

Contribution of Islam to International Humanitarian Law

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Abstract: *Contemporary international humanitarian law has largely developed from the historical experiences of Western countries, particularly those shaped by armed conflicts in Europe. As a result, its formation and evolution have been significantly influenced by European political, social, and legal traditions. However, Islamic law (Sharia), which emerged within the socio-cultural context of ancient Arab society that frequently engaged in land-based warfare, also contains comprehensive principles governing war and peace. This study aims to examine Islam's contribution to the development of international humanitarian law by exploring its underlying principles, systems, values, and normative foundations. Employing a normative legal research method, this research analyzes classical Islamic legal sources, including the Qur'an, Hadith, and the opinions of Islamic jurists, and compares them with modern humanitarian law norms. The findings indicate that Islam has made substantial contributions to international humanitarian law in two main aspects. First, Islamic law provides general provisions related to the conduct of war and the maintenance of peace, emphasizing justice, proportionality, and the protection of non-combatants. Second, Islam establishes specific rules concerning the treatment of prisoners of war, including humane treatment, protection of dignity, and opportunities for release. These principles demonstrate that Islamic law has long upheld humanitarian values that are compatible with and enrich contemporary international humanitarian law..*

Keywords : *Contribution, Islam, Humanitarian Law*

Introduction

Humanitarian law, or more completely, international humanitarian law, which applies to armed conflict and is the oldest (international) law in the world. Its age is almost the same as when humans were created on Earth. Humanitarian law broadly regulates the mechanisms of good and civilized warfare, both in written form and as customary law. The goal is to protect human civilization and the universe from destruction due to armed conflict between humans.

Therefore, the purpose of international humanitarian law is to limit the effects of armed conflict for humanitarian reasons, to protect those not participating in or withdrawing from the war, and to protect against cruel and inhumane methods of combat.

The legal basis of international humanitarian law is the principle of distinction. This is based on the recognition in the explanation of the St. Petersburg Declaration that "the only legitimate object for states to pursue and achieve during wartime is the weakening of the enemy's military power." While the civilian population and individual civilians will enjoy general protection against dangers arising from military operations, the parties to an armed conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives, so as to direct operations solely against military objectives. Another important difference is the distinction between jus in bello and jus ad bellum. In jus in bello, efforts are made to reduce suffering by providing a minimum standard of humanity. Meanwhile, jus ad bellum regulates the legality of military action taken by a state under humanitarian law. (Waibel M : 29)

The principle of limitation is a principle that desires a restriction on the targets, both the means and the tools, as well as the methods or ways of warfare employed by each participant in an armed conflict. Such as the use of Mustard gas, shrapnel bullets, atomic bombs, and so on, which, when used, not only cause horrific, excessive (superfluous) injuries and unnecessary suffering, but also affect a wide and uncontrolled area, potentially impacting civilians outside the war zone, as per Additional Protocol I, Article 35, paragraph 2. (Ahmad Raihan Ghoffar, Ayub Torry, Satriyo Kusumo : 78)



Another aspect of the legal context is that the basic principle of Islamic War Law is to use force only as necessary (and limited) to eliminate enemy aggression, and to use its forces only against those in power or the people who are at war with Islam, or at least are expected to take such actions. (Ahmad Raihan Ghoffar, Ayub Torry, Satriyo Kusumo : 79)

While the foundations of International Humanitarian Law are three: the Principle of Military Necessity, the Principle of Humanity, and the Principle of Chivalry. International Humanitarian Law and Islamic War Law share some similarities, such as political influence and the principle of limitation or distinction. The influence of politics causes very fundamental problems in the formation of Humanitarian Law. When the first war occurred on Earth, it was all intertwined with political issues, and the victors of the war determined the laws that would apply in future conflicts. (Ahmad Raihan Ghoffar, Ayub Torry, Satriyo Kusumo : 79)

Self-interest or egocentrism is one of the sources of conflict in relations between countries, leading to an increased need to maintain the state, which in turn increases the country's military strength and triggers social conflict. The following goals, which are included in each country's national policy framework, tend to create potential for conflict. This is a consequence of a country's power to issue political policies that can lead to potential conflict. The current humanitarian law is based on the experiences of Western countries during wars in Europe, so its formation is influenced by European politics. Meanwhile, Islam, because it was formed based on the customs of the ancient Arab people who fought on land. (Ahmad Raihan Ghoffar, Ayub Torry, Satriyo Kusumo : 79)

Therefore, it is very important to know the principles, systems, values, and foundations related to Islam's contribution to the development of international humanitarian law.

