

FIQH PERSPECTIVES ON HUMAN CORPSE IN CONTEMPORARY TIMES

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Abstract

This article discusses some of the contemporary issues and challenges related to handling victims killed in contemporary armed conflicts and situations of violence and other natural disasters within the framework of international humanitarianism in a review of Islamic law. Forensic professionals face problems and challenges in contemporary Muslim contexts, cases, and law: mass burials, quick burials, exhumations, and autopsies. Contemporary scientific discoveries in intensive care units and the rise of industry, which aid in the successful transplantation of organs from cadavers, but reveal new problems from legal, humanitarian, ethical, and judicial perspectives: such as issues of determining the time of death, matters of life (or brain death), and boundaries artificial resuscitation limits, by conducting a literature study and a qualitative descriptive analysis approach, new problems were found in the handling of this corpse, namely, those related to a merciful death, how to injure corpses, the extent of a person's rights over his body after death, cloning of the dead, and so on. Other. These are all doctrinal and not medical matters. The final opinion on this matter is for the jurists; Because that is their specialty, and doctors' views on it are for clarification and reference only. The article concludes that both legal systems have established provisions designed to protect the dignity and respect of the dead and complement each other to achieve this protection in specific contexts and situations involving Muslim parties.

Keywords: Human, corpse, fiqh, perspective.

Abstrak

Artikel ini membahas beberapa isu dan tantangan kontemporer terkait dengan penanganan korban tewas dalam konflik bersenjata kontemporer dan situasi kekerasan dan bencana alam lainnya dalam kerangka kemanusiaan internasional dalam tinjauan hukum Islam. Di antara masalah dan tantangan yang dihadapi profesional forensik dalam konteks, kasus, dan hukum Muslim kontemporer adalah penguburan massal, penguburan cepat, penggalian, dan otopsi. Penemuan ilmiah kontemporer di unit perawatan intensif dan kebangkitan industri, yang membantu keberhasilan transplantasi organ dari mayat, tetapi mengungkapkan masalah baru

dari perspektif hukum, kemanusiaan, etika dan peradilan: seperti masalah penentuan saat kematian, masalah hidup (atau mati otak), dan batas-batas resusitasi buatan, dengan melakukan studi pustaka dan pendekatan analisis deskriptif secara kualitatif maka didapatkanlah permasalahan baru dalam penanganan mayat ini yaitu, yang berhubungan dengan kematian belas kasihan, cara melukai mayat, luasnya hak seseorang atas tubuhnya setelah kematiannya, kloning orang mati, dan lain-lain. Semua ini adalah masalah doktrinal dan bukan medis. Pendapat terakhir tentang masalah ini adalah untuk para ahli hukum; Karena itu adalah spesialisasi mereka, dan pendapat dokter tentang itu hanya untuk klarifikasi dan referensi. Artikel tersebut menyimpulkan bahwa kedua sistem hukum tersebut telah menetapkan ketentuan yang dirancang untuk melindungi martabat dan penghormatan orang mati dan saling melengkapi untuk mencapai perlindungan ini dalam konteks dan situasi tertentu yang melibatkan pihak-pihak Muslim.

Kata Kunci: Fiqh, jasad, manusia, perspektif

A. Introduction

Death is the decisive and cruel moment in which a person leaves this world and receives the afterlife, according to the Almighty's saying

﴿الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا﴾

Who created death and life to test which of you is best in deed

The word "death" is given precedence over life in the noble verse because it fears and terrifies the soul. The same is true for his remembrance and preparation for him and the notification that death is the beginning of the true, supreme life, not the life of this world. According to the Almighty, death is not the end, but rather it is a prelude to a more lasting and better life.

﴿قُلِ اللَّهُ يُحْيِيكُمْ ثُمَّ يُمِيتُكُمْ ثُمَّ يَجْمَعُكُمْ إِلَى يَوْمِ الْقِيَامَةِ لَا رَيْبَ فِيهِ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ﴾

Say: God will bring you to life, then He will put you to death, then He will gather you together until the Day of Resurrection. There is no doubt about it.

﴿لَنَحْنُ قَدَرْنَا بَيْنَكُمْ الْمَوْتَ وَمَا نَحْنُ بِمَسْبُوقِينَ﴾

We have ordained death among you, and we are not preceded by death.

Means, We have decreed and ordained death for you and made us equal among you in it, the honorable and the lowly, and the prince and the homeless, and we are powerless.

