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War In Fiqh Review And Humanitarian Law

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Abstract

The main problem in this research is how to review war in fiqh and humanitarian law, how to determine the reasons for the permissibility of war in jurisprudence and humanitarian law, and how to post-war rehabilitation and reconstruction. This type of research uses descriptive qualitative and normative research. This research is a literature study. Sources of data come from legal materials that are primary, secondary and tertiary. The approach used is historical, normative theological and juridical approaches. Processing of legal materials using data analysis techniques with critical analysis. This study concludes that war in the view of fiqh is jihad fi sabilillah. However, the term jihad does not represent all forms of warfare in Islam. The principle of war in fiqh is an attempt to uphold dienul haq by risking wealth and life. Enforcement is intended to be carried out against disbelievers who hinder and make enemies of their adherents. The principle of fiqh sets limits (ethics) in war by not exceeding the limit. In humanitarian law there is the principle of military necessity, the principle of chivalry and the principle of humanity. The reason for war in fiqh is because it eliminates barbarity and tyranny, not because it is for imperialism. Another reason is because of self-defense or defending the homeland of the Muslims, or preventing from the dangers and threats of the infidels. In humanitarian law there is no provision for reasons of war. However, humanitarian law does not prohibit fighting. It only regulates hospitality which includes provisions for the use of means and methods of war, as well as protection for victims of war. Post-war reconstruction and rehabilitation were realized when the war ended through an absence of war (peaceful) phase. This phase is indicated by the end of the war.

Keyword : War, Fiqh, Jihad, Humanitarian Law

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INTRODUCTION

Al-Qur'an and Sunnah are guidelines for human life. The norms regulated in it cover all aspects of life. Its universal verses are valid for all time and contain basic principles. The basic principles in the Qur'an and Sunnah are concretized in the form of fiqh. It regulates various aspects of life. One aspect of human regulation is the fiqh of war, jihad in the narrow sense. This can happen because there are many human interests that cause conflict. When conflict is not managed properly, violence emerges, one of which is war.

War is an event resulting from a conflict and very unpleasant conditions. War is synonymous with violence, killing each other, destroying facilities and infrastructure, and can cause various other negative effects. The war situation causes suffering, especially for people who are directly involved with the war. So it's very natural for normal humans, actually don't like war. This can be proven by the statement of Allah swt. in the Qur'an, as the Creator of mankind; " *It is obligatory for you to fight, even though war is something you don't like* (hate)." (QS. al-Baqarah: 216)

In Islamic syari'at there are norms including the norms regarding the fiqh of war. When the Muslim Ummah is in a condition of being oppressed and wronged or attacked, it is justified to defend itself seriously, one of the ways is by war. Islam encourages its adherents not to shrink from fighting in the way of Allah. If Muslims are persecuted, then the law is *fardhu kifāyah* struggles with wealth, soul and body. *Ittifaq* (agreed) the mujtahid priests that jihad (fighting) is fardhu kifayah (al-'Asqalani , 283).

If one pays attention to the verses of the Al-Qur'an, war is carried out in order to eliminate slander, namely tyranny and polytheism, so that hostilities disappear. Therefore, there is no reason to wage war when the slander is no longer there (QS. al-Baqarah: 193). War is taken when it must be done for peaceful purposes, not for hostility and to cause damage to the earth. So according to fiqh, there should be no war other than to eliminate tyranny, polytheism and slander, and defend oneself from enemy attacks.

Meanwhile, there were many other factors that triggered the war. One of them is a war to control a certain area with the intention of controlling its natural resources or aiming at colonization. For example the war that was carried out by European countries against areas where the majority of the population was Muslim. This is similar to what was done by the Dutch State against the Kingdoms in the Archipelago, one of which was the Dutch war in Aceh, or more popularly the Aceh War. History has recorded that the Dutch issued a war declaration against

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the State of Aceh Darussalam on March 26, 1873. Because the rulers of Aceh Darussalam did not want to submit and did not recognize Dutch sovereignty over the territory of Aceh Darussalam, the Dutch infidel attacked Aceh Darussalam. Coupled with the Japanese colonial period, the war lasted for 69 years (Kawilarang, 2010: 146). The Aceh War is one of the longest wars in the world. So, invading other territories with the intention of colonizing and controlling their natural resources, what is the law when viewed from the perspective of fiqh norms and humanitarian law? And what about the provisions of the norms of fiqh and humanitarian law when fighting to defend oneself from attacks by other parties?

