

Ahkam

Jurnal Ilmu Syariah

- ❖ **HERDI SAHRASAD & AL CHAIDAR**
Indonesian Terrorist, ISIS, and Globalization of Terror: A Perspective
- ❖ **HOTNIDAH NASUTION**
Implementation of the Principle of Ultra Petitem Partium in Deciding Children Livelihood in Divorce Lawsuit in Religious Courts
- ❖ **HAVIS ARAVIK, CHOIRIYAH & SAPRIDA**
Critical Study on the Legal Thinking of Muhammad Shahrur
- ❖ **NITA TRIANA**
Urgency of Arbitration Clause in Determining the Resolution of Sharia Economic Disputes
- ❖ **زمخشري عبد المجيد**
أهمية قوانين المصارف الشرعية في إندونيسيا (نظرية التفسير الموضوعي)
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Islamic Law And Business Ethics: Case Study of Forest Fires for Clearing the Lands



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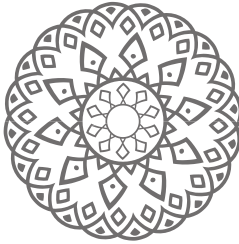
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TABLE OF CONTENTS

- 1 HERDI SAHRASAD & AL CHAIDAR
Indonesian Terrorist, ISIS, and Globalization of Terror:
A Perspective
- 23 HOTNIDAH NASUTION
Implementation of the Principle of Ultra Petitum Partium
in Deciding Children Livelihood in Divorce Lawsuit in
Religious Courts
- 43 HAVIS ARAVIK, CHOIRIYAH & SAPRIDA
Critical Study on The Legal Thinking of Muhammad
Shahrur
- 65 NITA TRIANA
Urgency of Arbitration Clause in Determining The
Resolution of Sharia Economic Disputes
- 89 زمخشري عبد المجيد
أهمية قوانين المصارف الشرعية في إندونيسيا (نظرية التفسير الموضوعي)

- 109 ARRISMAN
Islamic Law and Business Ethics: Case Study of Forest
Fires for Clearing The Lands
- 125 ABDULMAJEED HASSAN-BELLO
Riba and Islamic Banking, Examining the Practices of Jaiz
Bank PLC, Nigeria
- 155 ISNAWATI RAIS
Marriage Dispensation due to Extramarital Pregnancy:
The Study on the Decision by the Religious Court of
South Jakarta (2010-2011)
- 177 HAMZAH
Zakah Empowerment Optimization Through Baitul
Ikhtiar Cooperation as an Effort in Poverty Alleviation in
Bogor Regency
- 201 ABDUL MUTA'ALI
Israel and Palestine Conflict from Linguistics and *Fiqh*
Siyasah Perspective
- 219 SUSIKNAN AZHARI
Tracing the Concept of Fajr in the Islam Mosaic and
Modern Science
- 233 AHMAD SHOLIHIN SIREGAR
The Construction of *Āyātul Aḥkām* (Constructing the
Selection Bases of *Āyātul Aḥkām*)



CRITICAL STUDY ON THE LEGAL THINKING OF MUHAMMAD SHAHRUR

Havis Aravik, Choiriyah & Saprida

Abstrak: Shahrur adalah seorang pemikir kontroversial dari Syariah yang menawarkan sebuah epistemologi baru yang disebut Teori Batas (*Theory of Limit/Nadzariyah al-Hudud*). Teori ini ditawarkan untuk merespon stagnasi dalam kajian pemikiran hukum Islam, sekaligus sebagai sebuah kritik terhadap kelompok literal dan rasional Islam yang gagal menawarkan modernitas kepada umat. Pemikiran Shahrur menimbulkan banyak kritik dan cacian. Beberapa negara bahkan melarang peredaran bukunya. Namun, para sarjana Barat memberikan apresiasi tinggi karena Shahrur telah berupaya melanjutkan karya Fazlur Rahman yang belum selesai, yang disebut gerakan ganda (*double movement*). Dalam Teori Limit, Shahrur membedakan antara batas yang berlaku dalam hal ibadah dan batas dalam hukum pidana. Bagi Shahrur, ibadah, dalam makna hubungan antara manusia dan Tuhan, bersifat tawqifiyah. Ibadah ini terbagi menjadi empat kategori: shalat, zakat, puasa Ramadhan, dan haji. Empat kategori ini bersifat final, tidak diperselisihkan, dan sempurna. Di sisi lain, Shahrur menawarkan beberapa model pengembangan hukum, yang terbagi menjadi enam model teoretis berupa batas maksimal dan minimum.

Kata kunci: Syria, dialectics, nadzariyah al-hudud, pluralism, gender

Abstract: Shahrur is a controversial thinker from Syria who offers a new epistemology called Theory of Limit. This is to respond the stagnation in the study of Islamic legal thought, as well as a critique to the literal and rational groups that have failed to offer modernity to the people. The thought of the Shahrur reaped much criticism and insult. Some countries even banned the circulation of his books. However, Western academics give full appreciation because Shahrur has managed to continue the unfinished work of Fazlur Rahman, called double movement. In the Theory of Limit, Shahrur distinguishes between the prevailing limits in worships and limits in hudud. For Shahrur, worship, in the sense of the relationship between human and God, is tawqifiyah. It consists of four categories: prayer, zaka, Ramadan fasting, and Hajj. Those are final, uncontestable, and impeccable. Meanwhile, there are several possible forms in the development of law, which Shahrur divides it into six theoretical models of maximum and minimum limits.