Furthermore, death linguistically is stillness, and everything inhabited has died, and it is also what has no soul in it. Death and life are two opposites, and they do not meet at the same time. After all, death is an existential quality that was created against life, which removes the power of feeling, development, and sanity, as it is the separation of the soul from the body because the body is not fit to contain it. According to Islamic law, death is the soul's exit from the body or the complete separation of a person from life. After that, all organs completely cease to perform their functions, which the doctors determine. And everyone dies. There is no difference between a soul and a soul in tasting the dose of the separation of life through the soul separated from the body because the Almighty is saying: "Every soul will taste death". But the difference is in something else and in another value, in the inevitable fate that deserves to be taken into account, because of His saying, the Mighty.

B. Result and Discussion

1. Search for and Collect the Dead

Ancient fiqh rulings regulating armed conflicts were based on specific texts - religious, historical, and legal - that primarily dealt with war situations in the seventh century AD in which:

- (1) the warring parties in some cases, identified their combatant enemies by name, and some of the reason for this is due to Tribal affiliations
- (2) The degree of destruction and casualties was limited due to the primitive weapons available and the custom of conducting hostilities away from populated areas.

The purpose of this is to refer to the accurate documentation that is still in our hands today and includes lists of the names of those killed in the first battles during the life of the Prophet PBUH. Specifically between 624-632 AH and the names of prisoners of war and some testimonies showing the treatment they received while captives. The books of hadith and the Prophet's biography indicate that women in the life of the Prophet were providing in the field of combat the work and humanitarian services provided

by health care teams and humanitarian aid societies in contemporary armed conflicts. Although some women were fighting on the battlefields at that time - something that was documented by many narrations - it included their roles, as explained by Nusaiba bint Al-Harith Al-Ansari, may God be pleased with her (a narrator of the hadiths of the Prophet and a jurist whose nickname was "Umm Attia" (she died) In 643 AH, treating the wounded, caring for the sick, and preparing food. Al-Rabi` bint Mu'adh bin Afraa (died in 665 AH) said, "We used to return the dead and wounded to Medina."¹

It is inferred from the narration of al-Rabi', which shows that women participated in evacuating the remains of the dead Muslims and documenting the dead cases in every military engagement. As shown in particular in the Prophet's biography that the process of searching for and collecting the dead is one of the necessary measures that must be undertaken to ensure respect for human dignity. For example, after the war ended in the Battle of Uhud, the Prophet asked his companions to search for Sa'd ibn al-Rabi`, may God be pleased with him (died in the year 625), to see if he was one of the dead or still alive. In the same battle, the Prophet searched for the body of his uncle Hamzah. May God be pleased with him (he died in the year 625) after the fighting ended. The Prophetic Sunnah shows that searching for the dead in the ranks of the Muslim army, determining their identity, and gathering them is an obligation on Muslims. In the following, we will discuss dealing with dead enemies.²

2. Return of the Remains and Personal Effects of The dead

Burying the dead is an obligation of sufficiency for the Muslim community. This means that the entire Muslim community is sinning if it does not conceal its dead unless it is beyond their knowledge or beyond the limits of their ability. As evidenced by the narration of Al-Rabi`, Muslims are obligated to return the dead Muslim soldiers from the battlefield to their

¹ حسن ابراهيم حسن، تاريخ الاسلام السياسي 4/1 والديني والثقافي والاجتماعي (دار الجيل للنشر والطباعة والتوزيع، 2001)، 211. <https://books.google.co.id/books?id=1C4CjwEACAAJ/1>.

² حسن، 352.

families. Otherwise, when it is impossible to return the dead from the battlefield to their families, it is permissible to bury them in mass graves in this case of necessity, as shown in the discussion below. Likewise, there is precedent in early Islamic history for returning the dead to the opposing party, in the Battle of the Trench in the year 627 AH, when the number of Muslims in it was less than a third of the alliance that included their enemy attackers. Nawfal bin Abdullah bin Al-Mughira was killed when he tried to jump on his horse to break into the trench that the Muslims had dug around Medina to repel the attack of the people of Mecca. When the people of Mecca offered a sum of money for Nawfal's body, the Prophet gave them his body and refused to accept the money. Indeed, the old jurisprudential provisions in this respect are consistent with international humanitarian law and seem to go beyond the traditional rules of international humanitarian law in protecting the dignity of the dead and respecting the needs of their loved ones.

