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READING HUDUD VERSES IN PERSPECTIVE SYSTEM OF COGNITIVE AND OPPENES

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ABSTRACT:

This study describes the reading of the hudud verses in Islamic law and reading their application which is connected to the social conditions that occur. The approach used in this research is to embed that the *cognitive* character that distinguishes between the results of human cognition and text in different spaces. Next, the reading of the text, which is the main platform, also requires an *oppenes* system in order to embed the law in the relevant public sphere. The results of the formulation of this study conclude that the hudud verse -which this time - covers kisas, cutting hands and *jild-stoning* is still the same as written in the text. It is also supported by QS. al-Maidah 44, 45 and 47. But the reading doesn't end there. For the application of Islamic law that is relevant to social conditions, the hudud verse needs to be explored for the purpose behind it to find out the best solution when implementing it. Reading the reality that is happening, for example in a pluralistic Indonesia, the application of the hudud verse is difficult to apply as stated in the Qur'an. This is for the common good, justice and the peace mission. Therefore, in a country like this, when the Qur'anic law is the maximum law, then the legal (criminal) law that runs can be said to be minimal law with various considerations.

Key words: *Hudud verse, Islamic Law and Maqashid*

INTRODUCTION

Islamic law has always been classified as something vital for Muslims everywhere. Referring to QS. al-Maidah 5:44, 45 and 46, namely:

لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ¹
وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ²
وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ³

¹ Q.S Al-Māidah 5: 44

² Q.S Al-Māidah 5: 45

³ Q.S Al-Māidah 5: 47

The practice of *akām* implied in the Qur'an is mandatory for a Muslim. As the consequences written in the verse, if you do not apply the law of Allah, you will be sentenced to kufr, tyranny and fasiq.

Furthermore, in Islamic law, there are several laws legalized by the Qur'an, for example regarding kisas (*qi ā*)⁴, cutting hands⁵ and had-zina⁶. This verse is also included in the category of hudud verses. When you return to the letter al-Maidah verses 44, 45 and 47, that those who do not rule by the Qur'an will be judged to kufr, tyranny and fasiq, of course the application of these three laws is mandatory. This discussion is then reviewed in such a way in the discipline of Islamic jurisprudence in the *jināyah*⁷ (criminal) section. The ability to apply this law, of course, cannot be done in the domestic sphere, but in the public sphere which is also legalized by the State. The application of this law will later become a reference in terms of punishment/criminalization

In order to achieve a law that is appropriate to the reality that occurs, Hamka warned that Muslims need to understand the philosophy of sharia first (*'ikmat al-tashri'*)⁸. As also stated by Nūriddīn al-Khādimī that in maqasid (intentional)-based ijtihad, there are three important elements that are interrelated with each other, namely: text (*al-na*), reality (*al-wāqī'*), and legal subjects. (*al-mukallaḥ*).⁹ The text in the context of maqā idī interpretation is a legal proposition, 'illat as a legal reason and its purpose (al-maq ad) will be applied in legal cases.

Trying to read Indonesia, a country where the majority is inhabited by Muslims, is of course very possible if Islamic law is applied, including the had-had in criminal matters. However, what happened in Indonesia, Islamic law related to hudud was not implemented. Criminal law in Indonesia tends to use legal law, for example imprisonment or fines for murderers and others.

Al-Sha ibī stated in his work, that "laws are prescribed for the benefit of the servant".¹⁰ According to him, none of Allah's laws have no purpose. A law that has no purpose is the same as *taklīf mā lā yu āq* (to impose something that cannot be implemented).¹¹ In order to achieve the objectives of the shari'a, the scholars then proposed a method known as maqashid sharia. Based on this discipline, here is a methodology of interpretation known as maqashidi interpretation.¹²

In the hudud verse that will be discussed by the author, the application of kisas law is an effort of *hifẓ al-naḥs* (guarding the soul), punishment for adulterers is an effort of *hifẓ al-nasl* (guarding offspring) and -perhaps- *hifẓ al-naḥs* (guarding the soul). Then the punishment of cutting hands for thieves is an effort to *hifẓ al-māl* (guarding property). However, there is confusion when you look at Islamic law which is legalized by the Qur'an or the hudud verse

⁴ QS al-Māidah 5: 4

⁵ QS al-Nūr 24: 2

⁶ QS al-Baqarah 2: 177

⁷ The chapter on punishment also discusses the classification of murderers who deserve kisas or diyat. Even in relation to diyat, the classification varies depending on the rhythm of the murder, whether intentional or resembling intentional and unintentional or resembling. Likewise, it discusses the limits of thieves who are threatened with cutting hands and adulterers who deserve jild and stoning.

⁸ Hamka, **Tafsir al-Azhar**, Juz 7, (Singapura: Pustaka Nasional PTE LTD, cet. ke 5, 2003), page 4863

⁹ Nur al-Din al-Khādimī, *al-Ijtihad al-Maqashidi*, (Tunis: Dār Ibn Hazm, 2010), page 174

¹⁰ Al-Shaṭībī, *al-Muwafaqat fi Ushul al-Syari'ah*, Juz 2 (Beirut: Dar al-Kutub al-Ilmiyah, 2003), page 15.

