

**ROAD UTILISATION RESTRICTION POLICY IN KOPELMA BANDA
ACEH, INDONESIA: A STUDY OF THE CONCEPT OF *HAQQ AL-
MURUR* AND LAW NUMBER 38 OF 2004**

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Abstract

This article aims to identify the road restriction policy in Kopelma Darussalam according to the concept of *haqq al-murur* and Law Number 38 Year 2004. This research uses a qualitative approach with descriptive analysis method, as well as empirical juridical approach to evaluate the implementation of road utilisation restriction policy in the field. The results showed that, the agreement obtained between Syiah Kuala University and UIN Ar-Raniry regarding the use of road access as community mobility agreed to be reopened and utilised together. However, in this case there are still some access hour limits on the closure of these roads such as Jalan Bayeun, Jalan Hamzah Fansuri, then the intersection of three Jalan Tgk. Chik Pante Kulu, North Sector precisely in front of Mushalla Fathun Mubin. However, the implementation of Syiah Kuala University's policy on road utilisation restrictions in Kopelma Darussalam must consider the balance between individual rights to pass and the greater public interest, in accordance with the principle of *haqq al-murur* and Law Number 38 Year 2004.

Keywords: Restriction Policy, Road Utilisation, *Haqq Al-Murur*, and Law Number 38 Year 2004.



Abstrak

Artikel ini bertujuan untuk mengetahui kebijakan pembatasan jalan di Kopelma Darussalam menurut konsep *haqq al-murur* dan Undang-Undang Nomor 38 Tahun 2004. Penelitian ini menggunakan pendekatan kualitatif dengan metode analisis deskriptif, serta pendekatan yuridis empiris untuk mengevaluasi implementasi kebijakan pembatasan penggunaan jalan di lapangan. Hasil penelitian menunjukkan bahwa, kesepakatan yang diperoleh antara Universitas Syiah Kuala dan UIN Ar-Raniry terkait penggunaan akses jalan sebagai mobilitas masyarakat sepakat untuk dibuka kembali dan dimanfaatkan secara bersama-sama. Namun, dalam hal ini masih ada beberapa batasan jam akses atas penutupan jalan tersebut seperti Jalan Bayeun, Jalan Hamzah Fansuri, kemudian simpang tiga Jalan Tgk. Chik Pante Kulu, Sektor Utara tepatnya di depan Mushalla Fathun Mubin. Namun demikian, penerapan kebijakan Universitas Syiah Kuala tentang pembatasan pemanfaatan jalan di Kopelma Darussalam harus memperhatikan keseimbangan antara hak individu untuk melintas dengan kepentingan umum yang lebih besar, sesuai dengan prinsip *haqq al-murur* dan Undang-Undang Nomor 38 Tahun 2004.

Kata kunci: Kebijakan Pembatasan, Pemanfaatan Jalan, *Haqq Al-Murur*, dan Undang-Undang Nomor 38 Tahun 2004.

INTRODUCTION

Roads are state property that is used by the entire community for public purposes, especially access routes for the community for both vehicles and pedestrians. The use of roads by the public must comply with the regulations set by the government. Every road user, both motorists and pedestrians, has the same rights in using the road, without reducing the rights of other road users. State land has a strategic function for the benefit of the community to be utilised and used by the community in various interests, especially for people in a place that has an access point to the land. In general, state-owned land functions for the public interest and is also used as facilities and infrastructure such as the construction of public facilities, to promote the welfare of the community.¹

In the concept of *milk al-daulah*, it has been determined how to use state ownership, one of which is about the use of roads as part of state assets intended for public facilities as a means of mobility and the interests

¹ Law of the Republic of Indonesia Number 38 of 2004 concerning Roads, Article 12

of the general public. For this reason, every community has the same right to cross the road. The use of the road body according to the concept of *haqq al-murur* is a right given to the owner of the land or house next door in the form of passing on a public road or road belonging to someone else.² For public roads, everyone has the right to use and pass through. As for special roads, no one can close them to the general public who need them. The utilisation of a special road should be utilised in the best way possible, taking into account the interests of both the road owner and the general public.

If the public road being travelled on is a highway, then it is permissible for anyone to travel on it, sell on the side of the road, park their vehicles on the side of the road, provided that it does not cause adverse impacts on other road users and obtain permission from those who have authority in the area of the road. If a person's actions in utilising this road cause adverse impacts on others, such as the road becoming narrow, then such actions must be prohibited.³

In the concept of *haqq al-murur*, everyone has the right to use public roads without permission from other parties, provided that it does not cause harm to other parties. For example, using part of the road body to build something that will cover part of the road and interfere with public access that passes through the road.⁴

According to Imam Abu Hanifah, the use of a public road must be authorised by the competent authority as long as the use of the road does not adversely affect other road users. If it is not authorised by the authorities then everyone has the right to prohibit and take action against the construction that uses part of the road. If the road is a special road, that is, a road owned by a particular group, then the use of the road is only for the benefit of that group, while others are not allowed to use the road except with the permission of the owner.

