



## ***Hisbah in Public Moral and Marketplace Control: From Historical to Indonesian Contexts***

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### **Abstract**

The Hisbah is an institution in Islamic history that deals with marketplace control and public moral surveillance. Hisbah institution represents the state's effort to uphold social order based on the ideals of Islamic teachings. Although hisbah functions surveillance decreases, its function draws attention from scholars and public officials. The article aims to reveal the root and development of the hisbah along with history and its function in contemporary Indonesia. The article employs a synchronic and diachronic approach to track the development of hisbah and to portrait its relevance in a contemporary Indonesian context. The function of hisbah stems from the practice of the Prophet Muhammad and guided caliphs, while institutionally hisbah develop from market supervision authority to a broader function that encompasses morality. The function of hisbah in monitoring public morals emerge during the Abbasid. The importance of hisbah institution may decrease, but its functions are embodied in several modern institutions

**Keywords:** *Hisbah Authority, Moral Surveillance, Market Inspector, Commanding Good*

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### **Abstrak**

*Wilayah Hisbah adalah lembaga dalam sejarah Islam yang menangani pengawasan pasar dan pengawasan moral publik. Hisbah merepresentasikan upaya negara untuk menegakkan ketertiban sosial berdasarkan cita ajaran Islam. Lembaga hisbah saat ini mulai memudar, tetapi fungsi amar ma'ruf dan nahi munkar kembali menguat sejalan dengan penguatan semangat keagamaan. Kondisi itu di sisi lain melahirkan polemik mengenai batas dari pengawasan moral publik yang bisa dijangkau melalui amar ma'ruf dan nahi munkar tersebut. Artikel ini berupaya untuk perkembangan hisbah dalam sejarah Islam dan dalam konteks Indonesia saat ini. Artikel ini mempergunakan pendekatan sejarah secara diakronis maupun pendekatan sinkronis. Fungsi hisbah sudah dipraktekkan sejak zaman Nabi Muhammad, namun lembaga hisbah berkembang seiring*

dengan perkembangan kekuasaan Islam. Keberadaan hisbah pada masa sekarang merupakan bagian dari kebangkitan Islam di negara-negara berpenduduk muslim, termasuk di Indonesia. Kesadaran tersebut sebagian relevan dengan kebutuhan pengawasan terhadap praktik bisnis maupun pengawasan produk makanan. Di sisi lain praktik hisbah dalam pengawasan moral publik oleh lembaga pemerintah, lembaga non-pemerintah maupun masyarakat melahirkan isu mengenai diskriminasi, ketepatan aturan dan profesionalisme

**Kata Kunci:** Wilayah Hisbah, Pengawasan Moral, Inspektur Pasar, Amar Ma'ruf

## A. INTRODUCTION

In Islam, *hisbah* as an implementation of *Amar maruf* (commanding good) and *nahi munkar* (forbidding evil) is an inseparable part of the Muslim religious duties both individually and institutionally. Individually, every Muslim is obliged to conduct commanding good and forbidding evil, by his power, voice, or heart. Institutionally, Ibn Taymiyyah asserts the obligation of state authorities to uphold religious norms in the form of *amar* (command) and *nahi* (prohibition) because it represents the collective obligation (*fard kifayah*) of capable Muslims (Taimiyah 1998,p 9-11).

The *hisbah* authority may no longer exist in Islamic countries, but it attracts Islamic scholars' interest. Saham Musthafa Abu Zaid studies on *hisbah* in Egypt from Arabic conquest to the Era of Mameluk,(Zaid 1986) while Farid Abd al-Khaliq examines its functional root, institutional arrangement, and relevance in Democratic Governance (Al-Khaliq 2011). Contemporary Indonesian writers also pay attention on *hisbah*. Rozi reveals *hisbah* development along with Islamic history;(F. Rozi 2019,p 1-2). Halim focuses on *hisbah* authority in Islamic Governmental System (Halim 2011, p 65-81). Anwar, Fahrullah, Ridlwan, and Muzaki highlight the role of *hisbah* in the implementation of business ethics in the traditional market;(Anwar, A'rasy Fahrullah 2020, p 158-175) and Zakiyah, Prananingtyas, Disemadi, and Gubanov emphasize their interest in the actualization of *hisbah* function in economic-business law in Indonesia.”(Zakiyah, Prananingtyas 2019,p 249) The writings and researches cover a wide topic related to *hisbah* and show that *hisbah* function connects the historical root to actual practices.

