

## Hate Speech During the Caliphate of 'Alī ibn Abī Ṭālib and Its Relevance to Regulations in Indonesia: The Study of the Islamic Law History

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### Abstract

This paper aims to describe the process of overcoming hate speech crimes during the caliphate of 'Alī ibn Abī Ṭālib in the perspective of the history of Islamic law. The important question to be answered in this paper is how did the caliph 'Alī ibn Abī Ṭālib contribute to handling the problem of hate speech? This paper finds three essential things. First, the death of Caliph 'Uthmān became the cause of the emergence of various slander. The main perpetrators were the Sabā'iyyah, Khawarij, and Shia groups. The form of slander is in the form of hate speech, such as insulting, defaming, inciting, spreading hoaxes which are violations of human rights and have discriminated against certain entities and individuals. Second, the policy of overcoming hate speech is pursued by a criminal and social law approach. Third, the relevance between 'Alī ibn Abī Ṭālib's policy and existing regulations in Indonesia lies in the form of actions, punishments, and protection of human rights from discrimination.

**Keywords:** hate speech; 'Alī ibn Abī Ṭālib; *ta'zīr*; the history of Islamic law

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Tulisan ini bertujuan untuk mendeskripsikan proses penanggulangan kejahatan ujaran kebencian pada masa kekhalifahan 'Alī ibn Abī Ṭālib dalam kaca mata sejarah hukum Islam. Pertanyaan penting yang hendak dijawab pada tulisan ini yaitu bagaimana khalifah 'Alī ibn Abī Ṭālib berkontribusi dalam penanganan masalah ujaran kebencian? Tulisan ini menemukan tiga hal penting. Pertama, kematian Khalifah 'Uthmān menjadi sebab kemunculan berbagai fitnah. Pelaku utamanya yaitu kelompok Sabaiyyah, Khawarij, dan Syiah. Bentuk fitnahnya berupa ujaran kebencian, seperti menghina, mencemarkan nama baik, menghasut, menyebarkan hoax yang merupakan pelanggaran terhadap hak asasi manusia dan telah mendiskriminasi terhadap entitas tertentu maupun individu. Kedua, kebijakan penanggulangan ujaran kebencian ditempuh dengan pendekatan hukum pidana dan sosial. Ketiga, Relevansi antara kebijakan 'Alī ibn Abī Ṭālib dengan regulasi yang ada di Indonesia terletak dalam bentuk perbuatan, hukuman, dan perlindungan hak asasi manusia dari diskriminasi.

**Kata Kunci:** ujaran kebencian; 'Alī ibn Abī Ṭālib; *ta'zīr*; sejarah hukum Islam

## Introduction

Hate speech has existed in Islamic history. In the era of the caliphate of 'Alī ibn Abī Ṭālib, this phenomenon was increasingly widespread. The impact on the death of 'Uthmān ibn 'Affān. As caliph, 'Alī played a role in overcoming these crimes. The scholars, related to the provisions of the law on hate speech, group it into the type of *ta'zīr* punishment. In line with the decision of the caliph 'Alī, Wahbah al-Zuhaylī punished the perpetrators of hate speech with *ta'zīr* punishment, not with *ḥadd* punishment. The hate speech in question is like saying *yā kāfir, yā fāsiq, yā ḥimār* to others.<sup>1</sup>

Hate speech crimes are not defined in Islamic law. It will not be found in the discussion of *ḥadd* and *qisās* punishment chapters, so the process of punishment is classified into the *ta'zīr* type. Unlike common insults, hate speech is a type of crime that violates human rights and discriminates against certain groups. However, both hate speech and insults are forms of crime that deserve punishment.

Wahbah al-Zuhaylī's opinion above strengthens al-Shāfi'yah's opinion which states that the words *yā kāfir, yā fāsiq, yā shāqi, yā kalb, yā ḥimār, yā rāfiq, yā khābith, yā kadhdhāb*, are punished with *ta'zīr*. Meanwhile, Ḥanafiyah argues that the words *hi dog, hi pig, or hi donkey* are not included in the type of *ta'zīr* punishment. According to him, these words are different from hate speech but are classified as lies.<sup>2</sup>

Considering the harmful effects caused by hate speech crimes, understanding and legal history are needed to contribute to effective prevention. Several studies have been conducted on hate speech. Saeed Mohammed Alzahrani, in his dissertation, has discussed hate speech from a general *fiqh* perspective.<sup>3</sup> However, he did not explain the correlation between hate speech and freedom of expression, which is a misunderstanding among the ulama. It also does not describe a factual analysis of the process of hate speech occurring and developing during the caliphate of 'Alī ibn Abī Ṭālib.

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<sup>1</sup> Abū Bakr Ahmad ibn Ḥusayn ibn 'Alī al-Bayhaqī, *Al-Sunan al-Kubrā* (Beirut: Mu'assasah al-Tibā'ah wa al-Taṣwīr, n.d.), vols V; 258; Wahbah Al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, 2nd ed. (Damaskus: Dār al-Fikr al-'Arabī, 1985), 197–98.

<sup>2</sup> Al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, 198.