In many cases, international humanitarian law permits the burial of the remains of the dead without attempting to return them to their families as long as they are "buried appropriately for example, no one has argued that burying soldiers in World War II on the beaches of Normandy, rather than returning their remains to their loved ones, constitutes a violation of international humanitarian law when today's families expect the remains of their loved ones to be returned to them after death.³ In any case, ancient jurisprudence stipulates that the property of a deceased non-Muslim enemy becomes spoils of war - similar to the rule in international relations at the time. These rulings on the spoils of war are based mainly on textual sources - the Qur'an (verse 41 of Surat al-Anfal) and the Prophet's Sunnah - and are organized in detail in Islamic jurisprudence books. In short, one-fifth of the spoils shall be distributed among certain classes, and the remainder shall be distributed to the army. Some Hanafi and Shafi'i jurists give the guardian the

(مكتبة الآداب، 1946)، v. 10 531، سابق، السيد، *فقه السنة*، فقه السنة³
<https://books.google.co.id/books?id=J7JMAQAAIAAJ>.

freedom to return the property to the defeated opponent. The general and strict rule states that the guardian is the one who is entrusted with distributing the spoils, and then it is forbidden for Muslims to take anything from the spoils before it is distributed to them by the guardian. This is from Ghulul, and it is one of the major sins that the Holy Qur'an referred to in verse 161 of Surat Al-Imran. Moreover, the second Caliph, Omar Ibn Al-Khattab (reigned from 634 to 644), sent written commandments to his workers in which he said: "Do not exaggerate, do not be treacherous, and do not kill a young child, and fear God among the peasants."

In inter-Muslim conflicts or in what can be classified as non-international armed conflicts, ancient Islamic jurisprudence stipulates that money and weapons confiscated from armed rebels - both living and dead - should be returned to them after the cessation of hostilities. In other words, it is forbidden for the two parties to the conflict to take the spoils of war in the fighting that is taking place between Muslims. If respected in fighting between Muslims, this specific provision would protect many civilian objects such as cultural and private property from looting or destruction. This is especially true if either or both parties use Islamic law as a reference source.⁴

3. Muslim Mortal Remains

Islamic law has laid down detailed provisions regarding the treatment of dead Muslims. Most importantly, regarding the area of interest of this article, it contains a set of requirements for dealing with martyrs. In sum, the early Muslim jurists unanimously agreed that a martyr is someone who dies fighting infidel.⁵ Specifically, non-Muslim enemy combatants - or situations that can be categorized as a non-international armed conflict according to the traditional caliphate model in which all Muslims are united under authority. One rule. Under this model, any armed conflict between Muslims is

⁴ Islāmīk Fiqh Akāidmī, ed., *Fatwā fiqhīya mu'āsira*, Ṭab'a 1 (Bairūt: Dār al-Kutub al-'Ilmīya, 2008). 211

⁵ Meirison Meirison and M. Harir Muzakki, "Implementing The Spirit of Jihad in Sufism," *Jurnal THEOLOGIA* 31, no. 1 (November 6, 2020): 1, <https://doi.org/10.21580/teo.2020.31.1.5379>.

considered a non-international armed conflict. At the same time, a fight with a non-Muslim majority country is regarded as an international armed conflict. The ancient jurists deliberated on whether the special provisions regarding dealing with martyrs apply in those who die in fighting between Muslims and specifically in the case of fighting prostitutes. Most of the jurists agreed that the same rulings that apply to martyrs also apply in this case. a Muslim dies in natural disasters or is burned or drowned outside of the combat situations referred to above. They classified among the martyrs from a certain aspect, his body is subject to the same standard procedures followed as those who die in normal circumstances. As for the inherited one, he is wounded in the contexts described above, then saved and lives an everyday life for some time, and then dies from the wounds he sustained in the war. He judges that he is not subject to the same procedures as dealing with the martyr, according to the opinion of most jurists.⁶

The two battles referred to above, Badr that took place in March 624 and Uhud that took place in March 625, respectively formed two precedents from which the provisions relating to dealing with dead Muslims and non-Muslims were derived, and the main reason for this is that these two battles witnessed the largest number of battles. Of the dead among the Muslims and their enemies in the life of the Prophet. Thus, based on the manner of dealing with Muslim martyrs at the Battle of Badr and the narrations attributed to the Prophet in this regard, Muslim jurists unanimously agree that the following three provisions should be observed exclusively in the case of martyrs. First, Muslim jurists, except for Said ibn al-Musayyib (died 712 or 713) and al-Hasan al-Basri (died 728), are unanimously agreed that the body of a martyr is not washed.⁷ Other [jurists] provide religious justifications regarding the special status of the martyrs and

⁶ ‘Alī Ibn Muḥammad al-Māwardī et al., *al-Ḥāwī ʾāl-kabīr: fī fiqh madhab al-Imām aš-Šāfiʿī wa-huwa šarḥ muḥtaṣar al-Muzanī* (Bayrūt: Dār al-kutub al-ʿilmiyya, 1999), 89.

