Proceedings of the 1ST International Conference on Science and Islamic Studies
ISSN: 3024-9058 (media online)
Volume: 1, 2023
Publisher: Program Pascasarjana, UIN Alauddin Makassar

The determination of stability in the determination of public law in Islam

Rostansar[1], **Kurniati**[2], **Misbahuddin**[3], **& Andi Ahmad Nur Agsa**[4]

[1,2,3]Universitas Islam Negeri Alauddin Makassar
[4]Universitas Hasanuddin, Makassar
Correspondence Email: 80100322094@uin-alauddin.ac.id kyonkun552@gmail.com

ABSTRACT (12pt, bold)

Islamic law developed in line with the expansion of Islamic territory and its relationship with culture and society. The Qur'an provides conditions for every Muslim to obey Allah and His Messenger. A Muslim is not justified in making another choice if it turns out that Allah SWT and His Messenger have established definite and clear laws. The legality of determining an action as a crime and imposing punishment or the principle "There is no crime and punishment unless based on the Nash" must be followed by a country even though it is not an Islamic country because this principle of legality is generally accepted. The enactment of Islamic law as positive law for Indonesian Muslims, who constitute the majority in this country, is based on the Indonesian nation's philosophical, juridical, and sociological values. Therefore, the state is obliged to make Islamic law a positive law for Indonesian Muslims because, basically, the way of thinking, outlook on life, and character of a nation is reflected in its culture and laws. Therefore, in establishing Islamic laws, even though they have been established by Allah and His Messenger, the doors to establish laws remain open, especially public laws that are not explicitly stipulated in the Qur'an and As-Sunnah, including *Jarimah, jinayat, huddud, al-Ahkam as-Shulthaniyyah*, etc. However, researchers are only more interested in studying the establishment of public laws relating to *Jarimah jinayat* and *huddud* within certain limits as a sample in establishing law as a necessity.

Keywords: Establishment of public law; a necessity/obligation

1. INTRODUCTION

Re-actualizing Islamic teachings is one form of effort to answer the complexity of the problems Muslims face today. Re-actualization of Islamic teachings is defined as an effort driven by an objective assessment of the existing state of religion and considered by Muslims to be unsatisfactory. Intensive exploration of what is believed to be actual Islamic standards is necessary to obtain guidelines to adapt to the changing context of today's society. This conception implies that the present interpretation of Islamic teachings originates from efforts to adapt these teachings to past situations.

The primary assumption of the re-actualization of Islamic teachings in question is that the issue of re-actualization must be studied starting from aspects of Islamic law. That is why Islamic law is very influential and effective in shaping the social order and the life of the Muslim community. On the other hand, the law is fundamental to understanding the character and ethos of a nation. The law reflects the attitude of the people's soul far more clearly than any other organization. That is true not only for the law that developed outside the context of Islamic society but also for Islamic law. Shari'ah is the central core of Islamic teachings, and it is only possible to understand Islamic culture, history, social order and society by understanding Shari'ah.

Concerning this, in classical Islamic theory, law originates from divine will, so it is stated that the lawgiver in Islam is Allah, the All-Wise. Therefore, every effort to discover Islamic law is nothing but seeking and formulating Divine will.

Even though it is acknowledged that this is the formulation of the divine will, it is certainly not a static system that has been determined forever without changing but rather is a change of progressively revealed and elaborated principles. How and in what way Allah's will makes the law can be expressed is a heated debate among Islamic legal theorists. This problem is one of the epistemological aspects of Islamic law. This shows that the provisions of matters of worship are only authorized by the party being worshipped (Allah). Worship is declared authentic when there is an order from Allah. In terms of principles, worship is the authority of Allah. However, human tathbiq (technical) matters also have a role, for example, in determining or accounting for the times of prayer, fasting, and pilgrimage. However, the provisions in muamalat affairs show greater human authority. The point is that the determination of benefit in terms of law and statbiq is more significant in the authority of humans.