The function of *hisbah* function in monitoring public morals sparked polemic in Indonesia recently. The polemic, for instance, is regarding restaurants and discotheques that open during Ramadhan in which Muslim communities demanded respect for Muslim carrying out fasting. In some cases, civilian bands raid cafes selling alcoholic drinks or carry out sweeping of discotheques that provide liquor. The polemic also reaches legal aspects in which the Draft of Criminal Code aimed to renew old one draw dispute on whether the acts of adultery should be punished or not (Z. B. P. Rozi 2019,p 286)

In Aceh, *hisbah* authority has been institutionalized as part of Aceh's special autonomy, including autonomy to formulate local regulations in line with Islamic law. *Wilayatul Hisbah* (*hisbah* authority) is to control public morals to uphold Islamic teachings and to carry out remedy such as prohibiting solitude meeting between unmarried male and female, instructing adult Muslim to perform Friday prayers, monitoring Muslim women's clothing, and giving hard sanction over a gay couple, which was criticized by Human Right activists (Kholid 2017).



In another area, however, the role of the community to carry out commanding good and forbidding evil is under debate. Indonesian society - which is communal and religiously bond - participates in the surveillance and action against the violation of public morality, such as the ambush of solitude meeting by an unmarried couple in their house. The community helped police to disperse sex parties by gays or dissolved shops that provide illegal prostitution services (Umar 2020). These actions are taken by the community voluntarily and sometimes backed by officers.

In some cases, the participation of the community in forbidding evil causes controversy and objection from other members of society. The Islamic Defenders Front (FPI) is a mass organization that performs *hisbah* functions, such as sweeping cafes selling illegal liquor, and protesting against the Islamic sect deemed deviant. Formally, FPI includes the *hisbah* function in its Articles of Association and Household Budget (AD / ART). It states that FPI's goal is to carry out *hisba* or *amar ma'ruf* and *nahi munkar*. The goal raises the concern of other communities. After a long debate and the failure of FPI to renew its Registered Certificate (SKT) in 2019, in the end, the Indonesian government banned the organization and its activities in 2021 (Nugraheny 2019).

The function of *hisbah* as an embodiment of commanding good and forbidding evil may attract individuals or non-governmental agents to participate. Participation is not without risks of creating horizontal conflicts and arbitrary actions. Therefore, the practices of *hisbah* need to be developed based on the analysis of general needs and the efforts to uphold a dignified social order. Enforcing *hisbah* as a symbol of certain religious values (Islam) may ignite rejections for fear of discrimination and violations of other citizen's rights. The practice of *hisbah* needs to be re-read in the context of contemporary society with the development of modern institutional systems and the principle of public participation to strengthen noble values in society without abandoning the rights of other communities.

This paper is aimed to reveal the root and development of *hisbah* in Islamic history and to portrait its relevance in the Indonesian context. The paper employs historical examination or diachronic approach to provide a basis for understanding the long history of *hisbah* and synchronic approach to provide an adequate depiction of *hisbah* function in Indonesia.

## B. DISCUSSIONS

### Origin and Development of the *Hisbah*

There are different opinions among scholars on the origin of the *hisbah* institution in Islam. The term of *hisbah* comes from Arabic words which means reward, good arrangement, and supervision. Another derivation of the word *hisbah* is *al-ihṭisab*, which means hastening to seek wages (Al-Fiqhiyyah 1990,p 223). Some scholars state that the word *hisbah* means the act of counting or evaluating something. Others consider *hisbah* as a procedure for burying a corpse (Hamameh 1964, p158). The word *hisbah*, then, is linguistically related to the process of monitoring and counting. In use, *hisbah* is a technical term for the efforts of commanding good and forbidding evil, both of which are familiar concepts in Islam, as instructed in the Koran surah Ali Imran 104.

The verse instructs that Muslims should be a group of people who call for good and prevent wrong. Abu Ya'la defines *hisbah* as commanding good when it is abandoned and forbidding evil deeds if they are done (Al-Farra 2000,p 285). A similar understanding is also put forward by Abu al-Hasan al-Mawardi that distinguishes between the function of

*hisbah* with public acts of worship. He added that *hisbah* term also refers to *ishlah* (peacemaking) based on an-Nisa verse 114 (Al-Mawardi. 2006; Al-Mawardi 2002, p 63). Although *hisbah* term is not mentioned in The Koran, *hisbah* as the function of commanding good and forbidding evil is implied in it.

*Hisbah* term in popular usage refers to market supervision and moral control by state authority. People who carry out the function of *hisbah* are called *muhtasib*, *wali al-hisbah*, or *shahib al-hisbah*. Muslim writers emphasize the authenticity of *hisbah* as part of Islamic practices since the time of Prophet Muhammad and his companions. Ibn Taimiyyah highlights the Islamic nature of *hisbah* based on Islamic values to uphold religious teachings. (Taimiyyah, 1998:15) Hajji Khalifah (d. 1658 AD) supports such opinion that the function of *hisbah* in commerce activities had occurred during the early Islamic era. He states Umar bin Khattab (d. 644) appoints an official whose duty is to observe business ethics in the city of Medina. (Hamameh, 1964 p, 159). Umar bin Khattab once beat a camel owner who burdened it with excessive loads (Hasan 1964, p 1028). Umar also poured milk that had been mixed with plain water on the person who was responsible for the crime. He also ordered to burn shops selling liquor and punish those who violated the transaction code of conduct in the marketplace.

