

The Role of Islamic Law to Humanitarian Law

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Abstract. The purpose of this inquiry is to trace the blueprint of Islamic law and humanitarian law. The method used is library research using a heuristic approach, which is to trace and compile the principles and provisions of Islamic law in conjunction with humanitarian principles and provisions and then be analyzed by looking at the presence and links between the two legal systems. It is found that there are, at least, 228 provisions containing rules in humanitarian law. Of the 228 provisions, 198 provisions are -strongly presumed- influenced by Islamic law. Thus, quantitatively the percentage of the influence of Islamic law on humanitarian law can be determined by the formula: $f/n \times 100\%$. F is the frequency and n is the number of humanitarian law provisions containing rules. By this, Islamic law might play the role both as a formal source for humanitarian law and material one as well.

Keywords: Role, Islamic Law, International Law, Humanitarian Law.

1 Introduction

Hardly a legal expert examines the role of Islamic law to humanitarian law. Almost all international law writers think that the development of international law began in the 16th century towards the 17th century in Western Europe. It was also stated that this development was the product of Western cultures, as if in this world, at that time, there were no other nations that had a culture. Long before that time, Islam had dominated part of Europe [1].

The provisions of Islamic humanitarian law, which originate in the Qur'an and the Hadith, are not limited to Muslims but also to people outside the community regardless of religion, race, nation, and language. It applies universally across national borders. For this reason, it should be called international law. The rejection of the western world against the original owner of the Islamic world over humanitarian law, because, before the Western world, humanitarian principles were still limited to their religious enemies and cultural environment, so that it cannot be said to be a generally accepted principle that crosses all nations, religious and cultural boundaries, is not appropriate. Therefore, based on this reasoning, Western signals that humanitarian law is their work are, historically, doubtful.

Western writers attribute the collection of international legal rules to Christianity by first mentioning specifically the Greek era and then jumping right into the modern age with the assumption that the obscurity of the Middle Ages was the general state of the world as a whole.[2] However, the objectivity of history shows that the basis of the Mediterranean sea civilization for seven centuries in the Middle Ages was an Islamic one [3]. Nevertheless, in international law descriptions, contributions of the Islamic world are rarely mentioned. It was the Islamic world who reassembled and commented on classic works by commenting on the superiority of these works before submitting them to the West [3].

A historical fact also shows that some Islamic thinkers, including Ibn Rushd (Averroes) and Ibn Sina (Avicenna), are masters of several generations of Europeans. Jewish philosophy has been saved by the influence of Islamic civilization from the influence of Talmud which destroyed it for a long time. Musa bin Maimun (Maimonides), the twelfth-century Jewish philosopher who had a great influence on the souls of Jews and the West, lived in the Islamic State of Spain [3].

2 Methods

By the object of this study, this research is a qualitative.[4] This type of research is of library research [5]. The study was run, firstly, by recording all findings regarding the blueprint of Islamic law to international law in each research discussion obtained in the literature and sources, and or the latest findings of it. After noting, secondly, combining all findings, both theories and new findings on the relation between them. Thirdly, analyzing all findings from various readings, relating to the shortcomings of each source, strengths, or their respective relationships about the discourse discussed in it. The last is criticizing, providing critical ideas in the results of research on previous discourses by presenting new findings in collaborating different thoughts, about the role of Islamic law to humanitarian law.

This research is descriptive with historical characteristics [6]. It is said historically because it has historical dimensions. Like library research in general, this research includes criticism to thought, certain works, or certain texts.[6] That's why library research faces data sources in the form of books which are so numerous that they require adequate methods [5]. For that, in library research, collecting books must be gradual, because it would be difficult if it were not so. To get all the needs mentioned above, it can be produced through libraries, bookstores, research centers, and internet networks by accessing discourse and info on the role of Islamic law to humanitarian law. By using data from various references, both primary and secondary. The data is collected by documentation techniques, namely by reading (text reading), studying, and recording literature that has to do with the problems discussed in this study.

