

COMPATIBILITY OF LAW ENFORCEMENT AND HUMAN RIGHTS WITHIN ISLAMIC LAW IN ACEH PROVINCE, INDONESIA

Iskandar A. Gani
Faculty of Law, Syiah Kuala University
✉ Iskandar.agani@usk.ac.id

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ABSTRACT

Since the enactment of Act Number 11 of 2006 on the Governance of Aceh, the region has undergone decentralization, becoming an asymmetrical area with unique authority, particularly in the realm of Islamic Law. The implementation of Islamic law in Aceh has encountered obstacles and sparked debates among scholars. This article delves into the enforcement of Islamic laws and their relationship with human rights within the context of Aceh Province. Through doctrinal legal research, it is demonstrated that the enforcement of Sharia Law in Aceh upholds human rights principles. The justification for Islamic Sharia law is rooted in the Indonesian Constitution of 1945, provided that Qanuns (sub-national regulations) at the provincial or regional level align with higher laws hierarchically. Any discrepancies in implementation necessitate a reevaluation. The 1945 Constitution grants Aceh the authority to uphold Islamic law while promoting, respecting, and fulfilling human rights. The harmonization of human rights and Islamic Law is crucial for mutual reinforcement and justice-seeking in Aceh Province, Indonesia.

Keyword: Islamic Law; Human Rights; Aceh province

INTRODUCTION

Aceh faced significant challenges in the past when it was classified as a Military Operations Area (DOM) from 1989 to 1998. Following the abolition of DOM, social unrest persisted, leading to the imposition of a Military Emergency in 2003. The region further endured a devastating earthquake and tsunami on December 26, 2004, resulting in the loss of over 200,000 lives. These circumstances necessitated both parties involved in the conflict to come to a mutual agreement for resolution.¹ Negotiations to address the

¹ Terence Lee, "Political Orders and Peace-Building: Ending the Aceh Conflict," *Conflict, Security & Development* 20, no. 1 (January 2, 2020): 115–39, <https://doi.org/10.1080/14678802.2019.1705071>.

conflict were held in Helsinki, facilitated by the Henry Dunant Centre based in Geneva. The Indonesian Government and GAM (Gerakan Aceh Merdeka), also known as the Free Aceh Movement, engaged in direct negotiations for the first time. This process culminated in the Helsinki Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement. Additionally, in 2005, Act Number 11 of 2006 on the Government of Aceh was enacted, granting Aceh the right to implement Islamic or Sharia Law within its province.²

Aceh can include customary law and Islamic law into its legal system as a Special Autonomy region³. The adoption of legal tradition has led to the creation of rules and structures for resolving legal problems in society. Crimes like violence against kids, both offenders and victims, can be settled using different legal systems. Criminal cases concluded by litigation typically result in caning, as indicated in the qanun on jinayat. Nevertheless, immoral crimes like child sexual abuse are addressed by the national legal system through the Criminal Code and customary law traditions. The implementation of the Act has led to Aceh being an asymmetrical region of decentralization⁴. This kind of decentralization means that it has been granted certain powers and privileges that are distinct from other areas, including the incorporation of Shariah or Islamic Law for religious life in Aceh⁵.

In Aceh, Islamic Sharia is considered an integral aspect of the societal fabric. However, the practical implementation of Islamic Sharia continues to pose challenges and provoke discussions among social analysts, legal experts, politicians, and religious scholars. Legally, the application is founded on the existing positive legal provisions, namely Law Number 44 of 1999 and Law Number 11 of 2006, as well as the corresponding implementing regulations such as the Qanun of Aceh (Provincial Regulation) concerning *Maisir* (gambling), *Khalwat* (non-marital relationship in the silent place), and *Khamar* (alcoholic drinking), and other regulations such as the

² Iwan Gardono Sujatmiko, "Conflict Transformation and Social Reconciliation: The Case of Aceh, Indonesia," *Asian Social Science* 8, no. 2 (January 29, 2012): 104, <https://doi.org/10.5539/ass.v8n2p104>.

³ Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>.

⁴ Gabriel Lele, "Asymmetric Decentralization, Accommodation and Separatist Conflict: Lessons from Aceh and Papua, Indonesia," *Territory, Politics, Governance* 11, no. 5 (July 4, 2023): 972–90, <https://doi.org/10.1080/21622671.2021.1875036>.

⁵ Lele.

