

**THE CONTEXTUALIZATION OF THE TRADITIONAL ISLAMIC BOOK
ON CONTEMPORARY ISSUES
(Analysis of the Money Laundry Case)**

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Abstract. This research is a research library and belongs to qualitative research. The research approach is used with a normative system. The results reveal that the role of the traditional Islamic book is still crucial and contextual. The use of analogy and comparative methods is applied in determining law, both state and religion. Looking for the common ground then concocting through long dialectics. The orientation is to use religious law without touching or changing plural local wisdom, either in customary or national law. The contextualization of the traditional Islamic book here is a form of effort to maintain human social relations and eliminate the rigid paradigm in understanding the traditional Islamic book and its application. Money laundry in the view of the traditional Islamic book is prohibited because of the correlation with the use of booty.

Keywords: Contextualization, Money Laundry, Islamic Law

Abstrak. Penelitian ini merupakan penelitian kepustakaan, dan termasuk dalam penelitian kualitatif. Pendekatan penelitian yang digunakan adalah pendekatan normatif. Hasil penelitian mengungkapkan bahwa peran kitab Islam tradisional masih sangat penting dan kontekstual. Penggunaan metode analogi dan perbandingan diterapkan dalam menentukan hukum, baik negara maupun agama. Mencari titik temu kemudian meramu melalui dialektika yang panjang. Orientasinya adalah menerapkan hukum agama tanpa menyentuh atau bahkan mengubah kearifan lokal yang plural, baik dalam tatanan hukum adat maupun hukum nasional. Kontekstualisasi kitab Islam tradisional di sini merupakan bentuk upaya untuk menjaga hubungan sosial manusia, serta untuk menghilangkan paradigma kaku dalam memahami kitab-kitab adat dan dalam penerapannya. Pencucian uang dalam pandangan kitab

Islam tradisional dilarang karena ada korelasinya dengan penggunaan barang rampasan.

Kata Kunci: Kontekstualisasi, Pencucian Uang, Hukum Islam

Introduction

Contextual study¹ to traditional Islamic book² has been assessed as an appropriate method of understanding to find out the substantive messages of the book following the author's intent. This judgment is given because it is realized that a book was written or printed, not in a vacuum. The traditional Islamic book, which is generally an elaboration and understanding of the teachings of the Qur'an and al-Sunnah, is a reflection of many things that surround the author, including socio-cultural conditions, socio-political conditions, thought tendencies, and motives. - other related motives. It is realized that the language or symbol of writing cannot facilitate all the will of the author and the dimensions surrounding it. The thoughts in the classical scriptures, thus, come together with and according to their own situations and conditions. Therefore, renewing the shari'ah understanding is an effort to describe Islam teachings, following the demands of changing conditions to realize people benefit, both in the world and in the hereafter, through classical books.

¹ Dichotomically, there are always two different studies or approaches: textual and contextual, especially in understanding religious texts. The term "textual" itself is actually taken from the word "text" which means "original words". Then this term is understood as "understanding the literal meaning of the text, as the sound of the text itself". While the term "contextual" comes from the word "context", which has two meanings: [1] part of a description or sentence that can support or add clarity to meaning, or [2] a situation that has to do with an event. So contextual studies are understood as an understanding of the text that involves related situations to get clarity on the true meaning. Read Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, (Jakarta: Balai Pustaka, 1988), p. 458.

² *Kitab Kuning* are religious books in Arabic, Malay, Javanese or other local languages in Indonesia using Arabic script, which apart from being written by scholars in the Middle East, were also written by Indonesian scholars themselves. Lihat Azyumardi Azra, *Pendidikan Islam: Tradisi dan Modernisasi Menuju Millenium Baru*, (Jakarta: Logos, cet.I, 1999) p. 111

The contextualization of this traditional Islamic book uses a social-historical approach of thought, in this case Islamic legal thinking. According to M. Atho 'Mudzar, what is meant by a social-historical approach in Islamic legal study is an approach that every product of Islamic legal thought is the result of the interaction between the author (*musannif*) and the socio-cultural or socio-political environment that surrounds it. The product of his thought depends on the environment and the situation and conditions in which he is located.

