



# BETWEEN 'ĀRIYAH AND GAŞB: LEGAL AMBIGUITY IN THE UNAUTHORISED USE OF PROPERTY IN ISLAMIC AND POSITIVE LAW

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## **Abstract**

The widespread practice of using others' property without explicit permission in communal settings raises a significant legal ambiguity regarding its classification between *'āriyah* (gratuitous loan) and *gaşb* (unlawful appropriation). This ambiguity becomes critical as such practices are socially normalized, yet potentially generate disputes over rights, liability, and ownership. This study aims to analyse the legal status of unauthorised use of property by clarifying the boundary between *'āriyah* and *gaşb*, and examining its implications within Islamic law and positive law. This research employs a qualitative normative-analytical approach, drawing on doctrinal analysis and observation of everyday practices in public and semi-public environments. The findings demonstrate that the absence of explicit consent shifts the legal character of use from permissible *'āriyah* toward *gaşb*, thereby triggering liability (*damān*) under Islamic law. In contrast, positive law tends to frame such conduct within the scope of unlawful acts or, under certain conditions, elements of theft. The study's contribution lies in clarifying the often-overlooked boundary between socially tolerated practices and legally prohibited acts, highlighting a gap between normative legal principles and lived practices. This gap underscores the need for clearer consent-based norms, institutional regulation of shared property, and legal awareness to prevent disputes and ensure accountability.

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## A. Introduction

In many communal environments, the practice of using others' property without explicit permission has become socially normalized, yet it raises unresolved legal questions regarding consent, liability, and the boundary between permissible use and unlawful appropriation. This is based on the Uşul al-Fiqh principle which states that "the original ruling of mu'āmalah is permissible as long as there is no Naşş that prohibits it." This indicates that all worldly matters that do not have a prohibition are permissible and can be practiced in human social life. The issue of borrowing and lending (*'āriyah*) has gained renewed urgency in contemporary communal settings, where the increasing practice of using others' property without explicit consent has led to recurring disputes over rights, liability, and the legal status of such transactions (Suarni 2023).

In practice, the legal relationship between parties in borrowing activities becomes problematic when the use of property occurs without explicit consent, creating uncertainty regarding rights, obligations, and the applicable legal classification. Based on its nature, a loan for use is a reciprocal agreement, but not a perfect one. Because essentially, a gratuitous loan for use brings consequences that make the legal construction of a loan for use a "unilateral" agreement, meaning the burden of obligation almost entirely falls on the borrower (Harahap 1986, 295).

The absence of a clear agreement in borrowing practices generates a classification problem: should such acts be treated as legitimate *'āriyah* or as unlawful *gaşb* with legal consequences?. In practice, the habit of "borrowing and using" without explicit permission empirical observations and existing socio-legal studies indicate that this practice commonly occurs in public spaces, particularly in mosques and dormitory environments where shared property use is prevalent. leading to disputes over the rights to goods/benefits and the potential for material and non-material losses (Az-Zuhaili 2006, 4038).

Classical fiqh literature provides a well-established doctrinal framework for understanding *'āriyah*, particularly through the works of scholars such as Wahbah al-Zuhaylī, who systematically outlines its legal definition, conditions, and implications. In this framework, *'āriyah* is strictly conditioned upon the owner's explicit permission, clear limitations regarding the manner and duration of use, and the borrower's responsibility to maintain and return the property. This doctrinal approach reflects a normative-legal methodology that emphasises consent and accountability as central elements of lawful utilisation. However, while this body of scholarship offers a comprehensive legal foundation, it remains largely prescriptive and does not fully engage with the complexities of contemporary social practices where such conditions are often absent or informally negotiated.

In contrast, contemporary socio-legal studies, such as those conducted by Ernawati and Baharudin (2018), adopt an empirical approach to examine everyday practices within pesantren environments (Ernawati and Baharudin 2018). Their findings reveal that *gaṣb* the use of others' property without permission has, in certain contexts, become a socially normalised behaviour, shaped by communal culture and patterns of shared living. Although this study contributes important insights into the lived reality of property use, it does not sufficiently analyse the legal implications of such practices, particularly in terms of how they should be classified within Islamic legal categories or compared with positive law frameworks.

The existing literature thus reveals a gap between normative legal doctrines and empirical social practices. While classical fiqh clearly delineates the requirements of *'āriyah*, and contemporary studies document the prevalence of *gaṣb* as a social phenomenon, there remains a lack of analytical work that bridges these perspectives. Specifically, the boundary between permissible borrowing and unlawful appropriation in cases of unauthorised use remains underexplored. This study seeks to address this gap by critically examining how such practices should be legally classified, and by

situating the analysis within both Islamic law and positive law frameworks.

From the perspective of societal customs (*'urf*), borrowing and lending can be seen in two ways: in terms of essence and metaphor (Akuntansi 2012). 1) In Essence: *'Āriyah* is lending a thing that can be utilized without damaging its substance. According to the Maliki and Hanafi schools, its ruling is that the benefit is for the borrower without any compensation, or the borrower possesses something that compels with benefit according to custom (Syafe'i 2001, 142). Al-Kurkhi, a scholar of the Shafi'i and Hanbali schools, opined that what is meant by *'āriyah* is the permission to derive benefit from an object. 2) In Majazi: *'Āriyah* is the borrowing of items related to measurements, weights, calculations, and so on, such as eggs, money, and any items that can be utilized without damaging their substance. The *'āriyah* of these items must be replaced with similar or equivalent items. Although it is included in *'āriyah*, it is considered *'āriyah* in a metaphorical sense, because it cannot be utilized without damaging it. Therefore, having utility and the ability to utilize it are essentially the same (Al-Kāsānī 1996, 251).

Therefore, in essence and metaphorically, borrowed items in general must be taken care of by the borrower (*musta'ir*), in this case, the item (*mu'ar*) which in general must be preserved so that it can be used by other borrowers (*mu'ir*). The Hanafite scholars believe that borrowed items are a trust for the borrower, whether used or not. Thus, he is not responsible for the item if it gets damaged, just like in a rental or a deposit, unless the damage is intentional or caused by negligence. This is because the burden is not imposed on those who are not the perpetrators. Moreover, the borrower is also categorized as someone who takes care of someone else's property, which is considered a kindness to the owner (Syafe'i 2001, 149).

