



REINTERPRETING THE AMPUTATION PUNISHMENT IN QUR'AN SURAH AL-MAIDAH VERSE 38: A SYSTEMS APPROACH BY JASSER AUDA

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ABSTRACT

The interpretation of the law of hand amputation in Surah Al-Maidah verse 38 often conveys an impression of Islamic law as rigid, static, inhumane, and contrary to human rights. This study seeks to reinterpret this law through the system approach to Islamic jurisprudence developed by Jasser Auda, a contemporary expert in Islamic law. Auda, renowned for his expertise in systems analysis and *Maqāṣid syari'ah*, endeavors to reform Islamic legal principles to better align with contemporary issues. He employs *Maqāṣid syari'ah* as the foundation for his systematic approach, which serves as both his methodology and analytical tool. Auda's framework comprises six key features: cognitive nature, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness. By applying these features, the study aims to reinterpret the law of hand amputation into a more flexible, dynamic, and contextually appropriate form. Rather than a rigid application, the law should consider the varying contexts in which it is implemented, ensuring it aligns with current societal values and human rights standards.

Keywords: Reinterpretation, Amputation, Jasser Auda, Systems Approach

ABSTRAK

Interpretasi hukum amputasi tangan dalam Surah Al-Maidah ayat 38 sering menyampaikan kesan hukum Islam sebagai kaku, statis, tidak manusiawi, dan bertentangan dengan hak asasi manusia. Studi ini bertujuan untuk menafsirkan kembali hukum ini melalui pendekatan sistem terhadap hukum Islam yang dikembangkan oleh Jasser Auda, seorang ahli kontemporer dalam hukum Islam. Auda, terkenal dengan keahlian dalam analisis sistem dan *Maqāṣid syari'ah*, berusaha untuk mereformasi prinsip-prinsip hukum Islam untuk lebih menyesuaikan dengan isu-isu kontemporer. Dia menggunakan *Maqāṣid syari'ah* sebagai dasar untuk pendekatan sistematisnya, yang berfungsi sebagai metode dan alat analisisnya. Kerangka kerja Auda terdiri dari enam fitur utama: sifat kognitif, integritas, keterbukaan, hierarki yang saling terkait, multidimensi, dan tujuan. Dengan menerapkan fitur-fitur ini, studi ini bertujuan untuk menafsirkan kembali hukum amputasi tangan menjadi bentuk yang lebih fleksibel, dinamis, dan kontekstual. Alih-alih aplikasi yang ketat, undang-undang harus mempertimbangkan konteks yang bervariasi di mana ia diterapkan, memastikan ia selaras dengan nilai-nilai masyarakat saat ini dan standar hak asasi manusia.

Kata Kunci: Reinterpretasi, Potong tangan, Jasser Auda, Pendekatan Sistem



INTRODUCTION

The Qur'an is a text characterized by verses that are "*yahtamil wujūh al-ma'nā*," meaning they allow for multiple interpretations. As Martin Whittingham aptly describes, it is "one book with many meanings" (Whittingham, 2007). Muhammad Arkoun cites a narration by Abu Darda stating: "*Lā yafqah al-rajūl kull al-fiqh ḥattā yarā fīl Qur'ān wujūhan kaṣīrah*," which translates to, "A person does not truly understand the Qur'an until he perceives its numerous interpretative facets." Imam Sahl Ibn Abdullah al-Tusturi, a Sufi commentator referenced by Abdul Mustaqim, asserts: "If a servant is endowed with understanding of the Qur'an, deriving a thousand meanings from each letter, even then, it would not exhaust the divine meanings." This assertion underscores the inexhaustibility of God's word, paralleling the infinite nature of God Himself. Consequently, as Muslim civilization evolved historically, interpretation methodologies diversified, incorporating various scholarly tools and approaches. These diverse scientific backgrounds and socio-historical contexts have enriched the interpretative landscape of the Qur'an (Mustaqim, 2016).

