

Health Quarantine Law as Protection of the Fulfillment of Basic Rights in the Perspective of *Fiqh Siyasah*

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Abstract

This study was motivated by the implementation of the Health Security Law as *ius constitutum*, which on the one hand requires the state to protect public health through health quarantine, but on the other hand, it is also burdened with the obligation to guarantee the right to life of its people. Therefore, this article is directed at tracing the rationale for protecting *dharuriyat al-khamsah* in the health quarantine law (UU KK) from the perspective of *fiqh al-siyasah*. Through doctrinaire legal research methods, this article offers two conclusions, namely first, from the perspective of *fiqh al-siyasah* which postulates that every legal decision formulated by the authorities must be based on the problems of the people, then the presence of the UU KK has reflected the beneficial values desired in the postulates of *fiqh al-siyasah*. Then the second conclusion, in terms of protection against *dharuriyat al-khamsah*, the presence of the UU KK has provided a definite guarantee of the right to public health which has resulted in ensuring *hifd al-nafs*.

Keywords: *Fiqh al-siyasah*; Hifd al-Nafs, Health Quarantine Law; Protection of Society

Introduction

The conditions of the Covid-19 pandemic have multiplied an era of devastating disruption that has changed the old order of life into a new life. Facing such a reality, various countries are in a crisis situation so that in facing such cases, the efforts made are to enact emergency laws (martial law) at various levels according to their needs. Another method implemented is implementing mitigation and policies to encourage prevention efforts.¹

¹ Lidya Christin Sinaga, ed., *Penanganan Covid-19 dalam Perspektif Politik* (Jakarta: Yayasan Pustaka Obor Indonesia, 2020), 201.

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In the Indonesian context, there is actually a legal instrument that can be implemented to deal with the threat of Covid-19, namely Law Number 6 of 2018 concerning Health Quarantine (UU KK). The implementation of the UU KK in Indonesia can be seen as the state's response to the World Health Organization's designation of the Covid-19 outbreak as a pandemic that threatens public health throughout the world. In this context, the UU KK finds momentum for its implementation as *ius constitutum*,² by presenting regulations related to health quarantine starting from home quarantine to policies regarding large-scale social restrictions (PSBB).³ Of course, this regulation can be seen as a form of government responsibility in protecting the safety of its citizens, so that the UU KK clearly states that both central and regional governments are obliged to protect public health through implementing health quarantine.

The statement above, if placed in the context of the study of Islamic jurisprudence, is in line with the rule which states that policies made by the government must always be oriented towards the universal benefit of the society it regulates. In this case it is stated that *tasharraf al-imam 'ala al-ra'iyah manuthun bi al-maslahah*.⁴ The intended benefit revolves around the protection of *dharuriyat al-khamsah* which includes protection of religion, life, lineage, property and honor.⁵

In this case, the findings that will be proven in this article are related to the existence of a meeting point between the UU KK and the legal rules contained in the perspective of Islamic legal studies, especially *fiqh siyasah* which regulates - one of them- *siyasah dusturiyah*.⁶ This is important to study because it is not uncommon for conflicts to arise between legal norms in the form of laws processed through legislative bodies and the government and legal formulations contained in fiqh books, which are termed *siyasah syar'iyah* versus *siyasah wad'iyah*.⁷ Thus, this study will prove the opposite, namely the harmony between positive law and Islamic law.⁸

² Rachmat Trijono, *Menata Ius Constitutum Menuju Satu Sistem Hukum Nasional*, Veritas: Jurnal Program Pascasarjana Ilmu Hukum Vol.6 No. 2 Tahun 2020, h. 235-255.

³ Undang-Undang Nomor 6 Tahun 2018 tentang Kekarantinaan Kesehatan.

⁴ Muhammad Musthafa al-Zarqa, *Syarh al-Qavaid al-Fiqhiyyah* (Kairo: Dar al-Fath, 2010), h. 56.

⁵ Wahbah al-Zuhayli, *Ushul al-Fiqh al-Islamiy*, Vol. 2 (Damaskus: Dar al-Nasr, 2015), h. 167.

⁶ Abdul Wahhab Khallaf, *al-Siyasah al-Syar'iyah aw Nidzam al-Dawlah al-Islamiyyah fi al-Syn'un al-Dusturiyyah wa al-Kharijiyyah wa al-Maliyah* (Kairo: Matba'ah al-Taqaaddum, 1977), 57.

