

Research Article

Dispute Settlement Between Islamic Law State and Non-Islamic Law State: An Islamic International Law Perspective

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ORCIDEka An Aqimuddin: <https://orcid.org/0000-0001-9941-9263>**Abstract.**

The Islamic Law State is one of the existing state forms in real politics. When an Islamic state interacts with a non-Islamic state, conflict is inevitable. When this happens, Islamic law stipulates that all disputes must be settled in accordance with the Quran and Sunnah. This study explores what might transpire if one of the parties in conflict refused to accept the application of Islamic law to resolve the conflict. This study aims to look at the Islamic legal principles that can be used to settle conflicts between Islamic and non-Islamic states using a normative-juridical and historical approach. According to the results of the study, a dispute with a non-Islamic state must be settled amicably through an agreement whose provisions do not violate Islamic law. If this tactic does not work, though, going on a war is acceptable as long as you do it fairly and with a defensive attitude.

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1. INTRODUCTION

The relationship between religion and international law, especially Islam, has a long relationship and history. [1] Islam, as a complete and perfect religion, is manifested in a unique legal system that regulates all aspects of its adherents. In addition to arranging the relationship between Muslims, interreligious affairs must also be managed. The interaction between Muslim and non-Muslim states in international politics is governed by Islamic International Law or *Siyar* [1] [2]. In terms of sovereignty, however, Islamic international law differs from general international law. International law asserts that sovereignty was founded on territorial equality between states. [2] In contrast, *Siyar's* conception of statehood is universal and unrestricted by territorial considerations. [3] In Islam, the concept of the state is based on upholding the Islamic creed regardless of geographical boundaries.

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When Islamic Law State (henceforth ILS) interacts with non-Muslim states, *Siyar* classifies states or political entities as differentiated to apply particular legal provisions. While the Qur'an and Sunnah provided only guidance and no clear rules for this concept, Islamic jurists or fuqaha eventually classified it through *ijtihad*. In general, the category of *Siyar*-based states comprises three types: *Dar Al Islam*, *Dar Al Harb*, and *Dar Al-Hadi*, [4] [5]

Dar al-Islam is a region whose legal system is based on Islamic law or governed by Muslims. On the other hand, *Dar al-Harb* is a territory that non-Muslims administered neither utilized Islamic law as its internal legal system. The relationship between the two territories is perpetually hostile or tense. In addition, any peace agreement between them would be temporary until *Dar al-Harb* became *Dar al-Islam*. Imam Syafii created a third category, *Dar Al-Ahdi* or *Dar Al-Sulh*, consisting of neutral regions negotiating peace treaties with Dar al-Islam. The Islamic government will protect this peaceful region if they comply with the agreement. Contemporary practice dates back to 1535 when Sultan Suleyman I of the Ottoman Empire of Turkey and King Francis I of France signed a peace treaty to protect the latter. [4]

Following the collapse of the Ottoman Empire in 1924, the Muslim population was divided into several states. At least four typologies—Islamic State, Muslim State, Arab State, and Islamic Law State—are frequently used to define the relationship between the State and Islam (ILS). The word "ILS" is used in this study to refer to both the Islamic legal system practised within the internal legal system and the Muslim community in a majority country. [6] This definition will be helpful to see how ILS behaves in resolving disputes with the non-Muslim state in international forums.

In this study, a non-Islamic state is defined as a region without a majority Muslim population or one that does not base its policies on Islamic law. Therefore, it is essential to understand how *Siyar*, Islamic international law, governs this connection, mainly when a dispute occurs. There will be two sections to this article. The first section will go over the *Siyar* notion as it relates to the state and assess the ILS in the modern day. Additionally, it will talk about conflicts from Islamic international law's perspective and contrast it with other legal systems. The final section will cover how Islamic law governs disputes between states that uphold Islamic law and those that uphold non-Islamic law.