3. Result and Discussion

3.1 The Blueprint of Islamic law to Humanitarian Law

As far as I know, no writer has done any research related to the role of Islamic law to humanitarian law. The only work that can be mentioned here, which talks little about Islamic law and international law is Mashood A. Baderin's book on international law, human rights, and Islamic law [7]. However, the work did not mention the relationship between Islamic law and humanitarian law, let alone mention the contribution of Islamic law to humanitarian law.

According to Haryomataram, if it is said that the law of war originates from customs of war, it means that the custom of war in the Western world. Haryomataram continued that even in the Eastern world there were also customs of war, but at the time of drafting the laws of war, the source was only Western customs [8]. The main question from this statement is, where did the Western world transfer the custom? In other words, what is the source of war customs (laws of war) in the Western world?

From the perspective of knowledge, the law is a historical phenomenon; it has a legal history [9]. As a historical phenomenon, it means that it is subject to continuous growth. The notion of "growth" has two meanings: the element of change and the element of stability. The law that grows is stable, even if it changes [10].

Laws grow especially means that there is a close and continuous relationship or an unbroken relationship between the law in a period with the law in the previous period; between law in the present and law in the past. The law exists today and the law of the past is unity. Besides, "Laws grow" can also mean that laws change. Law as a symptom of society does not stand alone, but one related to the other. The growth, change, and disappearance of legal institutions are determined by various factors that exist in society, economic, political, church, religious, and moral factors [10].

In this context, historical facts show that Islamic law was born long before the birth of Western civilization which is referred to as the source of the preparation of humanitarian law. As is known, Islam was born and its teachings have been completed between 611 and 634 A.D., namely the broadcasting of religion carried out by the great prophet Muhammad PBUH, from the time he was sent as an apostle until the end of his life. By the end of the first century of the Islamic year, the religion of Islam had spread throughout the entire world at that time. As is well known, the revival of Europe (renaissance) which became the foundation of European civilization, was born approximately nine centuries later. Thus, it is not too difficult to conclude that the West is

imitating Islam, and it is not possible to reverse. This is recognized by the majority of historians, even Western historians themselves.

Henry Lucas acknowledged that Arabs (Islam) played a very important role in Byzantine civilization during the time because they were the propagators of Greco-Roman cultural traditions. More than that, they also make creations of the original Greco-Roman tradition. During the Arab leadership, European civilization was indebted to Muslims who had many higher cultural facets. Lucas acknowledged that his revival represented Islamic civilization [11].

In line with Lucas's view, Philip K. Hitti asserted that the Arabs (Islam) created not only a kingdom but also culture. They are heirs of the old culture that flourished on the banks of the Tigris and Euphrates rivers, in the Nile valley, and on the coast of the Mediterranean. Then the main properties of Greco-Roman culture were studied and developed. Therefore, it is they who spread much of the influence of this culture into the European continent, awakening from sleep and growing towards renaissance [12].

In the middle Ages, no nation had a greater contribution to the process of human progress than the Arabs; Arab students were preoccupied with studying Aristotle when the Great Curry and its dignitaries were still preoccupied with scratching to learn to write their names. Scholars in the city of Cordova, a city that has 17 libraries and one of them contains more than 40,000 volumes of books, likes to bathe in beautiful baths, while at the same time people at Oxford colleges consider bath as a dangerous habit [12].

Then with the translation of the books of science and philosophy written by Islamic scholars and philosophers into European languages in the eleventh century, Europe began to recognize Greek philosophy and science. Previously, Europe no longer knew Greek philosophy and science. It was from Islam that Europe learned the things above, it is not surprising that Le Bon said: "(it was the Arabs) that caused us to have civilization because they were our priests for 6 centuries"[13].

The progress of the legal world in Islamic civilization can be concluded from Hitti's statement that in Baghdad lawyers get the most important position.[14] The faculty of law is almost always present in famous universities such as the universities of Cordova and Granada which are favored by European students. Interestingly, the legal sciences are united with the divine sciences in one faculty [14].

Based on the description above, it is clear that the linking point between Islamic law and humanitarian law lies in two paths at once, namely the cultural path (in this case customs/habits) and the path of science.