In Islam, when fighting there are norms that must be obeyed and practiced by combat troops who will enter the battlefield. Where they are not justified in random killing of people from the enemy side, torture, and random damage to the environment and buildings. But in reality, in the modern era, especially during World War I and II, human civilization has been destroyed. The war that is happening today has used sophisticated weapons and bombs. It is understood that the use of bombs will cause enormous damage and effect. Destroying anything and anyone, including buildings, trees, women, old people and children. This can be seen in the nuclear bombs or atomic bombs used by America and its allies when they bombed the cities of Nagasaki and Hiroshima in Japan on August 6 and 9, 1945. in Nagasaki 39,000-80,000 died, bringing the total civilian deaths to over 129,000-246,000. The number is almost the same as the victims of the Aceh tsunami disaster, 250,000 people, on December 26, 2004. The world community from various nations are aware of this, so in the future it is necessary to organize and prevent the emergence of World War III. From the results of this awareness was born humanitarian law. In humanitarian law, there are norms of war which give the impression that they have no connection or are irrelevant to the Islamic legal system because they were born in the West.

RESEARCH METHODS

This research uses normative research, namely legal research conducted by examining legal materials originating from the Qur'an, Hadith, fiqh literature and literature on war. This research is a library research (Soekanto & Mamuji, 1995: 15). This paper uses three types of sources of legal material, namely: primary, secondary, and tertiary. The technique of collecting legal material is carried out by paying attention to the verses of the Koran related to war issues and studying legal materials from various literature, both books and books in the library that are

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relevant to war material. Then, the legal materials that have been found are classified into individual records according to the topics of the chapters and sub-chapters. The analysis technique applies three analytical techniques: deductive, inductive and comparative.

In analyzing legal materials, the method of analysis is used for primary and secondary legal materials by identifying and interpreting the main research issues based on the Qur'an, Hadith, fiqh books related to war, and other sources. Humanitarian Law. Data analysis was carried out by reducing legal materials, namely by grouping, classifying and organizing. The next step is the presentation of legal materials, namely compiling all the collected legal materials into text so that it is easy to understand. The last is drawing conclusions, by making explanations and drawing conclusions based on information from legal materials found descriptively.

RESULTS AND DISCUSSION

1. Draft War According to Fiqh

The word 'war' is a translation of the words *al-qitāl* and *al-ḫarb.* Both of these words are used in the Qur'an, but the first word is more numerous than the second. In addition, the word 'war' is also a translation of the word '*ghuzzā',* which is only used once in the Qur'an, namely in surah 'Ali 'Imrān (3), verse: 156. War in Islamic fiqh is jihad in the narrow sense . It is a branch of jihad. Ibrahim al-Bajuri interprets the meaning of jihad as *fi sabilillah war. 'Jihād'* comes from the word ' *mujāhadah',* namely war in defense of religion (*li iqāmatid dīn*), and is a minor jihad (al-Bajuri, 261).

According to al-Shan'āniy, jihad is devoting effort and sincerity in fighting unbelievers or dissidents against the government (*bughāh*) (al-Shan'ani, 1991: 75). Similarly, according to Ibn 'Urfah, jihad is the war of Muslims against infidels who are not bound by an agreement to elevate Allah's sentence, or *ḫudhūruhu lahu,* or occupy their territory (al-Sy'rawi, 1998: 43). Sulaiman Rasyid also uses the word 'war' in defining jihad with the meaning of war against infidels who are seen as enemies, to defend Allah's religion (*li'ilā-i kalimātillāh*) (Rasjid, 2007: 447).

According to Ibn Rushd, the scholars have reached an agreement that jihad warfare is *fardhu kifāyah* , not *fardhu'ain* . The majority of scholars are of the view that war is fardhu because it is based on the argument of the Qur'an which means: It is obligatory for you to fight even though it is not pleasing to you; and it may be that you hate something even though it is good for you and it may be that you like something even though it is bad for you . (QS. al-Bāqarah/2: 216)

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As for the law as *fardhu kifāyah* , then based on the argument of the Qur'an it means: It is not proper for the believer to go all out (to the battlefield). Why not go from each class among them some people to deepen their knowledge of religion and to warn his people when they have returned to him, so that they can take care of themselves. (QS. at-Tauba/9: 122)

Fadhu law *kifayāh* based on these two verses is supported by the fact that the Messenger of Allah. never really went out to fight (*ghazwah*), except for leaving some of his people in the country, they did not join the war. Both of these verses and this hadith are compromised, so it can be concluded that the legal war is *fardhu kifāyah* . Namely, if it is carried out by some Muslims, then the obligation for other Muslims falls (Rusyd, 278).