Governor or Head of Districts' or Mayors' regulations. In addition, Islamic sharia will not be enforced on non-muslims. If a non-muslim person residing subjugates themselves to Islamic Sharia law without converting, this is permissible, provided that the person voluntarily submits, particularly when the rules of Islamic sharia that they will follow are not found in their religion and are not contradictory.⁶

The Government of the Republic of Indonesia has provided Aceh Province with the authority to enforce Islamic Law, especially Islamic Criminal Law under Act Number 44, 1999, and Act Number 11, 2006 on Aceh Governance as its constitutional and statutory duty⁷. In exercising the authority granted by the central government should not arbitrarily issue regulations that essentially deviate from what has been mandated in the Constitution. The government has the right to make regulations to bring order to its citizens, while on the other hand, these citizens also have the right to be protected. Therefore, regulations that aim to bring order also protect of its citizens.⁸

The implementation of Islamic law in Aceh is done appropriately, emphasizing principles of justice, equality, and prosperity that can enhance the economic, political, and cultural development of the people of Aceh. It aligns with the concept of justice in Islamic law, which opposes favoritism or bias⁹. In addition, the implementation of Sharia law in Aceh can be seen as a type of "social engineering" aimed at shaping a new Aceh that is closely associated with Islam, both politically and culturally although the adoption of Islamic law in Aceh has not garnered unanimous acceptance among its populace who residing on the border of the provinces of Aceh and Sumatra Utara, particularly in the district of Aceh Tenggara, expressed a disapproving response towards the enforcement of sharia law¹⁰. This research is going to discuss regulation on law enforcement and

⁶ Abubakar Marzuki, "Syariat Islam Di Aceh: Sebuah Model Kerukunan Dan Kebebasan Beragama Di Aceh," *Media Syariah* 13, no. 1 (2011): 99–107, <https://jurnal.ar-raniry.ac.id/index.php/medsyar/article/view/1745>.

⁷ Hasnil Basri Siregar, "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia," *Journal of Law and Religion* 24, no. 1 (April 24, 2008): 143–76, <https://doi.org/10.1017/S074808140000196X>.

⁸ Dessy Marlani Listianingsih, "Analisis Pelaksanaan Peraturan Daerah Berbasis Syariah Provinsi Aceh Dalam Perspektif Hak Asasi Manusia," *STAATSRECHT: Indonesian Constitutional Law Journal* 3, no. 1 (June 24, 2019): 105–28, <https://doi.org/10.15408/siclj.v3i1.10850>.

⁹ Faisal A Rani, Fikri Fikri, and Mahfud Mahfud, "Islam and National Law: A Formal Legal Review on Sharia Laws in Aceh," *Al-Risalah* 20, no. 1 (May 28, 2020): 47–57, <https://doi.org/10.30631/al-risalah.v20i1.521>.

¹⁰ Muhammad Ansor, "Post-Islamism and the Remaking of Islamic Public Sphere in Post-Reform Indonesia," *Studia Islamika* 23, no. 3 (December 30, 2016): 471–515, <https://doi.org/10.15408/sdi.v23i3.2412>.

human rights under Islamic law, and how the enforcement of the law and human rights in the maintenance of Islamic Sharia in Aceh nowadays.

RESEARCH METHOD

This study employs a normative research approach, focusing specifically on analyzing pertinent documents related to the implementation of Islamic Sharia Law in Aceh and the human rights issues that have emerged from this implementation. The primary regulations under discussion include Law Number 11 of 2006 on Aceh Governance, Act Number 39 of 1999 on Human Rights, Qanun (local Islamic Sharia law in Aceh) Number 6 of 2014 on Islamic Criminal Law. Furthermore, the study will examine the rulings of the Mahkamah Shar'iyah, a specialized court handling cases within the realm of Islamic law, regarding violations of criminal Islamic law in Aceh.

RESEARCH OUTCOME AND DISCUSSION

1. Law Enforcement Under Islamic Sharia Law in Aceh

The law encompasses the comprehensive set of regulations or norms that govern collective existence, serving as the guiding principles for behavior and can be enforced by the execution of penalties¹¹. Moreover, the concept of recovery and awareness is paramount in the realm of law enforcement and the penalization of wrongdoers. Continuous efforts have been made to enforce and rehabilitate according to the sharia, resulting in numerous adjustments and alterations¹². The enforcement of Islamic law in Indonesia is in line with the number of Muslims in Indonesia and Islam is the most followed religion in the state. It has been stated that the research shows that religions in Indonesia were integrated into the political and public spheres¹³.

The law functions as a safeguard for human interests, necessitating its implementation to ensure their protection. It is in line with the aim of the Islamic law establishment which

¹¹ Djawahir Hejaziey, "Law Enforcement in Islam," *AHKAM : Jurnal Ilmu Syariah* 15, no. 1 (February 21, 2019): 1–19, <https://doi.org/10.15408/ajis.v15i1.2843>.

