



**Rereading the Concept of Joint Property: Fiqh Literacy in the Book of
Sabilal Muhtadin and the Genealogy of Sheikh Arsyad's Thoughts**

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Abstract: This research describes fiqh literacy regarding joint property which has become an academic rumor referring to the Book of *Sabilal Muhtadin* by Sheikh Arsyad, which is a reference for studies on joint property in Indonesia. Because of this, it is necessary to re-read the concept of joint property, which was born from the culture of the Banjar people, namely the property of taboo, which was initiated by Sheikh Arsyad, because the reference is not from the Book of *Sabilal Muhtadin*. This research uses a type of normative research using historical, hermeneutic, netnographic, conceptual and philosophical approaches. Data was collected by means of literature studies that refer to the book of *Sabilal Muhtadin* and articles and studies of parties who are concerned about the book in correspondence. The findings of this research indicate that the Islamic legal methodology used by Sheikh Arsyad regarding the concept of joint property is a product of his ijthihad taking into account the local culture of the Banjar community. Although there is a misrepresentation of fiqh literacy regarding joint assets in the *Sabilal Muhtadin* Book which is used as a literary reference. Sheikh Arsyad's genealogical thoughts regarding joint property, although not contained in *Sabilal Muhtadin's* Book, have become a local legal doctrine that has been transformed into a global insight using the methods of *islah, masalah mursalah, urf, and adatul muhakkamah*. However, this concept will not be degraded, because it has been practiced for a long time and has become a living law that contains beneficial values.

Keywords: Rereading, fiqh literacy, Sheikh Arsyad, joint property

Abstrak: Penelitian ini memaparkan tentang literasi fikih mengenai harta bersama yang menjadi rumor akademis merujuk pada Kitab Sabilal Muhtadin karya Syekh Arsyad, yang menjadi rujukan atas studi-studi tentang harta bersama di Indonesia. Karena itu perlu dilakukan pembacaan ulang konsep harta bersama lahir dari budaya masyarakat Banjar dengan sebutan harta perpantangan yang digagas oleh Syekh Arsyad, sebab rujukannya bukan dari Kitab Sabilal Muhtadin. Riset ini memakai jenis riset normatif dengan menggunakan pendekatan historis, hermeneutik, netnografi, konseptual, dan filosofis. Data dikumpulkan dengan cara studi literatur yang mengacu pada kitab Sabilal Muhtadin dan artikel serta kajian terhadap pihak-pihak yang membahas Kitab tersebut secara korespondensi. Temuan penelitian ini menunjukkan bahwa metodologi hukum Islam yang digunakan Syekh Arsyad tentang konsep harta bersama merupakan produk ijtihadnya dengan pertimbangan budaya lokal masyarakat Banjar. Karena itu perlu pembacaan ulang terhadap literasi fikih tentang harta bersama dalam Kitab Sabilal Muhtadin yang dijadikan rujukan literasi. Genealogis pemikiran Syekh Arsyad mengenai harta bersama meskipun tidak terdapat dalam Kitab Sabilal Muhtadin tetapi telah menjadi doktrin hukum lokal yang menjelma menjadi wawasan global dengan menggunakan metode islah, masalah mursalah, urf, dan adatul muhakkamah. Meskipun demikian, konsep tersebut tidak akan terdegradasi, karena telah lama dipraktekkan dan menjadi living law yang mengandung nilai maslahat

Kata Kunci: Pembacaan ulang, literasi fikih, Syekh Arsyad, harta bersama

Introduction

Sabilal Muhtadin lit Tafaqquh fii Amrid Din became one of the top books of the 18th century in Southeast Asia. At that time, Sheikh Arsyad wrote a *fiqh* book that led to be the reference of Muslims life in Kalimantan. The popularity of that book and Sheikh Arsyad's charismatic figure (also known as *Datuk Kalampayan*) is greatly admired by Southeast-Asia society. Indeed, some researchers claimed that a *fiqh* literature relating to Islamic-law renewal about a joint property referred to that Book.¹ Obviously, it leads to reasonable academic mistake considering Sheikh Arsyad's activity in preaching in Kalimantan. The *Sabilal Muhtadin* is *fiqh* book that was harmonized in terms of languages and studies for Banjar society in Kalimantan denoting *Shirathal Mustaqim* Book by Sheikh Ar-Raniry in Aceh.

¹Azyumardi Azra, "Networks of the Ulama in the Haramayn: Connections in the Indian Ocean Region," *Studia Islamika* 8, No. 2 (2001). Yusny Saby, "The Ulama in Aceh: A Brief Historical Survey," *Studia Islamika* 8, No. 1 (2001). Agus Moh Najib, "Reestablishing Indonesian Madhhab: 'Urf and the Contribution of Intellectualism," *al-Jami'ah: Journal of Islamic Studies* 58, No. 1 (2020).

To justify, fiqh literature does not discuss a joint property in marriage deeply, hence such topic has not yet been discussed in Islamic law.² However, some Indonesian scholars (or *ulama*’) addressed a joint property problem, one of whom is Sheikh Arsyad Al-Banjari by referring to a term of *harta perpantangan*.³ A *misrepresentation* that occurs among researchers in discussing joint property is that they represent *Sabilal Muhtadin* book as Sheikh Arsyad’s remarkable idea. Whereas, such book does not discuss *harta perpantangan*. In this case, once a husband and a wife divorced, a marriage property leads to a household dispute, or that referred to a joint property, in marriage context. Up to now, there are up to 19148 cases recorded as a joint-property dispute in directory of verdicts of The Supreme Court of the Republic of Indonesia.⁴ The notion of possession of joint-property first emerged from social practice among Indonesian society, then was supported by state laws and regulations.