2. The Concept of War in Humanitarian Law

Humanitarian law is essentially a legal term for war. Over time, the dynamics of this term have changed to law of armed conflict. Then it changed again to become International Humanitarian Law Applicable to Armed Conflicts which is commonly called Humanitarian Law. This is reasonable because after World War I (1914-1918) and World War II (1939-1945), an anti-war atmosphere emerged which affected various fields, including the term law of war was frowned upon. People try to avoid the term 'war', but war is still unavoidable. Then the question arises, what is the term for making rules of war? Until finally the term Humanitarian Law was born (Sujatmoko, 2015: 170).

According to JG Starke, humanitarian law means a set of restrictions regulated by international law in which it regulates the use of force that can be used to subdue the enemy and the principles governing the treatment of individuals in war and in armed conflict. The original text reads: *The laws of war consist of the limits set by international law within which the force required to over power the enemy by used, and the principles there under governing the treatment of individuals in the course of war and armed conflict (Starke* , 1977: 585).

In *Blak's Law Dictionary* , as cited by Yustina Trihoni Nalesti Dewi, war is hostility (dispute) using armed forces that occurs between nations, countries with countries, or rulers, or citizens within one nation or country ; and in *the Dictionary of The International Law of Armed Conflict,* the term war interpreted as armed hostilities (disputes) between two or more countries involving their respective armed forces and regulated by international law (Dewi, 2013: 26).

According to Haryomataram, war in humanitarian law means armed conflict. This is based on the use of the term armed conflict as a substitute for the term war (Adwani, 2014: 71).

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The term armed conflict and the term war must be distinguished, because the term armed conflict has a broader meaning than the term war. This is in accordance with the words of article 2 of the 1949 Geneva Convention, namely: " *This convention applies to all events of declared war or any other conflict of arms* ." In the sense of war according to the law, it is not certain that there will be an armed conflict. For example, in World War I, China declared war on Germany, but China never fought against the German army. Likewise, during World War II, Argentina and Peru declared war on Germany, but the armies of these two countries never fought against the German army. Vice versa, there is an armed conflict, but legally it is not recognized as a war. For example, the Japanese invasion of Mansyuria (1931-1932), and the Japanese incident with China (1937-1941) (Adwani, 2014: 72). Thus, legally every declaration of war does not necessarily mean that there is an armed conflict; and every armed conflict is not necessarily a war.

Several principles of war in humanitarian law at the time of war are contained in the 1907 Hague convention. There are three principles in this war; (Adwani, 2014: 60-61). *First,* restrictions on people who can be targeted for attacks. The belligerents must avoid as much as possible non-combatants or civilians from becoming military targets. Here -according to Masyhur Efendi- there is the principle of limiting the opponent's targets, meaning that only the enemy/opposing army can be attacked by seeking minimal targets (Effendi & Evandri, 2010: 226).

Second, Restrictions regarding the places that are targeted. A new attack is considered valid (legal) if it is directed at military objects. In other words, -according to Masyhur Efendi- this is the principle of limiting territorial targets, namely the prohibition against destroying places of worship, cultural heritage, science, and undefended areas, hospitals, and so on.

Third, restrictions regarding certain conditions. Prohibition against the use of weapons or methods of warfare which may cause unnecessary consequences or excessive suffering. In other words, -also according to Masyhur Efendi- this is the principle of limiting the target situation, that is, acts of war are prohibited from committing treason or pretending/trapping the opponent/giving the opponent excessive injury.

There are two parts to the principles of Geneva law. First part about general provisions related to humanity; Namely: (a) the right to life or physical and moral guarantees; (b) the right to equal treatment; and (c) obtain security guarantees. As for the second part relating to assistance to victims of war.; namely: (a) Neutrality, meaning impartial humanitarian assistance; (b) Fairness, meaning that the treatment of victims is fair; And (c) Protection, meaning that

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people who fall into power must be protected on the basis of international and national law (Effendi & Evandri, 2010: 226).

3. Reason War in nature Fiqh

Some of the reasons for the war were motivated by things including disputes in religion because of big fanatics, or proselytizing the truth. This dispute is sometimes the reason and cause of war. This never happened in pre-Islamic times, such as the outbreak of war under the leadership of King Himyar, Zu Nawwas who was a Jew, from the southern region of Yemen, against the Najran Christians who were wallowing in bloodshed because they refused to give up their religion, and refused to convert to Judaism. Because of that, they were destroyed en masse and killed by beheading and burning (Haikal, 1997 : 20).

