

The Enforcement of Human Rights Through Implementing of The Sharia

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ABSTRACT

Many Western law experts state that Islamic sanctions on criminal law are sadistic, cruel, so that universal human rights are violated. In the perspective of Western human rights the paradigm of thinking like that has long been embedded to this day. On the other hand, in a different perspective human rights in Islam explain that the legal sanctions contained in Islamic criminal law pay more attention to aspects of human rights, such as the protection of the rights of victims and victims' families and protect the rights of the community. The existence of death sanction in a murder case, is part of an effort to eliminate the sense of revenge, anger, that is in the victim's family. Legal sanctions in Islamic criminal law aim to provide social protection by ensuring the realization of human rights in society.

Keyword: *the enforcement, human rights, implementing, sharia*

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1. INTRODUCTION

The application of Islamic criminal law (*jinayah*) through legal sanctions in several countries that implement Islamic law is seen as an act that violates universal human rights. Such a view is certainly on one side legitimate although on the other hand it cannot also be accepted by groups that are pro to the enforcement of Islamic law. With different perspectives and sources, it is virtually impossible to find a meeting point between both version of Human Right.

The existence of various movements that want the implementation of Islamic law, especially in Indonesia, are considered by human rights activists as a very serious threat to the enforcement of human rights in Indonesia. The human rights activist considers that Islamic law does not at all provide room for human rights to live in accordance with the declaration of human rights that has existed for decades. Human rights activists give a negative stigma to the application of Sharia and consider criminal punishment in Islam as a very extreme and inhuman punishment. (Asnawi, 2012: 27) as well as labeling supporters who want the application of the Sharia as radicals.

Actually it is not appropriate to compare the concept of human rights in Islam, of which source is Qur'an with human rights from a Western perspective derived from human thought. When viewed from the historical side, Islamic human rights existed long before the West declared its human rights concept. Islam through the Qur'an has explicitly explained the height of human dignity and virtue in the QS. An-Nisa verse 70. The Qur'an commands humans to not only *survive*, but also live in glory, prosperity and perfection in terms of spiritual, moral, psychological, intellectual, or physical. (Mus'if, 2012: 60). The application of Islamic law is actually an inseparable part of the enforcement of human rights in an Islamic perspective.

This paper will discuss the basic concepts of human rights in Islam, the proposition of human rights in Islam and see whether Islamic criminal penalties violate human rights or not.

2. History and basic concepts of human rights in Islam

Etymologically, rights are a normative element that serves as a code of conduct, protects freedom, and guarantees opportunities for people to maintain their dignity. Rights are the most intimate essence of

truth and justice in the context of the dynamics and interactions of human life with God's creatures. These rights have been imprinted since humans were born and are attached to anyone, one of which is the right to live (*right to live*). Principle means the most fundamental or basic. (Trianto, Tutik, 2007: 259)

In terminology, human rights are generally interpreted as basic rights that humans carry from birth, as gifts from Allah Almighty. (Hadjon, 2008: 39). Donnelly said human rights are rights that humans have solely because they are human. Humanity has it not because it is given to it by the community or based on positive law, but merely based on its dignity as a human being. (Donnelly, 2003: 7-21). Based on the definition of human rights, the concept of equality and rights between human beings is born based on the principle of justice, equality, which gives recognition that humans have the same rights and obligations without differentiating gender, physical imperfection, race, ethnicity, religion and social status. (Basuki, 2001: 96)

In Arabic, the term human rights is known as *Haqq al-Insani al-Asasi* or called *Haqq al-Insani ad-Dharuri*, which consists of 3 (three) words, namely: a. the word rights (*haqq*) means: property, belonging, authority, power to do something, and is something that must be obtained; b. the word human (*al-insan*) means: a creature with minds and function as a legal subject; c. rights (*asasy*) means: substantial or basic. (Aji, 2015: 2)