In Indonesian positive law, the use of another person's property without permission may fall within the scope of unlawful acts or, under certain conditions, constitute elements of theft, depending on intent and factual circumstances (Yuska, Hernisawati, and Abrori 2024). However, a significant gray area emerges when the use of property

involves the taking of benefits without any intention of permanent appropriation. This ambiguity generates legal uncertainty, particularly in determining liability, the classification of the act, and the potential for dispute. Such conditions are further complicated in communal contexts, where informal norms often override formal legal requirements, thereby increasing the risk of normative inconsistency between social practice and legal standards.

From the perspective of Islamic law, wealth is understood as a trust (*amānah*) that must be managed in accordance with divine prescriptions, in which both individual and moral responsibilities are embedded. The legal status of property use is therefore closely tied to the structure of contractual relationships (*‘uqūd*), as the type and validity of a contract determine the resulting legal rulings. Classical fiqh emphasises that lawful utilisation of property is contingent upon clear consent and defined contractual terms, yet contemporary practices frequently operate outside these formal requirements. This disjunction between normative legal principles and everyday behaviour highlights a critical gap that has not been sufficiently addressed in existing scholarship.

In practice, Muslim communities often engage in the use of shared or public property such as mosque facilities or dormitory resources without a *sharīh* (explicit) contract governing permission, duration, or responsibility. For instance, congregants may use sandals or prayer garments provided in mosques without formal consent or clearly defined ownership arrangements. While such practices are widely perceived as socially acceptable, they raise fundamental legal questions regarding their classification within Islamic jurisprudence and their implications under positive law. This situation reflects not merely a practical issue, but a deeper problem of legal ambiguity, where the boundary between permissible *‘āriyah* and prohibited *gaṣb* becomes increasingly blurred (Sitepu 2015).

Based on this problem, the study is guided by the following research questions: (1) How should the unauthorised use of property without explicit agreement be classified within the conceptual framework of *‘āriyah* and *gaṣb* in Islamic law? (2) How does

Indonesian positive law interpret and regulate such practices, particularly in relation to unlawful acts and elements of theft? (3) What socio-legal factors contribute to the normalization of these practices in communal environments, and how do they affect legal awareness and accountability?.

Accordingly, this article aims not only to describe but to critically analyse the boundary between *'āriyah* and *gaṣb* by integrating doctrinal and socio-legal perspectives. It seeks to bridge the gap between normative legal frameworks and lived practices by offering a comparative analysis of Islamic law and positive law, while also identifying the underlying factors that sustain informal borrowing practices (Handoko and Tanjung 2023). Furthermore, the study proposes a conceptual and practical framework for regulating shared property use through consent-based norms, institutional governance, and preventive measures, thereby contributing to the development of more coherent and applicable legal standards in both domains.

In Indonesian positive law, the use of another person's property without permission may fall within the scope of theft or an unlawful act, depending on the presence of key elements such as intent, control, and resulting harm, as reflected in the Criminal Code (KUHP). However, this classification is not merely a matter of textual provision; it requires contextual interpretation. The absence of intent to permanently deprive the owner, for instance, may weaken the qualification as theft, yet the act may still constitute a violation of property rights under broader doctrines of unlawful conduct. This indicates that positive law operates with a relatively structured evidentiary framework, emphasizing clear elements to determine legal responsibility.

When compared to Islamic legal doctrine, a critical divergence emerges. While positive law tends to rely on formal elements and explicit proof, Islamic law allows for a more flexible assessment through concepts such as *'urf* (custom) and implicit permission, particularly in communal settings. This flexibility, however, also creates ambiguity in determining whether an act constitutes permissible *'āriyah* or impermissible *gaṣb*. The research gap,

therefore, lies in the absence of an integrated analytical framework that reconciles the procedural clarity of positive law with the normative elasticity of Islamic jurisprudence.

By situating these two legal systems in comparison, this study highlights that neither framework alone fully resolves the problem of informal borrowing practices. Positive law may risk over-formalization and misclassification, while Islamic law may permit excessive ambiguity in the absence of clear governance. Accordingly, a combined approach drawing on the strengths of both systems is necessary to develop clearer standards of consent, usage, and liability, thereby addressing the central issue of legal uncertainty in communal property use.

However, there is a gray area when benefits are taken without the intent to unlawfully possess, thus requiring the establishment of internal norms and education. Wealth in Islam is a trust that must be preserved, in which there are rights of Allah. Therefore, its management must be in accordance with the provisions of the giver of the trust, namely Allah Swt. In matters of wealth, it is closely related to the provisions of contracts or types of agreements that we often refer to as contracts. The forms of these contracts will determine the legal rulings that will be produced.

In many Muslim communal settings, everyday practices involving the use of shared property such as mosque sandals, prayer garments, or dormitory facilities often occur without a clearly defined *sharīḥ* (explicit) contractual framework. While such practices are socially normalized and perceived as benign, they raise significant juridical concerns within Islamic law. The absence of explicit consent, defined duration of use, and clarity regarding liability introduces legal uncertainty, increases the risk of disputes, and creates normative ambiguity in determining whether such acts fall under permissible *'āriyah* (gratuitous loan) or impermissible *gaṣb* (usurpation). This ambiguity is further complicated when these informal practices intersect with modern regulatory frameworks governing public or institutional property, thereby necessitating a more rigorous analytical approach.

Despite the prevalence of such practices, existing discussions in classical and contemporary fiqh tend to address 'āriyah and gaṣb in abstract doctrinal terms, without adequately engaging with their application in contemporary communal contexts where informal norms prevail. This reveals a significant research gap at the intersection of Islamic jurisprudence, socio-legal practice, and positive law. Specifically, there is limited scholarship that systematically examines how implicit permission, customary usage ('urf), and institutional governance interact to shape the legal characterization of borrowing practices in shared religious and residential environments. As a result, the issue remains insufficiently theorized, often leading to inconsistent interpretations and practical uncertainty.

Accordingly, this study is guided by the following research questions: (i) how can the conceptual boundaries between 'āriyah and gaṣb be more precisely defined in the absence of explicit contractual elements; (ii) what socio-cultural and institutional factors contribute to the normalization of non-contractual borrowing practices in worship and dormitory environments; and (iii) how can Islamic legal principles be integrated with positive legal frameworks to develop effective governance mechanisms that minimize disputes and ensure accountability (ḍamān)?

Building on these questions, this article aims not merely to describe existing practices, but to provide an analytical and integrative framework that bridges doctrinal fiqh analysis with socio-legal realities. It seeks to (i) reconstruct the doctrinal criteria distinguishing 'āriyah from gaṣb in light of contemporary usage patterns; (ii) critically map the underlying factors that sustain informal borrowing practices; and (iii) propose normative and practical guidelines for institutional governance that align Islamic legal principles with modern legal standards. Through this approach, the study contributes to advancing a more context-sensitive understanding of property use in Muslim communal life, offering both theoretical clarification and practical relevance.