¹¹ Ahmad Rajafi, QISHASH DAN MAQASHID AL-SYARIAH (Analisis Pemikiran asy-Syathibi dalam Kitab Al-Muwafaqat) in the jurnal Al-Syir'ah (Vol. 8, No. 2, Desember 2010), page 468.

¹² The implementation pattern of both can be concluded to be similar. The difference is that the maqashidi interpretation method is specific to the Quran only. As for maqashid sharia, the object is more global, including the Quran.

and the reality of Surah al-Maidah 44, 45 and 47 with the reality of the application of law in Indonesia.

In this case, Jasser Auda, as a *maqashid* figure, carries out a system in Islamic law. He said that the cognitive character and *oppenes* in Islamic law are necessary. Cognitive disposition aims to distinguish between the results of *ijtihad* of *fiqh* experts (Islamic jurists) and sacred texts. *Oppenes* disposition in Islamic law is required for the benefit of the *nas* so as not to "the wrong means". The stipulation of this law will also take into account the reality that occurs, because changes in social context are also necessary and the Qur'an must also be able to be relevant to it. Therefore, this article will analyze the *hudud* verses (*kisas*, cutting hands and *had zina*) in the *maqashid* view of the perspective of cognitive character and *oppenes* in Islamic law.

Methodology

Overall, this research belongs to the qualitative research model. That is an approach that produces descriptive datum.¹³ This research is also classified as a *library research* that uses several *hudud* verses in the Qur'an as a reference and platform. In addition, further interpretation of the verse is taken from several references and scholars' opinions contained in their works. Next, the verse will be collaborated with the social context that occurs in order to achieve an understanding of the text that is relevant and able to answer contemporary problems.

It is relevant if the approach in this study uses an *oppenes* and cognitive system. Both systems are needed in reading Islamic law. *Cognitive*¹⁴ character is needed to distinguish between the human cognition results (*fāqih*) and the texts which are the basis. *Fiqh* laws are often considered as an inviolable law. According to Auda, what is desired with the presence of a cognitive character is to provide distance so that the *ijtihad* of the *fiqh* scholars touches the circumference of the text position. *Cognitive* character also aims at the existence of a barrier between human cognition (*fakih*) and the text, but does not touch the sacred area of the Qur'an or the text itself.

While *openness*¹⁵ is also become an advanced discussion after passing through cognitive character. Dynamic life, conditions and situations that are always changing, time that goes by and the climatic conditions of each place are not the same, require the law to be able to be actualized at any time. As time goes by and the emergence of various sciences, making all the problems more complex, it seems to force us to move from a classic discussion to an actual discussion with a touch of relevant methodological approach. As the expression in the *u ul* rule:

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال¹⁶

“Changing in the law occur due to changes in time, place, and circumstances..”

The benchmarks and considerations in the application of Islamic law cannot only be fixed and based on textual understanding, but also with contextual considerations. Laws can change at any time, as expressed in a different narrative by Ibn al-Qayyim al-Jauziyyah in his work:

¹³ Lexy J, Moloeng, *Metodologi Penelitian Kualitatif* (Bandung: PT. Raja Grafindo Persada, 1995), page 94.

¹⁴ Read: Jasser Auda, *Membumikan Hukum Islam*, terj. Rosidin dan 'Ali 'Abd el-Mun'im (Bandung: Mizan, 2008), page 86

¹⁵ Read: *Ibid.*, hlm. 88.

¹⁶ Muslih Usman, *Kaidah-Kaidah Ushuliyah dan Fiqhiyyah*, (Jakarta: Rajawali Press, 1996), page 195.

تغير الفتوى واختلافها بحسب تغير الأزمنة والأمكنة والأحوال والنيات والعوائد¹⁷

“Changes and differences in fatwas depend on changes in time, place, circumstances, intentions and traditions.”

The emergence of a new law cannot be separated for the benefit of the existing community. Changes in conditions that always exist require solutions in dealing with these contemporary changes and problems. The words of Ibn Qayyim above explicitly say that the law is relative.

Therefore, as time goes on, changing social conditions require legal reforms. The need for the *oppenes* (openness) feature in understanding the text is not caused by the incompleteness of the guidelines contained in the text, but because the Qur'an and hadith will not be revealed again, while problems will always arise over time. Therefore there is a need for reinterpretation to compensate for changing times, differences from one place to another, and technological advances in various parts of the world as well as the latest discoveries which did not exist at the time of the Prophet Muhammad.

However, all *ijtihād* processes need to be carried out with a strong basis such as the Qur'an and hadith. In promoting purposeful understanding, *'illat*-based understanding and benefit also really needs to be implemented. All processes of *ijtihād* against a law must lead to a benefit; this is as expressed by al-Ghazālī:

المصلحة هي عبارة في الصل عن جلب منفعة او دفع مضرة¹⁸

”Maslahat is an expression that indicates the existence of (an effort) to take benefit and reject harm..”

By the existence of these two methodologies as approaches, it is hoped that they will produce a conclusion which is relevant in Islamic law. For example, regarding the recitation of hudud verses, all understandings originating from human cognition will be separated from the text first and then re-understood which can be actualized anywhere with considerations of benefit.

