

**THE GIVING GIFT TO LAW ENFORCEMENT OFFICERS IN  
ISLAMIC LAW PERSPECTIVE**

**(Study at Religious Court of Malang Regency)**

**THESIS**

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## STATEMENT OF THE AUNTENTICITY

In the name of Allah, with consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

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Malang, 6 April 2022

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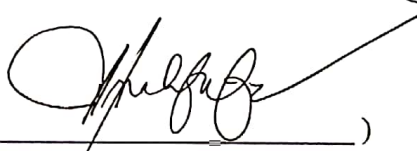
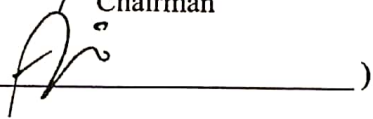
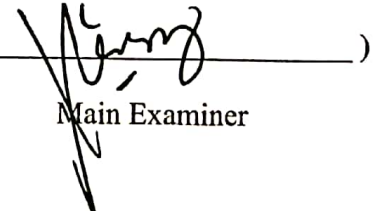
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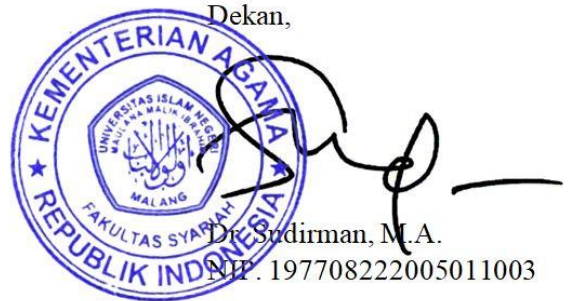
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**MOTTO**

خير الناس أنفعهم للناس

*The best of people are the most useful people*

لم ينال العلم مستحي ولا متكبر و لا الملاء سال صاعدا جبلا

*Someone who is shy and arrogant will never gain knowledge, it is like the  
impossibility of water flowing up a mountain*

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With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 6 April 2022

Writer,

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## TRANSLITERATION GUIDENCE

The Latin Arabic Transliteration Guidelines which are the result of a joint decision decision (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia. Number: 158 of 1987 and Number: 0543b/U/1987.

### A. Consonants

A list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arab Letters	Name	Latin Letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	Š	Es (with the dot above)
ج	Jim	J	Je
ح	H[a	Ĥ	Ha (with the dot above)
خ	Kha	Kh	Ka and Ha

د	Dal	D	De
ذ	Z/al	Ẓ	Zet (with the dot above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ث	Syin	Sy	Es and Ye
ص	S[ad	Ṣ	Es (with the dot below)
ض	D[ad	Ḍ	De (with the dot below)
ط	T[a	Ṭ	Te (with the dot below)
ظ	Z[a	Ẓ	Zet (with the dot below)
ع	‘Ain	‘	Apostrof backwards
غ	Gain	G	Ge

ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
هـ	Ha	H	Ha
ء / أ	Hamzah	‘	Apostrof
ي	Ya	Y	Ye

Hamzah (ء) which is located at the beginning of the word follows the vowel without any marking. If it is in the middle or at the end, it is written with a sign (‘).

## B. Vocal

Arabic vowels, like Indonesian vowels, consist of a single vowel or monophonic and multi vowels or dhipthongs. The Arabic single vowel whose symbol is a sign or vowel, the transliteration is as follows:

Sign	Name	Latin Letters	Name
اَ	Fath[ah	A	A
اِ	Kasrah	I	I
اُ	D[ammah	U	U

Arabic double vowel whose symbol is a combination of vowels and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin Letters	Name
اِي & اِ	Fath[ah and ya	Ai	A and I
اِي & اِ	Fath[ah and wau	Au	A and U

Example:

كَيْفَ : *kaifa*

حَوْلَ : *hauLa*

### C. Maddah

*Maddah* or long vowels whose symbols are vowels and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Name	Letters and Sign	Name
ا / ي & َ	Fath[ah and <i>alif</i> or <i>ya</i>	ā	a and the line above
ي & ِ	<i>Kasrah</i> and <i>ya</i>	ī	i and the line above
و & ُ	D[ammah and <i>wau</i>	ū	u and the line above

Example:

مَاتَ : *māta*

رَامَ : *rāma*

قِيلَ : *qīla*

يَمُوتُ : *yamūtu*

### D. Ta' Marbutah

There are two transliterations for *ta' marbutah*, namely *ta' marbutah* who live or get the letters *fathah*, *kasrah*, and *damamah*, the transliteration is [t]. While *ta' marbutah* who dies or get a sukun harakat, the transliteration is [h].

If the word ending with *ta' marbutah* is followed by a word that uses the article *al-* and the reading of the word is separate, then *ta' marbutah* is transliterated with [h].

المَدِينَةُ : *al-madinah*

#### E. Syaddah (Tasydid)

*Syaddah* or *tasydid* which in the Arabic writing system is denoted by a *tasydid* sign (◌ّ), in this transliteration it is symbolized by a repetition letters (double consonants) marked with a *syaddah*. Example:

رَبَّنَا : *rabbana*

الْحَقُّ : *al-haqq*

If latter i there is *tasydid* at the end of a word and preceded by the letter *kasrah*, then it is transliterated like the letter *maddah* (i).

Example:

عَلِيٍّ : 'Ali (not 'Aliyy or 'Aly)

عَرَبِيٍّ : 'Arabi (not 'Arabiyy or 'Araby)

#### F. Sandang Word

Sandang word in the Arabic writing system are denoted by letters (alif lam ma'arifah). In this transliteration giude, the article is transliterated as usual, *al-*, both when is is followed by letter *syamsiah* and the letter *qamariah*. The article does not follow the sound of the direct letter that

follows it. The article is written separately from the word that follows it and is connected by a horizontal line (-). Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلْزَلَةُ : *al-zalزالah* (not *az-zalزالah*)

الْفَلْسَفَةُ : *al-falsafah*

الْبِلَادُ : *al-bilādu*

### G. Hamzah

The rule for transliterating the letter hamzah into an apostrophe (‘) only applies to hamzah which is located in the middle and end of the word. However, if hamzah is at the beginning of a word, it is not symbolized, because in Arabic it is an alif. Example:

تَأْمُرُونَ : *ta’ murūna*

شَيْءٌ : *syai’un*

أَمْرٌ : *umirtu*

### H. Writing Arabic words commonly used in Indonesian

Transliterated Arabic words, terms or sentences are words, terms or sentences that have not been standardized in Indonesian. Words, terms or sentences that are commonplace and become part of the Indonesian vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. For example the



word Al-Qur'an (from the Qur'an), *Sunnah*, *khusus* and *umum*. However, if these words are part of a series of Arabic texts, then they must be transliterated in their entirety. Example:

*Fī zilāl al-Qur'an*

*Al-Sunnah qabl al-tadwīn*

*Al-'Ibārat bi 'umūm al-lafz bi khusūṣ al-sabab*

#### 1. Lafz al-Jalalah

The word Allah which is preceded by a particle such as the letter *jarr* and other letters or is located as a *mudlaf ilaih* (nominal phrase), is transliterated without the letter hamzah. As for the *ta' marbutah* at the end of the word that is attributed to *al-jalalah*, it is transliterated with the letter [t]. Example:

دِينُ اللَّهِ : *dinullah*

رَحْمَةُ اللَّهِ : *rahmatillah*

#### 2. Capital

Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration these letters are subject to provisions regarding the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the first letter of a personal name is preceded by an article (al-), then what is written in capital letters remains the initial letter of the personal name, not the initial letter of the article. If it is located at

the beginning of the sentence, then the letter A of the article uses a capital letter (Al-). The same provisions also apply to the initial letter of the reference title preceded by the article al-, both when it is written in the text and in the reference notes (CK, DP, CKD, and DR). Example:

وما محمد إلا رسول	: Wa mâ Muhammadun illâ Rasûl
إن أول بيت وضع للناس	: Inna Awwala baitin wuđi'a linnâsi
شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ	: 'Syahru Ramađān al-laẓī unzila fih
	al-Qur'an

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## ABSTRAK

Millatul Bariyah, 18220021, **Pemberian Hadiah untuk Aparat Penegak Hukum Perspektif Hukum Islam (Studi di Pengadilan Agama Kabupaten Malang)**, Jurusan Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri (UIN) Maulana Malik Ibrahim Malang, Pembimbing Ramadhita, M.HI.

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**Kata kunci:** Hadiah; Aparat Penegak Hukum; Hukum Islam

Korupsi yang masih menjadi masalah hukum di Indonesia ini ironisnya juga dilakukan oleh aparat penegak hukum. Salah satu tindakan yang dikategorikan sebagai tindak pidana korupsi ialah segala bentuk pemberian kepada aparat penegak hukum. Pada dasarnya hukum dari pemberian hadiah dalam Islam ialah mandub/sunnah. Akan tetapi, hukumnya akan berbeda jika diberikan untuk aparat penegak hukum. Adapun lembaga yang menggunakan hukum Islam sebagai dasar hukum adalah Pengadilan Agama. Maka, perlu diketahui bagaimana pandangan aparat penegak hukum di Pengadilan Agama terkait pemberian hadiah ini.

Jenis penelitian yang digunakan adalah penelitian hukum empiris dengan pendekatan kualitatif dan berlokasi di Pengadilan Agama Kabupaten Malang. Sumber data yang digunakan adalah sumber data primer dan sekunder. Metode pengumpulan datanya adalah dengan wawancara dan dianalisis dengan metode *miles* dan *hubberman*.

Hasil penelitian ini menunjukkan bahwa pandangan aparat penegak hukum di Pengadilan Agama Kabupaten Malang terkait pemberian hadiah telah sesuai dengan ketentuannya dalam Hukum Islam, bahkan cenderung memilih hukum yang melarang untuk berhati-hati. Pemberian hadiah dengan motif yang jelas terdapat niat buruk ataupun tidak jelas tetap dilarang untuk mengambalnya. Adapun tolok ukur kondisi yang memperbolehkan aparat penegak hukum untuk menerima hadiah adalah kebiasaan atau tradisi.



## ABSTRACT

Millatul Bariyah, 18220021, **The Giving Gift to Law Enforcement Officers in Islamic Law Perspective (Study at Religious Court of Malang Regency)**, Sharia Economic Law, Sharia Faculty, Islamic State University Maulana Malik Ibrahim Malang, Supervisor Ramadhita, M.HI.

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**Keywords:** Gift; Law Enforcement Officers; Islamic Law

Corruption that still become a legal problem in Indonesia, is ironically also carried out by law enforcement officers. One of the actions that are categorized as criminal acts of corruption is all forms of giving to law enforcement officers. Basically, the law of giving gifts in Islam is mandub/sunnah. However, the law will be different if it is given to law enforcement officers. The institution that uses Islamic law as a legal basis is the Religious Court. So, it is necessary to know how the opinion of law enforcement officers in the Religious Court regarding the giving of this gift.

The type of research used is empirical legal research with a qualitative approach and it is located at the Religious Court in Malang Regency. Data sources that used are primary and secondary data sources. The data collection technique is by interview and analyzed by the miles and hubberman method.

The results of this study indicate that the opinion of law enforcement officers at the Religious Court of Malang Regency regarding giving gift is in accordance with its provisions in Islamic law, even tend to choose laws that forbid it to be careful. Giving gifts with a clear motive of bad or unclear intentions is still prohibited from taking it. The benchmark for conditions that allow law enforcement officials to accept gifts is custom or tradition.

### ملخص البحث

مَلَّة البرية, 18220021, عطاء الهدية لجهاز إنفاذ القانون من منظور الشريعة الإسلامية (دراسة في المحكمة الدينية منطقة مالانج), قسم قانون الإقتصاد الشرعي, كلية الشريعة, الجامعة الإسلامية مولانا مالك إبراهيم مالانج, المشرف: راماديتا, الماجستير

#### كلمات الدالة: الهدية؛ جهاز إنفاذ القانون؛ الشريعة الإسلامية

مازال الإختلاس مشكلة قانونية في إندونيسيا, و ومن المفارقات, أن قضايا الإختلاس يتم تنفيذها أيضًا من قِبَل جهاز إنفاذ القانون. و من أشكال الإختلاس هو جميع أشكال العطاء لجهاز إنفاذ القانون. في الأساس, العطاء في الإسلام هو المندوب أو السنة. ومع ذلك, سيكون حكمه مختلفًا إذا تم تسليمه لجهاز إنفاذ القانون. المؤسسة التي تستخدم الشريعة الإسلامية كأساس قانوني هي المحكمة الدينية. لذلك, من الضروري معرفة آراء جهاز إنفاذ القانون في المحكمة الدينية فيما يتعلق بمنح هذه الهدية.

يستخدم هذا البحث نوع البحث القانوني التجريبي مع نهج نوعي ويقع في محكمة الدينية منطقة مالانج. مصادر البيانات المستخدمة هي مصادر البيانات الأولية والثانوية. أما طريقة جمع البيانات هي المقابلة و تحليلها بواسطة طريقة milles و hubberman .

