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Genealogy of Islamic Business Organization: The Institutional Approach Towards Current Islamic Corporate Law

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ABSTRACT

This article examines the social foundation which posed challenges to the adoption of corporate form as a business entity within the framework of Islamic legal tradition. This article employs juridical-normative research analysis with socio-legal approach. This paper concludes: (1) The corporate legal form was not required by the medieval Islamic legal system as well as the case in Western Europe due to several reason such as: an institutional vacuity; withdrawal of community capital resources into waqf institutions; stagnancy in institutional development of business organizations in Islamic law; and inability of the Muslim business elite to consolidate power. (2) In classical fiqh discussions, Islamic business organizations do not have legal personality. The closest approximation to corporate legal entities found in Islam have been bayt al-mal (public treasury), mosque property, and waqf (trusts). Recently, the scholars have approved the corporate form on the basis of fiqh principles of qiyas (analogy) and istihsan, or masaliha mursalah (public interest).

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1. Introduction

This paper begins with the thesis that the Muslim world has fallen behind the West due to the delayed adoption of institutions within the Islamic social system, which are the key drivers of

the modern economy.[1] These institutions encompass legal and economic institutions, dispute resolution mechanisms, financial institutions, business organizations and other crucial social instruments that support modern economic activities.[2] In terms of the development of business institutions, the Islamic world struggled to develop the type of organization that match the advantages of corporate business organizations advancing in Western Europe.[3]

Basically, an organization can operate efficiently only when it can maintain unity of interest within the organization.[4] As for the ability to sustain this unity depends on the organization's capacity to resolve conflicts of interest in within its framework. In the context of corporations, this is achieved because of the "simplicity of litigation" characteristics. The simplicity of corporate litigation is supported by five basic characteristics that become attributions for corporations, namely: Legal Personality, Limited Liability, Transfer of Shares, Management as an Agency, and Ownership by Investors. Some business organizations may possess several of these characteristics, but to be classified as a business corporation, the five basic characteristics must be present.

Among the five characters above, the concept of legal personality and limited liability stands out as a distinctive feature of corporation when compared to other types of organizations. These two attributes provide protection to corporate wealth entities and their investors. It is necessary to distinguish between the protection of shareholders (owner shielding) and the protection of corporate assets as legal entities.[5] Non-incorporated business organizations models (including some models partnership in classical *fiqh*) provide owner shielding to partners, therefore safeguarding their personal assets and investments from the claims of other partner creditors. In other words, this concept is what gives rise to the idea of limited liability for shareholders. However, none of the partnership models can provide entity shielding, which provides protection for the corporation itself.[6] In the absence of entity shielding, the lifespan of the business organization is likely shorter because theoretically, every private creditor including investors, would have the right to liquidate the firm.[7]

In fact, every society that implements market institutions invariably finds that large-scale companies tend to organize themselves in the form of business corporation.[8] Scholar's observation highlights the rational reason why many large companies in the modern economy

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[1] Faisal Z Ahmed, 'Muslim Conquest and Institutional Formation', *Explorations in Economic History*, 81 (2021), 101400. https://doi.org/10.1016/j.eeh.2021.101400.

[2] Ahmad Ali Jan, Fong Woon Lai, and Muhammad Tahir, 'Developing an Islamic Corporate Governance Framework to Examine Sustainability Performance in Islamic Banks and Financial Institutions', *Journal of Cleaner Production*, 315 (2021), 128099. https://doi.org/10.1016/j.jclepro.2021.128099.

[3] Ezzedine Ghlamallah and others, 'The Topics of Islamic Economics and Finance Research', *International Review of Economics & Finance*, 75 (2021), 145–60. https://doi.org/10.1016/j.iref.2021.04.006.

[4] Robert C. Ford, Ronald F. Piccolo, and Loren R. Ford, 'Strategies for Building Effective Virtual Teams: Trust Is Key', *Business Horizons*, 60.1 (2017), 25–34 <https://doi.org/10.1016/j.bushor.2016.08.009>.

[5] Sertsios.

[6] Noraina Mazuin Sapuan, 'An Evolution of Mudarabah Contract: A Viewpoint From Classical and Contemporary Islamic Scholars', *Procedia Economics and Finance*, 35 (2016), 349–58. https://doi.org/10.1016/S2212-5671(16)00043-5.

[7] Yordan Gunawan, Elvita Anggoro Wati, and Eva Ferrer Corral, 'Responsibility of Iran on the MV Mercer Street Attack in International Law', *Brawijiaya Law Journal*, 10.1 (2023), 72–88. https://doi.org/10.21776/ub.blj.2023.010.01.05.

[8] Yordan Gunawan and Yovi Cajapa Endyka, 'The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community', *Pertanika J. Soc. Sci. & Hum*, 25.2017 (2017), 199–206. https://doi.org/10.21776/ub.blj.2017.010.01.05.

choose to organize themselves in the form of a corporation is solely due to their efficiency and ability to accumulate and utilize capital within society.[9] It became rather peculiar when the Muslim world embraced corporations towards the end of the *tandzimat movement* in Turkey in 1908.[10] The question of why classical *fiqh* does not recognize the concept of legal personality is intriguing. Whether this is simply because Islamic law has not yet reached legal thought or vice versa, the *fuqoha* (Islamic jurists) already know the possibility of its application but are reluctant to develop it within the Islamic legal tradition. Upon closer examination of the concepts inherent in *waqf* (Islamic Endowment fund) and *baitul maal* institutions, it becomes challenging to believe that the medieval *fuqoha* had not yet reached the idea of establishing an artificial legal entity.

This article aims to explain why the corporation, as a model of business organization, was only introduced and accepted in the Muslim world after the 20th century AD. In this regard, this paper will be divided into two main sub-discussions. The first discussion delves into the historical context, focusing on the stagnation in the development of legal institutions in Islam.[11] The second discussion, it explores the legal and technical factors contributing to the resistance against the acceptance of corporations in *fiqh*. The second discussion uses a historical approach to legal thought. These topics aim to shed light on why in the *fiqh* formulation phase of the 7th-8th centuries AD, Islamic jurists did not develop a model for corporate institutions, despite their understanding of potential applications and benefits for banking institutions at that time. These aspects of legal history will be able to guide contemporary Islamic jurists to understand the origins of corporate legal institutions in the past and their influence on the development of Islamic business organizations today.

