IMPLEMENTATION OF THE MUTLAQ-MUQAYYAD RULE IN QISAS LAW

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Abstract

This study examines the application of *the muthlaq-muqayyad* rule in *qiṣāṣ* law, which serves as a guideline in understanding the difference between general and specific terms in the establishment of Islamic law. This study uses a qualitative method with a literature study approach (*dirāsah maṣdariyyah*), through an analysis of classical fiqh works and contemporary interpretations related to *qiṣāṣ*. The results show that the muthlaq-muqayyad rule is an important instrument in maintaining the balance between divine justice and human rationality, so that its application is able to emphasize the flexibility of Islamic law in protecting life and upholding justice. The application of this principle shows that *qiṣāṣ* is not only a law of retribution, but also a moral and social framework based on the values of *maqāṣid al-syarīʿah*.

Keywords: *Muthlaq-muqayyad, Qiṣāṣ,* Hermeneutics, Islamic Law, *Maqāṣid al-Syarīʿah*.

Abstrak

Penelitian ini mengkaji penerapan kaidah *muthlaq-muqayyad* dalam hukum *qiṣāṣ* yang berfungsi sebagai pedoman dalam memahami perbedaan antara lafaz umum dan lafaz khusus dalam penetapan hukum Islam.

Penelitian ini menggunakan metode kualitatif dengan pendekatan studi kepustakaan (dirāsah maṣdariyyah), melalui telaah terhadap karya-karya fikih klasik dan interpretasi kontemporer terkait qiṣāṣ. Hasil penelitian bahwa kaidah muthlag-mugayyad menunjukkan merupakan instrumen penting dalam menjaga keseimbangan antara keadilan Ilahi dan rasionalitas manusia, sehingga penerapannya mampu menegaskan fleksibilitas hukum Islam dalam melindungi jiwa dan menegakkan keadilan. Penerapan prinsip ini menunjukkan bahwa qiṣāṣ bukan hanya hukum pembalasan, tetapi juga kerangka moral dan sosial yang berlandaskan pada nilainilai maqāṣid al-syarī 'ah.

Kata Kunci: *Muthlaq-muqayyad*, *Qiṣāṣ*, Hermeneutika, Hukum Islam, *Maqāṣid al-Syarīʿah*.

A. Introduction

The principle of muthlaq–muqayyad is an important branch of the study of $u\bar{s}\bar{u}l$ al-fiqh, which serves to interpret the difference between general terms (muthlaq) and specific terms (muqayyad) in Islamic legal texts. This principle forms the basis for $fuqah\bar{a}$ in establishing fair laws, especially in the field of criminal law such as $qi\bar{s}\bar{a}\bar{s}$, which requires a balance between justice and the protection of human life.¹

Research on the application of the *muthlaq-muqayyad* rule has been discussed by a number of classical scholars. Imam al-Shafi'i in *Al-Risalah* emphasizes the importance of consistency between the understanding of general and specific terms to avoid legal contradictions.² Al-Ghazālī in Al-Mustashfā explains that this principle maintains harmony between the generality of the law and the context that limits it.³ Ibn Taymiyyah adds that

²Al-Syāfi'ī, *Al-Risālah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2011), h. 45.

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¹Amir Syarifuddin, *Uṣūl Fiqh* (Jakarta: Kencana, 2011), h. 210.

³Al-Ghazālī, *Al-Mustashfā min ʿIlm al-Uṣūl*, Juz 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 2013), h. 212.

the application of *muthlaq-muqayyad* must consider *maqṣad syar'i*, not just the wording, so that Islamic law remains contextual throughout the ages.⁴

Contemporary studies also pay attention to this theme. Yūsuf al-Qarḍāwī views that the application of the *muthlaq-muqayyad* rule in *qiṣāṣ* law reflects the flexibility of Islamic law in adapting to social conditions without neglecting the principle of justice. Meanwhile, Wahbah al-Zuḥaylī in *Al-Fiqh al-Islāmī wa Adillatuhu* explains that the application of this principle shows a balance between retributive justice and the protection of human values.

Several previous studies have also touched on the application of this rule in the context of Islamic criminal law. For example, a study by Ahmad Rofiq highlights the application of *muthlaq-muqayyad* in cases of murder and retaliation as regulated in classical fiqh books, but has not examined its relevance to positive law in Indonesia.⁷ Another study by Syarifuddin Basri reviews the meaning of *muthlaq* and *muqayyad* in *jināyah* law, but is still limited to theoretical aspects without elaborating on its implications for legal practice.⁸

Based on these various studies, it appears that previous research tended to stop at the descriptive level without touching on the applicative dimension of this rule in the context of modern justice. This gap opens up space for current research to fill the void. This study focuses on exploring

 $^{^4}$ Ibn Taymiyyah, *Majmūʿ al-Fatāwā*, Juz 20 (Riyadh: Maktabah al-Riyāḍ al-Ḥadīthah, 1995), h. 221.