¹² Alias Azhar et al., "Shari'ah Criminal Law Enforcement in Hisbah Framework: Practice In Malaysia," *Intellectual Discourse* 28, no. 1 (2020): 149–70, file:///C:/Users/USER%20DK/Downloads/1569-Article%20Text-2814-3109-10-20200624.pdf.

¹³ Azyumardi Azra, "Many Asian Nations Are Experiencing a Revival of Religion in Public and Political Life," *Melbourne Asia Review* 10 (June 6, 2022), <https://doi.org/10.37839/MAR2652-550X10.4>.

is to preserve the welfare of both humanity and the universe¹⁴. According to Islamic principles, the execution of public mandates should be guided by the principle of public welfare, as stated in the Fiqh Rule that a leader who does not genuinely consider the well-being of Muslims and does not strive for their prosperity, but only focuses on his own well-being, will not be rewarded in the afterlife alongside the Muslim community¹⁵.

In law enforcement, two fundamental components are the rule of law and justice. The concept of "law enforcement" has been proposed by experts who have varying beliefs and perspectives. The term "law enforcement" implies the use of force, leading some to believe that it is solely applicable to criminal law¹⁶. The normative concept necessitates that law enforcement is focused on articulating specific values, rather than simply carrying out its normal operations. The fundamental purpose of law enforcement is to strengthen the connections between values that are expressed through fair and equal norms and attitudes¹⁷. This is done to establish, uphold, and preserve a peaceful way of life.

In addition, law enforcement refers to the efforts made to successfully develop and implement legal norms as rules for behavior in traffic and legal relations within society and the state.¹⁸ The examination of law enforcement can be approached from the perspectives of both the subject and the object. In general, the law enforcement procedure encompasses all legal entities involved in any legal interaction. Law enforcement, in its strictest definition, refers to the efforts made by a certain law enforcement organization to ensure that the rule of law is upheld and functioning well. From the perspective of its purpose, the legal element of this issue encompasses both a broad and narrow interpretation. Law enforcement, in its broadest sense, encompasses the principles of justice that it embodies, the authority of formal regulations, and the principles of justice

¹⁴ Ali Sodikin, "Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System," *Ahkam: Jurnal Ilmu Syariah* 21, no. 2 (2021): 357–78, https://scholar.google.com/scholar?hl=id&as_sdt=0%2C5&q=Legal%2C+Moral%2C+and+Spiritual+Dialectics+in+t+he+Islamic+Restorative+Justice+System&btnG=.

¹⁵ Anita Marwing, "Indonesian Political Kleptocracy and Oligarchy: A Critical Review from the Perspective of Islamic Law," *Justicia Islamica* 18, no. 1 (April 16, 2021): 79–96, <https://doi.org/10.21154/justicia.v18i1.2352>.

¹⁶ Andi Hamzah, *Penegakan Hukum Lingkungan: Environmental Law Enforcement* (Bandung : PT Alumni, 2016).

¹⁷ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 2008).

¹⁸ Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta: Bhuana Ilmu Populer Kelompok Gramedia, 2008).

that exist within society. However, in its narrowest sense, it solely pertains to the execution of explicit and written regulations. Hence, the term "law enforcement" when translated into Indonesian language is employed to refer to both the general concept of enforcing laws and the specific concept of law enforcement.

Moreover, law enforcement is subject to a multitude of influences, encompassing legislative issues, law enforcement organizations, resources and infrastructure that aid law enforcement, community dynamics, and cultural elements. All these factors are interconnected, as the core of law enforcement lies in its ability to achieve justice. Baharuddin Lopa¹⁹ highlights that this requires three essential components: firstly, the presence of legal regulations that align with the public's aspirations; secondly, a law enforcement apparatus that is both professional and mentally resilient, with high moral integrity; and finally, a legal awareness within the community that facilitates the implementation of the law.

Furthermore, the application of Sharia in Aceh is primarily a symbolic representation of Islamic teachings and would not effectively resolve disputes in the region²⁰. The responsibility of implementing Islamic Sharia rests upon the entire society, beginning with the parents in each household, as well as teachers and scholars who actively promote it in educational settings. Public personalities are required to demonstrate vigilance in monitoring the field, while Umara must possess the determination and commitment to uphold it. This is the proposed implementation of Islamic Sharia law in Aceh. However, the implementation of Islamic Sharia still faces numerous challenges due to the reluctance of certain groups who perceive it as conflicting with the overall enforcement of human rights. If all parties adhere to and abide by the existing rules, the enforcement of human rights and Islamic Sharia will not contradict each other. Consequently, all sectors of society, including parents, teachers, scholars, and leaders, can collaborate in upholding Islamic Sharia by universally accepted human rights principles. According to most

¹⁹ Baharuddin Lopa, *Permasalahan Pembinaan Dan Penegakan Hukum Di Indonesia* (Jakarta: Bulan Bintang, 1987).

