

The Implications of Muhammad Arkoun's Hermeneutical Thought for Hadith Studies: An Examination of the Problematics in Hadiths on Hand-Cutting Punishment and Marriage Guardianship

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Abstract. Hermeneutics as a new methodology plays a vital role in complementing and providing methodological solutions to the legacy of conventional Islamic science, which is considered unable to solve contemporary problems. This paper aims to explain the use of Muhammad Arkoun's hermeneutics in Hadith studies, especially regarding the issue of the punishment of hand cutting and marriage guardianship in the contemporary context. In reading the two Hadiths, Arkoun's ideas effectively present a new perspective more relevant to the times. In this way, religion will always be appropriate to human needs throughout time and space. However, the presence of Arkoun's hermeneutics also leads to the emergence of diverse new interpretations, so that the potential for flooding religious information will be increasingly open. This condition certainly impacts the community; they will have difficulty finding the spiritual information they expect. Secondly, hermeneutics as an effect of Western humanist thought has the potential to change the order of life from God-centred (theocentrism) to human-centred (anthropocentrism) with its intellect. This universe is God's creation. All of his creations should be subject to the provisions given by God, not the other way round. This triggers a long debate that never ends.

Keywords: Hermeneutics, Muhammad Arkoun, Hadith Studies

Introduction

As a Muslim intellectual who has studied in the West, Muhammad Arkoun is aware of the weaknesses of the Islamic world today, especially regarding intellectual reason. A comparison of the development of the tradition of reason in the West and the Islamic East of the modern century shows a sharp chasm; the two seem so contrasting. Since the 16th century, the development of reason has looked so dynamic and revolutionary in France, England, and Germany. In contrast to the Islamic world, since the 16th century, it can be said that Islamic reasoning has stagnated, and it is difficult to accept change.¹

This fact triggered Muhammad Arkoun's anxiety, so he proposed the idea of the hermeneutics of ² Islamic criticism in his book *Pour Une Critique de la Raison*. Arkoun criticizes Islamic reasoning in this book, especially when reading about the Arab-Islamic tradition. He presents a discourse of deconstruction and historical reading of Islamic reason. He uses several of the latest scientific

¹ Siti Rohmah Soekarba, "Criticism of Arabic Thought: Mohammed Arkoun's Deconstruction Method," *Wacana, Journal of the Humanities of Indonesia* 8, no. 1 (April 1, 2006): 78, <https://doi.org/10.17510/wjhi.v8i1.248>.

² In the contemporary era, hermeneutics began to be widely discussed and became a study of interest to many Muslim intellectuals. Hermeneutics is considered to provide new understanding options, especially the understanding of religious texts that are more contextual, so that they can adapt to the changing times. Despite its emergence in the Western world, hermeneutics has a vital role in covering the gaps in the Islamic scientific apparatus and reopening the impasse of reason, so that scientific passion develops dynamically. See: Abdul Majid, "Hermeneutika Hadis Gender," *Jurnal al-Ulum: Peer-Reviewed, Open Access Journal of Islamic Studies* 13, no. 2 (2013): 293–320.

approaches, especially linguistics. With his hermeneutic thinking, Arkoun tries to reawaken the consciousness of thinking and awaken the intellectual spirit of the Islamic world to provide better changes for Islamic civilization in the future.

Therefore, studying Muhammad Arkoun's thoughts is essential, especially to meet the needs of studying religious texts in the contemporary era. As is known, the reading of Islamic religious texts has always relied on the perspectives and interpretations of the classical and medieval centuries, which, according to Arkoun, have become obsolete and caused a stalemate of thought.³ The contemporary era requires new methodologies and perspectives more relevant to current needs and better changes.

On the other hand, the implementation of Islamic religious texts in the contemporary era, some of which are found, shows serious problems. For example, a Hadith explains the punishment of cutting off the hand for thieves and the critical role of marriage guardians for women. In the case of the law of amputation, the legal form of amputation of limbs is considered to be contrary to modern human rights declarations that oppose inhuman punishment.⁴ Likewise, the need for guardians for women who want to marry seems to show that women do not have the skills. Hence, they need to always be accompanied, even though many women today are highly educated and occupy essential positions in the eyes of the public.

In this context, it is interesting to study the hermeneutic thoughts of Muhammad Arkoun, especially in finding a solution to the problem of the Hadith, the punishment of cutting off hands, and the guardianship of marriage. These efforts aim to bridge the gap between the Hadith texts full of nuances of the past and the religious practice of Islam in the current era, which sociologically has undergone sharp changes compared to the past. This article examines the two Hadiths using the approach of Muhammad Arkoun's hermeneutic thought. This study aims to analyze the extent of the implications of Muhammad Arkoun's hermeneutic thought on the understanding and practice of the two Hadiths in the contemporary social context.

This research uses a qualitative approach in library research, which aims to analyze the implications of Muhammad Arkoun's hermeneutic thought on the understanding and practice of Hadith, the punishment of amputation, and the guardianship of marriage in the contemporary social context. The primary data consists of the hermeneutic works of Muhammad Arkoun and the main books of Hadith, Hadith syrah, and Islamic legal literature that discuss the topic of the punishment of beheading and marital guardianship. Meanwhile, secondary data was obtained from relevant academic works and scientific articles. All data are analyzed using a descriptive-analytical method, namely by describing and examining the extent to which Arkoun's thinking impacts how to understand and apply Hadith in today's social reality.

Several previous studies examining the hermeneutic thought of Muhammad Arkoun have provided various perspectives that are important in understanding religious texts. For example, Setio Budi's research entitled *The Dark Side of the Qur'an Hermeneutics: Criticism of the Hermeneutics of the Qur'an by Mohammed Arkoun*. This study examines and criticizes the hermeneutic thought of the Qur'an, Mohammad Arkoun, which is considered to deviate from the theory of Quranic science. Setio Budi found that Arkoun's hermeneutics has many shortcomings and is only relevant to understanding the

³ Fadlil Munawwar Manshur, "Mohammed Arkoun's Critique of Rationalism on Arab-Islamic Intellectual Culture," *TAJIDID* 30, no. 1 (November 9, 2023): 1, <https://doi.org/10.36667/tajdid.v30i1.1161>.

⁴ The modern Declaration of Human Rights considers that the laws of cutting off hands, stoning, qishash, and the like are cruel, inhumane, and degrading to human dignity. See: Fitra Mulyawan and Wendriadi Wendriadi, "Human Rights Review On The Implementation Of Stoning Punishment In Indonesia (Comparative Analysis Study of Islamic Law and National Law)," *UNES Law Review* 2, no. 2 (February 9, 2020): 155–69, <https://doi.org/10.31933/unesrev.v2i2.111>.

context surrounding the Quran.⁵ Meanwhile, Budi Ichwayudi and Mukhammad Alfani's research entitled *Hadith Hermeneutics: A Comparative Study of the Thoughts of Mobammed Arkoun and Mubammad Syahrur*, tried to compare Arkoun's hermeneutics with the thought of Muhammad Syahrur. Although both emphasize the contextual aspect, Arkoun delves deeper into the historical and semiotic elements, while Syahrur focuses on the contextual legal dimension.⁶ Mahbub Ghozali's research, *Mystical Reason in the Concept of Jihadist Martyrs through Mubammad Arkoun's Hermeneutics on the Verse of Jihad*, tries to utilize Arkoun's hermeneutics to understand the verses of jihad in the modern context. Through Arkoun's hermeneutic approach, Mahbub found that jihad does not have to be interpreted as a sacrifice of souls in war, but can be in the form of various forms of struggle relevant to the conditions of peace and the needs of the times.⁷ On the other hand, research on the reinterpretation of the beheading penalty, such as the one conducted by Nur Danisia Octaviani and her colleagues entitled *Reinterpretation of the Text of the Hand Beating Law from the Hermeneutic Perspective of Khaled M. Abou El Fadl*, shows that with a hermeneutic approach, punishments that seem harsh and irrelevant to the present day can be reinterpreted in a more humanist way and by human rights values.⁸ Likewise, Agung Tri Nugroho's study entitled *Reconceptualization of Marriage Guardianship Authority in Indonesia*, discusses the authority of marital guardianship, proposes a more inclusive thinking with a *maqasid sharia* approach, and considers gender equality.⁹