يدل هذا البحث أن آراء جهاز إنفاذ القانون في المحكمة الدينية منطقة مالانج عن عطاء الهدية وفقا لأحكام الشريعة الإسلامية, حتى يميل أن يختار الحكم الذي يمنع للإحتياط. و يمنع أن يأخذ الهدية الواضحة نيتها أو غير الواضحة. و المعيار الأساسي للشروط التي تسمح لجهاز إنفاذ القانون بقبول الهدية هو العرف أو التقاليد.

## CHAPTER I

### INTRODUCTION

#### A. Research Background

Corruption still become the law problem in Indonesia. Various kind of preventive measures against corruption in Indonesia have been carried out, both formally juridical and through various campaign through posters and pamphlets.<sup>1</sup> Those efforts have been around since the beginning of Indonesia's reformation, beginning with the formation of the Corruption Crime Law in 1999 which was later revised in 2001, then followed by the establishment of the Corruption Eradication Commission in 2002.<sup>2</sup> These efforts are carried out in the hope of being the first step to build a country free from KKN (Corruption, Collusion, and Nepotism).

Ironically, this corruption crime is also carried out by law enforcement officers who should be role models and benchmarks for the community to comply with applicable laws. In this regard, several cases of corruption, the majority of which were carried out by law enforcement officers in the last five years, were in the form of accepting bribes. The law enforcement officers include judges, prosecutors and police.

One of the actions that are categorized as criminal acts of corruption are all forms of giving to law enforcement officers. Giving to law

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<sup>1</sup> Fakhruddin Odhy, "Perspektif Budaya Hukum Dalam Perkembangan Kasus Korupsi Di Indonesia," *Dharmasiswa* 1 (2021), 186.

<sup>2</sup> Kanti Pertiwi, "Kesenjangan Dalam Wacana Antikorupsi Di Indonesia : Temuan Dari Literatur Studi Korupsi Kritis," *Jurnal Antikorupsi Integritas* 5, No. 2 (2019): 133–150, 134.

enforcement officers is often done by the community. This giving is called as gratification. The gift giving is often used as the basis for a law enforcement officer to be charged with corruption. However, it is undeniable that law enforcement officers may also receive gifts.

In addition, basically the law of giving is *mandūb/sunnah*. Gifts in Islamic law are called grants. This grant includes gifts, *'aṭiyah*, and also alms. Gifts, *'aṭiyah*, and alms have close meanings, the difference is related to the purpose of the gift. If the gift aims to get closer to Allah SWT by giving to people in need, then it is called alms. If the gift is given to someone as a representation of respect and affection, it is called a gift. If the purpose of giving is other than these two things, it is called a grant. As for *'aṭiyah* is a gift or gift that is made when someone is sick before death.<sup>3</sup>

However, when referring to Article 13 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, it is stated that anyone who gives gifts or promises to civil servants by remembering the power or authority attached to his position or position, or by the giver of gifts or promises deemed attached to the said position or position, shall be punished with imprisonment for a maximum of 3 (three) years and or a fine of a maximum of 150,000,000.00 (one hundred and fifty million rupiah). In addition to bribes, there is also a prohibition on giving gratuities. Gratification is regulated in Article 12B of Law Number 20 of 2001.

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<sup>3</sup> Wahbah Al-Zuhaily, *Al-Fiqh Al-Islamy Wa Adillatuhu*, 2nd Ed. (Damaskus: Dar Al-Fikr, 1985), 5.

Gratification is a gift in a broad sense, which includes the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment and other facilitation.<sup>4</sup> Based on the definition of bribery and gratification above, it can be seen that the difference between the two is that gratification is only in the form of goods, while bribes can be in the form of promises.

Based on these regulations, a Law Enforcement Officer cannot accept gifts in any form and regardless of value. However, the culture of the people who often give money or food as a thank you for the help that has been given, or congratulate others, especially to their family or neighbors. The existence of a prohibition on the giving of gifts can cause a rift in the relationship between Law Enforcement Officer and the surrounding community, considering that one of the purposes of giving gifts is to strengthen the ties of friendship. On the other hand, there are also people who give gifts in the form of money or other goods to law enforcement officers with the aim of making it easier for administrative management, winning a case, and defending their rights in order to obtain a fair decision.

There are many normative studies have been carried out regarding the giving of gifts to officials, government employees, judges, and so on,

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<sup>4</sup> Ahmad Fahd Budi Suryanto, "Penegakan Hukum Dalam Perkara Tindak Pidana Korupsi Suap Menyuap Dan Gratifikasi Di Indonesia," *Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, No. 2 (2021): 589–600, 593.

such as research regarding the factors that cause gratification<sup>5</sup>, the category of gifts that cannot be categorized as bribes but there are still expert disputes regarding the effectiveness of its article<sup>6</sup>, comparative study between Ḥanafī and Syāfi'i's views regarding giving gifts to judges in defense of rights<sup>7</sup>, gifts for officials according to Imām Syāfi'i<sup>8</sup>, comparative study of Islamic law and Positive Law regarding gifts for officials<sup>9</sup>, law bribing judges with Q.S. analysis Al-Baqarah verse 188<sup>10</sup>, and analysis of the practice of money politics with the *istiṣlāhi* method<sup>11</sup>. The empirical studies related to gift giving that have been carried out include those related to giving for administrative management<sup>12</sup>, strategies to identify gift giving to civil servants<sup>13</sup>, and the application of the elements of bribery in the corruption

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<sup>5</sup> Supeni Anggraeni Mapuasari and Hadi Mahmudah, "Korupsi Berjamaah: Konsensus Sosial Atas Gratifikasi Dan Suap," *Integritas* 4, no. 2 (2018): 159–76, <https://jurnal.kpk.go.id/index.php/integritas/article/view/279>, 169.

<sup>6</sup> Yasmirah Mandasari Saragih, "PROBLEMATIKA GRATIFIKASI DALAM SISTEM PEMBUKTIAN TINDAK PIDANA KORUPSI (ANALISIS UNDANG-UNDANG NOMOR 31 TAHUN 1999 JO UNDANG-UNDANG NOMOR 20 TAHUN 2001 TENTANG PEMBERANTASAN TINDAK PIDANA KORUPSI)," *Jurnal Hukum Responsif FH UNPAB* 5, no. 5 (2017): 76–86, 77.

<sup>7</sup> MULIAMIN, "HUKUM MELAKUKAN SOGOK MENYOGOK UNTUK MEMPERTAHANKAN HAK (STUDI KOMPARATIF ANTARA MAZHAB HANAFI DAN MAZHAB SYAFI'I)" (UNIVERSITAS ISLAM NEGERI SULTHAN THAHA SAIFUDDIN JAMBI, 2019), 72.

<sup>8</sup> Khoiril Wardah, "Studi Analisis Tentang Pemberian Hadiah Kepada Pejabat Menurut Imam Asy-Syafi'i" (Universitas Islam Negeri Walisongo Semarang, 2017), 87.

<sup>9</sup> Ilgafur Tanjung, "PEMBERIAN HADIAH KEPADA PEGAWAI/PEJABAT (TINJAUAN HUKUM ISLAM DAN UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 20 TAHUN 2001)" (Universitas Islam Negeri Sumatera Utara, 2017), 98.

<sup>10</sup> Siti Ummu Kulsu et al., "Hukum Risywah Kepada Hakim," *Ma'mal : Jurnal Laboratorium Syariah Dan Hukum* 1 (2020): 497–519, 498.

<sup>11</sup> Mahbub Ainur Rafiq, "Diskursus Perdebatan Praktik Money Politics Dalam Perspektif Metode Istishlahy," *Al-Istinbath : Jurnal Hukum Islam* 6, no. 2 (2021): 179, <https://doi.org/10.29240/jhi.v6i2.2074>, 183.

<sup>12</sup> FITRI YANI, "PRAKTIK PEMBERIAN DALAM PENGURUSAN DOKUMEN DI DESA TELLULIMPOE KAB. SOPPENG (TINJAUAN HUKUM ISLAM)" (SEKOLAH TINGGI AGAMA ISLAM NEGERI (STAIN) PAREPARE, 2018), 87.

<sup>13</sup> Lisa Nazifah, "Strategi Menyikapi Gratifikasi Pegawai Negeri Sipil Strategy To Respond Gratification By Identifying Gift- Giving To Government Employee," *Jurnal Inovasi Aparatur* 1, no. 2 (2019): 47–58, <http://ejournal-bpsdm.jakarta.go.id/index.php/monas/article/download/9/6>, 51.

Law from the perspective of Islamic law<sup>14</sup>. From these various studies, there has been no empirical research that discusses the views of law enforcement officers regarding how to identify gifts given to them with an analysis of Islamic law. Islamic law in question is to combine the opinions of the *'ulama* of the *mazhab* and *sadd al-ẓari'ah*.

Seeing the culture of the community and the lack of public understanding regarding regulations and Islamic law regarding gratification, it is necessary to take preventive measures against gratification. One of the efforts to prevent this gratification is to prevent it from the smallest line of government. One program that is considered capable of preventing corruption is the existence of a Corruption Free Area (WBK) and a Clean and Serving Bureaucratic Area (WBBM) within the judiciary. To realize this WBK and WBBM, an Integrity Zone is being built within the government environment. One of the courts that scored very well for the assessment of the integrity zone was the Religious Court at Malang Regency.

The Religious Court which is one of the judicial institutions in Indonesia plays an important role in enforcing the law in society, especially for people who are Muslim. This is based on the authority of the Religious Courts to administer and handle Muslim cases as stated in Articles 2 and 49

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<sup>14</sup> Ahmad Fadhly Roza, Mhd . Yadi Harahap, and Ramadan Syahmedi Siregar, "Implementation of Bribes (Risywah) Based on Law No. 20 of 2001 on Action Criminal Corruption in Legal Perspective Islam in Medan State Court," *Britain International of Humanities and Social Sciences (BIOHS) Journal* 2, no. 3 (2020): 750–756, <https://doi.org/10.33258/biohs.v2i3.324>, 751.

of Law Number 3 of 2006 concerning Religious Courts.<sup>15</sup> Then, based on the explanation above, it is necessary to know about how law enforcement officers in the Religious Courts respond to the giving of gifts given to them and the views of Islamic law on this matter, so it is interesting to conduct a research with the title "The Giving Gift to Law Enforcement Officers in Islamic Law Perspective (Study at Religious Court of Malang Regency)".

## **B. Statement of Problem**

Based on the background above, it can be drawn a problem formulation that will be a reference for the discussion of this research, namely:

1. What are the opinions of law enforcement officers at the Religious Court of Malang Regency regarding the motives for giving gifts to them?
2. How do law enforcement officers see the situation and conditions for receiving gifts?

## **C. Objective of Research**

Based on the formulation of the problem above, it can be seen that this research purposes to:

1. Describe the opinions of law enforcement officers at the Religious Court of Malang Regency regarding the motives for giving gifts

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<sup>15</sup> Hasim, *Peradilan Agama Dan Perbankan Syariah Perspektif Sistem Ketatanegaraan* (Surabaya: Airlangga University Press, 2020), 6.



2. Cognize how law enforcement officers view the situation and conditions for receiving gifts

#### **D. Benefit of Research**

From this research, the writer hopes that it can provide benefits in several ways as follows:

1. Theoretical Benefits

This research is expected to contribute to the scientific development of sharia economic law, and can be additional knowledge for all students who are studying about gifts and the law related to the motives and conditions of the giver.

2. Practical Benefits

This research is expected to provide benefits for the community, law enforcement officers, and the government. For the community, this research is expected to provide knowledge regarding gifts that can be categorized as gratification and/or bribes, so that the community can be careful in giving gifts, especially for law enforcement officers. This research is also expected to provide information for the government in enforcing regulations related to bribery and gratification as well as providing socialization to the public regarding bribery and gratification.

#### **E. Operational Definition**

To provide an understanding of the topic to be studied, it is necessary to explain the terms that are considered necessary so that there is no misinterpretation in reading the research. The terms are:

## 1. Giving Gift

Gift giving in this study is referred to all forms of giving gifts such as money, goods and so on for law enforcement officers. This gift in a government environment is called gratification.

## 2. Law Enforcement Officer

The definition of law enforcement officers broadly includes all law enforcement agencies or institutions in Indonesia such as the Judiciary, Police, Attorney General's Office, Directorate General of Taxes, Directorate General of Immigration, and so on. These institutions can be called as law enforcers not only because they have authority related to the judicial process, but also because they have the authority to arrest, examine, supervise, or carry out statutory orders in their respective fields. However, when viewed in a narrow sense, law enforcement officers include judges, prosecutors, also police.<sup>16</sup> Then, the law enforcement officers who will be used as resource persons in this study are judges at the Religious Court of Malang Regency.

## **F. Structure of Discussion**

In order for the discussion in this research to be structured, directed and well understood, the systematic discussion arranged to make the readers can understand the discussion in the research easily and comprehensionable.

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<sup>16</sup> Ilman Hadi, "Siapa Sajakah Penegak Hukum Di Indonesia?," 13 Agustus, 2012, <https://www.hukumonline.com/klinik/a/lembaga-penegak-hukum-lt502201cc74649>. Diakses Pada 24 Januari 2022 Pukul 11.18.

