

## **Contextualizing Justice in Times of Crisis: A Study of QS. Al-Mā'idah 5:38 and its Application in Criminal Theft Cases**

*Kontekstualisasi Keadilan di Masa Krisis: Studi QS. Al-Mā'idah 5:38 dan Penerapannya dalam Kasus Tindak Pidana Pencurian*

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### **Abstract**

The Qur'an is considered a guide for all of humanity, offering valuable insights and guidance that is adaptable to changing circumstances and the challenges of modern life. This paper focuses on the issue of theft in times of emergency, which is an issue of concern for many societies today. In particular, the paper examines the Quranic verse, QS Al-Mā'idah 5:38, which states that men and women who steal are punished by having their hands cut off. The paper employs Abdullah Saeed's interpretation method, which emphasizes the importance of contextualizing Quranic verses in response to contemporary realities. The findings of the study indicate that the verse in question has a universal value in terms of justice, as it seeks to ensure that people's basic rights are protected and fulfilled in order to prevent theft. However, if basic needs are not met and a person is forced to steal in order to survive, it may be permissible to do so, as long as the limits of necessity are not exceeded. The verse also has a temporal nature, as the law of cutting hands can be replaced with alternative punishments, depending on the circumstances. In the Islamic context, this alternative might be ta'zir, while in the Indonesian context, it might involve a restorative justice process. Overall, the paper offers valuable insights into how the Qur'an can be interpreted to address the challenges of modern life, especially in times of emergency. The study highlights the importance of contextualizing Quranic verses in order to respond effectively to changing circumstances, while still upholding the core values of justice and compassion.

Keywords: Justice, Contextualization, The Law of Stealing, QS Al-Mā'idah 5:38

### **Abstrak**

Al-Qur'an dianggap sebagai petunjuk bagi seluruh umat manusia, menawarkan gagasan dan panduan penting yang dapat menyesuaikan dengan keadaan yang selalu berubah-ubah dan tantangan kehidupan modern. Artikel ini berfokus pada masalah pencurian pada masa darurat yang banyak menarik perhatian masyarakat saat ini. Secara khusus, artikel ini mengkaji ayat Al-Qur'an, QS al-Mā'idah ayat 38, yang menyatakan bahwa laki-laki dan perempuan yang mencuri dihukum potong tangan. Kemudian dikaji menggunakan metode tafsir Abdullah Saeed yang menekankan pentingnya mengontekstualisasikan ayat-ayat Al-Qur'an dalam merespon realitas kontemporer. Temuan penelitian menunjukkan bahwa ayat tersebut memiliki nilai universal dalam hal keadilan, karena berusaha untuk memastikan bahwa hak-hak dasar manusia dilindungi dan dipenuhi untuk mencegah pencurian. Akan tetapi, jika kebutuhan pokoknya tidak terpenuhi dan seseorang terpaksa mencuri untuk bertahan hidup, maka diperbolehkan selama tidak dilampaui batas kebutuhannya. Ayat tersebut juga bersifat temporal, karena hukum potong tangan dapat diganti dengan hukuman alternatif, tergantung pada situasi dan kondisi yang melingkupinya. Dalam konteks Islam, alternatif hukuman yang ditawarkan ialah hukuman ta'zir, sedangkan dalam konteks Indonesia, mungkin melibatkan proses keadilan

restorative (restorative justice). Secara keseluruhan, artikel ini menawarkan gagasan penting tentang bagaimana Al-Qur'an dapat ditafsirkan untuk menghadapi tantangan kehidupan modern, terutama di saat darurat. Studi ini menyoroti pentingnya melakukan kontekstualisasi terhadap ayat-ayat Al-Qur'an guna memberi respons secara efektif terhadap perkembangan zaman, sembari tetap menjunjung tinggi nilai-nilai inti keadilan dan kelembutan.

Kata kunci: Keadilan, Kontekstualisasi, Hukum Mencuri, QS al-Mā'idah 5:38.

## Introduction

The Qur'an emphasizes the crucial role of justice in enforcing Islamic law,<sup>1</sup> yet its implementation often falls short in constructing Islamic law, as justice is frequently used as a mere slogan.<sup>2</sup> This can be observed in instances of violence carried out in the name of religious justice. To ensure that justice is upheld in every legal decision, it is imperative to take into account the social context of Qur'anic verses. Muhammad Shahrur has emphasized that Islamic law could lose its significance and breed mistrust towards Islam if it neglects the sociological aspects of its implementation.<sup>3</sup> One particular Qur'anic verse that pertains to the establishment of law, QS Al-Mā'idah 5:38, specifically prohibits theft and outlines the appropriate punishment for such wrongdoing.<sup>4</sup> This verse encompasses both legal and social implications that necessitate careful deliberation in the determination of the law.

The formation of Islamic law has witnessed the adaptation of the interpretation of QS Al-Maidah 5:38 to the prevailing context. During the revelation, the Prophet Muhammad established the elements of theft based on an understanding of the verse. However, the interpretation of this verse has continuously evolved in response to the changing context in the post-revelation era. For instance, Umar Bin Khattab refrained from imposing a hand-cutting law for thieves during the food crisis (famine).<sup>5</sup> In the classical to middle era, tafsir scholars and fiqh scholars emphasized the terms and forms of theft to reinforce the Islamic law of theft. In the contemporary era, there has been a broader interpretation and study of *fiqh*, which includes discussions on more humane forms of punishment compared to the law of hand-cutting. These changes reflect the dynamic nature of the interpretation and implementation of Islamic law over time.

Based on the aforementioned points, it can be inferred that the interpretation

1 Muh. Daming K, "Justice Construction In Qur'an Perspective," *Advances in Social Sciences Research Journal* 4, no. 14 (2017).

2 Lawrence Rosen, *Islam and the Rule of Justice, Islam and the Rule of Justice*, 2017.

3 Muhammad Shahrur, *Prinsip dan Dasar Hermeneutika Hukum Islam Kontemporer* terj. Sahiron Syamsudin (Yogyakarta: ELSAQ Press, 2007), 18.