Research on *the Implications of Mubammad Arkoun's Hermeneutic Thought on Hadith (A Problematic Study of Hadith, Punishment of Cutting Hands and Guardianship of Marriage)* will add new insights to this discourse. Although it has similarities with previous research in terms of the use of hermeneutic approaches to reconstruct the understanding of religious texts critically and contextually, as done by Mahbub Ghozali, Budi Ichwayudi, and Mukhammad Alfani, the difference lies in the focus of the object of study. This study examines explicitly two problematic Hadiths, namely the punishment of amputation of hands and marital guardianship. In contrast, previous research has not made these two themes the focus of Arkoun's framework of thought. The novelty of this research lies in Arkoun's use of hermeneutics against the Hadith of beheading and marital guardianship that have not been touched much explicitly by previous research, as well as showing their relevance to the current social, legal, and cultural context.

Discussion

Historical Sketch of Muhammad Arkoun

Muhammad Arkoun is an Algerian-born Islamic thinker. Muhammad Arkoun was born on February 28, 1928, in Tsawrits Mimoun, Kabylie, Algeria. The Kabylie area is a mountainous agricultural area. So it is natural that most of the population works as farmers, herders, traders, and artisans. Race-wise, the inhabitants of Kabylie are Berbers, which is the designation of a race that

⁵ Setio Budi, "The Dark Side of Alquran Hermeneutics: Criticism of the Hermeneutics of the Alquran Mohammed Arkoun," *Journal of Islamic Civilization* 4, no. 1 (September 30, 2022): 81–90, <https://doi.org/10.33086/jic.v4i1.2627>.

⁶ Budi Ichwayudi dan Mukhammad Alfani, "Hadith Hermeneutics: A Comparative Study Of The Thoughts Of Mohammed Arkoun And Muhammad Syahrur," *Universe* 17, no. 2 (December 30, 2023), <https://doi.org/10.30762/universum.v17i2.1907>.

⁷ Mahbub Ghozali, "Mythical Reason In The Concept Of Jihadist Martyrdom Through Muhammed Arkoun's Hermeneutics On Jihad Verses," *Mafatih* 2, no. 1 (June 28, 2022): 1–15, <https://doi.org/10.24260/mafatih.v2i1.651>.

⁸ Nur Danisia Octaviani, Taufik Kurahman, and Moh Iqbal Assyauqi, "Reinterpretation of the Legal Text of Cutting Hands from the Hermeneutic Perspective of Khaled M. Abou El Fadl," *Al-Qalam: A Scientific Journal of Religion and Society* 16, no. 4 (12 Juni 2022): 1536, <https://doi.org/10.35931/aq.v16i4.1155>.

⁹ Agung Tri Nugroho, "Reconceptualization of Marriage Guardianship Authority in Indonesia," *Journal of the Court: Journal of Law and Islamic Law* 14, no. 1 (2019): 63–82, <https://doi.org/10.25217/jm.v4i1.455>.

inhabits the northern African region from Libya to the Atlantic Ocean. Long before the Islamic conquest, the inhabitants of Kabylie spoke a non-Arabic accent (Ajamiy). Even after Arabization, some of them still spoke Berber.¹⁰

The ancestors of the Berbers came from a group of humans who had lived in the North African region since before AD. In its development, the area was once controlled by the Roman Empire. However, the ancestors of the Berbers did not fully adhere to Roman law, nor did they embrace Christianity. During the war, the Berbers were conquered by Islamic Arabs during the Umayyad caliphate, under the command of Uqbah bin Nafi. Most of the Berbers embraced Islam and participated in the preaching and expansion of Islam in Spain. They also rebelled against the Abbasid Caliphate, which led to the division of the dynasty into several dynasties, such as the Aglabid, Morabit, and Muwahiddun.¹¹

The pattern of Islam that developed in the North African region, including among the Berbers, was Sufism. An important figure who was influential in the spread of Sufism in the area was Abu Madyan, a great Sufi figure and a teacher of Ibn Arabi. Several Sufi schools also emerged there, ranging from Syadziliyyah, Qadiriyyah, and Ismailiyyah. The rapid development of Sufism activities has caused various forms of animistic beliefs and rituals of Africa and the Berbers to permeate and give a specific character to African Islam. It was in this atmosphere of religious life that was full of nuances of Sufism that Muhammad Arkoun grew up and was raised.¹²

When Muhammad Arkoun was born in Algeria, it was still a French territory. History states that France has colonized and politically controlled the Algerian state since 1830. During the colonization, the French promoted agriculture, and it was not uncommon for them to take over the land of rebellious citizens because of reclamation efforts. In addition, France is also trying to develop Algeria in various sectors, such as agriculture, transportation, administration, and modern trade. In its interactions with Berber Muslim communities, French colonialists acted reasonably. France did not expel or exterminate Muslim communities. Instead, they gave privileges to the Muslim community. They were even on par with the French themselves, however, on the condition that the Muslim community must abandon Islamic family law based on Sharia and be willing to replace it with French family law.¹³

In Berber society, written civilization is not very well known; the spoken language is often used. Muhammad Arkoun knows his hometown's spoken language well, which has been inherited in a long tradition. In addition, Muhammad Arkoun also learned Arabic, which became the written language of Islam. Meanwhile, in education, he knows French as a tool to understand Western values, traditions, and scientific civilization. Because of mastering these three critical languages¹⁴ Muhammad Arkoun realized that each language has its value. Arabic, for example, is a tool of religious communication. The French language is an educational, scientific, and administrative communication tool. Meanwhile, Berber is a tool of cultural communication. With the Berber language, it is possible to understand the cultural values and traditions traditionally inherited from generation to generation.¹⁵

¹⁰ Suadi Putro, *Mohammed Arkoun on Islam & Modernity* (Jakarta: Paramadina, 1998).

¹¹ Putro.

¹² Baedh Baedh, *Islamic Humanism: a study of the philosophical thought of Muhammad Arkoun* (Yogyakarta: Pustaka Siswa, 2008).

¹³ Marshall Goodwin Simms Hudgson, *The Venture of Islam, Conscience and History in a World Civilization* (Chicago: University of Chicago Press, 1974).

¹⁴ Misnawati Misnawati, Samsul Bahri, and Muhammad Nuzul Abrar, "Mohammed Arkoun's Thought in Contemporary Interpretation," *MUDARRISUNA Journal: Islamic Religious Education Study Media* 12, no. 2 (30 Juni 2022): 271, <https://doi.org/10.22373/jm.v12i2.13292>.

¹⁵ Putro, *Mohammed Arkoun on Islam & Modernity*.

