

# CHAPTER I

## INTRODUCTION

### A. The Background of the Study

Israel's recent military offensives in the Gaza Strip have shocked the world with their intensity and indiscriminate targeting of Palestinians. Both ground and air attacks have been employed to disrupt weapons supply through tunnels and cripple the Islamic Resistance Movement (HAMAS), a Palestinian militant group.<sup>1</sup>

The devastating consequences of Israel's 8-month offensive in the Gaza Strip, from October 2023 to July 2024, have resulted in a staggering humanitarian crisis. Palestinian casualties have reached 38,259 killed and 88,241 wounded, including at least 33,246 children and 9,025 women. This includes at least 33,246 children and 9,025 women.<sup>2</sup> Meanwhile, in response to Hamas attacks since October, Israel has suffered 1,200 deaths and 5,432 injuries.

Israel's seizure of Palestinian territory began in 1917. To date, Israel has illegally occupied approximately 26,790 km<sup>2</sup> of historical Palestinian land, including areas beyond the original borders of historical Palestine territory.<sup>3</sup> Rafah, the last remaining "safe area" for indigenous Palestinians, was subjected

---

<sup>1</sup> "Israel/Palestine: Devastating Civilian Toll as Parties Flout Legal Obligations | Human Rights Watch," October 9, 2023, accessed July 19, 2024, <https://www.hrw.org/news/2023/10/09/israel/palestine-devastating-civilian-toll-parties-flout-legal-obligations>.

<sup>2</sup> "United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory | Home Page," United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory, accessed 19 July 2024, <http://www.ochaopt.org/node/10572>.

<sup>3</sup> "Visualising How Israel Keeps Stealing Palestinian Land | Israel-Palestine Conflict News | Al Jazeera," accessed July 19, 2024, <https://www.aljazeera.com/news/2024/7/11/how-israel-keeps-stealing-palestinian-land>.

to Israeli bombing under the pretext of pursuing the Hamas group.<sup>4</sup> These the attacks resulted in at least 45 deaths and 249 injuries wounded.<sup>5</sup>

International armed conflicts often arise when diplomatic efforts between countries reach a stalemate. International law, particularly International Humanitarian Law (IHL), has evolve rapidly in the 21<sup>st</sup> century, particularly following the First and Second World Wars.<sup>6</sup> While humanitarian Law does not regulate the reasons for countries going to war, it aims to protect and assist individuals affected by armed conflict, both combatants and civilians.<sup>7</sup>

International Humanitarian Law encompasses a broad Range of legal principles governing armed conflict, including both, the law of war and human rights law. The primary sources of International Humanitarian Law are Law Making Treaties (conventions) based on the 1949 Geneva Convention on War Victims, the 1899 Hague Conventions, and the 1907 Peace Convention.<sup>8</sup> A distinctive feature of IHL is its authority, which extends to both states and international organizations, regardless of their involvement in armed conflict.<sup>9</sup>

In response to Israel's violations of Palestinian rights, the Organization of the Islamic Conference has repeatedly called for an investigation into war

---

<sup>4</sup> “What Happened When Israel Attacked Rafah? | Israel-Palestine Conflict News | Al Jazeera,” accessed July 19, 2024, <https://www.aljazeera.com/news/2024/5/28/what-happened-when-israel-attacked-rafah>.

<sup>5</sup> “Death Toll in Israeli Attack on Displaced Palestinians in Rafah Rises to 45,” accessed July 17, 2024, <https://www.aljazeera.com/news/2024/5/27/dozens-killed-in-israeli-strike-on-rafah-following-hamas-rocket-attacks>.

<sup>6</sup> Hengky Ho, “Penerapan Hukum Humaniter Internasional Dalam Konflik Bersenjata Antara Palestina dan Israel,” no. 2 (February 2019): p. 170.

<sup>7</sup> Haryomataram, *Pengantar Hukum Humaniter*, 1 (Raja Grafindo Persada, 2005), p. 3.

