



# Comparative Study between Islamic Law and International Law on the Purposes of Peace

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## ABSTRACT

Islam was born not just as a belief system, but also because Islam was born because of a system of social norms framed through peace. Therefore the idea of peace in Islam is related to the vertical relationship between *hablum minallah* and horizontally *hablum minannas*. Likewise with international law, the goal of peace in international law was born not because of a social contract (state/organization), but the goal of peace in international law was born as a logical consequence of the social contract system. Based on the explanation above, the authors assume that the issue of peace is very interesting to be used as a scientific work (thesis). In compiling this thesis, the authors provide the title (Comparative Study Between Islamic Law and International Law Concerning the Purposes of Peace). The conclusion of the results of the analysis in this thesis, there are similarities and differences in the goals of peace in Islamic law and international law. The similarity is that the recommendations for peace are not limited to individuals, groups, even gender and they both want to create a safe situation without any violence, conflict, and war, both culturally and structurally. Meanwhile, the difference is that in Islamic law, peace is born because of religious advice and psychological needs. Meanwhile, international law was born peaceful because it wanted to create a world order that is safe without any violence and war.

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## 1. INTRODUCTION

Islam as a religion and way of life cannot be separated from the cultural situations of previous religions. Islam places peace as a general principle whose universality is recognized in the concept of *Rahmatan lil'alamīn*. Peace goals that uphold human dignity and human safety. Differences in religion, nation and geographical boundaries are unnecessary when peace aims to prosper the earth<sup>1</sup>.

The magnitude of the concern that conflict or war will occur, both on a national and international scale, will result in human unrest in the social life order of society, this is more due to conflict which is a state of conflict due to disharmony of social relations between group members or the community (State)<sup>2</sup>. It is not impossible that the conflict is based on religion.

<sup>1</sup>Jawahir Thantowi (ed) *Islam and Global Peace*, cet. I Yogyakarta: Madyan Press, 2002, p. 58-64.

<sup>2</sup>ibid

On the other hand, the Crusades were seen by Westerners as a series of heroic struggles in which kings, knights and princes tried to liberate Jerusalem from the Muslims. The contrary view of Muslims is that the crusades were an episode of Western cruelty and looting. This can be seen when the crusaders carried out a massacre in 1099, when they recaptured the city of Jerusalem. 1492 was a year of tragedy as the fall of Granada to Ferdinand and Isabella, marked the end of Muslim civilization in Europe and the elimination of Muslims in that country.<sup>3</sup>

Entering the 17th and 19th centuries, Western-Christianity slowly began to dominate the world. One by one the areas that were once controlled by Islam were taken back. In fact, the Islamic areas themselves were occupied, used as colonies<sup>4</sup>. In addition to the crusade, colonization through economic and political structures also appeared. This is marked by the birth of imperialism, especially capitalism. Capitalism is a social system in which the means of production and means of production of goods (material) are carried out and owned by individuals and there is exploitation of workers or laborers. Capitalist production is the expanding production of commodities, in which labor power becomes a commodity. The workers own nothing but the labor they lease to the capitalists to sustain life<sup>5</sup>.

History proves that after World War I and World War II, as well as the occurrence of several humanitarian tragedies and conflicts such as in Bosnia, India, Palestine, the Philippines, North Korea, Iraq, Iran, and several other countries, both involving religion, politics, economy, ethnicity, race, power and group interests, have resulted in human tragedies and gross human rights violations.

During the approximately 45 years that the UN was founded, the UN's activities were marked by the ups and downs of the cold war, where the conflict between the West and the East bloc greatly influenced the development and function of the UN Security Council. At that time there had been 150 armed conflicts in various regions of the world which had claimed no less than 20 million lives and that number had swelled to more than 24 million people in 1995<sup>6</sup>.

## 2. RESEARCH METHOD

Given the importance of a scientific method that can obtain the knowledge and data needed in writing this thesis, the authors use the following research methods:

### 2.1 Types of research

The research used in this thesis is library research<sup>7</sup>, namely a study to obtain as much data as possible relating to the literature that has to do with the concept of peace in Islamic law and international law.

### 2.2 Nature of Research

The nature of this research is descriptive analytic which seeks to describe clearly and systematically the problem of peace goals in Islamic law and international law, then an analysis is carried out together in each discussion and various aspects related to the material studied.<sup>8</sup>

### 2.3 Research Approach

The approach used in the preparation of this thesis is a normative and historical approach. The normative approach is divided into two. The first is the normative approach to Islamic law, namely the verses of the Qur'an and al-Hadith, and the proposed fiqh approach, namely the concept of Maslahatul Mursalah. And the two normative approaches in international law are in the form of articles, verses, several conventions on peace, treaties and opinions of international law experts. The historical approach is to find out and trace the historical setting, since when the peace was initiated, why and who was involved in creating peace.<sup>9</sup>

<sup>3</sup>Muhammad Noor Matdawam, *Dynamics of Islamic Law; Overview of the History of Development*, (Yogyakarta: Career Development Foundation), p. 16.

<sup>4</sup>BASIS Journal, No 05-06, 50th Year, May-June 2001, p. 66.

