

The Deontological and Consequentialist Principles Of Jihad and the Just War Theory in Indonesian Context: A Critical Analysis

Najamudin

Lecturer, STAI La Tansa Mashiro Lebak Banten

PhD Student in Theology and Religious Studies

University of Leeds UK

Abstraks

Tradisi perang berbasis keadilan dapat ditemukan dalam sejarah pemikiran politik Islam pada masa awal khalifah Islam. Dalam kajian ini, penulis menggunakan dua pisau analisis yaitu interpretasi tekstual terhadap Alquran dan Hadis, dan interpretasi sejarah perang suci dalam tradisi Islam. Penelitian ini bertujuan untuk menggali prinsip-prinsip dasar jihad, dan membandingkannya dengan teori perang berbasis keadilan untuk menemukan sisi persamaan dan perbedaannya, serta membangun argumentasi apakah jihad bisa dikategorikan sebagai bentuk perang yang memenuhi rasa keadilan masyarakat yang tertindas. Studi kasus dalam kajian ini adalah konsepsi jihad Imam Samudra dalam buku kontroversialnya “*Aku Melawan Teroris*”. Dengan menggunakan analisa *Jus Ad Bellum* dan *Jus In Bello*, ditemukan bahwa apabila jihad dipandang sebagai sesuatu yang sakral dan suci, maka kesucian jihad tidak bisa dikotori dengan tindakan terorisme. Dalam perspektif teologi dan hukum Islam, penelitian ini membuktikan penyalahgunaan ayat-ayat jihad oleh Imam Samudra untuk menjustifikasi tindakan terorisme yang dilakukannya di Bali.

Abstract

Just war traditions may exist in Islam dating back to the history of Islamic political thought from the early Islamic empire. Accordingly, textual interpretation on the *Qur'an* and the *Hadith*, and historical background on Islamic holy war, would be inevitable in this study. This study is aimed at assessing the main principles of *jihad*, and comparing them with the theory of just war in order to grasp some commonalities, if any, and building argumentations whether or not *jihad* could be deemed as a just war. In order to sharpen the understanding of these principles, one case study of *jihadist* theory in Indonesian context will be applied and analyzed, notably Imam Samudra's principle of *jihad* in his controversial book '*Aku Melawan Teroris*.' Under the framework of *jus ad bellum* and *jus ad bello*, this study reveals that if jihad is seen as holy, just and sacred, no one will justified to commit terrorism and violence under the guise of jihad. In addition, using juristic and theological approach of jihad, this study finds that Imam Samudra, one of the masterminds of Bali bombing, is guilty of using some Quranic verses regarding jihad and abusing it to justify his attacks on the island.

Keywords: Islam, *jihad*, Just War Theory, *jus ad bellum*, *jus ad bello*

A. Introduction

In the light of history, St. Ambrose wrote the notion of just war prior to the idea of Just War Theory (JWT) proposed by St. Augustine. Long before these two philosophers, just war traditions were embedded in two great empires in that time, the Roman and the Greeks. As a matter of fact, three prominent philosophers in the Roman Empire, Cicero, Plato, and Aristotle, wrote the same issues of moral consideration for leaders and soldiers before going to the battlefields. In addition, the just war tradition not only belongs to Western civilization, but also to other civilization such as China and India. Take for instance, Mo Tzu and Mencius from China, both wrote and discussed 'the injustice' and 'the necessity' to wage war to fight against the state of injustice. In India, two famous books *the Laws of Manu* (1991) and *the Bhadavad Gita* (1968) contain the concept and the ethics of war.¹

From this stand point, just war traditions may also exist in Islam dating back to the history of Islamic political thought from the early Islamic empire. It is, therefore, textual interpretation on the *Qur'an* and the *Hadith*, and historical background on Islamic holy war, would be inevitable in this study. On this regard, the paramount need is to prove whether or not *jihad*, (a spirit of Islamic war) like any other wars, comprises a just cause and a legal authority as core principles of the Just War Theory (JWT).

This study is aimed at assessing the main principles of *jihad*, and comparing them with the theory of just war in order to grasp some commonalities, if any, and building argumentations whether or not *jihad* could be deemed as a just war. With regards to various meanings of *jihad*, one would argue that, to some degree, the term *jihad* has something in common with the Just War Theory (JWT), albeit terrorists used and abused *jihad* for the sake of their political agenda. In order to sharpen the understanding of these principles, one case study of *jihadist* theory in Indonesian context will be applied and analyzed, notably Imam Samudra's principle of *jihad* in his controversial book '*Aku Melawan Teroris*' or 'I fight against the Real Terrorist'.²

This paper is outlined into three parts. In the first part, the possibility of the idea on holy war in Islam from historical perspectives is broadly presented, and then Islamic holy war and just war are compared to see their commonalities. In the next section, JWT and *jihad* are discussed and analyzed. The last is conclusion.

¹Nicholas Fotion. *Reaction to War: Pacism, Realism, and Just War Theory*, in Andrew Valls (ed). *Ethics in International Affairs*. (USA:Rowman and Littlefield Publisher, 2000), 15-32.

²Imam Samudra. *Aku Melawan Teroris or I fight against the Real Terrorist*. (Solo: Jazera, 2004).

B. The Idea of Holy War in Islamic History: A Myth or Reality?

Jihad is an Arabic vocabulary derived from the verb *jahada* meaning to exert, to struggle, or to strive. In the Arabic-English lexicon written by Edward Lane, *jihad* is literally defined as ‘exerting one’s utmost power, efforts, endeavours, or ability in contending with an object of disapprobation’.³ In this narrower sense, Jihad cannot be regarded as holy war.⁴ However, one would argue that since the term *jihad* is always referred to the *Qur’an*, a Muslims’ holy book, and the *Hadist*, the Prophet’s sayings and traditions, mostly related with the conditions to resort to war (as this study will prove it later in this paper), and considering the *Quran* is a holy guidance revealed from God, *jihad*, in this broader sense, could be meant holy war.

