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Islamic Law And Business Ethics: Case Study of Forest Fires for Clearing the Lands



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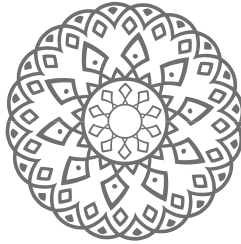
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THE CONSTRUCTION OF *ĀYĀTUL AḤKĀM* (CONSTRUCTING THE SELECTION BASES OF *ĀYĀTUL AḤKĀM*)

Ahmad Sholihin Siregar

Abstrak: Pertanyaan penelitian ini adalah Bagaimana memilih ayat-ayat hukum dari ayat-ayat non-hukum, apa saja karakteristiknya dan berapa banyak ayat-ayat Qur'an yang mengandung ayat-ayat hukum. Oleh karena itu penelitian ini bertujuan untuk mengkonstruksi landasan dalam memilih ayat-ayat hukum, karakteristiknya dan jumlahnya dalam Qur'an. Landasan ini harus dikonstruksikan karena belum terdapatnya landasan dalam memilih ayat-ayat hukum dalam konstruksi sebelumnya. Penelitian ini merupakan penelitian hukum normative (dogmatic, doktrinal). Obyeknya adalah ayat-ayat Qur'an dengan pendekatan mimetic dan obyektif. Dalam penelitian ini, landasan dalam seleksi ayat-ayat Qur'an dikonstruksikan terdiri atas landasan tekstual dan kontekstual. Penulis menemukan 418 ayat-ayat hukum yang memiliki landasan tekstual dan kontekstual disertai karakteristiknya.

Kata kunci: ayat-ayat hukum, prinsip-prinsip seleksi., tekstual, kontekstual, karakteristik.

Abstract: The questions to answer in this research is how to select legal verse from non legal verses, what its characteristics (*characteristics) are and how many verses Quran contains legal verses. Therefore (* Therefore,) this research aimed to construct a basis in selecting legal verse, its characteristic and its number in Quran. This basis must be constructed regarding to the unavailability of selection basis previously constructed. The research is a normative legal research (dogmatic, doctrinaire). The objects are Quran verses with mimetic and objective approach. In this research, foundation of Quran verses selection consisting textual and contextual basis is established. Writers found 418 legal verses using textual and contextual bases and its characteristics.

Keywords: *āyāt aḥkām*, selection base, characteristic, textual, contextual.

ملخص: بناء الآيات القانونية بناء قواعد الاختيار من الآيات الاحكام. الأسئلة التي يجب الإجابة عنها في هذا البحث ما هي الخصوصيات و كيفية الاختيار الآية الاحكام من الآيات غير الاحكام، وما عدد الآيات القرآنية التي تحتوي على آيات الاحكام. لذلك يهدف هذا البحث إلى بناء أساس في اختيار الآية الاحكام وخصائصها وعددها في القرآن. يجب بناء هذا الأساس فيما يتعلق بعدم توفر أساس الاختيار الذي تم إنشاؤه سابقاً. والبحث هو بحث قانوني معياري (عقائدي، عقائدي). الأشياء هي آيات قرآنية ذات مقارنة محاكية وموضوعية. في هذا البحث، تم تأسيس أساس اختيار القرآن الكريم على أساس نصي وسياقي. العثور على الكتاب ٤١٨ الآيات الاحكام باستخدام القواعد النصية والسياقية وخصائصه.

الكلمات المفتاحية: آيات الاحكام، اختيار الاساسي، الخصوصية، نصية، سياقية

Introduction

In Uṣūl Fiqh, Islamic law is defined as *khiṭābullāh al-muta'alliq bi af'āli al-mukallaḥīn bil iqtidā' aw at-takhyīr aw al-waḍ'* (God's command related to Mukallaḥ's deeds either demands or prohibition or regulation) (Khudari Bek, 1969). Wahbah Zuhaili (Zuhaili, 1986), one of *Uṣūliyyūn* criticized the definition, he assumed that the substantive meaning of *khiṭāb* is *taujīh* (directing). According to him, *taujīh* (command direction) is impossibly believed as Islamic law. Therefore, Zuhaili dominantly approved the definition of Islamic law in accordance with *Fukahā'* as *athar* (effect/manifestation) of Allah's command (demands, prohibition or regulation) related to mukallaḥ's deeds (authors, vol. 18, 2001). Thus, for Zuhaili and *fuqahā'*, Islamic law is not *khiṭāb* (commandment) itself, but manifestation or understanding of the *khiṭāb*.

