

## **For True Humanity: Harmonization of Islamic Law and Human Rights Towards Universal Justice**

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**Abstract:** This study aims to analyze the challenges and potentials in harmonizing Islamic law and human rights to achieve universal justice. The research method used is library research with a descriptive-analytical approach. Literature analysis was conducted to understand Islamic law and human rights concepts and principles, as well as the challenges and opportunities associated with harmonizing the two. The results show that harmonizing Islamic law and human rights can contribute significantly to achieving universal justice. This harmonization requires an awareness of the importance of protecting individual rights and universal justice and recognizing internationally recognized human rights principles. In Indonesia, a country with a majority Muslim population, harmonization between Islamic law and human rights must be done by considering the high religious and cultural diversity. There needs to be contextualization efforts with national legal systems and policies that support protecting individual rights fairly and inclusively. The role of state institutions, such as courts, legislatures, and law enforcement agencies, is also essential in encouraging the implementation of harmonization in line with the principles of universal justice.

**Keywords:** harmonization; Islamic law; human rights; universal justice

**Abstrak:** Penelitian ini bertujuan untuk menganalisis tantangan dan potensi dalam harmonisasi antara hukum Islam dan hak asasi manusia dalam rangka mencapai keadilan universal. Metode penelitian yang digunakan adalah penelitian kepustakaan dengan pendekatan deskriptif-analitik. Analisis literatur dilakukan untuk memahami konsep dan prinsip dalam hukum Islam dan HAM, serta tantangan dan peluang yang terkait dengan harmonisasi keduanya. Hasil penelitian menunjukkan bahwa harmonisasi antara hukum Islam dan HAM dapat memberikan kontribusi signifikan dalam mencapai keadilan universal. Harmonisasi ini membutuhkan kesadaran akan pentingnya perlindungan hak-hak individu dan keadilan universal, serta pengakuan terhadap prinsip-prinsip HAM yang diakui secara internasional. Dalam konteks Indonesia, sebagai negara dengan mayoritas penduduk Muslim, harmonisasi antara hukum Islam dan HAM harus dilakukan dengan memperhatikan keberagaman agama dan budaya yang tinggi. Perlu adanya upaya kontekstualisasi dengan sistem hukum nasional dan kebijakan yang mendukung perlindungan hak-hak individu secara adil dan inklusif. Peran lembaga negara, seperti pengadilan, lembaga legislatif, dan badan-badan penegak hukum, juga penting dalam mendorong implementasi harmonisasi yang sejalan dengan prinsip-prinsip keadilan universal.

**Kata Kunci:** harmonisasi; hukum Islam; hak asasi manusia; keadilan universal

## A. Introduction

Islamic law is a legal system based on the teachings of Islam, covering aspects of the lives of Muslim individuals and communities. Islamic law includes criminal law, family law, inheritance law, and economic law, among many other areas. As a universal religion, Islam offers moral and ethical principles that include justice, equality, and the protection of individual rights.<sup>1</sup> Conversely, human rights encompass a collection of essential ideals that acknowledge the innate entitlements possessed by each person, irrespective of their religious beliefs, ethnic origin, or societal standing. These ideals are enshrined within diverse global agreements, including the Universal Declaration of Human Rights established by the United Nations.

Human rights encompass various entitlements, incorporating civil, political, economic, social, cultural, and collective rights.<sup>2</sup> However, there is a perception that Islamic law and human rights are not always in line with each other. Several provisions in Islamic law have been considered controversial in the context of human rights protection, particularly women's rights, LGBTQI2S (lesbian, gay, bisexual, transgender, questioning, queer, intersex, and two-spirit), human rights, and freedom of religion. This tension between Islamic law and human rights has led to dilemmas and conflicts in achieving universal justice that respects religious principles and human values.<sup>3</sup>

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, these efforts have often led to debate and mixed interpretations. It also poses challenges in maintaining a balance between religious principles and the protection of human rights. Harmonizing Islamic law and human rights is difficult, but achieving universal justice that serves humanity is essential. In the context of ever-changing social and legal developments, this effort is vital in building a fair, inclusive society that respects every individual's rights, regardless of their religious beliefs or social background.

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.<sup>4</sup> For example, in some countries with a legal basis based on Islamic law, such as Saudi Arabia, women's rights, such as inheritance, divorce, and freedom of dress, may be restricted or

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<sup>1</sup> Arif Sugitanata, Suud Sarim Karimullah, and Rizal Al Hamid, "Hukum Positif Dan Hukum Islam: Analisis Tata Cara Menemukan Hukum Dalam Kacamata Hukum Positif Dan Hukum Islam," *JURISY: Jurnal Ilmiah Syariah* 3, no. 1 (2023): 1–22, <https://doi.org/10.37348/jurisy.v3i1.242>.

<sup>2</sup> Tamyiz Mukharrom and Supriyanto Abdi, "Harmonizing Islam and Human Rights Through the Reconstruction of Classical Islamic Tradition," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (2023): 40–57, <https://doi.org/10.22373/sjhk.v7i1.16436>.