2. Research Method

This article uses characteristics and approaches commonly employed in socio-legal research techniques. The choice of this technique aligns with the study's objectives, where the resulting analysis is expected not only to benefit from a purely juridical perspective but also provide a comprehensive understanding of the social foundations that underlie these legal institutions. Researchers used a number of approaches to explore and provide an analysis of these legal issues. The approach used includes a conceptual approach, statutory approach, historical approach, and comparative approach. In accordance with the aims and objectives, the researchers indicate that in contrast to legal research in general, the statutory approach here only functions as a complementary approach that supports other approaches. The main data used is secondary data obtained by literature study. Meanwhile, to support the data analysis, a field study was carried out using interview techniques where the data that had been obtained was analyzed using descriptive-analytical techniques.

[9] Fumian Huang, Liming Ge, and Sirui Wu, 'Minority Shareholder Protection, Corporate Governance, and Investment Efficiency', *Finance Research Letters*, 58 (2023), 104506 https://doi.org/10.1016/j.frl.2023.104506.

[10] Zhuo Li, Laura Panza, and Yong Song, 'The Evolution of Ottoman–European Market Linkages, 1469–1914: Evidence from Dynamic Factor Models', *Explorations in Economic History*, 71 (2019), 112–34 https://doi.org/10.1016/j.eeh.2018.10.002.

[11] Ibrahim Ari and Muammer Koc, 'Towards Sustainable Financing Models: A Proof-of-Concept for a Waqf-Based Alternative Financing Model for Renewable Energy Investments', *Borsa Istanbul Review*, 21 (2021), S46–56. https://doi.org/10.1016/j.bir.2021.03.007.

3. Result and Discussion

Can an institution survive when its environment changes? Will external changes lead to the dissolution of institutional ties and eventually undermine the institution itself? How have previous institutions influenced the direction of current or ongoing institutional change? Why does a social order evolve through different institutional paths and why is it so challenging to enhance existing institutional frameworks? These issues have captured the attention of academics specializing in the sociology of change. An analytical framework is required to answer this, which capable to explain its stability and change within institutions. Such a framework proves invaluable for studying institutional stability and resilience to changes that occur both externally (environmental) and internally, including the extent of the institutional resilience. Furthermore, the framework should help us understand why, how, and to what degree previous institutional designs affected current institutional evolution.[12]

At least there is an established perspective regarding the nature and causes of institutional dynamics. The first perspectives regard change as intentional social engineering, while the second perceives it as a natural outcome akin to evolutionary change. Institutional dynamics as social engineering deliberately created for prospective purposes and serving certain functions. Political economy theory proves immensely useful in the process of institutional formation and change. From this standpoint, institutional economists assert that any change in formal rules relating to economic activities results from the impact of the political process, therefore external changes occur in the decision-making process or in the interests of political actors. This viewpoint does have its shortcomings, especially in explaining why it is so difficult for an institution to change.[13]

The first generation in the institutional flow sees institutions as something that has been given and is non-economic in nature, so that their object of study focuses on questions such as which institutions can drive economic growth or which institutions have propelled Western progress. Subsequently, the second generation learns how an institution grows and develops. Initially, the problem was tackled by considering changes in economic phenomena, such as market developments, technological discoveries, thus changing incentives for institutional formation and change. A more sophisticated analysis concludes that legal and economic institutions are not formed solely through the law of demand. Scholars are beginning to realize the influence of socio-political factors, legal structures and their predecessor institutions, and their historical history on the development of economic and legal institutions. It is the entire set of elements in the environment that are relevant and necessary to develop a theoretical framework and empirical investigation of the study of institutional change and economic performance.[14]

Recently, a law, economics and organization approach has gained prominence. The issue at hand revolves around the question of why specific conditions and environments give rise to particular institutions, while different conditions and environments lead to the emergence of different institutions. For example, why did traders in North Africa organize themselves through collective and reciprocal agency agreements, whereas Italian swordsmen preferred

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[12] Peter Grajzl and Peter Murrell, 'A Macrohistory of Legal Evolution and Coevolution: Property, Procedure, and Contract in Early-Modern English Caselaw', *International Review of Law and Economics*, 73 (2023), 106113 https://doi.org/10.1016/j.irle.2022.106113.

[13] Calin Arcalean, 'Dynamic Fiscal Competition: A Political Economy Theory', *Journal of Public Economics*, 164 (2018), 211–24. https://doi.org/10.1016/j.jpubeco.2018.06.002.

[14] Avner Greif and Joel Mokyr, 'Cognitive Rules, Institutions, and Economic Growth: Douglass North and Beyond', *Journal of Institutional Economics*, 13.1 (2017), 25–52. https://doi.org/10.1017/S1744137416000370.

bilateral agreements with one-way agency relationships through state authorities? Why do corporations grow and develop in Europe but not in Islamic Legal Tradition? Why was the East India Trading Company (EIC) more voluntary with a democratic model, while the Dutch East India Company (VOC) was more oligarchic with a coercive model? Why is it that public companies that grew up in the United States have more dispersed ownership while those in Germany are more centralized? All of them lead to the same thing where the existing institutions are formed by their environment. This comparison helps separate and identify the elements present in each environment where the institution grows. It is in this institutional context that it is more appropriate to study the development of medieval Islamic business organizations using the law, economics & organization perspective.[15]

3.1 Stagnation of Islamic Legal Institutions

The period of *fiqh* formulation, which took place during the 7th-10th centuries AD was a decisive period in the formation of legal institutions in the Muslim world. The expansion of the Islamic *daulah* that stretches from Andalusia in the West to the Moghul Dynasty in the East means that it also increases the country's source of wealth from *zakat*, *jizya*, *kharaj* (land tax), *uhsr* (customs), *hummus* (found treasure), *nawaib* (conglomerate tax), as well as primarily *booty*. In this context, Islamic jurisprudence is directed at creating economic distribution by preventing the concentration of wealth in a small group of people, at the same time this effort is accompanied by corrective efforts towards past traditions which were full of influences from the Arab tribal and Roman legal traditions. The task facing the *fuqoha* is certainly not easy, because apart from Islamic law being designed to meet the religious demands, namely the safety of the hereafter, it must also be able to answer the practical needs of the daily life in the Muslim community. In this context, Islamic law is a manifestation of the concept of balance in the world and the hereafter.

If we look at the social structures available in medieval Muslim society, all the prerequisites that supported the formation of corporate organizations were already available for the *fuqaha* to form corporate organizations.[16] Based on the legal institutions that have been developed, it is hard to believe that the *fuqoha* do not know the benefits or advantages of having a legal personality that supports corporate organizations. However, instead of adopting the corporate concept, *fuqoha* preferred to develop separate social institutions that are in line with the *fiqh* paradigm that is being built. While some of these efforts succeeded brilliantly for a certain time, but in subsequent developments failed to respond to changes in society. We can examine this success by referring to the hegemony of the Karimi conglomerate in the Red Sea, as well as Madison's special note that no Chinese and Italian traders would perceive the Middle East as a region that is left behind or was regressive. This became a contrast when European and Chinese businessmen saw the Middle East at the beginning of the 20th century AD which was almost backward in all aspects.[17]

From a social theory standpoint, there are several explanations for why corporate organizations did not develop within the Islamic legal system. First, the issue of an institutional vacuum, as experienced in Western Europe, did does not occur in the Middle East. Second, the stagnation in the development of social institutions after the end of *fiqh*

[15] Yordan Gunawan and others, 'Journalist Protection on the Battlefield Under the International Humanitarian Law: Russia-Ukraine War', *Jurnal Hukum Unissula*, 39.1 (2023), 1–11. https://doi.org/10.26532/jh.v39i1.24685.

