

## Tiban Market and Utilization of Public Areas in the *Maqasid Syari'ah* Perspective: Perception of Islamic Scholars and Traders

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### Abstract:

*The utilization of state-owned public areas is widespread in various places, not only locally but also nationally. This research examines critically the use of public areas by tiban market traders for the purpose of trading in Warungasem District, Batang Regency, Central Java, Indonesia. In addition, this study explores the perceptions of Islamic scholars (ulama), traders and the government on the use of public areas as trade locations. Public land use is examined through qualitative research, with data collection techniques: interviews, observation and documentation, and analyzed with interactive models. This study finds that trading on the highway is actually not permitted by regulation. Both traders and the government have the same point of understanding. Traders continue to use highways as stalls solely to fulfill clothing, shelter and food needs, because they do not own land. Meanwhile, the scholar's perception of the use of the public arena is polarized into two, which is permissible and not. For those who allow it, the existence of the tiban market is considered to have more benefits than dangers. On the contrary, by referring to the maqasid syari'ah, the scholars allow on the grounds of the tiban market have fundamental benefits both economically, socially and can prosper the people, in the midst of the country which is less concerned with the growth of economic populism.*

**Keywords:** *Tiban Market, Public Area, Economic Populism, Benefits and Maqasid Syari'ah*

### INTRODUCTION

The results of Rismawati's research (2010) show that public areas owned by the state are widely used by the public for personal gain. Most of the traders in the Warungasem District, Batang Regency, Central Java, Indonesia, mostly use the road area for trade purposes. Highway is a road that connects one region to another and is a state-owned public asset intended for users of traffic. The traders carry out buying and selling transactions and hold their wares on the roadside. Local people usually call it *Tiban Market* (Tiban Market). Tiban Market is located in Warungasem District, which consists of three villages, namely Warungasem Village, Lebo Village and Cepagan Village. Like the general market, Tiban Market in Warungasem District is a meeting place for sellers and buyers to

carry out a mechanism to exchange goods and services by buying and selling transactions (Observation in Warungasem, dated 20, 22, March 23, 2017).

Tiban Market is a group of traders who sell various kinds of community needs where people can choose the type of goods needed at affordable prices (Akbar DP, 2015). In almost every area there is the Tiban Market, which is available once a week. Like Tiban Market in Warungasem Subdistrict, Tiban Market is available every Thursday night in Warungasem Village, every Saturday night in Lebo Village, and every Sunday night in Cepagan Village from 16.00 WIB - 22.00 WIB.

In this market, not only sell various daily necessities such as vegetables, snacks, clothes, sandals, household appliances, and others, there are also various games for small children such as swivels, swings, bath balls and so on. The existence of Tiban Market can be a place of entertainment that is cheap for the community, especially from the middle to lower classes and can help the income of the economy of selling and parking people who offer their services. The place is strategic and easily accessible to the community, becoming one of the factors in the Tiban Market, which is always visited by the public (Observation, March 23, 2017).

According to one of the Tiban Market traders, the existence of Tiban Market can open new jobs and increase income. Syarif recounts that the fees charged by traders in each region are different, there are those who have to rent a place to sell and there are also only dues for cleaning. The amount of contributions varies between regions (Interview with Mualawudin, April 1, 2017). For places to sell in Tiban Market, Warungasem Village, Lebo Village and Cepagan Village, there is no need to rent. People simply just ask permission from the homeowner if the transaction location is in front of the fence of the house. The faster he is, the quicker he can secure a place. This can add to the income of traders who do not need to spend money first to rent a place (Observation in Warungasem, dated 20, 22, March 23, 2017).

Although the existence of the Tiban Market can help the economy of the community and become a cheap alternative entertainment venue, the reality is roads are often misused for places of sale and purchase. So that road users often do not get the right to use the highway safely and comfortably as they should.