<sup>3</sup> Mashood A Baderin, *International Human Rights and Islamic Law* (New York: OUP Oxford, 2003).

<sup>4</sup> Farid Sufian Shuaib, "Administration of Islamic Law and Human Rights: The Basis and Its Trajectory in Malaysia," *Al-Jami'ah: Journal of Islamic Studies* 56, no. 2 (2018): 281–304, <https://doi.org/10.14421/ajis.2018.562.281-304>; Salman Salman and Siobhán McInerney-Lankford, *The Human Right to Water: Legal and Policy Dimensions* (Washington, DC: World Bank, 2004); Bassam Tibi, "Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations," *Human Rights Quarterly* 16, no. 2 (1994): 277–99.

interpreted differently.<sup>5</sup> This difference poses a dilemma in applying universal human rights in countries with a legal foundation based on Islamic law. There is tension between individual freedom and religious values, which can affect the protection of human rights, especially for minority groups or those with different views. In addition, other challenges are limitations in legal interpretation and a lack of agreement on integrating human rights principles into the framework of Islamic law. Some countries have adopted amendments or changes in their laws to reflect human rights principles, but their implementation often varies and still faces challenges in practice. For example, in Indonesia, several legal changes reflect the principles of human rights, but their implementation is still faced with obstacles and challenges.<sup>6</sup>

The impact may vary in different countries due to differences in interpretation and emphasis on specific values between Islamic law and human rights. For example, in Iran, conservative interpretations of Islamic law can result in significant restrictions on individual rights, especially for women and minority groups. In this regard, the universal implementation of human rights faces severe obstacles in protecting human rights. In a country like Turkey, efforts have been made to combine the principles of Islamic law and human rights in a more inclusive legal system.<sup>7</sup> Despite this, challenges remain in balancing individual freedom with the solid religious values that exist in society. Countries such as Brunei Darussalam and Malaysia, which also have legal bases based on Islamic law, have adopted a more moderate approach and tried to integrate human rights principles into their legal frameworks.<sup>8</sup> However, despite the steps toward protecting human rights, there are still differences in their implementation and challenges that need to be overcome. It is important to remember that each country has a different cultural, historical, and political context, which influences how the interpretation of laws and the protection of human rights are carried out. As a result, the challenges and solutions faced in combining Islamic law and Human rights may vary by country.

In the global context, efforts to reconcile Islamic law with human rights are intertwined with broader human rights issues. Concerns arise from disparities in the protection of human rights between countries with predominantly Muslim populations and those with a secular legal framework, which can lead to injustices and inequalities in human rights safeguarding on an international scale. Furthermore, contemporary challenges and dynamics driven by social, political, and cultural transformations influence Islamic law and human rights harmonization. In the era of globalization and rapid advancements in Information Technology, societies are becoming increasingly interconnected and influenced by diverse

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<sup>5</sup> Zainah Almihtar, "Human Rights of Women and Children under the Islamic Law of Personal Status and Its Application in Saudi Arabia," *Muslim World Journal of Human Rights* 5, no. 1 (2009), <https://doi.org/10.2202/1554-4419.1158>.

<sup>6</sup> A Malthuf Siroj, Ismail Marzuki, and Elkhairati Elkhairati, "Transformation and Future Challenges of Islamic Law in Indonesia," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 95–116, <https://doi.org/10.29240/jhi.v8i1.6618>.

<sup>7</sup> Hafza Girdap, "Human Rights, Conflicts, and Dislocation: The Case of Turkey in a Global Spectrum," *American Journal of Qualitative Research* 4, no. 1 (2020): 69–84.

<sup>8</sup> Kerstin Steiner, "Islam, Law, and Human Rights of Women in Malaysia," *International Human Rights of Women*, 2019, 381–401, [https://doi.org/10.1007/978-981-10-8905-3\\_27](https://doi.org/10.1007/978-981-10-8905-3_27); Dominik M Müller, "Paradoxical Normativities in Brunei Darussalam and Malaysia: Islamic Law and the ASEAN Human Rights Declaration," *Asian Survey* 56, no. 3 (2016): 415–41, <https://doi.org/10.1525/as.2016.56.3.415>.

values, perspectives, and norms from various cultures and religions. Consequently, there is a growing need to assess and adapt the interpretation of religious laws to accommodate diverse social contexts.

In a global context, harmonizing Islamic law and human rights reflects the inclusiveness and equality needed to build a sustainable and just society.<sup>9</sup> In the face of complex challenges such as poverty, conflict, and climate change, countries and communities must create legal frameworks that combine the principles of Islamic law and human rights principles to achieve sustainable and inclusive development. Thus, research on harmonizing Islamic law and human rights has broad and profound significance in social, political, cultural, and global contexts. This research can better understand the common human values underlying these two legal systems and provide a foundation for building societies that are just, inclusive, and respectful of human rights for all individuals, regardless of their religion, ethnicity, or social background.

