

ANAYASA

(Journal of Legal Studies)

E-ISSN: 2987-9965

Vol.3, No. 2, Januari 2026

THE APPLICATION OF THE PRINCIPLE OF JUSTICE IN THE ENFORCEMENT OF HUMAN RIGHTS FROM THE PERSPECTIVE OF ISLAMIC LAW

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Abstract

Human Rights are inherent and fundamental rights attached to every human being and must be respected, protected, and fulfilled. In the perspective of Islamic law, human rights are rooted in divine values, justice, humanity, and public welfare, aiming to safeguard human dignity in a comprehensive manner. This study aims to examine the essence of human rights from the perspective of Islamic law and its relevance within Indonesian society, analyze the mechanisms for the implementation and protection of Islamic human rights, and evaluate the impact of their implementation on social, legal, and constitutional life in Indonesia. This research employs a qualitative method with a library research approach and adopts a normative-philosophical framework by examining primary Islamic legal sources such as the Qur'an and Hadith, statutory regulations related to human rights, as well as relevant scholarly literature. The findings reveal that the concept of human rights in Islam is compatible with universal human rights principles and the Pancasila-based rule of law, particularly in upholding justice, equality, and respect for human dignity. The mechanisms for protecting Islamic human rights in Indonesia are implemented through the integration of Islamic values into the national legal system, the role of state institutions, religious courts, and civil society organizations. Furthermore, the implementation of Islamic human rights has contributed positively to strengthening social justice, protecting vulnerable groups, promoting religious tolerance, and improving public welfare. Therefore, the principles of justice in Islamic law play a strategic role in reinforcing human rights protection within Indonesia's pluralistic society.

Keywords: Human Rights, Justice, Islamic Law, Indonesian Society

Abstrak

Hak Asasi Manusia (HAM) merupakan hak yang bersifat fundamental dan melekat pada setiap manusia sejak lahir, sehingga wajib dihormati, dilindungi, dan dipenuhi. Dalam perspektif hukum Islam, HAM berakar pada nilai-nilai ketuhanan, keadilan, kemanusiaan, dan kemaslahatan yang bertujuan menjaga martabat manusia secara menyeluruh. Penelitian ini bertujuan untuk mengkaji hakikat Hak Asasi Manusia dalam perspektif hukum Islam dan relevansinya dalam kehidupan masyarakat Indonesia, menganalisis mekanisme penerapan serta perlindungan HAM Islam, serta menelaah dampak implementasi HAM Islam terhadap kehidupan sosial, hukum, dan ketatanegaraan di Indonesia. Metode penelitian yang digunakan adalah penelitian kualitatif dengan

pendekatan kepustakaan (library research) yang bersifat normatif-filosofis, dengan menelaah sumber hukum Islam, peraturan perundang-undangan terkait HAM, serta literatur ilmiah yang relevan. Hasil penelitian menunjukkan bahwa konsep HAM dalam Islam sejalan dengan prinsip HAM universal dan negara hukum Pancasila, khususnya dalam menjunjung tinggi keadilan, kesetaraan, dan penghormatan terhadap martabat manusia. Mekanisme perlindungan HAM Islam di Indonesia diwujudkan melalui integrasi nilai-nilai Islam dalam sistem hukum nasional, peran lembaga negara, peradilan agama, serta partisipasi masyarakat sipil. Implementasi HAM Islam memberikan dampak positif dalam memperkuat keadilan sosial, melindungi kelompok rentan, meningkatkan kesejahteraan masyarakat, serta mendorong terciptanya kehidupan bermasyarakat yang harmonis dan berkeadilan.