4 Wahbab Zuhaili, *Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syari'ah Wa Al-Manhaj*, Jilid III (Damaskus: Dār al-Fikr, 2009), 529.

5 Abū Ishāq Ibrāhīm asy-Syīrāzī, *al-Muhḏab fī Fiqh al-Imām asy-Syāfi'i*, Jilid III (Beirut: Dār al-kutub al-'Ilamiyah: 1995), 362.

of QS Al-Mā'idah 5:38 has undergone a transformation with the emergence of a new context. One such context is the emergency situation. Wahbah Zuhaili posits that an emergency may arise when individuals face extremely perilous or difficult conditions that elicit concerns about harm or loss.<sup>6</sup> For instance, the COVID-19 pandemic has compelled numerous individuals to resort to theft to meet their basic needs after losing their sources of income. Thus, it becomes imperative to reexamine the interpretation of QS Al-Mā'idah 5:38 within the context of an emergency while considering the principle of justice.

Numerous studies have been conducted on the Islamic law of theft based on QS Al-Mā'idah 5:38. The first study investigated the correlation between the verse and the form of punishment for stealing, as carried out by Raoff Bin Rased et al,<sup>7</sup> Mardani,<sup>8</sup> and Maharwati Dongoran.<sup>9</sup> The study concluded that stealing can warrant either a hand-cutting law, commonly known as *Hadd*, or a *Ta'zir*, such as imprisonment, as prescribed by a judge. The second study focused on the elements of theft in Islamic law, conducted by Muzai Rami<sup>10</sup>, Dedi Miswar<sup>11</sup>, and Ghoffar Ismail<sup>12</sup>. The study posited that the elements of theft in Islamic law include the act being carried out covertly, the stolen goods not belonging to the thief, the lack of ownership of common property, the stolen property exceeding the thief's *nisab*, being done intentionally and deliberately, and the stolen goods being valuable assets. Despite the extensive research, no new interpretation of QS Al-Mā'idah 5:38 has been found to address emergency situations, such as those arising during the current COVID-19 pandemic. Therefore, the purpose of this study is to uncover the new meaning of the verse on the punishment of thieves in the social context of emergency scenarios.

6 Wahbah az-Zuhaili, *Naẓariyyah aḍ-Ḍarurah asy-Syar'iyyah Muqāranah Ma'a al-Qānūn al-Waḍ'ī* (Beirut: Muassasah al-Risalah, 1985), 67-68.

7 Raoff Bin Rased, dkk. "Hukuman Pencurian Pada QS. Al-Maidah Ayat 38 (Studi Terhadap Pemikiran Wahbah Az-Zuhaili dan Muhammad Syahrur)" *Al-Misykah: Jurnal Kajian Al-Qur'an dan Tafsir* 2, no.2, 2021, 52-65.

8 Mardani. "Sanksi Potong Tangan Bagi Pelaku Tindak Pidana Pencurian Dalam Perspekti Hukum Islam" *Jurnal Hukum* 15, no. 2, 2008, 239-259.

9 Maharwati Dongoran. "Hukuman Bagi Pelaku Pencurian Yang Mengembalikan Barang Curiannya (Studi Komparatif Hukum Pidana Positif dan Hukum Pidana Islam)" *Undergraduate Thesis* Department of Islamic Law UIN Sumatera Utara, 2019.

10 Muzai Rami. "Kadar Pencurian Menurut Mazhab Hanafi Ditinjau Dari Konsep Masalah" *Undergraduate Thesis* Faculty of Islamic Law UIN Ar-raniry Aceh, 2019.

11 Dedi Mizwar. "Unsur-Unsur Pencurian Menurut Hukum Pidana dan Hukum Islam (Studi Pencurian di Bengkel Sepeda Kawasan Psar Tungkop Kecamatan Darussalam Kabupaten Aceh Besar Tahun 2016)" *Undergraduate Thesis* Faculty of Islamic Law UIN Ar-raniry Aceh, 2018.

12 Ghoffar Ismail. "Konsep Sariqah (Pencurian) dalam Perspektif Ulama Klasik dan Ulama Kontemporer" *The regular research of lecturer* Muhammadiyah Yogyakarta University, 2006.

This study employs Abdullah Saeed's contextual interpretation method due to its ability to provide systematic steps and give greater attention to legal verses (ethico-legal) by taking into account the context, specifically QS Al-Mā'idah 5:38 in an emergency context. By using a contextual approach, the researcher aims to address three questions: the historical meaning of QS Al-Mā'idah 5:38, the meaning of the verse in the context of its correlation, and the meaning of the verse in an emergency context. Abdullah Saeed offers operational steps in his contextual interpretation method, namely, first, Encounter with the Word, which involves understanding the text being examined. Second, Critical Analysis, which critically analyzes the text by involving linguistic aspects, contextual analysis, literary analysis, and parallel texts. Third, meaning for the First Recipient, which analyzes the meaning of the verse in the historical context in which the text was revealed to identify the intended meaning in the Quran. Fourth, Meaning for the Present, which analyzes the meaning of the verse in the present context and examines the problems that the text seeks to address.

### Linguistic Analysis of QS Al-Mā'idah 5:38

Analysis of linguistic features is a crucial aspect in the interpretation of the Qur'an. Abdullah Saeed cites Arkoun's emphasis on the importance of comprehensively learning the language. Morphological, syntactical, semantic, and stylistic features of the text are examined to gain an in-depth understanding of its linguistic aspects. This involves identifying dominant terms and ideas in the text to comprehend why certain linguistic features are employed and how they impact the text's meaning.<sup>13</sup> In the context of QS Al-Mā'idah 5:38, significant terms that necessitate analysis include *saraqah*, *qata'a*, and *yadd*.