According Khalfullah Muhammad Ahmad, in the terminology, human rights in the Islamic perspective is a right inherent in human beings which is natural and fundamental as a trustee from Allah SWT which must be protected, respected and protected by every individual, community or country. (Aji, 2015: 2). Ibn Rusyd even said that human rights in an Islamic perspective had provided the format of protection, security, and anticipation of various primary rights (*dharuriyyat*) possessed by every human being. (Aji, 2015: 2). This protection comes in the form of anticipation of various things that will threaten the existence of the soul, the existence of honor and descent, the existence of material possessions, the existence of reason, and the existence of religion. (al-Zuhayli, 1984: 19-19)

Based on the doctrine above, it can be said that the concept of human rights in Islam is actually not a new and foreign thing, because discussions and discourse about human rights in Islam are taught earlier when compared to the concept or several human rights charter that have been born in the history of human civilization. (Aji, 2015: 2). This fact proves that inherently Islam has come to bring teachings about human rights. Al-Maududi said that the teachings on human rights contained in the Charter of the Magna Charta only appeared 600 years after the arrival of Islam. (Aji, 2015: 2)

This fact is strengthened by Weeramantry who said that Islamic thought about rights in the social, economic and cultural fields had far preceded Western thought. (ICC UIN Team Jakarta, 2000: 220-221). Islamic teachings on human rights can be found in the main sources of Islamic law, namely the Qur'an and Hadith which are sources of normative teachings, then also found in the practice of Muslim life. A milestone in the Islamic partisanship towards human rights, namely the existence of the Madinah Charter, followed by the Cairo *Declaration*. (ICC UIN Team Jakarta, 2000: 220-221)

3. The postulate of human rights law in Islam

The Qur'an and Hadith as a source of law in Islam, give a very high respect for human rights. The Qur'an as the main source of Islamic teachings has laid the foundations of human rights, as well as truth and justice, long before there was any thought about it, in the world community. Verses A -Qur'an and al-hadith have touched on many issues relating to the content of human rights. (Lopa, 1996: 19). This can be seen in the provisions contained in the Qur'an, including:

- a. In the Al-Qur'an there are about 80 verses about life, maintenance of life, and provision of means of life, for example in surah al-Maidah verse 32. Al-Qur'an also talks about honor which is in 20 verses.
- b. The Qur'an also explains in about 50 verses about creation and creatures, as well as about similarities in creation, for example in Surah al-Hujarat verse 13.
- c. The Qur'an also presents attitudes against injustice and those who commit wrongdoing in about 320 verses, and orders to do justice in 50 verses which are expressed with the words: *'adl*, *qist*, and *qishash*.
- d. The Qur'an explains in 10 verses that talk about the prohibition of forcing to guarantee freedom of thought, belief and expressing aspirations. For example the verse contained in Surah al-Kahfi verse 29. (Yefrizawati, <http://repository.usu.ac.id>, accessed July 20, 2018)

The Qur'an itself even fully describes the first human rights violation in the history of human civilization, namely the murder of Adam and Eve's two sons, Qabil and Habil. The first killing event of this fellow man produced the edict of God: "Whoever kills a soul without (mistake) kills another soul or makes mischief on earth, then it is like killing humanity as a whole, and whoever helps the life of a soul then he is like helping life the whole humanity." The Qur'an has provided accurate information that the history of human rights violations has existed since the time of the first generation of Adam's children, namely Qabil and Habil, which was marked by the events of Abel's murder of Qabil. This is the beginning of the occurrence of human killing of humans, a violation of human rights that occurred the first time in the world. The story of human rights violations was first recorded in the Qur'an surah al-Maidah verse 27. (Abubakar, 2007: 77)

So is the case with various narrations that tell that the Prophet Muhammad always watched and provided protection for human rights. For example, this is seen in the orders of the Prophet Muhammad, who ordered the maintenance of human rights and the rights of glory, even though people of different religions, through his words: "Whoever *wrongs* a *mu'ahid* (someone who has been protected by a peace treaty) or diminishes his rights or burdens him beyond his ability or takes something from him unwillingly, then I am his opponent on the Day of Judgment." (Shiddieqy, 1993: 23)

