

# Review of Sharia Maqashid and Employment Law on the Rights of Women Workers to Wear the Hijab at the Workplace in Pasuruan Regency, East Java

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## Abstract

*Many women work as men. From some BPR and KSP there is a ban on wearing the hijab in the workplace. The veils of worship are covered by the Law. Hijab can avoid bad deeds and avoid temptation. The veil contains masalah as the goal of the maqashid of shariah. This study aims to identify the factors behind the ban on the use of hijab by the leadership of BPR and KSP in Pasuruan Regency analyzed by labor law and maqashid syariah. Empirical legal research by using data search methods in the form of questionnaires, interviews and documentation. The results show that financial institutions that make company regulations contain elements of discrimination and violate article 5-6, article 111 paragraph (2) of the Manpower Act. Every Muslim has equal opportunity / Equal Employment Opportunity. Woman veiled in the subject Maqashid Khassah (specific maqashid). The right of women to veil a part of the protection of honor (hifz al'ird). Aurat for Muslim women become treasure and dignity to always be maintained and preserved its security. Wearing the hijab as a preventive measure (saddan lidz-dzari'ah) to preserve the honor of women. QS. Al-Ahzab: 59 wisdom and kausa (al-'illah) is good, that is to cover the genitalia. Closing of her Maqsid's aurat, ie avoiding slander against a woman. Maqashid shariah, which provides a sense of security for women to move. The prohibition of wearing the veil in the workplace is against the maqashid of shariah.*

**Keywords:** Maqashid Syariah, Labor Law, Women Worker Rights.

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## INTRODUCTION

Pasuruan is one of the districts that have an industrial area such as an industrial area in Pandaan District. Based on data from the Department of Manpower, the number of men in the workforce is 35,518 people and women are 22,328 people. The workforce in the Pasuruan Regency area is the largest of the three regions that absorb labor in the Pasuruan Regency area, namely Pandaan sub-district 6.34%, Bangil sub-district 5.95%, and Gempol sub-district 5.78% (Pasuruan, n.d.).

Many women choose to have a career like men. Some of them even work in the military and police. In modern life, women can work anywhere while there is an opportunity, such as in the field of law as prosecutors, in the economic field as entrepreneurs, traders, and contractors, in the socio-cultural and educational fields as doctors, architects, artists, directors, teachers, and others. lecturer, as well as in politics as president, member of DPR, MPR, DPA, and others (Yanggo,

2001). The role of women in life is very complex, a trend that has emerged in society so far, women have duties in the function of reproduction, giving birth, and raising children. In addition, in some conditions women can have a work function in the form of a productive economy that is useful for supporting the family economy as stated by Moser (Julia Cleves Mosse, 2004) that there are three sets of women's roles which include roles in reproduction, productive economy, and community management. This shows that women in Indonesia, who are predominantly Muslim, have a dual role in addition to having to do household or domestic work, they also have the role of breadwinner to achieve prosperity (Zuhdi, 2019).

With 88.7 percent of the total 235 million Muslim population, Indonesia is the “largest Muslim country” in the world (Azra, 2012) so that changes in the roles and functions of women in society have implications for shifting values and religious tendencies. One of the issues that have been the subject of discussion in the discourse of career women vis-a-vis Islamic teachings/values is the use of the hijab. So far, the hijab is commonly used in women's daily activities. However, lately, the hijab is no longer an indicator for the public to assess the level of piety and religiosity of a contemporary Muslim woman. This tendency should be considered in-depth because the obligation to wear the hijab is a command from Allah SWT which aims to uphold the position and dignity of women. In Islam, wearing the hijab is part of the command (*amr*) as stated in the following QR al-Ahzab:59:

*“O Prophet, Say to your wives, your daughters and the wives of the believers: "Let them extend their veils [1232] all over their bodies". that way so that they are easier to identify, therefore they are not disturbed. and Allah is Most Forgiving, Most Merciful.”*

The Republic of Indonesia guarantees everyone's freedom of religion and the right of everyone to worship according to their religion. Article 28E Paragraph (1) of the 1945 Constitution affirms that everyone is free to embrace religion and worship according to their religion. The right to freedom of diversity is also guaranteed in Article 29 Paragraph (2) of the 1945 Constitution which states "The State guarantees the independence of each resident to embrace their religion and to worship according to their religion and belief". Article 80 of Law no. 13 of 2003 concerning Manpower also reflects the freedom of worship for every worker as stated in the article that "Entrepreneurs are obliged to provide adequate opportunities for workers/laborers to carry out the worship required by their religion". Every citizen has the right to be protected in carrying out worship and may not prohibit people from worshipping including wearing the hijab at work.