The interpretation of Surah Al-Ma'idah, verse 38, exemplifies this multiplicity of meanings. The prescribed amputation for thieves is a contentious and complex issue that has sparked extensive debate among scholars and jurists. This punishment intersects with broader themes of religion, ethics, and human rights. The historical and cultural context of the verse's revelation is crucial to understanding its application, which

must consider the prevailing social and cultural conditions. Simultaneously, the principle of property protection (*hifdz al maal*) is integral to Islamic jurisprudence.

Nailil Rahmi, in her journal article, concludes that the amputation punishment aims to safeguard human property from damage, destruction, and unlawful acquisition, aligning with Islamic law (Rahmi, 2018). Bukhori Abdul Somad's research concurs, emphasizing that the punishment protects and respects the victim while deterring theft and reducing crime. He argues that this punishment reflects Islam's respect for human values, its love for peace, and its commitment to mutual benefit (Somad, 2015). Contrarily, Novia Hanif Budi Astuti notes that Indonesia's criminal system does not enforce this punishment for theft. However, it has been implemented in Brunei Darussalam as part of Islamic law (Astuti, 2023).

Using Khaled Abu Fadl's Hermeneutic Theory, Nur Danisia Octaviani analyzes the amputation law, arguing that it aligns with the socio-cultural context of the Arabian Peninsula. She suggests that alternative punishments could be more appropriate, considering the specific social and cultural contexts of different countries (Octaviani et al., 2022).

In light of the above discussions and literature review, this study seeks to explore viable legal responses to theft that contextualize Qur'anic verses within the socio-cultural realities of contemporary societies. This research employs a systems approach, as proposed by Jasser Auda, integrating systems analysis theory and

maqāṣid syarī'ah (objectives of Islamic law). Auda advocates for a holistic understanding of Islamic law to achieve its overarching goals.

RESEARCH METHODS

This paper is a literature-based research study, involving the collection, reading, recording, and analysis of research data. The focus of this research is the amputation punishment as mentioned in Surah Al-Maidah, verse 38 of the Qur'an. This article adopts a qualitative, conceptual, and thematic approach, drawing concepts directly from the Qur'an. Methodologically, this research employs Jasser Auda's systems approach to analyze the verse. The aim is to reconstruct and reinterpret the Qur'an using Jasser Auda's methodology.

To achieve this, the research is conducted through four coherent steps. First, data collection involves gathering various interpretations of Surah Al-Maidah, verse 38. Second, the verse is analyzed using Jasser Auda's six features of the systems approach, alongside an analysis based on the theory of Ulumul Qur'an. Third, the findings from the previous analysis are linked with technological and social developments to provide a comprehensive understanding. Finally, the relevant aspects of *maqāṣid* (objectives of Islamic law) are concluded to benefit society by promoting good and eliminating harm in accordance with contemporary contexts.

RESULTS AND DISCUSSION

Jasser Auda and His Academic Career Journey

Jasser Auda was born in Cairo in 1966. In 1996, he earned his first doctorate from Waterloo University, Canada, with a dissertation on "The Analysis of Jurisprudence Systems" (Tahlil Almanzummat). In 2007, he achieved his second doctorate at the University of Wales, UK, with a dissertation on "The Theory of *Syarī'ah* Law" (Usul Al Fiqh) and "*Syarī'ah* Intentions" (*Maqāṣid syarī'ah*). His areas of expertise include *Syarī'ah* Intentions (*Maqāṣid syarī'ah*) and various sciences (Safvet Halilović, 2016).

Auda's academic journey encompasses religious studies at the University of Wales Lampeter, UK, systems analysis at the University of Waterloo, Canada, a Bachelor of Engineering from Cairo University, Egypt, memorization of the Qur'an, and studies of the hadith collections of al-Bukhari and Muslim, as well as Fiqh. He pursued religious sciences through halaqahs at the Al Azhar Mosque in Cairo (Muhammad Mattori, 2020). This diverse educational background illustrates that Jasser Auda is not only proficient in religious sciences but also in exact sciences. His ability to integrate Islamic law with a systems approach, typically associated with the exact sciences, has enabled him to become a distinguished expert in *Syarī'ah maqāṣid* through his application of systems theory (Auda, 2013).