A joint property was discussed in Faraid book (*risalah mawaris wal ishlah*)⁵ which was also written by Sheikh Arsyad. In fact, that book was not printed at all, even the original script was not yet found up to now. Sheikh Arsyad was the first scholar to describe a system and understanding of a joint property in society, which was, then, authorized in a law.⁶ Up to now, the studies about a joint property was centered to *Sabilal Muhtadin* book. As a study by Muhammad Ali Wafa claimed that Sheikh Arsyad first introduced a joint property in his *Sabilal Muhtadin* book.⁷ Also, a study by Syarifah Nur Aini mentioned that *harta perpantangan* concept was not explained in both Al-Qur’an and Hadits, yet being explained by well-known scholar (Sheikh Arsyad Al-Banjari) in *Sabilal Muhtadin* Book.⁸ Besides, a book also specified that a joint property concept was provided by well-known a religious figure (Sheikh

²Siah Khosyi’ah, “Keadilan Distributif Atas Pembagian Harta Bersama Dalam Perkawinan Bagi Keluarga Muslim Di Indonesia,” *Al-Manahij: Jurnal Kajian Hukum Islam* 11, no. 1 (2017), p. 35.

³Muhammad Iqbal, *Arsyad Al-Banjari’s Insights on Parallel Reasoning and Dialectic in Law: The Development of Islamic Argumentation Theory in the 18th Century in Southeast Asia* 25 (Springer Nature, 2022), p. 180.

⁴Mahkamah Agung Republik Indonesia, “Putusan Perdata Agama,” 2022, <https://putusan3.mahkamahagung.go.id/>.

⁵Siti Muna Hayati, “Sejarah Sosial Pemikiran Hukum Islam Syekh Muhammad Arsyad Al-Banjari (Studi Tentang Parpantangan Dan Baislah),” 2016, p. 3.

⁶Zikri Darussamin and Armansyah Armansyah, “Hak Harta Bersama Bagi Istri Yang Bekerja Perspektif Maqashid Asy-Syari’ah,” *Asy-Syir’ah: Jurnal Ilmu Syari’ah Dan Hukum* 51, no. 2 (2017), p. 361.

⁷Mohammad Ali Wafa, “Pemikiran Dan Kiprah Syekh Muhammad Arsyad Al Banjari dalam Perspektif Komunikasi Agama,” *Jurnal Mutakallimin: Jurnal Ilmu Komunikasi* 1, no. 1 (2019), p. 20.

⁸Syarifah Nur Aini, “Pribumisasi Islam: Solusi Keberagaman Di Tanah Banjar,” n.d., p. 1.

Arsyad) in his fiqh *Sabilal Muhtadin* book.⁹ Similarly, a thesis by Mardi Canda noted that the *Sabilal Muhtadin* book of *harta perpantangan* facilitated society legal awareness towards determining a joint property.¹⁰ A trend of a number of studies and articles dealing with a joint property that refers to *Sabilal Muhtadin* book indicated a mistaken reference.

Furthermore, a *misrepresentation* of several studies noticeably explained that a reference for a joint property was centered to *Sabilal Muhtadin* book, such as: Wafa,¹¹ Canda,¹² Aini,¹³ Muzainah,¹⁴ Djawas,¹⁵ Purwanto,¹⁶ Iqbal,¹⁷ and Agustina.¹⁸ Several studies show a methodological correlation with Sheikh Arsyad's idea of joint property. In fact, this literature is an incorrect academic reference and must be straightened out so that there is no misrepresentation of fiqh literature, so it is necessary to re-read it. In essence, the genealogy of the idea of joint property with Sheikh Arsyad is not found in *Sabilal Muhtadin's* book.

This research uses normative juridical methods.¹⁹ Data was collected by relying on the literature to study Islamic jurisprudence literature which was analyzed qualitatively using hermeneutic, historical, netnographic, conceptual and philosophical approaches. Apart from that, correspondence was also carried out with parties who had an interest in *Sabilal Muhtadin's* book. This research examines errors in fiqh literature in the book *Sabilal Muhtadin* written by

⁹Gusti Muzainah, *Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar* (Yogyakarta: Pustaka Akademika, 2016), p. 154-155.

¹⁰Mardi Canda, "Kedudukan Alat Bukti Surat Dalam Pelaksanaan Eksekusi Pada Pekerja Nomor: 35/Pdt. G/2005/PA. Bkn" (Universitas Islam Riau, 2010), p. 28.

¹¹Wafa, "Pemikiran Dan Kiprah Syech Muhammad Arsyad Al Banjari Dalam Perspektif Komunikasi Agama."

¹²Canda, "Kedudukan Alat Bukti Surat Dalam Pelaksanaan Eksekusi Pada Pekerja Nomor: 35/Pdt. G/2005/PA. Bkn."

¹³Aini, "Pribumisasi Islam: Solusi Keberagaman Di Tanah Banjar."

¹⁴Muzainah, "Asas Kemanfaatan Tentang Kedudukan Perempuan Dalam Hukum Waris Adat Masyarakat Banjar."

¹⁵Mursyid Djawas, "Jejak Maqashid Al-Syari'ah Di Nusantara: Melacak Fuqahā Berbasis Maqashid Al-Syari'ah Dan Hasil Ijtihadnya," *ARICIS PROCEEDINGS* 1 (2017): p. 172.

¹⁶Muhammad Roy Purwanto, "Thought of Nusantara Moslem Scholars: Fiqh Concepts of Syekh Arsyad Al-Banjari In Sabilalmuhtadin," *Akademika: Jurnal Pemikiran Islam* 24, no. 1 (2019), p. 187-212.

¹⁷Iqbal, *Arsyad Al-Banjari's Insights on Parallel Reasoning and Dialectic in Law: The Development of Islamic Argumentation Theory in the 18th Century in Southeast Asia*.