Editorial of Verses Encouraging the Application of Allah's Law and Hudud Verses

1. Verses encouraging the judgement of Allah

إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا لِلَّذِينَ هَادُوا وَالرَّبَّانِيُّونَ وَالْأَحْبَارُ بِمَا اسْتَحْفَظُوا
مَنْ كَتَبَ اللَّهُ وَكَانُوا عَلَيْهِ شُهَدَاءَ فَلَا تَخْشَوُا النَّاسَ وَاحْشَوُا اللَّهَ وَلَا تَشْتَرُوا بِآيَاتِي ثَمَنًا قَلِيلًا مِمَّنْ لَمْ يَحْكُمْ بِمَا أَنْزَلَ
اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ¹⁹

This verse shows that Allah has indeed sent down the Torah and it has been applicable for hundreds of years because there is indeed something original from the records of the Prophet Musa himself. But unfortunately it was burned or lost when the Children of Israel were colonized by the Babylonians and made prisoners.²⁰ In the next verse, Allah urges that these verses (law) not be exchanged for material possessions because they are desiring

¹⁷ Ibnu al-Qayyim al-Jauziyyah, *I'lām al-Muqī'im*, juz 1, (Riyad: Dār Ibn al-Jauzi, 1423 H), page 41.

¹⁸ Imam al-Ghazālī, *al-Muṣṭaṣṣā min Ilmi al-Uṣūl*, (Beirut: Dār al-Kutub al-Ilmiyyah, 1971), 176.

¹⁹ Q.S Al-Māidah 5: 44

²⁰ Hamka, *Tafsīr al-Azḥar*, Juz 6, page 1742.

material possessions to obliterate the truth. Because no matter how much material you receive, all of it will be of little value when compared to the truth that you betrayed.²¹

Then in the last verse, about the recommendation to punish with what Allah has revealed, Hamka said:

"If all this time you have claimed to be faithful to the Torah, you must carry out the law contained in the Torah. Rasulullah SAW himself, when asked by them to be judges, had invited them to return to the Torah Law. So their accusation is that they are faithful in upholding the Torah, but they don't want to carry out its laws, which means they are also disbelievers, which is, they refuse and do not believe either."

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ ۖ وَمَن لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ²²

Similar to the above verse which discusses the people of scribe, according to Abu Ja'far this verse also descended on the disbelievers of the scribe, this is due to the correlation between the previous verses.²³ According to Abū Ja'far, the word *katabna* is proof that this verse is still under discussion, namely the recommendation to stipulate the law stated in the Torah, namely that murderers must also be killed.²⁴ The interpreters agree that this verse is a threat to the Jews because they deny Allah's law in carrying out the stoning law.²⁵ Regarding the law written in the Torah, Hamka said in his commentary that it is unjust and be persecute those who do not carry out the law that has been determined by Allah. Be unjust people who claim to be guided by the Torah, even though the Torah law is not implemented.²⁶ In his commentary too, Hamka quotes the Torah currently circulating, he quotes in the "Book of Exodus" Chapter 21:

"23 – But if there is danger of death along with it, then no soul will not be replaced by a soul.

24 – An eye will replace an eye, a tooth will replace a tooth, a hand will replace a hand, a foot will replace a foot.

25 – Descendants will replace descendants, wounds will replace wounds, bruises will replace bruises."²⁷

وَلِيَحْكُمَ أَهْلَ الْأَنْبِيَاءِ بِمَا أَنزَلَ اللَّهُ فِيهِ ۖ وَمَن لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ²⁸

This verse is still closely related to the previous 2 verses that the author mentioned, namely the verse that was revealed to Christians who were reluctant to actualize the laws written in the Torah and the Bible. This verse and the previous verse provide very clear clarity, that under Islamic rule, the Jewish and Christian Dhimmis are ordered to carry out the law according to their book. Even though the contents of God's Law in all holy books, both the Torah and the Bible, to the Al-Quran are basically one, namely God's Law.²⁹

²¹ *Ibid.*

²² Q.S Al-Māidah 5: 45

²³ Al-Ṭabarī, *Jāmi' al-Bayān fī Ta'wīl al-Qur'an*, juz 10, (t.k.: Muassasah al-Risālah, 2000 M), page 358.

²⁴ *Ibid.*

²⁵ Fakhruddin al-Razī, *Mafātīh al-Ghaib*, juz 12, (Beirut: Dār Ihyā' al-Turāth al-Arabī, 1420 H), page 368.

²⁶ Hamka, *Tafsīr al-Azhar*, page 1745.

²⁷ *Ibid.*

²⁸ Q.S Al-Māidah 5: 47

²⁹ Hamka, *Tafsīr al-Azhar*, page 1747.

