

## OPTIMIZING THE ROLE OF BODY-BATHERS AS A PRIORITY FOR ZAKAT AL-FITR RECIPIENTS IN SIKILANG, SUNGAI AUR PASAMAN BARAT

Dedisyah Putra\*, Jannus Tambunan

Sekolah Tinggi Agama Islam Negeri Mandailing Natal

Jl. Prof. Dr. Andi Hakim Nasution, Panyabungan, Mandailing Natal, Sumatera Utara 22978

\*email: [dedisyahputra@stain-madina.ac.id](mailto:dedisyahputra@stain-madina.ac.id)

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**Abstract:** This research analyzes the practice of bathing corpse carried out in Sikilang Village, Sungai Aur Kuning Pasaman Barat District, which is in accordance with zakat al-fitr. This is a phenomenological and qualitative research with data collected through observation and in-depth interviews to determine the distribution of zakat al-fitr in accordance with *maqashid*. The results showed that body-bathers in Sikilang village do not have a fixed wage, hence many people are reluctant to pursue this profession. Furthermore, the review of *maqasid shari'ah* that customs can be used as an instrument in establishing law with terms and conditions set by the scholars. In conclusion, the habit of the people prioritizing body-bathers as the recipient of zakat al-fitr is contrary to *al-nushus al-shari'ah*.

**Keywords:** Zakat al-Fitr, Body-Bathers, *Maqashid Shari'ah*

**Abstrak:** Penelitian ini akan menganalisis praktik yang dilakukan masyarakat Desa Sikilang Kecamatan Sungai Aur Kuning Pasaman Barat yang menjadikan pemandi jenazah sebagai penerima prioritas zakat fitrah. Penelitian ini termasuk pada jenis penelitian fenomenologi yang bersifat kualitatif melalui observasi dan wawancara mendalam guna mengungkap kebiasaan masyarakat Desa Sikilang dalam mendistribusikan zakat fitrah ditinjau dari *maqashid*. Hasil dari penelitian ini menyimpulkan bahwa *pertama*; kebiasaan masyarakat desa sikilang adalah bentuk apresiasi kepada pemandi jenazah yang tidak memiliki upah tetap, padahal banyak orang enggan menggeluti profesi ini. *Kedua*, dalam tinjauan *maqashid syari'ah* bahwa adat istiadat dapat dijadikan sebagai instrumen dalam menetapkan hukum dengan syarat dan ketentuan yang ditetapkan oleh para ulama. Kebiasaan masyarakat dalam memprioritaskan pemandi jenazah sebagai penerima zakat fitrah bertentangan dengan dalil yang lebih kuat/pokok (*al-nushus al-syari'ah*).

**Kata Kunci:** Zakat Fitrah, Pemandi Jenazah, *Maqashid Syari'ah*

## Introduction

Zakat al-fitr is a religious obligation mandated by Allah SWT in the holy Qur'an and hadith of the Prophet SAW and *ijmā'* (consensus) of Islamic scholars, especially Salaf and Khalaf. Its institutionalization, which entails incorporating the observance of *bathin*, offers great and noble benefits. These include sincere intentions of the heart and the *zhawahir* (the world of bodies), which contributes to the payers of zakat and the wider community, particularly the recipients.

According to the Prophet's uncle Ibn Abbas RA, zakat al-fitr was commanded by the Prophet Muhammad SAW to purify a fasting Muslim and to relieve the poor.<sup>1</sup> Ibn Umar RA also stated the need to show some form of appreciation with a minimum amount of one *sa'* of dried dates or raisins for every male, female, young, old, slave, and free-man. The head of households must pay zakat al-fitr for all their dependents.<sup>2</sup> Most scholars believe that this payment must be made from the 27th of Ramadan till the night of 'Eid al-Fitr. Although, some individuals, including al-Imām Mālik, accept this payment at the beginning of Ramadan. The scholars' disagreement on the relatively lengthy payment period was backed by a strong basis.<sup>3</sup>

Unlike zakat al-fitr, wealthy Muslims, especially those involved in agricultural produce, commercial products, or livestock, are obliged to pay zakat al-mal (wealth). The obligation to pay zakat al-fitr is based on almsgiving regardless of one's social status. Indeed, it is obligatory for children, the elderly

who are too weak to earn a living, and slaves who are subject to their masters.<sup>4</sup> It is considered a compulsory act of charity whose objective is not merely on obeying Allah's commands and His Messenger's commands but also on raising society's social status by relieving the poor and needy.