¹⁸Arifah Millati Agustina, "Gender Construction in The Perspective of Living Fiqh in Indonesia," *Justicia Islamica* 18, no. 2 (2021), p. 206.

¹⁹Salim HS and Erlies Septianan Nurbani, *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis*, Jakarta: Raja Grafindo Persada, 2013. Jefry Tarantang, et.al., "Urgensi Itsbat Nikah Bagi Masyarakat Muslim Di Kota Palangka Raya," *Jurnal Ilmu Hukum Tambun Bungai* 4, no. 2 (2019), p. 519-42.

Sheikh Arsyad which is claimed to be a reference to joint assets. This study was elaborated with a retrospective and explanatory method regarding a re-reading of the fiqh literature of *Sabilal Muhtadin's* book and the genealogy of Sheikh Arsyad's ideas about joint property.

Honor and Ideology of *Sabilal Muhtadin* Book as A “Masterpiece” of 18th Century Indonesian Scholars Book

Sheikh Arsyad's life started in Lok Gabang Village, that was born 17th of March 1710 AD and died 13th of October 1812 AD at 102 years old.²⁰ He was named as Muhammad when being kid, Ja'far and Muhammad Arsyad when being teenage.²¹ His father was named as Abdullah and his mother named Aminah. His lineage was up to Prophet Muhammad through Sayyidina Husein.²² He could already read Al-Qur'an well since he was 7 years old. At 8 years old, Sultan Tamjidillah sent him to Banjar Martapura sultanate to get education. When he was 30, the sultanate offered a grant to go to holy sites to study more about religion. The Sultan expected what he learned there could help and teach around Banjar society. He was sent to Mecca and Medina to learn for approximately 30 years.²³

He with his four school mates were called “*Empat Serangkai*” (or that referring to *the four mates*). They were Sheikh Abdul Rahman Masri, Abdul Samad and Sheikh Abdul Wahab.²⁴ His teachers were Sheikh Muhammad al-Kurdi, Sheikh Muhammad al-Hasani al-Madani and Sheikh Attaillah.²⁵ His Asian and Malay teachers were Sheikh Abdul Rahman al-Fatani, Sheikh Muhammad Zayn from Aceh and others.²⁶ After finishing his education, he

²⁰ Purwanto, “Thought of Nusantara Moslem Scholars: Fiqh Concepts Of Syekharsyad Al-Banjari In Sabilalmuhtadin,” p. 189.

²¹ A Syaifullah, “Moderasi Islam Dalam Kitab Sabilal Muhtadin: Kearifan Lokal Tanah Banjar,” *Muà Sarah: Jurnal Kajian Islam Kontemporer* 2, no. 1 (2020), p. 35.

²² Ahmad Dakhoir, “Pemikiran Fiqih Shaikh Muhammad Arshad Al-Banjari,” *Islamica: Jurnal Studi Keislaman* 4, no. 2 (2010), p. 231.

²³ Zulfatun Ni'mah, “Pemahaman Masyarakat Banjar Kalimantan Selatan Tentang Pemikiran Fiqh Syekh Arsyadal Banjari Dalam Hal Harta Perpantangan,” *Jurnal Dinamika Penelitian: Media Komunikasi Penelitian Sosial Keagamaan* 20, no. 2 (2020): p. 383.

²⁴ Saifuddin Saifuddin, *Ulama Perempuan Ideologi Patriaki Dan Penulisan Kitab Kuning (Studi Peran Fatimah Binti Abdul Wahab Bugis Dalam Penulisan Kitab Parakunan Melayu)* (Antasari Press, 2013), p. 19.

²⁵ Ahmad Afdoli, “Pemikiran Muhammad Arsyad Al-Banjari Tentang Kearifan Lokal Dalam Kitab Sabil Al-Muhtadin (Perspektif Maqashid Al-Syari'ah),” (2018), p. 5.

²⁶ Dede Hidayatullah, “Legenda Syekh Muhammad Arsyad Al-Banjari Dan Pengaruhnya Pada Masyarakat Banjar,” *UNDAS: Jurnal Hasil Penelitian Bahasa Dan Sastra* 16, no. 2 (2020), p. 176.

returned to Martapura in 1772 AD.²⁷ He was very welcomed by all Banjar society and sultanate. The people called him with the term “Sun of Religion” with the hope that he could lighten around the nation.²⁸

Sheikh Arsyad activity was dedicated to share knowledge he acquired, especially in Banjar land. Beside teaching and preaching, he also wrote a number of treatises and books. Some of his well-known works were Ushuluddin, Tuhfatul Raghabin, Faraid book, an-Nikah book, Luqthatul Ajlan, Al- Qaul Mukhtasyar, Fatawa Sulaiman Kurdi, Kanzul Ma’rifah, Falaq science, Mushaf Alquranul Karim and Sabilal Muhtadin lit-tafaqquh fi amridin.²⁹ Sabilal Muhtadin book was the most well-known Malay book and monumental work. After spreading out Islam around Banjar sultanate for 40 years, he died in Pagar village.³⁰ He was buried in Kalampayan Martapura. In addition, people were familiar to him with the name of Datuk kalampayan.

Sabilal Muhtadin, which was familiar across Southeast Asia and even mostly mentioned by Islamic-country scholars,³¹ is a Malayan book composed by Sheikh Arsyad. He composed *Sabilal Muhtadin* to address interests of cultural and structural.³² The cultural interest was done since he considered the reality of Banjar society’s lack of access to legal resources in Malay. Besides, the structural interest was due to Sultan Tahmidullah bin Sultan Tamjidullah’s request to compile reference in accordance with society language and needs. Prior to studying *Shirathal Mustaqim* book, Muslims around him had limited knowledge of a number of terms due to a blend with Acehnese.³³

According to Banjar history quoted by Rahmadi et al., Sheikh Arsyad’s books were made based on purposes.³⁴ *Sabilal Muhtadin* book was dedicated to educated Muslim and Luqthat Ajlan. Hasyiyah Fath al-Jawad book was addressed to Arabic scholars, while an-Nikah book and Faraid book were

²⁷Ahmad Tamyiz, et. al., “The Study of Methodology of Book Tuhfah Ar-Ragibin Fi Bayan Haqiqah Al-Iman Al-Mu’minin Wa Ma Yufsiduhu Min Riddah Al-Murtaddin,” *Bulletin of Pedagogical Research* 1, no. 2 (2021), p. 200.

