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Homosexuality in Contemporary Islamic Legal Approaches: Study of Huzaemah Tahido Yanggo's Thought

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ABSTRACT

This study intends to identify the epistemology of Islamic law of Huzaemah Tahido Yanggo with the contemporary maqasid sharia approach formulated by Jasser Auda. This literature research uses a normative-philosophical approach. The main research data is Huzaemah Tahido Yanggo's scientific work entitled Sexual Deviance (LGBT) in the View of Islamic Law (2018). Secondary data in the form of books, journals, theses and dissertations that are relevant. The nature of this research approach is descriptive-analytic. Data analysis techniques include data reduction, data presentation, and data verification. The results showed that Huzaemah Tahido Yanggo's Islamic legal epistemology of homosexual behavior is a multidimensional approach to Islamic law, and has a preemptive-socialist orientation. Such a big conclusion is based on the epistemological foundation of Islamic law Huzaemah, as follows First, the foundation of the epistemology of Islamic law is comprehensive, not partial in accordance with the character of the features of the comprehensive Islamic legal approach. So, there is no tendency towards a dichotomous and partial approach to Islamic law. Second, the epistemological foundation of Islamic law that emphasizes meaning, which is to have a relationship with various Islamic legal orientations towards the monasticism of homosexual behavior, such as the value of maqasid in the form of the benefit of the soul (hifz al-nafs), and also the misfortune of regeneration of offspring (hifz al-nasl), even the expansion of the broader dimension of benefit, namely hifz waton (maintaining the

safety of the state).The theoretical implication of this research shows that the paradigm of contemporary Islamic law that prohibits homosexual behavior is not based on a pragmatism and individualist approach to Islamic law, but a multidimensional approach to Islamic law, and has a preventive-socialist orientation. There are limitations to the study, namely that it has not identified the method of interpretation that Huzaemah used to the theological basis of homosexual law.

A. Introduction

The phenomenon of homosexuals has again emerged on the surface of the world public and experienced strong resistance from across religious groups, including among Indonesian Muslims.¹ However, it is undeniable that there is still a small part of Indonesian Muslims who tend to be open, accepting, appreciative, and even advocating for the existence of these homosexuals.² Although most of them actually rejected it. This hard resistance was among others raised by Indonesia's pre-mpuese Muslim scholar, namely Huzaemah Tahido Yanggo. She is one of the Professors of Islamic Law at Syarif Hidayatullah State Islamic University Jakarta, and was also the head of the fatwa field of the Indonesian Ulema Council in 2000. According to her, the paradigm error over the validity of homosexuality raised by a small number of Muslims in Indonesia is due to a little Islamic science, has not read much interpretation and Hadith, does not know ushul fiqh and other ijihad media well. Such a condition that they easily state that there is no prohibition from the Qur'an and Hadith on homosexual behavior. Added to that the arguments in the name of Human Rights.

Huzaemah asserted that the law on homosexual behavior is haram. He warned that if there is a view that allows it, then it is contrary to Islamic law. Furthermore, he said that people who declare the legitimacy of homosexuals are a group of liberals who are only armed with a little religious knowledge, but easily gives misleading legal fatwas to the public. Not stopping there, Huzaemah also reminded that homosexual behavior has a great risk to the safety of human life.

¹ Syafi'in Mansur, "Homoseksual Dalam Perspektif Agama-Agama Di Indonesia," *Aqlania*, Vol. 8, No. 1, 2017.

² Musdah Mulia, *Membangun Surga Di Bumi; Kiat-Kiat Membina Keluarga Islam Di Bumi*, Jakarta: Quanta, 2011.

Where the salvation of life is part of the orientation of Islamic law (*maqasid sharia*).³

This study intends to conduct an analysis of Huzaemah Tahido Yanggo's Islamic legal epistemology of homosexual behavior with the contemporary *maqasid sharia* approach formulated by Jasser Auda. The reason for choosing the *maqasid sharia* approach is because Auda is known as an expert in contemporary Islamic law who is consensual in the field of developing *maqasid*. It is in Auda's hands that *maqasid sharia* is seen as a theoretical, applicative and adaptive approach to Islamic law in solving dynamic and complex modern legal issues. No exception to modern legal problems related to marriage and Islamic family law in general.⁴

This study is important because the existence of a dualism that is contrary among Indonesian Muslim scholars, namely between the pros and cons of the validity of homosexual behavior can trigger a public dilemma regarding how to be wise according to the teachings of Islamic law in responding to the homosexual phenomenon. Therefore, through the contemporary *maqasid sharia* approach formulated by Jasser Auda. This research is expected to analyze and describe huzaemah Tahido's legal epistemology of the existing homosexual behavior with the current approach of contemporary Islamic law.

