

# ESENSIA

Jurnal Ilmu-Ilmu Ushuluddin

**Economic Thought of Ibn Taimiyah and  
Relevance to the World Economic and  
Community Economic System**

*Ahmad Maulidizen*

**Contextualization of Hadical Understanding  
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**Nazm Jawen on 'Ilmu Al-Tajwīd and Qirā'āt  
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**The Study of Living Hadith of the Ancak  
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*Umi Hanik, Ibnu Hajar Ansori*

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# Historical Socio Analysis in the Interpretation of the Quran: Case Study of Legal Verses

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## **Abstract:**

*This study is to find the role of historical setting of the Quran revelation in understanding Quran, which is traced through the cause of Quran revelation. The verses analyzed in this study are the verses of the law (legal verses) which have the special cause of revelation. Those verses of the law are read and interpreted by using three theory of the cause of revelation, those are the common word of the Quran text, the special cause of revelation, and maqāsīd al-sharīa (purposes of sharia). The finding of this study asserts that the verses of the law which are read and interpreted by using maqāsīd al-sharīa are more dynamic than using two other theories. Based on this finding, then any provision of the law which differ textually with the provision of the law existing in the Quran may it is a part of the Quran teaching based on the similarity of maqāsīd al-sharīa.*

**Keywords:** *history, maqāsīd al-sharīa, verse, law*

## **Abstrak:**

*Penelitian ini bertujuan untuk mengetahui peranan latar historis turunnya ayat dalam memahami Alquran, yang ditelusuri melalui sebab turunnya ayat. Ayat-ayat yang dianalisis pada penelitian ini adalah ayat-ayat hukum yang memiliki sebab turun khusus. Ayat-ayat tersebut dibaca dengan kaidah sebab turun yang dibaca dengan menggunakan tiga kaidah sebab turun, yakni keumuman lafal, kekhususan sebab, dan maqāsīd al-sharīah (tujuan-tujuan syara). Simpulan penelitian ini mengatakan bahwa ayat-ayat hukum yang dibaca menggunakan maqāsīd al-sharīah lebih dinamis daripada ayat-ayat hukum yang dibaca menggunakan kekhususan sebab apalagi keumuman lafal. Didasarkan pada simpulan ini, maka setiap ketetapan hukum yang berbeda secara tekstual dengan ketetapan hukum yang ada dalam Alquran boleh jadi merupakan bagian dari ajaran Alquran didasarkan pada kesamaan maqāsīd al-sharīah.*

**Kata Kunci:** *sejarah, maqāsīd al-sharīah, ayat, hukum*



## Introduction

In its revelation era, Quran is a response from God to many problems happening in Arab society. This response is not only about faith issues, but also about other issues, including legal issues. Revealed in at least 23 years, Islamic scholars have studied this response to various studies, such as the study of the Quran's territorial revelation by studying Mecca-Medina verses, or the study of the Quran's cause of revelation by studying the cause of revelation. Some of problems of society are answered gradually and others at once, as can be traced in the Quran through the quantity of legal issues mentioned in the Quran.

Studying Mecca verses or verses of the Quran revealed in Mecca means studying how many humanitarian problems happened in Mecca during 13 years, which is more universal problem in its solution.<sup>1</sup> This study of Mecca era needs knowing the whole life of Mecca society, and then tracing how Quran responded their problems. Quraish Shihab analyses the Quran period revealed in Mecca during 13 years into two periods, namely: (1) first four years of revelation is about how to form the personal of the Prophet Muhammad, to introduce the basic knowledge of the Islamic attitude, and to argue against the Jahiliya opinion; (2) second nine years is about how to blockade the Jahiliya opinion.<sup>2</sup> Those whom the Quran refers to in Mecca are the idolaters, most of whom worshiped idols and lived the hedonist lives. Sura and verses revealed in Mecca, among those are sura 102, al-Takāthur (The Piling up) which describes the rivalry for piling up the wealth which is diverting people from the more serious things, sura 104, al-Humazah (The Scandalmonger) which describes the bad luck

to every kind of scandalmonger, sura 105 al-Fil (The Elephant) which describes the Abrahah's invasion, and sura 106, Quraysh (The Tribe of Quraysh) which describes the routine traveling to trade in winter and summer.

