

# The Independence of Civil Servant Investigators in Indonesian Immigration: A *Fiqh siyasah* Perspective

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**Abstract:** In handling immigration-related criminal offenses, overlapping authority between Immigration Civil Servant Investigators (PPNS) and police investigators remains a regulatory and practical issue. The limited scope of authority granted to PPNS highlights the need to reexamine existing legal provisions through the lens of *Fiqh siyasah* (Islamic political jurisprudence). This study aims to analyze how *Fiqh siyasah*, particularly the principles of *ta'addud al-wilayah* (plurality of authority) and *tafwidh al-sulthah* (delegation of power), can be used to reconstruct the authority of Immigration PPNS in carrying out independent investigative functions. Employing a normative legal research approach, the study finds that from the perspective of *Fiqh siyasah*, it is normatively justifiable for Immigration Civil Servant Investigators to operate autonomously as part of the delegated authority of the state (*ulil amri*). The study recommends amending Article 7, paragraph (2) of the Indonesian Criminal Procedure Code by replacing the phrase "under coordination and supervision" with "may coordinate," as an effort to strengthen the institutional position of PPNS within Indonesia's law enforcement system. The academic contribution of this study lies in offering an Islamic jurisprudential framework to critically assess and reform the institutional structure of legal authority in Indonesia, thereby integrating normative Islamic thought into the discourse of contemporary legal policy reform.

**Keywords:** *Fiqh siyasah*; Immigration; Civil Servant Investigators; Legal Authority; Normative Legal Study

**Abstrak:** Dalam penanganan tindak pidana keimigrasian, terdapat tumpang tindih kewenangan antara Penyidik Pegawai Negeri Sipil (PPNS) Keimigrasian dan penyidik kepolisian, yang menjadi persoalan baik secara regulatif maupun praktik di lapangan. Keterbatasan kewenangan yang dimiliki PPNS mendorong perlunya peninjauan kembali terhadap ketentuan hukum yang mengatur hal tersebut melalui pendekatan *Fiqh siyasah* (fikih politik Islam). Penelitian ini bertujuan untuk menganalisis bagaimana prinsip-prinsip dalam *Fiqh siyasah*, khususnya *ta'addud al-wilayah* (pluralitas otoritas) dan *tafwidh al-sulthah* (delegasi kekuasaan), dapat digunakan untuk merekonstruksi kewenangan PPNS Keimigrasian dalam menjalankan fungsi penyidikan secara independen. Dengan menggunakan pendekatan penelitian hukum normatif, hasil kajian ini menunjukkan bahwa dalam perspektif *Fiqh siyasah*, PPNS Keimigrasian secara normatif dapat dibenarkan untuk menjalankan fungsi penyidikan secara mandiri sebagai bagian dari otoritas negara (*ulil amri*). Penelitian ini merekomendasikan perubahan terhadap Pasal 7 ayat (2) Kitab Undang-Undang Hukum Acara Pidana (KUHP) dengan mengganti frasa "di bawah koordinasi dan pengawasan" menjadi "dapat berkoordinasi", sebagai upaya memperkuat posisi kelembagaan PPNS dalam struktur penegakan hukum di Indonesia. Kontribusi akademik dari penelitian ini terletak pada tawaran kerangka yurisprudensi Islam untuk meninjau secara kritis dan mereformasi struktur kelembagaan kewenangan hukum di Indonesia, sehingga memperkuat integrasi pemikiran Islam normatif dalam wacana reformasi kebijakan hukum kontemporer.

**Kata kunci:** *Fikih Siyasah*; Keimigrasian; Penyidik; Kewenangan Hukum; Studi Hukum Normatif

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## Introduction

The Republic of Indonesia is a country based on law,<sup>1</sup> where this is clearly stated in the provisions of Article 1, paragraph 3 of the 1945 Constitution.<sup>2</sup> In the concept of the rule of law, it is idealized that what should be made the commander in the dynamics of state life is the law, and not other fields. Everything must be based on legal rules, especially the need for law enforcement officers who are given duties, functions and authorities according to legal rules, which formally constitute the basis and basis for the legitimacy of all their actions according to existing legal rules to enforce the law.<sup>3</sup>

The presence of foreign citizens in Indonesia, not a few of whom abuse immigration permits, it is even possible that the intention to commit the violation already existed while still in their country and/or in another country. Regarding the suspicion that an immigration crime has occurred, one of the steps taken by law enforcement officers is to conduct an investigation.<sup>4</sup>

Law has an important function as a social controller that must be applied.<sup>5</sup> The immigration investigation process, especially against perpetrators of immigration crimes, is carried out by Civil Servant Investigators (PPNS) of immigration through a system

known as the criminal justice system in accordance with the Criminal Procedure Code. However, in its implementation, there is an overlapping authority between PPNS immigration and police investigators.<sup>6</sup> Civil Servant Investigators for immigration are given special authority by law and should have independence in carrying out their investigative duties. However, in practice, Civil Servant Investigators must submit to the coordination and supervision of police investigators, which is often seen as a limitation on their authority.