<sup>3</sup> Saeed Mohammed Alzahrani, 'Hate Speech from the Traditional Islamic Perspective' (The Indiana University, 2017), <https://doi.org/10.2/JQUERY.MIN.JS>.

Atikah Marwa and Muhammad Fadhlan, in their research, explain the law regarding the phenomenon of hate speech on social media.<sup>4</sup> Meanwhile, Yani'ah Wardhani and Ekawati provide information about hate speech related to the three domains of perception, response, and impact of religion-based hate speech in Jakarta, Bekasi, and Banten.<sup>5</sup> Meanwhile, Asphianto compares positive and Islamic law without looking at the history of the formation of the law.<sup>6</sup> Thus, this paper is different from previous studies. The main focus of this paper is on the phenomenon of hate speech that occurred during the caliph 'Alī, the process of overcoming it, and its relevance to events and existing laws in Indonesia.

Hate speech has been regulated in various regulations and the ratification of international treaties in Indonesia. However, it did not have a significant impact in overcoming the crime. Hate speech still happens, even by religious leaders. This crime needs attention so that the realization of justice and order can be appropriately realized. The phenomenon that occurred during the caliphate of 'Alī, thus found its importance.

There is relevance to 'Alī ibn Abī Ṭālib's opinion on hate speech with the Criminal Code and other regulations. The bearing includes definitions, forms of speech and punishment, as well as protection of human rights. The two clauses *yā kāfir yā ḥimār* can be described in two forms of speech. The first is to attack someone's belief that violates the Human Rights entity. The second refers to attacks on individual honour. The form of punishment for both acts is *ta'zīr*.

This paper examines hate speech crimes through library research using a normative juridical approach to positive legal data.<sup>7</sup> The normative juridical approach is used by analyzing secondary data in legal materials, especially

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<sup>4</sup> Atikah Marwa and Muhammad Fadhlan, 'Ujaran Kebencian di Media Sosial Menurut Perspektif Islam', *Al-Afkar Journal for Islamic Studies* 4, no. 1 (4 March 2021): 1–14, [https://al-afkar.com/index.php/Afkar\\_Journal/article/view/140](https://al-afkar.com/index.php/Afkar_Journal/article/view/140).

<sup>5</sup> Yani'ah Wardani and Ekawati Ekawati, 'Ujaran Kebencian Berbasis Agama: Kajian Persepsi, Respon, dan Dampaknya di Masyarakat', *Buletin Al-Turas* 26, no. 1 (10 February 2020): 153–71, <https://doi.org/10.15408/BAT.V26I1.13698>.

<sup>6</sup> Aan Asphianto, 'Ujaran Kebencian dalam Sudut Pandang Hukum Positif dan Islam', *Al-Risalah* 17, no. 1 (17 January 2018), <https://doi.org/10.30631/AL-RISALAH.V17I01.3>.

<sup>7</sup> Sutrisno Hadi, *Metodologi Research* (Yogyakarta: Fakultas Psikologi Universitas Gadjah Mada, 1990), 15.

primary legal materials and secondary legal materials. It is used to understand the law as a set of rules that govern human life.<sup>8</sup>

The historical approach of Islamic law is also used to find out the background of the formation of law at that time. Historical is used to see events related to hate speech and conduct a legal analysis of the periodization sequence and the historical facts behind it.<sup>9</sup> The historical approach to forming Islamic law (*tārīkh al-tashrī*) looks at history, culture, law, and politics. It seeks to understand a phenomenon, observe changing trends and dynamics of Islamic law, and the factors that influence it.<sup>10</sup>

The main question of this paper is how did Caliph 'Alī ibn Abī Ṭālib make an important contribution in dealing with the problem of hate speech? These questions are assisted by several minor questions as follows. 1. What is the context of the emergence of hate speech during the time of 'Alī ibn Abī Ṭālib? 2. How did Caliph 'Alī ibn Abī Ṭālib deal with this problem? 3. How is it relevant to regulations in Indonesia? 4. What is the contribution of 'Alī ibn Abī Ṭālib's thoughts in tackling hate speech in Indonesia?

### **Hate Speech During the Caliphate of 'Alī ibn Abī Ṭālib**

Slander and hate speech have occurred in every era. In the era of the Prophet, a cruel slander had befallen 'Ā'ishah. He was accused of adultery. This baseless accusation caused a stir in Medina at that time. In addition to making him sad, the incident also made the Prophet worried. Because of this slander, as well as revelations from God never came to give an answer. The Prophet then discussed with Osama and 'Alī. Osama responded that 'Ā'ishah was innocent so she could still be trusted. Meanwhile 'Alī stated that for the good of the Prophet, the Prophet should divorce her.<sup>11</sup>

'Alī bases his suggestion on the least likely of the two dangers to occur. According to him, if the Prophet remains restless, the Muslims and the message are at stake. According to al-Nawāwī, as quoted by Shallabi, 'Alī's offer would

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<sup>8</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2011), 14.

<sup>9</sup> Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008), 81.

<sup>10</sup> Yayan Sofian, *Tarikh Tasyrī' Sejarah Pembentukan Hukum Islam* (Jakarta: Rajawali Press, 2018), 17.

