



al-Ihkam: Jurnal Hukum dan Pranata Sosial, 18 (2), 2023: 320-341
ISSN: 1907-591X, E-ISSN: 2442-3084
DOI: <http://doi.org/10.19105/al-ihkam.v18i1.6187>

Masyumi's "Djihad dan Qitaal" and Islamic Laws of War: Ahead of Its Time?

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Article history: Received: April 28, 2022, Accepted: August 01, 2023, Published: October 15, 2023

Abstract:

During the post-independence wars in Indonesia, Masyumi's "*Djihad dan Qitaal*" was a book serving as a guide for the *laskar* (Islamic militia) in conducting *jihād* against those who were attempting to re-conquer Indonesia, including the Dutch and the British forces. We utilize literature research and interviews (obtaining secondary data) to examine the extent of this book's contribution in terms of legal scholarship, particularly in the context of its historical setting (1945-1948). This research first explores the significance of "*Djihad dan Qitaal*" during the post-independence wars among the *laskar*. Second, we explore both the Islamic laws of war (*fiqh al-jihad*) and the International Humanitarian Law (IHL) applicable at that time. We find that "*Djihad dan Qitaal*" was a very important book during the war, at least in two things. First, Masyumi's "*Djihad dan Qitaal*" is an important war manual used by the *laskar* during the post-independence wars, and it teaches Islamic laws of war as well as strengthens the spirit of *jihād*. Second, despite the conciseness of the book, the Islamic laws of war explained have prescribed and encouraged restraint in warfare in a way that fulfills the

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purpose of IHL, and is sometimes even more advanced than the IHL applicable at that time.

Keywords:

Masyumi; Indonesia; Jihad; Islamic Law; International Humanitarian Law

Introduction

During Indonesia's post-independence war (1945-1948), *Majelis Sjoero Muslimin Indonesia* (hereinafter, Masyumi) as the largest Islamic political party at that time contributed greatly towards the war. Masyumi was a symbol of the unification of Islamic organizations as it represented all former Islamic organizations.¹ Masyumi's most significant contribution during the war is their Islamic militia (*laskar*) named *Hizbullah*. Consisting mostly of 'ulama (Islamic scholars) and their students (*santri*), the *Hizbullah* fought against the Netherlands re-colonization attempt. Former *Hizbullah* members (together with the *Sabilillah*, another *laskar*) later influenced the establishment of *Asykar Perang Sabil* (APS) in Yogyakarta in 1947.²

We focus on a military manual published by Masyumi, titled "Djihad dan Qitaal", which outlines the necessity of *jihad* during the post-independence war and the principles of lawful conduct of *jihad*. There is already research concerning the role of Masyumi or the *laskars* it founded during the wars.³ However, there is no specific research on the book "Djihad dan Qitaal" despite its importance in the war. Also, there is no research on what international humanitarian law (IHL) was applicable at that time and how it was applied.

¹ S Soebardi, "Kartosuwiryo and the Darul Islam Rebellion in Indonesia," *Journal of Southeast Asian Studies* 14, no. 1 (1983): 116.

² Nur Aini Setiawati, "Askar Perang Sabil: Studi Sosio-Religius dalam Perjuangan Kemerdekaan Republik Indonesia di Daerah Istimewa Yogyakarta" (Thesis, Universitas Gadjah Mada, 1988).

³ See *inter alia*: Insan Fahmi Siregar, "Sejarah Pertumbuhan dan Perkembangan Partai Masyumi (1945-1960)," *Jurnal Thaqafiyat* 14, no. 1 (2013): 88-103; Galun Eka Gemini and Kunto Sofianto, "Peranan Lasykar Hizbullah di Priangan 1945-1948," *Patanjala* 7, no. 3 (2015): 381-98; Ulwiyati Ulwiyati, "Lasykar Hizbullah dalam Perang Kemerdekaan di Jember 1945-1948" (IAIN Sunan Ampel Surabaya, 1994).

The most significant contribution of Masyumi towards the war was (i) establishing the *laskars* of Hizbullah and (ii) being a symbol of Islamic organizations' unity.⁴ Hizbullah did not have a large number of *laskars*, but their jihad resolutions and callings attracted the *'ulama*, *santri*, and general civilians to join the fight. For example, the famous *Resolusi Jihad* by Nahdlatul Ulama's K.H. Hasyim Asy'ari (who co-founded Hizbullah) was claimed to have attracted 60 million Muslims to fight.⁵

The book "Djihad dan Qitaal" was published in 1946 -less than one year after *Resolusi Jihad*. This book reiterates the spirit of *jihad* and contains a good portion of Islamic laws on the conduct of warfare specifically under sub-chapter VIII and is possibly the only published Islamic war manual at that time. Therefore, this research explores two things. First, what "Djihad dan Qitaal" meant to the *jihad* in the early post-independence Indonesia. Second, how this book provides laws of war resources ahead of its time compared to the IHL sources applicable at that time.

Method

We primarily conduct literature research for our study. As the primary data, researchers used the book "Djihad dan Qitaal" which was published around 1946. Physical copies of this book appear to be quite rare and only found in a few libraries and personal collections across Indonesia. The book cover can be seen in Figure 1.

⁴ The early 20th century was the period of national movements emerging in Indonesia, specifically in 1908. *Budi Utomo*, the very first organisation formed by Indonesians, was followed by several other organisations and among the Islamic based were *Sarekat Islam*, *Muhammadiyah*, *Nadhalatul Ulama*, and *Persatuan Islam* in 1921.