2. FINDINGS AND RESULTS

2.1. Dar Al Islam, Dar Al Harb and Dar Al-Ahdi

Islamic jurists divide this world region into two parts: *dar al- Islam* and *dar al-harb*. First, *dar al-Islam* includes all countries which regulate by Islamic laws or whose Muslim

population can implement Islamic laws without any interference from the State. The category of *dar al-Islam* is a country where all or most of the population consists of Muslims or is controlled and ruled by Muslims even though some of the population does not consist of Muslims. Second, *dar al-Islam* can be defined as a country ruled and controlled by non-Muslims as long as the Muslims in it can exercise Islamic laws freely. [4] [5]

Khadduri defines *dar al-Islam* as an area under Islamic rule in which residents majority population has been Muslims since its establishment. He added that *dar al-Islam* could also consist of non-Muslims who are converted to Islam or dhimmi (non-Muslim citizens) who want to continue practising their religion under the Muslim rules by paying *jizyah* (poll tax) for protection. [7] A state becomes incorporated into *dar al-harb* when the Muslim rule and decisions are not applied or if the Muslims and their *dhimmi*s can find no protection and their residence is unsafe.

In some situations, *dar al-Islam* can turn into *dar al-harb*. The jurists of the Hanafi school put forward three conditions. First, if the inhabitants implement non-Islamic law. Second, if some area of *dar al-Islam* separates and announces not to use Islamic law. *Third*, if Muslims or dhimmis cannot stay there safely. In other words, when the laws of the land apply non-Islamic law, it is categorized as *dar al-harb* territory, so for Muslims to live in that area, they must move to *dar al-Islam*. However, suppose Muslims can live there safely and can practice their religion, even if the law for non-Muslim is enforced, the area can at least theoretically be considered an Islamic territory. [4]

In sum, in classical *Siyar*, if Islamic law applies in an area, then that area becomes *dar al-Islam*. Otherwise, it is the *dar al-harb* category. This binary division of the area creates a negative impression of Islamic law because it puts the situation only in the law of war or hostility.

Among the fuqaha, some divide the territory not only into two, as abovementioned, but they add a third area, namely *dar al-'ahd* or *dar al-shulh*. *Dar al-'ahd* or *dar al-shulh* is an independent territory that has a peace treaty with *dar al-Islam*. In this case, the former shall pay *Jizya* (Poll Tax) to get protection from the latter. Furthermore, even though both parties must respect the treaty, the *dar al-Islam* position is dominant over *dar al-shulh*. Meanwhile, the Hanafi school of jurisprudence has never recognized the third area. According to him, if an area's residents enter an agreement on peace and pay the *jizya*, then that area becomes part of *dar al-Islam*, and the Imam must protect its inhabitants. Otherwise, the area becomes part of *dar al-harb*. [4]

Concerning *dar al-'ahd* or *dar al-shulh*, two things need to be considered. First, a country that declares war or is hostile to Islamic states. In this case, there are three options: becoming *ahl al-dzimmah*, converting to an Islamic state, or going to war. It is called *dar al-shulh* if they choose to become *ahl al-dzimmah* by paying *jizyah* in return for

their security guarantee, which writes under a peace agreement. Second, a non-Islamic state that is not hostile attitude and does not enter into a peace treaty with an Islamic state. In this case, the country can be equated with a friendly country. This last form of *dar al-'ahd* or *dar al-shulh* is suitable to compare with contemporary international relations. ILS has made many friendly agreements with non-Islamic countries. [5] [4]

There is debate among Islamic jurists regarding the basic principles of interstate relations from the *Siyar* perspective. Two perspectives can be considered for this [5]. The first group defines relations between ILS and the non-Muslim state in nature as war. Relations between them are hostile as long as there is no reason for peace or a truce. The second group argues on the contrary that relations between countries are peaceful until there is a reason for war. In this view, as long as non-Muslims can live tolerantly and give freedom to Muslims to practice their religion and the *da'wah*, it is not permissible to fight them. This second school views the cause (*illat*) of allowing war against non-Muslims: as hostility, disobedience, and attack. [5]