In the Qur'an, almsgivings and zakat were mentioned no less than 82 (eighty-two) times and further supported by many hadiths. It was, therefore, not surprising that after the death of the Prophet Muhammad SAW, the caliph Abu Bakr RA declared war on anyone who refused to equate these commands with prayers.<sup>5</sup> This is because several verses in the Qur'an concerning zakat are always juxtaposed with prayers.

Allah SWT has made fasting during Ramadan mandatory, but many Muslims are ignorant of the qualities that invalidate their fasts. Therefore, Allah, through His Prophet, initiated the zakat al-fitr to instill kindness as compensation for their ignorance and shortcomings while fasting caused by the people's indulgence in *al-lahw wa al-rafats*.<sup>6</sup>

Meanwhile, during its distribution, zakat al-fitr should be given to those eligible to receive zakat as specified by Allah SWT in the Quran's Surah al-Tawba verse 60. Al-Imam Ibn Jarir at-Tabari and al-Shafi'i shared a unique view of the opening sentence *innama al-shadaqat*, which generally indicates *uslub*. This simply implies that zakat al-fitr needs to be equally distributed among all groups, as

<sup>1</sup> Abul Hasan Muslim bin Hajjaj bin Muslim, *Sahih Muslim, Bab az-Zakah* (Riyad: Darussalam, 2007), p. 318

<sup>2</sup> Abu 'Isa Al-Tirmizi, *Sunan al-Tirmizi* (Riyad: Daar Ibn Al-Jauzy, 1998), p. 248

<sup>3</sup> Yusuf Qardhawi, *Hukum Zakat*, Trj. UIN ANTASARI (Kota Banjarmasin: Lentera Antar Nusa, 1996), p. 217

<sup>4</sup> Aam Slamet Rusydiana dan Salman Al Farisi, "Studi Literatur tentang Riset Zakat," *AHKAM: Jurnal Ilmu Syariah* 16, no. 2 (2016): 281-90, <https://doi.org/10.15408/ajis.v16i2.4458>.

<sup>5</sup> Syaikh Muhammad bin Shalih Al Utsaimin, *Ensiklopedi zakat*, (Pustaka Al-Kautsar, 2010)p.110

<sup>6</sup> Muhammad Irfan Nasution dan Muhammad Andi Prayogi, "The Utilization of Zakah Productive towards Micro-Business Growth and Mustahik Welfare," *Jurnal Ekonomi Pembangunan: Kajian Masalah Ekonomi dan Pembangunan* 20, no. 1 (2019): 1-11, <https://doi.org/10.23917/jep.v20i1.6576>.

mentioned in the verse.<sup>7</sup> Some scholars encourage zakat's uneven or deliberate distribution to certain groups only.<sup>8</sup> There is even a belief that zakat al-fitr can only be distributed to the poor and needy since these two groups belong to the lowest social status. Indeed, Allah SWT mentions in surah al-Kahf verse 79 that the boat is intended for the poor. The *mufasssirin* believed that this means of transportation referred to the alms directed mainly to the needy.<sup>9</sup>

The conflicting arguments among scholars as earlier mentioned, suggest two things. First, the recipients of zakat al-fitr should belong to the eight groups, as stated in Al-Tawba Verse 60. Second, this form of almsgiving is distributed to only certain groups. According to some scholars, the distribution of zakat to recipients other than the eight groups will lead to its invalidation.<sup>10</sup> Contrary to this teaching, it is common practice among the people of Sikilang Village, Sungai Air District, West Pasaman Regency, to give zakat al-fitr to body-bathers due to *mashlahah*. It has become a custom practiced from one generation to another. This phenomenon incited the need to conduct a study on the distribution of zakat al-fitr to body-bathers from the perspective of *maqashid al-shari'ah*.

Based on the perspective of *maqashid al-shari'ah*, customs serve as the basis for proposing certain regulations since they constitute the oldest laws on earth. Likewise,

*dharurat*'s opinion can also change the legal position, such as the permissibility to buy and sell during Friday prayers in some places and under certain conditions.<sup>11</sup> Additionally, the prevalence of *'adah* in a community, it led to the development of customs believed to be the stronghold or legal rules binding the people.