[16] Riza Afita Surya and Daya Negri Wijaya, 'Females Roles and Their Social World in Al-Andalus', *International Journal of Islamic Thought*, 23.1 (2023). https://doi.org/10.24035/ijit.23.2023.259.

[17] Luca J Uberti, 'Corruption in Transition Economies: Socialist, Ottoman or Structural?', *Economic Systems*, 42.4 (2018), 533–55. https://doi.org/10.1016/j.ecosys.2018.05.001.

formulations in the 10th century AD. Third, the social system was designed to prevent the accumulation of capital in the hands of a small group of individuals.

3.1.1 Institutional Vacuity

The birth of the corporation in the West was just a natural reaction to changes in the institutional environment in Europe. The changes in the institutional environment in question occurred after the breakup of the Roman empire into Western and Eastern regions. In the East Roman region (Byzantium), the existence of a relatively strong state and at least was able to uphold state authority effectively at least until the conquest of Constantinople in 1453 AD.[18] On the other hand, in the West Roman region, state authority was very weak where Charlemagne as the ruler of the Holy see of the West Roman was only able to rule in a very limited area. Under normal conditions, the state can uphold social order and guarantee the legal and economic rights of every member of society. When the social order disappears, it becomes a natural human instinct to gather and group to collectively protect common interests.[19] In the absence of strong state authority, society is required to adjust fill this institutional void.

When the state authority in Western Europe collapsed, relatively at the same time the European nation faced new changes in terms of the development of its legal anthropology.[20] An interesting analysis was put forward by Greif who argued that at that time there was a change in the kinship pattern of Extended Family become Nuclear Family.[21] The combination of demographic and religious factors led Europeans towards a nuclear family pattern as a unit that became the heart of society in Europe. The phenomenon of the rise of the nuclear family in Europe was motivated by the high birth rate in Europe between the 9th and 10th centuries AD. The surge in population growth made large family units lose their ability to accommodate the increasing number of family members, especially parents and children who were out of balance. At the same time the Catholic Church for both theological and demographic reasons prohibit the practice of polygamy, seeks to end the pattern of endogamous marriages towards exogamy, defines incest as a sin and is a crime. The division of the extended family into the nuclear family in Western Europe resulted in the emergence of an institutional void that encouraged the formation of institutions that functioned as a means of gathering individuals who were not based on kinship in the framework of defense and achieving common goals.

Institutions that were formerly based on bonds of blood, clan, ethnicity, or other informal ties underwent formalization in Western European society, resulting in institutions that were independent of familial connections and instead relied on impersonal relation. In other words, the corporation is formed as a substitute for the extended family unit. Therefore, the growth of the nuclear family in Europe was in line with the strengthening of Christian doctrine, as well as marriage and inheritance laws, so that Greif's explanation became in line with

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[18] Matthew Melvin-Koushki, 'Early Modern Islamicate Empire: New Forms of Religiopolitical Legitimacy, *The Wiley Blackwell History of Islam*, 2018, 351–75. https://doi.org/10.1002/9781118527719.ch17.

[19] Taco Terpstra, 'Roman Technological Progress in Comparative Context: The Roman Empire, Medieval Europe and Imperial China', *Explorations in Economic History*, 75 (2020), 101300. https://doi.org/10.1016/j.eeh.2019.101300.

[20] Andrew T Young, 'Consent or Coordination? Assemblies in Early Medieval Europe', *International Review of Law and Economics*, 72 (2022), 106096. https://doi.org/10.1016/j.irle.2022.106096.

[21] Avner Greif and Guido Tabellini, 'The Clan and the Corporation: Sustaining Cooperation in China and Europe', *Journal of Comparative Economics*, 45.1 (2017), 1–35. https://doi.org/10.1016/j.jce.2016.12.003.

Berman's.[22] If according to Berman the institutional structures of the papacy and the church are the differentiating factors, Grief sees the legal and theological aspects of kinship as the differentiators. But both see its connection with the institution of the church.[23]

The institutional vacuum that occurred in Europe did not occur in the Middle East or other civilizations at that time. Grief's explanation is in line with fact that the existence of tribes or extended families are an institution that maintained the welfare, security and continuity of Middle Eastern society. During the pre-Islamic era, the extended family patterns that underpinned Arab tribalism posed both a source of division and an impediment to unity among Arab nations. After the rise of Islamic culture in the Arabian Peninsula, it turned out that tribalism or ethnicity was not eliminated, but in essence it became stronger but was given a new format called *ukhuwah islamiyah*. If previously the spirit of the Arab tribes was fixated on narrow tribal flags, Islamic law provides a new platform, namely the concept of *ummah* unity which unites the desert tribes of the Arabian Peninsula under the banner of Islam. The same thing applies to the Chinese who gather through their clans to play institutional roles in various matters ranging from politics, economics, and religion. In other words, Europeans developed corporations by accident solely to fill the institutional void after the formation of the nuclear family. Meanwhile, the people of the Middle East do not see the need to form an impersonal organization, bearing in mind the strong state authority and the solid existence of the tribes does not leave any gaps in the institutional vacuum.[24]

3.1.2 Development of Legal Institutions

The prominent historian of the 20th century Joseph Kohler argues that the main thing that caused the collapse of Islamic hegemony was due to the fact that *fiqh* did not open up space for the study of the development of social institutions. We can observe this by comparing developments between social institutions in the West and Islam, such as *waqf* and corporations.[25] Even though they have similarities in terms of organizational continuity, there are fundamental differences between the two. First, an association can turn into a corporation if it is in accordance with the will of its founders collectively, while *waqf* is usually established by one person. Second, the control of a corporation is determined by changing the members in it, while *waqf* is theoretically still controlled by its founder according to the directions set out in the *waqf* pledge (endowment).[26] Thus, the purpose of establishing a *waqf* is nature *irrevocable*, even if the legitimate founder intends to withdraw his statement with a new retroactive pledge. The third difference is in terms of organization. In contrast to the flexibility found in corporate organizations, the nature, and conditions of *waqf* are predetermined; the direction and goals set by the founder in the waqf pledge will be upheld by the judge, while if the pledge is not written or the law is not clear, it will be adjusted according to local customs.

