

## The Relevance Of *Hifdzun Nafs* With The Law of *Qishash*: An Analysis Of Ibnu 'Ashur's Interpretation In *Tafsir al-Tahrir Wa al-Tanwir*

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### Keywords:

*Qishash, hifdzun nafs, Ibnu 'Asyur*

### Abstract

This article aims to determine the relevance of *hifdzun nafs* to the law of *qishash* from Ibn 'Asyur's perspective in the tafsir *al-Tahrir wa al-Tanwir*. Ibn 'Asyur himself was famous as a mufasir who focused on *Maqashid al-Syari'ah* so that he also expressed the results of his thoughts about *Maqashid* in the form of interpretation. By using qualitative methods, pure literature research, this article concludes that according to Ibn 'Asyur, *qishash* functions to protect human life, because with *qishash* people are afraid of committing murder. If a person knows that he will survive death, he will dare to commit murder in the hope that the punishment will be light. Therefore, the *qishash* law that was implemented has strong relevance to *hifduzn nafs*, namely avoiding bloodshed as in the case of the murders that occurred during the Jahiliyyah era, which resulted in the loss of many lives. The *qishash* law is one way to protect the soul (*hifdzun nafs*), by punishing people who commit murder and other criminal acts, with appropriate punishments for the benefit and survival of humans.

### Kata Kunci:

*Qishash, hifdzun nafs, Ibnu 'Asyur*

### Abstrak

Artikel ini bertujuan untuk mengetahui relevansi *hifdzun nafs* dengan hukum *qishash* perspektif Ibnu 'Asyur dalam kitab tafsir *al-Tahrir wa al-Tanwir*. Ibnu 'Asyur sendiri terkenal dengan mufasir yang fokus terhadap *Maqashid al-Syari'ah* sehingga hasil pemikirannya tentang *maqashid* ini juga dituangkannya dalam bentuk penafsiran. Dengan menggunakan metode *kualitatif*, jenis penelitian kepustakaan murni, artikel ini menyimpulkan bahwa *qishash* menurut Ibnu 'Asyur berfungsi menjaga kehidupan manusia, karena dengan *qishash* masyarakat takut untuk melakukan pembunuhan. Jika seseorang mengetahui bahwa dia akan selamat dari kematian, maka dia akan berani melakukan pembunuhan dengan menganggap ringan hukuman. Oleh karena itu, hukum *qishash* yang diberlakukan mengandung relevansi kuat dengan *hifduzn nafs*, yaitu menghindari pertumpahan darah sebagaimana pembunuhan yang terjadi pada zaman Jahiliyyah, yang menyebabkan hilangnya banyak jiwa. Hukum *qishash* merupakan salah satu cara untuk melindungi jiwa (*hifdzun nafs*), dengan cara menghukum manusia yang melakukan tindak pidana pembunuhan dan tindak pidana lainnya, dengan hukuman-hukuman sepadan demi kemas-lahatan dan keberlangsungan hidup manusia.

Article History: Received: 12-02-2024 Accepted: 24-03-2024 Published: 15-04-2024

## INTRODUCTION

Every action taken by a reasonable human being must have a purpose. Moreover, Allah SWT, the All-Willed Creator, certainly all His actions are also has a purpose and purpose. In Arabic, the purpose or goal is called *maqshad* whose plural

form is *maqashid*.<sup>1</sup> By stringing the word *maqashid* with the word *shari'ah*, it becomes *Maqashid al-Syari'ah* which means the purposes and objectives of sharia. *Maqashid al-Syari'ah* is a goal to be achieved by the establishment of sharia and the secrets laid by Allah as the All-Wise Maker of sharia in every law.<sup>2</sup>

The scholars formulate human interests in living aspects of life into three, namely: *dharuriy*, *hajiyy*, and *tahsiniyy*.<sup>3</sup> The *dharuriy* issue relates to the needs that are the basis for the foundation of human life that must be fulfilled so that their welfare runs well.<sup>4</sup> If these *dharuriy* problems are not met, the human life system becomes shaky, human welfare is not realized properly, anarchy and damage occur everywhere.<sup>5</sup> The various *dharuriy* problems for humans refer to five things, namely: protecting and maintaining religion (*hifdzud din*), protecting and maintaining the soul (*hifdzun nafs*), protecting and maintaining the intellect (*hifdzul 'aql*), protecting and maintaining offspring (*hifdzun nasl*), and protecting and maintaining property (*hifdzul mal*).<sup>6</sup> Maintaining each of these five things is a matter of *dharuriy*, which must be fulfilled in human life. Therefore, these *dharuriy* needs are commonly referred to as primary needs.<sup>7</sup>

Today, there are Muslims whose behavior is destructive and contradictory to the principles of Islamic law, such as murder. Criminal acts today whether we realize it or not, for whatever reason, are considered contradictory to the principles of Islamic law.<sup>8</sup> Therefore, one Islamic law that must be realized in life to reduce the crime of murder is *qishash*, which aims to preserve human life. Islam has prohibited murder and murderous behavior with the threat of severe punishment, so that it is expected that people before committing murder think first.<sup>9</sup> Because after all, criminal acts have damaged the peace of society, and people need to be guided so as not to commit criminal acts as a reflection of despicable morals. It is for this reason that the *ahkam verses* give importance to criminal matters and are harsh on criminal crimes.<sup>10</sup>

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<sup>1</sup> Siska Lis Sulistiani, "Analisis *Maqashid Syariah* Dalam Pengembangan Hukum Industri Halal di Indonesia", *Law and Justice* 3, no. 2 (2018), h. 93.