The Tiban Market traders open their merchandise stalls on the right and left side of the roadside. As a result, the road that the vehicle should be able to pass smoothly becomes congested because the road area that is used for the selling area becomes narrow. They must be willing to jostle or even queue when passing the road. Road users and visitors to Tiban Market piled together so that the existence of Tiban Market on the side of the highway also adds to vehicle traffic jams and their safety is also threatened if not careful when passing the road (Tiban Market Observation, 05, 07 and April 8, 2017).

Studies on public areas for personal business interests have been widely studied. Chairur Rozikin (2013) examines the practice of renting street vendors in Malioboro Yogyakarta (Rozikin, 2013). However, the results of this study only emphasize the practice of renting street vendors in Malioboro whose object is sidewalk leasing to trade which is a shared public facility, not owned by individuals who can be rented out.

This study discusses the use of the area occupied by Tiban Market traders. They use public roads which are public facilities. Roads are one of the facilities in carrying out traffic and transportation among other facilities such as sidewalks, pedestrian crossings, special shelters and facilities for the disabled and for the elderly as stipulated in article 45 verse 1 of Act No. 22 of 2009 concerning the traffic and road transport. Everyone is prohibited from committing an act that results in damage and disruption of the road's function. Everyone is prohibited from committing an act which results in a disruption to the function of road equipment. This is reaffirmed in Article 28 verses 1 and 2 of Law Number 22 of 2009 concerning road traffic and transportation.

This research is related to the function of the highway which is used for trade purposes which focuses on the reasons for the Tiban Market traders and the views of local scholars regarding the use of public areas for trade purposes which are actually intended for vehicles. This research seeks to contribute knowledge by exploring Tiban Market traders who use public areas in the form of roads for trade purposes and the views of local scholars on public areas in the form of roads used for trading.

Based on the problems, thoughts and previous studies, this study is focused on the utilization of public areas for trade purposes and perceptions of scholars, traders and the government regarding the use of public areas as stalls trading in Tiban Market traders in Warungasem District, Batang, Central Java, Indonesia.

## **DISCUSSION**

### **Tiban Market and *Maqasid Syari'ah***

Tiban Market comes from the word "market" and "arrives". The definition of a market is simply the place where buying and selling transactions are carried out by buyers and sellers at certain times and places. While the word "tiban" is taken from the word "arrived" in the Indonesian dictionary the word "arrived" has the meaning of coming, arriving. Tiban Market means a market where its suddenness comes. A market can be formed if it has fulfilled the requirements of the existence of a seller, a buyer, an item being traded, an agreement between the seller and the buyer.

Tiban Market in some areas is called *Pasar Kaget*, traders who conduct trade or service activities, who tend to move around and do not have formal legality, where trading

activities can be carried out in groups according to their own or individual culture (Yanuasri and Sunaryo, 2015).

Judicially regarding the management of the market in Batang Regency, it has been regulated in local regulation (Perda) No. 40 of 2014. In the regulation stated that what is meant by market is an area of sale and purchase of goods with more than one number of sellers, both referred to as shopping centers, traditional markets, shops, malls, plazas, trade centers and other designations. In the explanation it is stated that market levies are benefits collected by market managers to the public for the market services (Article 1 verse 5). The collection of market retribution is carried out every day to traders when traders open their shops. If it is not open, no fees will be collected (Article 9 A).

Tiban Market has the following characteristics: (1). moves place or location; (2). there is no specific arrangement regarding retribution. The retribution referred to is the collection of a sum of money for cleaning, security, electricity, even for social purposes (money for a musholla/ mosque) and the amount of this retribution varies from place to place; (3), is managed by the community. Starting from the process of establishment, security, cleanliness, retribution, and the dissolution are carried out by the community (4), provides goods and services. Tiban Market provides various basic goods and services. Goods provided in Tiban Market are clothing, food, vegetables, children's toys, and others, while the services provided are entertainment for children, such as carousel, swaying pedicab and more. (5). Operating time at night. In contrast to traditional markets and modern markets that are always open in the morning or afternoon, Tiban Market is active starting in the afternoon (around 4:00 p.m. WIB) until late at night (at 10:00 p.m. WIB). The night time was chosen to be very precise. Considering the afternoon or evening time the community is at home (Loso, 2009: 1-12).