Though developing, the definition of Islamic law is always associated with God's command. Joseph Schacht (Schacht, 1991) and Fathurrahman Djamil (Djamil, 1999) simply defined Islamic law as a set of religious regulation based on Allah command organizing Muslim behavior in all aspects of life.

Uṣūl Fikih classified Islamic law into *taklīfī* (Demand and prohibition) and *waḍ'ī* (regulation). Those commands are gathered in Qur'an. However, not all quranic verses categorized as *khiṭābullāh al-muta'alliq bi af'āli al-mukallaḥīn*. Even more, not all *khiṭābullāh* demanding or prohibiting related to mukallaḥ's deeds. Q.S Al-Baqarah: 65 means: "be an obedient monkey", this verse contained commandment, but this commandment is agreed by scholars as not one of commandment related to mukallaḥ's deeds. So does the commandment of "*kun fayakun*" in QS. Yasin: 82.

Uṣūl fikih, that defined Islamic law as *khiṭābullāh*, did not inform any *khiṭāb* classified as *al-muta'alliq bi af'āli al-mukallaḥīn*. Supposedly, after defining law, uṣūl fiqh should direct *khiṭābs* containing the law.

It seems that identification to the *khiṭāb* categorized in *al-muta'alliq bi af'āli al-mukallaḥīn* is studied by *tafsīr āyātul ahkām*, also known as *tafsīr fiqh*. However, as its name, the main duty of *tafsīr āyātul ahkām* is not identifying or selecting law in Quranic verses,

the main duty of it is interpreting verses - therefore, *tafsir āyātul aḥkām* is always classified as thematic *tafsir*, not in shariah discipline – as it is seen in works of *tafsir āyātul aḥkām* such as `Alī as-Sāyis (Sayis, 2001), aṣ-Ṣābūnī (Ṣābūnī, 1980) and Shāfi`ī (Shāfi`ī, 1990). Even *al-Jāmi` li Aḥkām al-Qur`an* (Qurṭūbī, 2006) and *tafsir* of an-Nasāfi interpret the whole Quranic verses. Another proof is that Aṣ-Ṣābūnī did not interpret QS al-Baqarah 226-227 containing divorce and slavery matter, or QS al-Baqarah 232 containing *talāq* (Divorce process) as legal verses, although he interpret the same matter in other verses (Ṣābūnī, 1980).

Because the main duty of *tafsir āyāt aḥkām* is not in identifying, it can be understood that there is not any explanation towards basis or method of verse selection. In *tafsir aḥkām* literatures, it is not even mentioned about the criteria or selection basis used to choose legal verses. The identification of *khiṭābullāh al-muta`llaq bi af`āli al-mukallaḥīn* is not available yet today.

The fact, that the main duty of *tafsir aḥkām* is interpreting Quranic verses thematically not identifying nor selecting, led to other problem, a salient difference of legal verses number among the scholars, such as `Alī as-Sāyis, aṣ-Ṣābūnī, Shāfi`ī dan aṭ-Ṭaḥāwī. Sāyis included 305 verses without al-Fātiḥah in his work (Sāyis, 2001), Ṣābūnī included 225 verses without al-Fātiḥah (Ṣābūnī. 1980), Shāfi`ī included 447 verses (Shāfi`ī, 1990), and aṭ-Ṭaḥāwī included only 115 verses (Ṭaḥāwī, 1995).

In short, the base to select or identify the verses containing Islamic law is not yet formulated. The task to build it is duty of uṣūl fikih, as it defined the Islamic law. This is the main purpose of this research, to construct the base or method in selecting or identifying *āyātul aḥkām*.

Selection Bases for *Āyātul Aḥkām*

Based on Islamic law definition as the command (demand or prohibition or regulation) of god or its implication related to mukallaḥ deed, it can be formulated four substantive components of legal verses: 1) The legal verses are the commands of god. There is no doubt that quranic legal verses are the commands of god; 2) The verses related

to mukalaf deed; 3) The verses contain demand or prohibition or regulation on mukalaf deeds; 4) The verses addressed to mukalaf.

In short, the most substantive base for legal verses identification is the verses contain of demand or prohibition or regulation addressed to mukalaf. It is the first base for legal verse identification.