Kata kunci: Hak Asasi Manusia, Keadilan, Hukum Islam, Masyarakat Indonesia

INTRODUCTION

The idea of human rights arose in the 17th and 18th centuries as a reaction against the absolutism of kings and feudal lords of that era towards the people they ruled or the people they employed, namely the lower classes. The lower classes had no rights and were treated arbitrarily as slaves. As a reaction to this situation, the idea arose that the lower classes should be elevated from their position as slaves to be equal to the upper classes, because they were, after all, human beings too. Therefore, the idea of upholding human rights emerged, with the concept that all human beings are equal, all are free and brothers, no one is higher or lower than another, and thus there are no more slaves. (Makrifah 2021)

Every Indonesian citizen has human rights that are protected by the 1945 Constitution. Human rights violations, whether committed by individuals, groups, institutions, or the state, must be prosecuted in accordance with applicable law. In order to protect the human rights of citizens, ideal law enforcement is necessary. The concept of progressive law is one alternative in the effort to enforce human rights law. Internationally, human rights are regulated in the Universal Declaration of Human Rights. The declaration originated from the formation of the UN Human Rights Commission in 1945. Basically, human rights include the natural rights of humans, which in the UN Charter on the Universal Declaration of Human Rights include the right to think and express opinions, the right to own property, the right to education and teaching, the right to religion or belief, the right to life, the right to independence, the right to a good name, employment, and legal protection.

The Republic of Indonesia has a poor record in enforcing human rights laws. For example, the National Human Rights Commission's 2019 report stated that throughout that year, no serious steps had been taken to resolve various cases of human rights violations in Indonesia. The report submitted by KOMNAS HAM to the government highlighted the unresolved human rights cases from the past and after 2000, the large number of agrarian cases involving violence, and the prevalence of cases of intolerance and violations of freedom of expression. The concept of human rights in Islam is one of the important concepts in the Islamic religion. The concept of human rights in Islam is based on the principles of justice, equality, and humanity as emphasized in Islamic teachings. In Islam, every human being has the same rights and must be respected. Human rights in Islam

include the right to freedom of religion, the right to freedom of expression, the right to education, the right to health, and the right to justice. In addition, the concept of human rights in Islam also emphasizes the importance of maintaining human dignity and respecting the rights of others (Muhamad Sofian 2023).

As a tool for analysis, this study uses several important concepts, including the concept of human rights, will theory, interest theory, and the theory of legal systems. Human rights are fundamental rights. Human rights are a set of principles that arise from values that then become rules that govern human behavior in relation to other humans. According to Magnis Suseno, the core of the concept of human rights lies in the awareness that society or humanity cannot be upheld unless every individual human being, without discrimination and without exception, is respected in their entirety.

Furthermore, regarding the concept of human rights, Robert Audi said: *“the concept of right arose in Roman Jurisprudence and was extended to ethics via natural law theory. Just as positive law makers confer legal rights, so natural law confers natural rights”*. Audi also distinguishes between natural rights and legal rights. Legal rights are the rights of a person in their capacity as a legal subject that are legally stipulated in the applicable law. Meanwhile, natural rights are the rights of humans in toto. Thus, it can be said that legal rights emphasize formal legality, while natural rights emphasize the natural side of humans (naturally human beings). These two rights cannot be separated because they are interdependent. (Antasari 2014)

The difference in the direction of research in the study of human rights lies in the emphasis between human rights as natural rights and human rights as legal rights. The natural law approach places human rights as rights inherent to humans based on their human dignity, as emphasized by Franz Magnis-Suseno that respect for society can only be realized if each individual is respected as a whole without discrimination. This research direction is philosophical-normative, placing human rights as moral and ethical standards in assessing the justice of state power and the legitimacy of public policy, including in the context of governance according to the principles of justice and benefit.

Meanwhile, research that focuses on human rights as legal rights places human rights within the framework of the constitution, legislation, and the state legal system, as stated by Robert Audi regarding the distinction between natural rights and legal rights. From the perspective of constitutional law and *siyasah syar'iyah*, this approach emphasizes the role of the state as *hâris al-huqûq* (guardian of the people's rights), which is obliged to guarantee the protection of human rights through legal norms and public policy.