Ashri and Samuddin then argue that the main principle of relations between states that align with Islamic law is peace, not war. There are several reasons for this idea;

- (a) the *raison d'être* and far from a contradiction;
- (b) It is necessary to reconcile the arguments of the two groups by interpreting that war is only allowed under certain conditions;
- (c) In line with *al maqashid al sharia*;
- (d) Contribute to the development of Islamic law;
- (e) Following the current situation that forbids war as an instrument in inter-state relations. [5]

2.2. Criteria for Islamic Law State (ILS)

The term 'state' closest meaning in Muslim history was 'Ummah'. This was first used in practice when the prophet Muhammad made the constitution of Medina. In its development, the term "ummah" was replaced with "jamaah" in the Ummayah era and changed again to "dawlah" in the Abbasid era.. Definisi dari ketiga term tersebut yaitu technical, linguistic or religious bodies of peoples who are objects of the divine plan of salvation. [4]

The Qur'an contains almost nothing that may be conceived as state legislation. By this, Allah gives Muslims flexibility to establish a form of state. Historically, the Islamic state form differed from the Prophet Muhammad (PUBH) to Ottoman Turks. This fact shows that Islamic law theory of state falls into *ijtihad* from Islamic jurists. [6]

It is difficult, if not impossible, to define the boundaries of what it means to say that a law is based on Shari'a. Thus, a more acceptable and precise definition of an Islamic law state (ILS) is one in which the legal system is substantively burdened with the obligation to enforce Islamic law, and at least 50% of the population is Muslim. This definition is not based solely on citizens' religious preferences. Instead, it focuses on whether a state tries to implement Islamic law as a substantial part of civil, commercial, or criminal law. [6] [8]

The ILS category differs from other seemingly similar concepts or definitions, such as an Islamic state, an Arab state, or a Muslim state, which all define the characteristics of "Islam." The term "Muslim state" is most commonly used to refer to countries where Muslims constitute most of the population. A slightly more accurate definition of a Muslim country is one with at least 55% Muslim citizens. This definition emphasizes population composition rather than the influence of *Sharia* on domestic law. Many countries can be classified as Muslim states, including those that base their domestic laws on Islamic principles, such as Saudi Arabia, and those with a secular legal system. Turkey, for example, cannot be classified as a Muslim state despite its predominantly Muslim population because it is ruled by secular law. [8]

The term "Muslim State" refers to countries where Islam and Islamic law play a significant role in society, culture, or even politics. Some scholars use the more appropriate term, Muslim-majority countries, to correct the category's ambiguity. The term "Islamic State" is highly debatable and usually refers to a country that follows Islamic law. However, what constitutes an Islamic state, even when most of the population is Muslim? Is this the nature of domestic law? Alternatively, the religiosity range of the population is inherently difficult to understand or measure. [8]

The Arab State category emphasizes Arab ethnic and linguistic characteristics. Membership in the Arab League arguably sharpens this classification in a political sense. Arab countries are an essential part of the ILS category, but there are also important non-Arab countries where sharia has been incorporated into constitutions and laws. Islamic law has historically influenced non-Arab ILS domestic legal systems such as Brunei and Indonesia. As a result, this non-Arab ILS offers a unique perspective on the relationship between domestic Islamic law principles and international law [8]

While some define the Middle East solely by geographical factors, others emphasize the role of the Islamic religion in encouraging Arab expansion and settlement. Because of its broader scope, the ILS definition is located outside of this geographic issue. [4]

2.3. Dispute Settlement Mechanisms in Islamic International Law

Siyar's principle stipulates that each party should settle it peacefully in the event of a dispute. *Siyar* differentiates disputes among Muslim states or ILS with non-Muslim states. Whether disputes among Muslims or with non-Islamic states, Islamic international law first calls for reconciliation of the dispute. God's promise to those who make peace will be significantly rewarded. The way of war is only permitted if the opposing party is in defiance and unwilling to take the path of peace. [9]