This first base has three main aspects: first, it contains demand or prohibition on mukalaf deeds representing the *taklifi* law. Second, it contains regulation that set the demand or prohibition related to mukalaf deed and represent the *wad'ī* law. This regulation can be *sabab*, *māni*, *shart*, *ʿazimah*, *rukhsah*, *ṣah* and *bātil*. Third, its command is directed to mukalaf, not to other.

The command (demand or prohibition) in legal verses can be identified by using the different approaches namely *naḥw*, *ṣarf* and *balaghah*. Those three identified the existence of commands in legal verses by looking at the existence of the command words, or by identifying the meaning.

Naḥw identified the existence of the command by identifying *fi'l amr*, *fi'l muḍāri'* followed by *lām al-amr* or *lām an-nahy*, *ism fi'l* and *ism mā'nī*. The use of this method to identify the command in legal verses can be seen in: 1) QS al-Baqarah: 43, 83, and 125 that contain *fi'l amr*: *aqimū aṣ-ṣalāt* (do praying), *qulū li an-nāsi ḥusnā* (say good words to people), *wa ittakhidhu maqāma ibrahīm muṣallā*; 2) QS al-Baqarah: 232 and an-Nisā': 43 that contain *fi'l muḍāri'* followed by *lām an-nāhiyah*: *lā tumsikū hunna* (don't touch them), *lā taqrabū* (don't approach them), or QS al-Baqarah: 185 and 267 that contain *fi'l muḍāri'* followed by *lām al-amr*: *fāl yaṣumbu*, *fāl yaktub*, *wal yumli*; 3) QS al-Baqarah: 185 that contain *ism fi'l amr*: *fa' iddatun min ayyām ukhar*. 4) QS al-Baqarah: 239 that contain *ism mā'anī*: *fa rijālan au rukbānan*.

Meanwhile, *ṣarf* identified the commands by identifying two main words, *fi'l amr* and *fi'l nahy*. This method can be sampled as first two samples above.

In *balaghah*, the command can be identified from the meaning of the sentence. The sentence means the command named as *ṭalabiyah* (imperative) sentence or *khabariyah* (informative) sentence directed to *ṭalabiyah*, as can be seen in: 1) QS al-Baqarah: 43, 197 and 238: "and

establish prayer and give zakah”, “and take provision”, and “maintain with care the prayer” or an-Nisā’: 43: “do not approach prayer while your intoxicated” as *ṭalabiyah* (imperative) sentence; 2) QS al-Baqarah: 158, 184, 187, 228, 229, and an-Nisā’: 11; 3) The origin of *ṭalabiyah* (imperative) sentence is using verb as seen in QS al-Baqarah: 43, 185, 197, 238, or QS an-Nisā’: 25 and etc.

Beside the command, the legal verses also may contain regulations (*al-waḍ’i*) which set the command on mukallaf. Those regulation can be categorized into seven groups: *sabab* (cause) that sets the effectivity of command, *māni* (barrier) that eliminates the command, *shart* (requisition) that determines the validity of action, *‘azimah* that is the law on normal situation, *rukhsah* (remission or exception) that is the law on special situation, *ṣahih* (valid) and *bātil* (invalid) that is the legal status of mukallaf action. The sample of those regulation can be seen in QS al-Baqarah: 197 “*ḥajj* is during well-known months” which can be understood as *shart* (requisition) of *ḥajj*, or al-Baqarah: 229 “divorce is twice” as *shart* (requisition) of divorce, or al-Baqarah: 239 “and if you fear an enemy, then pray on foot or riding” as *rukhsah* (remission or exception) that only be effective in special condition.

The next element of the first base is that the command in it is directed to mukallaf. Eventhough a verse contains the command but it is directed to non-mukallaf, it can not be categorized as *āyātul aḥkām* (legal verses), such as the god’s command to angles to bow Adam in QS al-Baqarah: 34, is not legal verse because its command is not directed to mukallaf, or al-Baqarah: 65 “be apes despised” can not be seen as legal verse because its command is addressed to Banī Isrā’īl not to mukallaf, and so QS al-Baqarah: 45 “and seek help through patience and prayer” is not legal verse, because its command is directed to *ahlul kitāb* (Wahīdī, 1991).

