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Abstract

In both Islamic law and International Humanitarian Law, war is an ultimum remedium (last resort) used to solve a problem after both parties cannot resolve their dispute or problem in a peaceful manner. This research was conducted using the normative legal research method. Based on the results of the research, it is known that international humanitarian law and Islamic law both provide protection for people who are involved in armed conflict, including people who have disappeared and died as a result of war. Persons involved in armed conflicts receive protection from international humanitarian law, as stipulated in Article 13 of the Geneva Convention 1949. Protected persons include combatants, militia and levee en maase members and civilians, but their protection has not been properly implemented, because there is still violence in every conflict. In Islam it is found in the Koran, Surat Al-Baqarah, verse 190; "And fight in the way of Allah those who fight against you, (but) do not cross the line, for verily Allah does not like those who transgress". Islam also prohibits attacks on non-combatants, Rasulullah SAW said: "Do not kill your parents, children and women" (H.R Abu Dawud).

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Victims, War, International Humanitarian Law, Islam

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A. Introduction

War is not a word that is foreign to every human being on this earth. Human history has almost never been free of war. Mochtar Kusumaatmadja said that it is a sad fact that during 3400 years of written history, humanity has only known 250 years of peace. War is only one form of manifestation of the instinct to defend itself, which applies both in human relations, as well as in relations between nations. Thus, war is one thing that is as old as the history of mankind.[1] So old is the history of war, even a study of the war that was done by Quincy Wright, can not find with certainty when the war actually first existed. In this case Quincy Wright categorizes four stages of the development of war history, namely: War waged by animals (by animals); War waged by primitive humans (by primitive men); War waged by civilized humans (by civilized men); and War using modern technology (by men using modern technology).[2]

War in both Islamic law and International Humanitarian Law is an Ultimum Remedium (last resort) which is used to solve a problem after both parties cannot resolve their dispute or problem in a peaceful manner. In warfare, Islam does not teach to scorch the existing earth. Only those who carried weapons were allowed to be killed. This has been regulated in Islamic law, in warfare Islam teaches its ethics, so that there is no meaningless destruction when a war occurs. War is allowed when persuasive efforts fail, it becomes the last resort, after peaceful efforts are unsuccessful.

Basic rules, both contained in International Humanitarian Law and Islamic Law, can prevent war atrocities that cause death or disappearance. Respecting these rules is respecting the integrity and dignity of all human beings, including those who have died. In the context of missing persons, respecting these rules is to try to prevent missing persons from happening and to encourage the resolution of missing

[1] Mochtar Kusumaatmadja, "Hukum Internasional Humaniter dalam Pelaksanaan dan Penerapann di Indonesia". *Makalah disampaikan pada Simposium tentang Hukum Humaniter* (1980): p.7., dalam Haryomataram, *Sekelumit Tentang Hukum Humaniter*, Surakarta: Sebelas Maret Press, (1994), p.2-3.
[2] Fadillah Agus, *Hukum Humaniter Suatu Prespektif*, Jakarta: PT. Massma Sikumbang (1997), p.1.

persons cases. If a person is missing, his family has the right to obtain information about the fate of his or her missing relative and may ask for help with information about the fate of his or her missing relative and may ask the state for help in providing this information, as stipulated in Article 32 Additional Protocol I.[3]

The characteristics of war in Islam are to defend and to retaliate in kind against the enemy, this is in accordance with what is contained in the Qur'an, Surat Al-Baqarah, verse 190; "And fight in the way of Allah those who fight against you, (but) do not cross the line, for verily Allah does not like those who transgress". Islam also prohibits attacks on non-combatants, Rasulullah SAW said: "Do not kill your parents, children and women". (H.R Abu Dawud). Another narration also states "Don't go overboard, don't betray, don't destroy corpses, don't kill children and also residents of places of worship" (H.R Ahmad). These two hadiths explain Q.S Al-Baqarah verse 190, not to exaggerate, such as killing parents, women, children, and residents of places of worship. They all have no problem with warfare except those who take up arms.