Keywords: Syria, dialectics, nadzariyah al-hudud, pluralism, gender

ملخص: يعتبر شحرور مفكراً مثيراً من سوريا، حيث يقدم نظرية المعرفة الجديدة المسماة نظرية الحدود هذا هو الرد على الركود في دراسة الفكر القانوني الإسلامي، بالإضافة إلى نقد للجماعات الحرفية والعقلانية التي فشلت في تقديم فكرة التجديد للناس. حصد فكره الي كثير من النقد والإهانة. حتى أن بعض الدول حظرت تداول كتبه. ومع ذلك، فإن الأكاديميين الغربيين يعطون التقدير الكامل لأن هذه الفكرة تمكن من مواصلة والاستكمال العمل فزل الرحمن. وقد دعا بحركة مزدوجة. في نظرية الحدود، يميز شحرور بين الحدود السائدة في العبادات والحدود. بالنسبة لشحرور العبادة بمعنى العلاقة بين الإنسان مع الله، هي التوفيقية. وتتكون من أربع فئات فقط: الصلاة، والزكاة، وصيام رمضان، والحج. هذه نحائية لا تقبل الجدل ولا تشوبها شائبة. وفي الوقت نفسه، هناك العديد من الأشكال الممكنة في تطوير القانون، الذي يقسمه شحرور إلى ستة نماذج نظرية للحد الأقصى والحد الأدنى.

الكلمات المفتاحية: سوريا، الديالكتيك، النظرية الحدود، التعددية، Gender

Introduction

The discourse on the reconstruction of Islamic legal thinking still raises a polemic. The debate has caused Islamic law to be at a crossroad. The choice between revelation and reason is the problem faced by Muslim thinkers. Orthodox Muslims emphasize on revelation, while modernists stress on the need of rational interpretation of the Qur'an (Muslehuddin, 1980: XI).

Muhammad Shahrur, a liberal thinker from Syria, is one of those who have tried to reconstruct the concept of understanding of Islamic law to be compatible with current era. He offers a theory that compromise texts and contexts. This is called *nadzariyyah al-hudud* or the theory of limit. Also, Shahrur sees that the choice of the previous scholars is not worth defending anymore. This is because, orthodox scholars' thinking, with a textual approach to Islamic law, are likely to be irrelevant. Meanwhile, modernist scholars, with a contextual approach to Islamic law, tend to dissolve together with the relativity of socio-cultural dynamics.

This article attempts to trace the basis of Muhammad Shahrur's epistemological thought that led to the raise of the theory of limit (*nadzariyyah al-hudud*). This article also examines the extent of its relevance to answer some disputable issues such as inheritance, hand cutting for thieves, marriage, bank interest, *zakah*, and others. In order to objectively understand Shahrur' approach, this paper will see the applicability of the approach to those issues.

Biography of Muhammad Shahrur

To understand someone's thinking, one cannot ignore the dynamic of the person's life, because the human mind does not emerge from a vacuum. It is influenced by the surrounding circumstances. There is even a thought that cannot be understood at all, except using the plausibility context in which the thought emerges. Therefore, a character like Karl Mannheim, through his relational theory, strongly emphasizes the importance of the relationship between thinking and its social context. This theory says that every thought is always related to the overall social structure that surrounds it. So it is appropriate to say that the truth of thought is merely a contextual truth, not a

universal truth (al-ibrah bi khusus al-sabab la bi umum al-lafz). Therefore, understanding someone's thinking cannot be separated from the context and the plausibility structure owned by that person. This also applies in understanding the thought of Shahrur (Fanani, 2003:3).

Muhammad Shahrur bin Daib was born in the border of Shalhiyyah Damascus of Syria, on 11 April 1938. At that time, the country was still under the occupation of France (Rizq, 1995:15-16). Shahrur was the fifth child of a dyer (Mas'adi, 2000:147). His formal education began at a primary and secondary school at the Abdurrahman al-Kawakibi Institute of Education, in al-Midan in the southern suburb of Damascus. The madrasa was named after an Arab writer living in 1849-1903 and was vigorously voicing the Arab resistance against the corrupt Turkish dictatorship. Shahrur graduated from the madrasa in 1957 (Fanani, 2005:47).

An important event underlying the shifting of the thinking paradigm and life pattern of Shahrur occurred in March 1958 or one year after his graduation. This was precisely when Shahrur was 19 years old. Shahrur was awarded a civil engineering government scholarship to study at the Faculty of Engineering, Moscow Engineering Institute (Ulum and Junaidi, 2003: 210). After that, Shahrur chose to live in Saratow, which was not far from the campus. In 1964, Shahrur received a Diploma in Civil Engineering from the faculty. After the graduation, Shahrur returned to Syria to prepare for his future, and in 1965, Shahrur was accepted as a lecturer at Damascus University. Two years later (1967), Shahrur became a researcher in Imperial College London England. However, it was stopped, because of the June War between Syria and Israel in 1967. The war resulted in the breakup of the diplomatic relations between Syria and Britain because Britain with its true American allies supported Israel's independence. Shahrur, then, decided to go to the National University of Ireland, University College Dublin in the Republic of Ireland as the envoy of Damascus University. It was precisely in 1969, Shahrur took MA & Ph.D program in Soil Mechanics and Foundation Engineering until 1972 (Nasution, 2007:77-78). After completing his education, Shahrur returned to the Faculty of Engineering, University of Damascus.

