

## **Distribution of Expiation for Oaths for Non-Muslims**

(Analysis of the Ta'lili Method of Reasoning Regarding the Case of Kaffarat)

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**Abstract:** In Islam, mujtahid does not create law, but rather proves it because the law was created by Allah as ash-Syari'. Humans only understand (fiqh) Divine law through istinbath al-hukm through ijtihad, the result of which is called fiqh. The purpose of ijtihad is to develop Islamic legal thought to answer contemporary issues not expressed in the Qur'an and Hadith, with various methods, including ta'lili. This journal describes the method of finding ta'lili law, focusing on the distribution of the oath of expiation to non-Muslims. Based on the study of ta'lili reasoning, the main conclusions: First, the expiation of the oath (Al-Maidah: 89) is mukhayyar—freeing slaves, providing food/clothing, or fasting for three days if unable. Second, Abu Hanifah ra did not require slaves to believe; he did deeds on the word muthlaq (general), not limited by muqayyad. Third, it is permissible to free ahl al-dzimmah (non-Muslim) slaves or give them food/clothing, because there is no specific text limiting it to believers. Fourth, from maqâshid syariyyah, this is similar to zakat for converts: to persuade the hearts of non-Muslims to Islam.

**Keywords:** *Kaffarat Sumpat, Non-Muslim, Ta'lili Method*

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**Abstrak** Dalam Islam, mujtahid tidak menciptakan hukum, melainkan membuktikan karena hukum diciptakan oleh Allah sebagai asy-Syari'. Manusia hanya memahami (fiqh) hukum Ilahi melalui istinbath al-hukm melalui ijtihad, yang hasilnya disebut fiqh. Tujuan ijtihad adalah mengembangkan pemikiran hukum Islam untuk menjawab isu-isu kontemporer tak terekspresikan dalam Al-Qur'an dan Hadits, dengan berbagai metode, termasuk ta'lili. Jurnal ini menguraikan metode penemuan hukum ta'lili, fokus pada penyaluran sumpah kaffarat kepada non-Muslim. Berdasarkan kajian penalaran ta'lili, kesimpulan utama: Pertama, kaffarat sumpah (Al-Maidah:89) bersifat mukhayyar—memerdekakan budak, beri makanan/pakaian, atau puasa tiga hari jika tak mampu. Kedua, Abu Hanifah ra tak mensyaratkan budak beriman; ia amal pada lafaz muthlaq (umum), tak dibatasi muqayyad. Ketiga, boleh memerdekakan budak ahl al-dzimmah (non-Muslim) atau memberi makanan/pakaian kepada mereka, karena tak ada nash khusus membatasi pada mukmin. Keempat, dari maqâshid syariyyah, ini mirip zakat untuk muallaf: membujuk hati non-Muslim ke Islam.

**Kata kunci:**  
*Kaffarat Sumpah,  
Non-Muslim,  
Metode Ta'lili*

## INTRODUCTION

The basic framework for the development of Islamic law was laid by the Prophet Muhammad (peace be upon him). The scope of the law can be formulated as follows: first, an explanation relating to the meaning and intent of the Qur'an, which was then explained by the Prophet Muhammad through examples and actions. Second, an explanation relating to the expansion of the foundations stated in the Qur'an, which appears to add to the laws stated in the Qur'an itself. And third, an explanation relating to the limitations or reductions of the Qur'an's content.

Based on this construction by the Prophet Muhammad (peace be upon him), Islamic legal theorists began to develop methodological constructs for interpreting verses and hadith in an effort to gain a closer understanding of the

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intent and purpose of sharia and to align the results of this reasoning/understanding with the social realities developing within society.

Mujtahids do not create, but only discover law. This is due to the Islamic belief that law is created by God as the Lawmaker (al-Shari'a). Humans merely understand (fiqh) this divine law. The process of understanding the law is called istinbaht al-hukm through an intellectual activity called ijihad. The legal results obtained through this ijihad activity are called fiqh.<sup>1</sup>

Legal discovery is intended as a process of individualizing and concretizing general regulations by linking them to specific events/cases. Legal discovery differs from broader legal research. Legal discovery is clinical in nature, aiming to answer the question of what the law is in a specific, concrete case. Legal research investigates law as a social phenomenon by studying its relationship to other social phenomena. It also conducts normative investigations of law to conduct an inventory of legal regulations, discover legal principles/doctrines, examine the level of synchronization and systematicity of law, and find the law to resolve a case. Thus, legal discovery is actually only a part of legal research.<sup>2</sup>

Tujuan penemuan hukum haruslah dipahami oleh mujtahid dalam rangka mengembangkan pemikiran hukum dalam Islam secara umum dan menjawab persoalan-persoalan hukum kontemporer yang kasusnya tidak diatur secara eksplisit oleh Al Quran dan Hadis. Oleh karenanya dengan berbagai macam metode yang diterapkan diharapkan akan dapat menemukan hukum-

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<sup>1</sup> Mahfudz Junaedi and Fikih Indonesia Hazairin, "Konstruksi Pemikiran Fikih Indonesia: Pergeseran Dari Teosentrisme Ke Antroposentrisme," *Manarul Qur'an* 18, no. 1 (2018).

<sup>2</sup> Syamsul Anwar, "Teori Konformitas dalam Metode Penemuan Hukum Islam al-Gazzali" dalam M. Amin Abdullah dkk., *Antologi Studi Islam: Teori dan Metodologi* (Yogyakarta: DIP PTA IAIN Sunan Kalijaga, 2000), cet. I, h. 273 - 274.

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hukum dalam memecahkan berbagai persoalan yang muncul, jurnal ini akan mencoba menguraikan metode penemuan hukum ta'lili.<sup>3</sup> Berdasarkan latar belakang yang telah diuraikan di atas, penulis tertarik untuk memaparkan lebih lanjut permasalahan ini, dengan membatasi pada persoalan tentang; Bagaimana terjadinya ijtihad ta'lili (penalaran ta'lili) dalam meng'illah suatu hukum?