Muhammad Arkoun received his primary education in his hometown, Kabylie. Then, he continued his secondary education in Oran, in the western Algerian region. After completing his secondary education, Muhammad Arkoun continued his higher education at the University of Algiers from 1950 to 1954. At the University, he majored in Arabic language and literature. Subsequently, Muhammad Arkoun enrolled as a student at the Sorbonne University in Paris, France,¹⁶ So he settled in France. Arkoun received a French-style education as a child, which intensified when he studied higher education in France. The intersection between the West and the East influenced Arkoun's thought pattern, which tried to combine these elements, namely Islam on the one hand and the development of Western science on the other. This is also the background for the various activities and works produced by Muhammad Arkoun.¹⁷

In addition to the process in the world of education, Muhammad Arkoun has also had a brilliant career. He was a teacher at a high school in Strasbourg and an associate professor of Arabic language and literature in Paris. He was even asked to lecture at the Faculty of Letters of the University of Strasbourg in 1956-1959. Muhammad Arkoun was appointed as a lecturer at the Sorbonne University until 1969. He then taught at the University of Lyon until 1972, and returned to Paris as a professor of the history of Islamic thought. Because of his competence, Muhammad Arkoun has sparked worldwide interest in the academic world. He has been invited as a guest lecturer at the University of California in Los Angeles, Temple University in Philadelphia, Princeton University, Catholic University of Louvain-la-Neuve in Belgium, as well as filled academic activities at various campuses in Rabat, Algiers, Fez, Damascus, Tunis, Beirut, Tehran, Denver, Kulumbia, Berlin and so on.¹⁸

As an academic, Muhammad Arkoun is quite productive. Muhammad Arkoun has produced several vital works in books and scientific articles. These works include: 1) *Overture sur l'Islam*; 2) *L'Humanisme Arabe au IVe/Xe Siècle: Miskawayh Philosophe et Historien*; 3) *Traité d'Ethique, Traduction Française avec Introduction et Notes du Tabzib al-Akblaq de Miskawayh*; 4) *Pour une Critique de la Raison Islamique*; 5) *Islam Yesterday and Tomorrow*; 5) *Readings of the Qur'an*; 6) *Essays on Islamic Thought*; 6) *Al-Islam Asalah wa Mumarasah*; 7) *Penser Islam Aujourd'hui*; 8) *al-Islam Naqd wa Ijtihad*; 9) *Min Faisal al-Tafriqat ila Fasl al-Naql, Aina Huwa al-Fikr al-Islamy al-Muassir*; 10) *Rethinking Islam: Common Questions Uncommon Answer*.¹⁹

In the various works produced, Muhammad Arkoun focused his attention on multiple problems in Islam, in addition to the language issues that he had been engaged in for a long time in academic studies. The Islamic issues discussed by Muhammad Arkoun talked a lot about Islamic thought, humanitarian problems, societal problems, interpretation of the scriptures, and the intersection of religion with modernity. In Islamic studies, Muhammad Arkoun uses a multidisciplinary approach. He used the methodology of social sciences, anthropology, linguistics, and so on, with an open attitude to the scientific development of the time.

During his education in Europe, many great European thinkers at that time influenced Muhammad Arkoun's thinking in subsequent developments. In formulating his thoughts, Muhammad Arkoun referred to Paul Ricoeur's thoughts in his work *Philosophie de la Volonte*. Muhammad Arkoun also relates to the thoughts of Michel Foucault, especially in terms of *episteme*, discourse, and

¹⁶ It was at the Sorbonne University that Muhammad Arkoun pursued his last education and obtained a doctorate in literature in 1969. The dissertation title is *Arab Humanism in the Fourth/Tenth Century: Miskawayh as Philosopher and Historian*—his dissertation talks about humanism and Ibn Miskawayh's ethical thoughts. See: Muhammad Arkoun, *Humanism Islam in the Fourth/Tenth Century: Miskawayh Philosopher and Historian*, (Paris: Libraire Philosophique J. Vrin 2nd ed., 1982).

¹⁷ Baedh, *Islamic Humanism: a study of the philosophical thought of Mubammad Arkoun*.

¹⁸ Putro, *Mohammed Arkoun on Islam & Modernity*.

¹⁹ Baedh, *Islamic Humanism: a study of the philosophical thought of Mubammad Arkoun*.

archaeology terminology. Michel Foucault's most frequently referenced work is *L'Archéologie du Savoir*. In addition to these two scientists, Muhammad Arkoun often refers to Derrida's thought, especially seen in the terms used, such as *significant* (marker), *signified*, and deconstruction. On several occasions, Muhammad Arkoun also referred to the thoughts of Ferdinand de Saussure, Roland Barthes, Pierre Bourdieu, Jack Goody, Northrop Frye, and so on.²⁰

The Idea of Criticism of Islamic Reason: Muhammad Arkoun

Muhammad Arkoun is a contemporary Islamic thinker with unique ideas in offering a new perspective on Islam, conducting criticism, and using study methodologies relevant to the times' demands. In recent decades, Muhammad Arkoun's thoughts have been widely discussed by many circles, because they offer bold ideas that have not been found before in the treasures of Islamic thought. Apart from the liberal and secular accusations pinned on Muhammad Arkoun, the ideas he offers are extraordinary contributions to contemporary Islamic science, which indeed, at some point, require a refresh of thought and methodology to answer the challenges of changing times. From some of Muhammad Arkoun's broad Islamic thoughts, several key thoughts can be described as follows:

Deconstruction of Islamic Thought

In this context, deconstruction can be translated as rejecting a standard interpretation or the existence of boundaries in interpretation.²¹ Deconstruction can also be used to read something that has not been read, or dismantle something that has not been thought of, so that with this strategy, the construction of reason can be reformulated by the spirit of changing times.²² Muhammad Arkoun saw that the treasures of Islamic thought had suffered a long decline, especially compared to the development of reason in modern Europe. This is allegedly due to the strong dominance of the text and the weakening of reason's autonomy. From this, Muhammad Arkoun offers a deconstructive strategy by criticizing Islamic reason.

Muhammad Arkoun argues that his deconstructive strategy is the best in dismantling the sacredness of the sacred texts that early Muslim sources have constructed. The strategy started from the initial thesis that the history of the text of the Qur'an, which led to its becoming a holy book, needed to be traced, so that deconstruction efforts were necessary. Arkoun considers the deconstruction effort carried out to be an *ijtihad*. The results of his *ijtihad* will certainly oppose the opinions of previous *tafsir* scholars, and Arkoun believes that his *ijtihad* has a good effect on the Qur'an today. With this method, the conception of the Qur'an, which has been established and firmly rooted, will be dismantled entirely, thus opening up opportunities for diverse thoughts. Therefore, Islamic thought and understanding will develop rapidly and undoubtedly impact the progress of Islam itself, which is currently far behind the West.²³

Muhammad Arkoun is the most vocal Islamic intellectual who criticizes the treasures of Islamic thought. In one of his karyans, he expressed the following opinion:

Jurists and theologians practice a limited interpretation and employ specific methodologies, namely, *fiqh* and legislation. These two things transform the discourse of the Qur'an, which has a mystical-majazi meaning and is open to various meanings and understandings, into a rigid standard discourse. This has led to the neglect of the historicity of religious ethical norms and *fiqh* laws. Let the norms and rules of *fiqh* seem to be outside history and beyond social necessity; to be holy, they should not be touched or discussed. Jurists have transformed

²⁰ Putro, *Mohammed Arkoun on Islam & Modernity*.

²¹ Kris Budiman, *Kosa Semiotika* (Yogyakarta: LKIS, 1999).