In addition to theoretical relevance, harmonizing Islamic law and human rights has significant practical implications. In the context of Muslim-majority countries, harmonization efforts can help create legal systems that combine Islamic law principles with the protection of human rights so that people can live in equitable justice and respect human rights. Through this harmonization, it is hoped that a comprehensive and consistent legal framework will be created that protects the rights of individuals without discrimination and respects the plurality of cultures and beliefs. In addition, this study is also relevant in dealing with contemporary issues related to religious extremism, intolerance, and human rights violations. In some cases, narrow views or misinterpretations of Islamic law have been used to legitimize human rights violations or acts of violence. Therefore, it is essential to maintain a balance between the protection of religion and the human values underlying human rights to prevent abuse and maintain justice.

The research method used in this study is the library research method with a descriptive-analytical approach. This method is based on collecting data from various sources of relevant literature and analyzing such data. Researchers will search and collect literature in the form of scientific journal articles, books, research reports, case studies, or official documents related to Islamic law, human rights, and issues of harmonization between the two. Literature sources can be obtained through academic databases, libraries, electronic journals, and other online sources. After the collection of literature, the researcher will analyze the data found. The descriptive-analytical approach is used to comprehensively describe and explain the phenomenon of harmonization of Islamic law and human rights. Descriptive analysis will involve preparing information and facts related to both areas, such as Islamic law principles, human rights principles, differences and similarities, and harmonization challenges. Next, an analytical analysis will be carried out to identify emerging relationships, patterns, and trends from the collected literature data.<sup>10</sup> The

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<sup>9</sup> Abdullah Saeed, *Human Rights and Islam: An Introduction to Key Debates between Islamic Law and International Human Rights Law* (Cheltenham: Edward Elgar Publishing, 2018); Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (New York: Routledge, 2018).

<sup>10</sup> Hannah Snyder, "Literature Review as a Research Methodology: An Overview and Guidelines," *Journal of Business Research* 104 (2019): 333–39, <https://doi.org/10.1016/j.jbusres.2019.07.039>; David

researcher will analyze the arguments, perspectives, and approaches the authors propose in the literature. It involves an in-depth understanding of the interpretation of religious texts, national and international legal frameworks, and contemporary issues related to Islamic law and human rights.

Through careful and detailed literature analysis, researchers can understand the background issues, debates, and key issues in harmonizing Islamic law and human rights. Cross-literature comparisons and analyses will also be conducted to assist in understanding the various approaches and identifying gaps or contradictions in the existing literature. This research will produce a descriptive-analytical exposure that presents the findings and synthesis of the relevant literature and provides a comprehensive overview of the challenges and prospects. In addition, the researcher will also be critical in identifying, selecting, and evaluating the literature sources used to achieve optimal validity and reliability in this study.

## **B. Harmonization between Islamic Law and Human Rights**

Harmonizing Islamic law and human rights is an intricate and thought-provoking matter within modern civilization. Islamic law draws its foundation from various legal sources, including the Qur'an, Hadith (sayings and actions of Prophet Muhammad), *ijmā'* (consensus of scholars), and *qiyās* (analogical reasoning). The guiding principles of Islamic law encompass justice, freedom of religion, the protection of life, honor, and property of individuals, as well as social and moral responsibility. In contrast, human rights are established upon universally recognized principles with international consensus. These principles include freedom of thought, the right to life, freedom of expression, and the pursuit of justice. However, discrepancies exist between Islamic law and human rights in various aspects.

Some differences arise in the interpretation of religious texts, the priority of values, and the emphasis on certain aspects. For example, in the case of religious freedom, Islamic law recognizes religious freedom for non-Muslims with some restrictions. At the same time, human rights emphasize absolute religious liberty for individuals regardless of their religion. However, it is essential to note that there are also many similarities between Islamic law and human rights. Both areas base themselves on humanitarian principles that protect the dignity, freedom, and justice of the individual. Islamic law and human rights aim to realize a just and dignified life for all human beings.<sup>11</sup> In this view, harmonization efforts can be interpreted as finding common ground and agreement between these two areas to achieve universal justice and protect human rights.

The discussion of harmonization between Islamic law and human rights has led to various criticisms and debates that demand a critical and analytical approach. These criticisms include the interpretation of religious texts, implementation in practice, and

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Antons et al., "Computational Literature Reviews: Method, Algorithms, and Roadmap," *Organizational Research Methods* 26, no. 1 (2023): 107–38, <https://doi.org/10.1177/1094428121991230>.

<sup>11</sup> Ann Elizabeth Mayer, "Islamic Law and Human Rights: Conundrums and Equivocations," in *Religion And Human Rights* (Routledge, 2016), 177–98; Siti Rohmah, Moh Anas Kholish, and Andi Muhammad Galib, "Human Rights and Islamic Law Discourse: The Epistemological Construction of Abul A'la Al-Maududi, Abdullahi Ahmed An-Naim, and Mashood A. Baderin," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 19, no. 1 (2022): 153–70, <https://doi.org/10.21154/justicia.v19i1.3282>.



questions of equality and plurality. One criticism often arises regarding interpreting religious texts in the context of Islamic law.<sup>12</sup> Some researchers and human rights activists argue that traditional interpretations of religious texts are conservative and limited, which may hinder harmonization with human rights principles.<sup>13</sup> They emphasize the need for an inclusive and contextual understanding, considering the times's social evolution and changing demands. However, the challenge lies in finding a balance between the flexibility of interpretation and the maintenance of the integrity of the religious text itself.