Atrocities during war often occur, things that are not feasible to do such as rape and looting are often done. This is not in accordance with the ethics of war in Islam, so it is also prohibited. The act of burning down and tearing down buildings is also prohibited, as was the testament of Abu Bakar Ra. "Do not cut down trees, and do not destroy buildings".[4] Thus Islam teaches its troops to fight not as destroyers but as true fighters who defend religion and the state. If it is not in accordance with the truth then Islam will prohibit it. Burning and cutting down trees, and destroying buildings is not human. Despite war, Islam still teaches virtues in accordance with the commands of Allah and His Messenger.

Based on the explanation above, the focus of the problems raised in this research are; 1). How is the study of war according to International Humanitarian Law and Islamic Law; 2). How is the protection for victims of armed conflict according to humanitarian law and Islamic law? In line with the efforts to answer the problems that have been formulated in the research, the purpose of this research is to find out how the study of war according to International Humanitarian Law and Islamic Law, as well as how to protect victims of armed conflict according to Humanitarian Law and Islamic Law. The method used in this research is a normative juridical legal research (doctrinal research), the data of which are secondary data. The nature of this research is descriptive, which aims to provide an overview of social symptoms related to the issue of protection of missing and dead people in armed conflict according to International Humanitarian Law and Islamic Law. Sources of research data are primary legal materials, secondary legal materials and tertiary legal materials. The data collection method was carried out using document study techniques, which were analyzed using qualitative analysis techniques. This research is a comparative law study which in essence is comparing the legal system. Comparative law is research to find similarities and differences between two different types of law, namely Islamic Law and International Humanitarian Law.[5]

B. Discussion

1. War Studies According to International Humanitarian Law and Islamic Law

a. According to International Humanitarian Law

In the past, war was a killing on a large scale between the two warring parties, where this action was a manifestation of the instinct to defend oneself that prevailed both in the relationship between human beings and in the relationship between nations.[6] History records that in the beginning the rules regarding war were contained in rules of conduct, morals and religion, such as rules of war in the teachings of Buddhism, Confucius, Judaism, Christianity and Islam. Whereas provisions regarding war began 3000-1500 years before Christ, at which time nations such as Sumer, Babylon and Ancient Egypt were already familiar with these provisions.[7]

Around the 18th century Jean Jacques Rosseau in his book the Social Contract taught that war must be based on morals which later developed this concept and became the basis for international

[3] ICRC, *Kebutuhan Keluarga Orang Hilang Di Timor-Leste*, Jakarta: ICRC Indonesia Delegation, (tt), p.55.
[4] Hasan S, *The Art of Islamic War (Rahasia Kemenangan Tentara Islam Generasi Pertama)* Muhammadiyah University Press, (tt), p.
[5] Indianto S, "Studi Perbandingan Hukum Kartu Kredit Antara Hukum Positiv Indonesia dan Hukum Islam", *Skripsi Fakultas Hukum Univesitas Negeri Surakarta*, (2005): p.8.
[6] Mochtar Kusuma Admaja. dalam Haryomataram, *Op.Cit.*, p.9.
[7] Arlina Permanasari, dkk., *Pengantar Hukum Humaniter*, Jakarta: International Committe of The Red Cross, (1999), p1.

humanitarian law. It was only around the 19th century that the moral foundation of war was then rebuilt by Henry Dunant, who was the initiator of the Red Cross organization, which succeeded in issuing a Geneva Convention I in 1864, namely the Convention for the Improvement of the Condition of Soldiers Wounded on the Ground Battlefield.

The further development of rules regarding war is contained in international humanitarian law which is regulated through treaties signed by countries, such as "The Hague Laws 1899 and 1907" which are a series of conventions and declarations regulating the tools and methods of war made in 1899 and 1907, then the 1949 Geneva Conventions which regulate the protection of victims of war and the 1977 Additional Protocol which is a complement to the 1949 Geneva Conventions.[8]

International humanitarian law, as a part of international law, is one of the tools and methods that can be used by every country, including peaceful and neutral countries, to participate in reducing the suffering experienced by communities due to wars that have occurred in various countries. International humanitarian law is a policy instrument as well as a technical guideline that can be used by all international actors to address international issues related to losses and victims of war. Mochtar Kusumaatmadja divides humanitarian law into two parts, namely: a). Ius Ad bellum, namely the law on war, regulates how the state is justified in using armed violence; b). Ius in bello, namely the laws that apply in war are divided into laws that regulate how war is carried out. This section is usually called The Hague Laws and the Law which regulates the protection of people who are victims of this war. This is commonly called The Geneva Laws.[9]