⁷ عبد الرحمن الجزيري, *الفقه على المذاهب الأربعة 1-5 ج 4*, الفقه على المذاهب الأربعة 1-5 ج 4 (Dar Al Kotob Al Ilmiyah دار الكتب العلمية), 77, <https://books.google.co.id/books?id=O0RwDwAAQBAJ>, 2014.

that they are alive with their Lord, sustenance (verse 169 of Surah Al-Imran), and that their sins are already forgiven. Therefore there is no need to perform funeral prayers on them; because of this great position of martyrs under Islamic law and Islamic cultures, it is essential to add here that the former Libyan President Muammar Gaddafi, who was killed on October 20, 2011. He wrote in his will that if his enemies killed him, "I command that I not wash, And to be buried according to the teachings of Islamic law [which is applicable in the case of martyrs] and in my clothes in which I die." This indicates that Qaddafi expected that he would be killed and saw that he deserved to be treated as a martyr; It was clear that he considered his cause just. Likewise, photographs of Palestinians killed by the IDF show that they are buried as martyrs - that is, without ritual washing or shrouding.

4. Non-Muslim remains

There is a duty towards enemies, Muslims, and non-Muslims to collect and bury the dead from the opposing party. As explained above, the issue of returning dead bodies from the opposing party finds a precedent in early Islamic history. If any reason prevents the opponent from burying his dead, it becomes obligatory for Muslims to undertake this task. The Andalusian jurist Ibn Hazm (died 1064 AH), the author of the vanished *zahir* madhhab, justifies this obligation by arguing that if Muslims do not bury the corpses of the enemy in this case, they will decompose or be eaten by beasts or birds, which constitutes the act of mutilating the dead, which is prohibited by Islamic law.⁸ Among the many commandments that the Prophet said regarding the prohibition of mutilating the dead are:

5. Mass Graves

The rule in Islamic law states that each dead person should be buried in a separate grave. Nevertheless, it is possible, when necessary, to bury two

⁸ Meirison Meirison, "Islamic Tolerance on Religious Freedom, Culture and Thought in Andalusia," *HIKMATUNA; Vol 6 No 1 (2020): HIKMATUNA: Journal for Integrative Islamic Studies, Juni 2020* DO - 10.28918/Hikmatuna.V6i1.2313, June 16, 2020, <http://e-journal.iaipekalongan.ac.id/index.php/hikmatuna/article/view/2313>.

or three of the dead, or even more than that in the same grave if the need arises. Men and women should be planted in separate graves, but if necessary otherwise, early Muslim jurists said that a barrier of the earth should be placed between the dead. In the Battle of Uhud, the Muslims were afflicted, with the most significant deaths recorded in a single military confrontation. The Muslims told the Prophet that it was difficult to dig individual graves for each of the seventy martyrs. Hence, the Prophet ordered them to dig deeper graves and bury two or three martyrs in each grave. Based on this precedent, Muslim jurists unanimously agree that mass graves are permissible in cases of necessity in armed conflicts and other violent or natural disasters situations.

Today, mass graves of the dead, usually of the same family, are common in many Muslim countries, simply because of the limited space available for graves in villages and towns or the inability to pay the costs of building a separate grave for each dead person. It is worth adding that there are various Islamic rulings and regional, cultural and traditional practices throughout the Muslim world regarding digging or building graves and marking graves with the names of the dead. For example, in some countries, tombs are built above the ground and marked with the terms of the dead and the date of death to identify the various dead, which is permitted by Islamic law according to Fatwa No. 4341 issued by the current Egyptian Grand Mufti on March 7, 2018. However, the dead are buried in Other Muslim countries underground without revealing their names.

Early Muslim jurists unanimously agreed that Muslims and non-Muslims should be buried in separate graves. However, they discussed various specific cases in this regard. For example, jurists offer conflicting opinions in cases where it is impossible to determine the religious identity of several dead people. The majority believes that they should be buried in particular graves, not in the tombs of Muslims or non-Muslims. However, a minority of them think that they should be buried in the graves of Muslims, and another minority believes that they should be buried in the tombs of non-

Muslims. Despite this difference of opinion, the jurists are unanimously agreed that if a dead child is found and his identity cannot be determined, he should be buried in the graves of Muslims. The practice of separating the graves of Muslims from the graves of non-Muslims is still observed in Muslim countries.

