

INTERPRETING AL-BUGHĀT AND THE ETHICS OF NATION STATE CITIZENSHIP

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Abstract: This article examines the al-bughāt phenomenon addressed to groups accusing the Indonesian state of being a taghut government. The study garnered primary sources from siyāsah fiqh books discussing al-bughāt. The data collected was analyzed using content analysis, and the results are as follows; al-bughāt is a justified state dissident. The concept of al-bughāt was born within the framework of jināyah fiqh, so it is classified in the ḥudūd criminal provisions. Al-bughāt, in the practical level of early Islamic politics, was in a political frame so that there was no provision for sanctions. Besides, jurists position al-bughāt as the authority of the Islamic state under the political model of the khilāfah, so it is not appropriate when applied in countries that do not adhere to Islamic principles, such as Indonesia. As for certain groups that accuse Indonesia of being a taghut country, they should be more appropriately positioned as deviants who should be facilitated with guidance and counseling. However, if they commit deadly destruction and bombing, they are placed as al-muḥāribūn, whose punishment status is in the al-ḥirābah category.

Keywords: al-bughāt, al-ḥudūd, , al-muḥāribūn, jarīmah, ḥadd al-ḥirābah

Introduction

Amidst the dimensional crises in Indonesia and worsening trust among irresponsible people of certain communities in how politics work in Indonesia by labelling the state as a *tāghūt* state, a discourse labelling those irresponsible communities as deviants against the state arises, and definitely this form of deviance is known as *al-bughāt*.¹

Deviants have always expected Indonesia to be revised and re-constructed to force it to adjust to the political idea as this state has been expecting to be. On the other hand, the allegation of *bughāt* against irresponsible people certainly jeopardizes Indonesia since it has a greater likelihood to spark disintegration among Moslem people. It is generally understood that not all Indonesian Moslems judge the state to be *tāghūt*, indicating that the majority of the people believe that this state is lawful and obviously Islamic.²

Therefore, labelling this state *al-bughāt* calls for criticism to preclude any disharmony among Moslem people as a whole. In addition, this label is not evidentially true departing from the allegation of *tāghūt* against this state.

It does not seem fair if *al-būghāt* arises to be addressed to irresponsible Moslems arbitrarily simply because this tendency represents apriorism. On the contrary, it, without doubt, turns out fair enough to study *al-bughāt* independently and academically to ascertain the principal concept of *al-bughāt*. The concept of *al-bughāt* stems from the topic in a classical and established *fiqh* study as the legacy of *fiqh* thought that has significantly contributed to the repertoire of the studies of Islamic law, either within the purview of criminal law or political law. The concept of *al-bughāt* was constructed from the root of *al-baghy*, meaning *al-zulm*³, tyranny and misappropriation; *al-ta'addī*, meaning excessive or

¹ Wahbah al-Zuhayliy, *Al-Fiqh al-Islāmiy wa Adillatuh*, III, vol. VI (Damaskus: Dār al-Fikr, 1989), 142.

² Eva Johan, "Kebijakan Indonesia Terhadap Imigran Ilegal Dan Hubungannya Dengan Kedaulatan Negara," *Yuridika* 28, no. 1 (2013): 1–12.

³ Taqiy al-Dīn Abū Bakar bin Muhammad Ḥusaynī al-, *Kifāyah al-Akhyār fī Ḥal al-Ghāyat al-Ikhtiṣar* (Jakarta: Dār Iḥyā' al-Kutub al-'Arabiyah Indonesia, 1994), 198.

against the rights of others.⁴ Departing from all those meanings, *al-bughāt* as a plural form of its *mufrad*, *al-bāghy*, as the ism of *al-fā'il*, means people standing against government's legitimate authority; it is seen as conflicting with the perspectives of the majority of Moslems that base their belief on their own establishment⁵.

If we take a closer look, the definition of *al-bāghy* was formulated following the construction of Islamic countries under the leadership system of *khilāfah* that do not recognize party systems as the political systems of democracy that most contemporary Islamic countries now adhere to. With this phenomenon, a question investigating that *al-bughāt* is an indication of instability between one community of a party and one leader, or and the majority of party arises. That is, the phenomenon of *al-bughāt* demonstrates a crisis articulation in either vertical or horizontal direction.

Furthermore, it can also be fathomed that the concept of *al-bughāt* arose from the discourse on differing views (*ta'wīl*) among Moslems in issues of law and politics. The Fuqaha, however, classified the conduct of *al-bughāt* into a criminal offense or *jarimah* that was subject to particular sanctions ('uqūbah) or *jarimah hudūd*.⁶ This assumption brings further to the thought believing that *al-bughāt* is viewed as *al-junāt*, a criminal offender subject to a particular sanction, or it is seen as not more than a civil matter involving different political views. Issues stemming from the way how *al-bughāt* concept is critically responded to as above will remain actual since the construction of Islamic politics, with this concept, was different from it is today, where the systems of nation state are common. Central discussions today have been around *al-*

⁴ Wahbah Zuḥaylī al-, *al-Fiqh al-Islām wa Adillatuhu* (Beirut: Dār al-Fikr, 1989), 142.

⁵ al-Qādī Abū Ya'lā Muhammad bin al-Ḥusayn Farra' al-, *al-Ahkām al-Ṣulṭāniyyah* (Beirut: Dār al-Fikr, 1994), 63.

⁶ Dedy Sumardi, "Hudūd Dan HAM: Artikulasi Penggolongan Hudūd Abdullahi Ahmed An-Na'im.," *MIQOT: Jurnal Ilmu-ilmu Keislaman* 35, no. 2 (2011).

bughāt applied within the scope of Islamic states in the version of a nation state like Indonesia.