Although research that examines specifically Huzaemah's thoughts on homosexual law has not existed before, but based on the author's search there are several previous studies that try to photograph the homosexual phenomenon in Indonesia in the perspective of Islamic law, including research by Rustam Dahar Karnadi Apollo Harahap (2016) states that based on the perspective of Islamic law and human rights, LGBT movements should be banned and given ta'zīr, is a form of punishment by the government.⁵ Research by Hasan Zaini (2016) states that homosexual acts (*liwat*) are prohibited in Islamic law and are considered to be

³ Huzaemah Tahido Yanggo, "Penyimpangan Seksual (LGBT) Dalam Pandangan Hukum Islam," *MISYKAT Jurnal Ilmu-Ilmu Al-Quran Hadist Syari Ah Dan Tarbiyah*, Vol. 3, No. 2, 2018.

⁴ Soni Zakaria, "The Contextualization Of The Māqāsid Al-Syariah Jasser Auda Theory In The Concept And Practice Of Islamic Family Law," *Al-'Adl*, Vol. 14, No. 2, 2021.

⁵ Rustam DKA Harahap, "LGBT Di Indonesia: Perspektif Hukum Islam, HAM, Psikologi Dan Pendekatan Maṣlahah," *Al-Ahkam*, Vol 26, No. 2, 2016.

more heinous than adultery. Liwat is an act that is contrary to human morals and morals and endangers the perpetrator.⁶ Syafi'in Mansur (2017) in his research explained that various religions living in Indonesia all prohibit homosexual or LGBT behavior. It's just that Hinduism, Buddhism and Confucianism are not so firm on their declaration because there is no express threat in their scriptures. In contrast to Islam and Christianity which strictly forbid and incorporate into evil deeds and sins. Even the culprit is put to death if he has same-sex sexual intercourse. But if repentant then forgiven.⁷ Zulfa Hudiyani (2017) in his research said that homosexual behavior in Islam is legally haram. In the perspective of maqasid sharia, such deviant behavior is contrary to the commands of hifz nafs (maintaining the safety of souls) and hifz nasl (maintaining the continuity of offspring).⁸ Then siska Lis Sulistiani's research (2019) explained that Homosexual deviant behavior is contrary to various benefit orientations in the sharia of Islamic law, including the safeguarding of the benefit of offspring (*hifz nasab*), the benefit of honor (*hifz irdh*) and the benefit of the soul (*hifz nafs*).⁹

Based on some of the previous studies above, there has been no research that conducts an analysis of Huzaemah Tahido Yanggo's Islamic legal paradigm of homosexual behavior with the contemporary maqasid sharia approach formulated by Jasser Auda. It is the focus and climbing that is the distingency as well as the novelty of this research. This research is important to do and is expected to make a theoretical contribution to the construction of the epistemology of Islamic law on the prohibition of homosexuality from an expert in Indonesian Islamic law, especially in the midst of the LGBT phenomenon which is re-emerging into public spaces in various parts of the world, including Indonesia and sparking pros and cons in the middle of the world. Muslims themselves.

⁶ Hasan Zaini, "LGBT Dalam Perspektif Hukum Islam," *JURIS (Jurnal Ilmiah Syariah)*, Vol.15, No. 1, 2017.

⁷ Mansur, *op. Cit*

⁸ Zulfa Hudiyani, "Homoseksual Dan Islam: Analisis Maqasid Shari'ah Terhadap Wacana Dan Argumen Sarjana Islam Liberal," Master's Thesis, Sekolah Pascasarjana UIN Syarif Hidayatullah, 2017, ix.

⁹ Siska Lis Sulistiani, "Hukum Homoseksual Perspektif Maqashid Syariah," *Al-Istinbath: Jurnal Hukum Islam* Vol. 4, No. 2, 2019..