Studying verses of the Quran revealed in Medina means studying how many humanitarian problems happened in Mecca during 10 years, which is more partial and needs the specified solution.<sup>3</sup> This study of Medina era needs knowing the whole life of Medina society, and then tracing how Quran responded their problems. Quraish Shihab analyses the Quran period revealed in Medina during 10 years is about values in social life.<sup>4</sup> Legal verses that are related to the community governance are generally revealed in Medina. Those whom the Quran refers to in Medina are Jews and Christians who had also been revealed to them the Divine books through their prophets. Sura 2, al-Baqarah (The Heifer), sura 3, Alī Imrān (The Family of Imran), sura 4, al-Nisā (The Women) and other long sura relating to the community governance, are revealed in Medina.

Among issues responded gradually is the prohibition of drinking intoxicants (wine). The first verse related to this prohibition drinking intoxicants is emphasized in sura al-Baqarah/2:219 which says that in intoxicants there is great sin and some profits, but the sin is greater (dangerous) than the profits,<sup>5</sup> such as among these dangerous are loss of balance, health problems, fraud, falsehood, defraud and hostility, while among these profits which enjoyed by some people are material advantage, temporary pleasure, warmth in

<sup>1</sup> Heri Khoiruddin. *Kondisi Historis dalam tafsir* (Bandung: Fajar Media, 2013), 26-27.

<sup>2</sup> M. Quraish Shihab, *Membumikan al-Qur'an: Fungsi dan Peran Wahyu dalam Kehidupan Masyarakat* (Bandung: Mizan, 1993), 34-36.

<sup>3</sup> Heri Khoiruddin. *Kondisi Historis dalam Tafsir*, 26-27.

<sup>4</sup> M. Quraish Shihab, *Membumikan al-Qur'an: Fungsi dan Peran Wahyu dalam Kehidupan Masyarakat*, 37-38.

<sup>5</sup> Quraish Shihab analyses that sura al-Baqarah/2:219 is the second verse discussing the intoxicants, and the first verse of it is sura al-Nahl/16:67 which discusses the fruit of the date palm and the vine to get out wholesome drink and food. See, M. Quraish Shihab, *Tafsir al-Mishbah* (Jakarta: Lentera Hati, 2010), Volume 1, 565.

winter and job vacancy.<sup>6</sup> The next verse related to this prohibition is emphasized in sura al-Nisā/4:43 which forbids people to pray with a befogged mind until he can understand all what he says. After these two verses, another verse revealed relating to this prohibition is sura al-Māidah/5:90 which forbids people to drink intoxicants because it is an abomination or Satan's handiwork. In contrast to this prohibition is the prohibition on stealing which is responded not gradually, and the sanctions for thieves as emphasized in sura al-Māidah/5:38, for both his hands to be cut.

Based on its cause of revelation, verses revealed relating to this prohibition are based on the certain condition. One of the narrations as the cause of revelation of sura al-Baqarah/2:219 is based on Umar ibn Khattab. Once, Umar prayed and cried to God asking the legal instruction about intoxicant and its explicit explanation, because it had deprived the property and damaged the mind, and then Allah revealed sura al-Baqarah/2:219. He was called and recited to him this sura. He prayed again, and then Allah revealed sura al-Nisā/4:43. He was called and recited to him this sura. He prayed again, and then Allah revealed sura al-Māidah/5:91. He was called and recited to him this sura.<sup>7</sup> In other narration of this prohibition of drinking intoxicants is the impact of intoxicant in human life, that is an accident happened to Ali when he was invited by Abdurrahman ibn 'Auf to eat and drink, and become a leader of religious followers in prayer and at that time he made a mistake in reciting sura al-Kāfirūn.<sup>8</sup> The greater impact of the drinking intoxicant is reflected in the cause of revelation of sura al-

Māidah/5:90, that is the hostility among tribes because of intoxicant. They were the Anshar people who lived in harmony, when they drank the intoxicant, they bothered each other and they left scars on their faces and heads until their families became disharmony and made the animosity and resentment among them, and when they did not drink it, they became harmony.<sup>9</sup>

Cause of revelation requires at least four things, namely place, incident, time, and subject.<sup>10</sup> Based on these four things can be described the context around the Quran text. From this context, the verse can be implemented in the different context with the cause of its revelation and implemented in the different cases. Such as from the cause of revelation of the drinking intoxicant, there are questions, whether is every inebriated drinking is intoxicant and every inebriated drinking is forbidden. This context also relates to the reasons built by the Quran that intoxicant has the great sin and some profits, but the sin is greater (dangerous) than the profits, and based on those reason there are question, whether is every deed which has the greater sin than its profits is forbidden as intoxicant, including when its profit is the material profit and availability of job vacancies.

