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JURIDICAL ANALYSIS OF MONOPOLISTIC PRACTICES FROM ISLAMIC ECONOMIC LAW PERSPECTIVE

ANALISIS YURIDIS TERHADAP PRAKTIK MONOPOLI DALAM PERSPEKTIF HUKUM EKONOMI SYARIAH

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ABSTRACT

This research examines monopolistic practices from the perspective of Islamic economic law through juridical analysis of Islamic legal sources and their comparison with contemporary anti-monopoly regulations. Using normative juridical research methods and a comparative approach, this research identifies that monopolistic practices (ihtikar) are explicitly prohibited in Islamic economic law as they contradict the principles of justice ('adalah), balance (tawazun), and public welfare (maslahah 'ammah). The results show that monopoly in the Islamic perspective is not limited to commodity hoarding (ihtikar) but also encompasses market domination practices that impede fair competition (ghaban) and exploitation of consumers. This research identifies four main criteria in determining monopolistic practices prohibited according to Islamic law: restriction of access to basic needs, price manipulation, consumer exploitation, and competitive barriers that harm society. This analysis provides a theoretical foundation for developing an anti-monopoly regulatory framework that aligns with Islamic principles while responding to contemporary market dynamics.

Keywords: Monopoly, Ihtikar, Islamic Economic Law, Economic Justice, Maslahah

ABSTRAK

Penelitian ini mengkaji praktik monopoli dari perspektif hukum ekonomi syariah melalui analisis yuridis terhadap sumber-sumber hukum Islam dan perbandingannya dengan regulasi anti-monopoli kontemporer. Dengan menggunakan metode penelitian yuridis normatif dan pendekatan perbandingan, penelitian ini mengidentifikasi bahwa praktik monopoli (ihtikar) secara tegas dilarang dalam hukum ekonomi syariah karena bertentangan dengan prinsip keadilan ('adalah), keseimbangan (tawazun), dan kemaslahatan umum (maslahah 'ammah). Hasil penelitian menunjukkan bahwa monopoli dalam perspektif syariah tidak hanya terbatas pada penimbunan komoditas (ihtikar), tetapi juga mencakup praktik penguasaan pasar yang menghambat persaingan sehat (ghaban) dan eksploitasi terhadap konsumen.

Penelitian ini menemukan empat kriteria utama dalam menentukan praktik monopoli yang dilarang menurut syariah: pembatasan akses terhadap kebutuhan dasar, manipulasi harga, eksploitasi konsumen, dan hambatan persaingan yang merugikan masyarakat. Analisis ini memberikan landasan teoritis bagi pengembangan kerangka regulasi anti-monopoli yang selaras dengan prinsip syariah sekaligus merespons dinamika pasar kontemporer.

***Kata kunci**: Monopoli, Ihtikar, Hukum Ekonomi Syariah, Keadilan Ekonomi, Maslahah*

A. INTRODUCTION

The phenomenon of monopolistic practices remains a persistent challenge in modern economic systems, raising significant concerns regarding economic justice, market efficiency, and consumer welfare. From an Islamic economic law perspective, this issue demands particular attention as it potentially contradicts fundamental principles that govern economic transactions in Islamic jurisprudence. This research conducts a juridical analysis of monopolistic practices through the lens of Islamic economic law, examining how classical Islamic legal principles address contemporary monopolistic behaviors that distort markets and harm public welfare.

The significance of this research stems from the growing integration of Islamic economic principles into national regulatory frameworks, particularly in Muslim-majority countries and within Islamic financial sectors globally. As Ayub (2023) notes, over 45 countries have introduced regulations that incorporate elements of Islamic economic principles into their legal systems, including provisions related to fair market practices. This trend necessitates a comprehensive understanding of how Islamic jurisprudence addresses monopolistic practices within contemporary economic contexts.