<sup>2</sup> Tim Lajnah Pentashihan Mushaf al-Qur'an, *Tafsir Maudhu'i (Tafsir al-Qur'an Tematik): Amar Makruf Nahi Munkar, Maqasiduy-Syari'ah, Memahami Tujuan Utama Syari'ah*, (Jakarta: PT Lentara Ilmu Makrifat, 2019), h. 174.

<sup>3</sup> Abu Ishaq Ibrahim al-Syathibi, *al-Muwafaqat fi Ushul al-Syari'ah*, ed. Muhammad 'Abdullah Darraz, Juz II, (Beirut: Dar al-Kutub al-'Ilmiyah, 2003), h. 324.

<sup>4</sup> Eko Zulfikar, "Merajut Kemaslahatan Ekonomi dalam Perspektif al-Qur'an", *Jurnal Ulunnuha* 10, no. 1 (2021), h. 102.

<sup>5</sup> Wardatun Nabilah dan Zahratul Hayah, "Filosofi Kemaslahatan Dalam Aksiologi Hukum Islam (Telaah Kitab *Maqashid Syariah*)", *el-Hekam: Jurnal Studi Keislaman* 7, no. 1 (2022), h. 42.

<sup>6</sup> Faezy Adenan, et al., "*Dharuriyat al-Khams* and its Relation to The Protection of The Environment", *Al-Qanatir: International Journal of Islamic Studies* 30, no. 2 (2023).

<sup>7</sup> Tim Lajnah, *Tafsir Maudhu'i...*, h. 69.

<sup>8</sup> Siti Farhani Djamil, "Penanggulangan Kejahatan Dalam Perspektif Hukum Pidana Islam", *Binamulia Hukum* 8, no. 2 (2019), h. 228.

<sup>9</sup> Siti Anisah, "Penerapan Hukum *Qishahs* Untuk Menagakkan Keadilan", *Jurnal Syariah* 4 (2016), h. 100.

<sup>10</sup> Harun Nasution, *Islam ditinjau Dari Berbagai Aspeknya*, (Jakarta: Penerbit Universitas Indonesia, 1985), h. 3.

Among the experts who focus on the field of *Maqashid al-Shari'ah* by pouring their thoughts in the form of interpretation is Ibn 'Ashur. He has a book of interpretation called *al-Tahrir wa al-Tanwir* which is often dubbed the interpretation of *Maqashid*, because it has emphasized the five primary human needs that must be maintained in every interpretation.<sup>11</sup> One example, in his book *Maqashid al-Syari'ah al-Islamiyyah*, Ibn 'Ashur explains about *hifdzun nafs* which is inseparable from the problem of *qishash*. Then, he continues the explanation of *qishash* further in his tafsir *al-Tahrir wa al-Tanwir*. This is what motivates the author to examine a little further about the relevance of Ibn 'Ashur's interpretation of *hifdzun nafs* with *qishash* punishment.

In fact, there have been quite a number of discussions conducted by experts related to this theme, including: Sandy Alun discussed *Jarimah Qishash-Diyat's* review of a criminal act,<sup>12</sup> Anas Rohman reviewed *qishash* law and human rights,<sup>13</sup> Majidatun Ahmala explained human rights in *al-kulliyat al-khams*,<sup>14</sup> and Muhammad Syihab Mubarak explained the values of education in al-khams. -QS. al-Maidah verse 32 about *hifdzun nafs*.<sup>15</sup> Some of the previous studies conducted did not touch the discussion of the relevance of *hifdzun nafs* with *qishash* law. Thus, this article is directed to answer one question: how is the relevance of *hifdzun nafs* with the law of *qishash* in the interpretation of Ibn 'Ashur? This question also shows that the law of *qishash* is one way to protect the soul by punishing people who commit murder and other crimes, with commensurate punishments for the sake of human welfare and survival.

## RESEARCH METHODS

This article uses a type of *library research* with a qualitative method. This article also uses descriptive-analytical as a method of data analysis, namely describing the data obtained both primary and secondary data to be critically analyzed.<sup>16</sup> Primary data sources come from the Qur'an and tafsir *al-Tahrir wa al-Tanwir* by Ibn 'Ashur relating to *qishash* verses. While secondary data in the form of articles, supporting books and all references that support the theme of the discussion. In addition, considering that this article uses a pure type of *library research*, the data collection technique uses documentation.

<sup>11</sup> Joni Arni, "Tafsir al-Tahrir wa al Tanwir Karya Muhammad Al-Thahir ibn Asyur", *Jurnal Ushuluddin* 17, no. 1 (2011), h. 84.

<sup>12</sup> Sandy Alun Samudra MB, et al., "Tinjauan Jarimah Qishash-Diyat Terhadap Suatu Tindak Pidana Dalam Hukum Positif", *Tashdiq: Jurnal Kajian Agama dan Dakwah* 1, no. 2 (2023).