In Byzantium there was a conflict between their official royal understanding and the Monophysite and Nestor schools. The official understanding of the church is that in Jesus there are two natures, divine nature and human nature. The official church emphasized the humanity of Jesus. Meanwhile, according to the Monophysite school, which is predominantly adhered to in Egypt, Syria and Armenia, God incarnated in Jesus. This understanding emphasizes more on the nature of divinity. As for the views of the Nestor group which were widely adhered to in Mesopotamia and Persia, they put the same emphasis on the divinity and humanity of Jesus, in the sense that from one side Jesus was truly God, and on the other hand he was also truly human. In Persia, King Chosroes II (590-625 AD) in a war with Byzantium was defeated by King Heraclitus. His kingdom was destroyed. After the fall of Chosroes, his family members vied for power. The military and aristocrats also intervened in the struggle. The king was appointed and then killed, then another was appointed to be killed as well, and so on. So that in the period between Chosroes and Yazdagird there were dozens of successive kings. Apart from that, there are also conflicts of religious understanding between Zoroastrian followers and the Christian community and their two sects, Nestor and Monophysite. The Byzantine Empire forced the sect it adhered to to the people it led so that they would understand that way, so that the people lost their religious freedom (Nasution, 2011: 54).

4. Reasons for War in Humanitarian Law

Humanitarian law does not regulate and does not explain the reasons for war. Likewise, there is no provision in it regarding the purpose of war. Humanitarian law does not look at what

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the reasons are, and what the goals are in an event of war or armed hostilities. It's just that in humanitarian law there are rules that aim to provide protection and assistance to victims of war, whether actively participating in hostilities or not, whether soldiers or civilians.

According to Frederick de Mullinen as quoted by Andrey Sujatmoko that in various literary references, humanitarian law's main objective is to provide protection to combatants and civilians from unnecessary suffering, guarantees very fundamental human rights for those who fall into the hands of the enemy, preventing the practice of cruel war without limits. This is based on the most important consideration, namely the principle of humanity. Thus Andrey concluded that humanitarian law essentially does not prohibit war, but regulates war, regulates the tools and methods of war, and regulates the protection of war victims (Sujatmoko, 2015: 127).

5. Post-War Reconstruction and Rehabilitation

Rehabilitation in the post-war context means efforts to restore the situation so that it returns to its normal, peaceful state. In the health context, it means returning or repairing a disabled limb for an individual hospital patient or victim of a natural disaster, so that they become useful human beings and have a place in society.

The term reconstruction according to KBBI also has two meanings. One of them is the return as before. The meaning thus, between the words rehabilitation and reconstruction contain the same substance of meaning, meaning the return to its original post-war state (KBBI, 1999: 829) .

Rehabilitating and reconstructing post-war conditions has relevance to the meaning of repair (*ishlāḥ*) in Arabic. In the Al-Qur'an Surat an-Nisa', verse 128 states that peace is better . In the letter al-Bāqarah, verse 11, mentions there are people who claim to have made improvements (on earth). In the letter al-A'rāf, verse 56 reads which means: Do not do damage on earth after (it) there is improvement. (QS. al-A'rāf/7: 56)

Regarding the generality of the verse in the word ' *ishlah* ' which means to repair, it is in sync with the intent and substance of rehabilitating the situation and the victims of the war after the war. Rehab-recon aims, among other things, to restore the functions and abilities of persons with disabilities, improve the economic, social and political order, as well as apply human rights values.

According to Sukawarsini Djelantik, post-war reconstruction can usually be realized

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through a phase called the *absence of war phase.* This phase is marked by the end of a war or conflict in a country and efforts to restore development in that country begin (Djelantik, 2010: 304). Several forms of post-war rehabilitation and reconstruction included abolishing slavery, providing humanitarian assistance, holding reconciliation, and bringing to justice perpetrators of war crimes.

reconstruction and rehabilitation required a mechanism or method of implementation in accordance with the conditions of an area by an appointed authority. There are several mechanisms contained in its application in several post-war areas. Among other things, in Japan during the occupation by the United States there were several mechanisms. The United States government gave authority by appointing Dauglas Mc Arthur as full authority in reconstructing Japan, he implemented several mechanisms in rebuilding Japan which had been destroyed by war (Manchester, 1994: 157) .