Because *āyātul aḥkām* (legal verses) require directing command to mukallaf, the verses contain command in narration (story) can not be categorized as legal verses. Such as al-Baqarah: 33 which its command directed to Adam and Āli ‘Imrān: 43 to Maryām.

Basically, Alquran is revealed to be guidance for humankind in the world. Hence, its commands are universal for whole mankind. But, there are some god commands in it that are directed especially for or about certain people. Those verses can not be seen as legal verses.

Meanwhile, the command directed to Muḥammad is general command to mukallaf, considering Muḥammad himself was mukallaf. Muḥammad as mukallaf was commanded to do prayer, give zakah and etc. All verses that directed to Muḥammad textually was generally addressed to mukallaf, except some verses indicated for himself as explained by *ḥadiṣ*. Verses that is addressed especially for Muḥammad can not be categorized as legal verses. QS at-Talāq: 1 contains textually the command “oo prophets” addressed to Muḥammad. However, the verse is generally addressed to mukallaf because there is no explanation from Muḥammad that the verse is only addressed to him.

Sometime, a verse does not contain demand textually. But, the historical fact of its revelation may explain an existence of demand or regulation of mukallaf deed. This kind of verses can be categorized as legal verses. A good sample for this kind is al-Baqarah 115 “and to Allah belong the East and the West. So wherever you might turn, there is the face of Allah”. There is no demand in this verse textually. However, the revelation of this verse related to qiblat change permission in prayer during travelling. Hence, it can be understood contextually that the verse means regulation on prayer during travelling.

The next base for identifying legal verses is explanation from Muḥammad that a certain verse contain legal matter. This explanation is only found in *ḥadīth*. Some verses do not contain demand or regulation textually, and its revelation facts did not indicated its relation to legal matters. However, when Muḥammad refered it to legal matter, it must be categorized as legal verse. The good sample of this kind of verse is QS al-Furqān: 48 “and we send down from the sky pure water”. There is no demand nor regulation on mukallaf deed textually in this verse. Its revelation was not related to any legal matter. But, once Muḥammad said that only pure water used in wuḍū’ referring to QS al-Furqān: 48. Based on this explanation, the verse must be categorized as legal verse. So the QS al-Ḥujurāt: 12 which its contain explained by *ḥadīth*: “did you know about *ghibab*?”, and QS al-Mujādilah: 12 which explained by *ḥadīth* that `Alī once had given *ṣadaqah* before meeting Muḥammad (Nisabūrī, 1995).

In short, there are three bases for identifying legal matter in verses or for selecting legal verses. They are:

1. The existance of demand or regulation on mukallaf deeds.
2. Historical facts of verses revelation (*asbāb nuzūl*)
3. *Hadīth*.

Those bases can be grouped into two major bases: textual base and contextual base. Textual base using verses redaction to identify legal verses. Textual base referred to the existance of demand or regulation on mukalaf deeds. The contextual base identifies legal matter in verses by using information outside of the verse, such as *asbāb nuzūl* and *hadīth*.

Basically, those bases are independent. It means that one base is adequate to identify legal matter in verses. With only textual base can be selected legal verses without contextual base, and vice versa. However, those bases can affirm mutually in identifying legal verses. A verse can be categorized as legal verse based on both bases: textual and contextual. A verse may contain demand or regulation on mukalaf deeds based on its text. In addition, the legal content could be more confirmed when its revelation related to legal matter and has explanation from *hadīth*.

However, those bases can not work if other bases resist it. When textual base identifies a legal verse, but on contrary, its contextual base opposes it, it can not be categorized as legal verse. A good sample for this is QS an-Nisā': 49 which contains zakah textually. But, according to its revelation facts this verse addressed to Jews in Medina (Wahīdī, 1991). This verse is not legal verse. Shortly, the base only work when other base did not resist it.

Sometimes, a legal verse is identified by both bases: textual and contextual. This kind of legal verse can not be disputed, such as QS al-Baqarah: 125 "and take from the standing place of Abraham a place of prayer" in which from its text can be understood the existence of demand. Even more, its revelation background related to request of 'Umar to Muḥammad to take Abraham's standing place as place for prayer (Ibn Ḥajar, 2000). Both textual and contextual base confirm its legal matter. QS al-Baqarah: 144 which demand mukallaf to face *Masjid Ḥarām* in prayer as its text said. Furthermore, it is confirmed by its revelation background related to the hope of Muḥammad that God will change the direction of *qiblat*. So does QS al-Baqarah: 168 which

contains demand on mukallaf to eat the *ḥalāl* meal textually. Its legal content is affirmed by its revelation background related to Banī Thaḳīf who banned themselves to eat certain livestock, including donkey (Wahīdī, 1991).