This study garnered data from library research and presented the results descriptively. The data were analyzed based on content analysis with an *Usūl Fiqh* approach to understand the *al-bughāt* concept within the scope of Islamic criminal law. Moreover, this study also employed hermeneutical and historical approaches to analyze the journey of *al-bughāt* concept from the era of *khilafah* (caliphate) state system to the nation state systems. This method was used to ascertain whether the research data were relevant to the concept of *al-bughāt* within the purview of nation-state.

Al-Bughāt: An Overview

The fundamental of the concept of *al-bughāt* refers to Quran and Hadiths, specifically in surah *al-Hujurat* verses 9-10:

وَأَنْ طَائِفَتَيْنِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلَحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَى فَقَاتِلُوا الَّتِي تَبْغِي حَتَّى تَفِيءَ إِلَى أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلَحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ (9) إِنَّمَا الْمُؤْمِنُونَ إِخْوَةٌ فَأَصْلَحُوا بَيْنَ أَخْوَابِكُمْ وَأَتَّقُوا اللَّهَ لَعَلَّكُمْ تُرْحَمُونَ (10)

“If two groups of believers fight each others, reconcile between them. But if one group aggresses against the other, fight the aggressing group until it complies with God’s command. Once it has complied, reconcile between them with justice, and be equitable. God loves the equitable. The believers are brothers, so reconcile between your brothers, and remain conscious of God, so that you may receive mercy”.⁷

These two verses are connected; verse 9 demonstrates a likelihood of incongruous relationships between Moslem groups, and this disharmony is deemed acceptable and common

⁷ Departemen Agama RI, *Al-Qur'an Dan Terjemahnya*, 10 ed. (Bandung: CV Diponegoro, 2004), 412.

notwithstanding the faithful ties between them by virtue of their personal or collective interest, including party, tribal, and organizational interests.⁸ This verse also demonstrates that there are measures taken to reconcile between the two Moslem/faithful groups, which is an obligation either theologically or politically. Verse 10 of al-Hujurāt underlies the theological aspect of the provision written in verse 9 because principally faithful people should uphold brotherhood and sisterhood whose values exceed those of tribal, national, and lineage-based ties.⁹

It is obvious that the term *al-bughāt*, literally, is not written in the above verses. However, substantially, this term remains clear if seen from the word root *بغى* whose *isim fā'il* is *باغية*, and its plural form is *بغاة* as in *فاعلة* transforming into *فعلة* as a plural form (*fu'alah*). Furthermore, al-Zamakhshariy, an Arabic linguist and literature expert, defined the word "طائفة" in the above verses as to have a similar meaning to the word "القوم" and "الفينة",¹⁰ but he did not explain further that "طائفة" existed in a *crowded* situation, meaning that there was no leading factor serving as the central that formed "طائفة". Conversely, in Quran, the word "القوم" only refers to a group of people.

Ali al-Sāyis, a contemporary interpreting expert, explained that the word "طائفة" had only little meaning compared to the word "فرقة".¹¹ This definition refers to Q.S. al-Tawbah: 122. He argued that the word *طائفة* could mean a group (*جماعة*). Similarly, *فرقة* could mean a big group with its organizational structure and a leader

⁸ These interests may trigger separation and conflicts between Moslem communities, but this is quite natural, as mentioned in surah al-Rum: 32. Therefore, syaria of Islam needs to govern such matters.

⁹ Imam Abu al-Qāsim 'Umar bin Muhammad Zamakhshariy al-, *Tafsīr al-Kashshāf* (Beirut: Dār al-Kutub al-'Ilmiyah, 1995), Juz 4, 356.

¹⁰ Zamakhshariy al-, 355.

¹¹ Muhammad Alī Sāyis al-, *Tafsīr Āyāt Ahkām* (Mekkah: Matba'ah Muhammad Ali Sabi'ah, t.t.), juz:4, 86.

therein. That is, there is a difference between “طائفة” and “فرقة” regarding whether the group concerned is small or big.¹²

The observation by al-Sāyis above can also be understood in a way that the word “طائفة” means a group of people, but this group consists of fewer people than that of “فرقة”. The word “فرقة” means a group of people within an organizational structure, including *firqah khawārij*, *firqah mu'āwiyah*, and so forth. Thus, it can be understood that the word “طائفة” serves as a sub-part of *firqah*, meaning consisting of at least three individuals or to the maximum of *firqah*. In other words, the word *tā'ifah* can mean a group of people united in an organization or something other than an organization.

Interpreting experts agreed that verse 9 and 10 of al-Hujurāt are classified into the verses of Madaniyyah, carrying the message on socio-legal rules in society.¹³ Literally, these verses are linked to the social structure in a community under a leadership, including the matter of reconciliation as the main objective to bring people together to achieve peace, and this peace seems to be highlighted in Madaniyyah verse.¹⁴

Some contemporary Ulama argue that the verses in Makkiyah and Madaniyyah are obviously different in terms of the nature of law that each carries. Abdullah Ahmad al-Na'im differentiated the law written in the verse of Makkiyah and that of Madaniyyah. He argued that the sharia law in the verse of Makkiyah carried eternal and fundamental messages, while the verse of Madaniyyah was more practical in a particular time and situation.¹⁵ Al-Na'im further elaborated that the verses of Madaniyyah carried practical legal practices, where these verses

¹² Sāyis al-, juz: 4, 86.

¹³ Mannā' Qaṭṭān al-, *Mabāḥiṭh fi 'Ulūm al-Qur'ān* (Mekkah: Mansurat al-'Asr al-Ḥadīth, t.t.), 55.

