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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Analysis of the Study on Reconstruction of Protection of Human Dignity in Islamic Law based on Maqasid Al-Syariaah

Aqqil Sual

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,

E-mail: aqqillagi@gmail.com

Abstract. *Human dignity constitutes one of the fundamental principles of Islamic law, rooted in the concept of karāmah al-insān as a divine endowment inherent in every human being regardless of religion, race, gender, or social status. In contemporary society, issues such as discrimination, human rights violations, exploitation of vulnerable groups, and social injustice demonstrate significant challenges in implementing the values of human dignity protection. This study aims to analyze the concept of human dignity protection in contemporary Islamic law, examine its relevance to the development of modern human rights, and formulate a legal framework that positions human dignity as a fundamental principle in the formation and application of Islamic law. The research employs a normative legal method using conceptual, statutory, historical, and legal-philosophical approaches. Data sources include the Qur'an, Hadith, classical and contemporary Islamic jurisprudential literature, statutory regulations, and international human rights instruments. The findings indicate that the protection of human dignity represents a primary objective (maqāsid al-sharī'ah) underlying the protection of life, liberty, honor, equality, and justice. Contemporary Islamic law possesses a strong normative foundation to support human rights protection insofar as it remains consistent with the principles of Islamic law. Therefore, a contextual, inclusive, and responsive reinterpretation and development of Islamic law is necessary to strengthen the protection of human dignity as a universal value and a fundamental principle within the modern Islamic legal system.*

Keywords: *Contemporary Islamic Law; Human Dignity; Human Rights; Legal Protection; Maqāsid Al-Sharī'ah.*

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1. Introduction

Human rights are universal values that serve as the primary foundation for building a just and dignified life. Throughout the history of human civilization, the recognition of human rights has been a global endeavor, formally enshrined in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948. Article 5, a key article in this declaration, affirms the prohibition against torture, inhumane treatment, or insults to human dignity.¹ On the other hand, religious teachings, including Islam, have long instilled the principles of humane treatment and respect for human dignity. The teachings of the Quran, as a guide for Muslims, contain values rooted in respect for justice and the dignity of every individual. Therefore, the relevance of Article 5 of the UDHR to the teachings of the Quran is a topic worthy of study, particularly in the context of Islamic criminal law.

Islamic criminal law has a long history of applying humane treatment values, as reflected in principles such as qisas (retribution), hudud (punishment), and ta'zir (retribution). These principles not only emphasize the importance of justice but also limit the application of punishment to ensure it does not violate human dignity. However, over time, various interpretations have emerged regarding the application of Islamic criminal law, both in classical and contemporary contexts. When these principles are compared with Article 5 of the Universal Declaration of Human Rights, several similarities emerge that merit further analysis, particularly in relation to the historical construction and application of Islamic criminal law across time.²

Ideally, both Article 5 of the Universal Declaration of Human Rights and the teachings of the Quran offer a harmonious normative framework for protecting human dignity and preventing inhumane treatment. These principles aim to create a legal system that is just, humane, and based on moral values. However, in reality, the application of Islamic criminal law in various regions of the world does not always reflect this harmony.³ In some cases, the application of punishment is often deemed inconsistent with the principles of humane treatment, even giving rise to negative perceptions of Islamic criminal law itself. This is exacerbated by the global stigma that Islamic law is cruel and irrelevant to modern human rights concepts.

¹Izzuddin Washil and Ahmad Khoirul Fata, "Islamic Human Rights and the UN UDHR: An Effort to Find Common Ground," *MIQOT: Journal of Islamic Sciences* 41, no. 2 (January 22, 2018): 428–50, <https://doi.org/10.30821/miqot.v41i2.394>.



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²Mizaj Iskandar, "Human Rights in an Islamic Perspective," *Media Syari'ah: A Forum for the Study of Islamic Law and Social Institutions* 19, no. 1 (October 24, 2017): 111–26, <https://doi.org/10.22373/jms.v19i1.2017>

³Daniel Alfaruqi, "The Correlation of Human Rights and Islamic Law," *Salam: Journal of Social and Islamic Culture* 4, no. 1 (May 2, 2017): 57–76, <https://doi.org/10.15408/sjsbs.v4i1.7869>.