⁷ Ibn Qayyim al-Jauziyah, *al-Thuruq al-Hukmiyyah fi al-Siyasah al-Syar'iyah* (Kairo: Muassasah al-Risalah, 2014).

⁸ Mohammad Hasyim Kamali, *Principles of Islamic Jurisprudence* (T.tp.: Ilmiah Oublishers, t.th.), 123.

Of course, this study is different from the findings of Supriyadi who assessed that government policy from the perspective of Islamic jurisprudence is considered counter-productive to the benefits that must be achieved, such as the provision of legal exemptions both criminally and civilly for state officials who make mistakes in using the state budget during the pandemic.⁹

The researcher's study is also different from several studies which only revolve around the implementation of the UU KK in terms of its implications for social life. Such as studies that question the human rights of immigrants in the face of the implementation of the UU KK so that it is proposed that there is a balance between health protection and rights attached to immigrants.¹⁰ Still related to the protection of human rights, there is a study that highlights the efforts made by WHO regarding the obligation to uphold human rights in procedures for preventing Covid-19.¹¹

Apart from the studies that have been mentioned, research studies can also be distinguished from research that examines the UU KK in terms of the urgency of presenting Government Regulations as an explanation of the UU KK, which then concludes that even though the UU KK has provided guidelines for handling Covid-19, in reality, explanatory regulations are still needed to be issued by the government or by the Minister of Health.¹²

From the description above, it appears that the article that the author will present will complement previous studies which did not touch on aspects of harmony between *siyasah syar'iyah* and *siyasah wad'iyah* and even rejected conclusions that conflicted between the two. Based on the academic justification above, this study attempts to examine the existence of the UU KK from the perspective of *siyasah* jurisprudence which is divided into two main issues that will be answered. Namely regarding the tracking of *siyasah* jurisprudence on the existence of the UU KK from the perspective of the benefits contained in it, as well as its protection against *dharuriyat al-khamsah* which is summarized in the study of *maqashid al-syariah*.¹³

⁹ Supriyadi, Kebijakan Penanganan Covid-19 Dari Perspektif Hukum Profetik, *Suluh: Jurnal Program Studi Magister Hukum, Edisi Khusus, Oktober 2020*, h. 91-109.

¹⁰ Chetail, V., COVID-19 and human rights of migrants: More Protection for the Benefit of all, International Organization for Migration (IOM), Geneva, 2020, h. 1-11.

¹¹ Andi Anugrah Pawi, Peran WHO dalam Penghormatan Hak Asasi Manusia Di Masa Pandemi Covid-19, *Ascarya: Islamic Science, Culture, and Social*, Vol. 1 No. 1 (2021), h. 26-37.

¹² Dalinama Telaumbanua, Urgensi Pembentukan Aturan Terkait Pencegahan Covid-19 di Indonesia, *Qalamuna - Jurnal Pendidikan, Sosial, dan Agama*, Vol. 12 No. 1 (2020), h. 59-70.

¹³ Al-Ghazali, *al-Mustashfa min 'Ilm al-Ushul* (Beirut: Dar al-Kutub Ilmiyah, 2007), h. 123.

Method

This research uses a doctrinal legal research approach,¹⁴ or also known as doctrinal study of law,¹⁵ which is operationally carried out by tracking legal prescriptions which become legal reasoning in the UU KK as the object of study from the perspective of *fiqh al-siyasah*. Thus, the main data source (primary sources or authorities)¹⁶ used is the law in question, while the supporting data is other regulations related to the UU KK, as well as various literature that is considered to have relevance to the theme that will be answered in In this research, included in this category are various references related to the discussion of *fiqh al-siyasah*.

To achieve the results targeted in this research, the UU KK is first described in terms of its legal standing both in terms of juridical, philosophical and sociological arguments, then analyzed qualitatively,¹⁷ by presenting the object being studied narratively and then continuing with critical analysis from the perspective of *siyasa jurisprudence*. The data that researchers studied as a whole came from document studies.¹⁸

Result and Discussion

Legal Standing of the Health Quarantine Law

Indonesia is a state of law, as found in the basic concept in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which itself requires that all actions of the government as the holder of power must be based on applicable laws or regulations. Following the thoughts of Frederich Julius Stahl, a state order is said to be a rule of law, at least characterized by the protection of human rights; separation or sharing of powers to guarantee those rights; Government based on statutory regulations; and the existence of administrative justice in disputes that occur.¹⁹

From the description above, it is clear that the UU KK which applies in Indonesia is one embodiment of the intended concept of the rule of law. On the other hand, the law that is formed must also follow the guidelines which are also regulated by statutory regulations. Referring to Article 1 of Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law

¹⁴ Bambang Waluyo, *Penelitian Hukum dalam Praktek* (Jakarta: Sinar Grafika, 2002), h. 13.