²² M. Dawam Rahardjo, *Criticism of Islamism and the Rise of Islam* (Freedom Institute, t.t.).

²³ Inayatul Ulya, "Criticism Of Islamic Reason (The Study Of Mohammed Arkoun's Hermeneutic Thought)," *Hermeneutics: Journal of Qur'an and Tafsir* 11, no. 1 (2017): 81–96, <http://dx.doi.org/10.21043/hermeneutik.v11i1.4510>.

temporal socio-historical phenomena into ideal measures and sacred transcendent laws that are unchangeable and irreplaceable. All forms of establishment and practice born of these laws and measures are then sanctified, which upholds them from their foundations or biological, social, economic, and ideological requirements. Thus, historicity is ignored and discarded by established orthodoxy. Such a state continues to this day, and even the disposal of historicity has become more massive as time passes.²⁴

Deconstructive strategies not only offer a way of reading the text but also lead to attitudes and principles of mutual recognition and appreciation of the existence of others. If this is applied to the sacred text, then what must be done is to separate the text from its interpretation. If it is believed that there is a final relationship between the text and the interpretation, then that is what must be dismantled. It can be dangerous if not dismantled because it will cause fanaticism towards specific interpretations by rejecting others. The text will be closed, and there will be no more possibility of the text being opened to various interpretations. In addition, texts have become meaningless in today's face of all forms of change.²⁵

Muhammad Arkoun used deconstruction to reconstruct the treasures of classical Islamic thought. Thus, the layers of knowledge buried by orthodoxy will be seen by this dismantling. After that, selective sorting determines which ones are relevant and no longer applicable. Arkoun tries to reemphasize the meaning that has been eliminated due to the many processes of freezing and closure that Islamic thought has experienced. Arkoun emphasized that deconstruction efforts must also be accompanied by efforts to reconstruct discourse so that it is free from limitations, freezes, and distortions as it happened before.²⁶

The Concept of Historicity

Before explaining the concept of historicity, it is essential to convey the concept of revelation according to Muhammad Arkoun. A complete understanding of the concept of revelation will help one understand the historicity of the Quran offered by Muhammad Arkoun. It is even said that this derivative of the concept of revelation underlies the idea of historicity.²⁷

For Muhammad Arkoun, the revelation of the Qur'an contains two stages. First, revelation as *al-Kitab*. In this stage, the revelation is still in a state that has not been revealed to the world; it is still in *the realm of al-Mahfuz*. Revelation at this stage is eternal, not bound by time or space, not in the form of sound or letters, and contains absolute truth. However, it is impossible for revelation in this stage to reach humans, because it is still sealed in *the lauh al-Mahfuz*. Second, the revelation of the world edition. It is in this world edition that revelation can be reached by man, read, and understood by man. At this stage, revelation begins to be interfered with by the human element. It underwent various renewals, modifications, revisions, and substitutions.²⁸

Revelation in the world edition is divided into two stages: first, when the revelation transforms into the Quran, namely, when the Qur'an came down to Muhammad, it was written in Arabic for approximately twenty-three years, second, when the revelation of the Qur'an transforms into a writing arranged in *a mushaf* complete with punctuation. Namely, the mushaf codified by the era of Uthman bin Affan, which is known as the mushaf of Uthman, is used by Muslims worldwide to this day.

²⁴ Muhammad Arkoun, *Al-Islam; al-Akhlak wa al-Siyasah*, (Beirut: Markaz al-Inma al-Qaumi, 1990).

²⁵ Herdi SRS and Ulil Absar Abdalla, "Breaking down the Hegemony of Tafsir, Reviving the Text," *Ulumul Quran Journal* 5, no. 3 (1994): 87.

²⁶ Soekarba, "Criticism of Arabic Thought."

²⁷ Deden Mula Saputra and Latipah Latipah, "The Concept Of Historicity Of The Qur'an Text," *Al-Dirayah Journal* 2, no. 1 (2019): 47–61.

²⁸ Saputra and Latipah.

According to Arkoun, this is the beginning of doubts about the authenticity of the Qur'an in the form of the mushaf.²⁹

In the prophetic period, when the Qur'an came down for 23 years, it was still authentic and of sacred value, more trustworthy than when it was codified in writing. When the Qur'an was still an oral language in the time of the Prophet, it was open to all meanings. So when the Qur'an is written, its status has been lowered from *al-Muhyi* (revealed) to be no different from an ordinary book. During this period, Arkoun considered that the Qur'an did not deserve the status of holiness. However, orthodox Muslims have elevated their status to the word of God.³⁰ The consequence of this thinking states that if the words and verses of the Qur'an in the mushaf are not impressed with their authenticity and originality, especially if they come into contact with reason and culture, as happened in the long history of interpretation of the Quran. This is the entrance to Muhammad Arkoun's idea of historicity, that revelation has been running in a period, automatically, the revelation of the Qur'an is in contact with humans, read and understood, so that it begins to enter the relative dimension, namely human thought and history. Therefore, Muslims must have the courage to dismantle (deconstruct) the discourse that has been ingrained for centuries, so that they can clearly distinguish between revelation that is still authentic (the verbal era) and that is relative (the codification era).

The concept of historicity built by Muhammad Arkoun supports the big ideas and ideas about the criticism of Islamic reason that he echoed. The concept of criticism cannot be separated from the insight into historicity. From that idea, according to Arkoun, cultural and ideological climatology can be subject to historicity, and the Qur'an is no exception.³¹ The concept of historicity offered by Arkoun is included in the unthinkable realm of Islamic reason. Actual historicity can also include the historicity of the Quran, Hadith, and Sharia. The Qur'an, as a historical fact, should receive historical criticism. Muslims' inability to criticize the history of the Quran hinders them from enlightening reason.³² This concept of historicity is also sharpened by Arkoun's idea of *episteme*, which he obtained through his mentor, Michael Foucault. In historical phenomena, Foucault argues that each age has a system of thoughts, ideas, and practices that affect how humans perceive, understand, and grasp reality. This is called *episteme*, which means a whole of viewpoints that are consciously and secretly accepted based on all the results of the thought of a particular time.

Language Approach

As a scholar, Muhammad Arkoun was based on language knowledge at the beginning of his study of Islam. As a child, he was already involved in a life that spoke three languages. Similarly, he also studied in the language department when he entered higher education. So it is unsurprising that language became a central point in the thoughts and ideas that Arkoun developed in later life. Arkoun's attention to language is based on his own experiences. Then, it was sharpened by the analysis of the latest linguistic studies that he obtained when conducting studies in Europe from various linguistic sciences, sociology, anthropology, philosophy, and so on.

The themes of Muhammad Arkoun's thought are related to the study of language, for example, the discussion of the relationship between language and history, thought and power, the conflict between spoken language and writing, and the competition between various languages and ways of thinking. This problem, in turn, is closely related to Muhammad Arkoun's obsession with thought, which is the merging of multiple ways of thinking.

²⁹ Muhammad Arkoun, *Rethinking Islam: Common Question, Uncommon Answer*, (Yogyakarta: Pustaka Siswa, 1996).

³⁰ Ahmad Adian, *Logic para liberalis* (Jakarta: Perspektif, 2005).