About these three verses that need to be discussed later is the problem of the *audience*. Based on the text of the verse and historically, the verse was clearly revealed to Christians and Jews, but it is different when we look at the history of Ibn Abbas and Maqaam, Ibn Abbas' slave, both tend to say that the audience in this verse was also revealed to the Muslims.³⁰ Imam Fakhruddin al-Razi mentioned that in understanding the three verses above, there are two main things, namely:

First, that what is meant by Allah's word above is a threat to the Jews for their determination to deny Allah's law which has been *narrated* in the Torah; they say it is not obligatory. That's why they became absolute disbelievers. They no longer have the right to bear the title of "iman", they are not entitled to Moses and the Torah, nor are they entitled to Muhammad and the Qur'an. **Second**, the Khawarij argued that anyone who disobeys Allah is an infidel, while the jumhur are argued that the verse is a threat to those who do not comply with Allah's law, so they become infidels, unjust and wicked.³¹

These two main points were discussed by the classical mufasirs. Here is an overview of the mufasirs opinions.³²

- a. Some interpreters agree that this verse has a special *kebi'ah* (matter/target). However, they are still different in interpreting the specificity. Among them there are those who say this is only aimed at Jews. This opinion is supported by Abdullah bin Abdullah bin Utbah bin Mas'ud. Hasan Basri said that: "The verse is addressed to the Jews, but for Muslims it is still obligatory to judge on what Allah revealed (*bi ma anzal Allah*).³³ Ibn Mansur, Abu Shaykh and Ibn Marduwaih narrated from Ibn Abbas that this verse was revealed by Allah specifically to the Jews.

Other interpreters argued that the verse is for *scribe*, specifically Jews and Christians. It was narrated by Ibn Jarir from Abū Salih, which these three verses do not apply to Muslims, but to infidels, specifically scribe.³⁴ Ibn Abbas said: "*The best of people are you, what is good for you, while what is bad is for scribe. Whoever opposes Allah's law has indeed disbelieved and whoever does not judge by Allah's law then he has done unjust and wicked.*" In addition there are also those who argue that though the three verses are special, but the context of the three verses are different. For example Al-Sha'bī, he said, "*The name infidel is for Muslims, unjust for Jews, and wicked for Christians.*" Al-Zamakhshari said that the three qualities attributed to disbelievers (scribe) are a form of humiliation towards them because they are beyond the limit in disbelief. Their unjust deeds against the verses of the Qur'an with their ridicule and aversion to its contents, then they use another law.³⁵ There are also those who argue that kufr means kufr of favors. Fakhruddin al-Razi stated that the opinion about the verse above being specifically applicable is weak. **First**, it contradicts the rule "*al-'Ibrah bi 'umūm al-lafidzi, lā bi kehu'ūs al-Sabab*"; **Second**, this opinion is also weak because the word above uses the word *man* which shows a general nature (as a condition).³⁶

- b. Some commentators argue that the verse above is general. However, that does not mean if a Muslim so he becomes kufr. For example, Thawus said, "He is not a disbeliever like the disbeliever of a convert and like a disbeliever who disobey in Allah and the Resurrection Day." Atha' had similar opinion: Such a Muslim becomes a kufr, but he is

³⁰ Munawir, "Tafsir Indonesia Tentang Penerapan Hukum Allah", jurnal Nun, Vol. 4, No.1, (2018), page 100.

³¹ Fakhruddin al-Razī, *Mafātih al-Ghaib*, Juz 12, page 367.

³² Nadirsyah Hosen, *Tafsir Alquran di Medsos*, (Yogyakarta: PT Bentang Pustaka, 2017), page 124

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ Al-Razī, *Mafātih al-Ghaib*, Juz 12, hlm. 369.

not really an infidel. They seem to interpret that what is meant by infidel, unjust, and wicked is infidel, unjust and wicked towards favors.³⁷ Al-Alūsī explains in his work that Abū Hāmid and others narrated from al-Sha'bī, state that the three verses above can be distinguished. The first (5:44) applies to Muslims; while the next two verses (5:45 and 47) apply to Jews and Christians. When the kufr is attributed to the believer, it means a threat and a tough attitude. However, if the wickedness and kufr is attributed to the disbelievers, it means showing their disobedience and departure from Allah's law.³⁸

2. Ayat-ayat Hudud dan *Asbāb al-Nuzūl*

وَمَا كَانَ لِمُؤْمِنٍ أَنْ يَقْتُلَ مُؤْمِنًا إِلَّا خَطَأً وَمَنْ قَتَلَ مُؤْمِنًا خَطَأً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٌ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا فَإِنْ كَانَ مِنْ قَوْمٍ عَدُوٍّ لَكُمْ وَهُوَ مُؤْمِنٌ فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٌ وَإِنْ كَانَ مِنْ قَوْمٍ بَيْنَكُمْ وَبَيْنَهُمْ مِيثَاقٌ فَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٌ فَمَنْ لَمْ يَجِدْ فَصِيَامٌ شَهْرَيْنِ مُتَتَابِعَيْنِ تَوْبَةً مِنَ اللَّهِ وَكَانَ اللَّهُ عَلِيمًا حَكِيمًا (٩٢) وَمَنْ يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا (٩٣) يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا ضَرَبْتُمْ فِي سَبِيلِ اللَّهِ فَتَبَيَّنُوا وَلَا تَقُولُوا لِمَنْ أَلْقَىٰ إِلَيْكُمُ السَّلَامَ لَسْتَ مُؤْمِنًا تَبْتَغُونَ عَرَضَ الْحَيَاةِ الدُّنْيَا فَعِنْدَ اللَّهِ مَغَامٌ كَثِيرٌ كَذَلِكَ كُنْتُمْ مِنْ قَبْلُ فَمَنْ اللَّهُ عَلَيْكُمْ فَتَبَيَّنُوا إِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا (٩٤)³⁹