¹⁵ Darumurti, "Karakter Ilmu Hukum", 198.

¹⁶ C. F. G. Sunaryati Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad ke-20* (Bandung: Alumni, 1994), h. 134.

¹⁷ Emzir, *Analisis Data* (Jakarta: Rajawali Pers, 2016), h. 7.

¹⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2012), h. 66.

¹⁹ Muhammad Fadli, "Pembentukan Undang-Undang Yang Mengikuti Perkembangan Masyarakat," *Jurnal Legislasi Indonesia*, Vol. 15 No. 01 - Maret 2018, 51.

Number 12 of 2011 concerning the Formation of Legislative Regulations,²⁰ Legislative regulations are defined as written regulations that contain generally binding legal norms and are formed or determined by state institutions or authorized officials through procedures stipulated in statutory regulations.²¹

Apart from that, the binding force of a law produced by the government must also be explained in terms of the basis behind it, both the philosophical, sociological and juridical basis. Definitively, the philosophical basis revolves around the ability of law formation to capture the values summarized in the state's official philosophical doctrine, which in the Indonesian context is Pancasila. Therefore, based on this foundation, the formation of laws in Indonesia must refer to the philosophical values of Pancasila.²²

Then the sociological basis is intended as the necessity for legal norms regulated in law to reflect the demands of society's own needs for legal norms that are in accordance with the reality of society's legal awareness.²³ Meanwhile, the juridical basis is the necessity for the formulation of laws to reflect legal values so that they have general binding force and there is concrete accountability in the form of worldly sanctions when these legal values are violated.²⁴

The three legislative bases mentioned above also appear in the legal formulation of the UU KK. Referring to the academic text of the UU KK,²⁵ the three foundations intended can be explained. Philosophically, the UU KK is in accordance with the constitutional duties of the Government of the Republic of Indonesia as stated in the Second Paragraph of the 1945 Constitution of the Unitary State of the Republic of Indonesia, namely to protect the entire Indonesian nation and all of Indonesia's blood and to promote general welfare, educate the life of the nation, and participate in implementing world order based on freedom, eternal peace and social justice.

²⁰ Sopiani & Zainal Mubaroq, "Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan", *Jurnal Legislasi Indonesia*, Vol 17 No. 2 - Juni 2020, 147.

²¹ Pasal 1 Undang-Undang Republik Indonesia Nomor 15 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.

²² B. Hestu Cipto Handoyo, *Prinsip-Prinsip Legal Drafting dan Desain Naskah Akademik* (Yogyakarta: Atmajaya, 2008), 67.

²³ Yuliandri, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik* (Jakarta: RajaGrafindo Persada, 2009), 30.

²⁴ Handoyo, *Prinsip-Prinsip*, 69.

²⁵ Naskah Akademik Rancangan Undang-undang Tentang Kekarantinaan Kesehatan (Jakarta: Kementerian Kesehatan Republik Indonesia, 2015), 53.

The objectives above, in the context of health quarantine, are essentially aimed at protecting public health from the dangers of infectious diseases and the dangers of other health risk factors. Besides that, it also means that the state carries out its duties and participates in implementing world order by carrying out all state obligations.

Philosophically too, the UU KK has attempted to realize the protection of human rights, one of which is health - which, apart from being a human right - is also an element of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila. and the 1945 Constitution of the Unitary State of the Republic of Indonesia.

This also includes the guarantee of the 1945 Constitution of the Unitary State of the Republic of Indonesia, where every person has the right to live in physical and spiritual prosperity, to live and have a good and healthy living environment and the right to receive health services. This can be realized by implementing various health efforts, both preventive, promotive, curative and rehabilitative, which are directed at improving the highest level of public health.