The early days of Shahrur's career as a lecturer coincided with the

search for the identity of the Syrians. After all this time in the grip of French colonialism, this period also became a turning point for the whole Middle Eastern society to move against the invaders. The turning point in the domain of identity search stemmed from three streams. The first is the regional-based thinking that led to the birth of the regional nationalism. The figures of this thought were Anton Sa'adah (1904-1949) and Taha Husayn (1889-1973). The second is the idea based on the Arab identity (Arabism) held by Sati al-Husri (1880-1968). The third is the thought based on Islam held by Rashid Ridho (1865-1935) and Amir Syakib Arsalan (1865-1946), a Lebanese Shi'ite Druze. The conflict between the three streams above lasted long enough, thus contributed to the thinking paradigm of Shahrur in his maturity. Therefore, Shahrur argued that the first stream denied the history (Sayrurah/process) of Arabs and focused on the process experienced by the Arabs (Fanani, 2003: 49-48).

Previously, they were some figures such as Jamal al-Din al-Qasimi (1866-1914) and Thahir al-Jaza'iri (1852-1920) who tried to promote religious reform in Syria. The Reformation of al-Qasimi—the former disciple of Muhammad 'Abduh (1849-1905, an Egyptian reformer)—aimed at fortifying Muslims for the secular Tanzimat's tendency and the emergence of Islamic intellectual orthodoxy. For that, Muslims should be able to concoct rationality, progress, and modernity within the frame of religion. In this case, al-Qasimi proclaimed to rediscover the original meaning of Islam in the Quran and al-*Sunna* while emphasizing *ijtihad*.

Thahir al-Jaza and his colleagues further followed through al-Qasimi's though. This time, his ideas were more directed towards the promotion of education. From then, it can be seen in that the intellectual climate in Syria has been more "advanced" than other Arab Muslim countries that still apply Islamic law rigidly, especially with regard to freedom of expression. The fresh wind for the development of thought in Syria has been more real and promising than in other Arab countries. That is why liberals, like Shahrur, can freely 'breathe' in Syria after bringing forth their creative ideas, which are forbidden and unlawful in other Muslim countries. (<http://www.islamemansipatoris.com>).

Shahrur had a long experience with regard to the discipline he engaged in. His career as a scientist began since he was a teacher for

the subjects of Soil Mechanics in the Faculty of Engineering, University of Damascus. From 1964 to 1968, after his doctorate graduation in Ireland (1968-1972), he was appointed Professor of the Department of Civil Engineering at the University of Damascus (1972-1999) (Syamsuddin, 2003:276-277).

Furthermore, since 1972-2000, he was also appointed as a senior consultant of the association of engineers in Damascus. Apart from that, Shahrur has also been a successful professional throughout his career. He conducted soil mechanics investigations for more than 400 projects in Syria; became the supervisor of the Yalbugh Business Complex in central Damascus; was listed as a business centre designer in Medina, Saudi Arabia; and became the supervisor for the construction of four sports centres in Damascus. In 1982-1983, Shahrur was a lecturer at al-Saud Consult, Saudi Arabia. After that, he went back to Syria and became an engineering consultant (Fanani, 2003: 3).

Currently, he is a teacher at Damascus University and also works as an engineering consultant at his institution, Dar al-Isharat al-Handasiyya in Damascus. In addition, he also undertook studies in the field of philosophy and *fiqh* of language.

Some have attacked Shahrur for his questionable authority in the Islamic study area. The intersection of Shahrur with Islamic study area can be divided into three phases. The first was from 1970-1980 when he undertook his study in Dublin. He felt that his study of Islam was not meaningful, primarily when he studied about *Zikr*, its methodologies and a prophetic message about it. He saw that Islamic studies have been trapped in the tradition of *taqlid*. The discussion on Islamic studies merely duplicated previous thoughts. This also appears in the study of *kalam and fiqh*. The discussion of *kalam* has been trapped in the discussion surround Ash-Ariyya and Mu'tazila traditions; while the discussion about *fiqh* has been caught up in al-Fiwaha al-Khams. In turn, this has denied further scientific discussion. Shahrur's ten-years study led to the concept of *asasiyya*, which means that Islam is not only *taqlidi* as is in the previous studies. This is because Muslims cannot bring the previous product of thinking to the present. Shahrur insists on the need for Muslims to free themselves from the frame of unscientific *taqlidi* thinking.

The second phase was from 1980-1986. This phase began from the

meeting of Shahrur with Ja'far Dark al-Bab, one of Shahrur teaching colleagues in Damascus who took a doctorate in linguistics (al-Lisaniyah) in 1973 at the University of Moscow. Al-Bab introduced Shahrur with the thinking of al-Farabi, Abu Ali al-Farisiy and his disciples, Ibn Jinny, and Abd al-Qahhar al-Jurjani. From their thinking, he finally understood various language problems in Arabic. For example, Arabic is a language that does not recognize synonyms (*muradif*); and *lafz* follows the meaning. Starting from that time, Shahrur conducted an intensive study on manuscripts, especially those pertaining to the central terms in the Quran, such as al-Kitab, al-Qur'an al-Furqan, al-Zikr, Umm al-Kitab, Law al-Mahfudz, al-Imam al-Mubin. There were also new themes that he reviewed from new perspectives, such as al-Inzal wa al-Tanzil and al-Ja. From 1984-1986, along with Ja'far Dark al-Bab, Shahrur studied main ideas related to the Quran.