Method

Research is a fundamental means of developing both science and technology. This is because the research aims to reveal the truth systematically, methodologically, and consistently. Thru this research process, an analysis and construction of the collected and processed data was conducted. This research is a type of normative legal research.

Discussion

1. International Humanitarian Law Review

International Humanitarian Law (IHL) regulates cross-border issues between countries, as a branch of international law alongside diplomatic law, maritime law, international treaty law, and space law. (Smith, Rhona K.M, dkk: 333). Humanitarian law (HL) or the Humanitarian Law of Armed Conflict (HLAW) has a very broad scope, encompassing the laws of war and human rights law. HL is the legal rules found in the 1949 Geneva Conventions (Conventions on the Victims of War) and their protocols, as well as the Hague and Geneva Laws and their protocols. The Hague Laws are the 1899 and 1907 Conventions (Conventions for the Pacific Settlement of International Disputes). The Geneva Conventions are the 1949 Conventions, covering four conventions: the treatment of the sick and wounded in land combat, at sea, the treatment of prisoners of war, and the protection of civilians in wartime. The 1949 Geneva Conventions have two protocols: one regulating the protection of international victims of war and the other regulating the protection of non-international victims of war.

Compared to other branches of public international law, HH has a unique feature: the governing provisions are made thru multilateral treaties or international freedom law, but their substance largely regulates matters concerning individuals. Subjects of international law

are states or international organizations, and its rules encompass those involved or not involved in warfare. (Smith, Rhona K.M dkk : 333).

Comparative law is a specific method of legal discovery that examines legal issues thru a comparative approach, comparing two or more legal subjects such as state institutions, national constitutions, and the history of the formation of a law. The main objective of the comparative law method is to examine interconnected legal aspects and then assess their similarities and differences. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

This method is suitable for harmonizing two or more laws with different backgrounds, but whose intrinsic values are the same. Comparative law holds significant value in international relations. Its utility is excellent for a diverse society, both nationally and internationally. This provides a framework for legal practitioners to handle legal issues involving foreign law. The comparative process is useful in comparative jurisprudence, comparative legal history, constitutional and administrative law, criminal law, labor law, law of obligations, commercial law, procedural rules, legislation and legal reform, as well as international law and international relations. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

Legal comparison has two main principles: only comparing comparable laws and comparing their functions, not their legal formal aspects. There are six methods of legal comparison: functional, analytical, historical, structural, contextual, and constitutional. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

Humanitarian law, or the law of war, or in its full version, International Humanitarian Law Applicable in Armed Conflict, is the oldest law on Earth. Its age is almost the same as when humans first appeared on Earth. This law broadly regulates the mechanisms of good and civilized warfare, both in written and customary law. The goal is to protect human civilization and the universe from the destruction caused by armed conflict between humans. Thus, the purpose of establishing International Humanitarian Law is to limit the consequences of armed conflict on humanitarian grounds, to protect those who are not participating in or have withdrawn from the war, and to restrict inhumane and torturous methods of combat. From the definition above, there are two essential elements of war, namely:

- a. The existence of a situation of conflict (hostility) using armed force.
- b. The presence of disputing parties.

The forms of implementation of International Humanitarian Law are:

- a. Preventive measures;
- b. Compliance measures;
- c. Repressive measures;
- d. Other measures.

The legal basis of International Humanitarian Law is the principle of distinction. This is based on the recognition in the explanation of the St. Petersburg Declaration that "the only legitimate object for states to pursue and achieve during wartime is the weakening of the enemy's military power." While the civilian population and individual civilians will enjoy general protection against dangers arising from military operations, the parties to an armed conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives, so as to direct operations solely against military objectives. Another important difference is the distinction between *jus in bello* and *jus ad bellum*. In *jus in bello*, efforts are made to reduce suffering by providing a minimum standard of humanity. Meanwhile, *jus ad bellum* regulates the legality of military action taken by a state under humanitarian law. (Waibel : 29)

The methods and ways to limit war in international law are divided into two main branches: (Waibel : 29) :

The methods and techniques for limiting war in international law are divided into two main branches:

- a. The Geneva Law or Red Cross Law, which aims to protect civilians and non-combatants. This law was used before and after the battle occurred.
- b. The Hague Law aims to impose restrictions on the main means and tools of the weapons system during military operations. This law is used when armed conflict is taking place.