A Systems Approach in Islamic Law

The term 'system' originates from the Greek word 'systema,' signifying a whole composed of interrelated parts (Lorens, 1996). In English, 'system' translates to an arrangement, network, or method (Echols et

al., 1989). Scientifically, a system is defined as a set of elements that are systematically interrelated to form a coherent whole (Heppy, 2012). Analysts often conceptualize the entity being examined as a system. Generally, a 'system' encompasses a series of interactions among units or elements that create an integrated whole, designed to perform specific functions. Systematic analysis thus involves identifying units, elements, or subsystems, and understanding how they interconnect and integrate to execute particular processes or functions (Auda, 2022; Skyttner, 2001; Kendall & Kendall, 2014).

The emergence of systems theory and philosophy in the latter half of the 20th century served as a counter to both modernist and postmodernist thought. Systems theorists and philosophers reject the reductionist modernist perspective that simplifies human experience to mere cause and effect. Concurrently, they also repudiate the postmodernist inclination towards irrationality and deconstruction, viewing it as a meta-narrative of postmodernism (Auda, 2015).

Systems theory is characterized by several features that influence the analysis of its components. These features also determine the interaction among subsystems and with the external environment. It is crucial to note that the systems approach originated within the scientific domain, not the humanities, implying that not all aspects of systems theory are applicable to the humanities.

Linguistically, the word '*syari'ah*' refers to a path where water flows, symbolizing a method or way of something. This definition

aligns with Quranic verses (e.g., Surah al-Jašiyah: 18, Surah al-Syurā: 13, Surah al-Maidah: 48) that denote *syari'ah* as the "rule" or "method" of religion, serving as the foundation; it represents the "methods" and "ways" for the religions preceding Prophet Muhammad (peace be upon him). Essentially, the term '*syari'ah*' linguistically does not equate to legal legitimacy (*tasyri'*) or law (*al-qanūn*) (Faisol, 2017).

Jasser Auda, referencing Ibn Qayyim, defines *syari'ah* as wisdom and the pursuit of human welfare in both this life and the hereafter. *Syari'ah* is fundamentally about justice, mercy, wisdom, and goodness. Therefore, any ruling that substitutes justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, cannot be considered part of the *Syari'ah*, regardless of interpretive claims (Auda, 2022).

The term '*maqāṣid*' is the plural form of '*maqṣid*,' indicating a goal, objective, interest, or end goal. It corresponds to 'ends' in English, 'telos' in Greek, 'finalite' in French, or 'zweck' in German. In the context of *syari'ah*, *maqāṣid* signifies goals, purposes, or objectives behind Islamic law. Some theories of Islamic law equate *maqāṣid* with *maṣāliḥ*, or benefits (Auda, 2015).

Al-Syathibi (d. 790 AH / 1388 AD), an Andalusian jurist, initially popularized the term *maqāṣid syari'ah* (Mustaqim, 2010). According to al-Syathibi, all obligations, whether commands or prohibitions, aim to realize benefits for the servant. His concept of *maqāṣid syari'ah* attempts to articulate the relationship between divine law and human

legal aspirations. Muhammad Abu Zahrah emphasized that Allah's law (*syari'ah*) benefits humans in their relations with God, fellow humans, and nature (Salahuddin, 2012).

Traditionally, *maqāṣid* is classified into three levels of necessity: *daruriat* (necessities), *hajiāt* (needs), and *tahsiniyat* (complementary). *Daruriat* includes religious protection, physical and spiritual protection, property protection, intellectual protection, and progeny protection, with some jurists adding honor protection. These necessities are essential for human life, with general consensus that their protection is the goal of every divine law. *Hajiāt* are less critical, and *tahsiniyat* enhance the preceding levels (Auda, 2015).