⁵ Lukman Hidayat and Ufi Saraswati, "Bentuk Perjuangan Laskar Hizbullah Karesidenan Kedu dalam Perang Kemerdekaan Tahun 1944-1947," *Journal of Indonesian History* 9, no. 2 (2020): 150.

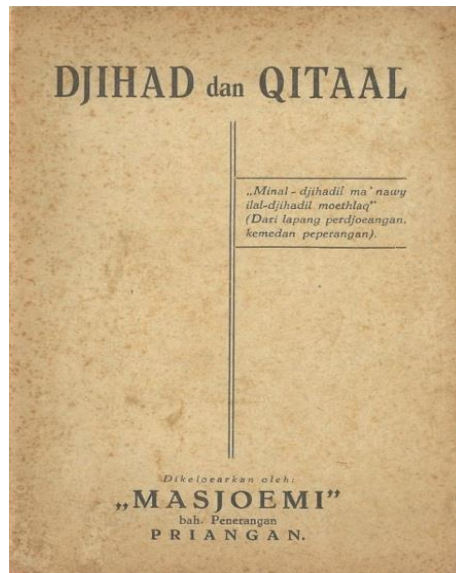


Figure 1. The book cover of Djihad and Qitaal

Fortunately, this book has been scanned and its PDF version is accessible online by everyone.⁶ However, we also obtained secondary data via an interview with Dr. Nur Aini Setiawati. She was not only chosen due to her expertise as an early post-independence Indonesia historian, but she has obtained primary data from the *'ulama* and *laskar* who fought in the early post-independence wars as part of APS, one of the sub-militias of Hizbullah operating in Yogyakarta during the said wars. Part of this data has been published in her previous research, but other parts have not been published. Her interviewees (and possibly all other *'ulama* and *laskar* who participated in the war) have deceased, so it appears that the data we need (especially concerning how the book "Djihad dan Qitaal" was used by the *laskar*) can be only obtained from her.

⁶ See *inter alia*: "Djihad Dan Qitaal - Masjoemi Priangan (1946)," Jejakislam.net, 2016, <http://jejakislam.net/djihad-dan-qitaal-masjoemi-priangan-1946/>.

Result and Discussion

“Djihad dan Qitaal” And What It Meant to The Indonesian *Jihad*

This section explains two things. First, the context in which the book was published and how it was used by the *laskar*. Second, the book was designed to touch the readers and spiritually encourage them to comply with the Islamic laws of war.

The Historical Context and Use of “Djihad dan Qitaal”

Published by Masyumi in January 1946, “Djihad dan Qitaal” was written by E. Abdurrahman, an ‘*alim* (Islamic scholar, singular of ‘*ulama*), Chairman of PERSIS⁷ and vice Chairman of Masyumi,⁸ and prolific author of various Islamic law or *fiqh* works.⁹ This book is very short, merely thirty-six pages, but packed and loaded with very important materials pertaining *jihad*. In summary, “Djihad dan Qitaal” contains three general topics: (a) the necessity of *jihad*, especially considering the situation at the time when the Netherlands was returning to Indonesia to try to re-conquer, (b) the virtues of *jihad* in Islam for the Muslims who participate in it, and, our biggest focus in this research, (c) the lawful conduct of *jihad* or “Islamic *jus in bello*”.

Approaching the final years of World War II when the Japanese position was declining, they realized how significant Islam was in Indonesia. The Japanese then formed Masyumi in 1943 and in 1944 formed Hizbullah under Masyumi to help contribute to the war.¹⁰ Hizbullah was organized into several divisions spreading over Java, including one division in Priangan (West Java) where the book

⁷ Ananda Alam Mar’atus Sholikha, ‘Kajian Hadis dalam Ormas Islam Persatuan Islam (PERSIS)’, *El-Furqania: Jurnal Ushuluddin dan Ilmu-Ilmu Keislaman*, vol. 7, no. 1 (2021), p. 137;

⁸ E Abdoerrahman, *Djihad dan Qitaal* (Priangan: Masjoemi Priangan, 1946).

⁹ Among others: *Perbandingan Mazhab, Ahkamusyari’i; Recik-Recik Dakwah, Hukum Qurban, Aqiqah, dan Sembelihan, Petunjuk Praktis Ibadah Haji, Mernahkeun Hukum Dina Agama, Syiatu aly, and Risalah Wanita*.

¹⁰ Irman G. Lanti, Akim Ebih, and Windy Dermawan, ‘Examining the Growth of Islamic Conservatism in Indonesia: The Case of West Java’, *S. Rajaratnam School of International Studies* (2018), p. 7–8.

"Djihad dan Qitaal" was later published.¹¹ The *laskar* of Hizbullah were not only trained militarily but also spiritually by the *ulama*.¹²

Upon Indonesia's independence on 17 August 1945, the *laskars* of Hizbullah became one of the readily available fighting forces in Indonesia. They fought in brutal battles against the Netherlands and their allies in Priangan,¹³ Jember,¹⁴ the famous battle of Surabaya,¹⁵ and many others. The spirit of *jihad* was strong in the air, and it was in this ambiance that "Djihad dan Qitaal" was published in 1946.