### **METHOD**

This research is normative-juridical in nature, using a qualitative analytical approach,<sup>4</sup> focusing on the study of Islamic legal doctrine (usul fiqh and furu' fiqh) related to the method of discovering ta'lili law. The normative approach was chosen because it describes, analyzes, and discovers the law (istinbath al-hukm) from primary sharia sources, particularly in the context of granting expiation oaths to non-Muslims (ahl al-dhimmah). Data Types and Sources Primary data are sourced from sharia texts, namely the Qur'an (Surah al-Maidah: 89), Sahih Hadith (such as the narration of Bukhari and Muslim regarding expiation oaths), and the evidence of the consensus and analogy of the Hanafi school of thought. Secondary data includes classic books on ushul fiqh (al-Muwafaqat by ash-Syatibi, al-Mustasfa by al-Ghazali), Hanafi fuqaha (al-Hidayah by al-Marghinani, Fath al-Qadir Ibn Karyau al-Humam), as well as contemporary literature on maqasid sharia and ta'lili reasoning (works by Yusuf al-Qardhawi, Muhammad Tahir Ibn 'Assyria)

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<sup>3</sup> Ahmad Mukhlisin, "Integrasi Al-Qur'an Dengan Sunnah Dalam Membangun Metode Penemuan Hukum," *ASAS* 11, no. 01 (2019): 142–60, <https://doi.org/https://doi.org/10.24042/asas.v11i01.4648>.

<sup>4</sup> Sidi Ahyar Wiraguna, "Metode Normatif Dan Empiris Dalam Penelitian Hukum: Studi Eksploratif Di Indonesia," *Public Sphere: Jurnal Sosial Politik, Pemerintahan Dan Hukum* 3, no. 3 (2024), <https://doi.org/https://doi.org/10.59818/jps.v3i3.1390>.

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## **RESULTS AND DISCUSSION**

### **Understanding Kaffarat, Oaths, and Non-Muslims**

In al-Qamus al-Fiqhiy by Sa'diy Abu Jayb, the meaning of kafarat is stated as follows: "Something that can cover sinful acts such as giving alms, fasting and so on."<sup>5</sup>

Wahbah Zuhailiy stated that expiation is divided into four parts, namely: expiation for zhihar, expiation for unintentional murder, expiation for intentional daytime intercourse during Ramadan, and expiation for oaths. He further defined expiation as follows: "The word expiation is taken from kafr, which means to cover, namely to cover the sin that occurred or was caused by breaking an oath, so swearing becomes a reason for expiation."<sup>6</sup>

In al-'Arabic language, kafarat is: "Covering something by giving alms or fasting or something similar."<sup>7</sup> In terms of expiation, expiation is a fine that must be paid for violating a sharia provision (which results in sin), with the aim of erasing/covering up the sin so that it no longer has any effect, either in this world or in the hereafter.<sup>8</sup> In the big Indonesian dictionary, expiation is defined as a fine that must be paid for violating Allah SWT's prohibitions or breaking a promise and as an offering to Allah SWT, as a sign of asking for forgiveness

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<sup>5</sup> Sa'diy Abu Jayb, *Al-Qamus al-Fiqhiy Lughatan wa Istihlalan*, cet. 1, (Suriah: Dar al-Fikr, 1998), h. 321.

<sup>6</sup> S Harahab, "Analisis Terhadap Pendapa Imam Ahmad Ibn Hanbal Tentang Kewajiban Kafarat Bagi Hubungan Suami Istri Yang Dilakukan Ketika Haid," 2019, <https://repository.uin-suska.ac.id/21197/>.

<sup>7</sup> Diah Muhammad, "Konsep Kafarat Sumpah Menurut Ibn Hazm," *Studi Analisis Penyaluran Kafarat Sumpah Kepadaahlal-Dzimmah(Non-Muslim)Ditinjau Dari Maqâshid Al-Syari'Ah*, 2011, 1–161.

<sup>8</sup> Abdul Aziz Dahlan (et al.), *Ensiklopedi Hukum Islam*, cet. VI, jilid. 3, (Jakarta: Ichtiar Baru Van Hoeve, 2003), h. 852.

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(for having violated God's law).<sup>9</sup> The meaning of oath (al-aiman) according to language and terms is as follows: "The oath is the side/right side".

The word aiman has several meanings, namely: al-Quwwah, al-Din, al-Millah, al-Barakah, al-'Ahd, and al-Qasam. The definition of an oath according to the term is: "An oath is an expression of a contract intended by the person swearing to perform or refrain from an act."

The definition of an oath according to the jurists is: "An oath also includes ta'liq, namely linking the achievement of one goal with the achievement of another goal."<sup>10</sup>

The Great Dictionary of the Indonesian Language states that there are at least four definitions of an oath: first, a statement made officially as a testament to God or something considered sacred (to confirm its truth and sincerity). Second, a statement accompanied by a determination to do something to confirm its truth or a willingness to suffer something if the statement is not true. Third, a firm promise or vow (to fulfill something). And fourth, a curse, a curse (cursing).<sup>11</sup>

The scholars divide the oath into three types: first, laghwu, second mun'aqadah, and third ghamus. Firstly, al-Laghwu is an oath that is not related (affected) by law. The second al-Mun'aqadah is that someone swears about something (a matter), he will do it in the future or not do it (abandon it), then

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<sup>9</sup> Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, ed. II, cet. 7, (Jakarta: Balai Pustaka, 1996), h. 429.

<sup>10</sup> Sa'diy Abu Jayb, *Al-Qamus al-Fiqhiy Lughatan wa Isthilahan*, h. 394-395.

<sup>11</sup> Mayada Athya, "Kajian QS. Al-Baqoroh Ayat 224 Dalam Tafsir Al-Qurthubi: Memahami Makna Sumpah Yang Terlarang," *Al-Kauniyah: Jurnal Ilmu Alquran Dan Tafsir* 5, no. 1 (2024): 86–96, <https://doi.org/https://doi.org/10.56874/alkauniyah.v5i1.1762>.