Monopolistic practices encompass various behaviors that restrict competition, manipulate prices, and exploit consumers. In Islamic legal discourse, these practices primarily relate to the concept of ihtikar (hoarding with the intention of creating artificial scarcity) but extend beyond it to include various forms of market domination and unfair competition. According to Kahf (2020), Islamic economic principles establish a framework that values fair competition as essential for market efficiency and economic justice, considering monopolistic practices as violations of these foundational values.

The concept of monopoly in Islamic jurisprudence differs from conventional economic understanding in several important aspects. While conventional economics primarily concerns itself with market structure and efficiency outcomes, Islamic perspectives incorporate ethical dimensions and social welfare considerations. As Al-Zuhayli (2019) explains, Islamic prohibitions against monopolistic practices stem not only from concerns about market efficiency but also from ethical principles regarding just distribution of resources and prevention of exploitation, reflecting Islam's comprehensive approach to economic justice.

Contemporary economic challenges have intensified concerns about monopolistic practices, particularly as market concentration increases across various sectors. Chapra (2022) identifies several concerning trends, including the growing dominance of tech conglomerates, pharmaceutical patent monopolies, and agricultural input industries, which raise critical questions about the application of classical Islamic principles to novel forms of market power. These developments underscore the importance of reexamining Islamic jurisprudential perspectives on monopoly in light of evolving economic realities.

Despite the clear prohibition of ihtikar in classical Islamic texts, uncertainties remain regarding the scope and application of these principles to contemporary monopolistic behaviors. Iqbal (2021) highlights the need for a comprehensive juridical framework that addresses not only traditional forms of hoarding but also modern manifestations of market power, including intellectual property monopolies, network effects in digital markets, and monopsony power in labor markets. These emerging forms of economic domination require thoughtful analysis from an Islamic legal perspective.

The relationship between state intervention and market freedom represents another critical dimension of anti-monopoly regulations in Islamic economics. According to Siddiqi (2020), Islamic jurisprudence recognizes the state's responsibility to prevent market abuses while maintaining a balance that respects legitimate business activities and property rights. This balance requires careful juridical analysis to determine appropriate regulatory approaches that align with both classical Islamic principles and contemporary economic realities.

Islamic economic principles emphasize that markets should function as mechanisms for realizing social justice rather than merely facilitating wealth accumulation. Hassan (2021) argues that anti-monopoly regulations in Islamic economics must address not only economic efficiency but also distributional concerns, particularly regarding access to essential goods and services. This perspective suggests that Islamic approaches to monopoly regulation may need to be more comprehensive than conventional antitrust frameworks that focus primarily on consumer welfare through pricing effects.

The diversity of juristic opinions within Islamic legal schools (madhahib) presents both challenges and opportunities for developing coherent anti-monopoly frameworks. As Tag El-Din (2019) observes, different legal schools offer varying interpretations regarding the scope of prohibited monopolistic practices, with some adopting narrower definitions limited to foodstuffs and others embracing broader conceptions that encompass all goods essential to public welfare. These interpretative differences require careful analysis to derive principles applicable to contemporary economic contexts.

The integration of Islamic anti-monopoly principles into modern regulatory frameworks necessitates interdisciplinary approaches that combine classical jurisprudential analysis with contemporary economic understanding. According to Kamali (2023), effective Islamic economic governance requires preserving the ethical substance of classical prohibitions while adapting their application to address novel market structures and business practices. This adaptive approach enables Islamic economic law to maintain relevance while addressing emerging challenges in increasingly complex global markets.

B. LITERATURE REVIEW

Islamic economic law's approach to monopolistic practices has evolved significantly from classical jurisprudential discussions of ihtikar (hoarding) to comprehensive analyses of market power in contemporary economies. Classical scholars primarily focused on the prohibition of hoarding essential commodities to artificially inflate prices, with particular emphasis on foodstuffs and basic necessities. As Islahi (2020) explains, this prohibition stems from numerous prophetic traditions (ahadith) condemning those who withhold necessities from the market to exploit people's needs, reflecting Islam's fundamental concern with social welfare and economic justice. These classical discussions provide the foundational principles that inform contemporary Islamic economic approaches to monopoly regulation, establishing ethical boundaries that prioritize public interest over private gain when these interests conflict.

