

Juridical Study of the Death of Mahsa Amini Based on Islamic Law and International Human Rights

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Abstract

The death of Mahsa Amini in relation to the mandatory wearing of the hijab for Iranian women caused quite an uproar in the international community. The research was conducted by utilizing written literature, books, journals, and past research results that are relevant to the research topic. The results of the research found that there was a violation of human rights from the loss of Mahsa Amini's life due to the actions of local authorities who were too repressive because she was considered not implementing the existing rules in Irat - relating to the obligation of Iranian women to wear the hijab and niqab. On the other hand, this shows that sometimes there is still a conflict of interest between the enforcement of human rights and the enforcement of Islamic law that collides with each other. In this case, a thorough investigation is needed to punish those involved and the government needs to review its law enforcement officers.

Keywords | Islamic law, international human rights, hijab

INTRODUCTION

Human rights are inherent in human beings from the moment they are born. This right is universal and cannot be taken away carelessly. Human rights are recognized and protected by positive law. Human rights are regulated in the UDHR (*Universal Declaration of Human Rights*). In general, all societies in the world recognize human rights and are represented by the recognition of the *Universal Declaration of Human Rights*. The *Universal Declaration of Human Rights* is an advisory statement and was adopted and ratified by the UN General Assembly in 1948. The UN issued the *Universal Declaration of Human Rights* with the aim that it is hoped that the UDHR will protect the human rights of every individual. This statement of human rights has 30 articles including the right to freedom and equality; human rights for all; the right to life, security and liberty; the right to be free from slavery; the right to be free from torture; the right to equality before the law; the right of access to the law; the right to legal representation; the right from unlawful detention; the right to a fair and public trial; the right to be presumed innocent until proven guilty; the right to privacy; the right to protection; the right to citizenship; the inviolability of human rights; responsibility to the society in which one lives; social and international order; the right to enjoy culture and create; the right to education; the right to health insurance; the right to rest; the right to work and to establish trade unions; the right to social security; participation in democracy; freedom of peaceful assembly; freedom of expression; the right to embrace religion; the right to private property; and the right to marry and raise a family.

The right to life, security and liberty is found in article three of the UDHR. Although it has been listed in the UDHR, in fact there are still many cases of violations of the right to



life, security and freedom. One example of the violation of this right is the death of Mahsa Amini. Mahsa Amini was a 22-year-old Iranian woman who died after being arrested by Iranian moral police in Tehran. Mahsa Amini was arrested because she was deemed to be wearing an inappropriate hijab. This is because in Iran there are regulations prohibiting women from wearing tight-fitting clothing and must wear a hijab when in public spaces. Mahsa was then arrested and detained by the police. She was allegedly tortured during her detention. The UN also received reports that Mahsa Amini suffered violence and abuse. However, Tehran police claimed that Mahsa Amini suffered heart problems while in detention. Mahsa Amini's death on suspicion of torture sparked public outrage and led to demonstrations everywhere.

Islam itself does require women to wear hijab. In Islam, women are required to cover and should not show off their bodies in association with men who are not legally their muhrim. The emphasis of the function of hijab in Islam is to cover the aurat and certain body parts that are considered to cause fitnah.¹ However, this seems to conflict with the right to freedom for every individual. This freedom relates to the freedom to determine one's own clothing. So in this case, Mahsa Amini, who was deemed not wearing the hijab as prescribed and was arrested, violated her right to freedom. Although Mahsa is a Muslim, she has the right to decide how she dresses and whether or not she wears the hijab. Her death after being imprisoned for not wearing the prescribed hijab was too fatal.

This case became the talk of the entire community both in Iran and in other countries. Mahsa Amini's death, which was considered odd, caused public outrage. This journal was written to find out about the relationship between Islamic law and the concept of international human rights in the death of Mahsa Amini. In addition, the writing of this journal also aims to find out about laws that are contrary to human rights and violate human rights.

LITERATURE REVIEW

Panji Adam (2019) in his book concluded that Islamic law actually has a broad definition because basically Islamic law includes fiqh and sharia. However, it can be defined that both are a set of laws or regulations based on the revelation of Allah and the Sunnah of Muhammad SAW relating to behavior and procedures in life that are recognized and believed and apply bindingly to all people who adhere to Islam. In simple terms, it can be concluded that Islamic law is law because it is compiled based on the revelation of Allah SWT.