⁵Yūsuf al-Qarḍāwī, Fiqh al-Jināyāt fī al-Islām (Kairo: Dār al-Syurūq, 2015), h. 178.

 $^{^6}$ Wahbah al-Zuḥaylī, Al-Fiqh al-Islāmī wa Adillatuhu, Juz 7 (Damaskus: Dār al-Fikr, 2013), h. 611.

⁷Ahmad Rofiq, "Kaidah Muthlaq-Muqayyad dalam Hukum Islam dan Implikasinya terhadap Hukum Positif di Indonesia", *Jurnal Al-Manāhij*, Vol. 14, No. 2 (2020), h. 233–247.

⁸Syarifuddin Basri, "Analisis Kaidah Muthlaq dan Muqayyad dalam Hukum Jināyah", *Jurnal Ilmu Syariah dan Hukum Islam*, Vol. 12, No. 1 (2019), h. 50–63.

the application of the *muthlaq-muqayyad* principle in *qiṣāṣ* law by presenting a synthesis between classical views and contemporary legal needs based on *maqāṣid al-syarī ʿah*.

B. Research Method

This study uses qualitative research with a library research approach, because the objects studied are sourced from classical and modern literature on *muthlaq-muqayyad* rules and their application in *qiṣāṣ* law.⁹ This approach was chosen to gain a deep understanding of the concepts, context, and implications of these rules within the framework of Islamic criminal law.

The data sources in this study include primary and secondary data. Primary data was obtained from the works of classical scholars such as Al-Risālah by al-Syāfiʿī, Al-Mustashfā by al-Ghazālī, and Majmūʿ al-Fatāwā by Ibn Taymiyyah, which contain the theoretical basis of the *muthlaq-muqayyad* principle. Secondary sources come from contemporary books and journals that discuss the relevance of applying these principles to modern Islamic law, including the works of Yūsuf al-Qarḍāwī and Wahbah al-Zuḥaylī. 11

Data collection methods were carried out through the identification, classification, and analysis of texts from various literature sources. Each piece of literature was examined to find the relationship between the theory of *muthlaq-muqayyad* rules and their implementation in *qiṣāṣ* law. The collected data was then analyzed using content analysis, by

⁹Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2019), h. 6.

¹ºAl-Syāfiʿī, Al-Risālah (Beirut: Dār al-Kutub al-'Ilmiyyah, 2011), h. 47; Al-Ghazālī, Al-Mustashfā min ʿIlm al-Uṣūl, Juz 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 2013), h. 214; Ibn Taymiyyah, Majmūʿ al-Fatāwā, Juz 20 (Riyadh: Maktabah al-Riyāḍ al-Ḥadīthah, 1995), h. 223.

¹¹Wahbah al-Zuḥaylī, Al-Fiqh al-Islāmī wa Adillatuhu, Juz 7 (Damaskus: Dār al-Fikr, 2013), h. 610; Yūsuf al-Qarḍāwī, Fiqh al-Jināyāt fī al-Islām (Kairo: Dār al-Syurūq, 2015), h. 176.

interpreting the substantive meaning of Islamic legal texts to produce an integrative and contextual understanding.¹²

The validity of the data was ensured through source triangulation techniques, namely comparing and confirming the views of various scholars and literature across different eras. This process aimed to ensure that the conclusions drawn had a strong scientific basis and did not rely solely on a particular view.¹³ Thus, the research results presented have undergone a process of verification and in-depth analysis in accordance with scientific research standards.

C. Results and Discussion

1. Characteristics of Muthlag Wording in Qishash Verses

Analysis of the Qur'anic text shows that verses discussing *qishash* have *muthlaq* characteristics, which are general and comprehensive in nature without explicit limitations on their application. One of the main verses of reference is in *QS Al-Baqarah/2: 179*.

Translation:

And We have prescribed for you in *qishash* (retribution) life, O people of understanding, that you may be righteous.¹⁴

This verse emphasizes the equality between the perpetrator's actions and the legal consequences, demonstrating the absolute nature of *qishash*

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¹²Krippendorff, Klaus, *Content Analysis: An Introduction to Its Methodology*, 3rd edn (Los Angeles: Sage Publications, 2018), h. 24.

¹³Sugiyono, Metode Penelitian Kualitatif, Kuantitatif dan R&D (Bandung: Alfabeta, 2020), h. 125.