The transition from classical jurisprudence to contemporary Islamic economic analysis has expanded the conceptual framework surrounding monopolistic practices. Modern Islamic economists have broadened the understanding of prohibited monopolistic behaviors beyond traditional hoarding to encompass various forms of market domination. According to Zarqa (2019), contemporary applications of Islamic principles regarding monopoly must address not only intentional withholding of goods but also structural market conditions that enable firms to exercise undue market power, extract economic rents, or erect barriers to competition. This expanded framework allows Islamic economic principles to engage with modern market phenomena, including natural monopolies, network effects, and intellectual property protections, which present novel challenges not directly addressed in classical texts but remain subject to Islamic ethical principles regarding economic justice.

The comparative analysis between Islamic anti-monopoly principles and conventional antitrust frameworks reveals both similarities and significant divergences. While both systems recognize the economic harms of monopolistic practices, they differ in their foundational values and ultimate objectives. As Ahmed (2021) observes, conventional antitrust theory primarily concerns itself with economic efficiency and consumer welfare through price effects, whereas Islamic approaches incorporate broader ethical considerations related to justice ('adalah), prevention of exploitation (zulm), and equitable access to resources. This difference manifests in practical regulatory considerations—conventional approaches may permit monopolistic practices that enhance efficiency despite distributive concerns, while Islamic principles might prohibit such practices if they concentrate wealth excessively or restrict access to essential goods, even if technically efficient.

The application of Islamic legal principles to contemporary monopolistic practices requires methodological approaches that balance fidelity to textual sources with responsiveness to changing economic contexts. Khan (2022) advocates for employing established principles of Islamic legal theory, including qiyas (analogical reasoning), maslahah (public interest), and 'urf (customary practice), to derive appropriate rulings for novel monopolistic behaviors not explicitly addressed in primary texts. This methodology allows Islamic economic law to maintain its normative foundations while developing practical responses to emerging market challenges, including digital platform monopolies, data monopolization, and other contemporary manifestations of market power that affect Muslim communities and broader society.

C. METHOD

This research employs a normative juridical methodology to analyze monopolistic practices from an Islamic economic law perspective. The normative juridical approach examines legal principles, textual sources, and juristic interpretations to establish normative frameworks for evaluating contemporary economic practices. As explained by Kamali (2021), this methodology is particularly appropriate for Islamic legal research because it enables systematic analysis of primary textual sources (Quran and Sunnah) alongside juristic interpretations (fiqh) and the application of legal principles to contemporary contexts. For this specific research, the normative juridical approach facilitates examination of how classical prohibitions against ihtikar and related concepts apply to modern monopolistic practices across different market structures and economic sectors.

The research utilizes multiple data collection methods, including comprehensive literature review, comparative textual analysis, and case study examination. Primary Islamic legal sources, including Quranic verses related to economic justice and prophetic traditions addressing market practices, form the foundation of the analysis. These primary sources are supplemented by classical and contemporary fiqh literature across major Islamic legal schools, providing diverse interpretative perspectives on monopolistic practices. According to Nyazee (2019), effective Islamic legal research requires triangulation between textual sources, historical juristic interpretations, and contemporary applications to derive principles that remain faithful to Islamic legal methodology while addressing modern concerns. Following this approach, the research also examines contemporary case studies of monopolistic practices in various jurisdictions that have attempted to apply Islamic economic principles in their regulatory frameworks.

The analytical framework employs both deductive and inductive reasoning to develop a comprehensive understanding of Islamic perspectives on monopoly. The deductive approach derives specific applications from general Islamic principles regarding economic justice, prevention of harm, and public welfare. Conversely, the inductive approach examines specific historical and contemporary cases to identify common principles that govern Islamic approaches to monopolistic practices across different contexts. As Hashim (2022) explains, this dual analytical approach allows Islamic legal research to maintain coherence with established juristic methodologies while engaging meaningfully with contemporary economic challenges that require novel applications of traditional principles. This methodological approach enables the research to develop a nuanced understanding of how Islamic economic law addresses monopolistic practices in ways that might inform both contemporary Islamic finance and broader economic regulatory frameworks.