It's important to note that just as the church didn't suddenly adopt the concept of the corporation overnight, the concept of *waqf* did not emerge out of thin air. The concept of *waqf* originates from institutions trust in fact, it has existed since the tradition of Roman law, and in

[22] Greif and Tabellini.

[23] Mateo Uribe-Castro, 'Expropriation of Church Wealth and Political Conflict in 19th Century Colombia', *Explorations in Economic History*, 73 (2019), 101271. https://doi.org/10.1016/j.eeh.2019.03.001.

[24] Emine Yüksel, 'Gender and Succession in Medieval and Early Modern Islam: Bilateral Descent and the Legacy of Fatima', *Journal of Middle East Women's Studies*, 19.1 (2023), 98–100. https://doi.org/10.1215/15525864-10256197.

[25] Shadiya Mohamed S Baqutayan and others, 'Waqf Between the Past and Present', *Mediterranean Journal of Social Sciences*, 9.4 (2018), 149–55. https://doi.org/10.2478/mjss-2018-0124.

[26] Baqutayan and others.

pre-Islamic times, people in the Middle East have used it in various forms. The question arises: why did the Muslim community choose the trust model while rejecting the corporate model? While there is no concrete evidence to support this, it can be surmised that the *waqf* institution was favored because it was perceived as more in line with the Islamic communal vision. Given that as Islamic leaders regarded factionalism as a threat, their preference for forms of organization established and managed by individuals over organizational models that allowed for legal group formation is not surprising.

We will not elaborate on the reasons why the rulers accept *waqf* and reject corporations further, but we will explain why individuals themselves choose to establish *waqf*. The two main reasons include generosity and prestige. Sometimes these two reasons have nothing to do with the services provided. In addition, it is not uncommon for *waqf* to be influenced by motives to gain economic benefits for the *waqif* (donor) himself and his family.[27] It is possible for a *waqif* to appoint himself as a *nadzir*/*mutawali* (*waqf* property manager), determine his own salary, hire his own relatives, and even appoint a replacement, in accordance with Islamic inheritance law. Donating these assets as *waqf* can provide added security. Through *waqf* instruments, the ruler's desire to take over private property will be hindered. Therefore, *waqf* can function as a means of storing assets.[28] The level of protection offered by the *waqf* institution is determined by its sanctity, which is partly based on the legitimacy of Islamic law and partly on public appreciation for the noble intentions of the *waqif*. Belief in the sanctity of donated treasure discourages authorities from confiscation, as it is seen as a wrongful act.[29]

Like the *waqf* who wants to secure their *waqf* assets, the government does the same, even though there is no opportunity to take over the *waqf* assets, the government is obliged to ensure the *waqif's* commitment to provide public services in accordance with the designation of the *waqf* assets. One way to achieve this is by supervising the *nadzir* (*waqf* property manager) to ensure compliance with the *waqf* pledge deed. In other words, *waqf* institutions are designed to be inflexible to prevent problems that arise for *nadzir* in the future in carrying out *waqf* pledges.[30]

The principle of "The Eternality Asset" that arises from *waqf* is part of a tacit agreement between the ruler and the owner of the property. That such bargaining leads to the creation of inefficiencies should be understood as an emergency way that is institutionalized to respond to the urgent needs of the time. However, the flexibility is very limited. In several places and at certain times, the standard for the establishment of *waqf* is included in a list which allows for several changes in its operationalization. However, only one provision can be changed, and once a change is made, the concept of the immutability of *waqf* assets will last forever. Therefore, sooner or later the judgments and considerations of *nadzir*, workers and other parties who previously received benefits will lose their attention, and in principle both the aims and modes of organization will become out of date.

What if a situation arises where the original goal is no longer attainable? For instance, if there is a change in trade routes rendering a *waqf*-funded lodging or shelter obsolete. Under these circumstances, can the purpose of *waqf* be readjusted? As per legal understanding, the *nadzir* does not have the authority to do so.[31] If such conditions occur, by law, the assets supporting

[27] Baqutayan and others.
[28] Baqutayan and others.
[29] Baqutayan and others.
[30] Onny Medaline, 'The Development of "Waqf" on the "Ulayat" Lands in West Sumatera, Indonesia', *Journal of Social Science Studies*, 5.1 (2017), 108. https://doi.org/10.5296/jsss.v5i1.10419.
[31] Ahmad Lukman Nugraha and others, 'Waqf Literacy: The Dynamics of Waqf in Indonesia', *Journal of Islamic Economics and Finance Studies*, 3.2 (2022), 102. https://doi.org/10.47700/jiefes.v3i2.5082.

the *waqf* will be donated for the benefit of the poor. In addition, the embodiment of the concept of perpetuity is by limiting the objectives for two or more *waqf* institutions formed to seek profit, including those based on economic scale.

Regardless of the motives underlying the characteristics of *waqf* institutions, it has been evident for a long time that they are inherently inefficient. This becomes particularly apparent when we compare the establishment of higher education institutions in the Middle East through *waqf* financing called *madrasah* and similar things established in the west which we now know as universities. The first universities in Europe, such as Paris (1180) and Oxford (1249), were initially established through trusts similar to *waqf*.[32] However, they quickly transformed into organizations that were independent from their arrangements and renewed their organization through corporations-foundations. In contrast, *madrasah* continue to be constrained by the boundaries set by their *waqif*. Over time, the educational curriculum at *Madrasahs* has barely changed compared to developments occurring at universities. This is what pushed the Middle East down in the era of intellectual backwardness. Although many other factors contributed to the decline of intellectuality in the Middle East after the glorious centuries of Islamic rule, one of the problems concerned the limited modes of *waqf* organization.

Madrasah and University are both non-profit organizations. The differences between the two appeared in the second millennium and can be traced from the different paths they took after the birth of Islam. *Waqf* has become the main form of organization in Islam which is limited to its function as a provider of social services while at the same time corporations are used by western society for the same purpose.[33] The organizational gap widened in the 16th century AD, when the West began to develop corporate organizations for business activities, while for social services the functions of corporations were transformed into foundations.[34] As for *waqf* institutions, until now they have not changed as if they were preserved like mummies.[35]

The stagnation of business organizations can also be observed in relation to the institutional dynamics between corporations in the West and *commenda* in the Middle East. The distribution of business organizations is strongly influenced by the geographical and dynamic aspects of a legal culture. *Commenda*/Partnership like a contract *musyakarah* and *mudharabah* spread from Arabic legal culture throughout the world because besides being very practical, this type of contract is very universal so that it can be applied in all conditions. On the other hand, for a long-time corporations could only evolve in the region of Western Europe because their character was inherent in a certain legal culture.[36]

3.1.3 Difficulty to Sustain Capital Accumulation

Islam recognizes private property and allows everyone to earn a living as long as it follows the rules of fair play.[37] The fair game procedure allows each individual to collect wealth as

[32] Christopher Markiewicz, 'Europeanist Trends and Islamicate Trajectories in Early Modern Ottoman History', *Past and Present*, 239.1 (2018), 265–81. https://doi.org/10.1093/pastj/gty009.

