al-Shar'iyah wa Masa'il al-Furu' al-Fiqhiyah* (Fikri, 2021).

Ibn Taymiyah limits the government's legitimacy in setting intervention policies in several situations and conditions. The first is when people really need certain commodities (goods and services). Certain commodities that are the people's desires may not be traded except at a reasonable price. The second is when there is a monopoly. When there is hoarding, the government should enact provisions that limit the usufructuary rights and usufructuary rights for ownership of goods (*hajr*). The government does it to anticipate monopolistic actions or hoarding by certain parties to seek profit over the



suffering of others. Third, when there is a boycott (*al-hasr*) in which the distribution of goods is only concentrated on one particular party, the government should intervene by setting prices to avoid arbitrary actions taken by parties (goods owners/sellers) who are boycotting by setting prices unilaterally, which can harm other parties (buyers). Fourth, if there is a coalition and collusion between sellers where several traders agree to conduct transactions among themselves, the selling price is below the market price. Intervention is here to avoid the possibility of extreme price fluctuations of goods (Dedi, 2018).

Al-Shatibi (w 790 H), in his work *Al-Muwafaqat fi Usul al-Ahkam*, affirmed that one is not justified in forbidding other parties from entering the world of professionalism or a particular industry. The road must be opened by any party who wants to wrestle it (Al-Syatibi, 1991). According to al-Shatibi, it is not justified to prohibit activities that will lead to benefits as long as the benefit is created from the activity. Al-Shatibi's statement shows that restrictions on production activities by certain parties, including the government, for monopolistic purposes and the benefit of certain parties are clearly not allowed. Suppose the limitation is intended for the public interest. In that case, this can be tolerated because the rules adopted are general rules in Islam, or in other terms, it can be emphasized that the public interest prohibits such restrictions. However, if it is in the public interest, this is a reason to provide tolerance space (Harisudin, 2021).

In his work *Al-Muqaddimah*, Ibn Khaldun (732-808 H) stated that government intervention in monopolistic behavior would narrow the industrial and commercial space of the community. Islam has the principle of providing everyone equal production and transaction opportunities. Suppose the market can accommodate the above forms of freedom. In that case, the market has acted as a structured instrument in distributing goods and services, production efficiency, and income distribution (Khaldun, 1989).

Several concepts put forward by Ibn Hazm, Al-Ghazali, Al-Athir, Ibn Taymiyah, and other Islamic thinkers who reject government intervention in monopoly behavior indicate that the economy in Islam must be able to guarantee the freedom of entry and exit of a commodity in the market with the purpose of the distribution of economic power in a proportional mechanism. The government cannot limit market elements to the role of specific industries because this will only lead to monopolistic behavior and limited productivity of an industry caused by the interests of price increases and others.

In the second view, the government's role is crucial in preventing the behavior of market monopolies. Scholars who support government intervention against monopolistic behavior refer to the *atsar* of Umar bin Khattab who rebuked Hatib ibn Balta'ah for selling dry wine below the market price by saying:

"Increase your price or leave our market." Umar's reprimand above denotes that Hatib carried out a monopoly on prices, leading to an unfair economy, thus causing deviations from the ideal competitive marginal cost pricing, leading to prices that do not reflect the actual costs or profits (Al-Mawardi, 1994).

In Islam, the government has a significant role in monopoly behavior, and its task is to regulate and supervise the economy, ensure that the economy is always in balance and justice, and can realize social welfare. As recorded in his hadith, the Prophet's refusal to set prices does not necessarily indicate that the Prophet rejected government intervention in monopolistic behavior because price increases at that time occurred naturally in accordance with the forces of supply and demand. If the price increase at that time did not occur naturally and did not follow the forces of supply and demand, the Messenger of Allah would have intervened. What Umar did was also done by 'Ali ibn Abi Talib. 'Ali once intervened by setting prices and burning the merchandise of those who did not sell at a predetermined price (Ibn, 1332).