The division of the law of war in "ius ad bellum" and "ius in bello" is related to the theory of just war or just war, where the theory formulates the conditions that must be met so that the party starting a war can be said to have committed a just war. The requirements include: (1) just cause; (2) the right authority; (3) the right intent; (4) balance (proportionality); (5) last resort. Even though in war these conditions were not fulfilled and what happened was unjust war, in that war ius in bello still prevailed. The objectives of humanitarian law in various literatures can be summarized, namely: (1) providing protection for combatants and civilians from unnecesaary suffering; (2) guarantee fundamental human rights for those who fall into enemy hands. Combatants who fall into enemy hands must be protected and cared for and have the right to be treated as prisoners of war; (3) prevent a cruel war without knowing any boundaries. Here the most important thing is the principle of humanity.[10]

Therefore humanitarian law adopts humanitarian law of war. The obligation to carry out and enforce humanitarian law lies with the state. However, in its implementation, it involves the International Committee of the Red Cross which has obtained a mandate from the international community to assist humanitarian law enforcement in accordance with the 1949 Geneva Conventions on the Protection of Victims of War and their Additional Protocols.[11] International humanitarian law or "the law of war" consists of the limits established by international law on which the force necessary to subdue an enemy is used, and its principles determine the treatment of individuals during war or armed conflict. Without such regulations, the savagery and brutality of war would have no limits. These laws and customs emerged from longstanding practices by warring states.[12]

Although international humanitarian law is the rules that will be enforced at war, the preparation for its implementation must be prepared from the time of peace, both by individual countries and in relations between countries. This has been agreed upon by the international community, as contained in various international treaties on International Humanitarian Law. The agreement is understandable considering that during the war the opportunity to prepare for the implementation of International Humanitarian Law will be less than the parties' desire to pursue their respective war objectives.[13]

Humanitarian law is not intended to prohibit war, because from the point of view of humanitarian law war is a reality that cannot be avoided. Humanitarian law tries to arrange for war to be fought by paying more attention to humanitarian principles. Based on the explanation above, it can be concluded

[8] Arlina Permanasari, *Ibid*., p.2
[9] Haryomataram, *Loc.Cit*.
[10] Arlina Permanasari, dkk., *Op.Cit*., p12.
[11] Sugiman, *Hukum Pengungsi Internasional*, Jakarta: Sinar Grafika, (2012), p33.
[12] J.G. Starke, *Pengantar Hukum Internasional*, Jakarta: Penerbit Aksara Persada Indonesia, (1989), p.237.
[13] Ambarwati, dkk., *Hukum Humaniter Internasional dalam Studi Hubungan Internasional*, Jakarta: Rajawali Pers, (2010), p.28.

that humanitarian law in essence does not prohibit war, but regulates war. In this case, humanitarian law regulates the tools and methods of war, and regulates the protection of victims of war.[14]

b. According to Islamic Law

War is not a vehicle for imagining someone to look for position, property, development of economic markets, exploitation of natural resources, and occupation of territory as seen in various wars waged by imperialist countries in the world. But in Islam, war is intended solely to exalt Allah's sentence and defend His Religion and ensure freedom of choice for human faith. That is the purpose of declaring war in Islam. Allah also teaches about the ethics of fighting according to Q.S Al-Baqarah verse 190 above so that every Muslim when fighting is not justified in killing unbelievers who are not fighting. It is not allowed to attack people who are not attacking themselves. For example, women, children, and people who are elderly who do not fight against the Muslims even though they are on the side of the infidels who are against the Muslims. They are the people in question that should not be targeted in war.[15]

Islam, like other religions, has the character of a legal order that governs the lives and thoughts of its adherents according to a set of revelations that were conveyed to Muhammad, the last prophet. Islam builds its own order based on good and bad. Justice is seen as the only means of justification and validation. In ratifying the law rationally in Islam, as in other religions, it states that the law is an ideal system that comes from a divine source, manifested through God's will and justice.