<sup>13</sup> Anas Rohman, "Qishash Law and Human Rights", *Tawasut: Indonesian Journal of Moderate Islam* 7, no. 2 (2020).

<sup>14</sup> Majidatun Ahmala, "Hak Asasi Manusia Dalam Al-Kulliyat Al-Khams (Perspektif Pemikiran Abdurrahman Wahid)", *Jurnal Keislaman* 4, no. 2 (2021).

<sup>15</sup> Muhammad Syihab Mubarak, et al., "Nilai-Nilai Pendidikan Dalam Al-Quran Surah Al-Maidah Ayat 32 Tentang Hifdzun Nafs", *Prosiding Pendidikan Agama Islam* 5, no. 2 (2019).

<sup>16</sup> Hilda Husaini Rusdi, "Metode Kritik Matan Hadis Prespektif Masrukhin Mukhsin", *Al-Shamela: Jurnal of Quranic and Hadith Studies* 1 no. 1 (2023), h. 39.

## RESULTS AND DISCUSSION

### Biography of Ibn 'Ashur and the Book *al-Tahrir wa al-Tanwir*

Muhammad al-Thahir Ibn 'Ashur was born in Tunisia from a respectable family. His full name is Muhammad al-Thahir bin Muhammad bin Muhammad al-Thahir bin Muhammad Syazili bin 'Abdul Qadir bin Muhammad Ibn 'Ashur. Ibn 'Ashur was born in his mother's kakeik house, which was in Jumadil 'Ula in 1296 H or in September 1879 AD and died in 1393 H. Ibn 'Ashur came from a family that had strong roots in knowledge and lineage, even the family was proud of the *ahl al-Bait* of the Prophet Muhammad.<sup>17</sup> The initial education that Ibn 'Ashur obtained was from his parents and all his family, both directly and indirectly. Ibn 'Ashur gained a lot of knowledge from his grandfather, Muhammad al-'Aziz bin Bu'atur. He studied the Qur'an and memorized it in his family home. Other information says that Ibn 'Ashur studied and memorized the Qur'an to Muhammad al-Khayyari at the Sayyidy Hadid mosque next to his house.

Ibn 'Ashur also memorized several books of matan such as the matan of Ibn 'Ashir *al-Jurumiyyah* and the book of *Sharah al-Shaykh Khalid al-Azhariy 'ala al-Jurumiyyah*. These two books are basic requirements for students who will continue their studies at Zaitunah University.<sup>18</sup> With a family background and an environment that loves knowledge, armed with genius, perseverance, sincerity, and commitment to education and its prudence, making Ibn 'Ashur as a person who devotes himself to knowledge, by becoming a teacher and religious shop. Most of his time was spent teaching and writing books. Two of his phenomenal books are tafsir *al-Tahrir wa al-Tanwir* and *Maqashid al-Syari'ah al-Islamiyyah*.<sup>19</sup>

Kitab *al-Tahrir wa al-Tanwir* is Ibn 'Ashur's magnum opus in the field of tafsir which is very prestigious and familiar. Istimewanya, the book of interpretation is always evolving following the progress of the times. This shows how rich the sciences that are born by the Qur'an. The background of the writing of this book began with the aspirations of Ibn 'Ashur to interpret the Qur'an. Ibn 'Ashur wants to explain to the people what brings them happiness in this world and the hereafter, explaining the truth, noble morals, the content of *balaghah* owned by the Qur'an, the sciences of sharia, and the opinions of the mufasir on the meaning of the content of the Qur'an. These aspirations were often expressed to his companions, and then asked for their consideration. In the end, these ideals became stronger and stronger, and Ibn 'Ashur asked for Allah's help so that in carrying out his ijtihad, he was spared from mistakes.<sup>20</sup>

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<sup>17</sup> Orien Effendi, "Kontribusi Pemikiran Maqasid Syari'ah Thahir Ibnu Asyur dalam Hukum Islam", *Bilancia: Jurnal Studi Ilmu Syariah dan Hukum* 14, no. 2 (2020), h. 256.

<sup>18</sup> Siti Fathimatuzzahrok, *Pemeliharaan Lingkungan dalam Tinjauan Tafsir Maqasid (Ayat-Ayat Ekologi dalam Kitab Tafsir al-Tahrir wa al-Tanwir)*, Skripsi: IAIN Salatiga, 2020, h. 66.

<sup>19</sup> Alif Jabal Kurdi, "Ishlah dalam Pandangan Ibnu 'Asyur dan Signifikansinya dalam Upaya Deradikalisasi (Telaah Penafsiran Q.S al-Hujurat: 9 dalam Kitab *al-Tahrir wa al-Tanwir*)", *Nun: Jurnal Studi Alquran dan Tafsir di Nusantara* 3, no. 2 (2017), h. 132-133.

<sup>20</sup> Jani Arni, "Tafsir *al-Tahrir wa al-Tanwir*...", h. 87.