As a religion that *rahmatan lil-'alamin* Islam recognizes and respects the personal rights of individual human beings as favors of the gifts bestowed by Allah also recognizes and respects the rights of collectivity as a public right in order to organize life on earth with the concept of *habl min Allah wa habl min al-nas*. (Qamar, 2013: 88). Such a perfect Islamic arrangement proves that Islam comes inherently with the teachings of human rights. This is proven by the aim of presenting the teachings of Islam, namely:

1. Maintaining the religion,
2. Nourish the soul,
3. Maintaining the mind,
4. Maintaining the honor or descent, and
5. Maintaining the wealth. (Munawar, 2002: 181)

The five objectives of the Islamic teachings are then become human rights principles, namely: a. the right to protection of life or right to life; b. right of protection of belief; c. the right to protection of reason; d. protection rights to property rights; and e. the right to have a family or the right to inherit and maintain a good name. (Trianto, Tutik, 2007: 266)

The five principles mentioned above serve as proof that human rights are the rights given by Allah SWT to each of His creatures after carrying out their obligations, so that everyone has the same rights as the others and others cannot take it, only Allah SWT who has the right to determine everything. (Hamidi, Lutfi, 2010: 233)

The birth of the Madinah Charter is inseparable from the journey of the Prophet Muhammad from Mecca to Madinah, and is a continuation of the two previous agreements namely Bai'at Aqabah 1 and 2. After the migration of the Prophet Muhammad to Madinah, a peaceful, and prosperous Islamic society was formed in Madinah, led by the Prophet Muhammad who consisted of the Muhajirin and the Ansar and a number of Arab tribes from the Jews and the Mushrik Madinah, who later placed Madinah as the center of Islamic activity and the development of the Islamic world.

The Madinah Charter is the world's first written religious piety that lays the foundations of human rights based on Islamic law. At the beginning of the opening of the Madinah Charter it was stated that all human beings were one people, born from the same source, so there was no difference between one person and another in all respects. In the teachings of Islam there is one thing that makes a person considered higher in the eyes of Alla, namely the level of his faith, so it is not seen from the color of the skin, ethnicity, race, country and gender. In addition to equality of rights among human beings, the Madinah Charter also accommodates the existence of freedom (in the sense that it is still within the scope of sharia) which is different from the freedom that is contained in other laws that exist today.

In the context of the Madinah Charter itself, there are at least 2 (two) human rights principles, namely: first; all followers of Islam are one people even though they are from different ethnic groups. Second; the relationship between the Muslim community and non-Muslims is based on principles: interact well with fellow neighbors; help one another in dealing with common enemies; defend those who are persecuted; advise one another; respect for religious freedom. (Tibi, 1991: 17-18)

The Madinah Charter itself consists of 70 chapters, and is written in 4 different stages. At the first writing there are 28 articles, which regulate the relationship between Muslims themselves. At the second writing there are 25 articles governing the relationship between Muslims and Jews, and the third writing occurs after the Hudaibiyah agreement in the 2nd year of Hijrah, which is the emphasis or repetition of the first and second chapters. In this fourth stage there are only seven chapters and regulate relations between tribes who converted to Islam. These are the first principles, the modern constitution which emphasizes human rights protection universally

The core of the Madinah Charter includes the principles of equality, brotherhood, unity, freedom, tolerance for religion, peace, help and defense of the persecuted and defend Madinah from enemy attacks. The following is a summary substance of the Madinah Charter:

- a. Monotheism, which recognizes the existence of one god. This principle is contained in the Preamble, clause 22, 23, 42 and the final part of clause 42.
- b. Unity (articles 1, 15, 17, 25 and 37). In these chapters it is stated that the entire population of Madinah is one people. There is only one protection, if Jews have followed this charter, it means they are entitled to protection of security and honor. In addition, Jews and Muslims jointly bear the costs of war.
- c. Equality and justice (chapters 1, 12, 15, 6, 19, 22, 23, 24, 37 and 40). These clause contain the principle that all citizens of Madinah have the same status before the law and must uphold the law and justice indiscriminately.
- d. Freedom of religion (clause 25). Jews are free to practice their religion as well as Muslims are free to fulfill Islamic sharia.
- e. Defend the country (clause 24, 37, 38 and 44). Every Madinah community who recognizes the Madinah Charter has the same obligation to uphold and defend Madinah from enemy attacks, both external and internal attacks.
- f. Recognition and preservation of customs (clause 2-10). In these chapters it is stated repeatedly that all good practices among the Jews must be recognized and preserved.
- g. The supremacy of Islamic shari'ah (clause 23 and 24). The main essence of this supremacy is that every dispute must be resolved according to the provisions of Allah and in accordance with Muhammad's decision.
- h. The politics of peace and internal protection and the issue of external peace also received serious attention in this charter (clause 15, 17, 36, 37, 39, 40, 41 and 47). (Sudjana, 2002: 89)

The attention to the human rights is not limited to a few verses of the Qur'an and the Hadith of the Prophet alone and only the Madinah Charter. There are at least 2 important documents in history that must be recorded about human rights in Islam, the Universal Declaration of Human Rights in Islam (1981) and the Cairo Declaration in 1991. The Universal Declaration of Human Rights in Islam in 1981 was made as a rival to the Universal Declaration of Human Rights from the United Nations in 1948. The Universal Declaration of Human Rights in Islam is less well known in Indonesia. To perfect this Universal Declaration of Human Rights, the 1991 Cairo Declaration was created.

According to Kevin Dwyer the teachings of Islam are basically in line with human rights motivation. (Dwyer, 1991: 40). The values in Islam and Human Rights had some similarities, among others: in terms of the value of equality, freedom, Siroj argues that the commitment of Islam as a religion of ethics and morality (*al-akhlaqi*) is shown by its attitude to defend human rights. (Siroj, 2008: 337)

In Islamic teachings, human rights are not only recognized but also fully protected. Based on that, then in this relationship there are 2 (two) very important principles, namely the principle of recognition of human rights and the principle of protection of those rights. (Azhary, 1992: 85). These principles are explicitly outlined in the Qur'an, among others, surah al-Isra 'verse 70.

Islamic historians have proven that Muhammad's presence as the bearer of the last teachings of Islam was the liberation of humans from various forms of oppression of human rights. The tradition and culture of ignorance that legitimizes slavery, discrimination of the results, discrimination of women in the name of faith in Latta and Uzza are completely eroded by Islam. There is no doubt that Islam guarantees the fulfillment of something which is a person's natural right, such as the right to life, the right to freedom, the right to equality and the right to justice. In the language of the American Declaration of Independence, these fundamental rights include the fulfillment of God-given rights, in the form of "*certain unalienable rights, that include life, liberty and pursuits happiness*". (Madjid, 1992: 517)

4. Disputing the notion of Islamic Criminal Law violates human rights

One of the crucial issues in upholding human rights in Islamic countries is the accusation that punishment in Islamic crimes is very cruel, very inhumane, left behind, sadistic, inhumane and various other negative accusations. When viewed in the present context, it certainly seems that this view is not wrong, but it needs to be underlined that all the legal rules prescribed in Islam have *benefits*. The point is that the West and even some of the leading Muslim thinkers have revealed that Islamic criminal law is incompatible with universal human rights are all the accusations true?

To answer at the same time refute various negative accusations against punishment in Islamic criminal law, it is better to look at the purpose of law (*maqashid shari'ah*) in Islam. The purpose of every law in Islam, including Islamic criminal law, is for the benefit of humans. The provisions contained in Islamic criminal law must be understood in its context, namely the historical, sociological, and anthropological conditions when the rules are revealed. The argument about Islamic criminal law must be seen in the text and its context at the same time, by looking at the continuity and changes. (Sodiqin, 2016: 185-199)

It should be noted that the legal accuracy in the Qur'an contains two dimensions, namely the particular dimension and the universal dimension. The particular dimension is related to *space* and time, because Quran was revealed in various pieces of history of human civilization. Consequently, the various rules of Quran must accommodate the interests of the law at that time as an *affirmation of its position* as the *hudan linnas* (instructions for humans). Based on these conditions, there was the adoption of Arabic customary law by Quran and a description of the existence of a dialogue on legal determination between Quran with its first recipient, namely the 7th century Arab society, when God's revelation was revealed. (Sodiqin, 2017: 202)