¹⁴ Qaṭṭān al-, 64.

¹⁵ Abdullah Ahmed Na'im an-, *Dekonstruksi Syari'ah: Wacana Kebebasan Sipil, Hak Asasi Manusia, dan Hubungan Internasional dalam Islam*, trans. oleh Ahmad Suaedy dan Amirudin Rany ar-, IV (Yogyakarta: LKIS, 2004), 88.

were referred to as historical verses that fitted only to the present time of one's own time.¹⁶

Al-Māwardiy in his commentary book *al-Nukat* explained that there were four histories of *sabab al-nuzūl*, including¹⁷ the history of 'Ata bin Dinar from Sa'id bin Zubair, explaining that Aus and Khazraj clashed in the time of Rasulullah in Madinah and a war and a brawl also took place and the verses above were revealed". Ali al-Sāyis in his commentary book explained *sabab nuzūl* of the verse concerned. He believed that once the Prophet of Muhammad visited one of his friends Sa'ad bin Ubadah who was ill. On his way, the Prophet bumped into Abdullah bin 'Ubay bin Sahl. Abdullah insulted the Prophet, followed by a defense given by Abdullah bin Rawahah for the Prophet. Since then, there had been a fight between Abdullah (an Aus) and Abdullah bin Rawahah (a person from Khazraj). They defended their own tribes and a war followed. Following this war, the verses were revealed and the Prophet read them out. They both came in peace.¹⁸

Sabab al-nuzūl of these verses reveal that the mission of these verses was to encourage peace and social order in the society. The histories of sabab al-nuzūl help ascertain the wisdom of *tasyrī* of a verse. The wisdom of *tasyrī* above is to encourage peace and justice in the society where the rights of the people are fulfilled.

Two principles are related to the *sabab al-nuzū*: *al-'Ibrah bi khuṣūṣ al-sabab lā bi 'umūm al-lafz lā bi khuṣūṣ al-sabab* (by considering the general view of *lafaz*, not the particular view of the cause). To understand the above verses, it is more appropriate to refer to the second principle, meaning that the verses apply to all,

¹⁶ The understanding of al-Na'im from the theory on new models of issues explaining that these issues are not about the revelations of verses, but more to the principal and non-principal issues. That is, verses that carry principal rules as in the verse Makkiyah can amend the verse with practical but non-principal legal substances such as the verses of Madaniyah.

¹⁷ Abū al-Ḥasan 'Alī ibn Ḥabīb Māwardiy al-, *al-Nukat wa al-'Uyūn* (Beirūt: Dār al-Fikr, t.t.), Jilid:5, 330.

¹⁸ Sāyis al-, *Tafsīr Āyāt Ahkām*, Juz: 4, 87.

where all cases can be categorized based on these verses. *Al-bughāt* only embraced cases of instability when a verse was revealed, but it covered disputes, fights, and protests causing socio-political instability at all time.

The second principle, *al-‘Ibrah bi’umūm al-laḥẓ lā bi khuṣūs al-sabab* is considered appropriate simply because it sees that the verse concerned carries the nuance of *jināyah* law¹⁹ although contemporary ulama argue that the issues regarding *al-bughāt* lean more towards *jarimah ta’zīr* instead of *jarimah ḥudūd*. This principle clearly indicates that the verses of *al-bughāt* above can be appropriately and progressively implemented in a general scope covering disputes arising in Moslem communities. Al-Zamakhshariy came up with an intriguing and illustrative understanding regarding the *bughāt* verses above. He believed that the verses brought further to three forms of *al-bughāt* phenomena. First, it happens to two communities of *al-bughāt* conflicting because of misappropriation. Second, it arose from the two communities at war following *subhat* or unclear issues and each community defends for its own sake. Thus, these two communities can be either blamed or justified according to convincing and clear grounds. Third, it arises from two communities, one of which intentionally tyrannizes the other.²⁰

The above illustration is fairly accepted, but the second phenomenon is seemingly not covered in the verse, and it seems to denote the expression *فقاتلوا التي تبغي*. If understood freely according to its expression *فان بغت احداهما* or as taken from *mafhūm mukhālafah*, the first phenomenon represents two communities that intentionally rebel and protest. In brief, each of the community refused to be blamed.

¹⁹ Muhammad Sālim Awwa’ al-, *Fī Uṣūl al-Nizām al-Jinā’ī al-Islāmī* (Mesir: Dār al-Ma’ārif, 1983), 61. According to al-Awwa’ Nasa-nas, *Jinayah* law could not be re-directed to the problems of the past before verses were revealed because it contravenes the nature of universality of a progressive verse concerning progressive social problems .

²⁰ Zamakhshariy al-, *Tafsīr al-Kashshāf*, juz 4, 355.

In terms of resolutions given to the forms of al-*bughāt* as above, al-Zamakhshariy opined that, first, it is essential to search for the resolutions. Both cannot refuse the resolutions or war may take place against the two. Second, unclear intention must not be present between the two to give clarity over which one is right. If the two deny after propositions and clear evidence are present, the two, then, can be referred to as *al-bughāt*. The third, the parties protesting against rules have to be prevented until they promise to turn back to the standards and realize that they have been on a wrong path.²¹

In the verses above, the imperative *فقاتلوا* was mentioned, meaning “fight against them”. A person, a community, or a party mandated to fight against are those following the right path. This notion sparks a question regarding the provisions of the party concerned and its quantity. Ibn Kathir explained that the parties mandated to combat the wrong and build peace are those not involved in any disputes.²² This assumption refers to the hadith of Bukhari-Muslim cited from Anas, explaining that Rasulullah declared:²³ *انصر أخاك ظالما أو مظلوما* (help your brothers as either the perpetrators or victims of this tyranny). The notion expressed by Ibn Kathir seems to be acceptable in the context of interpretation as in *Al-Qur’ān bi al-Sunnah* which is denoted as *tafsir bi al-ma’tsur*.