Chapter I is introduction that explains the background and formulation of the problem that causes the title of this research to be interesting to conduct a research. Explaining the research objectives, research benefits, operational definition, and structure of discussion.

Chapter II is literature review that explains and/or describes the data used as the basis for answering problems in thesis research. Analyzing the issues raised, then describing supporting references regarding the provision of gifts for law enforcement officers from the perspective of Islamic law and civil law which contains:

1. The theory of legal effectiveness which includes the definition of legal effectiveness and the factors that can influence it.
2. Giving gifts in Islamic law which includes the definition, plegal basis, pillars and conditions, types of gifts, and the law of giving gifts according to the opinion of 'ulama and sadd al-zari'ah.

Chapter III is research method that describes the types of research, research location, research approach, data sources, data collection technique, and data analysis technique. The things presented are the definition and reasons for using the method.

Chapter IV is research results and discussion that describes the research results which consist of an overview of the research location as well as the results of exposure and analysis. The data obtained from the

research location, data from interview and analysis from the study of literature and answers to the formulation of the problem.

Chapter V is closing that explains the conclusions which are the answers to the formulation of the problems raised along with suggestions.

## CHAPTER II

### LITERATURE REVIEW

#### A. Previous Research

Inclusion of previous research is an important part in writing a research. This is necessary to avoid plagiarism or similarities between one study and another. In addition, previous research can be considered as well as a reference for conducting research so that it can assist in the preparation of research. Therefore, there are at least three studies that are relevant to this research, namely:

1. Fitri Yani, *Praktik Pemberian Dalam Pengurusan Dokumen Di Desa Tellulimpoe Kab. Soppeng (Tinjauan Hukum Islam)*, 2018. This study aims to determine how the practice of giving in document management in Tellulimpoe Village, Soppeng. To find out the views of Islamic law on the practice of giving in document management in Tellulimpoe village, Soppeng, the type of research used in this thesis is empirical legal research.<sup>17</sup>
2. Khoirul Wardah, *Studi Analisis Tentang Pemberian Hadiah Kepada Pejabat Menurut Imam Asy-Syafi'I*, 2017. This study aims to find out the opinions and *istinbat* methods used by Imām

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<sup>17</sup> FITRI YANI, "PRAKTIK PEMBERIAN DALAM PENGURUSAN DOKUMEN DI DESA TELLULIMPOE KAB. SOPPENG (TINJAUAN HUKUM ISLAM)" (SEKOLAH TINGGI AGAMA ISLAM NEGERI (STAIN) PAREPARE, 2018), 87.

Syāfi'i about giving gifts to officials. The type of research used in this research is normative legal research.<sup>18</sup>

3. Muli Amin, *Hukum Melakukan Sogok Menyogok Untuk Mempertahankan Hak (Studi Komparatif Antara Mazhab Hanafi Dan Mazhab Syafi'i)*, 2019. The type of research used is qualitative legal research with a normative approach. The results of this study indicate that Imām Syāfi'i and Imām Ḥanafī have different opinions. According to Imām Ḥanafī, the law is permissible and not unlawful, while according to Imām Shāfi'i the law is permissible for those who give and forbidden for those who receive.<sup>19</sup>
4. Mahbub Ainur Rafiq, *Diskursus Perdebatan Praktik Money Politic dalam Perspektif Metode Istishlahy*, 2021. The type of research used is normative legal research. The results of this study indicate that the practice of *money politics* in ideal conditions ('*azīmah*) is forbidden in the syara' by confirmed it to *risywah* because of the similarity of '*illah* (logical ratio) namely *khauf al-mail*. However, there is a privilege (*rukḥṣah*) for this practice in conditions of urgency which is very far from idealism, as long as the indicators that become the privilege

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<sup>18</sup> Khoiril Wardah, "Studi Analisis Tentang Pemberian Hadiah Kepada Pejabat Menurut Imam Asy-Syafi'i" (Universitas Islam Negeri Walisongo Semarang, 2017), 86.

<sup>19</sup> MULIAMIN, "HUKUM MELAKUKAN SOGOK MENYOGOK UNTUK MEMPERTAHANKAN HAK (STUDI KOMPARATIF ANTARA MAZHAB HANAFI DAN MAZHAB SYAFI'I)" (UNIVERSITAS ISLAM NEGERI SULTHAN THAHA SAIFUDDIN JAMBI, 2019), 72.

factor for the practice of money politics are found in the socio-political reality.<sup>20</sup>

To make it easier and at the same time clarify the differences between the research to be studied and the research above, a tabular description will be presented. Here's a table of the differences,

**Table 1.1**

Research Difference Table

Researcher, Title and Year	Difference	
	Previous Research	Author's Research
Fitri Yani, <i>Praktik Pemberian Dalam Pengurusan Dokumen Di Desa Tellulimpoe Kab. Soppeng (Tinjauan Hukum Islam)</i> , 2018.	The object of study in this research is related to giving in document management only with the community as resource persons and the research was carried out in Tellulimpoe Village, Kab. Soppeng	The object of the study is all forms of giving to law enforcement officers and research is carried out at the Religious Court of Malang Regency
Khoirul Wardah, <i>Studi Analisis Tentang Pemberian Hadiah Kepada Pejabat Menurut Imam Asy-Syafi'i</i> , 2017.	The type of research used is normative legal research and the focus of this research is exploring the law of giving gifts to officials and the istinbath method used by Imām Syāfi'i	The type of research that used is empirical legal research and the object of this study is to determine the understanding of law enforcement officials regarding the law of giving in Islamic law
Muliamin, <i>Hukum Melakukan Sogok Untuk Mempertahankan Hak (Studi Komparatif Antara</i>	The type of research used is normative legal research and the focus of this research is related to the law of bribery practices to	The type of research used is empirical legal research and the focus of this research study is the understanding of law enforcement officers

<sup>20</sup> Mahbub Ainur Rafiq, "Diskursus Perdebatan Praktik Money Politics Dalam Perspektif Metode Istishlahy," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 2 (2021): 179, <https://doi.org/10.29240/jhi.v6i2.2074>, 199.

<i>Mazhab Hanafi Dan Mazhab Syafi'i</i> , 2019.	defend rights by comparing the opinions of Imām Ḥanafī and Imām Syāfi'i.	regarding the law of giving in Islamic law.
Mahbub Ainur Rafiq, <i>Diskursus Perdebatan Praktik Money Politic dalam Perspektif meode Istishlahy</i> , 2021.	The type of research used is normative legal research and the focus of the study is on the legal practice of money politics that occurs in government using the <i>istişhlāhi</i> method..	The type of research used is empirical legal research and the focus of this study is to determine the understanding of law enforcement officers regarding the law of giving in Islamic law.

## B. Theoretical Framework

### 1. Effectiveness of Law Theory

#### a. Effectiveness of Law Definition

According to Hans Kelsen, the effectiveness of law is closely related to the validity of law. Validity of law means that the law is binding and must act in accordance with the rules or legal rules, comply with and apply the law. Effectiveness of law means that the community actually implements, obeys, and acts in accordance with applicable legal norms.<sup>21</sup>

Effectiveness comes from the word effective which means success in achieving the goals that have been set. Effectiveness is always associated with the relationship between expected results and the reality of the results achieved. According to Allot, the effectiveness of the law is how the law can realize its goals.<sup>22</sup>

<sup>21</sup> Nur Fitryani Siregar, "EFEKTIVITAS HUKUM," *Al-Razi* XVIII, no. 2 (2018): 1–16, <https://ejournal.stai-br.ac.id/index.php/alrazi/article/view/23>. 2

<sup>22</sup> Diana Tantri Cahyaningsih, "Mengurai Teori Effectiveness of Law Anthony Allot," *Jurnal Recthvinding Online*, no. 3 (2020): 1–7, 2.



According to Soerjono Soekanto, the theory of legal effectiveness is a rule that guides appropriate attitudes, actions and behavior. The effectiveness of the law in reality can be known based on its influence on people's behavior.<sup>23</sup>

b. The Factors that Affecting the Effectiveness of Law

According to Allot, there are three factors that can cause the law to be ineffective, namely:

- a. Submission of the intent and purpose of the Act that is not successful or socialization and communication of norms that are not conveyed to the public.
- b. There is a conflict between the goals to be achieved by the legislators and the nature of society.
- c. Lack of supporting instruments for the law, such as implementing regulations, institutions or processes related to the implementation and application of laws, which means that the effectiveness of law enforcement is the responsibility of the legislators and not the obligations of the community regulated by the law.<sup>24</sup>

In addition, there are other factors that influence the effectiveness of the law, namely community and cultural factors. Law enforcement comes from the community and also to maintain

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<sup>23</sup> Siregar, "EFEKTIVITAS HUKUM" 7.

<sup>24</sup> Cahyaningsih, "Mengurai Teori Effectiveness of Law Anthony Allot." 3-6.

order in society. The good or bad of a law in society is often associated with the behavior patterns of law enforcement officers as a reflection of the law as a structure and process. Then, cultural factors also have an influence on the effectiveness of the law. This cultural factor cannot be separated from society, but needs to be distinguished because it involves a value system that grows in society.<sup>25</sup> Culture is the result of normative collective and communal thoughts and values so that the relationship between culture and law cannot be separated. The role of culture greatly determines the validity of a law and influences its effectiveness. If the two are contradictory or contradictory, then the law will lose its normative side. Culture itself is social awareness that has reached its level, the most visible forming element is the accumulation of values that have been ongoing and in progress from year to year.<sup>26</sup>

## **2. Gift in Islamic Law**

### **a. Definition of Gift**

Gift etymologically means something that is given, while in terminology, the fiqh experts have different opinions. These opinions are as follows:

- 1) That a gift is something given in order to grow, preserve, and strengthen a sense of love and affection.

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<sup>25</sup> Siregar, "EFEKTIVITAS HUKUM", 14-15.

<sup>26</sup> Ilham Yuli Isdiyanto, "Problematika Teori Hukum, Konstruksi Hukum, Dan Kesadaran Sosial," *Jurnal Hukum Novelty* 9, no. 1 (2018), <https://doi.org/10.26555/novelty.v9i1.a8035>, 62.

- 2) That a gift is something that is given unconditionally, without any hope of help for something.
- 3) That the gift is a form of goodness which is almost the same as the sunnah grants and alms. Imām Nawāwi stated that donations, gifts, and sunnah alms have close meanings which all have in common, namely ownership of an item without any return or exchange.<sup>27</sup>

From all the definitions above, it can be concluded that a gift is giving an item to a certain person with the aim of increasing harmony and reward from Allah SWT without any requests and conditions.

#### b. Legal Basis of Giving Gift

Gift is one of the media that are often used by the community to strengthen relationships with each other. In fact, exchanging gifts has become an inherent culture in society. Prophet Muhammad SAW also strongly encouraged Muslims to exchange gifts so that the relationship between Muslims was also stronger. The legal basis for giving, whether in the form of a gift or a gift, is *mustahab* (sunnah). This is based on the word of Allah SWT in Q.S. Al Baqarah verse 177 which means,

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<sup>27</sup> Ahmad bin Ahmad Muhammad Abdullah Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ĥarām* (Riyadh: Dar At-Thayyibah, 1992), 9-10.

*"... and give his beloved property to his relatives, orphans, the poor, travelers (who need help)..."*

Referring to the Hadith of the Prophet SAW which states that he received a gift, then returned the gift, he also invited and liked it. Then, based on the Hadith narrated by Ahmad from Khālid ibn 'Adi which reads as follows:<sup>28</sup>

من جاء من أخيه معروف من غير إشراف و لا مسألة, فليقبله ولا يردده فإنما هو

رزق ساقه الله إليه

*"Whoever gets goodness from his brother without hope and without problems, then (preferably) he accepts it and does not return it, because it is a sustenance that Allah has given him."*

There is also hadith from 'Aisyah RA. She asked the Messenger of Allah, *"O Messenger of Allah, I actually have two neighbors, so which one do I give a gift?"* The Prophet replied, *"To the one whose door is closer to you."*<sup>29</sup>

In other Hadith is also stated that the Prophet SAW also often received and gave gifts to others, and even recommended it as narrated in the following Hadith

*"Give each other gifts, you will surely love each other.."*<sup>30</sup>

<sup>28</sup> Sayyid Sabiq, *Fiqh As-Sunnah*, 1st ed. (Kairo: Dar Al-Hadits, 2004), 1076.

<sup>29</sup> Sabiq, *Fiqh As-Sunnah*, 1077.

<sup>30</sup> Az-Zuhaily, *Al Fiqh Al Islamy Wa Adillatuhu*, 6.

*“Tell us Musaddad, tell us, ‘Isa ibn Yūnus, from Hisyām from his father from ‘aisyah r.a. said: The Prophet never received a gift and returned the gift (with the same reward)”.*

In another Hadith, the Prophet SAW also said,

*"Tell us Muhammad bin Basyār, tell us Ibn Abī ‘Adi, from Syu'bah, from Sulaimān, from Abī Hāzim, from Abī Hurairah r.a., from the Prophet. He said: If I was invited to eat goat's legs (front and back), I would have fulfilled it and if I was presented with goat legs (front and back) I would have accepted it".<sup>31</sup>*

From the text above, it can be concluded that it is permissible to accept gifts with the aim of strengthening friendship and affection among others.