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The discrepancy between the idealism of Islamic law and human rights and the reality of their application raises interesting issues for research. The main problem to be examined in this study is the relevance of Article 5 of the Universal Declaration of Human Rights to the teachings of the Qur'an, particularly in the historical construction of Islamic criminal law. This study seeks to answer several important questions, such as: to what extent has Islamic criminal law historically accommodated the principles of humane treatment as outlined in Article 5 of the UDHR? How can the interpretation of the Qur'anic teachings regarding Islamic criminal law be applied to support the protection of human dignity?

The purpose of this study is to analyze the relevance of Article 5 of the Universal Declaration of Human Rights (UDHR) to the values contained in the teachings of the Qur'an, and to explore the historical construction of Islamic criminal law in relation to the principle of humane treatment. This study also aims to identify the compatibility or inconsistency between normative idealism and the practice of Islamic criminal law in various eras, so that it can contribute to the formation of a legal paradigm that is humanistic, just, and in accordance with the demands of the times.

The study of the Universal Declaration of Human Rights (UDHR) and its relationship to the Qur'an is not entirely new. Many researchers have previously addressed intersecting issues, such as the relationship between human rights and Islamic teachings, the analysis of universal values in the Qur'an, and their application in criminal law. Aisyah, in her work entitled "Human Rights in the Qur'an," discusses the concept of human rights from a Qur'anic perspective using an interpretive approach. Her work highlights how human rights values, such as freedom, equality, and the prohibition of torture, have been explained in various verses of the Qur'an.⁴ The similarity between Aisyah's research and this study lies in the study of the relevance of human rights to Islamic teachings, particularly in the Quran. However, the difference lies in the scope of the study; Aisyah's research focuses more on exploring the Quranic verses in general regarding human rights, while this study specifically examines the relevance of Article 5 of the Universal Declaration of Human Rights to the concept of criminal law in Islam, as well as highlighting the historical construction of the application of punishment in Islam.

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2. Research Methods

1. Types of research

This research is a normative legal study that focuses on the study of Islamic legal norms, principles, and doctrines related to the protection of human dignity (*karāmah al-insān*) as a fundamental principle in contemporary Islamic law. The research was conducted through a review of Islamic legal sources, Islamic legal theories, the concept of *maqāṣid al-syarī'ah*, and various relevant legal and human rights instruments.

2. Research Approach

A conceptual approach is used to examine and analyze basic concepts related to the protection of human dignity in Islamic law, including:

- 1) *The blessings of Allah* (human dignity).
- 2) Human rights in Islam.
- 3) Justice (*al-'adālah*).
- 4) Equality (*al-musāwah*).
- 5) Freedom (*al-hurriyyah*).
- 6) Protection of vulnerable groups.
- 7) *Maqāṣid al-syarī'ah*.

This approach aims to build a conceptual framework regarding the position of human dignity as a fundamental principle in contemporary Islamic law.

3. Data source

a. Primary Legal Materials

- 1) Sources of Islamic Law
 - a) Al-Qur'anas the main source of Islamic law.



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- b) Hadith of the Prophet Muhammad SAW as an explanation and reinforcement of the principle of protecting human dignity.
- c) Ijma' and Qiyas relating to the protection of human rights and dignity.
- d) Fiqh rules (al-qawā'id al-fiqhiyyah) that support humanitarian protection.

b. Secondary Legal Materials

- 1) Literature and Law Books
- 2) Scientific work
- 3) Expert Opinion

4. Analysis Method

Legal data obtained from the Qur'an, Hadith, Islamic jurisprudence literature, laws and regulations, and international human rights instruments are analyzed qualitatively and normatively, namely by:

- 1) Identifying legal norms and principles.
- 2) Interpreting the meaning of the law.
- 3) Systematize the relationship between norms.
- 4) Draw legal conclusions logically and academically.