This approach is critical to use for at least two reasons: first, to put the product of Islamic legal thought in the right place, and second, to give additional courage to legal thinkers today so that they do not hesitate if they feel the need to change a product of legal thought because history has proven that Muslims in various parts of the world have done it without feeling out of the framework of Islamic law.³

One contemporary issue rife in Indonesia and even in other parts of the world is the money laundry case. When investigated further about the meaning of money laundering, there is no uniform and comprehensive definition of money laundering or money laundering, each of them uses their respective perspectives. However, there are several definitions regarding money laundering (money laundering). In general, these meanings or descriptions are not much different. Black's Law Dictionary provides an understanding of money laundering as a term used to describe investment or other transfers of money flowing from rocketing, drug transactions, and other illegal sources into legitimate channels so that is source cannot be traced. (Money laundering is a term to describe investment in legal fields through legal channels so that the origin of the money can no longer be known). Money laundering is the process of erasing traces of the source of money from

³ M. Atho' Mudzar, "Pendekatan Sejarah Sosial dalam Pemikiran Hukum Islam," Makalah pada Seminar Kontekstualisasi Ajaran Islam, Badan Litbang Depag di Jakarta, 26 Desember 1991. Dimuat dalam *Studia Islamika*, No. 35 Th. XVI, Pebruari 1992, p. 20

illegal or criminal activities through a series of investment activities or transfers carried out many times to obtain legal status for money invested or destroyed into the financial system.

This form of money laundering activity is hazardous and detrimental to society. According to the Government of Canada in a paper issued by the Department of Justice Canada entitled *Electronic Money Laundering: An Environmental Scan*, published in October 1998, the negative impacts caused by this money laundering activity can be in the form of:⁴

1. Drug dealers and dealers, smugglers, and other criminals can expand their operations. This will increase the cost of law enforcement to eradicate it and the cost of health care and treatment for victims or drug addicts.
2. Money laundering activities can undermine the financial community because of the large amount of money involved in these activities. Moreover, the potential for corruption increases with enormous amounts of illicit money circulation.
3. Money laundering reduces government tax revenues and indirectly harms honest taxpayers, and reduces legitimate employment opportunities.
4. The easy entry of money into Canada has attracted unwanted elements by reducing the quality of life and raising concerns about national security.

Based on the enigmas above, the writer needs to offer a legal solution to the problems that occur through the traditional Islamic book approach because the traditional Islamic book is the leading guide in discussing Islamic law in the community. This research is also carried out to see the correlation and closeness to

⁴ Remy Syahdaeni, *Money Laundering, Materi Kuliah Hukum Perbankan*, Program Pasca Sarjana Ilmu Hukum Universitas Indonesia, tt, p. 4. As quoted by Neni Sri Imayati in "Pencucian Uang dalam Perspektif Hukum Perbankan Islam dan Hukum Islam", Volume XXI No. 1 Januari-Maret 2005 : 93 -114 96

the discussions and thoughts of the scholars who have been recorded hundreds of centuries ago with cases that occur today.

Discussion

Thinking Model Traditional Islamic Book

There is no concrete data on the origin of the term *Kitab kuning* in the archipelago culture. Only in its use is the term commonly used to refer to written works in Arabic (Arabic Book) compiled by scholars several centuries ago. Because of that, they are often called classical books. In general, although from the point of view of their content, the books are pretty comprehensive and can be said to be academic, but from a systematic point of view, they are still straightforward. They do not recognize reading signs such as periods, commas, question marks, etc. The transition from one sub-topic to another, not by using the new paragraph system, but by using articles or similar codes such as *tatimmah*, *muhimmah*, *far'un*, *tambihon*, and so on.⁵ Also, the binding system uses the koras system.

Masdar F. Mas'udi said that so far three terminologies regarding traditional Islamic book:⁶ The traditional Islamic book is a book written by classical Islamic scholars which are continuously used as a reference by Indonesian scholars, such as *Tafsir Ibn Katsir*, *Tafsir al-Khazin*, *Tafsir Jalalayn*, hadith books, such as the *Shahih Bukhari*, *Shahih Muslim*, and so. In Arabic, generally, do not wear a scarf, even without the period and comma.

