

## ***Wilāyah al-ḥisbah* and its Urgency to the Modern Economy in Indonesia**

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### **Abstract**

Weak state intervention in the modern economy has brought with it a number of excesses and negative consequences, such as unequal income levels, increasing poverty rates and widening social inequalities. Meanwhile, in the Islamic economic system, all comprehensive and general powers and authorities are given to the state to intervene in the economic life of the community and are seen as an important fundamental principle. In this case the role of the state is present in an institution called *wilāyah al-ḥisbah* (WH). As a representative of the state, the WH has the authority and power in carrying out and controlling the implementation of the sharia economy. Through the WH, state intervention is not limited to merely adapting the permanent rule of Islamic law, but also filling the void that exists in Islamic law. On a practical level, the state intervenes in economic life to ensure the adaptation of Islamic law related to the economic life of individuals. In addition, the state can also implement the principles of social security and social balance based on the principles of sharia economics.

### **Keywords**

Wilāyah al-ḥisbah, Islamic Economics, Modern Context, Indonesia.

### **Introduction**

Along with the dynamics of globalization in all sectors of life, economic activity at the present time can be stated to have reached a global economic order or economic globalization. The global economic system indicates the spread of a free-market system that is full of capitalism. Thus, globalization has a vision of spreading free market

capitalism (trade liberalization) to every country (Friedman, 2000). The result of this globalization is the lack of power of reform strategies at the national level. Because within certain limits, the national strategy is considered impossible to carry out.

The economic system of capitalism which was first initiated by Adam Smith (1723-1790) is indeed known as a liberal economic system. The basis of a liberal economy refers to the freedom of the market. In the market mechanism of this system, the state or government cannot regulate it at all (Mubyarto, 2000). In Adam Smith's view, capitalism is a system that can create prosperity for society if the government does not intervene. The intervention referred to here is interference with market mechanisms and policies. However, historical facts prove that Smith's liberal economic system in some aspects of life has not been able to realize prosperity. Even openly, Joseph E. Stiglitz (2007) describes a liberal economic system will only promise that the one who benefits is the country as a whole (not individual people). Liberalization will give birth to rich countries with poor people.

This is a crucial reason to think about and re-examine our position in such a global economic arena by referring to the concepts that have been offered and have historically been practiced in the early days of Islamic rule. In the treasures of Islamic economics, the important role of the government is considered very strategic and very important. This important role is at least an implementation of the word of Allah in Q.S. Ali Imran verse 104 which emphasizes the importance of *amar ma'ruf nahi munkar*. Historically, the Islamic government, especially during the Caliph Umar Ibn Khattab, had formed a forum that had the authority/power as the implementation of the verse in carrying out and controlling the implementation of sharia economics. The container is better known as the *wilāyah al-ḥisbah* (WH//the 'sharia police') institution.

Islam places the market in an important position in the economy, the importance of the market in Islam cannot be separated from the function of the market as a place for buying and selling activities to take place. Buying and selling itself has an important function considering that buying and selling is one of the economic activities that is legalized in Islam. The importance of the market as a place for buying and selling activities is not only seen from its physical function, but also the rules, norms and issues related to the market. The importance of buying and selling as one of the pillars of the economy can be seen in the letter Al Baqarah 275 that Allah justifies buying and selling and forbids usury.

With the above functions, the market becomes vulnerable to a number of frauds and acts of injustice that oppress other parties. This is because many forms of market distortion

such as fraud, fraud, exploitation and counterfeiting and other forms of injustice have been carried out in a market. There are many forms of market distortion such as fraud, fraud, exploitation and counterfeiting and other forms of injustice in a market. Drugs that contain harmful substances, non-halal foods and are harmful to the public must be regulated by an independent agency to protect consumers. Market regulatory agencies are also needed for producers to create a healthy market competition.