In the *Qur’an*, *jihad* is evident to be qualified by the word ‘in the path of God’, describing conditions to wage a war against infidels in the first Islamic society. In the *Hadith*, *jihad* is always associated with armed acts and military activities in the classical tenure of Islam around the first three centuries.⁵

In his famous book entitled *The Holy War Idea in Western and Islamic Tradition*, Johnson⁶ mentions that the notion of holy war in Western tradition rooted in three main historical dimensions: the Old Testament, the Crusades, and the religious wars of the post-Reformation era. Accordingly, the idea of holy war in Islam aimed, as Johnson argues:

Not to be systematic or comprehensive, but rather to render the diversity and commonality that exists both in holy war phenomena and in what scholars take to be definitive of holy war.⁷

For this purpose only, Johnson insists on using the term *jihad* to be simplistically meant holy war.⁸ Accordingly, it is not impossible to draw a linear line between these contrasting ideologies namely western doctrines of just war and Islamic doctrines of holy war regardless their distinct nature in characters.

³Edward Lane. *An Arabic English Lexicon*, bk. I, (London: William and Norgate, 1865), 473 cited in Roxanne L. Euben *Killing For Politics: Jihad, Martyrdom, and Political Action*. *Political Theory*. V.30, No.1, February 2000:12

⁴Robert Kennedy. *Is One Person’s Terrorist Another’s Freedom Fighter? Western and Islamic Approached to ‘Just War’ Compared*. (Terrorism and Political Violence, Spring 1999), Vol.11, No.1, 1-21. See also Michael G. Knapp. *The Concept and Practice of Jihad in Islam*. (Parameters: Spring 2003), 82-94, and Michael Bonner, *Jihad in Islamic History: Doctrines and Practice*. (Princeton, N.J.: Princeton University Press, 2006).

⁵Bernard Lewis. *The Political Language of Islam*. (USA: The University of Chicago Press, 1988), 72.

⁶See James Turner Johnson. *The Holy War Idea in Western and Islamic Traditions*. (USA: the Pennsylvania State University Press, 1997), 33

⁷Johnson. *The Holy War Idea in Western and Islamic Traditions*, 37

⁸Johnson. *The Holy War Idea in Western and Islamic Traditions*, 29

Correspondingly, Bonner suggests that the significance of comparing just war and *jihad* in anthropological perspectives lies in three important points. *First*, it is helpful to trace the lineage between *jihad* and war in Arabia before Islam. *Second*, it is pivotal to investigate the function of *jihad* as a means of conversion to Islam of other tribal and nomadic community like the Turks and the Berbers in Central Asia and North Africa. *Third*, it is not at odds with the Muslim jurists' conception on *jihad* because "for them any authentic instance of *jihad* was necessarily both holy and just."⁹

C. Just War Theory in Western and Islamic Perspectives: a Brief Outlook

Admittedly it is not easy to draw a comprehensive comparison of Just War Theory (JWT) in Western and Islamic traditions as both are completely different in values and doctrines. Kennedy felt that he "... [was] well aware of the hazards of any attempts to summarize western Christian, secular and Islamic just war tradition."¹⁰ Kennedy is absolutely right as one could feel the same. Nonetheless, despite this complexity, one is convinced that those just war traditions in Islam and the West may differ in some degree but they share commonalities in some points. As Bulliet (2004) suggests:

The term Islamo-Christian civilization denotes a prolonged and fateful intertwining of sibling societies enjoying sovereignty in neighbouring geographical regions and following parallel historical trajectories. Neither the Muslim nor the Christian historical path can be fully understood without relation to the other.¹¹

On this account, by comparing the war traditions in Western and Islamic doctrines, it is pivotal to trace the relationship between these competing ideologies in order to deconstruct the doctrine of *jihad* within the framework of just war theory. In what follows, if my analysis on *jihad* and just war is valid, the Islamo-Christian war traditions will form its parallel historical lineage.

In doing so, it is important clarify some important points. As mentioned earlier, using *jihad* in parallel meaning with holy war may raise controversy as *jihad* is literally not synonymous with holy war. Nonetheless, for the purpose of this critical analysis, it is inevitable to put it simply in this way to challenge this

⁹Michael Bonner. *Jihad in Islamic History: Doctrines and Practice*. (Princeton, N.J.: Princeton University Press, 2006), 5.

¹⁰Robert Kennedy. *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared*. (Terrorism and Political Violence, Spring 1999, Vol.11, No.1), 4.

¹¹Richard Bulliet. *The Case for Islamo Christian Civilization*. (New York: Colombia University Press, 2004), 10.

dispute as well as to open a room for discussion, and thus to ‘deorientalize’ *jihad* from a stereotype the West perceive it as terrorist ideology to holy and just. Another note to underline, the theory of just war is, to a greater extent, more structured than the theory of Islamic holy war in terms of its etymology and epistemology. On this account, the comparison will fall under the doctrines of JWT; *jus ad bellum* and *jus in bello*.

D. *Jus Ad Bellum* and *Jus In Bello*: Western and Islamic Doctrines Compared

According to Primoratz¹², the concept of Just War is in conjunction with the ethics of war in two frameworks. First is the main requirement of moral justification to wage a war, namely, *jus ad bellum*. Second is the vital condition which allows or forbid to do in that war, that is *jus in bello*. Under *jus ad bellum* principle, the reason of declaring war by a state must be based on the justice. The war can be either defensive or has a right of intervention in a narrower sense. On the basis of *jus in bello* principle, legitimate targets such as warriors and civilians may become the objects. These two requirements, in Primoratz’s account, are mutually independent:

Whether your cause is just or not, you can fight for it in a ‘clean’ or ‘dirty’ way. And the justice of your cause does not absolve you of the duty to fight ‘clean’.¹³

By comparison, Islamic doctrine on *jus ad bellum* and *jus in bello*, quoting Butterworth¹⁴, can be found in the work of al-Farabi (d.950), a great Islamic philosopher in the medieval age, on justice and injustice before and after conducting war. Al-Farabi (d.950) sets a basic foundation of *jus ad bellum* and *jus in bello* in accordance with conditions that justify wars on the basis of just or unjust principles. In Farabi’s view, ‘they are unjust if they serve a ruler’s narrow, selfish purposes or if they are devoted solely to conquest and bloodshed.’ Under *jus ad bellum* criterion, the war can be either defensive or offensive depending on the context in which wars occur. Finally, the cause of the war must be based on social justice and prosperity for all people, as suggested by Farabi “...what

¹²Igor Primoratz. *Michael Walzer’s Just War Theory: Some Issues of Responsibility*. (Ethical Theory and Moral Practice, 1997, Vol.5), 222

¹³Primoratz. *Michael Walzer’s Just War Theory: Some Issues of Responsibility*, 222.