- a. The traditional Islamic book is a book written by Indonesian scholars as an independent written work, such as those written by Imam Nawawi, Abdur

⁵ Zamakhsyari Drofier, *Contemporary feature of javanese pesantren*, MIZAN No. 2 Vol. 1. 1984, p. 27.

⁶ Masdar F. Mas'udi, *Menguak Pemikiran Kitab Kuning*, (Majalah Santunan, No. Perdana 1984. Ed. October-December 1984), p. 26

Rauf al-Singkili (Syiah Kuala), Imam Aḥmad Khātib al-Mangkabawī and others.

- b. The traditional Islamic book is a book written by Indonesian scholars as a commentary or translation of texts by foreign scholars. Such as the books of *sabil al-muhtadīn*, *siyarus salikin*, *sirāt al-mustaqīm* and others.

According to the author's analysis, the naming of the traditional Islamic book is because, in general, the books were printed on yellow paper, because of the technological advances that developed at that time. Namely, they could only publish an article in yellow, and sometimes the sheets were not bound, so it was easy. Taken the necessary parts without having to carry a whole book. Usually, the students only bring specific sheets to be studied. Because the writing form is "bald", the traditional Islamic book is not easy to read, let alone understood by those who do not master Arabic grammar. Need special skills and trained to read it. The traditional Islamic book format usually has its form, which often consists of two parts, the eyes occupying the margins and the *syarah*, which occupies the middle part broadly. For the paper size, the quarto size is usually used.

The position of the traditional Islamic book in the pesantren is complementary to that of the *Kyai*. The Traditional Islamic book codifies the values adopted by the pesantren community,⁷ while *Kyai* is a complete personification (or should be) of that system of values. A new *Kyai* is called a *Kyai* if he has understood and explored the teachings contained in the traditional Islamic book, and practices them with total sincerity and sincerity. The level of depth and practice of the traditional Islamic book is one of the most representative criteria for measuring the degree of a *Kyai* to another *Kyai*. And in the eyes of the *santri* a traditional Islamic

⁷ Rusli, R., & Nurdin, N. (2021). Understanding Indonesia millennia Ulama online knowledge acquisition and use in daily fatwa making habits. *Education and Information Technologies*. <https://doi.org/10.1007/s10639-021-10779-7>

book will be used as a guide for thinking or behavior when it has been presented in the presence of the Kyai, or at least the exemplary Kyai has stated his diploma (permission) for that, this is why a (senior) *santri* is able to read The books themselves, said Kali, still feel the need to present them in front of a Kyai who according to the *santri* has manifested the contents of the *rahim* and *piwulang* (teachings) of the Book to be served.⁸

Among the pesantren community, there is still a strong belief that the teachings contained in the traditional Islamic book are still valid and relevant, legal guidelines for life and life, meaning that these teachings are believed to be derived from the book of Allah and the sunnah of the Prophet. It is also vital elements in noble tradition of *ṣalih salaf* scholars. Relevant means that the teachings are still suitable and helpful in achieving happiness in this life and "later". Herein lies the difference between the "traditional" pesantren community and other Islamic societies called "modern" dichotomies, which have recently been increasingly criticized.

The pesantren community, who study the traditional Islamic book, believe that the guidelines for life are the Book of Allah and the Sunnah of the Prophet, but they will only guide it through the interpretations and descriptions that trusted scholars have attempted in the past. On the other hand, the so-called 'modern' group wants to teach these two sources, not utilizing the scholars' interpretations, but through interpretations or descriptions that are made on their own. In other words, the difference was a matter of means, not goals. But against this background, the group predicated "modern" can hardly appreciate the traditional Islamic book, nor the scholars who have compiled it.

⁸ Masdar F. Mas'udi, *Menguak Pemikiran...*, p. 27

As a comprehensive teaching system, the overall coverage of the traditional Islamic book covers a very broad range of aspects, including beliefs in metaphysical matters, as well as in the form of views and values of personal, family and community life, all of which are expected to lead to at one point the goal is the formation of a human quality with noble character (*insān Kamīl*) both towards God, himself and others..