This verse came down to Ayyas who killed al-Harith. In the past, al-ārith bin Yazīd from Banī Amir bin Luay with Abu Jahal often tortured him and threatened to kill Ayyash if he met him in quite. After some time, al-ārith converted to Islam without Ayyasy's knowledge, he had time to emigrate with the Prophet Muhammad and met Ayyasy on his migration journey. Seeing that he was alone, Ayyash killed him with a sword because he thought that al-Harist was still an infidel. Hearing al-ārith who had converted to Islam, then he went to the Messenger of Allah and told him about it. Then the verse was revealed "and it is not proper for a believer to kill a believer (another) unless he is wrong (accidentally)".⁴⁰

Ibn Jarir narrated from the Ibn Juraij path from 'Ikrimah that a man of An ar killed the brother of Miqyas bin Shababah. Then the Prophet Muhammad SAW gave him a ransom and he accepted it. Only then, he attacked his brother's killer and then kill him. Prophet Muhammad SAW said "I can not guarantee his security in public land and forbidden land". Then Miqyas was killed in the conquest of (Mecca). Ibn Juraij said, "To him the following verse has been revealed," And whoever kills a believer intentionally."⁴¹

As narrated by al-Bukharī, al-Tirmidzī, al-Hākim, and others narrated from Ibn Abbas, he said that this verse was revealed by the incident of a Banu Sulaym man who was herding his goat and met a group of the companions of the Prophet Muhammad, then that person say greeting to them. Hearing the greeting, the companions of the Prophet said, "*This person greets us to protect himself from us.*" They also came to the person and killed him and brought his goat to the Prophet Muhammad SAW so that the verse was revealed "Thou you who believe! When you go (war) in the way of Allah,"⁴²

³⁷ 37 Hosen, *Tafsir Al-Qur'an*, hlm. 126.

³⁸ 38 Al-Alūsī, *Rūb al-Ma'ani*, Juz 3, (Beirut: Dār al-Kutub al-'Ilmiyyah, 1415), hlm. 320.

³⁹ QS. Al-Nisā' 4: 92-94

⁴⁰ Muhammad 'Alī Al-Ṣabūnī, *Rawāi' al-Bayān Tafsiru Ayāt al-Aḥkām min al-Qur'an*, Juz 1 (Jakarta: Al-Dār al-Ālamiyyah, 2015), hlm. 403.

⁴¹ Al-Suyūṭī, *Asbabun Nuzul*, page 134.

⁴² Sahih: HR. Al-Bukhari dalam at Tafsir, (4591), at-Tirmidzi dalam at-Tafsir, (3030).

From the other side, Al-Bazzar also narrated from Ibn Abbas, he said that this verse was revealed when Rasulullah SAW sent an expeditionary force in which al-Miqdad was in it. When they came to the (enemy) people, it turned out that they had already divorced and there was only one person left who had a lot of wealth. That man said, "I testify that there is no god who deserves to be worshipped except Allah". It turned out that al-Miqdad actually killed him. Then the Prophet Muhammad SAW said to him, "how will you face Laillahallah?" Then Allah revealed the verse.⁴³

Asbāb al-Nuzūl with different versions narrated by Ahmad, al-Abari and apart from both from Abdulullah bin Abī Hadrad al-Aslamī, he said that this verse was revealed when Rasulullah SAW sent him with a group of Muslims. In the group there were Abu Qatadah and Muhallim bin Jatstsama. Then the group met with Amir bin Abū al-Ashjā'ī. He also greeted the group. Suddenly Muhallim attacked him and killed him. When the group had arrived in the presence of the Prophet Muhammad and preached the news, then the verse revealed, "Thou you who believe! If you go) in the way of Allah."⁴⁴

Another narration, Ibn Mandah narrated from Juz'u bin Hadrajan, he said that "Al-Miqdad came from Yemen to meet the Prophet Muhammad. He met the expeditionary force sent by the Prophet and said to them, "I am a believer." Apparently they did not accept the word and they killed him. It reached me, I went to the Messenger of Allah. Then the verse revealed, "Thou you who believe! when you go (war) in the way of Allah, so check it out (search for information)," then the Prophet Muhammad gave me my brother's diyat."⁴⁵

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ
لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدِّءِ إِلَيْهِ بِإِحْسَانٍ ۚ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۖ فَمَنِ اعْتَدَىٰ بَعْدَ
ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ⁴⁶

This verse is one of the foundations of kisas law. As narrated by Ibn Abi Hatim from Said bin Jubair regarding this verse *asbāb al-nuzūl*, he said:

"In the period of jahiliyah, namely the time before the arrival of Islam, there were two groups of Arabs. Among them are fighting each other by killing, injuring and killing slaves, women and they all do not take revenge until they convert to Islam. One group boasts of themselves and their wealth to another group. While the other group swore not willing until a slave can kill a free person of them, and a woman of us can kill a man of them. Then the word of Allah revealed, "Free man to free man, slave to slave, woman to woman."⁴⁷

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ⁴⁸

Imam Ahmad and others narrated from Abdullah bin Amr, he said: "During the time of Rasulullah SAW., there was a woman who stole and then her right hand was cut off. He asked. "Can I still repent, say Messenger of Allah? therefore, Allah revealed his word in al maaidah verse 39."⁴⁹

⁴³ See, Shahih al-Bukhari, juz 1, page 539).

