

Dialectical Relations of Sharia and International Law

By Gasim Yamani

Dialectical Relations of Sharia and International Law

Gasim Yamani^{1*} & Sari Sakinah²

¹Universitas Islam Negeri Datokarama Palu

²Islamic Family Law Study Program State Islamic University Datokarama Palu, Indonesia

*Corresponding Author: Gasim Yamani, E-mail: gasimyamani@uindatokarama.ac.id

ARTICLE INFO

Volume: 2

KEYWORDS

Relations, Sharia, International Law, Dialectics

ABSTRACT

The notion that international law is completely secular is fundamentally incorrect. Religious relations in international law can be categorized into three, namely separationist: movement for sovereignty, accommodationist: in Law is Consistency in religion with Rationalism and pragmatism (double-edge) which means teaches everything that proves itself to be true by looking at practical beneficial consequences or results. The current development of international law shows that international law tends to use religion as part of itself but is pragmatic in nature (double-edge). If it gives a positive value, it will be taken, whereas if it has a negative effect it will be abandoned. The principles underlying International Law are (1) Human unity (2) Cooperation (3) Tolerance (4) Freedom of belief (creed) (5) justice as for the main principles in Islamic law related to relations between countries (1) brotherhood (2) Respect for human dignity and protection of human rights (3) Commitment to morals and ethics (4) Justice and Equality of Rights and Obligations (5) Pardon in War and Peace (6) Fulfillment of agreements as long as the other party complies with and respects it (7) Reciprocity as long as it does not conflict with fundamental principles and values.

1. Introduction

Law broadly means a set of rules or norms to govern everything, especially human life. In living life, humans must have certain rules for the sustainability of human interests with one another. The hope that will be achieved from this rule is the creation of peace and the fulfillment of the interests of each human being without interfering with each other.

Although international law is synonymous with the interests of European countries, some influence of non-European interests is also evident in the development of international law. One of them is Islam. The influence of Islam in international law, for example, can be seen in consular diplomatic law, human rights, the laws of war as well as the law of dispute settlement and peace. Thus, the identification that international law is entirely inherited from Europe is incorrect. These facts and data must be read in a critical and progressive framework, namely that the development of international law in the future will be heavily influenced by various existing interests. At that point, Islam must play an important role to provide color or even significant influence so that the mission of Islam as rahmatan lil alamin can be realized. (eka, 2016)

¹ Gasim Yamani is a Lecturer of State Islamic University Datokarama Palu, Indonesia. This paper was presented at the 2nd International Conference on Islamic and Interdisciplinary Studies (ICIIS) 2023, as a presenter, Indonesia.

Of course, the issue of incorporating Islamic influence in the development of international law is not easy. Although the Islamic legal system has been recognized as one of the legal systems in the world by the International Court of Justice, Islamic law cannot automatically gain a place in the development of international law. This is because there is competition between diverse interests. Therefore, it is necessary to strive for Islamic scholarship so that the international community can accept concepts derived from Islam as something universal. To facilitate the international community's acceptance of the conception of Islamic law, what must be done is to make Islam a source of international law (eka, 2016)

The concept of Human Rights (HAM) arises because of deviations and injustices in obtaining life, so that human rights are rights between people, namely rights that exist in all humans to full equality.

2. Literature Review

2.1 International Law

The definition of General International Law is a collection of rules governing the relations of international law parties, both in peace and war. The main sources of General International Law, since ancient times, have been international agreements, customary law, general principles of law established between countries, for example the principle of responsibility for the perpetrator of damages (compensation) and the principle of honoring contracts (Karim Zaidan) International law is the part of law that governs the activities of entities on an international scale. In the beginning, international law was only interpreted as the behavior and relations between countries. However, in pattern development of International Relations the more complex the meaning. International law also deals with the structure and behavior of international organizations and to a certain extent. This so-called international law regulates relations between states, assigns rights and obligations to them and also contains provisions for situations of conflict and war, known as international law and public international law, and also applies to international organizations and political bodies

According to Prof. Hyde that International Law can be formulated as a set of laws which mostly consist of principles and regulations that must be adhered to by countries. Therefore international law must be obeyed when states are dealing with each other (Hyde, 1945.)