### **The Dynamics of *Wilāyah al-ḥisbah* in Islam**

Etymologically, *wilāyah al-ḥisbah* (WH) consists of two words, "*al-wilaya*" and "*al-hisbah*". The word *al-wilayah* is a masdar form of *wala-yalii-waliyyan-wilayatan*, which basically means to control, manage, rule, and help. While the word "*al-hisbah*" according to language comes from the word *hasiba*, with various forms of *masdar*; *hasaban-hisaban-hisbanan-husbanan-hasibatan*. This word has several meanings according to the context: a) against (*inkar*) like "احتسب فلان عليه", it means the so-and-so is against his bad deeds; b) test (الإختبار), like the sentence "احتسبت فلانا", it means I test fulfilment; c) discipline (manage) and supervise (التدبير والنظر), means to organize, manage, and supervise as well as possible; d) calculation/attention (الإعداد), like the sentence "فلان لا يحسب به", it means that so and so do not take into account/pay attention to it "*Hisbah*" can also mean wages and rewards (*al-ajr wa al-tsawab*) (Ma'luf, 1986; Mansur, 1992). In Hans Wehr (1979) view, the word *hisbah* is taken from the word *hasaba* which means calculating (reckoning and computing), thinking giving opinions, views and others.

Meanwhile, in terms of terminology, the notion of *al-hisbah* was formulated by several experts and scholars, including; Abu Hasan al-Mawardi, al-Ghazali, ibn Al-Khaldun and Ibn Taimiyyah. According to al-Mawardi (1966), *hisbah* is enjoining goodness if it is proven that goodness is left (not done), and forbidding from evil if it is proven to be done (Al-Mawardi, 1966). This definition emphasizes that *hisbah* is an order to carry out good deeds, when the good deeds have been seen to be abandoned and prevent bad deeds, when the bad deeds have been seen to be done. This definition, by some circles, is still considered too general regarding *amar ma'ruf nahi munkar*, so it is difficult to distinguish it from the authority of *qadha* and *madzalim*.

Ibn Khaldūn (1978) emphasized that *hisbah* is a religious duty which includes the area of enjoining the truth and forbidding the evil. Such obligations are centered on the problems of the Muslims. Therefore, those who can occupy these noble positions are those who have the ability to carry out these tasks and can become assistants for this agency working

to find evil committed by state leaders or the people. This task can bring humans to a world that is useful for their lives.

Muhammad Mubarak from the University of Damascus defines *al-hisbah* as administrative supervision carried out by the government by assigning special officials to oversee matters of morality, religion, economy, specifically in the social field in general in order to realize justice and virtue in accordance with the principles contained in the law. Islamic law and traditions that are recognized by all places and times (Halim, 2011).

By looking at these definitions, both etymologically and terminologically, it can be understood that *ih̥tisab* (practicing *hisbah*) can be associated with one's activities in commanding good and preventing evil. Technically, the word *hisbah* connotes an institution that is responsible for commanding good and preventing evil with the specific task of supervising public morals, especially in the economic field for public order.

Studies on the authority of this *hisbah* have been carried out by many classical and contemporary scholars. The oldest writing on *hisbah* is the writing of al-Māwardī (d. 450 H), namely, in the chapter *fī Ahkām al-hisbah*, in the book *al-Ahkām al-Sulthā-niyyah* (al-Mawardi, 1966). Al-Māwardī discusses the concepts of *hisbah*, *muhtasib*, and *mutathawwi'*, *muhtasib's* duties which include maintaining the rights of God and humans. Then followed by Abū Ya'lā al-Farrā' (d. 457 H) in the book with the same title as al-Māwardī, namely *al-Ahkām al-Sulthāniyyah*.

Al-Ghazālī (d. 555 H) discusses *hisbah* in the book *Ihyā' 'Ulūm al-Dīn* volume II in the chapter of the book *al-amr bi al-ma'rūf wa al-nahī 'an al-munkar*. In this chapter al-Ghazālī emphasizes the pillars of *hisbah* which include: *muhtasib*, *mā fih al-hisbah*, *al-muhtasab 'alayh*, and *nafs al-ih̥tisāb*. This book also mentions examples of the implementation of *hisbah* at the time of al-Mahd, al-Rasyīd, and al-Ma'mn of the 'Abbasiyyah dynasty. In addition, it is also discussed about adab *al-muhtasib* and forms of evil (al-Ghazali, 2005).