¹⁴See Charles E. Butterworth, *Al-Fa`ra`bi’s Statecraft: War and the Well-Ordered Regime*. cited in John Kelsay and James Turner Johnson *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Traditions*, (Westport: Greenwood Press, 1990), 79-100.

makes the just is their role in achieving the well-being of the virtuous city, that association which we all need in order to attain happiness".¹⁵

While war in Islam can be both defensive and offensive, according to Gratian, in Christian doctrines, the war ought to be defensive, though he never forbids religious wars.¹⁶ In western tradition, religious war or holy war is best defined, according to Johnson,¹⁷ as 'conflicts that have a strong ideological, motivational, social, or other connection with one major religious tradition or another.' This holy war in Christian history, Johnson points out, emerges in three main historical horizons: the Old Testament, the Crusades, and the religious wars of the post-Reformation era.¹⁸ Here, both Islam and Christianity shares common ground on the phenomenology of religious war.

In *Muqaddima*, a prolegomena to Islamic history, as cited by Butterworth, Ibn Khaldun (d.1406) states that wars will always happened in the world since God creates it automatically and inevitably. This is because, he argues, it is intended for human's revenge and self-defense. According to Ibn Khaldun, there are, at least, four kinds of War. At the first place, war usually happens within neighbouring clans and competing families. Second, it is caused by hostility, in which the people living in the desert were fighting each other intended merely to steal their belongings. Both wars are called in Arabic *hurub bagby wa fitna* or wars of outrage and sedition, and these two are considered unjust and lawless. The next form of war is *jihad* according to the divine law, and the last is dynastic wars against seceders and those who refuse obedience, and they both are deemed wars of Jihad and Justice or *hurub jihad wa'adl*. By this classification, Butterworth underlines that Ibn Khaldun attempts to differentiate between just war and jihad and to its similarities and differences.¹⁹

D. The Deontological and Consequentialist Principles of Just War in Western and Islamic Doctrines: a Comparative Analysis

¹⁵See Charles E. Butterworth, *Al-Fa`ra`bi`s Statecraft: War and the Well-Ordered Regime*. cited in Michael Bonner. *Jihad in Islamic History: Doctrines and Practice*. (Princeton, N.J.: Princeton University Press, 2006), 5.

¹⁶James Turner Johnson *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts*, (Princeton, NJ: Princeton UP, 1975), 34, cited in Robert Kennedy Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared. (Terrorism and Political Violence, Spring 1999, Vol.11, No.1), 6.

¹⁷Johnson. *The Holy War Idea in Western and Islamic Traditions*, 30

¹⁸Johnson. *The Holy War Idea in Western and Islamic Traditions*, 33

¹⁹See Butterworth, *Al-Fa`ra`bi`s Statecraft: War and the Well-Ordered Regime*. cited in Michael Bonner. *Jihad in Islamic History: Doctrines and Practice*, 6.

Basically, Just War Theory (JWT) falls within the framework of deontological perspectives, because, in Hurka's consideration²⁰, it does not require the best outcomes once a war or conduct to war is being declared. According to Valls,²¹ the components of *jus ad bellum* contains a just cause, legitimate authority, right intention, last resort, probability of success, and proportionality, and *jus in bello* criteria only consists of two categories namely proportionality and discrimination.

Jus Ad Bellum

- ***Just Cause***

In Valls' definition, referring to Michael Walzer's theory (1992), a just cause for resorting to war should be defensive, by this she means:

A state is taken to have a just cause when it defends it self against aggression, where aggression means the violation of the imminent threats of the violation of its territorial integrity or political independence.²²

In other words, Vall observes that 'the state has a right to defend itself against the aggression of other states,' and this right, as Vall emphasises, should be based on the right of its citizens. It is, hence, the moral obligation of the state is derivative, not foundational in character, meaning, it only associates with its citizen's right. Here, it is apparent that this approach is based on the dominant (liberal) opinion by which only statist perspective would disagree with it.²³

By comparison, in Islamic war tradition, according to Kennedy²⁴, the cause of declaring war has to be just, including the expansion of the borders of Islamic territory. Nevertheless, resorting to war by using lethal force would be justifiable if non-Islamic empires reject to admit the sovereignty of Islam that is either by embracing Islam or refusing to pay taxes. The Qur'an says:

Fight against those who believe not in Allah, nor in the Last Day, nor forbid that which has been forbidden by Allah, and his Messenger (Muhammad), and those who acknowledge not the religion of truth (i.e. Islam) among the people of the scripture (Jews and Christian), until the

²⁰Thomas Hurka. *Proportionality and Necessity*, in Larry May (ed). *War: Essays in Political Philosophy*. (Cambridge: University Press, 2008), 127.

²¹ Andrew Valls. *Can Terrorism be Justified?* . in Andrew Valls (ed). *Ethics in International Affairs*. (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, 2000), 68-77.

²²Michael Walzer. *Just and Unjust Wars: A Moral Arguments with Historical Illustrations*. 2nd Edition. (New York: Basic Books, 1992), cited in Andrew Valls (ed). *Ethics in International Affairs*. (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, 2000), 68.

²³See Beitz 1979b; Walzer 1992 cited in Valls, 68.

²⁴Robert Kennedy. *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared*. (Terrorism and Political Violence, Spring 1999, Vol.11, No.1), 10.

*pay the Jizyah (tax or tribute) with willing submission, and feel themselves subdued.*²⁵

- ***Legitimate Authority***

Vall considers that the only competent body to wage war is a state. On this basis, she argues that the state has a right to monopolize a legitimate use of force. Similarly, allowing other illegal individuals or institutions to commit violence would generate conflicts, and these conflicts would be deemed as criminal acts.²⁶

It is noteworthy that legitimate authority, as suggested by Coates (1997), should be based on the common good of which the state is ordered, and to the law of which it is subject. This is, Coates argues, because of the right of the state to go to war is not stemmed from its de facto or coercive sovereignty, but from its membership of an international community. This condition, Coates notes, could also be applied to the level of individual committing violence intended to defend his self out of his individual interests or his act is a representative of the community and an upholder of the law, this kind of person is justifiable to use force to resort to conflict.²⁷

While Vall considers a state as the sole competent body to resort to conflict, Islamic war tradition allows only the head of the Islamic state or the spiritual leader to declare war. *Jihad*, in this sense, can not be done by individual Muslim as a freedom fighter.²⁸

- ***Right Intention***

By definition, Valls states that right intention depends on the merit of the principle of the so-called just cause and legitimate authority. Valls explains that:

... if just cause and legitimate authority can be satisfied, there seems to no reason to think that requirements of right intention cannot be satisfied.²⁹

She further clarifies that:

This is not to say, of course, that if the first two are satisfied, the latter is as well, but only that if the first requirements are met, the latter can be. All

²⁵I refer all Quranic citations in this paper to Muhammad Taqiud-Din Al-Hilali and Muhammad Muhsin Khan (trans). "*Translation of the Meanings of the Noble Qur'an in the English Language.*" Madinah KSA: King Fahd Complex for the Printing of the Holy Qur'an. See the Qur'an, chapter 9, verse 29, 248.