The limited authority of the Immigration PPNS encourages the need to review the regulations governing the authority of the Immigration PPNS. This is where Islamic jurisprudence (Islamic political jurisprudence) becomes relevant as an analytical tool. The Islamic jurisprudence approach offers a theoretical framework<sup>7</sup> to assess whether the authority structure in the current investigation system is in line with the principles of justice and governance of power according to sharia. *Fiqh siyasah* can be used as a conceptual basis for evaluating the relationship model between PPNS Immigration and the Police, so that the analysis is not solely based on national legal positivism, but also Islamic legal values.

The main principles in *Fiqh siyasah* relate to the distribution and delegation of power.<sup>8</sup>

<sup>1</sup> Bawono, B. T., Wahyono, D., & Laksana, A. W. (2022). Implementation of rehabilitation for drug abuses according to law number 35 of 2009 concerning narcotics. *Jurnal Hukum*, 38(1), 1-11.

<sup>2</sup> Munib, M. A. (2018). Tinjauan Yuridis Kewenangan Kepolisian Republik Indonesia Dalam Penyelidikan Dan Penyidikan Menurut Kitab Undang-Undang Hukum Acara Pidana. *Justitiable-Jurnal Hukum*, 1(1), 60-73.

<sup>3</sup> Susanti, E. (2021). Kebijakan Hukum Pidana Jangka Waktu Proses Penyidikan Dalam Sistem Peradilan Pidana Di Indonesia. *Mizan: Jurnal Ilmu Hukum*, 10(2), 284-296.

<sup>4</sup> Friderick, I. (2023). Penegakan Hukum Terhadap Imigran Ilegal Yang Keluar Masuk Wilayah Indonesia Tanpa Melalui Pemeriksaan Imigrasi. *DIKTUM*, 2(3), 92-100.

<sup>5</sup> Laksana, A. W., Ikraam, A., & Robbani, A. (2024). The Liability of Criminal Law for Perpetrators of Goods Embezzlement. *Journal of Justice Dialectical*, 2(2), 70-83.

<sup>6</sup> Ritonga, B. Z., & Soponyono, E. (2023). Pembentukan Lembaga Pelaksana Pidana Sebagai Wujud Sistem Peradilan Pidana Integral. *Jurnal Pembangunan Hukum Indonesia*, 5(1), 136-153.

<sup>7</sup> Sulistiyawati, E., & Yamani, A. Z. (2025). Kepemimpinan Perempuan dalam Ranah Publik: Analisis Kritis Dalam Perspektif Fikih Siyasah dan Maqashid Syariah. *Ahsan: Jurnal Ilmiah Keislaman dan Kemasyarakatan*, 2(1), 9-23.

<sup>8</sup> Mendieta, M. D. R. S. (2024). Tinjauan Fikih Siyasah Kewenangan Penanganan Tindak Pidana Korupsi Di Indonesia (Analisis Kewenangan Kepolisian, Kejaksaan,

First, the concept of *ulil amri* outlines that the government must be obeyed within the corridor of goodness. The term *ulil amri* in *fiqh* is not limited to the head of state alone, but includes every power holder in a certain scope. Thus, public officials who are mandated to take care of public affairs, including PPNS Immigration, can be categorized as part of *ulil amri*. Second, the principle of *tafwidh al-sulṭah* or delegation of authority emphasizes that the ruler can delegate some of his power to other officials. In the history of Islamic political thought, the concept of Wazir al-Tafwidh (vizier with full delegation) is known, who is appointed by the Imam/Caliph with broad authority to regulate daily government affairs. Third, the idea of *ta'addud al-wilāyah* shows recognition of the division of areas of power under one highest authority. This means that in one government, there can be several officials or institutions, each of which has its area (domain) of authority. The principles of *ulil amri*, *tafwidh al-sulṭah*, and *ta'addud al-wilāyah* provide a rich normative perspective to assess whether the current authority of PPNS Immigration has been regulated proportionally and in accordance with the spirit of justice in Islam.

Previous research from Sodikin stated that in Islamic law, the authority of PPNS has similarities with the authority of *Muhtasib*, as Imam al-Mawardi said, the *al-hisbah* institution has the following tasks: enforcing the law, supervising legal subjects to obey legal norms, and helping people who are persecuted to obtain their rights.<sup>9</sup> Angraeni's research states

that the suitability of the concept of immigration law with *Fiqh siyasah* uses several fields or divisions of *Fiqh siyasah*, including *siyasah Dauliyah*, *Siyasah Idariyah*, *Siyasah Maliyah*, and *Siyasah Tandfziyyah*. *Siyasah Dauliyah* is related to the function of immigration, and entering and leaving the territory of Indonesia. At the same time, *Siyasah Idariyah* is related to travel documents in immigration. Related to *Siyasah Maliyah*, it is related to financing and sanctions in immigration. Finally, *Siyasah Tandfziyyah*, related to immigration supervision, prevention, deterrence, and investigation in immigration.<sup>10</sup>

The purpose of this research is to analyze the authority of civil servant investigators for immigration in the current Indonesian national legal system, analyze the principles of Islamic jurisprudence regarding the distribution of authority of law enforcement agencies in the structure of Islamic government, and analyze Islamic jurisprudence in reconstructing the authority of civil servant investigators for immigration in investigating immigration crimes.