<sup>11</sup> Muḥammad Ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Riyad: Bayt al-Afkār al-Dawliyyah li al-Nashr wa al-Tawzī', 1997), 1016 *Ḥadīth* Number 4141.

benefit the Prophet. 'Alī believed that his advice could calm the Prophet in times of great turmoil.<sup>12</sup>

Hate speech during the time of Abū Bakr stems from his disagreement about the postponement of 'Alī's promise. There is an opinion that 'Alī did not pledge allegiance to Abū Bakr because he was still mourning the death of the Prophet. 'Alī took a commitment to Abū Bakr after the completion of the Prophet's funeral procession. He asked Sa'īd ibn Zayd "*Did you witness the death of the Prophet?*" Sa'īd replied, "*yes.*"<sup>13</sup>

Hate speech also hit 'Umār ibn al-Khaṭṭāb. It comes from the Shia Imāmiyah group who hates the companions. In a narration, Aslam Al-Adawi explains that when the Prophet died, 'Umār and Zubayr ibn 'Awwam went to Fāṭimah to invite her to consult. 'Umār said, "*O daughter of the Prophet! There is no one we love more than your father. Furthermore, there is no human after your father whom we love more than you.*"<sup>14</sup>

Slander also occurred during the time of 'Uthmān bin 'Affān. It was motivated by various interrelated events. According to Shallabi, these factors are the luxuries that affect society, the departure of senior companions from Medina, the fanaticism of ignorance, the alliance of envious people, the use of means and media to provoke the masses, and the influence of the Sabā'iyah sect.<sup>15</sup>

Shallabi stated that the Saba'iyah led by 'Abdullāh ibn Sabā' spread hate speech among Muslims. The crime was not only carried out verbally; even fake letters were circulated in the name of the Caliph and other companions. The case considered the cause of chaos and the most heinous slander against the Caliph 'Uthmān is when the rebels who came to Medina had made peace with the Caliph.<sup>16</sup> The existence of 'Abdullāh ibn Sabā' has been mentioned in various *ahl al-sunnah* books. Al-Sha'bī (d. 103 AH) relates that the first to lie was 'Abdullāh

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<sup>12</sup> Ali Muhammad Al-Shallabi, *Biografi Ali Bin Abi Thalib* (Jakarta: Ummul Qura, 2017), 187–90.

<sup>13</sup> Muḥammad ibn Jarīr Al-Ṭabarī, *Tārīkh al-Umam wa al-Mulūk* (Beirut: Dār al-Fikr, 1987), vols III; 207.

<sup>14</sup> Ibn Abī Shaybah, *Al-Muṣannaḥ*, 1986, vols XVII; 567.

<sup>15</sup> Al-Shallabi, *Biografi Ali Bin Abi Thalib*, 319.

<sup>16</sup> Al-Shallabi, 321.

Ibn Sabā'. Ibn Ḥabīb (d. 245 H) narrates that Ibn Sabā' is one of Habashah's children.<sup>17</sup>

'Abd al-'Azīz argues that the Khawarij emerged because of the disappointment of some people with 'Alī's decision during the Ṣiffin war. At that time, they regretted 'Alī's decision to accept Mu'āwiyah's invitation to make peace (*taḥkīm*). They were disappointed that 'Alī hesitated with the help of those who could defeat the opponent but instead chose *taḥkīm*. They then changed their view that everyone involved in the *taḥkīm* event was *kufṛ*. Whoever accepts it has become an infidel and must repent.<sup>18</sup>

As for the Shia, they accuse the companions of being unfair in determining the affairs of Muslims. 'Alī was considered unwilling if 'Abd al-Raḥmān ibn 'Awf became chairman of the deliberative council in the election of the caliph. As quoted by Shallabi according to the narrations of Abū Mukhannaf and Hisham Al-Kalaby that 'Umār would still not win 'Abd al-Raḥmān ibn 'Awf. Therefore 'Alī already felt that he would lose the caliphate because 'Abd al-Raḥmān ibn 'Awf would put 'Uthmān first.<sup>19</sup>

'Alī classifies forms of hate speech as insults, defamation, incitement, spreading false news. It is a violation of human rights and discrimination based on certain entities or individuals. 'Alī argued about the prohibition of various forms of humiliation, defamation, and blasphemy of religion. The state of contempt refers to his statement that leaving insulting words will gain the pleasure of Allah, anger the devil, and be a punishment for the enemies.<sup>20</sup> 'Alī also believed that any form of terror, if it resulted in the loss of a person's life, then he was responsible for the crime.<sup>21</sup> As for the spread of hoax, 'Alī

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<sup>17</sup> Sulaymān ibn Fahd Al-'Awd, *'Abdullāh bin Sabā' wa Atharuh fi Aḥdāth al-Fitnah fi Ṣadr al-Islām* (Dār al-Ṭaybah, 1412), 53, <https://books-library.net/files/elebda3.net-wq-5121.pdf>.

<sup>18</sup> 'Abd al-'Azīz ibn 'Abd Al-Ḥumaydī, *Al-Khulafā' al-Rāshidūn Mawāqif wa 'Ibar* (Iskandariyah: Dār al-Da'wah, 2005), 670, <https://down.ketabpedia.com/files/bkb/bkb-hi03517-ketabpedia.com.pdf>.