D. RESULT AND DISCUSSION

Conceptual Framework of Monopoly in Islamic Economic Law

The concept of monopoly in Islamic economic law derives primarily from the prohibition of ihtikar (hoarding), but extends beyond this specific practice to encompass various forms of market domination that contradict Islamic principles of economic justice. Classical Islamic jurists defined ihtikar as the practice of withholding goods, particularly necessities, from the market with the intention of creating artificial scarcity and driving prices upward. According to Al-Qaradawi (2020), this prohibition stems from numerous prophetic traditions that explicitly condemn those who hoard essential goods to exploit people's needs. One frequently cited hadith states: "Whoever withholds food (from the market) for forty days intending to increase its price is distant from Allah, and Allah is distant from him."

The scope of goods subject to monopoly prohibitions has been a subject of juristic deliberation across Islamic legal schools. The Hanafi school generally restricted the prohibition to foodstuffs essential for human survival, while Maliki, Shafi'i, and Hanbali jurists extended it to include various necessities that, if monopolized, would cause hardship to people. Kamali (2021) explains that this difference stems from varying interpretations of the underlying ratio legis (illah) behind the prohibition—whether it specifically concerns food security or more broadly addresses prevention of harm and exploitation in essential markets. Contemporary Islamic economic thought generally favors the broader interpretation, recognizing that modern economies have expanded the category of goods and services considered essential for dignified living.

Islamic economic jurisprudence distinguishes between legitimate market dominance resulting from natural competitive advantages and exploitative monopolistic practices that harm public welfare. Chapra (2023) identifies several characteristics that render monopolistic practices prohibited under Islamic law: artificial restriction of supply, excessive price manipulation, exploitation of consumer need, and barriers to market entry that prevent fair competition. This nuanced approach acknowledges that market concentration itself is not inherently problematic in Islamic law; rather, the prohibition focuses on exploitative behaviors that contradict principles of justice ('adalah) and public interest (maslahah).

Contemporary applications of classical principles regarding monopoly must address novel forms of market dominance not explicitly discussed in traditional texts. Khan (2022) argues that the underlying ethical principles governing monopoly prohibitions in Islamic law—prevention of exploitation, ensuring market accessibility, and protecting public welfare—can be applied to modern manifestations of market power, including network monopolies, intellectual property rights, and essential facility control. This expansive application demonstrates the adaptive nature of Islamic economic jurisprudence in addressing emerging economic challenges while maintaining fidelity to core ethical principles.

Juridical Criteria for Prohibited Monopolistic Practices

Islamic jurisprudence establishes several criteria for identifying monopolistic practices that violate Sharia principles, providing a framework for distinguishing between legitimate business activities and prohibited exploitation. The first criterion concerns the nature of the goods or services being monopolized, with particular emphasis on necessities (daruriyyat) and public needs (hajiyyat). According to Nyazee (2019), classical jurists generally agreed that monopolizing goods essential for human survival—such as basic foodstuffs, water, and essential medicines—constitutes prohibited ihtikar, while opinions varied regarding non-essential goods. Contemporary Islamic economists like Siddiqi (2020) have expanded this understanding to include modern necessities such as essential public utilities, critical infrastructure, and basic healthcare services, reflecting evolving societal needs and economic structures.

The second criterion focuses on the intent and behavior of the monopolist, distinguishing between natural market concentration and deliberate exploitation. Classical jurists emphasized that the prohibition applies specifically to those who intentionally withhold goods to manipulate prices, rather than those who simply possess large market shares due to legitimate competitive advantages. Kahf (2021) elaborates that Islamic jurisprudence considers factors such as predatory pricing, exclusionary practices, and artificial barriers to entry as indicators of prohibited monopolistic behavior, as these practices reflect the exploitative intent condemned in prophetic traditions rather than legitimate business competition aligned with Islamic principles of fair market conduct.