The importance of the cause of revelation in understanding Quran is not only based on the acknowledgment of the Quranic scholars such as al-Wāḥidī,<sup>11</sup> Ibn Daqīq al-Id<sup>12</sup> and Ibn Taimiya,<sup>13</sup> but also on the misunderstanding of interpretation due to ignoring the cause of revelation, as experienced by 'Urwah ibn Zubair in understanding sura al-Baqarah/2:158

<sup>6</sup> M. Quraish Shihab, *Tafsir al-Mishbah*, 565.

<sup>7</sup> Muhammad 'Ali al-Sabuni, *Rawā'i al-Bayān Tafsir Āyāt al-Ahkām min al-Qur'ān* (Jakarta: Dār al-Kutub al-Islāmiyyah, 2001), Vol 1, 210-211; Abū Hasan 'Alī ibn Ahmad al-Wāḥidī, *Asbāb Nuzūl al-Qur'ān* (Riyād: Dār al-Maimān, 2005), 358.

<sup>8</sup> Abū Hasan 'Alī ibn Ahmad al-Wāḥidī, *Asbāb Nuzūl al-Qur'ān*, 288-289.

<sup>9</sup> Jalāluddīn al-Suyūṭī, *Lubāb al-Nuqūl fī Asbāb al-Nuzūl* (Beirut: Muassasah al-Kutub al-Thaqafiyah, 2002), 109-110.

<sup>10</sup> Heri Khoiruddin, *Kondisi Historis dalam Tafsir*, 14.

<sup>11</sup> See, Jalāluddīn al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān*, (Kairo: Dār al-Hadīth, 2004), 108.

<sup>12</sup> See, Jalāluddīn al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān*, 108.

<sup>13</sup> Ibn Taimiya, *Muqaddimah fī Usūl al-Tafsir*, (Beirut: Dār al-Qur'ān al-Karīm, 1971), 47.

implying that there is no sin for those who are not going around Safā and Marwā. Based on this misunderstanding, Aisha admonished him, that this verse is revealed relating to Anshar people before Islam, and then she said, that Safā and Marwā are among the symbol of Allah and then must be done and cannot be left behind.<sup>14</sup> In connection with this provision, Islamic scholars have a different opinion on whether this is an obligatory provision or not.<sup>15</sup> Imāduddīn Muhammad al-Rashīd analyses, one of the categories of the cause of revelation is to turn away the textual meaning, when this text revealed is an explicit text and the cause of revelation is the special cause, then the meaning of the text must be turned away to another meaning, whether to the close or far meaning, as applied in sura al-Baqarah/2:158 which uses a clear text with special cause of revelation, then the meaning of going around Safā and Marwā is the textual meaning which must be turned away not to an obligatory provision but as one of the pillars of pilgrimage.<sup>16</sup>

Based on the importance of the historical setting of the Quran revelation, the question in this study is how does the role of the historical setting in understanding the legal verses? The research question is emphasized on the historical setting based on the cause of revelation, which is based on the worried that the cause of revelation is only understood limiting to the revelation of verses, as Dawam Rahardjo said, if the cause of revelation is only understood limiting to the revelation of verses, then become a micro concept, but if the cause of revelation is understood in the historical framework, then

become a macro concept.<sup>17</sup> These verses having the cause of revelation absolutely must be traced where these verses were revealed and what the cause of these revelation. Understanding the revelation of verses based on its special cause of revelation will describe the dynamics in Islamic legal relating to the legal form, whether has an equal form with the textual form or not, but has an equal spirit and principal.