6. A proper Burial Without Unfair Discrimination

The above discussion shows that burying the dead of the Muslim army is obligatory on that army, while burying the dead of the enemy is not compulsory unless the enemy army does not bury their dead. From an Islamic perspective, all people are born with instinct, and when they die, any causes of hostility or enmity existed towards them before their death cease. It is considered that they have moved to another life or situation in which they are in the hands of God Almighty, and respecting them has become like respecting their humanity. In the early years of the first decade of the Islamic era, hostilities erupted between the nascent Muslim community and the three main Jewish tribes in Medina. However, when a Jew's funeral passed by the Prophet, he stood in respect. It seems that one of the companions of the Prophet was surprised by this and said that it belonged to a Jew. The Prophet replied briefly, as if denouncing the question of respect for any dead person, so he said: "Is it not a soul?"

It seems unclear whether the context of the travel to which Yala Ben Murra is referring was during an armed conflict or not. However, in any case, it is essential to note that this account reminds us of Rule 112 of the study of customary international humanitarian law from two sides within Other aspects. The first is the distinct lack between the dead (that is, in terms of their affiliation with the Muslim army or the enemy) and the second whether they participated in hostilities or not.

In the same context as the burial of the dead in respect for the dignity of the dead person and his family, Islamic law also requires that the limbs of the body or even the amputated limbs of persons who are still alive be buried, as is the case in surgeries or amputations that are carried out within the

framework of stipulated corporal punishments them in Islamic law. Muslim jurists broadly agree that body parts found after the burial of the dead should be buried, and Hanbali jurists add that said body parts should be buried next to or inside the grave without revealing the deceased's body for re-collection.

7. Prohibition of Representation of The Enemy Body

In the same context as protecting the human body in respect of human dignity, Islamic law regulating armed conflicts strictly prohibits the representation of the enemy. The representation of enemies was recorded as a sign of revenge in the fighting between the Arabs, and the practice of carrying the heads of the leaders of the enemy's armies after they were cut off in the wars between the Romans and the Persians was mentioned. In the Battle of Uhud in March 625, many of the dead Muslims were brutally mutilated, including the uncle of the Prophet Hamzah bin Abdul Muttalib. May God be pleased with him. The Prophet and the Muslims vowed to avenge their enemies by representing them in future military clashes. However, when verses 126 and 127 of Surah An-Nahl were revealed, the Prophet forbade representation. Among the commandments of the Prophet regulating the use of force during armed conflicts is his saying: "Do not be exaggerated, do not be treacherous, and do not pretend." The Prophet emphasized the brutality of acting and forbade it, "even with a sterile dog." Likewise, the first Caliph Abu Bakr al-Siddiq, may God be pleased with him (died in 634), sent written commandments to his governor in Hadhramaut, Yemen, in which he said: "Beware of example among the people; It is sinful and repulsive." And when they presented him with the head of a penguin, the leader of the Syrian army, and they justified this by saying, "They are doing this to us." He reprimanded them, may God be pleased with him, and said: "Will you be watching over Persia and the Romans? He does not carry ahead to me, for the book and the news suffice me." He means by saying the book the Noble Qur'an and the news the Sunnah of the Prophet. The answer of Abu Bakr, may God be pleased with him, was revealing, as it shows that Muslims have intrinsic motives to adhere to Islamic law. Then if Muslim

scholars spread the provisions of the Islamic law that regulate armed conflicts between Muslims, this may have a significant impact on the use of force in some cases in which it is used Arms bearers of Islamic law as a reference.⁹

It should be added in this regard that despite these categorical texts that forbid representation, a limited number of jurists such as Al-Mawardi (died in 1058) and Al-Shawkani (died in 1834) are of the view that beheading the leaders of enemy armies if it serves the interests of Muslims (i.e., helps them to Victory in the war), there is nothing wrong with doing it as a means to intimidate the opponent and force him to stop the war. It is clear that recourse to the principle of public interest, as in this example, can justify opposing ideas based on the person(s) assessments of what constitutes the interest of Muslims.¹⁰

8. Hurry Up Burial

There are different manifestations of the principle of respect for the dead in different cultures and periods. In Islamic law and Muslim cultures, burying the dead in the ground is appropriate to respect them. In contrast, Islamic law forbids cremation because, unlike in some cultures, it violates the dignity of the human body. To illustrate this, although the current Egyptian Grand Mufti, Dr. Shawky Allam, issued Fatwa No. 3246 dated May 14, 2015, permitting cremation of the dead bodies of Ebola victims and then burying them in graves afterward if burning is the correct way to stop the spread of the disease. Some scholars and other muftis rejected this fatwa because they considered burning remains forbidden even in this case.¹¹ As

⁹ “Muslim Occupation in France According to Arabic Literature and Western Historical Evidences,” *Journal of Al-Tamaddun* 16, no. 1 (June 29, 2021): 17–25, <https://doi.org/10.22452/JAT.vol16no1.2>.