The implementation of human rights principles in the practice of Islamic law in some countries has also been a source of criticism. Although there are foundations of Islamic law that recognize humanitarian principles, some countries still face challenges in respecting individual human rights. Political, cultural, and social factors often trigger discrepancies between regulations and implementation. Therefore, it is important to criticize the practice of law and fight for reforms aimed at generating a legal system that is fair, inclusive, and respectful of human rights. Furthermore, the issue of equality and appropriate treatment of non-Muslim individuals within the framework of Islamic law has also been the object of criticism.<sup>14</sup> Although Islamic law recognizes individual rights in general, their application in the context of a plurality of societies is often subject to debate. The question is to what extent Islamic law can ensure the protection and equality of non-Muslim individuals' human rights, especially regarding religious freedom and women's rights. In religious and cultural contexts, diverse conceptions of individual rights present difficulties in achieving universal harmony.

The discussion on harmonizing Islamic law and human rights necessitates the consideration of several important aspects, namely the cultural context, legal framework, and the potential conflict between religious values and the universality of human rights. Firstly, the cultural context is relevant in harmonizing Islamic law and human rights. Cultural values, norms, and practices shape the understanding and implementation of Islamic law and the interpretation of human rights principles. Therefore, it is crucial to consider the cultural framework surrounding societies that adhere to Islamic law to achieve meaningful harmonization. An inclusive and contextual understanding and interpretation can help acknowledge and accommodate solid cultural values, thus providing a more holistic perspective in the harmonization process. Secondly, the existing legal framework is pivotal

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<sup>12</sup> Rizal Al Hamid, Arif Sugitanata, and Suud Sarim Karimullah, "Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris," *Bertuah Jurnal Syariah Dan Ekonomi Islam* 4, no. 1 (2023): 48–60, <https://doi.org/https://doi.org/10.56633/jsie.v4i1.553>.

<sup>13</sup> Rudolph Peters, "Islamic Law and Human Rights: A Contribution to an Ongoing Debate," in *Shari'a, Justice and Legal Order* (Brill, 2020), 484–96, [https://doi.org/10.1163/9789004420625\\_027](https://doi.org/10.1163/9789004420625_027); Rustam DKA Harahap, "LGBT DI INDONESIA : Perspektif Hukum Islam, HAM, Psikologi Dan Pendekatan Maslahah," *Al-Ahkam* 26, no. 2 (December 2, 2016): 223, <https://doi.org/10.21580/ahkam.2016.26.2.991>; Imran Ahsan Nyazee, "Islamic Law and Human Rights," *Islamabad Law Review* 1 (2003): 1, <https://ssrn.com/abstract=2407010>.

<sup>14</sup> Abdullahi Ahmed An-Na'im, "Islam, Islamic Law and the Dilemma of Cultural Legitimacy for Universal Human Rights 1," in *Asian Perspectives on Human Rights* (Routledge, 2021), 31–54; Andrew March, "Sources of Moral Obligation to Non-Muslims in the" Jurisprudence of Muslim Minorities"(Fiqh Al-Aqalliyyāt) Discourse," *Islamic Law and Society* 16, no. 1 (2009): 34–94, <https://doi.org/10.1163/156851908X413757>; Shaheen S Ali, "Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man?," in *Gender and Human Rights in Islam and International Law* (Brill, 2021).

in harmonizing Islamic law and human rights. Countries with differing foundations of Islamic law may interpret and implement Islamic law and human rights principles differently. Approaches to legislation, courts, and legal institutions vary in terms of incorporating human rights principles within the framework of Islamic law. Consequently, conducting a critical analysis of the current legal framework becomes essential to identify gaps and opportunities for better harmonization.

In this study, several approaches can be taken to achieve harmonization between Islamic law and human rights, taking into account that from the side of religion (Islam), it is important to present the fundamental obligations that can not be denied for human rights. Therefore, respect for religious rules should not be interpreted as contrary to human rights. First, an inclusive and contextual interpretation approach can be used to understand and relate Islamic law principles to human rights principles. This approach involves trying to understand the historical, social, and cultural context in which religious texts are handed down, as well as paying attention to changing times and the demands of modern society. Secondly, dialogue between stakeholders from these two areas is essential. Discussions and exchanges between scholars, academics, human rights activists, and governments can help better understand and gain a more inclusive view of the harmonization between Islamic law and human rights. In this dialogue, upholding the principles of openness, mutual respect, and trust-building is essential. Third, contemporary thinking and approaches integrating aspects of Islamic law and human rights can also be a path to successful harmonization. One proposed approach is progressive Islamic law, which interprets the law flexibly to pay attention to social change and the protection of human rights. This approach can pave the way for discovering solutions and agreements that reflect universal values and fundamental Islamic principles.