If verses 9-10 in al-Hujurāt are viewed from the perspective of *al-Islāh* for reconciliation among all parties in conflict, the above hadiths can be referred to for reconciliation between conflicting parties. In other words, they can serve as explanatory tools to help decide who should be mediators and judges. In this case, then, neutral people will be most appropriate. Al-Marāghiy explains that the party responsible to settle the

²¹ Zamakhshariy al-, juz 4, 355.

²² al-Imām Abū al-Fidā’ Ismā’il Ibn Kathīr, *Tafsīr al-Qur’ān al-’Adhīm* (Mekkah: Dār al-Baz, 1987), juz 4, 266.

²³ Imām Bukhārī al-, *Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Kutub al-’Ilmiyah, t.t.), Jilid II, juz 3, 98.

dispute is the judge as the head of a state or *imam* (a leader), considering that they are the heads of judges. The notion of al-Marāghiy basically refers to “بالعدل” and “وأقسطوا”. These two expressions are identical to the professional positions of judges.²⁴ Nevertheless, al-Marāghiy illustrates that *al-bughāt* can clearly represent the judges themselves.²⁵

Departing from the above information, the right Moslems can be authorized to bring peace and settle disputes or *al-bughāt*. They can be leaders, judges, or both

Formulation of *al-Bughāt* by *fuqaha*

Etymologically, the term *al-bughāt* derived from the root *al-baghy*, which means seeking, as in the words of Allah in surah al-Kahfi: 64: قال ذلك ما كنا نبع... (Moses said: “This is what we were seeking”). *Al-baghy* could also mean unjust, violating justified rights. This is in line with the words of Allah in surah al-A’raf: 33: قل انما حرّم ربي الفواحش ماظهر منها وما بطن والائم والبعي بغير الحق... الآية (‘say, My Lord has forbidden immoralities—both open and secret—and sin, and unjustified aggression, and that you associate with God anything for which he revealed no sanction, and that you say about God what you do not know.’). This explanation reveals that *al-bughāt* can be understood as persons in search of matters that cannot be justified, or persons who unfairly violate the rights of others, or persons who protest against giving others the rights.

Terminologically, Ulama have their own views in defining the word *al-bughāt*. Hanafiyah, for example, defined *al-bughāt* as persons who decided to leave their faith to their just and legitimate leader without any acceptable arguments.²⁶ Malikiyah argued that *al-bughāt* represented Moslems conflicting with a high-profile figure or any other leader replacing this position simply because

²⁴ Aḥmad Muṣṭafā Marāghī al-, *Tafsīr al-Marāghī* (Beirūt: Dār al-Fikr, t.t.), juz 9, 129-132.

²⁵ Marāghī al-, juz 9, 129-132.

²⁶ Ibn Humam, *Ḥāshiyah al-Shaibānī* (Beirūt: Dār al-Kutub, t.t.), 60.

they refused to follow his rules or this leader did not play his role accordingly. Imam syafi'i argued that *al-bughāt* represented the Moslems who failed to follow the rules set by their leader and they chose to take a different course and refused to do their responsibility on the grounds of their own power, argumentations, and the ideal figure of their own leader.²⁷ Hanabilah once stated that *al-bughāt* referred to a group of people choosing not to obey and leave their leader because they believed he was not a just leader under allowed interpretation, while they held power, albeit without the presence of a figure they should obey.²⁸ Dhahiriyah opined that *al-bughāt* represented persons who decided to leave their legitimate leader on the grounds of unacceptable argumentations regarding religions, and they decided to divert to seek worldly satisfaction. All these matters of formulation should be connected to a core, so each of this aspect is supplementary to one another. In terms of the aspect, *al-bughāt* refers to an outward activity, representing disobedience of the leader and being blunt to do something inappropriate.²⁹

The following are the three points regarding the decisions of leaving the leader. First, they leave without any clear argumentations, without or with authority; second, they leave with unacceptable argumentations without any underlying bases; third, they leave their leader with argumentations and power to overthrow their leader. Of these three forms, the second form can be categorized as *al-bughāt*, but it is debatable among ulama, since they do not overthrow the leader. Regarding the third form, Hanafiyah, Syafi'iyah, and Hanabilah all agreed that they can be said as *al-bughāt*, while the first one, recalling that they do not

²⁷ Muhammad bi Abī 'Abbās al-, *Nihāyah al-Muhtāj fi al-Fiqh 'alā Madhāhib al-Imām al-Shāfi'i* (Beirut: Dār al-Fikr, t.t.), juz 5,454.

²⁸ Harissalam Harissalam, "Perspective Imam Madzhab on Bughat Elements," *JCIC: Jurnal CIC Lembaga Riset dan Konsultan Sosial* 2, no. 1 (2020): 29–34.