In this particular dimension, the legal provisions of Al- Quran function as social control, provide legal solutions at that time so that the color of a very clear. Based on this perspective can be explained why Quran mentions this form of punishment as *qisas*, *volume*, amputations, since it applies in Arab society at that time. (Sodiqin, 2017: 202)

The universal dimension is the second dimension related to the vision of the Qur'an as *rahmatan lil 'alamin*. As the last holy book revealed by God, the provisions of Quran apply throughout the ages. The Impact is demanding legal flexibility Quran in order to remain relevant to the development of human civilization throughout the ages as well. This dimension can be seen in the philosophical values contained in the verses of Quran, both explicit and implied. In the verses of the Islamic criminal law dimension of universality contained in the efforts of Quran into *social engineering*. Every legal provision is seen as an effort to make a *paradigm shifting*, changing the paradigm of law enforcement in Arab society at that time. Values fundamental values that are integrated in resolving cases of criminal law is morality, individual responsibility, balancing act with punishment, and social justice. These values are universal, which prioritizes the enforcement of human rights. (Sodiqin, 2017: 202)

One of the characteristics of the Islamic Human Rights Charter which was published by the Organization of the Islamic Conference (OIC) as a representative of Islamic countries in 1979 and 1981, which distinguishes it from the provisions of global human rights is the spiritual dimension of humanity. Actually Islam is very concerned about the material and spiritual dimensions to achieve happiness and perfection. On this basis, a number of contents of the Islamic Human Rights Charter affirm human rights regarding the teachings of spirituality to meet the needs of the individual person. In the view of Islam, human life in the world, determine his life in the hereafter. (Review, 2017: 159-160)

The right to life is the most basic thing of humans. In principle, human rights will be realized when he considers his behavior. In this case, the Islamic Human Rights Charter and world human rights affirm that right. Although there are differences between them, Divine Life is a principle that must be guaranteed by each individual community and country. Islam considers the right of life of every human being. (Usman, ed., 2006: 141)

Based on the concept of the right to life, the death sentence for perpetrators of murder crimes is not a violation of human rights. The penalties for this crime are murder (*qisas*), paying compensation/fines (*diyath*), and / or paying expiation (theological sanctions, such as freeing slaves, fasting, or giving food to the poor). This type of punishment is alternative, one of which can be chosen. Determination of penalties in this category is related to the rights of victims, meaning that if the victim's family to forgive the killing action, then may the law of *qisas* be cancelled. In other words, *Shari'* (God) sets the type of punishment that can be imposed, while determining the type of law imposed becomes the authority of the family of the murder victim. (Sodiqin, 2017: 204)

Why death penalty for perpetrators of murder in the Islamic criminal law system? The answer is because the religion of Islam places humans in a very high position of glory, that glory of Islam protects the human soul from the threat of others. (Zein, 2015: 103). Protection of the soul is in harmony with one of the objectives of the Shari'a, which is to protect the soul. Safeguarding the soul from the side of its manifestation (*hifzhu an-nafs min janibi al-wujud*), Islam presupposes the prohibition to seek clothing, food and shelter, while preserving the soul from the side of its abolition (*hifzhu an-nafs min janibi al-'adam*), Islam presupposes the prohibition of seeking clothing, food and shelter, while safeguarding the soul from the side of its abolition (*hifzhu an-nafs min janibi al-'adam*), Islam prescribes the prohibition killing, prohibition of oppression, etc. (Rofiah, Nahe'i, 2010: 60) . *Hifzhu an-nafs* must be understood as a theory oriented towards family protection and more concern for family institutions. (Auda, 2008: 3)

In the view of Hanafiyah scholars, killing deliberately *qisas* punishment is a punishment that has the dimension of God's right (dimension of God's right to contain general benefits) and Adami's rights (the law prescribed for individual benefit) at the same time it has two sides. The first side is the right of God (public benefit) because the purpose of this punishment is to maintain the continuity of human life and reduce criminal acts (killing) which is infuriated by Allah. But in the *qisas* there is also the Adami Right (individual benefit) that is reassuring the victim's family with the murder of the murderer. Among Allah's Rights and Adami's Rights, it turns out that Adami's Rights are more dominant, which is shown by giving authority to the victims to give forgiveness to the perpetrators, (QS. Al-Baqarah, 2: 178). (Rofiah, Nahe ' i, 2016: 76).