³¹ Saputra and Latipah. *Historicity Concept of Qur'an Text*

³² Ulya, "Criticism Of Islamic Reason (The Study Of Mohammed Arkoun's Hermeneutic Thought)

Studies that link linguistic problems with human and social issues are common for Muhammad Arkoun, especially when studying in France. There, scientists and structuralists were particularly interested in the new findings. They always associate science with social and cultural phenomena that occur in society. With such changes, there has also been an evolution and change in semiotics in linguistics and language. At first, people go through the fundamental problems of communication and signs, and then the development of language semiotics. The following study examines the signs of the structure and function of language, both the structure of language and the structure of society.³³

The extraordinary environmental effect of exploring language issues has prompted Muhammad Arkoun to try to correlate language issues with religious issues and the social life of the community at large. It is not surprising, then, that his conclusions sometimes go beyond semiotic theory. What is no less critical than his semiotic analysis is the achievement of semiotic consciousness, which leads him to the perspective of liberation in understanding texts, including religious texts. This perspective is intended so that Muslims can get out of the ideological and political confines of negative images that are often distorted, which have unwittingly shackled them for a long time.³⁴

Reading the Hadith from the Hermeneutic Perspective of Muhammad Arkoun

Reinterpretation of the Hadith of Punishment for Thieves

The legal problem of cutting off the hands of thieves is interestingly discussed and analyzed from various points of view, primarily through the lens of hermeneutics. The law of cutting off hands was a tradition of ancient societies, even before Islam came. Meanwhile, the tradition of human life is increasingly developing towards perfection. So, for now, enforcing the law on cutting hands is a problem, especially when dealing with human rights issues that are increasingly showing maturity.

In Islam, the provisions of the law of cutting off hands have been clearly stated in the Qur'an and the Hadith of the Prophet. Al-Quran Surah al-Maidah verse 38, explains:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Men and women who steal have their hands cut off as a retribution for their deeds and as a punishment from Allah. Allah is Mighty, Wise.

In its description, the ruling of cutting off hands can be seen in the following Hadiths of the Prophet:

وَحَدَّثَنِي أَبُو الطَّاهِرِ، وَحَرْمَلَةُ بْنُ يَحْيَى، وَحَدَّثَنَا الْوَلِيدُ بْنُ شُجَاعٍ، وَاللَّفْظُ لِلْوَلِيدِ، وَحَرْمَلَةَ، قَالُوا: حَدَّثَنَا ابْنُ وَهْبٍ، أَخْبَرَنِي يُونُسُ، عَنِ ابْنِ شَهَابٍ، عَنْ عُرْوَةَ، وَعَمْرَةَ، عَنْ عَائِشَةَ، عَنْ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «لَا تُقَطَّعُ يَدُ السَّارِقِ إِلَّا فِي رُبْعِ دِينَارٍ فَصَاعِدًا

*From Aisha, the Messenger of Allah said: It is not permissible to cut off the hand of a thief, unless he has stolen a quarter of a dinar or more.*³⁵

³³ Baedh, *Islamic Humanism: a study of the philosophical thought of Mubammad Arkoun*.

³⁴ Baedh.

³⁵ Imam Muslim bin al Hajjaj, *al-Musnad al-Sabih al-Mukhtasar bi al-Naql al-Adl an al-Adl ila Rasulillah*, vol. 3 (Beirut: Dar al-Ihya al-Turats al-Araby, t.th).

حَدَّثَنَا إِسْمَاعِيلُ، حَدَّثَنِي مَالِكُ بْنُ أَنَسٍ، عَنْ نَافِعٍ، مَوْلَى عَبْدِ اللَّهِ بْنِ عُمَرَ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ «قَطَعَ فِي مِجَنٍّ ثَمَنَهُ ثَلَاثَةُ دَرَاهِمٍ

*Ibn Umar reported that the Prophet once cut off the hand of a shield thief worth three dirhams.*³⁶

Based on the text of the Quran and Hadith, anyone who commits theft, stealing someone else's property secretly from its storage place,³⁷ must be subject to the punishment of having their hands cut off. This is generally true regardless of gender, as in Surah al-Baqarah verse 38. The number of thieves subject to the law of cutting off the hands, as explained by the Hadith. Jurists agree that the law of cutting off hands is applied to stealing goods for a certain number of nisabs. However, they differ in opinion on the amount of nisab, due to differences in *istimbat al-Hukum*.³⁸

Generally, scholars understand the law of cutting in essence, according to the redaction of the text (cutting off the hands). Because no customary reason prevents it from being understood in essence, it turns to the majazi. Scholars view that the law of cutting off hands for thieves has the primary purpose of retribution for deeds. However, some scholars understand majazi. Quraish Shihab said that scholars who understand the law of cutting off hands in majazi interpret cutting off hands as paralyzing abilities, for example, in the form of imprisoning them. However, this concept is not known among Arabs.³⁹ This opinion is rejected by al-Basamy, who interprets the law of cutting off hands with imprisonment as giving pleasure to thieves, because in prison they still feel the joy of eating, drinking, and so on.⁴⁰

Historically, the law of cutting off hands existed before Islam was born. Al-Qurtubi explained that the first person to receive the punishment of cutting off his hands during the period of ignorance was al-Walid bin al-Mughirah. After that, Islam came along and adopted this law of cutting off hands. The first thief to be punished for having his hands cut off during the time of the Prophet was Khiyar bin Adi bin Naufal bin Abdi Manaf. Meanwhile, among the women is Marrah bint Sufyan bin Abdi al-Asad. During the time of Khulafaur Rasyidin, the law of cutting off hands was still applied. Caliph Abu Bakr once punished the cutting off of the hand of a thief from Yemen, for stealing jewelry in the form of a necklace. Meanwhile, Caliph Umar once applied the law of cutting off the hand for Ibn Samurah.⁴¹

In the era of the Uthman Caliph, the law of cutting off hands was still preserved. Imam Malik in the book *Muwatta* narrates:

*From Amrah bint Abd al-Rahman, that there was once a thief who stole fruit during the time of Caliph Uthman bin Affan. Then Caliph Uthman asked for a calculation of the price of the fruit. The fruit is priced at three dirhams, with an exchange rate of twelve dirhams for one dinar. Then Uthman cut off the thief's hand.*⁴²

The long journey of applying the law of cutting hands in Islam left one unique event, which became the concern of many circles. This incident was the policy of Caliph Umar bin Khattab, who did not punish a thief during famine. At that time, Umar found Alamah al-Hatib bin Abi Baltah, who claimed to have stolen. At that time, it was the famine season. Later, Umar ordered the punishment

³⁶ Muhammad bin Ismail al-Bukhari, *Shahih al-Bukhari*, vol. 8 (t.kp: Dar al-Tauq al-Najah, 1422).

³⁷ Sayyid Sabiq, *Fiqh al-Sunnah*, vol. 3 (Beirut: Dar al-Fikr, 1983).

³⁸ Nailul Rahmi, "Punishment Of Cutting Off Hands From The Perspective Of The Qur'an And Hadith," *Ulunnuba Journal* 7, no. 2 (2018): 53–70, <https://doi.org/10.15548/ju.v7i2.254>.

³⁹ Mr. Quraish Shihab, *Tafsir al-Misbab*, vol. 3 (Jakarta: Lentera Hati, 2002).

⁴⁰ Rahmi, *Hand Cutting Punishment viewed from Qur'an and Hadith Perspectives*

⁴¹ Abdullah Muhammad bin Ahmad al-Anshari al-Qurtuby, *al-Jami li Ahkam al-Qur'an* (Beirut: Dar al-Fikr, t.th).