In the muamalat dimension, it can be understood that in the mapping of this field, two parts are found, as follows:

1. Covering laws in the public space, and

2. Includes laws in the private sphere. However, the focus of this study is to concentrate on law in the public space.

The concentration of this research is in the public sphere in the field of criminal law/Jinayat, by trying to approach national law, as well as jinayat which is applied to Aceh Province as a province that has special autonomy in the field of religion, including being given authority by the state to formulate its Islamic laws in the field of the law to be implied, for example, that governs Jarimah and 'Uqubat. Jarimah is defined as an act that is prohibited by Islamic law in Aceh Qanun Number 6 of 2014 concerning Jinayat Law.

2. METHODS

This study uses a qualitative method through a literature study approach to examine various information from reference sources regarding establishing public law in Islam. Data collection methods used with data collection tools include literature studies and document studies. The literature study is carried out by obtaining secondary legal materials originating from Naqli propositions, namely the Qur'an and As'Sunnah, as well as from books and references related to the subject matter of the research. In contrast, document study is used as a data collection tool to obtain data and information classified as primary legal material.

3. RESULTS AND DISCUSSION

Establishing Criminal Law is a Necessity in Maintaining the Stability of a Nation or State

If we read the history of the formation of the Republic of Indonesia, where before its founding, there were already legal provisions that applied to the Dutch colonial uniforms, both provisions that applied to the Dutch government and citizens in the Dutch East Indies, as well as those that applied to citizens of the Dutch colony in matters of indigenous and non-indigenous is the Criminal Code made in 1881 which was enacted in 1886, after Indonesia became independent by forming the Unitary State of the Republic of Indonesia (NKRI), the criminal law that applies in Indonesia is the Criminal Code, changes which at that time were adapted to the conditions of Indonesian society with the Law -Law Number 1 of 1946 (UU No.1 of 1946) concerning the unification of Indonesian Criminal Law, with the enactment of Law Number 73 of 1958, the criminal law that applies throughout the territory of the Republic of Indonesia is criminal law based on Law No.1 of 1946 In Islamic Law as the basis, among others, is, QS al-Nisa' (4): 59: Which means: O you who believe, obey Allah, to the messenger and Ulil Amri (leader) among you. And the Hadith from Abu Sa'id Sa'ad bin Malik bin Sinan Al-

Khudri Radi Allahu 'anhu that the Prophet Sallallahu 'alaihi wa sallam said, "It is not permissible to cause harm accidentally or intentionally." (Hadith hasan, HR. Ibn Majah.)

Observing these verses and hadiths, the researcher argues that the Unitary State of the Republic of Indonesia, which consists of various tribes, nations, and religions with different backgrounds, does not allow the application of Islamic laws such as criminal/jinayat law. The rule is needed as a necessity. To maintain the stability of the newly formed state, the determination of the criminal law taken over by the government as the exercise of power is in line with the verses and where hadith referred to.

In the formation of law as a provision because of the needs of society, in the Islamic view, the basis is always Nash and as-Sunnah. These Nash and as-Sunnah adorn the repertoire of law formation from jurists or mujtahids by giving birth to sources of law, including Ijt'ma with various other derivative legal provisions. For example, studies in the science of ushul fiqh, which are also studies of Muslim theologians, are about the purpose of law in Islam passing down. Does God establish certain laws with a specific purpose anyway? This is closely related to maqasid al-shari'ah, the method of ijtihad, and its profanity, among the many requirements for ijtihad put forward by the scholars, namely the obligation of the mujtahid to know the purpose of stipulating Islamic law (maqasid al-shari'ah).