Ibn Taymiyyah (d. 661 H) in the book *al-Hisbah fī al-Islām* linking *hisbah* institutions with the enforcement of state functions, the origins of *hisbah* institutions, and economic problems that continue to be relevant today (Ibn Taymiyyah, 1992). For example, the development of state intervention on business and restrictions on individual rights. The authority of *hisbah* is beyond the authority of *qadhā*, *madhālim*, and other councils. However, *hisbah* is in a state structure where the *muhtasib* is a state official. The theories

he put forward are strengthened by a number of relevant quotes from the verses of the Qur'an and the Hadith of the Prophet.

Muhammad al-Mubarak in the book *Nizhâm al-Islâm al-Iqtishâdî Mabâdî' wa Qawâ'id 'Âmmah*. Al-Mubarak stated that *hisbah* is an institution that was specifically formed since the early days of Islam to oversee trading activities in order to avoid fraud. 'Abd al-Mun'im Majîd in the book *Târîkh al-Hadhârah al-Islâmiyyah fî al-'Ushr al-Wustha*. This book discusses *hisbah* from its historical aspect which states that this *hisbah* institution has existed since the time of the Prophet. Historical *hisbah* review was also carried out by Fadhl Ilâhî in the book *al-Hisbah fî al-'Asr al-Nabawî wa 'Asr al-Khulafâ' al-Râshidîn*. This book discusses specifically the development of *hisbah* from the time of the Prophet Muhammad to *al-Khulafâ' al-Râsyidn* with the steps taken in each period.

The institutionalization of this *hisbah* began at the time of the Prophet Muhammad. As it is known that when the Prophet ruled in Medina, he had a dual position; as an Apostle and as head of state. Rasulallah is a religious leader as well as a state leader who holds three forms of power; *al-sulthah al-tasyri'iyyah*, *al-sulthah al-qada'iyyah*, and *al-sultah al-tanfidhiyyah*. At that time, the Messenger of Allah had formed a *hisbah* institution by appointing Umar Ibn al-Khattab as the first *muhtasib* who served in the Medina market, while Sa'id ibn al-'as Ibn 'Umayyah served in the Mecca market. The position of this *muhtasib* was equivalent to an appointed official Rasulallah for other tasks such as warlords, Amir and others (Allah, 1990).

At the time of Abu Bakr power was still "centralized" in the hands of the caliph. Caliph Abu Bakr tended to continue the policies carried out by the Prophet, including the appointment of *muhtasib*. A significant breakthrough occurred during the time of Umar which separated power into three: *al-sultah al-tasyri'iyyah* (legislative), *al-sultah al-qada'iyyah* (judicial), and *al-sultah al-tanfidhiyyah* (executive) assisted by *diwan-diwan*. During the caliphate of Umar, he appointed Sa'id Ibn Yazid and 'Abdullah Ibn 'Utbah as *muhtasib* in Medina. In carrying out their duties, they are assisted by the *diwan al-ahdath* (Police Department) whose main task is to maintain security. Caliph Umar himself often carried out direct supervision. The main task of the *muhtasib* is to oversee the market and public order. Furthermore, in Ustman ibn Affan (23-35 H/644-656 AD) the position of *muhtasib* was entrusted to Al-harits Ibn al-'Ash. At the time of Ali ibn Abi Talib (35-40 H/656-661 AD), besides himself carrying out the task, Ali also appointed 'Awrâd Ibn Sa'ad as *muhtasib* (Halim, 2011).