The third phase was from 1986-1990. This phase was nothing but the systematization of his thoughts with Ja'far Dark al-Bab in a book he published in 1990. This phase was the hard one because they have to sort through all parts of the book. For example, it took one year to complete the two hundred pages of the chapter one, from 1986-1987. The completed book, consisting of about eight hundred pages, was finished in 1988 (Esha, 78-79).

Shahrur is a persistent thinker. He has faced various criticism and threats due to his very original and courageous ideas in the book of Al-Kitab wa al-Quran, which was published in 1990. This became a bestselling book in the Middle East. Currently, he has become the object of criticism in the Arab world. There have been about 15 books written to attack his thoughts, among others: *Nahw Fiqh Jadid*, *Munthalikat wa Matahim Fahm al-Kitab al-Qur'ani* by Jamal al-Bana, *Mujarrad at-Tanjim* by Salim al-Jabi, and *Asy-Syawwaf Tahafut al-Qira'ah* by Muhami Munir Muhammad Thahir. On various occasions, he was accused by some Shaykh and Ulama such as Yusuf Qardhawi (in a television show "Ash Shar'iyya wa al-Hayat on June 25, 2001) as an apostle, infidel, Satan, Communist, creator of a new religion, and other bad terms. He has also been accused of being an enemy of Islam, a Western and Zionist agent.

In Syria, Shahrur was harshly criticized in a television debate, which as the government attempt to pacify the traditionalists. After that, a

book seller in Kuwait said that Shahrur's work was far more dangerous than the Satanic Verses of Salman Rushdie, which contains the insults against the Prophet Muhammad and the Angel Gabriel. Therefore, Ayatollah Khomeini ordered to capture Rushdie and kill him. On that basis also, some governments in Arab countries, such as Saudi Arabia, Egypt, Qatar, and the United Arab Emirates, formally banned the circulation of Shahrur's books in the countries. (Sahiron Syamsuddin, 2002: 132-133) The books include his second book *Dirasah Islamiyyah Mu'ashirah fi ad-Dawlah wa al-Mujtama* (1994), and his third book *al-Islam wa al-Iman; Munzhumah al-Qiyam* (1996). Because Shahrur does not have any supporting institution, he practically fights alone in his small office, at the intersection of Muhajirin, Damascus, against all accusations. Almost none of the works responding Shahrur's thoughts contains positive tones. Shahrur can only count on a small number of private and unofficial supporters in the Syrian government, as they do not want to repeat the case of Nasr Hamid Abu Zayd in Egypt (Muhyar Fanani, 2003: 53). Apart from those responses, there was also a positive response, such as shown by Sultan Qaboos in Oman. He distributed Shahrur's book and recommended his ministers to read them (Elsa, 2003:298).

Similarly, Wael B. Hallaq gives more appreciation to Shahrur by saying that the book of *al-Kitab wa al-Qur'an* has a depth and flexibility, which both are absent in other modern writings of re-understanding (re-reading) of the Quran and Sunna. Shahrur studied both Quran and Sunna based on the natural sciences, especially mathematics and physics. In addition, his education in engineering has a significant influence on his pattern of problem analysis (Hallaq, 1999:246).

The Works of Muhammad Shahrur

Shahrur's intellectual works include: *al Kitab wa al-Quran; Qira'ah Mu'ashirah* (1990); *al-Islam wa al-Iman, Manzummat Al-Qiyam* (1995), translated into Indonesia language: *Islam-Iman: Pokok-Pokok Dasar*"; *Dirasah Islamiyah fi al-Dawlah ma al-Mujtama (Studi Islam Kontemporer tentang Negara dan Masyarakat/ Contemporary Islamic Studies of State and Society)* (1996); *Mashru al-Amal al-Islam* (1999); and *Nahw Ushul al-Jadidah li Fiqh al-Islam (Metodologi Fiqh Islam Kontemporer/ Contemporary Fiqh Methodology)* (2000)". All books

are translated by al-Haliy at-Tiba'ah wa an-Nasyr wa at-Tauzi 'in Damascus. Even though the books did not get as significant responses as the first ones, the books were able to give new perspectives in the discourse of contemporary thoughts. In addition, there are also other books related to building techniques such as *Handasah al-Asasa* (Foundation Sciences), consisting of four volumes, and *Handasah al-Turab* (soil science), etc. (Shahrur, 2004:298-299).

Background of Shahrur Thought

A legal theory cannot be separated from the context of the theorist life. A theory is often seen as an answer given to the dominant problem at a certain time and case. A theory should be understood along with the socio-cultural contexts of its emergence. This is because, for example, theories emerged in the nineteenth century worked for the problems emerged during that time, and not for problems occurred in the twentieth century or beyond.

A fundamental problem that triggered Shahrur to study Islam can be divided into two interrelated dimensions, namely the reality of the contemporary Muslim society and the reality of traditional Islamic doctrines (turast). Shahrur sees that the Muslim community is still polarized into two factions. The first is those who hold the literal meaning of the traditions strictly. This means that what was suitable for the community in the time of the Prophet Muhammad PBUH, is also suitable for any age. The second is those who tend to call for secularism and modernity and reject all traditional Islamic resources, including the Quran. This is because the Quran is considered a part of an inherited tradition that has become opium. For them, rituals are the picture of obscurity. Marxians and Communists led the group.

According to Shahrur, all these groups have failed to fulfil their promise to provide modernity to their people. The failure of these two factions, later, led to the emergence of the third group. Shahrur claimed himself to stand in this group. Shahrur argues that in understanding the Quran, Muslims should follow the early generations of Islam. Shahrur says "treats the Qur'an as if it had just been revealed and Muhammad just died yesterday".