The Indonesian government established the Criminal Code as the law that applies throughout Indonesia, intending to stipulate Islamic law (maqasid al-shari'ah). Where maqasi al-shari'ah aims to protect, among other things, the soul, namely providing order and security in society, protecting assets, namely providing guarantees from the perpetrators of theft and deprivation of rights, etc., so that to provide that guarantee, the Criminal Code is a public law that guaranteeing order and security for all Indonesian people is a necessity to establish. Concerning the establishment of public laws, especially in criminal law, the researcher also examines several views from experts in his field, including those put forward by John E. Conklin in his book The Impact of Crime,

> *"Crime and violence, as well as public concern with crime and violence, rise and fall with regularity. Crime waves are not new. They have existed throughout history. When there is a crime wave, people change behaviour to protect themselves, their families, and their property from depredations and criminals".*

It is clear from John E. Conklin's statement that crime and violence, as well as public law relating to the ups and downs of regulation of waves of crime and violence, is not new; therefore, crime and violence have existed throughout history. When a crime wave occurs, people make behavioural changes in protecting themselves, their families, and their property from criminals. However, more is needed for the people to obtain

protection from community groups alone, but requires larger community groups to obtain power known as the government. Because the Unitary State of the Republic of Indonesia had been formed after declaring independence on August 17, 1945, it officially obtained a government based on the 1945 Constitution. In the 1945 Constitution (UUD'45), high state institutions and government structures and their instruments had been stipulated in such a way, including all statutory regulations as instruments that guarantee legal certainty are also stipulated through the transitional provisions of the 1945 Constitution.

Observing the 1945 Constitution, there is a public law whose existence in administering government is necessary. Public law in question is criminal law, as also meant by John E. Conklin, is public law in the sense criminal law, which contains legal rules that regulate the association of individuals with society or the state, are carried out in the interests of society and are determined when society requires them.

The Republic of Indonesia has a majority Muslim population, so digging into Islamic teachings inherent in public law is needed to understand these laws, namely the philosophy of Islamic law as knowledge about the nature, privileges, secrets, and purposes of the law. Islam. Through this formulation, the philosophy of Islamic law contains two main points of discussion, namely;

a. The main foundations, principles, nature, goals, and principles of establishing Islamic law are called al-tasyri philosophy;
b. Secrets, characteristics, privileges, and Islamic legal material are called the philosophy of al-shariah.

Understanding Islamic teachings in prayer rooms and public spaces in Islamic law was an important part discussed in Asrar al-ahkam. Asrar al-ahkam is a branch of the philosophy of Islamic law, which is addressed in terms of wisdom and law. Asrar, if approached from the dimension of legal causes it is prescribed to be called asrar al-tasyri (secrets of legal development). When approached from the dimension of legal material, it is called asrar al-ahkam or asruru al-shari'ah.

It has relation to the law in the public space that can be formulated from several stages, as step in establishing laws, including:

Understand the generally accepted principles/rules in the space of public laws, namely;

المعاملت طلق حت يعلم النع

It means:

"All types of muamalat are free to do so that the prohibitions are known."

In addition to the principles or rules above, other rules are still related to this matter: "There are no criminal sanctions for human actions before there is a rule of law (text)." In positive criminal law, no act can be punished unless it has been regulated in a statutory rule which states that the act is prohibited and subject to punishment, commonly called the principle of legality.

The rule "all kinds of muamalat are free to do so that the prohibitions are known" indicates that all actions are permissible unless there is a prohibition regarding the act in the Qur'an and hadith. The second rule explains that a person who commits or abandons an act cannot be considered a crime as long as it is not clearly stated in the text. For example, the prohibition against killing, stealing, robbing, adultery, accusing others of committing adultery, and drinking khamr.

Comparing the two principles or rules, the rule "All types of muamalat are free to do so that the prohibition is known" is global (universal) when connected with al-ahkam al-Khamsah. It is understood that the principle of origin of an action is permissibility. That is, all actions that fall into the muamalah category may be carried out as long as there is no prohibition. Because of its nature, the formulation and rules may change according to the displacement of places, developments in science and technology, and changes in situations and times. The principle/rule "There is no criminal sanction and there is no crime unless there is a text" is more specific because the acts designated in the field of muamalah have restrictions on specific actions. Because the intended act leads to the realm of crime or crime.