Contemporary *maqāṣid* concepts explore the evolution of these theories, aligning them more closely with present-day conditions compared to classical conceptions. For instance, *hifzun nasli*, meaning the preservation of offspring, now extends to family welfare and the establishment of a civil Islamic social system. *Hifzul aqli*, or preservation of reason, has evolved to encompass scientific thinking, knowledge pursuit, discouraging conformity, and preventing expert emigration (Auda, 2015).

Jasser Auda proposes a new paradigm in *maqāṣid syari'ah*, shifting from classical to contemporary *maqāṣid* by prioritizing development and freedom over mere protection and preservation (Auda, 2022). The *maqāṣid syari'ah* paradigm offered by Jasser Auda emphasizes this transformative approach (Ghozali, 2022):

Table 1.
Comparative Framework of Classical *Maqāṣid* and Jasser Auda's *Maqāṣid*

Classical <i>Maqāṣid</i> Paradigm	Jasser Auda's <i>Maqāṣid</i> Paradigm
Preserving offspring	Emphasizing the significance of family institutions
Preserving the intellect	Enhancing intellectual capacity and promoting scientific research
Preserving honor, preserving the soul	Upholding and safeguarding human dignity and human rights
Preserving religion	Ensuring the protection and respect of religious freedom and belief
Preserving property	Promoting economic stability, welfare, and social care

The Scope and Steps of a System Approach in Islamic Law

Jasser Auda employs the *maqāṣid syari'ah* as the cornerstone of his philosophical framework, utilizing a systems approach as both his methodological foundation and analytical tool. This novel approach has not previously been considered for application in the study of Islamic law and jurisprudence. To implement systems theory as an approach in Islamic law, Auda constructs a set of characteristics derived from systems theory. Among the myriad features in systems theory, Auda identifies those that are particularly pertinent to Islamic law research. These features are those advocated by renowned system theorists, including Bertalanffy (the progenitor of systems theory), Katz, Kahn, Ackoff, Churchman, Boulding, Bowler, Maturana, Varela, Luhmann, Gharajedaghi, Hitchens, Koestler, Waeber, Simon, Jordan, Beer, and Skyttner.

Jasser Auda delineates six key features of systems that he employs as analytical instruments: cognitive nature, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness. These six features are intricately linked, forming a cohesive system of thought. Among these, one feature transcends all others and epitomizes the essence of the systems methodology: purposefulness. This central feature underscores why Auda positions *maqāṣid syarī'ah* as a foundational principle and a critical methodology in the reform of contemporary Islamic law (Auda, 2015).

Reinterpretation of the Amputation Punishment in Surah Al-Maidah Verse 38 Using a Systemic Approach

The systemic approach in Islamic law, as proposed by Jasser Auda, represents a significant advancement in the methodology of legal interpretation within Islam. This innovative approach is particularly relevant in our contemporary context, aiming to make the Islamic legal system more cognitive, comprehensive, open, hierarchical, multidimensional, and purpose-driven.

By employing a systemic approach, we can effectively analyze the punitive measure of amputation for theft. Theft, in its simplest definition, involves the secretive taking of another person's property. Terminologically, it refers to the act of forcibly and clandestinely appropriating someone else's possessions under specific conditions. The traditional punishment for theft, as taught in various madrasahs, is the amputation of the thief's hand at the wrist (Bugha, 2012). This ruling is

derived from Surah. Al-Maidah (5): 38, which states:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٣٨﴾

"The male and female thieves, upon committing theft, shall have their hands cut off as a consequence of their actions, serving as a punishment decreed by Allah. Indeed, Allah is Almighty and All-Wise." (Departemen Agama, 2006).

The revelation of Qur'anic verse al-Maidah 38 is attributed to two distinct incidents. The first involves Tu'mah ibn Ubairiq, who stole an armor belonging to Qatadah ibn Nu'man, concealing it within a flour sack. This theft was discovered when flour leaked from the sack, leaving a trail that led to Zayd's house, where Tu'mah had hidden the armor. Consequently, Qatadah accused Zayd of the theft, but Zayd denied the accusation, asserting that Tu'mah had entrusted him with the armor, a claim supported by local witnesses. Qatadah then brought the matter to the Prophet Muhammad, prompting the revelation of Surah al-Maidah 38.