### **C. Implementation of Islamic Law and Human Rights in the National Legal System**

One of the key points of focus in the discourse concerns the correlation between Islamic jurisprudence and a nation's constitution. In countries where most of the population adheres to Islam, the legal structure typically encompasses Islamic law as an integral part of the constitutional framework. This phenomenon encompasses acknowledging Islamic law as a fundamental legal source, incorporating Islamic principles into legislation, and establishing institutions to administer Islamic law.<sup>15</sup> However, challenges arise in incorporating universal human rights principles into a constitutional framework based on Islamic law.

Implementing Islamic law and human rights in the national legal system involves aspects of legislation and courts. In countries with a foundation in Islamic law, legislation reflecting the principles of Islamic law is often an essential part of the national legal system.<sup>16</sup> However, challenges arise in incorporating universally recognized human rights principles into legislation based on Islamic law. In addition to legislation, the court's role in

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<sup>15</sup> Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib* 21, no. 2 (December 27, 2022): 213–44, <https://doi.org/10.21093/mj.v21i2.4800>.

<sup>16</sup> Muhajir Muhajir et al., "Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law," *Jurnal Ilmiah Al-Syir'ah* 21, no. 1 (2023): 86–103, <https://doi.org/10.30984/jis.v21i1.2321>.

implementing Islamic law and human rights is also essential. The court has an important task in enforcing the law and ensuring the protection of the human rights of individuals.

Islamic courts' role is crucial in applying Islamic law, as they are responsible for adjudicating cases involving religious matters. However, a significant challenge arises in ensuring Islamic courts incorporate human rights principles in their proceedings and rulings. It is imperative to critically analyze and assess the practices and functions of these courts in upholding human rights following universally recognized standards. Moreover, integrating Islamic law and human rights within the national legal system necessitates education and legal awareness efforts. It is essential to provide comprehensive legal education and foster a high level of legal consciousness within the community to promote a proper understanding of Islamic law and human rights principles. Society should develop a broad comprehension of religious values, human rights principles, and the significance of respecting individual rights and advocating for justice on a universal scale. Therefore, establishing inclusive legal education and elevating legal awareness within the community should be integral components of an effective implementation strategy.

A significant challenge that must be addressed in implementing Islamic law and human rights is the diversity of interpretations and understandings surrounding these principles. Each country has its distinct social, cultural, and political context, influencing how Islamic law and human rights are comprehended and incorporated into national legal systems. Therefore, adopting a critical and analytical approach to evaluate existing interpretations and implementations is crucial, seeking solutions that align with universally recognized human rights principles. Inclusive methods, interreligious dialogue, and the active participation of diverse stakeholders are also vital in implementing Islamic law and human rights within the national legal framework. Strengthening collaboration among religious leaders, academics, legal professionals, human rights activists, and civil society is essential to foster mutual understanding, cooperation, and sustainable harmonization.

Human rights violations or the misuse of Islamic law can occur when there is a narrow or inadequate interpretation of Islamic law principles. Implementing Islamic law and human rights is also susceptible to political and power dynamics. A country's political interests and power structures can influence how Islamic law and human rights are understood and applied. In certain instances, a limited interpretation or political exploitation of Islamic law may disregard human rights and social justice. Therefore, it is crucial to conduct a critical and analytical examination of the political factors that shape the implementation of Islamic law and human rights to ensure that human rights principles are respected and upheld. By undertaking such an analysis, we can strive for a system that safeguards and promotes human rights in conjunction with Islamic law.<sup>17</sup>

Harmonization between Islamic law and human rights in national legal systems often raises questions about gender equality and women's rights.<sup>18</sup> Some aspects of Islamic law

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<sup>17</sup> Khaled Abou El Fadl, "Cultivating Human Rights: Islamic Law and the Humanist Imperative," in *Law and Tradition in Classical Islamic Thought: Studies in Honor of Professor Hossein Modarressi* (Springer, 2013), 167–83; Isha Khan, "Islamic Human Rights: Islamic Law and International Human Rights Standards," *Appeal: Rev. Current L. & L. Reform* 5 (1999): 74.

<sup>18</sup> Ann Elizabeth Mayer, "Islamic Rights or Human Rights: An Iranian Dilemma," *Iranian Studies* 29, no. 3–4 (2007): 269–96, <https://doi.org/10.1080/00210869608701851>; Azizah Al-Hibri, "Islam, Law, and



can be interpreted as discriminatory against women or inconsistent with human rights principles that promote gender equality. In implementing Islamic law and human rights, it is also necessary to note the possibility of overlap or conflict between the Islamic legal system and the national legal system based on the constitution. Conflicts of interpretation, legal authority, and dispute resolution may arise to achieve harmony between Islamic law principles and human rights.

One of the important questions that needs to be asked is the extent of conformity between the principles of Islamic law and universally recognized human rights principles. Despite attempts to harmonize these two principles, there are differences in their interpretation and implementation in the context of national law. First, differences in the interpretation of Islamic law and human rights challenge its performance cohesively and somewhat. A narrow or dogmatic interpretation of Islamic law can limit human rights, especially regarding religious freedom and women's and minority rights. However, it is important to be clear that Islamic law itself is never oppressive but rather a wrong or extreme interpretation that can lead to restrictions on such rights. On the other hand, an inadequate interpretation of human rights can also ignore important religious and cultural values in a religiously grounded society.