The Characteristics of *Āyātul Abkām*

To select legal verses, it can be used three bases and grouped into two: textual and contextual bases. In line with this, it can be formulated two characteristics of legal verses: textual and contextual characteristics. The characteristic of legal verse is manifestation of the identifying base. To identify the existence of demand or regulation on mukallaf deed, it can be found from its textual characteristic, such as: an imperative words, or from its contextual characteristic such as *ḥadīth* explaining its revelation background or its content.

Textual Characteristics

Textual characteristic - a manifestation of textual base- referred the existence of demand or regulation in verse based on its text. The textual characteristic of legal verses are:

- a. *Fi`l al-Amr*
Fi`l al-amr is ordinary form in Arabic language to demand action. *Fi`l al-amr* can be found in many legal verses: QS al-Baqarah: 43, 83, 110, 125, 187, 189, 196, 198, 203, 222, 231, 238, 267, and 283, QS an-Nisā': 25, 35, 77, and 103, QS al-Mā'idah: 2, 38, etc.
- b. *Fi`l al-Mudāri`* preceded by *Lām al-Amr*
Fi`l al-mudāri` (present tense) preceded by *lām amr* also means demanding action. It can be found in QS al-Baqarah: 185, 282, QS an-Nisā': 102, QS al-Ḥajj: 28-29, and QS an-Nūr: 33.
- c. *Fi`l al-Mudāri`* preceded by *Lām an-Nāhiyah*
Fi`l al-mudāri` preceded by *lām an-nāhiyah* also known as *ṣigat fi`l nahy* is original form in Arabic language that prohibit an action. It can be found in: QS al-Baqarah: 222, QS an-Nisā': 43, and QS al-Mā'idah: 2.
- d. *Ism fi`l amr*
Ism fi`l amr is additional form in Arabic language that demand

action. It is a noun means verb. It can be found in QS al-Baqarah: 239.

فَإِنْ خِفْتُمْ فِرْجَالَ أَوْ رُكْبَانًا فَإِذَا أَمِنتُمْ فَأَذْكُرُوا اللَّهَ كَمَا عَلَّمَكُم مَّا
لَمْ تَكُونُوا تَعْلَمُونَ ﴿٣٦٩﴾

The word *rijālan* (on foot) and *rukbanan* (on travel) are noun in Arabic language but mean verb “do prayer on foot or on travelling”.

- e. *Al-khobar bima`nā ṭalab* (informative sentence mean imperative). Informative sentence basically means information for reader. It may contain right or wrong information. In Arabic, informative sentence may mean imperative. Many demands in legal verses expressed through informative sentences, such: QS al-Baqarah: 228:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

The divorced wives should wait themselves three *qurū`*

This verse informed divorced wives to wait three *qurū`* so the divorce is effective. However, the meaning of the verse is demanding divorced wife to wait three *qurū`*

Besides those five characteristics above, there are some other words in Alquran which mean demanding action from mukallaf, such as:

- a. *Farāḍa-Farīḍat*

It means obligation (Ma`luf, 1987). A lot of verses containing words *farāḍa-farīḍat* (and all of its derivative words) are legal verses, such as: QS al-Baqarah: 197, 236, dan 237, an-Nisā': 7, 11, 24, QS an-Nūr: 1, Qs at-Taubah: 60, QS al-Aḥzāb: 38, 50, and at-Taḥrīm: 2. Other verses containing these words are not legal verses, such as: QS al-Baqarah: 68 (*farīḍ*: old), an-Nisā': 118 (*mafrūḍa*: determined), dan al-Qaṣaṣ: 85 (*farāḍa*: obligate).