The principle of limitation is a principle that desires a restriction on the targets, both the means and the tools, as well as the methods or ways of warfare employed by each participant in an armed conflict. Such as the use of Mustard gas, shrapnel bullets, atomic bombs, and so on, which, when used, not only cause horrific, excessive (superfluous) injuries and unnecessary suffering, but also affect a wide and uncontrolled area, potentially impacting civilians outside the war zone, as per Additional Protocol I, Article 35, paragraph 2. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

Islamic law is a system of rules that refers to the revelation sent down by Allah SWT to Prophet Muhammad SAW thru the intermediary of the Angel Gabriel, serving as guidance for Muslims in particular and the entire universe in general. The primary legal sources of Islamic law are the Quran, Hadith or Sunnah, and Ijma (the general consensus of scholars). Islamic law is divided into two forms: Sharia and Fiqh. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

Sharia is a set of laws given directly by Allah to His Prophets and Messengers. The manifestation of sharia is in the form of the Quran and Hadith. Then, the Quran and Hadith are further explained in detail by fuqaha, scholars, or experts in Islamic law who are proficient in the science of jurisprudence. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

Fiqh literally means "understanding." Fiqh is created by scholars or experts in Islamic law by translating, studying, explaining, and developing the rules found in Sharia law. The legal product issued from Fiqh is the consensus of scholars. (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

The comparison between Humanitarian Law and Islamic War Law is as follows: (Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021).

2. Equations

The main principle of Islamic Law of War is that force may only be used to eliminate enemy aggression and may only be used by its forces against those who are at war with Islam or are expected to be. While the foundations of International Humanitarian Law are three: the Principle of Military Necessity, the Principle of Humanity, and the Principle of Chivalry.

Islamic Law of War and International Humanitarian Law share some similarities, such as political roles and the principle of limitation. A very important problem in the formation of Humanitarian Law is caused by political forces. Because when the first war happened in the world, no one cared about political issues, and only the winners determined the laws that would be applied in the future when the next war arose. One factor that causes conflict in relations between countries is self-interest, or being egocentric. This importance led to an increase in the country's military strength, which in turn caused social conflict. It has a tendency to cause conflict when these goals are pursued in the context of each country's national policies. This is because a country's power to issue political policies can lead to conflict. The experiences of Western countries during the wars in Europe shaped current humanitarian law, which was influenced by politics in Europe.

Nevertheless, Islam is based on the land warfare traditions of the Arab people. According to the principle of distinction in International Humanitarian Law, all persons belonging to the non-combatant category must be protected from the effects of war, including enemy property not related to military equipment. Since there is no compulsion and this is

related to the conviction of the heart, war and coercion should not be used to spread religion. Therefore, Islamic scholars and jurists agree that killing individuals who do not fall into the category of combatants, such as women, children, the elderly, the insane, farmers, fishermen, laborers, slaves, the disabled, and others, is forbidden.

3.Differences

International Humanitarian Law does not fundamentally restrict the types and elements of weapons that can be used in the context of firearms, especially in naval warfare. Therefore, rules restricting the use of new weapons will only be implemented after a thorough investigation, which will then be approved by an international conference. To this day, there are still many weapons that can be categorized as weapons of mass destruction, but have not been authorized, based on research in the science of weapon metallurgy. Russia and the United States withdrew from the Intermediate-Range Nuclear Forces (INF) treaty, which limits the use of nuclear weapons. This is happening for several reasons, such as the use of ballistic missiles from underwater carried by submarines and hypersonic anti-ship missile technology. Additionally, the INF treaty has also dissolved. Russia and China can reject foreign countries like China that want to be included in this agreement. In Islamic law of war, there are differences regarding the principles underlying the restrictions on the use of firearms. In the early Islamic era, the law forbade killing using anything composed of elements such as fire, water, earth, or poison.