The word “السَّارِقُ وَالسَّارِقَةُ” is a defined term that refers to a male and female thief and is derived from the verb “سرق - يسرق - سرقة” which means “to steal”. According to Muhammad Syahrur, the *Ism Fa'il* form of the word implies a perpetrator who habitually commits a crime and does so repeatedly over an extended period. This opinion is also shared by Hasbi ash-Shiddieqi<sup>14</sup> and Quraish Shihab<sup>15</sup>, who contend that the word “*as-sāriq*” in QS Al-Mā'idah 5:38 conveys a recidivist meaning, indicating that the deeds have been carried out repeatedly. Shahrur further remarks that if the thief in question has only stolen once, the Qur'an would use the language

13 Abdullah Saeed, *al-Quran Abad 21: Tafsir Kontekstual* (Bandung: PT Mizan Pustaka, 2016), 170-171.

14 Teungku Muhammad Hasbi ash-Shiddieqy, *Tafsir al-Qur'an al-Majid an-Nur*, Jilid I (Jakarta: Cakrawala Publishing, 2011), 660-661.

15 M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan, dan Keserasian al-Qur'an*, Vol. III (Ciputat: Penerbit Lentera Hati, 2011), 113.

“*wa man yasraqu*” which means “whoever steals”.<sup>16</sup> The term “*faqta’u*”, meaning “cut”, is the *fi’il amr* form of the word “*qata’a*”, which linguistically means “separating some parts of the piece from others”.<sup>17</sup> Ibn Faris explains that the word “قطع” is derived from the root words “*as-Sarm*” (separating), “*al-Batr*” (cutting), and “*al-Ibānah*” (explaining), and does not necessarily involve the use of sharp objects.<sup>18</sup> For instance, “*Qat’i at-Tāriq*” refers to a pedestrian, and “*qat’i ar-Rahīm*” denotes someone who breaks family ties, without the need for cutting instruments such as knives. Lastly, the term “*aidiyahuma*” has a linguistic meaning of “both hands”. The word is derived from “*yadd*” which has two meanings: “hand” and “rank or position”.<sup>19</sup> If the term “*qata’a*” refers to “*al-Batr*” (physical cutting), then “*qata’a*” means “hand”, which earlier scholars had varying interpretations of. Some interpret it as fingers, palms, arms up to the elbow, while others argue that it refers to the entire hand.<sup>20</sup>

Muhammad Shahrur, has put forward a different interpretation of the word “*yaddun*”. Shahrur suggests that attention should be given to verses containing the root of the word *yadd*, such as in QS al-Fath 48:10, QS Yāsin 36:9, and QS al-Fath 48:24. Shahrur interprets *yadd* as victory and help, signifying protection. Furthermore, *yadd* can also be interpreted as a leader (*al-Imām*), ability (*al-Qudrah*), and constancy (*at-Tamakkun*).<sup>21</sup> As a result, he contends that *Qat’u Yad* implies restricting an individual’s ability to engage in activities, such as imprisonment, which prevents them from working, earning a living, or doing anything. However, this interpretation would not lead to greater harm.

### The Socio-Historical Context of QS Al-Mā’idah 5:38

The step of examining the socio-historical context is crucial in the pursuit of understanding the Meaning for the first recipient of the text. This step serves to explore how a particular verse was perceived by the early Islamic society by delving into its socio-historical context. Gathering historical data on the 7th century AD society, including its economic, political, legal, and religious systems, enables a deeper comprehension of the relationship between the rules presented in the legal ethics verses and the reasons for their introduction to the Hijaz society. This study provides

16 Muhammad Shahrur, *Naḥw Uṣūl Jadīdah Li al-Fiqh al-Islāmī*, Terj. Sahiron Syamsuddin, MA dan Burhanuddin dalam Metodologi Fiqih Islam Kontemporer (Yogyakarta: Elsaq Press, 2004), 158.

17 Muḥammad bin Mukram Ibnu Manzūr, *Lisān al-‘Arab*, Juz X (Beirut: Dār Sadr, 1414 H), 276.

18 Muhammad Shahrur, *Metodologi Fiqih Islam Kontemporer*, 153.

19 Ahmad Warson Munawwir, *Kamus al-Munawwir Arab-Indonesia* (Surabaya: Pustaka Progresif, 1997), 1587-1588.

20 Muhammad Shahrur, *Metodologi Fiqih Islam Kontemporer*, 159.

21 Muhammad Shahrur, *Metodologi Fiqih Islam Kontemporer*, 161.

a strong foundation for comprehending the socio-historical background and context that influenced the early people's understanding of religious teachings.

Punishment for theft has existed since pre-Islamic times, and various methods were employed such as making the thief a slave or servant to the victim, and even the Prophet Ibrahim a.s. was known to have used this method. In Egypt, during the same era, torture and twice the value of stolen goods were the punishments of choice,<sup>22</sup> while in the *jāhiliyyah* period, thieves were punished with amputation of their hands. A historical chronicle mentions that Duwaik Maula Bani Malik, Ibn Umar of Bani Khuza'ah, was punished by the Quraysh authorities with dismemberment for stealing the treasury of the *kaaba*.<sup>23</sup> QS al-Mā'idah 5:38 is revealed within the context of the story of Thu'mah ibn Ubairiq, who stole the armor of his neighbor, Qatadah. Thu'mah hid the armor in a sack of flour and left it in the home of a Jewish man named Zaid bin Samin. Although Qatadah suspected Thu'mah, he did not confess. Later, the armor was found in Zaid bin Samin's house, and Bani Zhafar, who defended Thu'mah, accused Zaid bin Samin of being the thief. The matter was reported to the Messenger of Allah, who was about to defend Thu'mah but was rebuked by Allah through the descent of QS an-Nisā' verse 107 and QS al-Mā'idah 5:38, which explained the punishment for thieves. However, the story does not provide details on how the Messenger of Allah punished Thu'mah. Prior to Islam, the punishment for theft during the *jāhiliyyah* era was to make the thief a slave or servant of the person whose property was stolen. After the descent of this verse, the punishment for thieves was regulated according to the provisions given.