'Ali's efforts were inspired by the Qur'an Surah al-Hajj verse 25, which forbids those who carry out ihtikar (monopoly) actions in Mecca (al-haram mosque and its surroundings). Ihtikar prevention efforts cannot be carried out individually. However, they must be conducted by parties with strong authority, namely the government, represented by the Hisbah Institution at that time. 'Ali's attempt to intervene was also inspired by the hadith of the Prophet narrated by Sa'id ibn Musayyab. This hadith indicates that efforts to prevent ihtikar must involve government intervention. It is reinforced by the news narrated by Sa'id ibn Musayyab from 'Umar ibn al-Khattab who rebuked Hatib ibn Balta'ah when selling dry wine below the market price "Increase your price or leave our market." Umar's words indicate his efforts to carry out price intervention to protect sellers in terms of profit margins while protecting buyers in terms of purchasing power. Likewise, it prevented sellers' attempts to increase prices through ihtikar and ghaban fahish (Al-Mawardi, 1994).

Furthermore, there are two characteristics of government intervention (Yahya, 1996). The first is government intervention that is persecuting (zulm), such as government intervention in setting prices below the equilibrium price. The second is an intervention containing justice. Government intervention that contains justice, according to Al-Nawawi (w 676), is government intervention when producers carry out a monopoly in the hope of getting large profits that do not harm the community. Government intervention can also be said to be fair when producers offer their goods at very high prices while consumers demand meager prices. In this situation, price intervention must be carried out through deliberation between producers and consumers facilitated by the government. After deliberation with investigations on

demand, supply, production costs, and others, the government must encourage sellers and buyers to determine prices. The government then determines the price as the prevailing price. Government intervention can also be said to be fair when the service owner, such as labor, refuses to work except at a price higher than the prevailing market price; even though the community needs the service, the government can set a reasonable price and force service owners to provide their services.

Based on the description above, government intervention in monopolistic behavior will lead to two opposing possibilities. The first possibility is creating economic balance and justice, as scholars such as Al-Baji, Al-Rafi'i, Al-Mawardi, and Al-Nawawi believe. They recommend the government's efforts to organize and supervise the economic system by making regulations that can guarantee and protect the rights of the people. The second possibility is the creation of economic injustice, as feared by other scholars such as Ibn Hazm, Abu Ishaq al-Shayrazi, Al-Ghazali, and Ibn Athir. They believe that government intervention in monopolistic behavior will lead to economic injustice. The role of the government should not force its people to share their wealth, including intervention in monopolistic behavior that does not cause market distortion. Suppose the market can accommodate the above forms of freedom. In that case, the market has acted as a structured instrument in distributing goods and services, production efficiency, and income distribution. It applies when there is no market distortion, such as unfair monopoly behavior, which can interfere with the market's role in distributing goods and services. In the end, the government cannot limit market elements to the role of specific industries because this will only lead to monopolistic behavior and limited productivity of an industry caused by the interest in price increases and others.

#### **4.2. Islamic Economics and the Role of Government: Politico-Legal Practices for Contemporary Nation-States**

Seeing the structure and the duty of public institutions, basically, there are three roles of government in the economy in a country as administrators of government households: stabilization, allocation, and distribution. First, the stabilization role is defined as a function of the government to create stability in the economic, socio-political, legal, defense, and security domains. The stabilization in the economic role can also be referred to as the regulatory role. As an economic actor in a government household, the government in a country plays a vital role in regulating and controlling economic activities, which leads to the formulation of economic policies in that country. The stabilization role can be in the following examples: establishing fiscal policy related to state spending, which includes state income and expenditure; setting monetary policies, namely regulating the amount of money in

circulation to control inflation; establishing international economic policies related to trade and economic cooperation between countries.

Second, the allocation is the government's role in providing goods and services that the community can use or utilize. In this case, allocation can be interpreted as the role of producers. The real example of implementing this allocation or producer role is by providing lighting facilities, road infrastructure facilities, bridges, and others. Thirdly, the role of distribution is the role of the government to take care of the equitable distribution of people's income. It is done so that certain regions in a country do not experience disparities due to the unequal distribution of people's income.