Islam has established rules that are already perfect to become laws for war. The rules established by Islam are to obtain grace and create justice and form Islamic military laws in order to create world peace, not hostility. Therefore, Islam is known as the religion of salvation, upholding truth and justice, not based on injustice and enmity. Islam views mankind in general with a view that is full of honor and glory, laid down rules and laws that could lead mankind to gain glory, respected individual rights in developing their creativity, and made piety the main principle that humans must implement. Da'wah Islamiyah continues to be built on wisdom and provides good warning. Islam requires war to eliminate selfishness, greed and ignore the weak, but solely to create peace and tranquility, build life under the auspices of justice, equality and grace.[16]

In the Islamic world, humanitarian law is clearly regulated. Around the 6th to 7th century AD, when Europe was experiencing dark ages, on other parts of the earth, in a region which is often called the East, someone was introducing fresh and new innovations to mankind. He is Muhammad SAW, the manifestation of God's revelations. One of the major innovations that he introduced to the world was humanitarian law or warfare ethics which had been practiced long before the existence of international humanitarian law was enacted.[17]

Islam teaches how to deal with war and how to fight, the ethics of war is due to the result of the wisdom of the Prophet Muhammad who introduced a new perspective to humans in knowing war. At that time, a period called the period of ignorance (jahiliyah), where people's movements and thoughts lost their sanctity, Rasullullah SAW then came to teach them how to see the world without shedding blood, how to think without harming others, how to act without reducing feelings our respect for others and of course how to maintain ethics in war though.[18]

Islamic law will provide sanctions for those who violate the rules and laws. Thus, Islamic law can actually be more motivating to provide protection for human rights at the time of war, whether protection for those who are combatants or civilians. Islam obliges its adherents to always respect noble character in treating enemies who fall in their captivity or are no longer capable of aggression due to illness or injury. As Islam also prohibits killing people who do not actively take part in warfare, such as women, children, the elderly and those who do not participate in war or are no longer carrying out acts of hostility against Muslims.

Abdul Baqi Ramdhun defines War or what better known as jihad is divided into two meanings, namely Jihad according to the language derived from the words Jaahada - Yujaahidu - Mujaahadatun - wa Jihaadan with the meaning of directing and exerting all energy and abilities in the form of words or

[14] Andrey Sujatmoko, *Hukum HAM dan Hukum Humaniter*, Jakrta: Balai Pustaka, (2015), P.172.
[15] Muhammad Mutawalli al-Sya'rawi, *Jihad dalam Islam*, Jakarta: Republika Penerbit (2011), p. 203-204.
[16] Jamal Yusuf Al-Khulafat, *Seni dan Strategi Perang Masa Rasulullah SAW*, Yogyakarta: Izzan Pustaka, (2002), p.170.
[17] Miftah Idris, "Humaniter dalam Prinsip Hukum dan Hukum Islam", avaible online https://www.academia.edu/9807859/HUMANITER_DALAM_PRINSIP_HUKUM_DAN_HUKUM_ISLAM
[18] Miftah Idris, *Ibid*.

actions in war. And also from the words Al-jahdu and Al-juhdu: Strength and ability. And from the origin of the words "Jahada - yajhadu - Juhdan" and "Ijtahada", both mean Jadda (be serious).[19]

Majid Khadduri stated that jihad in a broad sense does not always mean war or sacrificing battle, because stepping in the path of Allah can be achieved by peaceful means or by acts of violence. Jihad is considered a form of religious propaganda carried out by persuasion or the sword. At the beginning of the revelation in Mecca, the emphasis on the substance of the revelation alluded to a lot of persuasive actions.[20]

It is clear that Islam wants to realize a guarantee of protection and respect for victims of armed conflict, whether those who are killed, injured or captured. In the perspective of Islamic Law, war is basically not something where the original law may be carried out, but Islam views war as something that can be legalized because of compulsion due to emergency conditions, and that emergency can only be carried out within the limits required (al-dharurah tuqaddar bi qadariha).