²⁸Purwanto, “Thought of Nusantara Moslem Scholars: Fiqh Concepts of Syekharsyad Al-Banjari In Sabilalmuhtadin.”

²⁹Hidayatullah, “Legenda Syekh Muhammad Arsyad Al-Banjari Dan Pengaruhnya Pada Masyarakat Banjar.”

³⁰Hidayatullah, “Legenda Syekh Muhammad Arsyad Al-Banjari Dan Pengaruhnya Pada Masyarakat Banjar.”

³¹Abd Rochim Al-Audah, *Pemikiran Politik Syekh Al-Banjari (1710-1812): Dalam Pembinaan Politik Hukum* (Lekkas, 2021).

³²Rakhmat Nopliardy and Jarkawi Jarkawi, “Meaning and Legal Position in Thoughts of Syekh Muhammad Arsyad Al-Banjari,” in *Borneo International Conference On Education And Social*, n.d., p. 467.

³³Marzuki Abubakar, “Kitab Jawi Dan Kontribusinya Dalam Kajian Islam Di Kepulauan Nusantara,” *Aracis Proceedings* 1 (2017), p. 446.

³⁴Rahmadi Rahmadi, Abbas M Husaini, and Wahid Abdul, “Islam Banjar Dinamika Dan Tipologi Pemikiran Tauhid, Fiqih Dan Tasawuf” (Antasari Press, 2012), p. 61.

addressed to state officials. Meanwhile, Parukunan book was addressed to public and was compiled by his descendants.³⁵ He expected to provide intact Islamic understandings to Banjar society. It was evidenced from his works on not only fiqh but also tasawuf issues. *Sabilal Muhtadin* concerned about fiqh of worship. He attempted to introduce fiqh to society in Malay also present local issues for easy understanding, and even his idea led to be global insight on fiqh issues in Southeast Asia.³⁶

Sabilal Muhtadin became a well-known and charismatic book, in addition to Indonesia, this book served to be reference in al-masjidil-ḥarām, also studied in neighboring countries and Thailand. It was written in Malay and Arabic script and was taught to those who haven't fluently spoken Arabic by Malay scholars.³⁷ After *Shirathal Mustaqim*, it is the second book of syafi'i maḏhab written with Arabic *pegon* style (referred to *Javanese-traditional Arabic writing*) as a guideline for Muslims to overcome several fiqh problems at that time.³⁸ *Sabilal Muhtadin* reputation quickly became the main fiqh reference and was practiced extensively in 19th century. Steenbrink's admiration expression as cited by Norcahyono stated that *Sabilal Muhtadin* is a Malayan book with dense and detailed in fiqh field, as its manuscript was scattered as well as in Jakarta-museum collection.³⁹ It was actually broad and deep in comparison to *Shirathal Mustaqim* book whose presentation was identical in topics and language.⁴⁰

Sabilal Muhtadin not only spreaded widely but also influenced writing of the next book of Southeast Asia scholars. It was considered as one of the most important references for fiqh Syafi'i in Malayan extent. As a result, Indonesian

³⁵Sribior Maulida, Sukarni Sukarni, and Muhammad Hanafiah, "Analisis C3 Framework Kitab Parukunan Melayu Besar Bab Haji Karya Haji Abdurrasyid Banjar," *Cakrawala: Jurnal Studi Islam* 14, no. 2 (2020), p. 78.

³⁶Sukarni, "Kitab Fikih Ulama Banjar Kesenambungan Dan Perubahan Kajian Konsep Fikih Lingkungan," *Analisis: Jurnal Studi Keislaman* 15, no. 2 (2015), p. 434.

³⁷Muhammad Syarif Hidayatullah, "Analisis Materi Bahasan, Karakteristik Penyajian dan Preferensi Kajian Dalam Kitab Parukunan Melayu Besar Karya Haji Abdurrasyid Banjar," *Madinah: Jurnal Studi Islam* 7, no. 2 (2020), p. 137.

³⁸Muhammad Fazlurrahman Syarif and Muhammad Syauqi Bin-Armia, "The Contribution of Indonesian's Muslim Kingdom In The Development of Islamic Court: Historical Legal Approach Analysis," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 7, No. 2 (2022), p. 121.

³⁹Norcahyono Norcahyono, "Konstruksi Akad Nikah (Ijab Dan Kabul) Dalam Kitāb Al-Nikāh Karya Muhammad Arsyad Al-Banjari," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021), p. 216-217.

⁴⁰Safriadi Safriadi, "Otoritas Kitab Kuning dalam Putusan Hakim: Analisis Putusan Hakim Di Mahkamah Syar'iyah Lhokseumawe Aceh," *Analisis: Jurnal Studi Keislaman* 19, no. 1 (2019), p. 91.

society adopted it as a main reference for Syafi'i jurisprudence.⁴¹ Too, fiqh Bughyah Tullab by Daud bin Abdullah al-Fatani was inspired and a continuation of *Sabilal Muhtadin*.⁴² Through *Sabilal Muhtadin* book, Syekh Arsyad had implicitly directed dynamic and update ideas in Indonesia.⁴³ Up to now, it is used and taught as a standard fiqh reference book both in Indonesia and Southeast Asia. Also, it is an essential part of education curriculum for students at learning centers. Its popularity possibly occurred due to Syekh Arsyad's moderate ideas and attitude⁴⁴ on his works. As a result, muslims considered easy to practice Islam, let alone it regarded their living conditions and local culture.

