

## HUMAN RIGHTS IN INTERNATIONAL HUMANITARIAN LAW AND THE PERSPECTIVE OF ISLAMIC SHARIA

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### ABSTRACT

*Today there is often abuse of human rights, from people who have power, so that the rights that they should have cannot be used properly. Therefore, the protection of a country's human rights needs to be carried out, and must be in accordance with the conditions, cultural background and capabilities of the country. Protection of human rights must also be in accordance with the formulation of human rights contained in the Universal Declaration of Human Rights and the Cairo Declaration on the concept of human rights in an Islamic state. Human rights are universal, without discrimination. Human rights may be violated, but they always receive recognition and guarantees of protection through law. The concept of human rights has two basic meanings; first, these rights cannot be separated and taken away, because he is a human being like moral rights that originate from the humanity of every human being and aim to guarantee the dignity of every human being; the second meaning is that rights according to law, are made according to the legal formation process of society. In Humanitarian Law this is more focused on upholding human rights which is oriented towards the law of war, which can cause harm and bring misery to mankind who are not involved in war (non combatant) and other forms of oppression that violate human rights, so that this becomes a benchmark for protecting humanity and justice for those who have suffered as a result of war. Because of this, the protection of human rights requires intensive attention, even though many regulations/resolutions have been made to protect human rights, human rights are still being violated. Therefore it is also necessary to discuss how the rules for the Protection of Human Rights in Humanitarian Law and in the Perspective of Islamic Shari'ah? with the aim of this writing is, To find out about the rules for the protection of Human Rights in Humanitarian Law, how is the Islamic view of war?*

Keywords: human rights, humanitarian law, Islamic shari'ah.

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### INTRODUCTION

Protection of human rights, arose since the 17th century AD, which was a reaction to the absolute power of the king and the feudal lords who ruled at that time against the people. Society at that time consisted of two major strata, namely the upper layer which was occupied by the rulers and the nobility who were a minority and the lower layer which was occupied by ordinary people who were in the majority. In fact, the lower strata are seen as having no rights and are often treated arbitrarily by those with more power, so it is hoped that the above ideas can equalize the position of each layer of human beings in the framework of protecting human rights (Ikhwan, 2004).

Human rights are universal, apply to everyone, without discrimination. Human rights may be violated, but they always receive recognition and guarantees of protection through law. Various forms of recognition and development of norms through various declarations, Covenants, Conventions, Protocols, as well as procedures and institutions aimed at advancing respect for human rights have taken place quite quickly (Rover, 2000). International law has regulated Human Rights which are based on 4 formulations of human rights known as The Four Freedoms namely Freedom of Speech, Freedom of Religion, Freedom From Fear, and Freedom From Want (Ikhwan, 2004).

The concept of human rights has two basic meanings; first is that these rights cannot be separated and taken away, because he is a human being like moral rights that originate from the humanity of every human being and aim to guarantee the dignity of every human being; the second meaning is legal rights that are made according to the legal formation process of the community itself, both nationally and internationally (Levin, 1987).

In general, human rights consist of various kinds; Jhon Locke who argues that all individuals are gifted by nature above: 1) right to live, 2) Right to Liberty, 3) right to property (Hutauruk, 1982). In international law, especially humanitarian law, in this case, it is more focused on upholding human rights which are oriented towards the law of war, which can cause harm and bring extraordinary suffering to mankind who are not involved in war (non-combatant) and other forms of oppression that is a violation of human rights, so this is used as a benchmark in protecting humanitarian issues and even upholding justice for people who have suffered as a result of war.

Therefore, the protection of human rights requires intensive attention. Nevertheless, even though many regulations or resolutions have been made to protect human rights, these human rights continue to be violated. Therefore it is necessary to discuss war crimes in the perspective of Islamic law.