The Shafi'iyah, Hanbalis, Imam Abu Yusuf and Imam Muhammad Ibn al-Hasan ash-Shibani are of the opinion that in the case of partial use of the road, permission from the competent authority is not required. The Maalikis are of the view that it is not permissible to use a private road that is in permanent use. However, using the road for car parking is

² Ahmad Wardi Muslich, *Fiqh Muamalah*, 88 (Jakarta: Amzah, 2015).

³ Nasrun Haroen, *Fiqh Muamalah*, 21 (Jakarta: Gaya Media Pratama, 2007).

⁴ Ahmad Wardi Muslich, *Fiqh Muamalah*.

permissible as long as it does not adversely affect other road users. Therefore, according to the Malikiyah scholars, what needs to be seen is that it does not cause harm to other road users, does not cause difficulties to access the road and does not interfere with public roads.⁵ From the explanation of the scholars is almost the same, they give a special explanation of *haqq al-murur* where in principle, the use of the road should not give harm to the landowner. Whether it is damaging the land or plants and buildings on it except with the permission of the landowner.⁶

According to Nasrun Haroen, the criteria of *haqq al-murur* is a road that is an access for the community to get to the destination.⁷ Ahmad Wardi Muslich states that the criteria for *haqq al-murur* is someone who owns land or house to use public roads to get to the land or house you want to go.⁸

In the right to use the road to utilise public roads, Article 12 of Law No. 38 of 2004 states that every person is prohibited from doing something that can cause interference to other road users on functions within the road useful space, road property and road supervision. The road function in question includes views on road traffic, smooth access routes in road utilisation, and road equipment, so that an activity that is a road restriction is also included in things that interfere with the utilisation of road functions.⁹ The intent of this article is that every individual has the right to use the road safely and conveniently for public transport purposes, while taking into account traffic rules and the safety of other users. As such, it confirms that access to public roads should be available to everyone, provided that people abide by the rules and do not interfere with traffic access points.

Article 1 Point 1 of Law Number 2 of 2022 concerning the second amendment to Law Number 38 of 2004 concerning roads.¹⁰ That roads are

⁵ Nasrun Haroen, *Fiqh Muamalah*, p. 21.

⁶ Chairul Fahmi, 'THE DUTCH COLONIAL ECONOMIC POLICY ON NATIVES LAND PROPERTY OF INDONESIA', *PETITA: JOURNAL OF LAW AND SYARIAH SCIENCE* 5, no. 2 (1 November 2020): 105-20, <https://doi.org/10.22373/petita.v5i2.99>.

⁷ *Ibid*, p. 21.

⁸ Ahmad Wardi Muslich, *Fiqh Muamalat*, p. 88.

⁹ Law of the Republic of Indonesia Number 38 of 2004 concerning Roads, Article 12.

¹⁰ Law Number 2 Year 2022 on the Second Amendment to Law Number 38 Year 2004 on Roads.

land transportation infrastructure which includes all parts of the road, including connecting buildings, complementary buildings and equipment intended for traffic, which are on the ground surface, above the ground surface, below the ground surface, and / or water, lorry roads and cable roads. Article 1 Point 1 of Law No. 38 of 2004 concerning roads, namely public roads are roads intended for public traffic. The intent of the amendment to the law is to establish the scope of what is regulated in relation to roads, which includes not only roads commonly used by motorised vehicles but also other elements that support the function of the road.

Unilateral closure of public roads can occur anywhere, resulting in limitations in accessing the road for other road users. One such road closure action can be found in the student city area precisely on the campus circumference carried out by the Syiah Kuala University. This area is surrounded by four villages, namely Gampong Tungkob, Gampong Limpok, Gampong Tanjung Selamat, and Gampong Rukoh, so that this area becomes an area that can be accessed together by the village community.

The Student City, which was later called Kopelma Darussalam, was established in 1959 which is an area of several university campuses, namely Syiah Kuala University (USK), Ar-raniry State Islamic University (UIN), Tgk Chik Pante Kulu College of Islamic Studies (STIA). In 2020, there was a conflict between the two campuses *jantoeng hate* Acehese people after the USK claimed boundaries and land ownership, such as fencing several roads with cement, including roads that have been accessed by the community and students to get in and out. In addition, the unsyiah also requested that the UIN women's dormitory building be demolished because it was claimed to be on USK land, as well as the men's dormitory.¹¹

The policy to build a fence carried out by the USK caused the closure of three public access roads that connect the community in the Kopelma Darussalam village area, precisely on Jalan Bayeun, Jalan Hamzah Fansuri, then the intersection of three Jalan Tgk. Chik Pante Kulu, North Sector precisely in front of Mushalla Fathun Mubin which

¹¹ Interview with Fuad Mardhatillah, Member of UIN Ar-Raniry Asset Settlement Team, on 21 March 2024, at Kopelma Darussalam.

used to be among the first mosques in the Darussalam campus area which is still used by the community until now.