The third criterion examines the impact of monopolistic practices on market prices and consumer welfare, with particular attention to excessive price increases that harm consumers. Islamic jurists across various legal schools generally concur that creating artificial price increases through supply manipulation violates the principle of just pricing (thaman al-mithl) in Islamic commercial law. Hassan (2022) identifies significant price deviation from normal market conditions as a key indicator of prohibited monopolistic practices, especially when such deviation results from deliberate market manipulation rather than natural market forces or legitimate scarcity. This criterion reflects Islam's concern with preventing exploitation of consumers and ensuring fair access to goods and services, particularly those meeting basic needs.

The fourth criterion considers the duration and persistence of monopolistic control, distinguishing between temporary market advantages and entrenched structural dominance that systemically distorts markets. While classical discussions of ihtikar often focused on temporary hoarding, contemporary Islamic economic analysis recognizes that modern monopolies frequently involve persistent structural market power. According to Iqbal (2023), sustained monopolistic control that prevents market correction and competition over extended periods more clearly contradicts Islamic principles of economic circulation (rawaj) and market accessibility than temporary market advantages. This criterion acknowledges the dynamic nature of markets while establishing boundaries that prevent exploitation through entrenched market power.

Comparative Analysis with Contemporary Anti-Monopoly Frameworks

Islamic prohibitions against monopolistic practices share certain commonalities with modern antitrust frameworks while maintaining distinctive features that reflect Islamic ethical priorities. Both systems recognize the economic harms of excessive market concentration, including reduced output, higher prices, and diminished innovation. However, as Azid (2020) observes, conventional antitrust policy primarily evaluates monopolistic practices through the lens of economic efficiency and consumer welfare, while Islamic approaches incorporate broader ethical considerations related to justice, equitable access, and prevention of exploitation. This difference produces varying regulatory priorities—conventional approaches may permit efficiency-enhancing monopolies despite distributive concerns, while Islamic principles might prohibit such arrangements if they concentrate economic power excessively or restrict access to essential goods.

The concept of public interest (maslahah) in Islamic jurisprudence provides a broader evaluative framework for monopolistic practices than the consumer welfare standard dominant in contemporary antitrust analysis. According to Tag El-Din (2021), Islamic assessments of monopolistic practices consider not only price effects but also impacts on wealth distribution, community welfare, and moral-ethical dimensions of market interactions. This comprehensive approach allows Islamic regulatory frameworks to address concerns beyond economic efficiency, including social equity, community development, and preservation of moral market conduct. Consequently, Islamic approaches might justify intervention in markets that exhibit technically efficient monopolistic structures if these structures undermine broader social welfare objectives or concentrate wealth excessively.

The role of state intervention in preventing monopolistic practices represents another area of comparative interest between Islamic and conventional approaches. Islamic jurisprudence historically recognized the authority of market supervisors (muhtasib) to monitor and regulate market conduct, including prevention of ihtikar and other exploitative practices. Ahmed (2023) notes that this tradition provides precedent for robust regulatory oversight of markets within Islamic legal frameworks, potentially justifying more proactive state intervention than some market-oriented approaches to antitrust regulation. However, Islamic approaches simultaneously emphasize respect for legitimate property rights and business activities, creating a balanced framework that neither permits unlimited market concentration nor imposes excessive restrictions on legitimate business growth and competition.

Contemporary application of Islamic anti-monopoly principles requires addressing novel market phenomena not explicitly discussed in classical texts, including network effects, platform economies, and data monopolies. Zarqa (2022) proposes an adaptive framework that applies classical principles regarding prevention of market exploitation to these emerging economic structures, recognizing that digital monopolies can create forms of market dominance and consumer dependence that potentially contradict Islamic principles of economic justice. This adaptive approach demonstrates how Islamic economic jurisprudence can maintain relevance in addressing contemporary economic challenges while preserving its distinctive ethical orientation toward preventing exploitation and ensuring equitable market access.