Definition of Public Law

The word law in the Big Indonesian Dictionary is:

a. Regulations that are officially considered binding, confirmed by the authorities (government),
b. Laws and regulations to regulate the social life of the community.

While the word public is many people or general, the words law and public, when combined into public law, can be interpreted as state law or law governing the relationship between the state and its equipment or the relationship between the state and individuals (citizens).

If you divide the law into public and private law, state administrative and criminal law become public law. An understanding emerged that apart from being interpreted as

state administrative law, it is also commonly understood as criminal law, which regulates what actions are prohibited and provides punishment for those who violate them.

In the following description of public law, the understanding will be narrowed down to criminal law, namely the law about not individuals who act in the event of a violation of the law, but the state through its means. To reinforce this statement, for example, if someone commits a crime of defamation, then it is not correct to say that someone will be subject to public sanctions, but what is appropriate is to be subject to criminal sanctions.

In line with this, Simons argues that criminal law is included in public law because it regulates the relationship between individuals and society or the state and is carried out for the benefit of society, and it is implemented because society needs it.

Meanwhile, Hazewinkel-Suringa firmly stated that criminal law is a public law. Furthermore, Van Hattum also views today's criminal law as public law. This is a new development because criminal law in the past could not be separated between public and private law.

Unlike Van Bemmelen, he did not mention criminal law as public law explicitly, but Bemmelen said that by threatening criminal human behaviour, it meant that the state took over the responsibility to maintain the rules that had been determined. It is no longer left to private individuals. In establishing criminal threats in society, the state has the task of investigating and prosecuting violations of regulations that contain criminal threats.

Even though Van Bemmelen did not provide an explicit statement on criminal law as public law, the end of it is criminal law. Simons, Hazewinkel Suringa, and other legal experts believe that criminal law is public law because of its nature. Thus, the deeper one looks at the study of public law, the more obvious it will be that what is meant is criminal law.

Therefore, criminal law has a plural meaning, in an objective sense, it is also often called jus poenale, which includes:

a. Orders and prohibitions for violations or neglect, sanctions have been determined in advance by authorized state bodies, and regulations must be obeyed and heeded by everyone.
b. Provisions that stipulate by what means or means a reaction to violations of these regulations can be carried out.
c. The rules determine the scope of application of these regulations at a time and in a particular country.

Moeljatno, a prominent Indonesian criminal law scholar, formulated criminal law, including material criminal law and formal criminal law, as meant by Enschede-Heijder with systematic criminal law, as follows:

a. Determine which actions may not be carried out and are prohibited by threats or sanctions in the form of specific penalties for those who violate these prohibitions.
b. Determine when and in what cases those violating these prohibitions can be imposed or punished as threatened.
c. Determine how the imposition of the penalty can be carried out if people are suspected of having violated the prohibition.

Compared to the term criminal law in Islamic law, criminal matters are discussed in fiqh jinayat, namely the science of sharia law relating to prohibited acts (jarimah) and sanctions (uqubah) drawn from detailed arguments. Based on this understanding, it can be seen that in general there are two objects of discussion of Fiqh Jinayat, namely criminal acts (jarimah) and sanctions (uqubah).

Imam al-Mawardi gives the definition of jarimah, as follows:

الجرائم محظورات شرعية زجرالله عنه بحد اوتعزي

It means:

> *"Jarimah are actions that are forbidden by syara' which are threatened by Allah with had or ta'zir punishment".*

However, some jurists distinguish between the terms jarimah and jinayat. The jurists' view regarding jarimah is syara' prohibitions which Allah threatens with hudud and takzir punishments. Meanwhile, jinayat is widely used for actions that affect a person's soul or limbs whose perpetrators are subject to Qisas-diyat sanctions, such as killing, injuring, hitting, and abortion.

The definition of jarimah put forward by Imam al-Mawardi and the jurists seems to have no fundamental difference. However, the exciting thing to distinguish between jarimah and jinayat is that jarimah contains Allah's rights, so these sanctions cannot be aborted by individuals or communities represented by the state. Meanwhile, in the case of jinayat, where human rights are more dominant, it is possible that these sanctions can be continued or aborted.