CLOSING

War in the view of fiqh is jihad or *fī sabīllāh war* . Done to defend *dienul ḫaq* (the truth of Islam) from disturbances by infidels who are hostile to Islam and hinder its adherents. War is permitted when it is in danger and threatened. The principle of war in fiqh does not cross the line. While in the review of humanitarian law there are three main principles, namely; (a) The principle of military necessity *,* the belligerent is justified in using force in order to subdue the opponent, in order to achieve goals and win the war. (b) The principle of chivalry, honesty in war must take precedence. The use of dishonorable tools and various methods of deception and/or treason is not permitted. (c) The principle of humanity, in war is required to pay attention to the principle of humanity. It is prohibited to use excessive force which may cause unnecessary suffering.

The reason for war in fiqh is to eliminate barbarity and human arrogance. The intention to fight is purely *fī sabīllāh* , solely to exalt Allah's sentence and defend His religion and guarantee freedom of belief for humans. Another reason is because of self-defense or defending the homeland of the Muslims, or preventing from the dangers and threats of the infidels. While the reasons for war in humanitarian law do not contain provisions. But humanitarian law does not stipulate a ban on war for a particular nation and religion, only regulates the conduct of hostilities which include provisions for the use of means and methods of war, and includes provisions for protecting war victims.

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Post-war reconstruction and rehabilitation can be realized when the war ends in a phase called the absence of war phase. There are two focuses that should be of concern to the authorities in a peaceful atmosphere; namely, focusing on creating calm and conducive conditions; and focus on providing humanitarian assistance to victims. Rehabilitation and reconstruction aims to improve the economic, social and political order, restore the functions and capabilities of persons with disabilities, and apply human rights values. Authority for post-war reconstruction and rehabilitation was granted by the victorious parties, or by the government of the territory concerned.

REFERENCE

A. Masyhur E. dan Taufani S. E., 2010 *HAM Dalam Dimensi/Dinamika Yuridis, Sosial, Politik,* Bogor: Ghalia Indonesia,.

Abu Zakariya Yahya bin Syarf al-Nawawi, 2016 al-Majmu' Syarḫ al-Muhazzab li Abī Isḫaq Ibrāhim ibn 'Aliy al-Syairāzi, Kairo: Maktabah Taufiqiyah,

Adwani, 2014 Perlindungan Kombantan dan Penduduk Sipil Dalam Komflik Bersenjata Non Internasional di Indonesia, Yogyakarta: Parama Publishing

Ahmad Amin, 2012 Dhuha al-Islām, tnp. nama kota: al-Hindawiy

Ali Ahmad al-Jarjawi, Ḫikmat al-Tasyrī' wa Falsafātuh, Singapura-Jeddah: Al-Haramain

Andrey S., 2015 Hukum HAM dan Hukum Humaniter, Jakarta: PT. Raja Grafindo Persada.

Harry K, 2010 Aceh, dari Sultan Iskandar Muda ke Helsinki, Banda Aceh: Bandar Publishing

Harun N.,2021 Islam Ditinjau dari Berbagai Aspek, Jakarta: Universitas Indonesia Press, 2011.

Haryomataram, 1998 Bunga Rampai Hukum Humaniter (Hukum Perang), (Jakarta: Bumi Nusantara Jaya,

Ibnu Hajar al-'Asqalani, Bulūghuk Marām min Adillati al-Aḫkām, Surabaya: Syirkah Bungkul Indah, tt).

Ibrahim al-Bajuri, Ḫāsyiah al-Bājūri 'alā Ibni Qāsim al-Ghaziy, Singapura-Jeddah: Al-Haramain,

J.G. Starke, 1977. Introduction Internatinal Law,.

Muhammad bin Isma'il al-Yamani al-Shan'ani, Subūl as-Salām, Tnp.nama kota: Darul Fikri, thn. 1411/1991.

Muhammad K. H. 1997 , Al-Jihād wa al-Qitāl fî as-Siyāsah asy-Syar'iyyah, Beirut: Dâr al-Bayariq

Muhammad Mutawally al-Sy'rawi, Al-Jihād fil Islām, cet.1, Kairo: Maktabah al-Turāts al-Islāmiy, 1419/1998.

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Sayidiman S., 2008. Pengantar Ilmu Perang, Tnp. nama kota: Pustaka Inter Masa, thn..

Soerjono S. dan Sri M.1995. Penelitian Hukum Normatif, Suatu Tinjauan Singkat, Jakarta:Raja Grafindo.

Sulaiman R. 2007. Fiqh Islam/Hukum Fiqh Lengkap, cet. 40, Bandung: Sinar Baru Algesindo,

Yustina T. N. D., 2013.Kejahatan Perang Dalam Hukum Internasional dan Hukum Naasional, cet. 1, Jakarta: PT Rajagrafindo Persada,

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