⁴⁴ The isnad shahih: HR. Ahmad dalam al-Musnad, (23364).

⁴⁵ Al-Suyūṭī, *Asbabun Nuzul*, hlm. 136

⁴⁶ QS al-Baqarah 2: 178

⁴⁷ Imam Jalāluddīn al-Suyūṭī, *Asbabun Nuzul* (Jakarta: Qisthi Press, 2017), page 42.

⁴⁸ QS al-Mā'idah 5: 38

⁴⁹ Jalaluddin al-Suyūṭī, *Lubāb al-Nuqūl fī Asbāb al-Nuzūl*, (Kairo: Darul Taqwa, 1422), page 250.

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةً جَلْدَةً يَوْمَئِذٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ
 وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ⁵⁰

“The female adulterer and the male adulterer, lash each the two of them a hundred times, and do not let compassion for them prevent you from (carrying out) the religion (law) of Allah, if you believe in Allah and the Last Day; and let (the execution of) their punishment be witnessed by some of the believers.

A. Analysis

After finishing discussing the obligation to apply Allah's law, historically the verse was not intended for Muslims. It's just that, from some of the opinions that the author expresses, the author will start from the assumption that the law is also related to Muslims. Thus, ruling by Allah's law is obligatory.

Looking at historical facts through *asbab al-nuzul* that the author has described, the application of hudud at the time of the Prophet had been practiced. However, from some of these implementations what was carried out was only cutting off the hands of women who stole, while the Prophet's companions who killed their Muslim brothers for mistakes were not punished kisas by the Prophet, but instead with ransom. The woman who stole, after having her right hand cut off, then asked the Prophet about the certainty of his repentance, which was then revealed in the verse after QS. Al-Maidah 5:39.

To fully understand the verses which have been mentioned, there are actually a series of things that need to be considered before applying Islamic law. For example, there are witnesses in adultery, there is a minimum limit in theft and there are several classifications in kisas law.

Complexly, behind the application of the hudud verse which has a large impact, the proof is also quite heavy. For example, the evidence in adultery case of must be proven by four people who have integrity and watch it by the naked eye the entry of the male genitalia into the vagina which may be difficult to find.

In Islamic law, this law has also got attention regarding the mechanism in its implementation which is discussed thoroughly in the chapter on *jinayat* (criminal law). In this verse, believers are prohibited to kill fellow believers except in unintentional condition. If a murder was committed involuntarily,⁵¹ so he must free the slave and *diyat*⁵² as punishment.

In Islamic law, the implementation mechanism of hudud actually has an optional variety. For example in murder, besides being punished by kisas, the killer has the chance to apologize to the victim's family, if the family forgives so he is only required to pay a *diyat* (ransom).

The variety of this diyat division are also discussed in detail, namely: **first**, *diyat mughalla ah* (heavy diyat), it is a diyat with a fine of 100 camels, this diyat applies to types of intentional and semi-intentional killings (*shibhu 'amdin*) and gets forgiveness from the guardian or family victim;⁵³ **secondly**, *diyat mukhaffafah* (reduced diyat), this section is obligatory for accidental killings. Unlike the first division, the relief in this section can be seen from the aspect of payment which is fully borne by the perpetrator, can be paid in installments over a period of

⁵⁰ QS al-Nūr 24: 2

⁵¹ The law on kisas with the intentional and unintentional options in this discussion is with the exception of if a parent kills his child intentionally, then he is not obliged to pay kisas, but only to pay diyat. Read: al-Hāzīmī, *Sharh al-Rahbiyah*, juz 6, (t.t.: t.k.,t.th), page 9.

⁵² Diyat is a fine paid by a murderer to the victim's family.

⁵³ Wahbah Zuhailī, *al-Fiqh al-Islāmī wa Adillatuhu*, juz 6 (Damaskus: Dār al-Fikr, 1989), page 304.

3 years and the difference of the camels age.⁵⁴ In the *mughballa ab diyat*, the *shibbu amdin* is obliged to pay the same fine as the perpetrator of intentional killing, except for two things that become waivers for him, namely the payment of the *diyat* may be paid in installments for 3 years and the payment of the *disa* fine will be borne by his family.⁵⁵

The legal principle of cutting hands as outlined by the Qur'an, is supported by many hadiths, including the following hadith narrated by 'Aisyah:

عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - (لَا تُقَطَّعُ يَدُ السَّارِقِ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا) (مُتَّفَقٌ عَلَيْهِ، وَاللَّفْظُ لِمُسْلِمٍ. وَلَفْظُ الْبُخَارِيِّ (: تُقَطَّعُ يَدُ السَّارِقِ فِي رُبْعِ دِينَارٍ فَصَاعِدًا) وَفِي رِوَايَةِ لِأَحْمَدَ :)
 اقْطَعُوا فِي رُبْعِ دِينَارٍ، وَلَا تَقْطَعُوا فِيْمَا هُوَ أَدْنَى مِنْ ذَلِكَ⁵⁶

"From 'Aisyah that Rasulullah Shallallahu 'alaihi wa Sallam said: "It is not permissible for a thief's hand to be cut off, except for a quarter of a dinar or more." Muttafaq Alaihi and his pronunciation according to Muslim history. According to Lafadz Bukhari: "A thief's hand is cut (if he takes a quarter of a dinar or more." According to Ahmad's history: "Cut it if he takes a quarter of a dinar and don't cut it if he takes less than that."