²⁰ Rani, Fikri, and Mahfud, "Islam and National Law: A Formal Legal Review on Sharia Laws in Aceh."

classical academics, dignity is widely regarded as an inherent right that is on par with the rights to life and liberty for all individuals²¹.

The Muslims in Aceh have shown a strong desire to reinstate the practice of sharia law, which has caused concern. Since last year, the ladies in Aceh have been adhering to Islamic dress codes. The implementation of Islamic Sharia in Aceh is governed by its own Qanun, with the responsibility of enforcement and supervision falling on the Wilayah Hisbah (prosecution office of Islamic law violation in Aceh). The officers of this Islamic criminal law office prioritize the application of Islamic Sharia, working in collaboration with other relevant agencies to ensure the enforcement of Islamic text. The primary objective of enforcing Islamic Sharia is to cultivate a strong feeling of Islamic pride and enhance the moral values of the population as a whole. Therefore, it is imperative to implement the socialization of Islamic Sharia following the specific requirements of the locality. It is crucial to prioritize preventive measures instead of punishment for those who violate Islamic Sharia. This can be achieved through performing socialization activities, which are an essential component of implementing Islamic Sharia and improving the moral values of the community.

The enforcement of Islamic Sharia was initiated to ensure the thorough observance of Islamic law in all spheres of life for the inhabitants of Serambi Makkah. One of the objectives is to support the integration of Islamic Sharia into governmental institutions, as part of the Unitary State of the Republic of Indonesia. The implementation of Islamic Sharia can also ensure adherence to local customs to uphold the three principles of Aceh, with the active involvement of scholars and prominent individuals in every policy-making process in the province.²²

The global application of Islamic Sharia is being implemented by Islamic Charity and Family Welfare in the province of Aceh. Employing many strategies to promote the conscious adoption of Islamic Sharia among citizens. The implementation of Islamic Sharia in Kafa should garner the attention of the entire society, particularly with the enforcement that has been stipulated in the Qanun of Aceh regulating Islamic Sharia.

²¹ Mark.J Bonica, "Adam Smith on Liberty and Reputation: Is Reputation Property? Are Defamation Laws Coercive?" (George Mason University, 2013), <https://www.proquest.com/openview/eb8439807f19bc138bfc807a59273f5f/1?pq-origsite=gscholar&cbl=18750>.

²² Rani, Fikri, and Mahfud, "Islam and National Law: A Formal Legal Review on Sharia Laws in Aceh."

Efforts are underway to enhance the efficiency of the combined rations and socializing by using voice announcements from service operations cars to ask the people, particularly Muslims, to attend Friday prayers at the mosque. The Friday prayer is regularly conducted by the Sharia officers, specifically the women officers of the Wilayatul Hisbah, who serve as reminders to men to adhere to religious directives. Nevertheless, there are still those who have not fulfilled their commitments as a result of many citizens failing to comply with them. Furthermore, the majority of merchants have now started to comply with the regulations to shut down their shops during prayer times.

The implementation of Islamic Sharia law in Aceh has been solidified in the form of specific regulations outlined in regional legislation known as Qanun. The Aceh Qanun Number 6 of 2014, also known as the Jinayah Law, is a concrete measure aimed at imposing Islamic Sharia law in the region of Aceh. The implementation of the regulations, which have been clearly defined and specified in the form of positive standards, is governed by a regional regulation or Qanun. Aceh Qanun Number 6 of 2014, also known as the Jinayah Law, is a concrete measure aimed at upholding Islamic sharia law in Aceh. The implementation of restrictions that are forbidden in Islamic law includes conduct such as *khalwat* (unmarried companion between a man and a woman), *ikhtilath* (the relationship between an unmarried man and woman in front of the public), adultery, sexual harassment, rape, *musahaqah*, *maiisir* (gambling), and *khamar* (alcoholic drinking).²³

Nevertheless, the regulation of this action has been partially governed by the requirements of Law Number 1 of 1946, which pertains to the Regulation of Criminal Law (now revised as Law of the Republic of Indonesia Number 1 of 2023, which deals with the Criminal Code). Regarding the execution of unique regulations for the Aceh region to enforce Islamic Sharia, the laws and regulations pertaining to these specificities and Islamic Sharia are governed by the norms outlined in Qanun Jinayah. The implementation of Qanun Jinayah in law enforcement reflects the recognition of human rights that are specific to the people of Aceh. Despite Qanun Jinayah being utilized as a means to enforce Islamic Sharia law in Aceh, its implementation regarding actions

²³ Rani, Fikri, and Mahfud, "Islam and National Law: A Formal Legal Review on Sharia Laws in Aceh."

already covered in the Criminal Code leads to the establishment of "open norms" within the regulation of Qanun Jinayah.