The guarantee of the law above is not necessarily obeyed by all agencies. In Pasuruan Regency, there are 31 Conventional Rural Banks (BPR) and 20 Savings and Loan Cooperatives (KSP), some of which are prohibited from wearing the hijab. Two female worker sources who

work at BPR and KSP told that they chose to take off their hijab for the sake of ease of work. At first, they wore hijab in their daily activities, including when applying for jobs. However, during the interview session, they were faced with the choice of removing their hijab to be accepted for work. If not, they are asked to find another job. Two sources were finally forced to choose to take off their hijab and work there (Fidhayanti, n.d.)

Covering the genitals by wearing a hijab avoids the temptation to do bad things, and avoids the temptations of men who are not muhrim. Hijab provides *maslahah* or goodness for female workers as the goal of *maqashid sharia*. In fact, many female workers have not felt the benefits or goodness for them in wearing the hijab at work, especially in Pasuruan Regency. Based on the above phenomenon, the researcher seeks to examine in depth the reasons why BPR and KSP leaders prohibit female workers from wearing the hijab in the workplace in terms of employment law and then examine it with *maqashid sharia*.

One of the studies related to the topic of women's workers' rights was conducted by Permatawati (t.t). In the conclusion of his research, it was revealed that several companies required female workers to voluntarily resign when the woman was pregnant because it was considered a factor that hindered women from carrying out their work. Second, research by Uli (2005) that employers must maintain good working relationships with employees to humanize humans by respecting their dignity which is embodied in work agreements in companies so that there is no discrimination against women, such as in terms of wages, welfare benefits, protection of work safety, health, and others. Third, Hidayah, et al (2015) that based on data analysis, researchers concluded that 80% of female workers did not know the contents of the written work agreement, while the remaining 20% read the work agreement and knew its substance. In this study, researchers conducted socialization with female workers regarding the importance of knowing and understanding the contents of work agreements. This research has more or less the same target as the studies above, namely female workers. However, the aspect studied is very specific about the neglect – not to mention the violation – of their right to wear the hijab in the workplace. This study also uses *maqashid sharia* and labor law as perspectives in the analysis so that the resulting critical review can contain aspects of legal integration and is more comprehensive than previous studies.

## **RESEARCH METHOD**

This study is an empirical study by examining the prohibition of the use of hijab in several financial institutions in Pasuruan Regency. The focus of the problem is studied with labor law and *maqashid sharia*. The approaches used are the statutory approach, the sociological approach, and the conceptual approach. Primary data sources were obtained through a questionnaire method and interviews with women workers and financial institution leaders in Pasuruan district consisting of

BPR Pandaan Arta Jaya, BPR Surasari Utama, BPR Harta Swandiri, BPR Dana Putra Sakti, BPR Bromo Mandiri, Koperasi Berkah Sesama, and Mitra Sejati Cooperative., while the secondary data sources came from the *maqashid sharia* concept proposed by several Islamic law experts, scientific journals and articles, and work agreement documents at BPR and KSP Pasuruan Regency. Data obtained from interviews and questionnaires were examined in the perspective of legal theory related to guaranteeing the rights of female workers to wear the hijab in the workplace. The researcher also examines the reasons why entrepreneurs apply the prohibition on wearing the hijab, as well as explores whether there is a policy regarding the prohibition of wearing the hijab by the Pasuruan Regency government. After that, the data is analyzed based on a review of *maqashid sharia* and labor law so that solutions can be found that favor the rights of women workers while still paying attention to the values of Islamic law.

## **RESULTS AND DISCUSSION**

### **Employment Law's View on the Factors Behind the Prohibition of the Use of Hijab in the Workplace by the Leaders of Banks, Rural Banks, and Savings and Loans Cooperatives in Pasuruan Regency**

The Dutch government referred to workers as blue collars, while working people (administrative employees) were called white collars because the people belonging to this group were nobles who worked in offices as well as Dutch and Foreign Easterners. The mention is more intended to provide a difference in position and social status between the indigenous people and the Dutch and the Foreign East (Husni, 2008).

In the development of Labor Law in Indonesia, the term labor was attempted to be replaced with the term worker, as proposed by the government (Depnaker) at the Second FBSI Congress in 1985. The government's reason was that the term labor was not following the nation's personality, workers tended to refer to groups that were always pressured and under the control of another party, namely the employer. The term labor is not easily replaced by the term worker. In the explanation, Article 2 of the 1945 Constitution uses the term worker. The explanation of article 2 states that "the so-called groups are bodies such as cooperatives, trade unions, and other collective bodies". strong legal basis (Asyhadie, 2013).

"Women workers" can be defined as working women. Because the activities of women workers are mostly carried out outside the home, women workers can be understood as "adult women who carry out regular (continuous) activities within a certain period time to get something in the form of objects or money for progress in real life. Over the past decade, women's participation in the labor market has increased significantly, although the percentage is small when

compared to men. This change shows an increase in the role of women which is very meaningful in economic activities in Indonesia (Khotimah, 2009).