B. Method

This qualitative research in the form of a literature study intends to analyze Huzaemah Tahido Yanggo's views on homosexuality through the contemporary maqasid sharia approach formulated by Jasser Auda. Meanwhile, this type of Islamic legal research uses a normative-philosophical approach.¹⁰ The main data of the study is in the form of Huzaemah Tahido Yanggo's scientific work entitled *Sexual Deviance (LGBT) in the View of Islamic Law* (2018). Secondary data uses a variety of scientific research that is relevant to the main object of this research, including books, journals, theses and dissertations. The nature of this research approach is descriptive-analytical. Through the concept of maqasid sharia elaborated with various features in the philosophy of the system, as well as the features of cognitive disposition, openness, whole, relational hierarchical, multi-dimensional, and intendedness will be used in identifying the epistemology of the thought of Islamic law Huzaemah Tahido Yanggo regarding homosexual behavior. In his steps, the author documents various literature data related to the main object of research. After the data is collected, the next stage is the data analysis technique. In this data analysis technique, there are three stages, namely data reduction, data presentation, and data verification.

C. Finding and Discussion

1. Construction of Maqasid Sharia as an Approach to Contemporary Islamic Law

Although *maqasid sharia* in the discourse of contemporary Islamic legal methodology has been seen as a new approach in Islamic legal thought, but in the realm of its praxis, it can pose difficulties if the concept is not updated.¹¹ As a form of effort to make maqasid sharia an implementative and adaptive approach to Islamic law in solving contemporary legal problems, Jasser Auda offers the importance of a systems philosophy approach in the

¹⁰ M. Atho Mudzhar, "Tantangan Studi Hukum Islam Di Indonesia Dewasa Ini," *Jurnal Indo-Islamika* Vol.2, No. 1, 2012..

¹¹ Athoillah Islamy, "Pemikiran Hukum Islam Nurcholish Madjid," Disertasi, Semarang, Pascasarjana Universitas Islam Negeri Walisongo, 2021.

renewal of Islamic legal methodology. According to Auda, there are several features in the philosophy of the system that according to Auda can be elaborated in formulating the concept of maqasid as a form of contemporary Islamic law, including the following as follows.

First, the disposition of cognition. Auda explained that naturally the basic cognitive disposition is an important part of the Islamic legal system to be understood by Muslims themselves. From this thought, it can then be understood that the product of *ijtihad* that exists as a positive achievement is also the fruit of a dialectic between the dimensions of cognition and the reality of human life which also allows having weaknesses. This shows that Auda views Islamic legal thinking as a product of dynamic thinking that can change along with the living conditions faced by Muslims. This entrusts the realization that the product of Islamic law that opens up space for debate from the aspect of understanding is in accordance with the conditions and context of its era.

Second, the whole. For Auda, it is important to have a comprehensive paradigm in the approach to Islamic law. It can also be interpreted that there is an interrelated relationship between the methodology of Islamic law and one another. This is because Auda considers the tendency of classical Islamic legal logic to be reductiononic and atomistic. He said that there is a factor of dominance of classical *ushul fiqh* logic which emphasizes more on the partial use of postulates, for example, the many uses of *maslahah* considerations are compared to the use of universal postulates such as *maqasid sharia*. Therefore, it can be concluded that Auda emphasized the importance of holistic thinking logic in the use of various Islamic legal propositions in the process of determining the law.

Third, openness. According to Auda, the Islamic legal system should be understood as an open system. He explained that the character of the openness of the Islamic legal system can be seen from the historical trajectory of the formation of various Islamic law schools that always bring the instrument of *ijtihad* to life. Auda added that to build an inclusive and open

legal paradigm, instruments with various methods of inclusive Islamic law are needed as well. So it is hoped that it will give rise to the development of the existence of classical Islamic legal methods in order to answer various problems that exist in the contemporary era.¹²

To realize the characteristics of the openness of the Islamic legal system, Auda offers two steps of renewal, as follows. First, the renewal of cognitive culture and worldview on the construction of Islamic legal thought. According to Auda, Islamic legal thought is a product of thought that is inseparable from the influence of the cognitive culture of human life. Second, renewal of aspects of Islamic legal methods through philosophical openness. Auda stated that the renewal of Islamic law is not limited to reforming classical Islamic legal thinking, but also updating philosophical logic in the establishment of Islamic law. He added that the logic of *ushul fiqh* must be adapted to modern logic that is not reductionist and dichotomous.¹³