This kind of understanding necessitates Muslims to understand

the Qur'an according to the context in which they live and eliminate the trappings of the past understanding. The history shows that every generation interpreted the Qur'an by considering their reality and life conditions. Modern Muslims, according to Shahrur, are more qualified and have more adequate tools to understand Qur'an according to the modernity and realities surrounding it. The consequence is that the interpretation of the past Muslim generations does not bind modern Muslim society.

According to Shahrur, human actions in the 7th century, when the Book was descended, were the form of their interaction with and interpretation of the Book. This means that their interpretation is not a final product. All the actions contain the values of traditions, except in the aspects of worship, *hudud*, and *al-sirat al mustaqim*, which are not bound by time and space. Similarly, what had been done by the Prophet PBUH was nothing but a model of Quranic interpretation, according to the context of his life (Shahrur,1991: 41).

The issue of the stagnation in Islamic thoughts became one of his concerns (Shahrur,1991:34-44). Shahrur affirms the need for jurists to always develop new legal theories, in accordance with their socio-cultural backgrounds and scientific knowledge of contemporary times. Shahrur made some criticisms of the contemporary state of Islamic thought, which according to him is problematic because of the following problems. The first is the absence of objective scientific research methods, especially with regard to the study of the Holy text of the Qur'an. The second is the existing Islamic studies that depart from subjective and doctrinaire perspectives, which no longer suitable with the contemporary context. The last is the neglect of the philosophy of humanities due to the suspicious attitude towards the Greek (Western) philosophical thought, which is considered entirely erroneous and deviant (Shahrur,1991: 81).

Like Shahrur, contemporary Muslims need a theory to make the Islamization of knowledge feasible. This can be done by instilling a scientific paradigm in every Muslims. In turn, this will result in the sense of confidence and courage to interact with any human values or concepts, regardless of the ideology. Firmly, Shahrur criticized that because of the absence of contemporary theory, Muslims have experienced the decay of thought, fanaticism toward madhhab, static

thinking, and inherited political turmoil that has lasted hundreds of years. This deterioration has caused disunity, and some of the Muslims have often been accused of being *kafir*, *apostate*, *zindik*, *Mu'tazilite*, *Jabari* or *Qadari*.

The effort that should be done immediately is to free Muslims from the narrow insights so that they are able to face the challenges of the contemporary thoughts. This is because not all of the thoughts are contradictory with Islam. Consequently, a comprehensive episteme (*al-manhaj al-ma'rifiy*) should be built on and sourced from God's texts. In this regards, Muslims must be able to adopt contemporary developments so as not to get caught up in the repetition of past knowledge. (Shahrur,1991: 90-96) This interaction will enable the enrichment of methodological tools in developing religious knowledge in line with modern phenomena (Shahrur,1991: 100).

The Dialectic of the Thought

In formulating his thoughts, Shahrur has laid down the basic assumptions that serve as a starting point in the overall structure of his thinking. To be able to understand the thinking of Shahrur, one should understand his basic assumption at the first place in order to follow his logical framework and the flow of his thoughts. Shahrur's basic assumptions among others:

First, Shahrur recognizes the existence of the relationship pattern between the objective external-reality beyond human self. The relationship between consciousness and external reality is built through correspondence pattern. This makes the external world outside human self as the source of knowledge, and then it is transformed into consciousness. The implication of this is the recognition that human intelligence is real and not merely an illusion. Everything beyond the human soul, which is the object of human knowledge, has an objective reality.

In this position, Shahrur rejects the idealists' views that are widely used by Islamic figures (e.g. al-Ghazali), assuming that thoughts are independent of the external world outside human consciousness. They hold that thinking is to recall what is in mind. With such understanding, religious thought has never touched upon objective reality, but is still idealistic and never realistic.

Second, Shahrur believes that the cosmos or the universe is material (real), and the reason is able to perceive and know it. Intelligence cannot be limited in identifying the reality of the material.

Third, according to Shahrur, human knowledge begins with accurate perceptions, continued with the universal rational abstraction. That is why the world that appears at the beginning of the material world, as known by human through the means of the senses, develops to reach rational abstraction. Thus, the supernatural and visible realms are two forms of the material and real world.

Fourth, there is no contradiction between the Quran and philosophy, which is the mother of all knowledge. The authority to interpret the Quran is limited to those who have a deep scholarly knowledge. In the interpretation of scriptural verses, one must consider the interpretation rule of Arabic language. The scripture is texts that correspond all time and space. Therefore, the content of the scripture is dynamic and compatible with the progress of science. With that argument, the paradigm of interpretation is something that must always be considered in the study of scripture.

Fifth, there is a need to redefine the theory saying that the nature is the result of the Big Bang theory, which leads to the change of the nature of the material world. On this basis, it can be formulated that a massive explosion, similar to the first one, leads to the change or destruction of the universe. This, after that, changes the basic nature of matters, so the matters take another form (Shahrur: 2007: 12-14).

Starting from those basic assumptions, Shahrur created a new method in the interpretation of the Holy Book. This new interpretation method is different from the conventional one which mostly refers to the authority of the early classical exegesis experts. The following is the foundation of Shahrur's new interpretation method:

First, the technique uses analysis from contemporary Arabic studies such as linguistic methods from Abu Ali Al-Faris, Ibn Jinni and Abd al-Qahir al-Jurjani, by relying on Jahili poems.