<sup>19</sup> Al-Shallabi, *Biografi Ali Bin Abi Thalib*, 311.

<sup>20</sup> Ghassān Al-Sa'd, *Huqūq Al-Insān 'ind al-Imām 'Alī Ibn Abī Ṭālib 'Alayh al-Salām Ru'yah 'Ilmiyah* (Baghdad, 2008), 652, <http://www.alnoor.se/article.asp?id=58783>.

<sup>21</sup> Syekh Syarif Radhi, *Nahjul Balaghah, Puncak Kearifan Sepanjang Masa* (Yogyakarta: Diva Press, 2020), 189.

emphasized to avoid prejudice against people who believe because Allah has given the truth to their words.<sup>22</sup>

'Alī emphasized that human rights cannot be separated from the rights of equality and justice. According to him, there is no difference in rights between humans in the view of sharia. The protection of the rights of human life is in line with the creation of a sense of security in society.<sup>23</sup> 'Alī stated that humans are brothers in religion, and all are equal in their existence as human beings.<sup>24</sup>

### **'Alī ibn Abī Ṭālib Policy in Regulating Hate Speech**

In order to regulate and prevent crime, 'Alī ibn Abī Ṭālib used four methods:

1. Using a criminal law approach.
2. The social policy approach.
3. Using a repressive legal system.
4. Implement preventive actions and other policies.

All these methods he uses in order to achieve justice and benefit. According to Nawawi Arief, the criminal policy can be interpreted as a reasonable government effort to tackle crime. It is an inseparable part of efforts to protect the community and achieve community welfare.<sup>25</sup>

The criminal law policy regarding hate speech can be seen from 'Alī's words when asked about the comments *yā kāfir*, *yā khābith*, and *yā ḥimār* being punished as *ta'zīr*. Because this type of verbal crime is not regulated in the texts, the authorities are given the freedom to determine the type and form of punishment.

The social policy approach is based on ethical values, benefits, and the protection of human rights. As an expert in science, 'Alī gave sermons on the dangers of oral speech and the importance of guarding human dignity. When dealing with slandered people, 'Alī's action is to advise and provide the correct view of the nature of the problem. Facing the Khawarij who went out of line and

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<sup>22</sup> 'Alī ibn Muḥammad al-Layth Al-Wāsiṭī, *'Uyūn al-Ḥukm wa al-Mawā'iz* (Dār al-Ḥadīth, 2000), 88, <https://hz.turathalanbiaa.com/public/3103.pdf>.

<sup>23</sup> Al-Wāsiṭī, 215.

<sup>24</sup> Radhi, *Nahjul Balaghah, Puncak Kearifan Sepanjang Masa*, 547.

<sup>25</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, ke 5 (Jakarta: Kencana, 2014), 3.

considered the Muslims infidels, 'Alī gave freedom as long as they did not interfere and fight other Muslims.

Muslims place the companions of the Prophet as figures who should be exemplary. Those with authority are expected to contribute their thoughts to answer the methodological and philosophical deadlocks related to the hate speech law. 'Alī ibn Abī Ṭālib as a *ṣaḥābah* and caliph has an essential position as a *mujtahid* and *qāḍī* (judge).<sup>26</sup>

As a *qāḍī*, 'Alī uses several approaches. First, sourced from the Qur'an and Sunnah. The method of taking arguments from the Qur'an begins with glorifying it, then understanding it with the scientific method.<sup>27</sup> 'Alī understood the Sunnah directly from the Prophet by keeping an example of the Prophet's words and actions. He maintains the integrity of the Sunnah by memorizing and writing it down. He also looked at the Sunnah from a scientific point of view based on its text, purpose, and conformity to the Qur'an.<sup>28</sup>

The legal *istinbat* method used by 'Alī also refers to *ijmā'* and pre-Islamic *sharī'ah* (*shar' man qablanā*). In addition to the *naqlī* method, 'Alī used the reasoning process with the *qiyās*, *istihsān*, and *istiṣḥāb* methods. 'Alī also used *ijtihād maqāṣidī* in deciding some cases.<sup>29</sup> According to 'Abdullāh ibn Sulaymān ibn 'Alī, 'Alī's method of *ijtihād* thought was adopted by many educational institutions in Kūfah.<sup>30</sup>

'Alī ibn Abī Ṭālib based his *maqāṣidī* method on the benefit side by considering *'urf* (custom) and *sadd al-dharī'ah* (preventive action).<sup>31</sup> It considers the beneficial and harmful effects of an action. *Maqāṣid* himself places

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<sup>26</sup> 'Abdullāh ibn Sulaymān ibn 'Alī al-'Abd Al-Mun'im, 'Fiqh Amīr al-Mu'minīn 'Alī Ibn Abī Ṭālib fi al-Ḥudūd wa al-Jināyāt wa Athruh fi Tashrī al-Jinā'ī al-Islāmī' (Jāmi'ah Nāyif al-'Arabiyah li al-'Ulūm al-Umniyah, 2004), 7, <https://ia903400.us.archive.org/30/items/fiqh07001/fiqh07713.pdf>.

