



Implementing and developing Islamic law internationally: challenges in the modern age

Imam Sujono

STAI Taruna Surabaya, Indonesia | imamsujono@staitaruna.ac.id

Received: 30-04-2023 Reviewed: 15-05-2023 Accepted: 30-05-2023

Abstract

The implementation of Islamic law at the international level faces a variety of complex challenges that include legal, political, social and cultural dimensions. One of the main challenges is the diversity of interpretations of Islamic law in different Muslim countries. Differences in schools of thought, local traditions, and state policies create gaps in the application of the law, which makes it difficult to establish uniform Islamic legal standards globally. Apart from that, the integration of Islamic law into the international legal system which is dominated by secular law is also an obstacle. The current international legal system places greater emphasis on universal principles which sometimes conflict with provisions in Islamic law, especially on issues such as human rights, gender equality and religious freedom. Another challenge arises from the geopolitical aspect, where countries with different political and economic interests are often reluctant to agree on a global Islamic legal framework. In addition, negative perceptions of Islamic law among non-Muslim communities also play a role in hindering constructive dialogue between civilizations. This condition is exacerbated by the stigma of terrorism which is often associated with the extreme application of Islamic law. Therefore, efforts are needed for cross-cultural dialogue and reform of Islamic law that is inclusive and adaptive to the global context without ignoring the basic principles of religion.

Keywords: implementing, developing, Islamic law, internationally, challenges, modern age

Introduction

Islamic law has not become the main reference for the panel of judges at the International Court of Justice in the realm of trying violations of international legal norms. However, in the future, there is an opportunity for Islamic legal standards to be adopted in international law. The international community commonly hears the term International Law. It has even become the dominant law in the arena of international relations. Unlike International Islamic Law (HII), perhaps only a few people know that it exists amidst popular International Law. HII or Siyar is a norm that regulates relations between Muslims and non-Muslims. (Powell, 2022)

Implementing and developing Islamic law internationally: challenges in the modern age

One of the famous figures of HII is Al-Syaibani (Rakhimovich, 2022), who lived in the 8th century AD. International Law only developed in the 14th century and peaked in the 16th century AD. Siyar or HII is essentially a practice when the Prophet Muhammad SAW interacts with non-Muslim groups (Muhammadin & Azzahra, 2022). By definition, siyar is a norm and custom practiced by the Islamic community towards non-Muslims. (Khdir, 2022) Because it is part of the sharia in fiqh, the source of HII law is the Qur'an and Sunnah, as well as *ijtihad* in the context of practices applied during the Islamic caliphate. (Farooqi et al., 2022)

After the Islamic Caliphate in Turkey ended, each country became independent and had domestic laws. Then independently regulate its relations with other countries. It has been a challenge in the practice of HII to date. Another challenge faced by HII is that international law has not provided adequate space (Ilhamni et al., 2022). So far, international law claims to carry universal values, but traced from its history, the concepts and norms that apply are the legacy of European civilization transmitted to third-world countries through colonialism. (Ahmad et al., 2022)

One of the minimal spaces given by international law to HII can be seen from the International Court of Justice. Ideally, the panel of judges at the International Court of Justice is selected based on the majority legal system that exists throughout the world. However, in fact, the selection of judges is based on geography, so it does not represent a particular legal system. Even if there are judges who are Muslim, they do not necessarily understand Islamic law. As a result, in handling international cases, Islamic law is not the main reference for the Court but only as an alternative. (Rehman, 2022)

It was recorded that in the period 1945-2006, the decision of the International Court of Justice that mentioned Islamic law was only 2 cases. Then, only 7 instances mentioned Islamic law in the opinion, either *dissenting* or *concurring*. Based on the data, it can be seen that Islamic law is not the basis for the International Court when deciding international law cases (Puspitasari et al., 2022). Examples of cases where Islamic law is not a reference for judges at the International Court (Lefolle, 2022). First is the dispute over the Western Sahara region by Morocco after Spanish decolonization. Morocco claims that Western Sahara is part of their territory because they have religious closeness. But the Court rejected Morocco's claim (Maksum & Afriyana, 2022). Next is the Aouzou Strip dispute between Libya and Chad. Libya claims that the disputed area belongs to it because it is subject to the Ottoman Empire. However, after seeing the agreement between France and Libya, the Court considered that the disputed area was not part of Libyan territory. A country cannot use religious pretexts to claim sovereignty over a region. (Al-Day, 2022)