While published in Priangan, this book was distributed to all Masyumi's channels across the nation, and our interview with Setiawati confirmed that this book was in good use by the *ulama* of APS in Yogyakarta around 1947.¹⁶ Setiawati explains how the training of APS's *Laskar* was both military (assisted by the Indonesian army) and spiritual by the *ulama* to teach and remind the importance and virtues of *jihad*. These *'ulama* would have strong Islamic knowledge including those pertaining to *jihad*, but Setiawati adds that "Djihad dan Qitaal" was likely the go-to handbook used to assist the *ulama* in teaching and providing sermons related to *jihad*. The book was very concise, so in explaining the book, it is likely that the *ulama's* explanation would be colored with their prior knowledge.

Setiawati's research confirmed that the virtues of *jihad* were an instrumental motivating factor for the *laskar*. Her interviewees did not indicate exactly how much Islamic laws of war content from "Djihad dan Qitaal" was explained by the *ulama*. However, the book very heavily emphasizes the significance of discipline towards the Islamic laws of war. The preface of the book strongly stresses it, and the

¹¹ Eva, 'Perjuangan Panglima KH. Zainul Arifin dalam Organisasi Laskar Hizbullah Tahun 1944-1948', p. 6;

¹² It was listed that members came from the region of Jakarta, Banten, Surabaya, Sukabumi, Priangan, Purwokerto, Bogor, Pekalongan, Kedu, Surakarta, Semarang, Pati, Jogjakarta, Madiun, Kediri, Bojonegoro, Malang and Besuki; See Winda Novia, "Peran Laskar Hizbullah Dalam Mempertahankan Kemerdekaan RI Pada Perang 10 November 1945" (Thesis, UIN Syarif Hidayatullah, 2018). Abu Rosyid, 'Biografi KH. M. Hasyim Latief', *Yayasan Pendidikan Maarif* (2014), <http://ypm.ac.id/html/index.php?id=artikel&kode=108> accessed 19 October 2019.

¹³ Gemini and Sofianto, "Peranan Lasykar."

¹⁴ Ulwiyati, "Lasykar."

¹⁵ Novia, "Peran Lasykar."

¹⁶ She does not know when the book first arrived in Yogyakarta.

epilogue (closing advice) by Abdoessalam ends by encouraging discipline and compliance towards rules of warfare in Islam,¹⁷ so it is very hard to miss. Crucially, we cannot find any evidence of the International Committee of the Red Cross (ICRC) disseminating IHL in Indonesia at the time.¹⁸ Therefore, the book “Djihad dan Qitaal” appears to fill in an important necessity at the time.

Navigating the Heart: Encouraging Compliance

Hatred and the desire for revenge have been the cause, and even justification, to commit cruel and heinous crimes including massacres since time in memoriam.¹⁹ Sell and Lopez explain that heinous acts in war are caused either by “anger” or “hatred”.

Anger is motivated by the desire to “recalibrate” the target of anger to treat the angry person better.²⁰ Thus, anger-based violence may help enforce International Humanitarian Law (IHL) or sometimes be violated to correct a prior violation by the other side.²¹ However, this may also lead to excessive violence because anger is empirically shown as violent behavior even to those who did not directly trigger the said anger.²² Meanwhile, hatred is caused by the negative association of the target by the hater and is manifested by the desire to eliminate or destroy the target with unlimited and lawless combat.²³ Hatred is stated either by gaining a positive association

¹⁷ See: Abdoerrahman, *Djihad*, 36.

¹⁸ We only found a few data on ICRC’s engagement with Indonesia’s government, and van Dijk suggested them as biased towards colonial powers. See: Boyd van Dijk, “Internationalizing Colonial War: On the Unintended Consequences of the Interventions of the International Committee of the Red Cross in South-East Asia, 1945-1949,” *Past & Present* 250, no. 1 (2021): 249-60.

¹⁹ David Konstan, “Anger, Hatred, and Genocide in Ancient Greece,” *Common Knowledge* 13, no. 1 (2007): 170-87.

²⁰ Aaron N Sell and Anthony C Lopez, “Emotional Underpinnings of War: An Evolutionary Analysis of Anger and Hatred,” in *The Handbook of Collective Violence: Current Issues and Perspectives*, ed. Carol A. Ireland et al. (Routledge, 2020), 33.

²¹ Sell and Lopez, “Emotional Underpinnings,” 40. Side note: IHL does not justify reciprocity-based violation except in very limited circumstances. See: Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, vol. 1 (Cambridge University Press, 2005), 515-520.

²² Raymond W Novaco, “Anger Dysregulation: Driver of Violent Offending,” *Journal of Forensic Psychiatry & Psychology* 22, no. 5 (2011): 650-68.

²³ Sell and Lopez, “Emotional Underpinnings,” 35, 42-43.

towards or destroying the target.²⁴ "Anger" and "hatred" can occur together or interchangeably.²⁵

How will Indonesians feel, after centuries of suffering and death,²⁶ finally achieving independence in 1945, when not long after that, the Netherlands and their allies returned and tried to re-occupy Indonesia while killing so many in the process?²⁷ We cannot help but empathize, without justifying, the anger and hatred felt by Indonesians at the time possibly making them commit cruel acts when given the chance.²⁸

"Djihad dan Qitaal", however, is designed not only as a legal manual but also to reach out to the hearts of Muslims to encourage them to not only fight but also comply with the Islamic laws of war in a few ways. *First*, this book emphasizes "jihad against one's personal desires" as an integral part of *jihad*,²⁹ while conquering "personal desires" by adhering to rules is central to every aspect of Islamic teachings.³⁰ Patience and *tawakkal* (trusting in Allah's plans) are accentuated, and the book ends with advice to abide by the Islamic laws of war.