The same theory can be derived from Islam. State institutions cannot be separated from the collective concept in the moral foundation and Islamic Sharia. The concepts of *ukhuwah*, *tausiyah*, and *maslahah* are the basis for the development of Islamic institutions in the form of a state. Imam Al Ghazali stated that religion is the foundation or principle. In contrast, power, in this case, the state, and can be understood as government, is the guardian of the foundation or principle, so there is a mutually beneficial and strengthening relationship (mutualism symbiosis). On the one hand, religion is the foundation for the state/government to act for its people toward prosperity. Meanwhile, the state becomes a tool for religious spirit, spreading and implementing it properly and efficiently.

Nejatullah Siddiqi emphasized that society cannot be organized or regulated using Islamic principles except by using the state/government as a medium. In Islam, several provisions are implemented by the government of a country, such as the implementation of the zakat mechanism, the provisions on the prohibition of usury, and the implementation of hudud laws (Islamic criminal law). Yusuf al-Qaradhawi also mentioned the importance of the state's role in effectively implementing Sharia principles in every aspect of life. His book entitled *Fikih Daulah* explains that with a state's existence, it is hoped that Islamic treatises can be maintained and developed, including beliefs and order, justice, prosperity, life, and civilization.

Broadly speaking, the state and government functions are expressed by Yusuf Qaradhawi into two primary functions. First, the function of the government is to guarantee all the minimum needs of the people. This function means that the government must provide or maintain the level of adequacy of the minimum needs of the community. Second, the government has the function of educating and fostering society. In this function, the scope of the government's work is to provide infrastructure facilities, regulations, human resource institutions, knowledge, and quality. Thus, broad, deep, and thorough knowledge (*syamil mutakalimin*) positively correlates to the

preservation and increase of faith that the first point of this state function has raised.

### **4.3. The Role of Government and Empirical Assessment: Monopoly and Unfair Business Competition (Law No. 5 of 1999) and Indomaret Case**

#### **4.3.1. Monopoly and Unfair Business Competition (Law No. 5 of 1999)**

To describe anti-monopoly regulation and the role of government in creating a prudential business system, favorable regulations and the case of monopoly dispute are presented here. By referring to empirical assessment and the case, some conclusions would be drafted based on legal comparison.

As one of the countries with high levels of income in the world, Indonesia is included in the group of G20 countries, which control more than 70% of world trade and, of course, have a relatively high level of economic growth. According to World Bank data in 2017, Indonesia recorded an economic growth rate of 5.05%. Even though it was still below the target to be achieved, this figure was high compared to other countries, which struggled to escape the economic crisis during the same period.

The achievement of this growth rate certainly also has positive and negative correlations with stretching the Indonesian national economy. In a positive context, this growth indirectly reflects the dynamics, prospects, and positive performance of the Indonesian economy globally. Meanwhile, on the negative side, the distribution of control over this growth still needs to be studied further. In other words, is this economic growth enjoyed by most people or only by a handful of Indonesian economic authorities?

In fact, implementing the national economy is slowly starting to show unhealthy symptoms and not refer to the constitution's mandate, especially in Article 33 of the 1945 Constitution. It tends to show the very monopolistic nature of the national economy. The Indonesian government predicted and anticipated the abovementioned conditions at the beginning of the reform period around 1997-1998. The real form of this is the enactment of Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition Practices ([Law No.5/1999](#)).

The structure of the law consists of 11 chapters, which explain related definitions in the first chapter, principles and objectives in the second chapter, scope in the third chapter, typology of prohibited activities in the fourth chapter, dimensions or definitions of dominant positions in the fifth chapter, institutions supervision in the sixth chapter, and procedures for handling cases related to unfair business competition in the seventh chapter. While the sanctions can be imposed in the eighth chapter, other provisions, transitional

provisions, and closing provisions are in the ninth, tenth, and eleventh chapters.

This law aims to provide protection and equal opportunities for all business actors to do business and compete in an economic climate and fair competition for all. As described above, in outline, the law regulates six main things, namely:

- a. Contains related to prohibited agreements
- b. Contains related prohibited activities
- c. Contains related to the dominant position
- d. Related to the Commission for the Supervision of Business Competition
- e. Related to law enforcement
- f. Other provisions

#### **4.3.1.1. Prohibition (agreement and activities)**

The law covers two prohibitions related to prohibited agreements and activities. In prohibited agreements, 10 (ten) issues related to the intended prohibition are price provisions, oligopoly, oligopsony, boycott, territorial division, cartel, trust, vertical integration, closed agreements, and agreements with foreign parties.