## B. Result and Discussion

### 1. The Concept of Borrowing and Using from the Perspective of Islamic Law and Positive Law

Within Islamic jurisprudence, *'āriyah* is commonly defined as a gratuitous loan that permits the use of an item without compensation, on the condition that the object remains intact and is returned to its owner. While this definition is well established in classical fiqh, its application in contemporary communal settings such as mosques or shared residential spaces reveals a critical gap between doctrinal clarity and social practice. In many cases, the absence of explicit consent, defined duration, and clear liability raises uncertainty as to whether such use still qualifies as *'āriyah* or instead shifts into the domain of *gaṣb*. This indicates that the concept of *'āriyah* cannot be treated merely as a static legal definition, but must be re-examined in light of implicit permission, customary norms (*'urf*), and institutional governance.

The Prophetic tradition narrated from Shafwan ibn Umayyah provides an important normative foundation for this analysis. In the report, the Prophet explicitly clarifies that the borrowed shield is not taken permanently but remains a guaranteed loan, thereby affirming two essential elements of *'āriyah*: the preservation of ownership and the presence of liability (*ḍamān*) in case of loss or damage. This hadith is particularly relevant to the present study because it underscores that borrowing is not merely a matter of permissibility, but also of clearly defined responsibility. In contexts where such clarity is absent as in the informal use of communal property the risk emerges that the practice may deviate from *'āriyah* and approach *gaṣb*, especially when the boundaries of use and accountability are undefined.

Accordingly, rather than engaging in an extensive linguistic exposition of related terms, this study adopts a functional approach to the terminology of *'āriyah*, *i'ārah*, and *isti'ārah*. These terms are treated as conceptually equivalent within fiqh literature, referring to the reciprocal acts of lending and borrowing between the *mu'īr* (lender) and *musta'īr* (borrower). The analytical focus, therefore, shifts from

terminological variation to the substantive legal criteria that determine validity namely consent, clarity of use, and allocation of liability. By foregrounding these elements, the discussion moves beyond descriptive compilation and instead contributes to clarifying how classical doctrines can be operationalized in addressing contemporary ambiguities in communal property use.

Classical jurists differ in their characterization of the *i'ārah* contract, and this divergence is not merely terminological but carries significant legal implications. The Ḥanafī and Mālikī schools tend to classify *i'ārah* within the category of *tamlīkāt* (transfer-based contracts), implying a temporary transfer of usufruct rights from the owner to the borrower. In contrast, the Shāfi'ī and Ḥanbalī schools conceptualize *i'ārah* as a form of *ibāḥah* (mere permissibility), in which no proprietary transfer occurs, but only a revocable authorization to use the object. This doctrinal distinction is crucial because it shapes how consent, control, and liability (*ḍamān*) are understood within the borrowing relationship.

From an analytical perspective, the classification of *i'ārah* as *tamlīkāt* tends to imply a stronger legal structure, where the borrower's right to use the item is more clearly defined and, consequently, where liability for misuse or damage is more readily established. By contrast, the *ibāḥah* approach allows for greater flexibility but also introduces ambiguity, particularly in contexts where permission is implicit or socially assumed rather than explicitly granted. In contemporary communal environments such as mosques or shared dormitories this distinction becomes highly relevant. Practices that rely on assumed permission may align with the *ibāḥah* model, yet they risk slipping into *gaṣb* when the limits of use and responsibility are unclear or exceeded.

Therefore, the divergence among the schools should be understood not as a purely theoretical disagreement, but as offering alternative legal lenses through which modern practices can be evaluated. This study argues that the absence of explicit contractual elements in communal settings exposes the limitations of an *ibāḥah*-based interpretation, as it may fail to provide sufficient safeguards

against misuse and dispute. Conversely, adopting a *tamlīkāt*-oriented framework emphasizing clearer consent, defined scope of use, and enforceable liability offers a more robust basis for governance. By synthesizing these doctrinal perspectives, the analysis moves beyond mere comparison and contributes to resolving the central ambiguity between permissible borrowing (*‘āriyah*) and unlawful appropriation (*gaṣb*) in contemporary practice (Al-Islāmiyyah 2012, 181):

1. The Hanafite scholars, as found in Ḥāsiyyah Ibn ‘Ābidīn (‘Ābidīn 2008, 502) argue that *i’ārah* is (تمليك المنفعة بغير عوض); which means, “(transferring) the ownership of benefit (to another party) without compensation”;
2. The Maliki scholars, as found in al-Sharḥ al-Ṣagīr (Al-Qazwīnī 2025, 570) argue that *i’ārah* is (تمليك المنفعة مؤقتة بلا عوض); which means, “(transferring) the ownership of benefit (to another party) for a certain period without compensation”;
3. The Shafi’i scholars, as found in Sharḥ al-Minhāj wa-ḥawāshih, argue that *i’ārah* is (إباحة الإنتفاع بالشيء مع بقاء عينه); which means, “allowing/authorizing (another party) to benefit from a tangible object while the object itself remains intact (not lost)”;
4. The Hanbali scholars, as found in Al-Mughnī (5: 220), argue that *i’ārah* is (إباحة الإنتفاع بعين من أعيان المال), meaning “allowing/permitting (others) to utilize a tangible object that is part of wealth.”

Scholars explain the meaning of *i’ārah* both linguistically and terminologically. This contract is named *i’ārah* or *‘āriyah*, which is derived from the word *a’āra* (أَعَارَ) that literally means open (not closed) or bare; this contract is called *i’ārah* because the *mu’ir* (the lender) does not receive any compensation (*‘iwaḍ*) for the *tamlīk al-manfa’ah* or *ibāḥah al-manfa’ah* to the other party (Al-Syarkhasi 1993, 133); that is, it is devoid, vacant, empty, null, or hollow of *‘iwaḍ* (compensation).

Four definitions of *i’ārah* proposed by scholars can be detailed as follows:

1. The Hanafite and Maliki scholars use the term *tamlīk al-manfa'ah*; whereas the Shafi'i and Hanbali scholars use the term *Ibāḥah al-Intifā*;
2. The Hanafiah and Malikiah scholars introduced the term without compensation (*bi-gayri 'iwaḍ*); this was not explicitly revealed by the Shafi'iah and Hanabilah scholars;
3. The Maliki scholars use the term *mu'aqqat* (a specific period of time); this is not explicitly stated by other scholars;
4. The Shafi'i scholars use the term *eternal* (*Baqā' al-'Ayn*); this is not explicitly stated by the Hanafi, Maliki, and Hanbali scholars.