²⁶Andrew Valls. *Ethics in International Affairs*. (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, 2000), 68

²⁷A.J. Coates. *The Ethics of War*. (Manchester and New York: Manchester University Press, 1997), 127.

²⁸Kennedy. *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared*. 10.

²⁹Valls. *Can Terrorism be Justified?*, 72.

that it requires is that the relevant actors be motivated by the just cause and not some other end.³⁰

According to Kennedy, resorting to wars in Islam must be based on Islamic values. Similarly, Kennedy emphasises that jihad is justified only with right intention, not intended neither for the purpose of war, not nor for individual interests. Instead, it should be based on peace and security instructed by God in the Quran.³¹ The Qur'an explains:

*And fight them until there is no more Fitnah (disbelief and worshipping of others along with Allah) and (all and every kind of) worship for Allah (alone). But if they cease, let there be no transgression except against Az-Zalimun (the polytheist, and wrong-doers).*³²

- **Last Resort**

The principle of last resort, that is waging war as the last option, seems to be problematic with the ultimate end of just war aims at promoting the prospects of peace. It has been argued that, instead of using force, conducting allied diplomacy appears to be more promising to achieve a peaceful resolution of the crisis. For such critics, applying the last resort is almost impossible inasmuch as it is suspected only to delay war in uncertain time. However, according to Coates, the purpose of the last resort is basically to raise the moral threshold of war, but it is not intended that that threshold should become virtually insurmountable.³³

In line with this, Islamic holy war should only be declared if there is no other choice, but *jihad*. The Qur'an explains this clearly:

*And make them ready against them all you can of power, including steed of war (tanks, planes, missiles, artillery) to threaten thereby the enemy of Allah and your enemy, and others beside them whom you may not know, (but) whom Allah does know. And whatever you shall spend in the cause of Allah, shall be repaid to you, and you shall not be treated unjustly.*³⁴

*But if the incline to peace, you (also) incline to it, and (put your) trust in Allah. Verily, He is the All-Hearer, the All-Knower.*³⁵

Both verses, Silverman asserts, denote the doctrine of *jus ad bellum*, a conduct to war, explaining preparation before going to the battlefields such as

³⁰Valls. *Can Terrorism be Justified?*, 72

³¹Kennedy. *Is One Person's Terrorist Another's Freedom Fighter?*, 10.

³²See the Qur'an, chapter 2, verse 193, 248

³³A.J.Coates. *Just War in the Persian Gulf?* in Andrew Valls (ed). *Ethics in International Affairs*. (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, 2000), 39-40.

³⁴See the Qur'an, chapter 8, verse 60, 239.

³⁵See the Qur'an, chapter 8, verse 61, 240.

weapons, bombs, soldiers, logistics, and so on, while at the same time offering an inclination towards peaceful solution and relation.³⁶

- ***Probability of Success***

According to Statman³⁷, the fundamental notion of success is that war should not be waged unless it is likely to succeed, lest many human lives be lost in vain. It is therefore the possibility of success, as Statman argues, has to be both prudential and moral concerns on declaring wars. By this he means:

As a prudential constraint, it applies to a just and just war alike. As a moral constraint, it applies to just wars because success in achieving an unjust cause is, of course, unhelpful in making the war just³⁸

By contrast, success or victory in Islamic war tradition is granted by God, not by the possibility of success estimated by the leader or the commander. Here, *jihad* becomes psycho-social motives that strengthen Muslims' community to be involved in holy war in pursuits of spiritual payoff in the hereafter. The Qur'an, states:

*Permission to fight (against disbelievers) is given to those (believers) who are fought against, because they have been wronged; and surely, Allah is able to give them (believers) victory.*³⁹

*Those who have been expelled from their homes unjustly only because they said: "Our Lord is Allah." For had it not been that Allah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, wherein the name of Allah is mentioned much would surely have been pulled down. Verily, Allah will help those who help his (cause). Truly, Allah is All-Strong, All-Mighty.*⁴⁰

These two verses, as Silverman argues, are the prominent verses concerning *jihad* revealed to explain the process of conducting *jihad*, the time when *jihad* should be declared, and the reasons to perform *jihad*. From those verses, it can be inferred that conditions to resort to *jihad* requires self-defense against aggression and strive to fight 'unjust action'.⁴¹

- ***Proportionality***

³⁶Adam L. Silverman. *Just War, Jihad, and Terrorism: A Comparison of Western and Islamic Norms for the Use of Political Violence*. (Journal of Church and State, 2002), Vol. 44, 79

³⁷Daniel Statman, *On the Success Condition for Legitimate Self-Defense*. (The Journal of Ethics, Vol. 118, No. 4, July 2008), 660

³⁸Statman, *On the Success Condition for Legitimate Self-Defense*, 660

³⁹See the Qur'an, chapter 22, verse 39, 448.

⁴⁰See the Qur'an, chapter 22, verse 40, 448.