The case of Thu'mah led to the revelation of QS al-Mā'idah 5:38, but historical records do not mention how the Apostle punished him. However, Thu'mah's lies and those of his clan have been extensively discussed in several interpretation books, and were also the reason behind the revelation of QS an-Nisā'. 4:107. The discussion of the *asbabun nuzul* of QS al-Mā'idah 5:38 includes other theft cases that led to the revelation of this verse, such as the case of Marrah binti Sufyan of Bani Makhzum, who was reportedly the first woman punished with dismemberment by the Apostle, according to Qurthubi.<sup>24</sup> Nonetheless, the explanation of QS an-Nisā'. 4:107 mainly focuses on Thu'mah and his family's hypocrisy in accusing the Jew, Zaid bin Samin, of being the thief. Thu'mah fled to Makkah and later apostatized.<sup>25</sup>

22 M. Quraish Shihab, *Tafsir al-Misbah: Pesan, Kesan, dan Keserasian al-Qur'an*, 2005, Vol. VI, 503

23 Ibnu Jarīr at-Ṭabarī, "Ṭarīkh at-Ṭabarī" in <https://lib.eshia.ir/22009/2/39> accessed on 7 December 2021.

24 Al-Qurṭubī, *al-Jāmi' al-Aḥkām Al-Qur'an wa al-Mubayyin Lamā Taḍammanah min as-Sunnah wa Āyi al-Furqān*, Jilid 5 (Beirut: Muassasah ar-Risālah, 2006), 111.

25 Wahbah Zuhaili, *Al-Tafsir Al-Munir Fi Al-Aqidah Wa Al-Syari'ah Wa Al-Manhaj* (Damaskus: Dār al-Fikr, 2009), 267.

After examining the historical context, it has been discovered that the Prophet, in some circumstances, refrained from imposing penalties for theft. According to one *riwayah*, the Prophet prohibited the punishment of hand-cutting while traveling.<sup>26</sup> Al-Auza'i cites another history that indicates this prohibition extended to times of war. The reason for the Prophet's decision to prohibit the imposition of this punishment during such situations was concern that the convicted individual might join the enemy. Al-Tusbisti also cited another reason, which was the fear that the process of imposing hand amputation penalties during war would distract the focus of Muslims in battle, as they would have to attend to the process.

### **The Interconnecting Context of QS Al-Mā'idah 5:38 in Classical Tafsir Literature**

The primary objective of contextual interpretation is to establish a correlation between the intended meaning of a specific verse in the Qur'an, as perceived by the early 7th century AD recipients of the revelation in Makkah and Medina, and the contexts that emerged in subsequent periods. This process involves examining each viewpoint and context presented by the generations that followed. It is important to note that there may be significant disparities between modern and pre-modern contexts, which can impact the values conveyed by the text, whether they remain unaltered or evolve over time.<sup>27</sup> Therefore, through the identification of values and clues apparent in the evolution of such contexts, interpretation can be directed towards uncovering novel meanings that are more pertinent to the current era.

#### ***Thievery during the Era of al-Khulafa' al-Rashidin***

Following the death of the Prophet Muhammad, the Islamic leadership was maintained by the caliphs who governed in a different context than that of the Prophet's lifetime. During the reign of Caliph Abu Bakr Ash-Shiddiq, a case of theft was committed by a disabled person. In this instance, Abu Bakr ruled that the deformed hand should be amputated as a punishment. If the right hand is deformed, the thief will be subject to the penalty of amputation on the right hand, and vice versa, to prevent dysfunction in both hands if only one is cut. Additionally, Abu Bakr argued that if the right leg is deformed, the right hand should not be amputated; in contrast, if the left leg is deformed, the right hand can still be cut off. If the thief repeats the same crime, they will be imprisoned and subjected to a more severe

26 أَخْبَرَنَا عَمْرُو بْنُ عُثْمَانَ، قَالَ: حَدَّثَنِي بَقِيَّةٌ، قَالَ: حَدَّثَنِي نَافِعُ بْنُ يَزِيدَ، قَالَ: حَدَّثَنِي حَبِيبُ بْنُ شَرِيحٍ، عَنْ عِيَّاشِ بْنِ عَبَّاسٍ، عَنْ جُنَادَةَ بْنِ أَبِي أُمَيَّةَ، قَالَ: سَمِعْتُ بُسْرَ بْنَ أَبِي أَرْطَاةَ قَالَ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: لَا تَقْطَعُ الْأَيْدِي فِي السَّفَرِ

27 Abdullah Saeed, *al-Quran Abad 21: Tafsir Kontekstual*, 177.

punishment until they repent.<sup>28</sup>

During the leadership of Umar bin Khattab, there were differences in his *ijtihad*, particularly regarding the punishment of thieves during times of famine. One well-known story is that of Hatib's maid, who stole his master's camel due to being forced to do so. Umar did not punish Hatib's aides, but instead ordered the employer to pay double the price of the camel. Umar believed that the act was carried out in an emergency and did not constitute an unlawful act. The annals of Abu Umamah mention that during years of famine,<sup>29</sup> there was no punishment for cutting off hands. Al-Syirazi explained that a review of the thief's circumstances during the famine is necessary, including whether the thief still has property or not. If the thief still has property, they should be punished as they did not need to steal. However, if not, then they are not punished, as was the decision made by Umar bin Khattab during those times. Umar himself once said, "I do not impose the punishment of cutting off hands during times of famine."<sup>30</sup>

Umar bin Khattab refrained from imposing the law of hand-cutting in situations other than emergencies and when there was a *syubhat* (equality of criminal facts) in it. An example of this occurred when someone stole property from *Baitul Maal*, and Umar did not impose the punishment of cutting his hands. When Abdullah bin Mas'ud inquired about this, Umar replied "لا تقطعه، فإن له فيه حقا" ("do not cut it, because there is a right in it"). Similarly, Sa'ad bin Abi Waqash had also asked the same question, to which Umar replied with the same answer but with the addition of "لا قطع عليه لأن له فيه نصيبا" ("not cut off because there is a part to which he is entitled in it").<sup>31</sup> The history concludes that if a person takes goods secretly and has his rights in them, it is not considered an act of theft. The existence of *syubhat* in the case results in a similarity of criminal facts and imperfections in the meaning of the word "stealing". Therefore, the punishment of cutting hands cannot be enforced.<sup>32</sup>

During the reign of Uthman ibn 'Affan, there were cases of reprieve for theft committed while on the way. According to the history of Ibn Abi Syaibah, a person stole whip while on his way to Makkah and Uthman decided to delay the execution

28 Muḥammad Ruwās Qal'ahjī, *Mausu'ah Fiqh Abi Bakar aṣ-Ṣidīq*, (Damasakus: Dār al-Fikr, 1983), 143.

29 Al-Burhān Faurī, *Kanz al-'Ummāl fī Sunan al-Aqwāl wa al-Af'āl*, Jilid V (Beirut: Muassasah Risalah, 2008), 381.

30 Abū Ishāq Ibrāhīm asy-Syīrāzī, *al-Muḥḍab fī Fiqh al-Imām asy-Syāfi'i*, Jilid III (Beirut: Dār al-kutub al-'Ilamiyah: 1995), 362.