The distinction between *ibāḥah* (mere permissibility) and *tamlīk* (transfer of usufruct rights) entails fundamentally different legal consequences, particularly when applied to contemporary communal practices such as the use of mosque facilities or shared dormitory property. Under an *ibāḥah* framework, the user's right is based on implicit or general permission, which may be easily assumed but lacks clearly defined boundaries of use and accountability. This often results in normative ambiguity, where users perceive their actions as permissible despite the absence of explicit consent or agreed limitations. In contrast, a *tamlīk*-oriented understanding implies a more structured legal relationship, where the scope of use, duration, and liability (*ḍamān*) are more clearly established, thereby reducing uncertainty and the risk of dispute.

This distinction is directly relevant to the research problem, as many everyday practices in communal religious spaces operate within an assumed *ibāḥah* paradigm, yet lack the safeguards necessary to prevent misuse or conflict. By highlighting the legal consequences of each framework, this study demonstrates that reliance on implicit permissibility alone is insufficient to ensure juridical clarity. Instead, incorporating elements associated with *tamlīk* such as clearer consent mechanisms and defined responsibility can help bridge the gap between classical doctrine and contemporary practice, and provide a more coherent basis for distinguishing between legitimate *'āriyah* and problematic *gasb*. The term *gayr al-'iwaḍ* or *bilā 'iwaḍ* is a term known

in the science of contracts; namely, the contracts of mu'āwaḍāt and tabarru'āt. The contract of mu'āwaḍāt is a contract whose legal consequence is the transfer of ownership of the object (ma'qūd 'alayhi) accompanied by a counter-value (iwaḍ); whereas the contract of tabarru'āt is a contract whose legal consequence is the transfer of ownership of the object (ma'qūd 'alayhi) without a counter-value (gayr al-iwaḍ).

The term mu'aqqat is explicitly stated by the Maliki scholars; the term mu'aqqat is related to the istimrāriyy contract or the zamaniyy contract; that is, a contract whose effectiveness is sustained in relation to time or duration. Among the contracts that contain the element of duration are the qarḍ contract, the ijarah contract, the syirkah contract, and the muḍārabah contract.

The term eternal (Baqā' al-'Ayn) is explicitly stated by the Shafi'i scholars. The term eternal (Baqā' al-'Ayn) regarding the object of the transaction is part of the ijārah and iqrar wakaf contracts; because ijārah and wakaf are related to consumable property (māl istihlākī) and non-consumable property (māl isti'mālī).

In Indonesian positive law, a loan for use (*pinjam pakai*) is defined as an agreement in which one party grants another the right to use an item free of charge, with the obligation to return it after a specified period or upon completion of its use, as regulated in Articles 1740–1753 of the Indonesian Civil Code. At a normative level, this formulation appears broadly compatible with the concept of *'āriyah* in Islamic jurisprudence, particularly in its emphasis on gratuitous use and the obligation of restitution.

However, a closer comparative analysis reveals important differences in legal structure and practical implications. Indonesian civil law places strong emphasis on explicit contractual elements such as clearly defined parties, object, duration, and enforceable obligations thereby providing a formal legal framework that reduces ambiguity and facilitates dispute resolution. In contrast, classical fiqh accommodates a wider spectrum of permissibility, including implicit consent and customary practice (*'urf*), which may validate usage even in the absence of formal agreement. While this flexibility allows for

social ease in communal contexts, it simultaneously introduces uncertainty regarding the limits of use and the allocation of liability (*damān*).

This divergence is particularly significant in the context of everyday practices in mosques or shared residential environments, where the use of communal property often occurs without explicit contractual articulation. From the perspective of positive law, such practices risk falling outside the scope of legally recognized agreements, thereby weakening claims to lawful use and accountability. Conversely, from a fiqh perspective, they may still be tentatively justified under *'āriyah* or *ibāḥah*, albeit with unresolved ambiguities. By juxtaposing these two legal frameworks, this study highlights a critical gap: the absence of clear governance mechanisms that integrate the doctrinal flexibility of Islamic law with the procedural certainty of positive law. Addressing this gap is essential for minimizing disputes and ensuring a more coherent classification between permissible borrowing and unlawful appropriation (*gaṣb*) in contemporary communal settings. The owner of the item retains absolute ownership, while the borrower only has the right to use it.

Loan for use is one type of agreement recognized in the Civil Code (hereinafter referred to as "KUHPerdata"). However, this type of agreement is not often heard of by the public. The word "borrow" leads many to equate the term "borrow and use" with the term "borrow and lend" (Subekti 2014, 118). In fact, in daily life, people often use the term "borrow and use," such as when borrowing a motorcycle. However, the community does not know that it is actually a loan for use. Article 1740 of the Civil Code states that "A loan for use is an agreement in which one party gives a thing to the other party to be used free of charge, on the condition that the recipient of the thing, after using it or after the specified time has elapsed, will return the thing." Unlike borrowing and lending known as "consumable loan" (hereinafter referred to as "borrowing and lending") in the Civil Code. Article 1754 of the Civil Code states that "a consumable loan is an agreement in which the first party delivers a certain amount of consumable goods to the second party on the condition that the second

party will return similar goods to the first party in the same quantity and condition” (F. A. Saputra, Hukum, and Udayana, n.d.).

Borrowing and lending is formed because there is an obligation that occurs between the parties. Obligations themselves arise from agreements or from the law. The Civil Code states that “obligations arise from agreements or from the law.” This means that it is the agreement or the law that gives rise to the obligation. The Civil Code itself does not regulate the definition of an obligation. Therefore, to understand obligations, the opinions of legal experts are certainly needed. One of them is the opinion of I Ketut Oki Setiawan that “Obligation (*verbintenis*) is a legal relationship between two parties in the field of wealth, where one party (the creditor) has the right to a performance, and the other party (the debtor) is obliged to fulfill that performance” (Setiawan 2015, 1) This means that in an obligation, there are legal relationships, parties, performances, as well as rights and obligations.

In Islamic jurisprudence, *gaşb* is generally understood as the unlawful use or appropriation of another person’s property without valid permission. While classical definitions emphasize elements such as seizure, open use, and the absence of ownership rights, these formulations require further analytical engagement when applied to contemporary communal practices. In particular, the assumption that *gaşb* necessarily involves an intention to permanently possess the object is overly restrictive. In many real-world cases such as the use of mosque sandals, shared prayer garments, or dormitory facilities individuals may only intend temporary use, yet still operate without explicit authorization or clearly defined boundaries. This raises a critical question: can temporary, non-consumptive use without permission still constitute *gaşb*?