Second, political and power factors influence Islamic law and human rights application in the national legal system. In some cases, dominant political interests may influence the understanding and application of Islamic law and Human rights principles. This can result in misuse of Islamic law to restrict religious freedom, oppress minority groups, or restrict women's rights. However, it is essential to emphasize that this is not a representation of the core principles of Islamic law itself but rather a political or power alignment that can lead to abuse. It should be understood that Islamic law itself has principles that underlie justice, equality, and the protection of human rights. Therefore, it is important not to blame Islamic law as a whole but to identify misinterpretations or abuses in some contexts or by certain parties.

Third, the issue of gender is also a crucial aspect of the implementation of Islamic law and human rights. Some provisions of Islamic law may be interpreted as discriminatory against women or inconsistent with human rights principles that promote gender equality. For example, in some cases, Islamic family law may mistreat women regarding divorce, inheritance, or ownership of assets. Fourth, implementing Islamic law and human rights also raises conflicts between the Islamic legal system and the national legal system based on the constitution. The misalignment between these two systems can create legal tensions and make it difficult for coherent and consistent implementation. In this case, a critical and analytical analysis is necessary to find solutions that accommodate these two principles through legal harmonization or legal mechanisms that resolve disputes between the two systems.

In Indonesia, incorporating Islamic law and human rights into the national legal system

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Custom: Redefining Muslim Women's Rights," in *Women and International Human Rights Law* (Brill Nijhoff, 2000), 379–420, [https://doi.org/10.1163/9789004531130\\_016](https://doi.org/10.1163/9789004531130_016); Adila Abusharaf, "Women in Islamic Communities: The Quest for Gender Justice Research," *Human Rights Quarterly*, 2006, 714–28, <https://www.jstor.org/stable/20072759>.

encounters distinct obstacles. With a predominantly Muslim population, the country operates under a dual legal framework, encompassing civil law derived from the Constitution and Islamic law practiced in regions following the Islamic legal system. While Indonesia's constitution at the national level upholds religious freedom and acknowledges human rights principles, reconciling Islamic law with human rights remains an ongoing concern that requires careful attention.<sup>19</sup> In this regard, implementing Islamic law must ensure conformity with universally recognized human rights principles.

At the regional level, Islamic law is implemented through local regulations governing civil and family matters.<sup>20</sup> However, in this context, there are challenges in ensuring the protection of individual rights and gender equality by human rights principles. For example, some local regulations in some areas apply punishments that could potentially violate human rights principles, such as corporal punishment or punishments that discriminate against women. In the face of these challenges, Indonesia has taken steps to achieve harmonization between Islamic law and human rights. One is strengthening an independent and objective judicial system that can protect individual rights and overcome conflicts between Islamic law and human rights. In addition, institutions such as the National Human Rights Commission (Komnas HAM) also play an essential role in monitoring and protecting human rights in Indonesia.<sup>21</sup>

Despite concerted efforts to reconcile Islamic law and human rights, the implementation process faces significant challenges and divergent viewpoints. Varied interpretations of Islamic law, political influences, and complex gender issues all contribute to the complexities of harmonizing Islamic law and human rights in Indonesia. Consequently, it is crucial to undertake critical and analytical assessments of legal advancements, court rulings, and policy implementations to identify and address discrepancies that arise in implementing Islamic law and human rights within the Indonesian legal framework. Achieving a better harmony between Islamic law and human rights necessitates the involvement of diverse stakeholders, including scholars, human rights advocates, academics, and civil society. Open and inclusive dialogue and discussions are essential in establishing a common understanding and bridging the gaps in interpretation and

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<sup>19</sup> Irene Istiningsih Hadiprayitno, "Defensive Enforcement: Human Rights in Indonesia," *Human Rights Review* 11 (2010): 373–99, <https://doi.org/10.1007/s12142-009-0143-1>; Jeff Herbert, "The Legal Framework of Human Rights in Indonesia," *Indonesia: Law and Society*, 2008, 456–82; Nurfaika Ishak, Romalina Ranaivo, and Mikea Manitra, "Constitutional Religious Tolerance in Realizing the Protection of Human Rights in Indonesia," *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 31–44, <https://doi.org/10.53955/jhcls.v2i1.24>.

<sup>20</sup> 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 (2021): 426–49, <https://doi.org/10.22373/sjhk.v5i1.9303>; Fajri M Kasim and Abidin Nurdin, "Study of Sociological Law on Conflict Resolution Through Adat in Aceh Community According to Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 375–97, <https://doi.org/10.22373/sjhk.v4i2.8231>.