Using the theory of will and the theory of interest, this study aims to analyze how human rights function both as a guarantee of individual freedom and as a protection of basic human interests, so that human rights are not only normative in value but also effective in the practice of constitutional and just governance. Based on the conceptual framework of human rights (HAM), which places human rights as natural rights inherent to human dignity as well as legal rights that require recognition and protection by the state, this study

departs from the initial assumption that the main problem in the protection of human rights does not lie in the absence of legal norms, but in the gap between the philosophical values of human rights and their implementation in the legal system and constitutional practice.

The researcher suspects that even though human rights have been constitutionally recognized and institutionalized in various laws and regulations, the protection of human rights does not yet fully reflect respect for human beings as a whole, as emphasized by Magnis-Suseno. This is due to the dominance of a legal-formal approach that treats human rights merely as legal rights, without internalizing the moral values and welfare that form the basis of natural human rights. As a result, the enforcement of human rights tends to be procedural and does not fully favor the substantive interests of humans, especially vulnerable groups.

From the perspective of constitutional law and *siyasah syar'iyah*, the researcher suspects that the state has not optimally performed its function as the protector of the basic rights of citizens (*hâris al-huqûq*), because public policy and the exercise of power still emphasize stability, legal certainty, and political interests over the principles of justice, humanity, and the public interest (*maslahah 'âmmah*). Therefore, this study proposes the initial hypothesis that an integrative approach between natural rights and legal rights, supported by the theory of will and the theory of interest, is an important prerequisite for the realization of fair and effective human rights protection in accordance with constitutional principles and Sharia values. Thus, the background discussed raises several questions: (1) What is the essence of human rights from an Islamic perspective and their relevance in Indonesian society? (2) What are the mechanisms for implementing and protecting Islamic human rights in Indonesian society? (3) What is the impact of the implementation of Islamic human rights on Indonesian society?

This study aims to comprehensively examine the essence of human rights from an Islamic perspective based on Islamic teachings and their relevance to the pluralistic and multicultural Indonesian society. In addition, this study aims to analyze the mechanisms for implementing and protecting Islamic human rights in Indonesian society, whether through religious norms, socio-cultural values, or through the legal system and state policies. Furthermore, this study also aims to examine the impact of the implementation of Islamic human rights on the social, legal, and constitutional life of Indonesian society, particularly in realizing justice, respect for human dignity, and the creation of a social and state life based on the principles of humanity and public interest.

METHOD

Penelitian ini menggunakan metode kualitatif dengan pendekatan kepustakaan (library research), karena kajian difokuskan pada pemahaman konseptual dan filosofis tentang hak asasi manusia (HAM) dalam Islam. Penelitian ini bersifat normatif filosofis, yakni menelaah sumber hukum Islam seperti Al-Qur'an, hadis, Deklarasi Kairo 1990, serta Undang-Undang Nomor 39 Tahun 1999 tentang HAM, untuk memahami hakikat, sumber pengetahuan, dan nilai-nilai moral yang melandasi HAM dalam Islam. Sumber data

penelitian terdiri atas data primer (Al-Qur'an, hadis, dan peraturan perundang-undangan) dan data sekunder (buku, jurnal ilmiah, serta penelitian terdahulu). Pengumpulan data dilakukan melalui studi dokumentasi dengan menelaah, mencatat, dan mengelompokkan informasi yang relevan. Analisis data menggunakan analisis isi (content analysis) dan deskriptif-analitis, yaitu menguraikan konsep HAM berdasarkan ajaran Islam serta membandingkannya dengan pandangan Barat. Sebagai landasan teori digunakan teori maqāsid al-syarī'ah yang menegaskan perlindungan terhadap lima hak dasar manusia, teori fitrah yang menjelaskan bahwa hak bersumber dari kodrat manusia sebagai ciptaan Allah, dan teori keadilan serta kemaslahatan yang menjelaskan tujuan penerapan HAM dalam menjaga keseimbangan sosial. Hasil penelitian ini diharapkan memberi pemahaman konseptual tentang HAM sebagai hak kodrati yang berasal dari Tuhan serta memperkuat penerapan nilai-nilai kemanusiaan dalam kehidupan bernegara sesuai ajaran Islam.