This approach does not consistently provide an effective solution for enforcing Islamic Sharia law and can result in injustice from a specific human rights standpoint. Case Decision Number 1/JN.Anak/2022/MS.Bpd, dated July 25, 2022, resulted in the acquittal of a defendant accused of child rape in Southwest Aceh. The claimed act of rape was committed by a 14-year-old child. The Panel of Judges observed that the implementation of Islamic law still falls short of ensuring the full protection of human rights.

The absence of norms governing the perpetrators of child rapists cannot be elaborated in the regulation of Jinayah Qanun, hence, acts that are prohibited in the Jinayah law make the norms open as a legal loophole for child rapists who are punished using the Qanun of Jinayah, this is very contradictory with the principle of upholding Particular Human Rights in Aceh which guarantees freedom of expression based on Islamic law and rights guaranteed by the enforcement of Islamic law through Qanun Jinayah which is detrimental to the people in Aceh, it is said that if the child rapist suspect is not proven guilty in the analysis Case Decision Number 1/JN.Anak/2022/MS.Bpd dated 25 July 2022, was unable to rehabilitate the good name and rights that were lost during the investigation due to the absence of criminal Islamic laws which technically regulate the protection of children both as victims and perpetrators suspected of committing prohibited acts.

2. Human Rights Principles in Aceh's Islamic Sharia Law

The concept of human rights is central to today's law, ethics, and politics for both legal and moral reasons. Human rights are a legal term that describes the circumstances that are regarded as necessary for a human's life and development as an individual. Human rights are the rights that a person or group of people have merely because they are human, or because they are essential for the functioning of a just society.²⁴

²⁴ Nazar Hussain et al., "Islam and International Standards of Human Rights: An Analysis of Domestic Implementation of International Human Rights in Islamic Culture," *Assyfa Journal of Islamic Studies* 1, no. 1 (June 24, 2023): 01–12, <https://doi.org/10.61650/ajis.v1i1.150>.

Harmonizing Islamic law and human rights is a complex challenge and requires a deep understanding of both legal systems. While some countries have adopted laws incorporating human rights principles into their Islamic legal systems. Although Islamic law and human rights principles aim to create justice and protect individual rights, there are differences in the interpretation and emphasis of specific values.²⁵

Contemporary Islamic thought has predominantly responded to external influences rather than taking proactive measures that examine how it establishes its stance on democracy or human rights, always considering how the other party defines itself²⁶. This state and the associated identity are attributed to the prevalence of a theology of power²⁷. Human rights are inherent and inalienable rights that every individual possesses from the moment of their birth, bestowed upon them as a divine endowment by a singular deity. Humanity is acknowledged and held in high regard by other individuals within the context of societal existence. The acknowledgment of an individual's entitlements imposes a duty on another individual, so the assertion of human rights is contingent upon the fulfillment of the corresponding human obligation.

Considering that the concept of human rights originated in the Western world but claims to be universally applicable in terms of ethics and law, the primary question is whether this concept can be legally established on cross-cultural grounds and therefore embraced by Muslims²⁸. Human rights standards should be established according to universally recognized legal principles and ethical ideals that are fundamental to universal morality. It is important to distinguish these standards from political power and dominant control. If one considers the previously criticized double standards of Western governments, it becomes evident that this statement is beyond doubt. Western governments frequently apply human rights notions in a highly selective manner, which undermines the very human rights they claim to support through rhetoric. The absence of a common global civilization among all humans undermines the goal of achieving

²⁵ Suud Sarim Karimullah, "For True Humanity: Harmonization of Islamic Law and Human Rights Towards Universal Justice," *Matan : Journal of Islam and Muslim Society* 5, no. 2 (July 31, 2023): 132–48, <https://doi.org/10.20884/1.matan.2023.5.2.9125>.

²⁶ Nader Hashemi and Emran Qureshi, "Islam and Human Rights: A 50 Year Retrospective," *Muslim World Journal of Human Rights* 19, no. 1 (September 27, 2022): 1–18, <https://doi.org/10.1515/mwjhr-2022-0007>.

²⁷ Hashemi and Qureshi.

²⁸ Bassam Tibi, "Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations," *Human Rights Quarterly* 16, no. 2 (May 1994): 277–99, <https://doi.org/10.2307/762448>.

universal human rights, highlighting the necessity of establishing a universal moral framework based on cross-cultural principles²⁹.