In approaching the issue of aqidah, especially those related to the divine aspect, the Traditional Islamic Book agrees to follow the principles of sunny teaching (*ahlu sunnah waljamaah*) as formulated by Abû al-Hasan al Asy'arī (873-935) and Imam Muhammad al-Matûridi (852-944).⁹ The substance of the teachings, this school is intermediate between the understanding of Qadariyah and Muktaẓilah and Jabariyah. Imam Al-Ghazalī through his works, especially *ihya ulûm al-Dīn*, has made Asy'ari's understanding increasingly popular and developed and eventually is practically the only theological system known accepted in almost the entire Islamic world, without exception. *pesantren* community, so that nearly all *pesantren* in Aceh, even in Indonesia adhering to the ideology taught by these two great theological figures.

Except for those circulating among *khawas* such as the book *Sirāj al-Thālibīn*, the work of Sheikh Dahlan Jempes al-Jawī, the book *Ihya al-Ulûm al-Dīn* itself and for those who are a little more open like the book *al-Khushûn al-Ḥamīdiyah*, most of the Traditional Islamic Books do not provide complex and abstract discussion of divine matters. In contrast to the Traditional Islamic Book for *khawas* and other works of philosophy enthusiasts, the more popular Traditional Islamic Book is not interested in speculating, for example, whether God is a substance or not. With the spirit of *Taslīm*, resigned, they followed the instructions of a hadith which says:

⁹ Both of them are considered the founders of the Ahlu Sunnah Wal Jamaah understanding or group, because of the similarity of ideas and thoughts between them.

تَفَكَّرُوا فِي خَلْقِ اللَّهِ ، وَلَا تَفَكَّرُوا فِي اللَّهِ

“Think about God's creatures, don't think about His Essence.”

From the expression of this hadith, it is understood that God is the One and Only One, *mukhālif lil ḥawādiṣ*, (there is nothing in the sky or on earth that resembles Him). God is the One who is not asked why; is not related to the dimension of time; He is beyond reach. Human thoughts and fantasies.¹⁰

Following the formula of Al-Asy'ari, which was later completed by Abu Bakr al Baqilani (w, 1012),¹¹ The Traditional Islamic Book always enters the discussion regarding divinity by parsing what is called the mandatory nature 20, the impossible nature which is also 20, and one *jaiz* (choice) quality, namely the freedom for God to do or not do something that may be slightly affected by the pattern of the philosophical approach used by Asy'ari and also Al-Ghāzalī when polemicizing with his opponents from among philosophers, the Traditional Islamic Book also underlines the usefulness of the argument of *aqli* (reasoning) in addition to *naqli*'s ideas in explaining divine qualities, although still in simple appearance. The *naqli* argument is an argument that is mixed from logical truths, while the *naqli* idea is compiled based on the facts of revelation, the Qur'an or the Hadith.

This flexible attitude or flexibility in matters that do not directly concern the field of *ushul al-din* (the basic principles of belief) is also seen in how they treat power. According to the theory in the Traditional Islamic Book, the highest strength and true sovereignty are in the hands of Allah. Just as humans were created to serve Him, a person's power must also be devoted to realizing His demands and words.

¹⁰ Muhammad Zain bin Jalaluddin, *Bidāyat al-Hidayat...*, p. 18

¹¹ He is a prominent figure in Asy'ari school. He is the second greatest figure in Asy'ariyah after Abū Hasan Al-Asy'ari. A *mutakallim* (expert of Kalam), Al-Baqilani also one of Ushul Fiqh scholar. See Ibn 'Asākir, *Tabyīn al-Kadzib al-Muftāri, Biografi al-Baqillani...*, h. 221,

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ

“All of you obey Allah, obey the Messenger of Allah also to those who hold power among you.” (Q: IV – 58).

In this verse Allah makes obedience to the leader in third place after obedience to Allah and His Messenger. However, the leader here does not come with the word 'ta'atilah' because obedience to the leader is a follow (*tābi'*) of obedience to Allah and His Messenger. Therefore, if a leader orders to commit immorality to Allah, there is no longer the obligation to listen and obey.

According to the commentators, in language such a sentence structure means that submission to the ruler is limited as long as it does not conflict with the provisions of Allah and His Messenger.