### METHODOLOGY

This study aim to find out how the rules for the protection of human rights in humanitarian law and to find out how the Islamic view of war. This study uses a type of normative legal research, namely the type research conducted through the study of legal literature and secondary data. This normative legal research refers to legal norms in regulations laws and norms that exist in society. Source of data used is secondary data, namely data that obtained in the form of documents or books related to the subject matter

## TYPES OF GST

### International Humanitarian Law

According to Prof. Muchtar Kusumaatmadja, the law of war is 2 legal rules, namely (Haryomataram, 2005):

1. Jus ad bellum, the law of war, which regulates matters how the state is justified in using gun violence.
2. Jus in bello, namely the law that applies in war. This law is subdivided into:
  - a. The law that governs the way war is conducted (conduct of war).
  - b. Laws governing the protection of persons who become war victims.

Protection and prevention of every individual in various events that cause suffering is the main concern of international human rights law and international humanitarian law. If human rights are intended to protect human rights, Humanitarian Law is precisely intended so that any incident that causes extraordinary suffering to humanity in an armed conflict can be categorized as an international crime (Radjab, 2022). This is in accordance with the objectives of the laws of war contained in the U.S Army Field Manual of landwarfare namely (Haryomataram, 2005):

1. Protect both combatants and non-combatants from unnecessary suffering;
2. Guarantee the rights of people who fall into the hands of the enemy;
3. Allowing the return of peace;
4. Limiting the powers of the warring parties.

In order to guarantee human respect in humanitarian law where various deviant actions are seriously classed as international crimes. There are 3 crimes covered under humanitarian law, namely: war crimes, crimes against humanity and crimes of ethnic extermination (genocide). Because of this, humanitarian law is divided into 2 branches, namely (Rover, 2000):

1. The Law of Geneva, which is basically related to the protection of victims of war and protecting all those who are hors de combat;
2. Law of The Hague, in this case, provides rights and obligations to the parties disputing in carrying out military operations and limiting the means of causing harm to the enemy.

The implementation of human rights in Islam which is based on the Al-Quran and Sunnah can be seen in the form of a declaration, namely The Cairo Declaration on Human Rights in Islam 1990 and the writings of experts. Human Rights in Islam is sharia law to be implemented as a charity of worship, where the basic human rights in the Qur'an include the letter Al Hujuraat verse 13. In this regard, where Islamic countries that are members of The Organization Islamic Conference/OIC) concerning humanity in accordance with Islamic Shari'ah based on the concept of human rights of OIC countries is referred to as the Cairo Declaration which in its application and reality has several similarities with the universal declaration of human rights The Universal Declaration of Human Rights (UDHR) born by the United Nations.

Regarding rights, in this case it includes all that is contained in the word rights, such as religious rights, civil rights, decency rights, general rights and others (Musthafa Ahmad Al-Zarqa) (Ikhwan, 2004). Human rights, as we all know, emphasize the origin and nature of these rights, in which human rights are basic rights given by God to every human being regardless of the differences that exist among human beings. That is why human rights are based on and formulated from the Qur'an and As Sunnah as the main sources of Islamic Shari'ah. The main rights which are the rights needed by humans to maintain the continuity of their existence and the safety of life are the following rights (Ikhwan, 2004):

1. Right to life safety;
2. Right to worship;
3. Rights regarding Religious Elements or Symbols;
4. The Right to Obtain Basic Needs;
5. Right to Work;
6. Right to Express Opinion;
7. Right to Marriage and Family.

Therefore, the protection of human rights requires intensive attention, and it is necessary to draw up a Universal Declaration of Human Rights. Nevertheless, even though many rules or resolutions have been made to protect human rights, these rights

continue to be violated. Because of this, it is necessary to discuss human rights from the point of view of humanitarian law, and the perspective of Islamic Shari'ah.

### War In The Perspective Of Islamic Shari'ah

War is something that believers really hate, because the essence of war is to kill people. Islam cannot justify destruction. Therefore the Qur'an mentions that war is something that the believer does not like and does not give up on it. But they will accept it if Allah S.W.T orders it and obliges it for themselves. They are sometimes forced to enter war because they are driven by a sense of humanity, for example allowing violence to reign willingly against weak groups who have no compassion. But true compassion obliges the destruction of that violence.