Second, the method departs from the latest discoveries in linguistics using a synchronic approach and rejecting the old diachronic approach. The synchronic approach in the study of the scripture language will give a distinct feeling in the interpretation, for it must presuppose

the *najwa najasa jamua imtil la amham* Arab antiquity. Meanwhile, the diachronic (historical) approach dissolves the assumption that the meaning (mental aspect) of a language is instant, continuous, and continuously applicable. Consequently, the interpretation of the scripture language by the 7th-century experts will remain relevant for the following centuries.

Thirdly, if Islam is compatible for every time and age, then it must be assumed that the Book is sent down all humankind. It is sent down to every generation. Thus the reading of the scripture should consider the context and level of knowledge of each generation without neglecting the historical development of the interpretation over time.

Fourthly, the Quran is not for Allah, because He does not need guidance or provide information to himself. Thus the Holy Book is meant for humans. Everything in the book can be known with certainty and understood by human intelligence. Moreover, in reality, every thinking activity is related to the language. So it is invalid to say that some Quranic verses are beyond human intelligence.

Fifthly, since Allah Almighty places reasons in such a high place, then there is no conflict between reasons and revelation. Likewise, there is no contradiction between revelation and the truth of reality (the truth of information and the rationale of the formation of the law). Therefore, there must be an accolade for reasons, higher than for feelings and emotions, even for religious emotions (Shahrur: 2007: 15-16).

Nevertheless, because Shahrur offers new concepts that still involve conventional ideas, we need to clarify the term dialectic used by Shahrur. According to Shahrur, understanding Islam must be based on strong epistemological principles. To understand Islam, it is not enough to rely on religious emotions and a narrow primordial spirit, because Islam is a religion based on the principle of consciousness and rationality. Islam places reasons in a privileged position, as a medium and instrument to understand the Devine, religion and the secrets of life.

In this regards, Shahrur offers the formulation of a dialectical epistemology that he explored from the scriptures. Using inductive reasoning on the Quranic verses, Shahrur found that the underlying reality, in general, has a dualistic characteristic. This dualistic characteristic

can be assumed to be a dynamic and continuous process. This is because a dialectical interaction should underlie the presence of two different matters (positions).

According to Shahrur, there are two dialectical forms. The first is a general dialect that applicable to the cosmos beyond human consciousness. This dialectic is objective and is the secret of all development, evolutions, and changes occurred in the universe. The second is the dialectic applicable to human contexts. There is an inherent duality between the two opposites and the non-materials, in which both can coalesce in the human brain and mind. This duality is based on the resistance of those two from two directions. The dialectic between those two opposites will end by the occurrence of a decision in every opposition. This is because one of them gets reinforced, while the other is subdued.

This type of dialectic sometimes does not end with a decision but is dominated by emotions and feelings of someone who tends to be irrational. This is the dialectic of the human psyche. For example, the battle between love and hate or vice versa is finally won by one of the feelings.

The Theory of Limit

In formulating hudud theory, Shahrur departed from the verses of the Quran associated with the division of inheritance. The QS. al-Nisa: 13 mentions '*tilka hudud Allah*'; and QS. Al-Nisa: 14 mentions *wa yata'adda hududahu*. The word *hudud* in this context is in a plural form, and its singular form is *hadd*, which means limit. The use of the plural form here signifies that the limit (*hadd*) is determined by Allah. Men have a freedom to choose the limits depending on the circumstances. As long as the choice is with the defined boundary, a human does not sin. A violation happens when human transcends the boundary (Shahrur: 2007 : 130).

Shahrur maintains that those verses explicitly mention that the problem in the inheritance division is the limits (*hudud*) in shari'a determined by Allah. The words *tilka hudud Allah* refers to the explanation of verses 11-12, which, at the same time, affirms that the restriction of the law that comes from God. In verse 14, the sentence

wa yata'adda hududahu means to violate His (law) boundaries. The use of *hudud* here is attributed to the *damir mufrad* (singular pronoun) "hu" (he), referring merely to God (Allah). While the fragments in the previous verse, *wa man ya'sillah wa rasulahu wa yata'adda hududahu*, assert that the sinful action can be done to Allah and His Apostle, but the violation against the boundary is only for God. This is because He is the One who has an authority to determine the *shari'a* law that prevails until the end of the world. He never gives His authority to others, even to His Prophet Muhammad Saw. If Muhammad had the rights or authority to determine the law (*haqq al-tasyri'*), clearly the verse above would say *wa man ya'si Allah wa rasulahu wa yata'adda hududahuma*, with the pronoun of two (*huma*).

According to Shahrur, all *shari'a* from the Prophet Muhammad PBUH is temporary without any obligation to enforce it until the end of time. In this regard, the hidden secrets are that the Sunnah is to be followed; and, in a meantime, the Prophet has become an example for the application of *ijtihad*, conducted within the limits of God's provision.

The authority to determine the law (*shari'a*) belongs only to God alone. Therefore, He is the sole legal determinant of the law to the end of time. This implies that the law from God has a universal nature, and applicable to all circumstance and conditions, in every time and place.

Consequently, the law should not be approached with single understanding and perspective. God's law must correspond human tendency that always changing, advancing, and evolving. Therefore, the Quran always mentions that the *shari'iy* only determines the limits (*hudud*). There is a maximum limit (*al-hudud al'ala*) and the minimum limit (*had al-'adna*) or the variation of both. The teaching of *Shari'a* brought by the Prophet Muhammad Saw is *hududiya*. This is in contrast with the *Shari'a* brought by other Apostles. The Prophet Muhammad's apostolic period is considered a new round of modern *shari'a* for the contemporary generations. For Shahrur Allah establishes the maximum and minimum legal concept of law, and human's *ijtihad* moves within these two boundaries.