During the reign of the Umayyads, there were at least four categories of important positions: *hajib*, *katib*, *amir*, and *qadi*. The position of *wilayat al-hisbah* at that time was as one of the three judicial powers (*wilayat al-Qadha'*), in addition to *wilayat al-qadha'* itself and *wilayat al-madzalim*. This separation is based on the severity of the case settlement burden. Minor cases fall under the authority of *Wilayat al-Hisbah*; more serious matters containing elements of a dispute fall under the authority of *Wilayat al-Qada'*. Meanwhile, serious cases or violations of state officials or their families are under the authority of *wilayat al-Mazalim*. Caliph Hisham himself appointed two brothers, Dawud and 'Isa ibn 'Ali ibn 'Abbas as muhtasib in Iraq. Even Caliph al-Walid made frequent inspections of the Damascus market.

### ***The Wilāyah al-hisbah's Role in the Indonesian Government***

The role of the government is very important to ensure that the market mechanism runs perfectly. As explained earlier that the Prophet Muhammad himself had carried out the function as market supervisor or *al-Hisbah*, which was later used as a reference for the role of the state in the market. Meanwhile, in his book *al-Hisbah fi al-Islam*, Ibn Taymiyah reveals a lot about the role of *al-Hisbah* at the time of the Prophet Muhammad. Rasulullah SAW often inspected the market to check prices and market mechanisms (Hakim, 2016).

The government is the holder of God's mandate to carry out collective tasks in realizing prosperity and justice (*al-ihsan wa al-adl*) and a good life order (*hayyah thayyibah*) for all people. Therefore, the government is *khalifatullah* to realize *falah*. As a holder of God's mandate, the existence and role of the government has a solid foundation in the Qur'an and al-Sunnah, both explicitly and implicitly (Bandingkan dengan ketentuan QS. Al-Nur: 25; dan QS. Al-Hajj: 41.). The basis for carrying out this mandate, the government should uphold the principle of deliberation (*syura*) as an important decision-making mechanism in Islam (QS. Al-Syura: 38; QS Ali Imran: 39).

Thus, in addition to the government as the holder of Allah SAW, the government in principle is the holder of the trust from the community. In this context, the government has a strategic role related to the important role in carrying out *fardl al-kifayah*. *Fardl al-kifayah* is an obligation addressed to the community, where if this obligation is violated, then the entire community will bear the sin. If it has been carried out, even if only by one person, then the whole community will be free from this obligation. The concept of *fardlu al-kifayah*, in a contemporary sense, does not only refer to the funeral prayer, but also refers to all the interests of the community (public interest), that is, if no one suffers a

loss, such as the establishment of an industry that provides basic needs (*dharuriyah*) and basic needs (*al-Hajjiyah*) (P3EI UII, 2011).

On the other hand, according to Ibn Taimiyah (1262-1328), the goal of the state in Islam is to *amr bi al-ma'ruf wa anhy an al-munkar* (Ibn Taymiyyah, 1992). Meanwhile, according to Ibn Khaldun (1332-1406), the purpose of the state is to bring people towards the benefit of the world and the hereafter. These goals are universal in every aspect of life, including in the economic field. Thus, it can be understood that the government's goal in the economic field is to create benefits in the form of welfare and economic justice for the community while adhering to Islamic values. Other classical Muslim scholars such as Al-Mawardi (d. 058), Abu Ya'la al-Farra '(d. 1065), Al-Ghazali (d.1111), also emphasizes the function that the government must carry out in building community welfare (Munir, 2006).

Ibn Khaldun analyzes that the strength of the government depends on its commitment to creating justice and public welfare. Without justice, community loyalty will not exist, if not loyalty then there will be no environment that supports the implementation of law, legislation, sharia, development and prosperity (Munir, 2006). If the public's awareness of public obligations is low, they will not do it, even though they are aware of this obligation, sometimes they will even ignore or cannot carry out their public obligations properly. If so, then the government must take over these public obligations (P3EI UII, 2011).

The economy has a very important role in life, both individually and collectively. Every individual, requires an adequate economy to meet his needs including clothing, food and housing or a place of domicile. Collectively, the community also needs public facilities such as; roads, religious facilities, educational facilities, health, by the body and so on. In order to achieve stability, both at the village, sub-district, district, provincial and capital levels, the role of the economy is very urgent. Without economic power, life and all its aspects will not be able to run well (Mujiatun, 2014).