But as is generally understood by the majority of people, most of the contents of the writings in the Traditional Islamic Book are not interested in getting too far involved in (practical) political matters, including issues that are very basic to almost all political societies. According to the Traditional Islamic Book criteria, the requirement for a leader is that he must act reasonably and be competent in carrying out the duties of his power. According to Al-Mawardī, the most influential theorist in the world of the political thought of the sunny, the task of a ruler (caliph) revolves around: upholding justice in the midst of society protecting and advancing religious life, guaranteeing the security and safety of the State, saving the lives and property of all the people. This is because, upholding the fundamental rights of the people, punishing mistakes and abuses, regulating the distribution of zakat, and enforcing proper government and financial discipline. Because the measure of power is the quality of justice that is upheld, then in its way, the Traditional Islamic Book thinking agrees that the people can be critical of the power that acts oppressive (oppressive).

But in line with the political times of the sunny, the Traditional Islamic Book never approved of acts of rebellion or treason against legitimate rule. They are more receptive to the status quo than choosing chaos and anarchy, whose results are not necessarily better. According to Al-Ghazalī, basically, the rulers who do wrong must be impeached. But if this is not possible, for example, if a powerful army supports it and is forced, it will give birth to anarchy and civil war, then it must be allowed to run and be accepted as an emergency option. The decision of the Islamic Boarding School Ulama (NU) to give president Sukarno the title *waly al-amrī dlarûr bi al-syawkah* can be explained from the concept of Al-Ghazalī's thought earlier.¹²

Talking to the *Ulama* as the leader of the Ummah, Al-Ghazalī said that there are three options for unjust rulers: first, the ulama join the power and participate in strengthening its ranks. Second, the authorities came to the *ulama* to steal sympathy. Third, the cleric avoided having any contact with that power. According to al-Ghazalī, the first option is haraam, because it is equivalent to strengthening the wrongdoing. The second option is *makruh*, it should be avoided, because it is said that people cannot maintain their stance and eventually fall into the ranks of the first group. And the third option, which is also called *uzlah* (step aside), is the safest and wisest choice. In this way, the ulama naturally frees himself from a touch of power, but in his heart, he steadfastly hates his arbitrariness. For the sake of religion and the people, he prays to God that such rulers will be immediately guided, or torn down to be replaced by other just powers. In this case, the Prophet's hadith was quoted as narrated by Abdullah bin Umar:

إِتَّقُوا دَعْوَةَ الْمَظْلُومِ فَإِنَّهَا تُصْعَدُ إِلَى السَّمَاءِ كَأَنَّهَا شِرَارَةٌ

¹² Muhibbudin Waly, *Ayah Kami*, (Singapore: LtD, 1995), h. 45

Beware of the prayers of those who are wronged, because they will be lifted up into the sky as if they were sparks.

Reluctance to enter into power, for example, by occupying certain positions, seems not only because they do not want to be involved in the wrongdoing (corruption) - however small - which often adorn every form of power, but because power itself is often not in line with the *zuhud* spirit (simple life) which almost every Traditional Islamic Book significantly emphasizes. Position and property are, for nearly everyone, two sides of the same coin. Reflecting on the pattern of life of the Prophet SAW, the Traditional Islamic Book does not insult worldly life but never considers it as something that must be taken seriously. Material wealth needs to be sought to fulfill a natural life. Do not fall into poverty, but do not accumulate more than the required limit.

Material wealth is sought as a means to sustain life, not an end in life itself. Therefore, the true goal of life that must be pursued, also by making use of the worldly wealth we have, is the pleasure of Allah. Imam Hasan al-Baṣrī said:

ليس الزهد في الدنيا بتحريم الحلال ولا إضاعة المال، ولكن أن تكون بما في يد الله أوثق منك

بما في يدك

This means that asceticism towards the world does not forbid lawful or defamatory money. But the mental attitude that worldly wealth is no more guaranteeing prosperity and happiness than the merits of goodness received by Allah.¹³

Therefore, if there is a discussion of human activity in the economic field in many Traditional Islamic Books, as found in almost all fiqh books, then the

¹³ see:

<http://www.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=146249>

objective of the discussion is not about how a person with his efforts can achieve the maximum benefit. But how can the action be carried out honestly, not harming oneself and not harming others, so that what is obtained from the business is lawful sustenance and brings blessings to fulfill worship to Allah.