[33] Baqutayan and others.

[34] Michael Hadani, Jonathan P Doh, and Marguerite Schneider, 'Social Movements and Corporate Political Activity: Managerial Responses to Socially Oriented Shareholder Activism', *Journal of Business Research*, 95 (2019), 156–70. https://doi.org/10.1016/j.jbusres.2018.10.031.

[35] Baqutayan and others.

[36] Daniel Nyberg and John Murray, 'Corporate Populism: How Corporations Construct and Represent "the People" in Political Contestations', *Journal of Business Research*, 162 (2023), 113879. https://doi.org/10.1016/j.jbusres.2023.113879.

[37] Mahmoud Fayyad, 'Reconstructing Lease-to-Own Contracts: A Contemporary Approach to Islamic Banking Standards', *Heliyon*, 9.9 (2023), e19319. https://doi.org/10.1016/j.heliyon.2023.e19319.

long as it does not conflict with Islamic economic principles, including by distributing his wealth. The prohibition of the usury system and the payment of *zakat* are Islamic instruments to realize its vision of social justice by preventing the accumulation of wealth in a small group of people.[38]

In Islamic law, this vision is implemented in various fields of law. As a business institution that has the main function as a means of raising capital, of course the presence of corporations is in line with the needs of the entrepreneur group.[39] Even though the trade sector cannot change the social order directly, in various practices, conglomerates like Karimi have sufficient social capital to exert influence through the formal rulers of the state. However, this Islamic merchant group failed to consolidate in order to strengthen its political influence in public policy making, especially in the interests of wealth defense.

While the consolidation of the European bourgeoisie succeeded in exerting influence on political authorities to support the formation of business corporations, Islamic conglomerates like Karimi failed to do the same. This illustrates the weak consolidation of business groups in the Islamic world within the framework of public policy-making. Rather than garnering support for corporations, these business groups were unable to persuade Islamic jurists, who hold authority in Islamic law, and the *Sultan*, as the political authority, to legitimize the existence of business corporations that could effectively raise capital.[40]

From the government's perspective, granting access and legal recognition to groups of individuals to form formal institutions outside the state potentially opens the door to factionalism within society.[41] Apart from that, from a fiscal policy perspective, recognition of the legal personality of corporations is considered to be able to reduce state taxes. In the government's logic it would be better if the various tax collection mechanisms were maintained for individuals. This is not much different from the pragmatic perspective of groups of Islamic scholars, the presence of corporations can reduce demand *legal opinion* which is their service.[42]

The non-consolidation of Islamic business groups can be caused by various factors, such as the difficulty in accumulating capital in a sustainable manner between generations and between conglomerates. This continuous accumulation and preservation of capital is very important in determining the strength of the conglomerate elite. As explained by Winters in his theory of oligarchy, the source of political power from an oligarchy that differentiates it from other elites is in their mastery of capital resources.[43] To exert influence on formal policies, both with religious authorities and political powers, a merchant like Karimi must establish a normative order that safeguards the foundation of their wealth. Recognition of the corporation will strengthen the basis for the defense of wealth for the next generation of Karimi or a means of

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[38] Abdullah Almansour, 'Muslim Investors and the Capital Market: The Role of Religious Scholars', *Pacific-Basin Finance Journal*, 58 (2019), 101211. https://doi.org/10.1016/j.pacfin.2019.101211.

[39] Zabihollah Rezaee, 'Business Sustainability Research: A Theoretical and Integrated Perspective', *Journal of Accounting Literature*, 36.1 (2016), 48–64. https://doi.org/10.1016/j.acclit.2016.05.003.

[40] Yusuf Kurt and others, 'The Role of Spirituality in Islamic Business Networks: The Case of Internationalizing Turkish SMEs', *Journal of World Business*, 55.1 (2020), 101034. https://doi.org/10.1016/j.jwb.2019.101034.

[41] Jan, Lai, and Tahir.

[42] Valentino Cattelan, 'Between Theory(-Ies) and Practice(-s): Legal Devices (Hiyal) in Classical Islamic Law', *Arab Law Quarterly* (Brill, 2017), 245–75. https://doi.org/10.1163/15730255-31030053.

[43] Emmanuel Lazega, Eric Quintane, and Sandrine Casenaz, 'Collegial Oligarchy and Networks of Normative Alignments in Transnational Institution Building', *Social Networks*, 48 (2017), 10–22. https://doi.org/10.1016/j.socnet.2016.08.002.

accumulating capital consolidation between other merchants. If this happens, the Karimi generation will be able to maintain its hegemony over the authorities.[44]

However, this did not materialize, the strength of the Karimi organization did not continue after the death of *al-Yasir or al-Din* (the richest Karimi). The main factor causing this problem is related to Islamic inheritance practices. The purpose of preventing the accumulation of wealth in inheritance law is institutionalized through institutions *ab-intestato* in Islam (*Faraidh*) which stipulates strict and detailed parts of the inheritance as well as limiting the inheritance mechanism in a manner *testamentary* (will). As a result, once a Karimi dies, the capital accumulation cannot be maintained considering the inheritance (*marriage*) of Karimi must be divided according to the provisions *Faraidh*. When the wealth is divided, the next generation is not in a strong enough position to face political and religious authorities. So are the provisions *kallalah* in Islamic inheritance law that allows the state to take over the wealth of an heir into cash *baitul maal*.

3.2. Reluctancy of Classical Islamic Legal Tradition Towards Corporate Law Concept

In this section the author will describe how the concept of legal personality was understood in the medieval *fiqh* approach. The thesis that the author is trying to support as has been corroborated by contemporary scholarly studies that the concept of legal personality was not understood by medieval Muslim scholars, but that the concept of legal personality was unacceptable in the context of *fiqh* at that time because it would conflict with the concept of legal personality being developed by scholars at that time. Although in the end, further investigation of corporate organizations leads to the conclusion that Islamic *fiqh* can accept the concept of legal personality, but acceptance of this concept is not an essential element of *fiqh*'s objections to corporate organizations. To be able to answer the validity of corporate legal personality in the perspective of Islamic law, the first effort that needs to be made is to recognize the concept of legal personality itself both in its understanding in western law and then to compare it with *fiqh* terminology. Once a shared understanding is established, the question's response can be ascertained.