Ibn 'Ashur emphasizes tafsir *al-Tahrir wa al-Tanwir* on the explanation of the sides of i'jaznya and Arabic linguistics (*balaghah*). The method used is the *tahlili* method, which explains the interpretation of the Qur'an in detail starting from Surah al-Fatihah to al-Nas.<sup>21</sup> Ibn 'Ashur revealed in the introduction of his tafsir, that he tried intensively to display in the interpretation of the Qur'an rare things that have not been made by previous scholars of tafsir. He also put himself as the arbiter of differences of opinion of scholars who at one time agreed with one of them and at another time opposite opinions. In this tafsir, Ibn 'Ashur tried to reveal every *i'jaz al Qur'an*, Arabic linguistic values (*balaghah*), as well as the uslub style of its use that explains the relationship between one verse with other verses, especially between one verse with the verse before and after.<sup>22</sup>

Ibn 'Ashur in interpreting the Qur'an is very prominent in the way he reveals the height of the language of the Qur'an and connects it with the cultural system of society to make the Qur'an as a book of guidance and social problems. In other words, the tendency of the tafsir *al-Tahrir wa al-Tanwir* by Ibn 'Ashur is *Adabi Ijma'i*, which is a book of interpretation that reveals the height of the language of the Qur'an and dialogues it with social reality.<sup>23</sup> Interpretation by using a linguistic approach in explaining the meaning of the verse contained in the Qur'an, also puts the book of interpretation of Ibn 'Ashur as a *lughawi* style.<sup>24</sup> In addition, because Ibn 'Ashur also often explains about fiqh, laws, and especially talk about *Maqashid al-Syari'ah*, then the tendency of his thinking is fiqh. For Ibn 'Ashur, as he wrote in the book *Ushul Nidham al-Ijtima'*, the world today has demanded humans to renew thinking and belief values by inviting to improve the education system. According to Ibn 'Ashur, that the verses that discuss worship and Islamic ethics are more than the verses of mu'amalah, this is more motivated by the principle problems that existed in the era of the Prophet's da'wah in Mecca at that time.<sup>25</sup>

Furthermore, Ibn 'Ashur also did not stick to tafsir *bi al-Ma'tsur* when interpreting the content of the letter, but also not limited to tafsir *bi al-Ra'yi*. Ibn 'Ashur interprets a verse by explaining from all sides, especially from its objectives, so that the reader of tafsir does not have the limit of only understanding the explanation of the vocabulary. He explains the purpose and meanings of the vocabulary he dissects more thoroughly than a dictionary.<sup>26</sup> Based on this, it can be understood that the book of

<sup>21</sup> Ahmad Rifai Arip, *Isti'arah dalam al-Qur'an (Studi Pemikiran Ibnu 'Asyur Tentang Isti'arah dalam Tafsir al-Tahrir wa al-Tanwir Q.S al-Fajr)*, Tesis: Institut PTIQ Jakarta, 2019, h. 89.

<sup>22</sup> Dian Erwanto, *Tafsir Surat al-Fatihah Berbasis Maqashid al-Qur'an Perspektif Ibnu 'Asyur*, Tesis: IAIN Kediri, 2021, h. 88.

<sup>23</sup> Faizatut Daraini, *Nasionalisme dalam Perspektif Ibnu 'Asyur (Kajian Ayat-Ayat Nasionalisme dalam Tafsir al-Tahrir wa al-Tanwir)*, Skripsi: UIN Sunan Ampel Surabaya, 2019, h. 47.

<sup>24</sup> Darul Muftadin, "Perspektif Tafsir *Maqashid* Ibnu 'Asyur Terhadap Kepemimpinan Perempuan dalam Politik", *Rausyan Fikr* 18, no. 2 (2022), h. 304.

<sup>25</sup> Orien Effendi, "Kontribusi Pemikiran *Maqashid Syariah*...", h. 260.

<sup>26</sup> Faizah Ali Syibromalisi, "Tela'ah Tafsir *al-Tahrir wa al-Tanwir* Karya Ibnu 'Asyur", *Jurnal al-Qur'an dan Hadis* 1, no. 1 (2009), h. 10.



tafsir *al-Tahrir wa al-Tanwir* is more dominant to tafsir *bi al-Ra'yi* with the approach of *adab ijtima'i* and *lughawi* interpretation, because Ibn 'Ashur in interpreting the verses of the Qur'an is more departed from the grammatical aspects of language and *satra* first, then he began his interpretation by using *bi al-Ra'yi*.

### Overview of *Hifdzun Nafs* and *Qishash*

*Hifdzun nafs* comes from two words, *hifdzun* and *nafs*. In language, *hifdzun* comes from the word *hafadza-yahfidzu-hafdzan* which means to keep. While *nafs* itself means soul. Thus, *hifdzun nafs* in terminology means preventing doing something bad to the soul, and ensuring that it remains alive.<sup>27</sup> According to Ibn 'Ashur, *hifdzun nafs* is one of the benefits that must be maintained or safeguarding things related to the soul. *Hifdzun nafs* is a hope, in the sense of hoping for security and peace in matters relating to the soul, in order to bring about the benefits and avoid the disadvantages.<sup>28</sup>