Anthropological Perspective. From the point of civilization development (Anthropology), there is not a single civilization in the world that does not imitate previous civilizations and also does not give to civilizations afterward [15]. From this standpoint, it is clear that war can be an effective channel in the spread of civilization. In this discussion, the war that became the "golden bridge" of the transition of Islamic civilization to Europe was Crusade that lasted for two centuries (1096-1229 A.D) [16].

Culturally, the crusaders in the East encountered some interesting aspects of Islamic life. When the troops return to their original place, they try to imitate them[16]. One of the various aspects, of course, are matters relating to the way the Muslims carried out the war. The series of crusades is direct and long-standing contiguity. Throughout the war, the kings and people of Europe learned the basics (rules) held by Muslims in times of peace and wartime. Through this contact, they learned that war in Islam must be limited to certain battle areas and only involve combatants. Civilians must get protection [17].

It was through the crusades, most likely, that Europeans learned that Islam did not permit destruction and persecution and was not allowed to kill prisoners. Islam respects security agreements; respect all religions, do not allow betrayal and breach of promises; do not allow girls, children, and laborers to be killed; it is not permitted to remove trees and plants (sources of production). Islam treats its enemies for equal treatment (reciprocity).

In addition, as studying and enjoying the knighthood qualities, European Christians also witnessed the humanity and the greatness of the soul that adorned the agility and courage of the heroes of Islam, for this, Ahmad Syafiq stated that European arrogance was a cliché of virtue Arab

[17]. Furthermore, Sedillo added that the Arabs far exceeded Christians in the areas of morals and etiquette such as generous (karam), affection (rahmah), honesty, keeping the feelings of women, fulfilling promises, and tolerance, and the good example that officers (knights) should have.

Many other things that the Crusaders could learn from their meetings with Muslims, including the establishment of hospitals, the establishment of public baths, and the most important is the strategy of war [14]. Several translations from Arabic to Latin were carried out in the territories where the Crusades took place [18].

For Europe, the Crusades had a very positive and influential meaning. On the contrary, the Islamic world did not see any significance in the incident. For Muslims, the crusades were nothing more than a series of border incidents [18].

With the two perspectives above, it is clear that the overall spread of Islamic material and intellectual culture in Europe occurred because of the arrival of Muslims to Spain and Sicily and the occurrence of the Crusades. Thus, this also means that the three regions (Spain, Sicily, and the Crusades) were the links between Islamic law and humanitarian law. Therefore, as is well known, the law is one aspect of culture. So, talking about Islamic culture, should not ignore the legal discourse that is in it.

3.2 The Provisions of Islamic Law Relating To Humanitarian Law

International law, which in Islamic terminology is known as "al-Siyar", creates rights and obligations and international law becomes an independent field of study in Islamic law. Islamic International Law (al-Siyar) does not recognize discrimination against foreigners who treat non-Muslim countries around the world.[19]

Muslim jurists argue that the term al-Siyar with the meaning of international law was first used by Imam Abu Hanifah (d.150 H.), founder of the Hanafi school of thought when giving lectures on the theme of international law. The lectures were compiled and edited by his student Imam Muhammad al-Syaibani (d.188 H.) in the book of al-Siyar al-Saghir and the Book of al-Siyar al-Kabir. These two al-Siyar books, among others, discuss the behavior of Muslims in dealing with non-muslims such as Ahl-Zimmi, foreign residents, apostates, rebellion, and so forth.[20]

The great influence of al-Siyar (Islamic international law) on public international law can be ascertained from the fact that the writers of the first European international law such as Pierre Bellow, Ayala, Vitoria, Gentili, and others came from Spain or its neighbors, Italy. They accepted much of the influence of Islam and Muslims during the Renaissance period as a result of the influence of Islam on the Christian world.

Regarding this, Baron Michel de Tubb, professor of international law at the State Academy of Sciences in The Hague, Netherlands, who had been a minister in 1936, had proven that Vitoria and Suarez were regarded as the first person to think about the basics of international law, actually imitates and follows the principles of international law as contained in Islamic law. Then Grotius who has the title "The Father of International Law" quoted from Vitoria and Suarez. After that, all modern international jurists took material from the 'Father'. [21] The influence of Islamic international law on Grotius' thoughts was very clear with his findings which stated that postliminum originated from Islamic law.