Pasuruan Regency is one of the regencies that has an industrial area and an industrial area consisting of several large companies, one of which is an industrial area located in Pandaan District. In 2014, the population in Pandaan sub-district was 111,725 people, consisting of 55,259 males, and 56,466 females. Based on data from the Department of Manpower, the number of men in the workforce is 35,518 people and women are 22,328 people. The workforce from the Pandaan sub-district is the largest contributor. The workforce in the Pasuruan Regency area is the largest of the three regions that absorb labor in the Pasuruan Regency area, namely Pandaan sub-district 6.34%, Bangil sub-district 5.95%, and Gempol sub-district 5.78% (Pasuruan, n.d.). Women workers who work in Banks, Rural Credit Banks and Savings and Loan Cooperatives in Pandaan District are placed in the Teller, Customer Services, back office, and a few are in the marketing department.

Based on data obtained from questionnaires to 37 female workers in 1 Bank, 8 Rural Banks and 2 Savings and Loan Cooperatives in Pandaan District, it shows that the youngest age of female workers is 18 years old at Surya Dana Karya Rural Bank and the oldest age is 38 years at the People's Credit Bank, Harta Swadiri. Workers with a certain time work agreement, namely 9 contract workers and an indefinite work agreement, namely 28 permanent workers.

Female workers who are the youngest are included in the category of Workers with a certain Time Work Agreement or contract workers who have not worked for a long time, which is about 1 month. The female worker is a high school graduate. Female workers with university graduates work in financial institutions with better employment status than female workers with only education up to high school. Workers from college graduates mostly fall into the category of Indefinite Employment Contracts or permanent workers. By being categorized as female workers in an indefinite employment agreement or permanent workers, female workers in this category are workers with a long period time.

There are 16 workers in the category of 1 – 2 years working duration, 12 people working 3 – 4 years category, 5 – 6 years working category 4 people, 3 people working 7 – 8 years category, 9 years working category – 10 years 1 person and 1 person worked in a financial institution for 14 years. Length of work and level of education does not guarantee women workers' understanding of the existence of Law no. 13 of 2003 concerning Manpower. 59% or as many as 22 female workers do not understand the existence of Law no. 13 of 2003 concerning Manpower. The remaining 41% or 15 female workers know that Law no. 13 of 2003 concerning Manpower.

This is because as many as 57% of female workers or as many as 21 people come from a high school level education level. Although as many as 43% or 16 female workers graduated from tertiary institutions, these female workers mostly came from economics majors, not law majors who understood the law. Socialization of Law no. 13 of 2003 concerning Manpower has also never been obtained by female workers in financial institutions. As Wheny confessed that "the socialization of the law never existed, I know it even comes from the internet when I'm reading and reading". The same thing was also confirmed by one of the leaders of the Rural Bank, Mr. Robert that "there has never been a socialization of the law, nor has it been from the service, even if I knew I only knew that there was a law that protects workers, only if you read it in detail it doesn't matter." . In this BPR, the rules have also been made from the center, so you just have to read that without reading the labor law." (Fidhayanti, n.d.).

The lack of knowledge about Law no. 13 of 2003 concerning Manpower makes these workers do not understand the contents of work agreements, company regulations, or collective labor agreements. Some of the female workers who are permanent have read the company regulations or collective labor agreements and some have not. Company regulations or collective labor agreements are usually posted on company notice boards. The company regulations are updated every 2 (two) years, so they are routinely posted by the company. Of the 28 permanent workers of financial institutions in Pandaan District, there are 25 permanent workers, i.e. 89% who read and understand the contents of company regulations or collective labor agreements, the remaining 3 are permanent workers, i.e. 11% never read or understand the contents of company regulations or collective labor agreements. The workers reasoned that they only worked as instructed and did not create problems in the work environment which was considered sufficient because at this time finding work was very difficult, especially with the status of permanent workers (Fidhayanti, n.d.).

Based on the results of the questionnaire distributed to workers, it shows that for indefinite time workers or contract workers, they will usually renew their work agreements every 3 (three) months. With an average working period of more than 1 (one) year. Contract workers always read the contents of the work agreement every time they sign a renewal of the work agreement every 3 (three) months. 9 Female workers with the status of contract workers all read and understand the contents of company regulations or work agreements. Reading and understanding company regulations, collective labor agreements, and work agreements are very important because they contain the rights and obligations of women workers.

Company regulations, collective labor agreements and work agreements in them contain conditions, rights, and obligations of workers aimed at ensuring a balance between the rights and

obligations of workers, as well as the authorities and obligations of employers, providing guidelines for employers and workers to carry out their respective duties and obligations. create a harmonious, safe, and dynamic working relationship between workers and employers, as well as improve the welfare of workers and their families. The rights and obligations of women workers have been regulated so completely in Law no. 13 of 2003 concerning Manpower, Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Law no. 7 of 1984 concerning the Elimination of All Forms of Discrimination against Women, International Labor Organization Convention No. 111 concerning Anti-Discrimination of Position and Employment which has been ratified by Indonesia with Law no. 21 of 1999, and the International Labor Organization Convention No. 100 concerning Wage Equality which has been ratified by Indonesia with Law no. 80 of 1957 (Addiniaty, 2012).