In connection with *hifdzun nafs*, one of the punishments for people who disturb human souls is *qishash*. The law of *qishash* is used to punish people who commit crimes of murder and intentional destruction of limbs. This is based on the fact fourteen centuries ago, that Islam taught by the Prophet Muhammad SAW has a great vision, which respects human rights, and the most important thing is that Islam is very concerned about the right to human life so that the human soul in a series of objectives of God's sharia is very respected and glorified.<sup>29</sup> Thus, the guarantee of life safety through the law of *qishash* is a guarantee of the safety of the right to life that is honorable and noble for every human being. This guarantee is not only for the soul, but also for the limbs and honor. Safeguarding the soul is appointed to maintain the continuity of human life as a form of existence of maintaining security, order, peace and the survival of mankind in accordance with what is desired by Islamic law. This has an impact on the prosperity of sustainable life.<sup>30</sup>

*Qishash* is literally derived from the word *qashsha-yaqushshu-qashshan wa qashashan* which means to cut, approach, narrate, follow, and retaliate. The Qur'an itself indicates that what is meant by *qishash* is a legal sanction that is determined as closely as possible to the previous criminal act. According to Quraish Shihab, the provision of *qishash* law is a guarantee of survival for humans. Because, who knows that if he kills illegally, he is also threatened with being killed, then surely he will not

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<sup>27</sup> Muhammad Syihab Mubarak, et al., "Nilai-Nilai Pendidikan dalam al-Qur'an Surah al-Maidah ayat 32 Tentang *Hifdzun Nafs*", *Jurnal Unisba* 5, no. 2 (2019), h. 200.

<sup>28</sup> Muhammad Thahir Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, (Tunisia: Dar al-Tunisiyyah, 1984), Vol. II, h. 137.

<sup>29</sup> Aay Siti Raoharul Hayat, "Implementasi Pemeliharaan Jiwa (*Hifdzun nafs*) Pada Pengasuh Anak Berbasis Keluarga", *Jurnal Kajian Keislaman dan Kemasyarakatan* 5, no. 2 (2020), h. 155.

<sup>30</sup> Dedisyah Putra dan Asrul Hamid, "Tinjauan Maqashid As-Syari'ah Terhadap Perlindungan Anak Panti Asuhan Siti Aisyah Kabupaten Mandailing Natal", *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan dan Pranata Sosial* 10, no. 1 (2020), h. 9.

step in to kill.<sup>31</sup> In terminology, *qishash* is a form of reward in the form of punishment to the convicted perpetrator in accordance with the crime committed. For example, the perpetrator of murder is threatened with the death penalty, the person who gouges the eye is threatened with the punishment of eye gouging as well, and so on. Like the law in general, the law of *qishash* also has certainty and conditions in accordance with applicable Islamic law. This Islamic law is required with the aim of realizing and protecting the benefit of mankind, whether the benefit of the individual, the community, or for both.<sup>32</sup>

*Qishash* itself has two types that are worth noting. First, the *qishash* of the soul, is the *qishash* that relates to a person's soul or right to life such as murder. This type of *qishash* addresses the nature of the killing and the killer, who must be avenged in proportion to what was done to the victim.<sup>33</sup> However, the scholars of fiqh understand this type of *qishash* differently, because in reality not all murderers are punished with *qishash*. This can be seen in terms of the nature of the act of murder which can be divided into three, namely, intentional murder, resembling intentionality and unintentional murder.<sup>34</sup> Second, *qishash* limbs, namely *qishash* punishment in the form of criminal acts of injuring, damaging limbs, or removing the benefits of limbs. In order for murder to be punishable by *qishash*, it must be in accordance with certain rules and conditions. This kind of *qishash* is usually applied because the perpetrator commits persecution against the victim.<sup>35</sup>

### **Ibn 'Ashur's Understanding of the Verses of *Qishash***

*Qishash* is a punishment determined by following the form of criminal offense committed by the convicted offender.<sup>36</sup> In the Qur'an, the word *qishash* which contains the meaning of punishment as discussed by the author is contained in four verses, namely in QS. al-Baqarah [2]: 178, 179, and 194, and QS. al-Maidah [5]: 45.<sup>37</sup> These four verses will be the focus of the author's study by examining the interpretation of Ibn 'Ashur in the book *al-Tahrir wa al-Tanwir*. According to Ibn 'Ashur, *qishash* is a punishment to preserve and protect the right to life of all humans, because killing one person is like killing everyone. This is stated in QS. al-Maidah [5]: 32:

<sup>31</sup> M. Quraish Shihab, *Tafsir Al-Mishbah: Pesan, Kesan, dan Keserasian Al-Qur'an*, (Jakarta: Lentera Hati, 2013), Vol. 1, h. 394.

<sup>32</sup> Siti Anisa, "Penerapan Hukum *Qishash* Untuk Menegakkan Keadilan", *Journal of Islamic (JILS)* 1 no. 2, (2018), h. 10.

<sup>33</sup> Sudarto, *Fikih Munahakat*, (Yogyakarta: CV Budi Utama, 2021), h. 238.

<sup>34</sup> Abdul Qadir Jasser Audah, *al-Tasryi' al-Jina'i al-Islami*, terj. Ahsin Sakho Muhammad, dkk, (Jakarta: PT Kharisma Ilmu, 2008), h. 338.