In another narration, a woman was apprehended for theft during the Prophet Muhammad's era. When the incident was reported to the Prophet, Surah al-Maidah 38 was revealed, prescribing the amputation of hands for both male and female thieves. Following this decree, the woman's right hand was amputated. Subsequently, she sought the Prophet's assurance regarding the acceptance of her repentance by Allah. The Prophet responded with the subsequent

verse, affirming that Allah would accept her repentance provided she improved herself and performed good deeds towards others (As-Suyuthi, 2014).

The practice of hand amputation for theft predates Islam, persisting through the Prophet's time and the era of the Khulafaur Rashidin. A hadith narrated by Ibn Jarir and Ibn Abi Hatim, through Abdul Mu'min from Najdah al-Hanafi, documents a query posed to Ibn 'Abbas concerning the general or specific applicability of Surah al-Maidah 38. Ibn 'Abbas affirmed its general applicability (Octaviani et al., 2022). Another hadith from Aisha recounts the Prophet's stipulation that a thief's hand should not be cut off unless the stolen amount was at least a quarter of a dinar. Furthermore, Ibn Umar's narration details an incident where the Prophet ordered the amputation of a hand for stealing a shield valued at three dirhams (Islamiyah & Umami, 2024).

During their respective caliphates, Abu Bakr amputated the hand of a Yemeni man for stealing a necklace, while Umar ordered the amputation of Ibn Samrah's hand. Under Uthman's rule, a thief who stole *utrujjah* (a slightly sour fruit) valued at three dirhams suffered the same fate. However, during a famine, Umar famously suspended the punishment of hand amputation for theft.

Scholars offer various explanations for Umar's decision. Some argue the theft did not meet the minimum threshold of three dirhams. Others suggest the theft was driven by the necessity to sustain life. Yet another account posits the stolen she-camel's value surpassed the theft threshold.

Imam Malik mandated hand amputation for thefts reaching the three-dirham limit based on Ibn Umar's hadith. Imam Hanafi set this threshold at ten dirhams, while Imam Shafi'i adhered to Aisha's narration, setting the limit at a quarter of a dinar. This law applies to property that is securely stored, excluding items deliberately left in open spaces (Octaviani et al., 2022).

The author contends that the implementation of hand amputation for theft under specific conditions was contextually appropriate during its time. The prevailing Arab customs of that era endorsed such punishments, and Islam did not seek to completely overturn existing traditions. While this punishment is closely tied to Arab culture, it contrasts with the principles of humanism within Islamic law (Octaviani et al., 2022).

Cognitive Nature Analysis

The cognitive nature of Islamic jurisprudence emphasizes the distinction between divine revelation and human cognition. This implies that *fiqh* (Islamic jurisprudence) transitions from being perceived as the domain of divine knowledge to being recognized as the domain of human understanding of divine knowledge. Divine knowledge, derived from revelation, specifically the *Syari'ah* (Quran and Hadith), serves as the foundational source. Consequently, the interpretations made by jurists represent their best estimations of the truth, with all differing legal opinions being legitimate and correct expressions of that truth (Auda, 2015).

Examining Surah Al-Ma'idah verse 38 and its associated Hadith, the punishment of hand-cutting for theft is prescribed in a general sense without specifying particular conditions. The detailed stipulations for this punishment emerged during the era of the classical fiqh scholars, including the perspectives of the four Imams of the major schools of thought. Moreover, the practice of hand-cutting for theft can be traced back to pre-Islamic Arabian law. The existence of varied scholarly opinions regarding the conditions and implementation of this punishment indicates that the interpretation of Surah Al-Ma'idah verse 38 is adaptable, allowing for diverse legal applications in accordance with societal conditions.