²⁹ Hasmita Jannah, "Tinjauan psikologis tentang anarkisme dan Bughat," *Jurnal Psikologi Terapan (JPT)* 2, no. 1 (2021): 14–18.

demonstrate any clear bases of argumentations, may represent a group of troublemakers or robbers who are subject to the punishment of *hadd*. Thus, *al-bughāt* represents a group of Moslem people not abiding by the legitimate government with the accusation implying that the government fails to perform tasks according to *nas syar'iyah*, while they as the followers are supposed to be the ones with inappropriate understanding.³⁰

Comparison of Terms: *Al-Bughāt*, *al-Muḥāribūn*, *al-Murtaddūn*, and *Qutṭā' al-ṭarīq*

Ulama have their different views, declaring that the law is imposed on those committing *bughāt* as a criminal offense/*jarimah hudud* or *takzir*. Classical ulama placed *al-bughāt* as criminal offenders of *hudud*, resulting in the imposition of a particular punishment that cannot be revoked, reduced, or added.³¹ The notions of these classical ulama are supported by modern ulama, *al-Jurjawi*,³² a contemporary ulama, *Abd al-Qadir Audah*. However, Mahmud Salim, '*Awwa*', a contemporary ulama stood against these notions. He argued that *al-bughāt* could not be categorized as *jarimah hudūd*, but it should be included in *jarima ta'zīr*³³ whose handling will depend on the leader or a state head.

Looked more closely, the notion saying that *al-bughāt* should be categorized as *jarimah hudud* seems to raise doubt in terms of setting the legal basis for this, where the legal basis of *hirābah* fits *al-baghy*. Similarly, *nas* Quran and hadiths concerning *jarimah riddah* is more appropriate for *al-baghy* and *al-hirābah*. That is, the categorization of *al-baghy* into *jarimah hudūd* sparks bias

³⁰ Shihābuddin Ramli al-, *Mughnī al-Muhtāj* (Beirūt: Dār al-Fikr, 1982), juz 4, 124.

³¹ Muhammad bin Muhammad Abū Shuhbah, *al-Hudūd fī al-Islām* (Kairo: Salsalah al-Buḥūth, 1974), 132. *Hudud* is a particular form of punishment over a criminal offense governed in the Quran and Hadiths.

³² He defines *al-bughāt*: الطائفة الخبيثة من البشر الناس في الأمة لأنها تسعى في الأرض ففسادا وتخل نظام الدولة وتخلق الفتن والدم سائس (They are the representatives of the government, they spread libel and instability). It carries ambiguous definition compared to *al-hirābah*.

³³ *Awwa' al-*, *Fī Uṣūl al-Nizām al-Jinā'ī al-Islāmī*, 130–33.

among the concepts of *al-bughāt*, *al-muhāribūn* atau *quṭṭā' al-ṭarīq* dan *al-murtaddūn*.

To avoid any bias of these concepts, it is considered necessary to elaborate on the definition of each term for better understanding of the categorization of *jarimah* (criminal offense) in each concept. *Al-bughāt* means: وهم القوم الذين يخرجون على الامام بتأويل سائغ وهم منعة وشوكة ('A community leaving their leader as a government because of a particular argument that is allowed, while they have their own defense and power to attack').³⁴ *Al-Muhāribūn* is a group of people with their power, and defense, and they have capacity to shoo Moslem people, murder them, and seize properties in the crowd or in remote regions.³⁵ They are also known as *quṭṭā' al-ṭarīq*. *Al-Murtaddūn* refers to those deciding to leave Islam, either after they converted to another religion or not.³⁶

In a conceptual term, *al-bughāt* is different from *al-muhāribūn* or *quṭṭā' al-ṭarīq*. Thus, *Al-bughāt* consists of a group of Moslem people who disobey their leader because they have their own and ideal perspective about the government and they may form power to defend and fight. *Al-muhāribūn*, on the other hand, does not always refer to Moslems, and it is not always linked to compliance with a leader. It is rather related to violence happening in society, probably involving murder and property seizure.

In terms of the proposition, *al-bughāt* refers to al-Hujūrāt verses 9-10. *Al-muhāribūn*, on the contrary, refers to surah al-Maidah verses 33-34. The underlying matter of *al-bughāt* does not strictly mention a particular punishment. An order to fight against *al-bughāt* "فقاتلوا التي تبغى" cannot be taken as a sanction due to two elements: first, in terms of the essence, the phrase "fight against" carries flexible meaning, unlike the word "murder (اقتلوا) that can be

³⁴ Abdullah bin Ahmad bin Qudāmah Muqaddasi al-, *al-Mugnī fī Fiqh al-Imām Ahmad bin Hanbal al-Shaibani* (Beirut: Dār al-Kutub al-ʿIlmiyah, 1994), 306.

³⁵ Shuhbah, *al-Hudūd fī al-Islām*, 287.

³⁶ Shuhbah, 297.

understood as taking someone's life. Second, in terms of how it is done, fighting against something does not always involve the death of a person, but it can be understood as to shake a community to further interrupt a plan. Furthermore, an order to fight against does not show any intensive meaning of taking someone's life since it also has its limit of definition, as shown in the word "حتى". Thus, 'fighting against' can also be a warning to scare people away. Fighting against, thus, can be understood as an order to create a defensive attitude or self-defense.³⁷ To sum up, an order to fight against *al-bughāt* cannot be taken as a strict sanction.

The legal basis of *al-muhāribun* refers to a sanction of a certain punishment, consisting of four aspects according to the level of the *jarimah* (crime): whether it involves murders, crucifixion, leg or hand dismemberment in a cross pattern (left leg and right hand or vice versa), and being expelled from a state. From this explanation, it can be understood that *al-bughāt* cannot be categorized as the people who commit *jarimah hudūd*, but they should be classified as *jarimah ta'zīr*. *Al-muhāribūn* or *quṭṭā' al-ṭarīq* can be classified as the offenders of *jarimah hudūd*. *Al-bughāt* more appropriately represents a group of people who call for political rights, unlike the term *al-humāribūn* as a crime that should be imposed with punishment. Ulama *Syafi'iyah* opines that the term *al-bughāt* is not a label of stigma³⁸ because they are not criminals, but a group of people calling for their rights from a justified perspective.