When there is a dispute between ILS and non-ILS, the provisions of *Siyar* recommend resolving it through peace. This peaceful dispute settlement model can be done directly or through a third party's assistance. In direct dispute settlement mode, *Siyar* rules that each party allows making agreements (*Mu'ahadah*) with non-ILS. Even though there are disagreements between Islamic scholars, at least there is consensus regarding the validity of treaty formation between ILS and non-ILS. First, the condition of the consent of both parties must be met for the treaty to be valid, and this must be expressly stated in written form. The second is treaty became valid by actions taken by both parties in accordance with their respective interpretations and terms in the treaty when they concluded it. Third, the treaty is concluded through a well-known expression, action, or a common practice among the people parties. The third mode is not constrained by language or legal code but rather varies based on the individuals involved and their customary practices. [4] [5] This treaty's principle point with non-ILS does not contradict Islamic law (*Syariah*).

The legal basis for establishing a peace agreement with non-ILS is permissible as long as it contains goodness for Muslims. In Islamic international law, there are two models of agreements with non-ILS regarding time limits. Permanent and a temporary treaty. A permanent agreement is a mutual consent that cannot be cancelled unilaterally by Imam even though there are benefits for Muslims. This is called the *dhimmah contract*. While the temporary peace agreement is related to the number of subjects, one of which is carried out through *the al-aman* and *al-hudna contract*. [4] [5]

The *Dhimmah contract* is a permanent agreement between ILS and non-ILS with a guarantee for the latter to live in an Islamic state to protect themselves, their property and honour. The requirement in the *dhimmah contract* is a binding obligation to pay *jizyah* every year and is subject to Islamic law. With this contract, the *ahlu dhimmah* has the right to live in an Islamic state and live with Muslims with the same rights and obligations as citizens of the state. In contrast, the *al-aman* and *al-hudna* is a treaty to end a battle or hostilities for a certain period. The validity period of this type of agreement varies between sects. Hanafi is of the opinion that this type of agreement is

not more than a year; Maliki is less than four months, Shafi'i is valid for as long as the desired goal is completed while Hambali does not specify a specific time duration. [4]

Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah are among the jurists who recognize the validity of the *'aqd al-muwada'ah* and *hudnah* without specifying a time. According to these two scholars, if those treaties are consistent with the Qur'an and sunnah are permissible. Muslims should never fight against those with whom they have signed a temporary truce unless the non-Muslims violate the truce first. The contract is lawful and valid as long as the terms of the agreement between the parties are adhered to, a time limit is specified or not, and the contract is lawful and valid [4]. In other words, if the agreement has been reached, the parties are obliged to fulfil or implement the agreement. ILS is obliged to uphold the promises made as long as non-ILS do not violate the agreement. The safe status is void if the agreement is violated, and the ILS can resort to war.

The dispute settlement model between ILS and Non-ILS can be done using a third party or known as *Tahkim*. The *tahkim*, similar to arbitration, is a legal institution in which two or more people inaugurate one of them to settle disputes and apply sharia law to settle their disputes. The institution of *tahkim* has been known in the early generations of Islam. The fuqaha allow arbitration to resolve disputes that occur to Muslims in conditions of war or peace relating to internal and external affairs. [5] In this context, dispute settlement between ILS and non-ILS can be carried out through an international court or international arbitration that has been agreed upon. All parties must obey and implement the results of this settlement mechanism.

3. CONCLUSION

This study concludes that if there is a dispute between ILS and non-ILS, the main route that must be taken is peace settlement. The mechanism for peaceful dispute resolution can be carried out directly through a treaty or with the help of a third party. Both formats are carried out in the form of an agreement which ILS should comply with as long as the opposing party does not disobey and carry out attacks. The agreement made has primary conditions that must provide benefits to the Muslims.

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