RESULTS AND DISCUSSION

The essence of human rights from an Islamic perspective and their relevance in Indonesian society

Human rights are the natural rights of human beings that cannot be separated from freedom, equality, and justice. Freedom, equality, and justice are not without rules, but they must be in accordance with the right values (Tadabbur et al. 2020). The essence of human rights is an effort to protect the safety of human existence as a whole through a balance between individual and public interests. Likewise, the effort to respect, protect, and uphold human rights is a shared obligation and responsibility between individuals, the government (both civil and military officials), and the state.

Based on the above formulations of human rights, several key aspects of the essence of human rights can be concluded, namely:

1. Human rights do not need to be given, bought, or inherited; they are an automatic part of being human.
2. Human rights apply to all people regardless of gender, race, religion, ethnicity, political views, social origin, or nationality.
3. Human rights cannot be violated; no one has the right to restrict or violate the rights of others. People still have human rights even if a country makes laws that do not protect or violate human rights (Asasi and Dalam 2018).

In Indonesia, a constitutional state is also called a Pancasila constitutional state because Indonesia is a country based on Pancasila and the 1945 Constitution. According to Azharry in Wijaya (2015), a Pancasila constitutional state has one dominant characteristic, namely the principle of a family-based state. This principle of family-based statehood contains recognition of individual rights, which still include property rights or fundamental rights, but prioritizes the common interest or the interests of the state or nation over personal or individual interests. The concept of the Pancasila-based rule of law also has principles and

key characteristics, one of which is the protection of human rights with legal guarantees for their enforcement through a fair process. Human rights must be respected and protected, therefore they must be disseminated and promoted to the entire community, as this is the most important characteristic of a democratic state based on the rule of law (Nandini, Trisiana, and Utami 2021).

In the context of Islam, the concept of human rights is known in Arabic as *haq al-insan*. In the pesantren tradition, there are two interrelated concepts of rights, namely *haq al-insan* (human rights) and the rights of Allah. These two rights support and depend on each other. The rights of Allah are the basis for human rights, and vice versa. In practice, none of these two concepts can be separated. For example, when discussing the issue of prayer, which is a right of Allah, because prayer is an obligation commanded by Allah, then no human being or other party has the right to force someone to pray. No worldly power, including countries, can force individuals to carry out this obligation. Both rights, human rights and God's rights, must be respected and applied in a balanced manner in social life, including in the practice of worship such as prayer (Kansil and Putri 2024).

Islam's various perspectives on human rights are inseparable from its view of the status and function of humans. Humans are creatures of Allah SWT, who are noble and honorable (Q:S. Al-Isra/17: 70), (Q:S. Al-Hijr/15:28-29) and functional (Q:S. Al- An'Am/6:165) and (Q:S. Al-Ahzab/33: 72). From an ideal existence, humans are drawn to an ideal life. Humans are drawn to an ideal life, humans are drawn to a real life (empirical reality) so that they can be praised as functional beings. In this regard, humans are called *khalifah*, in the sense of mandataries, who are given authority, and not rulers. In this honorable status and function as mandataries, humans only have obligations to Allah SWT (because of this, only Allah SWT has rights) by obeying His laws. All these obligations are a mandate (Q:S. Al-Ahzab/33: 72), as a realization of his covenant with Allah SWT at the beginning of his creation (Q:S. At-Taubah/9: 111) (Al- 2018).