The perfect rule which Islam has applied in war is to attain mercy and justice. Therefore, the leaders of the Islamic forces and their subordinates should not act arbitrarily, but must uphold the rules of war which have been stipulated as follows: 1) Treat prisoners of war with good treatment, enter into a collective agreement to release prisoners by exchanging assets or exchanging prisoner; 2) Determining the obligation to treat prisoners in a good manner, prohibiting insulting or degrading them, which can damage their human values; 3) Guarding the souls of good people, people who are weak and people who are not part of the army; 4) Guard against mental breakdown of people such as helping the injured; 5) Prohibit spontaneous actions that sometimes occur to some soldiers as a psychological impact of war; 6) Responsible for and secure troops when given the task of securing them; 7) Be kind to enemy envoys.

The perfect rule which Islam has applied in war is to attain mercy and justice. Islam has strict requirements for the conduct of war. If this happens because of conditions against its will, then Islam lays down a number of principles aimed at limiting its negative impact on combatants only and not spreading to the civilian population and others who are not involved in the war. Likewise, so as not to spread, so that the prisoners became victims of war. The bottom line is that Islamic humanitarian law aims to protect humans and their rights during armed conflict.[21]

2. Protection of Victims of Armed Conflict according to Humanitarian Law and Islamic Law

a. According to Humanitarian Law

Missing people or people who have no explanation (unaccounted for) are people whose families have no news about them or people who are reported missing based on trusted information. From this explanation, missing persons are all people, including soldiers or combatants. The disappearance of a person or relative in situations of armed conflict has an impact on the well-being of the family, which is characterized by sadness, depression and mental illness. Some people show avoidance symptoms, somatic physical symptoms, and the symptoms of "hanoin barracks" (a term in the Tetum language indicating deep anxiety or disturbing sadness). A small number of family members are unable to cope with it, they are traumatized and sometimes remember missing relatives, so they cannot live their daily lives properly.

From several examples, such as in the Conflict that occurred in Timor-Leste, the early years of the conflict were the most devastating. Many people died and many were separated from their families when a significant number of people were displaced, this process of displacement caused many families to become separated and separated from each other, the most missing were men who were the mainstay of the economy for their families. As a result the families they left behind faced often very difficult livelihood challenges.[22]

Apart from that, the greatest hope of the family is to be able to find the missing family, to be certain of the fate of the missing family, even if they are already dead or dead, the family will handle the body properly.

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[19] Abdul Baqi Ramdhun, *Al-Jihad Sabiluna (Jihad Jalan Perjuangan Kami)*. edisi terjemahan oleh Abdurrahman, . Solo: Pustaka Al-'Alaq, (2005), p.15.

[20] Majid Khadduri, *War and Peace In The Law of Islam*, Edisi terjemahan oleh Kuswanto, Yogyakarta: Tarawang Press, (2011), p.46-47.

[21] Zayyid bin Abdel Karim al-Zayyid, *Pengantar Hukum Humaniter Internasional dalam Islam*, Jakarta: Balai Pustaka, (2008), p. 30.

[22] ICRC, *Op.Cit.*, p.14.

In a war each party is required to search for people who have been declared missing by the other party as soon as conditions allow for the search to be carried out within the time limit before the confrontation ends. Each party is required to convey all of its details regarding the missing persons to their country of origin directly or through the Protecting Power, the Central Bureau for the Search of Missing Persons under the International Committee of the Red Cross, or national agencies such as Red Crescent Agency. If information about a person who has been declared missing is not sent through the International Committee of the Red Cross and the Central Bureau of the Search for Missing Persons, each party to the dispute has an obligation to ensure that this information is also provided to the Central Bureau of Search for Missing Persons.[23]

Meanwhile International Humanitarian Law also stipulates the obligation to respect the bodies of persons who are not citizens of the country where they died as a result of fighting from an armed conflict. The same respect should also be paid to the bodies of persons who died of causes related to occupation or in detention as a result of occupation or military operations.[24] The parties to the conflict are obliged to bury the victims who died in a respectful manner and if possible, their funeral is accompanied by a religious ritual in accordance with the beliefs of the victim concerned. If possible, each victim should be buried individually.