This hadith explains that the application of hand cutting has a minimum limit for the amount stolen, which is 1/4 dinar (about 1 million) or more than that. If we pay attention to the verse that uses the word thief isim fa'il from *sarafa*, it gives an indication that the person has repeatedly committed theft, so it is only natural to be given the punishment of cutting one's hand. This means that Allah also distinguishes between a thief and someone who steals. Abdullah bin Abdurrahman al-Sahmī explained that *al-sirqah* (theft) according to language is taking something surreptitiously from a place of storage, while according to the term that is taking property kept from other people from their storage, which there is no doubt for him to hide.⁵⁷

In terms of formality, *budud* in constitutional law really needs to be enforced, because at a glance the recommendations for implementing *budud* also contain mutual benefit. For example the concept of *hif al-māl* in theft, the concept of *hif al-nasl* in adultery and the concept of *hif al-nafs* in punishment for murderers. This application is of course an important goal of Religion,⁵⁸ namely the guarded of great human values. Look at the maqashid dimension table in the *budud* verse::

Hudud	Maqāshid	Description	Islamic Law
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⁵⁴ Ibid., hlm. 306.

⁵⁵ Sayid Sabiq, *Fiqh al-Sunnah*, juz 2 (Beirut: Dar Al-Fikr, 1980), hlm. 470.

⁵⁶ Muhammad bin Isma'il al-Amir al-Yamaniy al-Shan'ani, *Subul al-Salām Sharh Bulūgh al-Marām*, juz 4, (Mesir: Shirkah Maktabah wa Maṭba'ah Muṣṭafā al-Babī al-Halabī wa Awladihi, 1950), page 18. See also: *Ṣahib al-Bukhārī* in chapters *budūd* (no. 6789), *Ṣahib Muslim* in chapters *budūd* (no 1684), *Sunan al-Nasā'ī* in chapters *qat'u al-Sāriq* (no. 4936), *Sunan Ibnu Mājah* in chapters *had al-Sāriq* (no. 2585), *Sunan Abū Dāud* (no. 2348), and *Musnad Ahmad* (no. 23558) in chapters al-Irwa'a (2024).

⁵⁷ Abdurrahman al-Bassām, *Taudhīh al-Aḥkām min Bulūgh al-Marām*, juz 4, (Mesir: Dar Alamiyyah Mesir, t.th.), hlm. 181.

⁵⁸ According to al-Ghazalī, al-uṣūl al-khamsah is a teaching that is not only taught by Islam, but also taught and became the principle of all religions (milal) that desired the creation of benefits for man on earth. By Therefore, there is no single religion that does not forbid kufur, murder, adultery, theft and consuming something which interferes with even undermining the function of reason (Read: A. Halil Thahir, *Ijtihad Maqāshidi*, Yogyakarta: LKiS, 2015, page 9)

Thief	<i>Hijz al-Māl</i>	Guarding other people's assets and explaining the wisdom of sportsmanship in seeking material.	Cutting hand
Adulterer	<i>Hijz al-Nafs</i>	Preserving dignity and mental safety for victims of sexual crimes.	<i>Jild-rajam</i>
	<i>Hijz al-Nasb</i>	Maintaining the lineage of descendants.	
Murder	<i>Hijz al-Nafs</i>	Preserving the nobility of human life and soul.	Kisas

In its classification, Islamic law is divided into two things, namely *taklifi* and *wadh'i*. *Taklifi* is related to a person's actions, either in the form of demands to do (mandatory), prohibition / stay away (haram), or optional (sunnah, makruh and permissible). While *wadh'i* is a law related to the existence of causes, conditions, and *māni'* (barriers). Means, the emergence of the *wadh'i* law leads to something as a cause, condition or barrier to the existence of something else. The law of *wadh'i* function as the legal standard of *taklifi* law. A small example in the cutting off hands case for thieves. If the stolen object has not reached 14 dinars or approximately 8.145 grams of gold which is a requirement (*wadh'i*) of the cutting hands law, so the cutting off hands law (*taklifi*) may not be applied. Another example, such as zuhr prayer should not be done (*taklifi*) before the sun slips (zuhur prayer time), because that means praying before there is a legal reason for it (*wadh'i*). Or a child who kills his parents does not get inheritance rights (*taklifi*), because the murder which is done becomes a barrier to inheritance rights (*wadh'i*). The basis of this typology is based on the verse:

لِكُلِّ جَعَلْنَا مِنْكُمْ شَرْعَةً وَمَنْهَاجًا⁵⁹

"For every ummah among you, we have given a rules and a clear path."