Nevertheless, HII contributes to international law. For example, distinguishing between combatants and civilians in the law of war convention. The concept of HII has been adopted by international law (Rahman & Shah, 2022). Then, diplomatic protection, where HII regulates diplomatic representatives, must be protected and may not be punished, killed, or others. (Abbas & Naveed, 2022)

In the future, there will be many more HII norms that can be adopted in international law, including trade. Currently, one of the issues is international law, especially trade, which

concerns halal products. When a dispute occurs regarding halal products and its resolution ends up in the International Court, Islamic law is worthy of being a reference for the panel of judges to decide the case.

Literature Review

Studies on diplomacy in Islam often refer to peace agreements and diplomatic interactions carried out by the Prophet Muhammad SAW. One important example is the Treaty of Hudaibiyah, which marked a peaceful diplomatic approach in Islamic history. Much modern literature examines how international agreements of this kind reflect the principles of justice, mutual respect, and peaceful resolution that are still relevant in the global world today.

- a. Classical Islamic Diplomacy: Works such as "Islamic International Law and Public International Law: Separate Expressions of World Order" by Westbrook D. A. explain that Islam expresses this division between friend and foe, and its political results, by dividing the world into the *dar al-harb* - the domain of war - and the *dar al-Islam* - the domain of Islam, where war is forbidden. He argue that these attempts either fail to address the concerns of public international law or fail to locate legal authority in Islam - fail, that is, to be substantively Islamic. The public international law solution of order without shared belief is not available to Islamic scholars, insofar as their work is informed by Islam. Unlike Western writers on international law, who appear uninterested in the Islamic tradition and how it may differ from the *siyar*, Muslims who write on international law do so with an awareness that public international law, a product of Western culture, is universally entrenched as the normative standard and will be used to judge Islamic legal doctrines, which will be deemed defective if they violate the international norms. For the Islamic scholar, public international law is foreign. Although secular Islamic law - Islamic law without Islam - is nonsensical, it is not clear what the resurgence of religious fundamentalism means for public international law. Significantly, each scholar provides a sense of the *siyar's* inapplicability to contemporary problems and thereby serves to undermine *fiqh's* monopoly of the legal imagination of Muslims.(Westbrook, 1993)
- b. Modern Literature: Research by Cherif Bassiouni in his book "The shari'a and Islamic public law in time of war and peace". This book uniquely presents a critique of the violent practices of contemporary Muslims and Muslim clerics who support these practices. It rebuts Islamophobes in the West that discredit Islam on the basis of the abhorrent practices of some Muslims, and hopes to reduce tensions between Western and Islamic civilizations by enhancing common understanding of the issues.(Cherif Bassiouni, 2013)

Research methods

Empirical Approach in the Study of International Islamic Law

In empirical research on Islamic International Law, researchers focus on practical observations and analysis of how Islamic legal principles are applied in international relations, including

diplomacy, international treaties, the laws of war, and human rights. Some examples of empirical approaches include:

- a. **Case Studies:** Researchers can analyze specific cases where the principles of Islamic Law are applied in international relations. For example, case studies on how Muslim countries play a role in conflict resolution through diplomacy based on the principles of Islamic law.
- b. **Document Analysis:** Researchers can also study the texts of international treaties, charters of international Islamic organizations (such as the OIC), or court decisions related to Islamic Law. It helps to see how the law is applied in real situations.

Empirical research methods in Islamic International Law provide an approach that focuses on the reality of practice rather than theory alone. By collecting and analyzing data obtained from direct observation, interviews, surveys, and documentation, this method provides insight into how Islamic legal principles are applied in international relations. Despite the challenges, empirical research remains an important tool for understanding the dynamics of Islamic International Law in the modern world.

Results and Discussion

International Islamic Law: Concept and Implementation

International Islamic law deals with relations between states or groups in the international world. Although international Islamic law is not as formal as secular international law as regulated by the UN Charter, there are basic principles in Islam that guide international relations in diplomatic, political, and war contexts. This article will discuss the concept and implementation of international Islamic law and how it is applied in the modern context.