This phenomenological qualitative research employed a descriptive-analytic approach encompassing observations and in-depth interviews with the community members. It is focused on the perspective of *maqashid al-shari'ah* concerning the custom of the people from Sikilang Village, Sungai Aur District, West Pasaman Regency, who designate body-bathers as zakat recipients. Data collection was carried out through documentation, interview, and observation techniques to explore relevant information concerning the practice of zakat al-fitr.

### Zakat al-Fitr for Sikilang Villagers

Zakat al-fitr consists of two words, the first term zakat is derived from "*zaka*" meaning to grow, increase, develop, and blessings. This term represents God's blessing and peoples' efforts to cleanse their properties and souls.<sup>12</sup> The word "*fitr*" or "*fitrah*" implies the end of the fasting month, and the first day of Syawwal, marks the beginning of Eid al-fitr. The word, zakat is used to mandate Muslims to donate a certain amount of their properties required by threshold before the Eid al-Fitr.<sup>13</sup>

<sup>7</sup> Abdul Hamid, *Fikih Kontemporer* (Curup: LP2 STAIN CURUP, 2011), p. 38

<sup>8</sup> Udin Saripudin, Fathurrahman Djamil, and Ahmad Rodoni, "The Zakat, Infaq, and Alms farmer economic empowerment model," *Library Philosophy and Practice* 2020 (2020): 1–13.

<sup>9</sup> Syaikh Abdurrahman bin Nashir Al-Sa'di, *Tafsir As-Sa'di*, 2003, p. 217

<sup>10</sup> Muharman Lubis, Arif Ridho Lubis, dan Ahmad Almaarif, "Comparison of the Approach in the Zakat Management System," *Journal of Physics: Conference Series* 1235, no. 1 (2019), <https://doi.org/10.1088/1742-6596/1235/1/012048>.

<sup>11</sup> Asrul Hamid dan Dedisyah Putra, "The Practice of Buying and Selling During Friday Prayer in Mandailing District Natal: A Study With A Maqashid Al-Syari'ah Approach," *Samarah* 5, no. 2 (2021): 1021–43, <https://doi.org/10.22373/sjkh.v5i2.7575>.

<sup>12</sup> Sayyid Sabiq, *Fikih Sunnah*, Vol 12 (Cairo-Mesir: Daar Al-Risalah, 2000), p. 81

<sup>13</sup> S. Martono et al., "The relationship between knowledge, trust, intention to pay zakah, and

Zakat al-fitr is payable at one *sa'*, which is equivalent to 2.5% of the wealth possessed by an individual. Equalizing its worth' with another weight value has made it possible to make payments in the form of cash.<sup>14</sup> It is believed that giving zakat al-fitr in the form of cash is more beneficial since one of the main purposes is to help the recipients meet their daily needs. It encompasses food and other secondary needs such as clothing, house rent, medical expenses, and others. On the other hand, rice prices tend to drop, thereby putting the zakat recipients at a disadvantage. Previous studies reported that paying zakat al-fitr with a nominal approach is more beneficial presently. This is because, among the obligatory purposes, zakat is used to meet the needs of its recipients. These are not limited to food but other secondary basic needs that must also be fulfilled, such as buying clothes, paying house rent, medical expenses, etc. On the other hand, exchanging the rice received with the buyer makes its selling value to drop drastically, thereby harming the zakat recipients themselves.

Zakat al-fitr should only be given to people who need it the most to realize its purpose and distribution, which is right on target.<sup>15</sup> One major problem is that it is difficult to distinguish between the recipients and the benefactor. However, both the payers and recipients might be either poor or rich. This tends to occur because of the confusion caused by unskilled religious speakers in providing coherent explanations. It led to the

imposition of one's view even though the case is associated with the realm of *khilafiyah*, and for the sake of public benefit, one need not turn a blind eye to the problems of the umma.

Several regions in Indonesia have unique traditions related to the distribution of the zakat. For example, the Regional Government is usually involved through existent zakat institutions on the North Coast of Central Java.<sup>16</sup> Furthermore, anthropocentric religious empowerment communication has improved the quality of life, knowledge, work skills, and mindset of marginal communities in Padang using enlightening, supplying, and using capital resources to develop independent communities by BAZNAS.<sup>17</sup>

Sikilang Village is located in Kenagarian Sungai Aua, Sungai Aur District, West Pasaman Regency, West Sumatra. It has an area of 1000 ha, and most communities are mainly located in coastal areas and oil palm plantations. This village consists of 600 families with a population of 2711 people, all of whom are Muslims.