<sup>35</sup> Abdullah 'Afif, "*Pustaka Ilmu Sunni Salafiyah*", (Indonesia: PISS-KTB, 2013), h. 1258.

<sup>36</sup> Suyitno, "*Maqashid al-Syari'ah dan Qishash: Pemikiran al-Syathibi dalam Kitab al-Muwafaqat*", *Muaddib*, 5, no. 1 (2015), h. 80.

<sup>37</sup> Muhammad Fuad Abdul Baqi, *al-Mu'jam al-Mufahras li Alfaz al-Qur'an*, (Beirut: Dar al-Fikr, t.th), h. 546.

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ  
النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعَدَ  
ذَلِكَ فِي الْأَرْضِ لَمُتْرِفُونَ

*"Therefore, We have ordained for the Children of Israel, that whoever kills a human being, not because he killed another, or not because he caused mischief on earth, it is as if he had killed all of mankind. And whoever preserves the life of one human being, it is as if he has preserved the life of all human beings. And indeed, Our messengers came to them with clear proofs, but many of them afterward went beyond the pale in their corruption of the earth."*

Ibn 'Ashur explains this verse by informing Muslims that Allah has obliged the death penalty (*qishash*) to the previous people before Islam, namely the death penalty for the perpetrators of unlawful and intentional murder. Thus, this verse actually teaches Muslims to always protect each other's right to life by leaving the act of murder, because it is a cruel act.<sup>38</sup> In addition, Ibn 'Ashur clearly interprets QS. al-Baqarah [2]: 178 regarding *qishash* which is seen as a way to uphold justice;

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ  
لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَىٰ بَعْدَ  
ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ

*"O you who believe, it is obligatory upon you (to perform) the qishash with respect to those who are killed. Freeman for freeman, slave for slave, woman for woman. But whoever obtains forgiveness from his brother, let him follow him kindly, and pay him back kindly. Such is a relief and mercy from your Lord. But whoever transgresses after that will have a very painful punishment."*

In the interpretation of Ibn 'Ashur, this verse explains the law of *qishash* that originated from people in the era before the advent of Islam. At that time, the Jahiliyyah had done damage that had reached an extreme attitude that wasted human lives. If this happened for a long time and Allah did not respond to this condition with the arrival of Islam, then there would be endless revenge. The family of the victim will try to kill the perpetrator or group of perpetrators who are equal to the victim. The blood of the group that is considered noble will count for approximately ten lives of the group that is considered inferior. From this incident, one group will ask for help from another group to avenge the grudge. Thus, there was destruction in this incident. Islam then came with a solution to this problem, namely with the law of *qishash* which aims to protect the soul of every human being.<sup>39</sup>

The above verse also implies that *qishash* is not an obligation in the case of a criminal offense. The right returns to the guardian of the victim's family. Forgiveness

<sup>38</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid VI, h. 178.

<sup>39</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid II, h. 134-135.



on the part of the victim must be based on a willingness to accept compensation for the victim's blood in lieu of *qishash* to change the traditions of jahiliyyah. The implementation of *qishash* is justice, while forgiveness is a compassion for others.<sup>40</sup> When the *qishash* punishment can realize the purpose of its legislation, namely preventing murder and protecting the rights of victims, then forgiveness is a mercy from Allah towards both parties. Here it is clear that justice is prioritized, while mercy comes after.

Before Islam came, the punishment for murder varied. For example, among the Jews the murderer was punished by *qishash*, among the Christians by *diyat*, while among the Arabs of the jahiliyyah the custom of revenge was developed in which someone other than the murderer was killed. Sometimes the victim was only one person, but they took revenge against ten people. *Qishash* in Islam has the status of the original law, which was enacted at the earliest. While the fine (*diyat*) is the second law that applies if the victim's family forgives the murderer.<sup>41</sup>

At the same time, the Qur'an recommends making peace as an effort to resolve cases of murder, as Allah says in QS. al-Baqarah [2]: 179:

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

"And in the *qishash* there is life for you, O men of understanding, that you may fear."

This verse contains a great law that can calm the souls in two groups, namely the soul of the avenger and the soul of the killer. Allah explains in this verse that the law of *qishash* contains life. This is revealed in the word *hayat* which indicates a law that Allah implies in the form of a guarantee of life, so this position is the same as giving life to the human soul.<sup>42</sup> The content of the verse above is a beautiful expression that contains a very deep meaning, because Allah states that the actual implementation of the *qishash* punishment is death, then there is life.<sup>43</sup>

Meanwhile, Ibn 'Ashur understands the editorial *ya uli al-albab* to refer to people who have perfect intellect. The wisdom of *qishash* itself cannot be known except by those who have the right view. If you look at it lightly, *qishash* is a disaster. In fact, the enactment of the law of *qishash* is a punishment for the continuity of life, even a guarantee of life for humans, not a disaster.<sup>44</sup> The affirmation of QS. al-Baqarah [2]: 179 above seems clear to maintain human rights, namely the right to life by giving the most severe punishment to people who take the lives of others. Allah has emphasized forbidding his servants to kill, because killing is a severe punishment. The stipulation

<sup>40</sup> Budi Sastra Panjaitan, "Perlindungan Korban Dalam Kasus Pembunuhan Dan Penganiayaan Berdasarkan Hukum Islam Dan Hubungannya Dengan Restorative Justice", *Jurnal Bina Mulia Hukum* 7, no. 1 (2022), h. 4.