Second, "Djihad dan Qitaal" encourages various acts of 'ibadat (worship) during warfare, *inter alia* war-time prayer recitations, repenting, *dhikr*, *salat*, and this further builds a stronger spiritual

²⁴ Sell and Lopez, "Emotional Underpinnings," 38-39.

²⁵ Sell and Lopez, "Emotional Underpinnings," 43.

²⁶ See *inter alia*: Remco Raben, "On Genocide and Mass Violence in Colonial Indonesia," *Journal of Genocide Research* 14, no. 3-4 (2012): 485-502; Paul Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia," *Journal of Genocide Research* 14, no. 3-4 (2012): 441-61. Note: Not all regions in Indonesia suffered the same length of colonialism.

²⁷ One can add the British contribution, resulting in more battles such as the famous Battle of Surabaya in 1945. See: Merle Calvin Ricklefs, *A History of Modern Indonesia since c.1200* (Hampshire: Palgrave Macmillan, 2001), 266-67, 276-77, 282-84.

²⁸ See, for example: Jack Boer, "Archief van Tranen: Documenten Jack Boer," Pia Media, accessed October 17, 2021, <https://pia-media.nl/projecten/documenten-jack-boer/>.

²⁹ Abdoerrahman, *Djihad*, 6. See also: letter from H. E. Abdoessalam appended on page 35.

³⁰ See *inter alia*: Ibn Al-Qayyim Al-Jawziyah, *Manajemen Qalbu* (Jakarta: Darul Falah, 2005), 1-15; Abū Ḥamid Muḥammad Al-Ghazālī, *Ihya Ulum-Id-Din*, vol. 3 (Karachi: Darul Ishaat, 1993).

connection with Allah.³¹ There are endless virtues of these acts, including maintaining closeness to Allah, soothing the heart, avoiding oneself from committing sins, and many others.³² This helps to suppress one's "personal desire" and increases compliance with commandments.

Third, "Djihad dan Qitaal" positions the enemy as an object of *da'wah* (Islamic propagation), giving new meaning to "enemy". Most *fiqh al-jihad* works mention the duty of calling the enemy towards Islam prior to attacking,³³ but "Djihad dan Qitaal" is unique in emphasizing *da'wah* towards enemy captives. To a Muslim, successfully inviting someone to Isla are deemed to give immense joy and rewards from Allah.³⁴

In sum, "Djihad dan Qitaal" may curb "anger" because, while the *laskar's* reason for anger may persist, their emotional relations with Allah would make them not want to disobey His laws lest their efforts will not be a legitimate *jihad*. "Hatred" may also be curbed by repositioning the enemy as an object of *da'wah* instead of adding positive association towards the enemy. Therefore, obedience towards Islamic laws of war is incentive and its violation is disincentive, at least emotionally so.

"Djihad Dan Qitaal" and Fiqh Al-Jihad: Filling the Void

In this section, we explore three points: first, the applicable IHL during 1945-1948. Second, a general overview of the Islamic laws of war contents in "Djihad dan Qitaal". Third, a comparative analysis of the general principles of IHL in how "Djihad dan Qitaal" provides relevant rulings.

³¹ Abdoerrahman, *Djihad*, 23-25, 34-35.

³² See *inter alia*: Ibn Al-Qayyim Al-Jawziyah, *Al-Wabil Al-Şayyib* (Makkah: Dar 'Alam Al Fawaid, n.d.), 94-198; Norlain Dindang Mababaya, *The Rationale and Benefits of Salat* (Riyadh: Darussalam, 1998); 'Abd Allāh b. Aḥmad ibn Qudāmah Al-Maqdisī, *Mukhtasar Minhaj Al-Qasidin* (El-Mansoura: Dar al-Manarah, 2002), 15-17, and Chapter One generally.

³³ See *inter alia* Wahbah Al-Zuhayli, *Fiqh Islam Wa Al-Adillatuhu*, vol. 8 (Jakarta: Gema Insani Press, 2011), 32-33; Ibn Rushd, *The Distinguished Jurist's Primer*, vol. 1 (London: Garnet Publishing, 2000), 461-62.

³⁴ Muslim ibn al-Ḥajjāj Al-Naysābūrī, *Sahih Muslim*, vol. 7 (Riyadh: Darussalam, 2007), hadith no 6804.

What IHL Applies During the Post-Independence Wars

The need to protect vulnerable persons in war will forever persist. However, the post-independence wars occurred between 1945 to 1948 just before the four Geneva Conventions of 1949 and decades before their additional protocols in 1977. There were predecessors: one Geneva Convention in 1864 and two in 1929, and the Hague Conventions 1899 and 1907. These are international armed conflict laws applicable to Indonesia which was fighting foreign states.³⁵ However, they are difficult to apply at the time due to the following problems:

First, the 'clean slate' rule applies to new states.³⁶ IHL cannot be included to the "human rights exception"³⁷ because human rights as a full legal regime did not exist yet at the time. *Second*, claiming the aforementioned treaties as customary international laws might be unfair because it imposes a pre-existing legal order to states not participating in its making.³⁸ *Third*, it was not until 1949 did Indonesia obtain sufficient international recognition to enter into any treaties. *Fourth*, we found no evidence of IHL dissemination towards any Indonesian fighters.