According to the conceptual framework as above, *al-bughāt* is also different from *al-murtaddūn*. When *al-bughāt* is understood as a group of people who fight for Islam, *al-murtaddūn*, on the contrary, represents a group of Moslems obviously leaving Islam. The legal basis of this term *al-murtaddūn* is mentioned in al-Baqarah verse 217, Muhammad verses 25-27, al Nahl verses 106-109 and Ali Imran verse 177. These verses imply that *al-murtaddūn*

³⁷ 'Abbās al-, *Nihāyah al-Muḥtāj fi al-Fiqh 'alā Madhāhib al-Imām al-Shāfi'ī*, 404.

³⁸ Awwa' al-, *Fi Uṣūl al-Nizām al-Jinā'ī al-Islāmī*, 130.

are those sinful to Allah, and in a *syar'iyah* context, cannot be classified as the offenders of *jarimah* unless they aggress against Moslem people after converting from Islam, and, thus, sanctions must be imposed under the term *al-muhāribūn*. Within this context, al-Awwa'³⁹ argues that the hadith reflecting the history of Imam Bukhari from Ibn Abbas allows a murder to take place against those who left Islam.⁴⁰

The above information implies that *al-bughāt* is not comparable to *al-muhāribūn* and *al-murtaddūn*, both of which can be positioned as *jarimah hudūd*, while *al-bughāt* cannot be classified as the offenders of this *jarimah* since it is only a matter of dissenting political views and beliefs; it only needs reconciliation, not a death penalty/murder.

Political Setting of the Birth of *al-Bughāt* Concept

Al-bughāt concept, in terms of the definition, did not exist during the period of the Prophet Muhammad and the time of *al-khulafā' al-rāsyidūn*, but substantively it did. This can be explained according to the following two matters: first, surah al-Hujurāt in the Quran verses 9-10 serving as a juridical fundament of the concept of *al-bughāt* were already revealed. It indicates that it substantively existed. Second, these verses, since their revelation, have been practically referred to as the sources to deal with political and social instability in society, but the phenomena and cases that refer to these verses have not been practically mentioned in the name of *al-bughāt*. However, it implies that Rasulullah SAW practically dealt with the related cases, as obvious in his words: من حمل علينا السلاح فليس منا⁴¹ ('whoever upholds weapons against us (not following our governance) does not belong to this community').

³⁹ Awwa' al-, 159.

⁴⁰ The hadith reads: من بدل دينه فاقتلوا

⁴¹ Bukhārī al-, *Ṣaḥīḥ al-Bukhārī*, Jilid Iv, Juz 8, 90.

This hadith clearly gives a message that the followers of the Prophet was encouraged to keep the brotherhood, to assure and maintain peace, discontinue the practices of the age of Jahiliyah that always put war to the fore in dealing with all cases of life.⁴² Under the ruling Rasulullah SAW in Madinah, he intended to encourage a peaceful and sedentary life for all in a civil society as contrary to the concept of a nomadic life.

In Madinah, Rasulullah SAW declared that as heterogenous elements of the society, people were encouraged to maintain their brotherhood within a state, protect each other and protect the dignity of the government. Therefore, the tradition that the prophet expected to establish is that people cling on to their faith to their leader, and this is known as the term “bai’ah”. Rasulullah SAW once said, as cited by Imam Al-Hakim from Ibn Umar:

من خرج من الطاعة وفارق الجماعة ثم مات مات ميتة جاهلية...⁴³ (those deciding to leave their leader and take a different course from the unity and they pass away, they would die as *jahiliyyah* (ignorance)').

This hadith indicates that the mission that Rasulullah intended in Madinah was to abolish the monarchy system of the government that was believed to be relevant to the age of *Jahiliyah*. Imam al-Mawardi, in this context, explained that leaving monarchy was everyone’s hope and the people of the Age of Jahiliyah. Al-Afwah al-Audi, a famous poet from the Age of Jahiliyah, said in his poem:

لا يصلح الناس فوضى لا سراة لهم # ولا سراة اذا جهاهم سادوا⁴⁴

(This life should go on without a support#there is no support for the benefit of the people if ignorant people are allowed to lead)

⁴² Ali Abd Raziq al-, *al-Islām wa Uṣūl al-Ḥukm* (Beirut: al-Muassasah al-‘Arabiyyah li al-Dirāsah wa al-Nashr, 1987), 169.

⁴³ al-Imām Muslim, *Ṣaḥīḥ Muslim* (Bandung: Dahlan, t.t.), Juz 2,135, Bab: al-Amr bi al-Luzum al-Jama’ah.

⁴⁴ Abū Ḥasan ‘Ali ibn Ḥabīb Māwardiy al-, *al-Aḥkām al-Sultāniyyah* (Beirut: : Dār al-Fikr, 1992), 5.

This *syi'ir* indicates that there is an intention to create peaceful and safe life, and people will not live this peaceful life without the presence of a wise and charismatic leader.