<sup>8</sup> Moh Rosyid, “Menggugah peran hukum humaniter internasional Islam dalam mengurai konflik etnis perspektif sejarah,” *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 12, no. 2 (December 31, 2012): p. 194–95

<sup>9</sup> Rhona K.M. Smith, Njäl Høstmælingen, and Christian Ranheim, *Hukum Hak Asasi Manusia*, vol. 1 (Yogyakarta: PUSHAM UII, 2008, 2008), p. 333.

crimes. The Arab League also convened a meeting to discuss urgent measures to address the conflict, with the establishment of two states emerging as the preferred solution.<sup>10</sup>

Africa as one of the International Community has accused Israel of committing genocide in Palestine, with reports filed at the International Court of Justice. Israel vehemently denies these allegations, claiming that its actions were defensive responses to a complex conflict. The United Nations Relief and Works Agency for Palestine refugees in the Near East (UNRWA) has documented the severe humanitarian consequences of the conflict particularly for civilians not involved in hostilities. In response, the tribunal issued an interlocutory ruling emphasizing the need to halt genocidal actions and hold all parties accountable for the extensive harm caused.<sup>11</sup>

These contemporary events challenge the traditional approach to international law, raising questions about its adequacy in addressing complex modern conflicts. However, Islamic Civilization as exemplified by Fiqh al-Siyar (Islamic International Law), demonstrated significant advancements in this field as early as the 8th century AD, predating the work of Hugo Grotius, considered the father of international law.<sup>12</sup> The inclusion of Imam Muhammad ibn al-Hasan al-Shaybani in the first list of The Oxford Handbook of the History of International Law, followed by Hugo Grotius, further underscores the significant contributions of Islamic legal thought to the development of international law.<sup>13</sup>

---

<sup>10</sup> Muhammad Arslan Farooq and Sapna Mumtaz, “*The Interplay of the United States and the Muslim World in the Israel-Palestine Conflict: A Complex Web of Interest and Tensions*” 5, no. 2 (June 2024): p. 2

<sup>11</sup> “The Court Indicates Provisional Measures,” *International Court of Justice*, January 26, 2024.

<sup>12</sup> Fajri Matahati Muhammadin and Shania Dwini Azzahra, “The Role of Fiqh Al-Siyar in International Law-Making: Escaping the Lethargy,” *Al-Jami’ah: Journal of Islamic Studies* 60, no. 2 (December 16, 2022): p. 511

<sup>13</sup> Bardo Fassbender and Anne Peters, eds., *The Oxford Handbook of the History of International Law*, 1st ed. (Oxford University Press, 2012), See Chapter VI People in Potrait.

Islamic scholars and non-Muslims alike have questioned the role of Islam in the formation of International Law, recognizing its relevance and influence.<sup>14</sup> Some critics argue that elites and colonial societies have exploited international law-making processes to perpetuate colonial interests, highlighting the political, ideological, and educational factors that shape these processes.<sup>15</sup>

In Islam, law is established through human intermediaries, such as the Khalifah of Allah, who act as conduits for divine law. Ultimately, Allah SWT holds the supreme authority in determining law.<sup>16</sup> However, the desire to incorporate diverse perspectives and knowledge can lead to interpretations that may conflict with Islamic teachings. It is crucial to reaffirm the principles outlined in the Qur'an, such as Surah Al-Baqarah verses 190-193, which emphasize the prohibition of war except in self-defence against those who attack Muslims or commit aggression.

While Islam advocates for self-defence, its core principles emphasize peace and compassion. Fuqaha have emphasized the prohibition of killing women, children, and the elderly during warfare. Islam also promotes ethical conduct in warfare, forbidding acts such as cutting down trees and plundering livestock, even when intended to weaken the enemy.<sup>17</sup>

The fundamental similarities between International Humanitarian Law and Fiqh al-Siyar make this study relevant for exploring potential solutions to the Israeli-Palestinian conflict. By examining the principles and values shared

---

<sup>14</sup> Fajri Matahati Muhammadin, "Urgensi Majelis Ulama Indonesia Membersamai Pemerintah dalam Hukum Internasional," *El-Dusturie* 2, no. 1 (June 6, 2023), p. 6

<sup>15</sup> Muhmammadin and Azzahra, "The Role of Fiqh Al-Siyar in International Law-Making." p. 8

<sup>16</sup> Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu*, vol. 8 (Jakarta: Gema Insani, 2017), p. 267.

<sup>17</sup> محمد ابن محمد ابن قداماء، *المغني*، مجلد ١٠، (بيروت: دار الكتب العلمية، ١٩٩٠)، ص ١٧٠.

by these two legal frameworks, we can gain valuable insights into potential avenues for conflict resolution.

## **B. Research Questions**

Based on the background that has been described above this study seeks to address the following research questions:

1. How has International Humanitarian Law been applied in the Israeli-Palestinian conflict?
2. What practical solutions does Fiqh Siyar offer for resolving the Israeli-Palestinian conflict?
3. What are the relevance and differences between International Humanitarian Law and Fiqh Siyar in addressing the challenges of the Israeli-Palestinian conflict?