Actions and Formulation of Offenses in the Concept of Islamic Law

An act or action that is punishable by crime, which is against the law related to mistakes, is committed by a person capable of being responsible. When Dutch, the term strafbaar feit is used. Sometimes it is also a delict, which comes from the Latin delictum. The criminal law of Anglo-Saxon countries uses the terms offence or criminal act. If the term strafbaar feit is brought into Indonesian, different interpretations arise. Moeljatno and Ruslan Saleh tend to translate strafbaar feit as a criminal act. Utrecht copied the feit strafbaar into a criminal event, which scholars, namely offence, commonly use.

Therefore, referring to the above description, an act that can be formulated as an offence, namely;

a. Threatened with a crime by law
b. Contrary to law
c. Made by the guilty
d. The person is seen as responsible for his actions.

Still related to the formulation of the offence, as stated by H. Hamka Haq, in his book Islamic Sharia, Discourse and Its Application says that there are only three known elements that form the basis for determining an act worth a crime, namely;

a. The action was agreed as an action against the rights of the people,
b. The act is determined by law as a crime,
c. The law has determined the form of punishment for the crime.

In general, the formulation of an offence contains the "core part" of an offence. The core parts of the offence are following the actions committed so that a person is subject to criminal sanctions. Some legal experts view this as an element of the offence. However, here, the term "element of the offence" is not used because the elements of an offence also exist outside the formulation. For example, the offence of theft consists of the main parts (elements):

a. Taking,
b. Goods that another person wholly or partly owns,
c. Intention to own,
d. Against the law.

The offence's four main parts must follow the actions committed. Therefore, it must be included in the indictment. If one or more of these core parts cannot be proven at trial, the defendant is acquitted.

The formulation of the theft offence does not contain an element of "intentional", because "taking" contains that element. Because there is no crime of theft committed by negligence (culpa). Abdul Qadir Audah argued that acts that are considered crimes in Islamic criminal law can be broadly divided into two, namely, general elements and particular elements. Common elements include, namely:

a. The element of law (الركن الشرعي), namely explicit provisions to prohibit an act that constitutes a crime and to determine sanctions for that action.
b. The material element (الركن المادي), namely in the form of actions, both active and passive actions.
c. The cultural/moral element (الركن الادبي), which includes maturity, can be responsible and can be blamed on the perpetrator.

Criminal Acts and Sanctions in Islamic Law

Crimes Subject to Hudud Criminal Sanctions

Types of criminal acts in Islamic law that are subject to hudud criminal sanctions, among others;

- Out of Islam (Riddah)
- Murder (al-Qatl)
- Adultery (al-Zina)
- Theft (al-Sariqah)
- Drinking Khamar (Shurb al-Khamr)
- Other criminal acts besides

Concerning the discussion of material on the necessity of establishing public law in Islamic law, the researcher conducted his study of how important it is in establishing law, especially in Indonesia, to maintain national stability so that law can be enforced to avoid a legal vacuum, in providing security and order guarantees in society, the author first outlines public law, in terms of criminal law applicable in Indonesia, among others:

- Criminal Murder (al-Qatl)

Sanctions imposed on criminal offenders regarding honour crimes against a person's soul and body are called Qisas. In Islamic jurisprudence, a distinction is made between hudud provisions (sanctions whose models have been determined textually as the right of Allah S.W.T.) and sanctions in the form of Qisas (which provide an opportunity for the victim's family) to choose among several alternative criminal sanctions or choose peace. This is mentioned in QS al-Baqarah 178:

Translated:

> *"O you who believe, Qisas is prescribed for you concerning those who are killed; freeman to freeman, servant to servant, and woman to woman. So, whoever gets forgiveness from his brother, let (the one who forgives) pay (diat) to the one who forgives in a good way (also). That is a relief from your Lord and mercy. Whoever exceeds the limit after that then for him a painful punishment. And in Qisas there is (a guarantee of continuity) of life for you, O people of understanding, so that you may be pious."* Q.S. Al-Baqarah Ayat 178