This analysis focuses on the relationship between *das sollen* (the law that should be) and *das sein* (the reality of the implementation of contemporary Islamic law).

3. Results and Discussion

Human rights have become a universal moral and legal foundation in efforts to protect human dignity throughout the world. One of the fundamental aspects regulated in the Universal Declaration of Human Rights (UDHR) is Article 5, which expressly states that; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment." This article emphasizes the importance of protecting the dignity of every individual from actions that exceed the limits of humanity, both in

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situations of peace and conflict.⁵Article 5 is not only a principle of international law, but also a moral guideline recognized in various national and regional legal systems.

The prohibition of torture in Article 5 of the Universal Declaration of Human Rights is a key pillar in preventing acts that violate the boundaries of humanity. Torture is defined as an act that intentionally causes physical or mental suffering, whether by an individual or an institution, for the purpose of obtaining information, punishing, or intimidating the victim. This prohibition is *jus cogens*, meaning there are no exceptions under any circumstances, including emergencies or war. This affirmation demonstrates that the prohibition of torture is a non-derogable right, which serves as a minimum standard in protecting human rights.

The universal goal of Article 5 of the Universal Declaration of Human Rights is to create a global society that upholds human dignity and rejects all forms of degrading treatment. This article serves as a moral and legal guideline that directs states to adopt policies and laws that protect individuals from torture, inhumane treatment, and humiliation.⁶In addition, Article 5 also encourages international dialogue and cooperation to ensure that this right is respected in all countries, regardless of differences in culture, religion, or political system.

One of the foundations of the Quran that supports humane treatment of others is Surah Al-Ma'idah, verse 32, which states that killing one person without justification is equivalent to killing all of humanity. This verse teaches that human life has immense value and should not be taken without justification. Furthermore, in Surah Al-Isra, verse 70, Allah states that humans have been honored with various privileges and elevated above other creatures. This serves as the basis for treating people humanely, regardless of their background.⁷This humane treatment includes respect for the rights to life, liberty and security, which are the basic rights of every individual.

Social justice in the Quran is also reflected in its concern for the poor, orphans, and the destitute. Surah Al-Baqarah, verse 177, emphasizes that virtue is not only

⁵Sonya Hellen Sinombor, "The Position of the Universal Declaration of Human Rights (UDHR) in the Indonesian Legal System," *Al-Wasath; Journal of Legal Studies* 3, no. 1 (April 20, 2022): 1–12, <https://doi.org/10.47776/alwasath.v3i1.336>

⁶Ahmad Tholabi Kharlie, "Human Rights in Indonesian Constitutional Amendments," *Jurnal Cita Hukum* 1, no. 1 (June 7, 2013): 1–18, <https://doi.org/10.15408/jch.v1i1.2987>

⁷Silvia Lativatul Diniah, Siti Maemunah, and Salman Bariq Suherman, "Quranic Interpretation in the Context of Human Rights: Revealing the Humanitarian Messages Behind the Words of Allah," *An-Najah; Journal of Islamic Education and Social Religious Studies* 3, no. 4 (June 22, 2024): 37–51.

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about ritual worship, but also about giving wealth to those in need, such as orphans, the poor, and those in debt. This verse emphasizes that their rights must be respected and fulfilled as part of social justice. By fulfilling these rights, human dignity can be maintained and social inequality can be reduced. Regarding humane treatment of others, the Quran also emphasizes the importance of forgiveness and compassion. Surah Al-A'raf, verse 199, states, "Be forgiving, and enjoin what is right, and turn away from the ignorant." This verse demonstrates that forgiveness and compassion are part of treating others humanely.⁸