2.1 Sharia (Islamic Law)

Islamic law is the law established by Allah through His revelation which is now contained in the Qur'an and explained by the prophet Muhammad as His Messenger through his Sunnah which is now well compiled in the books of hadith. It can also be interpreted as a law that originates and becomes part of the Islamic religion. What is governed is not only the relationship between humans and other humans in society, humans and objects and the universe, but also the relationship between humans and God. The word law used today in Indonesian comes from the word *lawhakama-yahkumu-hukmanin* arabic. That is, norms or rules, namely deciding, establishing, standards, benchmarks, guidelines used to assess the behavior or actions of humans and objects. The relationship between the words of law in the Indonesian language mentioned above and the law in the sense of norms in Arabic is indeed very close. Every regulation, regardless of its type and source contains norms or rules as its core. That is why in everyday speech people speak about the law of an object or action. What is meant, as mentioned above, is a standard, benchmark, rule or measure regarding the act or object. (Muhammad Daud Ali, 2000)

3. Methodology

This research uses a type of literature research, namely research conducted using secondary data in the form of books, notes and online references, as well as previous research. Literature research is a data collection technique using existing data through literature research. The documents used in the literature research as long as they are still related to the topic written

4. Results and Discussion

According to Baderin, at a practical (empirical) level, there are three levels (levels) of the relationship between religion and current international law, namely:

- (1) The relationship of international law with the national law of a country that makes religion the basis of that country's law.
- (2) International legal relations with regional organizations.
- (3) The relationship of international law with the right to freedom of religion for individuals and groups. These three levels create a dynamic relationship between international law and religion. The nature of the relationship is also very loose. In other words, there is no hierarchy between international law and religion. (kuntowijoyo, 2006)

The Quran recognizes the division of knowledge into three kinds, namely *kauniyah* (natural science, nomothetic), *qauliya* (theology) and *nafsiyah* science which deals with the meaning, value of humanities consciousness. This last science was equated by him with the humanitarian sciences or humanities. On that basis, it can be concluded that the definition of General International Law in Islam is a set of rules and provisions in Islamic law that must be implemented by the Islamic state in relation to various countries and other international organizations. The most important principles underlying General International Law in Islam are as follows.

(1) The unity of mankind. Islamic Sharia views humanity as one nation brought together by human aspects. The difference between nations and tribes is only meant for mutual knowledge and cooperation. The competition between nations and tribes is measured by another standard, namely to the extent to which it is consistent with the commands of Allah Almighty as in the word of Allah Almighty in the Qur'an Surah Al-Hujurat : 13

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاكُمْ ﴿٤﴾

"O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may 'get to' know one another. Surely the most noble of you in the sight of Allah is the most righteous among you."

(2) cooperation. Cooperation for goodness is a principle that has a high position in Islam in accordance with the word of Allah SWT in QS Al-Maidah : 2

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ﴿٢﴾

"... Cooperate with one another in goodness and righteousness, and do not cooperate in sin and transgression"

(3) Tolerance. Islamic Shari'at urges people to be tolerant towards mankind as in the commands of Allah SWT, In Surah Al-Baqarah : 109

فَاعْفُوا وَاصْفَحُوا ﴿١٠٩﴾

"Pardon and bear with them "

and the word of Allah SWT in QS Ali Imram : 134

وَالْعَافِينَ عَنِ النَّاسِ وَالْكَاطِمِينَ الْغَيْظَ ﴿١٣٤﴾

"those who control their anger and pardon others. "

(4) Freedom of belief (*aqidah*). Islamic Shari'at is based on freedom of belief and prohibits coercion in religion as in the word of Allah SWT in QS Al-Baqarah : 256

لَا إِكْرَاهَ فِي الدِّينِ ﴿٢٥٦﴾

"Let there be no compulsion in religion."

Even the Islamic state protects non-Muslims who live under its auspices and prevents anyone who forces them to leave their religion. Even the Islamic state protects non-Muslims who live under its auspices and prevents anyone who forces them to leave their religion. (5) Justice. Islamic Shari'at determines justice and takes decisions on the basis of justice in a state of peace or war. In addition to obliging its adherents to treat anyone fairly in accordance with the commands of Allah SWT QS An-Nisaa : 135

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ ﴿﴾

"O believers! Stand firm for justice as witnesses for Allah even if it is against yourselves."

And the word of Allah SWT in QS Al-Maidah : 8

وَلَا يَجْرِمَنَّكُمْ شَتَانُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ﴿﴾

"...Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness."

The source of these general rules is the legal Qur'an, Sunnah and Custom ('I-'Urf). Sources of religious texts (Al Qur'an and Sunnah) relating to the relationship of Islamic countries with other countries are as follows: The Word of Allah SWT in QS Al-Maidah : 1

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ ﴿﴾

"O believers! Honour your obligations"

This verse includes the generally accepted commandment to execute all forms of covenant. Agreements concluded between countries are considered to include agreements recognized by Islamic sharia. Therefore, the Islamic country is obliged to implement the agreements it signs with other countries. On the other hand, there is a text that warns against betrayal (inconsistent with the covenant), namely the words of Allah Almighty In Q.S Al-Anfal: 58

إِنَّ اللَّهَ لَا يُحِبُّ الْخَائِنِينَ ﴿﴾

"Surely Allah does not like those who betray."