The campus boundary conflict has actually been going on for a long time, related to the certificate that USK holds in claiming the boundary, but it needs to be re-examined because the certificate issued by USK in 1992 found many irregularities. This is because the land status that now stands two well-known campuses in Aceh, namely USK and UINAR, is state land granted by the Government of Aceh and there is no unilateral control of the land by any campus.¹²

The closure of three public access roads by USK is a closure of the main access for residents that was carried out without the approval of the Governor of Aceh and the Mayor of Banda Aceh as the authority over the area. In addition, there was no consultation with other parties such as UIN Ar-Raniry, STIA Tgk Chik Pante Kulu and Kopelma Darussalam village officials in Syiah Kuala sub-district.¹³

With the closure of the road, it hampered the mobility of the community to get in and out of the residential area, both students who live around the campus and also people who are outside the Syiah Kuala District area such as the people of Baitussalam District, especially residents of Blangkrung, Kajhu, Baet villages. Therefore, in this case the author examines this problem with the title "*Road Utilisation Restriction Policy in Kopelma Darussalam According to the Concept of Haqq Al-Murur and Law Number 38 of 2004*".

DATA AND METHODS

In this research, the author uses an *empirical* juridical approach as a form of research by analysing the problems that occur, by making legal values which are juridical provisions regarding the regulation of roads as transportation facilities and infrastructure. These legal values are used as parameters, which are then connected with primary data obtained from the field to measure community compliance with the use of road bodies.

Primary data obtained in this study were obtained through interviews from several respondents, namely that USK has made

¹²*Ibid.*

¹³ Interview with Fuad Mardhatillah, Member of UIN Ar-Raniry Asset Settlement Team, on 21 March 2024, at Kopelma Darussalam.

unilateral claims to the campus boundaries so that they immediately fenced off the road with cement, including roads that have been accessing community mobility. Secondary data is data collected directly by the author as support for primary data or it can also be said to be a data source that is able to provide additional information or data to strengthen the main data.¹⁴ In this case, the secondary data sources obtained are through *library research*, which is a type of writing that uses reading books as a basis or foundation for retrieving data that is related to the writing of this proposal, namely books related to muamalah, *haqq al-mur* and other readings as a basis for retrieving data. The author also uses other supporting literature, such as readings from internet media and articles related to the writing of this research, which describes the existing discussion and explains in detail.

In this study, the authors obtained data using interview techniques, which is one of the data collection techniques carried out by dealing directly with asking several questions to informants who play an important role in the field under study. The interview that the author uses is a *guided interview*, which is a question and answer process directed at structured problems.¹⁵

In addition to using interview and observation data, the author also uses documentation data because a large number of facts and data are stored in the form of documentation. In this study, documentation in the form of photos was obtained at the research location of the Kopelma Darussalam area and online media, namely articles as supporting data, as well as other important information related to the problems studied.

RESULTS AND DISCUSSION

A. The Concept of Haqq Al-Murur in Fiqh Muamalah

1. Definition and Legal Basis of Haqq Al-Murur

Etymologically, the word "right" comes from Arabic, namely "*haqq*" (حق) which comes from the root word ح - ق - ق -, which means ownership, determination, and certainty. In terminology, right is defined as the power or authority to perform an action.¹⁶ Meanwhile, according to

¹⁴ Sumardi Suryabrata, *Research Methodology*, (Jakarta: PT Raja Grafindo Persada, 1997), p. 84.

¹⁵ Burhan Bungin, *Social and Economic Research Methods*, (Jakarta: Kencana, 2013), pp. 140.

¹⁶ Rahmat Hidayat, *Fikih Muamalah*, (Medan: Cv. Tungga Esti, 2022), pp. 25.

the Big Indonesian Dictionary (KBBI), right is defined as something that is right, ownership, authority, power to do something, and legitimate authority over something or to demand something.¹⁷ Thus, it can be concluded that rights are the authority given to each individual to do, get, and have something they want.

According to Wahbah Az-Zuhaili, *al-haq* is a specific relationship relating to a particular individual.¹⁸ An example is the seller's right to set the price of an item and the buyer's right to choose and receive the desired item, according to a mutual price agreement.¹⁹ Thus, both parties have equal rights in a sale and purchase transaction, whether it is in cash or non-cash.

The word "*murur*" comes from the Arabic word meaning to pass or pass by.²⁰ In terms of terms, *haq al-murur* is the right for the owner of the more distant land to pass over the closer land. *Haq al-murur* gives the owner of the inner land the right to access his land through a road, be it a public road or a special road owned by someone else. On public roads, everyone has the same right to use them according to their needs. However, on special roads, only the owner of the road has the right to use it, so others need permission to use it.²¹

According to Wahbah Az-Zuhaili, *al-murur* is the right of a person to access his property, such as land or a house, through a road that can be a private road or a shared road. Meanwhile, according to Muhammad Yusuf Musa, *haq al-murur* is the right of a person to pass over someone else's land, even though such action may cause damage to the land or crops around it.²²

Based on the explanation above, it can be concluded that *haq al-murur* is the right owned by each individual to pass the road, whether it is a public road whose use is not limited so that everyone has the right to

¹⁷ KBBI, *Definition of Rights*, accessed on 20 August 2024 from the site: <https://kbbi.web.id/hak>

¹⁸ Wahbah Zuhaili, *Al-Fiqh al-Islami Wa Adilllatuhu* (Beirut: Dar al-Fikr al-Mu'ashir., 1998).