#### c. Pillars and Provisions of Gift

The pillars and provisions of the gift are the same as the grant.

The pillars and provisions are as follows:

##### 1) *Al-muhdī* (a person who gives a gift)

The condition for the person giving the gift is the legal owner of the property or goods given, the giver is in good health, and has the freedom to give the property or goods.<sup>32</sup>

##### 2) *Al-muhdā* (the person who receives a gift)

Basically everyone has the ability to accept gifts, even children who are still not legally capable are also allowed.<sup>33</sup>

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<sup>31</sup> Ilgafur Tanjung, “PEMBERIAN HADIAH KEPADA PEGAWAI/PEJABAT (TINJAUAN HUKUM ISLAM DAN UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 20 TAHUN 2001)” (Universitas Islam Negeri Sumatera Utara, 2017). 22.

<sup>32</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Depok: Rajawali Press, 2017). 378.

<sup>33</sup> Rofiq, *Hukum Perdata Islam Di Indonesia*, 380.

### 3) *Al-hadiyah* (gift)

The goods that given have the following provisions:

- a) The item has a form
- b) It is in the form of assets that can be valued (*māl mutaḳawwam*)
- c) The goods are legally owned by the giver
- d) The goods are not connected to the property of the giver, such as rice fields, buildings without land and trees, so that the giver is obliged to separate the goods from their ownership and hand them over.
- e) The goods must be separated, then a joint property cannot be donated according to Abū Hanīfah. However, Imām Mālik, Imām Syāfi'i, Imām Hanbali and Aš- Šauri negate this requirement, so that the shared assets that have not been divided are valid to be given. Then, the Mālikiyah added that the goods that can be donated are all kinds of goods that can be sold. However, there are items that are not legal to sell but are legal to give, namely small items such as a few grains of rice, unknown items (*ma'dūm*), and untanned carcasses.<sup>34</sup>

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<sup>34</sup> Sabiq, *Fiqh As-Sunnah*. 1078.

#### 4) *Qabḍ* (acceptance)

According to Imām Shafi'i and Imām Abū Hanifah, acceptance is a valid provision for gift. If the gift is not accompanied by a statement of acceptance, then the gift is invalid.<sup>35</sup>

#### d. Types of Gifts

The types of giftss based on their objectives are divided into six types. Syeikh Ahmad Aṭ-Ṭawīl divides the types of gifts and their laws as follows:<sup>36</sup>

##### 1) Gift of Love and Affection

Gift of this type are further divided into three types, namely gifts from people of higher position and colleagues, gift from parents, and gift in marital relations. The first type of gift when made between family and relatives can be a door of relationship and goodness, if it is given to scholars and worship experts it can be a way to get closer and look for blessings, if it is given by rich people to the poor people to help them it can be aimed at giving benefits, if it is given to enemies or people who have a problem with the giver then it can be aimed at softening the heart.

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<sup>35</sup> Rofiq, *Hukum Perdata Islam Di Indonesia*. 380.

<sup>36</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*. 31.

Gifts such as the above are in no way intended to get the same or greater reward and the recipient of the gift does not need to repay the gift either. This type of gift is sunnah and is lawful for both the giver and the recipient.<sup>37</sup>

## 2) Gift to be Reciprocated

This type of gift is a gift given by people in lower positions to people in higher positions, from poor people to rich people, younger people to older people, or between friends. The law of this type of gift is that it is permissible for both the giver and the recipient. Even the Prophet SAW when he received a gift, he replied with a better gift and liked it very much, but if he could not repay it then it was enough to pray for the good for the giver.

## 3) Gift for Fulfilling a Wish

This type of gift aims to get help for permissible needs or purposes. The intention is a good deed that requires help from people who have position, nobility, and so on. This type of gift is called a gift for help (*al-hadiyah 'alā al-syafā'ah*). The scholars divide the law of this type of gift as follows:

### a) *Qaul Jawāz* (allowed)

Imām Al Gazāli allows this type of gift and the reward is according to the assistance given, if it is not

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<sup>37</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 32.



like that then it is forbidden because the gift is a substitute for the position. However, it is appropriate for the person who helped the person not to accept the gift and do it sincerely. Ibn Hazm argues that it is permissible to accept gifts for people who help others to obtain the truth without conditions because of the kindness of their hearts. He also stated that "*we are not aware of any texts that prohibit this*".<sup>38</sup>

b) *Qoul Makrūh*

Imām Aḥmad is of the opinion that a reward for work that is permissible is makruh unless it is recompensed with an equivalent which is like returning a deposit and maintaining the trust. So the act should be intended to get a reward from Allah S.A.W. Some *muta'akhkhirīn* scholars give *rukshoh* related to this type of gift and include it in the *ju'alah* chapter which is different from the sunnah, *qaul* of friends and priests because the general benefit must be done whether it is an act *farḍu 'ain* or *farḍu kifāyah*. The proof that this type of gift is not allowed is the following hadith of Abū Umāmah,

*"Whoever helps his brother then he (who asks for help) gives a gift for that help, then he (the helper)*

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<sup>38</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Harām*, 35.

*accepts the gift, then the door of usury has really come.*"<sup>39</sup>

c) *Qoul Tahrīm*

There is an *atsar* delivered by ‘Umar bin Khattāb and Ibn Mas'ūd and besides the two who explain that taking gifts for help is *harām*. Ibn Munzīr said from Ibn Masrūq,

*"I asked ‘Umar bin Khattāb : have you seen bribery in the government, is it illegal (suht)? and has an interest in the government, he does not carry out his desire until he gets a gift."*

When Ibn Mas'ūd was asked about *suht*, he replied that:

*"suht is when someone asks you for help in a bad situation and then he gives you a gift, then don't accept it."*

Ibn Masrūq said that he had heard Ibn Mas'ūd says,

*"that whoever rejects a Muslim who is unjust, then he (the unjust Muslim) gives him (a gift) either a little or a lot, then that is suht. Then a man said, "O Abū Abdullah! In the past we thought that suhtun was just a bribe in the government", then Ibn Mas'ūd said, "it is an act of kufr and may Allah protect us from it."*<sup>40</sup>

4) Gift for Taking Advantage of One's Position

This gift giving intends to approach the heart of the recipient of the gift, get his affection, not purely to get his feelings but to benefit from his rank and status, then the gift

<sup>39</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 36.

<sup>40</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 37.

giver will achieve his goal. This type of gift resembles a bribe, so it is makruh to accept the gift if the rank is related to knowledge and lineage (descendants) because the consideration of the rank is lighter. However, it is forbidden to accept this type of gift if the rank is related to the jurisdiction, government, or leadership, then this gift is a bribe.<sup>41</sup>

This type of gift that aims to obtain assistance for the needs of the judge, his deputy, his relatives, people within his government area or people who have positions around the judge is unlawful (*ḥarām*). The difference between this type of gift and the previous type is the need. If the first type (gift for help) is a need that is permissible in nature, then this type of gift is more general in nature, the purpose also varies. Sometimes the goal is to ask for help on things that are unjust, forbidden, not the right of the asker for help, and so on, so this type of gift is a bribe. Sometimes the goal is lighter than the one mentioned above and does not reach the level of prohibition above, then the law is makrūh.<sup>42</sup>

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<sup>41</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 44.

<sup>42</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 44.

#### 5) Gift for Obtaining the Truth or Rejecting Injustice

This type of gift is made by the giver when he feels it is impossible to get what he deserves or to avoid badness. This gift is lawful for the giver but unlawful for the recipient if the gift is sufficient to reject injustice against him. The gift is lawful for the giver because he uses his wealth to protect himself. As for this type of gift, it includes bribes which are clearly forbidden according to al-Khaṣṣāf and al-Gazālī and many scholars regarding the legal explanation of bribery to reject injustice or danger.<sup>43</sup>

#### 6) Gift to Justify the Crime

This type of gift that is clearly forbidden because of something that is forbidden, tyrannizing people and so on.

This gift is considered as a bribe.

#### e. The Law of Accepting Gift for Law Enforcement Officers According to ‘Ulama Maḏhab

The law of giving gifts to judges and government employees according to the scholars of maḏhab is as follows:

##### 1) Ḥanafi’s School

In Fath al-Qadīr it is stated that the difference between bribes and gifts is that bribes are given with conditions to help while gift hasn’t any requirement when it is given. This is based on the

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<sup>43</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 45.

Hadith in Ṣahih Bukhāri narrated from Ḥumaid As-Saʿīdi, he said,

*“The Prophet SAW hired a man from ‘Azd, he was called Ibn al-Lutbiyyah to take care of alms. When he came, he said: This is for you and this is for me, the Prophet (SAW) asked: Will he not sit in his father's house or his mother's house and see if something is given to him or not?”.*

Then ‘Umar bin ‘Abd al-‘Azīz said,

*“Gifts at the time of the Prophet SAW was a gift in general and today is a bribe as narrated by Bukhari.”*

‘Umar RA once employed Abū Hurairah then Abū Hurairah came with money, then ‘Umar RA said to Abū Hurairah, “where did you get this money from?”, Abū Hurairah replied, “gifts”, Then ‘Umar said to him: “Do not you sit in your house and watch whether something is given to you or not?” then ‘Umar took the money from him and gave it to the *bait al-māl* and the Prophet SAW confirmed the argument for the prohibition of gifts caused by government positions, and because of this even though the gift giver adds more than habit or has a conflict then the law is *makrūh*.<sup>44</sup>

Ibn al-Himām in Fath al-Qadīr mentions that gifts to judges are *qiyās* as gifts from debtors to creditors are allowed if the debtor has a habit before he owes a debt, then he gives a gift to

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<sup>44</sup> Ibn Al-Himam, *Fathul Qadir*, Juz 16 (Beirut: Dar Al-Kutub Al-‘Ilmiyah, n.d.), 356

the debtor then the creditor must accept the gift if the gift is the same as before the person owed without additional. Such a gift is allowed as long as there are no absolute conditions. As for the special invitation, it should be rejected and not attended because it can be used for purposes, including invitations from relatives. However, Muhammad and al-Khaṣṣāf thought it was permissible to accept the invitation. On the other hand, if he leaves the limitation briefly, depending on what he makes an exception in the gift, then it is better to accept the gift and a special invitation or invitation except from his mahrom or someone who is used to doing this. Judges have the right to respond to special invitations from foreigners who have a habit of receiving them as gifts. If the previous habit was to invite once a month and then changed to once a week, then the judge has the right not to respond.<sup>45</sup>

## 2) Māliki's School

The Māliki school states that there is no difference of opinion regarding the *makrūh* to accept a gift for a judge. A judge is prohibited from accepting a gift even if he reciprocates the gift. Likewise, if the giver has a conflict with the judge either at the time of giving or before that.<sup>46</sup> As for gifts from children,

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<sup>45</sup> Zainuudin Ibn Najim, *Bahr Ar-Raiq Syarh Kanzud Daqaiq*, Juz 6 (Beirut: Dar Al-Ma'rifah, n.d.), 305.

<sup>46</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Harām*, 53.

parents, and other family members, it is not forbidden to accept these gifts. If the gift is given by someone other than his relative and is given by someone who is dependent on the judge to benefit or avoid harm, then the law is makruh, but if the purpose is other than that, then it is permissible to accept the gift. The Prophet SAW accepted the gift and said, “Give gifts to each other so that you will love one another.”

Abū Ḥasan al-Anṣārī stated that it is not appropriate for judges to accept gifts from anyone even if that person has been accustomed to giving gifts from before the judge took office, nor from relatives, friends, and besides the two even if the judge repays double the gift. Rabī’ah ibn Ka’ab also said,

*“Be careful with gifts because they are the way to bribes”.*

Ibn 'Urfah also stated that judges do not accept gifts from people who are in conflict with him, even if they are relatives or also from people who have no conflict with him. Ibn Sahnun added, it may be accepted if from mahrom such as parents, children, uncles, aunts, nephews, and from people who are not under prosecution and the like (defendant or suspect).<sup>47</sup>

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<sup>47</sup> Muhammad 'Illis, *Minahul Jalil Syarh 'Ala Mukhtashor Sayyid Khalil* (Bairut: Dar al-Fikr, 1989). 299.

According to Abd al-Hikām, accepting gifts from anyone who is used to giving gifts to judges before he is appointed as judge is permissible. On the other hand, according to Abd al-Mālik and Muṭṭarrif, the judge should not accept the gift and the law is makrūh, but the law becomes forbidden (*ḥarām*) if it is given after he takes office by someone who previously used to give gifts to him and the gift is more and better in terms of the quantity and quality of gifts that are usually given.<sup>48</sup>

Then, regarding giving to workers or employees, there is the following statement from Sulaimān Ibn Yasār,

*“Rasulullah SAW sent Abdullah Ibn Rawāḥah to Khaibar, then he lied between him and the Jews of Khaibar, he said, “they collected some of their women's jewelry for him”, then they replied, “This is for you, free us and pass this department.”. Abdullah Ibn Rawāḥah replied, “O Jews, by Allah you are one of Allah's creatures that I hate the most, and what makes me want to be unfair to you? As for what you are offering is a bribe and it is a suht (illegal) act and we do not eat it. They replied, “By this the heavens and the earth will be erected.”<sup>49</sup>*

### 3) Syāfi’i School

It is necessary to pay attention to gifts for judges whether the gifts come from people in conflict with them, people who are litigating or under prosecution, or from people who have previously been accustomed to giving gifts since the judge has not served. If the gift comes from a person who is used to giving

<sup>48</sup> Ḥillis, *Minahul Jalil Syarh ‘Ala Mukhtashor Sayyid Khalil*, 299.