And the word of Allah in QS An-Nisaa 107:

إِنَّ اللَّهَ لَا يُحِبُّ مَن كَانَ خَوَّانًا أَثِيمًا ﴿﴾

"Surely Allah does not like those who are deceitful, sinful."

Any form of betrayal is frowned upon, both between individuals and between nations. Even treason between countries is more frowned upon, because its capacity is bigger and it is more common. Likewise in the words of Rasulullah SAW: "There are three criteria for a hypocrite, namely when he speaks, he lies; when he gives a promise, he breaks it; and when he is trusted, he betrays." There are quite a lot of religious texts in this context. Everything is generally accepted and includes interpersonal relations or relations between Islamic countries and other countries.

Based on the theoretical perspective of the relationship between religion and international law, the current development of international law is closer to the double-edge theory. In other words, religion can still play a role and have an important value as a source of law in the formation of international law.

One of the Islamic jurists, Wahbeh al-Zuhili, then tried to list the basic principles in Islamic law related to relations between states. The main principles are (Wahbeh Al-Zuhili):

- (1) Brotherhood (Human Brotherhood QS, Al-Baqarah: 213)

3

كَانَ النَّاسُ أُمَّةً وَاحِدَةً فَبَعَثَ اللَّهُ النَّبِيِّينَ مُبَشِّرِينَ وَمُنذِرِينَ وَأَنْزَلَ مَعَهُمُ الْكِتَابَ بِالْحَقِّ لِيَحْكُمَ بَيْنَ النَّاسِ فِي مَا اخْتَلَفُوا فِيهِ. وَمَا اخْتَلَفَ فِيهِ إِلَّا الَّذِينَ أُوتُوهُ مِنْ بَعْدِ مَا جَاءَتْهُمْ الْبَيِّنَاتُ بَغْيًا بَيْنَهُمْ. فَهَدَى اللَّهُ الَّذِينَ ءَامَنُوا لِمَا اخْتَلَفُوا فِيهِ مِنَ الْحَقِّ بِإِذْنِهِ. وَاللَّهُ يَهْدِي مَنْ يَشَاءُ إِلَى صِرَاطٍ مُسْتَقِيمٍ ﴿٣﴾

“Humanity had once been one community of believers before they lost faith. Then Allah raised prophets as deliverers of good news and as warners, and revealed to them the Scriptures in truth to judge among people regarding their disputes. And no one disputed the Scriptures except the very people who received them after clear proofs had come to them—out of jealousy. Then Allah, by His grace, has guided the believers to the truth regarding those disputes. And Allah guides whoever He wills to the Straight Path.”

7

(2) Respect for human dignity and protection of human rights (Honouring the human being and preserving human rights QS, 17/70)

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا ﴿٧﴾

“Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures.”

(3) Commitment to morals and ethics

(4) Justice and Equality of Rights and Obligations Q.S An-Nahl : 90

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ. يَعِظُكُم لَعَلَّكُمْ تَذَكَّرُونَ ﴿٩٠﴾

“Indeed, Allah commands justice, grace, as well as courtesy to close relatives. He forbids indecency, wickedness, and aggression. He instructs you so perhaps you will be mindful”

(5) Mercy in War and Peace Q.S Al-Anbiya : 107

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ﴿١٠٧﴾

“We have sent you ‘O Prophet’ only as a mercy for the whole world”

(6) Fulfillment of agreements as long as the other party obey and respect it Q.S Al-Maidah : 1 and Q.S An-Nahl : 91

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ. أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَىٰ عَلَيْكُمْ غَيْرِ مُجْلِى الصَّيْدِ وَأَنْتُمْ حُرْمٌ. إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ ﴿٩١﴾

“O believers! Honour your obligations. All grazing livestock has been made lawful to you—except what is hereby announced to you and hunting while on pilgrimage. Indeed, Allah commands what He wills”

وَأَوْفُوا بِعَهْدِ اللَّهِ إِذَا عَاهَدْتُمْ وَلَا تَنْقُضُوا الْأَيْمَانَ بَعْدَ تَوْكِيدِهَا وَقَدْ جَعَلْتُمُ اللَّهَ عَلَيْكُمْ كَفِيلًا. إِنَّ اللَّهَ يَعْلَمُ مَا تَفْعَلُونَ ﴿١٢٦﴾

“Honour Allah’s covenant when you make a pledge, and do not break your oaths after confirming them, having made Allah your guarantor. Surely Allah knows all you do.”

(7) Reciprocity as long as it does not conflict with fundamental principles and values Q.S An-Nahl : 126

وَإِنْ عَاقَبْتُمْ فَعَاقِبُوا بِمِثْلِ مَا عُوقِبْتُمْ بِهِ. وَلَئِنْ صَبَرْتُمْ لَهُوَ خَيْرٌ لِّلصَّابِرِينَ ﴿١٢٦﴾

“If you retaliate, then let it be equivalent to what you have suffered. But if you patiently endure, it is certainly best for those who are patient.”