Fourth, relational hierarchical relations. Auda said that categorization based on concepts becomes an appropriate categorization applied in the modernization of Islamic legal methods. He added that the grouping is an integrative and systematic method. So, it is not just to determine right or wrong but rather contains various criteria that produce the product of creative thinking in a continuity. The implications of the features of the relational hierarchy, namely the level of benefit (*maslahat*), both *daruriat*, *hajat* and *tahsiniat* can be viewed at the same level and important. In contrast to the classification of classical *maqasid* levels which uses a paradigm of categorization based on features, so that hierarchies tend to be rigid.¹⁴

Fifth, multi-dimensional. Auda gave an understanding that the Islamic legal system is a legal system that has a variety of offers. So he understood that biner's opposition paradigm should not be used in Islamic law

¹² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*, London dan Washington: International Institute of Islamic Thought (IIIT), 2008.

¹³ Hengki Ferdiansyah, "Pemikiran Hukum Islam Jasser Auda," Tesis, Sekolah Pascasarjana Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2017.

¹⁴ Auda, *op. Cit*

approaches. Because in essence, the laws that are considered contradictory in essence complement each other.¹⁵ According to him, through a multi-dimensional approach, it will be able to dilute the dichotomy between the *dalai qat'i* and *zanni* and can solve the problem of contradictions in other Islamic legal postulates.

Sixth, intent. According to Auda, the existence of *maqasid shariah* as a priority offer that has a sense of intent in the Islamic legal system. Auda reminded that the meaning of this meaning has a relationship with various methods of Islamic law with each other. This is because in the system theory approach, it does not recognize the independence of features. All features must be able to work together to integrate with each other to perform their functions in achieving common goals.

In realizing the concept of *maqasid* as a value, a goal as well as a legal approach that is not monolithic and mechanistic, Auda proposes the expansion of the dimension of benefit that is contained in the concept of classical *maqasid* with all its degrees.¹⁶ Not only expansion of the benefit's dimension of classical *maqasid*s, Auda also classifies *maqasid*s into three levels. First, *maqasid am* (general) is the orientation of Islamic law that can be found in any discussion of *maqasid shariah al-khomsah*. Second, the distinctive *maqasid*, that is, the orientation of Islamic law on various derivatives of the special *maqasid*, such as the care of the benefit of the child. Third, *maqasid juz'iat*. At this level it is related to reason (*illat*) or purpose (*ghayat*).

The *maqasid sharia* approach that is elaborated through the philosophy of systems as formulated by Jasser Auda above is used as a theory of analysis in analyzing the epistemology of Islamic law Huzaimah Tahido Yanggo regarding homosexual behavior in this study.

¹⁵ Ferdiansyah, *op. Cit*

¹⁶ Auda, *op. Cit*

2. Portrait of the Socio-Intellectual Life of Huzaemah Tahido Yanggo

Prof. Dr. Hj. Huzaemah Tahido Yanggo, M.A. was born on December 30, 1946 and passed away on July 23, 2021. Huzaemah is one of the Indonesian Muslim intellectuals who has a concentration of expertise in the field of comparative jurisprudence. He earned his Baccalaureate (BA) degree from the Sharia Faculty of Alkhairaat University. After two years, he continued his intellectual odyssey, studying at Al-Azhar University, Cairo, Egypt until he received a Master of Arts (MA) degree in 1981 and even earned a doctorate in 1984. All of these titles earned the title of *yudicium laude*.

Huzaemah became the first female Professor at Syarif Hidayatullah State Islamic University. Not only that, he also served as rector of the Institute of Quranic Sciences, Jakarta (2018-2022). Huzaemah is also actively involved as a member of the Indonesian Ulema Council (MUI) and has been a member of the MUI Fatwa Commission since 1987 and the MUI National Sharia Council since 1997-2000. In addition, he has also served as chairman of the Fatwa field of the Indonesian Ulema Council. In 2000, he was appointed chairman of the Central MUI in the Field of Recitation and Social Development.