¹⁹ Mahmud Yunus, *Indonesian Arabic Dictionary*, (Jakarta: PT Mahmud Yunus wa zuriyyah, 2010), p. 415. 415.

²⁰ Ramadhan Syahputra, *Passing Rights that Harm Landowners According to Wahbah Az-Zuhaili*, (*UIINSU Faculty of Sharia and Law*, 2020), p. 17. 17.

²¹ Dimyauddin Djuwaini, *Introduction to Fiqh Muamalah*, (Yogyakarta: Student Library, 2008), pp. 41.

²² Wahbah Az-Zuhaili, *Fiqhul Islam Wa Adhillatuhu, Volume 6*, (Jakarta: Gema Insani and Darul Fikr, 2007), p. 557. 557.

pass it as long as it does not harm other users, or a special road that requires permission from the landowner to pass.

Public roads are roads built by the government for public use, such as highways used for mobility and traffic, including public transport. Their ownership belongs to the state for the common good, so their use should not interfere with or harm other road users. Special roads, on the other hand, are roads built on private land or by a group of people, so their use requires permission from the landowner.

The legal basis regarding haq al-murur is regulated in the Qur'an, precisely in surah Thaha verse 53, where Allah SWT says:

الَّذِي جَعَلَ لَكُمُ الْأَرْضَ مَهْدًا وَسَلَكَ لَكُمْ فِيهَا سُبُلًا وَأَنْزَلَ مِنَ السَّمَاءِ مَاءً فَأَخْرَجْنَا بِهِ أَزْوَاجًا مِنْ نَبَاتٍ شَتَّى

Meaning: "Who has made for you the earth as a plain, and has made for you paths, and sends down from the sky rain, so we grow with it plants of every kind". (Qs. Thaha: 53)

The above verse explains that Allah created the earth and the roads on it to connect one place to another. This certainly provides benefits for humans, facilitating daily activities such as transportation, transferring goods between regions, and travelling from one area to another.²³

Regarding the journey of man, this is also explained in the Qur'an Surah Noah in verses 19 and 20, namely:

وَاللَّهُ جَعَلَ لَكُمُ الْأَرْضَ بِسَاطًا ۖ لَتَسْلُكُوا مِنْهَا سُبُلًا فِجَاجًا

Meaning: "And Allah has made for you the earth as a plain, so that there may be wide paths in it." (Qs. Nuh: 19-20)

In Tafsir Al-Wajiz, it is explained that Allah created the earth as a vast expanse so that humans can walk on it by making wide roads. In the verse, the word "fijaj" is the plural of "fajjun" which means the road that runs between two mountains.²⁴ In addition, As-Sa'di's interpretation also states that Allah made the earth as a spread out expanse, so that it can be

²³ Al-Qur'anmulia, Tafsir Ibn Katsir Surah Thaha (*Journal of Al-Qur'an and Tafsir Science*, Tafsir Ibn Katsir and its Forms of Interpretation, 2018), p. 83.

²⁴ Wahbah Az-Zuhaili, *Tafsir Al-Wajiz*, (STIQ Scientific Articles, Tafsir Al-Wajiz by Dr Wahbah Az-Zuhaili, 2021), p. 3

utilised to create wide roads, if Allah had not spread it out, humans would not be able to utilise it.²⁵

In Surah Nuh Verses 19 and 20, it explains that Allah created the earth for human use, including providing roads on it. Therefore, it is important to pay attention to the use of roads so as not to cause narrowing due to improper utilisation, such as parking vehicles on the side or body of the road which reduces the width of the road and disturbs the activities of other users.

In addition, there is also a hadith which is the legal basis for the use of the right of way, as narrated by Abu Sa'id Al-Khudri RA, where the Prophet said:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: إِذَا سَأَلْتُمْ بِالطَّرِيقَاتِ، قَالُوا: يَا رَسُولَ اللَّهِ مَا لَنَا مِنْ مَجَالِسِنَا بَدَّ نَتَحَدَّثُ فِيهَا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِذَا أَبَيْتُمْ إِلَّا الْمَجَالِسَ فَأَعْطُوا الطَّرِيقَ حَقَّهُ» قَالُوا: وَمَا حَقُّ الطَّرِيقِ؟ قَالَ: غَضُّ الْبَصَرِ، وَكَفُّ الْأَذَى، وَرَدُّ السَّلَامِ، وَالْأَمْرُ بِالْمَعْرُوفِ، وَالنَّهْيُ عَنِ الْمُنْكَرِ (رواه البخاري و مسلم)

Meaning: *Abu Sa'id Al-Khudri Ra said, that the Messenger of Allah (SAW) said: "Do not sit by the roadside," the Companions said: "Indeed we need to sit down to talk." The Prophet replied: "If you cannot and must sit then give the right of way," the Companions asked again, "What is the right of way, O Messenger of Allah?" He replied: "Lowering the gaze, not disturbing or harming people, answering the greeting, commanding the right and forbidding the wrong." (Muttafaun 'alaih).*²⁶

In the hadith, the Prophet forbade the Companions to sit on the side of the road, because the road serves as a place of traffic and crossing, so it is not appropriate to use it as a place to sit, let alone as a parking lot. The hadith also contains the statement, "If you cannot avoid and have to sit, then give the right of way." This prohibition is tanzih, which means avoiding things that are not good.²⁷ The right of way referred to in this Hadith is to use the road according to its function and not to disturb other users.