Likewise with the call for the Universal Declaration of Bioethics and Human Rights which decides the need for the Indonesian people, who are part of the international community, to uphold human honor and dignity, which are universal principles. Especially in this era of rapid advances in science and technology which can be misused to spread viruses, germs and NUBIKA which will disturb the peace of life between humans through war, bioterrorism, abuse of power, unethical trade (commercialization) between countries, between islands and between regions which in turn can endanger human health.²⁶

Meanwhile, sociologically, the UU KK relies on the fact that germs and viruses and other microorganisms naturally experience rapid changes in line with changes in climate, technology and the environment, giving rise to new and/or old diseases that reappear with greater spreading capacity. Especially in the era of free trade and advances in transportation technology, this will cause a shift in disease epidemiology. This is characterized by the spread of disease incidents from one continent to another, through the mobility of people and goods that carry or are contaminated with disease germs and health risk factors.

Meanwhile, Indonesia is an archipelagic country that has many seaports, air ports and land border posts which have the potential for the spread of infectious diseases as well as the entry and exit of health risk factors including the danger of NUBIKA, all of which can have the potential for PHEIC.

²⁶ Naskah Akademik.... 54.

Therefore, Health Quarantine essentially aims to provide as much protection as possible. In health quarantine there are quarantine actions which are actions of detaining (restricting movement) of people which, if not based on clear authority for implementation, can be categorized as a human rights violation. For this reason, the state has an obligation to maintain a balance between the interests of maintaining public health and the interests of respecting human rights.

As for the juridical basis of the UU KK, one of them is the call for the 2005 IHR, where Indonesia as a member country for world health has accepted and implemented the IHR since June 15 2007. The call for the IHR is that all member countries of the World Health Organization must be able to detect and respond early. all events that have the potential to be PHEIC. Meanwhile, one of the efforts to respond early is to implement health quarantine measures at entrances and in areas. Another juridical basis is Law Number 1 of 1962 concerning Sea Quarantine, Law Number 2 of 1962 concerning Air Quarantine which are considered to be no longer relevant to the development of disease and technology, because they have not accommodated PHEIC mitigation and have not strictly regulated health quarantine, so it needs to be replaced with a new law.²⁷

Fiqh Siyasah and Tracking the Protection of Dharuriyat al-khamsah

Starting the discussion regarding the tracing of siyasah fiqh towards the protection of *dharuriyat al-khamsah* in the UU KK, it needs to be stated first that siyasah fiqh is closely related to the study of the relationship between the government and its people in an effort to create mutual prosperity and benefit, where one of the studies is around policy issues. government related to legislation.²⁸ In this sense, siyasah fiqh is equivalent in meaning to the term political law which is known in the study of positive legal science which states that it is the policy of state administrators both in relation to the currently applicable law (*ius constitutum*) and the direction of legal development that will apply in the future. will come (*ius constituendum*).²⁹

The definition above implies an understanding that the authority to form all forms of laws, regulations and policies relating to the regulation of state interests and the affairs of the people in order to realize the public benefit lies

²⁷ Naskah Akademik..., 57.

²⁸ Muhammad Iqbal, *Fiqh Siyasah: Kontekstualisasi Doktrin Politik Islam* (Jakarta: Gaya Media Pratama, 2007), 15.

²⁹ Imam Syaukani dan A. Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Jakarta: Rajawali Pers, 2008), 27.

with the holder of power (the government or *ulil amr*). For this reason, all forms of laws, regulations and *siyasi* policies made by *Ulil Amr* are binding and must be obeyed provided they do not substantially conflict with the basic objectives of *sharia* (*maqashid sharia*).³⁰

Obedience to legal formulations and policies made by the government is normatively and theologically stated in *Surah al-Nisa'* verse 59. In this verse, Allah commands believers to obey Him, as well as the Messengers He sent. In fact, obedience to both of them is also used as a breaker if a disagreement occurs, and this is considered by Allah as behavior that can have a positive impact.

In interpreting the verse above, M. Quraish Shihab stated that obedience to *ulil amr* is conditional obedience, namely that the policies made must not substantially conflict with the basic teachings of religion. According to Shihab, this can be traced from the use of the word "*athi'u*" which is not coupled with *ulil amr*, in contrast to obedience to Allah and His Messenger, which is editorially coupled with the word "*athi'u*".³¹

The same thing was also stated by Afifuddin Muhajir. According to him, the obligation to obey a leader is not absolute but rather conditional obedience, that is, as long as the orders, rules and regulations made by the government do not deviate and conflict with the provisions of the *Shari'a* and are also not included as rules that allow something that is forbidden or conversely forbid something that is lawful. by the *Shari'a*. This provision was emphasized by the Prophet in his words, "There is no obligation to obey anyone in matters of disobedience to Allah. Obedience is only in the case of goodness".³²