<sup>49</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 78



gifts and is not in conflict with the judge, then the law is that it is permissible as long as it is not more than the amount that is usually given. If it is more necessary to pay attention to whether something added has a clear impact, then it should not be accepted, if it is not like that then it may be accepted but the judge should be careful. A gift if there is a clear intention in the gift, such as for the judge to decide the case incorrectly, then the gift is a bribe. Bribery is a big sin. Judges are sinful if they accept it, as well as those who give and assist in the bribery business. Based on the Hadith narrated by Tirmizi in al-Ahkām, Abū Daud in al-‘Aqḍiyah, Abū Hurairah, and ‘Abdullah Ibn ‘Umar that the Prophet SAW cursed the briber and the bribe taker in law. Then, another redaction which is narrated by Aḥmad from Šauban, he said,

*“Rasulullah SAW cursed the briber, the recipient of the bribe, and those who were among them (helping).”<sup>50</sup>*

Al-Mawardi also stated that a judge does not accept gifts from both his opponent and his partner, if he does not have an opponent or enemy, the judge needs to be prepared for the possibility in the future that that person may have a conflict with him, so that the gift given can make him tend to fight against

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<sup>50</sup> Mushtafa Al-Khin, Mushtafa Al-Bugha, and Ali Asy-Syarbaji, *Al Fiqh Al Manhajy 'Ala Madzhab Al-Imam Asy-Syafi'i*, Juz 3 (Damaskus: Dar Al-Qalam, 1992), 171.

other people. It's because of his relationship and previous gifts.<sup>51</sup> If the judge has received the forbidden gift as mentioned above, the judge may not have it and must return it to the previous owner. If the judge is afraid to return the gift, then the gift is given to the *bait al-māl* (state).

Imām Muslim in the book *Al Ijarah*, chapter *Tahrîmul Hadāyā al-'ammāl* mentions that in the Hadith narrated by Abu Ĥumaid Al-Saīdi that,

*“Rasulullah SAW hired an employee, then the employee came to the Messenger of Allah in a state of fear of his work, then he said, "O Messenger of Allah, this is for you and this is given to me", then the Prophet asked, "Do you sit at your father and mother's house and see Is there anything given to you or not?", Then the Messenger of Allah stood up in the evening after praying, he praised Allah and said, "What about the employees we hire? He came to us and said, 'This is part of your work and this is a gift. for me', does he not sit at his mother's father's house and see if there is a present for him or not? For the sake of the substance in which Muhammad's life is in his hands, let no one of you take anything from us unless he comes on the Day of Judgment with a shackle around his neck. If he gets a camel, he will come with the sound of a camel. comes with the sound of a cow, when he gets a goat he will come with the sound of a goat." Then the Prophet raised his hands until his armpits were white.”*

In the Hadith narrated by Ahmad from Abu Hurairah it is stated that the Prophet SAW said, "Gifts for employees are *gulūl*". *Gulūl* is taking *ganīmah* before it is distributed, and gifts

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<sup>51</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Harām*, 53.

for employees or workers are called *gaul* because it includes betrayal and violation of responsibilities.<sup>52</sup>

#### 4) Ḥanbali's School

A judge does not accept gifts except from people who have given him gifts before he took office, not in a lawsuit or in a case, and gifts from anyone who is afraid or suspected of being charged with. If the person is feared to be indicted, the gift cannot be accepted and must be returned to the giver. If the judge accepts the gift, then he should be suspected. Then, whoever receives the gift is required not to have a lawsuit or indictment, if the giver has an indictment, then he cannot accept it unless they are the person who gave him the gift before he took office. If in previous they have been accustomed to giving gifts before the judge took office, then the gift must remain as it was before the judge took office, and the judge is allowed to accept it. Because the habit of giving gifts from before the judge took office is an implementation of the Hadith "*Tahāddu, tahābbu*".<sup>53</sup> Then, if the gift is given at the time the case or claim is completed by one of the parties in the case, the judge is still not

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<sup>52</sup> Al-Khin, Al-Bugha, and Asy-Syarbaji, *Al Fiqh Al Manhajy 'Ala Madzhab Al-Imam Asy-Syafi'i*, 193.

<sup>53</sup> Abdullah Ibn Abdurrahman, *Syarh Akhsharul Mukhtasharat*, n.d. 12

allowed to accept the gift unless the parties have used to give the judge a gift beforehand.<sup>54</sup>

In addition, Wahbah Zuhaili also explained about the ethics of a judge, one of which is about accepting gifts. A judge cannot accept gifts other than his mahrom and people who used to give gifts to judges before he took office, because the original purpose of the gift is friendship. Then, if the giver has a conflict or case when he gives the gift, it is forbidden for the judge to accept it based on the hadiths of the Prophet SAW which have been described above. However, if the giver is a person close to the judge and there is no conflict with him, then the judge may accept the gift.<sup>55</sup>

f. Giving Gift to Law Enforcement Officers from *Sadd Al-Žari’ah* Perspective

*Sadd al-žari’ah* etymologically consists of two words, namely *sadd* dan *žari’ah*. *Sadd* means closing reproach, covering damage, preventing, or prohibiting, while *žari’ah* means *wašilah* or the way to something both *hissi* and *ma’nawi* (good or bad).<sup>56</sup> This opinion is in line with the opinion of Ibn Qayyim who interprets *žari’ah* as a way to something general, so that it can lead to good or

<sup>54</sup> Abdurrahman, *Syarh Akhsharul Mukhtasharat*, 28

<sup>55</sup> Wahbah Zuhaily, *Al-Fiqh Al-Islāmi Wa ‘Adillatuhu*, Juz 6 (Damaskus: Dar al-Fikr, 1989), 501.

<sup>56</sup> Hifdhotul Munawwaroh, “Sadd Al- Dzari’At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer,” *Ijtihad: Jurnal Hukum Dan Ekonomi Islam* 12, no. 1 (2018): 63, <https://doi.org/10.21111/ijtihad.v12i1.2584>, 65.

bad. However, there is also an opinion which states that *żari'ah* is a way to something that is forbidden and contains badness. As a result of the differences in the definitions above, there are two kinds of *żari'ah*, namely *fath al-żari'ah* and *sadd al-żari'ah*. *Fath al-żari'ah* is taking a path that aims to benefit, while *sadd al-żari'ah* is preventing access or a path to damage if it is known that the results of the act can cause damage.<sup>57</sup>

Then, *żari'ah* also has pillars. Muhammad Hasyim Al-Burhani established three pillars of *żari'ah*, namely:

- 1) Things that are not prohibited by themselves. In this case it is divided into three conditions, namely:
  - a) The intent and purpose of the act is for other actions, such as buying and selling credit.
  - b) The intent and purpose of the act is for the act itself, such as criticizing the worship of others.
  - c) The act becomes the principle that makes it intermediary, such as the prohibition of stamping the foot for a woman who is afraid that she will reveal her hidden jewelry.

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<sup>57</sup> Wahbah Zuhaily, *Ushul Al-Fiqh Al-Islami* (Beirut: Dar al-Fikr, 1986), 873.

- 2) The strength of the accusation against the act (*al-ifḍa'*) that the act can cause harm.
- 3) *Al-mutawaṣṣil ilaihi* (to prohibited acts) or *al-mamnū'* (prohibited act).

The use of *sadd al-ẓari'ah* as a legal basis (*ḥujjah*) is agreed upon by the Mālikiyyah and Ḥanabilah. The opinions of the two schools of thought are based on Q.S. Al-An'ām verse 108 which prohibits Muslims from making fun of gods other than Allah SWT because they are afraid that other worshipers (other religions) will reply to the ridicule without any knowledge. In addition, there are other texts that have the same meaning as the verse, including the Hadith of the Prophet SAW regarding the prohibition of accepting gifts from people who borrow money from us for fear that it will lead to the practice of usury. Meanwhile in the Ḥanafiyah, Syāfi'iyyah, and Syī'ah, they only accept *sadd al-ẓari'ah* in certain matters and do not make it a proposition in other matters. An example of a problem that uses *sadd al-ẓari'ah* is when someone in the month of Ramadan cannot fast because of age, then it is better for that person to eat and drink secretly to avoid slander.<sup>58</sup>

According to Abdul Karim Zaidan, the actions that become *waṣilah* against the emergence of forbidden acts are divided into two

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<sup>58</sup> Firdaus, *Ushul Fiqih: Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif* (Jakarta: Zikrul, 2004), 120-121.

kinds. Firstly, an act that is *ḥarām* is not because it becomes a *wasilah* to something that is *ḥarām*, but the act is indeed *ḥarām*. So, the unlawful act is not because of *sadd al-ẓariah*. Second, an act whose initial law is permissible, but the act has the opportunity to lead to harm or something unlawful, then the law becomes unlawful. Meanwhile, Ibn Qayyim classifies *ẓari'ah* based on the impact it causes into four kinds, namely:

- 1) An act that basically leads to damage.
- 2) An act is basically permissible (*mustahab, mubāh*), but is used as an intermediary for the occurrence of actions that lead to intentional damage.
- 3) An act that is basically permissible, but causes damage accidentally, and generally the bad thing still happens even though it is intentional, where the badness is greater than the good that is obtained.
- 4) An act that is basically permissible, but sometimes it can cause damage, where the good is greater than the bad that is caused.<sup>59</sup>

A gift given to law enforcement officials has fulfilled the pillars of *ẓari'ah* because originally the gift was not prohibited, but

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<sup>59</sup> Munawwaroh, "Sadd Al- Dzari' At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer" 70.

saw the potential for another purpose behind the gift and made it a path to bribery which could be categorized as corruption. In addition, referring to the rules of fiqh. *dar'u al-mafāsīd muqaddam 'alā jalbi al-maṣālih* (rejecting badness takes precedence over obtaining benefits) and *izā ijtama'a al-ḥalāl wa al-ḥarām gulliba al-ḥarām* (If ḥalāl and ḥarām are mixed, then ḥarām beats ḥalāl)<sup>60</sup>, so that it is unlawful for law enforcement officers to accept gifts from anyone and regardless of the amount because it is feared that giving such gifts is considered a common thing and can be used as an alibi to steal bribes.

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<sup>60</sup> Munawwaroh, "Sadd Al- Dzari' At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer", 69.



## CHAPTER III

### RESEARCH METHOD

The method or methodology has several meanings, namely the logic of scientific research, the study of research procedures and techniques, and a system of research procedures and techniques. Based on this definition, the research method or methodology is a system to organize research procedures and techniques so that they are structured methodologically, systematically, and consistently.<sup>61</sup>

#### A. Type of Research

The type of research that will be used in this research is empirical legal research. Empirical legal research is a research that uses secondary data (legal theory) as initial data which is then followed by primary data in the form of field data.<sup>62</sup> Peter Mahmud Marzuki defines empirical legal research as follows,

*“Penelitian sosio-legal adalah penelitian yang menempatkan hukum sebagai gejala sosial. Hukum dilihat dari sisi luarnya saja dan dikaitkan dengan masalah sosial, sehingga penelitian ini menitikberatkan pada perilaku masyarakat dan kaitannya dengan hukum.”<sup>63</sup>*

This type of research is used because the primary data is data obtained in the field and does not use legislation as the primary source. In addition, the object of study in this research is related to compliance with

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<sup>61</sup> Zainuddin Ali, *Metodologi Penelitian Hukum* (Jakarta: Sinar Grafika, 2017), 17.

<sup>62</sup> Djulaeka and Devi Rahayu, *Buku Ajar Metode Penelitian Hukum* (Surabaya: Scopindo Media Pustaka, 2019), 56.

<sup>63</sup> Muhaimin, *METODE PENELITIAN HUKUM* (Mataram: Mataram University Press, 2020), 82.

the law, implementation and the role of law enforcers in law enforcement, so this research is categorized as empirical legal research.

## **B. Research Location**

The research will be carried out at the Religious Courts of Malang Regency Class I A, having its address at Jalan Raya Mojosari Number 77, Pepen, Jatiroyoso, Kepanjen District, Malang Regency, East Java. This location was chosen for three reasons, namely:

1. The Religious Court of Malang Regency received an APM (Quality Assurance Accreditation) certificate with the predicate A (Excellent) in which one of the assessments was seen from the Corruption Free Area (WBK) and the Clean and Serving Bureaucratic Area (WBBM);
2. Court location is close and easy to reach;
3. The suitability of the research object with the research location.

## **C. Research Approach**

The approach that will be used in this research is a qualitative approach. A qualitative approach is an approach to analyze data obtained in writing or verbally as well as real behavior that is researched and studied as a unified whole descriptively.<sup>64</sup> This research approach is used because it will examine the opinions of law enforcement officers in a judicial institution regarding gift giving in Islamic law where the data cannot be measured and must be presented in a descriptive-analytical explanation.