Methodology and Anatomy of *Sabilal Muhtadin* Book

In the 18th century in Indonesia, the renowned fiqh book was born that had correlation with *Shirathal Mustaqim* book by Sheikh Ar-Raniry, and that was acknowledged as *Sabilal Muhtadin* compiled by Sheikh Arsyad. In Constantinople in 1302 H, *Sabilal Muhtadin* book was first printed after being corrected by Sheikh Ahmad al-Fathani.⁴⁵ Based on the *muqaddimah* (or *preface*) of its drafting book, the references were taken from the popular Syafi'i scholars, for instance: Fath al-Wahhab, Mughni al-Muhtaj by Sheikh al-Khatib al-Syarbini, Tuhfat al-Muhtaj by Sheikh Ibn Hajar al-Haitami,⁴⁶ Syarah Manhaj by Zakariya al-Anshari,⁴⁷ Nihayatul Muhtaj oleh ar-Ramli,⁴⁸ Syarh al-Rawdh by Zakariya al-Anshari, Syarh al-Shagir by al-Nawawi, Syarh Rawdh by Ibnu Muqri, Syarah Lubab by Ibnu Hajar al-Haytami and al-Khadim by al-Zarkasyi.⁴⁹ Ar-Raniry was also mentioned, in addition, the book was claimed that scholars

⁴¹Rahmah Ahmad Osman and Khaled Ahmad Mohd Muhedat, "A Bird's Eye View on Muslim Scholarship in Southeast Asia.," *International Journal of the Humanities* 7, no. 3 (2009), p. 54.

⁴²Rahmadi, M Husaini, and Abdul, "Islam Banjar Dinamika Dan Tipologi Pemikiran Tauhid, Fiqih Dan Tasawuf."

⁴³Azyumardi Azra, *Jaringan Ulama Timur Tengah* (Jakarta: Prenada Media, 2013).

⁴⁴Syaifullah, "Moderasi Islam Dalam Kitab Sabilal Muhtadin: Kearifan Lokal Tanah Banjar."

⁴⁵ Abdul Rahman Abdullah, *Biografi Agung Syekh Arsyad Al-Banjari* (Selangor: Inspirasi I Media, 2016), p. 183.

⁴⁶Syed Salim Syed Shamsuddin et. al., "Kitab Turath Fiqh Syafie Jawi Sebagai Medium Penyampaian Ilmu Fardu Ain Di Malaysia: Analisis Metodologi Penulisan Kitab Hidayat Al-Sibyan Fi Ma 'Rifat Al-Islam Wa Al-Iman," 2020, p. 755.

⁴⁷Wan Zulkifli Wan Hassan et al., "Practice in Certain School and Fanatic Inclination to One School: A Study among Malaysian Shafi'i Mazhab Within Islamic Civilization Context," *ARPJ Journal of Engineering and Applied Sciences* 15, no. 2 (2020): p. 2535.

⁴⁸Muslich Shabir, "Pemikiran Syekh Muhammad Arsyad Al-Banjari Tentang Zakat Dalam Kitab Sabil Al-Muhtadin Analisis Intertekstual," *Analisa Journal of Social Science and Religion* 16, no. 1 (2009), p. 41921.

⁴⁹Rahmadi, M Husaini, and Abdul, "Islam Banjar Dinamika dan Tipologi Pemikiran Tauhid, Fiqih dan Tasawuf."

and sanad sustained up to the Middle East. As a result, a lot of scholar network among Indonesia and the Middle East could be exposed.⁵⁰

Sheikh Arsyad's religious ideas in *Sabilal Muhtadin* owns several aspects. At least, there are 3 aspects that can be perceived from its contents.⁵¹ First, Syeikh Arsyad's idea emphasizes several contextual fiqh aspects, though it does not fully describe contextual fiqh. Second, futuristic aspect or that relates to productive zakat which is relevant to apply up to now. Third, providing choices of solution when facing fiqh problems regarding various conditions on worship implementation, as it denotes alternatives and comparatives.

Syeikh Arsyad's ijtihad method on *Sabilal Muhtadin* Book owns at least 3 patterns. They are *Bayani*, *Qiyasi*, and *Istishlahi* and its implementation employs fiqh rules.⁵² First, *Bayani* ijtihad is a legal reasoning method which is primarily based on semantics study.⁵³ This is also called literal method because it is aimed to explaining syariah texts, such as Al-Qur'an and Hadits to describe certain fiqh law.⁵⁴ Second, *Qiyasi* ijtihad is an effort to describe unexplained Islamic law in *nash* by providing analogy through similar legal cases or story provided in *nash*.⁵⁵ In practice, this method is used to complete explanations made through *Bayani* method. Third, *Istishlahi* ijtihad is one method to formulate law especially by using common *nash* to make principles thoroughly to achieve benefit.

Anatomy of *Sabilal Muhtadin* book contains information about fiqh, particularly regarding worship practice. The print edition is broken down into two volumes, whereas the original manuscript owns four volumes.⁵⁶ The writing structure of *Sabilal Muhtadin* book is firstly set with muqaddimah by mentioning the reason for writing the book, then explains that Syafi'i Mazhab serves as the reference. Then, he divided the book into eight parts, called as

⁵⁰Azra, *Jaringan Ulama Timur Tengah*.

⁵¹Rahmadi, M Husaini, and Abdul, "Islam Banjar Dinamika Dan Tipologi Pemikiran Tauhid, Fiqih Dan Tasawuf."