3.2.1 Concept of Legal Person and Personality

The author has previously highlighted the difficulty of incorporating established legal terminology from one legal system into another. In the Western legal tradition, the concept of the subject of law encompasses anything that can bear rights and obligations. Therefore, it is not uncommon for the terms legal subject and legal person to be added in the understanding of law. However, according to the author, the use of the term legal subject is inaccurate for the context of this writing because the subject of law is very broad depending on the material object, whether it is in the field of private law or public law or national law or international law, one reason or another has its own subject limits. Therefore, for academic purposes, the authors tend to use the technical term "legal personality" to clarify its meaning in the field of private law.[45]

Dutch legal scholar Van Apeldoorn defines person as everything that has *personality*. As for what is meant by legal personality is the ability to become a legal subject. Thus, according to

[44] Christophe Lévêque and Mohamed Saleh, 'Does Industrialization Affect Segregation? Evidence from Nineteenth-Century Cairo', *Explorations in Economic History*, 67 (2018), 40–61. https://doi.org/10.1016/j.eeh.2017.08.001.

[45] Hirsanudin Hirsanudin and Dwi Martini, 'Good Corporate Governance Principles in Islamic Banking: A Legal Perspective on the Integration of TARIF Values', *Journal of Indonesian Legal Studies*, 8.2 (2023), 935–74. https://doi.org/10.15294/jils.v8i2.70784.

Van Apeldoorn legal personality is an essential element in understanding *person*. Therefore, the meaning given is not entirely accurate because sometimes person it doesn't have personality. For example, slaves, immature children as referred to in Article 330 of the Civil Code, in fact, are person but because the law does not yet have personality.

In this case understanding person and personality what Salmon put forward is important to listen to. Salmon defines person as any person to whom rights and obligations can be assigned or in another sense the term person means any person who by law is deemed capable and can be encumbered with rights and obligations as long as the legal requirements determined by law are met in order to obtain the capacity to perform legal actions.[46] The definition given by Salmon according to the author is more adequate because with this definition it means that not every person has a legal personality, while something can be said *person* in a legal sense if two elements are fulfilled, namely: a). *Juris Corps*, namely the physical form where legal personality resides, the corpus here can be manifested in the form of a human being, a group of people, and so on; b). Legal Attribution on Corpus Juris which makes a corpus have legal personality.[47]

Thus, a person can be understood as just one form of body, while personality is the legal attribution given to body or person thus making him have the legal capacity as defined by the person referred to by Van Apeldoorn.[48] The benefits of Salmond's understanding can be applied to explain the status of slaves and child earlier. Both slaves and child are persons because they are body in human form but because of the law they do not have or have not received legal attribution which makes them have the legal capacity to become legal personalities. In addition, based on the corpus manifestation person, these can also be divided into natural person (legal subject with human physical form) and legal person (artificial legal subject).[49]

In classical *fiqh,* the term personality can be related to the term *mukallaf*. However, this terminology has limitations in the development of contemporary legal thought concepts *mukallaf* it always and only refers to the corpus in the human physical form.[50] In other words, *mukallaf* can only be understood limited to the understanding of natural person. *Mukallaf* in *fiqh* terminology is broader than concept of natural person itself which includes every person who can be burdened by *sharia* both in the relation of worship (*ibadah*) and civil matter (*muamalah*). Thus, this terminology is less accurate to be combined with the terminology *legal personality* in modern legal theory since only working in a secular sphere also recognizes persons in terms other than humans such as limited liability companies and foundations.

To overcome this problem, the term person in contemporary *fiqh* terminology was introduced to become the term *shaksiyyah* which includes person nor *shaksiyyah i'tibariyah*. Person said personal (natural person), when referring to the subject of human law, as for what is meant by

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[46] Adriano.

[47] Ahmad Siboy and others, 'The Islamic Law-Based Design of Regional Head Post-Filling ', *Legality : Jurnal Ilmiah Hukum*, 32.1 (2024), 1–15. https://doi.org/10.22219/ljih.v32i1.31261.

[48] Adriano.

[49] Cristine Griffo and others, 'Legal Powers, Subjections, Disabilities, and Immunities: Ontological Analysis and Modeling Patterns', *Data & Knowledge Engineering*, 148 (2023), 102219. https://doi.org/10.1016/j.datak.2023.102219.

[50] Mustapha Tajdin, 'Sharīʿa as State Law: An Analysis of ʿAllāl Al-Fāsī's Concept of the Objectives of Islamic Law', *Journal of Law and Religion*, 35.3 (2020), 494–514. https://doi.org/10.1017/jlr.2020.41.

shaksiyyah i'tibariyah is person other than humans (right person).[51] therefore, this effort does not necessarily solve the problem because the use of this term is not based on a specific *fiqh* basis which, when explored deeper, has more detailed and complex terminological specifications when compared to terminology in western legal theory.[52]

Some terms closely related to legal personality issues are terminology *ahliyah* and the matter. *Ahliyah* linguistically means ability or skill, thus in general the understanding according to this language is very broad.[53] For technical-legal purposes, the *fuqaha* provide legal understanding *Ahliyah* as the ability or ability to obtain rights and use and accept the legal obligations. Based on this understanding, *fiqh* distinguishes two forms *personality* namely in the first sense as the ability to obtain rights or in *fiqh* terms it is called *ahliyah al wujuh* and secondly as the ability to act or *ahliya al-ada'*. *Ahliyah al wujuh* become the basis for someone to be able to accept legal rights and obligations, meanwhile *ahliya al-ada'* becomes the basis for someone to be able to take legal action.

This distinction is very useful in providing an explanation of the personality attached to a slave or an immature child or someone under guardianship. A slave does not have an absolutely good personality in that sense *Ahliyah al-Wujub* nor *ahliya al-ada'* so that even though he is a person, due to the lack of capacity to accept rights and obligations or the capacity to act, he does not qualify as a person with personality. Meanwhile, a minor has limited personality, namely *ahliyah al-wujub* so that he can receive the legal rights and obligations such as the share on *tirkah* but he does not have *ahliya al-ada'* so that a guardian is needed to be able to represent the child in carrying out legal actions.[54]

The next *fiqh* term that is relevant to juxtapose with personality is *the matter*. Some *fuqaha* add the term *dhimmah* with *ahliyah al-wujub*.[55] However, most scholars hold their opinion that the term *dhimmah* refers to the aggregation of *ahliyah al-wujub* and *ahliya al-ada'*. Until something is said *the matter* if it contains the capacity to accept legal rights and obligations as well as the ability to act/perform legal actions. In other words, *dhimmah* is the house where it is attached *ahliyah*. Thus, it's not surprising if someone argues that *dhimmah* is the terminology closest to the meaning and content of personality elements in Islamic legal theory.[56]

If further study is carried out on the technical terms in several *fiqh* works, it turns out that this statement is also not completely accurate because *dhimmah* has a broader dimension than personality. Al-Sharaksi gives a literal definition of *dhimmah* as "mandate" or "belief". Al-

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[51] Moh Dahlan and others, 'The Islamic Principle of Ḥifẓ Al-Nafs (Protection of Life) and COVID-19 in Indonesia: A Case Study of Nurul Iman Mosque of Bengkulu City', *Heliyon*, 7.7 (2021), e07541. https://doi.org/10.1016/j.heliyon.2021.e07541.