¹⁰ Madadin Mohammed and Magdy A. Kharoshah, “Autopsy in Islam and Current Practice in Arab Muslim Countries,” *Journal of Forensic and Legal Medicine* 23 (March 2014): 80–83, <https://doi.org/10.1016/j.jflm.2014.02.005>.

¹¹ Jill Davies, “Book Reviews : Transcultural Medicine-Dealing with Patients from Different Cultures by Dr Bashir Qureshi. Published by Kluwer Academic Publishers, 1994. 243pp, £29.95. Hardback. ISBN: 0 7923 8836 4,” *Journal of the Royal Society of Health* 115, no. 6 (December 1995): 406–406, <https://doi.org/10.1177/146642409511500628>.

for natural circumstances, the frequent narrations from the Prophet indicated that it is desirable to hasten the burial of the dead, and the meaning of the *mustahabb* is that the issue is not an obligation or an obligation. However, there were no indications in these frequent narrations that specify the amount of time that would fulfill the requirements of expediting the burial. Nevertheless, in the case of the stabbed (plagued), the paralytic (paraplegic), and the paralyzed (in a coma or coma), the early Muslim jurists thought that Muslims should wait day and night to verify the death of these people. The reason for waiting in these three cases is that there is a possibility that the person has not died yet.¹²

9. Exhumation of Mortal Remains

The term "grave digging" is associated in Islamic writings and early Muslim history with robbing graves. The jurists used the word "digging up the graves," whether about the exhumation of the dead to take criminal proceedings or for other purposes, such as the examples shown below. The Kuwaiti jurisprudence encyclopedia, arranged in forty-five volumes, defines the gravedigger who searches the graves for the dead to steal their shrouds and ornaments, a crime that deprives the perpetrator of accepting his testimony. This historical connection has resulted in a very negative connotation of these in many Arabic-speaking cultures. In addition, the principle of respect for the dead requires that their graves not be exhumed. Thus the early Muslim jurists unanimously agreed on the prohibition of exhuming graves except in cases of necessity. One of the distinguishing features of Islamic law is that the early Muslim jurists not only set forth provisions regulating the situations that Muslims face in their daily lives in many areas of Islamic law, but also envisioned hypothetical situations and put in place provisions that regulate them in anticipation of their actual occurrence. Accordingly, the early Muslim jurists discussed the

¹² Meirison Meirison, "RELIGIOUS TOLERANCE IN THE OTTOMAN EMPIRE," *Fakultas Syariah Dan Hukum* Vol 19 No 2 (2019): Nurani, no. 2 (2019): 185–98, <https://doi.org/10.19109/nurani.v19i2.3261> Main Article Content Meirison Meirison Meirison IAIN Imam Bonjol Padang Abstract Islam is a.

permissibility of exhuming graves in several cases, including cases that appear to be hypothetical¹³. Examples of exhuming the remains of the dead for religious purposes include exhuming a deceased person who was buried without performing the rituals of washing or shrouding or performing the funeral prayer.¹⁴

Examples of exhuming graves in civil liability cases are buried with the dead gold, money, or valuable possessions, if the deceased swallowed a piece of jewelry before death, or if he was buried in a usurped land. The landowner asked to remove the grave from the ground, or in the case of a living fetus in the womb of a dead woman. In all these examples, the jurists support the exhumation of graves because the ownership of all the things that accompany the dead devolves by law to his heirs according to their legal share, which Islamic Sharia determines.¹⁵ Therefore, valuables and personal items found with the dead during armed conflicts or natural disasters should be returned to their families. Likewise, the fulfillment of the right of the living, in this case concerning the owner of the usurped land on which the grave is built, takes precedence over respecting the dead.¹⁶ The same rationale applies to saving a living fetus; otherwise, this would constitute a crime against the soul of a living human being, even if he had not yet been born. Examples of exhuming the remains of the dead to achieve the purpose of the public interest are exhuming graves to build public roads or if a flood or water leakage hits the graves. Hence, considerations of public interest here constitute legitimate grounds for exhumation.