During her lifetime, there were many awards that had been received by Huzaemah, including the "Leadership and Management of Improving the Role of Women" Award from the Minister of State for the Role of Women of the Republic of Indonesia (1999). Erasmus Global Media Award as a female jurisprudence expert (2007), Satyalancana Wira Karya from the President of the Republic of Indonesia for his services as a member of the Qur'an Interpretation Improvement Team of the Ministry of Religion of the Republic of Indonesia (2007), Women Award for dedication, innovation and achievements in realizing various rights of women and children from UIN Jakarta (2015), Satyalancana Karya Satya 30 Years (2016). Meanwhile, some of her scientific works include "Introduction to Comparative Schools" (2003), "Masail Fiqhiyah: A Study of Contemporary Islamic Law" (2005), and

"*Contemporary Women's Jurisprudence*" (2010),¹⁷ *Sexual Deviance (LGBT) in the View of Islamic Law* (2018) (2018).¹⁸

When viewed from the setting of Huzaemah's social and intellectual activities as above, it can be said that she is a female Muslim intellectual in Indonesia who has an intensive Islamic education base and is active in various activities related to education and social diversity. Especially in the concentration of his expertise in the field of fiqh (Islamic law). Therefore, his figure in expressing Islamic legal thinking related to the homosexual phenomenon is very worthy of in-depth study.

3. Huzaemah Tahido Yanggo's Epistemology of Homosexual Law in Contemporary *Maqasid Sharia* Perspective

The manifestation of the face of the character of moderate Islamic teachings is very urgent in responding to various problems of the globalization era in all aspects of the social life of mankind today.¹⁹ However, it is not understood by moderate Islam as a paradigm or permissive attitude and ignorance of the noormative foundation of Islamic teachings, but still has the basis of the correct paradigm of Islamic teachings in accordance with various existing rules. In this case, it is no exception in responding to the global phenomenon, namely the existence of homosexuals which is a crucial issue in modern countries, especially countries with a largely Muslim population, such as Indonesia. .

The importance of the manifestation of moderate Islamic teachings in responding to the homosexual phenomenon is also in line with the distribution of noble social values contained in Pancasila to realize the plurality civilization of Indonesian people's lives.²⁰ The existence of

¹⁷ "Huzaemah Tahido Yanggo," in *Wikipedia Bahasa Indonesia, ensiklopedia bebas*, October 26, 2021, https://id.wikipedia.org/w/index.php?title=Huzaemah_Tahido_Yanggo&oldid=19317531.

¹⁸ Yanggo, *op. Cit*

¹⁹ Husaini Husaini and Athoillah Islamy, "Harmonization of Religion and State: Mainstreaming the Values of Religious Moderation in Indonesian Da'wah Orientation," *Al-Adalah: Jurnal Hukum Dan Politik Islam* Vol. 7, No. 1, 2022..

²⁰ Eko Siswanto, Syaiful Muhyidin, and Athoillah Islamy, "Pancasila Dan Kerukunan Hidup Umat Beragama: Manifestasi Nilai-Nilai Pancasila Dalam Peran Forum Kerukunan Umat

Pancasila as a state ideology also contains various integrative values in harmonizing between religious values (Islamicity), modernity and Indonesianness in the plural frame of life. The existence of Pancasila as a state ideology also contains various integrative values in harmonizing between religious values (Islamicity), modernity and Indonesianness in the plural frame of life.²¹ Not only that, the existence of various noble values contained in Pancasila is also a source of law or social norms that apply in society.²² Therefore, the phenomenon of homosexuality in Indonesia needs to be addressed multidimensionally, both in a religious perspective and socio-cultural values and even the existing state. Especially in the context of the plural life of Indonesian society, in addition, the existence of Pancasila also contains various integrative values in harmonizing between religious values (Islamicity), modernity and Indonesianness in the bingkai of a plural life.²³ In this context, it is important to realize that the existence of Islamic law (fiqh) as a variant of Islamic teachings is not only Islamic teachings that dwell on formal legal issues on the reality of legal issues in society, but also as teachings that contribute greatly to the formation of religious understanding and social attitudes of the people. Islam,²⁴ is no exception related to the law on homosexual issues that are re-emerging to the public surface in Indonesia

Before the author elaborates on the analysis of the epithemological construction of Huzaemah Islamic law regarding homosexuals, it is important to understand first that the term homosexual in a sociological point of view can be interpreted as the condition of a person who has sexual relations with

Bergama Kota Jayapura,” *INOVATIF: Jurnal Penelitian Pendidikan, Agama, Dan Kebudayaan* Vol. 8, No. 1, 2022.

