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Imam Al-Shafi'i's Thought about Human Obligations and Rights in Islamic Law

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Abstract

Human rights are topics that are constantly debated without a unified definition. Therefore, this study aimed to analyze human rights from the perspective of the Imam school of thought by using the analysis of Imam Al-Shafi'i. It adopted a qualitative approach using the *library research* method based on data management obtained from several pieces of literature. Furthermore, this study used a normative approach by adapting several books by Imam Al-Shafi'i. According to Imam Al-Shafi'i, human obligations and rights in Islamic law are inseparable, and Muslims should examine the past to comprehend the origins and evolution of these concepts. In addition, human rights are a basic concept, as seen in *Al-Umm* and *Al-Risālah*. These texts are quite unconventional for people to study human rights. The work and application imposed by Imam Al-Shafi'i are not different from what is explained by several figures of thinkers from the West. The application found a match after seeing several figures' development of human rights thought. Therefore, contemporary Muslim scholars should prioritize the issue of human obligations and rights in providing legal solutions.

Keywords:

Human Rights; Human Obligations; Imam al-Shafi'i.

Abstrak

Hak asasi manusia merupakan isu yang selalu dibahas dan belum memberikan pemahaman yang tunggal. Artikel ini bertujuan untuk menganalisis hak asasi manusia perspektif Imam Mazhab dengan menggunakan analisis pemikiran Imam al-Syafi'i. Penelitian ini adalah kualitatif dengan menggunakan penelitian Kepustakaan (*Library Research*) yang berpedoman terhadap pengelolahan data yang didapatkan dari beberapa literatur. Pendekatan penelitian ini menggunakan pendekatan normatif dengan menyadur beberapa kitab Imam al-Syafi'i. Hasil penelitian menemukan bahwa kewajiban dan hak asasi manusia pada aspek hukum Islam menurut Imam al-Syafi'i menjadi satu kesatuan yang tidak dapat dipisahkan. Umat Islam perlu jauh melihat kebelakang terkait sejarah kelahiran dan perkembangan kewajiban dan hak asasi manusia itu sendiri. Seperti yang dimaksud oleh Imam al-Syafi'i bahwa Hak Asasi Manusia merupakan sebuah hal yang fundamental dan patut untuk kita perjuangkan sebagai mahluk sosial, pemikiranya tentang Hak Asasi Manusia bisa kita lihat di beberapa karyanya seperti *Al-Umm* dan *Al-Risālah*, sebuah karya yang sangat luar bagi kita yang ingin mempelajari terkait Hak Asasi Manusia. Karya dan penerapan Hak asasi

Manusia yang diberlakukan oleh Imam al-Syafi'i tidak jauh berbeda juga dengan yang dijelaskan oleh beberapa tokoh pemikir Hak Asasi Manusia yang berasal dari Barat. sebagaimana Penulis menemukan adanya kecocokan dalam penerapannya setelah melihat dari pengembangan pemikiran Hak Asasi Manusia dari beberapa tokoh. Diharapkan kepada para cendekiawan Muslim kontemporer untuk menjadikan isu kewajiban dan hak asasi manusia menjadi prioritas dalam memberikan solusi hukum kepada umat Islam.

Kata Kunci:

Hak Asasi Manusia; Kewajiban Asasi Manusia; Imam al-Syafi'i.

1. Introduction

Human rights are a set of rights inherent in the nature and existence of humans as creatures of God Almighty.¹ In addition, this is also a gift from God that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and protection of human dignity.² Therefore, as creatures of God Almighty, humans carry out the task and maintain the universe with full devotion and responsibility for human welfare.³ Also, human rights are basic rights that are naturally inherent in universal human beings and lasting so that they must be protected, respected, maintained, and should not be ignored, reduced, or taken away by anyone.⁴ The right to work and the right to work are human rights. Protecting and fulfilling these rights are important in achieving a decent standard of living.⁵ Income from work must be given in a good way because it has a positive effect on survival and without discrimination.

Human rights are important to protect our right to live with dignity, including the right to life, freedom, and security.⁶ Living with dignity means having a decent

¹ Muhammad Rijal Fadli, "Tinjauan Historis: Pemikiran Hukum Islam Pada Masa Tabi'in," *Tamaddun* 8, no. 1 (2020): 1–20.

² Dany Try Hutama Hutabarat et al., "Understanding and Describing Relationship of State Law and Human Right," *Journal of Humanities, Social Sciences and Business (Jhssb)* 1, no. 1 (2021): 65–72, <https://doi.org/10.55047/jhssb.v1i1.63>.

³ Muhammad Afif Laurensius Arliman S, "Protection Of Children's Rights Of The Islamic And Constitutional Law Perspective Of The Republic Of Indonesia," *Internasional Conference on Humanity, Law and Sharia (ICHLash)*, no. 17 (2018): 135–40.

⁴ Alberto Quintavalla and Klaus Heine, "Priorities and Human Rights," *International Journal of Human Rights* 23, no. 4 (2019): 679–97, <https://doi.org/10.1080/13642987.2018.1562917>.