These laws and regulations, it has been regulated about what are the rights and obligations of women workers and how they should be treated equally and well by employers. However, there are still many deviations that occur in its implementation, generally in the form of discrimination. The prohibition of wearing the hijab in the workplace is also part of discrimination. Discrimination occurs due to a lack of insight into the concept of discrimination and the extent to which a policy is said to discriminate or not.

Rules regarding the prohibition of wearing the hijab issued by the leadership of financial institutions can be categorized as discriminatory treatment of workers based on religion. As article 5-6 of Law no. 13 of 2003 concerning Manpower that every worker has the same opportunity without discrimination to get a job. explanation: every worker has the same rights and opportunities to obtain a job and a decent living without distinction of gender, ethnicity, race, religion, and political sect by the interests and abilities of the workforce concerned, including equal treatment of persons with disabilities. Article 6 states that every worker/ laborer has the right to receive equal treatment without discrimination from employers. the entrepreneur must provide the rights and obligations of the worker/labourer without distinction of gender, ethnicity, race, religion, skin color, and political sect.

This article is the basis that the leadership of financial institutions is prohibited from discriminating against their workers and prospective workers who want to work in their companies because basically, workers have the same opportunity without discrimination to get a job, whether based on religion, gender, ethnicity, race or political sect. In case of violation, the minister or appointed official may impose administrative sanctions on entrepreneurs by Article 190 paragraphs (1) and (2) of Law no. 13 of 2003 concerning Manpower in the form of warnings; written warning; limitation of business activities; Suspension of business; cancellation of approval;

cancellation of registration; temporary suspension of part or all of the means of production; license revocation.

Based on the results of interviews, discrimination in wearing the hijab at work at a bank in Pandaan District is laid down in company regulations (Fidhayanti, n.d.). Company regulations are made by the Bank's head office and then distributed to all branches throughout Indonesia. At the bank branches, the prohibition on wearing the hijab was written in a memo then posted on the office notice board and the original file was held by the branch manager (Fidhayanti, n.d.). Making company regulations The procedure for making company regulations is regulated in article 2 of the Regulation of the Minister of Manpower of the Republic of Indonesia no. 28 of 2014 concerning Procedures for Making and Ratifying Company Regulations and Making and Registering Collective Labor Agreements. The company regulations only make one company regulation that applies to all workers in the company, both for workers for a certain time and workers for an indefinite period time. For companies that have branches, then the company regulations can apply in all branches. As stated in one of the banks above, which provides a copy of the company's regulations that prohibit wearing the hijab to all its branches in Indonesia.

Wearing the hijab is part of worship. This company regulation which prohibits the wearing of hijab for female workers has violated Article 111 paragraph (2) of Law no. 13 of 2003 concerning Manpower states that the provisions in company regulations must not conflict with the provisions of the applicable laws and regulations. Such regulations should not be legalized and corrections must be requested before they are passed because they contain elements of discrimination. The principle of equal opportunity and treatment without discrimination in employment, as well as providing understanding and awareness of respecting and protecting basic rights that are naturally owned by human beings in this case female workers and should not conflict in providing equal opportunities and treatment. There is one basic principle that is anti-discrimination made by the International Labor Organization, namely Equal Employment Opportunity that workers and laborers will not be limited in their work due to responsibilities related to reproductive functions, biological needs, obligations to worship, and so on. Employers must ensure that they carry out the applicable laws and regulations relating to working hours, rest periods, and leave due to worship, menstrual breaks, maternity leave, and so on (Departemen Tenaga Kerja dan Transmigrasi Republik Indonesia, 2005). However, there are still rules that discriminate against Muslim women in carrying out their religious obligations, namely wearing the hijab.

Despite the prohibition on wearing the hijab in these financial institutions, female workers persisted to work. Based on the results of interviews and questionnaires to 37 workers at banks,

Rural Banks, and Savings and Loans Cooperatives, it showed that 83% or a total of 31 female workers remained and worked due to economic reasons and the limited number of jobs. The economic reasons referred to by women workers are various, including to meet family needs, for children's school fees, to help husbands, and to save for preparing for old age when they are no longer working. This shows that now the role of women in the household is not only as a complement but also as a breadwinner for the family. Meanwhile, the remaining 17% of women stay and work because they are comfortable, responsible, seek knowledge, and are paid above the Regency Minimum Wage. This illustrates that women who reason like that only work for career reasons which in their household actually for household needs and family needs can already be met with only the husband working.

Women workers need knowledge of Law no. 13 of 2003 concerning Manpower because it contains rights and obligations for women entrepreneurs and workers. In the book *ABC of Women Workers' Rights And Gender Equality* published by the ILO, it is stated that: *“People need knowledge about legal rights and the machinery to enforce them if they are to combat discrimination and fight for a fair balance of opportunity, treatment, pay, and representation between men and women in all areas of paid and unpaid employment and in work-related decision-making. However, many workers around the world are only hazily aware or even unaware of their rights, and this is perhaps the greatest obstacle to their exercising those rights.”* (ILO, 2000).