To maintain national stability, this law has been regulated in criminal law in Indonesia, which is contained in the Criminal Code (KUHP) Article 340 and Articles 98 to 102 of the latest Criminal Code. Although not the same, the values of Islamic law as benefits are not ignored. In Islamic law, in general, Murder can be divided into three types, namely; (1) intentional killing, (2) semi-intentional killing, (3) accidental killing. Also, the Criminal Code distinguishes premeditated Murder, ordinary Murder, and extermination with weighting.

The author realizes that the difference can only be sharpened if it is not seen from the perspective of the present benefit but if explored from the perspective of maqasid al-asyari'a for the greater benefit of protecting the Unitary State of the Republic of Indonesia.

- Theft (al-Sariqah)

Theft is regulated, among other things, in Article 362 of the Criminal Code, namely that anyone who commits the theft is threatened with imprisonment for a maximum of five years or a maximum fine.

Theft is defined as the act of stealing other people's property secretly with bad intentions. Taking property secretly is taking things without the owner's knowledge and consent. Abdul Qadir 'Audah formulates the definition of theft in two senses, namely:

1. Light theft is stealing other people's property secretly, that is, by stealth,
2. Serious theft, including robbery and embezzlement, is taking other people's property through violence.

The legal basis for imposing sanctions on the crime of theft is stated in QS al Ma'idah (38):

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Translated:

> *"Men and women who steal will be cut off the hands between the two (as) revenge for what they do as punishment from Allah. And Allah is Mighty, Most Wise"*

Based on this, Sayid Sabiq argues that theft includes three factors, namely: (1) taking other people's property, (2) the process of taking it is hidden, and (3) that the property taken is appropriately stored.

Suppose the stolen property does not belong to someone else. In that case, the retrieval process does not need to be hidden, or if the property itself is not stored correctly in a particular place, then it does not meet the requirements to be subject to the punishment of amputation. The usual sanction for perpetrators like this is takzir, namely sanctions that are determined at the judge's discretion. Hand amputation is only applied to the perpetrators of theft if it meets various external factors. Apart from that, the thief's internal factors must also be fulfilled, namely: (1) the person has reached puberty, (2) intentionally did it (not because he was forced or forced to), (3) the person has no relationship with the exact status of ownership of the stolen property.

There are still other factors related to stolen property, which also determine whether or not a hand amputation sentence is imposed, namely: (1) stolen assets have value as assets and are lawful to be traded, (2) according to Jumhur, the amount of stolen property is at least a quarter of a gold dinar. Abu Hanifah, the stolen property is at least 10 dirhams.

The wisdom of this sanction is that the researcher examines matters relating to the Criminal Qisas An-Nasf and Qisas ghair an-Nasf, including theft because, in this criminal law as a hudud finger, the sanctions have been determined in the Qur'an. However, the researcher examines whether it is still possible to determine whether the law with sanctions other than those specified in the Nash is a necessity.

Word of Allah Subhanahu Wa Ta'ala, In QS. An-Nisa's verse 58 says: "Verily, Allah orders you to convey the mandate to those entitled to receive it, and (orders you) when establishing laws between people so that you determine fairly. Verily Allah gives you the best teaching. Verily, Allah is All-Hearing, All-Seeing." This verse is according to Quraish Shihab12 that Allah reminds you if you determine the law between humans, whether it is in dispute with humans or without disputes that you must make decisions reasonably according to what Allah has taught, not taking sides except for the truth and not dropping sanctions except for those who violate them, not to abuse even your opponents and not to your friends. Indeed, Allah has given you the best teaching by ordering the fulfilment of the trust and establishing the law somewhat because it tries its best to implement it.