When the punishment is viewed through the lens of cognitive nature, it becomes evident that the apparent meaning can be interpreted in line with the scholars' understanding of the text. A notable example is the interpretation by Caliph Umar ibn al-Khattab concerning the aforementioned verse. Umar decisively chose to suspend the punishment for thieves, despite facing criticism and protests. He defended his decision by asserting, "There is no point in speaking the truth if the truth itself is not practicable" (Octaviani et al., 2022).

Wholeness Analysis

The classical scholars predominantly employed an atomistic approach in their jurisprudence. This method relies heavily on individual passages to address specific cases, leading to several inherent issues. The principal drawback of the atomistic approach is its reliance on partial and fragmented causal

bases, lacking comprehensiveness. To address these limitations, Auda proposed a holistic approach that incorporates all verses of the Qur'an, not just the legal ones, in the formulation of Islamic law. This holistic methodology is exemplified through thematic interpretation, as opposed to the atomistic approach, which confines itself to causality and cause-and-effect relationships (Prihantoro, 2017).

From the perspective of wholeness, punishment can be interpreted from various angles rather than a singular viewpoint. The aforementioned verse is not the sole reference concerning the punitive measure of hand amputation for theft. A relevant hadith illustrates this broader context: When Shafwan ibn Umayyah was resting in Bathha', someone stealthily took his cloak. Shafwan apprehended the thief and brought him to the Prophet, who ordered the amputation of the thief's hand. However, Shafwan interceded, saying, "O Prophet, I have forgiven him and forsaken the matter." The Prophet responded, "Why did you not forgive him before bringing him to me?" (HR. Nasa'i (VIII/68) and Ahmad (III/401) (Bugha, 2012) (Octaviani et al., 2022).

Openness Analysis

The Islamic legal system is inherently an open system. Nevertheless, many scholars still maintain that the door to *ijtihad* has been closed at the level of *uṣūl*. This perception effectively renders the Islamic legal system a closed one. However, the necessity of *ijtihad* remains critical, given the evolving circumstances and developments within society. The existing interpretations are based

on a limited framework, whereas societal dynamics are perpetually fluid and boundless.

Openness in law is understood by relating it to the prevailing social conditions. In Indonesia, for instance, people are generally unaccustomed to certain forms of punishment as they do not align with the deeply ingrained societal traditions.

A notable example is the well-known story of Umar bin Khattab, who refrained from imposing the punishment of amputation in a case of theft. His decision was informed by the prolonged hardship faced by the community at that time. Moreover, Umar bin Khattab considered the underlying reasons for the theft, which were rooted in the thieves' need to provide for their families (Arfan, 2013).

This nuanced approach reflects a profound understanding of justice that transcends rigid legalistic interpretations, emphasizing the importance of contextual and compassionate application of the law.

Interrelated Hierarchy Analysis

Jasser Auda posits that *maqāṣid* aims to integrate various dimensions within fiqh. Consequently, Islamic legal products are not confined to textual interpretations or the views of specific scholars. Instead, they adhere to the fundamental principle of facilitating unity among Muslims, enabling them to collectively address shared challenges (Faisol, 2017).

The concept of interrelated hierarchy suggests that the punishment for theft should not be solely based on textual sources. It should also incorporate the perspectives of

scholars from various madhhabs, synthesizing these views to form a cohesive understanding. For instance, the law of amputation for theft, as established across different eras, should converge to a point that serves to protect the Muslim community as a whole.

Multidimensionality Analysis

The Islamic legal system is inherently multidimensional. Jasser opposes the binary perspective often applied in Islamic jurisprudence. He argues that the dichotomy between *qath'i* (definitive) and *dzanniy* (speculative) evidence, which has long dominated Islamic legal methodology, results in methodological reductionism. This binary viewpoint simplifies the complexities of legal matters into mere opposites of black and white, right and wrong. However, certain contradictory elements can be reconciled through an understanding of the *maqāṣid* (objectives) of *Syar'ah*.

In the context of multidimensionality, theft cases should not be viewed solely in terms of right and wrong. Instead, there are various dimensions between these extremes that must be considered. A thorough investigation of a theft case should include an examination of the motives behind the theft, the economic conditions that influenced the act, and other contextual factors. Additionally, the amount of property stolen must also be taken into account when evaluating the case.