31 Yusuf al-Qaradhawī, *Dirāsah fī Fiqh al-Maqāṣid asy-Syari'ah: Baina al-Maqāṣid al-Kulliyah wa al-Nuṣūṣu al-Juz'iyyah* (Kairo: Maktabah Wahbah, 1992), 109.

32 Muḥammad Ruwās Qal'ahjī, *Mausu'ah Fiqh 'Umar bin Khaṭāb*, (Damasakus: Dār al-Fikr, 1983), 491.



of the hand-cutting punishment until the thief reached his destination.<sup>33</sup> Uthman's decision to postpone the sentence was a form of *ijtihad* based on the prevailing circumstances. The *ijtihad* made by Abu Bakr, Umar bin Khattab, and Uthman ibn 'Affan were mostly followed during the reign of Ali ibn Abi Talib. However, there was one decision that differed from the previous three caliphs, which was the punishment for a third-time theft and onwards. Ali ibn Abi Talib chose to impose caning or imprisonment instead of cutting off the thief's hand again, as he was ashamed before Allah. Ali said, "What would he eat and run with if I cut off his other hands and feet?" Therefore, Ali chose to imprison the thief, and in other accounts, a life imprisonment sentence was given.

### ***Theft in Classical Tafsir Literature through the Interpretation of QS al-Mā'idah 5:38***

The term "classical tafsir" refers to the tafsir books that were written prior to Tafsir al-Manar by Muhammad Abduh and Rashid Rida in Egypt, as well as Tafsir Tafhim al-Quran by Ahmad Khan in India.<sup>34</sup> The classical commentaries on Surah Al-Mā'idah's verse 38 primarily focus on the text's interpretation, such as the components of theft, theft's conditions, the punishment of hand-cutting, and so on. For instance, some interpretations deal with the distinction between the general and specific aspects of the verse, which have an impact on the discussion of the stolen amount limit. The *mufassir* who views the theft verse as general argues that there is no limit to the value of stolen goods, meaning that all thefts can lead to hand-cutting penalties. On the other hand, the *mufassir* who specializes in the theft verse contends that there is a limit to the value of stolen goods, resulting in not all thefts being eligible for hand-cutting punishments.

In the classical era, there were *mufassir* who considered the verse of theft to have a specialty, including ath-Tabari and Ibn Katsir. At-Tabari explained in his interpretation that QS Al-Mā'idah 5:38 applies specifically in terms of its stolen value, which is 1/4 of a dinar or item worth it.<sup>35</sup> Meanwhile, Ibn Katir provided a more detailed explanation of the differences of opinion among the clerics regarding the limitation of stolen value. He mentioned several opinions, such as Imam Malik

33 Muḥammad Ruwās Qal'ahjī, *Mausu'ah Fiqh 'Uṣmān bin 'Affān*, (Damasakus: Dār al-Fikr, 1983), 203.

34 Abdul Mustaqim notes that the emergence of contemporary tafsir began during the Islamic modernization movement carried out by several Islamic figures and Mufassirs who wrote tafsir during that time. These figures include Jamaluddin Al-Afghani (1838-1896 AD) and his disciple Muhammad Abduh (1845-1905 AD) in Egypt, Muhammad Iqbal in Pakistan (1878-1938), and Sayyid Ahmad Khan in India (1817-1898). (see Abdul Mustaqim, *Dinamika Sejarah Tafsir Al-Qur'an* (Yogyakarta: Adab Press, 2012), 117.

35 Abu Ja'far Muhammad bin Jarir at-Tabari, *Tafsir at-Ṭabari* terj. Akhmad Affandi, Jilid VIII (Jakarta: Pustaka Azzam, 2008), 867.

ibn Anas with *nisab* worth 3 pure dirhams, Hanafi School worth 10 dirhams, Imam Shafi'i 1/4 dinar or the price of goods worth it or more, and some Salaf *Ulama* with *nisab* worth 1/5 or 5 dinars or 50 dirhams.<sup>36</sup> On the other hand, the scholars of madzhab adz-Dzahiri argue that the verse of theft is general. Therefore, the perpetrator of theft, whether the stolen goods are few or many, cheap or expensive, must be punished with cutting hands. They also argue that hand-cutting penalties should be given, whether stolen goods are protected or not. In their view, theft should be viewed absolutely without regard to other factors.<sup>37</sup>

The scholars of the Madzhab adz-Dzahiri argue that the verse on theft in QS Al-Mā'idah 5:38 is general, as supported by the history of Najdah al-Hanafi who asked Ibn Abbas about the nature of the verse, and he replied that it was general. Moreover, the *hujjah* of the Adz-Dzahiri School is based on the Prophet's Hadith<sup>38</sup> which states that perpetrators of theft, regardless of the quantity or value of the stolen goods, will still be punished with hand-cutting, citing examples such as stealing an egg or a rope.<sup>39</sup> However, the *Jumbur Ulama* commented on Mazhab adz-Dzahiri's opinion, highlighting three points. Firstly, the hadith in question has been abrogated by the hadith of 'Aisyah, however, further examination is necessary as the period of occurrence must be clear. Secondly, the term *baidah* (egg) has been interpreted as a helmet made of iron and the term *habl* (rope) has been interpreted as a ship's anchor. Thirdly, theft is a gradual process that starts with a small amount and progresses to a larger amount, resulting in the amputation of the thief's hand.<sup>40</sup>