From a doctrinal perspective, the key issue lies not in the duration or intention of use, but in the absence of valid consent and the resulting infringement on the owner’s control rights. Classical jurists differ on the extent to which implicit permission or customary practice (*urf*) can mitigate this infringement. However, when such practices lack clear institutional regulation such as signage, established

borrowing procedures, or defined responsibility for loss and damage they risk crossing the threshold from tolerated usage into unlawful appropriation. This is especially relevant in communal environments, where the boundaries between shared access and individual rights are often blurred.

Accordingly, this study argues that *gaṣb* should be reinterpreted in a functional rather than purely definitional manner. The determining factors are not merely linguistic or formal, but relational and contextual: whether consent can be reasonably established, whether the scope of use is clearly limited, and whether liability (*damān*) is acknowledged. By applying these criteria, practices that are socially normalized but legally unstructured can be more accurately evaluated, thereby clarifying the boundary between permissible *āriyah* and impermissible *gaṣb* in contemporary settings (Razzaq Bulatanias 2023).

The use of another person's property without the owner's knowledge such as wearing someone else's sandals in a mosque raises complex legal questions that cannot be resolved through a single categorical label. Under Indonesian positive law, particularly Articles 362 and 364 of the Criminal Code, such conduct may prima facie fall within the scope of theft, as it involves the unauthorized taking or use of another's property. However, a more nuanced interpretation is required. The classification as theft depends not only on the act itself, but also on elements such as intent (*mens rea*), the duration of control, and whether there is an intention to permanently deprive the owner of the object. In many communal cases, the user's intention is temporary and functional rather than acquisitive, which may render the application of "theft" disproportionate and instead shift the analysis toward minor offenses or unlawful acts that disrupt public order.

From the perspective of Islamic law, the issue is similarly complex and cannot be reduced to a single doctrinal category. While analogies are often drawn to concepts such as *sariqah* (theft), *gaṣb* (usurpation), *khiyānah* (breach of trust), or *gulūl* (misappropriation of entrusted property), each of these carries specific legal thresholds that

may not be fully met in cases of informal, temporary use. For instance, *sariqah* requires strict evidentiary and substantive conditions, including covert taking and intent of appropriation, which are often absent in open, short-term communal use. Conversely, *gaṣb* may be more applicable where the act involves unauthorized control, even without intent to own.

Given these doctrinal nuances, such conduct is more appropriately situated within the category of *jarimah ta'zīr*, where the determination of wrongdoing and sanction is left to judicial or institutional discretion based on context, harm, and public interest. This classification allows for proportionality, taking into account factors such as intent, social norms, and the presence or absence of clear governance mechanisms. In this sense, both positive law and Islamic law reveal a shared challenge: how to balance formal legal protection of property rights with the realities of communal practice. This reinforces the central argument of the study that clearer regulatory frameworks grounded in both fiqh principles and positive legal standards are necessary to prevent over-criminalization on the one hand and normative ambiguity on the other (Syahrir and Muamar 2023).

Practices involving the unauthorized use of another person's property should not be generalized as uniformly occurring across all sectors or social groups without empirical support. However, observations in communal environments such as mosques, dormitories, or other shared facilities suggest that such conduct often emerges in contexts where access is relatively open and social trust is implicitly assumed. In these settings, individuals may feel permitted to use available items without explicit authorization, particularly when norms of mutual assistance and shared use are culturally embedded.

Rather than attributing this behavior broadly to all layers of society, it is more analytically precise to understand it as a situational phenomenon shaped by weak governance structures, the absence of clear usage protocols, and reliance on informal trust. When such trust is not accompanied by clearly defined boundaries of permission and responsibility, it may lead to misuse whether intentional or

inadvertent. Thus, the issue is less about generalized moral failure and more about the gap between social expectations of trust and the lack of institutional mechanisms to regulate and safeguard that trust (Azelchie Caroline, Lisnawaty W. Badu, and Nuvazria Achir 2024).

One form of violation of the law is a criminal act, which is an action that violates or does not comply with a set of established rules (Kurniawan 2020). Such actions carry legal risks, and if the owner feels aggrieved, these actions can be reported to the authorities because the element of taking someone else's property, either partially or entirely, unlawfully has been fulfilled. Criminal acts (Theft/Gasb) such as taking someone else's sandals without permission, especially taking them away (even if they were swapped), are forms of gasb or taking someone else's rights, which in a legal context can be categorized as petty theft.

## **2. The Legal Consequences of Tamlīk and Ibāḥah**

In Islamic jurisprudence, *al-milk* refers to a legally recognized relationship between a person and property that grants the authority to control, use, and dispose of it within the bounds of the law. While this definition is well established at the theoretical level, its relevance becomes more apparent when examined in relation to contemporary communal practices. In settings such as mosques or shared residential spaces, the boundaries of ownership are often blurred by assumptions of collective access, leading to uncertainty over who holds legitimate control (*milk*) and to what extent others may lawfully use the property.

This study departs from a purely definitional treatment by situating *al-milk* within the problem of informal borrowing practices. The key analytical issue is not merely who owns the object, but how ownership rights are operationalized in contexts where permission is implicit rather than explicit. When individuals use communal property without clear authorization, they may inadvertently infringe upon the owner's *milk*, even if no harm is intended. This highlights a critical tension between the legal exclusivity inherent in *al-milk* and the social norms of shared use.

Accordingly, this article proposes a functional interpretation of *al-milk* that emphasizes not only formal ownership, but also the need for clear governance mechanisms that regulate access and responsibility. By linking the concept of *al-milk* to issues of consent, scope of use, and liability (*ḍamān*), the analysis contributes to resolving the ambiguity between permissible borrowing (*‘ariyah*) and unauthorized use (*gaṣb*) in contemporary communal environments.

Shihāb al-Dīn al-Qarāfi in the book *Al-furūq* explains that “ownership is a legal determination that is certainly attached to a physical object or benefit, allowing the owner to utilize it or receive compensation from it as appropriate” (Al-Qarāfi 1998, 209). Muhammad Abū Zahrah in the book *al-Milkīyah wa Naẓarīyat al-‘Aqd* (Abū Zahrah 1962, 63) states that Ownership is “the authority to utilize something, whether it be an object or a benefit; this authority is not possessed by anyone except as determined by Allah’s decree; because all rights, including ownership rights, do not exist except as established by Allah and the causes for the emergence of those rights are also determined.” Rights do not arise from the characteristics of something (an object), but rights emerge from the permission/provisions of Sharia, and Sharia makes it a cause that produces legal consequences.