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<sup>64</sup> Muhaimin, *METODE PENELITIAN HUKUM*, 104.

## D. Data Sources

There are two sources of data that will be used in this empirical legal research, namely:

### 1. Primary Data Source

Primary data sources are the main data sources originating from respondents, informants, or sources. The source of this data is obtained through field data. The primary data sources in this study were obtained through informant. Informants are people or individuals who provide information, the data needed by the researcher is limited to what he knows and the answers cannot be directed by the researcher in accordance with his wishes. In this research, the informants will be Drs. H. Fahrurrozi, M.H.I, judge at the Religious Court of Malang Regency.

### 2. Secondary Data Source

Secondary data sources are data obtained through literature study. Literature studies in the form of publications on law which are unofficial documents, such as law books, theses, theses, legal dissertations, legal dictionaries, legal journals, and comments on judges' decisions.<sup>65</sup> Because this study aims to determine the implementation of Islamic law related to giving to law enforcement officers, the data sources to be used are law books, legal journals,

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<sup>65</sup> Ali, *Metodologi Penelitian Hukum*. 54.

fiqh and ushul fiqh books, as well as other legal research related to the object of research.

#### **E. Technique of Data Sources Collection**

There are two kinds of data collection in empirical research, namely primary data collection and secondary data collection. The primary data collection method in this research is interview. Interview is the collection of primary data from respondents, informants, or sources at the research location.<sup>66</sup> Interview can be conducted using a list of questions that will be asked or can also be done freely if the researcher obtains the required data. The technique used to collect secondary data is to collect, document books, journals, and other sources related to the problems studied.

#### **F. Technique of Data Analysis**

The stage after collecting data is analyzing the data. Data analysis is conducting a study or review of the results of data processing using theories that have been previously obtained which are then described in the form of good and correct sentences. After the data is collected and arranged systematically, it needs to be checked, marked, classified, and compiled.<sup>67</sup> After all these processes, conclusions can be drawn. The data analysis method that will be used is the Milles and Hubberman method. This method uses an interactive analysis model consisting of three stages, namely data

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<sup>66</sup> Muhaimin, *METODE PENELITIAN HUKUM*, 95.

<sup>67</sup> Muhaimin, *METODE PENELITIAN HUKUM*, 104.

reduction, data display and conclusion drawing.<sup>68</sup> The explanation of these stages is as follows:

### 1. Data Reduction

Data reduction is the process of selecting, focusing, simplifying, abstracting, and transforming raw data from field notes. Qualitative data can be reduced and transformed in many ways, namely through subtle means, through summarizing or paraphrasing, through making it part of a large pattern, and so on.

### 2. Data Display

The second step of data analysis activities is data presentation. The most frequent form of presenting data from qualitative data is narrative text. If the number of pages of text is very large, scattered, irregular and very broad. Then of course it is something that is difficult and also terrible. Under these circumstances, it is easy for qualitative researchers to jump in hastily and eliminate unused information.

Data presentation can be done by designing the columns and rows of a matrix for qualitative data and determining which data, in which form, should be entered into which cells are the analytical activities.<sup>69</sup>

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<sup>68</sup> Wanda Fristian, Vina Salvina Darvina S, and S Sulismadi, "Upaya Penyesuaian Diri Mantan Narapidana Dalam Menanggapi Stigma Negatif Di Kecamatan Klakah, Lumajang," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 14, no. 1 (2020): 101–20, <https://doi.org/10.15575/adliya.v14i1.8205>. 105.

<sup>69</sup> Emzir, *Metodologi Penelitian Kualitatif* (Jakarta: Raja Grafindo Persada, 2010). 129-131.

### 3. Conclusion Drawing

The third step of the analysis is drawing conclusions. From the beginning of data collection, qualitative researchers begin to decide on the meaning of things, noting regularities, patterns, explanations, possible configurations, causal lines, and propositions. Final conclusions may not occur until data collection is complete, depending on the size of the corpus of field notes, coding, storage, and improvement methods used, the experience of the researcher, and the demands of the funder. Conclusions are often drawn from the outset, even since researchers claim to have processed inductively.

Conclusions are also verified as researcher process. Verification may be a passing second thought in the researcher's mind returning to field notes during the researcher's writing, or verification may be through and carried out carefully by lengthy argumentation and review among colleagues to develop consensus between subjects, or by attempts to replicate a finding in other datasets.<sup>70</sup>

The data obtained from this research is descriptive-analytical, which means that the data obtained through informants both in writing and orally have been studied and analyzed as a whole.

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<sup>70</sup> Emzir. 133.

**CHAPTER IV**  
**THE GIVING GIFT TO LAW ENFORCEMENT OFFICERS IN**  
**RELIGIOUS COURT MALANG REGENCY IN ISLAMIC LAW**  
**PERSPECTIVE**

**A. Overview of Research Location**

**1. Brief History of Development of the Religious Courts of Malang Regency**

The Religious Court of Malang Regency was established based on the Decree of the President of the Republic of Indonesia Number 85 of 1996 and was inaugurated on June 28, 1997. The Religious Court of Malang Regency building is located in the Malang Regency Regional Government area, namely Jl. Banner 202 Kepanjen-Malang. At the time of its formation, the Religious Court of Malang Regency was a Religious Court Class II. After running for approximately 12 years, the Religious Court of Malang Regency Class II obtained a grade upgrade to Religious Court of Malang Regency Class IB based on the Decree of the Secretary of the Supreme Court of the Republic of Indonesia number: 039/SEK/SK/IX/2008 dated 17 September 2008.

In 2009 the Religious Courts of Malang Regency Class IB received an award from the leadership of the Supreme Court of the Republic of Indonesia in the form of a capital expenditure budget allocation for land acquisition for the relocation of the Religious Court

of Malang Regency Class IB office building covering an area of 6.243 m<sup>2</sup> located on Jalan Raya Mojosari, Mojosari Village, Kepanjen District, Malang Regency. Furthermore, starting from the 2011 fiscal year to the 2014 fiscal year, the Religious Court of Malang Regency Class IB received a budget for the construction of an office building and to be precise on November 7 2014 the representative office building of the Religious Court of Malang Regency Class IB in accordance with the prototype court building has been completed and stands on land area of 6.243 m<sup>2</sup> belongs to the Government of the Republic of Indonesia CQ Supreme Court of the Republic of Indonesia.

In the 2015 fiscal year, the Religious Court of Malang Regency Class IB received a budget for the procurement of office furniture, so the new building for the Religious Court of Malang Regency Class IB office was occupied on August 18, 2015 with the address at Jalan Raya Mojosari No. 77, Mojosari Village, Kepanjen District, Malang Regency. In 2017, with the Decree of the Supreme Court of the Republic of Indonesia. Number : 37/KMA/SK/II/2017 dated February 9, 2017, in order to improve the professionalism of the performance of the judicial apparatus and bureaucratic reform in the judicial sector, the Religious Court of Malang Regency received an increase in class from class I B to class I A. Along with this, the Malang Regency Religious Court continues to improve services and refine the SAPM program (quality standards that must be applied in the Religious Courts to serve the



community) which is promoted by the Directorate General of the Religious Courts of the Supreme Court of the Republic of Indonesia and after going through a rigorous selection through the Phase I Quality Assurance Accreditation Certification, in the end the Malang Regency Religious Court obtained very satisfactory results with the A (Excellent) predicate in the award ceremony by the Chief Justice of the Supreme Court of the Republic of Indonesia. on November 23, 2017 in Makassar.<sup>71</sup>

## **2. Vision and Mission of Religious Court of Malang Regency**

### a. Vision:

“The Realization of the Great Religious Court of Malang Regency”

### b. Mission:

- a. Maintaining the independence of the Religious Court Apparatus;
- b. Improving the quality of legal services that are fair, credible and transparent;
- c. Realizing legal unity so that legal certainty is obtained for the community.
- d. Improve supervision and coaching.<sup>72</sup>

## **3. The Authority of Religious Court of Malang Regency**

The authority of the Religious Courts includes two kinds of authority, namely absolute authority and relative authority. The absolute

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<sup>71</sup> Hanum, “Sejarah Pegadilan Agama,” 20th August, 2017, <https://www.pa-malangkab.go.id/pages/sejarah>.

<sup>72</sup> Hanum, “Visi Misi,” 7th May, 2017, <https://www.pa-malangkab.go.id/pages/visi-misi>.

authority or competence of the court is the authority of the court to adjudicate certain cases based on the type of case. While the relative authority of the court is the authority of the court to adjudicate based on the territory or jurisdiction of the court concerned.

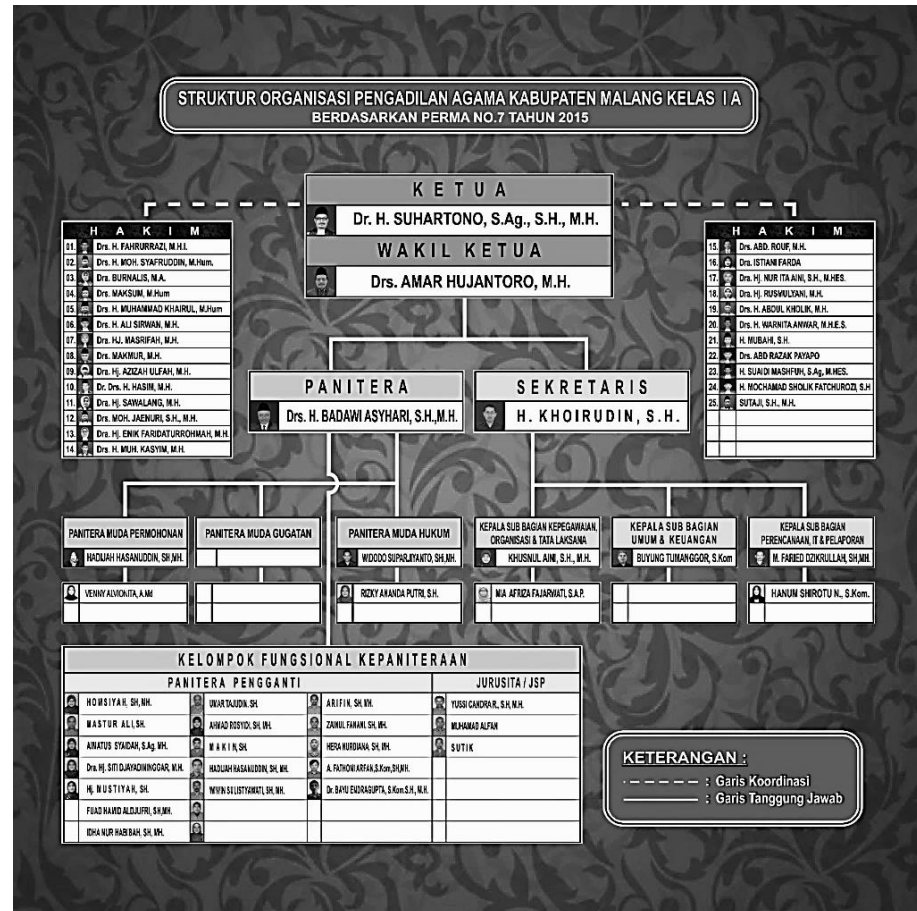
The cases that are under the authority of the Religious Courts have been regulated in Article 49 of the Law on Religious Courts. The Religious Courts have the authority to examine, decide, and settle cases at the first level between people who are Muslim in the field of marriages carried out according to Islamic sharia, inheritance, wills, grants, waqf, zakat, infaq, alms, and sharia economics.<sup>73</sup> Meanwhile, the area under the jurisdiction of the Malang Regency Religious Court (called relative authority) covers all areas in Malang Regency that can look from picture below,



<sup>73</sup> Hasim, *Peradilan Agama Dan Perbankan Syariah Perspektif Sistem Ketatanegaraan*. 53.