The forms of prohibited activities are divided into four parts of activities, including monopsony, monopoly, market domination, and conspiracy.

Prohibitions in the context of the agreement can be explained in the table below:

**Table 1.** Summary of the Prohibited Agreement

No	Agreement Form	Subject	Object	Indication of Violation	Explanation
1	Oligopoly	Business actors with other business actors	Mastery of production and/or marketing and/or goods and services	Two or three business actors/groups control 75% of the market share for one product or service type.	
2	Pricing	Business actors with their business competitors	The price paid by the consumer/customer for a good or service	<ul style="list-style-type: none"> <li>• Together in the relevant market</li> <li>• Buyers pay different prices for the same goods/services.</li> <li>• Under market pricing</li> <li>• Making terms with the agreement that the buyer of services or goods does not supply or sell services or goods at a lower price</li> </ul>	Exceptions apply to a. Agreement are made in a joint venture; and b. Agreements are made based on applicable laws.
3	Territory Division	Business actors with their business competitors	Marketing area or market allocation	Dividing the marketing area or market allocation	
4	Boycott	Business actors with their business competitors	Doing the same	<ul style="list-style-type: none"> <li>• Preventing other business actors from carrying out the same business activities both domestically and abroad</li> </ul>	

No	Agreement Form	Subject	Object	Indication of Violation	Explanation
5	Cartel	Business actors with their business competitors	Organizing the production and/or marketing of goods/services	<ul style="list-style-type: none"> <li>Refusing to sell goods/services from other business actors has a detrimental impact on other business actors. In addition, it limits other business actors from selling or buying goods/services from the relevant market.</li> <li>Intending to influence prices, which may result in monopolistic practices or unfair business competition, to supervise the marketing or production of goods, which may result in monopolistic practices or unfair business competition</li> </ul>	
6	Trust	Business actors with their business competitors	Cooperating by forming a joint company or a larger company		
7	Oligopsony	Business actors with their business competitors	The activity of purchasing or receiving supplies regularly and maintaining the survival of each company or company its members	<ul style="list-style-type: none"> <li>Aiming to jointly dominate the receipt or purchase of supplies to regulate prices for goods or services in the relevant market, resulting in monopolistic practices or unfair business competition</li> <li>Business groups that dominate more than 75% of market share or specific services</li> </ul>	
8	Vertical Integration	Business actors with their business	Production of several products	Each production series results from a process or sustainable management, either directly or indirectly,	



No	Agreement Form	Subject	Object	Indication of Violation	Explanation
		competitors	included in the production chain of goods/services	which may result in unfair business competition or be detrimental to society.	
9	Closed Agreement	Business actors with their business competitors	Regulations	The party receiving the goods does not supply goods or services to a particular party or place.	
				<ul style="list-style-type: none"> <li>Containing requirements that parties who receive certain goods and/or services must be willing to purchase other goods and/or services from supplying business actors</li> </ul>	
		Business actors	Specific prices or discounts on goods and/or services	Business actors who receive goods from suppliers must meet the following requirements: <ul style="list-style-type: none"> <li>Must be willing to buy other goods and/or services from supplying business actors</li> <li>Not buying the same or similar goods and/or services from other business actors who are competitors of the supplying business actors</li> </ul>	
10	Agreements with Foreign Parties	Business actors with their business competitors	Business agreements with other parties abroad	Containing provisions that may result in monopolistic practices or unfair business competition	

Some prohibited activities are as follows:

**Table 2.** Summary of the Prohibited Activities

No	Agreement Form	Subject	Object	Indication of Violation
1	Monopoly	Businessmen	Mastery of production or marketing of services or goods	<ul style="list-style-type: none"> <li>• Resulting in monopolistic practices or unfair business competition, provided that:               <ol style="list-style-type: none"> <li>a. There are no substitutes for related services or goods.</li> </ol> </li> </ul>
				<ol style="list-style-type: none"> <li>a. It will result in other business actors being unable to enter the business competition for the same services or goods.</li> <li>b. Actors or business groups dominate market share with one type of goods or services of more than 50%.</li> </ol>
2	Monopsony	Businessman	Becoming the sole buyer of goods or services in the relevant market	<ul style="list-style-type: none"> <li>• Resulting in monopolistic practices or unhealthy business competition</li> <li>• Actors or business groups that dominate the market share of one type of service or goods above 50%.</li> </ul>
3	Market Control	Businessman	Holding several activities, either alone or with other entrepreneurs (business actors)	<ul style="list-style-type: none"> <li>• Refusing or blocking certain entrepreneurs (business actors) who carry out the same business activities in the relevant market or make rival businesses in the relevant market die</li> <li>• Resulting in monopolistic practices or unhealthy business competition</li> <li>• Making fraud in determining the cost of production, or other, which is an element of the price of services or goods which results in unhealthy business competition</li> </ul>
4	Conspiracy	Businessmen	Collaborating with other parties	<ul style="list-style-type: none"> <li>• The tender winner has been arranged or determined so that it can result in unhealthy business competition.</li> <li>• Entrepreneurs (business actors) obtain news of their rival activities, categorized as company secrets, which can result in unhealthy business competition.</li> <li>• Obstructing the production of services by competing entrepreneurs (business actors) through the services or goods supplied in the relevant market is insufficient in quantity, quality, and time.</li> </ul>

#### 4.3.1.2. Definition/Measurement of Dominant Position

Globally, this law explains the dominant definition in terms of scope: a) Terms of sale are determined, which is made to prevent consumers from obtaining competitive services or goods, both in terms of quality and price; b) Putting limits on technology and market development; c) Obstructing other entrepreneurs (business actors) who have the power to become rivals from occupying the relevant market.

The criteria for the dominant position are as follows:

- a) If the entrepreneur (actor) or business group dominates the market share of certain goods or services by more than 50%
- b) If the entrepreneur (actor) or business group dominates the market share of certain goods or services by more than 75%

More specifically, this law also regulates and defines dominance in structure (multiple positions), share ownership, and merging, consolidating, and taking over a business entity. In the context of multiple positions, dominant is defined as if a person holds the position of director/commissioner in more than one company in the same market in question, has a close relationship to the type or field of business, and simultaneously dominates the market share of certain services or goods, which results in the occurrence of monopoly.

In the context of share ownership, a business actor will be deemed dominant if he owns many shares in several similar companies that carry out business activities in the same sector in the same relevant market. Alternatively, several companies have the same business activities in the same relevant market if this ownership results in the following:

- a) Entrepreneurs (actors) or business groups with more than 50% market share for one type or certain goods
- b) Entrepreneurs (actors) or business groups with a market share of one type or certain goods of more than 75%

In the context of takeover, consolidation, and merger, arrangements related to consolidation or merger of business entities and taking over shares of other companies require unfair or monopolistic business competition practices not to occur. Provisions for consolidating, merging, and taking over shares of other companies have been regulated by government regulations.

Furthermore, business actors who carry out mergers and consolidations, and acquisitions of shares of other companies resulting in assets and the number of sales exceeding the limit set through government regulation are obliged to report to the commission no later than 30 (thirty) days, from the date of consolidation, merger, and acquisition that other companies do.

#### 4.3.2. Indomaret Case Decision

Based on reports from non-governmental organizations (NGOs), which have previously conducted research in Jakarta, Bogor, Depok, Tangerang, and Bekasi regarding the impact of the proliferation of modern franchises on small and micro-entrepreneurs in their surroundings, the Indomaret case was tried by the Anti-Trust Commission (Komisi Pengawas Persaingan Usaha, KPPU) with the result of Case Decision No. 3/KPPU-L/2000. A survey was conducted on 429 small traders/shops in Jabodetabek, with the study's results yielding the conclusion that most small and micro-entrepreneurs have felt the impact on their income or sales turnover, which has decreased drastically. Many small businesses have even been unable to sell anymore because they cannot compete in price and service with modern supermarkets, in this case, the Indomaret supermarket (Anggraini, 2020).