⁴² Malik bin Anas, *al-Muwaththa* (UEA: Muassasah Zayid bin Sultan, 2004).

of cutting off the hands. Strangely, Umar suddenly canceled and said, If I had not known that this theft was due to hunger, I would have cut off his hand. It was narrated from Saïdy that Umar said that the thief's hand was not cut off because of *idzqi* (*nakhlah*/a date), and the situation at that time was *ami sanah* (*majaah*/hunger).⁴³

In addition, during the time of Caliph Ali, there was a third theft conviction. The thief was once punished for having his first and second hands cut off, namely his right hand and left leg. So, Caliph Ali bin Abi Talib said, I am ashamed of Allah, when I cut off his hand, what does he eat with? Then, if I continue to cut off his left leg, how will he walk and work? Ablution, big baths, and prayers with what? So Caliph Ali only sentenced him to prison for theft for the third time.⁴⁴

As is known, the law of cutting off hands is a traditional heritage of the Arab nation, even before Islam was born. This era has succeeded in presenting various forms of punishment, ranging from the death penalty, cutting off limbs such as tongues, hands, and so on. In the Babylonian era, King Hamurabbi had drafted 282 laws, including the death penalty and the cutting off of hands.⁴⁵ The law of cutting off hands for thieves has also been applied in pre-Islamic Arabia. The Quraish once executed the cutting off of the hands of Duwaik Maula Bani Malih ibn Amr from Khuza'ah because he was caught stealing the treasures of the Kaaba.⁴⁶ Meanwhile, Al-Qurtuby thinks that the first person to receive the punishment of cutting off his hands during the period of ignorance was al-Walid bin al-Mughirah. After that, Islam came along and adopted this law of cutting off hands.⁴⁷

Looking at the hermeneutic thought of Muhammad Arkoun, to make an effort to deconstruct the sharia of cutting off the hand, it is first necessary to understand the historical background so that an epistemic picture can be found in each stage of history. So, suppose you look at the phenomenon of pre-Islamic hand-cutting laws that the Hadith later adopted. In that case, it further emphasizes that these religious texts speak in cultural language while using the logic of the cultured society at that time. This means that religious texts descend and respond to society with the artistic approach of society itself, automatically making it historical, not just God's kalam in *the mahdus* that is untouched by humans, instead of being understood by humans.

The interesting thing about the law of cutting hands adopted by the Hadith is that it questions the cultural consistency in the *episteme* of that era, namely, whether it can survive and be accepted by all people in every space and time. This is the problem, considering that the embodiment of the universal value of human life in the form of culture, viewed from its space and time, produces diversity. It has an *episteme* in its history. For example, the logic of the deterrent effect of thieves is certainly different between Arabs and other regions, such as Indonesia. Similarly, the logic of ancient Arabia would be different from modern Arabia. Therefore, imposing the law of cutting off hands applied in every space and time does not make sense, because the Hadith is history, of course, in the course of history, entrusts the existence of a shift in cultural ideas, such is the way of thinking of Muhammad Arkoun.

The cultural episteme of that time showed that the Arabian Peninsula was a barren, arid, and hot region. People lived nomadic lives to obtain natural resources to maintain survival. This geographical condition and social setting require Arab society to compete. War is sometimes a solution, so it is

⁴³ Ibnu Qayyim, *Ilam al-Muwagqin*, vol. 3 (Egypt: Idarah Tilabaah Misriyyah, t.th).

⁴⁴ A. Djazuli, *Fiqh Jinayah: Efforts to Overcome Evil in Islam* (Jakarta: Raja Wali Press, 2000).

⁴⁵ Sahiron Syamsuddin (ed), *Ma'na Maghza's Approach to the Qur'an and Hadith: Answering Social and Religious Problems*, (Yogyakarta: Ladang Kata Institute, 2020).

⁴⁶ Ibn Katsir al-Dimasyqi, *Tafsir Ibn Katsir*, vol. 6 (Bandung: Sinar Baru Algensindo, 2000).

⁴⁷ Qurtuby, *al-Jami li Ahkam al-Qur'an*.

natural for them to seem to like war. In resolving disputes, war is commonplace. So blood, blood avenged, life avenged, is normal in this harsh tradition.⁴⁸

Therefore, based on *the episteme* of that era, it can be stated that the law of cutting off hands is a natural thing, not considered harsh amid this harsh and belligerent culture of Arab society. This kind of psychic atmosphere is very contrasting compared to the psychology of today's society, where the level of difficulty, hunger, violence, and war is far different from what happened in Arabia at that time. So God's intention is more to uphold the universality of human rights, namely the right to be free from theft, than to realize the law of cutting off hands. Thus, recognizing the right to freedom of thought, adjusted to the cultural ideas that develop in *each episteme*.

Contextualizing the meaning of the law of cutting hands in today's *episteme* framework is essential. So, in general, the law of cutting off hands was an effort by the Arabs at that time to maintain human property rights. As is known, the ownership of goods at that time was necessary amid the harsh life of the arid desert area. So, to maintain the basic needs of life, property rights must be maintained. The Arab people at that time, to meet the needs of life, often had to change places and deal with other powerful tribes. So, if they find a polemic between tribes, sometimes they choose the path of war. Reflecting on the Arab socio-historical setting, it can be stated that the law of cutting off the hands of the Arab people at that time was a social measure in maintaining property rights. This is the real main idea, which has the scope of universal guidance. Then, in the current era, the concept of human rights (HAM) is undoubtedly different from human rights in the past. However, the basic principles can be said to be the same, such as the right to life, the right to own, the right to be respected, and so on. However, efforts to realize these rights will certainly differ due to differences in history, social setting, geography, etc.

Although the main idea is to protect human property rights, the law of cutting off hands is contrary to the concept of human rights in the current era. The modern Universal Declaration of Human Rights states that no one shall be subjected to torture, treatment, or punishment that is cruel, inhuman, and degrading to human dignity. On this basis, the law of cutting off hands seems difficult to apply in the current situation. This is because the current situation is different from the Arab situation at that time, where cruelty was everyday in the midst of a harsh culture. Therefore, another alternative is needed that is more humane, not torturous, or revealing something sadistic according to today's society's definition.

Another more humane alternative can be in the form of punishment that can be accepted by contemporary society, such as prison laws, fine laws, or other laws, as long as they can realize the universal ideal of protecting human property rights. Anticipatory efforts must also be made, for example, providing access to jobs and job skills training to establish the community's economy and impact, decreasing theft cases. That is an attempt to contextualize the doctrine of the Hadith of the law of cutting off hands, in the form of maintaining human property rights in a contemporary era, with the peculiarities of today's culture.

Reinterpretation of the Hadith of Marriage Guardianship

Today's gender demands are increasingly being glorified. This is motivated by changes in times and culture. Today, the roles of men and women no longer seem to be distinguishable. Women work and occupy the same important role as men. In religion, the critical gender issue to be discussed is the issue of Islamic marriage law. There are some gender biases, for example, on the issue of guardianship for women. Guardianship only for women seems to place women as less capable than men, so a guardian must handle it; if it is not fulfilled, the marriage becomes invalid. This provision, by some gender activists, is considered very discriminatory against women. In some classical fiqh books, such

⁴⁸ Firas Alkhateeb, *The Lost History of Islam* (Jakarta: Bentang Pustaka, 2016).

gender bias is pronounced. This is natural because the book of marriage jurisprudence was compiled when the *episteme* of society was still dominated by patriarchy.