<sup>41</sup> Ali Sodikin, "Restorative Justice dalam Tindak Pidana Pembunuhan: Perspektif Hukum Pidana Indonesia dan Hukum Pidana Islam", *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 49, no. 1 (2015), h. 79.

<sup>42</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid II, h. 134-135.

<sup>43</sup> Eko Zulfikar, *Karakteristik Ulul Albab: Menuju Kepribadian Islami di Era Disrupsi Digital*, (Bogor: Guepedia, 2023), h. 162.

<sup>44</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid II, h. 144-145.

of *qishash* does not mean that in *qishash* only to waste human life, but for punishment for having violated as well as a threat so that there are no more victims.

In another verse, Allah SWT emphasizes the law of *qishash* which is revealed in QS. al-Baqarah [2]: 194;

الشَّهْرُ الْحَرَامُ بِالشَّهْرِ الْحَرَامِ وَالْحُرُمَاتِ قِصَاصٌ فَمَنْ عَدَىٰ عَلَيْكُمْ فَاعْتَدُوا عَلَيْهِ بِمِثْلِ مَا عَدَىٰ عَلَيْكُمْ ۗ  
وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

*"Unlawful month for unlawful month, and against that which is honored, qishash applies. So whoever attacks you, attack him as he attacks you. Fear Allah and know that Allah is with those who fear."*

This verse relates to a story, that the Prophet heard the news that his friend Uthman had been killed, when Uthman was ordered by the Prophet to deliver a letter to the polytheists. Thus, the Prophet pledged all the 1.400 companions under a tree to fight the polytheists. However, when news reached him that Uthman had not actually been killed, the Prophet finally refrained from fighting and chose to make peace. So it came to pass that year that the polytheists were forbidden to enter Mecca, postponed until the next year. While the law of *qishash* was enacted to maintain security and self defense. Allah commands *qishash* in the context of preventing war, as well as defense by not exceeding the limit.<sup>45</sup>

Furthermore, the verse that describes *qishash* is QS. al-Maidah [5]: 45 as follows;

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

*"We have decreed for them therein (the Taurat) that life is for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds have their qishash (equal recompense). Whoever waives his right to qishash, it is a penance for him. Whoever does not judge according to what Allah has revealed, then they are the wrongdoers."*

This verse relates to a problem among the Jews of Medina, namely the problem between Bani Quraidzah and Bani Nadhir. They punished a Bani Nadhir for killing a Bani Quraidzah, but they did not punish the Bani Quraidzah for killing a Bani Nadhir, but only paid diyat. They were considered to be denying the law. Therefore, it is mentioned in the previous verse in QS. al-Maidah [5]: 44: *"Whoever does not judge by what Allah has sent down, then they are the disbelievers."* Since they deny the law of Allah intentionally, they are considered disbelievers.<sup>46</sup> If in QS. al-Baqarah [2]: 178 explains the *qishash* that applies to people who commit the crime of murder, then in QS. al-Maidah [5]: 45, it is emphasized that in the Taurat also stipulated *qishash*. Not only to the crime of murder, but also to the crime of persecution.

<sup>45</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid II, h. 210.

<sup>46</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid V, h. 213.

The explanation above is Ibn 'Ashur's interpretation of the verses of *qishash*. It can be understood that *qishash* aims to preserve human life by establishing laws and punishments that guarantee human rights. Every segment of the human body is always watched by Allah, so that Allah forbids things related to breaking, damaging, injuring limbs and even killing every human being who lives on earth. Thus, the enforcement of laws enacted to maintain the continuity of human life and so that people do not commit criminal acts, can be called the law of *qishash*.

### Relevance of *Qishash* Law with *Hifdzun nafs*

In Ibn 'Ashur's view, *Hifdzun nafs* can be understood as a hope. Hoping for security and peace in matters relating to the soul in order to bring benefit and stay away from harm. While *qishash* is a punishment to preserve and protect the right to life of all humans. Ibn 'Ashur mentions in his tafsir that *qishash* is one of the Islamic laws that has an interest in benefit. All the verses that mention the law of *qishash*, namely QS. al-Baqarah [2]: 178, 179, 194 and QS. al-Maidah [5]: 45, according to Ibn 'Ashur contains *hifdzun nafs* (protecting and maintaining the soul).<sup>47</sup> Referring to the explanation of the usefulness of *qishash*, above, it can be concluded that there is a strong relevance between *hifdzun nafs* and *qishash* punishment.