Classical scholars debated the interpretation of the punishment of hand-cutting based on the pronunciation “فَأَقْطَعُوا أَيْدِيَهُمْ”. At-Tabari and al-Baidāwī interpreted it as cutting the right hand only. Ibn Katir did not give a specific interpretation of the pronunciation, whereas al-Bagawi interpreted it as cutting the right hand from the elbow in the second theft, and the left leg from the sole in the third theft. However, the scholars had varying opinions on the punishment for the third theft and beyond. Some argue that the left hand was cut off in the third theft, the right leg in the fourth theft, and the offender is punished with sanction or imprisonment until death in the fifth theft and beyond. Another opinion says that the offender is

36 Ibnu Kaṣīr, *Tafsīr al-Qur'an al-Azīm*, Juz III (Riyadh: Mamlakah al-'Arabiyyah as-Sa'ūdiyah, 1999), 108-109.

37 Ibnu Kaṣīr, *Tafsīr al-Qur'an al-Azīm*, Juz III, 108.

38 Ibnu Kaṣīr, *Tafsīr al-Qur'an al-Azīm*, Juz III, 108.

39 Hadis Riwayat Muslim, Kitab *Ṣaḥīḥ Muslim*, Bab *Ḥad as-Sariqah wa Niṣābuhā*, No. 1687, Aplikasi Maktabah Syāmilah.

40 Ibnu Kaṣīr, *Tafsīr al-Qur'an al-Azīm*, 110.

sentenced to imprisonment from the third theft onwards.<sup>41</sup> Al-Qurthubi argued that the pronunciation “فَأُطْعَمُوا” contains the meanings of explanation and disappearance. He also explained that Allah used the word “أَيْدِيَهُمَا” which means to cut off the right hand of the perpetrator and the right hand of the victim, not the word “يَدَيْهِمَا” which means to cut off both hands of the perpetrator. Additionally, Al-Qurthubi cited Umar’s account of the order to give harsh punishment to the perpetrators of theft by cutting off their hands and feet one by one.<sup>42</sup>

The punishment of theft is closely linked to the pronunciation “جَزَاءٌ بِمَا كَسَبْنَا نَكَالًا” “مِنَ اللَّهِ”. At-Tabari believes that the punishment is a necessary consequence for those who commit theft or any other type of disobedience towards Allah. He cites the Qatadah Annals which emphasize the importance of enforcing Allah’s law without hesitation, as Allah only commands what is good and prohibits what causes harm. Ibn Katir’s interpretation of the pronunciation “جَزَاءٌ بِمَا كَسَبْنَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ” is that the punishment for theft is a balanced recompense for using one’s hands to take other people’s property. The punishment of cutting off the thief’s hands is a manifestation of the Almighty and Wise God’s justice, commands, prohibitions, and decrees.<sup>43</sup> Similarly, the Qurtubi’s interpretation includes the pronunciation نَكَالًا مِنَ اللَّهِ, which means to inflict torment on the thief after committing the act of theft. In the Qurtubi’s view, the physical punishment of cutting off the thief’s hands is a means of inflicting this torment.<sup>44</sup>

### ***Thievery in Contemporary Tafsir Literature through the Interpretation of QS Al-Mā'idah 5:38***

Recent contemporary interpretations have been successful in revealing new meanings of the verse which have not been previously uncovered by classical *mufasssir*. These modern interpretations still explain the elements of theft, including the conditions, ways of proving theft, and forms of punishment for perpetrators, while also introducing new explanations on *'illah* punishment and preventive measures against the possibility of the crime occurring. Some contemporary tafsir literature has revealed that theft refers to the act of secretly taking someone else’s belongings from their storage area, which must have reached the *nishab*. *Tafsir al-Munir* by Wahbah az-Zuhaili, *Tafsir fi dilāli al-Qur'an* by Sayyid Qutb, *Tafsir an-Nur* by Hasbi ash-Shiddieqy, and *Tafsir al-Azhar* by Buya HAMKA are among the works that

41 Abi Muḥammad Ḥusain bin Mas'ūd al-Bagawī, *Tafsir al-Bagawī: Ma'alim at-Tanzil*, Jilid III (Riyadh: Dār Taibah, 1989), 53.

42 at-Tabari, *Tafsir at-Tabari*, Terj. Akhmad Affandi, Jilid VIII, 867-868.

43 Ibnu Kaṣīr, *Tafsir al-Qur'an al-Azīm*, 110.

44 al-Qurṭubī, *al-Jāmi' al-Aḥkām al-Qur'an*, Juz VII, 472.

provide explanations on this matter. Hasbi ash-Shiddieqy defined a thief (*Sāriq*) in QS Al-Mā'idah 5:38 as a person who has the habit of stealing or has committed theft on several occasions. Meanwhile, Sayyid Qutb mentioned that the limit for stolen goods is 1/4 dinar,<sup>45</sup> but Hasbi ash-Shiddieqy suggested that the status of theft can be determined by the judge based on the time, place, and circumstances of the incident.<sup>46</sup>

Furthermore, according to Sayyid Qutb, the act of theft is only considered theft when the stolen property truly belongs to someone else. Therefore, individuals who take communal property will not be subject to the penalty of cutting off their hands. Similarly, individuals who steal from *Baitul Maal*, a Muslim treasury, will not be subject to the punishment of cutting off their hands since they have rights to them. Nonetheless, in such cases, a person may still be subject to *ta'zir* punishment, such as flogging, imprisonment, humiliation, or sufficient advice.<sup>47</sup> Additionally, punishment for thieves cannot be enforced if there is still a *syubhat*, which means doubt or ambiguity, present in the situation. Sayyid Qutb identified several factors that are considered *syubhat*, such as hunger, necessity, and communal property. Secondly, the revocation of the confession and the lack of sufficient witnesses. Third, the suspect or defendant's reluctance to swear.