The rights of women workers have been regulated in Article 76, Article 81 to 84, and Article 93 of Law no. 13 of 2003 concerning Manpower and Minister of Manpower Decree No. 224 of 2003 which includes Protection of Working Hours, Protection during Menstruation, Protection during Maternity Leave and Provision of Breastfeeding Locations. The basic rights of women workers as described above are not fully understood and implemented by the leadership of financial institutions. Based on the results of the interview, the leadership of the Rural Bank also does not understand the rights of women workers. Menstrual leave is ignored by many banks, Rural Banks and Savings and Loans Cooperatives. Leaders in some of these financial institutions could not give reasons. If there are female workers who are sick with menstruation, they are more likely to use a permit because of illness, not menstruation leave.

All financial institutions, whether Banks, Rural Banks, and Savings and Loan Cooperatives, do not give different treatment to female workers. All jobs share the same as male workers. The difference in treatment is given to female workers who wear hijab in financial institutions. Based on the results of interviews and questionnaires distributed in 1 Bank, 8 Rural Banks and 2 Savings and Loan Cooperatives, there are 1 Bank, 1 Rural Bank, and 1 Savings and Loan Cooperative that prohibits female workers from wearing hijab at work. Meanwhile, the remaining 7 Rural Banks

and 1 Savings and Loan Cooperative allow their female workers to continue to wear the hijab at work. According to the leaders of several financial institutions, there is no prohibition on wearing the hijab because the central leadership of the financial institution does not have any prohibition rules and they also give freedom to female workers to wear the hijab.

The female workers also understand that wearing the hijab is part of worship. Based on the results of the questionnaires that have been distributed, almost 100% or as many as 37 female workers understand and know that wearing the hijab is part of worship for Muslim women. part of worship that has been ordered by Allah SWT. The workers also reasoned that the workers chose to wear the hijab because to cover the aurat, to avoid eye crimes. There is one people's credit bank that requires its female workers to wear the hijab (Fidhayanti, n.d.) Not only as a symbol of Islam, the hijab worn by female workers further also regulates their morals at work. As stated that "*With this hijab, we maintain morals and behavior, we avoid doing bad things, such as embezzling BPR money, because we are ashamed of the hijab we have worn*" (Fidhayanti, n.d.). If so, it means that the hijab has a positive value for workers not to do things that damage their morale. The burden of being a female worker by wearing a hijab makes them more polite and keeps themselves from doing things that are not following the rules of financial institutions.

This positive value was not responded well by 1 Bank, 1 Rural Bank, and 1 Savings and Loan Cooperative which prohibits female workers from wearing the hijab in the workplace. Pak Haris, the head of a bank that prohibits the wearing of hijab in the workplace said that: "*We don't know why there is a ban on wearing the hijab, because this rule was made by the center, so only they know, we at the branch only work according to the SOP that has been made by the center, if there is a prohibition then we just follow it.*" Mrs. Angel as the head of the Rural Bank which also prohibits the wearing of hijab in the workplace said that: "*We prohibit our female workers from wearing the hijab because it is related to how they look. If it is here, it must be neat and beautiful so that customers are happy to come here*". The head of the Savings and Loans Cooperative, Mr. Fx Harbet, stated that: "*We prohibit our female workers from wearing the hijab because we want to be in uniform with others*" (Fidhayanti, n.d.).

This expression is understandable because many of the owners of banks, Rural Banks, and Savings and Loans Cooperatives are non-Muslims. Researchers have ever been rejected for interviews or just left a questionnaire because the title of this research asks about the rights of workers to wear hijab at work. Represented by one of the female workers stated that the leadership of the Rural Bank is not pleased if there is research that goes with such a theme.

Appearance is a priority to attract customers to come to the Savings and Loans Cooperative. The three financial institutions make women workers not wear hijab as a way to increase customers

who come to the three financial institutions. The prohibition of wearing the hijab in the workplace is a dilemma for female workers who have previously used the hijab in their daily lives. The workers are faced with a choice of worldly or religious rules. Some female workers choose to leave their hijab to find these workers. Getting a job in Pandaan District as a metropolis in Pasuruan Regency is also not easy, so there are many considerations for female workers to choose to leave the hijab and work in the financial institution.