Basic Concepts of International Islamic Law

International Islamic law is known in classical terms as *Siyar*, which is the branch of Islamic law that regulates relations between Muslims and non-Muslims in the international world (Muhammadin & Azzahra, 2022). *Siyar* was mainly developed by the *fiqh* scholars in the early days of the Islamic Caliphate and covers a wide range of issues such as:

1. Diplomatic Relations

Islam views the importance of peaceful relations with other countries. In this context, diplomacy is regulated based on the principles of mutual respect and maintaining justice. Rasulullah SAW himself signed several international agreements with non-Muslim parties, such as the Hudaibiyah Agreement, which is one of the earliest examples of peace agreements in Islamic history. (Bouzenita, 2021)

2. War and Peace

The concept of war (*jihad*) in Islam is often misinterpreted as a call for unlimited warfare. In Islamic law, war is permitted only in self-defence or against oppression. There are strict

rules about how war should be waged, including a prohibition on killing civilians, children, children and women and environmental protection.(Ahmad et al., 2021)

3. Human Rights

Islam emphasizes the importance of protecting the dignity of every individual, both Muslim and non-Muslim. Principles such as the protection of the right to life(Dungga & Al-Khalaf, 2022), freedom of religion, and social justice form the basis of international relations. The Qur'an often emphasizes the importance of justice and the protection of the weak, which can be translated in the international context as the principle of human rights.(Okladnaya & Hurenko, 2021)

4. International Trade

Islam has guidelines on how international economic and trade transactions should be conducted, emphasizing transparency, fairness, and protection against fraud. The Prophet Muhammad himself was a trader known for his honesty, and many of Islam's economic teachings are derived from his trading practices.(AlKhaza'leh, 2021)

Implementation of International Islamic Law in Modern Times

In the modern world, the implementation of international Islamic Law faces its challenges because many Muslim countries (Minardi et al., 2022) have adopted a secular legal system or a combination of Islamic law and international law codified by international institutions such as the UN. However, the basic principles of Siyar are still relevant and can be applied in various international contexts:

1. Conflict and Peaceful Resolution

Many Muslim countries participate in international organizations such as the Organization of Islamic Cooperation (OIC), which aims to maintain peace and stability in the Muslim world. Islamic legal principles on war and peace are often used in peace negotiations in conflict areas such as Palestine, Yemen, and Syria.(Sofyan et al., 2021)

2. Human Rights and Diplomacy

Despite differences in the interpretation of human rights in Islam and the international system, some Muslim countries have integrated Islamic principles on human rights into their constitutions (Sebar & Ismail, 2021). For example, Egypt and Pakistan have codified some aspects of Islamic law in their national legal systems relating to individual rights.(Rehman, 2022)

3. Sharia Trade and Economy

In international trade, many Muslim countries have adopted the Islamic banking system, which emphasizes the principles of justice and transparency in economic transactions. These concepts are in accordance with the principles of Islamic law on international trade and have become an important part of the global economic system, especially in the Gulf countries.(Hassan et al., 2022)

4. The Role of International Islamic Institutions

Institutions such as the OIC and the Islamic Development Bank (IDB) play a vital role in strengthening cooperation among Muslim countries based on Islamic principles (Mohamed Hamed Mohamed Al- Amayrah, 2021). They are also active in providing humanitarian aid and economic development in developing Muslim countries. (Hendri Hermawan Adinugraha & Ali Muhtarom, 2021)

Challenges of International Islamic Law

Despite the many positive aspects of international Islamic Law (Ilhamni et al., 2022), there are also challenges in implementing it in the modern world. Some of these challenges include:

1. Differences in Interpretation

Islamic law, like other religions, can be interpreted differently by different Muslim scholars and countries. It means that there is no single standard for the application of international law based on Islam. (Chattha, 2021)

2. Conflict with Secular International Law

Sometimes, the principles of Islamic Law conflict with international law administered by organizations such as the United Nations. For example, human rights issues related to religious freedom and women's rights are often debated in international forums. (Alotaibi, 2021)

3. Modernization and Secularization

Many Muslim countries are undergoing a process of secularization and modernization, where Islamic law is becoming less relevant in national legal systems. It poses a challenge to how international Islamic law can be applied consistently. (Lefolle, 2022)

Conclusion

Islamic international law, although less formal than secular international law, has a long history and strong principles regarding international relations, human rights, and trade. These principles are still relevant in the modern world and can serve as a foundation for just and peaceful international relations. However, their application requires adaptation to the current global context, as well as a deep understanding of the universal and specific values of Islamic law.