The existence of Indomaret around settlements or people's markets is troubling and detrimental to small traders in the vicinity. Indomaret has had a direct impact on the sales of small traders, so in reality, the turnover has decreased drastically. The turnover decreased impacted income by up to 60% (KPPU, 2000).

It is believed that Indomaret does not respect the goals and principles of Law No. 5 of 1999 concerning monopoly and competition between companies. Hence, social unrest arises in society, especially among small traders. This social anxiety was evident in the majority of the 129 small business owners interviewed, who said that Indomaret's supermarket activities negatively impacted their business, especially in the form of a drastic reduction in income or turnover. Many small businesses have also closed or are no longer selling because they cannot compete in price and service with Indomaret supermarkets, and the cost of living for their homes is threatened because previously, these stalls were a source of support for daily shopping (KPPU, 2000).

The existence of Indomaret also creates disturbances in the economic balance of society, potentially reducing the welfare of small business actors. Apart from business licensing, business location, hours of service, and spatial planning, based on integrated interests, disturbances to social and economic balance must concern prominent business actors, such as Indomaret.

As a result of the decision on the Indomaret case, the KPPU stated that it found no evidence of Indomaret's dominant position as required in Article 25 of Law No. 5 of 1999. The results of the KPPU's research revealed that Indomaret is not dominant in controlling a market share of up to 50% or more in one particular type of goods and services or jointly with one or two other business actors controlling up to 75% or more in similar market shares on specific goods

or services (KPPU, 2000). At the same time, it was uncovered that Indomaret is a business actor in the retail sector located in the Greater Jakarta area, which, when viewed carefully in terms of the number of businesses and sales volume, is in a higher position than other retailers who also have higher financial or capital capabilities than small retail companies.

Meanwhile, in terms of access to supply or sales and the ability to adjust the supply or demand for specific goods or services, Indomaret is better than small retailers. However, Indomaret is not the only large company with easy access to supplies. Meanwhile, Indomaret's market share dominates in several markets but not in others.

In its decision, the Commission Council of the KPPU stated that in developing its business activities, Indomaret did not heed the principles of economic democracy and ignored the economic balance between the interests of Indomaret and the interests of the surrounding small business community. Often, Indomaret markets its products at meager prices, such as providing super-saving discounts every month for two weeks for 40 product items, opening services early, permits for business locations, and allotments of locations that are not quite right.

Based on the facts mentioned above, the Commission Council provided an assessment that Indomaret has not thoughtfully implemented Articles 2 and 3, which are the principles and objectives of Law No. 5 of 1999, thereby disrupting the existence of small businesses/shops in the vicinity and causing unrest in the community, as well as disturbing the economic balance in the public interest, which has the potential to cause a decrease in the welfare of micro-entrepreneurs. It could also lead to a more significant increase in unemployment.

The Commission Council also sees the possibility of vertical integration. If there is indeed vertical integration, PT Indomarco Prismatama can be suspected of violating Article 14 of Law No. 5 of 1999. Furthermore, the Commission Council also noted a written agreement between PT. Adi Prima and PT. Goro Batara Sakti, where the agreement stated that the supply recipient could not sell and hand it back to a particular party.

For this reason, the KPPU's Commission Council suspects that there has been a violation of Article 15 of Law No. 5 of 1999. Article 15 of the Anti-monopoly Law stipulates that traffickers are prohibited from entering into agreements with other traffickers that contain conditions that the recipient of goods or services provides or does not provide said goods or services only for specific subjects or in certain places.

As a result of the decision, the Commission Council ordered Indomaret to stop its expansion in traditional markets and community areas that can deal directly with small retailers to create a balance of competition between large, medium, and small business actors. In addition, in developing its business, Indomaret was asked to involve the surrounding community by increasing the portion of franchise activities (KPPU, 2000). In addition, the impact of this case is that the KPPU's Commission Council provides recommendations to the government to improve and immediately make effective implementation of regulations issued and implement policy measures that are not limited to localization policies and plan area utilization, permits, opening hours and social context. Apart from that, it is necessary to foster and empower small and medium enterprises or small retailers. It is intended so that small retailers are competitive and able to cooperate with medium or large companies.