### Theoretical Framework

The method used to answer these questions is to look for the legal verses which have the special cause of revelation. These verses are then analyzed using the context of revelation and the cause of revelation. The cause of revelation (or *asbāb an-nuzūl* in Arabic) is defined as a cause which become the legal guidance before or after revelation.<sup>18</sup> This cause is not understood as a cause and effect, or if there is no a cause then there is no revelation, therefore Alī ibn Abī Thālib names this term as *munāsabat an-nuzūl*, because if named as *asbāb an-nuzūl* then there is a verse which not revealed unless there was a cause to reveal. That means, Allah did not reveal many verses unless there was a problem to respond.<sup>19</sup> This definition implies that there are verses which have the cause of revelation and verses which have not, as al-Ja'bari said, that the Quran was revealed into two parts, one part is revealed by itself and another part is reveal based on a special cause or certain question.<sup>20</sup>

Verses which have the cause of revelation, can be divided into two, both are verse that uses the common word of Quran text and verse that

<sup>14</sup> Abū Hasan 'Alī ibn Ahmad al-Wāḥidī, *Asbāb Nuzūl al-Qur'ān*, 152; Abd-Fattāh Abd-Ghanī al-Qādli, *Asbāb al-Nuzūl 'Inda al-Sahābah wa al-Mufasssīrīn*, (Kairo: Dār al-Salām, 2007), 24.

<sup>15</sup> See, Muhammad 'Alī al-Sabūnī, *Rawā'i al-Bayān*, 107-109.

<sup>16</sup> Imāduddīn Muhammad al-Rashīd, *Asbāb al-Nuzūl wa Atharuhā fī bayān al-Nusūs*, (Damaskus: Dār al-Shihāb, 1999), 506-506; Heri Khoiruddin, *Kondisi Historis dalam Tafsir*, 32-33.

<sup>17</sup> Muhammad Dawam Rahardjo, *Paradigma al-Qur'an: Metodologi Tafsir dan Kritik Sosial*, (Jakarta: PSAP Muhammadiyah, 2005), 158-159.

<sup>18</sup> Heri Khoiruddin, *Ilmu Alquran dan Peranannya dalam Memahami Alquran*, (Bandung: Fajar Media, 2012), 51.

<sup>19</sup> Tsuruya Kiswati, "Rekonstruksi Metodologis Wacana Keagamaan Muhammad Shahrūr," *Indo-Islamika*, Vol 4, No 2 (2007), 281.

<sup>20</sup> Jalāluddīn al-Suyūṭī, *Al-Itqān fī 'Ulūm al-Qur'ān*, 108.

uses the special word. Islamic scholars have different opinion to understand the legal verse which have the special cause of revelation. Some Islamic scholars hold on to the common word, some of them hold on to the special cause of revelation, and others hold on to the *maqāsid al-sharīa* or sharia purposes of the legal provision.

There are three rules to understand the verses with the special cause of revelation, namely: (1) based on the common of Quran text; (2) based on the special cause of revelation; (3) based on *maqāsid al-sharīa*. According to the first rule, the legal verse will be applied without looking at the cause of revelation and will be concluded what the legal guidance derived from the common statement used. According to the second rule, the legal verse will be applied by looking at the cause of revelation and will be concluded what the legal guidance derived from the special statemen used. According to the third rule, the legal verse will be applied by looking at purposes of sharia and will be concluded what the legal guidance derived from the purposes of sharia relating to that legal provision.<sup>21</sup>

Based on the first rule, an Islamic scholar do not have to be bound by the cause of revelation, because the cause is only accidental (by chance), when God is absolutely revealing these verses. While based on the second rule, he should still turn over in mind the cause of revelation, because according to his opinion, why had God delayed one or more verses to reveal.<sup>22</sup>

Correlation between the common word of Quran text and the cause of revelation can be understood in two forms: (1) cause of revelation is used if those verses which are understood based on the common text will be on the contradictory meaning among verses; (2) cause

of revelation is used if in those verses which are using the common words should be traced a clear explanation that referred to use the common word.<sup>23</sup> For the second form, among those special causes are: (1) to specialize the common, such as the cause of revelation of sura al-Māidah/5:93; (2) to limit the absolute, such as the cause of revelation of sura al-Baqarah/2:198; (3) to turn away the textual meanings, such as the cause of revelation of sura al-Baqarah/2:158; (4) to cancel the global meanings, such as the cause of revelation of sura al-Anfāl/8:35.<sup>24</sup>

Why does the third rule should be used? Abd-Moqsith Ghazali in his book criticizes the above two rules because of two, both are: (1) those rules are too much in the semantic field; (2) Those rules subordinate the reality into the literal sound of the text. According to him, who propose themselves only on the meaning of textual meaning and ignore the sharia purposes, then they are potentially making a mistake.<sup>25</sup> For the Islamic scholar who hold on to *maqāsid al-sharīa*, the main thing to take the conclusion from Quran is not based on the common word of Quran text or its verses, or only based on the cause of revelation, but based on the suitability with the vision and mission of global Quran, such as to put forward the principle of equality, justice, liberation and more.<sup>26</sup> Based on vision and mission of global Quran, then each of the legal verses will be traced to the sharia purposes, which may in practice, the sanctions (for example) of one provision can be textually different from what is in the Quran and applied to society.