⁴¹Silverman. *Just War, Jihad, and Terrorism*, 78

Valls states that the principle of proportionality under *jus ad bellum* needs a prospective judgement, ensuring that the costs of war are not higher than its benefits. The problem of this judgment, she explains, lies in the fact that it seems almost impossible to assess the values of costs and benefits, considering that those values are abstract and invisible. As a consequence, there is no probability to judge this category with any levels of certainty.⁴²

By contrast, the doctrine of proportionality in Islamic principles is intended to prevent a revenge and hatred against the enemy. According to Silverman (2002:79), a Muslim may not respond in greater manner than he received. The Qur'an emphasizes:

*That is so. And whoever has retaliated with the like of that which he has made to suffer, and then has again been wronged, Allah will surely help him. Allah indeed is Oft-Pardoning, Oft-Forgiving.*⁴³

Jus in Bello

- ***Proportionality***

Just like the conditions of proportionality under *jus in bellum*, Valls argues that this category needs a sort of proportionality between the costs of an action and benefits to be achieved, restricting to certain conducts of war. At the same time, it does not allow resorting to war in the way that it engages in ordinate costs, costs that are disproportionate to the gains.⁴⁴

Unlike Valls who limits the principle of proportionality to certain wars, in Islamic doctrine of wars, Kennedy⁴⁵ considers it in different sense, that is, a criminal is dealt a punishment equal to the crime committed, and even here compassion is rewarded, referring to the following Qur'anic verse:

*The recompense for an evil is an evil like thereof; but whoever forgives and makes reconciliation, his reward is with Allah. Verily, He likes not the Zalimun (oppressors, polytheists, and wrong doers).*⁴⁶

- ***Discrimination***

According to Valls, the doctrine of discrimination says that in conducting a war, one should be able to differentiate between legitimate and illegitimate targets of attacks, in particular, between combatants and non-combatants, or between, say for instance, soldiers and civilians. Here, only soldiers may be legitimate to attack. Nevertheless, many disagree with this category questioning

⁴²Valls. *Can Terrorism be Justified?*, 74

⁴³See the Qur'an, chapter 22, verse 60, 451

⁴⁴Valls. *Can Terrorism be Justified?*, 75.

⁴⁵Kennedy. *Is One Person's Terrorist Another's Freedom Fighter?*, 14.

⁴⁶See the Qur'an, chapter 42, verse 40, 660.

the moral arguments of this difference. Basically, moral justification of this distinction is based on separation between the innocent people, notably non-combatants, and the guilty people namely combatants. This kind of discrimination seems bias due to the fact that often combatants are conscripts, while those who are in charge of waging war are not liable to attack.⁴⁷

With reference to the history of Islam, it was in the period of ignorance (*jahiliyya*), the Arabs before Islam had been recorded to owe principles of warfare similar with the Western doctrine, that was, the codes of chivalry. With this doctrine, Arab troops were forbidden to murder non-combatants” such as infants, children, women, elderly people, and disable people who were badly injured and almost died. This custom had been reported to become a part of Islamic law concerning jihad and warfare.⁴⁸ The Qur’an supports this:

*And fight in the way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.*⁴⁹

This verse reveals that *jihad* is recommended with certain limits, that is, prohibition to kill non-combatants. It has been reported that *Hadits* strictly emphasized on this issue saying that it is forbidden to kill a decrepit old man, or a young infant, or a woman.⁵⁰ In addition, quoting Kelsay, military operation in Islamic warfare has to differentiate between the guilty and the innocent using a minimum of force to accomplish the objective.⁵¹

Now let us turn to the consequentialist point of view within *jus ad bellum* and *jus in bello* criterion in detail. According to Hurka⁵², the concept of just war should consider the consequence of war, in particular, the death and destruction caused by war. This is, in Hurka’s view is very complicated. On this basis, the theory consists of some requirements to meet, allowing or forbidding war to be waged. If the consequence of war outweighs its conception, then the war cannot be accepted. Under *jus ad bellum*, as suggested by Hurka, a war has to contain a reasonable hope of success as its highest priority. If war tends to be failed, it will result in destruction, and hence cannot be justified. The Next is proportionality

⁴⁷Valls. *Can Terrorism be Justified?*, 75.

⁴⁸M. Cherif Bassiouni. *Evolving Approaches to Jihad: From Self-defense to Revolutionary and Regime-Change Political Violence*. Chicago. (Journal of International Law, Summer 2007) Vol.8, No.1, 123.

⁴⁹See the Qur’an, chapter 2, verse 190, 339.

⁵⁰Kennedy. *Is One Person’s Terrorist Another’s Freedom Fighter?*, 12.

⁵¹John Kelsay. *Islam and War: A Study of Comparative Ethics*. (Louisville, KY: Westminster/John Knox Press, 1993), 32, cited in Robert Kennedy. *Is One Person’s Terrorist Another’s Freedom Fighter? Western and Islamic Approached to ‘Just War’ Compared*. (Journal of Terrorism and Political Violence, Spring 1999), Vol.11, No.1, 1-21.

⁵²Thomas Hurka. *Proportionality and Necessity*, in Larry May (ed). *War: Essays in Political Philosophy*. (Cambridge: University Press, 2008), 127.

by which it determines the degree of success assessed by comparing the level of benefits and destruction. It is wrong, if say for instance, the damage is higher than the advantage. Final condition in this category is a last resort, that is, a war is not allowed if its benefit, though significant, could have been achieved by less destructive means such as diplomacy. By comparison, *jus in bello* criterion, Hurka asserts, has something in common with *jus ad bellum* in those of proportionality and last resort namely:

*An act in war is wrong if the harm it causes, especially to civilian, is out of proportion to its military benefits, while a necessity condition forbids acts that cause unnecessary harm, because the same benefits could have been achieved by less harmful means.*⁵³

With regards to the death and damage caused by a war, on the perspective of Islamic doctrines, killing and murder regarded as one of the four major sins).⁵⁴ Accordingly, there must be moral obligation to other human beings, even in the time of war, as suggested in the Qur'an:

*Because of that, we ordained for the children of Israel that if any one killed a person not in retaliation of murder, or to spread mischief in the land, it would be as if he killed all mankind, and if any one saved a life, it would be as if he saved the life of all mankind.*⁵⁵

In order to deepen the understanding of these principles, in what follows, one case study of *jihadist* theory will be analyzed, that is Imam Samudra's principle of *jihad* in his controversial book 'Aku Melawan Teroris' or I fight against the Real Terrorist.⁵⁶

E. Imam Samudra's Theory of Jihad: *Jus Ad Bellum* and *Jus in Bello*

Imam Samudra, a Bali bombing perpetrator, views *jihad* in three meanings. First, *jihad* can be literally meant 'striving to do the best in order to gain one's purpose.' Second, *jihad* refers to 'struggling to impose sharia or Islamic laws, to call for it, and to implement it.' Third, *jihad* in the light of Shari'a is regarded as 'resorting to war against infidels who fight against Islam and Muslims' community.' From these three definitions, it can be inferred that Samudra relates *jihad* to warfare, and deems it as a holy war.⁵⁷

⁵³Hurka. *Proportionality and Necessity*, 127-128.