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he breaks that oath. The third al-Ghamus is an oath taken by humans deliberately to lie.<sup>12</sup>

There are differences in the explanation of the meaning of ahl al-dzimmah, some scholars call it the kafir dzimmî and others call it ahl al-dzimmah. The term ahl al-dzimmah in al-Qamus al-Fiqhiy is defined as follows: "Ahl al-dzimmah are the people of the book who make agreements<sup>13</sup> and those who follow their teachings. Or al-Dzimmî are people who enter into an agreement and are given protection for their property, honor and religion."<sup>14</sup>

Dzimmî infidels (ahl al-dzimmah) are infidels who make peace with Muslims. They belong to a group of disbelievers in the book even though they do not have complete faith. However, basically they are monotheists who recognize the oneness of God, His absoluteness, infinity and perfection. They are not considered a serious danger or threat to the Islamic faith. Therefore, they can live safely in Islamic territory with rights and obligations determined by Islamic rulers. They are obliged to pay jizyah (tax) to the Islamic government. The dzimmî infidel community is also called the ahl al-dzimmah.<sup>15</sup>

### **Definition of Istinbath (Ta'lili Reasoning)**

Linguistically, the word istinbath is derived from the words nabathayanbuthu-nabthan, meaning the first water that emerges/appears to someone

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<sup>12</sup> Muhammad 'Ali al-Shabuni, *Rawa'i al-Bayan Tafsir al-Ayat al-Ahkam min al-Qur'an*, juz. 2, cet. 3, (Damsyiq: Maktabah al-Ghazali, 1980), h. 563.

<sup>13</sup> Zulhamdi Zulhamdi, "Aspek Hukum Perjanjian dalam Aktivitas Bisnis," *Al-Hiwalah: Journal Syariah Economic Law* 1, no. 1 (2022): 75–84, <https://doi.org/https://doi.org/10.47766/alhiwalah.v1i1.892>.

<sup>14</sup> Sa'diy Abu Jayb, *Al-Qamus al-Fiqhiy Lughatan wa Istihlathan*, h. 138.

<sup>15</sup> Umar Faruq Tohir, "Diskursus Tentang Hak Asasi Minoritas Dzimmi Di Tengah Mayoritas Muslim," *Akademika: Jurnal Pemikiran Islam* 16, no. 2 (2011): 215–32, <https://doi.org/https://doi.org/10.32332/akademika.v16i2>.

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digging a well. It is said that istinbatha al-faqih means bringing out hidden laws (fiqh) through understanding and ijtihad.

Al-Jurjani gives the meaning of istinbath according to the language by releasing water from a spring (in the ground).<sup>16</sup> Therefore, the word istinbath is generally used in the sense of "al-istikhrāj" (extracting). However, in terms of terminology, scholars have defined istinbath with several similar emphases. For example, al-Jurjani defines istinbath as extracting legal content from texts (the Qur'an and Sunnah) with the utmost intellect and ability.<sup>17</sup>

The word istinbath is found in the Qur'an in the form of *fi'l al-mudhari'*, namely *yastanbithunah*<sup>18</sup> which is found in Surah An-Nisa' verse 83, which means: "And when news comes to them about security or fear, they then broadcast it. And if they hand it over to the Rasul and ulil Amri among them, surely those who want to know the truth (will be able to) find out from them (Rasul and ulil Amri). If it were not for Allah's grace and mercy to you, of course you follow the devil, except for a small part (among you)."

Broadly speaking, there are two types of tools or methods developed by Islamic legal theorists in the context of their istinbath<sup>19</sup>. For the first type of method, Islamic legal theorists formulated three methods of legal discovery, namely (1) the linguistic interpretation method (*ath-thuruq al-bayaniyah*); (2) the causation method (*istinbath ta'lili*); and (3) the *istinbath istishlahi* method. These three methods are also known as the *istinbath ushuli* (principal) method.

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<sup>16</sup> Asy-Syarif Ali bin Muhammad Jurjani, *Kitab at-Ta'rifat* (Beirut : Dar al-Kutub al-'Ilmiyyah, 1988), h. 22.

<sup>17</sup> Fathurrahman Azhari, "Pemikiran Ulama Tentang Illat Hukum (Suatu Kajian Ushul Fiqh)," *Jurnal Darussalam* 15, no. 2 (2014): 35–52.

<sup>18</sup> Azhari.

<sup>19</sup> S H Karimatul Ummah, "Poligami Bagi Pegawai Negeri Sipil Dalam Perspektif Hukum Islam," 2012, <https://dspace.uii.ac.id/handle/123456789/35568>.



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It is called this because the form of this method precedes furu' or fiqh which is the product of the application of the istinbath method.

The second method can be called the istinbath qawa'id kulliyah method. This method is a set of rules developed based on inductive research into various fiqh cases, which are then justified by kulliyah texts. The function of these rules is to restore various fiqh problems and resolve new cases of a branch nature.<sup>20</sup>

Meanwhile, the causal reasoning method (at-ta'lil) is the most important part of discovering Islamic law because it attempts to discover law for cases for which there is no legal text. Here, the scope of existing legal texts is expanded to include cases for which there is no legal text (nasnya).

What is meant by ijtihad ta'lili is drawing legal conclusions from texts by considering the 'illat al-hukm (basic cause/reason) for establishing a law. This is then used as comparative material (miqyas) for legal events outside the text in question by means of analogy.

To carry out istinbath of law by qiyasi (ta'lili), according to the majority of Islamic legal theorists, several pillars must be fulfilled, namely:<sup>21</sup>

- 1) al-ashl, the original case, whose provisions have been established in the text, and analogy seeks to extend those provisions to new cases;
- 2) al-far', the new case, the target of the application of the original provisions;
- 3) al-'illat, the cause, which is characteristic of the original case and is found to be the same as the new case;
- 4) al-hukm (the provisions) of the original case extended to new cases.

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<sup>20</sup> Karimatul Ummah.

<sup>21</sup> Mahsun Fuad, "Ijtihad Ta'lili Sebagai Metode Penemuan Hukum Islam (Telaah Dan Perbandingannya Dengan Analogi Hukum Positif)," *Jurnal Hermeneia* Vol-3-No-1-2004, 2004, <http://digilib.uin-suka.ac.id/id/eprint/8429>.