Based on this distinction of rights, the offending party has the right to forgive. When violations that only concern personal rights, the right to forgive is the victim or his heir if the victim dies. If there is a violation that is public in nature and there are also violations of individual rights, then forgiveness by individuals does not automatically eliminate their public liability. Public settlement in the concept of Islamic criminal law does not automatically disregard individual rights. In a murder case where the *qisas* sentence has two rights violated, first, the victim's right; second, public rights (God's right). (A'ishah, Roihanah, 2018: 9)

The deliberate murder case resulted in the punishment of *qisas*, there were two rights that were violated, namely the right of God (general rights) and the rights of Adami (the rights of victims). Victims' rights are violated because they have been denied their right to live. God's right is violated because basically the killings can threaten the stability of the community, but what is dominant is the victim's right. Based on that fact, then when there is forgiveness on the part of the victim, the *qisas* can be aborted. Even though they have been forgiven, the perpetrators are still subject to payment of compensation (restitution, *diyath*) as a deterrent punishment so that in the future they will not repeat the act. (A'ishah, Roihanah, 2018: 10)

The recurrence of the murder case from both the perpetrator and the person who has the potential to commit the murder is a representation of the public interest. In the case of payment of compensation in addition to the victim being fulfilled his rights, the public also has an interest in not repeating the act of killing. (Bashir, 2000: 23).

Based on the above statement, it can be understood that the application of the *qisas* law for the perpetrators of intentional killings is an attempt to maintain public good. The killer intentionally is a person who violates the benefit of society. The existence of *qisas* for the perpetrators of the killings is also an inseparable part of the existence of revenge from the victims' families towards the perpetrators of the killings. With the execution of the perpetrators of the murder, it is expected that revenge, loss and psychological suffering from the victim's family can be lost, because justice appears in the case.

Keep in mind in a murder case, corporal punishment (*qisas*) is *qat'iy* because it is not the only choice and it is not the purpose of punishment. From the *maqasid asy-shari'ah* review, it was found that the purpose of punishment is to protect human rights, namely the right to life (in *qisas* law), the right to think / hold opinions (criminal *khamr*), the right to inheritance (zina law), the right to dignity (criminal *qazaf*), and work rights, property/property rights (criminal theft). One thing that is emphasized in the implementation of human rights is morality in its implementation. (Sodiqin, 2017: 209)

Law in Islam does not only contain legal aspects, but is a combination of legal aspects with *ethical* aspects. Both must be in line and go hand in hand so that punishment in Islamic law is not only to enforce the law but also aims to uphold social justice. (Kamali, 2013: 175)

The difference in perspective between Western human rights and Islamic human rights, is based on the existence of very sharp differences related to the philosophical values of the birth of human rights in these two paradigm concepts. The difference in perception is illustrated by a clear sketch when

discussing legal sanctions in Islamic criminal law. Each concept maintains its argument without seeing any advantages and disadvantages of each.

The Western perspective means that the concept of human rights is merely anthropocentric, where humans are a measure of everything (everything is human-centered), humans are seen as the full owners of these rights. Western human rights are based on philosophical thought alone, because they are entirely the product of the human brain. Based on the anthropocentric view, all values that support the upholding of human rights are human-oriented, because human beings are the final target of the implementation of human rights. (Kosasih, 2003: 37)

Islam, meaning the concept of human rights is more theocentric (everything is centered on God). That is, Islam is more in favor of Allah's rights than personal rights. Humans in this case are seen only as beings who are entrusted with the basic rights of God, not as absolute owners. The root is that humans are obliged to maintain it according to God's rules. The exercise of this right must not be contrary to God's will. (Kosasih, 2003: xxii). Recognizing the rights of humans is an obligation in the context of obedience to God. Wahyu, 1986: 106).