In the Hadith, the issue of guardianship is clearly explained. The Prophet stated that marriage is with a guardian. In history, it is mentioned:

Muhammad bin Qudamah bin A'yun, Abu Ubaidah al-Haddad, Jonah and Israil, Abi Ishak, Abu Burdah, and Abu Musa narrate that the Prophet said: "There is no (perfect/valid) marriage except with the (presence/permission) of the guardian."⁴⁹

Fiqh scholars, such as Imam al-Shafii, argue that marriage has several pillars. Among them are 1) the existence of a prospective husband, 2) the existence of a prospective wife, 3) the existence of a guardian, 4) the existence of *ijab qabul*, and 5) the existence of two witnesses. This is also in line with the opinion of Imam Malik and Imam Ahmad bin Hambal. However, Imam Hanafi conveyed a different thing regarding the guardian of the marriage. Imam Hanafi thinks that if a person marries without a guardian and her future husband is in an equal position (*sekufu*), then his marriage is valid.⁵⁰

Apart from the opinions of jurisprudence regarding whether or not it is permissible to marry a guardian or without a guardian, reviewing the phenomenon of marriage guardians through the perspective of Muhammad Arkoun's hermeneutic thought is interesting. To fulfill this, the first step is to trace the historical roots of the conception of marriage that prevailed in Greater Arabia, especially before Islam, to the early era of Islam. Historical studies must be carried out to uncover or dismantle (deconstruct) the marriage facts of that time. Thus, *an epistemic image* that was prevalent at that time formed the idea of guardians for marriage.⁵¹

Historically, Smith explained that the marriage of the Arabs before Islam can be divided into two models, namely the *baal* and *sadiqah* model marriages. In a *Baal marriage*, the kinship system becomes the husband's right. The wife lives according to her husband's will and gives birth to a child whose fate depends on her husband. The wife loses the right to divorce her husband. On the contrary, the husband has full authority over his wife, including the *talaq* issue. Meanwhile, in a *sadiqah* marriage, one party has no submissiveness to the other. The wife is the husband's partner, and vice versa.⁵²

The existence of these two types of marriage also influenced kinship in the traditions of the Arab people at that time. Matrilineal kinship is formed from *sadaqah*-type marriage, while patrilineal kinship is formed from *baal*-type marriage. The two types of marriage not only affect different kinship laws but also give rise to fundamental differences in the position of women and the overall structure of social relations.

If in a *baal* marriage, the man appears to be so dominant, on the other hand, in a *saqidah* marriage, the woman is more predominant. Furthermore, Smith explained in more detail that *Sadiqah's* marriage is divided into two types. First is the kind of *beana* marriage, which is the existence of women when they are married to remain with their tribe. The woman is free to reject her husband if he wants. Meanwhile, his children belong to his tribe and live under the protection of his tribe. In this marriage, the husband usually lives in the wife's village. Second, *mutab* marriage is a marriage for a specific period, and is based on the consent of men and women without any intervention from the

⁴⁹ Abu Dawud Sulaiman, *Sunan Abu Dawud*, vol. 2 (Beirut: al-Maktabah al-Ashriyyah, t.th).

⁵⁰ Abd al-Rahman al-Jaziriy, *al-Fiqh ala al-Madzhab al-Arbaah*, vol. 4 (Beirut: Dar al-Kutub al-Ilmiyyah, 1995).

⁵¹ Muhammad Isna Wahyudi, "Rereading the Concept of Guardianship in the Perspective of Muhammad Arkoun," *Musawa: Journal of Gender and Islamic Studies* 5, no. 2 (2007): 1–23.

⁵² W. Robertson Smith, *Kinship and Marriage in Early Arabia, new edition* (Netherlands: Anthropological Publications, 1966).

woman's relatives. In this case, women get gifts from men. After marriage, the woman does not leave her home and tribe, and her children, as a result of this marriage, do not belong to the husband.⁵³

This type of *Baal marriage is culturally formed through the capture of female captives during war, a phenomenon that continued until the time of the Prophet. Marriage through the capture of the captive was followed by marriage through purchase. This means that the suitor buys the woman by paying a dowry to the parents. From this came the terms dowry and sadaq. Dowry is the value that must be paid to the guardian, while sadaq is paid to the future wife.*

In pre-Islamic times, dowry was considered a woman's purchase. Guardians usually spend dowry for women's needs when married, and sometimes it is found that the dowry is used as an additional wealth for the guardian. The emergence of the expression *haniyyan laka al-Nafija*, as a form of congratulatory expression for a father for the birth of a daughter, because it is considered a capital that can be used to increase the father's wealth.⁵⁴ For fathers, dowry is considered compensation for losing the services of daughters.

However, Arab heads of families who belong to the bourgeois social strata sometimes label dowries for their daughters at a reasonably high price. This causes the cost of marriage to be very high. As a result, many men then decide to find shortcuts when they want to channel their sexual desires, by committing adultery with prostitutes. In the time of the Prophet, the high culture of dowry was improved by teaching simplicity, even if it was only in the form of an iron ring. When dowry previously functioned as a purchase price, the Quran changed it by stating that dowry is a voluntary gift without expecting anything in return. Surah al-Nisa verse 4 states that the groom is commanded to give dowry to the bride voluntarily. Because the gift is a form of love, this is what is put forward in marriage, not purchasing merchandise.

In the early Islamic era, payments made by men to propose to their wives were still valid, but they were given only to the future wife, no longer to the guardian or father. Since then, dowry and sadaq can no longer be distinguished; the two terms are used together. However, in reality, women are still considered the property of their husbands, who, because they feel paid, believe that men have the right to be served by women.⁵⁵

Based on the historical study of marriage in pre-Islamic Arab society to the beginning of Islam, it can be stated that there has been a shift in the role of guardians in marriage, along with changes in the status of women in marriage, and changes in social order as a result of the presence of Islam. If observed, the concept of *baal type marriage*, which is identical to the payment of dowry by the prospective husband to the female guardian, basically follows the logic of buying and selling at that time. If it can be equated with buying and selling, the female guardian is the seller, while the suitor is the buyer. Meanwhile, women are the goods sold, and dowry is the selling price. If agreed upon, Ijab Qabul is carried out by buying and selling. Concepts like this, of course, cannot be separated from the Arab conditions at that time, especially Makkah, which experienced rapid development in the trade sector.⁵⁶

The concept of marriage is identical to the logic of buying and selling. When Islam was present, there was a shift in the meaning of dowry. Islam corrects the definition of dowry, originally the purchase price of a woman to be married, to a gift not accompanied by the expectation of receiving any reward, purely because of evidence of affection, as explained in Surah al-Nisa verse 4. Similarly,

⁵³ Smith.

⁵⁴ Asghar Ali Engineer, *Women's Rights in Islam* (Yogyakarta: LSPPA, 1994).

⁵⁵ Reuben Levy, *The Structure of the Islamic Society* (Jakarta: Pustaka Firdaus, 1986).

⁵⁶ W. Montgomery Watt, *Muhammad at Mecca* (Oxford: The Clarendon Press, 1953).

the dowry, which is so expensive, is arranged to be simple so as not to be burdensome for someone who wants to get married, as explained in several Hadiths.⁵⁷

However, the spirit of Islam was not well captured by the *episteme* that developed in the early days of Islam. As a result, the concept of marriage in the early days of Islam was still adjusted to the patriarchal culture that dominated at that time. In the sense that the idea of marriage with a guardian is still preserved, so that women still cannot marry themselves unless they are widowed. However, it should be realized that Islam certainly cannot make radical changes to the concept of marriage in the social order of society that developed at that time, except for gradual changes along with the *epistemic shift* that prevailed at a particular time. Because if this were not the case, the presence of Islam would be difficult to accept for the Arab people at that time.