Fast forward half a century later, the ICRC actively engages with Islamic circles because many armed conflicts involve Muslim nations and/or groups.³⁹ Discourses on the compatibility between Islamic law and IHL became important to bring a more 'relatable' push for Muslims to comply with rules similar to IHL. There is a need

³⁵ The Netherlands' claim of sovereignty over Indonesia (largely unrecognized) was supported by Western powers at the time, hence they would not think these conventions applied to them. No non-international armed conflict legal regimes were set yet at the time.

³⁶ Malcolm N Shaw, *International Law*, 8th ed. (Cambridge: Cambridge University Press, 2017), 740-42; J Mervyn Jones, "State Succession in the Matter of Treaties," *Brit. YB Int'l L.* 24 (1947): 373.

³⁷ Shaw, *International Law*, 743-45.

³⁸ Antony Anghie, "Towards a Postcolonial International Law," in *Critical International Law: Post-Realism, Post Colonialism, and Transnationalism*, ed. Prabakhar Singh and Benoit Mayer (Oxford-New Delhi: Oxford University Press, 2014), 137.

³⁹ Ahmed Al-Dawoody, "IHL and Islamic Law in Contemporary Armed Conflict: Expert Workshop, Geneva 29-30 October 2018" (Genev, 2019), <https://www.icrc.org/en/document/eyeperts-workshop-report-ihl-and-islamic-law-contemporary-armed-conflicts>.

to further develop Islamic laws of war to meet new contemporary challenges, but there are large areas of compatibility between Islamic laws of war and IHL.⁴⁰ Therefore, the inapplicability and irrelevancy of IHL to 1946 Indonesia was filled by Islamic laws of war, at least for the *laskar*.

Islamic Laws of War in "Djihad dan Qitaal"

The book "Djihad dan Qitaal" allocates seven pages to outline Islamic laws of war, which is very concise but loaded with important materials. On pages sixteen-seventeen, for instance, this book emphasizes the importance of honesty and trustworthiness as a character while also mentioning the condemnation against treachery. *Amānah* (trustworthiness) itself is among the main characteristics of Prophet Muhammad ﷺ.⁴¹ While warfare brings an exception to *siddiq* as it is permissible and even encouraged to use deception as a strategy of war,⁴² *amānah* is specifically noted to have no compromise during the war. Prophet Muhammad ﷺ has explicit prohibitions against treachery (*khiyānah*) during wartime.⁴³

Pages seventeen-eighteen, meanwhile, highlight the need to obey Allah and Prophet Muhammad ﷺ as the source of law integral to the Islamic theology, while also obeying battle commanders. This would point to the necessity to, as a Muslim, follow Islamic laws generally and laws of war specifically. Meanwhile, page nineteen explains how hostilities must cease if the enemy sues for peace. It is also mentioned that the enemy could either be a *dhimmi* citizen of the Islamic state or those with peace treaties. The non-Muslim (now

⁴⁰ See *inter alia*: Fajri Matahati Muhammadin and Thara Kunarti Wahab, "Fiqh Al-Jihād in Modern Warfare: Analyzing Prospects and Challenges with Reference to International Humanitarian Law," *IJUM Law Journal* 26, no. 2 (2018): 241-74.

⁴¹ Miftah ibn Ma'mūn ibn 'Abdillah Al-Shianjūr, *Al-Hāshiyah Al-Martiyah 'alā Tijān Al-Durārī* (Cianjur: Ma'had al-Islāmī al-Salafī, n.d.), 15-16; Imam Zarkasyi, *Usuluddin ('Aqa'id) Ala Madzhab Ahlu Al-Sunna Wa Al-Jama'ah* (Gontor: Trimurti Press, 2014), 58-59.

⁴² Muḥammad ibn Ismā'īl Al-Bukhārī, *Sahih Al-Bukhari*, vol. 4 (Riyadh: Darussalam, 1997), ḥadīth no.3028-3030. Compare with: Muḥammad ibn 'Isā al-Sulamī Al-Tirmidhī, *Jami Al-Tirmidhi*, vol. 4 (Riyadh: Darussalam, 2007), ḥadīth no. 1939. See also: Yahya ibn Sharaf Al-Nawawī, *Ṣaḥīḥ Muslim Sharḥ Al-Nawawī*, vol. 3 (Damascus: Dar al-Khayr, 1416), 404; Abū Zakariyā Muḥī Al-Dīn Ibn Nuhās, *Mashāri' Al-Ashwāq Ila'ā Maṣāri' Al-Ushāq* (Beirut: Dār al-Bashā'ir al-Islamiyyah, 1990), 1075-77.