⁵⁴James Robeson (trans). *Mishkat al Masabih* (Lahore: Sh.Muhammad Ashaf, 1975), 838, cited in Robert Kennedy *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared*. (Journal of Terrorism and Political Violence, Spring 1999), Vol.11, No.1, 13.

⁵⁵See the Qur'an, chapter 5, verse 32, 147.

⁵⁶Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004)

⁵⁷Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 108.

These three concepts of *jihad*, according to Samudra, are stemmed from the “*ulama salafush saleh*” or the pious ancestors’ perspectives on *jihad* as the legitimate source to wage a war in Islamic war tradition. Those Moslem scholars, Samudra argues, are the most trustworthy people after the Prophet Muhammad’s companions. To mention some, the four scholars of Islamic jurisprudence such as Imam Hanafi, Maliki, Syafi’I and Hanbali, and other Moslem philosophers like Imam Qatadah, Imam Mujahid, Imam sufyan ibn ‘Uyainah, Imam Muqatil, Ibn Taymiyya, Imam Ibn Qayim al-Jauziyah.⁵⁸ However, in his book, Samudra does not specify those Moslem scholars who become his main reference.

Samudra’s main books of *jihad* rely on three important sources namely ‘*al-Jihad Sabiluna*’ (Jihad is Our Way of life) by ‘Abd al-Baqi Ramdun, ‘*al-Jihad*’ (the principles of *Jihad*) by Syaikh ibn al-Mubarak, and ‘*Fi al-Tarbiyah al-Jihadiyah wa al-Bina*’ (Education and Trainings on Jihad) by Dr ‘Abdullah Azzam. Nonetheless, those books are actually not available in Samudra’s hand; his citation relies on his memory of those books (which is immensely doubtful). The only book Samudra has is ‘*Tafsir Ibnu Kathir*’ (Quranic exegesis of Ibn Kathir on *jihad*) provided by Moslem solicitors in detention.⁵⁹

All of those three concepts of *jihad*, in Samudra’s view, ought to be applied in the four tactical steps of *jihad* consisting of state of being patient, permit to wage a war, duty to resort to a limited war, duty to fight against infidels and disbelievers (Samudra, 2004:123-134).⁶⁰ Similarly, the first two steps falls under the category of *Jus Ad Bellum*, and the later contains *Jus in Bello* principles.

Principle 1: State of Being Patient (*Jus Ad Bellum I*)

According to Samudra, *jihad* in this step is not yet recommended. The Moslems are told to be patient from the aggression and humiliation of the infidels (the US and its alliances). Samudra exemplifies this *jihadist* strategy to the history of Islam in the time of the Prophet Muhammad when his two companions, Bilal ibn Rabah and Yasir family, were tortured by the Quraish tribe. As Hadith narrates “*Be patient [Yasir], verily you deserve entering the paradise*”(related by H.R Ahmad).⁶¹

In addition, Samudra observes that the Islamic community all over the world in the contemporary global political orders are threatened by the pressure of converting their beliefs into Christianity and Judaism. In this stage, Samudra emphasizes that the Moslems have to keep their temper, keep praying and paying

⁵⁸Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 61

⁵⁹Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 125

⁶⁰Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 123-134

⁶¹Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 125

alms to the needy, and forgiving those aggressors who oppress their firm beliefs.⁶² Samudra refers this to the Quranic verse 4:77 as follows:

“[Prophet], do you not see those who were told, ‘Restrain yourselves from fighting, perform the prayer, and pay the prescribed alms?’

On this level, Samudra considers this stage as ‘*kafful yad*’ or self restrain. By this he means, a state when the Moslems ought to keep themselves from any hatred and angers upon the non-believers who attempt to challenge the consistence of the Moslems’ faith.⁶³ Samudra points out the Prophet’s saying

“Verily, I am instructed [by God] to forgive, so that you are not allowed to fight them [the infidels]” (Narrated by H.R. Ibnu Abi Hatim).

Principle 2: Permit to Wage a War (*Jus Ad Bellum II*)

In Samudra’s theory of war, waging *jihad* is permitted only if tortures and coercion upon the Moslems community have been increasing in the global scale, and when the Moslems are expelled from their homeland like what has been happening in Palestine and Afghanistan. On this account, the Moslems are only allowed to wage *jihad*, but not to fight, kill, or go to the battlefields. Samudra states that a permit to wage a war does not mean a declaration to resort to a war.⁶⁴ His argument is basically referred to the following Quranic verse 22:39-40

“Those who have been attacked are permitted to take up arms because they have been wronged; God has the power to help them. Those who have been driven unjustly from their homes only for saying, ‘Our Lord is God’”.

Samudra argues that this verse is the first Quranic revelation concerning ‘armed *jihad*’. Quoting Ibn Kathir, he claims that there are some traditional Moslem scholars supporting his view on this issue such as Imam Mujahid and Imam Adh-Dhahhak, Ibn Abbas, Urwah bin Zubair, Zaid bin Aslam, Muqatil bin Hayyan, Qatadah, and many more.⁶⁵

Principle 3: Duty to Resort to a Limited Warfare (*Jus in Bello I*)

In Samudra’s opinion, the so-called ‘limited warfare’ is a war committed to fight solely against the infidels who fight the Moslems community. Similarly, the non-believers and infidels who do not oppress the Moslems are not to be fought or killed. On this level, waging a war is instructed and *jihad* becomes compulsory (Samudra, 2004:127).⁶⁶ As the Quran 2:190 declares

⁶²Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 126.

⁶³Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 126

⁶⁴Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 127

⁶⁵Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 127

⁶⁶Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 127

“Fight in God’s cause against those who fight you, but do not overstep the limits: God does not love those who overstep the limits.”

Moreover, Samudra⁶⁷ relates the duty of going to war with the obligation to fasting in Ramadhan, a holy month in Islamic calendar, with reference to the following Quranic verses

Sura al-Baqarah 2:216: “Fighting is ordained for you, though you dislike it. You may dislike something, although it is good for you, or like something although it is bad for you: God knows and you do not”

Sura al-Baqarah 2:183: “You who believe, fasting is prescribed for you, as it was prescribed for those before you, so that you may be mindful of God”

According to Samudra, both verses are similar in essence. The first denotes a duty to resort to a war, and the later reveals an obligation to conduct fasting. In other words, it is sinful to neglect fasting, and so is refusing to go to a war.