From the Islamic jurisprudence perspective, the Quranic text approached by *maqāsid al-*

<sup>23</sup> Heri Khoiruddin, *Ilmu Alquran*, 56-60.

<sup>24</sup> Imāduddīn Muhammad al-Rasyīd, *Asbāb al-Nuzūl wa Atsaruhā fī bayān al-Nushūsh*, 368; Heri Khoiruddin, *Kondisi Historis dalam Tafsir*, 30.

<sup>25</sup> Abd-Moqsith Ghazali, Luthfi Assyaukanie, Ulil Abshar-Abdalla, *Metodologi Studi al-Qur'an* (Jakarta: Gramedia Pustaka Utama, 2009), 155-159.

<sup>26</sup> Nasaruddin Umar, *Fikih wanita untuk semua*, 171-172.

<sup>21</sup> How to use these three rules in details, see, Nasaruddin Umar, *Fikih wanita untuk semua* (Jakarta: Serambi, 2010), 170-172.

<sup>22</sup> Nasaruddin Umar, *Fikih wanita untuk semua*, 170-171.



*sharīa* is not something new. The application of this *maqāsid al-sharīa* in various legal issues has also been widely discussed, whether by discussing the evolution of *maqāsid al-sharīa* as a legal theory,<sup>27</sup> applying the *maqāsid al-sharīa* in Muslim minority countries,<sup>28</sup> including applying the *maqāsid al-sharīa* in business activities.<sup>29</sup>

The term *maqāsid al-sharīa* has been known for a long time and has been commonly practiced. Ahmad Imam Mawardi analyses, *maqāsid al-sharīa* had grown at the time of at-Tirmidzī around 320 AH, then studied in more at the time of Abu Bakar ibn al-Baqilānī around 403 AH, then rapidly developed at the time of al-Subkī around 771 AH, then became an independent Islamic science at the time of Ibn Ashūr around 1393 H, and became an approach in Islamic science at the time of ar-Rashūnī around 1414 AH.<sup>30</sup>

Based on the concept of as-Shāhibī, *maqāsid al-sharīa* consist of five objectives, namely: (1) taking care of religion; (2) taking care of soul; (3) taking care of mind; (4) taking care of offspring; (5) taking care of wealth. According to as-Shāhibī, these five points above are based on Quran and Hadith.<sup>31</sup> Based on those concepts of the *maqāsid al-sharīa*, then every legal issue can be traced and explored its sharia purposes.<sup>32</sup>

<sup>27</sup> Abdul Hameed Badmas Yusuf, "A Studi of Evolution of Maqāsid as-Syari'ah as a Legal Theori," *Madania*, Vol. 19, No. 1, Juni 2015, 1-15.

<sup>28</sup> Ahmad Imam Mawardi, *Fiqh Minoritas Fiqh al-Aqalliyāt dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan* (Yogyakarta: LKiS, 2010).

<sup>29</sup> Zein Muttaqin dan Nadia Nuril, "Investigating Meat Milling Business in Yogyakarta: A Maqāsid al-Syari'ah Perspectives," *Madania*, Vol. 21, No. 2, Desember 2017, 171-180.

<sup>30</sup> Ahmad Imam Mawardi, *Fiqh Minoritas Fiqh al-Aqalliyāt dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan*, 200.

<sup>31</sup> Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia dan Relevansinya bagi Pembangunan Hukum Nasional* (Jakarta: Raja Grafindo Persada, 2006), 51.

<sup>32</sup> The methods to decide a provision in Islamic law through *maqāsid al-sharīa* approach are *qiyas, istislah, istishab, syad al-dzari'ah* dan *'urf*. See, Isa Anshori. "Maqasid al-Syari'ah Sebagai Landasan Etika Global". *Jurnal Hukum Islam*, Vol 01, No 01, Maret 2019, 17.