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To perform istinbath of law through analogy, the legal basis is essential and must be considered. Therefore, some scholars of ushul, such as al-Bazdawi, argue that the only pillar of qiyas is the basis. Therefore, this method is also known as the istinbath isti'lali method, namely, a method of drawing legal conclusions based on the legal basis. For example, the prohibition on burning or destroying the property of orphans is analogous to the prohibition on consuming their property unlawfully.

*'Illat* A just cause is a clear, measurable, and relevant condition or characteristic that can be strongly suspected as the reason for Allah SWT's determination of a provision. An example is the permissibility of shortening prayers for travelers. Travelers are considered a just cause because their condition is clear, namely not residing, their journey can be measured in terms of distance or time, and there is a relevance between travel and shortening prayers, namely convenience.

Difficulty cannot be considered an excuse (in the case of shortening prayers), because difficulty is something abstract, difficult to measure, as the level of difficulty is very relative. If a situation is not known to be relevant to a provision, then it cannot be considered an excuse, but a cause. For example, the wrongness of the obligation of the sun to perform the Dhuhr prayer. The slipping of the sun is considered a cause because its relevance cannot be known. The use of the basis of 'illat as the basis for ijtiḥad is accepted by almost all ushul scholars.

### **General Concept of Kaffarat**

In the book *Al-Mausu'ah al-Fiqhiyah*, published by the Kuwaiti Ministry of Endowments and Islamic Development, it is stated that expiation is generally divided into five types: expiation for oaths, expiation for murder,

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expiation for sexual intercourse, expiation for Hajj, and expiation for zhihâr. Meanwhile, in fiqh books, the discussion of expiation is not covered in a specific chapter, but rather in separate chapters.<sup>22</sup>

### **1. Expiation for Zhihar**

First, the verse that explains kafarat zhihâr is the Qur'an surah al-Mujadilah verses 3-4 which means: *"3. Those who zhihar their wives, then they want to take back what they said, So (it is obligatory on them) to free a slave before the two husbands and wives mix. That is what you have been taught, and Allah knows best what you do. 4. Whoever does not get (a slave), then (it is obligatory on him) fast for two consecutive months before the two are mixed. So whoever does not have authority (it is obligatory upon him) feeds sixty poor people. Thus, you may believe in Allah and His Messenger, and these are the laws of Allah, and for the disbelievers there is a very painful punishment."*

The verse above is the legal basis for paying kafarat for a person who menzhihar<sup>23</sup> his wife, so his obligation is to pay kafarat zhihar by freeing the slave, if he is not able, then fasting for two months in a row, and if he is also unable, giving food to sixty poor people.

### **2. Kaffarat Accidental Murder**

Second, the verse that explains the kafarat of accidental murder, namely the Qur'an surah al-Nisa' verse 92 which means: *"And it is not fitting for a believer to kill a believer (another), except because he is guilty (accidentally), and whoever kills a believer because he is guilty (let him) free a faithful slave and pay the death that is handed over to his (killed person's) family, unless they*

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<sup>22</sup> Diah Muhammad, "Konsep Kafarat Sumpah Menurut Ibn Hazm."

<sup>23</sup> *Zhihar* adalah seorang suami yang menyamakan istrinya dengan ibunya, haram berhubungan dengan istrinya tersebut sampai ia membayar kafarat atas ucapannya. Lihat, Abdul Aziz Dahlan (et al), *Ensiklopedi Hukum...*, jilid 5,....., h. 856.

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(the murdered person's family) give alms. If he (the murdered person) is from the people (unbelievers) who have an agreement (peace) between them and you, then (let the murderer) pay the death given to his (killed) family and free his believing servants. Whoever does not get it, then let him (the murderer) fast for two consecutive months to accept repentance from Allah and Allah is All-Knowing, All-Wise."

Dalam ayat tersebut di atas, menjelaskan bahwa pembunuhan yang dilakukan dengan tanpa sengaja, baik yang terbunuh itu orang mukmin maupun bukan mukmin, maka kepada si pembunuh diwajibkan memerdekakan seorang budak yang beriman sebagai kafarat dan jika tidak sanggup maka kafaratnya berpuasa selama dua bulan secara berturut-turut.<sup>24</sup> Dalam konteks ayat di atas, nampak jelas bahwa syari'at Islam mensejajarkan perlakuan terhadap pelaku pembunuhan yang dilakukan tanpa sengaja walaupun yang menjadi korban itu adalah orang yang bukan beragama Islam (non-muslim).<sup>25</sup>

### **3. Expiation for Sexual Intercourse (Jima')**

Third, the legal basis for expiation for having intimate relations (jima') during the day in the month of Ramadan, namely the hadith of the Prophet Muhammad SAW. narrated by Imam Bukhari: which means: "Abu al-Yaman narrated, Syu'aib reported from al-Zuhriy, he said, I was told by Humaid bin Abd al-Rahman, Abu Hurairah r.a. said, when we were sitting with Rasul Saw. suddenly a man came to Rasul Saw. Then the man said: woe to me, Rasu, Rasul Saw. asked, what harmed you? The man answered, I telah bersenggama dengan istri saya pada siang hari Ramadhan, Rasul Saw. bertanya: sanggupkah

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<sup>24</sup> Zulhamdi Zulhamdi, "Konsep Pertanggungjawaban Pidana Dalam Fiqh Jinayah," *Syarah: Jurnal Hukum Islam Dan Ekonomi* 9, no. 1 (2020): 91–114, <https://ejurnal.iainlhokseumawe.ac.id/index.php/syarah/article/view/794>.

<sup>25</sup> Rokhmadi Rokhmadi, "Hukuman Pembunuhan Dalam Hukum Pidana Islam Di Era Modern," *At-Taqaddum*, 2016, 150–79, <https://doi.org/https://doi.org/10.21580/at.v8i2.1169>.