In some places, street vendors were disputed for disturbing motorists, using road bodies and sidewalks. The same is true for Tiban Market, which uses part of the road space for trading activities, so that it seems far from benefit. The essence or the initial purpose of implementing the Syariat is to realize human benefit.

*Maqâsid Syari'ah*. In lughawi (language), *Maqâsid Syari'ah*, consists of two words, namely *Maqâsid* and *Syari'ah*. *Maqâsid* is the plural form from *maqsad* which means intention, target, principle, intention, final goal (Auda, 2015: 32). *Syari'ah* in language means the road to a water source. The road to this water source can also be said to be the road to the main source of life (Bakri, 1996: 70). From the definition above, it can be analogized that what is meant by *Maqâsid Syari'ah* is the purpose of all the provisions of Allah which are given to mankind. *Maqâsid* of Islamic law is the goals or purposes behind the law (Auda, 2015: 33).

According to al-Syatibi the goal of *Maqâsid Syari'ah* is to achieve human benefit. Benefit is seen from two perspectives. The two points of view are *maqâsid syari'ah* (God's purpose) and *maqâsid mukalaf* (mukallaf's goal). *Maqâsid Syari'ah* contains four aspects. The

four aspects are: (1). The initial goal of the *syariat* is the benefit of mankind in the world and in the hereafter; (2). *Syar'at* as something that must be understood; (3). *Syar'at* as a *taklif* law that must be done, and (4). The aim of the *syar'at* is to bring people under the auspices of the law.

Jasser Auda defines *Maqâsid* in four meanings, first, the wisdom behind a law; secondly, the good final goal to be achieved by law; third, the divine purpose group and the moral concept which is the basis of the law; fourth, *maslahah* (benefits for society). In the *Maqâsid* concept offered by Jasser Auda, the values and principles of humanity are the main points (Mayangsari R and Noor, 2014: 50-69).

According to al-Syatibi, the purpose of *maqâsid syar'ah* is to achieve human benefit. Benefit can be realized if the five main elements can be realized and maintained, namely: *hifz al-dîn* (religion), guaranteeing religious freedom; *hifz al-nafs* (soul), maintains survival; *hifz al-'aql* (reason), guarantees creative thinking; *hifz al-nasl* (offspring), guarantees offspring and honor; *hifz al-mal* (wealth), property, property and wealth (Anwar, 2010: 76).

In an effort to realize and maintain the five essential elements, he divides the level of *maqasid* or the goal of the *shari'ah*, which is: *maqasid daruriyat*, *maqasid hajiyat*, and *maqasid tabsiniyat*. *Maqasid daruriyat* is intended to preserve five basic elements in human life. *Maqasid Hajiyat* is intended to eliminate difficulties or make maintenance of the five basic elements even better. While *Maqasid Tabsiniyat* is intended so that humans can do their best to improve the maintenance of the five basic elements. The non-realization of aspects of *Daruriyat* can damage the life of the human world and the hereafter as a whole. Abandonment of the *Hajiyat* aspect is not to damage the existence of five basic elements, but only leads to difficulties for humans as *mukallaf* in realizing it. Whereas the neglect of the *tabsiniyat* aspect, brings an effort to maintain five imperfect basic elements.

In contrast to al-Syatibi's opinion, Jasser Auda sought to offer the concept of modern fiqh based on *maqâsid syar'ah* (Mayangsari R and Noor, 2014: 50-69). *Daruriyat* is considered an essential aspect of human life itself. There is general agreement that this protection or necessity is the goal behind every divine law. The *maqâsid* at the level of need or pilgrimage is considered to be less essential for human life (Auda, 2015: 34).