Michel De Tubb underlined that many of the principles that have been pioneered by Islam, especially those related to the law of war. In this case he gave the message of Abu Bakr to the commander of the first Islamic army he sent to Syria after the death of the Prophet.

In this study, I explore which Islamic law provisions are, allegedly, transferred by humanitarian law. The cases I mean here are as described below.

Declaration of War (*I'lan al-Harb*). According to Starke, the first legal scholar who argued for the need for a declaration of war was Grotius in the 17th century.[22] To me, what was stated by Strake was indeed true, because as was stated earlier that Grotius' thoughts were mostly taken from Islamic law. Along with that, the rules of a declaration of war had long been adhered to in Islamic law long before Grotius spawned his idea.

Michel De Tubb flatly rejects the perception that the declaration of war provisions are the work of the participants of the Hague Conference. The reason for his refusal is because, according to him, it is one of the principles of heroism (knight hood) that was unknown to Europe in the Middle Ages (European Middle Ages), but its roots have long since plummeted in the Islamic world. De Tubb claimed to have found the text of the declaration of war in the book Abu al-Hasan al-Mawardi al-Bagdadi. He stated that what happened in Europe in the Middle Ages was the worst of the century. Feudalism is rampant and the only creation is trying to implement "God's peace" (Truce of God). Likewise, what happened in eastern Rome (Byzantium), Tubb showed Basil II, who bowed the Balkans and gouged the eyes of 15,000 of his captives. He said in the Middle Ages, humanity in Europe was destitute and needed a lot of attention.[23]

Protection for Civilians and Their Social and Environmental Facilities. In Islamic law, the provisions regarding the protection of civilians along with their social institutions and the environment contained in the wills of the Prophet. As stated above, the wills are always repeated on various occasions. The wills are then summarized in a message of Abu Bakr al-Shiddiq, the Caliph of the Messenger of Allah. Some regulations in Islamic law concerning humanitarian are ignored by humanitarian law (not specifically regulated) but are regulated in Islamic law special protection for old men (*shuyukh*) and employees and laborers (*'usafa'*).

Specifically, regarding the protection of women and children, the Prophet had given his attention from an early age. One time the Prophet passed in the middle of the corpses of those who were victims of war and saw the corpses of women, then he said: "ماكانت هذه لتقاتل" (not suppose he was fought).[24]

Protection to War Victims. It should be emphasized here that the background of international relations in Islam is human honor (karamah Insaniyah), because of this human glory, God commands angels to bow to the Prophet Adam, the Father of all humans.[25]

Human honor and glory are widely expressed in the verses of the Holy Qur'an, among which are explicitly mentioned in Al-Isra '(17): 70. The honor given to humans, as stated in various verses and the hadith, is not limited to only one race and not to a certain nation, but all humans have the same rights and position in that honor. Then the glory of man is determined by the Qur'an and the Sunnah of the Prophet for all people who are pervaded by the meaning of humanity.

Islamic law is very concerned about human honor even when the war is raging. Prophet Muhammad SAW prohibited chopping and slashing of war victims and obliged to bury it, and not let it be left as food for birds and animals. The Prophet also ordered to gather the victims of Badr war in a dry well (as a sacrifice). More than that the Prophet forbade showing the sword the opponent so as not to blemish his face unless it cannot be avoided again.[26] What governed by humanitarian law in principle is not much different from that of governed by Islamic law. The provisions of international law regarding victims of war are regulated in the Geneva convention of 1949; conventions I and II.

Prisoner of War (*al-Usra*). The treatment of prisoners of war before the advent of Islam was very bad. Even in Judaism, as stated in their holy book the Talmud, captives must be killed including all women, children, and animals in the conquered territories.[27]

In Roman and Greek times, various views had developed somewhat by making prisoners of war a slave, instead of murderous rules to use them. Then, the prisoner became the property.[27] They were given heavy work that was almost impossible to do and was given poor food and clothing. If a slave-produced something from his work, the result belonged to his master and if he rejected a job or stole his master's property, he would be killed.

