



## Study of Compilation Islamic Law on Human Rights Issues in Indonesia

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### ABSTRACT

In the concept of Islamic law, human rights are an integrated part of life so that individual rights can be fulfilled. Human rights in Islam are more theocentrically oriented, namely that God is the benchmark so that the fulfillment of rights can apply in totality to human life. In the compilation of Islamic law, human rights have become part of national law even though their position is very weak because they are only in the form of INPRES, but in their application they are part that must be implemented in jurisprudence to uphold human rights. The purpose of this research is to determine the content of Islamic law compilation material on human rights. The KHI certainly contains aspects of personality so that its implementation adheres to elements of human rights

## **INTRODUCTION**

It has become common knowledge that in the teachings of the Islamic religion, humans have what is called a double obligation that must be fulfilled, namely firstly obligations relating to themselves, which are called *huquq Allah* or God's rights and secondly obligations relating to the external world which are called *Huquq al-ibad*. (Ismail Suny, 1991)

*Huquq al-ibad* is also commonly referred to as the rights of society in the external world of creation. *Huquq al-lbád* or *Huquq al-Nás* seems to continue to flow from the obligations that must be fulfilled by someone who believes in God. In so far as it not only recognizes him as its creator and lawgiver, but also recognizes him as the creator of all nature. Islam has provided an ideal regulation of human rights to mankind fourteen centuries ago. These rights are intended to grant humans human rights and eliminate exploitation, oppression and injustice. (Harun Nasution dan Effendi Bahktiar, 1987).

Human rights in Islamic teachings originate from the belief that Allah is the giver of law and the source of justice. Human rights in Islamic teachings originate from all human rights. So no ruler, government, assembly or expert can limit or violate in any way the human rights that have been given by God. (Sri Wahyuni, 2003)

This declaration does not constitute human rights. Complications of Islamic Law as one of the many great works of Indonesian Muslims in order to give a more positive meaning to their diverse lives in the context of the revival of Indonesian Muslims. Indirectly, he also reflects on this success, so that by reading the work, he will be able to provide an assessment of the level of ability of Muslims in the process of law formation. (Abdurrahman, 1992)

Paying attention to one of the Presidential Instructions, that KHI guidelines in resolving problems in this field relating to marriage law, inheritance and endowments can be one of the demands, guidelines that must be used by religious courts and community members in resolving their disputes. The very universal teachings of Islam certainly respect the dignity and position of humans and even uphold their rights, so that humans can feel these rights, so that they can get a sense of justice for themselves and this is the demand that is always desired in life so that a sense of justice can be realized. The existence of the Compilation of Islamic Law is a concrete manifestation that must be recognized as a guideline that must be adhered to by the Religious Courts, so that judges can provide a sense of justice to those requesting the law. Komaruddin Hidayar, 1998).

## **LITERATURE REVIEW**

Likewise, these rights cannot be separated from humans. To guarantee the protection of these rights, in 1948 the PBB issued an important document called The Universal Declaration of Human Rights. This declaration was accepted in principle by almost all PBB members. However, the world consensus regarding the meaning that the basic nature, definition and scope of human rights in question has been completely agreed upon, still leaves behind several basic issues related to human rights which await explanations such as clarity regarding the nature of universal human rights, namely human rights. (Abdul Manan, 2010)

## **METHODOLOGY**

This research is comparative research by comparing KHI and human rights so as to find points of similarity in drawing conclusions. The approach taken through normative juridical means is legal research carried out by examining library materials by conducting searches on regulations relating to human rights. Focus on an empirical juridical approach by paying attention to community behavior towards the level of acceptance of KHI. The data that has been collected is processed using qualitative methods, then conducting a comparative analysis of the compilation of Islamic law on human rights. (Sumadi Suryabrata, 2000)