If so, then the UU KK is a policy made by the government or *ulil amr* which must be followed because it was formulated by those who were given the authority to form laws, which does not substantially conflict with the basic conception of religious teachings. In fact, as will be explained in the following discussion, the UU KK is intertwined with the protection of *dharuriyat al-khamsah* which is the fundamental substance of Islamic teachings. In such a context, the rule "anything that is a condition for the realization of a mandatory case is also legally obligatory" and the rule "an instrument has the same legal status as its purpose" can be applied.³³

³⁰ J. Suyuthi Pulungan, *Fikih Siyasah: Ajaran, Sejarah dan Pemikiran*, Yogyakarta: Ombak, 2019, 28.

³¹ M. Quraish Shihab, *Tafsir al-Mishbah: Pesan, Kesan dan Keserasian al-Quran*, Vol. 2 (Jakarta: Lentera Hati, 2002), 585.

³² Afifuddin Muhajir, *Fiqh Tata Negara: Upaya Mendialogkan Sistem Ketatanegaraan Islam* (Yogyakarta: IRCiSoD, 2017), 88.

³³ Muhajir, *Fiqh Tata Negara*, 70.

The rationalization of the two rules mentioned above in relation to the implementation of the UU KK is in terms of the protection efforts contained in the UU KK which will be *dharuriyat al-kehamsah*. In other words, if the protection of *dharuriyat al-kehamsah* is mandatory, then the legal prescription for the application of the UU KK becomes mandatory too, because the UU KK is – one of – the instruments that can achieve protection for aspects of *dharuriyat al-kehamsah*.

Stating that the UU KK is in line with the protection of *dharuriyat al-kehamsah* which is the basis for policy formulation by Ulil Amr, it can be seen from the consideration of letter (a) in the UU KK which states, in order to implement Indonesia's complete human development, it is necessary to protect health for all Indonesian people are spread across various large and small islands which are located in very strategic positions and are on international trade routes, which play an important role in the traffic of people and goods.

Apart from that, you can also examine the many articles contained in the 1945 Constitution of the Republic of Indonesia as references, namely Article 5 paragraph (1), Article 20, Article 28 H paragraph (1), and Article 34 paragraph (3) of the State Constitution. Republic of Indonesia in 1945. Thus, in the context of legislative studies, what is called legal drafting has fulfilled the elements of constitutionality of legislation which include philosophical, juridical and sociological arguments.³⁴

Philosophically, referring to several articles in the 1945 Constitution stated above, it explicitly and implicitly recognizes the existence of a state which must protect the entire nation and the bloodshed of Indonesia. In this case, the state's obligation that must be realized is to protect the entire Indonesian nation from the threat of dangerous diseases. Not to mention if you look at the formulation of articles concerning human rights which firmly place health as a fundamental right whose fulfillment must be guaranteed.³⁵

Then sociologically, Indonesia, which is known as an archipelagic country, is certainly very vulnerable to the spread of disease due to the rapid spread of the virus. Therefore, the UU KK which mandates health quarantine if it is not regulated in constitutional juridical provisions will tend to be seen as a violation

³⁴ Undang-Undang Republik Indonesia Nomor 6 Tahun 2018 Tentang Kekarantinaan Kesehatan, 54.

³⁵ Tim Pengkajian Undang-Undang, Naskah Akademik Rancangan Undang-Undang Tentang Kekarantinaan Kesehatan (Jakarta: Kementerian Kesehatan Republik Indonesia, 2015), 53.

of human rights, considering that restrictions on basic human rights can only be carried out by presenting laws that apply juridically.³⁶

The juridical basis that is the argument for the presence of the UU KK is several statutory regulations that were in effect before the birth of the UU KK, such as IHR 2005 which states that all member countries of the World Health Organization must be able to detect and respond early to all incidents that have the potential for PHEIC. Then Law Number 1 of 1962 concerning Sea Quarantine, Law Number 2 of 1962 concerning Air Quarantine.³⁷

Overall, the regulations in the law that have been mentioned are considered to be irrelevant to the development of diseases and technology that threaten the health of the world community, because they need to be adjusted to current conditions that are more likely to prevent the transmission of diseases caused by viruses. For this reason, the birth of the UU KK is seen as a new development from several existing laws.