²¹ Mohamad Badrun Zaman *et al.*, “Harmonisasi Pendidikan Islam Dan Negara: Pengarustamaan Nilai-Nilai Pancasila Dalam Orientasi Pendidikan Pesantren Di Indonesia,” *TARBAWI*, Vol. 10, No. 2, 2022.

²² Eko Siswanto and Athoillah Islamy, “Meninjau Ulang Polemik Formalisasi Hukum Islam di Indonesia Perspektif Demokrasi Pancasila : Analisis SWOT,” *Miyah : Jurnal Studi Islam*, Vol 18, No.1 2022.

²³ Athoillah Islamy, “Landasan Filosofis Dan Corak Pendekatan Abdurrahman Wahid Tentang Implementasi Hukum Islam Di Indonesia,” *Al-Adalah: Jurnal Hukum Dan Politik Islam*, Vol. 6, No. 1, 2021.

²⁴ Eko Siswanto, and Athoillah Islamy, “Fikih Moderasi Beragama dalam Kehidupan Bernegara di Indonesia,” *Jurnal Al-Adalah : Jurnal Hukum dan Politik Islam*, Vol. 7, No. 2, 2022.

the same sex. In this context, men with men are called Gay, and women with women are called Lesbians. Meanwhile, gay in Islamic legal terminology is called al-liwâth. Meanwhile, Lesbian is called as-sihâq. While bisexual is a term for someone who has a dual sexual orientation, both in men and women. The term bisexual in Islamic teachings is not found explicitly, but bisexual practice is analogous to homosexual practice, both liwât (fellow men) and sihâq (fellow women).

As for transgender, it is called for people who have psychological disorders, namely there is no harmony between the Psychology and physical identity (gender) socially. Therefore, their behavior is often contrary to gender roles in general, some even to the point of totally changing their sex, or what is called transsexual. Regarding his sexual orientation, a transgender person may fall into the category of people who are homosexual, bisexual, or also heterosexual. Meanwhile, transgender people in Islamic law are called mukhannats or khuntsa, which are men who resemble women in their various behaviors, such as softness, speech style and gestures. In the Indonesian context, they are often referred to as sissy or waria (female-male) or wadam (female-adam).²⁵ From this it can be concluded that LGBT behavior has a common point in the tendency of pleasure orientation, both psychic and biological.

According to Huzaemah Tahido Yanggo, the phenomenon of homosexual behavior in Indonesia is aggravated by some Muslim intellectuals who advocate for it by seeking the legitimacy of nas postulates that are twisted in meaning by not looking at various other verses related to related issues. Huzaemah said the various verses of the Qur'an actually have a correlation in the interpretation of a particular legal problem. For Huzaimah, there is a deviation of interpretation in punishing the validity of the homosexual phenomenon by the Muslim intelligentsia due to the lack of Islamic science, such as not having read much interpretation and Hadith, and

²⁵ Mamluatun Nafisah, "Respon Al-Qurân Terhadap Legalitas Kaum LGBT," *Jurnal Studi Al-Qur'an* Vol. 15, No. 1, 2019.

also not understanding the methodology of Islamic law well and so on. This is what then makes them easily give legitimacy to the existence of homosexuals under the pretext that there is no prohibition from the Qur'an and hadith that forbid it. Even the fact that the ban on homosexuals is seen by them as a violation of Human Rights.

Huzaemah asserts that homosexual acts are heinous acts that damage personality, morals and religion. The explanation can be found in various verses of the Qur'an, including Q.S al-A'raf verses: 80 and 81, Q.S al-Syu'ara verses 165 and 166. Huzaemah said in the verses of the Qur'an it has been explained that the Prophet Luth had sexual relations with fellow men and had no interest in women, eventually Allah gave them punishment and twisted their land, including the wife of the Prophet Luth the lesbi, embedded along with the turning of the land. Then the Hadith of the Prophet Saw narrated by Muslims from Abi Saïd which means Let no man see the aurat of another man and let not the woman see the aurat of another woman and do not touch another man under a blanket, and neither shall a woman come into contact with another woman under a blanket". Not only that, Huzaemah added that the scholars of jurisprudence have also agreed on homosexual monasticism. In addition, Huzaemah also based his argument on the rules of Islamic law which reads Sex is basically a haram law, so there is a postulate that justifies it through a valid marriage contract.²⁶