It is understood that Allah Subhanahu Wa Ta'ala, with wise shari'a, has transferred the model of torture sanctions to criminal acts, the meaning of which is the punishment that has a better and nobler value. In the past, criminal sanctions functioned as torture from the family of the murdered to the murderer. Seeing this reality, the victim's family was not willing to take revenge before shedding blood and eliminating the killer's life. Sometimes, perhaps by killing one person, five or more people would be killed in revenge. Here, it can be positioned that Allah Subhanahu Wa Ta'ala. They are establishing Qisas sanctions for benefit so that people think when they want to commit Murder.

In line with this, the assessment of conventional jurists is very clearly wrong if Qisas's punishment is seen as a cruel and heinous sanction. Protecting killers from capital punishment, even though those killed have become victims of tyranny, is an attitude contrary to humanity's natural values. Mercy for murderers is not appropriate, avoiding the death penalty is not a solution to upholding justice and a sense of comfort for people's lives.

Supposedly, conventional jurists have an objective and comprehensive view, think based on common sense, will love society more than criminals, and strictly apply Qisas punishment. People who love society will undoubtedly try to reduce the volume of crimes and prevent excessive reprisals.

At first glance, the verse that forms the normative basis for cutting off the hands of thieves seems ruthless and frightening. So far, this has been the way of thinking for some people. The problem is how the provisions of the verse are understood wisely. According to Syahrur, there are several provisions for criminal sanctions in the Qur'an, one of which is the theory of halah al-had ala'la (maximum limit). A judge may make ijtihad in reducing the highest punishment in the Qur'an but may not exaggerate.

Following this, the punishment for cutting hands is the maximum punishment in the Qur'an, and a judge may use ijtihad to reduce the punishment for cutting hands to replace other crimes such as imprisonment. In addition, there is still a gradation theory, namely the stages of a punishment being imposed. According to Syahrur, judging from environmental and psychological factors, judges should not rule out this theory in making decisions. For example, how many times did he steal, what was the reason for stealing, and what was his background in life? Islam is very sensitive to this issue, so the Prophet saw. did not punish fruit thieves who were eaten on the spot, and Umar bin al-Khattab did not punish thieves' hands being cut off during the famine season.

Another factor that must be considered in punishing thieves in Islam is paying attention to strict pillars and conditions. The mujtahids have outlined that in the act of

stealing, which is subject to the punishment of cutting off a hand, there are at least four things that must be considered, namely: (1) thieves, (2) stolen goods, (3) places where goods are stored, (4) imposition of sanctions.

Thus, Allah has prescribed the punishment of cutting hands, which some jurists consider very cruel. However, the punishment of cutting off the hand will protect property and human life. The evil hand that is cut off is a limb that is the source of disease. Therefore, it is inappropriate for hands like that to be allowed to spread all over the body. It is much safer if the limbs are annihilated. One hand is enough to give a guarantee to deter criminals and create a conducive atmosphere in society.

The forms of criminal acts mentioned above have, in principle, been regulated in the Criminal Code and the Qanum of the Provincial Government of Aceh, except for qisas for Murder and cutting off hands.

The formation of the Criminal Code and the Aceh Provincial Government's Qanum is one illustration of how important it is to establish laws to maintain stability.

4. CONCLUSION

This discussion provides a clear picture of the privileges and superiority of Allah's laws, which are implemented in Islamic law. Particularly concerning public laws, primarily criminal law/jinayat:

a. Islamic law can always go hand in hand with human nature, following the determination of reason, and correct logic and restoring human nature that has been damaged by lust, actualizing the benefit of society, both in this world and in the hereafter, creating absolute justice, opening the door for criminal sanctions takzir.
b. Islamic criminal law is benefit-oriented, so in enacting it, a formulation is needed that is a provision for criminal sanctions in the Qur'an. For example, one is the theory of halah al-had ala'la (there is a maximum limit). A judge may make ijtihad in reducing the highest punishment in the Qur'an but may not exaggerate because the purpose of Islamic law is the happiness of human life in this world and the hereafter by taking everything beneficial and preventing or rejecting that which is harmful.

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