The relationship between humans and wealth and ownership; wealth is an object that can be owned by humans (*mamlūk*) and a place of ownership (*maḥall lil-milkīyah*), and humans hold the position of owner (*Mālik*); wealth is obtained thru lawful means (*kasb al-ḥalāl/tijārah*) which gives rise to rights based on Sharia law.

The consequence of the opinion of the Hanafiah and Malilikiah scholars, who state that *i’ārah* is (تمليك المنفعة), is that *Tamlīk* is a legal relationship between the owner and the property characterized by: a) the owner can perform legal acts fully (if the ownership includes *milk tām*), b) without being bound by time, c) without being bound by place, d) a certain manner of utilization (*ṭarīq al-intifā*) that is appropriate based on custom (*al-‘urf*; *al-‘ādah muḥakkamah*), and e) the right to utilize received by the *musta’ir* can be transferred without needing permission from the *mu’ir*.

The views of Hanafiah and Malikiah scholars regarding *i'arah* are fundamentally inseparable from the initial discussion about wealth, which consists of physical objects (corporeal objects [al-'ain]) and their benefits that can be utilized under normal conditions (freely), not under forced conditions. Rather than presenting an exhaustive classification of contracts related to physical objects and their benefits, this study selectively focuses on those most directly relevant to the research problem—namely, *'ariyah*, *ibāḥah*, and *gasb*. These three frameworks capture the core legal spectrum between permissible use, tolerated access, and unlawful appropriation, and therefore provide a more precise analytical lens for examining contemporary communal practices.

This selective approach is necessary to avoid unnecessary doctrinal breadth and to maintain analytical focus. By concentrating on these key categories, the discussion is able to move beyond textbook exposition and instead examine how each framework operates in practice particularly in environments such as mosques and shared residential spaces, where the boundaries between permission, custom, and violation are often unclear. This enables the study to directly address the central research problem: how to distinguish legitimate borrowing from unauthorized use in contexts where formal contractual elements are absent. Accordingly, the analysis does not aim to catalogue all possible contracts in fiqh, but to critically engage with those that have the most explanatory power for understanding the legal ambiguity under investigation.

First, the sale and purchase agreement; the sale and purchase agreement is the parent agreement (*umm al-'aqd*) in the fiqh of *mu'āmalāt māliyyah* because the provisions of the sale and purchase agreement are used as a benchmark or benchmark for other *mu'āmalāt māliyyah* agreements. The sale and purchase agreement consists of the *ṣiḡhah* agreement consisting of *ijab* and *qabul*, carried out by the seller and the buyer (as legal subjects), the objects being traded are *mabī* (the assets being sold) and *thaman* (price), and the legal consequences of the sale and purchase agreement are *intiḡāl al-milkīyah* (transfer of ownership of the object of the agreement [*mabī*

which originally belonged to the seller changes to belong to the buyer; and tsaman which originally belonged to the buyer changes to belong to the seller]). Mabī in the sale and purchase agreement consists of physical objects (bodily objects) and their benefits.

Second, the *ijārah* (rent) contract; the sale and purchase contract consists of *ṣīghah*, a contract consisting of *ijab* and *qabul*, carried out by *musta'jir* and *mu'jir/ajir* (as legal subjects), the objects exchanged are benefits/services (property sold) and *ujrah* (rent/wages), and the legal consequences of the sale and purchase contract are *intiqaal al-milkīyah* (transfer of ownership of the object of the contract [*manfa'ah* which originally belonged to *mu'jir/ajir* changes to belong to *musta'jir*; and *ujrah* which originally belonged to *musta'jir* changes to belong to *mu'jir/ajir*]). Physical objects (*al-'ain*) which are also known as *maḥall al-manfa'ah* are not sold; what is sold is only the benefits of *maḥall al-manfa'ah*.

For example, a shop; if the shop is sold to another party, then the *mabī* in the sale-purchase contract consists of the physical object and its benefits (to be used as a residence and/or business). So, what is sold is the physical object of the shop and its benefits; whereas the shop that is transacted with an *ijārah* contract, what is sold is the benefit of the shop (to be used as a residence and/or business), while the physical shop itself is not sold.

Third, *i'ārah*; *i'ārah* is part of *tabarru'āt* contracts; that is, contracts whose legal consequence is specifically the transfer of ownership (*intiqaal al-milkīyah*) of the object of the contract; namely, the benefit (Syubayr 2009, 70). The benefit that initially belonged to the lender becomes the property of the borrower. In the view of the Hanafī and Mālikī scholars, the essence of *i'ārah* is *hibah al-manāfi* (granting the benefit of an object) just as the essence of *ijārah* is *bay' al-manāfi* (selling the benefit of an object).

In explaining the concept of ownership, scholars elucidate two related terms; namely *al-ibāḥah* and *al-ikhtiṣāṣ*. *Al-ibāḥah* is a term that linguistically means permission (*al-idhn*); and *al-ikhtiṣāṣ* linguistically means alone or solitary (*al-munfarid/al-infirād*). The term *al-ibāḥah* means: (والإباحة هي الإذن بإتيان الفعل كيف شاء الفاعل) which

means “al-ibāḥah is the permission for the doer to perform an action as they wish” (Syubayr 2009, 119).

Permission from the legal source is distinguished into two; first, permission to perform legal actions for the actor sourced from the Qur'an and sunnah as well as other sources of sharia provisions based on the process of ijtihād; permission from the source includes the following two aspects:

1. Al-ibāḥah, which is the cause of the emergence of full ownership; among them is the possession (iḥrāz) of objects that have no owner (al-mubāḥāt) by hunting (ṣayd) animals in the forest or fish in the sea; taking/cutting wood (al-iḥtiṭāb) in the forest; and taking/cutting grass (al-iḥtishāsh) which is classified as a plant (not a crop) in open land.
2. Al-ibāḥah, which is the cause of the emergence of the right to utilize (al-ibāḥah sababun lil-intifā); among them, the right to utilize public roads and public gardens (ḥadā'iq).