References

- Abbas, D. N., & Naveed, D. S. (2022). An Analysis of the Objections Related to the International Law of Islam. *IQAN*, 4(2). <https://doi.org/10.36755/iqan.v4i2.387>
- Ahmad, N., Ahmad, S. S. binti H., & Zulkiffle, N. binti H. (2021). The Concept of Just-War in Islamic and Modern International Law. *Manchester Journal of Transnational Islamic Law*

and Practice, 17(1).

- Ahmad, N., Asmad, A. H., & Zulkiffle, N. B. (2022). Evolution and Practices of Diplomatic Immunity under Islamic Traditions and International Law. *Manchester Journal of Transnational Islamic Law and Practice*, 18(2).
- Al-Daya, A. R. S. (2022). The Eligibility of Liberation Movements to Conclude International Treaties in Islamic Jurisprudence and International Law. *المجلة الدولية للدراسات الإسلامية*, 7, المتخصصه(2). <https://doi.org/10.31559/sis2022.7.2.4>
- AlKhaza'leh, M. S. (2021). An outlook of each of the Islamic thought and the contemporary global thought on the human concept and rights. *Academic Journal of Interdisciplinary Studies*, 10(2). <https://doi.org/10.36941/ajis-2021-0047>
- Alotaibi, H. A. (2021). The challenges of execution of Islamic criminal law in developing Muslim Countries: An analysis based on Islamic principles and existing legal system. *Cogent Social Sciences*, 7(1). <https://doi.org/10.1080/23311886.2021.1925413>
- Bouzenita, A. I. (2021). THE DIVISION OF THE SEAS IN INTERNATIONAL AND ISLAMIC LAW AND THE CONCEPT OF ḤARĪM AL-BAḤR: A COMPARATIVE FIQH STUDY. *Ilahiyat Studies*, 12(2). <https://doi.org/10.12730/13091719.2021.122.225>
- Chattha, A. N. (2021). Perspective of the islamic law of war on the armed non-state actors' militancy. *Journal of Islamic Thought and Civilization*, 11(2). <https://doi.org/10.32350/jitc.112.19>
- Cherif Bassiouni, M. (2013). The shari'a and Islamic public law in time of war and peace. In *The Shari'a and Islamic Public Law in Time of War and Peace*. <https://doi.org/10.1017/CBO9781139629249>
- Dungga, W. A., & Al-Khalaf, A. (2022). Integration Of Labor Law In Islamic Law And Civil Law Citizenship (Harmonization Of Principles And Their Implementation In Contemporary Society). *Jurnal Pamator : Jurnal Ilmiah Universitas Trunojoyo*, 15(2). <https://doi.org/10.21107/pamator.v15i2.19812>
- Farooqi, M. A., Rizvi, D. A., & Ramzan, D. M. (2022). The Classical and Contemporary Approaches towards International Law: Conceptual and Thematic Study of Siyar (Islamic International Law). *International Journal of Social Science & Entrepreneurship*, 2(2). <https://doi.org/10.58661/ijssse.v2i2.85>
- Hassan, S. S. U., Hussain, M. A., & Sajid, S. (2022). The effectiveness of anti-money laundering legislation in Islamic banking of Pakistan: experts' opinion. *Journal of Money Laundering Control*, 25(1). <https://doi.org/10.1108/JMLC-02-2021-0014>
- Hendri Hermawan Adinugraha, & Ali Muhtarom. (2021). UNDERSTANDING OF ISLAMIC STUDIES THROUGH SHARIA ECONOMICS PERSPECTIVE IN INDONESIA. *Journal of Islamic Economics Perspectives*, 3(1). <https://doi.org/10.35719/jiep.v3i1.25>
- Ilhamni, I., Meirison, M., & Nazar, Z. (2022). Islamic Political Thought And Its Implementation In The Contemporary World. *Islamadina : Jurnal Pemikiran Islam*, 23(1). <https://doi.org/10.30595/islamadina.v23i1.10715>
- Khdir, R. R. (2022). Child Recruitment and Use during Armed Conflicts by Muslims between International Law and Islamic Law. *European Scientific Journal*, ESJ, 18(26). <https://doi.org/10.19044/esj.2022.v18n26p108>