The compassion called for by the Apostle obliges not to allow evil to let good thoughts and not to overpower good. But obligatory compassion saves truth and good and rejects evil. So war in Islam is a necessity which is based on compassion, morals and human ethics (Zahrah, 1982).

### The Doctrine of War In Islam

In the Al-Quran the words that are often used to mean war are Jihad and Qitaal. Jihad is defined as war in all forms, namely; armed war, propaganda war, political war, economic war, social war, social war, diplomacy war. Meanwhile, Qital has a more specific meaning, that is, armed physical warfare (Hasjmy 1978).

#### a. Meaning of Jihad

Jihad means sacrificing energy and all existing abilities to achieve a goal which can be translated by the word "struggle". The word jihad in this general sense is found in the following verses:

1. "Fight in the way of Allah with the real struggle. Allah has chosen you with the real struggle" (Al-Hajj: 78);
2. "Those who fight because of us, we will show them our way. Verily, Allah is with those who serve" (Al-Ankabaut: 69);
3. "Indeed, those who believed, emigrated and fought in the cause of Allah, they hope for Allah's mercy, and Allah is Forgiving and Merciful" (Al-Baqarah: 218);
4. "Indeed, those who believed, emigrated and fought with their wealth and souls in the way of Allah, and those who gave places and helped (the muhajirin) they were leading one another" (Al-Anfal: 72);
5. When the letter has been sent down: have faith in Allah and fight with the Messenger, then the rich people ask your permission with the words: let us live with people who do not take part in war" (At-Taubah: 86).

#### b. Islamic War Aims

Basically war in Islam is not colonial, but a war to defend and protect Da'wah Islamiyah. Based on that, there are 2 goals of war that are most important in Islam, namely (Hasjmy 1978):

1. Protecting freedom of preaching

According to Islamic teachings that developing Islamic teachings by force is coercion, while in Islam coercion is prohibited, as expressed in Surat Al-Baqarah: 256; "There is no compulsion in religion, what is right is clear and what is wrong is obvious." As has been described that war in Islam aims to protect Aqidah and secure independence and develop it among other human beings, as described in the verse Al-Baqarah: 190 which states;

"Fight in the way of Allah to fight those who fight you, and do not exceed the limits, because Allah does not like those who transgress." From the verse above it is clear that war in Islam is a war that is defensive in nature, therefore Islamic soldiers may not start hostilities and wars unless they are forced to fight, at which time war for them is an honor and a glory.

Therefore, Islamic soldiers may not commit acts that deviate from the line of honor. They are bound by the obligation to keep promises, treat injured and sick people, protect prisoners and may not kill and disturb people who are not participating in the war, as stated in Al-Baqarah: 194, namely; "Whoever is hostile to you, let you be hostile to you." them according to their animosity. And fear Allah, you must understand that Allah is with those who fear Allah."

2. Strengthen the Love of Peace

A nation that does not have a strong army will become the prey of another strong nation. If the Islamic army is not strong, of course the enemy will not respect the sovereignty of the Islamic state. As explained in Al-Anfal: 60-61 which reads "Make preparations to face them (the enemy) as far as you can, with all your strength and cavalry, to make the enemies of Allah and your enemies feverish with fear, as well as other enemies that you do not know, only Allah knows them, and whatever you give charity in the way of Allah will surely be paid enough for you, while you will not be wronged. And if they like peace, then you must love peace too. And fear Allah, for He is all-hearing and all-knowing." Regarding peace, Islam really wants it as stated in the verse Al-Baqarah: 208 which means: "you who believe! All of you should enter into peace, and never follow the steps of satan, because actually satan is a real enemy. From this it can be concluded that

Islam is a religion of peace that stands on the basis of love and tolerance which does not allow war, unless there is no other way to go.