Initially, the use of fire, groundwater, and poison was prohibited due to concerns that the effects of these elements would spread uncontrollably, thus minimizing casualties and civilian and non-combatant losses. Beside fire, the use of other firearms, such as stone throwers, is also prohibited. However, Salman al-Farisi, one of the companions of Prophet Muhammad SAW, suggested using stone-throwing weapons during the Battle of Khaybar. This is based on his own experience in Persia, where this weapon had long been and was commonly used for besieging and attacking fortresses. Modern Islamic scholars and jurists disagree on the use of weapons of mass destruction. Some argue that possessing and using weapons of mass destruction is forbidden, while others believe they can be stored but not used for attack, only for defense; or that they can be stored and used to attack an enemy state that also possesses weapons of mass destruction to protect its territory.

Islamic law emphasizes the importance of peace in human life in general and for prisoners of war in particular, and many verses in the Quran explain this. Teach them well, and debate with them in the correct manner, for your Lord knows best who has strayed from His path and He knows best what to take. And Allah Subhanahu wa ta'ala says: "O you who believe, enter into Islam completely and practice it" (Yustitiantingtyas, 2016). Don't follow in Satan's footsteps. Indeed, he is your open enemy, and Allah Ta'ala says: And if they incline toward peace, then incline toward them, and put your trust in Allah. Indeed, He is the All-Hearing, the All-Knowing.

After being persecuted and abused by non-believers, Allah SWT did not give the Prophet Muhammad SAW any command or authority to kill the polytheists at the beginning of Islam's arrival. The Quran and the Sunnah also regulate Islamic law. It turns out that both of these legal concepts have similarities and differences. Both ideas are interdependent, as some Western scholars acknowledge that the concept of Islamic law has adopted the concept of war crimes in human rights. Islamic war law in Islam refers to what scholars in fiqh and sharia consider to be the Islamic law that Muslims must follow during war, especially in terms of the legal treatment of prisoners of war and the protection of their rights.

Principles and rules of wartime in the Quran and Hadith. Islam shows the characteristics of the Prophet (peace be upon him), he (peace be upon him) used to treat prisoners of war well and he (peace be upon him) said: I advise you to treat them well, namely: (Yustitiantingtyas, 2016)

1. Prisoners are forbidden from excessively abusing prisoners of war.
2. Feeding Prisoners of War: Allah the Almighty says: And they feed the orphan and the prisoner out of their love for Him. And the Messenger of Allah, may Allah bless him and grant him peace, did this not just once, but often.
3. Respect prisoners of war.
4. Be gentle with prisoners.
5. Torturing prisoners of war is prohibited.
6. Provide food, drink, and clothing.

There are similarities between the HHI and Islamic law in the concept of Islamic legal rules in the Quran: (Yustitianiingtyas, 2016)

1. Regarding the general protection of prisoners of war.
2. Follow the laws of the host country.
3. Adequate space and infrastructure.
4. Release of prisoners of war.
5. Various obligations of prisoners of war, punishments, judicial processes, and abolition of prison sentences.

Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn: Islam teaches how culture and civilization developed throughout the course of human life. Furthermore, the success of Islamic civilization can be viewed from the perspective of scientific indicators. The main elements of the success of Islamic civilization from a scientific perspective. In the past, specifically from the 8th to the 12th century CE, Muslims experienced their golden age, a time when Islamic science and civilization flourished. Finally, the contribution of Islam to International Humanitarian Law in terms of two main aspects: Humanitarian Law related to general provisions concerning war and peace, and specifically, among other things, related to prisoners of war.