Hasan al-Basya reinforces the idea that *hisbah* authority had existed since the beginning of Islam, although *muhtasib*, as a technical term for *hisbah* authority, had not appeared until the Abbasid era. The Islamic practice of *hisbah* then spread and influenced Christian kingdoms in Jerusalem (Al-Basya. 1999). He reinforced the adaptation of *hisbah* institution by the West from the Islamic world and rejected the attribution of *hisbah* institution to the *Book of Perfection* of Byzantine which regulates trade matters. Christian kingdom in Jerusalem adopted *hisbah* from the Muslims and called it *mathessep* (from the word *muhtasib*). This argument is supported by the fact that the records of *agronomos* (market surveillance) were not found in Greek inscriptions for 300 years before the conquest (Bernard Lewis 1971,p 478 ).

Western scholars, such as Gustav Von Grunebaum, Noel J. Coulson, Joseph Schacht as well as Arab historian Hasan al-Hallaq, argue that *hisbah* institution is an adaptation of the *agronomos* (market inspector) institution in Byzantine. According to Von Grunebaum, it was from this *agronomos* that *hisbah* entered the Islamic world in the time of Umayya Daula in Syria in 700 AD. The term *agronomos* was then changed into *muhtasib*. Grunebaum's opinion is based on the comparison of *hisbah* with the *Book of Perfection* from Byzantium which contains the regulation of trade matters, including in Constantinople (Grunebaum 2005,p100-101).

In Arabic, the initial term used is *shahib* or *amil suq*, not *hisbah* or *muhtasib*. The change of the term from *amil suq* into *muhtasib* occurred during the Abbasid era. The works of *al-Ahkam al-Sulthaniyyah* – by al-Mawardi or Abu Ya'la - which appeared during the Abbasid era had used the term *muhtasib*. During the Umayyad period, *amil al-Suq* operation was limited to the monitoring of weights and measures used in marketplaces and monitoring the violation of the code of conduct in the marketplace, (Coulson 1997) while in the Abbasid era, *muhtasib* operate beyond the marketplace and touch moral control.

The *zindiq* movement occurring during the time of al-Hadi broadened the function of *hisbah* authority beyond market control. Al-Mahdi, for instance, appointed Abdul Jabbar as *muhtasib* and ordered him to fight against the *zindiq* (religious defiant). Later, al-Hadi, the successor of al-Mahdi, places Nafi bin Abdul Rahman bin Abu Naim al-Muqri, a *Qurra'* (quranic expert) on the position of *muhtasib*. (Ibnu., 1393 H,p 29-30 )



The *amil al-suq* term changed into *muhtasib* in the time of al-Mahdi, although some experts go back to the al-Ma'mun era for the institutional development of *hisbah* into an office of commanding good and forbidding evil.

According to the second opinion, *hisbah* institution became part of the administrative structure of the Abbasid government during the al-Makmun (d. 833) and al-Mu'tashim (d. 842) era. Both opened *hisbah* offices in Baghdad and army camps. The well-known *muhtasib* during the Abbasid era were Shafi'ite scholars, Abu Said al-Hasan al-Istakhri (d. 939), who was later became appointed as a judge in Sijistan by al-Muqtadir, and Ibrahim bin Muhammad bin Batha (Hamameh, 1964, p 159 -161).

In sum, there are two major narratives regarding the origin of the *hisbah* institution. The Muslim writers, such as al-Mawardi and Ibnu Taimiyah, emphasize the originality of *hisbah* as a unique institution in Islamic history. *Hisbah* is rooted in Quranic verses, the practices of the Prophet Muhammad, and that guided caliphs It developed significantly in the Umayya and Abbasid period (Islahi 2014). The second narrative comes from Western writers who emphasize the link of *hisbah* to the market control of the Byzantine Empire. According to them, *hisbah* institution was received by the Muslims during the Umayyad era in Syria, where had been controlled by Byzantium before Moslem conquered it.

In its development, the *hisbah* serves as the extension of the judicial duties. Judicial power was distributed among three authorities: judge, *muhtasib*, and *qadli al-mazhalim* (judge for high-profile cases). *Hisbah* authority handles cases that do not need a legal verdict by the judge, while *qadli al-mazhalim* deals with cases involving high-ranking officials that the judge could not afford to solve. The peculiarity of the *hisbah* institution lies in its quick resolution of disputes or violations of common religious norms. If *qadli al-Mazhalim* solves cases that are beyond the authority of judges, *muhtasib* resolves cases that are not worthy of being handled by judges (Hasan, 1964, p 151 -152).