²⁵ Shaykh Abdurrahman bin Nashir As-Sa'di, *Tafsir As-Sa'di*, (Jakarta: Darul Haq, 2016), pp. 25.

²⁶ Ibn Hajar Al-Asqalani, *Fathul Bari Explanation of Sahih Al-Bukhari*, (Jakarta: Pustaka Azam, 2005), p. 55. 55.

²⁷ Ibn Hajar Al-Asqalani, *Fathul Bari Explanation of Sahih Al-Bukhari*, p. 57

The relevance of the hadith to the discussion in this thesis is that the Prophet explained that one of the recommended rights of the road is not to disturb other people in using it. It is clearly stated that one should not prohibit others from travelling on the road, unless there is harm such as road damage or landslides that cover the road body. Therefore, the Prophet forbade anyone from sitting on the side of the road or using the road as a car park, as this can obstruct and disturb other road users by narrowing the width of the road. One example of an act that can be a nuisance on the road is throwing rubbish or erecting a building that covers the side or body of the road. Regarding this, the Prophet said:

عن سهل بن معاذ الجحيني عن أبيه قال نزلنا على حصن سينان بالأرض الروم مع عبد الله بن عبد الملك فضيق الناس المنزل وقطعوا الطرشييق فقال معاذ أيتها الناس إننا عزونا فق. مع رسول الله صلى الله عليه وسلم عزوة كذا فضيق الناس الطريق فبعث النبي صلى الله عليه وسلم منادياً فنادى من ضيق منزلاً أو قطع طريق ف لا جهادله

Meaning: Sahal b. Mu'az b. Anas Al-Juhni from his father Mu'az b. Anas Al-Juhni said: "We stopped at the fortress of Sinan, in the Roman city after which the people narrowed the existing refugee houses and they closed the road to build housing. Mu'az said: "O people, we fought with the Messenger of Allah at a time when people were narrowing the roads, so the Messenger of Allah called out that whoever narrows the houses and closes the roads then there is no jihad for him." (HR. Ahmad and Abu Daud).

The hadith explains that roads should not be converted or utilised in any way that harms others. It also illustrates how in the Roman Empire, roads that previously existed were used to construct buildings and housing. This is certainly detrimental to the public interest, as roads are supposed to function as places for traffic.²⁸

Likewise in the policy of limiting road utilisation in Kopelma Darussalam. This condition can disturb and harm the public interest, this can be seen on the public road around the campus which is an access route for community mobility both those who live around the campus and also people who are outside the Syiah Kuala District area.

2. Scholarly Opinions on *Haqq Al-Murur* and Its Use

²⁸ Muhammad Nashiruddin Al-Albani, *Sahih Sunan Abu Daud*, (Jakarta: Pustaka Azzam, 2006), pp. 149.

Every Muslim is obliged to create security and peace among fellow human beings. Especially in areas or places designated for public use, such as roads, Islam places great emphasis on good behaviour and morals by upholding equality of rights and prioritising the interests of the public over those of individuals or groups, and not arbitrarily abusing rights. Therefore, it can be seen that Islam highly values rights and common interests, not only in human relations, but also in relations with the universe.²⁹

One of the classifications of rights that must be upheld for the common interests of fellow human beings is *haqq al-irtifaq*. The law of *haqq al-irtifaq* is general in terms of its rights and provisions. Once this right is established, it will apply as long as its existence does not interfere with or cause harm to others.³⁰

Haqq al-mur is part of *haqq al-irtifaq*, which is the right to utilise immovable property, whether privately or jointly owned. *Haqq al-irtifaq* is the right to utilise fixed objects belonging to others, either privately or jointly owned, free of charge. This right is attached to the fixed object, not to the person, so this right remains as long as the object still exists, even though the person changes.³¹

There are several scholarly opinions regarding the form of implementation of *haqq al-murur* relating to the right to use public or main roads and the right to use special or private roads, including:

If the road is a public road, everyone has the right to pass by, trade on the side of the road, or park their vehicles on the side of the road, as long as they do not cause harm to others and have obtained permission from the government. However, if a person's use of the road causes harm to others, such as narrowing the road or disrupting traffic, then it is not allowed.³²

Everyone has the same right to use the road without needing permission from other parties, as long as it does not cause harm or

²⁹ Chairul Fahmi (Acehnese), 'The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia', *AlterNative: An International Journal of Indigenous Peoples* 20, no. 1 (1 March 2024): 157-66, <https://doi.org/10.1177/11771801241235261>.