<sup>5</sup>Jogjakarta: Radja Minyak, 2002, p. 3.

<sup>6</sup>Law Journal, FH UII, No. 15 Vols. 7. 2000, p. 68.

<sup>7</sup>Lexy J. Moleong, *Qualitative Research Methodology*, cet. 14th (Bandung; PT Remaja Rosda Karya, 2001), p. 113

<sup>8</sup>Winarno Surakhmad, *Introduction to Basic Scientific Research, Methods and Techniques*. 7th edition (Bandung: TARSITO, 1980), p. 140.

<sup>9</sup>Anton Bakker, *Philosophical Methods*. Cet. To one (Jakarta: Ghalia Indonesia, 1984) p. 138.

## 2.4 Data source

In accordance with this type of research, namely library research, the source of the data is done by tracing various existing data sources. The data collected is qualitative data because the object of research is the purpose of one's or many people's thoughts. The sources in this study are

- a. Primary data, namely collection of library data from primary sources<sup>10</sup>. In this research, the main sources are the following books: Religion and Culture of Peace written by Satha Anand, International Law; Definition of Role and Function in the Era of Global Dynamics written by Boer Mauna.
- b. Secondary data, namely the collection of library data that is in accordance with the problems above, such as the work of Rafsanjani on Social Justice, Sa'Duddin AsSayyid Shalih The Conspiracy Network Against Islam, Geoffrey. Roberttson QC Crimes Against Humanity; The Struggle To Realize Global Justice and Sidiq Jatmika AS A Habiter of Democracy; Dismantling the Double Standard Politics of the United States.

## 2.5 Data Analyst

The data that has been collected is analyzed using the following methods:

- a. Inductive, namely by parsing specific data and drawing general conclusions. This method is used in order to explain the purpose of peace in Islamic law and international law and then a common thread is drawn from these two goals.
- b. Comparative, namely analyzing different data by comparing the goals of peace in Islamic law with the goals of peace in international law with the aim of finding similarities and differences.

## 3. RESULTS AND DISCUSSIONS

### 3.1 Equality of Peaceful Goals in Islamic Law and International Law

In international law, the recommendation to do peace is not limited to individuals, groups and even gender. Rather, they have high commitment and responsibility, are capable of being diplomatic and also able to act fairly. This is in accordance with the Declaration on Friendly Relations and Cooperation Between Countries dated 24 October 1970 (A/RES/2625/XXV) and the Manila Declaration dated 15 November 1982 (A/RES/37/10) regarding the Peaceful Settlement of International Disputes, namely on points 6 and 7, namely the principle of good faith in international relations; Principles of justice and international law.

Explicitly, the elements of peace in Islamic law and international law are generally the same. This means that both in Islamic law and in international law there is no comprehensive and systematic discussion of the elements of peace. However, this can be seen from the definition and philosophical basis, namely a state of security, without any violence, conflict, war, both culturally and structurally.

Therefore, Islam places war (jihad) in a balanced way between the obligation to defend oneself and protect the upholding of religious teachings.

From the point of view of Islamic law, the obligation of war must be seen in the context of the whole. This means that in addition to limiting the subject and object or certain reasons, but also the social implications of the consequences of war must be taken into consideration.

In general, international law distinguishes between international disputes over political disputes and legal disputes. Political disputes are where a country bases its claims on non-judicial considerations, for example on political grounds or other national interests.

Political dispute resolution can be done through reconciliation. Meanwhile, reconciliation is the settlement of disputes through efforts to adjust opinions between the disputing parties in a friendly manner.

### 3.2 Differences in Peaceful Purposes in Islamic Law and International Law

Islamic law in the framework of fostering the people and society towards a harmonious order, is the stipulation and implementation of the Medina Charter with the following principles: First, Monotheism, Unity and Unity, can be seen in Articles 1, 15, 1, 25, and 37. Third, Equality and Justice, can be seen in Articles 13, 15, 16, 22, 23, 24, 37, and 40. Fourth, Freedom Religion, explicitly, freedom of religion is mentioned in article 25. Fifth, Preservation of Good Customs, can be seen in Articles 2-10. Sixth,

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<sup>10</sup>Winarno Surakhmad, Introduction to Basic Scientific Research, Methods and Techniques, p. 147

Defending the Country, this can be seen in Articles 24, 37, 38, and 44. Seventh, Shari'ah Supremacy, in articles 23 and 42. Eighth, Politics of Peace and Protection, in Articles 15, 1, 36, 37, 39, 40, 41 and 47.

The principles contained in the Medina Charter are the principles contained in the Al-Qur'an which are related to the development of the life of the political community. The principle of peaceful settlement of international disputes is based on universally applicable principles of international law, and is contained in the Declaration on Friendly Relations and Cooperation Between Countries dated October 24, 1970 (A/RES/2625/XXV) and the Manila Declaration dated November 15, 1982 (A/RES/37/10) regarding the Peaceful Settlement of International Disputes, namely as follows: 1. The principle that the state will not use violence that threatens the territorial integrity or political freedom of a country, or uses other methods that are inconsistent with the objectives - UN goal 2.