In principle, human rights can be understood in two main aspects: the moral dimension and the legal dimension. The moral dimension emphasizes that human rights are inalienable and cannot be challenged, because they are essential rights that exist in every individual as a human being. This moral aspect emphasizes that these rights are inherent, or naturally attached to humans. On the other hand, the legal dimension of human rights refers to rights that are recognized and described in various legal regulations, both at the international and national levels. This includes international agreements, resolutions, declarations, and national laws governing human rights. This aspect emphasizes that human rights are also defined by the applicable legal system, whether established by the international community or individual countries. (Kansil and Putri 2024)

Mechanisms for the protection of Islamic human rights in Indonesian society

As a Muslim country, Indonesia has demonstrated its commitment to respecting and protecting human rights since its independence, as evidenced by the 1945 Constitution, which explicitly mentions them. However, in the past, there were differences in the

government's interpretation of human rights, which were related to its political tendencies. The New Order government understood human rights in the context of an “integralistic” Indonesian society, which was inseparable from efforts to restrict the civil and political rights of citizens. This characterization was first expressed by Soepomo at the BPUPKI session in 1945 to state that Indonesian society was a unified entity, which was manifested, among other things, in the absence of dualism between the state and society (Staat und staatsfreie Gesellschaft) and between fundamental rights and individual freedoms (Grund- und Freiheitsrechte) in relation to the state (Abdillah 2014).

The human rights protected under Islamic law include:

1. The Right to Life (Al-Hayat)

The right to life is the most fundamental human right, which is a gift from Allah to every human being. Islamic law's protection of the human right to life can be seen in the provisions of Sharia law that protect and uphold human blood and life, through the prohibition of killing, the provisions of qishash, and the prohibition of suicide.

As Allah says in Surah An-Nisa verse 93, which means:

“And whoever kills a Muslim intentionally, his punishment is Hell, wherein he will abide forever, and Allah is angry with him and has cursed him and has prepared for him a severe punishment.”

2. Right to Freedom of Religion (Al-I'tiqad)

In Islam, freedom and independence are human rights, including the freedom to embrace a religion according to one's beliefs. Therefore, Islam strictly prohibits forcing religious beliefs on people who already adhere to other religions. This is explained in the Quran, Surah al-Baqarah, verse 256, which means: *“There is no*

compulsion in (entering) Islam, for the right way has become clear and the wrong way has become clear.” (Suhaili 2019)

3. The Right to Justice (Al-'Adalah)

Justice is one of the main principles in Islam, which is also reflected in the teachings on human rights. Islam emphasizes that every individual has the right to be treated fairly, both before Allah SWT and in social relationships with other human beings. As stated in Surah An-Nisa' verse 58: *“Indeed, Allah commands you to convey the trust to those who are entitled to receive it, and when you judge between people, judge with justice. Indeed, Allah is the best of those who teach you. Indeed, Allah is All-Hearing, All-Seeing.”*

4. The Right to Freedom of Expression (Al-Ra'y):

In Islam, freedom of expression is also recognized, provided that it does not infringe on the rights of others or contradict Sharia law. This can be seen from the many examples in Islamic history where companions and scholars criticized the policies of leaders with the aim of improving the condition of the ummah (Widiawan 2025). To strengthen the

protection of human rights, the Human Rights Law mandates the establishment of a National Human Rights Commission (Komnas HAM), which was actually established in 1993 but has not been functioning effectively. This commission has the following tasks: (1) to develop conditions conducive to the implementation of human rights in accordance with Pancasila, the 1945 Constitution, and the Universal Declaration of Human Rights, (2) to improve the protection and enforcement of human rights in order to develop the personality of the Indonesian people and their ability to participate in various fields of life. This commission has the functions of assessment, research, education, monitoring, and mediation regarding human rights (article 76:1). In addition, there are also several non-structural state institutions related to the protection of human rights, particularly the National Commission on Violence Against Women (Komnas Perempuan), the Indonesian Child Protection Commission (KPAI), and the Ombudsman.

The government also encourages the role of civil society, especially non-governmental organizations (NGOs), in advocating for human rights, such as the Commission for Missing Persons and Victims of Violence (KONTRAS), the Institute for Policy Research and Advocacy (ELSAM), and so on (Abdillah 2014).