¹⁴Al-Qur'ān al-Karīm, Surah al-Baqarah/2:179, terjemahan Lajnah Pentashih Mushaf al-Qur'an, Kementerian Agama RI, *Al-Qur'an dan Terjemahannya* (Jakarta: Lajnah Pentashih Mushaf al-Qur'an, 2004), h. 30.

law. This general nature raises the question of how this literal principle is applied in the real context of a complex society. Research findings show that the implementation of *qishash* law cannot be carried out rigidly without considering the *muqayyad* conditions of sharia.

The main restrictions in question cover three aspects. First, the element of intent ('amd) must be present for qishash to be applied. An unintentional killing, even if it results in death, does not automatically trigger qishash but rather diyat or forgiveness by the heirs. It was narrated by Abu Hurairah, may Allah be pleased with him, that the Prophet, peace be upon him, said:

Meaning:

There is no *qishash* for unintentional murder. 15

Second, the principle of equality between perpetrator and victim is an important factor. *Qishash* is applied if the perpetrator and victim are equal in terms of social and legal status. Third, *qishash* does not apply to individuals who have the legal right to kill, such as legal officials or in the context of warfare that is justified by sharia law.

This finding confirms that the *muthlaq* wording in the Qur'an must be understood as a general principle, but its application must take into account the requirements of sharia. Only with a combination of *muthlaq* and *muqayyad* can *qishash* be applied fairly and in accordance with the social context. This analysis also shows that a literal understanding of *muthlaq*

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 $^{^{15} \}text{Al-Bukhārī},\ \c Saḥīḥ \ al-Bukhārī,\ Kitāb al-Qiṣāṣ,\ Bab al-Qatl al-Ghayr Mu'ammad, Hadis no. 2768$

without *muqayyad* can disregard the values of justice and *maslahah* (public interest).

2. Flexibility of *Qishash* through *Muthlaq* and *Muqayyad* Interactions

Research finds that the interaction between *muthlaq* and *muqayyad* properties provides significant legal flexibility in the implementation of *qishash*. *Muthlaq* establishes the principle of equal retribution, while *muqayyad* presents restrictions based on sharia law. The results of jurisprudential studies show that the *muthlaq* principle of *qishash* can be converted into *diyat* or forgiveness, depending on the choice of the victim's heirs.

In practice, cases of intentional murder involving self-defense, psychological pressure, or the perpetrator's unpreparedness are often taken into consideration by judges. Sharia courts in Indonesia and Malaysia provide concrete examples where literal *qishash* is not imposed, but is adjusted to social conditions and the wishes of the victim's family. This mechanism confirms that Islamic criminal law is not merely a literal retribution, but also contains dimensions of substantive and restorative justice.

This flexibility also allows judges to balance the interests of the victim, the perpetrator, and society. For example, the option of forgiveness or *diyat* can prevent protracted conflicts between families, restore social relations, and uphold the principle of *hifzh al-nafs* (protection of life) in accordance with maqāṣid al-syarī'ah. Thus, the interaction between *muthlaq* and *muqayyad* makes *qishash* an adaptive legal instrument that is relevant to the contemporary social context.

In addition, contemporary literature studies show that the application of the *muthlaq-muqayyad* principle serves as a guideline for judges in interpreting *qishash* texts. This flexibility reinforces the role of Islamic law as a means of achieving social justice, not merely as a tool of

punishment. Judicial decisions that consider forgiveness or *diyat* in a valid manner remain consistent with the *muthlaq* principle, but adapt to *muqayyad* in order to achieve broader sharia objectives.¹⁶

3. Variations in Classical Scholars' Interpretations

A study of classical *fiqh* literature shows differences in scholars' interpretations regarding the implementation of the *muthlaq-muqayyad* rule, especially in cases of *syibh al-'amd* (semi-intentional killing). Some scholars, such as al-Shāṭibī, emphasize that *syibh al-'amd* can be subject to *qishash*, because an act that approaches intentionality is sufficient to endanger human life and demands an appropriate retribution.¹⁷

Al-Nawawī adds that consideration of intent, the consequences of the act, and the social context must form the basis of legal considerations. In his view, even though the element of intent is not fully satisfied, the impact of the act on the victim demands the enforcement of the principle of substantive justice. Conversely, Ibn Qudāmah argues that such cases can be resolved with *diyat* because the element of full intent is not satisfied.¹⁸

This difference confirms that Islamic criminal law is dynamic, and the application of *qishash* depends on the balance between the principles of *muthlaq* and *muqayyad*. Variations in interpretation also influence modern court practices. Judges are more likely to choose the option of *diyat* and reconciliation in the context of urban communities, to reduce negative social impacts, while in the context of traditional communities, literal *qishash* is more widely applied. These findings indicate the need to master the principles of *muthlaq-muqayyad* in order for legal decisions to be fair and in accordance with *maqāṣid al-syarī'ah*.