References

- Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, *Komparasi Hukum Humaniter Internasional Dan Hukum Islam Dalam Penggunaan Senjata Pada Perang Laut*, dalam *Jurnal of Law, Society and Civilization*.
- Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021, *Komparasi Hukum Humaniter Internasional Dan Hukum Islam Dalam Penggunaan Senjata Pada Perang Laut*, Jolsic: *Journal of Law, Society, and Civilization*.
- Al-Dawoody, A, 2019, *Hukum Perang Islam*. Jakarta: KPG (Kepustakaan Populer Gramedia) dalam Ahmad Raihan Ghoffar, Ayub Torry Satriyo Kusumo, 2021, *Komparasi Hukum Humaniter Internasional Dan Hukum Islam Dalam Penggunaan Senjata Pada Perang Laut*, Jolsic: *Journal of Law, Society, and Civilization*.
- Smith, Rhona K.M, dkk, 2010, *Hukum Hak Asasi Manusia*, Pusham UII: Yogyakarta.
- Waibel, M, 2014, *Even Wars Have Limits: Fundamental Principles of International Humanitarian Law* *Juridicum - Zeitschrift Im Rechtstaat*, 1 (2)
- Yustitianiingtyas, L, 2016, *Perlindungan Orang Sipil Dalam Hukum Humaniter Internasional*, *Jurnal Komunikasi Hukum (JKH)*, 2 (1), <https://doi.org/10.23887/jkh.v2i1.7282>.
- Intersection Principles Between Islamic and International Humanitarian Law. *Istinbath: Jurnal Hukum*, 16(2), 265–280. DOI: <https://doi.org/10.32332/istinbath.v16i2.1632>
- Jawanta, H. S. (2024). *Perlindungan Tawanan Perang dalam Konflik Israel-Palestina Berdasarkan Hukum Humaniter Internasional dan Hukum Islam*. *Law and Humanity*, 2(3), 264–280. DOI: <https://doi.org/10.37504/lh.v2i3.658>

- Salsabila, A. M. *Konvergensi Maqāsid al-Syarī'ah dan Prinsip Humaniter Internasional Terhadap Jarimah al-Harbiyyah*. *Jurnal Al-Jina'i Al-Islami*, 3(1), 206–217. DOI: <https://doi.org/10.15575/jaa.v3i1.2258> ejournal.uinsgd.ac.id
- Abidin, A. Z. *Perlakuan terhadap Tawanan Perang dalam Hukum Humaniter Internasional dan Hukum Islam*. *Qonuni: Jurnal Hukum dan Pengkajian Islam*, Vol. 3 No. 01 (2023). DOI: <https://doi.org/10.59833/8gw7p743> journal.ptiq.ac.id
- Iwansyah, H. *Islam and the Provisions of War*. *Al-'Adalah*, 15(2), ... DOI: <https://doi.org/10.24042/adalah.v15i2.3549> [Ejournal Raden Intan](http://Ejournal.RadenIntan)
- Houmine, M. *Protection of Civilians and Treatment of Prisoners during War are at Stake: A Comparative Study*. *Journal of Current Social and Political Issues*, 2(1), ... DOI: <https://doi.org/10.15575/jcspi.v2i1.660> ejournal.uinsgd.ac.id
- Nasution, H. A. *Islam and Trans-Border Humanity: Humanitarian Intervention in the Perspective of Islam*. *Himmah: Jurnal Kajian Islam Kontemporer*, 3(1), ... DOI: <https://doi.org/10.47313/jkik.v3i1.1090> [Unas Journal](http://UnasJournal)
- Nasution, H. A. *Islam and Trans-Border Humanity: Humanitarian Intervention in the Perspective of Islam*. *Himmah: Jurnal Kajian Islam Kontemporer*, 3(1), ... DOI: <https://doi.org/10.47313/jkik.v3i1.1090> [Unas Journal](http://UnasJournal)
- Mehmood, D. F. *Jus in Bello: War in Islamic International Law and International Humanitarian Law*. *Al-Absār* 61–47), 1(3, (□□□□□□□). DOI: <https://doi.org/10.52461/al-abr.v3i1.2696> [IUB Journals](http://IUBJournals)
- Iqbal, M. J. *Humanitarian Dimensions of the Islamic Law of War: The Case of Prisoners of War*. *International Journal of Politics & Social Sciences Review (IJPSSR)*, 4(IV), 124–132. DOI: <https://doi.org/10.5281/zenodo.17899646> ojs.ijpssr.org.pk
- Mohamad Zaini, M. N., et al. *Treatment of Prisoners of War and Human Rights According to the Methodology of Revelation (al-Quran and al-Hadith)*. *Ma'ālim al-Qur'ān wa al-Sunnah*, 17(2), ... DOI: <https://doi.org/10.33102/jmqs.v17i2.331> jmqs.usim.edu.my
- Hamda, H. H. *Konsep Perlindungan Tawanan Perang Menurut Hukum Humaniter Internasional dan Hukum Islam*. *Jurnal Hukum IUS QUIA IUSTUM*, 12(30), ... DOI: <https://doi.org/10.20885/iustum.vol12.iss30.art2> [Journal UII](http://JournalUII)