- b. *Kutiba `Alaikum*

The words *kutiba `alaikum* mean “prescribed for you”. The words mean demanding action. All of verses containing these words are legal verses if directed to mukalaf, such as: QS al-Baqarah: 178, 180, 183, and 216. However, there is a verse containing *kutiba `alaikum* which is directed to Banī Isrā'īl, such as QS al-Baqarah: 246 and it is not legal verses.

c. *Hurrima, Harrama*

Word *harrama* means forbidden (Ma'luf, 1987). Its meaning indicates prohibition of action. Word *harrama* and its derivation are textual characteristic of legal verses. All verses containing these words are legal verses if the prohibition comes from Allah or Rasul and is addressed to mukallaf. These words can be found in QS al-Baqarah: 173 and 275, QS Āli `Imrān: 50, QS an-Nisā': 23, QS al-Mā'idah: 3 and 96, QS al-An`ām: 119, QS an-Nahl: 115, and QS an-Nūr: 3.

However, if the prohibition did not come from Allah or Rasul, or it is not directed to mukallaf, then the verses are not legal verses, such as in QS Āli `Imrān: 93 and QS al-Mā'idah: 72 in which the subject of prohibition is Banī Isra'īl, or QS al-Mā'idah: 87 in which the subject of prohibition is believers, not Allah or his *rasūl*.

d. *Ahalla dan Uhillā*

These words mean permission (permissible) (Ma'luf, 1987). The word *ahalla* or *uhilla* indicates the demand of action from its reader whether to do action or not to do it. All verses containing these words are legal verses. These words are found only in seven verses: QS al-Baqarah: 187, QS al-Mā'idah: 4-5, 87, 97 dan QS at-Taḥrīm: 1.

e. *Lā Junāḥa* atau *laisa Junāḥu*

The primary mean of this word is group of something (Ma'luf, 1987). However, in Alquran these words mean "there is no blame". These words mean demanding mukallaf to choose to do an action or not to do it. All verses containing these words are legal verses. It can be found in 26 verses: QS al-Baqarah: 158, 198, 229-230, 233-236, 240, 282, QS an-Nisā': 23-24, 101-102, 128, QS al-Mā'idah: 93, QS al-Isrā': 24, 29, QS an-Nūr: 58, 60-61, QS al-Aḥzāb: 5, 51, 55, and QS al-Mumtaḥanan: 10.

f. *Lāḥharaj* or *laisa ḥaraj*

These words have similar meaning to *lā junāḥu-laisa junāḥu* which mean "there is no blame" that indicate the permisson to do something for mukallaf. All verses containing these words are legal verses, like: QS at-Taubah: 91, QS an-Nūr: 61, dan QS al-Aḥzāb: 38.

g. *Hudūd*

Word *hudūd* - which mean border or limit - also mean demanding not to do action from mukallaf. The word *hudūd* in Alquran which means “that are border you should not trespass it” is textual characteristic of legal verses. Almost all of verses containing the word *hudūd* are legal verses, like: QS al-Baqarah: 187 dan 229, QS an-Nisā’: 13, QS at-Taubah: 97, QS al-Mujādilah: 4, QS at-Ṭalāq: 1.

Contextual Characteristics

The revelation of Alquran is complete a while before Muhammad’s death. It means that Alquran was completely revealed. Hence, the legal verses in Alquran must have been practiced by Muḥammad in his life or he had given it an explanation through *sunnah*. The *Sunnah* itself functions to explain Alquran, besides to legislate law. From this, it can be concluded three contextual characteristic of legal verses:

a. The verse revealed in relation to legal matter

The content of Islamic law in verse can be identified contextually by using two bases: the historical background of revelation and the explanation of *ḥadīth*. With these two, Alquran can be understood comprehensively in its context. To understand legal verse better, reader should notice the revelation background, although the revelation background does not always restrict the meaning of the text.

In uṣūl fikih, the debate on the context of legal proof bring forth two contradictory principles: *al-`ibrah bi `umūm al-lafẓi lā bi khuṣūs as-sababi* versus *al-`ibrah bi khuṣūs as-sababi lā bi `umūm al-lafẓi* (the legal proof should be seen from its general text versus the legal proof should be seen from its special background). The scholars tend to the first principle, which means that background of legal proof did not limit the meaning of legal proof. It is clearly seen in *ḥadīth* stating the purity of sea water. Based on it, the scholars approved the purity of sea water by ignoring the background of this *ḥadīth* given forth by the question of traders who ran out of pure water for *wuḍū’*.