³⁰ Scientific article, *Types of Rights in Islam*, (Iibtikar Rights, Intifa' Rights, Irtifa' Rights and Property Rights), 20 September 2024.

³¹ Wahbah Az-Zuhaili, *Fiqh Al-Islami Wa Adillatuhu*, translated by Abdul Hayyie Al-Khattani, Volume 6, (Jakarta: Gema Insani, 2002), pp. 63.

³² Nasrun Haroen, *Fiqh Muamalah*, p. 21.

negative impacts on others. For example, constructing a building on a public road or taking part of the road for personal use to the extent of blocking the road is not allowed. If a house faces a public road, it is permissible to build a window or roof over the road so long as it does not harm others. According to Imam Abu Hanifah, a person must obtain permission from the government to use a public road, for example, to park a vehicle or trade on the roadside. If permission is not obtained, then others have the right to refuse or dismantle the kiosk on the road.³³

According to the Shafi'iyah, Hanbalis, Imam Muhammad Ibn Al-Hasan Ash-Shibani, and Imam Abu Yusuf, one does not need to obtain permission from the government to utilise the road. Meanwhile, the Malikiyah scholars argue that if the utilisation of the road is proprietary, such as erecting a permanent building to sell on the side of the road, it is not allowed. However, it is different from parking a vehicle, because the vehicle will not always be in the same place. Therefore, according to the Maaliki, parking a vehicle is permissible as long as it does not harm others and still provides benefits, such as not narrowing the road and not damaging the road itself.³⁴

When parking a vehicle that causes disruption to the flow of traffic for other motorists is considered an act of taking the right of way. According to the Islamic perspective, parking vehicles on public roads is an act of taking the rights of others and is a form of injustice. Since public roads are intended for the public for traffic, they should not be misused or diverted, such as for selling or other purposes. In Islam, if there is no land available for parking, then it is the responsibility of the government to provide such public facilities.

But if a person uses the road at a speed that exceeds the prescribed limit or against the flow of traffic so as to endanger the safety of other motorists, this is not allowed. This is in accordance with the rule "*al-dhararu yuzalu*," which means "if there is something that can harm others, it must be prevented as much as possible."³⁵ In addition, in utilising public

³³ Ahmad Wardi Muslich, *Fiqh Muamalah*, pp. 88.

³⁴ Nasroen Haroen, *Fiqh Muamalah*, p. 21.

³⁵ Riau Islamic University article, *Interpreting the Rule of Al-Dhararu Yuzalu for the Benefit of the People*, (Humas Admin_news, 11 November 2022).

roads, motorists are required to abide by the rules for their own safety and to avoid causing harm to other motorists.³⁶

Meanwhile, for special roads built on private or group-owned land, their use is limited to the benefit of the owner or group. Other parties are not allowed to use them without their permission. However, in situations where the public road is congested and other motorists are forced to pass through the special road, the owner should give permission for the use of the road.

In terms of road utilisation, the Prophet prohibited holding events on the shoulder or road. This prohibition was based on his concern about the diversion of road functions and the non-fulfilment of the rights of other people who also have the right to use the road. One of the prohibitions is not to sit on the shoulder of the road, because it can disturb other people passing by. Therefore, the use of the shoulder is permissible as long as the rights of others are respected, such as lowering one's gaze to non-mahram passers-by, and not disturbing others with words or actions, such as damaging the road or gathering on the road.³⁷

Based on the above statements, the author concludes that the fuqaha agree that no one should take any action that could endanger others, whether on public roads or special roads. If the use of the road is proprietary, such as setting up a permanent shop or kiosk on the side of the road, it is not allowed. However, using the side of the road as a car park is permitted, provided it does not disturb passers-by. Nonetheless, avoiding harm takes precedence, as it should not interfere with the function of roads, markets or other public places. Such interference may include damaging the road, creating potholes, or spilling items on the road that could endanger the safety of others.

3. Principles of *Haqq Al-Murur* and Conditions for Its Utilisation

Haqq al-murur is a principle in Islamic law that gives individuals or communities the right to pass through or use public roads, provided

³⁶ Chairul Fahmi, *GEUNAP ACEH: PEACE NOT A SIGN*, ed. Fajran Zein et al. (Banda Aceh: The Aceh Institute Press, 2010).

³⁷ Almanhaj article Arif Syarifuddin, *Rights of Way*, accessed on 21 September 2024 from the site: <https://almanhaj.or.id/37576-hak-hak-jalan-2.html>.

they do not harm or disturb others. This principle includes several important aspects, including:³⁸

a. Public access rights

Everyone has the right to use public roads and public spaces as long as there are no legal restrictions. This principle guarantees people's freedom of access and movement.

b. Not harming others

Road use should consider the interests of others, and users should not cause nuisances, such as blocking roads, creating congestion, or creating hazards.

c. Maintenance and repair responsibilities

Users or parties who have rights over a road also have an obligation to maintain it. For example, in the context of private roads or shared facilities, the user is responsible for maintaining the road in a condition suitable for use.

d. Balance of individual rights and public interest

The application of *haqq al-murur* requires a balance between the individual's right to use the road and the public interest. Certain restrictions may be imposed in the public interest, such as to maintain security or regulate traffic.