### c. Things That Must be Fulfilled in the Implementation of War in Islam

The things that must be fulfilled include, among others, (Hasjmy, 1978):

#### 1. People who are obliged to fight and those who are not obliged to fight

According to Islam, citizens can be exempted from compulsory military service because they are unable, such as: sick, weak and old. One of the verses that illustrates this is the letter At-Taubah: 191 which means: "It is permissible for people who can't afford it, sick people, and people who don't have shopping money to join the war, as long as they are truly honest with Allah and His Messenger. There is no way to blame devoted people. Verily, Allah is Most Forgiving, Most Merciful."

#### 2. Mandatory Conditions for War

The law of war in Islam is fardhu kifayah except in cases of coercion, therefore the conditions for becoming a soldier are set, namely as follows (Rasjid, 1992): Islam: this means that those who will become soldiers must be Muslims, and those who are not Muslim are not obliged to fight.

- a. Baligh (adult): a person who is not yet an adult is not obliged to fight.
- b. Reasonable: people who are imperfect in mind are not obliged to fight.
- c. Freedom: slaves are not obliged to fight, unless ordered by their master.
- d. Men: There are exceptions to this, namely women can become soldiers if their husbands allow them to join the battlefield, as well as children who have received permission from their parents to help take care of soldiers.
- e. Able-bodied and strong: it is not obligatory to fight for those who are disabled and sick.
- f. Having sufficient expenses for him and his family in time during the war, if not funded by the government.
- g. There is permission from the parents. In this case there is a hadith that confirms it, namely from Abu Dawud "From Abu Sa'id: a man from Yemen came to Rasulullah SAW to join the war, then he asked the man "do you have family in Yemen? He answered "yes, my parents", and he again asked, "Are your two parents allowing you?", all right, you take care of both (meaning you don't have to fight).

#### 3. Declaration of War

Islam warns Muslims of the possibility of enemy betrayal, by using peacetime to attack suddenly when Muslims are deceived by a peace agreement, the verse that describes this is the verse Al-Anfal: 58 which means: "If you are worried about betrayal (breaking a promise) from a people (enemy), then break the promise frankly (which means the peace agreement is over) because Allah does not like traitors."

#### 4. The Call to Jihad

When the country is in a state of danger, especially in a state of war, then in general the Muslims are called upon to wage jihad, which in modern terms is called general mobilization. Islam warns and threatens Muslims who neglect or object to the call of jihad (general mobilization). One of the letters in the Qur'an that describes this is the letter At-Taubah: 38-39 which means: "You who believe! What obstacles are there for you, when you are ordered: "Let's go to war in the way of Allah!" then do you want to live on on earth? Do you love worldly life more than the hereafter?"

#### 5. On Prisoners of War

Islam teaches to be kind to prisoners of war and not to be mistreated. At the time of the Apostle, the prisoners of war were given 3 choices, namely:

- a. Teach the sons of the Muslims, then they are free;
- b. Convert to Islam and then be free and get the same rights and obligations as the old Muslims;

Redeem yourself with some money, and then be free. Surah Muhammad: 4 explains this, which means: "Therefore, if you meet disbelievers on the battlefield, attack them so that, after they can be defeated, then take them prisoner. Then you may release the captives as a kindness and you may also ask for ransom so that the war is over."

## CONCLUSION

1. Human Rights are inherent in human nature since human birth. Therefore there is no power whatsoever that can revoke it, so that the existence of human rights in a country is important to be protected from arbitrary actions that can harm them. And the implementation is of course adjusted to the conditions, cultural background and capabilities of the country concerned;
2. Based on the protection of human rights towards the implementation of respect for human rights itself, a separation is made between basic rights and additional rights based on the Qur'an and Sunnah according to Islamic Shari'ah;
3. Looking at the UDHR itself, the protection of human rights, in this case, is based on the rights after World War II which are linked to humanitarian law as a consideration for violations of the rules of war, where war or armed conflict often causes damage and destruction, and does not even rule out involving people. people who are not involved in warfare/non-combatants become victims and suffer material losses.

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