However, the legal verses is never born without its background. QS an-Nisā’: 3 revealed in relation to a Quraish, who takes care

for an orphan girl and her wealth, tended to marry her Wahīdī, 1991). QS Āli `Imrān: 88 revealed in relation to a group of muslim who choose Jews as their friend, helper and leader (Wahīdī, 1991, Suyūṭī, 2006, Ibn Hajar, 2000). QS al-Aḥzāb: 4 revealed in relation to muslim turn the name of Zaid bin Ḥārithah into Zaid bin Muḥammad (Bukhārī, 1400, Muslim, 1400, Tirmīdhī, 1417). QS al-Baqarah: 144 revealed in relation to Muḥammad's lament on qiblat direction which is similar to Jews qiblat (Ṭāḥāwī, 1995). It can be said that legal verses must be revealed in relation to legal matter. So, to identify the legal verse, it can be used the revelation background as base.

The problem with *asbāb nuzūl* as base to identify legal verses is that not all of legal verses known its historical background. The source information of *asbāb nuzūl* is only reliable record (*riwāyat ṣaḥīḥah*). Those record had been established stagnantly and its number will not increase. Hence, *asbāb nuzūl* is not dynamic compared to the comprehension on text of legal verses.

b. The verses had explanatory *ḥadīth*

Legal matter on verses also can be identified by *ḥadīth*. The authority to explain Quranic verses is given to Muhammad as god messenger. *ḥadīth* - a verbal record of *ṣaḥābat* on the Muḥammad's conduct - is an accurate base and characteristic for identifying legal verses. When a reliable *ḥadīth* indicated the legal matter in a verse, it can be confirmed that the verse is legal verse.

Because the revelation was completed a while before Muḥammad's death, it can be confirmed that all of legal matter in Alquran had been practiced or explained by him. So, properly, the legal verses has explanatory *ḥadīth*.

These are samples of legal verses identified by explanatory *ḥadīth*: QS aṭ-Ṭalāq: 1 which is related to *ḥadīth* contains Muḥammad's instruction to Ibn `Umar - who divorced his menstruated wife - to reconcile her and wait until her menstruation time passed (Bukhārī, 1400, Muslim, 1400, Sijistānī, 1417, Ibnu Mājah, 1417). QS al-Ḥujurāt: 12 which is explained by *ḥadīth* on *ghībah* "did you know what is *ghībah*? They answered: only Allah and his messenger knew".

- c. The verse is revealed after Muḥammad became *Rasūl* (*āyat risālah*) Muḥammad just actively spread Islamic law after *hijrah* (migration) to Madinah (Yastrib). Previously, in Mekkah, Muḥammad has spread only the principles of Islam. The spread of Islam can be grouped into two stages, Mekkah period and Medinah period.

In Mecca, Muḥammad began to spread Islam after his *risālah* (became messenger). With his *risālah*, Muḥammad officially has a new gospel which is different from the old gospels. Part of this gospel is Islamic law. To legitimate his *risālah*, God revealed QS al-Muddathir: 1-9. It means that only after the revealing of QS al-Muddathir: 1-9, Muḥammad began to preach actively. Hence, all of legal verses must be revealed after the revelation of QS al-Muddathir: 1-9. Three Sūras revealed before QS al-Muddathir: 1-9, those are QS al-`Alaq, al-Muzzammil and part of al-Muddathir can not be categorized as legal verses.

The acceptance of Madinah society for Muḥammad and the significant increase of his followers gave him chance to proceed the spread of Islamic law (not only Islamic theology). Muḥammad was not deal with theological resistance as he dealt with in Mecca. This gave him a good chance to teach Islamic law as part of Islam. Previously, in Mecca, Muḥammad dealt with idols worship and theological resistance. He had rough time in Mecca dealing with former religious institutions.

Thus, in Medina, the revealed verses respond to his needs for Islamic law, while in Mecca he needed the verses of creed. Just in Medina, Muhammad's needs shifted to spreading Islamic law. Hence, legal verses generally revealed in Medina. Thus, another contextual characteristic of legal verses is revelation after *hijrah* to Medina.

The legal verses revealed after *hijrah* might be revealed both in Medina or Mecca. Thus, *madaniyyah-makkiyah* classification did not respond this third characteristic. To refer to this characteristic, new verses classification is needed because *makkiyah-madaniyah* classification is not suitable. The verses revealed before *hijrah* is called as *nubuwwat* verses, and verses revealed after *hijrah* is called as *risālah* verses. *Nubuwwat* verses can be understood as

verses revealed before Muhammad given his *risālah*. There are only three sūras revealed before Muḥammad's *risālah*, al-'Alaq, al-Muzzammil and part of al-Muddatthir. Apart from those are *risālah* verses. Legal verses must be *risālah* verses, not *nubuwwat* verses. *Madaniyyah* verses are part of *risalah* verses, but it is much more than *madaniyyah* because most of *makkīyah* verses are also *risālah* verses.