The arguments of Huzaemah Tahido Yanggo's legal thought above can be said to be based on the foundation of a comprehensive, not partial, epistemology of Islamic law. The paradigmatic pattern of Islamic law is thus in the contemporary concept of sharia maqasid formulated by Jasser Auda, it can be included in the character of the features of a comprehensive Islamic legal approach (wholeness). Where the features of the approach emphasize the importance of an overarching paradigm in the approach to Islamic law. This is realized because there is an interrelated relationship between the

²⁶ Yanggo, *op. Cit.*

methodology of Islamic law and one another. Therefore, there should be no tendency to build a dichotomous and partial paradigm of Islamic law.

Huzaemah further asserted that homosexuals are legally illegitimate. He warned that if there is a view that allows it, then it is contrary to Islamic law. Huzaemah said that those who have a view on the legal validity of homosexual behavior have carried out liberalism of Islamic legal thought with only a little religious knowledge, so as to mislead the mindset and attitude of society towards the existing phenomenon of homosexuals. Huzaemah also reminded that homosexual behavior can have implications for the great risks to the safety of human life, including HIV / AIDS venereal cancer, spilis, and so on. Pemikiran hukum Islam Huzaemah demikian paralel dengan pelbagai orientasi pensyariaan hukum Islam (maqasid syariah), among others, to maintain the continuity of human offspring (hifz al-nasl) and maintain the safety of the human soul (hifz al-nafs). In a context contrary to "hifz al-nasl" that sexual relations (marriages) carried out by homosescual behavior will not be able to produce offspring at all because Allah Swt. creates offspring only through the relationship between a man and a woman.

The legal epistemology of Huzaemah above can be said to be in line with the features of the Islamic legal approach that emphasizes purposefullness. According to Jasser Auda, the existence of maqasid shariah has a feature of intent in the Islamic legal system. This intention in the realm of praxis will have a relationship with various methods of Islamic law with each other. This is because in the system theory approach, it does not recognize the independence of features. All features must be able to work together to integrate with each other to perform their functions in achieving common goals. To realize the character of this feature, the concept of maqasid as a value, purpose as well as a legal approach that is not monolithic and mechanistic. This can be seen from the consideration of Huzaemah's legal arguments for homosexual monasticism which is not only based on the maqasid value of the benefit of the soul (hifz al-nafs), but also the laziness of

the regeneration of offspring (hifz al-nasl). The consideration of the two foundations of maqasid values shows that the approach of Islamic law in Huzaemah's epistemology of homosexual behavior law emphasizes the meaning of a law that is not monolithic.

Huzaemah was also of the view that homosexual behavior was contrary to the ideology of Pancasila, the 1945 Constitution. Law No. I of 1974 on marriage and the Compilation of Islamic Law (KHI) which states that marriage can only be performed by men and women²⁷. Related to KHI has actually experienced a response of Islamic legal liberalism from Indonesian Muslim intellectual groups in the form of a Counter Legal Draft (CLD)- KHI by offering the formulation of an article on the validity of same-sex marriage. Although the existence of CLD-KHI has received strong resistance from the public because it is seen as containing various articles of law that are contrary to the established teachings of Islam.²⁸

Not only a critique and analysis of Islamic law on homosexuals, Huzaemah also gave some advice to the public as a preventive measure to avoid homosexual behavior. He said that religious education and sex education are two things that cannot be bargained for in anticipation of avoiding homosexuality. In this context, Huzaemah emphasizes the active role of parents in several steps as follows. First, avoid pell various things that lead to homosexual behavior. Second, perform a legal marriage. Sex has a variety of noble purposes, apart from having to be carried out within the sacred bonds of marriage, it is through this marriage that the next generation will be born. Third, it provides punitive sanctions for perpetrators of sexual deviance. Fourth, the government strictly prohibits any form of propaganda, promotion and support for the legalization and development of homosexuals. Not only that, the government must also immediately issue laws and regulations that prohibit the behavior and practices of homosexuals. Fifth, the

²⁷ Yanggo, *op. Cit*

²⁸ Athoillah Islamy, "Eksistensi Hukum Keluarga Islam Di Indonesia Dalam Kontestasi Politik Hukum Dan Liberalisme Pemikiran Islam," *Al-Istinbath: Jurnal Hukum Islam*, Vol. 4, No. 2, 2019.

government provides work programs and budgets in the areas of mentoring, rehabilitation and healing for homosexuals. Sixth, the community plays an active role in assisting the assistance of the homosexual community and not ostracizing them 29.