## Legal Verses and *Maqāsid al-sharīa*

To find out how the verses which have the special cause of revelation are understood based on sharia purposes, can be learned in following examples:

### 1. Cutting off hands for the thieves

Cutting off hands for thieves are affirmed in sura al-Māidah/5:38 which says that male thieves and female thieves should be cut off both hands as a punishment from God for their crime. The word used in this verse is a common word with the special cause of revelation. This verse does not refer to a certain person with certain criteria, but the cause of revelation refers to a person who stole in the time of the Prophet, then her right hand was cut off as a punishment.<sup>33</sup>

More than one question asked relating to this punishment, among those are: is the cutting off hands for the thieves the only punishment recommended in the Quran, or just one of the punishments? If the answer is the only punishment, then every thief punishment is a cut off his hand, and if the answer is one of the punishments, then there are other punishments can be applied as a substitute for cutting off the hand but have the same impact.

In practice, Islamic scholars do not necessarily argue to cut off hands for the thieves, but they formulate a number of policies by making the narrow definition of the thievery and avoiding the doubtfulness principles to avoid the punishment in the case of doubtful thievery as a caution and compassion. If it has truly been proven and there is no appropriate punishment then the cutting off hands can be applied.<sup>34</sup> There are at least five questions can be asked relating to this punishment, they are: who steals, what was stolen, how he steals,

<sup>33</sup> Jalāluddīn al-Suyūti, *Lubāb al-Nuqūl fī Asbāb al-Nuzūl*, 102.

<sup>34</sup> Ahmad Syukri Saleh, *Tafsīr al-Qur'ān Kontemporer dalam Pandangan Fazlur Rahman*, (Jambi: Sulthan Thaha Press, 2007), 184.

when this stealing happened, and whether the property stolen by him is his family's property because stealing family's property is obscure, then can be punished by cutting off hands.<sup>35</sup> Lots of history relating to this punishment, such as no cutting off hands for less than ten dirhams, and the prophet had cut off hand of a thief who stole more than a quarter of dinars, and the prophet had cut off hand of a thief who stole a shield for three dirhams.<sup>36</sup> Therefore, the ulema also require that the thief must be mukallaf and the wealth is in the certain threshold.<sup>37</sup>

*Maqāsid al-sharīa* relating to cutting off hands for thieves can be referred to sura al-Baqarah/2:188 and al-Nisā/4:29 not to eat wealth illegally, except through business, although illegal ownership is obtained through court. The cause of revelation of sura al-Baqarah/2:188 is relating to Imrīl Qais ibn 'Abis and 'Abdan ibn Ashma' who fought over land to be his land by swearing in the court.<sup>38</sup> Based on this verse and its cause of revelation, *maqāsid al-sharīa* in this provision is to take care of wealth.

## 2. Polygyny

At the time of the Quran revelation, Arab society already had several social and legal institutions, which include: (1) marital institutions; (2) inheritance; (3) adoption of children; (4) legal of *qisās-diyāt*; (5) transaction system; (6) markets. For marital institutions, some models of marriage practiced were: (a) ordinary marriages as known in this era; (b) polygyny, or men had more than one wife; (c) polyandry, or women had more than one husband; (d) *mut'ah*, or marriage for the specified time based on certain agreement; (e) *as-sabyu*, or marriage with the arrested woman in war; (f) marriage with the slave; (g) *al-maqtu*,

marriage with his stepmother because his father (or her husband) passed away; (h) *al-istibda'* or a husband asked his wife to be in love (or having sexual intercourse) with another chosen man, and the son later should be recognized as his son; (i) *al-shighār* or a cross-marriage between two men who both have a women under their guardianship; (j) marriage with two sibling women at the same time. For the legal of *qisās-diyāt*, Arab society has been known for a long time and has been commonly practiced, as a responsibility for criminal acts, which is more emphasized on personal justice and revenge.<sup>39</sup> Based on the various marriage models above, some are permitted and others are prohibited. For polygyny, this marriage is the permitted marriage but having differences from what Arab carried out at that time. When polygyny was carried out averagely by chiefs who had wives of tens or even hundreds,<sup>40</sup> and then came Islam to limit.

The provision of polygyny marriage is mentioned in sura al-Nisā/4:3, which says that if fear not to be able to deal justly with the orphans, then marry (other) beloved women, two, three or four, and if fear not to be able to deal justly, then (marry) only one. The case as the cause of this revelation is based on the narration of 'Aishah, that there was a man taking care of an orphan and then marrying her, she was under her husband's authority but she was not given her right.<sup>41</sup>

Polygyny is legal in Islam, but Islamic scholars have different opinion to understand the meaning "to deal justly" of that verse, different meanings in the above verse, whether it is dealing justly in love and wealth, or dealing justly only in wealth. Everyone may cannot be

<sup>35</sup> Heri Khoiruddin, *Kondisi Historis dalam Tafsir*, 46.