⁴³ Abu Dawud Sulaymān ibn al-Ash'ath Al-Sijistānī, *Sunan Abu Dawud*, vol. 3 (Riyadh: Darussalam, 2008), ḥadīth no. 2613.

former) enemy will have to pay a reasonable and non-burdening *jizyah* (a poll tax) in exchange for protection. These are also options available in classical *fiqh* literature.⁴⁴

As for page twenty contains three items. *First*, the prohibition against burning the enemy. This might stem from Prophet Muhammad ﷺ who prohibited burning persons⁴⁵ and although the classical 'ulama differs in whether they said 'prohibition' is a strict prohibition or merely undesirable (*makruh*),⁴⁶ "Djihad dan Qitaal" says that it is prohibited. *Second* is the prohibition against "acts of cruelty" which includes: torture, treachery, cheating in sharing loot and spoils, and the infliction of harm towards women, children, incapacitated persons, trees, and animals. These might be based on two narrations, one is authentically attributed to Prophet Muhammad ﷺ (narrated by Muslim, Ahmad, Ibn Majah, and Tirmidhi), and the other was a narration attributed to Abu Bakr al-Siddiq from Imam Malik's Al-Muwatta, which is not authentic due to a missing narrator in the chain (*munqati'*).⁴⁷ Nonetheless, the content of this second narration is supported by other more authentic narrations such as the first narration (prohibition of killing certain persons) and general commands to protect the environment.⁴⁸

Third, spanning also to page twenty-one, humane treatment towards enemy spies and captives: prohibiting torture, execution being last resort only if necessary for security reasons, and making them an object of *da'wah*. This resonates with classical *fiqh* works that say captives may be either executed, enslaved, released with ransom, or released gratuitously depending on *maslahat* (exigency), which are all based on the practice of Prophet Muhammad ﷺ.⁴⁹ It appears that

⁴⁴ Ibn Rushd, *The Distinguished*, 1:483–87.

⁴⁵ Al-Bukhārī, *Sahih*, 4:ḥadīth no.2964, 3016.

⁴⁶ Muḥammad ibn 'Alī Al-Shawkānī, *Nail Al-Authar*, vol. 7 (Misr: Dār al-Ḥadīth, 1412), 294. They agree using fire is permissible in retaliation. See: Ibn Ḥajar Al-'Asqalānī, *Fath Al-Bārī Fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, vol. 2 (Beirut: Dar al-Ma'rifah, 1379), 178; Ibn Rushd, *The Distinguished*, 1:460.

⁴⁷ Aḥmad al-'Uthmānī Al-Tahānawī, *I'lā Al-Sunnan*, vol. 12 (Karachi: Iradah Al-Qur'an wal-'Ulum al-Islamiyah, 1418), 25; Abdullah Azzam, *Jihad: Adab Dan Hukumnya* (Jakarta: Gema Insani Press, 1993), 37.

⁴⁸ See: Yūsuf Al-Qaradāwī, *Ri'āyat Al-Bī'ah Fi Al-Sharī'ah Al-Islām* (Beirut: Dar Al-Shurūq, 2001).

⁴⁹ Al-Zuhaylī, *Fiqh Islam*, 8:86–88; Ibn Rushd, *The Distinguished*, 1:456.

“Djihad dan Qitaal” takes most of these options, and excludes the option of enslavement.

Finally, pages twenty-two and twenty-three note how the central command should make strong and informed decisions, employ experts, manage the distribution of information (especially sensitive ones) very carefully, and have good spy networks as well. This is consistent with Prophet Muhammad ﷺ’s practice of careful information management, sometimes pretending to send an army to one direction and suddenly changing to another direction.⁵⁰ The classical ‘ulama have emphasized Muslim armies to have a good network of spies, feed the enemy with false information, and be careful in when to spread certain information.⁵¹

How “Djihad dan Qitaal” Fills the IHL Void

It can take lengthy books to comparatively explain IHL rules compared with Islamic law and “Djihad dan Qitaal”. Therefore, we simplify it by comparatively analyzing the main principles of IHL.

The first principle of IHL is *the principle of distinction*, meaning that non-combatants may not be harmed during war.⁵² “Djihad dan Qitaal” prohibits “acts of cruelty” while citing the prohibition against killing certain types of persons not traditionally participating in hostilities such as women, children, and the sick.⁵³ On IHL’s side, the Geneva Convention specifically protecting civilians was only made in 1949 and has no predecessor, while the existing Geneva Conventions did protect sick (1864) or shipwrecked soldiers (1929).

Second, the *prohibition to cause unnecessary suffering and superfluous injuries* includes not only the prohibition to harm non-

⁵⁰ Al-Sijistānī, *Sunan Abu Dawud*, 3:ḥadīth no. 2637.

⁵¹ Ibn Nuḥās, *Mashāri’ Al-Ashwāq Ila’ Maṣāri’ Al-Ushāq*, 1075–77. Also: Jalāl al-Dīn Al-Maḥallī and Jalāl al-Dīn Al-Suyūṭī, *Tafsīr Al-Jalālayn*, ed. Ghazi bin Muhammad ibn Talal (Amman: Royal Aal al-Bayt Institute for Islamic Thought, 2007), 98; Haji Abdulmalik Abdulkarim Amrullah, *Tafsīr Al-Azhar*, vol. 2 (Singapore: Pustaka Nasional PTE Ltd, n.d.), 1326–27.

⁵² Marco Sassoli and Antoine A. Bouvier, *How Does Law Protect In War?*, vol. 1 (The International Committee of the Red Cross, 2006), 143–44.