The people widely practice an age-long custom concerning the distribution of zakat al-fitr. The body-bathers in the village are part of the recipients of zakat, which is usually distributed from the night of the 27<sup>th</sup> Ramadan till the morning before Eid prayer.

The practice of this phenomenon in the Sikilang Village is relatively rare. The reason why these individuals were included is that whenever someone dies in the village, the

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zakah-paying behavior," *International Journal of Financial Research* 10, no. 2 (2019), <https://doi.org/10.5430/ijfr.v10n2p75>.

<sup>14</sup> Fuad Thohari dan Mohammad Syairozi Dimyathi Ilyas, "Hukum Dan Pedoman Zakat Fitrah Dengan Uang (Kajian Fatwa Mui Provinsi Dki Jakarta, No. 1 Tahun 2018)," *Istinbath* 19, no. 1 (2020), <https://doi.org/10.20414/ijhi.v19i1.205>.

<sup>15</sup> Tika Widiastuti dan Lina Nugraha Rani, "Evaluating the Impact of Zakat on Asnaf's Welfare," *Global Journal Al-Thaqafah* SI (2020), <https://doi.org/10.7187/gjatsi2020-10>.

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<sup>16</sup> Widiyanto bin Mislan Cokrohadisumarto et al., "A study of Indonesian community's behavior in paying zakat," *Journal of Islamic Marketing* 11, no. 4 (2020): 961-76, <https://doi.org/10.1108/JIMA-10-2018-0208>.

<sup>17</sup> Bukhari et al., "Anthropocentric religious communication of National Amil Zakat Agency for the empowerment of marginal communities in Padang Indonesia," *International Journal of Innovation, Creativity and Change* 5, no. 2 (2019): 1102-15.

body-bathers voluntarily perform the *fardhu kifayah* duty to the deceased without any payment or reward. Therefore, the residents were obliged to return their kind gesture. This has become an age-long custom of the people, practiced for generations in the community.

Rosmana, a volunteer body-bather in Sikilang Village, stated that they could not turn down the community's favor because the zakat was delivered directly to them. Moreover, any form of refusal implies inviting a new social problem.

Zakat al-fitr should be given to mustahiq because they have urgent needs to achieve zakat's goals and targets. Nevertheless, the residents of Sikilang Village are inclined to follow the procedure passed down by their predecessors, that is, to prioritize giving zakat to the body-bathers. In a household consisting of three family members, a body-bather is entitled to receive one portion of its zakat, which applies to the entire community.

Referring to the reason why zakat al-fitr is given to the body-bathers, during an interview session with one of the residents named Muhirnis, it was gathered that:

*"The zakat al-fitr given is a sign of gratitude from the community to the body-bathers because they are believed to have contributed immensely in terms of helping the community take care of corpses. Therefore, each household needs to give these individuals a portion of its zakat."*<sup>18</sup>

When asked why this was practiced, Muhirnis stated that death is inevitable, besides it is a sorrowful condition that is bound to befall all men. Therefore, each household is mandated to give one portion of their zakat al-fitr to a body-bather.

The residents of Sikilang Village believe that giving their zakat al-fitr to the body-bathers is a sign of gratitude, even though it should only be given to those entitled, especially the poor. On the other hand, the residents give their zakat al-fitr to body-bathers because it is believed that they have served the community without payment. To the community, these individuals are entitled to this type of almsgiving as a form of gratitude. In one of the interview sessions, another resident named Abdi Pudi stated:

*"During my time as a body-bather, I have never received any form of payment for my service. I worked for the sake of Allah SWT, and even when I get paid, it is just a sign of gratitude from the grieving family. Sometimes the offer is rejected, depending on their financial status. In Sikilang Village, this practice is not against Islamic law because it is carried out voluntarily, and zakat al-fitr is also given to other poor people."*<sup>19</sup>

The villagers give a portion of their family's zakat al-fitr to the body-bathers as remuneration and gratitude. This is also done voluntarily and sincerely, thereby giving rise to the assumption that this custom does not contradict religious teachings. It is assumed that the body-bathers have served the community without any compensation, and therefore zakat al-fitr needs to be given to them as a form of gratitude.

Concerning the amount of zakat al-fitr received by the body-bathers in Sikilang Village, Rosmana stated that:

*"In respect to the zakat al-fitr received... virtually every family gives an amount equivalent to the share of a family member either in the form of rice or money."*<sup>20</sup>

Practically, some people even give their entire zakat al-fitr to the body-bathers. This is because its distribution to other *ashnaf* is

<sup>18</sup> Muhirnis, *interview*, with Muzakki Direct indepth interview, October 2, 2021.