Wali al-Mazhalim handles cases that are not able to be handled by judges and *muhtasib* because of the requirement of higher authority decisions. The judge could manage the judiciary and *hisbah* process, but *muhtashib* may not handle cases in court. On the other hand, wali *madzhalim* can enter the area of both *muhtasib* and judge and make decisions (Al-Farra, 2000, p 258-287). The judicial authority granted to the *muhtasib* is similar to that of the judge in terms of receiving and hearing charges from the complainant regarding personal rights, but it has limited in the matters of the measure or weights, fraud, and merchandise forgery, and negligence of debt payments. *Muhtasib* may revoke individual rights because of the violation of fair transactions.

In some cases, *hisbah* court and judiciary court were handled by one person to overcome the limitations of the *muhtasib* in handling cases that require proof examination. *Muhtasib* had no authority to examine complicated proof, rather he works on simple cases. *Muhtasib*, however, has specific authority that judges do not have, such as commanding good and forbidding evil that does not require complaints. *Muhtasib* can directly inspect and arrest the perpetrators of fraud or other moral violations (Al-Mawardi., 2006, p 352-353).

*Muhtasib* is not a lawmaker, rather he is the only law enforcer. If the judge may find the law for sake of making a legal verdict so that judge should qualify as *mujtahid*, *muhtasib* does not issue any legal decision and he does not need to comply *mujtahid* qualifications. *Muhtashib* may be filled by a *mujtahid*, but as a law enforcer, he is not required to do *ijtihad*.

## The Development of *Hisbah*'s Functions

### 1. Market Surveillance Function

The study of *hisbah* institution encompasses structural and functional review. The function of *Hisbah* has existed since the beginning of the Islamic era and has developed subsequently. The functions of *hisbah* in marketplace control stem from the practice of the Prophet Muhammad and guided caliphs. They directly came to markets or check or placed supervisory authority. The Prophet Muhammad ordered Sa'id bin al-Ash bin Umayyah to oversee the Mecca market, as part of his duty as governor. Prophet Muhammad himself often directly inspects markets to make sure any transaction complying with fairness (Ibnu Mursyid 1988,p 29 ).

*Hisbah* initially was a manifestation of religious functions rather than institutional and administrative ones (Hallaq 1999,p 64). *Hisbah* is exercised by checking the quality of goods and by enforcing businessmen to follow the code of conduct of business. The caliphs who succeeded the Prophet Muhammad also appointed inspectors to oversee the marketplaces as well. Umar bin Khattab appointed Abdullah bin 'Utbah as *hisbah* officer and Ali Bin Abi Talib appointed one or two *hisbah* authorities for the Medina and Mecca markets. The caliphs also paid a visit to markets for inspection.

Along with the development of big cities (*amsar*) of Islam, the function of *hisbah* grew and *muhtasib* had an increasingly important position. Markets in big cities, such as Baghdad, Basrah, Damascus, and Fustat played an important role as the centers of domestic and international trade. These markets were arranged according to the groups of products either agricultural or industrial ones. The markets also acted as meeting points for various people from different races and nations. The market has even become a place of political activity for conspirators who disagree with the government (Hasan 1953, p 74).

*Muhtasib* exercised his work in three main domains. Firstly, it examined measures and weights in the marketplace. Secondly, it intervened to eradicate fraud in the sale and pricing of merchandise, thirdly, it pushes debtors to pay back their debt when they were able to do it. *Muhtasib* actively finds out problems in the market and solved them directly. (Hallaq 2009). As the market used to be located around the Jami' mosque, *muhtasib* did his job in the mosques, such as in the mosque of Amru and the mosque of al-Azhar in Egypt. *Muhtasib* worked every day accompanied by his assistants, bringing scales and measurements. *Muhtasib* distributed jobs among his subordinates, some of them to inspect food, some to inspect house fumes, and some to inspect gold and jewelry. If the *hisbah* assistants found damaged or fraudulent scales or measurements, they would report to *muhtasib*. At certain times, *muhtasib* invited the traders to *dar al-iyar* to check the accuracy their weights and measurements and prepared standardized weight and measures. To anticipate fraud by traders, *muhtasib* conducted unannounced inspections. In turn, *muhtasib* activities were also supervised by the amir (governor) (H. I. H. M. A. R. M. and A. I. Hasan, 1953,p 73)

*Muhtasib* has the authority to carry out direct execution of the violations he discloses. He might apply *ta'zir* penalty according to his discretions without any consultation to police or judge. The *ta'zir* was carried out by whipping, beating, driving the perpetrator abroad, or broadcasting the offender's ugliness publicly. Only in certain cases did he ask favor from the police (*rijal al-syurtah*) or the governor in executing sentences. *Muhtasib* might also ask the judge for help in cases that need legal rulings (Al-Basya., 1999: 1033). *Muhtasib* had no right to set prices for goods or fix prices for sellers.