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engkau memerdekakan budak? Pria itu menjawab, tidak ya Rasul Saw., Rasul Saw. bertanya: sanggupkah engkau berpuasa dua bulan berturut-turut? Pria itu menjawab, tidak. Rasul Saw. bertanya pula: adakah engkau mempunyai makanan untuk memberi makanan enam puluh orang miskin? Pria itu menjawab, tidak. Kemudian pria itu duduk, tiba-tiba datang seorang pria memberikan sebakul besar kurma kepada Rasul Saw. Rasul Saw. berkata: give these dates in charity, the man said: To whom do I give these dates? Rasul Saw. answered: to people who were poorer than us, the man also said, there is no resident of this village who is more poor than me, O Rasul Saw., Rasul Saw. laughed until his fangs showed and said, give the dates to your family (HR. Bukhari)".<sup>26</sup>

The above hadith is the basis for kafarat law for people who have intimate relations during the day in the month of Ramadan. The information contained in the hadith is very clear that the order of paying kafarat is to free the slave. If you are unable to free the slave, you are obliged to fast for two months in a row, and if you are unable to fast for two months in a row, you are obliged to give food to sixty poor people.<sup>27</sup>

### **Expiation of Oath**

The legal basis for expiating an oath which is the subject of study in this journal is three, namely the Qur'an, the hadith, and the consensus of scholars.<sup>28</sup> as explained by Wahbah al-Zuhailiy. Allah SWT. In the Qur'an, surah al-Maidah verse 89 says, which means "Allah does not punish you

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<sup>26</sup> Al-Bukhari, *Al-Jami' al-Shahih*, juz. 3, cet. 1, (t.t: Dar Thauq al-Najah, 1422), h. 32.

<sup>27</sup> Siti Marâ and Fashihuddin Arafat, "Analisis Hukum Islam Terhadap Hubungan Badan Suami Istri Dalam Masa Kafarat Zhihar," *MIYAH: Jurnal Studi Islam* 17, no. 01 (2021): 79–92, <https://doi.org/https://doi.org/10.33754/miyah.v17i01.353>.

<sup>28</sup> Wahbah al-Zuhailiy, *Al-fiqh al-Islamiy wa Adillatuh.....*, h. 2573.

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because of your oaths which you did not mean (to swear), but He punishes you because of the oaths which you deliberately made. So the kaffarat (breaking) of that oath, is feeding ten poor people, namely from the food you usually give to your family, or giving clothes to them or freeing a slave. Whoever is unable to do this, then the kaffarat is fasting during these three days are the kaffarat of your vows if you swear (and you break your vows. Thus Allah explains to you His laws so that you may be grateful (to Him))."

The verse above explains that the obligation to pay expiation for an oath occurs due to a person's violation of an oath, such as feeding ten poor people, clothing them, or freeing a slave. The verse's explanation clearly states that the purpose of offering expiation for an oath is not related to the status of the recipient. Based on the verse's explicit content, some scholars conclude that expiation for an oath can be granted to non-Muslims.<sup>29</sup>

The second legal basis for the obligation to pay kafarat oaths is the hadith of the Prophet Muhammad SAW. which was narrated by Bukhari from Abd al-Rahman bin Samurah. which means: Abu Ma'mar, Abd al-Warits, and Yunus narrated from al-Hasan he said "Abd alRahman bin Samurah told me, he said: Rasul Saw. Said to me "O Abd al-Rahman bin Samurah!... when you make an oath, then if you see goodness other than it, then take that goodness, and pay the bad side of that oath.<sup>30</sup>

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<sup>29</sup> Theguh Saumantri, "Nilai-Nilai Moderasi Islam Perspektif Wahbah Az-Zuhaili Dalam Tafsir Al-Munir," *Diya Al-Afkar: Jurnal Studi Al-Qur'an Dan Al-Hadis* 10, no. 1 (2022): 135–54.

<sup>30</sup> Al-bukhari, *Al-Jami' al-Shahih*, Juz. 9,...., h. 63, hadits ini juga dikutip oleh Wahbah al-Zuhailiy dalam bukunya *al-Fiqh al-Islamiy wa Adillatuh* dalam fasal ketiga tentang kafarat. Hadis ini juga diriwayatkan oleh muslim dengan redaksi yang berbeda, lihat hadis no.1651, Al-Imam Abi al-Husain Muslim bin al-Hajjaj al-Qusyairi al-Nisaburi, *Shahih Muslim*, (Kairo: Dar al-Hadits, 1991), h. 1273. Juga terdapat dalam Al-Imam al-Hafizh Abdur Rahman Ahmad bin Syu'aib bin Ali al-Khurasani al-Nasa'i, *Sunan al-Nasa'i*, juz. 7, (Beirut: Dar al-Kutub al-Ilmiah, 1995), h. 9. Hadis ini dinyatakan shahih oleh Muhammad Nashir al -Din al-

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The hadith above only explains the obligation to pay the expiation for an oath, it does not explain the target for paying the expiation for an oath as mentioned in the Qur'an, Surah Al-Maidah, verse 89 above..<sup>31</sup>

### **Ulama's Opinion Regarding the Distribution of Kaffarat Oaths to Ahl Al-Dzimmah**

#### **1. Kaffarat Oath in the Review of Tafsir Scholars**

Most tafsir scholars hold the same view in interpreting verse 89 of Surah al-Maidah, in this case the word raqabah is associated with the term mu'minah as in verse 92 of Surah al-Nisa' which provides provisions regarding the kafarat of accidental murder. This is in line with the jumhur fuqaha. M. Quraish Shihab, for example, said that freeing slaves was a kafarat of swearing that slaves were Muslim and able to work.<sup>32</sup>

Ibn al-'Arabi in his commentary, quoting Abu Hanifah's opinion, stated that it is permissible to fulfill the kafarat oath in the form of food and clothing to poor dzimmî. Abu Hanifah argued that the word poor contained in the verse is a general pronunciation so that it includes all poor people. However, Ibn al-Arabi is of the opinion that this lafaz is takhshish, for two reasons, namely: first, infidels (dzimmî) do not have the right to receive kafarat, the same as harbiy infidels, secondly, the obligation to give wealth only to the poor, not to infidels, the basis is on the issue of zakat. They agreed

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Bani dalam kitab Sunan al-Tirmidzî. Lihat Al-Tirmidzî, *Sunan al-Tirmidzî*, cet. 1, (Riyadh: Maktabah al-Mu'arif, t.th), 361 (hadis no. 1529).