<sup>36</sup> Heri Khoiruddin, *Ilmu Alquran*, 60.

<sup>37</sup> Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtashid*, (Beirut: Dār al-Fikr, tt), Volume 2, 334.

<sup>38</sup> Abū Hasan 'Alī ibn Ahmad al-Wāhidī, *Asbāb Nuzūl al-Qur'ān*, 161.

<sup>39</sup> Ali Sodiqin, *Antropologi al-Qur'an Model Dialektika Wahyu & Budaya*, (Yogyakarta: Ar-Ruzz Media, 2008), 57-65.

<sup>40</sup> Masthuriyah Sa'dan. "Poligami Atas Nama Agama: Studi Kasus Kyai Madura". *Esensia*, Vol 16, No 1 (2015), 92. <https://doi.org/10.14421/esensia.v16i1.989>.

<sup>41</sup> Muhammad 'Ali al-Sabūnī, *Rawā'i al-Bayān*, 330.

dealing justly as mentioned in sura al-Nisā/4: 128-129 which stresses that a man can never be dealing justly among his wives even though he wants to be just, then he have not to lean only to beloved woman and ignore others.

Sura al-Nisā/4:128 is revealed relating to the wife of ibn Khudāij. She was unbeloved wife because he was old or anything else, so she was worried to be in divorced. Then his wife told her husband not to divorce her and he could come to her whenever as he wants.<sup>42</sup> Based on that verse with the special cause of revelation, polygyny marriage is not only allowed unconditionally but also allowed to be just, and not only dealing justly in property but also in love. Polygyny can be said as a permitted marriage, but not recommended, and Islam permit this polygyny on strict conditions.<sup>43</sup>

*Maqāsid al-sharīa* relating to marriage can be referred to sura al-Nisā/4: 1 about the creation of men and women to love each other and to have a good posterity. From this verse, it can be concluded that among the purposes of marriage is to take care of posterity. In another verse, the Quran also reminds many worried marriages, such as Lūth and his wife when his wife failed to keep her obedience,<sup>44</sup> Pharaoh and his wife when Pharaoh overreached,<sup>45</sup> Zulaikha with her husband when Zulaikha turned over her husband,<sup>46</sup> Zakariya and his wife when his wife lived in hope of having posterity,<sup>47</sup> and all of those marriages form have potentially divorce. How get these marriages taking care of their offspring, are implied in the Quran such not to divorce even though it is a permitted deed. Unlike the practice which is leading to marriage

that can take place in a short time, the Quran implies the practice that is leading to divorce can take place a long time, and this provision can be assumed that couples who want to get divorced is to turn over in mind by looking at the impact to their children and offspring.<sup>48</sup>

### Quran and Formation of Islamic Legal

The Quran is the main source of Islamic law. The four Islamic scholars, they are Abū Hanīfah, Malik ibn Anas, Idris ash-Shāfi'i, and Ahmad Ibn Hanbal, put the Quran as the main source of Islamic law. Their differences relating to the Quran as the main source of Islamic law is in their way of how they refer to it, as Malik ibn Anas which has an own steps referring to it, they are: (1) taking from the Quran; (2) using *zahir* (literal) of the Quran or the common word of the Quran text; (3) using *mafhūm muwāfaqah*; (4) using *mafhūm mukhālafah*; (5) using *tanbih* of the Quran by paying attention to the *illat*,<sup>49</sup> and Ahmad Ibn Hanbal who refers to the Quran in line with the literal meaning and ignoring the implied meaning.<sup>50</sup>

The patterns established by Islamic scholars relating to the Quran and the formation of Islamic law are in multiple diverse patterns. In practice, Islamic scholars do not necessarily argue to put into effect, but they formulate a number of policies by making the narrow definition and others in details, and the result of which can be concluded that a provision would be applied only if those policies are fulfilled. Such as Ibn Rushd in his book, *bidāyat al-mujtahid wa nihāyat al-muqtashid*, which make some requisites in details to cut off hands of the thieves by asking what is the theft meant, are

<sup>42</sup> Abū Hasan 'Alī ibn Ahmad al-Wāhidī, *Asbāb Nuzūl al-Qur'ān*, 328.