Contemporary *mufassir* not only interpret the elements of theft in the Qur'an, but also provide a broader interpretation beyond the textual aspects, including the interpretation of *'illah* punishment. This punishment serves not only as recompense but also as a deterrent to prevent the perpetrator from repeating the act and as a lesson for others. In Tafsir an-Nur, Hasbi ash-Shiddieqy explains that punishment is given to maintain the safety and tranquility of the community.<sup>48</sup> Meanwhile, according to Sayyid Qutb, the punishment of cutting hands in the sentence “فَأَطْعَمُوا” “أَيُّدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ” is a terrifying torment from God, which is an expression of God's affection for people who have a tendency to do evil. The purpose of this punishment is to prevent people from committing theft and to create tranquility in the community.<sup>49</sup>

Contemporary interpretation reveals that the Quran provides preventive measures to ensure that humans do not engage in criminal activities. Sayyid Qutb, in his *Tafsir fi Zilal al-Qur'an*, explains that Islam has educated human character and hearts so that individuals can work to obtain wealth through lawful means. Islam

45 Sayyid Qutb, *Tafsir fi Zilali al-Qur'an*, Jilid II (Mesir: Dār asy-Syuruq, tt), 883.

46 Teungku Muhammad Hasbi ash-Shiddieqy, *Tafsir al-Qur'an al-Majid an-Nur*, Jilid II, 1077.

47 Sayyid Qutb, *Tafsir fi Zilali al-Qur'an*, Jilid II, 884.

48 Teungku Muhammad Hasbi ash-Shiddieqy, *Tafsir al-Qur'an al-Majid an-Nur*, Jilid II, 1079.

49 Sayyid Qutb, *Tafsir fi Zilali al-Qur'an*, Jilid II (Mesir: Dār asy-Syuruq, tt), 886.

also acknowledges every Muslim's right to vital matters that sustain community life, such as the right to eat, drink, dress, shelter, and seek refuge. The state can fulfill these rights by teaching or providing training to the community on how to work, facilitating work, and providing job opportunities.<sup>50</sup> If any community members are unable to work, then Islam will fulfill their needs through obligatory sustenance, which will come from the wealth of the affluent members of the community, *Baitul Maal* of the Muslim community gathered from zakat, or if zakat is not sufficient, Islam will levy contributions from the wealthy to fulfill the needs of those who are unable.<sup>51</sup> According to Hamka, Allah provides two paths to prevent wrongdoing, namely the protection of the soul and the threat of punishment for those who cannot control themselves. Thus, Islam provides a solution to prevent criminal acts through the fulfillment of rights and the preservation of the soul.<sup>52</sup>

### Discovering the Hierarchy of Values in QS Al-Mā'idah 5:38

The contextualization of Qur'anic verses requires careful attention to the hierarchy of values present in each interpreted verse. One of the challenges in this process is determining the degree of significance of the identified Qur'anic values in the studied text. The term "value" in this context refers to what a Muslim may want to adopt, follow, practice, or reject in terms of beliefs, ideas, and practices. To determine the value, it is necessary to identify the type of text being studied. Abdullah Saeed has categorized texts into two types: context-free (universal) texts and context-dependent texts (particular). Context-free texts include mandatory, fundamental, protection, and instructional values, while context-dependent texts include both implementational and instructional values.<sup>53</sup>

Based on Abdullah Saeed's classification of text types and its criteria for determination, the paragraph that prohibits stealing falls under the category of texts with protective values. This value is an effort to preserve fundamental values, which in this case is property (*hifz Māl*) as one of the objectives of *Syari'a*. Al-Mā'idah 5:38 states a specific punishment for theft, which is cutting off hands. The punitive measures are necessary to follow up on those who violate the prohibition of stealing, making it an implementational as well as an instructional value since the pronouncement of *faqta'ū aidiyahumā* is a command sentence (*amr*).

50 Sayyid Quṭb, *Tafsīr fī Zilālī al-Qur'ān*, Jilid II, 882.

51 Sayyid Quṭb, *Tafsīr fī Zilālī al-Qur'ān*, Jilid II, 884.

52 Abdul Malik Abdul Karim Amrullah (HAMKA), *Tafsīr al-Azhar*, Jilid III, 1731.

53 A more detailed explanation of mandatory, fundamental, protection, and instructional values can be found in Abdullah Saeed's, *al-Quran Abad 21: ...* 111-116

The Qur'an prescribes cutting off the hands of thieves as a form of punishment, which may be viewed as a reflection of the cultural context of its time. Before the advent of Islam, the pre-Islamic Arabian society, known as *jāhiliyyah*, employed corporal punishment as a means of retaliation for crimes committed. Moreover, the law of retaliation was the primary mechanism for addressing various issues, including murder cases and those resulting in the loss of limbs. The law of retaliation aimed to ensure the security and peace within the tribal groups. In the primitive law of the desert, blood was required to be repaid with blood, which explains the use of corporal punishment in the society.

QS Al-Mā'idah 5:38, which mandates the cutting of hands as punishment for theft, reflects the temporal nature of the Qur'anic text that is dependent on the context in which it was revealed. Although the hand-cutting penalty was appropriate for the context in which the verse was revealed, it may not necessarily be applicable in the present day. For instance, Imam Shafi'i produced various fatwas and legal provisions that were adapted to his contextual circumstances. This is evident in the *Qaul Jadid* and *Qaul Qadim* of Imam Shafi'i, where differences in context between Iraq and Egypt resulted in variations in legal provisions. This demonstrates that legal provisions are contextual and can vary depending on the context in which they are applied.