## **C. The Objectives of the Research**

The objectives that have to be achieved in this research are as follows:

1. To examine the application of International Humanitarian Law principles in the Israeli-Palestinian conflict.
2. To identify practical solutions offered by Fiqh Siyar for resolving the Israeli-Palestinian conflict.
3. To compare and contrast International Humanitarian Law and Fiqh Siyar in their approaches to addressing the challenges of the Israeli-Palestinian conflict.

## **D. Significance of The Research**

This research contributes to the advancement of legal science, particularly Islamic law. Thus, it will clarify the influence of International Humanitarian Law and its relevance to Fiqh Al-Siyar as an application of Islamic law.

### **4.1. Theoretical Implications**

This research is useful for developing International Humanitarian Law and Fiqh Al-Siyar more widely.

#### 4.2. Practical Implications

This offers valuable insights for practitioners and scholars of international law seeking to understand contemporary issues through an Islamic legal perspective.

#### E. Literature Review

Offers valuable insights for practitioners and scholars of international law seeking to understand contemporary issues through an Islamic legal perspective.

1. Hengky Ho (2019) "*Application of International Humanitarian Law in the Armed Conflict Between Palestine and Israel*". This journal describes violations of Humanitarian Law in the Armed Conflict between Palestine and Israel and its resolution according to International Humanitarian Law, which concludes the application of International Humanitarian Law in the Israeli-Palestinian conflict. Concluding that both parties to the dispute, both Israelis and Palestinians, have equally violated International Humanitarian Law, particularly human rights.<sup>18</sup> The current author examines the history of the beginning of the conflict with violators of International Humanitarian Law.
2. Fajri Matahati Muhammadin (2021) "*Mukadimah Fikih siyar: An Introduction to Islamic International Law in the Contemporary Era*". This book discusses an introduction to Islamic International Law, which is becoming unfamiliar to the public and law students.<sup>19</sup> The difference between the author and the author is the implementation of international humanitarian law regarding the phenomenon of the Israeli and Palestinian conflicts.

---

<sup>18</sup> Ho, "*Penerapan Hukum Humaniter Internasional Dalam Konflik Bersenjata Antara Palestina dan Israel*." p. 1

<sup>19</sup> Fajri Matahati Muhammadin, *Mukadimah Fikih Siyar : Mengenal Hukum Internasional Islam di Era Kontemporer* (Yayasan Bentala Tamaddun Nusantara, 2021), p. 5

3. Fajri Matahati Muhammadin; Shania Dwini Azzahra (2022), *"The Role of Fiqh Al-Siyar in International Law-Making Escaping the Lethargy"*. This journal reaffirms the urgency of applying Islamic Law (Fiqh Al-Siyar) to make International Humanitarian Law. Bridging the gap so that Islamic International Law can develop and respond well to current issues. By involving all scholars and all channels in the process.<sup>20</sup> The current author discusses how fiqh siyar looks at a contemporary phenomenon today.
4. Zelda Farah Ardiata; Komang Febriyanti Dantes; Si Ngurah Ardhya, M. Jodi Setianto (2022), *"The View of International Humanitarian Law towards the Israeli-Palestinian Armed Conflict"*. This journal provides insight into how International Humanitarian Law is applied and violated in the Israel-Palestine conflict and its impact on human rights and the protection of civilians.<sup>21</sup> In comparison, the current author examines the principles of Fiqh Siyar that can be applied in the Israel-Palestine conflict.
5. Tri Mahwati; Ana Risma Nanda (2022) *"Analysis of the Palestinian and Israeli Conflict in the Perspective of International Humanitarian Law"*. This research emphasizes the importance of applying International Humanitarian Law in protecting civilians during armed conflicts and criticizes human rights violations that occur in conflicts.<sup>22</sup> The current author examines the importance of applying the principles of Fiqh Siyar in resolving armed conflicts.

---

<sup>20</sup> Fajri Matahati Muhammadin and Shania Dwini Azzahra, "The Role of Fiqh Al-Siyar in International Law-Making: Escaping the Lethargy," *Al-Jami'ah: Journal of Islamic Studies* 60, no. 2 (December 16, 2022): p. 509-46

<sup>21</sup> Zelda Farah Ardiata et al., "Pandangan Hukum Humaniter Internasional Terhadap Konflik Perseteruan Bersenjata Israel-Palestina," *Ganesha Law Review* 4, no. 2 (November 1, 2022): p. 24–32

<sup>22</sup> Tri Mahwati and Ana Risma Nanda, "Analysis of the Palestinian and Israeli Conflict in the Perspective of International Humanitarian Law," *International Law Discourse in Southeast Asia* 1, no. 1 (January 31, 2022): p. 23–42