In Law No. 38 of 2004 on Roads in Indonesia, these principles are enshrined in regulations governing road utilisation and maintenance. The law emphasises that roads are public facilities that should be used for the benefit of society, but there are restrictions and responsibilities for users to maintain safe and smooth traffic.³⁹

B. Provisions on Utilisation of Road Use in Law No. 38 Year 2004 on Roads

³⁸ Article, *The Concept of Rights in Islam*, accessed on 21 September 2024 from the site: <https://irham-anas.blogspot.com/2011/04/konsep-hak-dalam-islam.html>.

³⁹ Article, *Principles of Sharia Economics in Welfare of the People*, accessed on 21 September 2024 from the site: <https://uinsgd.ac.id/prinsip-prinsip-ekonomi-syariah-dalam-mensejahterakan-umat/>

1. Definition of Road and Its Utilisation in Law No. 38 Year 2004 on Roads

The definition of a road according to Indonesian Law No. 38 of 2004 concerning roads is a means of land transport that includes all parts of the road, including complementary buildings and equipment intended for traffic, both above ground, below ground, and above the surface of the water, except railways, lorries, and cableways. Public roads are roads used for public traffic, while special roads are roads built by agencies, business entities, individuals, or community groups for private interests. Parts of the road include the road benefit space, road property space, and road surveillance space:

- a. The road usable space includes the road section, roadside channels, and security areas.
- b. The road usable space consists of the road usable space and a certain portion of land outside the road usable space.
- c. Road surveillance space is a certain area outside the road right-of-way that is under the supervision of the road operator.⁴⁰

According to Law Number 38 Year 2004, roads are classified based on their function and type. Road construction is not done without a reason, apart from improving public accessibility, roads also have a number of benefits, including:

- a. Transport

Roads play a role in facilitating the efficient movement of people and goods from one place to another. It is the main route for motorised vehicles such as cars, buses, trucks and motorbikes.

- b. Connectivity

A well-integrated road network ensures easier access between towns, villages, shopping centres, educational institutions, healthcare facilities and other important locations.

- c. Economics

Roads support the flow of goods and services between producers, distributors and consumers, and accelerate economic growth by facilitating the movement of labour and easy access to workplaces.

⁴⁰ Law of the Republic of Indonesia Number 38 of 2004 concerning Roads, Article 12.

d. Environment

Highway construction also takes environmental aspects into consideration, with the utilisation of eco-friendly technologies such as the use of recycled asphalt, tree planting along the road, and efficient drainage systems.

2. Types of Roads and Their Functions as Means of Mobility for Society

Based on Article 8 of Law Number 38 Year 2004, public roads are classified based on their function into several types, namely:

a. Arterial roads

It is a major transport artery characterised by long-distance travel, high average speeds, and efficiently restricted driveways.

b. Collector road

It is a public road that plays a role in serving collector or distribution transport, with characteristics of medium-distance travel, medium average speed, and limited access driveways.

c. Local roads

It is a public road that serves transport in the local area, with characteristics of short-distance travel, low average speed, and unrestricted driveway access.

d. Neighbourhood street

It is a public road that serves transport within the neighbourhood, with characteristics of short-distance travel and low average speed.⁴¹

3. Fulfilment of Road User Rights in the Restriction Policy

The fulfilment of road use rights in the restriction policy is regulated by Law No. 38/2004 on Roads. Some of its key aspects include:

a. Road setting

⁴¹ Law of the Republic of Indonesia Number 38 of 2004 concerning Roads, Article 12.

This law emphasises the importance of road management, which includes the regulation, guidance, construction and supervision of roads to ensure safety and convenience for road users.

b. Road usable space

This law regulates the road usable space, which includes the road body, roadside channels and road safety areas. These rules aim to protect the road structure and ensure the safety of road users.

c. Community engagement

This law emphasises the importance of community involvement in road implementation, with the aim of making road implementation effective and efficient.

d. Balance of rights and obligations

This law regulates the balance between individual rights to land and the need for road construction in the public interest. Land use must benefit the community, the state, and the landowner. For landowners affected by road construction, compensation is provided based on an agreement. If no agreement is reached, the land rights may be revoked.⁴²

Thus, Law No. 38/2004 on Roads highlights the importance of regulation, public involvement, and the balance between rights and obligations in fulfilling the rights of road users.

C. Signification of the Concept of *Haqq Al-Murur* with Law No. 38 of 2004 on Road Utilisation Restrictions in Kopelma Darussalam

The Student City, which was later called Kopelma Darussalam, was established in 1959 which is an area of several university campuses, namely Syiah Kuala University (USK), Ar-raniry State Islamic University (UIN), Tgk Chik Pante Kulu College of Islamic Studies (STIA). In 2020, there was a conflict between the two campuses *jantoeng hate* Acehnese people after the claim of boundaries and land ownership by USK, such as fencing several roads with cement, including roads that have been accessed by the community and students to get in and out.⁴³

⁴² Law of the Republic of Indonesia Number 38 of 2004 concerning Roads, Article 12.