The articles above and the considerations in the UU KK as mentioned above imply the authority of ulil amr and at the same time confirm the protection of *dharuriyat al-khamsah*. In other words, the protection of *dharuriyat al-khamsah* which is enshrined in the concept of benefit is a basic consideration regarding the validity or not of the government regulations that are initiated. It is mentioned this because in the Islamic view, whether a leader or government administrator's policy is correct or not really depends on the implications it has for the benefit of the people. If the intended policy has implications for the benefit of the people, then in the eyes of the Shari'a it is considered a valid rule. On the other hand, if it turns out that the policy being rolled out actually causes harm, then it will automatically be considered a policy that violates the Shari'a.³⁸

In this context, a rule applies which states that a leader's policy towards his people is always intertwined with the benefits he must achieve. This really depends on the concept of leadership in Islam, where a leader does not work for himself but as a representative of the people he leads. In fact, Imam Syafi'i illustrates the obligations of a leader towards his people as is the position of an orphan caregiver towards the orphans he cares for.³⁹

In Supriyadi's view, this legal pattern which is based on sharia values is called a prophetic legal pattern which is based on three important pillars, namely

³⁶ Badan Pengkajian MPR, *Academic Constitutional Drafting* (Jakarta: Kesekretarian MPR RI, 2021).

³⁷ Badan Pengkajian..., 57.

³⁸ Muhajir, *Fiqh Tata Negara*..., 91.

³⁹ Muhajir, *Fiqh Tata Negara*..., 92.

humanization as an ontological basis which has as its core the obligations and responsibilities of leaders as God's representatives in the context of humanizing humans. The second foundation is liberation as an epistemological foundation that instructs the equal position of every human being before the law, in other words, every citizen has equality in aspects of policy making and government action. Then the third pillar is transcendence as an axiological basis which emphasizes that policies and actions produced by the government must be based on divine values.⁴⁰

Looking at each article contained in the UU KK, the three pillars stated as the basis of prophetic law can be declared to have been fulfilled. In the humanization aspect, the UU KK, as contained in Article 2, states that the health quarantine implemented is based on humanitarian principles, which in the explanation of the Article states, "The implementation of health quarantine must be based on the protection and respect for universal human values and civilized." Meanwhile, the aspect of liberation is also stated in Article 7 of the UU KK, where it is said that everyone has the right to receive equal treatment in health care. This article then provides an explanation that equal treatment means that everyone in terms of health care must be treated equally and must not be based on discriminatory aspects.

Then on the transcendence side, it is not stated explicitly in the legal formulation of the UU KK, however, it can be understood that *ulil amr* can stipulate policies whose rules are not explicitly found in the Koran and hadith as the main source of Islamic teachings as long as they contain this aspect. benefits that can be justified by the Shari'a.⁴¹ If read in this way, the UU KK does not actually conflict with the benefit side which is the basic aim of Islamic law. This can be explored from the content of Article 3 of the UU KK, where it is said that the aim of implementing health quarantine is to:

- a. protect the public from disease and/or public health risk factors that have the potential to cause a public health emergency;
- b. prevent and prevent disease and/or public health risk factors that have the potential to cause a Public Health Emergency;
- c. increasing national resilience in the field of public health; And
- d. provide legal protection and certainty for the public and health workers.⁴²

⁴⁰ Supriyadi, Kebijakan Penanganan Covid-19 Dari Perspektif Hukum Profetik", *Jurnal Program Studi Magister Hukum, Edisi Khusus, Oktober 2022*, 94.

⁴¹ Muhajir, *Fiqh Tata Negara...*, 128.

⁴² UU KK.

Protection of *Dharuriyat al-khamsah* in the Health Quarantine Law

In the study of ushul science, the term *dharuriyat al-khamsah* is often equated with the term *kulliyat al-khamsah*⁴³ which as a whole means something that is really needed both in order to support life in this world and in the afterlife, or with a different editorial, namely maintaining essential needs. for human life, the absence of which can threaten the destruction of life.⁴⁴

In the study of ushul fiqh, what is included in the category of *dharuriyat al-khamsah* is maintaining religion, soul, hereditary property and reason, which is realized in two ways, namely in terms of manifestation (*min nahiyat al-wujud*) in other words maintaining things that can be achieved. perpetuate its existence. Apart from that, maintaining the existence of *dharuriyat al-khamsah* can also be achieved by eliminating (*min nahiyat al-'adam*) in other words preventing things that could damage the existence of *dharuriyat al-khamsah*.⁴⁵