<sup>19</sup> Abdi Pudi, *interview*, Direct, in-depth interview with body bather. October 2, 2021

<sup>20</sup> Romana, *interview*, Direct in-depth interview with body bather, October 11, 2021

time consuming and due to the common assumption that these individuals are similar to *ibn sabil* and are entitled to receive zakat. This practice is certainly based on an age-long custom justified by the local religious leaders.

The residents of Sikilang Village have long accepted the giving of zakat al-fitr to body-bathers because the practice is considered normal. The villagers prioritized these recipients rather than the poor. In fact, it is not uncommon to give all their zakat al-fitr to the bathers.

In principle, the residents of Sikilang Village do not distribute zakat al-fitr evenly to the eight *ashnaf* because the local '*amil* (zakat collector) committee is not functional, because participation is voluntary. The interview held with a villager named Rodipion revealed some factors that cause uneven distribution of zakat al-fitr:

*"It's been a long time since there was a zakah committee in Sikilang Village. Therefore, the distribution of zakat al-fitr is uneven because there is no amil committee. In certain circumstances, these villagers personally delivered their zakah to the recipients."*<sup>21</sup>

However, on several occasions, the residents' zakat al-fitr was handed over to the Imam of the village's mosque, who was considered eligible to manage it as an '*amil*. In reality, they seemed to use this opportunity to enrich themselves and failed to distribute all the proceeds equally. This was deduced from the interviews held with several local figures. The absence of an institution to manage zakat al-fitr, led to improper distribution. Even some poor people do not receive their appropriate share of zakat.

Therefore, through BAZNAS and other institutions, the government has adopted many efforts to assist the collection and distribution of the villagers' zakat in accordance

with Islamic provisions.<sup>22</sup> However, some communities, especially those located in remote areas, still engage in traditional and poor zakat management.

The phenomenon in Sikilang Village is an example of a remote community where zakat al-fitr is managed traditionally. The general public is aware that payment of the zakat is aimed at purifying their souls and properties, but they fail to understand its mechanisms and provisions properly.

The body-bathers in Sikilang Village often come from fairly capable middle-income families that are financially comfortable, but because of the deep-rooted tradition, the villagers ignore their economic condition and insist on giving their zakat al-fitr as a form of gratitude and appreciation. Based on an interview session held with a villager named Maira Wati:

*"The body-bathers in Sikilang Village are people who are financially comfortable and could afford big houses and vehicles, but because they have contributed to the community, their roles are taken into account."*<sup>23</sup>

Distributing zakat to those financially able indirectly diminishes its objective, for instance, to prosper the people and eradicate the gap between the rich and the poor. It will only make the rich even richer and the poor trapped in poverty. In principle, when the rich are aware of the purpose of zakat, they are bound to reject it because they are not entitled to receive this almsgiving. This is in contrast to the reality in Sikilang Village. Another villager named Suardi stated the following:

*"It is legal to give zakat al-fitr to the body-bathers because they belong to the fi sabilillah (in the cause of Allah) faction working purely*

<sup>21</sup> Rodipion, *interview* Direct in-depth interview with Head of Jorong/Village Head, October 14, 2021

<sup>22</sup> Ahmad Roziq et al., "An Escalation Model of Muzakki's Trust and Loyalty towards Payment of Zakat at BAZNAS Indonesia," *Journal of Asian Finance, Economics and Business* 8, no. 3 (2021): 551–59,

<https://doi.org/10.13106/jafeb.2021.vol8.no3.0551>

<sup>23</sup> Maira Wati, *interview*, with Muzakki Direct in-depth interview, October 9, 2021



*for the sake of Allah, therefore it is only appropriate that other residents show their gratitude.*"<sup>24</sup>

The residents of Sikilang Village believe that in Islamic teachings, there is no prohibition on prioritizing the body-bathers in the collection of zakat al-fitr as long as there is a consensus in the community. In this community, there has been an age-long consensus to prioritize zakat al-fitr over body-bathers. This is an acceptable practice because a custom ('Urf) becomes a law as long as it does not conflict with the Qur'an and hadith. An elderly villager named Rumi stated:

*"Most residents strictly follow the teachings of their ancestors in distributing zakat al-fitr, and this practice has become a yearly tradition in Sikilang Village, and it has never been objected to by anyone."*<sup>25</sup>

Based on the interviews, it can be learned that in distributing zakat al-fitr, residents of the Sikilang Village adhere to the age-long custom of prioritizing the body-bathers, arguing that it is a form of gratitude for their contribution to every misfortune in the village. This resulted in an uneven distribution of zakat in the village, thereby ensuring that the *ashnaf* (rightful recipients) did not receive their share.