The hijab ban for female workers who work in banks, Rural Banks, and Savings and Loans Cooperatives neglects their obligations as Muslim women to wear hijab. As the command of Allah SWT to veil in QS. An-Nur: 31 the following:

*“Say to the believing women: "Let them hold their gaze and their genitals, and let them not show their adornments, except what is (usually) visible from them. And let them cover their breasts and do not reveal their adornments except to their husbands or their fathers. , or the father of their husbands, or their sons, or the sons of their husbands, or their brothers, or the sons of their brothers, or the sons of their sisters, or the women of Islam, or slaves they have, or male servants who have no desire (towards women) or children who do not understand about the female genitalia, and let them not beat their feet so that the jewels they hide are known. And repent all of you. to Allah, O you who believe, that you may be successful.”*

The obligation to wear hijab is still carried out by one of the female workers in the Savings and Loan Cooperative, namely Vina. Vina's veiling obligation is carried out daily outside the office. Vina stated that it was her obligation as a Muslim woman to wear the hijab, even though she still needed work. Basically, all Muslim women are aware of the obligation of female workers to wear the hijab. However, not all female workers wear the hijab. From the results of the questionnaire to 7 female workers who did not wear the hijab, they reasoned that they were not ready and not ready to wear the hijab. This female worker who does not wear a hijab is prohibited from wearing a hijab in her workplace.

Wheny became a veiled woman who dared to remain veiled even though her place of work had forbidden her. The ban was posted on the bank's notice board. Wheny ventured to wear the hijab because she wanted to conform to the aurat which is the obligation of Muslim women to wear the hijab and was ready to be reprimanded if there was an SP. However, Wheny's co-workers at the bank did not forbid Wheny and did not report Wheny to the head office even though Wheny had violated the rules of the bank (Fidhayanti, n.d.).

Leaders at 7 Rural Banks and 1 Savings and Loan Cooperative did not prohibit women from wearing hijab in the workplace, unlike what 1 Bank, 1 Rural Bank, and 1 Savings and Loan

Cooperative did for female workers who were prohibited from wearing hijab. The head of the Rural Bank, Mr. Robert, reasoned that although none of the branches wore hijab, all of them at the head office wore hijab because this was part of the freedom and rights of workers. Angel's mother, head of the Savings and Loans Cooperative, gave the same argument. Mrs. Angel does not forbid every worker from wearing the hijab because it is an important part of religious tolerance among fellow workers. Angel's mother also said that banning the veil would violate the law.

Hijab in addition to being a fashion style for Muslim women also provides a positive value for the Muslim woman. Hijab does not interfere with the performance of women workers in financial institutions. The positive impact of the use of the hijab for female workers, namely on the morale of female workers who guard themselves not to do anything that harms financial institutions such as counterfeiting and embezzlement of financial institution funds (Results of a questionnaire on the effect of using hijab for female workers in financial institutions). Every Muslim woman has the same opportunity / Equal Employment Opportunity as proclaimed by the International Labor Organization. George and Jones provide a definition of Equal Employment Opportunity (EEO) as the equal right of all citizens to the opportunity to obtain employment regardless of their gender, age, race, country of origin, religion, or disabilities (Press, 2014). Legal protection must be given to every Muslim woman who will work as well as female workers in financial institutions, be it banks, Rural Banks and Savings and Loans Cooperatives. These women workers who have an important role in national development, especially economic development in Indonesia, for that the government must provide legal protection for workers, especially in the freedom to wear the hijab in the workplace.

According to John Rawls, "The maximum equal freedom" must be prioritized before the second and third principles, namely the principle of difference, and the principle of fair equality of opportunity. The principle of "Freedom to the fullest" includes Freedom to participate in political life (right to vote, right to stand for election); Freedom of speech (including freedom of the press); Freedom of belief (including religious belief); Freedom to be yourself (person), Right to maintain the private property (Fattah, 2013). Islam views justice as always present as injustice or injustice follows it. This research has the aim of material advancement. The element of tyranny against veiled female workers, namely not being given the same access as non-veiled women to be able to work in financial institutions. It is hoped that the common good or *maslahah* will be achieved as the tyranny against veiled female workers is revealed so those female workers can have equal access to work and become workers in financial institutions, especially in Pandaan District.

## A REVIEW OF MAQASHID SYARIAH ON THE PROHIBITION FOR WOMEN WORKERS IN WEARING HIJABS AT WORK IN PASURUAN REGENCY

Etymologically (*ma'na Lugawi*) maqashid sharia consists of two word elements, namely *maqashid* (مقاصد) and *al-syariah*. The word "مقاصد" is the plural of the word "مقصد", which means purpose or intent. While the word *al-syariah* (الشريعة) comes from the verb *Syara'a* (شرع) which means law, rules and *Shari'ah*. Therefore, *maqashid al-syariah* مقاصد الشريعة can be interpreted with the aim or intent of establishing sharia law (SA, 2008).

Contemporary *sharia maqashid* theory is used as one of the analytical tools in this study to provide a different color of integration with Islamic nuances. The prohibition of veiling for female workers in Pandaan sub-district cannot be justified by articles 5 and 6 of Law no. 13 of 2003 concerning Manpower. The company regulations that are made are also not following the company regulations which prohibit the wearing of hijab for female workers. This has violated Article 111 paragraph (2) of Law no. 13 of 2003 concerning Manpower.