This is the case with international human rights law, which is based on the UDHR passed by the United Nations to protect the human rights of every human being in the world. Which in it, there are several normative cores that can be harmonized with religious life, namely including (1) internal freedom; related to freedom of thought and religion. This also concerns individual freedom to embrace, apply, maintain, or change religion and belief. (2) external freedom; individual freedom in community with one another, either in the public or

¹ Mubaidi Sulaeman, *Clarifying the Position of Hijab as a Critique of Islamic Fundamentalism Religious Expression*, Spiritualist Journal, Vol.4 No.2 (September 2018), p. 105.

private sphere. In this case, it relates to spreading religious teachings as long as it does not conflict with the norms of society and applicable laws.

Some of these rules include the use of the hijab, which is often considered a rule that contradicts the individual freedom of dress-or freedom of expression-for a woman. According to Yazdi and Musavi (2021), hijab is said to be a separator that separates two things and covers the two separate things. Hijab itself has been mentioned seven times in the Qur'an with the intention of *separating*. In the Qur'an Surah Al-Ahzab:33, in the word *hijab*, men are instructed to speak to the prophet's wives from behind a *curtain*.

Musavi (2021) again argues that the conflict between the obligation to wear hijab and the freedom of expression to choose one's own lifestyle. In essence, hijab does not intend to trap women at home and prohibit them from going out. While it is recommended not to leave the house too often, jurisprudence and religion itself have never prohibited Muslim women from appearing in public. Muslim women can still participate in economic, cultural, social, and political activities as usual. With this, women's freedom is protected. Just like men, women have the opportunity to develop, such as receiving education and others.

Sayyed (2021) concluded that the hijab, questions and doubts about it, especially in the Islamic Republic of Iran. That the use of hijab in Islam can be proven through one of the verses of the Qur'an and hadith supported by rational reasons. The issue of the hijab and all the questions and doubts that come with it, especially in a predominantly Muslim country - in this case, Iran, for example. This research will address the issue of the mandatory hijab for Muslim women, which is thought to be the cause of the death of Iranian woman Mahsa Amini, and the aspects of human rights violations involved in the case, as well as answer whether the use of the hijab in sharia violates women's freedom of expression.

METHOD

The type of research used in this research is a literature study. The literature study method is a series of ways to solve problems by tracing the sources of writing that have been made before. Literature study is an activity that has the main objective of developing theoretical aspects as well as aspects of practical benefits. This study is carried out to find a foothold to build a theoretical basis, framework, and determine temporary conjectures in the problems to be discussed. The author solves the problem by tracing the sources of writing that have been made before.

In the search for theory, the author collects information from related literature. The author uses data collection techniques by looking for sources from books, journals, magazines, as well as from research results (theses and dissertations), and other appropriate sources. The analysis technique for this research starts from looking for research results that are sequentially considered from the most relevant, relevant, and quite relevant. This was done by looking at the most recent research and gradually moving to older years. Reading the abstract of each research first to see if it is in line with the problem to be solved in the research.



RESULTS AND DISCUSSION

As we know the enforcement of the rules of the Islamic Republic of Iran in the country is very conservative since the Islamic Revolution in 1979, the Iranian government imposes rules based on strict Islamic law, especially for women in terms of dress where every woman is required to dress closed and must use a hijab as a head covering. This is very different from the time before the Revolution when women were free to dress without head coverings and even dress like in western countries. In a law adopted in 1983 all women, regardless of creed or nationality had to hide their hair with the hijab in public and wear loose clothing under their coats. Although some of these rules have been largely ignored over the years especially in big cities but some crackdowns are still occasionally enforced. Under the hardline government of Iranian President Ebrahim Raisi, such enforcement was left to a police unit known as the Guide Patrol or what is often referred to as the Moral Police. Like the police, they are authorized to enforce regulations in the country. The Moral Police are authorized to detain citizens who are deemed "inappropriately dressed". The existence of these regulations has resulted in human rights violations within the country, such as the recent case of the death of a 22-year-old woman named Mahsa Amini for wearing an inappropriate hijab.