Second, the positions of the maximum and minimum limit are simultaneous. This means that God sets both limits. The area of *ijtihad*

is between those two. QS. Al-Nisa: 11 describes that the maximum ratio for men and the minimum ratio for women in an inheritance division are 2:1. In the form of a percentage, the proportion for men is 66.6%, while the proportion for women is 33.3%. According to Shahrur, the principle in the inheritance is *al-taqrib* or the tendency to reach the limit so that portions for both men and women become equal, i.e. 1: 1 or 50% for each of them.

Third, the position of the maximum and minimum limits is simultaneous. This means that the maximum limit is also the minimum limit. *Ijtihad* is unlikely to take the heavier and lighter laws. In the case of adultery, for example, the 100 lashes for adulterers in the Quran is the maximum and minimum punishment, because the word *ra'fah* means "no remission". The room for *ijtihad* is only possible in the matter of witnesses, not the punishment.

Fourth, the upper limit has been set and cannot be exceeded, but it is still possible to be reduced. For example, in the case of theft (*al-sariqah*) in QS. al-Maidah: 38, the punishment for thieves cannot exceed the law of hand cutting. However, *ijtihad* allows to reduce it depending on the circumstances. In the thievery, it should be distinguished between the first time thievery forced by particular circumstances, with the recurring crime. The word of *al-sariq* and *al-sariqa* should be interpreted as a thief as a profession.

Fifth, the position of the maximum limit is almost firm but without interaction with the minimum one. The Quran determines the upper limit; however, it does not correlate with the minimum limit. In this case, the law cannot be established. This proposition applied in the limitation of between men and women. The defined limit is the punishment of adultery (*zina*). According to Sharur, if the relationship between a man and women has not involved sexual activity (*coitus*), the *had* of *zina* cannot be imposed. In this regard, Shahrur considers *zina* as a sexual activity between a man and woman, witnessed by four people. Without four witnesses, the accusation is considered *fashihah*. Then, the consequence is more a moral and individual commitment of the perpetrators to God. For their action, they can ask for God's mercy and forgiveness.

Sixth, the maximum positive limit should not be exceeded, and the negative lower may be exceeded. This proposition is applied in the

spending (*tasaruf*) of property: *zakah*, *sadaqa*, and *riba*. The maximum limit that should not be exceeded is *riba*, while lower limit that can be transcended is *zakah* with its negative limitation. This is because the *zakah* is the minimum limit in property spending. The form of spending that can exceed the limit of *zakah* is *sadaqa*. Apart from the minimum and maximum limits, there is also a middle position between those two limits. This middle position is symbolized with zero points in the intersection of two axes. This notion is implemented in the concept of *qard hasan* of the loan with 0% interest.

As a consequence, Shahrur insists that the prohibited form of *riba* is when the interest reaches 100% from the capital, called *ad'afan mud'afan*. If the interest is less than that amount, then the transaction is still allowable. This means that the interest has not breached God's provision. In this case, the *ijtihad* is needed to determine the exact percentage to maintain as stable economic activities. For sure, Islamic law experts need to cooperate with experts in economy, especially in banking. For Shahrur, Muslims should not hesitate to conduct a banking transaction involving interests. This is because, when the interest is no more than 100% of the invested capital, then it is not a prohibited *riba*.

Zakah and charity are two form of wealth spending to other parties without any condition and obligation for the recipient to return it. However, Shahrur differentiates those two concepts. According to Shahrur, *zakah* is a minimum limit in wealth spending. The Prophet PBUH has determined the limit of 2.5% of spending from the total wealth. Moreover, Allah has established the practical procedure for *zakah*, in which it should be given to eight groups known as *al asnaf al-samaniyah*. These groups are the poor and the indigent, those who work on [administering] it, those who newly convert to Islam, newly freed slaves, the debt-ridden, those who engage in the cause of Allah (*jihad*), and to the wayfarer. This means that *zakah* is a minimum implementation of *sadaqa* because *sadaqa* is broader and more open to anyone to perform it. In Islam, *zakah* is a minimum obligation to be performed by those who are capable. Islam encourages *sadaqa* to prevent wealth hoarding among the rich that lead to the deepening of the poverty gap.

With regards to the procedure in wealth spending from the rich to the poor or the needy, Shahrur argues that basically the spending is done without any condition or free of any charges. In a certain

situation, the spending can be in the form of a no-interest loan. This is the maximum implementation of wealth spending to be given to the eight groups of zakah recipient.

Religious Pluralism

Pluralism is an avoidable social reality. Humans live in the plurality and become the part of the process of plurality, either actively or passively. The plurality exists in the whole part of life, including in religion and beliefs. God does not see plurality in religious beliefs as a disaster. Instead, He gives some spaces for people to work together to create a synergy (Thohir, 2007: 300).

How do Muslims deal with such reality? Shahrur argues that all human who believes in God, in the end, are Muslims. In his opinion, every person who believes in God is a Muslim. They also believe and follow the teaching of the Prophet Muhammad, and they are called Muslim-Mu'mins; while those who follow the teaching of the Prophet Isa are called Muslim-Christians; and those who follow the teaching of the Prophet Moses are called Muslim-Jews. Shahrur maintains that this concept is because of synonyms in the Quranic texts. The term of Muslim and Mu'min are inherently different. As is QS. al-Baqara 62 says:

“Indeed, those who believed and those who were Jews or Christians or Sabeans [before Prophet Muhammad] - those [among them] who believed in Allah and the Last Day and did righteousness - will have their reward with their Lord, and no fear will there be concerning them, nor will they grieve.”