Second, permission from the owner of the property to another party to consume (istihlāk) and use (isti'māl) their property; permission from the owner's perspective includes two aspects; namely:

1. The authority to consume and/or finish it (istihlāk); among them is the authority granted by the owner to another party (invited guests) to eat food and drink beverages at the event (such as walīmat al-'urs), without the right to take the food and beverages to another place, whether for personal consumption or for consumption by others (such as mustaḍ'afīn).
2. The authority to use and/or benefit from (intifā) an object; among them, the authority granted by the owner to another party to use (rukūb) their vehicle to go to a specific place, or permission from the owner to another party to stay in their house.

The consequence of the opinion of the Shafi'i and Hanbali scholars, who state that i'ārah is (إباحة الإنتفاع), is that Al-ibāḥah is a permission that has the following characteristics: a) specifically permitted to a certain party (mu'ayyan), b) at a certain time

(mu'qqat), c) at a certain place (makān mu'ayyan), d) in a certain manner of utilization (ṭarīq al-intifā) that is appropriate based on custom (al-'urf; al-'ādah muḥakkamah), and e) the right to utilize that is received by the musta'ir cannot be transferred except with the permission of the mu'ir.

Among the applications of the law related to permission (ibāḥah) is the permission from the host (the one in charge of the walimah) to the invited guests present to consume the food and drinks provided (according to custom) at that time, in that place (the walimah space), and this right is non-transferable. Guests present are not allowed to take the food and drinks to consume them elsewhere at another time or to be consumed by others unless they have obtained permission from the host and/or the representative.

From these two viewpoints (Hanafiah and Malikiah versus Syafi'iyah Hanabilah), there are very different consequences. I'arah in the view of Hanafiah and Malikiah is considered tamlik al-manfa'ah; therefore, the right to utilize can be transferred both socially (for example, by re-lending [i'adat al-ḥawālah]) and transferred for business purposes (for example, rented out [ijarah 'alā al-a'yān]) without needing prior permission from the mu'ir; whereas i'arah in the view of Syafi'iyah and Hanabilah, which states that i'arah is ibāḥah al-intifā or idhn lil-intifā, therefore, the right to utilize cannot be transferred either socially or for business purposes except after obtaining prior permission from the mu'ir.

The practice of wearing another person's sandals in a mosque without the owner's permission or knowledge serves as a central analytical case for examining the boundary between permissible borrowing and unlawful appropriation. Under Indonesian positive law, particularly Articles 362 and 364 of the Criminal Code, such conduct may be construed as theft or a minor unlawful act, insofar as it involves the unauthorized use of another person's property. However, this classification cannot be applied mechanically; it requires careful consideration of intent, duration of use, and the presence or absence of harm. Where the intention is merely temporary use without intent to permanently deprive the owner, the strict

qualification as theft may be legally debatable, though the act may still constitute a violation of property rights or social norms.

From an Islamic legal perspective, this case illustrates the ambiguity between *'āriyah* and *gaṣb*. If the use of the sandals is based on clear or reasonably inferred permission such as established custom (*'urf*) or explicit institutional allowance it may fall within the scope of permissible borrowing. However, in the absence of such indicators, the act more closely aligns with *gaṣb*, as it involves the exercise of control over another's property without valid consent. Importantly, the absence of intent to own the item does not automatically negate the classification as *gaṣb*, since the core issue lies in unauthorized use rather than permanent appropriation.

By foregrounding this case, the study develops a more generalizable analytical framework based on three key criteria: (i) the presence or absence of valid consent (explicit or implicit), (ii) the clarity of the scope and limits of use, and (iii) the allocation of liability (*damān*) in the event of loss or damage. This framework allows for a more precise evaluation of similar practices in communal settings, moving beyond rigid doctrinal categories toward a contextualized legal assessment. In doing so, the example is not treated as an isolated incident, but as a representative case that helps operationalize the distinction between lawful *'āriyah* and unlawful *gaṣb* within both Islamic and positive legal systems.

In the case of property used without the owner's knowledge being damaged or causing damage, according to civil law, damaging someone else's property unintentionally can be considered an unlawful act. This means that the perpetrator may be required to compensate for the damages caused by their actions. This principle is known as "responsibility civil" or civil liability. The perpetrator can be asked to compensate for the damages caused, both materially and immaterially, to the owner of the damaged property. The perpetrator can be charged under the article regarding Unlawful Acts, which is regulated in Article 1365 of the Civil Code as follows: "Every act that violates the law and causes loss to another person obliges the person who caused the loss due to their fault to compensate for the loss."

The act of damaging someone else's property can be punished under Article 406 paragraph (1) of the Criminal Code or Article 521 of Law 1/2023 concerning the new Criminal Code, which will take effect three years from the date of promulgation, namely in 2026. Article 406 paragraph (1) of the Criminal Code states, "Anyone who intentionally and unlawfully destroys, damages, renders unusable, or eliminates wholly or partially someone else's property shall be punished with imprisonment for a maximum of two years and eight months or a fine of up to Rp. 4.5 million." Meanwhile, Article 521 in conjunction with Article 79 paragraph (1) of Law 1/2023 states:

1. Anyone who unlawfully damages, destroys, renders unusable, or eliminates property that is wholly owned by another person shall be punished with imprisonment for a maximum of 2 years and 6 months or a fine of up to category IV, Rp. 200 million.
2. If the crime as referred to in paragraph (1) results in a loss not exceeding Rp. 500 thousand, the perpetrator of the crime shall be sentenced to imprisonment for a maximum of 6 months or a fine of up to category II, Rp. 10 million.

Based on the Explanation of Article 521 paragraph (1) of Law 1/2023, "damaging" means making something unusable for a temporary period, meaning that if the item is repaired, it can be used again. Meanwhile, "destroying" means completely annihilating or damaging something so that it can no longer be used. Someone can be punished under Article 406 paragraph (1) of the Criminal Code or Article 521 of Law 1/2023 above, provided that all elements of the article are fulfilled. However, if it is done unintentionally, it means that the elements of Article 406 paragraph (1) of the Criminal Code or Article 521 of Law 1/2023 are not fulfilled. The act is classified as negligence. If the destruction and damage occur due to negligence, then the resolution falls under civil law.

In reality, we often encounter situations where someone else's belongings can be damaged unintentionally. This can happen in various contexts, ranging from accidents at home to incidents in public places. When this happens, legal questions arise regarding the

responsibility and legal consequences that the perpetrator must bear. Thus, accidentally damaging someone else's property can lead to serious legal consequences. The perpetrator may be required to compensate for the damages caused, either civilly or criminally.