<sup>27</sup> Muḥammad Fu'ād Ḍāhar, *Aqḍīyyah al-Khalīfah al-Rāshid 'Alī Ibn Abī Ṭālib, Dirāsah Ta'ṣīliyah Taṭbīqiyah li Manhaj 'Alī fi Uṣūl al-Fiqh*, 1st ed. (Kuwait: Mabarrah al-Āl wa al-Aṣḥāb, 2015), 179–201, [https://d1.islamhouse.com/data/ar/ih\\_books/single\\_01/ar\\_Aqdit\\_Ali\\_ibn\\_Abu\\_Talib.pdf](https://d1.islamhouse.com/data/ar/ih_books/single_01/ar_Aqdit_Ali_ibn_Abu_Talib.pdf).

<sup>28</sup> Ḍāhar, 236.

<sup>29</sup> Ḍāhar, 267–365.

<sup>30</sup> Al-Mun'im, 'Fiqh Amīr al-Mu'minīn 'Alī Ibn Abī Ṭālib fi al-Ḥudūd wa al-Jināyāt wa Athruh fi Tashrī al-Jinā'ī al-Islāmī', 5.

<sup>31</sup> Ḍāhar, *Aqḍīyyah al-Khalīfah al-Rāshid 'Alī Ibn Abī Ṭālib, Dirāsah Ta'ṣīliyah Taṭbīqiyah li Manhaj 'Alī fi Uṣūl al-Fiqh*, 367.



*al-maṣlahah* as the primary goal of Islamic law. It is as al-Shāṭibi's opinion which states that *maqāṣid* places benefit as an essential element of legal goals.<sup>32</sup>

'Alī's thoughts on *fiqh* and *uṣūl al-fiqh* greatly influenced the development of the science of *fiqh*. Al-Shāfi'ī states that if it were not for 'Alī, there would be no law on *bughat*.<sup>33</sup> Meanwhile, Al-Dihlawī stated that the basis of the school of Abū Ḥanifah is the fatwa of 'Abdullāh ibn Mas'ūd and the decisions and fatwas of 'Alī ibn Abī Ṭālib.<sup>34</sup>

### **The Relevance of 'Alī ibn Abī Ṭālib's Policy regarding Hate Speech and Regulations in Indonesia**

Hate speech has the potential to divide the unity and integrity of Indonesia. Although many laws and regulations regulate it, the implementation and enforcement of the law have not been effective. Several regulations related to hate speech in Indonesia are; Law No. 1 of 1946 concerning the Criminal Code, Law No. 39 of 1999 concerning Human Rights, Law No. 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination, Law No. 11 of 2008 concerning Information and Electronic Transactions. Hate speech is also clearly regulated in the Circular Letter of the National Police Chief number SE/06/X/2015. Hate speech cases that arise often involve identity politics which causes social, vertical, and horizontal conflicts. The primary source of regulations governing hate speech is Article 156 of the Criminal Code. Hate speech is prohibited in public to express hostility, hatred, or contempt towards community groups in Indonesia.<sup>35</sup>

Meanwhile, the prohibition of hate speech in cyberspace is strictly regulated in Article 28 paragraph (2) of Law No. 11 of 2008 concerning Information and Electronic Transactions. A person is prohibited from spreading information that aims to cause hatred or hostility based on ethnicity, religion, race, and class. Hate speech is theoretically defined as a crime in the form of swearing, insulting, defaming individuals or groups based on ethnicity, nationality, race, gender,

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<sup>32</sup> Abu Rokhmad, *Ushul Fiqh Metodologi Ijtihad Hukum Islam* (Semarang: Varos Mitra Utama, 2002), 215.

<sup>33</sup> Muḥammad al-Khaṭīb al-Shirbīnī, *Mughnī al-Muḥtāj* (Beirut: Dār Al-Kutub Al-'Ilmiyyah, 2000), vols IV; 123.

<sup>34</sup> Shah Waliyullāh al-Dihlawī, *Hujjah al-Bālighah* (Riyad: Maktabah al-Kawthar, 1999), vols I; 448.

<sup>35</sup> Moeljatno, *KUHP Kitab Undang-Undang Hukum Pidana* (Jakarta: Bumi Aksara, 2006), 115.

sexual orientation, or religion. It results in hostility and intimidation towards the object of the action.<sup>36</sup>

Based on the 1966 International Covenant on Civil and Political Rights (ICCPR) Article 20 Paragraph 2, states are prohibited from taking sides and advocating acts of hate speech or incitement to discrimination that can lead to hostility and violence based on race or religion.<sup>37</sup> However, the Article on hate speech does not regulate in detail the forms of hostility, hatred, or humiliation. Thus, according to Andi Hamzah, the judge has the authority to interpret the action. This Article is considered ambiguous because of its bias and vulnerability to politics outside the law. This Article is considered to contain an element of emotion.