Normatively the contents of the Manila Declaration and the UN Charter above, are in accordance with the philosophical basis and universality (public benefit). But in practice, the UN Security Council, one of whose duties is to resolve disputes peacefully, is often caught up in injustice and taking sides with certain countries or groups. This can be proven when the United States accused Iraq of having weapons of mass destruction that could threaten world peace and recommended the UN Security Council to carry out aggression based on the UN Security Council Resolution on weapons of mass destruction. Even though de-facto and de-jure this cannot be justified because apart from not having clear evidence, it also violates the principle of *Facta sun Servanda*, namely the principle of mutual respect and appreciation.

In Islamic law, the concept of peace was born not only because of religious advice but also because of psychological, humanist needs and also born because we wanted to create a safe social order without any violence, conflict, war and actions that could threaten peace. This can be seen in several verses of the Qur'an and also the Constitution of Medina.

Meanwhile, the concept of peace in international law was born not because of religious awareness. However, philosophically the concept of peace was born because we wanted to create a world order that is safe without any violence and war. Therefore, the concept of peace in international law, both contained in the UN Charter and the Convention, is part of the instruments regarding criminal acts that will threaten the peace process. So that there is no comprehensive and systematic discussion of peace. The concept of peace in international law only regulates or resolves disputes peacefully between countries.

### **3.3 Source of law**

The concept of peace in Islam, apart from being sourced from the Qur'an, Sunnah, Ijma and Qiyas, is also sourced from universal customs and ethics, neither of which conflict with Islamic principles. Over the centuries, history has proven that the legality and truth of the above sources is beyond doubt.

In Islam, the concept of peace is known by several Arabic grammatical terms, namely greetings and torches. The two terms essentially have the same goals and values. It's just that the placement of the sentence form (*Siyakul al Kalam*) is different.

Meanwhile, the concept of peace in Islam places more emphasis on surrender in totality and the recognition of existing plurality. Several verses in the Qur'an emphasize greeting in the sense of justification or acknowledgment of the existence of the Islamic religion. Therefore, the actualization of peaceful values in Islam is related to several aspects, namely theological, psychological, legal, cultural and social norms.

In the theological aspect, greetings indicate the need for recognition of religious dogmas that will guide human life. Psychologically, a peaceful (safe) condition is a basic human need that is needed in any condition. In the legal aspect, peace is needed when conflicts occur between groups, individuals and even countries. The need for the concept of peace in an institution and even a state indicates the need to make rules or laws that are agreed upon through existing mechanisms.

In international law Article 38 paragraph (1) of the statutes of the International Court of Justice, regulates the sources of international law, namely, International Conventions and Agreements; State Customs and Practices; General Principles Recognized by Civilized Countries and Judgments of Courts and Textbooks.

The definition of peace in Islamic law, with reference to the Qur'an, hadith and Islamic history, has two meanings. First, peace is a value system that essentially aims to surrender oneself completely to God's will. Surrender to God does not mean servitude as if dealing directly with God as Ruler, but rather as a form of human consciousness that is free from all kinds of worship of human strength and also that worship is based on rational knowledge. In the word of Allah it is emphasized "Enter all of you into Islam kafah".

In Islamic law, the concept of forgiveness is not just amnesty (giving forgiveness), but there is a constant desire to live in a new day without looking back and erasing memories of 71 bitter moments filled with hatred and revenge<sup>12</sup>. That is, through the power of forgiveness, people can be freed from the burden of past mistakes. In this sense, forgiveness is not just a moral or religious issue, but is also related to one's mental and mental health.

Meanwhile, in international law, there is no concept of forgiveness, both as stated in the UN Charter, the Hague Convention and the Geneva Convention. However, I see that the concept of forgiveness can be born or implemented in an international agreement (negotiation) between countries or organizations that are in dispute and there are third parties (arbitrators) who participate in resolving disputes peacefully and that is also inseparable from political intervention and not law.

#### 4. CONCLUSION

From the explanation described above, the authors draw the following conclusions:

- a. The goal of peace in Islamic law is peace apart from religious advice, it is also due to psychological, humanist needs and is also born because we want to create a safe social order without any violence, conflict, war and actions that can threaten peace. And the goal of peace in international law is peace born not because of religious awareness. However, philosophically the concept of peace was born because we wanted to create a world order that is safe without any violence and war.
- b. The goal of peace in Islamic law as well as in international law has similarities and differences. The similarity is that the recommendations for peace are not limited to individuals, groups, even gender and they both want to create a safe situation without any violence, conflict, conflict, and war, both culturally and structurally. Meanwhile, the difference is that in Islamic law, peace is born because of religious advice and psychological needs. Meanwhile, international law was born peaceful because it wanted to create a world order that is safe without any violence and war. In Islamic law the goal of peace is based on the Al-Qur'an, Sunnah, Ijma' and Qiyas. Meanwhile, international law originates from the statute of the International Court of Justice, which regulates the sources of international law, namely, 1) International Conventions and Agreements, 2) State Customs and Practices, 3) General Principles recognized by Civilized Countries and 4) Decisions Court Decisions and Textbooks.

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