The initial breakthrough in the triumph of the human rights movement occurred in 1215 with the establishment of the Magna Carta in England. This document outlined the entitlements of the nobility to be upheld by the King of England. While the relationship between the King and the nobility may have its limitations, it is a fundamental premise that some rights have been acknowledged by the rulers. The subsequent advancements in human rights occurred during the American Revolution (1776), which led to the establishment of the Virginia Bill of Rights, and the French Revolution (1789), which sparked the creation of the Declaration des droits de l'homme et du Citoyen. The concept of human rights gained significant prominence following the conclusion of World War II and the establishment of the United Nations (UN) in 1945. The term "human rights" superseded the term "natural rights", which subsequently generated debate, leading to the phrase "the rights of man"³⁰

The concept of human rights enforcement refers to the authority of the state to uphold public order³¹. Classical liberalism, driven by the goal of curbing and dividing state authority to promote individual liberties, coincided with the 20th century's progress in creating national constitutions and global agreements that sought to restrict the oppressive capabilities of governments and prioritize personal freedom, particularly in the realm of political expression³². According to Franz von Liszt, the statehood of criminal law serves as a "Magna Charta" - a stronghold for citizens against the power of the State. It safeguards individuals from the oppressive force of the majority and protects them from the Leviathan³³

²⁹ Richard Falk, "Refocusing the Struggle for Human Rights: The Foreign Policy Illusion," *Harvard Human Rights Journal* 4 (1991): 47, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hhrj4&div=7&id=&page=>.

³⁰ Abdullah Saeed, *Human Rights and Islam : An Introduction to Key Debates Between Islamic Law and International Human Rights Law* (United Kingdom: Edward Elgar Publishing Limited, 2018).

³¹ John Lisle, "The Defensive Function of Penal Law," *Journal of the American Institute of Criminal Law and Criminology* 4, no. 6 (1914): 800–8003, <https://www.jstor.org/stable/1133157>.

³² M. Cherif Bassiouni, "Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions," *Duke Journal of Comparative & International Law* 3, no. 2 (1993): 235–98, <https://scholarship.law.duke.edu/djcil/vol3/iss2/1>.

³³ Carlos Elbert, *Franz von Liszt: Teoría y Práctica En La Política-Criminal (1899-1919)* (Uruguay: Prosa Editores, 2017).

The fundamental right bestowed to humanity by Allah SWT is a fundamental right. The Islamic teachings, as seen in the al-Qur'an and As-Sunnah, prioritize the rights of marginalized individuals. Indeed, one of the primary aims of Islam is to elevate the dignity of humanity and impart teachings that are amicable and benevolent. In the pre-Islamic era, individuals were subjected to inhumane treatment and were hired without regard for their inherent worth³⁴. Historically, the protection of human rights has been seen as a means to break free from the oppressive control of authoritarian rulers. One approach to combat this repression is to establish and enforce laws that prohibit such abuses. The problem of human rights among adults is wielded as a potent tool in the realm of politics, with major nations positioning themselves as champions of human rights, even in cases where violations occur elsewhere.

Furthermore, this issue is exploited to suppress smaller and weaker nations in the economic domain. The prevailing notion of human rights today is rooted in Western society, emerging and evolving alongside the concurrent rise of power during that era. Thus, the notion of human rights is inherently subjective and cannot be easily applied to a community with distinct historical, cultural, and social characteristics that differ from the one where the concept originated. Thus, it is imperative to share a common understanding of human rights to prevent the exploitation of these rights for the political advantage of one nation over another, particularly when a powerful nation oppresses a weaker nation.

Furthermore, it is imperative to comprehend the notion of human rights not only as perceived in Western societies, but also as understood in third-world countries or Islamic nations. The book of Islam encompasses three primary perspectives on Human Rights. Firstly, it acknowledges that certain concepts in Islam align with those presented by Western societies. Secondly, it recognizes the historical aspect of Islam, where many ideas and demands that were later advocated by Westerners had already been anticipated and even inspired by Islam. The experts of Islam provide three methods that are considered controversial. These methods involve presenting historical proof of the

³⁴ Mufarrihul Hazin, Nur Wedia Devi Rahmawati, and Muwafiqus Shobri, "Hak Asasi Manusia Dalam Perspektif Islam Dan Maashid Al-Syari'ah," *CENDEKIA: Jurnal Studi Keislaman* 7, no. 1 (June 25, 2021): 101–14, <https://doi.org/10.37348/cendekia.v7i1.123>.

Human Rights system, which is derived from the Quran and Al-Hadist, as introduced by the Messenger of the Lord, the Creator. Western thinking has been influenced by Islamic thought, particularly concerning social, economic, and cultural rights. Islamic teachings embraced the concept of human rights much earlier than the Western world³⁵. These teachings recognized that certain rights cannot be taken away and that rulers only hold power as long as they fulfill their responsibilities. These principles were a fundamental part of Islamic political theory eight centuries before Locke articulated them in the West³⁶. It is clear from this idea that human rights apply to all nations and civilizations worldwide, that Islam has addressed human rights concerns even before John Locke established them.