The Impact of the Implementation of Islamic Human Rights in Indonesian Society

The implementation of human rights in Indonesia follows the prevailing political climate. Politics in Indonesia is not Islamic politics. However, in many ways, Islamic values are incorporated into the spirit of the country's laws and regulations. With regard to tolerance, religious harmony, and rejection of terrorism, Indonesian Muslims, as represented by Islamic mass organizations (Muhammadiyah, NU, Persis, Al-Irsyad, and others) have a clear stance. Indonesian Muslims support tolerance, condemn terrorism, develop social virtues, and are active in women's empowerment and poverty alleviation programs through their organizational units.

Therefore, Indonesian Muslims must be separated from the policies of their government. If there are human rights violations committed by the state, it does not automatically mean that they were committed by Muslims. If there is violence committed by individuals who are Muslims, it does not automatically mean that it was committed by Islam. This separation is necessary so that anything that is not in accordance with Islamic teachings is not considered to be Islamic teachings themselves. The attitude of Indonesian Muslims towards human rights principles is final and conclusive. The difference lies in the details and methods of implementation. Therefore, cooperation and dialogue on how to uphold human rights continue to be carried out by considering the specific aspects of each religious teaching concept (Atqiya 2014)

Several implementations of Islamic principles relevant to human rights in Indonesia can be used as concrete examples of how Islamic law contributes to the strengthening of human rights:

1. The Role of Zakat in Reducing Social Inequality In Islam,

zakat is an obligation for Muslims to help the underprivileged. In Indonesia, zakat is managed by institutions such as the National Zakat Agency (BAZNAS), which distributes zakat to the poor, orphans, and other vulnerable groups. This is in line with modern human rights principles that prioritize the right to social welfare and poverty alleviation.

2. Religious Courts in Protecting Women's and Children's Rights

Religious courts in Indonesia handle various family issues, such as divorce, child custody, and alimony. In many cases, religious courts have issued rulings that protect the rights of women and children, for example, by granting child custody to the mother who is more suitable or requiring the payment of alimony after divorce.

3. Management of Waqf as Support for Economic Rights Waqf, a form of Islamic philanthropy, has been utilized in Indonesia to support the development of public facilities, such as hospitals, places of worship, schools, and job training centers. The utilization of waqf helps fulfill the basic rights of the community, especially in the fields of education and health.

4. Fatwa on Environmental Protection The Indonesian Ulema Council (MUI) has issued a fatwa on the importance of protecting the environment, which is in line with the right to a healthy environment in modern human rights. This fatwa shows how Islamic law can be used to support a broader human rights agenda, including the right of future generations to a sustainable environment.

CONCLUSION

Human rights in the perspective of Islamic law are essentially natural rights inherent to human beings as creatures of Allah SWT, which are derived from the principles of justice, equality, humanity, and benefit. The concept of Islamic human rights is not only understood as legal rights regulated by legislation, but also as moral rights rooted in human nature. In the context of Indonesia's pluralistic society based on Pancasila, the essence of Islamic human rights is highly relevant because it is in line with the principles of the Pancasila legal system, which upholds the protection of human dignity and the common good.

The mechanism for implementing and protecting Islamic human rights in Indonesian society works through the integration of Islamic values with the national legal system, both through constitutional norms, laws and regulations, and the role of state institutions and civil society. The principles of Islamic human rights, such as the right to life, freedom of religion, justice, and freedom of expression, are realized through formal institutions such as the National Human Rights Commission, religious courts, and Islamic philanthropic institutions, as well as through the internalization of religious values in social life. This shows that Islamic human rights are not exclusive, but rather adaptive and contextual within the framework of the nation-state.

The impact of the implementation of Islamic human rights in Indonesian society can be seen in the strengthening of social justice, the protection of vulnerable groups, improved

welfare, and the growth of tolerance and humanitarian awareness. The practices of zakat, waqf, religious courts, and religious fatwas demonstrate the real contribution of Islamic law in supporting the fulfillment of the basic rights of the community. Thus, the application of the principle of justice in the enforcement of human rights according to the perspective of Islamic law not only enriches the wealth of legal thought, but also plays a strategic role in realizing a just, civilized, and public welfare-oriented society and state.

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