He does the right to reprimand and punish traders whose merchandise prices are higher than the general price.

*Muhtasib*'s duty cover aesthetic and health aspects such as prohibiting wood or straw traders from entering marketplaces in order not to contaminate people's clothes. *Muhtasib* also carried out health surveillance by prohibiting people with leprosy from entering the market or drinking in public cafes used by healthy people. He prohibited people who did not know discipline from practicing medicine or checked meat shops so that they paid attention to the health requirements and prevent the use of endangered materials, such as tanning, lime, and pouring iron and glass (H. Hallaq, 1999, p 72).

## 2. Moral Surveillance

The functions of *hisbah* expanded to moral control in the time of Abbasid era. *Muhtasib* exercised public moral supervision, besides handling marketplace inspections. The development of its functions gave birth to a more established *hisbah* institution so that the *hisbah* office became a separate office supervised by Islamic law scholars. *Muhtasib*, for instance, urged people to attend Friday prayers and to conform to social and religious values through good conduct. He, however, still did not issue any verdicts as the judge did (W. B. Hallaq, 2009, p 75).

There were three fields *muhtasib* operates in moral public surveillance. Firstly, it operated on cases regarding the rights of Allah, such as calling on everyone to perform Friday prayers or performing obligatory prayers together. Secondly, it operates on the rights of humans, either concerning the violation of public rights - such as neglecting public drinking water, collapsing public buildings, destroying mosques, madrasas, - or protecting personal rights, such as helping to settle debts and defending the rights of workers. Thirdly, it deals with cases considered as to the mixture of God's and human rights, such as advising women to comply with the *'iddah* law and advising the people to comply with the general code of conduct. (Al-Farra, 2000, p 285-287). Apart from commanding goodness, *hisbah* institution has a moral function in forbidding evil. The forbidding evil function ranges from God's rights to human rights. God's rights comprise the violations of worship (such as prayer, fasting, and hajj) and the violations of religious prohibitions (such as promiscuity between men and women, gambling, drinking wine, and counterfeiting goods). The rights of humans comprise actions that harm other parties such as disturbance to neighbors and clean water distribution. A mixture of God's and human rights comprise entering someone else's house without permission, harassing pedestrians or traders, and opening gambling or prostitution houses (Al-Farra, 2000: p, 287-288).

*Muhtasib* does not only operate in mosques, markets, and shops but also in performance venues, government offices, schools, warehouses, and general public gatherings. *Muhtasib* does not immediately take ultimate action (punishment), but he follows steps the of *hisbah*: namely warning or notification (for those who do not know they have committed a violation), advice (for offenders who know), verbal warning, and threats (for those who remain stubborn), actions to eliminate evil, punishments of lashes or beatings (if previous methods have not worked) and bring the problem to the ruler or the imam for matters that cannot be resolved by *muhtasib* (Ahmad 1975). *Muhtasib* uses a persuasive approach or direct sanctions.

In the past, the legal basis for the practice of *hisbah* was the fatwas of the jurists. The problem is that the jurists do not always agree on the law of one issue. Cook described gives a picture of the variety of opinions among Islamic jurists, from the Sunni to Shi'i. (Cook 2004). *Muhtasib* faces difficulties when there are different opinions among

legal experts on one issue. *Muhtasib* is sometimes held by a legal expert or has a legal advisor from which he asks for a fatwa because *muhtasib* acts as a law enforcer of both in business ethics or public morals.

The most important qualification of *muhtasib* is certainly moral and competency criteria. *Muhtasib* can be appointed from traders whose moral integrity is recognized. Al-Ghazali in his work provides the five qualifications of *muhtasib*: *mukallaf* (having legal capacity), Muslim, having a fair nature, having official permission from the government, and having the ability. (Al-Ghaali 2005, p788-795) Meanwhile, Hilmy put forward seven qualifications of *muhtasib*: integrity, morality, acceptability in society, polite approach in law enforcement, trust, tenacity and patience, and diligence and consistency in enforcing *syar'i* rules (Hilmy 1978, p 363).

*Muhtasib* has the right to perform *ijtihad* in the application of the rule in the complex reality of society. In the matters of Islamic law, he refers to the opinion of the *mujtahid* or other legal authority. *Muhtasib* is not required to decide based on a particular school of law, rather he should take a moderate and position in carrying out their duties, related to the plurality of laws in society, by taking into account the legal norms that are widely applicable in society.