## Method

This research employs a normative legal research approach<sup>11</sup>, which is appropriate for analyzing legal issues based on existing laws, regulations, and doctrines. Normative legal research primarily uses secondary legal materials, including primary, secondary, and tertiary sources, to analyze the legal issues at

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Dan Komisi Pemberantasan Korupsi). *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam*, 6(1), 1-13.

<sup>9</sup> Sodikin, M. (2015). Kewenangan Penyidik Pegawai Negeri Sipil Dalam Penyidikan Kasus Korupsi. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 1(1), 61-82.

<sup>10</sup> Angraeni, A., & Ahyar, M. (2023). Analisis Fikih Siyasah terhadap Undang-Undang Nomor 6 Tahun 2011 tentang

Keimigrasian. *QONUN: Jurnal Hukum Islam dan Perundang-undangan*, 7(1), 94-114.

<sup>11</sup> Laksana, A. W., Widodo, H., Siswanto, M. A., Djunaedi, H. D., & Widiyoko, S. (2025). Criticism of legal protection for victims of drug abuse: the disharmony in legal substance regulation. *Legality: Jurnal Ilmiah Hukum*, 33(1), 93-109.

hand.<sup>12</sup> Primary legal materials in this research consist of the Qur'an, Hadith, the 1945 Constitution, Law Number 2 of 2002 concerning the Indonesian National Police, and Law Number 6 of 2011 concerning immigration. Secondary legal materials include literature, books, journal articles, research studies, and other scholarly works that are relevant to the topics of immigration law, law enforcement, and Islamic jurisprudence. Tertiary materials consist of sources such as legal dictionaries and encyclopedias, which will provide definitions and contextual understanding of legal terms.

The data analysis process follows a qualitative approach, with the following steps: 1) Classifying the data according to the research questions and legal issues identified in the study. This involves categorizing the sources based on their relevance to Islamic law, Indonesian law, and the specific case of Immigration Civil Servant Investigators (PPNS). 2) Systematizing the data by organizing it into logical frameworks that allow for comparisons and critical analysis of the legal norms and principles involved. 3) Analyzing the systematized data using doctrinal analysis and a comparative approach to assess how the principles of Islamic law (*Fiqh siyasah*) relate to the legal framework governing PPNS. This will also involve interpreting Islamic legal principles, such as *ulil amri*, *tafwid al-sulṭah*, and *ta'addud al-wilāyah*, and applying them to the analysis of the authority of PPNS within the Indonesian legal system. The research will also examine how Islamic principles can inform and

potentially reform the current legal framework to ensure fairness, justice, and the proper delegation of authority. The methodology will also include a critical review of existing literature to identify gaps in the current understanding of the authority of PPNS and how Islamic legal principles might offer solutions. The data will be synthesized and analyzed in a way that contributes to the broader discourse on the intersection of Islamic law and Indonesian legal systems, especially in the context of immigration law enforcement.

## Results and Discussion

### The Authority of Civil Servant Investigators (PPNS) for Immigration in the Current Indonesian National Legal System

Law enforcement in Indonesia<sup>13</sup> is implemented by legal institutions that work together to resolve a case.<sup>14</sup> Civil servants who have been appointed as investigators with the position of Civil Servant Investigator (PPNS) have the right to carry out filing, investigations and even rights such as searches, confiscations and arrests.<sup>15</sup> The basis for the formation of PPNS is regulated in the Criminal Procedure Code and Law Number 2 of 2002 concerning the Republic of Indonesia National Police which explains that "Civil Servant Investigators are certain civil servant officials who, based on statutory regulations, are appointed as investigators and have the authority to conduct investigations into criminal acts within the scope of the laws that form the legal basis

<sup>12</sup> Mashdurohaturun, A., Gunarto, G., & Nugroho, O. S. (2021). Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy. *Jurnal Pembaharuan Hukum*, 8(3), 485-502.

<sup>13</sup> Laksana, A. W., Saragih, Y. M., & Hadiyanto, A. (2024). Lembaga dan Pranata Hukum. *Penerbit Tahta Media*.

<sup>14</sup> Rahmaddani, I. (2023). Pengawasan Kode Etik Jaksa Oleh Komisi Kejaksaan Guna Terwujudnya Jaksa Yang Profesional Dan Berintegritas. *Journal Presumption of Law*, 5(1), 18-34.

<sup>15</sup> Massie, H. A. C. D. (2021). Pkm Kesadaran Hukum Masyarakat Desa Lelema Kecamatan Tumpaan Kabupaten Minahasa Selatan Terhadap Pelestarian Fungsi Hutan. *LEX ADMINISTRATUM*, 9(8).

for each of them.”<sup>16</sup>

Provisions on investigations into immigration crimes are regulated in Chapter X of Law Number 6 of 2011 concerning immigration, which specifically regulates investigations which are an elaboration of Article 6, paragraph 1 of the Criminal Procedure Code. In Chapter X, Article 105 of the Immigration Law, it reads, “Immigration PPNS are authorized as investigators of immigration crimes which are carried out in accordance with the provisions of this Law.”<sup>17</sup>

Police and PPNS as enforcers of criminal law are the first apparatus in the law enforcement process; they occupy a position as guards, namely through existing power (police direction), which is the beginning of the criminal process. Because of their expertise, the police feel they know more about carrying out their duties. As a result, the police can then increase the emphasis on policies that pay less attention to formal legal threats.<sup>18</sup>