⁵ Pir Ali Kaya and Isin Ulas Ertugrul Yilmazer, "The Right to Work as a Fundamental Human Right," *European Scientific Journal ESJ* 15, no. 14 (2019): 151–74, <https://doi.org/10.19044/esj.2019.v15n14p151>.

⁶ Salvador Santino F. Regilme, "The Global Politics of Human Rights: From Human Rights to Human Dignity?," *International Political Science Review* 40, no. 2 (2019): 279–90, <https://doi.org/10.1177/0192512118757129>.

place to live and sufficient food. It means that we must be able to participate in society to receive education, work, practice our religion, speak our own language, and live in peace. Human rights are tools to protect people from violence and arbitrariness. Human rights develop mutual respect between humans. Human rights encourage action based on awareness and responsibility to ensure that the rights of others are not violated. For example, we have the right to live free from all forms of discrimination, but at the same time, we have a responsibility not to discriminate against others.

The basic rights inherent in us are freedom, equality, protection, and so on. These rights are not a gift from a person, organization, or state but are a gift from God that he has brought since he was born into the world. These rights are then called human rights. Without understanding these rights, we cannot fulfill our duties and obligations as God's caliph. This may be due to the low level of education or the socio-political and cultural system in the area. From the Islamic point of view, human rights have been regulated based on or guided by the Al-Qur'an and Hadith. Because the Al-Qur'an and Hadith are a way of life for all humans on this earth. Therefore, if we do not want our rights to be taken away by others, then we must know our rights and always fight for them as long as they do not take or exceed the limits of the rights of others.

According to the Islamic view, human rights are human rights in Islam, which are clearly stated for the benefit of humans through Islamic sharia and revealed through revelation.⁷ According to the shariah, humans are free beings who have duties and responsibilities, and therefore, they also have rights and freedoms. Basically, justice is served based on equality or egalitarianism without discrimination. It means that the task at hand will not be realized without freedom, while existential freedom does not exist without responsibility itself. The human rights system in Islam contains the basic principles of equality, freedom, and respect for fellow human beings. Islam views all humans as equal and has the same position. The level of piety only determines the only advantage enjoyed by a human being over another human. This is in accordance with the word of God in Al-Hujurat verse: 49/13:

⁷ Louay M Safi, "Human Rights and Islamic Legal Reform," *Islamic Resources Repository*, 2000.

*"O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things)."*⁸

Basically, human rights in Islam are centered on five main things summarized in *al-dharuriyat al-khamsah*, also called *al-huquq al-insaniyah fi al-islam* (human rights in Islam).⁹ This concept contains five main things that must be maintained by every individual, namely *hifdzu al-din* (respect for religious freedom), *hifdzu al-mal* (respect for property), *hifdzu al-nafs wa al-'ird* (respect for the soul, the right to life and individual honor) *hifdzu al-'aql* (respect for freedom of thought) and *hifdzu al-nas* (the obligation to maintain offspring). Every Muslim must maintain these five main things in order to produce a more humane order of life, based on individual respect for the individual, the individual with the community, the community with the community, the community with the state and the religious community with other religious communities.

2. Literature Review

2.1. General Definition of Human Obligations

Human obligations can briefly be defined or interpreted as an obligation in carrying out life.¹⁰ Of course, every human being must do this, wherever they are, not bound by time and place. Human obligations are a human rights partner because, as we know, rights must be balanced with obligations. The term human obligations itself in Indonesia are less popular among the wider community, even though we exist as a barrier to selfishness between individuals.¹¹

⁸ Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019), <https://lajnah.kemenag.go.id/unduhan/category/3-terjemah-al-qur-an-tahun-2019>.

⁹ Hazrazil and Irfan Lewa, "Return of Stored Goods ; Comparative Analysis of the Laws between the Al-Shafi'i and the Hanafi School," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 2 (2021), <https://doi.org/10.24252/mh.v3i2.22272>.

¹⁰ María José Añón, "Human Rights Obligations, Especially, in Times of Crisis," *Age of Human Rights Journal* 17, no. 17 (2021): 1–26, <https://doi.org/10.17561/TAHRJ.V17.6406>.

¹¹ Patrick Abel, "Counterclaims Based on International Human Rights Obligations of Investors in International Investment Arbitration," *Brill Open Law* 1, no. September 2017 (2018): 1–30, <https://doi.org/10.1163/23527072-00101003>.

As perfect beings, humans can distinguish between good and bad, both for themselves and for others. On the other hand, humans are selfish. Therefore, there is an obligation as a reminder for everyone.¹² By understanding the obligation to use full awareness, a conducive environment and relationship will be created in carrying out the life of the nation and state. Thus, it is appropriate for each individual to have good character and behavior, think about the environment and others around them.

2.2. General Definition of Human Rights

Internationally protected rights (namely the United Nations Declaration of Human Rights) are the right to life, the right to freedom, the right to own, and the right to express opinions.¹³

HR stands for Human Rights. Human Rights are defined as the "Power and security" owned by each individual. Human Rights are morally justified guidelines so that all human beings can enjoy being able to exercise their freedom, their property, and their services considered necessary to achieve human dignity. Human rights are basic human needs in the form of rights, and without these rights, we cannot live properly as human beings.