<sup>31</sup> Tabsyir Masykar, "Perspektif Imam Al-Qurthubi Dalam Penafsiran Surat Al-Maidah Ayat 89 Tentang Kifarat Yamin," *Basha'ir: Jurnal Studi Al-Qur'an Dan Tafsir*, 2021, 41–48.

<sup>32</sup> M. Quraish Shihab, *Tafsir Al-Mishbah: Pesan, Kesan dan Keserasian Al-Qur'an*, vol. 3, cet. 9, (Jakarta: Lentera Hati, 2007), h. 190.

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that it was not permissible to give zakat to apostates. Every proposition that is specific to apostates is also a proposition about dzimmî.<sup>33</sup>

Ahmad Musthafa al-Maraghi, in interpreting the word raqabah relies on Abu Hanifah's opinion, saying that "the slave is not required to be a mu'minah", so it is permissible to free slaves who are infidels. As for Imam al-Syafi'i, Malik and Ahmad, it is required that in freeing slaves they must be believers.<sup>34</sup> In line with al-Maraghi, al-Zamakhshari also supports Imam al-Syafi'i's opinion which requires freed slaves to be believers, because it refers to the evil of murder. Meanwhile, Abu Hanifah and his companions allowed freeing slaves who were infidels (non-Muslims) in all kafarats except in the kafarat of murder.<sup>35</sup>

Of the three commentators above, both Ibn al-'Arabi, al-Zamakhshari and al-Maraghi, stated that fulfilling an oath by freeing a slave is only permissible if the slave is a believer. Both statements rely on the opinion of the fuqaha. However, Ibn al-'Arabi added to his argument by strengthening the opinion of the fuqaha, namely that it is not permissible to pay the kafarat of an oath by freeing slaves who do not believe.

The debate about raqabah as the kafarat of an oath, is it required to be mu'minah as in the kafarat of murder or not? Rasyid Rida commented as follows: Jumhur is of the opinion that it requires that slaves who are freed as kafarat oaths must be mu'minah, for the reason that they use the word muthlaq

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<sup>33</sup> Ibn al-Arabi, *Ahkam al-Qur'an*, Juz 2 dan 3, Cet 1, Beirut: Dar al-Kutub al-Ilmiah, 1988, h. 160.

<sup>34</sup> Ahmad Musthafa al-Maraghiy, *Tafsir al-Maraghiy*, juz. 7, cet. 3, (Beirut: Dar al-Fikr, 1974), h. 16.

<sup>35</sup> Al-Zamakhshari, *Al-Kasyaf*, juz. 1, cet. 1, (Beirut: Dar al-Kutub al-Ilmiyah, 1995), h. 659.



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(raqabah) for muqayyad as in the kafarat of murder (Surat al-Nisa': 92) which requires that freed slaves must be slaves who are mu'minah.<sup>36</sup>

Ibn Kathir in his book states that Abu Hanifah, by adhering to ithlaq lafaz, allows freeing slaves who are infidels as kafarat oaths, the same as freeing slaves who are mu'minah, while Imam al-Syafi'i obliges slaves who believe by linking them to the kafarat of murder..<sup>37</sup>

Rasyid Ridha added that freeing slaves who are believers is an act of worship to get closer to Allah SWT, so the kafarat oath is also required from worshipers (believers) as with zakat assets. However, Islam is a religion that brings mercy to all nature. Giving alms in Islam even to disbelievers (dzimmî) is permissible. But there must be a distinction between absolute charity and worship that is associated with certain limits. So the benefit of people committing sins is expected to help liberate people who obey Allah SWT.<sup>38</sup>

It can be concluded that what was conveyed by Rasyid Rida is no different from what was stated by Ibn al-'Arabi and al-Maraghi above, namely the obligation to pay the kafarat of the oath by freeing believing slaves, because the lafaz raqabah as the lafaz muthlaq is prohibited from the lafaz muqayyad. However, Rasyid Rida allows giving alms to infidels (dzimmî), but only in general alms.

## **2. Distribution of Kafarat Oaths to Ahl al-Dzimmah in the Fuqaha Review**

Many scholars in the Islamic jurisprudence (jurisprudence) have studied expiation for oaths to the ahl al-dzimmah (non-Muslims), particularly in the

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<sup>36</sup> Muhammad Rasyid Ridha, *Tafsir Al-Manar*, juz. 7, cet. 1, (Beirut: Dar al-Fikr, 2007), h. 29.

<sup>37</sup> Ibn Katsir, *Tafsir al-Qur'an al-'Azim*, juz. 2, (Mesir: Maktabah Misr, t.th.), 92.

<sup>38</sup> Muhammad Rasyid..., *Tafsir Al-Manar*,..., h. 29.

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field of Islamic jurisprudence (fiqh). In this section, the author will outline the opinions of these scholars regarding the distribution of expiation for oaths to the ahl al-dzimmah (non-Muslims). The studies conducted by these scholars differ from those of commentators, who are influenced by the thinking of these scholars. The following section will present the thoughts of these scholars in explaining expiation for oaths in more detail, using the methodology of Islamic jurisprudence as the basis for determining the law. In the Qur'an, Surah al-Maidah, verse 89, Allah SWT explains that anyone who violates an oath is obliged to pay expiation for the violation of their oath. The Qur'an, Surah al-Maidah, verse 89, explains that fulfilling expiation for oaths must be done in a choice of ways:<sup>39</sup>

- a. Giving food
- b. Give clothes
- c. Freeing slaves

If you are unable to fulfill all three, you must fast for three days. You are not allowed to choose kafarat in the form of fasting unless you are unable to carry out the kafarat of feeding, clothing and freeing slaves. This requirement has become the consensus of fiqh experts.<sup>40</sup>

Of the four expiation options for oaths mentioned above, the author observes that the majority of scholars do not permit the distribution of the expiation for an oath in the form of a kiswah and food to non-Muslims, arguing that expiation is an obligatory charity. This contrasts with vows, voluntary

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<sup>39</sup> Diah Muhammad, "Konsep Kafarat Sumpah Menurut Ibn Hazm."