The five main things included in *dharuriyat al-khamsah* can actually be seen as a simplification of the many human rights included in the Koran, such as the right to life (al-Isra'/17:33; al-An'am/6:51), property rights (al-Baqarah/2: 188; al-Nisa'/4: 29), rights to protect honor (al-Hujurat/49: 11-12), rights to protect security (al-Nur /24: 27), the right to independence (al-Hujurat/49: 6), the right to protection from violence (al-An'am/6: 164; Fathir/35: 18), the right to protest (al-Nisa/4: 148; Ali Imran/2: 110), the right to freedom of expression (al-Taubah/9: 71), the right to religion (al-Baqarah/2: 256; al-Kafirun/109: 6), the right to freedom of association (Ali Imran/ 2: 104-105), the right to domicile (al-Baqarah/2: 84-85), the right to equality before the law (al-Nisa/4: 58), the right to obtain justice (al-Shura/42: 15), the right to obtain the necessities of life (al-Dzariat/15: 19), the right to education (Yunus/10: 101; al-Tahrim/66: 6), the right to gender equality (al-Baqarah/2: 228), the rights of children (al -Baqarah/2: 233), the right to obtain asylum (al-Nisa/4: 97), the right to have a family (al-Nur/24: 32; al-Mumtahanah/60: 9) and the right to work and create (al-Taubah/9: 105).⁴⁶

⁴³ Saifudin al-Amidi, *al-Ihkam fi Ushul al-ahkam*, Vol. 2 (Kairo: Muassasah al-Halabi, 1976), 48.

⁴⁴ Arif Rahman, "al-Dharuriyat al-Khamsah dalam Masyarakat Plural", *Mazhabuna: Jurnal Perbandingan Mazhab*, Vol. 1, Juni 2019, 26.

⁴⁵ Afridawati, "Stratifikasi al-Maqashid al-Khamsah dan Penerapannya dalam Masalah", *al-Qisthu*, Vol. 13, No. 1, 2015, 18.

⁴⁶ Makhrur Adam Mualana, *Konsepsi HAM dalam Islam: Antara Universalitas dan Partikularitas* (Yogyakarta: Pustaka Ilmu, 2015), 31.

Referring to the UU KK, protection of the right to life (*hifd al-nafs*) is a very prominent aspect. This can be understood from the consideration which clearly states that in the context of implementing comprehensive human development, the important thing to pay attention to is the existence of a form of health protection for all Indonesian people spread across various regions, both in the categories of people who live on large islands and health. people who live in remote areas.⁴⁷

Consistent with the protection of the public's right to health, which in the context of *dharuriyat al-khamsah* protection can be referred to as *hifd al-nafs*, is reaffirmed in the formulation of Article 8, where it is stated that everyone has the same right to obtain basic health services that can be reviewed. from several aspects, namely from the aspect of medical needs, food needs and other living needs in the context of daily life in terms of implementing health quarantine.⁴⁸

Such needs, if compared with the formulation of human needs formulated by Abraham Maslow, are classified as physical needs (physiological needs), which Maslow intended as the most basic needs and dominate human needs. This aspect of needs is called a need that dominates all other needs, for Maslow, because if these basic needs are not met then a person tends not to think about other needs. On the other hand, if basic needs have been met, then there is a tendency for them to have the desire to fulfill other needs, starting from the need for security (safety needs), the need for belonging and love (the belongingness and love needs), the need for respect (the esteem needs) to the need for self-actualization (self-actualization).⁴⁹

Efforts to protect the right to life mentioned in the UU KK, including forms of protection that are *ijabi* in nature. In a sense, the birth of the UU KK was in order to realize one of the *dharuriyat al-khamsah*. The ulama exemplify this form of protection in that a person must take care of food, drink and shelter in order to protect his soul. This is different from the form of protection in the form of *al-salb* which is interpreted by the ulama as a repressive action against parties who want to disturb the existence of the soul itself.⁵⁰

An example that is often put forward in this aspect is the strict punishment included in the Koran in relation to the protection of a person's right to life,

⁴⁶ Siti Muazaroh dan Subaidi, "Kebutuhan Manusia Dalam Pemikiran Abraham Maslow (Tinjauan *Maqasid Syariah*)," *Al-Mazahib*, Volume 7, Nomer 1, Juni 2019, 23.

⁴⁷ UU KK, poin (a) dalam konsideran "Menimbang".