Weak state intervention in the liberal-capitalist economy has brought about a number of excesses and negative consequences, the most prominent of which are unequal income levels, increasing poverty rates and widening social inequality. This result arises, among others, because the market that works optimally makes competition unavoidable, entrepreneurs with large capital defeat and shift small entrepreneurs. Capital and wealth only revolve around a few people. On the other hand, in a socialist system, the state has a very large role in production and distribution. Indeed, through this system, poverty, social

inequality and unequal income distribution can be overcome. However, in this system, competition is prohibited, so the drive to excel and increase productivity tends to be absent. As a result, the socialist system failed to promote significant economic growth (Munir, 2006).

In the Islamic economic system, all comprehensive and general powers and powers given to the state to intervene in the economic life of the community are seen as an important fundamental principle. But competition that does good deeds is encouraged. This can be seen at least in Q.S. Al-Baqarah verse 148: “... *So compete (in making) goodness ....*”. State intervention is not limited to merely adapting the permanent rule of Islamic law, but also filling the void that exists in Islamic law. On a practical level, the state intervenes in economic life to ensure the adaptation of Islamic law related to the economic life of individuals. In addition, the state can also implement the principles of social security and social balance based on sharia economic principles (al-Shadr, 2008).

The existence of the government's role in developing the economy of a country is something that is not debated in theories and treasures of economic thought. Economic growth, for example, is driven by government policies that seek to invest and attract investors, encourage technological development, or produce and educate the workforce needed by the labor market. If further develops a view that seems to raise two poles of views stating whether or not the role of the government is necessary, in fact the two differences between the two views only lie in the magnitude or degree of the role of the government (Asyik, 2010).

There are at least five types of government roles in the economy. First, it provides a legal framework or instrument relating to all economic transactions. The existence of this legal instrument is a very important element in the economy so as to provide certainty of property rights, security and so on. Second, the government has a role to regulate. These rules are needed for business activities, such as to protect workers, consumers and the environment. Third, the government acts as a producer. The government does not only provide infrastructure and public goods or services, but also “individual” goods (private goods). Such products include the provision of postal services, banking, telecommunications, transportation, insurance services, and so on. Fourth, as a community in the economy, the government also plays a significant role in influencing the economy. Fifth, the government has an active role in redistribution of income in society. The government's efforts to redistribute this income are also carried out through the tax system. Funds obtained from taxes are partly allocated for the benefit of people who have low incomes (Asyik, 2010).



Besides being involved in distribution activities, the government is also involved in production activities through established business entities. In contrast to the private sector which always tries to get maximum profit, government enterprises do not always prioritize maximum profit in these activities. The experience of many countries shows that many of the business entities owned by the government run inefficiently and become a burden on the government and society (Mujiatun, 2014). So, it can be concluded that the role of government in the economy is an absolute.

The government also has an important role in ensuring a perfect market mechanism. The market occurs when the price created is equal to the minimum cost to produce one unit of the good. Technically, this condition can be created if the market can compete perfectly where no single individual can set the market price. The opposite situation is when the market is completely controlled by a single producer. Under these circumstances, producers can fully control supply/supply so that they can dictate market prices (P3EI UII, 2011).

Rasulullah SAW himself has also carried out his function as a market supervisor or *al-hisbah*, which in turn has been widely used as a reference for the role of the state in the market. In his book, *Al-Hisbah fi al-Islam*, Ibn Taimiyah reveals a lot about the role of *al-Hisbah* at the time of the Prophet Muhammad. The Prophet often inspected the market for prices and market mechanisms. In his inspections, the Prophet often found dishonest business practices, so he reprimanded him (P3EI UII, 2011). Al-Mawardi defines *Al-Hisbah* as an institution that functions to enjoin the good so that it becomes a habit and prohibits the bad when it has become a common habit.