The act of taking a life for revenge or for spreading damage can only be decided by the competent court. During the warfare, the act can only be tried by a legitimate government. In each of these incidents, no individual has the right to judge by playing alone. As explained by Allah SWT in QS. 6 (al-Anfal): 151. Thus killing is distinguished from taking the lives carried out for the sake of carrying out justice. (Syisyani, 1980: 312)

Allah bestows the right of life to all people of His servants by not looking at race, gender, nation, or religion. In accordance with the words of the Messenger of Allah which was narrated by Imam Bukhari sourced from 'Amr ibn 'Am, which means: A person who kills a person under an agreement (a non-Muslim citizen in an Islamic state) will not smell paradise. (Aji, 2015: 5).

According to Shaykh Syaikat Husain, Islam commands his people to respect the right to life, even if the baby is still in the mother's womb. More than that, Islam not only pays attention to the glory and dignity of man while he is still alive, his dignity remains glorified, until his death, with the care of his body, bathed, prayed, and buried well and full of sincerity. (Husain, 1996: 60)

Allegations that Islamic criminal law sanctions are incompatible with human rights, appear to be too forced. The settlement of criminal acts in Islam is even more humane because it considers the rights of the parties involved. When compared with the modern criminal law system, including those adopted and practiced in Indonesia, which only protects the rights of criminal offenders, the Islamic criminal law protects the rights of victims and the rights of the people. (Sodiqin, 2015: 63-100). The rights of victims and the community are placed in line with the rights of the perpetrators, so that the settlement of the criminal offenses is aimed at restoring rights damaged by criminal acts. (Surbakti, 2015: 84)

The completion of this model, later known as restoration, not only resolved problems between the perpetrators and victims, but also restored the conditions of order in the community. Based on this, the scope of protection of human rights in Islamic criminal law is broader in scope than modern criminal law. (Sodiqin, 2017: 211)

When viewed from the orientation law in Islamic criminal law perspective the aim is to achieve social protection (*social defense*). Criminal law is not merely aimed at giving a retribution for a crime committed by a person (*retributive*), or to defend the interests of the state as the holder of legal authority. Islamic criminal law places the law as part of other aspects of life, such as social, economic, political, cultural, etc., so that its enforcement must function as well as other aspects of life. (Sodiqin, 2017: 211)

Based on these conditions, in the event of a criminal act, the criminal law is placed as the last resort in dealing with criminal acts. In Islamic criminal law, this orientation is seen by the existence of non-criminal forms of settlement, such as forgiveness, repentance, payment of compensation (*restitution*), *expiation*, and others. This non-criminal sanction is a form of orientation of Islamic criminal law which is more concerned with the creation of social protection in society. In other words, Islamic criminal law appreciates human rights, both for perpetrators, victims and the public. With this orientation model, the handling of criminal acts in Islamic criminal law can create social justice for perpetrators, victims and the community (Sodiqin, 2017: 213)

5. CONCLUSION

Based on the discussion, there are some conclusions obtained that the sanctions of Islamic criminal law do not violate human rights. There are several things that support the thesis, among others that Islamic criminal law sanctions, especially those related to legal sanctions for murder cases, are more protective of the rights of the community, because the rights of adami are fully protected. The second thesis is that the legal sanctions for killing primarily for payment of compensation (restitution, *diyat*), pay more attention and concern to the victim and the victim's family. In the case of murder, the existence of punishment gives equal place to the victim's human rights and the community is placed in line with the rights of the perpetrator, so that the settlement of the criminal offense is aimed at restoring rights damaged by criminal acts. Legal sanctions in Islamic criminal law aim to provide social protection by ensuring the realization of human rights in society. *Maqasid as-sharia* from Islamic criminal law is to protect and uphold human rights, namely the right to life, the right to think/have opinion, the right to inheritance, the right to freedom of religion, and the right to property/property.

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