⁵³ Abdoerrahman, *Djihad*, 20. Side note: this Islamic law construction may have a legal vacuum for non-specifically mentioned non-combatants. See: Muhammadin and Wahab, “Fiqh Al-Jihād In.”

combatants (like the principle of distinction above),⁵⁴ but also – essentially for this section – prohibits inflicting excessive harm towards combatants beyond what is necessary to incapacitate them.⁵⁵ Here, other than the general wording of the principle itself, it seems that the vast majority of IHL rules are to mention specific weapons considered to be especially torturous.⁵⁶ For example: the prohibition of blinding lasers⁵⁷ and the restrictive use of incendiary weapons.⁵⁸

In “Djihad and Qitaal”, meanwhile, there are four points directly related to this, i.e. the prohibitions against the use of fire against the enemy and torture or execution towards captured enemy spies.⁵⁹ There is also one point indirectly related, which is the command to do *ihsan* (good)⁶⁰ which, according to a *hadith* also partly cited in “Djihad dan Qitaal”⁶¹, includes the command to kill enemies humanely:

إِنَّ اللَّهَ كَتَبَ الْإِحْسَانَ عَلَى كُلِّ شَيْءٍ، فَإِذَا قَتَلْتُمْ فَأَحْسِنُوا الْقِتْلَةَ، وَإِذَا
ذَبَحْتُمْ فَأَحْسِنُوا الذَّبْحَ، وَلْيُجِدْ أَحَدُكُمْ شَفْرَتَهُ، وَلْيُرِخْ ذَيْبِحَتَهُ

“Verily Allah has prescribed *ihsān* (proficiency, perfection) in all things. So if you kill then kill well; and if you slaughter, then slaughter well. Let each one of

⁵⁴ See: Henckaerts and Doswald-Beck, *CIHL*, vol. 1, chaps. 28–29.

⁵⁵ Advisory Services on International Humanitarian Law, “What Is International Humanitarian Law?,” ICRC, 2004, 1–2, https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf. See also the St. Petersburg Declaration of 1868.

⁵⁶ Some states hold that, despite this principle, specific weapons are only unlawful when a particular rule of custom or treaty specifically outlaws that weapon. See: Henckaerts and Doswald-Beck, *CIHL*, 1:242–243.

⁵⁷ Henckaerts and Doswald-Beck, *CIHL*, 1:293.

⁵⁸ Henckaerts and Doswald-Beck, *CIHL*, 1:289; Theo Boutruche, “The Legality of Flamethrowers: Taking Unnecessary Suffering Seriously,” ICRC Humanitarian Law and Policy (ICRC, February 22, 2018), <http://blogs.icrc.org/law-and-policy/2018/02/22/the-legality-of-flamethrowers-taking-unnecessary-suffering-seriously/>.

⁵⁹ Abdoerrahman, *Djihad*, 20–21.

⁶⁰ Abdoerrahman, *Djihad*, 6.

⁶¹ Abdoerrahman, *Djihad*, 21.

you sharpen his blade and let him spare suffering to the animal he slaughters.”⁶²

Third, *the principle of proportionality* endeavors to ensure collateral damage to be proportionate towards the military advantage anticipated and avoided to the furthest extent possible.⁶³ Such a principle requires a thorough assessment of the military value of legitimate targets and potential collateral losses while applying feasible precautionary measures.⁶⁴

“Djihad dan Qitaal” does not seem to directly touch this issue, but the principle of distinction above indirectly implies to also avoid targeting non-combatants accidentally. Additionally, the book in page 8 cites Surah Al-Baqarah (2) verse 190 regarding *jihad*:

وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ

“... and do not transgress the limit. Indeed, Allah does not love those who transgress the limit.”

This verse hints at a general idea of proportionality, and classical Islamic literature usually prohibits means and methods of warfare that cause excessive and disproportionate damage.⁶⁵

⁶² Muslim ibn al-Ḥajjāj Al-Naysābūrī, *Sahih Muslim*, vol. 5 (Riyadh: Darussalam, 2007), ḥadīth no.5055. See also: Yusuf Al-Qardhawi, *Fiqh Jihad* (Bandung: Mizan, 2010), 496; Jamal Ahmed Badi, *Sharh Arba'een an Nawawi: Commentary of Forty Hadiths of An-Nawawi* (fortyhadith.com, 2002), 88–89, https://ahadith.co.uk/downloads/Commentary_of_Forty_Hadiths_of_An-Nawawi.pdf.

⁶³ Henckaerts and Doswald-Beck, *CIHL*, 1:46; James Kilcup, “Proportionality in Customary International Law: An Argument Against Aspirational Laws of War,” *Chicago Journal of International Law* 17 (2016): 248.

⁶⁴ Janina Dill, “Applying the Principle of Proportionality in Combat Operations,” Oxford Institute for Ethics, Law, and Armed Conflict (Oxford Institute for Ethics, Law, and Armed Conflict, 2010), 7, http://www.elac.ox.ac.uk/downloads/proportionality_policybrief_dec_2010.pdf; Knut Dormann, Louise Doswald-Beck, and Robert Kolb, *Elements of War Crimes under the Rome Statute of the International Criminal Court* (Cambridge: Cambridge University Press, 2004), 167–69.

⁶⁵ Ahmed Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave Macmillan, 2011), 124.