### **The Contextual Meaning of QS Al-Mā'idah 5:38 and its Relevance to the Time of Crisis**

The final step in interpreting the Qur'anic text is to find the meaning for the present by analyzing the current context and identifying the problem that needs to be addressed. This is essential to update the original message of the Qur'an and make it relevant to the present situation, conditions, time, and environment.<sup>54</sup>

The protection of personal property has been a concern since ancient times, and the law has always taken strict measures against those who commit acts of theft that cause harm to others. In Islam, the punishment for theft is regulated in QS Al-Mā'idah 5:38. Although this verse initially provides information on the punishment for theft without gender distinction, it carries a growing significance in every context. During the *jāhiliyyah* period, perpetrators of theft were punished immediately without undergoing an examination process first. In this regard, Islam introduced a reform by requiring perpetrators of theft to go through an examination process before being found guilty. This arrangement contains elements that must be present in the criminal act of theft and is exemplified by the Prophet Muhammad. However,

<sup>54</sup> Abdullah Saeed, *al-Quran Abad 21: Tafsir Kontekstual*, 145.

over time, the understanding of the elements of theft has diversified among fuqaha and *mufassir*. This occurs because the existing context is evolving and generating new meanings that have never been discussed before, such as emergencies that force someone to steal. Therefore, contextualization in interpretation needs to be done to address current problems.

In times of crisis, an individual may resort to theft to safeguard their own life (*hifd Nafs*). According to the *Qarwāid Fiqhiyyah*, also known as the Rule of *ad-darurat Tubīhu al-Mahdurāt*, it is permissible for individuals to perform actions that are typically prohibited by sharia in emergency situations, as long as these actions are within reasonable limits. However, such actions must be carried out only to meet essential needs and not driven by greed or avarice. In Islam, there are dignified and halal ways to meet human needs, such as the obligatory family maintenance established by sharia, charitable contributions from affluent community members, and zakat from the *Baitul Maal* of Muslims. When all of these sources are insufficient, Islam requires the wealthier members of society to contribute their surplus property.

In response to the COVID-19 emergency in Indonesia, the government has implemented various social assistance measures, such as subsidies for cash, internet, electricity, and rice, for underprivileged communities. However, it is essential to ensure that the aid is directed towards the intended beneficiaries and does not get channeled towards inappropriate channels. Although stealing after fulfilling basic needs is considered a reprehensible and inexcusable action, the lack of sufficient aid reaching its rightful recipients complicates the punishment for theft. In his *Tafsir fī dilāli al-Qur'ān*, Sayyid Qutb mentions that one of the unclear matters (*syubhat*) is the situation of hunger and need.<sup>55</sup> Even though theft committed during an emergency may be excused, the perpetrator may still be subjected to *ta'zir* punishment as a means of providing justice for the victim. The judge has the discretion to decide on the appropriate punishment that considers justice for both the perpetrator and the victim of theft. In Indonesia, there are various articles that stipulate the punishment for theft, ranging from petty theft to severe theft that carries the death penalty.<sup>56</sup> However, there is currently no law that specifically regulates the punishment status for criminal acts that involve emergency elements. Nonetheless, the Indonesian Criminal Law includes the *overmacht* provisions that may aid in determining criminal cases involving emergency situations.<sup>57</sup>

55 Sayyid Qutb, *Tafsir fī Zilāli al-Qur'ān*, Jilid II, 884.

56 Direktori UU RI, "Pasal 364 KUHP" in <https://uu.direktorimu.com/kuhp/buku-kedua/bab-22-pencurian/>, diakses pada tanggal 4 Mei 2021.

57 J.E Sahetapy, *Hukum Pidana* (Jakarta: Rineka Cipta, 2006), 25.

Although Indonesia has yet to establish legal implications for the status of criminal acts committed in emergencies or forced elements as stipulated in Islamic law, Indonesian law offers the concept of restorative justice, which is the process of solving criminal acts through the participation of perpetrators, victims, families of perpetrators/victims, and other related parties to seek a fair solution. This concept emphasizes peace, the fulfillment of a sense of justice that involves all parties, and not retaliation. Thus, the contextual meaning of QS Al-Mā'idah 5:38 and its relevance during the emergency period in Indonesia have considered justice as the universal nature of this verse, both in the context of Islamic law and Indonesian law. The Qur'an considers the factors behind a person's actions, and QS Al-Mā'idah 5:38 not only prosecutes a person with punishment for their offenses but also guarantees the fulfillment of the right to minimize the urge to obtain property in an improper way. Moreover, justice is also seen through the alternatives to punishment or problem-solving offered by Islamic law and Indonesian law, in accordance with the applicable context.

## Conclusion

The Qur'an conveys the main message of justice, and during the Islamic era, the practice of Prophet Muhammad emphasized the key elements that should be present in the determination of punishment, which was different from the pre-Islamic period where the determination was made without going through an investigative process. Although QS Al-Mā'idah 5:38 deals with the form of hand-cutting punishment as practiced in pre-Islamic times, Islam provides clear elements to ensure that the execution of punishment is not arbitrary. The value of justice in QS Al-Mā'idah 5:38 has always existed, despite the evolving context and times. The contextual meaning of QS Al-Mā'idah 5:38 during an emergency situation shows the importance of justice for all parties involved. The Qur'an considers the aspects behind a person committing an offense and, in cases of compulsion during an emergency, the person may be exempt from the punishment of hand-cutting *hadd* or subject to *ta'zir* punishment at the discretion of the judge. In Indonesia, restorative justice offers a problem-solving approach that involves the participation of perpetrators, victims, families, and other parties to seek a fair and just solution. QS Al-Mā'idah 5:38 provides decisive action against those who deliberately cause harm, while also emphasizing the importance of preventive measures to discourage humans from committing offenses.

Further improvements in the contextual meaning of QS Al-Mā'idah 5:38 are still needed, particularly in examining its relevance to countries that apply Islamic law as their legal system. This study focused on Indonesia, and thus additional research is necessary to trace the flow of the verse's development over time in other



countries. Additionally, this study did not utilize *Ma'anil Hadis* to explore the socio-historical context of the revelatory period, which presents opportunities for further investigation. By doing so, it may be possible to identify the dominant meaning of the verse and provide a comprehensive historical perspective.

### Supplementary Materials

The data presented in this study are available in [insert article or supplementary material here] (Usually the datasets were analyzed from library research can be found in the whole data references ).

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### Authors' contributions

I did this research by myself, from preparing the materials, writing the paper, reviewing, and revising.

### Data availability statement

Data sharing is not applicable to this article as no new data were created or analysed in this study.

### Conflicts of Interest

None of the authors of this study has a financial or personal relationship with other people that could inappropriately influence or bias the content of the study.

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