The existence of *al-Hisbah* is often used as a reference for the function of the state in the economy, especially in the market. However, the elaboration of *al-hisbah* in practical policy takes various forms. Some economists argue that *al-hisbah* will be played by the state in general through its various institutions. *Al-Hisbah* is considered to be attached to the function of the state in the market and does not need to form a special institution. Meanwhile, others argue that it is necessary to form a special institution called *al-hisbah*, a kind of special police for economics and trade. In fact, this institution is an independent agency so that it is independent of the interests of certain groups or even the government itself. Of course, both have their advantages and disadvantages.

In the context of *al-hisbah* in Indonesia today, there are at least 2 (two) institutions that resemble the *al-hisbah*. First, the institution known as KPPU or the Business Competition

Supervisory Commission. KPPU is an independent institution established to oversee the implementation of Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. KPPU is responsible to the President. There are 7 commissioners of KPPU, appointed by the President based on the approval of the DPR. Currently, the KPPU is chaired by M Syarkawi Rauf. There are at least 3 (three) tasks that must be supervised by KPPU based on Law no. 5 of 1999: 1) Prohibited agreements, namely entering into agreements with other parties to jointly control the production or marketing of goods and services that may lead to unfair business competition monopolistic practices such as price fixing agreements, price discrimination, closed agreements, partnerships, and agreements with foreign parties that may cause unfair business competition; 2) Prohibited activities, namely controlling production and marketing through supply regulation, market regulation which may lead to unfair business competition practices; 3) Dominant position, a business actor who abuses his dominant position to limit the market, obstruct consumer rights, or hinder the business of other business actors. Second, LPPOM-MUI. LPPOM-MUI tasked with supervising the halal, health and hygiene of a commodity has been represented by this institution. LPPOM-MUI is an institution with a strong task of researching, reviewing, analyzing and deciding whether products, both food and their derivatives, medicines and cosmetic products, are safe for consumption, both in terms of health and in terms of teaching the Islamic religion, namely halal or permissible and good. to be consumed by Muslims, especially in the territory of Indonesia, in addition to providing recommendations, formulating provisions and guidance to community services. This institution was founded on the decision to support the Indonesian Ulema Council (MUI) based on the licensing decree number 018/MUI/1989, on 26 *Jumadil Awal* 1409 *Hijriah* or January 6, 1989.

Third, the Indonesian Consumers Foundation (YLKI). YLKI is a non-profit and independent community organization that was founded on May 11, 1973. YLKI's existence is directed at increasing consumers' critical awareness of their rights and obligations, in an effort to protect themselves, their families, and the environment. The Indonesian Consumers Foundation, abbreviated as YLKI, is a non-governmental and non-profit organization founded in Jakarta on May 11, 1973. The purpose of establishing YLKI is to increase consumers' critical awareness of their rights and responsibilities so that they can protect themselves and their environment. This institution also carries out market supervision which functions to protect consumer rights that must be fulfilled by producers so that producers will not arbitrarily make products that essentially endanger consumers with the aim of getting greater profits.

## Conclusion

If the role of al-Hisbah in Indonesia is studied more deeply, then we will find many institutions which are essentially part of the function of a-Hisbah. However, in the author's opinion, these institutions are in a very weak position. Because, first, it is not directly attached to the government system such as the ministry. Second, these institutions are not equipped with law enforcement 'tools' such as the police or civil service or others. Third, they are very few in number, and usually only the ones that are effective in the center are not evenly distributed. fourth, despite supporting laws, in reality it is very weak when it comes to dealing with 'players' and 'financiers' of business enterprises.

Therefore, concrete steps are needed to strengthen the hisbah institution in Indonesia. Institutionally, the formation of this hisbah should be equivalent to other judicial institutions, or at least equivalent to the ministry and have the tools that support the hisbah efforts and of course must be supported by conducive legislation. In its operation, this hisbah institution must touch on the basic needs of the community, such as: 1) Maintain market balance both in terms of production and distribution; 2) Eliminating monopolistic and oligopoly practices, including cartels; 3) Has a commitment to safeguard state assets by restricting licenses; 4) Control the interest and margin prevailing in the community, and; 5) Prioritize the interests of the people over foreign parties.

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