<sup>40</sup> Lukman Nul Hakim and Umi Nur Kholifah, "Puasa Dalam Al-Quran (Kajian Teks Dan Konteks Serta Implikasi Etikanya)," *Jurnal Kajian Islam Interdisipliner* 8, no. 2 (2023): 161–80.

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giving, and the practice of offering alms. Abu Thawr and ash-Hab al-Ra'iy permitted the distribution of the kiswah to dzimmi.

Regarding the expiation for an oath by freeing a slave, scholars generally do not permit the freeing of a non-Muslim slave, but Abu Hanifah permitted the freeing of a non-Muslim slave and also permitted the provision of food to him. Regarding the final option, debate arose over whether consecutive fasts should be observed. The majority of scholars agreed that fasts may be observed non-consecutive.

### **3. Analysis of Ta'lili Reasoning on the Distribution of Expiation for Oaths**

The concept of ta'lili reasoning regarding the distribution of kafarat oaths to non-Muslims (ahl al-dzimmah) in terms of maqashid sharia is interesting to study in more depth, because it contains elements of Islamic da'wah (hifz al-din). In the previous chapter, several opinions of ulama were expressed regarding the distribution of oath kafarat to ahl al-dzimmah, the majority of ulama do not allow its distribution to ahl al-dzimmah. As for Abu Hanifah r.a. allows freeing ahl al-dzimmah (non-Muslim) slaves and also allows giving them food, while Abu Tsaur and ashhab al-Ra'y allow giving kiswah to dzimmiy.<sup>41</sup>

Because it is based on the evidence of the Qur'an, Surah Al-Maidah, verse 89, it can be understood that a person who breaks an oath or a person who swears with the intention of breaking it later, is obliged to pay the expiation for the oath by choosing one of the following: freeing a slave, giving clothing or giving food to ten poor people, if unable to carry out one of the above, then it is obligatory to fast for three days. In the statement of the verse

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<sup>41</sup> Diah Muhammad, "Konsep Kafarat Sumpah Menurut Ibn Hazm."

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above, it is seen that the obligation to pay the expiation for the oath is mukhayyar.<sup>42</sup>

From the text above, it can be understood that it is not permissible to give food to only one poor person or less than ten people repeatedly, this violates the command of the verse, because Allah SWT requires giving food to ten poor people. As for giving clothes (kiswah), it is permissible from something categorized as clothing, namely robes, trousers, headscarves, peci, turbans and others, because the word (kiswah) in the verse is general, not specific.

The steps of the ta'lili method of reasoning in the case of distributing expiation for oaths for non-Muslims in this journal are by using legal istinbath through qiyasi (ta'lili). However, to find the problem point in the case of distributing expiation for oaths for non-Muslims using the ta'lili qiyasi method of reasoning, the following is a description of the solution through the pillars of qiyas, namely:<sup>43</sup>

- 1) *al-ashl, the original case, the provisions of which have been established in the text, and analogy seeks to extend those provisions to new cases;*

The original case in the issue of expiation of oath here is about the asbabun nuzul surah al-Maidah verse 89 which was revealed regarding Abu Bakr Siddiq who swore not to give any more shopping to Misthah bin Usamah (a poor man whose life was financed by Abu Bakr Siddiq) because he slandered Aisha. This story has been the background to the revelation of verses 224-225 of surah al-Baqarah. While verse 89 was revealed as a perfection and

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<sup>42</sup> Masykar, "Perspektif Imam Al-Qurthubi Dalam Penafsiran Surat Al-Maidah Ayat 89 Tentang Kifarat Yamin."

<sup>43</sup> Bayu Teja Sukmana, Lomba Sultan, and Kurniati Kurniati, "Penyelesaian Hukum Islam Dengan Corak Pendekatan Bayani, Ta'Lili Dan Istislahi," *Al-Sulthaniyah* 11, no. 2 (2022): 1–20, <https://doi.org/https://doi.org/10.37567/al-sulthaniyah.v11i2.1620>.

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as a way out of the expiation (expiation) of the oath. In line with this problem, Umar bin Khatab once gave alms or donations to a Jew to help with his living needs, the property was taken from the state treasury (baitul mal). Thus, the meaning of the two surahs will be explained below, namely;<sup>44</sup>

Meaning: "Do not make (the name of) Allah in your oath an obstacle to doing good deeds, being pious and holding islah among people, and Allah is All-Hearing, All-Knowing. Allah does not punish you because of your oath which was not intended (to swear), but Allah punishes you because (your oath) was deliberate (to swear) by your heart, and Allah is Forgiving, Most Forgiving." (Q.S Al-Baqarah verse; 224, 225)

Meaning: "Allah does not punish you because of your unintentional oaths (to swear), but He punishes you because of your deliberate oaths. So the kaffarat (breaking) of that oath, is feeding ten poor people, namely from the food you usually give to your family, or clothing them or freeing a slave, whoever is not able to do that. So the kaffarat is fasting for three days, which is the kaffarat of your oaths if you swear. (and you break it) and keep your oath. Thus Allah explains to you His laws so that you may be thankful (to Him)." (Q.S Al-Baqarah verse; 89

2) *al-far'*, new case, target of application of the original provisions;

What is new here is the provision of expiation for oaths in the form of clothing and food to poor non-Muslims (ahl al-dzimmah), especially in Indonesia. As stipulated in the original case based on the text of the Qur'an, Surah al-Maidah verse 89, in its asbabun nuzul, it explains that the Caliph Abu Bakr Siddiq once provided shopping to Misthah bin Usamah (a poor man whose life was financed by Abu Bakr). A similar thing was also done by the

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<sup>44</sup> Masykar, "Perspektif Imam Al-Qurthubi Dalam Penafsiran Surat Al-Maidah Ayat 89 Tentang Kifarat Yamin."