The Traditional Islamic Book Study About the Legal Status of Money Laundry

Money Laundry is caused by the result of using haram assets, resulting in very much profit. Therefore, the first explanation that must be discussed is the definition of haram assets in terms of the explanation in the Traditional Islamic Book, as below:

والكسب الخبيث هو أخذ مال الغير لا على وجه إذن الشرع ، فيدخل فيه القمار والخداع والغصب وجدد الحقوق وما لا تطيب نفس مالكة ، أو حرمة الشريعة وإن طابت به نفس مالكة كمهر البغيّ وحلوان الكاهن وأثمان الخمر والخنازير وغير ذلك¹⁴

While the characteristics of these haram assets are explained in the text at that point.

وإن ظن أنه يستعمله في حرام كالحرير للبالغ ونحو العنب للسكر والرقيق للفاحشة والسلاح لقطع الطريق والأفيون والحشيشة وجوزة الطيب لاستعمال المخدر حرمت هذه المعاملة¹⁵

Suppose it is suspected that he is wearing unclean clothes to a child who is already baligh, selling wine to get drunk, selling a slave to be used in immoral work, selling weapons to robbers, selling marijuana for forbidden purposes. In that case, the law is haram to sell goods. The item.

¹⁴ Tim Penulis, *Al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah*, Jld. 34, (Maktabah Syamilah), p. 245

¹⁵ Al-Sayyid 'Abd al-Rahman ibn Muhammad Ba'lawi, *Bughyatul Mustarsyidin*, (Beirut: Dar al-Fikr, 1995), p. 81

Haram assets are obtained through methods that the Sharia does not permit. The assets can be divided into two categories: first, assets owned by illegally controlling the rights of others. There are many ways, including stealing, robbing, robbing, cheating, extortion, harassment of the rights of others, and so on. Second, assets that are owned through businesses that are prohibited by religion even though they are mutual, such as buying and selling containing elements of usury and other usury practices, illegal transactions, selling prohibited objects such as narcotics and liquor, the results of haram performances such as performances musical instruments, and jokes, bribes, and so on.

Thus, assets controlled in such an unlawful way, if used to buy other assets (developed) or money laundering, the legal provisions are described in the following classic text.:

والغاصب إذا اشتري بالمال المغصوب عرضا وأفاد فيه ربحا لم يخل عقد ابتياعه من أن يكون بعين المال أو بغير عينه. فإن كان بعين المال فالشراء باطل، لأن العقد على المغصوب باطل، ومع بطلان الشراء يفوت الربح فلا يحصل للغاصب ولا للمغصوب منه. وإن كان الشراء في ذمة الغاصب والثمن مدفوع من المال المغصوب فالشراء صحيح لثبوته في الذمة، والربح مملوك بهذا الابتیاع لصحته¹⁶

A usurper seizes the property of another person. Then the spoiled property is used as business capital to make a profit, then the transaction is carried out with the illegal property or not. If it is carried out with other illicit assets, the sale and purchase transaction is null and void. To abort all the benefits it has. Conversely, if the sale and purchase transaction is carried out in a *usurper's dhimmah*, and at the price of the booty, then the transaction is valid, and the profit can be owned.

¹⁶ Al-mawāridī, *al-Hāwī al-Kabīr*, juz. 7, (Mesir: Dār Kutub Ilmiyah, tt), p. 336