### **3. The Law of I'ārah from the Perspective of Islamic Law and Positive Law**

Scholars have differing opinions on the ruling regarding the implementation of i'ārah. First, the majority of jurists from the Hanafi, Maliki, Shafi'i, and Hanbali schools of that have unanimously agreed (ijmā) that the ruling on performing i'ārah is sunnah (mandūb); the evidence is QS al-Hajj (22): 77, which states: (وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ), meaning "do good deeds"; the hadith of the Prophet saw. narrated by Imam Bukhari: (كل معروف صدقة), meaning "every good deed is charity;" it is not considered an obligatory act because it is part of good deeds (iḥsān); (Rusyd 1971, 696) and in Naf' al-Ashja' Sharḥ Mu'āmalāt Abī Shujā', it is explained that 'āriyah is a sunnah act because there is a need (al-ḥājah) to perform it and it is part of good deeds (birr) (Al-Kāf, Al-Kāf, and Al-'Aṭṭās 2019, 215). However, the ruling on performing i'ārah can change due to changing conditions, as per the principle of Taghyīr al-aḥkām bi-taghayyur al-azminah wa-al-amkinah wa-al-aḥwāl wa-al-'awā'id (Kūksāl 2000, 132).

Second, in Al-Mawsū'ah al-Fiqhiyyah and Naf' al-Ashja' Sharḥ Mu'āmalāt Abī Shujā', it is explained that the ruling on performing i'ārah is obligatory; this opinion is based on QS al-Ma'un (107): 4-7. Additionally, it is explained that performing i'ārah is obligatory under certain conditions; among them: a) it is obligatory to lend clothes to someone who is cold or hot if the person does not have clothes to protect their body from heat and cold; b) it is obligatory to lend clothing to someone who will perform the five daily prayers if the person does not have clothes to cover their private parts; c) it is obligatory to lend a knife to someone who will slaughter an animal that is at risk of becoming carrion because it was not slaughtered according to sharia; and d) it is obligatory to lend a muṣḥaf Qur'an to someone

who will read it to remind them of the time for prayer (Al-Islāmiyyah 2012, 182–83).

Third, beside obligatory and recommended acts, scholars explain that *i'ārah* can be positioned as a means (*wasīlah*) related to the objectives to be achieved (*maqāṣid*) (Al-Ḥasan 2000, 146). The ruling on performing *i'ārah* is *mubāḥ*, *makrūh*, or *ḥarām* when *i'ārah* is used as a means to achieve *mubāḥ*, *makrūh*, or *ḥarām* actions or conditions; and in *Naf' al-Ashja' Sharḥ Mu'āmalāt Abī Shujā'*, the original ruling on *i'ārah* is discussed; among scholars, some believe the original ruling on *i'ārah* is recommended (*nadb*), while others believe the original ruling on *i'ārah* is permissible (*ibāḥah*) (Al-Kāf, Al-Kāf, and Al-'Aṭṭās 2019, 215).

In the Criminal Code, destruction falls under the category of criminal acts. Destruction is listed in the second book of the Criminal Code, specifically in Chapter XXVII on Destroying or Damaging Goods. If a violation occurs under articles 406 and 407 of the Criminal Code, it is stipulated that “Anyone who intentionally and unlawfully destroys, damages, renders unusable, or eliminates wholly or partially someone else’s property shall be punished with imprisonment for a maximum of two years and eight months or a fine of up to four thousand five hundred rupiah.”

In criminal law, vandalism is defined as an act that damages someone else’s property without taking the item. In the Great Dictionary of the Indonesian Language, the word “*pengrusakan*” cannot be defined on its own. However, the word “*rusak*” means no longer perfect (good, intact), and it can also mean destroyed. Therefore, destruction is a process, method, and act carried out by an individual or a group of individuals against someone else’s property, by destroying property that is no longer intact (good, whole). Providing an interpretation of losses and setting boundaries within the category of criminal losses so that criminal losses can be punished.

The resolution of cases of unintentional damage to someone else’s property usually involves compensation for the resulting losses, which can be referred to as compensation for wrongful acts (Latri et al. 2024). The legal basis for this case can be found in the Civil Code.

### **C. Conclusion**

*This study establishes a definitive legal position that the unauthorised use of another's property in communal settings cannot be classified as 'āriyah, but must instead be treated as gasb when it occurs without explicit consent or exceeds the recognised limits of use. This finding moves beyond descriptive observation by reaffirming the centrality of consent as a non-negotiable legal condition in Islamic law, while also refining its application within contemporary socio-legal contexts where informal practices often obscure legal accountability. Accordingly, the normalization of such behaviour does not mitigate its legal status, but rather reinforces its classification as a prohibited act that entails liability (ḍamān).*

*The study's primary contribution lies in developing a clearer analytical framework that bridges the gap between doctrinal fiqh and empirical social practice. While previous scholarship has either remained within normative legal exposition or documented the social prevalence of gasb, this research integrates both dimensions to demonstrate that the boundary between permissible use and unlawful appropriation is not merely theoretical, but actively contested in everyday life. By articulating this boundary with greater precision, the study advances legal scholarship on mu'āmalāt and provides a more context-sensitive interpretation of property use in communal environments.*

*In comparison, Indonesian positive law addresses unauthorised use through a less determinate framework, where legal classification depends heavily on intent and evidentiary circumstances. Acts that do not involve animus possidendi are often treated as unlawful conduct rather than theft, resulting in a more flexible but also less normatively grounded approach to liability. This divergence highlights a critical insight: whereas Islamic law offers a principled and consent-based standard for determining legality, positive law operates through case-by-case interpretation. The absence of a unified framework between these systems underscores the need for a more integrative approach that aligns ethical responsibility with formal legal mechanisms.*

*The implications of this study extend beyond doctrinal clarification to the level of institutional practice. The persistence of unauthorised borrowing in mosques, dormitories, and similar communal spaces reflects not only legal ambiguity but also governance gaps. Addressing this issue requires targeted intervention by institutional actors such as mosque administrators, educational institutions, and dormitory management through the establishment of clear consent-based protocols, structured borrowing procedures, and enforceable internal regulations. These measures should be complemented by systematic education in fiqh al-mu'āmalāt to cultivate legal awareness and reshape communal norms around responsibility and accountability.*

*In theoretical terms, this study contributes to the development of a socio-legal understanding of gaṣb by demonstrating how doctrinal principles interact with lived realities, thereby expanding the scope of Islamic legal analysis beyond purely textual interpretation. Practically, it offers a feasible model for integrating Sharia-based norms with institutional governance, ensuring that legal principles are not only articulated but effectively implemented. Through this dual contribution, the study provides a coherent framework for mitigating disputes, reducing material and non-material losses, and strengthening legal compliance in communal property use.*

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