Purposefulness Analysis

Auda posits that purpose (*maqāṣid*) is a foundational aspect of the Islamic legal

system. The effectiveness of this legal system is rooted in its core principles, serving as a benchmark for the validity of each *ijtihad*. The essence of every Islamic law lies in the realization of benefits for humanity. Consequently, this purposeful feature encompasses all other features outlined by Auda (Auda, 2015). The implementation of Islamic law must revert to the primary texts of the Quran and Hadith. *Fiqh* does not reject the criteria for truth; rather, it addresses the contextual outcomes within the community (Fasa, 2017).

The central feature of all features is purposefulness. A law is evaluated based on the goals it seeks to achieve. For instance, the punishment of hand-cutting for theft aims to protect individual property and instill a formidable deterrent effect on potential offenders. However, the Quranic prescription of hand-cutting is one among various punitive measures for theft. Alternative punishments, such as imprisonment for a few months proportional to the severity of the theft, may also effectively serve as deterrents.

Moreover, Islamic law must consider the protection of offenders. The hand-cutting punishment was suitable for the conditions of Arabian society at that time. The Arabian Peninsula, characterized by its harsh desert environment, necessitated strict asset protection amidst a nomadic lifestyle. In such conditions, severe punishments like hand-cutting were feasible as part of a broader cultural context where harsh measures were commonplace for survival.

In contemporary times, society values rationality, justice, and human rights, influenced significantly by Western thought.

Hand-cutting is perceived as cruel, horrific, and a violation of human rights. Therefore, modern interpretations of Islamic law advocate for alternative punishments that maintain the deterrent effect while upholding human rights standards.

DISCUSSION

Jasser Auda offers a groundbreaking paradigm of *Maqāṣid syari'ah*. Among the five *Maqāṣid syari'ah* proposed by Auda, there is a focus on the protection of property owners to prevent theft. Islamic law must ensure the preservation and protection of the economy, welfare, and social care. When considering the punishment for theft, it is essential to take into account the fulfillment and preservation of economic stability and societal welfare. Furthermore, the punishment of amputation for theft appears disproportionate, especially if the threshold for theft is as low as a quarter of a dinar or three dirhams. This severe punishment would significantly restrict an individual's ability to work normally. In the contemporary context, amputation would result in permanent disability, severely limiting the range of possible employment for the individual.

Ultimately, the amputation penalty would cause the offender to lose numerous job opportunities, impeding their ability to support their family's economy and welfare. If the thief happens to be the family's primary breadwinner, this punishment could severely compromise the dignity and human rights of their family members.

The punishment for theft should also take into consideration the extent of the theft. There should be a graduated scale of

punishments that corresponds to the value of the stolen property. The current amputation penalties do not seem to reflect the amount of property stolen, applying a single severe punishment regardless of the theft's scale. The amputation penalty for thieves might be justifiable if the value of the stolen property is equivalent to the loss incurred by the amputation of a hand. For instance, this punishment could be deemed appropriate for corrupt officials who have embezzled significant amounts of public funds. In extreme cases, such as the theft of state property, the death penalty might even be considered appropriate.

CONCLUSION

The punishment of amputation for theft, when analyzed through the systems approach promoted by Jasser Auda, represents a significant reform effort within Islamic law, transforming what has traditionally been perceived as rigid into a more flexible, innovative, and dynamic framework. This systems approach incorporates six key features: cognitive nature, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness, with the latter being the central core of the system. These features collectively allow for the reinterpretation of hand amputation laws to become more adaptable, context-sensitive, and aligned with contemporary realities. Rather than enforcing amputation rigidly, the punishment must consider the various contexts surrounding the act. Jasser Auda proposes a range of punishments calibrated to the value of the stolen property, emphasizing the need to safeguard economic stability,

welfare, and social support for the offender. Furthermore, the punishment for theft must uphold the protection of human dignity and human rights.

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