The investigative institution is one of the subsystems of the criminal justice system; therefore, if there are police investigators and PPNS investigators in the investigative institution,<sup>19</sup> then it can be said that PPNS is part of the criminal justice system. Although PPNS has its duties and authorities according to the scope of its field of duty and specialization, it does not mean that PPNS is a stand-alone subsystem in the criminal justice

system. In accordance with its existence, it can be said that PPNS is part of the police subsystem as one of the criminal justice subsystems.<sup>20</sup>

The existence of civil servant investigators is a fact that not all special crimes are mastered by police investigators. Maybe at the central level, police agencies have experts, but in the regions, not all police agencies have experts as investigators in certain crimes, which are the authority of civil servant investigators. Not all special crimes are mastered by investigators from the Police agency, because the existence of civil servant investigators is a fact and is involved. This is because it could be that at the central level, the police have many expert investigators. However, at the regional level, not all Police agencies have experts as investigators in certain crimes that are actually the authority of civil servant investigators.

The implementation of immigration crime investigations by PPNS Immigration is carried out by applying the principles of investigation, which are a series of questions needed to obtain the necessary information. These questions relate to: who is the perpetrator of the forestry crime, what immigration crime has been committed, where the crime was committed, with what the crime was committed, why the crime was committed, how the crime was committed, and when the crime was committed. Through these

<sup>16</sup> Lazuardi, A., Ferdi, F., & Elda, E. (2023). Kewenangan Penyidik Pegawai Negeri Sipil (PPNS) Keimigrasian dalam Penanganan Tindak Pidana Perdagangan Orang yang Berasal dari Tindak Pidana Penyelundupan Manusia. *UNES Law Review*, 6(1), 1510-1519.

<sup>17</sup> Adzkia, D., & Marwenny, E. (2024). Kedudukan Penyidik Pegawai Negeri Sipil (PPNS) Keimigrasian dalam Penegakan Hukum Pidana Terhadap Migran Ilegal. *Jurnal Kajian Hukum Dan Kebijakan Publik* [E-ISSN: 3031-8882, 1(2), 198-206.

<sup>18</sup> Ketaren, S. M. S., Syahrin, A., Ablisar, M., & Hamdan, M. (2013). Peranan Penyidik Pegawai Negeri Sipil (PPNS)

Perpajakan dan Penyidik Polri Dalam Penanganan Tindak Pidana Perpajakan. *USU Law Journal*, 1(2), 57-75.

<sup>19</sup> Hasan, F. (2020). Eksistensi Penyidik Pegawai Negeri Sipil Perikanan Dalam Sistem Peradilan Pidana Di Indonesia. *Jurisprudentie*, 7(2), 262-273.

<sup>20</sup> Delpiro, E., & Rusdiana, E. (2021). Kajian Yuridis Kewenangan Penyidik Pegawai Negeri Sipil Pada Tindak Pidana Perpajakan Dikaitkan Dengan Kuah: Kajian Yuridis Kewenangan Penyidik Pegawai Negeri Sipil Pada Tindak Pidana Perpajakan Dikaitkan Dengan Kuah. *NOVUM: Jurnal Hukum*, 8(4), 71-80.



questions, it is hoped that the purpose of the investigation can be achieved properly, namely, to collect evidence to clarify a forestry crime that has occurred or to find the suspect. In the implementation in the field, what often becomes a dispute or conflict is about who actually has more authority to carry out arrests and detentions against someone suspected of committing a crime in the field of immigration. In fact, in terms of normative juridical terms, Police Investigators and PPNS Immigration both have the authority that is legally recognized to carry out the arrest specifically against people suspected of committing a crime in the field of immigration.

To provide a clearer understanding of the authority of Immigration Civil Servant Investigators (PPNS) within Indonesia's national legal system, the following table summarizes the legal basis, powers, and institutional positioning of PPNS in the structure of the criminal justice system:

Table 1. The Authority of Immigration PPNS in the Indonesian Legal System

Aspect	Explanation
General Basis	<ul style="list-style-type: none"> <li>- Criminal Procedure Code (KUHP) Articles 6 and 7</li> <li>- Law No. 2 of 2002 on the Indonesian National Police</li> </ul>
Specific Basis	<ul style="list-style-type: none"> <li>- Law No. 6 of 2011 on Immigration, Article 105</li> </ul>
PPNS Authority	<ul style="list-style-type: none"> <li>- Conduct investigation and inquiry</li> <li>- Examine locations, documents, and individuals involved</li> <li>- Carry out arrest, seizure, and detention (within limits set by law)</li> </ul>
Relationship with Police	<ul style="list-style-type: none"> <li>- Recognized as investigators under the Criminal Procedure Code</li> <li>- Must operate under the coordination and supervision of the Police (Article 7(2) KUHP)</li> </ul>
Position in the System	<ul style="list-style-type: none"> <li>- Subsystem of the criminal justice system</li> <li>- Considered a part of the police subsystem</li> </ul>
Common Issues	<ul style="list-style-type: none"> <li>- Overlapping authority with the Police</li> <li>- Police dominance in field implementation</li> </ul>