Principle 4: Duty to Fight against all Infidels and Disbelievers (*Jus in Bello II*)

In this last strategy of war, Samudra emphasizes that all preceding Quranic verses within the previous stages are abrogated and replaced with the new commandment in the following Quranic verses:

Sura At-Tawba 9:5: “... wherever you encounter the idolaters, kill them, seize them, besiege them, wait for them at every lookout post...”

Sura At-Tawba 9:29: “Fight those of the people of the Book who do not [truly] believe in God and the Last Day, who do not forbid what God and His Messenger have forbidden, who do not obey the rule of justice, until they pay the tax and agree to submit”

Quoting Ibn Kathir, Samudra states that both verses are named ‘verses of swords’ due to the fact that all infidels and disbelievers in the time of the Prophet Muhammad were fought and killed (by means of swords), unless they were repentant and embracing Islam, performing prayers and paying obliged alms.⁶⁸

In other Quranic verses, Samudra finds a continuous explanation of the so-called ‘verses of swords’ in the *Sura At-Tawba 9:36*

“...Do not wrong your souls in these months [twelve months], though you may fight the idolaters at any time, if the first fight you, remember that God is with those who are mindful of Him”

⁶⁷Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 128

⁶⁸Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 130

For him, this verse is the last Quranic revelation regarding jihad, and the last chapter of the Quran which conclude the personal duty to wage a war in the name of *jihad*.

Furthermore, Samudra mentions a Hadith (the Prophet's speech and tradition) in conjunction with this principle of *jihad*

"I am commanded to fight against men [non-believers] till they declare that there is no deity except God and that Muhammad is His Messenger, and they are constant in prayers and pay the alms" (Narrated by al-Bukhari and Muslim).⁶⁹

Other two Hadiths explain the roles of the Prophet Muhammad

"I was sent near the day of Resurrection with the sword so that only God is worshipped and no others will be ascribed divinity to, except Him. And my sustenance is guaranteed to be under the shadows of my lance; and humiliation and debasement is to those who go against my commandment. Whosoever resembles a tribe he is from among that tribe" (Narrated by Ahmad).⁷⁰

"Know that the paradise is under the shadow of the swords" (Narrated by al-Bukhari and Muslim).⁷¹

Quoting Ali bin Abi Talib's statement, the second Islamic Caliph, Samudra asserts that both Hadiths connotes 'the four swords' to the roles of the Prophet Muhammad in waging *jihad* notably the first sword is related to fight against the 'polytheists' embedded in the Quranic verse 9:5; and then the second sword is connected with fighting against the 'People of the Book' which are the Jews and the Christians explained in the Quranic verse, 9:29; and the third sword is in accordance with God's instruction to fight against the 'hypocrites' stated in the Quranic verse 9:73; and the last is the fourth sword which is meant fighting against the 'dissenters' mentioned in the Quranic verse 49:9.⁷²

Accordingly, Samudra states that the fourth step is deemed as the 'offensive *jihad*' which is higher than the 'defensive ones' of the preceding steps. Here, he combines both strategies of *jihad* in Bali and he calls it the "deffoffence *jihad*."⁷³

F. Critique against Imam Samudra's Theory of *Jihad*

In many parts of Samudra's book, he often states that his understanding on *jihad* comes from the theological perspectives of the so-called "*al-Salaf al-Salih*"

⁶⁹Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 130

⁷⁰Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 132

⁷¹Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 132

⁷²Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 131

⁷³Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 170

or the pious predecessors concerning *jihad* in which he considers them as the most righteous Moslem scholars after the Prophet Muhammad and his companions. For him, their thoughts are revealed from God and free from political motives as God and his Messenger Muhammad had guaranteed the authenticity and validity of their thoughts and faith. In Samudra's view, the '*al-Salaf al-Salih*' is the early generation of Islamic community comprising the *Sahabah* (the Prophet's companions), the *Tabi'in* (the followers of the *Sahabah*) and the *Taba' al-Tabi'in* (the disciple of the *Tabi'in*). Moreover, Samudra asserts that in order to understand the types of thought of those pious Moslem ancestors, it would be better to read their works on Islamic laws, Islamic jurisprudence, *jihad* and so forth. He also mentions some prominent Moslem scholars of the '*al-Salaf al-Salih*' such as the four schools of thought notably Imam Hanafi, Maliki, Syafi'I and Hanbali, and the other Moslem philosophers like Imam Qatadah, Imam Mujaihid, Imam Sufyan ibn 'Uyainah, Imam Muqatil, Ibn Taymiyya, and Ibn Qayyim al-Jauziyyah.⁷⁴ However, Samudra does not clarify the fundamental thought of this *al-Salaf al-Salih*, their characters, their methodology of thinking, and their movements which make them different from any other schools of thought in Islam.

On my analysis, the *al-Salaf al-Salih* in its socio-political context dating back to the history of Islamic civilization is best defined as an Islamic social movement appeared in the post Prophetic era (the Prophet's companions) and the two succeeding Moslem generations (the Followers and their disciples) as the best role-models on how Islamic teachings and practices should be done. Typically, the core principle of this righteous Moslem group is that Islam along with its teaching is perfect and complete during the early period of Islam under the leadership of the Prophet Muhammad and his companions, but then it had been affected by the 'materialist' and 'cultural' circumstances.⁷⁵

Around sixth century, *Salafism* or Salafi movement emerged as a revival of the *al-Salaf al-Salih* ideology intended to awake Islamic teachings which are close to what the Prophet Muhammad and his companions had been practising. One of the proponents of *Salafism* is Ibn Taymiyyah (611-728 H/1263-1328).⁷⁶ His classical work on the chapter of *jihad* can be found in *al-Siyasa al-Shar'iyya fi islah al-Ra'I wa al-Ra'iyya* or the Governance according to God's law in reforming both the ruler and his flock.⁷⁷ Accordingly, the political thought of *Salafism* can be traced from Ibn Taymiyah's view on *jihad* in his book. In what

⁷⁴Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 59-64

⁷⁵See Wikipedia, the free encyclopedia, <http://www.wikipedia.org/>

⁷⁶See Wikipedia, the free encyclopedia, <http://www.wikipedia.org/>

⁷⁷Rudolph Peters. *Jihad in Classical and Modern Islam*. (Princeton: Markus Wiener Publishers, 1996), 43-54.

follows, by way of assessment, Imam Samudra's theory of *jihad* will be cross checked with that of Ibn Taymiyya's concept of *jihad*. If it is found to be inconsistent, Samudra's *jihadist* ideology is absolutely fake and false.