Islamic criminal law, as part of Sharia, aims to uphold justice, protect human rights, and maintain social order. As a legal system based on revelation, Islamic criminal law possesses unique characteristics that integrate the values of justice and humane treatment. One of the main principles of Islamic criminal law is the prohibition of torture against individuals, both in law enforcement and in the execution of sentences.⁹ This prohibition is rooted in the concept of maqasid sharia, namely the main goal of sharia which includes the protection of religion, soul, mind, lineage and property. Islamic criminal law seeks to balance strict punishment and humanitarian principles in order to achieve justice without violating human dignity

Article 5 of the Universal Declaration of Human Rights (UDHR), which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment," is a universal principle that reflects a global commitment to respect for human dignity. This principle is deeply aligned with the teachings of the Quran, which affirm humane treatment, justice, and respect for the human rights of every individual. Islam, as a religion that emphasizes the balance between rights and obligations, makes these principles the legal and ethical foundation of social interaction. This alignment demonstrates that the universal values enshrined in the UDHR are not only secular but also have strong roots in religious values, particularly in Islam.

4. Conclusion

Human trafficking crimes between Indonesia and Cambodia demonstrate that the availability of international, regional, and national legal instruments is insufficient to guarantee effective law enforcement. Although both countries have ratified the

⁸Adi Abdilah Yusup, "Religion and Respect for Human Dignity in the Perspective of Abdullahi Ahmed An-Na'im," *Jurnal Ilmiah Falsafah: Jurnal Studi Filsafat, Theologi dan Humaniora* 10, no. 2 (April 20, 2024): 107–23, <https://doi.org/10.37567/jif.v10i2.3035>.

⁹Maura Pemelie Walidain and Laras Astuti, "Implementation of the Qanun Jinayat in Criminal Law Enforcement in Aceh," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 2, no. 3



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UNTOC, the Palermo Protocol, and ACTIP, their implementation in the field remains hampered by differing legal definitions, a lack of synchronization of criminal elements, weak victim protection, and the use of inappropriate articles in handling cases that actually meet the elements of human trafficking, particularly those related to online fraud and forced labor in scam compounds. Law enforcement is also hampered by jurisdictional constraints, minimal inter-agency coordination, slow information exchange, and systemic pressures such as corruption and limited capacity of officials. As a result, the investigation, evidence-gathering, and victim recovery processes are often suboptimal and not in line with international standards. These findings emphasize that eradicating human trafficking cannot be done unilaterally. Strengthening international cooperation through the MLA, extradition, Joint Investigation Teams, Interpol, and ASEANAPOL, along with regulatory harmonization and capacity building of law enforcement institutions, are crucial steps to ensure a more coordinated, rapid, and victim-friendly response. Without structural improvements and cross-jurisdictional collaboration, human trafficking crimes will continue to thrive, exploiting legal loopholes and weak implementation across countries. Cambodia needs to continue aligning its domestic regulations with international standards and obligations as stipulated in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). This harmonization includes standardizing the definition of human trafficking, elements of exploitation, the principle of non-criminalization of victims, and the state's obligation to implement prevention and international cooperation. Regulatory synchronization is also crucial to prevent legal gaps that perpetrators can exploit, such as differences in the criteria for exploitation, the requirements for proving coercion, or gaps in regulations regarding prosecution of online enablers. With a legal framework consistent with international standards, Cambodia can more effectively support requests for law enforcement cooperation from other countries, including Indonesia, through MLAs, extradition, and Joint Investigation Teams. International technical assistance from various agencies, such as the United Nations Office on Drugs and Crime (UNODC), human rights organizations, and development cooperation programs, plays a crucial role in strengthening the capacity of investigators, prosecutors, and judges. Through training on modern investigative techniques, including digital evidence, a trauma-informed/victim-centered approach, and standards of evidence in cross-jurisdictional cases, these agencies help create a more professional and comprehensive legal and operational framework. Therefore, strengthening international technical support is a crucial prerequisite for ensuring that law enforcement efforts against trafficking in Indonesia and Cambodia are not only procedurally sound, but also effective, comprehensive, and in line with international standards of justice.



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