Islam came to completely overhaul these bad habits. The Prophet Said: "إتستصوا بالأساري خيرا" (you accept my will to do good to the captives). Besides, God views the feeding of the captives as the best qualities of the believers [28]. Elsewhere, the treatment of prisoners of war is regulated in QS. Muhammad (47) [28].

Armistice/Intiha' al-Harb. Sometimes wars have to be stopped temporarily (truce) for example to lift the injuries, to bury them and so on. In this case, the local commander can agree with the opposing commander in a restricted area. According to paragraphs 32 and 35 of the Hague convention, this limited measure does not require the agreement of the two warring countries. The agreement of two commanders in war is sufficient. Such a Cessation of war is contained in Islamic law based on the word of God [28].

In Islamic law, peace is the foundation and the main objective of international relations based on the adagio "The basic norm of relations (between nations) is peace" (الأصل في العلاقة هو (السلام) [29]. Furthermore, it is worth mentioning here, the issue at the end of a war in the literature of Islamic law is discussed more detailed and varied than that of in the humanitarian law [30].

Neutrality/Hiad. The most important obligation of the warring parties to the neutral state is that of the warring parties not to use the territory of the neutral state for military operations. Besides, the warring parties also have an obligation not to interfere in the neutral state's affairs in legal relations with other warring parties. Warring parties are also prohibited from confiscating neutral state goods transported by enemy ships unless they are *contraband* (contraband items that are important for military operations). Islamic law requires Muslims to respect neutrality, as stated in the Holy Qur'an (4): 90 [31].

The above verse, clearly shows that whoever wants the middle (neutral) position will be given or fulfilled his wish. This attitude is in accordance with the principles of Islamic law, namely the basic foundation in conducting relations (among nations) is peace, while war is an event that comes later (incidental). So, whoever wants peace will be given the condition that he truly does not want a war and intends to do so.

Thus, if inventorying the descriptions above again, it can be put that the main provisions contained in humanitarian law, have long been determined in Islamic law. If it is said that these equations are mere coincidences, then this cannot be logically accepted, for two reasons.

First, an equation can only happen accidentally on a matter of a general nature with a low frequency, and it is not possible to accidentally occur on things that are detailed with a high frequency. Second, pure equality by chance only happens to things that have never met each other before or have no links. Furthermore, it appears that there are several provisions regulated in detail in Islamic law, but not regulated in detail in humanitarian law. Thus, it is increasingly clear, that Islamic humanitarian law is more advanced than humanitarian law.

It is found that there are, at least 228 provisions containing rules in humanitarian law. Of the 228 provisions, 198 provisions are influenced by Islamic law. Thus, quantitatively the percentage of the influence of Islamic law on humanitarian law can be determined by the formula: $f/n \times 100\%$. F is the frequency and n, is the number of humanitarian law provisions containing rules. A description of the number of humanitarian law provisions influenced by Islamic law can be seen in the figure below.

Table 1.

Number of Humanitarian Law Provisions strongly presumed got Influence by Islamic law

Description	F	Percentage
Influenced	198	86.8
Not Influenced	30	13.2
Total	228	100

Source: Library Research, 2019.

5. Conclusion

Historically-anthropologically, Islamic law has a very dominant role in humanitarian law. From this angle too, it is evident that these two legal systems have a very close and undeniable sea point wherein their relationship, it is Islamic law that influences humanitarian law and cannot be otherwise. This happens, because Islamic law was born and universally enforced by Muslim rulers long before the emergence of humanitarian law, even international law which is the mother of humanitarian law. This also dismissed the notion that humanitarian law is entirely the work of Western-Christian civilization.

Juridical-formally, based on article 38 of the Charter of the International Court of Justice, Islamic law can be categorized as a source of formal law for humanitarian law in particular and international law in general, both as proven international practice in general practice and accepted as law (international custom as evidence of general practice accepted as law); as general legal principles recognized by civilized nations (the general principles of nation recognized law); as well as the teachings of prominent scholars from various countries as an additional source for establishing the rules of law (the teachings of the most highly qualified publicists of the various nations).

On the other hand, Islamic law can also be categorized as a material source for humanitarian law when viewed from the perspective of the place (from which) legal material is taken and concerning moral sources which are one of the foundations of the development of humanitarian law.

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