Under the ruling Rasulullah SAW, the Quran always serves as guidance and approves the ideas of the prophet. Thus, in creating social stability, the Quran also sets legal provisions to govern the communities or groups that tend to spark anarchy and conflict, as reflected in verses 9-10 of surah al-Hujurāt. By referring to the provision of *syar'iyah* of these verses, Rasulullah SAW further explained the legal provisions to govern the communities mentioned above, as cited by the friend of the Prophet, Ibn Umar:

أن رسول الله قال لعبد الله ابن مسعود: يا ابن ام عبد هل تدري كيف حكم الله فيمن بغى من هذه الامة؟ قال: الله ورسوله أعلم، قال "لا يُجَهِّزُ على جَرِيحِها ولا يُقَتِّلُ أسيرِها ولا يُطَلِّبُ هاربِها ولا يُقسَمُ فيها"⁴⁵

"Rasulullah said to Abdullah ibn Mas'ud: O the son of Umi Abd, do you know how Allah punishes those following their inappropriate behavior (اللبغاة) diverting from their faith to the leader of this community? Ibnu Mas'ud answered: Allah and His prophet know more. Rasulullah SAW said: (the punishment for them) is that their wounds are not to be treated, the prisoners are not to be murdered, and the fleeing people are not to be chased after, and properties obtained from seizure are not to be shared".

From this, it can be understood that the verses on *al-bughāt* (verses 9-10 surah al-Hujurāt) are effective and can serve as juridical fundamentals as referred to by Rasulullah to deal with instability in the society. It also holds true for four caliphates al-Rasyidun and other caliphates after him, and other religious leaders of Islam after their time. Definitively, however, there has not been any concept of *al-bughāt*. This concept was triggered by

⁴⁵ Ṭabrāniy al-, *al-Mu'jam al-Ausat*, vol. VI, t.t., 246.

fuqaha of different theological and ideological backgrounds and orientations.

The concept of *al-bughāt* surfaced to the field of *fiqh* that most classical fuqaha tend to classify as a criminal law instead of *siyāsah* (politics). However, Muhammad bin Habib al-Māwardiy took it as a political science in his famous book *al-Aḥkām al-Sulṭānīyah*. He put it under the theme *al-bughāt* as in his *siyāsah* book on *al-wilāyah 'alā ḥurūb al-maṣāliḥ* in chapter five.⁴⁶

From the above historical description above, the emergence of the concept of *al-bughāt* indicates that the political setting brought about in this concept represents the form of Islamic government, often dubbed as Daulah islāmiyah that adopted the caliphate government. Departing from this view, a question is raised: can the concept of *al-bughāt* be accessed post-caliphate era, especially within the purview of state government that is not legally and formally based on Islam?

Phenomena of *al-Bughāt* in Classical Era

As presented above, the concept of *al-bughāt* did not definitively exist before the existence of ulama *mujtahidin*. There are several phenomenal cases classified by fuqaha; do these cases belong to *al-bughāt* or another concept? Then the cases of *al-bughāt* are elaborated on as follows:

1. The cases during the time of Rasulullah SAW.;

During the unrest taking place in the time of Rasulullah SAW between 'Urainah and 'Ukail, they declared that they converted to Islam before the Prophet SAW. Simultaneously they were fell sick due to the weather in Madinah. Then, the Prophet spared a place for them to take some rest. They were also allowed to drink camel milk to help them recover. When they were healed,

⁴⁶ Māwardiy al-, *al-Aḥkām al-Sulṭānīyah*, 55.

they seized the camel, killed the camel man, and fought against Moslems.⁴⁷

Several fuqaha, however, have rather different perspective in seeing this case. Some saw it within the scope of *al-murtaddīn* because they decided to leave Islam after they declared themselves that they converted to Islam; some others categorize them as rebels (*al-muhāribūn*) or *quttā' al-ṭarīq* simply because they planned to steal and snatch properties, and kill Moslem people. Their conversion to Islam was used as a strategy. To some extent, others still judge them as *al-bughāt*.

This study sees that these fuqaha are trapped only in one view without considering other aspects. From this kind of understanding, their view cannot be said as incorrect, recalling that they could be classified as *al-murtaddūn* in terms of leaving Islam. They could also be taken as *al-muhāribūn* or *al-bughāt* in terms of standing against the sharia of Islam.

This study, however, tends to position them as *al-muhāribūn*, robbers, and troublemakers to society. Following this practice, the verse *hirābah* was revealed as in surah al-Maidah verses 33-35. In this case, Rasulullah SAW punished them as pure criminal offenders. They could not be positioned as *al-bughāt* since their rebellion did not depart from dissenting views between them and Moslems in terms of political and legal matters. As a consequence, they were murdered or thrown into places with excruciating heat. It indicates that they were criminal offenders. The Prophet did not offer a chance for negotiations, but he rather went to the point of appropriate punishment for this criminal offense. Thus, the verses in the Quran highlights the punishment of *hirābah*.

2. The Cases during the Time of *al-Khulafā al-Rāshidīn*

⁴⁷ Khalid Abd Raḥīm al- 'Ak, *Ṣafwah al-Bayān li Ma'āni al-Qur'ān al-Karīm* (Kairo: Dār al-Salām, 1994), 113.

After the death of Rasulullah SAW, political unrest surfaced, followed by other turmoil, including rebellion of Yamamah community refusing to pay *zakat* (alms) and they declared to step out of Islamic government under the ruling Caliphate Abu Bakar. Disobedience taking place in the time of Caliphate Ali bin Abi Talib was marked by the event when al-Khawarij decided to leave the government. This event can be viewed as the phenomenon of *al-bughāt*.

Classical fuqaha have different views in giving names to the above events historically. The case of Abu Bakar was recognized as an event of fighting against *murtaddīn* community instead of the event of *al-bughāt* and *al-muhāribūn*. The case during the time of Usman bin Affan was seen more as *al-muhāribūn* instead of *al-murtaddūn*. The case of Ali bin Abi Tālib in dealing with Khawarij was classified as an event that fought against *ahl al-baghy*.⁴⁸

This study also sees that the causal phenomena above can be seen as *al-bughāt*, simply because they consisted of Moslems and they held different views from the majority of the Moslems under legitimate leaders. Abu Bakar faced the *murtaddūn* people from Yamamah as *al-bughāt*, while he offered reconciliation and advices, followed by a strict warning, emphasizing that they would be fought against unless they chose to obey the government.