### Contemporary Function of *Hisbah*

*Hisbah* institution in Islam is the result of a long evolution. The debate on whether *hisbah* institution originates from Islamic practices or the influence of similar institutions from Byzantine does not reduce the distinctive value of *hisbah* in the Islamic political system. *Hisbah* institution is the embodiment of the duty of Islamic political leaders to regulate world affairs and to protect religion. The development of *hisbah*, therefore, cannot be separated from the religious mission carried out by Islamic political power in creating a social order based on religious norms.

The function of the *Hisbah* institution in the early days of Islamic development focused on the control of business activities in marketplaces and then extended to public morals until nowadays. The two fields are increasingly developing in line with modernity which has an impact on the development of social organization and work differentiation. Gidden, as quoted by Ritzer (Ritzer 2010, p 555) defines modernity through four basic institutions, namely capitalism, industrialism, public oversight capacity, and control of the means of violence by the state. Supervision of morality, both in the business world and in social behavior in modern society, is exercised by the state which controls the means of violence (coercion) and can control society.

Commanding good and forbidding evil in Islamic teachings do not explicitly put weight on governmental agents but *hisbah* requires Government as the primary agent. According to Islahi, literature refers *hisbah* as the control function of Government in the moral, religious and economic domain. *Hisbah* institution or office represents the role of government in moral and market controls (Islahi, 2014, p 45). The Government's role distinguishes *hisbah* from general commanding good and forbidding evil practice because *muhtasib* should be appointed or granted permission by *Imam* (political ruler). The idea, however, does not represent all of the Islamic scholar's opinions because some Islamic scholars allow an individual to exercise *hisbah*, apart from the cases of criminal law, rebellion, and military affairs. (Al-Fiqhiyyah, 1990, p 242-243). Al-Ghazali takes moderate opinion by distinguishing the levels of commanding good into information, advice, warning, and repressive action. The first and second levels may be conducted by Government and civilian, but the fourth may not be committed by any civilian in order





not to cause liable and dispute. The third level may be exercised by civilians under the condition that action will not lead to libel and dispute (Al-Ghaali, 2005, p 821).

Theoretically, the Islamic community may conduct commanding good or forbidding evil orally, through writing, or by real actions. Al-Mawardi, however, distinguishes between *muhtasib* (appointed by the government) and *mutathawwi* (voluntary actors) (Al-Mawardi., 2006, p, 349-350). Consequently, *hisbah* activities are the duty of the Government, while civil agents may commit them as personal or communal participation in upholding Islamic teachings. Both *hisbah* activities and voluntary actions refer to the same religious arguments that may confuse because of no clear-cut boundary between the authority of the Government and the participatory rights of civil society.

In the modern era, Governmental institution grows more complicated. *Hisbah* institution may no longer exist, but its functions are taken over by various institutions. In Egypt, the role of *hisbah* in monitoring the food market Egypt began to fade away in the 19<sup>th</sup> century and was replaced by the Pharmaceutical and Chemical Laboratory and the Cairo Health Supervision Department in 1842. The police, together with the Health Supervision Department, acts as the authoritative body that exercised *hisbah* of food and carried out inspections by conducting laboratory tests of drugs and food on the market. Western-style health management had influenced the diminishing role of *hisbah* institution in Egypt, as well as its influence in monitoring public morals (Fahmi 2018, p 217-225).

However, the efforts to Islamize political life in Muslim countries have sometimes brought back *hisbah* alive. In Nigeria, for example, since the collapse of the Sokoto Caliphate (1906) the *hisbah* has no longer been heard from public spectacles. In line with the Nigerian Government's efforts to enforce Islamic law in 1999, the *hisbah* commission was re-established to support the implementation of Islamic law. The *hisbah* commission retains the classic *hisbah* function of market supervision, but also exercises criminal and social control, such as worship, dress etiquette, and social or business relations (Dogarawa 2013, p52,).

On an international scale, the practice of monitoring public morals by armed groups has produced a blurry portrait of the practice of *hisbah*. ISIS gets a bad reputation for its use of violence to control society. The control of the Mosul Iraq region by ISIS (Islamic State in Iraq and Syria) was followed by the efforts of ISIS to establish *hisbah* institution (*Diwan al-Hisbah*). The *hisbah* institution was placed under a department whose job is to prevent people from shirk and to eliminate pagan sites. *Diwan Hisbah* played a role in prohibiting the consumption of alcohol and cigarettes, prohibiting women from leaving the house, and prohibiting shops from selling women's clothing that is not in line with Sharia norms, and ordering citizens to wear the niqab (veil). *Diwan Hisbah* becomes the official bureau with the task of controlling public morality, while serious cases like adultery, homosexuality, murder, theft, and refusal to pay zakat are handled by judges in court (Aqeedi. 2016, p 5-7).