The word Muslim in the above verse refers to those who believe in God, the hereafter, and good deeds. Meanwhile, the world believer refers explicitly to the followers of the Prophet Muhammad Saw. Everything related to God is Islam.

According to Shahrur, there are three fundamental messages brought by the Prophet Muhammad, which also carried by the prophets before him. First, the concept of morality, which is the universal message of all religions from the Prophet Noah to the Prophet Muhammad. Second, legal aspects related to the limits set by Allah in its implementation. Third, ritual aspects, as God's universal message accepted in a specific social diversification (Haqqul Yaqin: 2003: 40-41).

Gender Issues

Among the discourses of justice and equality strived by Islam is the equality between men and women. Initially, the equality discourse was a breakthrough posed by Islam to reform the injustice against women in the age of jahiliya (pre-Islamic Arabs). Islam shifts the practice of injustice. For example, Islam limits the number of wives in the practice of polygamy to no more than four wives, as before there was no limit. In addition, the concept of mahr has changed the marriage practice that resembled selling and buying transaction (Esposito, 1982:14).

According to Shahrur, the study on gender relations between men and women in Islam is a sensitive issue. Many efforts are made to close the gaps in gender issues, but an effective formula has not yet been found. Among fundamental weaknesses in the previous interpretations are:

First, a methodological error that neglects the characteristics and flexibility of the meaning of the texts. As a consequence, the legal products resulted become burdensome and non-contextual. For example, the mistake in interpreting QS. Ali Imran: 14 (zuyyina li al-nash hubb al-syahawat....) and QS. al-Baqara verse 223 (Nisa'ukum harst lakum....) lead to another fatal mistake by positioning women as the possessions of men.

Secondly, the absence of a revolutionary interpretation of Islamic laws related to women, as is also happened with the interpretation of verses on slavery. In fact, there has been a historical consciousness that women emancipation has begun since the time of the Prophet Muhammad and never ends until today. (Haqqul Yaqin: 2003: 41-42)

In the issue of polygamy, as one of the gender issues, Shahrur argues that QS. An Nisa: 2 is the verse of hududiyya. This means that the verse consists of "the limits in law-making", quantitatively (*hudud al-kamm*) or qualitatively (*hudud al-kaif*). Thus, that verse merely illustrates the principles in determining the law on polygamy. These principles are al-hadd al-adna (lowest/ minimum limit) and al-hadd al-a'la (highest/ maximum limit), both reviewed quantitatively and qualitatively. Both limits, according to Shahrur, should be considered simultaneously in the practice of polygamy (Nurjannah Ismail, 2003: 226).

First, Shahrur discusses two keywords in that verse from the etymological aspects, namely *qasatha* and *'adala*. In Arabic, those two terms have potential paradox meanings. *Qasatha* has two possible meanings 1) *Al-'Adlu al Musa'adah* (perform justice by helping), as is in QS. *Al-Ma'idah*: 42, QS. *Al-Hujurat*: 9, and QS. *Al-Mumtahanah*: and 2) *I'wijaj* or deviate. Looking at those two meanings, the one that meant by QS. *An Nisa*: 3 is the first meaning, which is doing good and administering justice.

Also, Shahrur does not see that the word *qasatha* is a synonym of *'adala*. Both, although they have almost similar meaning, have different connotations. The meaning of justice in the word *qasatha* should have a single meaning without comparison. Meanwhile, doing justices meant by the word *'adala* is to be fair between two different parties (*musawah baina tharafain mukhtalifain*).

Thus the Q.S. *An-Nisa* 3 should be understood or translated “and if you are worried about not being able to do good to (or, not being able to take care of) the orphans, then marry their mothers as you wish: two, three, or four.” In other words, Shahrur insists that, qualitatively, the permission of polygamy is related to the condition that the second wife and the next wives should be widows (whose husbands has died), and have orphans. To strengthen this view, Shahrur analyses the grammatical structure of this verse. He relates the practice of polygamy with the phrase *fankihû mâ thâbâ lakum min an-nisâ 'matsnâ wa wa tsulâsâ wa rubâ'*, acting as *jawabu ash sharath*; and the phrase *wa in khiftum an lâ tuqsihu fi al-yatâmâ*, acting as the structure of *sharath* (condition) (Haqqul Yaqin: 2003: 227-228).

Nurjannah Ismail concluded that the vision and paradigm of the Shahrur's interpretation of some gender verses have proven that he implicitly aims at fighting for women's rights based on justice (Haqqul Yaqin: 2003: 230).

Conclusion

From the above description, it can be concluded that the theory of limit (*nadzariah al-hudud*) offered by Muhammad Shahrur is a new way of understanding Islamic teachings; and as an interesting suggestion to resolve the contradictions in textual and contextual approaches. If the

textual approaches deal only with texts, the contextual ones merely deal with reason, without considering transcendental values.

Although the approach used by Shahrur is still textual, Shahrur uses a different perspective from the mainstreams, developed among the textualists. With his hududiyah theory, Shahrur manages to combine both approaches.

Shahrur is a new phenomenon in contemporary Islamic legal thinking. In some Muslim countries, his thought has been sued, prohibited and stripped naked. Conversely, academics, especially the West, give appreciation to Shahrur's thought. Of course, it is homework for Muslim countries to learn a little respect for differences of opinion and thought.[]

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