In the case of naval warfare, if the funeral of the deceased's body is to be carried out into the sea, it must be carried out individually as far as circumstances permit. If the bodies of victims of naval warfare are to be landed, provisions relating to burial procedures and burial places must be applied in accordance with the provisions set out above. In each condition, each party to the conflict is obliged to identify the identity of the victim who died and to make a report wherever possible.[25]

Additional Protocol I of 1977 also emphasized the obligation to provide facilities for the return of the bodies of victims who died and their personal belongings to their respective homelands. The Protocol also affirms the obligation to assist family members of deceased victims and representatives of the Official Cemetery Registration Service, to identify the burial places of the victims and arrange the necessary preparations for entry to burial places. The protocol also affirms the protection, maintenance and continuous care of the burial places of the victims.

Also, dead prisoners of war must be buried in individual graves, except where unavoidable circumstances necessitate the use of shared graves. The corpse may only be burned for urgent reasons, because of the religion of the deceased, or according to the clear wish of the deceased about it. In the case of cremation, this must be recorded and the reasons for this must be stated in the death certificate.

In order for attempts at graves to be found, all information concerning burials and graves must be recorded at the cemetery registration service administered by the detaining power. The list of graves and information concerning prisoners of war buried in cemeteries and other places shall be forwarded to the country to which the prisoners of war adhere to. The responsibility for the maintenance of these graves and the records of the subsequent transfer of bodies rests with the State which controls the territory, if that country is a party to this Convention. These provisions also apply to the ashes of bodies which must be kept by the cemetery registration service until the ashes can be properly delivered in accordance with the wishes of the country of origin of the prisoners of war.

In an armed dispute, the protected persons include combatants and the civilian population. Combatants who have 'hors de combat' status must be protected and respected in all circumstances. Combatants who fall into enemy hands gain the status of prisoners of war. The protection and rights of prisoners of war are regulated in Geneva Convention III. Meanwhile, the civilian population is entitled to protection as provided for in the Geneva Conventions IV and the 1977 Additional Protocols. Although the protection of civilians already has international legal arrangements, in its implementation in an area of armed conflict everything seems useless, there are still many civilians who are injured or killed and even leave their homeland to get a peaceful life. . Therefore, the Martens Clause Principle "Martens Clause" is needed in a situation of armed conflict.

Under the Geneva Conventions, the general protection granted to the civilian population must not be exercised on a discriminatory basis. In all circumstances, civilians have the right to personal respect, family rights, property and the practice of their religious teachings. Against them, the actions mentioned

[23] Protokol Tambahan I tahun 1977 Konvensi Jenewa, Pasal 33 Ayat (1) dan (3)
[24] Protokol Tambahan I tahun 1977 Konvensi Jenewa, Pasal 34 Ayat (1)
[25] Konvensi Jenewa I, Pasal 17, Konvensi Jenewa II, Pasal 20, Konvensi Jenewa III, Pasal 120, dan Konvensi Jenewa IV, Pasal 129.

in Articles 27-34 may not be carried out, namely; 1). Carry out physical and spiritual coercion to obtain information; 2). Doing actions that give rise to physical suffering; 3). Imposing collective punishment; 4). Committing intimidation, terrorism and robbery; 5). Taking them hostage; 6). Take revenge (reprisal); 7). Doing actions that give rise to physical suffering or enmity.

b. According to Islamic Law

Islamic law as the implementer or application of Islam is more clear (Al-Wudhuh) and human (Al-Insaniyah) than the concept of International Humanitarian Law. Islamic law is said to be clear (Al-Wudhuh), this is because Islam is a clear treatise related to its principles, legal sources, goals and objectives, as well as clarity of the system and the way of solving it[26], in this case Islamic law provides more clarity in terms of giving final decisions to prisoners of war in accordance with the benefit of mankind in general and Muslims in particular. Thus, this further clarifies the purpose of holding prisoners of war prisoner of war. This is different from the concept of International Humanitarian Law, which is unclear in carrying out detention to prisoners of war, as evidenced by the absence of goals to be achieved from the detention and after the detention was ended.