Aspect	Explanation
Harmonization Efforts	<ul style="list-style-type: none"> <li>- Unequal investigative expertise in regional areas</li> <li>- Proposal to revise the phrase "under coordination and supervision" to "may coordinate"</li> <li>- Emphasis on non-overlapping distribution of authority</li> </ul>

Source: Author Interpretation

As shown in the table, the normative legal framework provides Immigration PPNS with defined powers and institutional legitimacy. However, practical implementation often reveals structural challenges, particularly regarding overlapping authority with the Police. Hence, regulatory harmonization is needed to ensure PPNS can fully exercise their authority as part of an integrated and effective criminal justice system

Regulation of Article 6 paragraph (1) of the Criminal Procedure Code states that investigators are Polri investigators and PPNS, which means that the Criminal Procedure Code recognizes the equality between Polri Investigators and PPNS. However, Article 7 paragraph (2) of the Criminal Procedure Code states that it gives authority to Civil Servant Investigators (PPNS) to carry out investigative duties in accordance with the law, but with the condition that they must be under the coordination and supervision of police investigators. The inconsistency of the two articles will restrict the movement of PPNS if Polri Investigators in reality also dominate the investigation, so that there will be overlapping authority.

The differences in the regulation of the authority of Polri Investigators and PPNS need to be harmonized based on the principles contained in the integrated criminal justice system as an effort of *ius constituendum* in enforcing criminal law. The problems and

antinomies as described above must be of greater concern to the components of the criminal justice system in their efforts to combat crime. Efforts to harmonize the provisions regarding the authority of PPNS with Polri Investigators are through provisions that emphasize that there is no overlapping authority.

### **Principles of *Fiqh siyasah*: Looking at the Distribution of Authority of Law Enforcement Institutions in the Structure of Islamic Government**

Siyasah Idariyah is part of siyasah sharia. In the time of the Prophet, state administration (Siyasah Idariyah) was regulated directly by the Prophet Muhammad SAW because in his time, the Prophet was head of government and head of state, with the appointment of Zaid ibn Thabit as secretary of state to record various constitutional matters.<sup>21</sup>

In the modern era, Siyasah Idariyah is a way to achieve good government. The study of Siyasah Idariyah is related to government, including authority, organs, agencies, public government bodies and so on. The basic sources of Siyasah Idariyah come from the Koran and hadith, as well as ijma and qiyas and so on.<sup>22</sup>

The Caliph, as the highest leader of a country, has the right to establish legal rules or qanun that are not expressly regulated in the Qur'an and al-Hadith. In addition to the power to establish legal rules, namely the Caliph, the role of Al-sulthah al-Tashri'iyah also has the right to establish legal rules or qanun

implemented by the Ahlu al-halli wal Aqdi institution. However, absolute power and authority to establish a law is the right of Allah SWT and His Messenger. As the Prophet SAW said:<sup>23</sup>

“How can you decide when a legal issue is presented to you?, Muadz r.a. answered, “I decide with Kitabuallah”. Rasuallah SAW asked, If you don't find it in Bukuuallah? Muadz r.a. answered, “I will decide with the Sunnah of the Messenger.” Rasuallah SAW asked again, if you don't find it in the Sunnah of the Prophet? Muadz r.a. answered, “I will make ijthad with my opinion and I will not be careless in it.” Rasulullah SAW then patted Muadz bin Jabal r.a's chest and said, “Praise be to Allah Who has shown the Messenger of His Messenger to what is acceptable to Allah and His Messenger.”

Regarding the hadith above, this means that genuine sovereignty belongs only to Allah SWT. If there are demands for social development that require the establishment of a legal rule that was not previously contained in the text, this allows a caliph or leader to consult with the ahlul halli wal'aqdi. The Qur'an also explains the legal basis for the *Ahlu halli wal Aqdi* institution in establishing the law contained in the letter An-Nisa' (4) verse 59:

“O you who believe, obey Allah and obey the Messenger (Prophet Muhammad) and the ululamri (holders of authority) among you. If you have different opinions about something, return it to Allah (the Qur'an) and the Messenger (sunnah) if you believe in Allah and the Last Day. That is better

<sup>21</sup> Dewi, R. K., & Agustina, S. (2021). Tinjauan Fiqih Siyasah terhadap Lembaga Yudikatif di Indonesia. *Cakrawala: Jurnal Kajian Studi Manajemen Pendidikan Islam dan studi sosial*, 5(2), 241-252.

<sup>22</sup> Pradikta, H. Y., & Juliana, A. (2024). Tugas Dan Fungsi Jaksa Pengacara Negara Perspektif Fiqh

Siyasah. *YUSTISI*, 11(2), 446-461.

<sup>23</sup> Sari, N. P., Hak, N., & Andiko, T. (2024). Analisis Undang-Undang Nomor 17 Tahun 2017 Tentang Perlindungan Anak Korban Kekerasan Seksual Perspektif Fikih Siyasah Dusturiyah. *Journal of Sharia and Legal Science*, 2(1), 107-130.

(for you), and the consequences are better (in this world and the hereafter).<sup>24</sup>

There are many interpretations from several Muslim figures about the substance of the verse. According to Muhammad Rasyid Ridha, the verse reflects the existence of rules of government in Islam.<sup>25</sup> Sayyid Qutb interpreted it as a fundamental basis for the organization of the Muslim community, including the legal system and state power.<sup>26</sup> Maulana Muhammad Ali sees this verse as an elaboration of three main rules relating to the welfare of the people, especially in the context of government.<sup>27</sup> From these three interpretations, it can be concluded that the verse is the basis for the formation of the Islamic power and government structure, which is carried out through the authority of the *ulil amri* as the executors of the will of the sharia.