The practice of *hisbah* shows the increasing awareness of the implementation of Islamic practices in the public sphere. On other hand, the practice raises concerns about the use of violence in enforcing sharia both by the state and by non-state actors. This concern comes from non-Muslims who fear that the strengthening of Islamic populism in the public sphere will erode their rights and freedoms. For most Muslims, upholding Islamic values by force does not comfort them.

### ***Hisbah* in Indonesia**

Islam in Indonesia spread through cultural and social means until it transformed into a political movement and built political institutions. The transformation did not deprive the role of civil society so that Islam roots in Indonesian society although most Islamic kingdoms in Indonesia no longer has power. Through civil society, Islam underpins social values and strengthens social control over community members. Moral surveillance is frequently conducted by the community by raiding promiscuity between man and woman (Agustina 2019). or reporting gay parties or same-sex gatherings to police who subsequently disperse the gathering and catch the gays (Flora 2020). The participation of the Indonesian community in moral surveillance represents forbidding evil done by the community.

*Hisbah* in Indonesia gets the opportunity to gain formal embodiment in Aceh, a region in Indonesia that was granted special autonomy under the Helsinki peace agreement in 2001. Aceh could apply Islamic law formulated by local parliament and local government. *Hisbah* authority (*wilayah al-hisbah*) emerged as an important symbol of Islamic commitment based on Act number 44, the year 1999, concerning the implementation of Privileges for the Province. The privilege includes privileges in the administration of religious life, customary life, education, and the role of ulama (clerics). Act Number 18 the Year 2001 regarding Special Autonomy further confirms the right of the Aceh Government to implement Islamic law.

The *hisbah* itself was established in 2004 under the umbrella of the Governor's Decree Number 1/ 2004 on the Establishment and Work Procedure of the *Hisbah* Area. *Hisbah* reception into the Aceh Governmental system was then strengthened by Act Number 11/ 2006 concerning the Aceh Government, which includes a chapter on the implementation of Islamic law.

The *hisbah* authority in Aceh has the same structure as the Civil Police. It bears responsibility is to maintain public order, enforce regulations, and conduct supervision or guidance for society. *Hisbah* authority works on more specific areas, namely enforcing Islamic norms in society and prevents the violation of regulations (Bahri, 2017, p 37-39). The *hisbah* authority is closely linked to a long history of Acehnese aspiration to implement Islamic law. The history of the Islamic sultanate in Aceh provides a historical precedent for how the government regulates society based on religious values. The *hisbah* is an embodiment of Islamic norms in a societal context and represents Aceh's strive to enforce Islamic law formally.

Indonesian constitution provides legal legitimation for *hisbah* for it states that Indonesia is based on the principle of The Oneness of God. Indonesian constitution also protects and guarantees religious freedom for citizens, despite long debate on how to formulate the interaction between religion and state. It grows awareness among Islamic society to support the implementation of Islamic values through state regulations with the understanding that Pancasila, Indonesian basic principles, does not affirm specific religion. Pancasila is a compromise between Islamic and secular nationalists reflected in the debate between Muhammad Natsir and Soekarno in the 1930s. Natsir emphasized that according to democratic principles, Islam, as embrace by the Indonesian majority, should be taken as the foundation of the state. On the other hand, Soekarno highlighted the progress in several Muslim countries, particularly Turkey, as they adopted secularism to eliminate Islamic practices which are incompatible with the idea of progress (Pajriyah, 2017, p 174-180).



The involvement of the state in the implementation of certain religious norms easily sparks polemics in Indonesian pluralistic society. The spirit to uphold religious norms through formal regulation grew rapidly during the Reformation period. The regulations regarding public morality called the Regional Regulations of Sharia (Perda Syariah) raise the concern that Indonesian gets more Islamized. Dani Muhtada classified Perda Sharia into seven topics: morality (the prohibition of prostitution, gambling, and alcohol), zakat and faith (prohibition on Ahmadiyah and deviant sects), Islamic education (*madrasah diniyah* and *reading and writing Alquran*), Muslim's clothing code, and others (such as about the Great Mosque, pilgrimage services, and Ramadhan affairs). In 2013, these kinds of regulations spread across 173 districts and cities. The regional regulations, according to Muhtada, contain three problems, namely discrimination against non-Muslims and women, the low quality of regional regulations that copy local regulations elsewhere, and the unclear application of them (Muhtada 2014, p 2-3).

The latest debate on the school instruction that wearing hijab is obligatory for all students of State Senior Highschool in Padang. The instruction refers to the Perda issued by Padang Major in 2005. The Instruction sparks heat debate in Indonesian society and drives The Government to revoke the majors' regulation. The Minister of Interior Affairs, The Minister of Religious Affair, and The Minister of Education and Culture ministries decided on 03 February 2021 to forbid state schools to order their students to wear hijab through joint decree. The joint decree put hijab practice as a free choice for students so that state schools should not push the practice. The decree attracts both support and rejection from Indonesian society in which the latter accuses the decree as part of the de-Islamization agenda from the Government (BBC News 2021).