Huzaemah's legal argument above involves the consideration of a set of norms or constitutions of state law in force in Indonesia which emphasizes the importance of preventive efforts in realizing public benefit in parallel with the preventive fiqh rule which reads *al-dhororu yuzaalu* (danger must be eliminated), and the priority fiqh rule which reads *al-maslahat al-ammah muqoddamatun ala al-maslahat al-khossoh* (the public interest must be prioritized from individual interests). This shows that Huzaemah's legal epistemology of homosexual behavior is also based on the consideration of the benefit of the wider community, even in the context of state life. Such an award can be seen from its emphasis on complying with a set of legal norms that apply in the country of Indonesia. Such an argument of Islamic law in the perspective of contemporary *maqasid shariah* can be intended as a manifestation of *hifz waton* (keeping the country safe). In the realm of praxis, *hifz waton* can become a paradigm in all forms of efforts to maintain order, security and peace of state life in Indonesia. This can be realized through the understanding and attitudes of religious people in Indonesia. With the preservation of the benefits of national life, it also has a positive impact on the preservation of other *shariah maqasid* values for religious people both as individual beings and social beings in state life.³⁰

The dimension of the *hifz waton* value in the consideration of the importance of complying with legal norms in force in Indonesia can be said to be a form of expansion of the dimension of benefit contained in the classical *maqasid* value. As Jasser Auda said that to make *maqasid* a goal as well as a legal approach that is not monolithic and mechanistic, it is important to expand the dimension of benefit contained in the classical *maqasid* concept

²⁹ Yanggo, *op. Cit.*

³⁰ Syamsul Bachri, "Nasionalisme Dalam Perspektif Hukum Maqasid Al-Syariah," *Moderation| Journal of Islamic Studies Review* Vol. 1, No. 2 2021.

in all its levels. It is in this context that the existence of the *hifz waton* value can be referred to in the classification of Auda which is called by the term *maqasid am* (general). Where the classification accommodates various forms of Islamic legal orientation that can be found in any discussion of sharia *maqasid* in general, such as the protection of religion, soul, reason, ancestry, and property. Such a statement as based on the foregoing that the manifestation of *hifz waton* in state life can have far-reaching implications for the realization of various other sharia benefit goals.

D. Conclusion

Based on the core discussion of this study, it can be concluded that *huzaemah Tahido Yanggo's* Islamic legal epistemology of homosexual behavior is a multidimensional approach to Islamic law, and has a preemptive-socialist orientation. Such a grand conclusion is based on the epistemological character of *Huzaemah* Islamic law, as follows. First, the foundation of a comprehensive epistemology of Islamic law, not partial in accordance with the character of the features of the wholeness of the Islamic legal approach, that is, there is no tendency to a dichotomous approach to Islamic law. Second, the epistemological foundation of Islamic law that emphasizes meaning, that is, it can have a relationship with various Islamic legal orientations on the monasticism of homosexual behavior, such as to maintain the benefit of the soul (*hifz al-nafs*), regeneration of offspring (*hifz al-nasl*), regeneration of heredity (*hifz al-nasl*), even the expansion of the broader dimension of benefit, namely *hifz waton* (keeping the country safe). In the realm of praxis, the *hifz waton* can be seen from the epistemology of the law *Islam Huzaemah* for the monastic behavior of homosexuals by emphasizing the importance of complying with a set of applicable state legal norms in order to maintain the safety of state life in Indonesia.

The theoretical implications of this study show that the contemporary Islamic legal paradigm that strictly prohibits homosexual behavior is not based on an Islamic legal approach that is in the style of pragmatism and individualism, but

a multidimensional approach to Islamic law, and has a preventive-socialist orientation.. There are limitations to this research that can be continued by subsequent researchers, namely related to the analysis of Huzaemah's method of interpretation of the theological basis of homosexual law. Given the differences and even the contestation of Islamic legal thought regarding the validity of the homosexual phenomenon is inseparable from the interpretation of the existing theological foundations.

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