### Distributing Zakat al-Fitr to Body-Bathers from Islamic Law Perspective

As agreed by some scholars, there are four sources of Islamic laws which serve as arguments for its establishment, namely the Qur'an, Hadith, Ijma', and Qiyas.<sup>26</sup> The first two, the Qur'an and the Sunnah are the main arguments for Allah's law (*adillah al-ahkam al-*

*manshushah*), because their existence is mentioned in the *Nas*. The others such as *ijma'*, *qiyas*, *istihsan*, *al-maslahah al-mursalah*, *istishab*, *'urf*, *shar'u man qablana*, and *qaul sahabi* are considered as supporting arguments (*adillah al-ahkam ghair al-manshushah*). These constitute tools used to understand the Qur'an and the Sunnah of the Prophet. Therefore, the decision-making is referred to as the *istinbat* method by some scholars.<sup>27</sup>

Customs or traditions ('Urf) are one of the methods of *istinbat* that scholars dispute. They are considered a proposition of law by the Hanafi and Maliki schools but not by the others (Shafi'i, Hanbali, Dhaheri, and Shi'i). Although Shafi'i does not view 'Urf as a legal argument, in reality, Imam Shafi'i took into account the socio-cultural factor ('Urf) of the society before establishing a law. This can be seen by the existence of *qaul qadim* and *qaul Jadid* during their stay in Egypt.<sup>28</sup>

*Urf* refers to a certain norm recognized by the people and practiced habitually among them in words and deeds. Some scholars of *ushul fiqh* referred to it as custom. Even though by definition there is no difference between 'urf and customs. The notion of 'urf is commonly understood as being more encompassing than customs. This is because customs are well recognized and has also been practiced by the people in the same manner as written law, and those who violate it are also sanctioned.

The validity of a law established based on 'urf is equivalent to that focused on *nash*. The scholars who share this view in terms of understanding and interpreting a law set several requirements for 'urf to be accepted, namely:<sup>29</sup>

<sup>24</sup> Suardi, *interview*, with Tokoh adat Direct in-depth interview, October 14, 2021

<sup>25</sup> Rumi, *interview* with Muzakki Direct in-depth interview, October 10, 2021

<sup>26</sup> Wahbah Al-Zuhaili, *Fiqhul Islam wa Adillathuhu*, Vol 1 (Libanon: Daar al-Kutub al-Ilmiyyah, 2011), p. 107

<sup>27</sup> Satria Efendi M. Zain, *Ushul Fiqh* (Yogyakarta: Prenada Media Group, 2019).p.82

<sup>28</sup> Wahbah al-Zuhaili, *Usul Fiqh*, Vol II (Libanon: Daar Al-Fikr, 2000), p. 36

<sup>29</sup> Ahwan Fanani, "Akar, posisi, dan aplikasi adat dalam hukum," *IJTIHAD Jurnal Wacana Hukum Islam dan Kemanusiaan* 14, no. 2 (2015): 231, <https://doi.org/10.18326/ijtihead.v14i2.231-250>.

- a. 'Urf contains certain benefits and can be perceived by common sense. This condition is absolutely a prerequisite for 'urf to be accepted by the public. In Islam, the harmful one that cannot be perceived by common sense is unjustifiable.
- b. 'Urf is generally applicable to an environment where it is practiced by the majority of the people. This requirement can be clarified by closely analyzing certain examples in the community.
- c. 'Urf used as the basis for the stipulation of law is enforced immediately rather than later. This condition mandates its existence before the stipulation of law otherwise, it cannot be accepted or taken into account.
- d. 'Urf does not conflict with the existing *syara'* or absolute principles. This condition led to the creation of authentic 'urf because it is *fasid* and cannot be accepted as a proposition for establishing a law.