إذا غصب رجل دراهم، وتصرف فيها، وظهرت أرباح في ظاهر الحال، أو تصرف المودع على خلاف الإذن، وبيع، فإذا فعل ذلك، فهو غاصب، فالمنصوص عليه للشافعي في الجدد، وهو القياس الذي لا حيد فيه أن تيك التصرفات إن وردت على الأعيان المغصوبة، فهي منقوضة، وإن تعددت، وبلغت مبلغاً يعسر تتبعها، وإن كانت الأعيان المغصوبة قائمة، فهي مستردة، والبياعات الواردة عليها فاسدة، والأعيان المأخوذة في مقابلتها مردودة على ملاكها. هذا في التصرف الوارد على العين. ولو اشترى الغاصب في ذمته شيئاً، وأدى الثمن من الدراهم التي غصبها، فبيع المتاع في الأصل واقع للغاصب؛ إذ ورد على الذمة؛ وتأدية الثمن من الدراهم المغصوبة عدوان، وتلك الأعيان متبعة مستردة حيث تُلْفَى، على قاعدة الغصب. وإذا ملك الغاصب ما اشتراه في الذمة، ثم ارتفع السعر، وباعه، فالربح له؛ فإنه ربح على ملكه الصحيح. وهذا هو القياس الذي لا يخفى مدركه. ونص الشافعي في القديم على أن الغاصب إذا تصرف في الدراهم المغصوبة، وانفقت أرباح بسبب تصرفه، فإنه يُجيز تلك التصرفات، ويفوز بالأرباح، واعتمد في ذلك مصلحة كلية؛ من جهة أن تتبّع التصرفات الكثيرة في الأمتعة التي تداولتها الأيدي، وتشتتت في البلاد عسر، وقد لا يُوصل إليه، هذا وجه. والآخر: أننا لو لم نجوز هذا، فقد يتخذ الغضاب ذلك ذريعةً إلى تحصيل الأرباح؛ فإن الشراء في الذمة، ونقد الثمن من الدراهم المغصوبة متيسر لا عسر فيه¹⁷

If a man seizes some dirhams (currency), then uses it and gets a profit, or uses the entrusted (young ') property and makes a profit, then according to Jadid's opinion (Shafi'i fatwa in Egypt) in the Shafi'i school of thought that the exploitation of the spoils is prohibited. And all the forms that have been generated are returned to their owners. This applies to its direct utilization of the other spoiled dirhams. Meanwhile, if the contract states that the payment is in the buyer's responsibility (*dhimmah*), then the sale and purchase will be legally punished, but the cost is canceled if it is paid with the money from the spoils. Qadim's version, the profit belongs to the person who is confiscated, that is, the owner of the seized property.

¹⁷ Imam Haramain, *Nihāyah al-matlab*, (tp; Dār al-minhaj, tt), p. 497

The usurper cannot own this profit. This opinion presents two reasons for the legal basis. First: when what happens is the growth of property in the form of fruits produced from the booty tree and in the form of children produced from spoiled cattle, then it belongs to the owner, does not belong to the usurper, then this is the case if the profits obtained from the capital from the confiscation of people's assets other things that are not in the form of fruit and cattle, then it also belongs to the owner of the property that is confiscated and does not belong to the usurper. Because in both cases, the development of the property of the seized person occurred together. Second: Whereas every cause which is forbidden (such as seizing), on this reason conveys possession of a property, then the cause which is forbidden becomes a barrier to owning property. It is the same as if the heir is a murderer. When the law of killing is prohibited, he is prevented from getting an inheritance. Because don't get a legacy, it gives a chance to kill. Likewise, the usurper, where the law of seizing is forbidden, is prevented from obtaining a profit from the capital of the spoiled property. Because if he can have a profit by taking away, then it is the same as allowing confiscating with the aim that when the property has been made a profit, later he will return the booty as well.

Muhammad al-Zarqâ 'in Syarhul Qawāid al-Fiqhiyyah said,

ان الشيء المحرم الذي لا يجوز لأحد اخذه ويستفيد منه يحرم عليه أيضا أن يقدمه لغيره ويعطيه إياه سواء على سبيل المنحة ابتداء أم على سبيل المقابلة.

Money laundering increases its status from being merely haram and immoral to become jarîmah (a criminal act) when it is threatened with a punishment.

وَقُلْنَا بِالْحَدِيدِ (الْمَقْرُرُ فِي الْمَذْهَبِ الظَّاهِرِ عِنْدَ مَنْ لَهُ أَدْنَى الْإِمَامِ بِهِ وَهُوَ أَنَّ الرَّبْحَ فِي الدِّمَةِ وَتَقْدَمُ مِنَ الْمَغْصُوبِ لِصِحَّةِ شِرَائِهِ وَإِنَّمَا الْفَاسِدُ تَسْلِيمُهُ لِغَايِبِ أَشْتَرَى فَيَضْمُنُ مَا سَلَّمَهُ

Imam Syāfīi's *jadīd* opinion explained that the profit from the use of the spoils of the property owner (malik) if the transaction is carried out with 'ain property that is haram, but if it is carried out in the usurper's *dhimmah*, then the profit belongs to the usurper..