## **RESULTS AND DISCUSSION**

### **1. Epistemology of Human Rights in Islamic Law**

Human rights are morally justifiable demands, so that all humans can enjoy and exercise their basic freedoms, property and humanitarian services. Human rights are rights inherent in humans, it is impossible to live as humans. What is meant by "impossible to live as a human" should be interpreted as a responsible human. Human rights are defined as legal ownership, basic rights and are owned by every individual from birth into the world, taking into account differences in race, ethnicity and nation. Because these rights are human, anyone who tries to take them away will be subject to moral sanctions as an anti-human act. (Adnan Buyung Nasution, 1996)

A conception of rights actually also assumes the existence of a concept of obligation. Because every person has legal and basic rights, claiming and recognizing the existence of rights implies that other people are obliged to recognize the existence of other people's rights. In Islam, the rights and obligations of prohibitions and commands are all religious in nature. At first glance it appears that reciprocal relations must be strict because the revealed law applies to all circumstances. The epistemology of rights always connotes the values that a person wants to protect himself, so that he can maintain and improve his life and develop his life and develop his personality. A person's right to do something implies an obligation to other people and society not to obstruct what that person wants to do, even in certain circumstances to provide positive assistance in doing that thing. In a group, the obligations of other members either individually or collectively. (Baharuddin Lopa, 1996)

Human Rights are more Anthropocentric, that is, they focus only on humans themselves. Universality of Human Rights as a concept that is in line with the tendencies and instincts of humans everywhere who need the protection and actualization of their human rights. Human rights are a formulation of various basic rights inherent in every human being. Differences in cultural and historical backgrounds between each nation do not mean there are differences in human rights themselves. Because the culture of a society, the individuals in that society, need protection for their rights. These human rights will not be universal if they are not in line with human tendencies and instincts as human beings in existing society. (Marcel A. Boisard,1980)

If we return to the teachings of the Koran, Islam contains many human rights principles. The history of the emergence of Islam as a religion revealed to Arab society where human rights were completely trampled on. Islam places humans in an equal position with other humans, only the faith in question differentiates them from others. (Alwi Shihab,1999)

In the declaration of Human Rights at the United Nations General Assembly on December 10 1948, human rights and fundamental human freedoms were stated, the essence of humans being born free, endowed with reason and consciousness and acting towards each other in a spirit of brotherhood. Establish the human rights to life, freedom and the right to determine security. Oppose torture and degrading and inhumane treatment or punishment. So this is in line with the values of Islamic teachings which always uphold human existence as explained in Surah Al-Hujurat verse 11, namely لا قوم من يسخر قوم (do not make fun of each other). (Busthanul Arifin,1997)

The essence of human rights consists of the two most fundamental rights, namely the right to equality and the right to freedom. From these two basic rights, other human rights are born or without these two basic human rights other human rights or without these two basic human rights are difficult to enforce. Human Rights are a direct gift from God, the Almighty Creator, which is natural. (Cik Hasan Bisri, 1997)

## **2. Human Rights Perspective of the Compilation of Islamic Law**

Compilation of Islamic Law is a series of words consisting of the words compilation, law and Islam. Compilation comes from the word *Compilare* which means gathering together, like collecting regulations that are scattered everywhere. This term was later developed into "compilation" in English or "compilate" in Dutch. This term was then used in Indonesian to become "compilation" (Muhammad Gazali Rahman, 2015)

A compilation is a product in the form of written work by other people that is arranged regularly. Thus, the Compilation of Islamic Law is a collection of Islamic legal provisions consisting of three books, each of which is first about marriage, second about inheritance and third about endowments. The division in these three books is just a grouping of the legal fields discussed, namely the field of waqf law. Within the systematic framework, each book is divided into several parts, then for certain chapters it is also divided into several further parts which are detailed in the chapters. And it is these complications that will later be used as guidelines by judges in religious courts.