Dialectical Relations of Sharia and International Law

In addition to the sources of International Law recognized by Islam, there is also a very important aspect in the implementation of International Law, namely upholding morals. The moral urgency in General International Law in Islam is quite clear and the same level of urgency exists in legal relations between individuals. Thus, the obligation to maintain moral values in the relationship at the individual level and stay away from it vice versa also becomes a necessity in relations between countries. There is a discourse that is not normally accepted by Islamic Shari'a, namely that a trait or action in interpersonal relations is considered heinous and forbidden in Islam, then the same nature and action is considered noble and legitimate in the relationship of an Islamic state with other countries. Therefore, the true principle of International Law in Islam is to uphold morals and the Islamic state must adhere to it carefully in all conditions and in relation to all countries, including with the residents of these countries although for this consistency one has to sacrifice a lot and lose a number of interests. Because consistency with morals in the Islamic perspective is very valuable and invaluable. Whatever efforts and sacrifices for the sake of its realization are considered trivial and small. Inconsistency in this case is considered very bad whose badness cannot be eliminated. (Karim Zaidan)

5. Conclusion

The notion that international law is completely secular is fundamentally incorrect. Religious relations in international law can be categorized into three, namely separationist: movement to gain sovereignty, accommodationist: in Law is Consistency in religion with Rationalism and pragmatism (double-edge) which means teaching everything that proves itself to be true by looking at practical beneficial consequences or results. The current development of international law shows that international law tends to use religion as part of itself but is pragmatic in nature (double-edge). If it gives a positive value, it will be taken, while if it has a negative effect it will be abandoned.

References

- Abdul Karim Zaidan, "Nazarat fi 'l-Syari'ah" (Beberapa persepsi dalam Syari'ah), cetakan pertama (Beirut, Muassah 'l-Risalah 1421H)
- Abdul Karim Zaidan. Al-Fardu wa Al- Daulah Fi al- Syari 'ah al- Islamiyyah, (Masalah Kenegaraan Dalam islam). Terjemahan : Abdul Aziz
- Ali, Mohammad Daud. Hukum Islam : Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia. Jakarta : Raja Grasindo Persada, 2000.
- Al-Zayyid Zayyid bin Abdel Karim, PENGANTAR HUKUM HUMANITER INTERNASIONAL DALAM ISLAM
- Al-Zuhili Wahbeh, "Islam and International Law", International Review of the Red Cross, Vol. 87, No. 858, 2005.
- Aqimuddin an Eka , 2016. ISLAM SEBAGAI SUMBER HUKUM INTERNASIONAL, Masalah – Masalah Hukum, Jilid 45 No. 4, Oktober 2016, Halaman 318-325
- Baderin Mashood, "Religion and International Law ; Friends or Foes ?", European Human Rights Review, Issue 5, Sweet & Maxwell, London, 2009
- C.K.L Bello Petrus, 2013, Ideologi Hukum ; Refleksi Filsafat atas Ideologi di Balik Hukum, Bogor, Insan Merdeka
- Hyde Charles Cheney , International Law, Chiefly as Interpreted and Applied by the United States. Boston : Little, Brown ; 1945 (second revised edition).
- Imam Muslim, "Sahih Muslim", realisasi Muhammad Fuad Abdul Baqi (Cairo, Dar Ihya 'l-Kutub 'l-'Arabiyah)
- Kuntowijoyo, Islam sebagai ilmu : epistemologi, metodologi, dan etika / penulis, Yogyakarta : Tiara Wacana, 2006
- Wahhab Khallaf Abdul, 2003, Ilmu Ushul Fikih : Kaidah Hukum Islam, Jakarta, Pustaka Amani.

Dialectical Relations of Sharia and International Law

ORIGINALITY REPORT

6%

SIMILARITY INDEX

PRIMARY SOURCES

1	repository.uindatokarama.ac.id Internet	44 words — 1%
2	journal.formosapublisher.org Internet	31 words — 1%
3	sites.google.com Internet	29 words — 1%
4	afghanistan.iom.int Internet	16 words — 1%
5	ia801206.us.archive.org Internet	12 words — < 1%
6	ejournal.balitbangham.go.id Internet	11 words — < 1%
7	pt.scribd.com Internet	11 words — < 1%
8	ejournal.uin-suka.ac.id Internet	9 words — < 1%
9	jurnal.radenfatah.ac.id Internet	9 words — < 1%
10	legal.un.org Internet	

9 words — < 1%

EXCLUDE QUOTES ON

EXCLUDE BIBLIOGRAPHY ON

EXCLUDE SOURCES < 5 WORDS

EXCLUDE MATCHES < 9 WORDS