Chronology of Events

It is known that Mahsa Amini is actually from the city of Saqqez in the Kurdistan Province of Western Iran and is an ethnic Kurd, a minority group in Iran that mostly lives in the west of the country and is not from Tehran. On September 13, after Mahsa Amini traveled in order to visit her family. At the time of the incident Mahsa was with her brother Kiaresh Amini at the entrance to the street. She was immediately arrested by Moral Police and Kiaresh was told that his sister would be taken to a detention center for a "briefing class" after which she would be released. But it was all a lie, as Mahsa was rushed to Karsa Hospital, where after being in a coma for three days, she was pronounced dead on Friday local time. Witnesses said that Mahsa was beaten by patrols in a van whose purpose was to take her to the detention center. The local hospital said that the patient suffered a heart attack and brain injury which resulted in death, despite all efforts made by the medical team but unfortunately, they failed to keep Mahsa alive.

Authorized Party Description

In a statement by Tehran Police, Mahsa Amini's death was an 'accident' and said that Mahsa had a heart attack due to collapse and three days later she was pronounced dead. However, Mahsa's father insisted that Mahsa had no heart problems and epilepsy. Mahsa Amini's family lawyer rejected Iran's official medical report which stated that her daughter's death was not caused by a beating. Previously, Mahsa Amini's family had complained to the police who arrested her and asked for evidence of photos and videos during detention. Finally, the Iranian police released CCTV footage evidence. The CCTV footage shows a woman known as Amini interacting with a female police officer at the police station, after a brief conversation Amini held her head, grabbed a chair and fell.

Regarding the release of the CCTV video, Amini's father said that the CCTV footage released by the Iranian Police had been heavily edited and contradicted reports of bruises and eyewitness accounts. An eyewitness did not say that Amini was beaten at the police station. Instead, they alleged that he was beaten in a police car after being arrested outside a train station in Tehran. Amini lost his sight and collapsed at the police station due to a concussion caused by the beating on his head. A witness said that Amini was also tortured and humiliated.

Reaction to Mahsa Amini's Death

The death of Mahsa Amini made the public, especially women, strongly condemn the persecution she received during her arrest by the Iranian Moral Police. The protests started from Mahsa's hometown of Saqqez in Kurdistan province and have spread to most of Iran's 31 provinces. Clashes between protesters and the Iranian police have shaken the country for days since last September, until now a number of protests and riots are still taking place throughout Iran and even the international community as a form of solidarity with fellow women. As a form of disappointment, some female protesters protested by cutting their hair and burning their hijab in public places. In addition, female protesters danced near a large bonfire while clapping and chanting.

As of Monday, October 3, 2022, at least 92 people were killed in the protests including women and children. The Iranian government itself will take firm steps against the demonstrators and say that they are "rioters and thugs". Calls for regime change were also raised by the protesters in reference to Iran's supreme leader Ayatollah Ali Khamenei. The government finally took decisive steps to quell the action, one of which was by blocking a number of social media platforms from posting videos of the demonstrators. The Iranian Embassy stated that the government will thoroughly investigate the case of Mahsa Amini's death, which has sparked protests across the country. During Mahsa's death rally, Iranian President Ebrahim Raisi said there was interference from western countries that have antagonized the Islamic state of Iran since 1979.

CONCLUSION

Iran is one of the Islamic countries that adheres to the Islamic legal system whose existence has strengthened after the Islamic revolution. As such, this country also applies Islamic law to the making of state laws. In the state laws made to regulate the continuity of people's lives in the nation and state, there is a strict rule regarding the ethics of dress for its people. The original purpose of making the law was to maintain the dignity of the people as Muslims, but in its application in the field what happened was not order, but instead disaster for some people.

This can be seen from the incident experienced by an Iranian citizen named Mahsa Amini, where the woman allegedly experienced human rights violations by local security officers because she did not comply with the regulations regarding the dress code set by the government. The incident experienced by Mahsa Amini led to her death and of course it caused sympathy from all people throughout the country, they felt that what happened to



Mahsa Amini was not just an accident, but included violations of human rights committed by the government who should be the protector of the people.

It is not only the actions of the Iranian authorities that are of concern, but the laws and regulations made by the government have also drawn strong criticism from the world community because they are considered to violate the right to freedom, equality and the right to life, which is one of the spearheads of Human Rights Law, as established by the United Nations in international declarations. As a country that has joined the UN, the Iranian government should pay more attention to actions in the management of its country, and not just let go of what has been done by its state apparatus. This is because the state should protect the human rights of every citizen. Therefore, the government should be able to provide firm action to the state apparatus involved so that the demonstration efforts that occur among the community will subside.

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