⁵²Purwanto, "Thought of Nusantara Moslem Scholars: Fiqh Concepts of Syeikharsyad Al-Banjari In Sabilalmuhtadin." Atika Fitri, et.al., "Divorce Lawsuit Due to Impotence Perspective Maslahat Theory: Case study of the Andoolo Religious Court Decision, Southeast Sulawesi," *El-Ussrah: Jurnal Hukum Keluarga* 7, No. 1 (2024).

⁵³Wahyu Wahyu Akbar, "Epistemologi Fikih Filantropi Masa Pandemi Covid-19 Di Indonesia: The Epistemology of Fiqh Philanthropy in the Covid-19 Pandemic Period in Indonesia," *Jurnal Bimas Islam* 14, no. 2 (2021), p. 350.

⁵⁴Jefry Tarantang, "Cita Hukum Dan Sistem Nilai Etika Advokat Dalam Penyelesaian Sengketa Hukum Keluarga Islam," *El-Mashlahah* 9, no. 2 (2019), p. 137-53.

⁵⁵Jefry Tarantang, "Buku Ajar Hukum Islam (Paradigma Penyelesaian Sengketa Hukum Islam Di Indonesia)" (Yogyakarta: K-Media, 2020), p. 3.

⁵⁶Muhammad Arshad Abdullah al-Banjari and Asywadie Syukur, *Kitab Sabilal Muhtadin: I* (Jakarta: Bina Ilmu, 1989).

“*kitab*” (or that refers to ‘*book*’).⁵⁷ Similar to Arabic fiqh texts, the discussion is started by explanation of *taharah*, then prayers, fasting, zakat, halal and haram food and so on.⁵⁸ Each *kitab* is made up of chapters and articles, except end of discussion. The writing of the book is completed with a cover containing a description of the completion then a prayer.⁵⁹

Rereading Fiqh Literacy Concerning Joint Property and Academic Rumors Referring to *Sabilal Muhtadin's* Book

The concept of joint property served as a new spirit of Islamic law renewal in 18th century in Banjar society initiated by Sheikh Arsyad. Even Abdurrahman Wahid admitted the concept that the problem of husband-wife property acquisition was set out from Indonesian culture. The concept obtained validity by Sheikh Arsyad’s idea by considering the majority of Banjar society were working on the stream river at that time.⁶⁰ Misrepresentation of fiqh literacy first occurred from several mistaken researchers in capturing Abdurrahman Wahid's writing that stated a joint property by the Syeikh Arsyad, the author of *Sabilal Muhtadin* book. Then, several researchers noted that the idea of a joint property was initiated by Syeikh Arsyad in *Sabilal Muhtadin* book. In the end, misrepresentation occurred on fiqh literacy by researchers, and were cited by other researchers in a number of studies. Then, it led to academic rumor that a joint-property by Sheikh Arsyad referred to *Sabilal Muhtadin* book. Whereas, the book did not discuss any about a joint property. It can be seen from several following studies:

1. A study by Mohammad Ali Wafa entitled “Pemikiran Dan Kiprah Syech Muhammad Arsyad Al Banjari Dalam Perspektif Komunikasi Agama.” submitted in *Mutakallimin Journal: Journal of Communication Science* Vol. 1, No. 1, 2019.
2. A study by Mardi Canda entitled “Kedudukan Alat Bukti Surat Dalam Pelaksanaan Eksekusi Pada Pekerja Nomor: 35/Pdt. G/2005/Pa. Bkn.” written in Dissertation at Riau Islamic University in 2010.
3. A study by Syarifah Nur Aini entitled “Pribumisasi Islam: Solusi keberagaman di Tanah Banjar” written as KTI on Academia website in 2020.

⁵⁷Iqbal, *Arsyad Al-Banjari's Insights on Parallel Reasoning and Dialectic in Law: The Development of Islamic Argumentation Theory in the 18th Century in Southeast Asia*.

⁵⁸Muhammad Arsyad Al-Banjari, *Sabil Al-Muhtadin Li at-Tafaqquh Fi Amr Al-Din* (Beirut, n.d).

⁵⁹Fathurrahman Azhari, “Pemikiran Hukum Kearifan Lokal Syekh Muhammad Arsyad Al-Banjari Dalam Kitab *Sabilal Muhtadin*,” 2016, p. 5-6.

⁶⁰Zainal Muttaqin and Rusdiyah, “Laporan Hasil Penelitian: Model Harta Perpantangan Dalam Perspektif Zuriat Syekh Arsyad Al Banjari Di Martapura” (Kota Banjarmasin, 2019), p. 2.

4. A book of Gusti Muzainah entitled "Asas Kemanfaatan Tentang Kedudukan Perempuan dalam Hukum Waris Adat Masyarakat Banjar." published by Pustaka Akademika, 2016.
5. A study by Mursyid Djawas entitled "Jejak Maqashid Al-Syari'ah Di Nusantara: Melacak Fiqah Berbasis Maqashid Al-Syari'ah Dan Hasil Ijtihadnya." written in Aricis Proceedings 1 of 2017.
6. A study of Muhammad Roy Purwanto entitled "Thought of Nusantara Moslem Scholars: Fiqh Concepts of Sheikh arsyad Al-Banjari in *Sabilal muhtadin*." written in Akademika: Journal of Islamic Thought Vol. 24, No. 1, 2019.
7. Muhammad Iqbal's book entitled "Arsyad al-Banjari's Insights on Parallel Reasoning and Dialectic in Law: The Development of Islamic Argumentation Theory in the 18th Century in Southeast Asia" published by Springer Nature Vol. 25, 2022.
8. A study by Arifah Millati entitled "Gender Construction in The Perspective of Living Fiqih in Indonesia." published in journal of Justicia Islamica Vol. 18, no. 2, 2021.