When examining the historical period known as the golden ages of the Islamic kingdoms, it is evident that Aceh Darussalam was once part of a powerful Islamic Kingdom in the 16th century, led by Sultan Iskandar Young. This kingdom was one of the five great Muslim kingdoms in the world during that time. The concept of Human Rights in Islam was already recognized in society during this era, emphasizing the equality of righteousness and the value of humanity. The measure of a person's worth was determined solely by their level of fear, rather than their tribe, power, or origin. Within the Islamic community, there exist three distinct forms of law according to the Islamic perspective that are Sharia refers to Islamic law, Fiqh is the understanding and interpretation of Islamic law and Siyasah Syari'iyah refers to the governance and administration of Islamic law. The Qur'an and the Hadith are divine revelations from Allah and His Messenger. The Syari'iyah refers to the legal regulations established by the governing authorities of a country, which may either conform to or deviate from the principles of Sharia law.³⁷

The notion of human rights has long been recognized and extensively discussed in Islam. This comprehensive understanding is derived from the teachings of Allah SWT in the Al-Qur'an and the Sunnah (Al-Hadith), as well as in Islamic constitutions such as the

³⁵ Christopher G Weermantry, "International Seminar on the Teaching of Human Rights, Geneva, Switzerland, 5-9 December 1988 : Background Paper" (Geneva, 1988), <https://digitallibrary.un.org/record/72816>.

³⁶ Weermantry.

³⁷ Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>.

Medina Charter. Furthermore, the establishment of contemporary Islamic human rights has started to be recognized in the global community, particularly with the endorsement of the Cairo Declaration on Human Rights in Islam (1990). As stated in this proclamation, despite humanity's significant advancements in materialistic progress through science, there is still a strong and enduring need for faith to provide support in times of struggle and to serve as a motivating factor in defending its rights. The fundamental right bestowed to humanity by Allah SWT is inherent and essential. The Islamic teachings of the al-Qur'an and As-Sunnah prioritize the rights of marginalized individuals³⁸.

Based on the provided description, it can be inferred that universal rights and fundamental freedoms in Islam are an inherent aspect of the religion. In principle, no one has the authority to completely or partially revoke these rights or to violate or disregard them. These rights and freedoms are considered sacred and are derived from the divine commandments found in the Scriptures revealed by the last Prophet, Muhammad SAW. In Islam, the entitlement to life, liberty, education, dignity, and property is a fusion of both rights and responsibilities, encompassing acts of worship, the guidance of the Messenger, and the concept of trust. Among all the human rights recognized in Islam, the right to life is considered the most fundamental. This right is subsequently accompanied by additional rights, including According to Islam, it is considered an obligation to have freedom of thought and expression, as long as it promotes goodness, upholds righteousness, and seeks to advocate for truth and justice.³⁹

The author attempts to elucidate the principles governing the implementation of human rights from an Islamic standpoint, including the notion of "*Huwaiul Ubudiyah*" (Spiritual rights) is viewed in the Western perspective as a duty of man towards his Lord, rather than being considered as an inherent right of humanity. Hence, there exists a conspicuous contrast between Western and Third World ideologies, particularly concerning Islam. The international (Western) system is significantly shaped by an expanding and vibrant philosophy. The Islamic world perceives ideology as indivisible from all facets of human existence. This is derived from the divine revelation sent by the

³⁸ Hazin, Rahmawati, and Shobri, "Hak Asasi Manusia Dalam Perspektif Islam Dan Maashid Al-Syari'ah."

³⁹ Hasnil Basri Siregar, "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia," *Journal of Law and Religion* 24, no. 1 (April 24, 2008): 143–76, <https://doi.org/10.1017/S074808140000196X>.

Messenger (Prophet Muhammad PBUH), which highlights the fundamental importance of both righteousness and responsibility.⁴⁰

Allah is the ultimate originator of all entities present on the planet. He is the Prophet of Allah, the Prophet of Allah (peace and blessings be upon him). This encompasses the rights that are enforced by the government, such as the acknowledgment of liberty, safeguarding of rights, equal rights, and social rights about social well-being and fairness. It also includes the rights of individuals, including the rights of leaders and communities, parents, children, spouses, relatives, neighbors, individuals with non-Islamic beliefs, and the principle of tolerance. Additionally, it encompasses the rights that are upheld by both governments and communities, such as freedom of expression, religion, association, assembly, and movement. The fundamental rights include the entitlement to life, ownership of property, recognition of achievements, and preservation of moral integrity. They also encompass the right to resist oppressive rule, equal treatment under the legal system, access to justice, opposition to unlawful acts, participation in governance, social protection, education, and the opportunity for fair employment and sustenance.⁴¹