- Lefolle, J. (2022). IDENTIFICATION OF THE DEAD UNDER ISLAMIC LAW AND INTERNATIONAL HUMANITARIAN LAW: A MINI REVIEW. *Malaysian Journal of Syariah and Law*, 10(2). <https://doi.org/10.33102/mjsl.vol10no2.394>
- Maksum, M., & Afiyanah, Y. (2022). The Influence of International and Islamic Law on Labor Laws in Indonesia and Morocco. *Jurnal Cita Hukum*, 10(2). <https://doi.org/10.15408/jch.v10i2.27804>
- Minardi, A., Afriantari, R., & Maesuroh, M. (2022). The Implementation of Islamic Penal Law in Brunei Darussalam and International Society. *Socio Politica : Jurnal Ilmiah Jurusan Sosiologi*, 11(1). <https://doi.org/10.15575/socio-politica.v11i1.7961>
- Mohamed Hamed Mohamed Al- Amayrah. (2021). Imprisonment of the Debtor in the Jordanian Implementation Law in Comparison to Islamic Jurisprudence and International Covenants: حبس المدين في قانون التنفيذ الأردني مقارناً بالفقه الإسلامي والمواثيق الدولية. *مجلة العلوم الاقتصادية والإدارية والقانونية*, 3(5). <https://doi.org/10.26389/ajsrp.q270119>
- Muhammadin, F. M., & Azzahra, S. D. (2022). THE ROLE OF FIQH AL-SIYAR IN INTERNATIONAL LAW-MAKING Escaping the Lethargy. *Al-Jami'ah*, 60(2). <https://doi.org/10.14421/AJIS.2022.602.509-546>
- Okladnaya, M., & Hurenko, O. (2021). Stages of the formation of the Islamic concept of international law in the medieval and modern time. *Law and Innovative Society*, 1 (16). [https://doi.org/10.37772/2309-9275-2021-1\(16\)-13](https://doi.org/10.37772/2309-9275-2021-1(16)-13)
- Powell, E. J. (2022). Complexity and Dissonance: Islamic Law States and the International Order. *International Studies Review*, 24(1). <https://doi.org/10.1093/isr/viac001>
- Puspitasari, R. A., Hutami, P. P. R., Prasyanti, M. D., Nisa, M. Ai., & Kusuma, F. D. (2022). Juridical Study of the Death of Mahsa Amini Based on Islamic Law and International Human Rights. *Sinomics*, 1(5).
- Rahman, S. U., & Shah, M. S. S. (2022). The Command Responsibility in International Criminal Law and Islamic Law: A Comparative Study. *Journal of Law & Social Studies*, 4(2). <https://doi.org/10.52279/jlss.04.02.316327>
- Rakhimovich, J. S. (2022). Characteristics of organization of international relations in the works of Muhammad Shaybani. *Asian Journal of Multidimensional Research*, 11(5). <https://doi.org/10.5958/2278-4853.2022.00084.2>
- Rehman, J. (2022). Revisiting the Jihad Ideology in Islamic International Law and its Appropriation by Nonstate Actors. *Human Rights Quarterly*, 44(2). <https://doi.org/10.1353/hrq.2022.0015>
- Sebar, H., & Ismail, S. M. (2021). THE USE OF FLOGGING AS A PUNISHMENT IN SAUDI ARABIA FROM THE PERSPECTIVE OF INTERNATIONAL HUMAN RIGHTS LAW. *IIUM Law Journal*, 29(1). <https://doi.org/10.31436/iiumlj.v29i1.609>
- Sofyan, D., Saputra, Y. M., Nurihsan, J., & Kusmaedi, N. (2021). Islamic Solidarity Games (ISG): Historical perspective. *Journal Sport Area*, 6(2). [https://doi.org/10.25299/sportarea.2021.vol6\(2\).6476](https://doi.org/10.25299/sportarea.2021.vol6(2).6476)
- Westbrook, D. A. (1993). Islamic International Law and Public International Law: Separate Expressions of World Order. *Virginia Journal of International Law*, 33(Summer).