On the IHL side, the Hague Conventions 1899 and 1907 do restrict certain acts of aerial bombardment potentially causing disproportionate damage to civilians and civilian objects. However, as a principle, it may appear that the principle of proportionality was not very solid and comprehensively regulated until decades later *inter alia* through Articles 51 and 57 of the Additional Protocol I of 1977 and more well-established customs.⁶⁶

With regards to protecting the environment, IHL did not have any such regulation until the Additional Protocol I of 1977. Meanwhile, "Djihad dan Qitaal" on page twenty since 1946 has already prohibited (unnecessary) destruction of trees and wildlife.⁶⁷

Fourth, *the prohibition against perfidy* in IHL means that a combatant may not deceive the enemy by pretending to be a non-combatant. Also, perfidy is a war crime if committed while attacking.⁶⁸ This is an exception to the general permissibility of using deception in war. Islamic law prohibits treachery, while some scholars mistakenly think that modern IHL's perfidy is the same as Islamic law's notion of treachery.⁶⁹ In fact, the Islamic notion of treachery refers to the betrayal of agreements and has nothing to do with combatants feigning protected status (as enjoyed by non-combatants).⁷⁰ "Djihad dan Qitaal" has emphasized the importance of trustworthiness and impermissibility of treachery towards agreements in three sections,⁷¹ but nothing on feigning as non-combatants. As a general rule, it does not seem that there is anything in Islamic law against combatants pretending to be non-combatants except if the Muslims were already parties to treaties prohibiting such

⁶⁶ Henckaerts and Doswald-Beck, *CIHL*, 1:46-76.

⁶⁷ We have mentioned earlier that this was taken from Al-Muwatta of Imam Malik (8th century AD).

⁶⁸ Decades later, Article 37 of Additional Protocol I of 1977 prohibits perfidious attacks.

⁶⁹ See *inter alia*: Muhammad Munir, "Suicide Attacks: Martyrdom Operations or Acts of Perfidy?," in *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, ed. Marie-Luisa Frick and Andreas Th. Muller (Leiden-Boston: Martinus Nijhoff Publishers, 2013).

⁷⁰ See: Fajri Matahati Muhammadin, "Fiqh Al-Jihād In The Contemporary World: Addressing The Gaps in The Regulations on The Means and Methods of Warfare" (Ph.D Thesis, International Islamic University of Malaysia, 2020), Chapter 5.

⁷¹ Abdoerrahman, *Djihad*, 16-17.

acts, or if such strategy might end up endangering actual protected persons.⁷²

The International Committee of the Red Cross (ICRC) researchers have noted that perfidy has been prohibited before 1949 IHL (e.g. the Lieber Code 1863, Brussels Declaration 1874).⁷³ Here, “Djihad dan Qitaal” shows no similar rule, but respecting truces has been emphasized. However, it appears that Hizbullah-affiliates such as APS generally fight using uniforms or special insignias, although the call for *jihad* was addressed to the general populace.⁷⁴

Fifth, *humane treatment towards captives* means exactly as it is spelled, with an entire Geneva Convention (GC 1929) dedicated to this. Execution is impermissible except for certain crimes beyond mere belligerency.⁷⁵ The term “Prisoners of War”, however, only includes uniformed members of the armed forces of the opposing side.⁷⁶ Spies, mercenaries, loosely coordinated militia, and many others, are not included and therefore are not afforded similar protection under IHL. “Djihad dan Qitaal” is ahead by not restricting the term ‘captive’ (*tawanan*) as IHL does, implying any captured enemy is included. It does not comprehensively explain what “humane” means but mentions *inter alia* the impermissibility of torturing them⁷⁷ and encouraging them to give *da’wah* to them,⁷⁸ and only allowing execution if the captives cause serious security concerns.⁷⁹

Conclusions

Masyumi published “Djihad dan Qitaal” at an important time. In 1946, few books or any forms of knowledge outlining how to wage *jihad* properly were published in Indonesia. Additionally, IHL was scarce and only debatably applicable. “Djihad dan Qitaal” was concise but contained necessary rules and was ahead of its time, filling the regulation void that IHL cannot fill in. It provided what—from an

⁷² Muhammadin, “Fiqh Al-Jihād,” Chapter 5.

⁷³ Henckaerts and Doswald-Beck, *CIHL*, 1:205, 221.

⁷⁴ Setiawati, “APS.”

⁷⁵ See article 66 of GC 1929.

⁷⁶ See Article 1 of GC 1929.

⁷⁷ Abdoerrahman, *Djihad*, 20–21.

⁷⁸ Abdoerrahman, *Djihad*, 20–21.

⁷⁹ Abdoerrahman, *Djihad*, 20–21.

Islamic perspective—was the bare minimum to know and observe during warfare, including the necessary restraints so the *laskar* would not cause excessive violence. “Djihad dan Qitaal” was ahead of IHL by numerous points. Most importantly, other than being a mere law instruction, it reached out to the hearts of the *laskar* not only to persevere but also to obey the Islamic laws of war as an integral part of *jihad fi sabilillah* which were the reason for them to fight in the first place. Nonetheless, there is only so little our humble research can cover in just one article. We hope more research can be made on “Djihad dan Qitaal” specifically and other early post-independence jihad literature generally, to examine the contribution of Indonesian Islamic scholarship particularly concerning *jihad*.

Acknowledgment

An earlier version of this paper was presented at the *Call for Papers on Southeast Asian Contributions to the Development of the Rules of Warfare in Islam* organized by the International Committee of the Red Cross Regional Delegation Indonesia-Timor Leste, Office for Indonesia and Timor Leste. We thank Novriantoni Kaharudin, Mohd. Fikri Pido, Ahmad Nashrullah, and Prof. Ratno Lukito for hosting the event and providing valuable feedback.

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