'Alī's opinion with regulations in Indonesia regarding hate speech both contain a prohibition against hate. 'Alī declared that enmity with fellow human beings is a heinous act.<sup>38</sup> He continued that those hostile are the same as having made Satan the ruler of their affairs. Satan has overpowered them, sees with his eyes, and speaks with his tongue.<sup>39</sup> This expression forms the basis for a ban on hate speech.

The formulation of acts of hate speech in Islam goes beyond the scope of regulatory definitions and Western terms. The moral principle that underlies the prohibition of hate speech applies to other actions related to the benefit of the people. First, the prohibition against hating other people, both fellow Muslims and non-Muslims. Subjectively, a Muslim is prohibited from having feelings of hatred or committing acts of humiliation to others. As for objectively, religion forbids any actions that harm others.

The second principle, hate speech, relates explicitly to the prohibition of saying words that cause personal or group hostility. It includes words and actions directed at a Muslim or non-Muslim. Islam forbids discrimination on any basis so that there should be no difference in viewing God's creation. Islam

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<sup>36</sup> Susan J. Brison, 'The Autonomy Defense of Free Speech', *Ethics* 108, no. 2 (January 1998): 313, <https://doi.org/10.1086/233807/0>.

<sup>37</sup> William B. Fisch, 'Hate Speech in the Constitutional Law of the United States', *The American Journal of Comparative Law* 50 (2002): 463, <https://doi.org/10.2307/840886>.

<sup>38</sup> Hammad Muḥammad 'Abd Al-Ṣamad, *Nizām al-Ḥukm fi 'ahd al-Khulafā' al-Rāshidīn* (Beirut: Mu'assasah al-Jāmi'iyyah li al-Dirāsāt wa al-Nashr wa al-Tawzī', 1994), 165.

<sup>39</sup> Aḥmad ibn Yaḥyā ibn Jābir Al-Balādhri, *Jumal min Insāb al-Ishrāf* (Beirut: Mu'assasah al-I'lāmī, 1973), 701.

highly upholds human rights based on respect for differences. Islam does not distinguish forms of hate speech based on discrimination against human rights entities and ordinary forms of humiliation. 'Alī states that the words *yā kāfir*, *yā fāsiq*, *yā ḥimār* are condemned as *ta'zīr*. These words are a form of insult based on belief and cursing.

'Alī ibn Abī Ṭālib prohibited some of the actions: insults, slander, blasphemy, incitement, provocation, spreading hoaxes, insulting the sahaba, and damaging the honor of the Islamic religion. Acts that are considered not to be included in hate speech but are prohibited by 'Alī are cursing and slandering. While cursing is categorized as expressing hostility when viewed from praying for someone in a state of anger. In contrast to insulting, cursing requires a more profound identification because it intersects with freedom of expression. Praying for evil is included in expressing someone's beliefs that are considered contrary to the teachings they believe.

As for *ghībah*, which is talking about someone that person does not want to hear, it is the same as spreading someone's disgrace. It was done, both secretly and openly. Backbiting can still be categorized as an insult, even though it is accurate. The desirable element is caused not only by untrue accusations but also includes remarks that attack honor. Such misdeeds are punishable by imprisonment and fines, which policymakers determine with a series of conditions. In Islam, the punishment that is left to the policymakers is called *ta'zīr*. That is the relevance between the existing regulations in Indonesia and the decision of 'Alī.

According to 'Abd al-Qādir 'Awdah, *jarimah ta'zīr* is a criminal act that can be punished with a single or more punishment based on *ta'zīr*. *Ta'zīr* itself means destiny or discipline. According to 'Awdah, *shari'ah* does not provide a limit on the sentence for *jarimah ta'zīr*. The *ta'zīr* punishment decided by the judge can be based on appropriateness based on the act and the perpetrator. So, the *ta'zīr* punishment is based on the judge's consideration.<sup>40</sup>

In determining a crime, 'Alī used *ijtihad maqāsidi*. According to Fu'ād Ḍāhar sources of *ijtihad maqāsidi* 'Alī are:<sup>41</sup> *al-maṣlaḥah al-mursalah*, *al-kulliyah al-*

<sup>40</sup> 'Abd al-Qādir 'Awdah, *Al-Tashrī' al-Jināī al-Islāmī Muqāran bi al-Qānūn al-Waqī* (Beirut: Mu'assasah al-Risālah, 2001), 80.

<sup>41</sup> Ḍāhar, *Aqḍīyah al-Khalīfah al-Rāshid 'Alī Ibn Abī Ṭālib, Dirāsah Ta'şīliyah Taṭbīqiyah li Manhaj 'Alī fi Uşūl al-Fiqh*, 407.

*khamsah*, *al-'urf*, and *sadd al-dharī'ah*. The basis of benefit in the protection of human rights are 1). right to life, 2). the right to equality and justice 3) the right to freedom.<sup>42</sup>

'Alī's protection of human rights entities is relevant to the provisions contained in Indonesian regulations. 'Alī bases the protection of human rights on the concepts of justice and equality. Both are categorized into two parts: the equality of human entities with human ties (*ukhuwah insāniyah*) and putting something in its place. When 'Alī was asked which is better, generosity or justice, he replied that justice puts something in its place while generosity brings something out according to its direction.<sup>43</sup>

'Alī prohibited discrimination based on belief with his policy at the time. He stated that when faced with a case, he would use the Torah law for its adherents, use the Bible law for its adherents, and use the Qur'an for Muslims.<sup>44</sup> Faith is a fundamental right that cannot be imposed on others. The Qur'an expressly states that everyone has the right to their own beliefs, as stated in QS. 109. He also prohibits discrimination based on sex or persons with special needs. He respects women as he respects Fāṭimah. His concern for people with special needs is to implement policies that provide equal services to all levels of society.