Contemporary *sharia maqashid* theory is appropriate when used as an analytical knife in this study. The contemporary maqashid sharia is an improvement from the shortcomings of the classical al-maqashid theory. Contemporary Islamic jurists develop traditional *maqasid* terminology in contemporary terms, in the context of Islamic reform, although some experts reject the contemporization of *maqashid* terminology (Auda, 2013).

The traditional classification divides maqashid into three levels of necessity, namely necessity or *daruriat* (emergency), necessity or *hajiyyat* and completeness or *tahsiniyyat*. *Daruriat* is divided into religious protection or *hifzuddin* (*hifz al-din*), body and soul protection or *hifzun-nafs* (*hifz al-nafs*), property protection or *hifzulmali* (*hifz al-mal*), intellectual protection or *hifzul-aqli* (*hifz al-'aql*) and protection of offspring or *hifzun-nasli* (*hifz al-nasl*). Some ushul fiqh experts add honorary protection or *hifzul-irdi* (*hifz al'ird*) in addition to the five very well-known necessities above (Al-Gazali, 1993).

The improvement of classical *maqashid* into contemporary *maqashid* is divided into three, namely: (1) *Maqashid 'Ammah* (general maqashid), which includes all *maslahah* in tashri behavior that is universal, such as justice, equality, tolerance, convenience, and others; (2) *Maqashid Khassah* (specific maqashid), namely *maqashid* related to problems in certain issues, for example not being allowed to hurt women, family scope, not being able to cheat in trade in any way, and others; (3) *Maqashid Juz'iyah* (partial maqashid), namely *maqashid* related to the most core *maslahah* of a legal event. The new universal *maqashid* is deduced directly from sacred texts, not from the legacy literature of the Islamic jurisprudence school.

The prohibition of wearing the hijab is included in contemporary issues related to women's rights. Women's rights are included in the discussion of *Maqashid Khassah* (specific *maqashid*) because the discussion is on certain things, namely the prohibition of veiling women in the workplace. Contemporary *maqashid* scholars who made scientific contributions to women's rights such as Rashid Rida (d. 1354 H/1935 AD), al-Tahir ibn 'Asyur (d. 1325 H/1907 AD) were included in the discussion on preserving honor (*hifz al-'ird*), Muhammad al-Gazali (d. 1416 H/1996 AD) on reformers in the field of human rights and women's rights, and Yusuf al-Qardawi (1345 H/1926 AD) suggested the subject of *Shari'a* (according to the Qur'an ) one of them is to treat women fairly. The right of women to veil at work is part of the protection of honor or *hifzul-irdi* (*hifz al'ird*) because the aurat for Muslim women is property and dignity that must be safeguarded and preserved. *Maqashid sharia* theory places the preservation of property in the level of necessity (*al-daruriyyah*) No. three after preserving religion and soul, placing honorary protection or *hifzul-irdi* (*hifz al'ird*) as number six.

Wearing the hijab is a preventive measure/in Islamic law, it relies on *sad* and *lidz-dzari'ah*. According to Yusuf Qardhawi, wearing the hijab is part of an Islamic society that relies after -faith in Allah and the Last Day - on maintaining virtue, self-respect, and guarding in the relationship between men and women, and combating *ibahiyyah* (permissibility, permissivism). and freedom to indulge (Qardhawi, 1995). Islam calls for Muslim women to wear hijab of course with provisions that have a positive impact on Muslim women. Allah ordered Muslim women to veil through QS. Al-Ahzab: 59 the following:

*“O Prophet, say to your wives, your daughters, and the wives of the believers: "Let them stretch out their veils all over their bodies." that way so that they are easier to identify, therefore they are not disturbed. and Allah is Most Forgiving, Most Merciful.”*

Ibn Asyur in analyzing the benefits in every application of Islamic law in the Qur'an, namely by looking at the mention of the nature of the Qur'an as the best guidance (safriadi, 2014). To understand Allah's command for Muslim women to wear the hijab, the researcher uses Ibn Asyur's thinking in understanding *maqashid* on a problem. According to Ibn Asyur there are three ways to find out the *maqashid of sharia*, namely: First, through the inductive method (*istiqrā'*), which is to study the *sharia* from all aspects based on particular verses. This method is divided into two classifications. Examining all laws with known causes (*al-'illah*) and Examining legal arguments with the same *al-'illah* until they are sure that *al-'illah* is the *maqsid*. Second, *maqasid* that can be found directly from the arguments of the Qur'an clearly (*sarih*) and is unlikely to be turned away from its *zahir* meaning. Like the sound of QS. al-Baqarah verse 183 concerning the obligation of fasting "*kutiba 'alaykum al-siyam.*" In this verse, it is very unlikely that the word "*kutiba*" means

anything other than "required," and cannot be interpreted as "written." Examples of universal values that are determined based on the textual understanding of the Qur'anic verse are ease, hatred of damage, and illegal eating of other people's property, avoiding hostility and promoting spaciousness. Third, *maqasid* can be found directly from the arguments of the *Sunnah* which are *mutawatir*, both *mutawatir* in meaning and practice. *Maqasid* which is obtained from the *Sunnah* arguments which are *tawatir ma'nawi* is *maqasid* which is understood from the experience of a group of friends who witnessed the actions of the Prophet SAW, such as the provision of sermons on two holidays (Ibn 'Asyur, 1336).