According to Auda (2015: 36-37), based on his contemporary classification divides the *maqâsid* into three levels, namely (1) general *maqâsid (al-maqâsid al-ammah)*. This *Maqâsid* can be studied in all parts of Islamic law, such as the necessity and needs mentioned above, such as the new *maqâsid* proposals such as justice and ease; (2). Special *Maqâsid (maqâsid al-khassah)*: This *maqâsid* can be observed throughout the entire chapter of certain Islamic laws, such as child welfare in family law, protection from crimes in criminal law, and protection from monopolies in economic law; (3). *Maqâsid persial (Maqâsid al-juz'iyah)*: This *maqasid* is the intent behind a particular passage or law, such as the purpose of revealing the truth, in requiring a certain number of witnesses, the purpose of alleviating

difficulties, in allowing sick people not to fast and the purpose of giving eat for the poor, in prohibiting Muslims from hoarding meat during Eid al-Adha.

### **Public Areas for Trading: Traders versus Government**

Like the beginning of the history of the emergence of other markets, the tiban market in Warungasem Batang also went through experiments from one place to another. Tiban Market in Warungasem District, which consists of Tiban Market, Warungasem Village, Lebo Village, Cepagan Village, is the preferred place for Tiban Market because of its strategic location on the side of the road and many busy people visiting. Tiban Market in Warungasem Subdistrict was established for a number of years ago and was managed by the local community who had previously requested permission from the village of Tiban Market.

From the results of interviews with the Tiban Market manager in Warungasem Subdistrict, every week the Tiban Market merchant must issue cleaning fees, contributions to the charity of the mosque which are deposited to the local Tiban Market Village manager. In addition, the electricity fees are directly deposited to the place being overtaken. Benefit in the field of *muamalat* in the case of Tiban Market is obtained from traders who issue fees for the charity of the mosque. Keeping Religion (*ḥifẓ dīn*) in the case of Tiban Market can be maintained. Traders want to spend a small portion of their fortune on charity services for mosques/musholla.

Tiban Market in Warungasem District is in a public area in the form of a road. So, congestion often occurs. Tiban Market visitors and road users piled into one and had to be willing to stand in line and be careful when passing the road so that there would be no collisions between visitors to Tiban Market and road users.

Based on Article 34 verse 1 to verse 3 of Government regulations regarding roads, the space for road benefits includes road bodies, roadside channels and safety thresholds. The road benefit space is only for the median, road pavement, dividing line, road shoulder, roadside channel, sidewalk, slope, safety threshold, pile and excavation, culverts, road equipment, and other auxiliary buildings. The function of the road is reaffirmed in article 35 verse 1 of the government regulation on roads which reads: "The road body is only intended for traffic services and road transportation." Based on verse 1, the road area functions cannot be misused in any way, including used for activities buy and sell.

Everyone is prohibited from committing an act that results in damage or disruption of the road's function. Everyone is prohibited from committing an act which results in a disruption to the function of road equipment. This is reaffirmed in Article 28 verse 1 and 2 of Law Number 22 of 2009 concerning road traffic and transportation.

Keeping the soul (*hifz nafs*) in Tiban Market cannot be maintained properly. The object used as a trade stall in Tiban Market is a road area. The location of Tiban Market itself, located in the area of the road, does disturb road users. A small collision will occur if you are not careful when passing through the area. Road users and visitors to the Tiban Market pile up into one and must be willing to queue or jostle as they pass the road (Interview with Sri, August 12, 2017).

From Syarif's explanation, a seller of biting snacks selling in the area of the road is actually prohibited even though he does not know the exact rules in question. The reason he continues to sell is simply because selling in a very strategic street area and many visiting the Tiban Market. Moreover, Tiban Market provides almost all community needs (Interview with Syarif, August 12, 2017).

From Bambang's statement, female clothing merchant, selling in Tiban Market, which is located on the side of the road, is permitted because if it is prohibited, the government also must pay attention to the condition of the traders of Tiban Market. In addition, selling in Tiban Market can be a new job after he was laid off from his workplace (Interview with Bambang, August 12, 2017).