In terms, human rights are a set of rights inherent in humans as creatures of God Almighty. Human rights are gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and the protection of human dignity.¹⁴ Human rights are called basic rights. Human rights are essentially human rights that are inherent to them because they are human. Humans are creatures created by God with all their high dignity and worth. That is what distinguishes it from other creatures. These human rights are basic and fundamental in nature. In its implementation, it is absolutely necessary so that humans can

¹² Michael Santoro and Robert Shanklin, "Human Rights Obligations of Drug Companies," *Journal of Human Rights* 19, no. 5 (2020): 557–67, <https://doi.org/10.1080/14754835.2020.1820315>.

¹³ Izul Herman Al-Baweany, "Dialektika Hak Asasi Manusia (HAM) Internasional Dengan Hukum Islam (Tela'ah Terhadap Pemikiran Mashhood A. Baderin)," *Legitima* 1, no. 1 (2018): 62–77.

¹⁴ Lorna McGregor, Daragh Murray, and Vivian Ng, "International Human Rights Law as a Framework for Algorithmic Accountability," *International and Comparative Law Quarterly* 68, no. 2 (2019): 309–43, <https://doi.org/10.1017/S0020589319000046>.

develop in accordance with their dignity and ideals. This right is also considered universal, owned by all humans regardless of nation, race, religion, and gender.

The essence of human rights is an effort to maintain the safety of human existence through a balance between individual and public interests. Likewise, efforts to respect, protect, and uphold human rights are a shared obligation and responsibility between individuals, the government (civil and military government apparatus), and the state. Based on the formulations of human rights above, the conclusions can be drawn about several main aspects of the essence of human rights, namely:

- a) Human rights do not need to be given, bought, or inherited; human rights are part of humans automatically.
- b) Human rights apply to all people regardless of gender, race, religion, ethnicity, political views or social origin, and nation.
- c) Human rights cannot be violated; no one has the right to limit or violate the rights of others. Even if a country makes laws that do not protect or violate human rights, people still have human rights.

2.3. The History of the Birth and Development of Human Rights

2.3.1. The History of Human Rights

We are human, and being human means having one factor that differentiates us from other living things. Humans are given a distinguishing gift in the form of reason to establish human-based interactions with fellow humans and other living creatures.¹⁵ Thus, what are Human Rights (HR)? The beginning of the emergence of the concept of Human Rights was in 1215.¹⁶ It happened when British rule by King John has judged arbitrarily in giving punishment to his people and collecting taxes. The King, in this case as the long arm of God at that time, was given absolute authority to rule and whatever was said was a decree. Until the Barons were moved inwardly to oppose the King, they forced the King to sign an agreement that became the beginning of protecting humans for their dignity, namely *Magna Charta*. Finally,

¹⁵ Lanelle E. Quzack et al., "A Social Work Education Grounded in Human Rights," *Journal of Human Rights and Social Work* 6, no. 1 (2021): 32–40, <https://doi.org/10.1007/s41134-020-00159-5>.

¹⁶ Quintavalla and Heine, "Priorities and Human Rights."

the Universal Declaration of Human Rights emerged in 1948, which was initiated by the United Nations (UN) to protect the world order based on humanity.

Article 1 of the Universal Declaration of Human Rights (UDHR) states that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. The value system incarnated in the concept of human rights is not merely a western product but has a solid foundation in all cultures and religions (Nowak, 2003). Therefore, it is a mistake to think that the beginning of the growing awareness of human dignity is through the *Magna Charta* in England directly, which considers that human rights are western productions. In fact, religion also contains a humanistic element that anticipates modern conceptions of human rights and highlights the positive contribution of religion to the evolution of human rights (Ishay, 2004). In religious teachings, of course, human dignity is based. Human rights are not only centered on the positive elements of one religion but also varies and sorts out only the elements of the justest goodness of human dignity. Human rights are basic rights owned by every human, regardless of origin, rooted and cannot be taken in any way or condition. The understanding of the concept of human rights is never standardized and will always seem to be abstract because human rights develop culturally by looking at various aspects of values that cannot be separated from the boundaries of one religion.

In relation to law,¹⁷ human rights are soft law, which the Black's Law Dictionary defines as a law-forming guide, policy declaration, or code of ethics that determines standards of behavior but is not legally binding. Thus, human rights are currently being used as a political campaign to advocate and provide policy guidelines by attacking the foundations of humanity as the basis of an argument. On the other hand, law, whether it is state legislation or contracts, is a tool for human rights which is just the most basic concept of humanity to have a place in society as a fundamental right.

¹⁷ Aleš Završnik, "Criminal Justice, Artificial Intelligence Systems, and Human Rights," *ERA Forum* 20, no. 4 (2020): 567–83, <https://doi.org/10.1007/s12027-020-00602-0>.