By considering several studies above, misrepresentation of fiqh literacy clearly occurred that referred to *Sabilal Muhtadin* by Sheikh Arsyad as a book that discussed the concept of joint property. It caused issues among Banjar society including his zuriah (or 'family').⁶¹ Nevertheless, *Sabilal Muhtadin* book by Sheikh Arsyad did not surely mention any concept of a joint property. In line with Guru Hatim Salman Martapura, one of Sheikh Arsyad's zuriah, confirmed that a joint property was not discussed in *Sabilal Muhtadin* book.⁶² Before the news was taken down, Guru Hatim Salman had detailed that a joint property was not discussed in the book. He asserted that "I have finished both studying and teaching *Sabilal Muhtadin*, there is no discussion about a joint property." He also added that several people, indeed, said that the book truly discussed a joint property. Meanwhile, in fact, the book merely discussed about worship. As a result, it is clear that misrepresentation of fiqh literacy by researchers who claimed a joint-property concept by the Syekh Arsyad in *Sabilal Muhtadin* book occurs.

Genealogy of Idea of Syekh M. Arsyad Al-Banjari Regarding a Joint Property

An issue about a joint treasure (or '*harta Perpantangan*') is a part of Banjar culture that cannot be separated from Sheikh Arsyad, since it is

⁶¹Muttaqin and Rusdiyah, "Laporan Hasil Penelitian: Model Harta Perpantangan Dalam Perspektif Zuriat Syekh Arsyad Al Banjari Di Martapura."

⁶²Banua.co, "Guru Hatim Salman, Tidak Ada Bukti Otentik Penetapan Harta Gono Gini Oleh Syekh Arsyad Al-Banjari," n.d.

conceptually and contextually considered and believed by Banjar society as Sheikh Arsyad's view. Though, the authentic fact of the fiqh literacy about a joint treasure has not yet been found up to now. Even Guru Haji Irsyad Zein, or his pen name Ibn Dawud, stated that a joint treasure is Syekh's *ijtihad* which is written in *Risalah al-Mawaris wal Islah*, or also known as *kitab Faraid*.⁶³ The *kitab* contains rules related to allocation of family property during marriage. Once between husband and wife died, the property is allocated into two, then being shared in accordance with Islamic inheritance law.⁶⁴

Sheikh Arsyad's idea written in the *Risalah* can be divided into 2 outlines. *First*, there is a family-life distinction between Arab and Banjar society, resulting Sheikh Arsyad's idea of a joint property emerged, as detailed by Ibnu Daudi. *Second*, through *islah* or a development of fiqh among contemporary Banjar society. The *islah* relates to an agreement between both beneficiaries to hand the portion of property prior to applying Faraid law.⁶⁵ Despite the fact that the book has not yet been discovered, the concept of a joint property by Sheikh Arsyad's idea and *islah* has rooted in Banjar culture. Since 18th century to this day, the tradition has been living and surviving as a reference for allocation of a joint property. Conceptually, a joint property is well-known in a wide range of cultures, customs, and regions throughout Indonesia. As in Aceh, it is known as *Hareuta Sihareukat*, as *Harta Suarang* in Minang land, *Massow Bebesak* in Lampung, *Guna Kaya* in Sunda West Java, *Barang Gana* or *Gono Gini* in Java, *Ghuna Ghana* in Madura, *Duwe Gabro* in Bali and *Barang Perpantangan* in Kalimantan and *Barang-barang Cakkara* in Bugis.⁶⁶ Among societies with patrilineal, matrilineal, and parental systems, both husbands and wives may hold the property equally.⁶⁷

According to Banjar culture, once the husband died and the wife worked to sustain family economy, the wife received 50% of property, which were then shared based on *Faraid*. This is referred as "*Barang Perpantangan* or *harta Perpantangan*", or well known as *Harta Bersama* (or a joint property), and is published in the Compilation of Islamic Law. Meanwhile, according to Faraid Law, once the husband died, the property is firstly divided prior to be handed to

⁶³Hayati, "Sejarah Sosial Pemikiran Hukum Islam Syekh Muhammad Arsyad Al-Banjari (Studi Tentang Parpantangan dan Baislah)."

⁶⁴Rahmadi, M Husaini, and Abdul, "Islam Banjar Dinamika Dan Tipologi Pemikiran Tauhid, Fiqih dan Tasawuf."

⁶⁵Irfan Noor, "Harta Parpantangan; Sebuah Akomodasi Hukum Waris Islam Atas Budaya Relasi Gender Dalam Masyarakat Banjar" (Kota Banjarmasin, 2008), p. 5.

⁶⁶Etty Rochaeti, "Analisis Yuridis Tentang Harta Bersama (Gono Gini) Dalam Perkawinan Menurut Pandangan Hukum Islam Dan Hukum Positif," *Jurnal Wawasan Yuridika* 28, no. 1 (2015), p. 653. Eko Rial Nugroho, et.al., "Granting of Property During Marriage as an Inherited Property in Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, No. 1 (2024).