The Commission Board also recommends conducting studies, monitoring, evaluating, and further investigating alleged acts of monopoly or unfair business competition by entrepreneurs (business actors) related to retail activities in the vertical channel, including allegations of discriminatory pricing and closed agreements.

The above decisions are inseparable from the results of further in-depth research carried out by the KPPU on the existence of Indomaret by surveying consumers. From the survey results, it is known that consumers liked the presence of Indomaret. The resulting percentage is that consumers accepted and were happy with Indomaret, with a very high number of 97%. Consumers stated that they were happy with the existence of Indomaret because of lower prices and better service, and 93% also stated that the place was pleasant and comfortable. In addition, 93% of consumers agreed that Indomaret is an example of a store of the future. Based on these matters, KPPU decided not to order the closure of Indomaret shops. Instead, it only ordered Indomaret to no longer expand its business in the Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek) areas because the reports came from the Greater Jakarta area (KPPU, 2000).

Thus, to resume, the government plays a role in people's economic development and Islamic economics because the progress of a country can be seen from the economic welfare of its people (Karim, 2004; Manan, 1992). Some of the roles that must be owned by the government related to the development of the people's economy include the following:

### **The Government's Responsibility for the Welfare of the People**

Islam determines the main functions of the state and government in the economic field, namely eliminating economic difficulties experienced by the people, providing easy access to economic development for all levels of the

people, and creating prosperity. The Qur'an proclaims the state's vision in this economic field:

"Indeed, you will not starve in it and will not be naked, and verily you will not feel thirsty, nor will the heat of the sun hit you in it." (Thaha: 118-119)

In this regard, Imam Al-Ghazali describes the socioeconomic responsibilities of the state:

"The authorities' responsibility is to help the people when they face food scarcity, hunger, and suffering, especially when there is a drought or when prices are high until the people get their income back because, in those circumstances, it is difficult for them to fulfill these two goals. Under these conditions, the state must provide food to the people and provide financial assistance to them from state assets so that they can increase their income. Al-Mawardi, in his book *al-ahkam al-sulthaniyah*, mentions some of the government's responsibilities in the economic fields:

- a. Creation of an environment conducive to economic activity
- b. Collection of income from available sources and increasing revenue by imposing new taxes when the situation demands it
- c. The use of state finances for purposes that are the obligations of the state

### **Islamic Principles for Public Economic Policy**

By analyzing the primary sources of the Qur'an and al-Hadith with the addition of literature, in this section, the author ventures as an intellectual exercise to compile Islamic principles for public policy:

- a. The principle of the reality of ownership in Allah SWT means that the universe and its contents, including humans in it, are creatures (creations) of Allah SWT; therefore, the nature of ownership does not belong to humans but belongs to Allah SWT, while humans are the parties entrusted with managing, maintaining, and utilizing this universe for the benefit of all humankind. Human ownership is recognized in Islam as part of the legitimate results of his efforts.
- b. Principles of sources of decision-making indicate that making policy decisions must rely on the Book of Allah and the *Sunnah* of the Prophet Muhammad. If a problem requires legal firmness directly related to the problem but cannot be found in the Al-Qur'an or as-Sunnah, humans are welcome to carry out *ijtihad*. The fruit of *ijtihad* must not conflict with the Sharia of Allah SWT.
- c. Concerning the deliberation principle, public policy must consider all aspects and factors related to the problem comprehensively with all the consequences.

- d. Regarding *Maqashid Sharia* principles, public policy must consider *Maqashid Sharia*, protecting religion, soul, honor, wealth, and reason.
- e. Principles of justice and benefit mean that public policy must guarantee justice and benefit for all. Social justice should be the highest rank of its value (*Salus populi suprema lex*).
- f. Leadership and compliance principles are based on rational deliberation and principles of check and balance. Suppose the policy has been decided by deliberation. In that case, the leader must execute the decision, which is also obligatory for the leader to show compliance in implementing the policy.
- g. About the principle of accountability, no matter how small, every policy or action will be held accountable before Allah in the future. Furthermore, every public obligation must also be held accountable to the public because it involves using power and authority and using assets entrusted to the policymakers.