Human rights, as soft law, contain basic principles in social life between individuals or groups and the state; otherwise, it is impossible. Human rights principles include the universal principle; namely, all people in the world have the same rights, not differentiated because every human being is born with the same freedom and dignity in rights.¹⁸ Furthermore, the principle of equality and non-discrimination has the right of all human beings to have the same position of dignity so that no one should suffer discrimination based on race, color skin, ethnicity, gender, age, language, sexual orientation, religion, political or other opinions, origin, national, social or geographical origin, disability, property, birth or another status as defined by human rights standards. The principles of interdependence and interconnectedness of each person contribute to the realization of human dignity through the satisfaction of his developmental, physical, psychological, and spiritual needs. This means that the fulfillment of one right often depends, in whole or in part, on the fulfillment of others. All human beings have the right to participate in and access information related to decision-making processes that affect their lives and well-being.¹⁹ The principle of state accountability and responsibility, this principle states that the state as a stakeholder must be responsible for the observance of its norms and laws based on human rights and not allowed to conflict.

2.3.2. Development and Regulation of Human Rights in Indonesia

The Indonesian government is currently paying attention to human rights issues at the end of the New Order era with the establishment of the National Human Rights Commission in 1993. Then, the Reform Order government had great and serious attention to human rights issues, which was realized through the issuance of the People's Consultative Assembly Decree Number XVII. / MPR/1998, concerning Human Rights, described in Law Number 39 of 1999 concerning Human Rights and Law Number 26 concerning Human Rights Courts. The expansion of guarantees of human rights through articles in the 1945 Constitution, especially the results of the

¹⁸ Sharifah Sekalala, Haleema Masud, and Rebekah Thomas Bosco, "Human Rights Mechanisms for Anti-Corruption, Transparency and Accountability: Enabling the Right to Health," *Global Health Action* 13, no. sup1 (2020), <https://doi.org/10.1080/16549716.2019.1699343>.

¹⁹ Jens T. Theilen, "The Inflation of Human Rights: A Deconstruction," *Leiden Journal of International Law* 34, no. 4 (2021): 831–54, <https://doi.org/10.1017/S0922156521000297>.

Second Amendment, is progress in building the legal foundation of the state to strengthen the ruler-people contract with the spirit of Indonesian constitutionalism.

In addition, with the ratification of various international conventions in the field of human rights, such as ICCPR (The International Covenant on Civil and Political Rights) through Law Number 12 of 2005 and then ICESCR (The International Covenant on Economical, Social and Cultural Rights in 1966) through Law Number 11 of 2005, as well as various other international human rights conventions, show that human rights are seen as rights that must be respected and protected by the state and are used as parameters for policymakers always to fulfill them. The existence of these human rights instruments also strengthens the position of citizens in relation to the state. However, as the Human Rights Law been properly socialized and understood by the duty holders and the wider community? The answer to this problem still needs to be done continuously for both parties.

3. Methods

This study was qualitative using library research guided by the management of data obtained from several works of literature. The data sources included primary data from the books of Imam al-Shaf'i, such as *al-Umm*, *al-Risālah*, and so on. While secondary data was obtained from journals, websites, books, and other relevant research work. This approach used was a normative approach. The data obtained was analyzed using critical analysis to produce an adequate discussion.

4. Result and Discussion

4.1. Human Obligations and Rights in the Islamic Point of View

The concept of human rights in Islam is divided into two types when viewed from the *huquuqul ibad* category. First, the existence of human rights can be carried out by a state (Islam). Second, the existence of human rights cannot be directly implemented by a state. The first rights are called legal rights, while the second can be called moral rights.

In Islam, the harmony of the sanctity of human rights is far greater than just ritual worship. If a person does not fulfill his obligations before Allah, then he may still be forgiven. But, this is not the case not fulfilling obligations to fellow human beings.

The achievement of the essence of human rights in the Al-Qur'an now provides a very significant difference between the concept of human rights known in Islam, more specifically studies in the Al-Qur'an, and the concept of human rights in a Western perspective. This is due to a very basic review; namely, the Western concept attaches great importance to protecting human rights and the basic freedoms of every individual in society. The West views individual rights with an anthro-centric approach, in which the human being is the measure of everything. As a result, the human mindset is more focused on fulfilling human rights than on human obligations. On the other hand, the Al-Qur'an views human rights with a theocentric view, in which God's position is absolute for everything and humans are only tasked with serving Him.