Therefore, if the *wadh'i* law as a condition for the validity of *taklifi* law is not fulfilled, the application of Islamic laws is not mandatory. The application of the cutting hands law, kisas, *jild*, and others is not mandatory because the legal requirements of *wadh'i* that support the validity of a law has not been fulfilled. However, the provisions of the laws written in the text cannot be denied. Because, belief and believing in the standard provisions (*qa 'i*) written in the text is a mandatory consequence for Muslims. In addition to the requirements for the implementation of *taklifi* which must go through the validity of *wadh'i*, other considerations also need to be considered in realizing Islamic law.

The author's conclusion from some of the explanations above, the application of Islamic law in Indonesia, as long as it does not cause *harm* (danger) is very good if applied, but if implementing it will cause a new problem so rejecting a greater *harm* in favor of a lesser harm is highly prioritized. The possibilities of greater harm that the author means include lawsuits and rejection of Indonesian citizens who incidentally are not all Muslims which of course will disturb the peace that has been established in Indonesia.

In addition, as explained by Hamka regarding the application of Islamic law and considering several conditions and situations in various countries in general and Indonesia in particular, the application of Islamic law must be understood in the wisdom of sharia first. As the objectives in the application of hudud such as kisas, cutting hands and *jild* in the *maqā'id* point of view, namely preventive and overcoming efforts.

⁵⁹ QS. Al-Mā'idah 5: 48

Although some punishments are not textually applied in Indonesia, but the essence and purpose of the enactment of Islamic law (*jarimah*) is still one. This is in line with the spirit of the rules that have been conveyed by al-Qarafi; "separation between purpose and wasilah"

Discussion on the Interpretation of Hudud Verses

In Islamic law; kisas, adultery and theft have been arranged and have a maslahah purpose. The global goal of all these laws is an effort to prevent crime in the public sphere. Prevention for extramarital relations, theft and murder. But then what became a big consideration was the concern when applying according to the text which resulted in discorded and disturbed peace in various regions, especially Indonesia which is a pluralistic country.

This law then also gets attention related to the mechanism in its implementation which is thoroughly discussed in the chapter on *jinayat* (criminal law). In this verse, it is forbidden for a believer to kill another believer except in unintentional circumstances. If a murder is committed accidentally,⁶⁰ so he must free slaves and *diyat*⁶¹ as punishment.

Regarding that verse, Hamka concluded that the principal Allah's law (*maqā id al-shari'ah*) focus on the spirit of "making what He makes lawful and forbidding what He prohibits" and the spirit of "taking advantage and rejecting harm", or equivalent to the dictum of the rule of *dar'u al-mafāsīd muqaddamun 'ala jalb al-ma āli* .⁶²

The law kisas, cutting hands and *jild* is actually a preventive law in order to realize the noble goals of the Shari'a (*maqā id al-shariah*), namely applying kisas for the protection of life (*hifdzu al-nafs*), applying *jild* to create a deterrent effect in committing adultery (protecting offspring/ *hifdzu al-nasl*) and cutting off hands for thieves with the aim of a deterrent effect and protecting other people's property (*hifdzu al-māl*). A punishment of cutting hands for thieves aims as follows:

1. Preventive measures to prevent theft from occurring, given the severe penalties.
2. Make thieves feel deterred so they don't do it the next time.
3. Growing awareness in everyone to appreciate and respect the results of the hard work of others.
4. Growing the spirit of productivity through healthy competition⁶³

Conclusion

The law of kisas, cutting of hands and *jild* -stoning in Islamic law has been stated in the Qur'an. Thus actualizing the law is an obligation as also expressed in QS. al-Māidah 5: 44,45 and 47. However, as stated by Hamka in his commentary that in order to actualize the law, it is necessary to know the wisdom of the law first, so that the law is relevant and able to be lived by the *mukallaf* (humans).

The author's conclusion regarding several hudud verses, its application is still mandatory. Of course this is after seeing *al-wāqi'* (reality) and the abilities of the *mukallaf*. If indeed both of them are able to accept the application, so the application of the hudud verse is mandatory. This is also with the consideration of fulfilling *wa 'i* law as supporting the validity of *taklifi* law.

The application of punishment as in Indonesia is a minimum sentence which is often said to be superfluous due to the diversity which exists in Indonesia In terms of the purpose of the establishment of sharia law, with this method, of course it will still be achieved, even if it is

⁶⁰ The law on kisas with the intentional and unintentional options in this discussion is with the exception of if a parent kills his child intentionally, then he is not obliged to pay kisas, but only to pay diyat. Read: al-Hāzimī, *Sharh al-Rabbīyah*, juz 6, (t.t.: t.k.,t.th), page 9.

⁶¹ Diyat is a fine paid by a murderer to the victim's family.

⁶² Munawir, "Tafsir Indonesia Tentang Penerapan Hukum Allah", page 101.

⁶³ Zainuddin Ali, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2009), page 67-68.

not in the way recommended by the Qur'an. This aspect is of course for the sake of peace and unity as has also been practiced by the Prophet.

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