According to Novi, a grilled sausage trader, the use of the road area to trade in Tiban Market was not a problem. Selling at Tiban Market can also enhance our income because its strategic location on the edge of the road is always crowded with people. Meanwhile, according to Mrs. Kusniah, one of the children's clothing traders. He felt he did not know about the regulations or government regulations that prohibited selling in the area of the road. He claimed he did not know about the regulation. He sells in Tiban Market to help the husband's income and there are no other skills he has other than selling (Interview with Kusniah, 08 January 2018).

Waluyo the tiban market trader who sells tapes said:

"I don't know there are rules because we are so busy selling here. Other traders and I did not know of any government regulations. For us, the most important thing is trading. It is never quiet, always visited by the public. The road area is always crowded ". (Interview with Waluyo, January 08, 2018).

On another occasion, the villagers felt they had received permission. Tiban Market has obtained permission from the Village Head. Even though the Regional Regulation or government regulation prohibits selling in the road area, the village itself is uncertain. In the sub-district level, they also do not know about the existing regional regulation and only knows the regulations about road traffic and transportation. So far, the management of Tiban Market in Warungasem District has been managed by the local village community.

Most people do not feel disturbed by the existence of Tiban Market on the side of the road. They also have reasons why they do not mind such as paying attention to the

traders, for instance, they are not allowed to sell their products, but the arrangement is neat and can be passed by vehicles that do not cause traffic jam. (Interview with Anam, 29 December 2017).

Regarding government regulations that prohibit selling in the road area, only a small number of traders know. However, they just know without trying to apply the regulation. Most traders do not know clearly because so far there has never been socialization and control of the government. If the government prohibits, the government must also provide solutions or pay attention to traders who lose their jobs (Interview with Syarif, August 12, 2017).

True trading is a social activity to meet human needs. Trading is a part of interacting with people, as one of the core needs in life, where humans are not separated from it. Humans are motivated to look for treasures to maintain their existence and to increase the enjoyment of material and religion. However, all of these motivations are limited to three conditions, namely the assets collected in a halal way, used for good things and the property must be spent the God's way and the community where he lives.

In Tiban Market there are various kinds of goods to sell, starting from vegetables, snacks, clothes, shoes, and others. Traders sell goods that are permitted by Islamic law and do not damage the mind such as selling liquor and others. In trading, Tiban Market traders also do not cheat on scales. Intelligence is the source of wisdom (knowledge) and the medium of human happiness in the world and the hereafter. Allah SWT said in QS. Al-Isra: 70, which reads:

*"And verily We have honored the sons of Adam, We have carried them on the land and in the sea, We have given them sustenance from the good and We have exalted them with perfect advantages over most of the creatures We have created". (Surah Al-Isra: 70).*

Benefit in the field of *muamalah* can be found by human reason / thought through *ijtihad*. For example, the human mind can know that cheating especially cheating in trading activities is despicable behavior.

The traders who sell in Tiban Market can be helped by their economy because they can increase their income. Keeping the property (*hijz mall*) in the Tiban Market case is well maintained. The community chose to become a Tiban Market trader rather than being unemployed. In addition to being the livelihood of traders, Tiban Market is also a place of entertainment that is cheap for the community so that the Tiban Market is always crowded with people. Furthermore, it adds to the income of the Tiban Market traders.

The use of the road area as a stall trade for Tiban Market traders in Warungasem sub-district does not use a place rental system. There is no party renting out the place of trading for the traders of Tiban Market as in other regions. The places used by Tiban Market traders vary in size. There are broad and narrow ones depending on the needs of



the traders. Who can get a place quickly, there is no need to rent a place (Interview with Yudi, 12 August 2017). The problem of this place is one of the additional advantages for traders who do not need to spend money to rent a place.

Although the existence of Tiban Market is in the road area and creates congestion, the Tiban Market has never been lonely visited by the community. This makes the merchants continue to sell in the road area even though it disrupts vehicle traffic.