4.2. Human Obligations and Rights in Imam al-Shafi'i's Perspective

Imam al-Shafi'i has the full name Muhammad bin Idris bin Abbas bin Utsman bin Syafi'i bin Saib bin Ubaid bin Abdul Yazid bin Hisyam bin Muttalib bin Abdul Manaf bin Qushai bin Kilab bin Murrah bin Ka'ab bin Luay bin Ghalib bin Fihir bin Malik bin al-Nadhr bin Kinanah bin Khuzaymah bin Mudrikah bin Ilyas bin Mudhar bin Nizzar bin Ma'ad bin Adnan bin Ud bin Udad.²⁰ The meeting of his descendants with the Prophet Muhammad is at Abdul Manaf bin Qushai. His mother's name is Fatimah binti Ubaidillah bin Hasan bin Ali bin Abu Thalib. If we look at the descendants of his parents, Imam Syafi'i is a descendant of the Quraysh tribe. His father came to Gaza to earn a living and died not long after the birth of ash-Shafi'i; in poverty, he lived in the care of his mother. His mother brought Al-Imam ash-Shafi'i to Askalan, which is not that far from Gaza. After being two years old, his mother brought him to Mecca. His mother was afraid that his son would be wasted, then he continued to live abroad, far from his family and the Quraish tribe.²¹

²⁰ Abdul Wahid Sy , *Diwan al-Syafi'i li Abi Abdillah Muhammad ibn Idris al-Syafi'i*, Cet Ke 1,Bandung: Al-bayan, 1992, hlm.17

²¹ Moh. Mufid, "ASPEK SOSIOLOGIS FIKIH IMAM AL-SYAFI 'I," *Syariah* 16, no. 1 (2016): 1–12.

Imam Shafii went from Makkah to a hamlet of Bani Huzail to learn fluent and native Arabic.²² Imam Shafii lived in Huzail for about ten years. There, he studied Arabic literature until he was proficient and memorized many poems from Imru' al-qais, Zuhra, and Jarir. By learning Arabic literature, he was encouraged to understand the Al-Qur'an's content in fluent, original, and pure Arabic. Imam Shafii became a trusted person in terms of the poems of the Huzaelites.

Apart from being a teacher and poet, al-Shafii is also known as a writer who has left many works with various themes and quality discussions.²³ Al-Shafii always took the time to write or dictate to his students some views, opinions, and criticisms in every place he visited or where he lived. In every area he lived in throughout his life, such as the Hijaz, Baghdad, Iraq, and Egypt, al-Shafii built scientific *halaqah* and *majlis taklim*, crowded by common people to the elite of Muslims today. Some students wrote from the lectures the Imam gave and then read them back to other students to discuss together. The topics studied are not limited to *fiqh* and Hadith alone but extend to other themes and lattices of Islamic scholarships, such as the area of language, literature, biographies of figures, history, wisdom, and even medical issues.

For those who observe and trace the episodes of Imam Shafii's life, it will be clear in his mind that Imam Shafii is a figure who is always surrounded by friends and students from all walks of life.²⁴ Starting from the Hijaz, Mecca, Medina, Iraq, Yemen, Palestine, to Egypt. The friends or students of Imam Shafii will be divided based on their involvement in the old (*qadin*) or new (*jadid*) narrations of Shafii's thoughts and those narrated by *as-Subki*. The narrators of the Imam Shafii *mazhab qadim* are all citizens of Baghdad, while the narrators of the *madzhab jadidnya* are Egyptians. The number of friends or students of Imam Syafii who narrated the manuscripts counted as the work of the *qadim* was 4. Meanwhile, the friends or

²² Rahmat Ari Aripin, "Kewenangan Wali Dalam Menentukan Pernikahan Janda Yang Belum Dewasa Menurut Imam Al-Syafi'i," *Al-Fikra : Jurnal Ilmiah Keislaman* 18, no. 1 (2020): 28, <https://doi.org/10.24014/af.v18i1.7062>.

²³ Muhammad Taufan Djafry, "Metode Ijtihād Imam Al-Syāfi'ī Dalam Kitab Al-Risālah," *NUKHBATUL 'ULUM,Jurnal Bidang Kajian Islam* 2, no. 1 (2016): 1–19.

²⁴ Randi Safii, "Al-Sūrah Al-Tasybīhīyah: Nažharīyyatuhā Wa Ma'ānīhā Fī Asy'āri Al-Imām Al- Syāfi'ī," *'A Jamiy: Jurnal Bahasa Dan Sastra Arab* 10, no. 1 (2021): 64–77.

students of Imam Syafi'i who narrated the manuscripts of Imam Shafi'i said to be finished works were 20.

In order to analyze Imam Shafi'i's thoughts regarding Human Obligations and Human Rights, the author will discuss Imam Shafi'i's work itself. There are several of his works, but the author will start discussing his work entitled *Al-Umm* as our reference to arrive at his thoughts on human rights.

According to Abu Zahrah in *al-Umm*, there are direct writings of Imam Shafi'i, but there are also writings from his students. In fact, there is a hint that in *al-Umm*, there is also a third person's writing besides Imam Ash-Shafi'i and his student *al-Rabi'*. However, according to a well-known narration, it is narrated that the *Kitab al-Umm* is the personal record of Imam Shafi'i, because every question asked of him was written, answered, and dictated to his students. Therefore, some say that the book is the work of his two students Imam al-Buwaihi and Imam *al-Rabi'*. This was stated by Abu Talib al-Makki. This opinion violates the *Ijma'* of scholars who say that this book is the original work of Imam Shafi'i, which contains his thoughts in the field of law. For preserving the human body, Islam establishes the principle of justice for the entire human body. Islam establishes the principle of justice for all mankind. The Al-Qur'an, whether in the Makiyah or Madaniyah letters, prioritizes and recommends that justice be the people's concern. Furthermore, the Al-Qur'an admonishes and distances mankind from the nature of persecution that will destroy humans themselves. Therefore, the Al-Qur'an commands justice in general and in particular, whether against enemies who attack or vice versa against them, Muslims are ordered to remain fair to each other.