#### 4. Organizational Structure and Number of Personnel at the Religious Court of Malang Regency

The organizational structure of the Malang Regency Religious Court can be seen in the picture below:

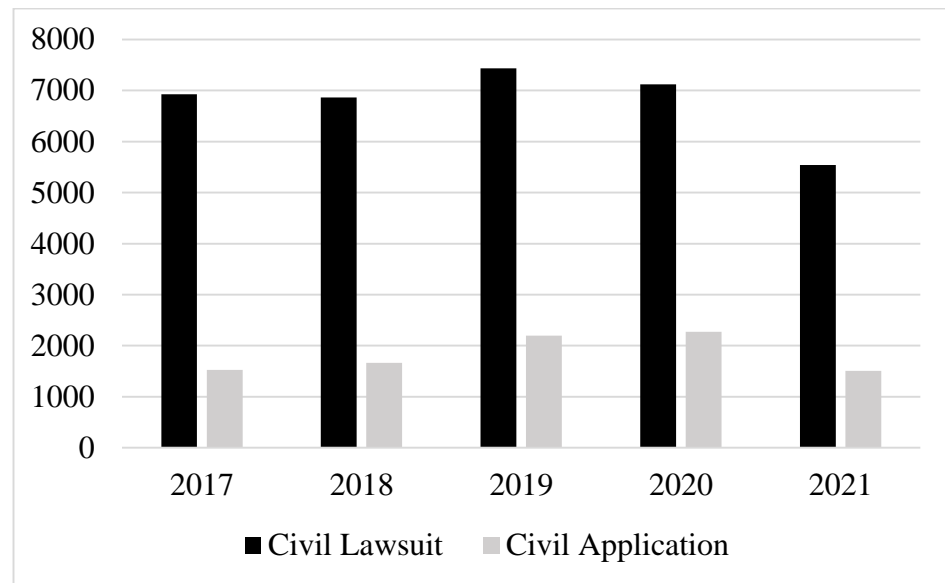


The number of Judges, Registrars, Bailiffs, and Administrative Employees at the Religious Courts of Malang Regency is as follows:

a. Judge	: 28
b. Registrar	: 1
c. Secretary	: 1
d. Junior Registrar	: 3
e. Head of Sub Division	: 3
f. Substitute Registrar	: 17
g. Bailiff	: 2
h. Substitute bailiff	: 2
i. Staffing Analyst	: 1
j. Court Analyst	: 1
k. CPNS	: 2

## **5. Case Statistics**

The case statistics of the Malang Regency Religious Court can be seen at SIPP which can be accessed through the page [http://sipp.pa-malangkab.go.id/statistik\\_perkara](http://sipp.pa-malangkab.go.id/statistik_perkara). The Case Tracking Application System or SIPP is an application that provides information to the general public or parties regarding cases. Based on the report contained on the page, the following statistics on cases entered in the last five years will be illustrated in the graph below:



**Graph 1:** Entry Case in Religious Court of Malang Regency

## **B. Opinion of Law Enforcement Officer in Religious Court Malang Regency About Giving Gift**

### **1. Giving Gift and Its Motive**

Giving has a broad meaning. Giving can include grants, gifts, alms, and also *'aṭiyah*. The focus of this research is giving gifts to law enforcement officers. The thing that needs to be analyzed regarding the giving of this gift is the motive of the gift giving. As discussed in the previous chapter, the original law of gift giving is sunnah. However, the law becomes different if it is given by a certain person and with a certain motive or purpose.

According to Mr. Fahrurrozi, the gift for thanking someone that allowed is gift from a student to his lecturer. However, if the gift is given by the person who is litigating starting from the time the case goes to

court until the case is finished, then the law is *ḥarām*. Here's what he said,

*“Salah satu pihak pernah menemui saya di rumah. Ia membawakan bermacam-macam oleh-oleh. Pada saat itu, perkara pihak tersebut baru masuk ke pengadilan dan belum masuk ke tahapan sidang. Saya tolak hadiah tersebut dan saya mengatakan pada orang itu bahwa datang ke rumah dan melakukan tersebut dilarang baik dalam hukum Islam maupun dalam hukum acara.”*<sup>74</sup>

Then, he also said that even the smallest gift must be rejected and returned to the giver. Here's what he said,

*“Hadiah sekecil apapun itu, tetap saya hindari. Jangan diambil walaupun sedikit dan tolak dengan sopan dengan diberikan alasan karena takut menyinggung perasaan orang tersebut sebagaimana diajarkan dalam al-Qur'an, fabimā rahmatin min Allāhi linta lahum...”*<sup>75</sup>

In addition, he also said that judges are not allowed to accept gifts other than because they are contrary to Islamic law, this is also contrary to the Code of Ethics for Judges as contained in the Joint Decree of the Chief Justice of the Republic of Indonesia and the Chair of the Indonesian Judicial Commission Number 047/KMA/SKB/IV. /2009 and Number 02/SKB/P.KY/IV/2009.

As for giving gifts for which the motive is not clear, it is still considered unlawful. This refers to the hadith of the Prophet SAW,

*“Verily, ḥalāl and ḥarām are obvious, and what is between them is syubḥāt”*

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<sup>74</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

<sup>75</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

So based on the hadith, taking a gift whether the motive is clear or not, the law is the same, which is *ḥarām*. Here's what he said,

*“Pernah suatu ketika ada pihak yang memberikan amplop di depan persidangan, akan tetapi kami tolak karena hal tersebut melanggar kode etik hakim dan hukum Islam. Yang jelas kita tidak boleh menerima hal yang tidak jelas. Kalau yang tadi itu jelas ya, maka tidak boleh. Yang tidak jelas saja tidak boleh, apalagi kalau jelas begitu.”*<sup>76</sup>

To find out the motives of a person in giving a gift, a law enforcement officer needs to ascertain the interests of that person. If the person has an interest related to law, or matters relating to the trial, even though the person stated his original intention was to get together, then the gift should be avoided. In fact, giving an explanation regarding the law and the flow of the trial should not be done because it is beyond the authority of a judge. As we know that the task and authority of the judge is to examine, decide and resolve cases, so that things outside the authority are not allowed. Here's what he said,

*“...Kita jangan layani itu, langsung saja kita hentikan pembicaraan soal persidangan dan sebaiknya di kantor saja. Kalau di luar persidangan itu kan bukan wewenang hakim. Jangan diperpanjang lagi, kalau kita jawab gini-gini kan artinya kita melayani”*<sup>77</sup>

However, if the gift is given to the judge after the case is finished, the law is divided into two, namely allowed and prohibited. However, according to the majority of *'ulama* and more authentic opinions prohibit this. Moreover, if a Judge is in the rain, then there is someone who offers assistance in the form of a ride and so on, if that person is a person in a

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<sup>76</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

<sup>77</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

litigation, then the stronger opinion is to refuse the assistance. The reason for the prohibition is that it is feared that if later during the trial or maybe one of the relatives of the person who helped the case has a case, the judge will have a bad feeling and a sense of reciprocity, as well as the person who helped it is feared that it will bring up his past assistance. However, there are also opinions that allow it. He said as follows,

*“Siapa tahu nanti di belakang hari walaupun ia sebagai pasien (orang yang berperkara) sudah selesai, kemudian anak atau keluarganya berperkara sementara orang itu punya jasa, apalagi jika sudah ditolong dalam hal besar, orang tersebut akan mengungkit pertolongannya itu seperti ‘oh hakim ini dulu sudah saya kasih tumpangan dan sebagainya tapi begini-begini’. Nah, itu alasan pelarangannya. Kalau alasan yang diperbolehkan itu begini, ya mengapa tidak? kan orang itu mau menolong saja. Alasan itu juga rasional.”<sup>78</sup>*

Based on the explanation above, it can be concluded that the motive for giving gifts to law enforcement officers is clear, such as gifts that are given openly when they are still in the status of a litigant, or given in order to thank them after the case is unlawful (*ḥarām*). Likewise, the motive for giving gifts that are still unclear or unclear, such as gifts on the grounds of friendship, and providing assistance to judges is also unlawful. The basis for taking this *ḥarām* law is the hadith of the Prophet SAW, *“inna al-ḥalāla bayyinun wa inna al-ḥarāma bayyinun wa baina humā umūrun mutasyābihāt”*.

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<sup>78</sup> Fahrurrozi, interview, (Malang, 3th June 2022).



## 2. Situation and Condition of Law Enforcement Officers in Receiving Gift

A law enforcement officer, especially a judge can also receive gifts in certain situations and conditions. The following are the situations and conditions in which judges may or may not accept gifts:

### a. Forbidden Situation and Condition

Situations and conditions that cause a judge to be unable to accept a gift are when the gift is given by the person who is litigating from the time the case goes to court until the case is finished. Even after the case is over, the judge cannot accept the gift from the person. However, there are differences of opinion regarding giving gift after the trial is over. Mr. Fahrurrozi said that,

*“Jadi itu kita harus waspada. Ada orang yang ngasih hadiah itu sebelum sidang tapi perkaranya sudah masuk, atau saat sudah sidang, bisa sidang sekali dua kali sidangnya. Terus minta bantu ke kita dan kasih hadiah. Ada juga yang sudah selesai sidangnya dan dia menang sesuai harapannya, pihak yang kalah juga tidak keberatan dan kemudian ia memberikan itu khilafiyah hukumnya. Kalau dua yang pertama tadi jelas haram, tidak boleh. Nah, yang terakhir sebagian ulama memperbolehkan karena kasusnya sudah selesai, akan tetapi saya ambil yang tidak boleh.”<sup>79</sup>*

### b. Allowed Situation and Condition

Situations and conditions that allow judges to accept gifts are when giving these gifts is a habit or even a common tradition.

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<sup>79</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

These gifts have also been obtained from colleagues, friends and other people who are used to giving these gifts. An example is a farewell gift. Mr. Fahrurrozi said as follows,

*“Kalau tidak terkait persidangan, misalkan saya mau dipindahkan ke Surabaya. Ketika mau perpisahan, baik dari IHI (Ikatan Hakim Indonesia), rekan-rekan, pegawai itu memberikan hadiah. Itu ya saya terima. Karena mereka ikhlas memberikan dan di sisi lain, itu tradisi ya dan tidak memberatkan. Yang ringan-ringan saja seperti baju, sarung, selimut. Jangan tanah! Kalau itu ya tidak saya terima.”<sup>80</sup>*

### 3. Preventive Measures in Preventing People from Giving Gift to Law Enforcement Officers

Efforts that can be made by law enforcement officers, especially in the field of justice, are carried out in two ways, namely:

#### a. Through Personal Awareness

A law enforcement officer has to know between a pure gift and a gift given for certain reasons. If the gift is related to the duties and authorities of law enforcement officers, then the gift must be refused. Mr. Fahrurrozi's words are as follows,

*“Kalau secara pribadi ya tergantung kita sendiri. Kita harus tau mana hadiah, pemberan, sogok. Kan ada pemberian dengan embel-embel atau ada sebab-sebab. Seorang aparat penegak hukum harus tau mana pemberian murni atau ada unsur-unsur yang lainnya. Kita teliti. Kalau terkait dengan tugas kita ya tidak kita terima. Itu tergantung kita sebenarnya. Kalau kita tahu ya diamalkan. Tapi yang parah itu biasanya hukum pidana atau perdata yang besar seperti warisan, biasanya banyak yang menyogok. Tapi di sini tidak, biasanya kecil-kecil dan tidak diterima juga.”*

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<sup>80</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

b. Through Legal Counselling

Legal counseling is one of the activities to disseminate information and understanding of legal norms and legislation in force in order to realize and develop public legal awareness, so as to create a legal culture that is orderly and obedient or obedient to legal norms and legislation in force for upholding the rule of law.<sup>81</sup> In practice, judicial institutions send judges to provide counseling to the public. At that time, the judge has the opportunity to explain to the public that while litigation, the public is prohibited from giving gifts, bribes or whatever because the court will still give a fair decision and in accordance with the applicable rules. The method used when counseling is through lectures. The lecture material has been studied beforehand and can be conveyed in the form of stories to make it easier for the general public to understand.

Mr. Fahrurrozi's words are as follows,

*“Secara teknis ya bisa secara pribadi atau kita diutus oleh kantor untuk penyuluhan hukum ke masyarakat, biasanya kita dikirim ke kecamatan-kecamatan. Nah, disitulah kita berkesempatan untuk menjelaskan kepada masyarakat bahwa ketika mengurus perkara janganlah sampai memberikan hadiah, menyogok atau apapun itu. Pengadilan Agama akan berdiri tegak sesuai aturan yang berlaku. Pengadilan Agama kan namanya juga ‘agama’, insya Allah kita akan berdasarkan hukum Islam. jangan sampai memberikan hadiah untuk hakim. Sebelum penyuluhan kita juga belajar terlebih dahulu. Dasar-dasar di Al Qur’an,*

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<sup>81</sup> Yul Ernis, “Implikasi Penyuluhan Hukum Langsung Terhadap Peningkatan Kesadaran Hukum Masyarakat,” *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 477, <https://doi.org/10.30641/dejure.2018.v18.477-496>. 490.