## **F. Research Methods**

### **6.1. Type of Research**

This thesis employs a qualitative normative research approach, also known as doctrinal or subjective legal research. This approach focuses on analysing legal texts and interpreting their meaning as rules or norms that guide appropriate human behaviour.<sup>23</sup>

The author utilizes a descriptive and historical approach. The descriptive approach involves observing and analysing existing data to gain a comprehensive understanding of the issues and complexities of the Israeli-Palestinian conflict. The historical approach examines sources that provide information about the origins and development of the conflict.<sup>24</sup>

### **6.2. Object of Research**

The Object of the research refers to the primary subject or phenomenon being studied, analyzed, or investigated by the researcher. It is essentially what the research is focused on, and it can be a tangible or intangible entity.<sup>25</sup> This study focuses on the Israeli-Palestinian conflict, examining the application of International Humanitarian Law (IHL) and Fiqh Siyar within this context. The research aims to analyse and explore the practical solutions offered by Fiqh Siyar in addressing the challenges posed by the conflict.

### **6.3. Data Source**

Data source refers to the origin of the data or information that is collected, analyzed, and interpreted in a research project. It is where the researcher gathers the evidence needed to answer the research questions or

---

<sup>23</sup> Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 1 (Jakarta: PT Raja Grafindo Persada, 2004), p. 118.

<sup>24</sup> Sugiyono, *Quantitative, Qualitative, and R&D Research Methods*, 23rd ed. (Bandung: Alfabeta, 2016), p. 226-229.

<sup>25</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, 23rd ed. (Bandung: Alfabeta, 2016), p. 29.



test hypotheses.<sup>26</sup> This research employed a literature review methodology, collecting and analysing various legal documents, scientific literature, and other relevant sources. This approach aimed to gain a comprehensive understanding of the applicable legal principles and their application to the Israeli-Palestinian conflict:

#### 6.3.1. Primary Data Source

Primary data is original data collected directly by the researcher for the specific purpose of their study. It provides firsthand, new information that has not been previously analyzed or interpreted by others.<sup>27</sup> Primary data was collected through a literature review of Fiqh Siyar (Muhammad al-Shaybani), The Law of Islamic War (Ahmad Dawoody), Natural Law and Enlightenment Classics (Hugo Grotius), hadith, and tafsir.

#### 6.3.2. Secondary Data Sources

Secondary data refers to data that has already been collected, processed, and published by others. It is information that exists independently of your research but can be used to inform or support your analysis.<sup>28</sup> Secondary data was obtained from various sources, including books, journals, newspapers, internet media, and other relevant materials related to the thesis topic.

### 6.4. Data Collection Method

The data collected in this research is documentation. As a human instrument, the researcher played a crucial role in determining the research

---

<sup>26</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, 23rd ed. (Bandung: Alfabeta, 2016), p. 229.

<sup>27</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, 23rd ed. (Bandung: Alfabeta, 2016), p. 224.

<sup>28</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, dan R&D*, 23rd ed. (Bandung: Alfabeta, 2016), p. 225.

focus, selecting relevant data, assessing data quality, and analyzing the findings to draw conclusions about the Israeli-Palestinian conflict.<sup>29</sup>

#### **6.5. Data Analysis Method**

This research employed a qualitative descriptive analysis method to analyze the collected data. The analysis process involved the following steps:

- a. **Description:** Identification and description of the relevant principles of International Humanitarian Law and Fiqh Siyar within the context of the Israeli-Palestinian conflict.
- b. **Comparison:** Analysis of the similarities and differences between International Humanitarian Law and Fiqh Siyar in addressing the challenges of the Israeli-Palestinian conflict.

#### **G. Systematization of Writing**

There are four chapters of discussion to obtain accurate results from this research. Among them are as follows:

**CHAPTER I:** This chapter will explain the background of the problem, problem formulation, the objectives of the research and benefits of research, literature review, research methods and systematic discussion.

**CHAPTER II:** Provide a comprehensive overview of the Israeli-Palestinian conflict, including its historical context, key events, and ongoing challenges and their application in seeing a phenomenon.

**CHAPTER III:** This chapter Provide the discussion and result of the research, which consist of the principles of international humanitarian law in the context of the Israeli-Palestinian conflict, the practical solutions offered by Fiqh Siyar in resolving the Israeli-Palestinian conflict, then the comparison and relevance between international humanitarian law and Fiqh Siyar.

**CHAPTER IV:** Closing. This chapter contains conclusions and suggestions from researchers. The conclusion contains the answer to the

---

<sup>29</sup> 226–29.

existing problem formulation and the implications of this research; it also contains suggestions from the author.