In the patriarchal *episteme* that views women as still below men, there were many restrictions for women at that time. These restrictions cause women to play less active roles in public spaces, lacking opportunities to learn and seek new experiences. As a result, women become less capable and marginalized. In this context, women still need guardians, especially in marriage, to guarantee and provide protection, at least so as not to become victims of fraud or crimes from irresponsible people.

However, the role of female guardians in temporal marriages at that time seemed to be generalized by the fiqh scholars who came later. The importance of guardianship in marriage is then established as a universally applicable teaching. Thus, women remain objects (as the logic of sales), not as subjects in the marriage contract. In contrast to today, the condition of women has changed drastically; many women have begun to play an active role in the public sphere, many women have gone through education, meaning that women are no longer limited and numbered twice as in the pre-Islamic era. Hence, the *ijtihad* of the fiqh scholars is contrary to the *epistemic* condition now. So, placing women as parties not legally qualified to carry out a marriage contract is no longer relevant.

Therefore, the spirit of Islam in transferring the position of women from the object to the subject of the marriage contract needs to be raised and reread (deconstructed), after being buried by the *episteme* pile of a time that tends to be patriarchal. Based on Muhammad Arkoun's hermeneutic thoughts, the concept of guardianship in marriage can be recommended to be changed. The incompetence of women at that time, which required the existence of a guardian, may be the opposite for now, namely for prospective grooms who do not have the skills like women in the pre-Islamic era and early Islamic era.

A Critical Note

Implementing Muhammad Arkoun's hermeneutic ideas on the Hadith of the punishment of cutting off hands and the guardianship of marriage produces a fresh, innovative, and solutive understanding, even though it seems different from Islamic scholars' general knowledge and practice. This new understanding is an essential breakthrough in reconciling past texts with the dynamics of life in the current era, aiming for religions sourced from past texts to remain relevant to the current situation. Humans will always be close to religion, and religion does not show its selfishness by distancing itself from humans or feeling holy, elite, and heavenly, so it is difficult to be touched by human life today. Religion must always be present, blended, grounded, and become a solution to every community life in various spaces and times, with all its problems. Therefore, a breakthrough is needed to bring the two together.

⁵⁷In the Hadith, the Prophet did not incriminate the matter of dowry. The Prophet stated that if the suitor only has an iron ring, it does not matter; even if he has nothing but memorization of the Quran, it can also be used as a dowry. (H.R. al-Bukhari Index number 5422). Even when Ali bin Abi Talib was about to marry Fatimah, the daughter of the Prophet, Ali had nothing. Then the Prophet asked for Ali's anti-sword armor, and then the Prophet ordered to use the armor as a dowry (H.R al-Nasai Index number 3322).

However, changing the order of Islamic teachings that have been established and inherited from scholars over a long period of history, through offering alternative interpretations with a hermeneutic approach, on the one hand has clear benefits and invites problems that are not light. The impact of the use of hermeneutics certainly opens up space for the presence of various opinions. The birth of diverse interpretations has become unstoppable, causing a flood of information in the community. This, of course, causes confusion for the public over the amount of religious information they must follow, especially for the general public.

Psychologically, conditions like this affect the cognitive dissonance of people,⁵⁸ Especially Muslims. Cognitive dissonance is a psychic condition a person experiences when they conflict with their knowledge. This situation causes discomfort because there is an imbalance between what is desired and what is known.⁵⁹ People find it difficult to distinguish between the religious information they need and the religious information they do not need. Both needed and unneeded information is often presented in the presence of varying diversity.

In addition, the emergence of hermeneutics as a consequence of the development of humanist thought in the Western world has led to a change in the order of life that was initially centered on God (theocentrism) to human-centered (anthropocentrism). This, of course, triggers debate in the community. People believe that this universe is God's creation, and that only God owns the universe and has the right to govern everything. Man should obey God's rules as part of a small universe entity. To be reversed, when God's laws must be subject to the criteria that man produces through his logical reason. Thus, when everything must be based on man with his intellect, while the condition in reality continues to develop, evolving along with the latest changes and findings, what can these truths be guaranteed? The truth will continue to change with the will of man and to the extent that it results from the human point of view. When religion becomes a guide, it is like a roadmap that guides people to their destination. Therefore, it is inconceivable that if the directions of the roadmap change and evolve according to the development of the human *episteme*, it certainly confuses people who seek guidance from it.

This challenge suggests applying hermeneutics to religious texts requires epistemological and methodological prudence. On the one hand, hermeneutics as a method of interpretation, in turn, opens up space for contextual and historical understanding. But on the other hand, this approach can potentially obscure the transcendental authority of the text of revelation, mainly if used without a solid theological framework and an awareness of the limitations of human reason in reaching divine meaning. Therefore, in the context of Islam, it is necessary to develop a hermeneutic model that can maintain a balance between the divine authority of the text and the historical dynamics of human understanding, so as not to get caught up in the relativism of meaning that erodes the sacredness of revelation. In other words, the main challenge in adopting Western hermeneutics of religious texts is how to make them interpretive tools that still respect the normative structure of religion, rather than being a tool to deconstruct the authority of revelation itself.

Conclusion

Muhammad Arkoun is a progressive and critical Algerian-born contemporary Islamic thinker. In studying Islam, Arkoun initiated a critique of Islamic reason. According to Arkoun, Islam has been

⁵⁸ Aliyah Nur'aini Hanum, Dewi Utami, and Widha Anistya Suwarso, "Cognitive Dissonance Of The People Of West Kalimantan Due To The Flood Of Covid-19 Information," *Expression And Perception: Journal Of Communication Sciences* 5, No. 1 (January 30, 2022): 39–57, <https://doi.org/10.33822/jep.v5i1.3454>.

⁵⁹ Richard West and Lynn H Turner, *Introduction to Communication Theory: Analysis and Applications* (Jakarta: Salemba Humanika, 2013).

frozen in reason, so it is difficult for them to advance and lag far behind, especially compared to the Western world's development. Therefore, Arkoun offers a deconstructive strategy by examining Islam through the perspective of history and modern sciences, including linguistics. With these efforts, it is hoped that it will be able to open the horizon of Islamic reasoning, which has been frozen and confined by the establishment of tafsir products that have traditionally been inherited from scholars since classical times. Arkoun's idea can be applied to reading Islamic religious texts, especially Hadith texts, which have modern problems. In reading the Hadith about the law of cutting off hands and marriage guardianship, for example, Arkoun's ideas have proven to be effective in presenting a new perspective that is more relevant to the development of the times, so that it can bridge the problems of the past text with the current situation. In this way, religion will always be relevant to the needs of human beings in all spaces and times. However, the presence of Arkoun's idea is not without problems. At least two main issues were found that became side effects. First, hermeneutics will produce diverse new interpretations, making the potential flood of religious information more open. This condition significantly impacts the community, as they will have difficulty finding the spiritual information they expect. Second, hermeneutics, which was born due to the development of humanist thought in the West, certainly can change the order of life centered initially on God (theocentrism) to human-centered (anthropocentrism) with its ability to reason. This universe is God's creation. All of his creations are subject to the provisions and rules given by God. Therefore, when man is part of God's creation, it is very natural that he must obey God's laws, not the other way around; God's laws are subject to artificial criteria, with the capital of reason that he has. Of course, this is a long debate that will never end. Therefore, applying Muhammad Arkoun's hermeneutics to religious texts requires epistemological and methodological prudence. It is necessary to develop a model of hermeneutics that can maintain a balance between the divine authority of the text and the historical dynamics of human understanding.

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