Islamic law is humanitarian (Al-Insaniyah), this is because Islamic law is a law that leads to human rights values besides humans as well as carrying out the obligations it carries.[27] In this connection, that every decision made by a priest is based on the benefit of mankind. So, Muslims in particular who have been deprived, insulted and even persecuted for their rights can feel calm because these things will not happen to their other brothers with the decisions that have been taken by the imam.

Islamic law appears to be an inhuman law because it is easy to take away lives (qishas), cut off hands for the punishment of those who steal, lashes for those who gamble and stoning for those who commit adultery. However, in fact this is not true when viewed from a point of view for the benefit of mankind, because imposing sanctions by causing a deterrent effect will have a positive impact on both the perpetrator and other communities.

Islam glorifies humans, both life and death, as in how to glorify the dead. Rasulullah Saw prohibits damaging the organs of the dead people. Islam argues that the enemy's corpse should be buried as a tribute to humanity. From the point of view of their religious beliefs, they are left to Allah SWT. This is a fact of concrete action to respect humans, both living and dead, regardless of differences in religion, belief and so on, which can damage this honor.

The Prophet Muhammad SAW, strictly prohibited the killing of prisoners of war without any reason related to the benefit of the people and ordered his companions to treat them with generosity and compassion. Islam also teaches Muslims not to commit actions that exceed the limits of the prisoners that cause the prisoners to die. Allah Jalla wa 'Ala (The Most Glorious, Most High) forbids transgressing actions in His words, "And do not transgress, because verily Allah does not like those who transgress." (AlQuran surah. Al-Baqarah [2] verse 190). The interpretation of this verse explains that Muslims are prohibited from fighting them first (those who fight against Muslims) and do not kill those who cannot be killed.[28]

In the history of warfare at the time of the Prophet, warfare was not the main mission in Islamic civilization, so what Westerners often say that Islam is a religion of the sword is completely untrue. Because basically war is only the last solution if diplomacy is not successful. In addition, war also only occurs when the enemy first harasses the Muslims and it is based on Surah Al-Baqarah (2) verse 190 which means: "And fight in the way of Allah those who fight against you, but do not exceed the limit. Indeed, Allah does not like those who exceed the limits. " (Qur'an, Surat Al Baqarah: 190) If interpreted more deeply, Muslims at that time fought when the enemy started the fire of war and although the enemy carried out various cunning war strategies (hypocrites), Islam did not want action that exceeds the limit, in the sense that Islam puts forward ethics in war.[29] Al-Alusi said: It is not permissible for a prisoner to be killed without a reason; and if that happens then the Imam must punish the ta'zir of the perpetrators, but he is not subject to a fine; And if the prisoner declares his conversion to Islam after being taken prisoner, then he cannot be killed but can be made a slave because his Islam does not prevent him from

[26] Tim BPA AAI, *Di Bawah Naungan Cahaya Ilahi*, Surakarta: Nurulhuda Press, (2007), p.93.
[27] Tim BPA AAI, *Ibid*., p.85.
[28] Teungku Muhammad Hasbi Ash Shiddieqy, *Al Bayan Tafsir Penjelas Al-Quranul Karim,* Semarang: PT. Pustaka Rizki Putra, (2002), p.74.
[29] Miftah Idris, *Loc.Cit*.

being a servant as a reward for his kufr during this time, it is different if he converted to Islam before being taken prisoner because he had converted to Islam before there was any element (servitude). to her.[30]

After the war, many people disappeared who were not informed about the news. Of course this is sad and painful for the family left behind. Families certainly really hope to get the best news, but the problem that occurs is that it is difficult to get information on the whereabouts of the missing family or relative. Therefore it is necessary to inform the enemy about the prisoners in their hands. In this case it is not justified to hide the names of the prisoners or deny their existence, because it is an insult to the prisoner and a harassment of their rights. The most important thing is to know the news of the soldiers after the battle, gather information about the missing soldiers, including those who died in the battlefield and their bodies remain among Muslims.