The rebellion coming from Egyptians taking place during the ruling Caliphate Usman bin Affan that triggered the emergence of *al-fitnah*, *al-kubra*, should appropriately be seen as *ahl al-baghy*, considering that they consisted of Moslem people although one history explains that, behind this case, there were also political actors and provocateurs from Jewish community (*al-munafiqūn*), intending to attack the unity of the Moslems from the inside. Rebellion also arose due to different views (*takwil*) and arguments regarding political issues. In this case, the leadership of Usman bin

⁴⁸ Yūsuf Aybāsh, *Nuṣūṣ al-Fikr al-Siyāsī al-Islāmī* (Beirut: Dār al-Ṭalīqah, 1986), 109–10.

Affan was regarded as incapable of guaranteeing justice for the people.

The Caliphate Ali bin Abi Ṭālib faced the people of Khawarij was more obvious in terms of implementing the sharia of the Quran in dealing with disobedience and rebellion against legitimate government due to the following reasons. First, he offered reconciliation and diplomatic measures; second, he sent a strict warning to them since they showed attitude beyond what was acceptable, labelling 'kaffir' to the people outside their community. They also murdered people and seized the properties of others, and committed vandalism. Ali bin Abi Ṭālib stood against them and strictly fought against them to clean them all.

Several fuqaha hold different views regarding how to fight against the people of Khawarij. Some see this as part of 'uqūbah implying that they are not *al-bughāt*. Conversely, they are regarded as *muhāribūn*. Some others see this effort of fighting against as *ta'zīr* or an act aiming to intimidate people to re-direct them to the right path. As a consequence, they are taken as *ahl al-baghy*.

This study concludes that what was faced by the Caliphate Ali bin Abi Ṭālib against the people of Khawarij fits the term *ahl al-baghy*. This represents the combination of *ahl al-baghy* and *ahl al-hirābah* to fight against. This term is elaborated further to an understanding of fighting against in the scope of intimidating or sending a warning to encourage peace between two communities. This is in line with the *nass* of the Quran in the verse of *al-bughāt*, u .
فَقَاتِلُوا الَّذِينَ تَبَغُّوا. Murdering them in a cruel way was the sanction over the conduct that was seen unacceptable such as murdering, robbing, and initiating riot in society. Thus, this conduct can be categorized as *ḥadd al-ḥirābah*. This is congruent with *naṣṣ* of verse *ḥirābah*, as in al-Maidah: 33:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأرجُلُهُمْ مِنْ خِلافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ هُمْ فِي الدُّنْيَا وَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

“The punishment for those who fight God and His messenger, and strive to spread corruption on earth, is that they be killed, or crucified, or have their hands and feet cut off on opposite sides, or be banished from the land. That is to disgrace them in this life, and in the Hereafter they will have a terrible punishment”.⁴⁹

The causal phenomena above were made as references by *fuqaha* as conceptual-juridical fundamentals to help understand the verse *al-baghy* (al-Hujurāt: 9-10). With it, the concept of *al-bughāt* can be brought to the surface and defined theoretically or operationally. The definitions contributed by *fuqaha*, as in line with the matters discussed above, imply that the phenomenon of *al-bughāt* emerges amidst the society with Islamic governmental system. On the contrary, the phenomenon of *al-bughāt*, theoretically or operationally, cannot take place within the state under the government that does work the way Islamic country does, such as Indonesia.

The community standing against Indonesia was Hizbu Tahrir Indonesia,⁵⁰ alleging Indonesia as a *ṭāghūt* country, as discussed earlier. Thus, this organization can be regarded as deviant and it requires counselling. If the deviant conduct emerges in the form of riot, vandalism, bombing that destroys and kills, it can be positioned as rebellion or troublemaker. The criminal offense, in Islam, was once done by Rasulullah, and *fuqaha* categorizes this conduct as *ḥadd al-ḥirābah* with the legal provisions explained earlier.

Conclusion

Al-bughāt as a criminal offender *al-baghy* involving disobedience cannot be categorized as a *jarimāh* offender because, first, this

⁴⁹ Departemen Agama RI, *Al-Qur'an Dan Terjemahnya*, 90.

⁵⁰ Zaenal Abidin, “Wahabisme, Transnasionalisme Dan Gerakan-Gerakan Radikal Islam Di Indonesia,” *TASĀMUH* 12, no. 2 (1 Juni 2015): 130–48.

conduct is intended to call for political rights in the form of governmental power or the rights to be given political protection. If this al-baghy also sparked conduct outside the scope of the law such as vandalism, murders, and the like, this scope is considered *jarīmah* or a criminal offense and, second, in terms of the conduct of al-baghy by the perpetrator, al-*bughāt* does not have any *‘uqūbah* or its own sanction.

Fuqaha positions al-*bughāt* in an authority of Islamic state working under the system of caliphate politics. Thus, it is regarded as inappropriate if this al-*bughāt* surfaces in the state not according to Islamic principles such as Indonesia. Some parties standing against Indonesia by alleging this country as *ṭaghūt* can be regarded as deviant requiring counseling and guidance. If these parties are involved in vandalism, murder, deadly bombing, they are to be positioned as troublemakers, al-*muḥāribūn*, with the status of the punishment categorized into *hadd al-ḥirābah*, meaning that strict punishment is under the guidance of the Quran and the punishment imposition exercised by Rasulullah SAW.

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