⁴³ Interview with Fuad Mardhatillah, Member of UIN Ar-Raniry Asset Settlement Team, on 21 March 2024, at Kopelma Darussalam.

The policy to build a fence carried out by the USK caused the closure of three public access roads that connect the community in the Kopelma Darussalam village area, precisely on Jalan Bayeun, Jalan Hamzah Fansuri, then the intersection of three Jalan Tgk. Chik Pante Kulu, North Sector precisely in front of Mushalla Fathun Mubin which used to be among the first mosques in the Darussalam campus area which is still used by the community until now.

The campus boundary conflict has actually been going on for a long time, related to the certificate that USK holds in claiming the boundary, but it needs to be re-examined because the certificate issued by USK in 1992 found many irregularities. This is because the land status that now stands two well-known campuses in Aceh, namely USK and UINAR, is state land granted by the Government of Aceh and there is no unilateral control of the land by any campus.

The closure of three public access roads by USK is a closure of the main access for residents that was carried out without the approval of the Governor of Aceh and the Mayor of Banda Aceh as the authority over the area. In addition, there was no consultation with other parties such as UIN Ar-Raniry, STIA Tgk Chik Pante Kulu and Kopelma Darussalam village officials in Syiah Kuala sub-district. The road closure has hampered the mobility of the community to get in and out of the residential area, both students who live around the campus and also people who are outside the Syiah Kuala District area such as the people of Baitussalam District, especially residents of Blangkrung, Kajhu, Baet villages.

After the official signing between Syiah Kuala University and UIN Ar-Raniry, the Asset Settlement Team of UIN Ar-Raniry Banda Aceh began to dismantle the boundary fence located in Jalan Bayeun area, Darussalam, Syiah Kuala District, Banda Aceh. After the demolition at that location, a gate will be built which will be accessible to the general public. The gate will be opened during the day and closed at night to maintain security, comfort and safety to avoid harm. However, if the public needs access at night, the gate can be opened depending on the level of need and mobility of the community.⁴⁴

Kopelma Darussalam, which is located in an area with a density of educational and social activities, requires effective and prudent road

⁴⁴ Interview with Zainuddin T, Member of UIN Ar-Raniry Asset Settlement Team, on 9 January 2025, at Kopelma Darussalam

management. In this case, the application of the concept of *haqq al-murur* must be faced with the fact that roads in the area are not only used by individuals for private purposes, but also for public purposes. Therefore, restrictions on road utilisation in Kopelma Darussalam are very relevant to the concept of *haqq al-murur*, which upholds the right to pass, but must still pay attention to the public interest and the sustainability of the road function itself.⁴⁵

1. Right to pass with necessary restrictions

Based on Law No. 38/2004, the right to pass can be restricted if there is a need to maintain the security, comfort and safety of other road users. If the road in Kopelma Darussalam is used by thousands of students every day, the use of the road must be regulated to avoid congestion or accidents. Restrictions can be in the form of timings, certain lanes that can only be travelled by certain vehicles or even access restrictions for activities that can disrupt the function of the road.⁴⁶

2. The importance of the government's role in road management

Law No. 38/2004 gives the government the authority to regulate roads, including road utilisation restriction policies. In the Kopelma Darussalam area, the authorities can impose certain restrictions based on the interests of the general public and the restriction policy must still consider the right of each individual to pass in accordance with the principles of *haqq al-murur*.

3. Community participation in road restriction policy

The concept of *haqq al-murur* includes the community's right to be informed and involved in the decision-making process related to road utilisation restriction policies. People in Kopelma Darussalam such as geuchiks, students, and teaching staff, have the right to know the reasons and legal basis of the restrictions made.

By involving the community, the policies taken will be accepted and implemented properly by all parties involved.

⁴⁵ Nasrun Haroen, *Fiqh Muamalah*, p. 21.

⁴⁶ Law of the Republic of Indonesia Number 38 of 2004 concerning Roads, Article 12.

CONCLUSIONS

Based on the study of the road utilisation restriction policy in Kopelma Darussalam according to the concept of *haqq al-murur* and Law No. 38/2004, it can be concluded that this policy has an important role in maintaining the balance between individual rights to pass and the interests of the general public. The concept of *haqq al-murur* affirms the right of every individual to use the roads that are already available, but this right can be limited to ensure comfort, safety and sustainability of road functions. Law No. 38 Year 2004 provides a clear legal basis for the government to regulate and restrict road users in the public interest.

The restriction policy in Kopelma Darussalam should consider the needs of the dense community and the high activity in the area. Such restrictions may include regulating vehicle types, specific times, or special access to avoid congestion, accidents, and road damage. Although such restrictions limit an individual's right to pass, they are still consistent with the principle of *haqq al-murur*, which prioritises the protection and maintenance of roads for the common good.

Overall, the road restriction policy in Kopelma Darussalam should pay attention to road safety, convenience, and sustainability, as well as ensuring people's right to fair access to public facilities. With proper policy implementation, these restrictions will create an orderly, safe and well-managed environment in accordance with the provisions of Law No. 38 Year 2004.

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