[52] Najwan Saada, 'Educating for Global Citizenship in Religious Education: Islamic Perspective', *International Journal of Educational Development*, 103 (2023), 102894. https://doi.org/10.1016/j.ijedudev.2023.102894.

[53] Zuly Qodir, Haedar Nashir, and Robert W. Hefner, 'Muhammadiyah Making Indonesia's Islamic Moderation Based on Maqāsid Sharī'ah', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23.1 (2023), 77–92. https://doi.org/10.18326/IJTIHAD.V23I1.77-92.

[54] Ashadi L Diab and others, 'Safeguarding Consumers: The Role of Industry and Trade Office in Countering Monopolistic Practices and Ensuring Business Protection', *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 6.2 (2023), 299–312. https://doi.org/10.24090/volksgeist.v6i2.9065.

[55] Antonia Bosanquet, 'Ordered Relationships. The Regulation of Jewish-Christian Marriages and Children in Ibn Qayyim Al-Jawziyya's Legal Works', *Entangled Religions*, 13.2 (2022). https://doi.org/10.46586/er.13.2022.9938.

[56] Luqman Abdullah, Muhammad Ikhlas Rosele, and Wan Marhaini Wan Ahmad, 'The Concept of Legal Entity from the Islamic Law Perspectives', *Pertanika*, 28 (2020), 3207–21. https://doi.org/10.47836/pjssh.28.4.39.

Sharaksi draws this from the Al-Quran Surah Al-Ahzab verse 72, which is a free translation: "*In fact, we have offered a mandate to the heavens, earth and mountains, but all of them are reluctant to carry out the mandate and they are afraid that they will not (be able to) carry it out, then humans carry out the mandate...*".[57] Here al-Sharaksi binds *dhimmah* as a legal capacity in the field of world and hereafter law, something that we will not find in the concept of personality in the western legal tradition.

3.2.2 Reception of the Concept Legal Personality in Islamic Law

The concept of corporate legal personality is the central legal issue, if not the one that has attracted the interest of Muslim scholars when corporate business organizations are introduced to implement the Islamic economic system.[58] On this issue, at least three views emerge regarding the acceptance of the concept of corporate legal personality, namely: (a) The view that concludes that there is no strong foundation in *fiqh* that can support the existence of *rechts* person (legal person) in Islamic law; (b) The view that concludes that *fiqh* has laid the foundation which is sufficient to support the presence of *recht* person in Islamic law; (c) The view which concludes that the concept of *recht* person has no basis in *fiqh*, but its existence is needed by society so that *ijtihad* is required. The first view is supported by orientalists such as Joseph Schacht and Abraham L. Udovitch, while Nyazee Khan includes Isa Abduh as one of the Muslim scholars supporting this view. The main argument of this group is based on the study of *fiqh* there is no strong foundation that supports existence right person.

Joseph Schacht added that the institution *bayt al-mal* and *waqf* cannot be relied upon to support the acceptance of an artificial legal personality for the classical Islamic legal system.[59] In this case, Joseph Schact seems to be in an academic conflict because this opinion only seems to reinforce the thesis he built that Islamic law was only formed after the *fiqh* formulation took place at the end of the first *Hijriyah* century (seventh century AD) and reached an established form in the third *Hijriyah* century (more less than the ninth century AD).[60] Prior to that period, the Muslim community still based its customary laws on pre-Islamic Arabic traditions, which were heavily influenced by Roman law. As for both Roman law at that time and Islamic law after the end of the formulation of *fiqh*, they had not yet reached the development of such advanced legal thought as to be able to create *prototype* legal personality. According to Schacht, the only concept of *fiqh* that is closest to this concept is *aqi'lah*.[61]

Meanwhile, Abraham L. Udovitch's more comprehensive observation seems to be more acceptable for his objectivity. Through the research on related works of al-Sharaksi partnership During the medieval period in the Muslim world, no strong indications for the existence of legal persons were found. However, Udovitch saw an opportunity for this by basing al-

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[57] Mohd Hilmi Ramli, 'Commercial Partnership in Islam: A Brief Survey of Kitab Al-Mudarabah of Al-Mabsut by Al-Sarakhsi (d. 483/1090)', *TAFHIM: IKIM Journal of Islam and the Contemporary World*, 11 (2018). https://doi.org/10.56389/tafhim.vol11no1.4.

[58] Reza Widhar Pahlevi, 'Mapping of Islamic Corporate Governance Research: A Bibliometric Analysis', *Journal of Islamic Accounting and Business Research*, 14.4 (2023), 538–53. https://doi.org/10.1108/JIABR-12-2021-0314.

[59] Faizah Darus and others, 'Empowering Social Responsibility of Islamic Organizations through Waqf', *Research in International Business and Finance*, 42 (2017), 959–65. https://doi.org/10.1016/j.ribaf.2017.07.030.

[60] Uin Maulana Malik Ibrahim Malang, ''Abd Al-Majīd Al-Najjār's Perspective on Maqāṣid Al-Sharī'ah Faishal Agil Al M Unawar', *JURIS: Jurnal Ilmiah Syari'ah*, 20.2 (2021), 209–23. https://doi.org/10.31958/juris.v20i2.4281.

[61] Devi Triasari and Francesco de Zwart, 'The Legal Reform Policy on the Shariah Supervisory Board Role's in Indonesian Shariah Banks', *Bestuur*, 9.2 (2021), 113–25. https://doi.org/10.20961/bestuur.v9i2.55173.