Regarding trading on the tiban market, the Prophet could be an inspiration. He is a successful trader. This is because of honesty, sincerity, and integrity of the Prophet Muhammad in maintaining the quality of goods. The Prophet taught the concept or benefit of conducting successful trade according to Islamic principles. His honesty encouraged the Makkah community to give him the title *ash-Shidiq* (the person who always said the truth and never lied). He sold the products he bought in Sham for sale in Mecca. He gets more benefits from the results of selling in the Sham country, which has many buyers. When the prophet was 25 years old and was married to Khadijah, he continued his trade as Khadijah's business partner. He traveled to various trade centers throughout the country (Wicaksana, 2014).

The concept of the Prophet in trading is to prioritize honesty and find a crowded place to trade to increase sales turnover. The use of public areas for the sake of trading Tiban Market in accordance with the concept of the prophet to find a place that is crowded with buyers. The reasons of the traders of Tiban Market in Warungasem subdistrict are because in Tiban Market there are various kinds of goods that community needs and the location of Tiban Market which is in the street area directly facing the people, making Tiban Market always crowded with people.

### **Public Area for Trading: Perception of Islamic Scholars (Ulama)**

Regarding the ulama's view of the use of the public area for the sake of trading in the Tiban Market, it is certainly not always the same as the foundation of Islamic legal theory. There are differences of opinion among scholars who allow and who prohibit the use of public areas for the sake of trading in Tiban Market.

According to KH. Masykur Hasyim, the presence of Tiban Market in Warungasem Subdistrict, unlike in other areas that are too badly jammed, congestion in the Tiban Market in Warungasem District is understandable. This consideration is based on the level of benefits and harm. Each individual wants to reach *maslahah* but to achieve that *maslahah* surely involve a clash. So when there is another conflict of interest, it is the government's duty (Interview with KH. Masykur Hasyim, July 4, 2017).

According to the Head of Indonesian Religious Council (MUI) Warungasem District, KH. M. Ichwan, the use of public areas for the Tiban Market trading activities is permitted. In relation to the Tiban Market case, so far the existing regulations are not too

strict in prohibiting the use of public areas to trade. Existing regulations tend not to work well because there is never a solution. Thus, the MUI itself responded neutrally during the time that *Muamalat* did not violate religion, meaning it was also not prohibited. The law will run according to needs. If something is more prosperous than the harm, then it is permissible. MUI do not dare to ban Tiban Market from using the road area to trade, because the government itself does not strictly prohibit (Interview with KH. Ichwan, December 05, 2017).

In the use of the road area for trade purposes, some scholars allow it to be based on the level of greater benefit obtained by the community rather than the level of harm. This is in accordance with fiqhiyah rules which read:

الأصل في المعاملة إلا باحّة حتى يذلل دليل على تحريمه

"Basically, *muamalah* law is permissible as long as there is no law that prohibits it".

*Maslahah daruriyah* is everything that becomes the joint existence of human life, must exist for their benefit. The *maslahah dharuriyah* is given to protect and guarantee the preservation of religion (*hifz al-din*), protect the soul (*hifz al-nafs*), protect the mind (*hifz al-aql*), protect offspring (*hifz al-nasl*), and protect property (*hifz al-mal*). (Suwarjin, 2015: 142).

The existence of Tiban Market in Warungasem subdistrict located in the road area is considered by most scholars to be understandable. Although the disadvantage is to disturb passing road users, there are more benefits such as increasing merchant income, reducing unemployment and becoming a cheap entertainment place for the lower middle class people. This consideration is based on the level of benefits and harm.