Previously, there were differences of opinion, for example, some of the opinions of the *fujahah*, including Imam Shafi'i and Imam Malik. The differences of opinion are common because the understanding of the Imam *mazhab* is strongly influenced by their educational background and scientific capacity as well as the social culture of the community in which they are located.

Like the crime against the soul, the crime against the fetus, according to Imam Malik, sometimes happens intentionally and sometimes happens by mistake.

Meanwhile, according to Imam Syafi'i, the crime against the fetus does not occur intentionally but accidentally or wrongly.

According to Imam Syafi'i, the punishment for killing a pregnant woman resulting in the death of the fetus is to pay *diyat*. Imam Shafi'i's reasons have been explained in the Al-Qur'an (An-Nisaa: 92) as follows:

"Never should a believer kill a believer; but (If it so happens) by mistake, (Compensation is due): If one (so) kills a believer, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely. If the deceased belonged to a people at war with you, and he was a believer, the freeing of a believing slave (Is enough). If he belonged to a people with whom ye have treaty of Mutual alliance, compensation should be paid to his family, and a believing slave be freed. For those who find this beyond their means, (is prescribed) a fast for two months running: by way of repentance to Allah: for Allah hath all knowledge and all wisdom." (Q.S. an-Nisaa : 92)

The verse above explains that if someone kills accidentally, the punishment is not *qishas* but paying *diyat*. In this case, the *diyat* of killing the fetus is by *ghurrah* or male or female slaves.

According to Imam Syafi'i, the value of *ghurrah* is equivalent to one-half of the tenth of the *diyat* price of a Muslim adult male, namely five camels, in the case of a crime that arises from an intentional element.

Meanwhile, if the author looks at his methodological work, *Ar-Risalah*, Imam Syafi'i explains the framework and basics of his *mazhab* and some examples of how to formulate *far'iyyah* laws using these basics. According to him, Al-Qur'an and Sunnah are on one level and constitute a unified source of Islamic law. Meanwhile, such as *qiyas*, *istihsan*, *istishab*, and others are the only a method of formulating and inferring the law from the main source.

From this explanation, it can be clearly seen that Imam Shafi'i's moderate attitude has been described in his methodological books: *Ar-Risalah*, *Al-Umm*, and others which explain the legal *istimbath* method used by Imam Shafi'i in determining the law.

4.3. The Implementation of Human Rights According to Imam Shafi'i

The sanctions or punishments for a *jarimah* are set so people do not violate it. This is because the prohibition of carrying out an act or an order to carry it out solely does not guarantee that it will be obeyed.²⁵ Without punishment, orders and prohibitions will be something useless and ignored. Thus, the punishment is very necessary because it is a punishment that makes the commands and prohibitions effective.

The characteristic of the Shafi'i *mazhab* in concluding the law is that it always relies on the Al-Qur'an according to its *zahir* meaning unless there are instructions not contained in the *zahir* meaning.²⁶

The steps taken by Imam Shafi'i in interpreting the law,²⁷ in general, can be seen in his words, as quoted by Taha Jabir Fahyadh al-Ulwani in his book "The History and Glory of the Shafi'i *Mazhab*" by Sirajuddin Abas.

As for the arguments for their use, these four arguments are the words of Allah SWT in the AQu'r'an Surah an-Nisa verse 59.²⁸ The command to follow *ulil amri* among you means that you have followed the laws that have been agreed upon by the *mujtahids*. That's why the *ulil amri* Muslims in the matter of establishing law is Islamic law.

According to Imam Malik and Imam Shafi'i,²⁹ people who intentionally kill are subject to *qisas* punishment, while people who are not intentional and are still children are punished with half a *diyat*. However, Imam Malik freed half of the *diyat* to his family. According to Imam Shafi'i, he freed half of the *diyat* on the property of each of the two people. Similarly, the opinion of Imam Malik and Imam

²⁵ Iskandar, Ariesman, and Iman Afandi, "DEATH PENALTY FOR KILLING NON-MUSLIMS (COMPARATIVE STUDY PRIEST ABŪ ḤANĪFAH AND PRIEST AL-SYĀFI'I)," *Bustanul Fuqaha: Jurnal Bidang Hukum Islam* 2, no. 1 (2021): 98–109.

²⁶ Afiful Huda and Febriyani Dyah Ayi Wardana, "Ta'liq Talak Perspektif Imam Syafi'i Dan Imam Ibn Hazm," *Usratuna* 4, no. 1 (2020).