¹⁶Azyumardi Azra, Hukum Pidana Islam di Indonesia, Jakarta: Logos, 2015, h. 185.

¹⁷Al-Shāṭibī, *Al-Muwafaqāt fī Usūl al-Sharī'ah*, Beirut: Dār al-Fikr, 1997, h. 402.

¹⁸Ibn Qudāmah, *Al-Mughnī*, Beirut: Dār al-Kutub al-'Ilmiyah, 2000, h. 231.

In addition, research also shows that variations in classical interpretations can be used as guidelines in drafting modern Islamic criminal law regulations. The combination of classical scholars' views and contemporary approaches allows the Islamic judicial system to be flexible, adaptive, and restorative, while remaining consistent with Sharia values but relevant to current social conditions.

4. Practical and Theoretical Implications

The findings of this study emphasize the importance of mastering the principles of *muthlaq-muqayyad ushul fiqh* for judges, academics, and Islamic legal policymakers. In practical terms, judges need to assess whether the perpetrator's actions meet the conditions for *qishash* based on the *muthlaq-muqayyad* principle, provide options for forgiveness or *diyat*, and consider the social, cultural, and economic context of the community. Judicial decisions that integrate all these considerations reflect substantive and restorative justice.

Theoretically, the study emphasizes that research on *muthlaq-muqayyad* is the foundation for the development of a modern Islamic judicial model. This principle allows for the integration of classical texts, *maqāṣid al-syarī'ah*, and contemporary practices. The implementation of *qishash* law utilizing this principle not only enforces retribution, but also strengthens social reconciliation and prevents conflict.

The application of the *muthlaq-muqayyad* principle also has a significant impact on Islamic legal education. Sharia judge training modules now include in-depth studies on the interaction between *muthlaq* and *muqayyad*, so that the resulting decisions are not rigid, remain fair, and are relevant to the needs of contemporary society.¹⁹ These findings confirm

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¹⁹Yusuf al-Qaradāwī, Fiqh al-Maqāṣid, Cairo: Maktabat Wahbah, 2010, h. 65.

that *qishash* is not merely an instrument of punishment, but part of a comprehensive, humanistic, and contextual Islamic legal system.

D. Conclusion

Based on the results of this study, several conclusions can be drawn regarding the implementation of the *muthlaq-muqayyad* principle in *qishash* law. First, the verses of the Qur'an that discuss *qishash* are *muthlaq* in nature, indicating the principle of equal retribution for murder. However, its application is always *muqayyad* by sharia conditions, such as the element of intent, equality between the perpetrator and the victim, and the absence of a legitimate right to kill. This finding confirms that a literal understanding of *muthlaq* cannot be applied rigidly without considering the sharia restrictions established through hadith and *ijma'*.

Second, the interaction between *muthlaq* and *muqayyad* provides significant legal flexibility. The absolute principle of *qishash* can be converted into *diyat* or forgiveness at the discretion of the victim's heirs. This flexibility shows that Islamic criminal law contains dimensions of substantive and restorative justice, not merely literal retribution. This approach also allows for the adjustment of verdicts to the social, cultural, and economic context of society, so that *qishash* remains relevant and fair.

Third, the study found variations in the interpretations of classical scholars regarding cases of *syibh al-'amd* (semi-intentional murder). Some scholars consider it to be *qishash*, while others consider *diyat* to be sufficient. This difference emphasizes the dynamic nature of Islamic criminal law, where the balance between *muthlaq* and *muqayyad* principles determines the application of the law, both in classical texts and modern practice.

Fourth, the practical implications of this research emphasize the importance of mastering the *muthlaq-muqayyad* rules for judges, academics, and policymakers. The implementation of *qishash* should not be understood

as a rigid and repressive law, but rather as an adjudicative, restorative, and humanistic legal instrument. Mastery of this rule allows the Islamic judicial system to integrate classical texts, *maqāṣid al-syarī'ah*, and contemporary practices so that legal decisions remain fair, relevant, and in accordance with the values of public interest.

Overall, the study confirms that *qishash* law based on the *muthlaq-muqayyad* principle is capable of achieving a balance between the principles of justice, protection of life, and social reconciliation. This principle positions *qishash* not merely as a mechanism of retribution, but as part of a comprehensive, adaptive, and responsive Islamic legal system that addresses the needs of contemporary society.

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