¹³ Meirison ., Fadhilah Insani . Insani, and Zahara Andini, “Epistemology of Basic Concepts of Spiritual and Physical Taharah: Analysis of The Benefits of Ablution Spiritually and Physically,” *Al-Insyiroh: Jurnal Studi Keislaman* 7, no. 1 (March 16, 2021): 26–43, <https://doi.org/10.35309/alinsyiroh.v7i1.4080>.

¹⁴ Islāmīk Fiqh Akaidmī, *Fatwā fiqhīya mu’āsira*, 22.

¹⁵ Ahmed Daoudi, *Les produits carnés halal: charcuteries et préparations bouchères* (Conflandey (Haute-Saone); [Lieu de publication non identifié: MAÉ-ERTI; Koutoubia, 2006), 11.

¹⁶ Rasyid Al-Hafizh, Fachrul Rozy, and Zaim Rais, “USUL AL-FIQH: ITS EPISTEMOLOGY, PURPOSE, AND USE” 19 (2021): 15.

10. The Anatomy

An autopsy or post-mortem examination means an autopsy for educational, scientific, or legal purposes—that is, to determine the cause of death. This practice was not unknown in Islamic history. Abu Bakr Muhammad ibn Zakariya al-Razi (born 854 - 925) and al-Husayn ibn Abdullah ibn Sina (died 1037) lived in the country known today as Iran, used dissection for educational purposes. However, Ali ibn Abi al-Hazm ibn al-Nafis (died in 1288 AH), who was born and educated in Syria, then assumed the position of head of the Nasserite bimaristan in Cairo and was also known as the first to describe the pulmonary circulation, did not perform autopsies for educational purposes because he believed that this was not permissible. According to Islamic law, the autopsy is practiced in Muslim countries by specialists in forensic medicine departments located in justice or health ministries.¹⁷ However, unless the autopsy results in the case of a court order due to suspicion of death as a result of a criminal act and the parents are interested in knowing the cause of death, there is a common tendency in Muslim societies to reject autopsy because it leads to the mutilation of the dead and thus violates his sanctity. Not presented in Islamic religious books or ancient legal literature, the current Islamic legal deliberations on this issue by some muftis primarily reflect a kind of deliberation between the principle of respect for the dead on the one hand and the legal duties of determining the cause of death in the event of a suspected criminal act. And the scientific and educational benefits of anatomy on the other hand. Based on the principle of public interest and the two Islamic legal principles "necessities permit prohibitions" and "choosing the lesser of two evils," most Muslim jurists and the principal Sharia and Fatwa Councils in many Islamic countries such as Egypt, Saudi Arabia, Jordan, and Palestine allow autopsy for criminal investigations and scientific and educational benefits. It is worth noting that the example of dissecting the uterus of a dead woman to save the

¹⁷ Mohammed and Kharoshah, "Autopsy in Islam and Current Practice in Arab Muslim Countries."

fetus, which the early Muslim jurists gave, was quoted in this regard by contemporary muftis for the permissibility of dissection.¹⁸

11. The Opposite Sex deals With The dead

The handling of corpses by forensic specialists of the opposite sex follows, in principle, the same Islamic position on the examination of patients by medical professionals of the opposite sex, which is the subject of one of the chapters on the most accurate books of hadith compiled by Muhammad ibn Ismail al-Bukhari (died 870). The Islamic Fiqh Academy of the Muslim World League in Jeddah issued Resolution No. 8/12/85 D in its eighth conference, held in Brunei from June 21 to 27, 1993, in which it decided that the principle is that if a specialized female doctor is available, she must examine the patient. If he is not available, This is done by a trustworthy non-Muslim doctor, and if that is not available, a Muslim doctor does it. If a Muslim doctor is not available, a non-Muslim doctor can take his place.¹⁹ He provided that he looks at the woman's body as much as is needed in diagnosing and treating the disease and not more than that and turning a blind eye As much as he can and that the doctor treats this woman in the presence of a *Mahram*, a husband or a trusted woman for fear of being alone. However, these rulings do not apply in cases of necessity, based on the Islamic jurisprudence rule that necessities permit prohibitions. Thus, firstly, medical professionals of the opposite sex can perform the examination in the following cases of necessity: lack of specialization or lack of confidence in the competence of the medical professionals involved or during armed conflicts in which Muslim men are fighting, and health care personnel are needed of women to treat the wounded and injured. Secondly, the condition that requires a husband or mahram during the examination does not also

¹⁸ Mohammed Imran Sajid, "Autopsy in Islam: Considerations for Deceased Muslims and Their Families Currently and in the Future," *American Journal of Forensic Medicine & Pathology* 37, no. 1 (March 2016): 29–31, <https://doi.org/10.1097/PAF.0000000000000207>.