Ibn 'Ashur interpreted the verses of *hifdzun nafs* concerned with *qishash* using the *Maqashid al-Shari'ah* approach, which later became known as tafsir *maqashid*. *Maqashid* interpretation aims to find a holistic interpretation and hold the meaning of the Qur'an with its essence.<sup>48</sup> When viewed from the definition of the meaning of tafsir expressed by experts, that tafsir is an attempt to find the meaning contained in the Qur'an, both in terms of law and wisdom in it,<sup>49</sup> then the *maqashid* interpretation approach is relevant to the objectives to be achieved by interpreting the verses of the Qur'an. Because *maqashid* interpretation seeks to find the universal meaning of the verses of the Qur'an that are relevant to the objectives of the establishment of Islamic law.<sup>50</sup>

The law of *qishash* is used to punish people who commit the crime of killing and damaging limbs intentionally. According to Ibn 'Ashur, the reason behind this *qishash* law is to avoid bloodshed as happened in the Jahiliyyah, where they killed each other if there was a tragedy of murder.<sup>51</sup> The victim group storms the killer group until they

<sup>47</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*.

<sup>48</sup> Aftonur Rosyad dan Eko Zulfikar, "The Concept of Religious Pluralism in The Qur'an: An Analysis of *Maqashidi* Exegesis in The Indonesian Context", *Dialogia: Jurnal Studi Islam dan Sosial* 20, no. 1 (2022), h. 154.

<sup>49</sup> Nur Afyah dan Eko Zulfikar, "Kualifikasi Intelektual dan Moral Mufasir pada Abad Kontemporer", *Al-Misykah: Jurnal Studi Al-Qur'an dan Tafsir* 3, no. 1 (2022), h. 6. Lihat juga, Eko Zulfikar dan Ahmad Zainal Abidin, "Ikhtilaf al-Mufassirin: Memahami Sebab-sebab Perbedaan Ulama dalam Penafsiran al-Qur'an", *At-Tibyan: Jurnal Ilmu Alquran dan Tafsir* 4, no. 2 (2019), h. 288.

<sup>50</sup> Washfi 'Asyur Abu Zaid, *al-Tafsir al-Maqashid li Suwar al-Qur'an al-Karim* (al-Jazair: Jamiah Abdul Qadir, 2013), h. 7.

<sup>51</sup> Ibnu 'Asyur, *Tafsir al-Tahrir wa al-Tanwir*, Jilid II, h. 134-135.

are satisfied with the murder committed. The victim group also asks for help from other groups, and the perpetrator's group also asks for help because of the invasion. So there was a bloodbath that took many lives. If there is no law of *qishash*, this will continue endlessly. In addition to the law of *qishash*, there is the law of *diyat* that is used as an option for the crime. In this case, the victim's guardian has the right to determine the punishment, either *qishash* or *diyat*. If the victim's guardian forgives the perpetrator then the perpetrator is released from *qishash* which switches to *diyat* (paying a predetermined fine).

After Islam spread throughout the world, only a few countries implemented the *qishash* law, one of which was Saudi Arabia. Whereas in Indonesia, which has a majority Muslim population that should apply the law of *qishash*, it does not apply it. Indonesia does not make Islamic law the basis of its law because for the sake of prosperity, the law of *qishash* by itself cannot be implemented.<sup>52</sup> Although *qishash* is not implemented in Indonesia, this country has its own policy to deal with people who commit the crime of murder (premeditated), namely the death penalty. For example, in the case of Amrozi, Mukhlas, and Abdul Aziz, known as Imam Samudeira. They were executed in 2008, for committing premeditated murder by carrying out bombings in Bali in 2002 that killed around 202 people.<sup>53</sup>

The law of *qishash* which is specifically explained in Indonesia, in practice still imposes the death penalty for those who commit intentional murder. The difference is that *qishash* does not only apply to the crime of murder, but also in the case of other crimes the law of *qishash* still applies. The law of *qishash* can be transferred to *diyat* if the victim's guardian forgives the murderer. This does not apply in Indonesian law, the perpetrator is still punished even though the victim's guardian has forgiven him. Thus, it appears that Ibn 'Ashur's interpretation of the law of *qishash* has a strong relevance to the punishment of perpetrators of murder and injury after Islam.

## CONCLUSIONS

From the brief explanation above, this article concludes that Ibn 'Ashur understands *qishash* as one of the Islamic laws that has an interest in the benefit. *Qishash* serves to protect human life, because with *qishash* people are afraid to commit murder. If *qishash* is left out, then people will not be deterred, because the toughest thing that every soul is afraid of is death. If a person knows that he will survive death, then he will dare to commit murder by taking the punishment lightly. The law of *qishash* explained by Ibn 'Ashur has a strong relevance to *Hifduzn Nafs*, namely avoiding bloodshed as happened in the Jahiliyyah era, they killed each other if there was a tragedy of murder that caused the loss of many lives. Thus, *qishash* punishment

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<sup>52</sup> Prawitra Thalib, "Pemahaman Terhadap Pemberlakuan Hukum Islam di Indonesia", *Jurnal Halo Oleo Law Review* 2, no. 1 (2018), h. 371-386.

<sup>53</sup> Muhammad Subhan, "Pergeseran Orientasi Gerakan Terorisme Islam Di Indonesia (Studi Terorisme Tahun 2000-2015)", *Journal of International Relations* 2, no. 4 (2016), h. 60.

is one way to protect the soul (*hifdzun nafs*), namely by punishing people who commit criminal acts of murder and other criminal acts, with commensurate punishments for the sake of human welfare and survival.

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