Despite the polemic, *hisbah* functions are accommodated in Indonesia through the reception of Islamic norms into Indonesian regulations. Mujahidin (2004) noted several Acts explicitly regulate the aspects of Islamic law, such as The Act Number 1/ 1991 on Marriage, The Act Number 7/ 1989 on Islamic Court, The Act Number 17/ 1999 on The Management of Hajj, and The Act Number 38/ 1999 on Zakah Distribution and Management. This shows that the Indonesian Government and Parliament pay attention to the institutionalization of Islamic law in the Indonesian legal system (Mujahidin 2004, p 184).

Other researchers go further and show how *hisbah* function has been being implemented in Indonesia. The *hisbah* function *hisbah*, for instance, is implemented by The Business Competition Supervisory Commission (KPPU) whose purpose is to realize a healthy market competition and to prevent deviant practices by market players. The head and officials of KPPU are appointed by President (*Imam*) with the approval of the Parliament which is similar to a condition for *muhtasib* to get *imam*'s permission. The authority of KPPU, however, is more limited than that of *hisbah* in Islamic history (Zakiyah, Prananingtyas, 2019, p 260).

Apart from regulation problems, *hisbah* practices are frequently exercised by non-state actors. The Islamic Defenders Front (FPI), for instance, one of the NGOs that had set its goal was to carry out *hisbah*. The establishment of FPI was driven by a religious mission to foster Islamic norms in societal life under the pretext of commanding good and forbidding evil. Habib Muhammad Rizieq Shihab, an Arab descendant, initiated and formed paramilitary wings to launch *hisbah* activities against practices contradictory to Islamic law (Sukayat 2018, p 5). The members of FPI are involved in voluntary efforts to combat immoral practices in society, such as prohibiting and raiding liquor sales, prostitution service, and deviant sects. The violent approaches by FPI were often

criticized as a takeover of state authority in upholding public order and morals (Bamualim 2011, p 267).

In December 2020, the Indonesian Government banned FPI's activities based on Joint Decree by the Minister of Interior Affairs, The Minister of Law and Human Rights, The Minister of Communication and Information, Attorney General, State Intelligence Board, and National Board of Anti-Terrorism. The decree was applauded by the supporters of the Government, but criticized by the Opposition (Tempo 2020). Several FPI's elites then reformed FPI with a slightly different name and logo and conducted social activities, such as helping victims of natural disasters.

The participation of Indonesian civilians in *hisbah* practice will always be a critical problem. Civil society is part of the Indonesian characteristic in which Government also allows the involvement of non-governmental organizations or communities to support social orders. The problem lies in the extent of community participation in order not to overlap with the state's authority. Forbidding evil is a crucial part of *hisbah* activities that Michael Cook writes on *Forbidding Wrong in Islam* (Cook 2004), because it opens the use of force to restore social norms. The participation of the community of combating social problem may cause horizontal conflicts so that there will be a dilemma in which Government foster cooperation with social agents to overcome social problems, but arbitrary actions by non-governmental agents raise concern.

### C. CONCLUSION

The function of *hisbah* in Islam developed since the beginning of the Islamic era, through the practice of the Prophet Muhammad and guided caliphs after him to inspect the marketplace or appointed an official for the work. The function of *hisbah* got more important in the Abbasid period when *hisbah* official (*muhtasib*) was granted authority to control the moral public. The wider functions of *hisbah* lead to the more established institution or organization of it.

Regardless of the debate on whether *hisbah* institution originates from the internal Islamic practices or it was received from the market inspectors (*agronomos*) model that had developed in Rome, the *hisbah* has played important role in Islamic history. *Hisbah* underwent dynamics and changes in line with changing challenge face by Islamic society in regulating public morality and business. In modern times, the institutions of *hisbah* have declined due to the development of modern institutions. Consequently, *hisbah* functions are taken over by various new institutions. In several Muslim countries, though, there has been an endeavor to revive *hisbah*, mainly due to the encouragement of Islamization, such as in Sudan and Indonesia. The fact, however, raises a concern about the discriminative actions by the state against multicultural and multi-religious citizens.

The function of *hisbah* as an embodiment of commanding good and forbidding evil may attract individuals or non-governmental agents to participate. Participation is not without risks of creating horizontal conflicts and arbitrary actions. Therefore, the practices of *hisbah* need to be developed based on the analysis of general needs and the efforts to uphold a dignified social order. Enforcing *hisbah* as a symbol of certain religious values (Islam) may ignite rejections for fear of discrimination and violations of other citizen's rights. The practice of *hisbah* needs to be re-read in the context of contemporary society with the development of modern institutional systems and the principle of public participation to strengthen noble values in society without abandoning the rights of other communities.



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