## **The Contribution of 'Alī ibn Abī Ṭālib's Thoughts to the Resolution of Hate Speech in Indonesia**

First, the linguistic contribution, where the linguistic approach by 'Alī refers to the '*urf*. An example of 'Alī's use of '*urf* is on the issue of the benefit of *al-īlā'* for a wife. Someone told his wife to breastfeed his brother's child with his child. His wife replied that she couldn't breastfeed two people. So the man promised not to approach his wife until the end of breastfeeding. After that, the man went to the assembly, so people asked the man why he didn't feed the child. The man replied that he promised not to approach his wife until the end of breastfeeding. So people said to him that it was *al-īlā'*.

Then 'Alī came and explained that if the words were done out of anger then the person was forbidden to come to his wife, while if not then he was allowed

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<sup>42</sup> Al-Sa'd, *Huqūq al-Insān 'ind al-Imām 'Alī Ibn Abī Ṭālib 'Alayh al-Salām Ru'yah 'Ilmiyah*, 31.

<sup>43</sup> Al-Sa'd, *Huqūq al-Insān 'ind al-Imām 'Alī Ibn Abī Ṭālib 'Alayh al-Salām Ru'yah 'Ilmiyah*, 75.

<sup>44</sup> Muḥammad ibn Mas'ūd al-'Ayyāshī, *Al-Taḥfīr al-'Ayyāshī* (Teheran: Maktabah al-Ilmiyah al-Islāmiyah, n.d.), vols I; 15.

to go to his wife. In other literature, 'Alī has also said that there is an element of anger in *al-īlā'*. In that case, 'Alī did not see from the language used, but saw from the intentions of the person. What the man wants is for the benefit, while *al-īlā'* is for harm.<sup>45</sup>

Second, the contribution of the ethical approach. Religion and values or ethics have a close relationship, but the beliefs of one religion are very difficult to coexist with others. Even so, ethical norms between one religious follower and another often have similarities. Morality as a basis cannot exist without religion, although the morality that is practiced is not necessarily related to religiosity. So that every transformation of morality, also begins with religious renewal.

Islam is deeply committed to moral wisdom, compassion, character of honesty and justice. Humans are directly mandated to become caliphs on earth to uphold justice. In the Qur'an there are several ethical concepts of *ma'rūf*, *al-khayr*, *al-birr*, *al-ḥaq*, *al-qist*, *ihsān*, and *ālīḥah*. Apart from that, there are *amr ma'rūf nahy munkar* (*ḥisbah*) deeds, *ta'āwun*, *ukhuwah*, humanization, and efforts for social welfare. The most important thing is patience and knowledge.<sup>46</sup>

'Alī's advice is related to speaking ethics, including 'Alī's opinion to stay away from every action that the perpetrator likes for himself but is not liked by Muslims in general. Steer clear of any actions that are carried out in secrecy and which may cause embarrassment when exposed. Stay away from actions that when the perpetrator is asked about it, he himself views it as bad or he makes excuses for it. Does not open the honor to be the subject of people's conversation. Avoid telling people everything that is heard, because it will lead to falsehood. Forbidding to match everything that people say, because it means stupidity.<sup>47</sup>

'Alī's advice about speaking ill of others is his opinion that the gossiper is the one who blames his brother and finds fault with him. One should remember that Allah has hidden his sins. In fact, it could be that the person's sins are greater

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<sup>45</sup> Al-Ṭabarī, *Tārīkh al-Umam wa al-Mulūk*, vols IV; 133.

<sup>46</sup> Mohammad Hashim Kamali, 'Ethical Limits on Freedom of Expression with Special Reference to Islam', *Cile Journal*, 2014, 45, <https://www.cilecenter.org/sites/default/files/pdfs/Recommended-Articles-English-Ethical-Limits-on-Freedom-of-Expression.pdf>.

<sup>47</sup> Al-Rāḍī, *Nahju al-Balāghah*, vols III; 189.

than the sins of his brother. Every human being must have sinned. Therefore, Islamic values teach not to spread someone's ugliness without a clear basis.<sup>48</sup>

During the battle of Şiffin, 'Alī heard some of his men berating the Syrians. So 'Alī said that he didn't like the behavior. Next, 'Alī asked to better describe their actions and tell them their situation, that was a better way of speaking and a more convincing way of arguing. Instead of insulting them, it would be better if you ask Allah for help.<sup>49</sup>

The ethical approach is in accordance with the Circular Letter of the National Police Chief number SE/2/11/2021 concerning Ethical Cultural Awareness to Create a Clean, Healthy, and Productive Digital Space for Indonesia. In law enforcement efforts, the police are asked to use persuasive, educative and preventive measures. To uphold justice, it is necessary to understand the ethical culture of the community in communicating on social media.