The concept of having the right for both people (creatures) and the universe. The State and the community have the authority to exercise this right to safeguard the environment and prevent the extinction and harm of flora and wildlife due to human avarice. Hence, the diligent attention and concern of both the government and the populace are imperative, since the absence of such care would result in catastrophic consequences for the survival and existence of humanity on our planet. It is unquestionably indebted to his Lord as a result of his subservience to religious rule. Human salvation is achieved solely by fulfilling the requirement to repay the debt, which is analogous to observing the law as a means of repaying one's debts to their divine ruler. In Islam, there is a strong emphasis

⁴⁰ Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>.

⁴¹ Hasnil Basri Siregar, "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia," *Journal of Law and Religion* 24, no. 1 (April 24, 2008): 143–76, <https://doi.org/10.1017/S074808140000196X>.

on the vertical dimension of human cosmology.⁴² This dimension has the power to surpass all innate human rights and ego, and it involves the continuous endeavor to acknowledge and worship God in every single instant of a faithful individual's existence. Hence, the entitlement is not absolved from the responsibility of individuals on this planet, who consistently bear in mind and adhere to it under the directive of the Supreme Being.

During this pivotal moment in a nation's growth and development, the principles of freedom of conscience, rooted in the spirit of universal humanism, are increasingly becoming an important guiding force for society as a whole. These principles serve as the basis and motivation for all endeavors to promote and maintain knowledge of human rights and democracy, in accordance with the nation's determination and ideals as outlined in the state's ideology. Hence, it is imperative that none of us are granted the ability to refuse their entitlements, thereby exempting them from the responsibility to adhere to the fundamental principles of the nation.⁴³

Every citizen is entitled to equal rights and duties in accordance with the state's philosophical beliefs. The right of one individual to another entails the obligation of the second individual, and conversely, the obligation of one individual to the second individual represents the entitlement of the person in question.⁴⁴ From a citizen's perspective, restrictions and limitations should be viewed as a duty of the nation, while from the viewpoint of those in power, they can be seen as a right to exercise control.⁴⁵ In line with this, Islam emphasizes that an individual's human rights are bounded by the rights of others. Put simply, one's freedom is limited by the freedom of others. Therefore, the presence of a right necessitates both a corresponding obligation and the involvement of another party who upholds that right.

⁴² Dedy Sumardi, Ratno Lukito, and Moch Nur Ichwan, "Legal Pluralism within The Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>.

⁴³ Hasnil Basri Siregar, "Lessons Learned from the Implementation of Islamic Shari'ah Criminal Law in Aceh, Indonesia," *Journal of Law and Religion* 24, no. 1 (April 24, 2008): 143–76, <https://doi.org/10.1017/S074808140000196X>.

⁴⁴ Nurcholish Madjid, *Demokratisasi Politik, Budaya Dan Ekonomi : Pengalaman Indonesia Masa Orde Baru*, ed. Elza Peldi Taher (Jakarta: Yayasan Wakaf Paramadina, 1994).

⁴⁵ Iskandar. A Gani, *Refleksi Penegakan Hukum Dan HAM Di Aceh; Kajian Yuridis Historis Pelanggaran HAM Dan Evaluasi Penegakan HAM Hingga 2008* (Banda Aceh: Syiah Kuala University Press, 2009).

CONCLUSION

The enforcement of Islamic Sharia in Aceh is effectively aligned with human rights principles when the perspective of the wrongdoer or decision-maker in enforcing the law can reconcile local legal matters (Islamic Sharia law) with the broader principles of universal human rights in all of its interpretations. The implementation of human rights may not be enforced under local Islamic Sharia law, even if it is based on existing laws or the Indonesian Constitution of 1945, which grants special autonomy rights to Aceh through the Special Autonomous Law found in Act Number 11 of 2006 on Aceh Governance.

The application of Islamic Sharia law in Aceh is appropriate and safeguarded by the Indonesian Constitution of 1945. As long as the implementation of Islamic law and its rules found in Qanun at the provincial or regional level are consistent with higher laws hierarchically, the application is deemed valid. However, if the implementation deviates from the higher law, a reevaluation is necessary. This does not automatically imply a direct challenge to the Act granting Aceh the authority to enforce Islamic Sharia law. To ensure the successful implementation and protection of human rights, it is crucial to carefully consider and accurately interpret Islamic Sharia in a manner that safeguards human rights while upholding the principles of the law.

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