In the Islamic government, from the time of the Prophet to the jurists, implementing economic policies was regulated in such a way through *Baitul Maal*. *Baitul Maal* is an Islamic monetary and fiscal institution whose function is to accommodate, manage, and distribute state wealth for the benefit of the ummah. The existence of the *baitul maal* for the first time was after the revelation that ordered the Prophet to distribute *ghanimah* from the Badr war.

"They ask you about (the distribution of) the spoils of war. Say: "The spoils of war belong to Allah and the Messenger; therefore, fear Allah and improve relations between yourselves; and obey Allah and His Messenger if you are believers." (Al-Anfal: 1)

This provision of Allah appoints the Messenger of Allah as the party authorized to distribute the *ghanimah* and keep part of it, namely one-fifth of the portion for himself and his family as well as orphans, the poor, and *ibn sabil*:

"Know that whatever you can get as spoils of war, then one-fifth is for Allah, the Messenger, the Prophet's relatives, the orphans, the poor, and *ibn sabil*, if you believe in Allah and what We have sent down to the enslaved people. We (Muhammad) on the day of Furqaan, the day the two armies meet. And Allah has power over all things" (al-Anfal:41)

The practice of collecting and distributing wealth by the Prophet later became the forerunner of *Baitul Maal*. In practice, collecting and distributing wealth during the Prophet's time was not yet a complex organization. However, the Prophet was assisted by several of his companions to record his income and expenses. In fact, the *Baitul Maal* property in the time of the Prophet was directly distributed to those entitled. For the benefit of the ummah, even parts of himself and his own family were often released to those who were more in



need and for the benefit of the ummah. One of the secretaries of the Prophet, Handhala bin Shafiy narrated that the Messenger of Allah said:

“Determine and remind me (report to me) of everything. He said this three times. Handhala said: "One time there was no wealth or food for me (in the *baitul maal*) for three days, then I reported it to the Prophet (situation). Rasulullah did not sleep, and there was nothing by his side.

The situation was the same in the first year of Abu Bakr's caliphate. If treasure came from various conquered areas, it was immediately brought to the Prophet's Mosque and immediately distributed. However, in the second year, the income from assets was much more significant, so Abu Bakr made part of the space in his house a center for storing and distributing the assets for the benefit of the Muslims.

In the era of Umar bin Khathab's caliphate, the expansion of Islamic regional power developed rapidly. The Persians and Romans were conquered, the greater the volume of wealth flowing into Medina. Caliph Umar also ordered to build of a particular place as a place to store the treasure. At the same time, he drew up an organizational structure to manage the *baitul maal's* activities.

## **V. Conclusion and Recommendation**

### **5.1. Conclusion**

This study demonstrates that the government's role is vital in minimizing monopoly behavior detrimental to the broader community and as a form of social justice without ignoring its negative impacts, which various specific policies must also overcome. It can be concluded that Muslim scholars differ on the government's role in monopolistic behavior that causes market distortion. Among contemporary Muslim scholars who do not recommend government intervention in monopolistic behavior are 'Abd Allah 'Abd al-Ghani Ghanim and 'Abd al-Hamid Mahbub, while those who recommend it when monopoly causes market distortion are Umer Chapra and Ziya' al-Din Ahmad. Specifically, Indonesian Muslim scholars believe that the government can intervene in monopolistic behavior when the monopoly can cause market distortion. Therefore, regulations have been drafted and enforced, and cases are resolved. Thus, the government's role is essentially adaptive and highly dependent on market conditions. If the market is effective, the role of the government tends to be low. On the other hand, if the market has not been effective, the government will inevitably have to enter as a market player.

## **5.2. Recommendation**

The government is advised to understand the real conditions of the factors causing monopoly behavior and take firm policies against monopolistic practices that harm society in the context of realizing social justice and mutual welfare. As shown in the previous explanation on anti-monopoly regulation and the dispute, anti-monopoly regulations may work to eradicate unfair business. The case of Indomaret implies that future research studies could use different approaches and methods to explore more deeply the implications of the role of government in monopolistic behavior.

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