<sup>43</sup> Sukring Syamsuddin. "A Legal Debate on Polygamy: Classical and Contemporary Perspectives". *Esensia*, Vol 19, No 2 (2018), 149. <https://doi.org/10.14421/esensia.v19i2.1735>.

<sup>44</sup> See, sura al-A'rāf/7:83.

<sup>45</sup> See, sura al-Qasās/28:9.

<sup>46</sup> See, sura Yūsuf/12:30.

<sup>47</sup> See, sura Maryam/19:8.

<sup>48</sup> Masyithah Mardhatillah. "Semangat Egalitarian Al-Qur'an dalam Otoritas Menginisiasi dan Prosedur Perceraian". *Esensia*, Vol 16, No 1 (2015), 2. <https://doi.org/10.14421/esensia.v16i1.983>.

<sup>49</sup> Jaih Mubarak, *Sejarah dan Perkembangan Hukum Islam*, (Bandung: Remaja Rosdakarya, 2000), 81.

<sup>50</sup> Jaih Mubarak, *Sejarah dan Perkembangan Hukum Islam*, 119.

there certain condition relating to something stolen, are there certain condition relating to stealing, and when the cutting off hands as a sanction can be applied. All of the discussion above implies more than one condition to apply one provision in Islamic law, even in the case of cutting off hands, Islamic scholars agreed to have two witnesses of that theft or witnesses of the thief himself.<sup>51</sup>

In Indonesia, the pattern of Islamic law established by the Ulema is certainly integrating the Quran and hadith with the Indonesian culture. In Indonesia, there are well-known Islamic scholar figures, such as Hasbi ash-Shiddieqy and his *fiqh of Indonesia*, Hazairin and his *fiqh of national mazhab*, Munawir Sjadzali and his *re-actualization of Islamic teachings*, Masdar F. Mas'udi and his *religion of justice*, Sahal Mahfudh and Ali Yafie and their *social fiqh*.<sup>52</sup> Each of those Ulema does not see the Quran as a text without context, and then they put the Quran into practice by involving the context and culture of Indonesia which already exists and develops in Indonesia. Principles based on the special cause of revelation and *maqāsid al-sharīa* are evidently looked in each of their legal products. Hasbi ash-Shiddieqy in his *fiqh*, refuses to forbid the practice of handshakes between men and women. Hasbi argues that the handshake is a tradition of the people for a long time, and he also argues that there is no a harmless problem so there is no reason to ban it.<sup>53</sup> In line with Hasbi, Hazairin criticizes the practice of inheritance. He argues that the position of offspring through daughters is as strong as the position of offspring through sons. He also includes a substitute into the Islamic inheritance system as he understands sura al-

Nisā/4:33.<sup>54</sup>

## Conclusion

Historic a l setting of revelation has an important role in understanding legal verses. Various legal provisions in the Quran in general are provisions that already existed and lived in the Arab society before revelation. For Islamic scholars who prioritize the common word of the Quran text, those provisions are still maintained, for who prioritize the special cause of revelation, provisions are a part of provisions which not automatically applied unless the conditions of its provision had been met. For Islamic scholar who prioritize *maqāsid al-sharīa*, the main value in a provision is the achievement of their legal purposes. Those legal purposes can be traced in the Quran and hadith, and other sources, which among those purposes are to take care of religion, soul, mind, offspring, dan wealth.

Based on the description above, the historic a l setting has a role to find what is actually intended by the existing of those provisions. Then, in practice, some provisions will differ between the provisions which be applied in one place with those in another place, but those provisions have the same goal, that is the direct desired by the Quran as life guidance. Intoxicant is forbidden as a part to make serious efforts to take care of religion and mind, theft is forbidden and the thief must be cut off his hands as a part to make serious efforts to take care religion and wealth, and certain marriages (permitted marriages) is presented as a part to make serious efforts to take care of religion and offspring.

<sup>51</sup> Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtashid*, Vol 2, 334-340.

<sup>52</sup> Mahsun Fuad, *Hukum Islam Indonesia dari Nalar Partisipatoris hingga Emansipatoris*, (Yogyakarta: LKiS, 2005), xviii.

<sup>53</sup> Mahsun Fuad, *Hukum Islam Indonesia*, 73.

<sup>54</sup> Mahsun Fuad, *Hukum Islam Indonesia*, 83.



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