Third, the contribution of the unified and unified approach. As the Prophet kept the unity and unity, the companions including 'Alī ibn Abī Ṭālib certainly followed in his footsteps. Hate speech as part of actions that can cause division and unity has emerged since the time of the Prophet. 'Abdullāh ibn Ubay ibn Salūl is a person who is considered to be the spreader of rumors about 'Ā'isha's adultery. Responding to this, the Prophet did not immediately respond in a hurry, but was very careful and thoroughly investigated the case. The Prophet asked his companions for consideration, including 'Alī. Even though at that time, 'Alī gave the opinion that the Prophet should divorce 'Ā'ishah, for the benefit of her, not out of hatred for 'Ā'ishah. However, 'Alī took a lesson from the Prophet's prudence in responding to the slander over the killing of 'Uthmān.

If this case is contextualized at this time, it is with the widespread spread of hoaxes. Hoax according to Irfan Afandi refers to information that is actually not true, but is made as if it is true.<sup>50</sup> The way to respond to the news circulating is to not be in a hurry to believe and participate in spreading it. A more in-depth examination is needed to find out the truth. The public is expected to master literacy so that they do not easily believe all the news that is spread.

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<sup>48</sup> Al-Rāḍī, vols II; 49.

<sup>49</sup> Al-Rāḍī, vols II; 273.

<sup>50</sup> Irfan Afandi, 'Hoax dalam Sejarah Islam Awal (Kajian Kritis tentang QS. An-Nur: 11-12)', *Ar-Risalah: Media Keislaman, Pendidikan dan Hukum Islam* 16, no. 1 (3 April 2018): 145-61, <http://ejournal.iaibrahimiy.ac.id/index.php/arrisalah/article/view/150>.

In maintaining unity and integrity, 'Alī obeyed the legitimate leader. Answering the hoax about the feud between 'Alī and Abū Bakr can refer to a history from Abū Sa'īd Al-Khudrī, which explains the events after the Prophet died. The Ansor group began to speak at Thaqifah's *bay'at* event. Then Abū Bakr looked at the audience who did not find 'Alī. Not long after, 'Alī came to take an oath of allegiance to Abū Bakr.<sup>51</sup>

## Conclusion

The slander that sowed hate speech during the Caliphate of 'Alī ibn Abī Ṭālib started with the slander of the killing of 'Uthmān. The main actor in the spread of hate speech is 'Abdullāh ibn Sabā' and his followers called the Sabā'iyyahyyah. Apart from Sabā'iyyahyyah, there are Khawarij who came out of the ranks of 'Alī ibn Abī Ṭālib with a *takfīrī* ideology. Shia Imāmiyah who glorify 'Alī excessively and denounce the companions and previous caliphs. The forms of hate speech according to 'Alī include insults, pollution, blasphemy, prohibition of cursing, backbiting, inciting and provocation, spreading hoaxes and false news, and insulting the five constants of Islam. All of these actions were prohibited by 'Alī based on words and actions in accordance with the arguments of the *sharī'ah*. According to 'Alī, hate speech is a limitation on a person's freedom of expression because it is contrary to human values and human rights.

'Alī uses a criminal and social law approach in solving the problem of hate speech. The criminal law policy is in the form of prohibition of infidel or insulting words with bad nicknames. 'Alī punished him with *ta'zīr* according to the ruler's policy. The social approach includes ethics, justice and the protection of human rights and strengthens unity. Analysis of 'Alī's *ijtihād* method in determining hate speech acts is based on the Qur'an, Sunnah, *ijmā'*, and *qiyās*. As for the provisions of the form of action and punishment using a *ta'zīr* approach. To see the purpose of the *sharī'ah* on the protection of human rights and the limitations of freedom of expression in achieving the benefit by using *maqāṣid al-sharī'ah*.

The relevance of 'Alī's opinion on hate speech with regulations in Indonesia can be seen from the definition, form of action, form of punishment and protection of human rights. First, basically an explicit definition of hate speech is not found in Indonesian regulations. However, from a theoretical point of view, there is relevance to 'Alī's opinion. The definition of hate speech according to 'Alī

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<sup>51</sup> Al-Shallabi, *Biografi Ali Bin Abi Thalib*, 242.

is the prohibition of expressing something that can cause hatred and hostility. Second, the form of action contained in the regulations in Indonesia is in accordance with 'Alī's opinion on hate speech. The actions that were prohibited by 'Alī were insults, slander and blasphemy, incitement and provocation, spreading hoaxes and false news. Third, the form of punishment set by 'Alī is *ta'zīr*. The form of punishment for hate speech can be adjusted to the effectiveness of countermeasures while still paying attention to the benefit and protection of human rights.

Based on the above study, it is suggested to the government to reform the criminal law on hate speech by taking into account the limitations of human rights proportionally. With these two approaches, it is expected to provide the legal certainty needed to minimize juridical problems. In tackling hate speech, apart from using a penal method, a non-penal approach is needed by making non-discriminatory policies and prioritizing morality.[a]

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