Various interpretations of Muslim figures regarding the verse show that the Qur'an contains basic principles in the Islamic government system. According to Muhammad Rasyid Ridha, the verse reflects the existence of government rules in Islam. Sayyid Qutb interpreted it as a fundamental foundation for the organization of the Muslim community, including the legal system and state power. Meanwhile, Maulana Muhammad Ali saw this verse as an elaboration of three main rules relating to the welfare of the community, especially in the context of government. From these three interpretations, it can be

concluded that the verse is an important basis for the formation of the Islamic power and government structure, which is carried out through the authority of the *ulil amri* as the executors of the will of the sharia.

During the reign of the Prophet Muhammad SAW, there was an institution known as hisbah, which played a role in maintaining public order and enforcing the principle of *amar ma'ruf nahi munkar*. This institution was not only tasked with regulating various things that were considered to disturb the interests of society, but also had the authority to try violations that occurred. Thus, at that time, the function as a judge and enforcer of order was in one hand, namely, directly carried out by the Prophet SAW as head of state, who also served as the implementer of judicial and executive powers in an integrated manner.<sup>28</sup>

The area of al-hisbah has been known since the time of Rasulullah SAW and was an inseparable part of his activities in daily life, where he always invited the people to uphold the commandments of good and evil. Etymologically, *ma'ruf* refers to all forms of speech, actions, or intentions that are considered good and ordered in the teachings of the Shari'a, while *munkar* includes everything that is considered bad by the Shari'a, whether in words, actions, or intentions, and therefore must be abandoned.<sup>29</sup>

The main task of the hisbah institution is to assist people who are unable to defend or

<sup>24</sup> Qur'an Surah An-Nisa" (4):59

<sup>25</sup> Pulungan, J. S. (2013). Ide Jamaluddin Al-Afghani, Muhammad Abduh Dan Rasyid Ridha Tentang Negara Dan Pemerintahan Dalam Islam. *Tamaddun: Jurnal Kebudayaan Dan Sastra Islam*, 13(1).

<sup>26</sup> Rinaldo, M. E., & Pradikta, H. Y. (2021). Analisis Fiqh Siyasah Dusturiyah Dalam Pembentukan Peraturan Tentang Trading in Influence Dalam Hukum Positif Di

Indonesia. *As-Siyasi*, 1(1), 63-84.

<sup>27</sup> Sulaeman, E., Nurbaiti, N., & Abd Muid, N. (2022). Politik Dalam Kandungan Al-Qur'an. *Mumtaz: Jurnal Studi Al-Quran dan Keislaman*, 6(1), 52-72.

<sup>28</sup> Mujahidin, A. (2012). Peran Negara dalam hisbah. *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, 4(1).

<sup>29</sup> Nur Chamid, *Jejak Langkah Sejarah Pemikiran Dan Ekonomi Islam*, Pustaka Pelajar, Yogyakarta, 2010, 277



claim their rights without the role of authorized officers.<sup>30</sup> According to Ibn Khaldun, hisbah is an institution related to religious affairs and is the responsibility of individuals who are given the mandate to take care of the interests of the Muslim community professionally and expertly.<sup>31</sup> This institution functions to maintain public order and morality in accordance with the principles of Islamic law.

Officials who carry out duties in the hisbah structure are known as al-muhtasib, who have the authority to regulate social order, prevent violations of citizens' rights, ensure the implementation of laws in force in society, and, in certain circumstances, can even make legal decisions for urgent cases. During the time of the Prophet Muhammad SAW and his companions, this position was held by people who were directly appointed by the head of state or Caliph, especially to oversee activities in the market and ensure that economic transactions ran honestly and fairly without fraud.<sup>32</sup>

The task of a muhtasib is not only to resolve disputes and hear complaints, but also has the right to give decisions that fall within his field.<sup>33</sup> This is done if there is a dispute that must be resolved so as not to cause worse impacts. If the dispute goes through a court process, it will take longer. However, the muhtasib does not have the right to listen to witness testimony in deciding a law and does not have the right to order an oath to be taken

against the person who rejects the lawsuit, because this is the authority of the court judge. The al-Hisbah region has the task of carrying out *amar ma'ruf nahi munkar*, implementing laws and has the task of supervising state officials who commit irregularities.<sup>34</sup>

During the reign of Abu Bakr ra,<sup>35</sup> Amir al-mukminin formed important institutions, including the Police Institution (*Diwan al-Ahdath*), the Judicial Institution (*al-Qady*), and the Department of Defence and Security (*Diwan al-Jundy*), where the Police Institution was tasked with maintaining security and order in society. The establishment of these institutions shows that during the time of Amir al-mukminin there had been a separation between two law enforcement functions, namely the Police Institution and the Judicial Institution. The distribution of authority in government based on Islamic religious principles, as shown by the existence of *Diwan al-Ahdath*, *al-Qady*, and *Diwan al-Jundy* since the era of the Prophet and his companions, shows the principle of *ta'addud al-wilayah* (plurality of authority). The principle of *ta'addud al-wilayah* means that in one country, it is possible for there to be several officials or institutions with complementary but non-overlapping authorities. *Fiqh siyasa* teaches that power must be distributed according to function and expertise, so that a just government system is realized and the risk of injustice due to the concentration of power is reduced.