<sup>21</sup> Ken Setiawan, "From Hope to Disillusion: The Paradox of Komnas HAM, the Indonesian National Human Rights Commission," *Bijdragen Tot de Taal-, Land-En Volkenkunde/Journal of the Humanities and Social Sciences of Southeast Asia* 172, no. 1 (2016): 1–32, <https://doi.org/10.1163/22134379-17201002>; Nukila Evanty, "Komnas HAM: Discrepancies Between Its Mandate and the Indonesian Constitutional Framework," *National Human Rights Institutions in Southeast Asia: Selected Case Studies*, 2020, 141–62, [https://doi.org/10.1007/978-981-15-1074-8\\_7](https://doi.org/10.1007/978-981-15-1074-8_7).

perspectives. Furthermore, raising awareness and promoting education about human rights and inclusive Islamic values can fortify the implementation of Islamic law and human rights in a manner that aligns with and complements the Indonesian national legal system.

Legislative reforms play a crucial role in enhancing the harmonization between Islamic law and human rights in Indonesia's national legal system. It is essential to assess and amend local regulations contradicting human rights principles. Moreover, there should be a concerted effort to foster a more inclusive interpretation of Islamic law in line with human rights principles. This aim can be achieved through dialogue and consultation among scholars, Islamic legal experts, and human rights practitioners. Furthermore, strengthening the role of institutions responsible for safeguarding human rights in Indonesia, such as Komnas HAM (National Commission on Human Rights) and the Sharia Supervisory Commission, is paramount. These institutions should possess adequate authority to oversee and protect individuals' rights from violations carried out under the guise of Islamic law. By enhancing the capacity and independence of these institutions, the implementation of Islamic law and human rights can be strengthened fairly and sustainably.

Furthermore, adopting a comprehensive approach to address gender issues in implementing Islamic law and human rights is imperative. Concrete actions such as promoting women's access to justice, empowering women economically, and eliminating gender discrimination in Islamic family law must be taken. This condition will ensure that implementing Islamic law and human rights safeguards women's rights and advances gender equality. Additionally, active engagement of civil society, including women's groups, human rights advocacy organizations, and religious communities, is essential in strengthening the implementation of Islamic law and human rights. By involving the community in policy-making, law enforcement, and monitoring efforts, a shared understanding and social accountability can be fostered to promote improved implementation.

Avoiding a narrow and rigid perspective when interpreting Islamic law and human rights is vital. In the Indonesian context, diverse Islamic schools of thought and interpretations can contribute to viewing Islamic law as a source of values that respect human rights. This understanding can enrich the discourse and implementation of Islamic law, making it more inclusive and protective of individuals' rights. Furthermore, it is essential to recognize that Islamic law and human rights performance is not a static process but should continuously evolve and adapt to societal developments and contemporary demands.

In interpreting and implementing Islamic law and human rights within the national legal system, it is crucial to consider social change, technological advancements, and the evolution of thought. This recognition enables a dynamic approach that acknowledges the shifting landscape and emerging challenges. Engaging diverse and knowledgeable stakeholders from Islamic law, human rights, and social sciences fosters collaborative efforts and facilitates improved implementation. A more effective and harmonized approach can be achieved by promoting cooperation among these competent parties.

On a global scale, Indonesia plays a significant role in advocating for harmonizing Islamic law and human rights. Within regional and international organizations, Indonesia can champion the compatibility between Islamic law and human rights, working towards establishing complementary principles. Active engagement in dialogues and collaborations

with other countries further strengthens the protection of human rights and promotes universal justice and genuine humanity. By actively participating in these forums, Indonesia can contribute to shaping a more inclusive and comprehensive understanding of the relationship between Islamic law and human rights, fostering a global environment that upholds and protects human rights.

#### **D. Universal Justice in the Context of Harmonization of Islamic Law and Human Rights**

Harmonization between Islamic law and human rights is essential in creating a legal system that is fair, inclusive, and respects human dignity. Universal justice refers to universally accepted principles that recognize and protect every individual's fundamental rights without discrimination based on religion, sex, race, or other background.<sup>22</sup> These principles of universal justice are also reflected in internationally recognized human rights principles.

In harmonizing Islamic law and human rights, it is important to ensure that the principles of universal justice are respected and integrated into the legal system. This harmonization requires a deep understanding of both legal systems, identifying complementary values, and looking for common ground for fair implementation. In the harmonization process, it should be recognized that there are differences and tensions between Islamic law and human rights on several issues. For example, in cases such as corporal punishment or the treatment of women, there are differences in approach and interpretation between Islamic law and human rights. Therefore, constructive dialogue and a deep understanding are needed to reach agreements that respect individual rights and the principles of universal justice.

The importance of universal justice in harmonizing Islamic law and human rights is also related to the protection of the rights of minorities in society. Fair and inclusive harmonization must ensure that the rights of minorities, including religious freedoms, are respected and protected. This requires efforts to overcome prejudice, discrimination, and intolerance that can arise in this context of harmonization. In addition, the implementation of universal justice in the harmonization of Islamic law and human rights also involves the development of effective and independent legal mechanisms. The judicial system must provide fair and equitable protection to all individuals, regardless of religion or other background. An inclusive and transparent dispute resolution mechanism must be developed to achieve universal justice in this harmonized context. In achieving universal justice, paying attention to the social, cultural, and historical context in implementing harmonization between Islamic law and human rights is important. Each country or society has unique characteristics, and a harmonizing approach must consider this context without compromising the principles of universal justice.