Sharaksi's opinions on the partnership concept that had been practiced in the past.[62] The second view that supports the acceptance of corporate legal personality bases its argument on the existence of *waqf* institutions. *Baitul al-mal* as well as treasures that are considered to represent existence *personality* where the institution in practice seems to be treated like pseudo person who can own wealth or bear legal obligations. This opinion was expressed by Abd al-Qadir Awdah who stated:

"Sharia since its inception has recognized legal person. This is based on the views of the jurists who consider *baitul al-mal* and *waqf* as institutions that have legal personality. The same goes for *madrasahs*, hospitals, and so on. The institution has the legal capacity to own assets and can also utilize these assets". Awdah's opinion, as often stated by Nyazee, is the main basis for his supporters, while this argument is then repeatedly reproduced by supporters of the *sharikah* contract theory.[63]

The third view is the most moderate stance in the polemic regarding the legal personality of the corporation. This opinion is based scientific research results, as well as the conclusions of the first group, which failed to find a solid foundation for the existence of corporate legal personality in the Islamic legal tradition. However, this group sees it more clearly, even though it does not have a legal basis, it still needs *ijtihad* which can support the existence of the legal personality, considering that this is the foundation for the birth of corporations with an Islamic flavor.[64]

Based on the analysis above, the authors argue that even though the classical *fiqh* tradition shows there are thoughts that lead to the formation of corporations, it is difficult to prove that classical *fiqh* recognizes the concept of the legal personality of the corporation. This statement is based on the unproven second opinion which considers legal personality to a non-human corpus to be acceptable by relying on *waqf* and *baitul maal* institutions.[65]

Waqf institutions cannot be relied upon because no legal personality characteristics are found in these institutions. In essence, waqf is only a legal construction that underlies the separation of an object of property from the personal assets of a *waqif* to be hung for an indefinite period for a specific purpose. In the *waqf* institution, there are no experts *al-wujuh* and *ahliya al-ada* which forms the basis of status *the matter*. As for the statuses *gallah* (receiving *waqf* property), which is considered as a manifestation of the characteristics of the *waqf* expert is wrong because the *gallah* itself is not an attachment of the *waqf* itself but the right of the *beneficiary waqf* represented by *nadzir*.

Arguments built to confirm the legal personality of the corporation with *baitul maal* even weaker. This opinion is built based on the existence of *baitul maal* as a form *mall musytarak* (collective ownership) of *sharikah al-milk* therefore in practice he is treated as a *pseudo* personality who has expertise in the form of receiving receipts and paying a number of obligations. This argument is contradictory because the essence of legal personality does not arise because of collective ownership, but when the entity identifies itself as an independent entity or in other words, *baitul maal* can only be recognized as a legal personality and only if

[62] Abdullah, Rosele, and Ahmad.

[63] Abdurrohman Kasdi and others, 'The Development of Waqf in the Middle East and Its Role in Pioneering Contemporary Islamic Civilization: A Historical Approach', *Journal of Islamic Thought and Civilization*, 12.1 (2022), 186–98. https://doi.org/10.32350/jitc.121.10.

[64] Abdullah, Rosele, and Ahmad.

[65] Kasdi and others.

the assets and obligations attached to it belong to and own responsibility.[66]

The *baitul maal* is just a corpus that has no attribution as a legal personality but a form*al milk company* of the Islamic *Ummah* where representatives of the *Ummah* are institutionalized by an Imamate institution which has limited administrative management authority (*administrative act*) *per se*. We can observe the absence of acknowledgment of ownership of the *baitul maal* property by the *baitul maal* itself in the legal opinions of Imams Abu Hanifah, Syafi'i, Ahmad and Shiah Zaydiyah who concluded the imposition of *hadd* for the thief of the *baitul maal* treasure as *subhat.* [67]

The author argues that even though the classical *fiqh* tradition shows that there are thoughts that lead to the formation of corporations, it is difficult to prove that *fiqh* recognizes the concept of the legal personality of the corporation. Even so, the concept of legal personality can be accepted if several scientific adjustments and clarifications are made from the *fiqh* review of corporate organizations.

The rejection of the concept of legal personality by medieval jurists was due to different perceptions of this legal personality. In Islam, *fuqoha* develops a legal system that covers aspects of the life of the world and the hereafter simultaneously. Therefore, the concept of personality is understood as a form of independent action as a legal subject covering worldly and transcendental dimensions in the hereafter. Therefore, *fuqoha* see the concept of legal personality in terms of terminology the matter.

The terminology of *dhimmah* is indeed very similar to the concept of personality in western law, even in the previous description the terminology of *dhimmah* is more detailed than the concept of personality itself. However apart from that there is a fundamental difference in the scope of the law, where this *dhimmah* does not only cover worldly aspects but also the hereafter dimension. Therefore, every form of personality in Islam must be burdened with the rights and obligations of the world and the hereafter. In the *fuqoha's* thinking, *dhimmah* can only be given to humans or in terms it is only limited to *mukallaf*. If an institution has a personality status, then how can it be burdened with religious obligations.

There is no doubt that the *fuqoha* understand the concept of *dhimmah* for corpus other than humans, but they refuse to develop this concept because they cannot work in the legal system created by the *fuqoha*. Reception of corporate concept as pseudo-personalities in Islamic law broadly established based on Organisation of Islamic Cooperation (OIC) resolution No.7/1/65 of 1992 which issued by the Islamic *Fiqh* Academy. In this resolution, in term as *Shakhsiyah i'itbariyah*, Islamic legal experts accepted the validity of the concept of corporate law based on the methods of *qiyas* (analogy) and *istihsan*, or *masaliha mursalah* (public interest).

4. Conclusion

The delay in the development of corporate business organizations in the Muslim world is attributed to various factors. First, medieval Muslim societies did not experience an institutional vacuum as experienced by Western Europeans, there was a view that community group organizers could undermine the vision of the unity of the *Ummah* because it could lead to factionalism in society; Second, projection of community capital resources into *waqf*

[66] M. Fabian Akbar and others, 'The Financial Balance Policy Between Central and Local Government: Toward More Just Financial Allocation', *Yuridika*, 38.2 (2023), 415–30. https://doi.org/10.20473/ydk.v38i2.42904.

[67] Al Fadilla Yoga Brata, Rakotoarisoa Maminiaina, and Heritiana Sedera, 'The Implementing a Carbon Tax as a Means of Increasing Investment Value in Indonesia', *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, 1.2 (2023), 39–50. https://doi.org/10.53955/jsderi.v1i2.6.

institutions; Third, decadency of institutional development for business organizations in Islamic law; and Forth, the inability of the Islamic business class to consolidate their political influence and the challenges in continuously amassing capital across generations and among conglomerates. In Islamic law, (classical *fiqh*i discussions) the corporate form of a business organization as a separate legal entity does not appear directly. Strictly speaking, the medieval scholars understand the possibility of applying the concept *the matter* for *corpus* other than humans, but they are reluctant to develop this concept because it cannot work in the legal system they created. Nowadays The OIC *Fiqh* Academy accepts the concept of a legal or fictitious personality in term as *Shakhsiyah i'itbariyah*. The scholars have approved the corporate form on the basis of *fiqh* principles of *qiyas*, *istihsan* and *masalih mursalah*.

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