A society is closely tied to its customs, which is difficult to reform. This is the reason why the Prophet considered the enactment of 'Urf as decent and special in *mu'amalah* issues. Reciprocal acculturation between Islam and local cultures is viewed as methodologically accommodated. This accommodative nature of Islam is found in the fiqh rule stating that *al-'adah muhakkamah* (a custom can become law), or state *al-'adah shari'ah muhkamah* (a custom is a sharia that can be made law).<sup>30</sup>

Etymologically, the word *al-'Adah* means a repetition of either statements or deeds. It is derived from the term *al-'aud* or *al-mu'awadah*, which means repetitive. Terminologically, 'Adah is the tendency (in the form of an expression or an action) towards a certain object, as well as an accumulative repetition of the work in question, carried

out either by individuals or groups. As a result of the repetition, the action was judged as being normal or viable. However, the activity is ingrained and almost characterizes the perpetrator.

Although the words 'Adah and 'Urf are literally different at a glance, some linguists are of the view that they are similar. In other words, these two words are *mutaradif* (synonyms),<sup>31</sup> and assuming they are strung together in a sentence as "*this law is based on 'Adah and 'Urf.*" It does not mean that they have different meanings despite being conjugated with *and* commonly used to distinguish between two or more items. Since the two words have a similar meaning, the term 'Urf in the example functions to reinforce the word 'Adah.

From the aforementioned definition, it can be inferred that this is something that has been widely recognized and practiced therefore, there is no more doubt about engaging in such an act. The scholars who distinguished between 'Urf and 'Adah gave the following reasons:

1. 'Adah encompasses actions performed not only by individuals but also by many people. 'Urf, on the other hand, refers to an action by the majority, it is not a habit when it occurs only among certain individuals.
2. 'Adah can appear naturally, as is the case in society, unlike 'Urf, rather it takes place through contemplation and experiences.
3. 'Adah does not include an evaluation of the good and bad aspects of its actions, while 'Urf is an assessment of such acts.

The scholars who tend to equate 'Urf with 'Adah argued that in principle, there is no difference because the two words are similar. 'Adah refers to an act that has been performed repeatedly, that is known and recognized by many, while 'Urf is already well-

<sup>30</sup> Fatahuddin Aziz Siregar, "Ciri Hukum Adat Dan Karakteristiknya," *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan dan Keperdataan* 4, no. 2 (2018): 1-14, <http://194.31.53.129/index.php/almaqasid/articled/view/1473>.

<sup>31</sup> 'Ali Ahmad Al-Nadwi, *al-Qawa'id al-Fiqhiyyah: Maflumuha, Nasy'atuha, Tatawuruha, Dirasa Muallafatiha, Adillatuha, Muhimmatuha, Tatbiqatuha*, ed. oleh Dar Al-Qolam (Damaskus, 2001), p. 311



known and carried out consistently. Therefore, although the two words are distinguishable, the distinction is insignificant.

The arguments among the earlier-mentioned scholars are driven by the differences in the way they viewed 'Urf and 'Adah. However, those who were able to distinguish between these terms viewed these two cases broadly. They took into account various aspects, ranging from culture, tradition, and society. There was no focus on *fiqh* issues, unlike those who tend to equate 'Urf with 'Adah, who viewed these two terms from a jurisprudence perspective. Most of the *fuqaha'* are unable to distinguish between these two, as is evident in the emergence of *qa'idah fiqhiyah*, *Al-'Adah Muhakkamah*, in which the term 'Adah is used, but its actual meaning is not only 'Adah but also 'Urf.<sup>32</sup>

The provision of *Al-'Adah Muhakkamah* regulates that not all 'Adah customs can be used as the basis for establishing or implementing a legal provision, rather certain requirements need to be fulfilled, namely:

- a) 'Adah does not conflict with *al-Nash al-Shar'i* in the Qur'an, al-Hadith, or certain legislative principles, thereby abolishing the entire aspects of the law.
- b) It is constant (*muttarid*) in nature and applies to the majority, for instance, the payment of dowry in cash is partly considered constant, assuming this practice occurs throughout the country.
- c) 'Adah was stipulated before its use as a legal foundation. This condition can be stated in terms commonly used in business transactions such as waqf, trades, wills, and marriages.
- d) There are no statements or actions that contradict or deviate from 'Adah.<sup>33</sup>

Based on the aforementioned explanation, zakat al-fitr is mainly distributed to its right-

ful recipients and the poor<sup>34</sup>. Therefore, the custom of prioritizing body-bathers as recipients in Sikilang Village is against Islamic law since the rule stipulates that the application of customs as the basis for establishing or applying a legal provision should not infringe the sharia text (*al-Nash al-Shar'i*). Supposing the provisions of man-made laws conflict with *al-Nash al-Shar'i* as the main source, its use to achieve public benefit should be prioritized.