To find out *maqashid* in the prohibition of the use of hijab in financial institutions in Pandaan District using the inductive method (*istiqra'*) by examining all laws with known causes (*al-'illah*). In QS. Al-Ahzab: 59 states that the use of the hijab is intended to avoid distractions. In addition, veiling can also free the view from places of slander that stimulate. According to Ibn Abbas "what is usually visible in the palm, the ring, and the face (face)". Ibn Umar said "face and palms". Anas says "palm and ring". Ibn Hazim said "all these narrations are valid from them, as well as the narrations from Ayesha and Sthe tabi'in" (Qardhawi, 1995). So, apart from the face and the palms of the hands are aurat that must be covered by Muslim women. Aurat covered with a hijab will avoid slander.

The prohibition of the wearing of hijab in several financial institutions in Pandaan District is contrary to the goodness contained in the imposition of hijab. The verse about the recommendation to wear the hijab above actually contains good wisdom and cause (*al-'illah*), namely to cover the nakedness. Covering the *maqasid aurat*, which is to avoid slander against a Muslim woman. From *al-'illah*, it can be seen that there is *maqashid sharia*, which aims to provide a sense of security for women to carry out daily activities because the essence of this *maqasid* concept is to realize goodness while avoiding evil or rejecting benefits and attracting *harm*.

The prohibition of wearing the hijab is contrary to the *maqashid sharia* that has been set by Allah SWT. The ban on wearing the hijab is an injustice to female workers because female workers who wear hijab do not get the same opportunity to find work in financial institutions. In Jasser Auda's perspective, justice is also one of the values in the *sharia maqashid* theory, so based on this the act of banning the wearing of hijab by some financial institutions is not in tune with the *sharia maqashid* theory. This is also contrary to the theory of *maqashid sharia* from the perspective of Ibn 'Assyria which includes equality as a part of *maqashid sharia*. The non-realization of the preservation of honor (*hifz al'ird*) in the *sharia maqashid* theory can damage the life of the world and the hereafter as a whole.

According to the theory of the Leveling of Human Needs According to Modern Psychologists expressed by Abraham Maslow called the theory of five hierarchy of needs that there are five kinds of human needs, namely First, *al-hajat al-faisulujiyyah* (physiological needs/Physiological Needs) such as food , drinking, sleeping, resting, sex, and so on. Second, *al-hajat alamaniyyah* (safety needs), includes protection against physical and health disturbances as well as economic crises. Third, *al-hajat al-ijtima'iyyah* (social needs/social needs), such as one's love for others and acceptance of others, which can be realized by acts of sadaqah, friendship, love, affection, and friendship. Fourth, the need for respect (Esteem Needs), includes the need for respect and self-recognition. Fifth, the need for self-actualization (Self-Actualization Needs), includes the need to empower all self-potential (Riyanto, 2010). So it can be seen that the prohibition of the wearing of hijab in the workplace is contrary to the need for security/self needs and the fourth human need, namely the need for respect which includes the need for respect.

## CONCLUSION

Banks, Rural Banks and Savings, and Loans Cooperatives that make company regulations regarding the prohibition of wearing the hijab containing elements of discrimination have violated Article 5-6 of the Law and Article 111 paragraph (2) No. 13 of 2003 concerning Manpower. Every Muslim woman has the same opportunity / Equal Employment Opportunity to be able to work in any financial institution even though she wears the hijab. The prohibition on wearing the hijab in financial institutions in Pandaan sub-district, Pasuruan Regency is included in contemporary issues regarding women's rights that are included in the *Maqashid Khassah* (specific maqashid). The right of women to veil is part of the protection of honor or *hifzul-irdi* (*hifz al'ird*). Covering the maqsid *aurat*, which is to avoid slander against a Muslim woman. *Maqashid sharia* aims to provide a sense of security for women to carry out their daily activities. The prohibition of wearing the hijab is contrary to the *maqashid sharia* that has been set by Allah SWT.

This research on the prohibition of the wearing of hijab in BPR and KSP of Pasuruan Regency in the perspective of *maqashid sharia* and positive law can provide a solution to discrimination against the rights of women workers in carrying out religious teachings, especially the use of the hijab, in the workplace. This “friendly” policy towards the rights of women workers to wear the hijab can be formulated jointly by researchers with business actors, the employment agency, and female workers. This step is in line with the tripartite model that has often been taken to solve common problems in the employment sector. This aspect is the distinguishing feature between this study and other studies that have been carried out previously.

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