واعلم قبل الشروع فيهما أنه إذا اتجر الغاصب في المال المغصوب ففيه قولان (الجديد (أنه ان باعه أو اشترى بعينه فالتصرف باطل وان باع سلماً أو اشترى في الذمة وسلم المغصوب فالعقد صحيح والتسليم فاسد ولا تبرأ ذمته عما التزم ويملك ما يأخذ وارباحه له) والقديم (أنه يتبعه والشراء بعينه منعقد موقوفاً على اجازة المالك فان اجازة فالربح له وكذا إذا التزم في الذمة وسلم المغصوب وتكون الارباح للمالك¹⁸

Suppose a usurper trades with the capital from the spoils. In that case, there is a difference of opinion: a strong argument (*jadīd*) if the sale and purchase of the property is illegal, then the use of the property is unlawful, on the other hand, if the transaction occurs in the usurper's *dhimmah* (dependents), the contract is valid, while the price is *fasid*. Whereas a weak opinion (*qadīm*), buying and selling which is done on the booty, everything returns to the owner whether it is done with 'ain' the property or on account of it.

Discussion

The forms of crime today are many and varied, one of which is money laundering. This crime is classified as a significant crime and can affect the country's stability. The background of someone committing a money laundering crime (money laundry) is so that the origin of the money cannot be known or can not be traced by law enforcers. In this crime, the perpetrators must pay attention to several things:

¹⁸ Imam Rāfi'i, *Al -wajīz syarh al-aziz*, juz. 11, (Mesir: Dār Kutb Ilmiyah, tt), p. 331

- a. The true ownership and true source of laundered money must be hidden. There is no point in money laundering if everyone knows who owns the money if the money appears at the end of the money laundering process.
- b. The form of money must change. Funds originating from drug trafficking are almost certainly cash. This cash must be converted into other forms of payment, for example, in the form of checks.
- c. The traces left by the money laundering process must be disguised or obscured. The purpose of money laundering will be futile if other people can follow the course of the money laundering process from the beginning to the end of the process.
- d. Continuous supervision must be exercised over the money. In the end, many people who show up while the money is being laundered know that the money is dirty (dirty money), and if they can take it or steal it, there is little chance that the owner of the funds will be able to take legal action against the act. The origin of the laundered money can still be traced, which will lead law enforcers to arrest predicate crimes, namely crimes that produce money laundered through the money laundering process.¹⁹

From the search for the Traditional Islamic Book text above, and also by paying attention in general to the description of money laundry, the link between the Traditional Islamic Book text and the money laundry is part of the use and development of other people's property described in the Traditional Islamic Book. The legal provisions of this money laundry transaction are prohibited and forbidden. All proceeds obtained from this transaction must be returned to the property owner. In contemporary studies today, the proceeds of illicit money crimes such as corruption, methamphetamine, and other proceeds of crime are used to buy land, build buildings, buy cars, and do different types of activities. All

¹⁹ Sutan Reimi Syahrudi, *Perbankan Syari'ah*, (Jakarta:Prenada Media, 2014), p. 48

profits are returned to the property owner if it is still known, if not used for public facilities and interests. The use of facilities and personal interests is prohibited and illegally related to the property. For example, paying zakat, pilgrimage fees, and paying debts.

Conclusion

The role of the Traditional Islamic Book is crucial. It supports the concept of *madzhab* development. The use of analogy and comparative methods is applied in determining law, both state and religion. Looking for the common ground then concocting through long dialectics. The orientation is to use religious law without touching or changing plural local wisdom, either in customary or national law. The contextualization of the Traditional Islamic Book here is a form of effort to maintain human social relations and eliminate the rigid paradigm in understanding the Traditional Islamic Book and its application. For example, money laundry in the view of the Traditional Islamic Book is prohibited because of the correlation with booty use.

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