*Hadis, Atsar, kisah-kisah Nabi dan kemudian kita sampaikan pada masyarakat. Pengadilan itu akan seimbang, adil dan tidak berat sebelah. Kita berprinsip sama di depan hukum, tidak memihak siapapun, berlaku adil dan sesuai aturan yang berlaku. Jangan dikasih hadiah biar lancar. Nanti masyarakat diberi atsar, cerita-cerita Nabi. Kalau hadis kan kadang juga bingung. Kalau lewat cerita Nabi kan orang-orang lebih mudah memahami, paling tidak secara umum.”<sup>82</sup>*

### **C. Islamic Law on Law Enforcement Officers in Religious Court Malang Regency Opinion about Giving Gift**

#### **1. Islamic Law regarding Giving Gifts Based on Motives**

Motives or goals in doing all forms of muamalah are things that are beyond human control. In principle, a contract is called a valid contract based on something visible. Then, based on the interview data that has been obtained, there are two kinds of motives in giving gifts. These motives are obvious motives and vague motives. The obvious motives include giving gifts in the context of parting, certain moments that have become a habit before, and bribing in order to get a decision that is in line with expectations. The vague motive is when the gift is given by someone who is unknown and has never given a gift before and can also be in the form of assistance given to judges. Regarding this motive, mazhab scholars have different opinions regarding this matter. The Ḥanafī and Syāfi’ī schools see a muamalah from the contract. According to the two schools of thought, if the pillars and conditions have been

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<sup>82</sup> Fahrurrozi, interview, (Malang, 3th June 2022).

met, then the contract is valid and the intention is left to Allah SWT. According to both of them, as long as there are no indications that indicate the intention of the perpetrator (the bad intentions of one party), then the rule applies *al-mu'tabar fī awāmīrillah an-niyah wa al-mu'tabar fī umūr al-'ibad al-ismu wa al-lafzu* (The basic reference regarding matters relating to the rights of Allah is the intention while those relating to the rights of servants are the words). However, if there are indications that indicate the intention of one of the parties, then the rules apply *al-'ibrah bi al-ma'āni lā bi al-alfāzi wa al-mabāni* (basic reference is meaning or intention, not lafaz and form), so that according to the Ḥanafī and Syāfi'i schools, if it appears that there is an indicator of someone's bad intentions in a gift contract, then the reference is their intention. Then, according to the Māliki and Ḥanbali schools, if the intention and purpose of a contract are in accordance, then it is valid, but if it turns out to be inappropriate and there are no indicators, the contract remains valid and the wrong intention is a matter between the perpetrator and Allah. If there are indicators that indicate the intention, which is not appropriate, then the contract is damaged.<sup>83</sup>

Therefore, when law enforcement officers can see indications of the unfavorable motive of the gift giver, the reference is the motive of the person. However, if law enforcement officials cannot see any indicators that indicate the motive of the gift giver, then the gift should not be taken

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<sup>83</sup> Munawwaroh, "Sadd Al- Dzari' At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer", 75.

as a form of caution against cases that are still unclear (*syubhāt*). A *syubhat* case is a case for which there is no clarity regarding the *ḥalāl* or *ḥarām*, so that the rules apply *iza ijtama' a al-ḥalāl wa al-ḥarām gulliba al-ḥarām* (If *ḥalāl* and *ḥarām* are mixed, then *ḥarām* beats *ḥalāl*)<sup>84</sup>, so it is unlawful for law enforcement officers to accept the gift.

As for the gift given by the litigant after the case is over, according to the *Ḥanbali* school, the law is not allowed. The gift can only be received if the person is accustomed to giving gifts to judges since the judge has not been appointed.

## 2. Islamic Law regarding Giving Gift Based on Situation and Condition

A law enforcement officer can receive a gift if the gift given is completely unrelated to the case. One of the examples presented is the giving of gifts when a task is transferred out of town. Giving gifts at such times is allowed as it is a tradition. The gifts are also obtained from colleagues, employees, and also their friends, which in this case is a type of gift that must be repaid, so that the law is allowed (*mubāh*).<sup>85</sup>

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<sup>84</sup> Munawwaroh, "Sadd Al- Dzari' At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer", 69.

<sup>85</sup> Aṭ-Ṭawīl, *Al Hadiyah: Baina Al-Halal Wa Al-Ḥarām*, 33.

## CHAPTER V

### CLOSING

#### A. Conclusion

Based on the data described in this study, the following conclusions can be drawn:

1. The views of law enforcement officers at the Religious Court of Malang Regency regarding the motive for giving gifts are in accordance with the provision regulated in Islamic Law. The motive for giving gifts to law enforcement officers is broadly divided into clear motives and vague motives. If there are indicators indicating that the motive for giving the gift is for bad things such as bribing or the motive cannot be indicated, then the law on accepting the gift is *harām*.
2. The benchmark in determining situations and conditions that allow law enforcement officials to accept gifts is tradition or custom.

#### B. Suggestion

1. Law enforcement officers should not accept gifts in any form in order to avoid any gifts intended to bribe. This is done in order to prevent the normalization of giving to law enforcement officers and to prevent gratification practices that lead to bribery.

2. For the government, it is better to emphasize regulations and socialization related to gratuities to law enforcement officers and the public. This needs to be done so that law enforcement officers carry out their duties and obligations properly and the community does not normalize the provision of law enforcement officers.
3. The community should not give anything for the assistance they receive from law enforcement officers or for other reasons. This is done so that the community participates in preventing the practice of unconscious gratification.



## BIBLIOGRAPHY

### Books

'Illis, Muhammad. *Minahul Jalil Syarh 'Ala Mukhtashor Sayyid Khalil*. Bairut: Dar al-Fikr, 1989.

Abdurrahman, Abdullah Ibn. *Syarh Akhsharul Mukhtasharat*, n.d.

Al-Himām, Ibn. *Fathul Qadir*. Juz 16. Beirut: Dar Al Kutub Al 'Ilmiyah, n.d.

Al-Khin, Mushtafa, Mushtafa Al-Bugha, and Ali Asy-Syarbajy. *Al Fiqh Al Manhajy 'Ala Mazhab Al-Imām Asy-Syafi 'i*. Juz 3. Damaskus: Dar Al-Qalam, 1992.

Ali, Zainuddin. *Metodologi Penelitian Hukum*. Jakarta: Sinar Grafika, 2017.

Aṭ-Ṭawīl , Aḥmad bin Aḥmad Muhammad Abdullah. *Al Hadiyah: Baina Al-Ḥalāl Wa Al-Ḥarām*. Riyadh: Dar At-Thayyibah, 1992.

Az-Zuhaily, Wahbah. *Al Fiqh Al Islamy Wa Adillatuhu*. 2nd ed. Damaskus: Dar al-Fikr, 1985.

Djulaeka, and Devi Rahayu. *Buku Ajar Metode Penelitian Hukum*. Surabaya: Scopindo Media Pustaka, 2019.

Emzir. *Metodologi Penelitian Kualitatif*. Jakarta: Raja Grafindo Persada, 2010.

Firdaus. *Ushul Fiqih: Metode Mengkaji Dan Memahami Hukum Islam Secara Komprehensif*. Jakarta: Zikrul, 2004.

Hasim. *Peradilan Agama Dan Perbankan Syariah Perspektif Sistem*

*Ketatanegaraan*. Surabaya: Airlangga University Press, 2020.

Muhaimin. *METODE PENELITIAN HUKUM*. Mataram: Mataram University Press, 2020.

Najim, Zainuudin Ibn. *Bahr Ar-Raiq Syarh Kanzud Daqaiq*. Juz 6. Beirut: Dar Al-Ma'rifah, n.d.

Rofiq, Ahmad. *Hukum Perdata Islam Di Indonesia*. Depok: Rajawali Press, 2017.

Sabiq, Sayyid. *Fiqh As-Sunnah*. 1st ed. Kairo: Dar Al-Hadits, 2004.

Zuhaily, Wahbah. *Al-Fiqh Al-Islāmi Wa Adillatuhu*. Juz 6. Damaskus: Dar al-Fikr, 1989.

———. *Ushul Al-Fiqh Al-Islami*. Beirut: Dar al-Fikr, 1986.

## **Researches**

Ainur Rafiq, Mahbub. “Diskursus Perdebatan Praktik Money Politics Dalam Perspektif Metode Istishlahy.” *Al-Istinbath : Jurnal Hukum Islam* 6, no. 2 (2021): 179. <https://doi.org/10.29240/jhi.v6i2.2074>.

Cahyaningsih, Diana Tantri. “Mengurai Teori Effectiveness of Law Anthony Allot.” *Jurnal Recthvinding Online*, no. 3 (2020): 1–7.

Ernis, Yul. “Implikasi Penyuluhan Hukum Langsung Terhadap Peningkatan Kesadaran Hukum Masyarakat.” *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 477. <https://doi.org/10.30641/dejure.2018.v18.477-496>.

Fristian, Wanda, Vina Salvina Darvina S, and S Sulismadi. "Upaya Penyesuaian Diri Mantan Narapidana Dalam Menanggapi Stigma Negatif Di Kecamatan Klakah, Lumajang." *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 14, no. 1 (2020): 101–20. <https://doi.org/10.15575/adliya.v14i1.8205>.

Ilgafur Tanjung. "PEMBERIAN HADIAH KEPADA PEGAWAI/PEJABAT (TINJAUAN HUKUM ISLAM DAN UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 20 TAHUN 2001)." Universitas Islam Negeri Sumatera Utara, 2017.

Isdiyanto, Ilham Yuli. "Problematika Teori Hukum, Konstruksi Hukum, Dan Kesadaran Sosial." *Jurnal Hukum Novelty* 9, no. 1 (2018). <https://doi.org/10.26555/novelty.v9i1.a8035>.

MULIAMIN. "HUKUM MELAKUKAN SOGOK MENYOGOK UNTUK MEMPERTAHANKAN HAK (STUDI KOMPARATIF ANTARA MAZHAB HANAFI DAN MAZHAB SYAFI'I)." UNIVERSITAS ISLAM NEGERI SULTHAN THAHA SAIFUDDIN JAMBI, 2019.

Munawwaroh, Hifdhotul. "Sadd Al- Dzari' At Dan Aplikasinya Pada Permasalahan Fiqih Kontemporer." *Ijtihad : Jurnal Hukum Dan Ekonomi Islam* 12, no. 1 (2018): 63. <https://doi.org/10.21111/ijtihad.v12i1.2584>.

Odhy, Fakhruddin. "PERSPEKTIF BUDAYA HUKUM DALAM PERKEMBANGAN KASUS PERKEMBANGAN KASUS KORUPSI DI INDONESIA." *Dharmasiswa* 1 (2021).

Pertiwi, Kanti. "Kesenjangan Dalam Wacana Antikorupsi Di Indonesia : Temuan

Dari Literatur Studi Korupsi Kritis.” *Jurnal Antikorupsi Integritas* 5, no. 2 (2019): 133–50.

Siregar, Nur Fitriyani. “EFEKTIVITAS HUKUM.” *Al-Razi* XVIII, no. 2 (2018): 1–16. <https://ejournal.stai-br.ac.id/index.php/alrazi/article/view/23>.

Suryanto, Ahmad Fahd Budi. “Penegakan Hukum Dalam Perkara Tindak Pidana Korupsi Suap Menyuap Dan Gratifikasi Di Indonesia.” *Jurnal Program Magister Hukum Fakultas Hukum Universitas Indonesia* 1, no. 2 (2021): 589–600.

Wardah, Khoirul. “Studi Analisis Tentang Pemberian Hadiah Kepada Pejabat Menurut Imam Asy-Syafi’I.” Universitas Islam Negeri Walisongo Semarang, 2017.

YANI, FITRI. “PRAKTIK PEMBERIAN DALAM PENGURUSAN DOKUMEN DI DESA TELLULIMPOE KAB. SOPPENG (TINJAUAN HUKUM ISLAM).” SEKOLAH TINGGI AGAMA ISLAM NEGERI (STAIN) PAREPARE, 2018.

### **Websites**

Hadi, Iلمان. “Siapa Sajakah Penegak Hukum Di Indonesia?” 13 Agustus, 2012. <https://www.hukumonline.com/klinik/a/lembaga-penegak-hukum-1t502201cc74649>.

Hanum. “Sejarah Pegadilan Agama.” 20th August, 2017. <https://www.pa->

malangkab.go.id/pages/sejarah.

———. “Visi Misi.” 7th May, 2017. <https://www.pa-malangkab.go.id/pages/visi-misi>.

## APPENDIXES

### APPENDIX 1

#### PHOTOS BEHIND INTERVIEW



Photo with Drs. Fahrurrazi, M.H.I



Letter of Research Permission

PENGADILAN AGAMA KAB. MALANG		
SURAT MASUK		
No. Urut : <b>1881</b>	Tgl Masuk : 24/05/2022	Kode : <b>PB.02</b>
Isi Ringkas : Permohonan Izin Penelitian		
Lampiran : -		
Tujuan : PA KAB. MALANG	Surat Dari : Universitas Islam Negeri Maulana Malik Ibrahim Malang	
Tanggal : 23/05/2022	No. Surat : B-2690/F.Sy.1/TL.01/03/2022	
Pengolah : Petugas1	Paraf :	
Catatan :		FM/AS/1702
PENGADILAN AGAMA KAB. MALANG		
LEMBAR DISPOSISI		
No. Urut : <b>1881</b>	Tgl Diterima : 24/05/2022	Kode <b>PB.02</b>
Asal Surat	Universitas Islam Negeri Maulana Malik Ibrahim Malang	
Isi Ringkas	Permohonan Izin Penelitian	
Tanggal / Nomor	23/05/2022 / B-2690/F.Sy.1/TL.01/03/2022	
Tanggal Penyelesaian		
Isi DISPOSISI	Diteruskan kepada :	
Mohon Petunjuk 24/05/2022	1. Yth. Bapak Ketua	
<i>di hitung oleh P. Fahrurrozi untuk</i>	2. P. Fahrurrozi	
<i>menjls. berau pembidj. Mahkamah</i>	3.	
<i>penelitian terapan</i>		
	<i>30/05/22</i>	
Sesudah diproses harap segera diembalakan		
Kepada :	Tanggal : 3-6-2022	

Photo of Incoming Letter and Disposition Sheet

## CURRICULUM VITAE



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