⁴⁸ Pasal 8 UU KK.

⁴⁹ Siti Muazaroh dan Subaidi, "Kebutuhan Manusia Dalam Pemikiran Abraham Maslow (Tinjauan *Maqasid Syariah*)," *Al-Mazahib*, Volume 7, Nomer 1, Juni 2019, 23.

⁵⁰ Fauzi, *Hak Asasi Manusia dalam Fikih Kontemporer* (Jakarta: Kencana, 2018), 142.

namely the obligation of qisas for people who take the lives of other people. As mentioned in Surah al-Baqarah verses 178-179. This implies a strict form of punishment and is also proof that a person's right to life is given top priority in the Koran.⁵¹

The above can be seen from the various sanctions contained in the UU KK, starting from the threat of imprisonment for a maximum of 10 (ten) years or a fine of a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah).⁵² The sanctions that will be applied will not only apply to those who violate the health quarantine rules contained in the law, but can also be applied to those who attempt to obstruct the implementation of health quarantine. For them, criminal sanctions can be imposed with a maximum imprisonment of 1 (one) year and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).⁵³

In the description above, by looking closely at the articles contained in the UU KK, it is quite clear that there is a form of protection for a person's right to life through health quarantine which is enforced in health emergencies, both in terms of ijabi protection and al-salbi protection. In other words, the author can categorize ijabi protection as a form of passive protection where the state simply applies legal instruments that are inherent to a person, such as the state being obliged to protect the right to life that a person naturally has. Meanwhile, the al-salbi category of protection can be said to be a form of active protection, where the state is not enough just to protect the rights inherent in a person but has an active obligation to protect everything that can eliminate the rights inherent in a person.

Protection of the right to life, which Abraham Maslow termed physical needs, must take precedence before fulfilling other needs, such as the need for love and the need for self-actualization.⁵⁴ In line with Abraham Maslow, in discussions about maqashid, it is still debated between hifd al-din and hifd al-nafs. Which should take priority? Meanwhile, scholars state that hifd al-nafs is more important than protecting hifd al-din, because nafs is manat al-taklif without which religious taklif will not be realized.⁵⁵

If read in the maqashidi narrative and the ranking of human needs introduced by Maslow, then the health quarantine proclaimed in the UU KK is

⁵¹ Kementerian Agama RI., *Tafsir al-Quran Tematik*, Vol. 5 (Jakarta: Kemenag RI., 2012), 330.

⁵² Pasal 90 UU KK.

⁵³ Pasal 93 UU KK.

⁵⁴ Abraham H. Maslow, *New Knowledge in Human Values* (USA: Indiana, 1959), 35.

⁵⁵ Ismail Habib, *Hifd al-Nafs wa al-Din fi al-Islam* (Dubay: Dar al-Ulum, t.th), 25.

in line with the opinion that prioritizes protection of the soul compared to fulfilling other needs. Apart from that, the characteristics of *hifd al-nafs* that appear in the UU KK are also a development of the classical *maqashid* concept which talks about *hifd al-nafs* only exemplifying the prohibition of killing, while in the UU KK, it is more directed at general protection against the possibility of endangering people's lives. not only individually but collectively.⁵⁶

By borrowing Jasser Audah's study, the perspective of *hifd al-nafs* proclaimed in the UU KK does not only stop at the level of protection and preservation but also leads to forms of development.⁵⁷ This can be seen from the formulation of several articles that have been stated previously, that in realizing public health as a form of protection for *hifd al-nafs*, the state is burdened with the obligation - in addition to - ensuring equitable health care, and what is no less important is guaranteeing the fulfillment of the community's living needs. which he arranged.

Conclusion

The explanation above implies two conclusions, namely first, from the perspective of *fiqh al-siyasah* which postulates that every legal decision formulated by the authorities must be based on the problems of the people, then the presence of the UU KK reflects the value of benefit desired in the postulates of *fiqh al-siyasah*. Then the second conclusion, in terms of protection against *dharuriyat al-khamsah*, the presence of the UU KK has provided a definite guarantee of the right to public health which has resulted in ensuring *hifd al-nafs*.

⁵⁶ Ibn Asyur, *Maqashid al-Syariah al-Islamiyah* (t.tp.: Dar al-Salam, t.th), 58.

⁵⁷ Jasser Audah, *Maqashid al-Syariah as Philosophy of Islamic Law* (Virginia: International Institute of Islamic Thought, 2008), 89.

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