Islam glorifies humans, both living and dead, there are several texts on how to care for people who have died:

1) Rasulullah Saw prohibits damaging the organs of the body of a person who died, this is based on the Hadith narrated by Buraidah, that: Rasulullah in his order to a military commander to fear Allah SWT and not to cross the line. His words: "Fight in the name of Allah and on Sabilillah and fight against those who do not believe. Fight, but don't go overboard, destroy corpses and do cunning and don't kill children ". It is narrated from Anas bin Malik that: "the only sermon of the Prophet that is not like other Kutbahs, is to order charity and prohibit damaging the organs of a corpse". During the Uhud war, the enemy damaged the organs of the corpses of the Muslims, so the Prophet Muhammad said as follows in the interpretation (Tabari): "If we win we will cut the corpses of thirty of their people, when Muslims hear this someone says , "If we win over them, we can destroy their corpses like they did and no one from among the Arabs has ever done it." Then the Word of Allah came down: "And if you give reward, then pay back the same as the torment inflicted on you. But if you are patient, that is actually better for those who are patient. Al. Tabhari said, "Intending and informing, but not destroying the corpse's organs. Then Rasulullah Saw prohibited the destruction of the corpse's organs. On that basis, the destruction of enemy corpses was not justified.
2) Apart from prohibiting the destruction of corpse organs, Islam also prohibits carrying the head of a corpse and throwing it. Al-Zuhri said that the head of a corpse was never brought to the Prophet. In another narration, the Caliph said: "This is the tradition of foreigners (non-Muslims). This means that he criticizes and rejects actions like that which are not justified.
3) As an effort to protect human dignity is not to allow the corpse to be torn apart and devoured by wolves and birds, even avoiding as much as possible from all improper forms. Islam commands that the corpses do not become toys for wild animals or be damaged by vultures. Rasulullah Saw, buried the bodies of disbelievers and did not leave them lying on the ground. In the battle of Badr, the Prophet Muhammad (saw) issued an order to pull the bodies of the disbelievers near a spring and bury them. When he saw a corpse, he immediately ordered to bury it without asking about the religion of the corpse.

Along with the occurrence of armed conflicts in many parts of the Islamic world, Islamic war laws have become a necessity to protect civilians and those classified as hors de combat (combatants who no longer participate in conflict). Over the centuries, classical jurists have compiled an impressive legal literature, which, like international humanitarian law, puts forward the human aspect of war. Emphasizing the universality nature of the principles of international Humanitarian Law that transcend legal traditions, civilization and culture - is essential in order to increase respect and protection for victims of armed conflict in the Islamic world.

C. Conclusion

Protection of the Missing and the Dead Under international humanitarian law establishes the obligation to respect the bodies of persons who are not nationals of the country in which they died as a result of conflict from an armed conflict. The parties to the conflict are obliged to bury victims who died as a result of the conflict in a respectful manner and where possible, their funeral is accompanied by religious rituals in accordance with the beliefs or religions of the victims. Wherever possible, each victim

[30] Muhammad Ali Ash-Shabuni, *Tafsir Ayat Ahkam I dan II*, Edisi terjemahan oleh Muu'amal Hamidy dan Drs. Imron A'Manan, Surabaya: PT. Bina Ilmu, (2003), p.84.

should be buried individually, except when uncontrollable circumstances necessitate the use of a shared grave. The civilian population is entitled to the protection as provided for in the IV Geneva Conventions and the 1977 Additional Protocol. Under the Geneva Conventions, the general protection provided to the civilian population cannot be exercised on a discriminatory basis.

Protection of Missing Persons and Deaths In Islamic law contained in the Koran which is a provision for Muslims. Islamic law comes from Allah who governs every aspect of human life, both relating to human relations with fellow humans and human relations with God. The source of Islamic law comes from the Koran, Hadith, and Ijtihad. The aim and source of Islamic law in general is to prevent harm to humans and bring benefit to them, directing them to the truth to achieve the happiness of human life in this world and the hereafter. Islamic law is humanitarian (Al-Insaniyah), this is because Islamic law is a law that leads to human rights values. Islam glorifies humans, both living and dead, Rasulullah Saw prohibits damaging the organs of the dead, prohibits the destruction of corpse organs, Islam also prohibits carrying the head of a corpse and throwing it and maintaining human honor. Therefore it is suggested that every country is obliged to comply with international humanitarian law and parties who violate humanitarian law are given strict sanctions.

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