⁶⁷Amelia Rahmaniah, "Harta Bersama dalam Perkawinan Di Indonesia (Menurut Perspektif Hukum Islam)," *Syariah: Jurnal Hukum dan Pemikiran* 15, no. 1 (2015), p. 74-75.

the heirs, with one-third (1/3) for the wife.⁶⁸ As the two-third (2/3) is shared to the heirs in accordance with Syariah rule about inheritance law. In detail, of the part of two-third (2/3), the wife accepts the return of one-eighth (1/8) once having descent; or one-four (1/4) once not having descent.⁶⁹

The original script or copy of *Risalah Faraid*, as previously stated, has not yet been discovered. According to Ahmad Dakhoir, A Professor of Islamic Civil Law at IAIN Palangka Raya, he stated that Ibnu Daudi claimed the original script was brought by one of Sheikh Arsyad's descendants, Abdurrahman Siddiq (Guru Sapat) Riau. Ibnu Daudi assumed that it is a short *Risalah* which is the basis of *Sabilal Muhtadin* book and is expected to explain fiqh discussion thoroughly as the answer of society's problems at that time. Because *Sabilal Muhtadin* book primarily discusses fiqh on worship. This claim was based on consideration of Sheikh Arsyad's works, such as *Luqtatul Ajlan* and *Kitabun Nikah*.⁷⁰ Abdurrahman, head of Supreme Court of Indonesia from South Kalimantan, speculated that Syeikh Arsyad's book of *Sabilal Muhtadin* has not yet finished because the book interest many people to question deeply about Islam in a local context.⁷¹ In line with that, Ahmad Dakhoir expressed that there was, indeed, a discussion to merge *Risalah Faraid* with *Sabilal Muhtadin* book, as *Majmu'ah Ar-Rasail* Imam Ghazali or *Majmu'ah Ar-Rasail* Hasan Al-Banna, but it has not yet been actualised. Nevertheless, it indicated a wish of refinement by Syeikh Arsyad in his *Sabilal Muhtadin* book.

Islamic law reasoning, known as *hifdzul mal*, emphasizes the importance of preserving private ownership and ensuring sustainability. Similarly, Islamic law recognizes a joint property ownership through *syirkah* scheme,⁷² which is ownership in a way of cooperation among people for mutual benefit and goodwill. Islamic law defines *syirkah* as a joint property ownership for benefit goal. In addition, in a positive law, it is mentioned in the Civil Code, Article 35

⁶⁸Munarif Munarif and Asbar Tantu, "Hukum Waris Islam Dan Hukum Waris Perdata Di Indonesia (Studi Perbandingan)," *Al-Mashadir: Jurnal Ilmu Hukum Dan Ekonomi Islam* 4, no. 2 (2022), p. 151-152. Nurunnisa Nurunnisa, et.al., "Implications of Annulment of Marriage on the Distribution of Joint Assets according to the Compilation of Islamic Law and National Law," *Syariah: Jurnal Hukum dan Pemikiran* 23, No. 2 (2023).

⁶⁹Dakhoir, "Pemikiran Fiqih Shaikh Muhammad Arshad Al-Banjari."

⁷⁰Noor, "Harta Parpantangan; Sebuah Akomodasi Hukum Waris Islam Atas Budaya Relasi Gender dalam Masyarakat Banjar."

⁷¹Mirza Satria Buana, "Sang Pemikir Hukum dari Bumi Lambung Mangkurat," 2021, p. 72-73.

⁷²Nadia Nadia and Noval Noval, "Musyarakah Pada Harta Bersama," *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum* 14, no. 2 (2020), p. 350.

paragraphs (1) and (2), Law Number 1 of 1974 concerning Marriage Articles 35–37, and the compilation of Islamic Law Articles 85–97.⁷³

Custom regulations and rules have defined a joint property as a husband-wife income while they were married.⁷⁴ When deciding how to divide the property, both parties may select to discuss it outside of court or seek assistance from a notary.⁷⁵ If a divorce is granted by the Religious Court, an ex-husband or ex-wife may request a notary to issue a deed of distribution of joint property in accordance with the Civil Code, Article 191. A joint-property problem leads to provide a space and reasoning of *ijtihad* for scholars to find solutions,⁷⁶ and compromise for society's benefit.⁷⁷ To achieve mutual equity of a joint property, it is important to use *harta perpantangan* idea, which emerges from Sheikh Arsyad's local idea with global insight by applying *islah*, *mashalah mursalah*, *urf*, dan *adatul muhakkamah* methods.

Conclusion

The concept of joint property that has been understood by researchers referring to Sabilal Muhtadin's book is a misinterpretation of *fiqh* literature that must be reviewed and re-read. Then, several researchers noted that the idea of joint property was coined by Sheikh Arsyad, written in the book Sabilal Muhtadin. Meanwhile, the book clearly does not discuss anything about joint assets. Further investigation is needed, both from an institutional, cultural and state perspective, to "find" the *risalah al-mawaris wal islah* which is the originality of the concept of joint property or Sheikh Arsyad's tool of abstinence. This concept then continued to be adopted in marriage laws and compilations of Islamic law in Indonesia which were used formally in all religious courts. This concept not only functions as a fatwa or legal opinion, but also as an institutional and cultural Islamic law doctrine with a local and global benefit perspective. Likewise, even though it is not found in the *Sabil al-Muhtadin* book, this does not necessarily reduce the truth of the concept of joint property,

⁷³Mamat Ruhimat, "Teori Syirkah dalam Pembagian Harta Bersama Bagi Istri Yang Berkarir Berdasarkan Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam Serta Prakteknya Di Pengadilan Agama," *Jurnal 'Adliya* 11, no. 1 (2017), p. 79.

⁷⁴Syamsiah Syamsiah and Darmawan Darmawan, "Pembagian Harta Poh Roh Setelah Putus Perkawinan Karena Kematian Dalam Masyarakat Adat Gayo," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 2, No. 1 (2018), p. 231.

⁷⁵Asep Ubaidillah, "Review Peran Notaris Dalam Pembagian Harta Gono Gini Pada Proses Perceraian," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 2, no. 01 (2022), p. 42.

⁷⁶Ibnu Elmi Achmat Slamet Pelu and Jefry Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020), p. 315.

⁷⁷Jefry Tarantang, "Teori dan Aplikasi Pemikiran Kontemporer dalam Pembaharuan Hukum Keluarga Islam," *Transformatif* 2, no. 1 (2018), p. 28.

because in legal reality this has been practiced by the people of the archipelago which can be called living law.

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