<sup>30</sup> Pangestuti, D. S. (2019). Peran Lembaga Kepolisian dalam Perspektif Fiqh Siyasa. *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, 22(2), 401-423.

<sup>31</sup> Lestari, D., Puspita, F. F., & Latifah, F. N. (2022). Analisis Komparatif Lembaga Hisbah Di Zaman Rasulullah Dengan Zaman Modern Berdasarkan Sistem Ekonomi Islam. *Al-Muamalat: Jurnal Ekonomi Syariah*, 9(2), 84-92.

<sup>32</sup> Jaelani Aripin, Peradilan Agama Dalam Bingkai Reformasi Hukum Di Indonesia, Kencana Prenada Media Group, Jakarta, 2008, 168

<sup>33</sup> Ferdika, A. F., Mu'in, F., Latua, A., & Hendriyadi, H. (2022). Kedudukan Kejaksaan di Indonesia: Perspektif Fiqh Siyasa. *As-Siyasi*, 2(1), 39-58.

<sup>34</sup> Abdullah, A. F. (2018). Wewenang dan peran wilayah hisbah dalam pengawasan pasar dan ekonomi dalam perspektif fiqh siyasa. *Al Mabhats: Jurnal Penelitian Sosial Agama*, 3(2), 283-305.

<sup>35</sup> Nofrianti, M. (2018). Perkembangan Hukum Islam Pada Masa Umar Ibn Khattab (634-644 M). *JURIS (Jurnal Ilmiah Syariah)*, 17(2), 269-282.

This principle of *ta'addud al-wilāyah* is in line with law enforcement involving different institutions such as the police, the prosecutor's office, and the PPNS. For example, the PPNS is part of a sectoral law enforcement agency that has the authority to investigate certain crimes based on the law, while the National Police has general authority in the field of investigation. The position of the PPNS can be likened to a form of delegation of the *muhtasib's* task power, which has a limited scope but focuses on one sector.

### **Analysis of *Fiqh siyasah* in Reconstructing the Authority of Civil Servant Investigators in Immigration Crime Investigations**

The legitimacy of government actions is measured based on the authority granted in laws and regulations. Regarding authority, it can be seen from the State Constitution, which provides legitimacy to Public Agencies and State Institutions in carrying out their functions.<sup>36</sup> Authority is the ability to act granted by applicable laws to carry out legal relations and actions. According to Prajudi Atmosudirdjo,<sup>37</sup> Authority is what is called formal power, power that comes from Legislative Power (granted by law) or from Executive/Administrative Power.<sup>38</sup> Authority is power over a certain group of people or power over a certain area of government (or area of affairs) that is complete, while authority only concerns certain parts. Within authority there are authorities. Authority is the power to carry out a public legal act.

The authority of Civil Servant Investigators

(PPNS) of Immigration in carrying out investigative functions is still limited by Article 7 paragraph (2) of the Criminal Procedure Code, which states that the implementation of PPNS duties is under the coordination and supervision of Police investigators. This formulation places the position of PPNS under Police investigators, even though PPNS work based on special laws that are *lex specialis*. In practice, supervision by police investigators can hinder the independence and effectiveness of investigations by PPNS. The novelty in this study is the need to reconstruct Article 7 paragraph (2) of the Criminal Procedure Code by removing the phrase “under coordination and supervision”, and replacing it with “can coordinate”. The aim is to separate the authority of PPNS Immigration, so that they are no longer under the coordination and supervision of Police Investigators, while still being able to coordinate with Police Investigators.

The reconstruction can be justified through the principles of Islamic jurisprudence, especially regarding the legitimacy of power and distribution of authority in Islamic governance. Immigration PPNS can be categorized as part of the *ulil amri* structure, because they are tasked with enforcing the law based on the mandate of the government through laws. Therefore, their authority must be guaranteed by the legal system, including in criminal investigations in the field of immigration.

Islamic jurisprudence emphasizes the importance of *ta'addud al-wilāyah* or plurality

<sup>36</sup> Mau, H. A., & Sinaulan, R. L. (2021). Keabsahan Surat Keputusan Bersama Untuk Penyidikan Perkara Koneksitas Pasca Perubahan Ketatanegaraan Indonesia. *Jurnal Penelitian Hukum Legalitas*, 15(1), 436698.

<sup>37</sup> Desrina, S. A. (2020). Hubungan Kewenangan Pusat dan Daerah dalam Pengawasan Obat di Apotek. *University Of*

*Bengkulu Law Journal*, 5(1), 12-34.

<sup>38</sup> Firas Meshhal Abduljabbar dkk., “Securitization of Immigration and Refugee Policy in Contemporary Islamic Politics and International Law,” *MILRev: Metro Islamic Law Review* 4, no. 1 (4 April 2025): 64–98, <https://doi.org/10.32332/milrev.v4i1.10266>.

of authority in governance. Governance based on Islamic religious principles not only recognizes a single institution that regulates all affairs, but also divides power among a number of officials according to their expertise and areas of duty. For example, between qadhi, muhtasib, and amir jund, each has their areas of authority: qadhi takes care of judicial law, muhtasib is responsible for market and moral supervision, while amir jund is in the field of defence and security.