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<sup>22</sup> John Laughland, "Human Rights and the Rule of Law: Achieving Universal Justice?," in *Rethinking Human Rights: Critical Approaches to International Politics* (Springer, 2002), 38–56, [https://doi.org/10.1057/9781403914262\\_3](https://doi.org/10.1057/9781403914262_3); Antoine Kesia-Mbe Mindua, "Universal Justice for a Globalized World," *Comparative Law Review* 23, no. 1 (2017): 9–47; Michael Kirby, "Attaining Universal Justice: Realities Beyond Dreams," *DICTUM: Victoria Law School Journal* 1, no. 1 (2011): 7–20, <https://search.informit.org/doi/10.3316/informit.070909846644172>.

In Indonesia, a country with a majority Muslim population, harmonizing Islamic law and human rights must also consider ethnic, religious, and cultural diversity. To implement fair harmonization, conducting inclusive dialogues and consultations with various parties, including ulama, religious scholars, human rights practitioners, and civil society groups, is necessary. This will enable a broader understanding of both legal systems and reach a common ground that respects individual rights universally. Harmonization between Islamic law and human rights should not be used as an excuse to weaken or eliminate individual rights. Harmonization that is just and in line with universal justice must balance religious values and universally recognized human rights. It is important not to sacrifice individual rights and principles of justice to achieve harmonization between these two legal systems.

Effective implementation of harmonization requires concrete measures that lead to the protection of individual rights and universal justice. Efforts are needed to increase public understanding and awareness of the importance of harmonization between Islamic law and human rights. An in-depth education of these legal systems and the principles of universal justice will help overcome misunderstandings, prejudices, and discrimination that may arise. In this case, educational institutions, community organizations, and the mass media are significant in conveying accurate and balanced information. Furthermore, concrete steps must be taken to ensure the protection of individual rights guaranteed in human rights are also recognized and protected in Islamic law. For example, in treating women, there is a need for interpretation and implementation in line with the principles of gender justice and equality.<sup>23</sup> This can involve changes in social and cultural practices that conflict with women's rights and developing effective legal mechanisms to deal with gender-based violence and discrimination. In addition, it is essential to create a legal framework that blends universal human rights values with the underlying principles of Islamic law. This harmonization process should involve legal experts, scholars, and religious scholars with deep knowledge and understanding of both legal systems. At the same time, there needs to be a supportive policy promoting harmonization between Islamic law and human rights and integrating the principles of universal justice into the national legal system.

In addition to national efforts, involving international organizations, the academic community, and human rights institutions is crucial for strengthening the global harmonization between Islamic law and human rights. Collaboration and knowledge sharing among these entities facilitate the identification of best practices, common challenges, and a broader understanding of the significance of universal justice in this harmonization process. However, it is important to acknowledge that achieving harmony between Islamic law and human rights in the context of universal justice is a complex and gradual process. It is influenced by various factors, such as differing societal interpretations, political dynamics, and cultural considerations. Hence, ongoing research, dialogue, and critical discussions are necessary to address tensions, develop equitable solutions, and promote harmonization that universally upholds individual rights.

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<sup>23</sup> Erik Melander, "Political Gender Equality and State Human Rights Abuse," *Journal of Peace Research* 42, no. 2 (2005): 149–66, <https://doi.org/10.1177/0022343305050688>; Duncan Wilson, "Human Rights: Promoting Gender Equality in and Through Education," *Prospects* 34, no. 1 (2004): 11–27; Novia Puspa Ayu Larasati, "Gender Inequality in Indonesia: Facts and Legal Analysis," *Law Research Review Quarterly* 7, no. 4 (2021): 445–58, <https://doi.org/10.15294/lrrq.v7i4.48170>.



It is essential to recognize that achieving complete harmony between Islamic law and human rights is not always feasible or desirable in every situation. There may be inherent tensions between certain aspects of religious freedom within human rights and specific rules in Islamic law. In such cases, state institutions, including courts, legislatures, and law enforcement agencies, play a pivotal role in promoting fair harmonization that aligns with the principles of universal justice. These institutions must navigate these complexities to ensure a balance between religious freedoms and the protection of individual rights.

## E. Conclusion

Harmonization between Islamic law and human rights toward universal justice is a complex and ongoing process. In achieving equitable harmonization, it is necessary to pay attention to the local and global context, respect the values and principles, and strengthen public awareness and understanding of harmonization between Islamic law and human rights in achieving true humanity and universal justice. This harmonization requires attention to the importance of protecting individual rights and universal justice and recognizing internationally recognized human rights principles. In Indonesia, a country with a majority Muslim population, harmonization between Islamic law and human rights must be done by considering the high religious and cultural diversity. There needs to be contextualization efforts with national legal systems and policies that support protecting individual rights fairly and inclusively. The role of state institutions, such as courts, legislatures, and law enforcement agencies, is also vital in encouraging the implementation of harmonization in line with the principles of universal justice. The ultimate goal of this harmonization is to create a legal system that universally respects individual rights, prevents abuse of power, and maintains universal justice.

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