There are lot of legal verses indicating the viscosity of legal verses with this characteristic. All of verses containing *jihād* (war) are revealed after *hijrah*, all of verses containing inter-religions relationship are also revealed after *hijrah*, and so do verses containing inheritance law, marriage and divorce.

Selecting Legal Verses

Legal verses can be constructed based on identification or selection bases presented previously (textual and contextual) and its characteristics (textual and contextual). The writers selected 418 verses as legal verses after re-reading the Alquran and selecting legal verses using the selection bases both textual and contextual. Some verses are likely legal verses, but further study proved that they are not legal verses.

QS Al-Baqarah: 45, “and seek help through patience and prayer” are likely legal verse, but it is not, because its command addressed to *ahlul kitāb* (Wahīdī, 1991) Al-Baqarah: 114, “and who are more unjust than those who prevent the name of Allah from being mentioned in His Mosque and strive toward their destruction” is not legal verses because it revealed in relation to Taus ar-Rūmī and his Christian group who burn the *Taurāt*, fought Banī Isrā'īl and will break down *Bait al-Maqdis* (Wahīdī, 1991), QS al-Baqarah: 177, “righteousness is not that you turn your faces toward the east or the west, but...” is likely legal verses, but it is not, because it revealed in relation to a question to Muḥammad about the meaning of *al-birr* (righteousness), or in relation to a person died just after he embraced Islam (Wahīdī, 1991). So does QS Āli 'Imrān 31 which contains Muḥammad's invitation to follow him, is likely legal verse, but it is not, because his invitation is addressed to Quraish unbeliever according to *asbāb nuzūl* (Wahīdī, 1991). QS an-Nisā: 49 is likely legal verse containing *zakāt*, but it is not, because its *sabab nuzūl* refers to Jews (Wahīdī, 1991). QS an-

Nisā': 125, is also likely legal verse, but it is not, because revealed in relation to Muḥammad's question to Jibrīl "is not Ibrāhīm the dearest to Allah" (Wahīdī, 1991). So does QS az-Zumar: 53, the phrase "don't be hopeless" is likely indicating legal matter, but it is not, because it means repentance based on its *asbāb nuzūl* (Wahīdī, 1991). QS Āli 'Imrān 77 which contains "don't hide the truth" is likely legal verse, but it is not, because it revealed in relation to Abū Rāfi', Kinānah and some Jews figures who knew the signs of Muḥammad's prophecy and refused to acknowledged it (Ibn Ḥajar, 2000). QS Āli 'Imrān: 96 is likely legal verses but it is not because it revealed in relation to Muslims and Jews who proud of Kakbah and Baitul Maqdis, which one the oldest (Wahīdī, 1991).

Conclusion

Selecting the legal verses can be based on two bases: textual and contextual bases. Textual bases are: the verse contains the command (demand or prohibition) on mukallaf deeds, the verse contains regulation on mukallaf deeds and is addressed to mukallaf. The contextual bases are: *asbāb nuzūl* (revelation background) and explanatory *ḥadīth*. Both bases are independent, which means a verse can be categorized as legal verse if it meet one of two bases, when other base did not deny it.

In line with its selection bases, it can be formulated two legal verses characteristic: textual and contextual characteristic. The textual characteristic means that legal verse must contains one or more of those words: *fi'l amr*, *fi'l muḍāri'* preceded by *lām al-amr*, *fi'l nahy*, *fi'l muḍāri'* preceded by *lām an-nāhiyah*, *ism fi'l amr* or *nahy*, *ṭalabiyyah* (imperative) sentence, *jumlah al-khabriyyah bima'nā aṭ-ṭalab* (informative meaning imperative) such as: *lā junāḥa*, *laisa ḥaraj*, *kutiba `alaikum*, *uḥilla*, *ḥurrima*, *faraāa* or *farīdah*. Contextual characteristic means that the legal verses must be revealed in relation to legal matter, revealed after Muḥammad's *risālah*, and has an explanatory *ḥadīth*.

Using those bases and its characteristic, the researcher found 418 legal verses in Alquran.

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