²⁷ Wan Zulkifli bin Wan Hassan, Luqman Hj Abdullah, and Saadan Man, "Pemikiran Imam Al-Syafi'i Mengenai Sadd Al-Dhara'i Sebagai Sumber Hukum," *Jurnal Fiqh* 5 (2008): 97–116, <https://doi.org/10.22452/fiqh.vol5no1.5>.

²⁸ Tafsîr Al-imâm Al- Shâfi'î and M Masykur Abdillah, "Metode Penafsiran Al- Shâfi'î Dalam Tafsîr Al- Imâm Al- Shâfi'î," *Mutawatir: Jurnal Keilmuan Tafsir Hadis* 2, no. 2 (2012).

²⁹ Md Mokhter Ahmad and Imām Muḥammad b. Idrīs al- Shāfi'î, "Reviewing Imām Al-Shāfi'î's Tafsîr Āyāt Al-Aḥkām for Developing Principles of Contemporary Tafsîr Literature," *IIUC Studies (Research Journal of the International Islamic University Chittagong (IIUC))* 10–11, no. December (2014): 9–38.

Shafi'i about free people and servants who kill other servants. It means that the punishment for the slave is subject to the death penalty, while the free person is subject to half a *diyat*.

Wahbah az-Zuhaili, in his book *al-Fiqh al-Islamiy Wa Adillatuhu* stated that according to the majority of scholars, if the murder involving several people is murder without any element of *tamallu'* (conspiracy, conspiracy), then they can all be *qisāṣ* if indeed the actions of each of them is an act that can be lethal and kills.

Meanwhile, if the perpetrators of *isytirāk fi al-qatl* (a crime involving murder) have an element of *tamallu'*, they are all still being punished, even though the actions taken by each of them actually cannot kill and are deadly. According to the Syafi'iyyah scholars and the Hanabilah scholars, this is a more valid opinion. In contrast to Imam Malik's opinion in terms of requirements, each of them did participate in the crime.

4.4. Human Rights Analysis and Development

a. Human Rights Development in Islamic Law

Some of the principles of human rights in the Al-Qur'an are:

1) Equation

According to Islam, humans are born in a state of *fithrah*, without carrying any inherited sins, and free without bearing the burden of being a slave or the sins of others. The concept of *fithrah* and freedom also gives meaning to equality (equality or equalitarism) for every human being who was born because they were both born in a state of nature and independence. The differences in race, ethnicity, nationalism, or class are precise to make introductions even more not a symbol of the degradation of position.

2) Freedom

Freedom is one of the basic things in everyone's life and is the recognition of a person or group and the dignity of the human dignity of others. Freedom is increasingly needed in a pluralistic (heterogeneous) society. If freedom is shackled, then what will happen is the oppression of one group against another. Freedom makes every person or group feel uplifted in their existence and respect for their human dignity amid the plurality of the people.

The freedoms that humans need are as follows:

a) Freedom from persecution and claiming rights

This freedom requires enforcing security and social order in society to protect them from arbitrary actions and absolute injustice. In this regard, the Al-Qur'an states that Allah SWT strongly opposes heinous acts, both real and covert, and violates human rights for no good reason.

b) Freedom from fear

The Al-Qur'an strongly emphasizes the importance of protecting and maintaining the safety of the self and soul of every human being. The Al-Qur'an strongly condemns people who kill someone; he calls the act as if it were the same as killing a whole human being. On the other hand, the Al-Qur'an highly praises people who take care of one's life, which he calls the act as if it is the same as preserving human life as a whole.

c) Freedom of speech or opinion

In the history of Islam, evidence shows that the Prophet Muhammad gave freedom to his companions to speak and express their opinions. This can be seen in the deliberations or consultations he conducts to discuss various problems. He developed a culture of freedom of opinion or difference of opinion among his companions. The description above indicates that he recognizes the existence of freedom of thought and opinion and really appreciates the values of that freedom as something valuable and useful. However, freedom of expression is not absolute. A person under the pretext and in the name of freedom is not allowed to do it by following his own will. Because freedom of speech is to seek the truth, to advise leaders and the general public so as not to fall into disgraceful acts.

d) Freedom of religion

Humans have the right to personal freedom to have any belief or ideology. This freedom must be respected and protected by others. The points above are very strong evidence that does not justify anyone forcing others to embrace Islam. All human beings are given the right to freedom to choose the religion they want. It means that Islam, since 14 centuries ago, has enacted religious tolerance and freedom, and the Prophet Muhammad has practiced it.

3) Peace

Allah commands in QS. Al-Hujurat: 9-10 to the believers to create peace in their internal environment. Verse 9 explains that if there are two groups of believers fighting in order to stop them from fighting, by advice, or by threats, and or by legal sanctions. However, if one group is reluctant to accept peace according to Islamic law and violates what Allah has decreed regarding events for its creatures, then that group may be fought so that it submits and obeys Allah's law and returns to Allah's commandment, namely peace. Therefore, those who act as peacemakers must act fairly and honestly, without taking sides with anyone by taking a neutral position as arbitrators and not taking economic and political advantages from them.