¹⁹ Meirison Meirison, "Sejarah Kepemimpinan Wanita Di Timur Tengah Dalam Tinjauan Hukum Islam (Analisa Terhadap Syajar al Durr)," *Kafa'ah: Journal of Gender Studies* 9, no. 1 (July 30, 2019): 50, <https://doi.org/10.15548/jk.v9i1.231>.

apply in cases of accidents and emergency medicine because it is a case of necessity.²⁰

12. Burying The Dead at Sea

It is interesting to find that early jurists deliberated on burial at sea, although their discussion was not necessarily related to the circumstances of the armed conflict. However, it should be noted that early Muslim jurists have deliberated on this issue since the seventh and eighth centuries as

- (1) no international agreements were governing this issue and
- (2) the state of war was the norm in international relations at the time unless a peace agreement was concluded, as shown in the scholar's deliberations on this issue.

Briefly, we say that the rationale for their discussion on this question appears to be the necessity of ensuring a proper burial of the dead in the event of death onboard a ship at sea. In this context, the position of the early Muslim jurists considered the following three cases. In the first case, if it is possible to wait until ashore is reached without the body of the dead being altered, the burial should be postponed until the ship reaches land and is buried as usual in a grave. This ruling is based on the case of Abu Talha Zaid bin Sahl bin Al-Aswad bin Haram, who died on a ship at sea, and his body was preserved for seven days until the ship reached the first island and was buried there. In the second case, if it is not possible to wait until reaching the shore without the dead's body being changed, it should be tied in a piece of wood and placed in the water until it floats. The waves take it to the nearest shore if that area is inhabited by Muslims who will respect the dead and honor his burial. As for the third case, if the deceased is to be met by enemies on the nearest shore who may violate his sanctity, the dead should be tied up in something heavy and sent to the sea.

The official website of the office of His Eminence the Supreme Religious Reference, Sayyed Ali al-Hussaini al-Sistani, representative of the

²⁰ السيد، فقه السنة، 411.

Shiite supreme religious authority, briefly describes Islam's position as follows:

If a dead person dies on board the ship, if it is possible to delay to be buried in the ground without hardship, then that is obligatory. Suppose it is not feasible for fear of his corruption or the prevention of an impediment. In that case, he is washed, shrouded, embalmed, prayed over, placed in a container, her head is leaned, and thrown into the sea-facing the qiblah as a precaution. The dead person is burdened with a stone or something like that by placing it on his leg. He is also thrown into the sea.²¹ The above discussion shows that the secret burial of Osama bin Laden by US forces at sea was not per Islamic law regarding the place of burial. Although US forces claim that bin Laden was buried by Islamic burial rites, which most likely mean washing, shrouding, and funeral prayer, there is no justification for burying him at sea in light of the discussion of the jurists set out above. Islamic law requires that the dead be buried in graves on the ground, and burial at sea was not discussed except in the case mentioned above. The US administration decided to bury bin Laden in a secret place at sea because it believed that if he were buried in an actual grave in the land, it would become a shrine visited by some Muslims.²²

C. Conclusion

Studying the convergences between IHL and the old legal, cultural, and domestic traditions will lead to the universalization and dissemination of contemporary IHL principles to the general public because these principles do not intrinsically conflict with previous attempts by various early legal, cultural and domestic traditions. Thus, the universality of IHL will be reinforced first by making it clear that its humanitarian principles and philosophy are generally self-evident, and secondly by emphasizing that it is the most comprehensive, most specialized, and up-to-date legal system capable of humanizing

²¹ الجزيري, *الفقه على المذاهب الأربعة* 1-5 ج 4, 3/99.

²² Thomas Walker Arnold, *The Spread of Islam in the World: A History of Peaceful Preaching*, Repr (New Delhi: Goodword Books, 2003), 91.

contemporary armed conflicts. This means that prior legal, cultural, and local traditions can be essential in promoting respect for IHL in specific contexts.

This article is an abridged version of a more extensive study on the handling of the dead from an Islamic perspective: Forensic considerations in humanitarian action. An English version of it was published in the latest issue of the International Review of the Red Cross. See [here](#) to read the contents of this issue in Arabic and the English version of the study.

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