In relation to elements of justice, the compilation of Islamic law is used as a guideline in resolving cases involving religious matters. This was motivated by the preparation of a compilation of Islamic law to fill the substantial legal gaps which were used as a reference in resolving the cases submitted. Of course, it is very parallel to absolute power as regulated in Chapter III articles 49 to article 53 of Law no. 7 of 1989. The articles contained in the compilation of Islamic law can accommodate the wishes of the community because they reflect the existence of humanitarian norms. In other words, the compilation of Islamic law indicates the existence of human rights.

In Article 79 of the Marriage Law, which is stated in the compilation of Islamic law, the rights and position of the wife are balanced with the rights and position of the husband in domestic life and social interactions with society. And article 80 states that husbands are obliged to provide opportunities to learn knowledge that is useful and useful for religion and the nation. If you pay attention to these two articles, it cannot be denied that both of them contain Human Rights values which include the wife's position being equal to the husband's position in various sectors, both education and work, so that the position is not equal because there is no discrimination between the two.

In chapter XIII article 85 which regulates assets in marriage, it states that there are joint assets or gono-gini in marriage. This article contains human rights values. Article 87 states more clearly that husband and wife have the full right to carry out legal actions regarding their respective assets in the form of grants, gifts, sadaqah, or other things. Referring to the Koran Surah al-Baqarah verse 228, namely *بالمعروف عليهن الذي مثل ولهن* (and women have rights in balance with their obligations). The *ma'ruf* obligations referred to in this paragraph are the balance of rights and obligations that must be had which have a positive purpose, not a negative purpose, so that there is equality between the two.

In general, marriage law and the articles contained in the Compilation of Islamic Law reflect the values of human rights because basically marriage and starting a family are rights for every individual and the right to enjoy them. This was stated in the University Declaration of Human Rights (UDHR) which was issued at the PBB. Article 16 paragraph 1 explains that "men and women who are adults, without restrictions based on differences in race, nationality and religion, have the right to marry and establish a household, they have the same rights in marriage as long as the marriage continues.

Human rights are not only explained in marriage, but in inheritance the issue of equal rights is also explained. Each heir has rights and shares that have been regulated and determined so that there cannot be a monopoly of ownership. This shows that the rights of heirs are something that must be owned and cannot be taken away by anyone and inheritance issues are regulated in faraid law as a source of distribution which is guided by the teachings of the Koran and hadith in detail regarding distribution so that the existence of a compilation of Islamic law strengthens it.

## **CONCLUSIONS**

Human rights are basically rights that belong to every person and other people must respect these rights and cannot take them away, let alone step on them, because these rights are an embodiment of individual freedom, as long as they are within the outlined path. Everyone has the right to obtain their basic rights regardless of ethnicity, race and religion. Differences in the cultural and historical backgrounds of each nation do not mean there are differences in human rights, especially since religions highly uphold human existence without discrimination from others. The compilation of Islamic law is very much in line with human rights values and through the articles contained in it has accommodated the wishes of Muslims, this means that the Compilation of Islamic Law can be used as a guideline in handling legal cases in Islam so that religious courts can give fair decisions in to uphold the truth.

## **RECOMMENDATIONS**

The Koran is a guide and guidance for human life and contains human rights. The Al-Quran's instructions regarding human rights aim for equality of rights and non-discrimination. Human rights are intended to achieve humane treatment as a right inherent in every individual. The existence of a compilation of Islamic law which is implemented through the judiciary to create a sense of humanity for each individual through a decision which becomes a guideline that must be followed. Of course, it is hoped that there will be equality of position so that discrimination does not occur which could be detrimental to society. The compilation of Islamic law has accommodated the interests of society in realizing equality before the law. Chapter by chapter and article by article have certainly gone through established stages so that they can be represented in making legal decisions.

## **FURTHER STUDY**

This research still has limitations, so it is necessary to carry out further research related to the topic of Study of Compilation Islamic Law on Human Rights Issues in order to improve this research and add insight to readers.

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