In this regard, the following table presents an analytical comparison between the classical Islamic governance structure and the proposed reconstruction of authority in the context of Immigration Civil Servant Investigators (PPNS) in Indonesia. This comparison is intended to show how the principle of decentralised but specialised authority in Islamic jurisprudence supports the argument for independent investigative powers for PPNS.

Table 2. Comparative Analysis of Authority – *Fiqh Siyasah* and PPNS Reconstruction

Aspect	<i>Fiqh Siyasah</i> (Islamic Political Jurisprudence)	Proposed Reconstruction for PPNS Authority
Foundational Legitimacy	Derived from <i>ulil amri</i> through divine mandate and public trust	Derived from statutory law ( <i>lex specialis</i> ) enacted by legislative bodies
Concept of Authority	Emphasises <i>ta'addud al-wilāyah</i> (plurality of authority)	Advocates separation from hierarchical subordination to the Police; endorses equality in enforcement
Role Specialisation	Distinct roles for <i>qādī</i> , <i>muhtasib</i> , <i>amir jund</i>	Specialised PPNS roles in ministries/institutions (e.g., Immigration, Environment, etc.)
Supervisory Structure	Officials act within their domain, not subordinate to one another in overlapping functions	PPNS coordinates with but is not subordinate to Police Investigators
Legal Framework Orientation	Power is decentralised within the bounds of Sharia and	<i>Lex specialis</i> principle under Law No. 6 of 2011 on Immigration and other sectoral regulations

Aspect	<i>Fiqh Siyasah</i> (Islamic Political Jurisprudence)	Proposed Reconstruction for PPNS Authority
	entrusted roles	
Implication for Law Enforcement	Strengthens autonomy and accountability based on area of expertise	Enables PPNS to act independently and efficiently, improving effectiveness in combating immigration crimes

Source: Author Interpretation

This comparative analysis underscores that the principle of decentralised authority is not alien to Islamic jurisprudence, but rather embedded within its governance model. Applying this perspective, the reconstruction of Article 7 paragraph (2) of the Indonesian Criminal Procedure Code finds both normative and religious justification. It allows for a fair and effective law enforcement mechanism wherein Immigration PPNS may exercise their mandate without structural subordination, while still preserving coordination across institutions.

The existence of PPNS Immigration and Polri can be seen as two law enforcement agencies that do not have to be in a hierarchical relationship, but rather two equal institutions that have their respective authorities. The reconstruction of Article 7 paragraph (2) of the Criminal Procedure Code will not only eliminate the overlapping authority between PPNS and Polri, but also strengthen the spirit of centralizing authority in law enforcement. PPNS spread across various ministries and institutions will have full authority to investigate criminal acts according to their expertise without any intervention from police investigators. The police will continue to play a role as the executor of police functions, but will no longer be a supervisor for PPNS investigators.

## Conclusion

The role of Civil Servant Investigators (PPNS) for immigration is crucial within the Indonesian criminal justice system. While their authority is outlined in the applicable laws, it remains constrained by Article 7, paragraph (2) of the Criminal Procedure Code, which places them under the coordination and supervision of police investigators. This limitation hampers the independence of PPNS, which is essential for effective law enforcement in immigration matters. Through the lens of *Fiqh siyasah*, particularly the principles of *ta'addud al-wilāyah* (division of authority) and *tafwidh al-sulthah* (delegation of authority), this study justifies the notion that PPNS should be able to perform their investigative functions independently, as part of the power system (*ulil amri*). These principles offer a framework for understanding the relationship between legal authority and governance within Islamic jurisprudence, which can complement the existing legal system. The recommendation to amend Article 7, paragraph (2) of the Criminal Procedure Code by replacing the phrase “under coordination and supervision” with “can coordinate” aims to empower PPNS and clarify their role within the national law enforcement structure. This adjustment would ensure that PPNS has the autonomy necessary to carry out their duties effectively, while maintaining a collaborative relationship with police investigators without diminishing their independent authority.

The proposed change has significant implications not only for the practical functioning of PPNS but also for the broader dynamics between police investigators and immigration authorities. It is essential to consider the potential challenges and opportunities arising from this shift, including how it would affect coordination and prevent

jurisdictional overlaps. Furthermore, this study contributes to the broader academic discourse by offering an innovative perspective on the integration of Islamic legal principles with national law enforcement practices, showing how *Fiqh siyasah* can inform and guide legal reform in contemporary Indonesia.

## Credit Authorship Contribution

Anis Mashdurohatun led the conceptual design and supervised the legal framework of the study. Deny Arly Asmara contributed to the immigration law analysis and drafted key sections. Erwin Zainul Hakim supported the integration of *fiqh siyasah* and legal reform. Agung Hadi Wijanarko refined the manuscript and handled citation consistency. Zekry Abd Elrazik Mohamed Ali provided theoretical insights from Islamic governance and comparative perspectives.

## Declaration of Competing Interest

The authors declare no competing financial or personal interests that could have influenced the research presented in this article.

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