4) Justice

According to Al-Baidhawi, the word *al-'adl* in the Al-Qur'an means "middle and equality". Sayyid Quthub emphasized based on equality as the principle of humanity which everyone owns. Justice for him is inclusive, not exclusive to certain groups, even though, for example, the one who determines justice is a Muslim for non-Muslims. The command to uphold justice is stated clearly in several verses of the Qur'an, for example, Qs. al-Maidah (5):8; Qs. al-An'am (6) 152; Qs. al-Hujurat (49): 9. These verses mean that upholding justice is an obligation for every believer based on faith in Allah, as an act of witness for Him.

b. Development of Universal Human Rights Thought

The issue of justice, which is the core of natural law, becomes the impetus for efforts to respect the protection of universal human dignity. The development of world human rights thinking begins with:

1. Medina Charter

The Medina Charter (*shahifatul madinah / mitsaaqu al-Madiinah*) also known as the Medina Constitution, is a document compiled by the Prophet Muhammad, which is a formal agreement between himself and all the tribes and important people in Yathrib (later named Medina) in 622. The document was compiled with the main aim of stopping the conflict between the *Banu 'Aus* and the *Banu Khazraj* in Medina. Therefore, the document establishes a number of rights and obligations for the

Muslims, the Jews, and the pagan communities of Medina; and making them into a unified community, which in Arabic is called *Ummah*.

The human rights contained in the Medina Charter can be classified into three parts, namely the right to life, freedom, and the right to seek happiness.

a. The right to life

Article 14 states that it is forbidden to kill a believer to benefit an infidel, and it is not permissible to help an infidel to kill a believer. Article 21 also provides a death penalty for the killer unless the victim's family forgives the murderer.

b. Freedom

In this context, freedom can be divided into four categories, namely: a.) Freedom of expression. Deliberation is one of the media regulated in Islam in resolving cases which is also a form of appreciation for freedom of expression. b.) Freedom of religion. Freedom to embrace their respective religions for Jews and Muslims is stated in article 25. c. Freedom from poverty. This freedom must be overcome together, help each other and do good, especially for the weak. In the Medina Constitution, this effort is a collective effort, not an individual one, as in the Western view. d.) Freedom from fear. The prohibition of committing murder, the threat of capital punishment for the perpetrator, the obligation to live as neighbors in harmony and peace, and security guarantees for those who will leave and will live in Medina are evidence of this freedom.

c. The right to seek happiness.

In the Medina Charter, as previously discussed, placing the name of Allah SWT at the top position, then the meaning of happiness is not only due to material sufficiency but must also be accompanied by inner peace.

2. Magna Charta

The right to seek happiness In the Medina Charter, as previously discussed, placing the name of Allah SWT at the top position, the meaning of happiness is not only due to material sufficiency but must also be accompanied by inner peace.³⁰

³⁰<https://tirto.id/magna-carta-membatasi-kewenangan-raja-menjunjung-tinggi-ham-ggRU>, Diakses Pada Tanggal 10/14/2021 Pada Pukul 02:18 WITA

3. The French Declaration

There must be no arbitrary arrests and detentions, including arrests without a valid reason and detention without a warrant issued by a legitimate official. In this regard, the principle of presumption of innocence applies, meaning that people who are arrested, then detained, and accused have the right to be declared innocent until a court decision with permanent legal force declares them guilty.

4. The Four Freedoms

a. The first generation

The definition of human rights only focuses on the legal and political fields. The focus of the first generation of human rights thought on law and politics is caused by the impact and situation of World War II, totalitarianism, and the desire of newly independent countries to create a new legal order.

b. Second generation

Human rights thinking does not only demand juridical rights but also social, economic, political, and cultural rights.

c. Third Generation

Justice and the fulfillment of human rights must begin from the start of the development itself, not after the construction is completed. It seems that the old adage "justice delayed, justice denied" still applies to all of us.

d. Fourth Generation

The understanding of the fourth generation of human rights was pioneered by countries in the Asian region which in 1983 gave birth to a declaration of human rights called the "Declaration of The Basic Duties of Asian People and Government." This declaration is more advanced than the third formulation because it includes structural demands and favors the creation of just social order. Some of the problems in the declaration related to human rights concerning development are as follows: independent development, peace, people's participation, cultural rights, and social justice rights.

5. Conclusion

According to Imam al-Shafi'i, human obligations and rights in Islamic law aspects are inseparable units. Muslims must look back at the history of the birth and development of human obligations and rights. Imam Syafi'i mentioned that human rights are fundamental and worthy of our struggle as social beings; his thoughts on human rights can be seen in several of his works, such as *Al-Umm* and *Ar-Risalah*, a very important work outside for those of us who want to learn about Human Rights. The work and implementation of human rights imposed by Imam al-Shafi'i are not much different from that described by several Western human rights thinkers. The author finds a match in its implementation after looking at the development of human rights thoughts from several figures. It is hoped that contemporary Muslim scholars will make the issue of human obligations and rights a priority in providing legal solutions to Muslims.

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