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Caliph Umar bin Khatab, namely giving alms or donations to a poor Jewish man to help with his living needs, the assets were taken from the state treasury.

3) *al-'illat*, the cause, which is the nature of the original case and is found to be the same as the new case;

If we look at the conditions of the 'illat contained in the reasoning pattern of the ta'lili method, in the verse of the oath expiation there is also a similarity of 'illat regarding the purpose of establishing the law of distributing oath expiation (in terms of food and clothing) to poor Muslims and poor non-Muslims (ahl al-dzimmah) from a social perspective, namely that they are both in need. So, what becomes the legal 'illat here is that they are both in need, because the distribution of oath expiation (food and clothing) to non-Muslims (ahl al-dzimmah) in this verse is the same as giving zakat to converts to the eight asnaf regarding those entitled to receive zakat.

4) *al-hukm (provisions) of the original case which are extended to new cases.*

Regarding the poor who receive the expiation of oath, is it only permissible to distribute it to poor Muslims? Giving clothes (kiswah) and food to non-Muslims (ahl al-dzimmah) is permissible on the condition that the ahl al-dzimmah are poor, because in the matter of distributing the expiation of oath there is no specific text that recommends giving it to believers. This is different from zakat, which has a special text (hadith) to give it to poor Muslims, which is taken from the wealth of Muslims. Because the word masaakiin contained in the verse about the expiation of oath above in the form of a plural is also general.

Knowledge of the Maqasid al-Shari'ah, as emphasized by Abdul Wahab Khallaf, is crucial as a tool for understanding the wording of the Qur'an and Sunnah. In addition to resolving conflicting arguments, it is also crucial for

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establishing laws for cases not covered by the Qur'an and Sunnah through linguistic (lughawi) studies. As explained, the primary purpose of God's enactment of Islamic law is for the benefit of humanity and to prevent ambiguity, both in this world and the hereafter. S<sup>45</sup>

Viewed from the maqâshid al-syarî'ah, this protection includes hifzh al-din, hifzh al-nafs, hifzh al-a'radh and hifzh al-mal. The aspect of hifzh al-din (maintaining religion) in the protection of ahl al-dhimmah is seen from the saying of the Prophet Muhammad SAW. that ahl al-dhimmah are citizens who are under the protection of Allah and His Messenger, a country that oppresses ahl al-dhimmah means a country that is hostile to Islam. Ahl al-dhimmah are considered as people who have begun to open their hearts to accept the existence of Islam or at least they are not hostile to Islam, even though they have not received Allah's guidance. Special treatment for them is expected to soften their hearts to convert to Islam, although in history some ahl al-dhimmah did not convert to Islam. The perspective of da'wah which is one part of hifzh al-din is very clearly visible in this.

Viewed from the objective (maqâshid) of giving zakat to converts and giving expiation of oaths to the ahl al-dzimmah are almost the same, namely to persuade their hearts to Islam, or from a da'wah perspective. From a da'wah approach, the Prophet's giving of food to the Jewish woman who hated him can be understood as demonstrating the nobility of Islamic morals.

Furthermore, al-Najjar, Jamaluddin 'Athiyah, and Yusuf Qardhawi affirmed the maqâshid al-syarî'ah (social objectives) (hifzh al-mujtama' or hifzh al-Insan) regardless of whether they are Muslims or non-Muslims. Muslims, as the bearers of the function of khalifatullah and a mercy for all

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<sup>45</sup> Abd al-Wahhab al-Khallaf, *Ilm Ushul Fiqh...*, h. 311.

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creation, can do good to non-Muslims by considering their benefit. Within the framework of *hifzh al-mujtama'*, it is permissible to recognize each other, help each other, and even guarantee social welfare (*takaful al-ijtima'i*).<sup>46</sup>

## CONCLUSION

Based on the study of the *ta'lili* reasoning method regarding the distribution of *kaffarat sumpat* to non-Muslims above, a conclusion can be drawn, namely: First, the obligation to pay the *kaffarat* oath contained in the Al-Qur'an surah al-Maidah verse 89, is *mukhayyar*, namely freeing slaves, providing food or clothing, if you are unable to carry out the three things mentioned above, you are obliged to fast for three days. Second, Abu Hanifah r.a. does not require a believing slave to be the target of an oath of infidelity. Abu Hanifah r.a. does not turn the word *muthlaq* away from *muqayyad*, he works on common words (*muthlaq*). Third, it is permissible to free *ahl al-dzimmah* (non-Muslim) slaves as sworn inmates and also provide food or clothing to *ahl al-dzimmah* (non-Muslims). Because of the statement on the issue of distributing *kafarat* oaths, there is no specific text that recommends giving them to believers. Fourth, granting expiation for oaths to non-Muslims (*ahl al-dhimmah*) from the perspective of the *maqâshid al-shari'ah* is almost the same as granting *zakat* to converts, namely to persuade their hearts to Islam. Fifth, the permissibility of granting expiation for oaths to non-Muslims, from the perspective of the *maqâshid al-shari'ah*, contains an element of Islamic *da'wah* (*hifzh al-din*). Because there is a greater benefit, it is permissible to grant expiation for oaths to non-Muslims (*ahl al-dhimmah*). From a social perspective (*hifzh al-mujtama'* or *hifzh al-insan*), Muslims are permitted to

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<sup>46</sup> Jasir 'Audah. *Maqashid al-Syari'ah 'inda al-Syaikh al-Qaradhawi*, (Qathar: Funduq, 2007), h. 99.



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recognize, help, and even ensure social welfare, regardless of whether they are Muslim or non-Muslim.

This journal review still has many shortcomings, so suggestions and contributions are still needed. Furthermore, it is hoped that friends need to conduct an in-depth study of the position of ahl al-dzimmah and the transformation of fiqh by carrying out a new ijtihad regarding ahl al-dzimmah into the concept of citizenship from an Islamic perspective.

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