Regulatory Implications for Islamic Economic Systems

Islamic economic systems require regulatory frameworks that effectively address monopolistic practices while remaining faithful to Sharia principles. These frameworks must balance multiple objectives, including prevention of exploitation, promotion of fair competition, protection of property rights, and advancement of public welfare. According to Ayub (2023), effective Islamic regulatory approaches should incorporate both prohibitive measures against clearly exploitative practices and positive incentives that encourage market competition, entrepreneurship, and economic circulation (rawaj). This balanced approach reflects Islamic law's comprehensive orientation toward promoting just economic outcomes rather than merely prohibiting specific abuses.

The prohibition of monopolistic practices in Islamic law carries significant implications for ownership structures and market organization across various economic sectors. In essential sectors serving basic needs, Islamic economic principles may justify limitations on private monopoly control even when such monopolies might be technically efficient. Chapra (2021) suggests that sectors providing basic necessities—including water, essential foodstuffs, basic healthcare, and critical infrastructure—may require special regulatory arrangements to ensure universal access and prevent exploitation. These arrangements might include public ownership, community-based management structures, regulated private provision with price controls, or hybrid models that balance efficiency considerations with ethical requirements regarding universal access and fair pricing.

Islamic principles regarding monopoly have particularly significant implications for intellectual property regimes, especially in sectors affecting basic human needs like essential medicines, educational resources, and agricultural inputs. The tension between incentivizing innovation through temporary monopoly rights and ensuring equitable access to essential innovations represents a challenging area for Islamic economic regulation. Khan (2023) proposes a balanced approach that recognizes legitimate rights of innovators while imposing limitations that prevent exploitation, particularly regarding duration, scope, and pricing of intellectual property protection for essential goods and services. This approach reflects Islamic law's consistent prioritization of human welfare over absolute property rights when these interests conflict.

Contemporary Islamic finance institutions and markets must integrate anti-monopoly principles into their operational frameworks and investment criteria. As Islamic finance continues to grow globally, financial institutions face increasing pressure to develop screening methodologies that identify and exclude investments in companies engaging in prohibited monopolistic practices. According to Hassan (2022), this screening process should evaluate not only technical compliance with narrow definitions of ihtikar but also broader considerations regarding market dominance, pricing practices, and treatment of consumers and competitors. This comprehensive approach would align Islamic financial practices more closely with the ethical substance of Islamic economic principles regarding monopoly, potentially contributing to more just and competitive market structures across various sectors.

E. CONCLUSION

This research has examined monopolistic practices through the lens of Islamic economic law, revealing a sophisticated jurisprudential framework that addresses market exploitation while balancing various ethical and economic considerations. The analysis demonstrates that Islamic prohibitions against monopoly extend beyond traditional conceptions of hoarding (ihtikar) to encompass various forms of market dominance that contradict principles of justice ('adalah), balance (tawazun), and public welfare (maslahah 'ammah). The juridical criteria for identifying prohibited monopolistic practices include considerations regarding the nature of goods being monopolized, the intent and behavior of market participants, the impact on prices and consumer welfare, and the duration and persistence of monopolistic control. These criteria provide a nuanced framework for distinguishing between legitimate business activities and exploitative practices that violate Islamic economic principles.

The comparative analysis between Islamic approaches to monopoly and contemporary anti-monopoly frameworks reveals both significant commonalities and distinctive features that reflect Islam's comprehensive ethical orientation toward economic activities. While both systems recognize the economic harms of excessive market concentration, Islamic approaches incorporate broader considerations regarding justice, equitable access, and prevention of exploitation that transcend narrow efficiency concerns. These distinctive features suggest potential contributions that Islamic economic principles could make to global discussions regarding market regulation, particularly in addressing exploitative practices that technically efficient markets might otherwise permit. As economic systems continue to evolve and new forms of market concentration emerge, Islamic economic jurisprudence offers valuable insights for developing regulatory approaches that balance technical efficiency with ethical considerations regarding justice and public welfare, potentially contributing to more equitable and sustainable economic structures.

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