Muhammad Amin Suma stated that the poor and the needy are the main targets of zakat and they must be prioritized because relieving them of their needs is the main objective of this almsgiving. The Prophet SAW did not to explain it in the hadiths narrated by "Muadz ibn Jabal," and others rather focused on only the objective, for example, zakat is taken from the rich and given to the poor among them. This is because its target is based on *al-kifayah* (subsistence criteria). In principle, this program is urgent, limited, and selective. Meanwhile, in the case of body-bathers in Sikilang Village, they are financially stable and need not be recipients of zakat.<sup>35</sup>

The custom of prioritizing body-bathers in distributing zakat al-fitr is against Islamic law since it creates certain discrepancies because this almsgiving is given to financially unstable people. It should be paid to those urgently in need, and these people belong to the eight factions mentioned in the Qur'an and hadith to achieve the objective and the right targets. Assuming, zakat is properly managed, it certainly has remarkable potential to alleviate poverty in Indonesia. Its benefits have been evident since the time of the

<sup>32</sup> Abu Ishaq al-Shirazi, *Al-Luma' fi Usul al-Fiqh*, Vol III (Bairut: daar al-Kutub al-ilmiyyah, 2000), p. 110

<sup>33</sup> Abu Ishaq al-Shathibi, *Al-Muwafaqat Fi Ushul Al-Ahkam*, Vol II (Cairo-Mesir: Daar al-Wafa, 2004), p. 102

<sup>34</sup> Kutbuddin Aibak, "Zakat Dalam Perspektif Maqashid Al-Syariah," *Ahkam: Jurnal Hukum Islam* 3, no. 2 (2015), <https://doi.org/10.21274/ahkam.2015.3.2.199-218>.

<sup>35</sup> Muhammad Amin Suma, *Sinergi Fikih & Hukum Zakat (Dari Zaman Klasik Hingga Kontemporer)*, Cet. I (Tangerang Selatan: Kholam Publishing, 2019), p. 72

prophetic era. Although circumstances and times continue to change, the spirit of managing zakat remains the same.

Muhammad Daud Ali argued that zakat al-fitr is an obligation that must be paid by all Muslims who have excess income on the night of *Eid al-Fitr* as a form of gratitude to Allah SWT for the completion of Ramadan.<sup>36</sup> According to the scholars from Shafi'i, Hanafi, and some from Hanabilah schools, this almsgiving must be distributed the way zakat *amwal* is paid to its recipients, i.e. the *ashnaf* or eight factions. As stated in the Qur'an's Surah Al-Tawba Verse 60:

*Zakat expenditures are only for the poor and needy as well as those employed for its collection. It brings hearts together [for Islam], free the captives [or slaves] and those in debt, for the cause of Allah and [stranded] travelers. It is also an obligation [imposed] by the all Knowing and Wise Allah.*<sup>37</sup>

According to the scholars of Maliki and Hambali schools, zakat al-fitr is only paid to the poor, it is not given to amil, converts, and the corpse-bathers. It must be exclusively distributed to the poor.

## Conclusion

Several people assume that customs are on the same level as legal provisions by considering whether a case is in line with the prevailing culture and the norm, especially in rural areas. This is reflected in practice among the residents of Sikilang Village, who are of the belief that body bather need to receive zakat al-fitr as a reward for their contribution towards providing voluntary service to the community. Additionally, no one in the community objected and questioned this custom because it was considered hereditary.

From the perspective of *maqashid al-shari'ah*, the custom of distributing zakat al-fitr in Sikilang Village is against Islamic law since the rule stipulates that its application as the basis for establishing or applying a legal provision need not infringe the sharia text (*al-Nash al-Shar'i*), which is more authoritative. Supposing the provisions of man-made laws conflict with *al-Nash al-Shar'i* as the main source, its use to achieve public benefit should be prioritized.

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<sup>36</sup> M. Daud Ali, *Sistem Ekonomi Islam: Zakat dan Wakaf* (Jakarta: UI Press, 1998, p. 48

<sup>37</sup> Abu Muhammad al-Husain bin Mas'ud al-Farra' Al-Baghawi, *Mukhtashar Tafsir al-Baghawi* (Mesir: Dar al-Ma'rifah, 2005), p. 216

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