Benefit seen from the *syari'ah* side can be divided into three. There are those who are obliged to implement it, there are those who practice it, and some who change it. If many *maslahah* (benefits) have to do at the same time, then the most serious and important one is chosen. This is in accordance with QS. Al-A'raf verse 145:

*"And We wrote for him (Moses) on the tablets [something] of all things - instruction and explanation for all things, [saying], "Take them with determination and order your people to take the best of it. I will show you the home of the defiantly disobedient."*

**(Surah Al-A'raf verse 145) .**

The use of public areas as stalls trading in Tiban Market is permitted although in government regulations the use of road areas for selling is prohibited. There has never been a strict action from the government to control or socialize the regulation. The use of the road area to trade in Tiban Market is more expensive at the end of the day. Regarding

traffic congestion, it is understandable because in fact, the community in Tiban Market is always crowded with people.

According to KH. Abdul Malik, he did not agree with the existence of Tiban Market on the side of the road. Consequently, he never visited Tiban Market and just passed it. According to him, if there is an urgent need, he comes to visit the Tiban Market. Then, it will further disrupt traffic and increase congestion (Interview with KH Abdul Malik, October 4, 2017). In line with Kiai Malik, KH. Ikhwani gives the following explanation:

"The existence of Tiban Market on the roadside is clearly not allowed. Legally, the road use is prohibited. However, those who have the right to ban are from the government and must be able to find a solution. Hence, sellers do not monopolize the road area for the sake of trading by providing a suitable place for traders not to sell in the street area. In general, the existence of Tiban Market in the area of the road has many disadvantages due to disturbance, especially road users. Meanwhile, there are advantages such as profits for traders who sell (Interview with KH. Ikhwani, March 6, 2018).

Complaints, there are those who are unlawful (haram) and there are those who are less good (makruh) to do it. When gathered between *maslahat* (benefits) and *mafsadat* (harms), then the ones who have to be chosen are more masses (stronger), and if they are equal or equally strong, rejecting *mafsadat* is more important than achieving *maslahat*, because rejecting the *mafsadat* is already a benefit.

This is in accordance with the rules (Djazuli, 2006: 29).

دَفْعُ الضَّرَرِ أَوْلَى مِنْ جَلْبِ النَّفْعِ

"Refusing harms is more important than achieving benefits".

Based on the findings above, there are differences in the views of scholars regarding the use of public areas for trade purposes. The Islamic scholars (ulama) who allow and prohibit both have a basis or a strong reason. The opinion of scholars who forbid, argued that the reason for the use of the road as a stall trading in Tiban Market was still prohibited because it was very disturbing and took the rights of road users to pass the road safely and comfortably. The opinion of scholars who allow arguing that, there must be parties who are disadvantaged or benefit from the existence of Tiban Market in Warungasem District. Not entirely the existence of Tiban Market, which is on the edge of the highway, is one of the traders' faults. This consideration is based on the level of benefits and harm. There are more benefits obtained from Tiban Market than the consequences.

## CONCLUSIONS

Based on the discussion of the perceptions of traders and scholars on the use of the public area as a trade stall for the tiban market traders in the Warungasem District, Batang Regency can be summarized as follows. The traders use the public area in the form of a road as a stall trading in the tiban market in accordance with the concept of the Prophet that is to find a place that is crowded with buyers to increase sales turnover, though the state regulation is prohibited. They are more concerned with achieving economic income than complying with applicable regulations. Therefore, to justify its behavior, traders build arguments with a partial understanding of the teachings of the Prophet, for example the doctrine of finding a strategic place.

The traders want to bring their goods closer to the people. In the tavern market of Warungasem Subdistrict, there are various kinds of community needs merchandise and the location of the tiban market which is in the area directly facing the community makes the tiban market always crowded with people. This fact is another reason that traders continue to use public areas, highways and other public facilities as a place to trade.

There are differences of opinion among scholars in terms of whether or not the use of the area is permissible. Some of the differences of opinion allow, some also forbid. Some scholars who allow the tiban market argue that the existence of the market is more prosperous than the danger. This consideration is based on the level of benefits and harm. Some scholars who forbid the opinion think however the reason to use the road, trading remains prohibited because it is very disturbing and takes the right of road users to pass the road safely and comfortably.

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