According to Ibn Taymiyyah, there are, at least, three strict conditions of waging *jihad*. First, the advantage of *jihad* should be intended for the sake of the common goods and just cause; not only for the *mujahid* itself (the one who performs *jihad*) but also for other Moslems. Second, *jihad* covers all dimensions of worships; both 'inner' (greater *jihad* like spiritual warfare) and 'outer' (lesser *jihad* concerning physical warfare). It should contain love, patience, asceticism, and peace, not hatred, anger, and war. Third, *jihad* is waged to gain the 'ultimate happiness' in the worldly life and the hereafter. It is not allowed to conduct *jihad* by means of suicide inasmuch as it falls into *bida'* or innovations in *jihad* which contradict with to the Quran and the Hadith.⁷⁸ The Quran 4:97 severely condemns the acts of killing one's self in the guise of *jihad*:

"When the angels take the souls of those who have wronged themselves, they ask the, 'What circumstances were you in?' They reply, 'We are oppressed in this land,' and the angels say, 'But was God's earth not spacious enough for you to migrate to some other place?' These people will have Hell as their refuge, an evil destination..."

The most hazardous point of Imam Samudra's view on *jihad* is his notion on continuous warfare against non-Moslems, non-believers, or infidels. He is convinced that once *jihad* is being instructed (step 4 of *jihad*), there is no choice but fighting and killing the non-Moslems as the Quran reveals to do so. On Samudra's account, the relation between Moslems and non-Moslems is, hence, a war not peace.⁷⁹ Samudra supports his arguments with this Quranic verse 8:39

"[Believers], fight them until there is no more persecution, and all worship is devoted to God alone; if they desist, then God sees all that they do".

On this level, it is obvious that Samudra's principle of *jihad* is at odds with that of Ibn Taymiyya's second rule of waging *jihad*, that is, *jihad* should not mix with anger, hatred and war. Similarly, while Samudra values *jihad* as a violent act, Ibn Taymiyyah sees it as peaceful way in the path of God.

In addition, Samudra mostly claims that the thoughts of *al-Salaf al-Salih* are guaranteed by God, their deeds are protected by God, and their everlasting place in the hereafter life is a paradise. Based on these distinctions, Samudra refers almost all his conception on *jihad* to their schools of thought expecting that he would also be saved by God entering His paradise like what he believes to be true. Here, it is obvious that Samudra is driven by the spiritual payoffs he dreams

⁷⁸Peters. *Jihad in Classical and Modern Islam*, 48-50.

⁷⁹Samudra. *Aku Melawan Teroris* (Solo: Jazera, 2004), 133-134.

of as a divine reward from God. In this sense, Samudra seems to be irrational. His rationality (or irrationality) can be further explained by the rational choice theory stating that ‘if spiritual payoffs outweigh the negative consequence of strategies in the here and now, high-cost/risk activism is [absolutely] intelligible.’⁸⁰ On my account, Samudra’s misinterpretation of *jihad* generates a misleading faith. It is therefore, his wrong faith results in evil deeds. With this in mind, I assume that Samudra uses *jihad* as a spirit of his ‘high-cost/risk’ movement as well as abuse it as a means of justification for his terrorist acts.

Furthermore, Samudra’s use and abuse of Quranic verses concerning *jihad* can be found in undertaking step 4 of *jihad* (duty to fight against all infidels and disbelievers) with reference to the two Quranic verses; *Sura At-Tawba* 9:5 and *Sura At-Tawba* 9:29.

In the first place, Samudra explains that *Sura At-Tawba* 9:5 reveals a duty to fight all non-believers (without any exceptions) wherever they are. Samudra quotes only a part of this verse “...*wherever you encounter the idolaters, kill them, seize them, besiege them, wait for them at every lookout post...*”(the Quran,9:5). The complete verse is as follows

Sura At-Tawba (the Repentance, 9:5): “*When the [four] forbidden months are over, wherever you encounter the idolaters, kill them, seize them, besiege them, wait for them at every lookout post; but if they turn [to God], maintain the prayer, and pay the prescribed alms, let them go on their way, for God is most forgiving and merciful*”.

If it is taken for granted, the verse might be meant God’s commandment to fight all non-Moslem wherever they reside in, and the war is going to end if they are repentant and embracing Islam. Nevertheless, this verse cannot be separated from the preceding verse and the verse coming after it. For instance, the Quranic verse 9:1 which is the first part of this chapter denotes a delay of the armistice made between the Moslem and the non-Moslem group. Historically, this verse was revealed when the battle of Tabouk occurred in the 9th year of the Islamic calendar (around 630 AD). It has been rumoured that the Byzantine emperor led by Heraclius was going to attack the Moslem community with a huge number of army approximately 40,000 to 100, 000 soldiers approaching the restricted area of *Tabouk*. The Moslem army under the Prophet Muhammad was ready to go to the battlefield of Tabouk to fight against the Byzantine soldiers, but when they reached there, there was nothing but staying there for a couple of days. Finally, the truce was over due to this rumour.⁸¹ Here, it appears that the historical

⁸⁰Q. Wiktorowicz. *Islamic Activism: A Social Movement Theory Approach*. (USA:Indiana University Press, 2004), 295-296.

⁸¹See Wikipedia, the free encyclopedia, <http://www.wikipedia.org/>

background of the descent of this verse is nothing more than ensuring the postpone of the agreement made between the two groups. As the previous verse confirms this historical fact in the Quran 8:58

“And if you learn of treachery on the part of any people, throw their treaty back at them, for God does not love the treacherous”

Afterwards, the following chapter of the Quranic verse 9:2 proclaims
“You [idolaters] may move freely about the land for four months, but you should bear in mind both that you will not escape God, and that God will disgrace those who defy [Him]”.

In this regards, the Byzantine army is offered only two options; surrendering or waging a war. This warning lasts only four months. If they were surrendering, they would be saved under the protection of Moslem constitutional laws of warfare.⁸² The Quran 9:3 further declares

On the day of the Great Pilgrimage [there will be] a proclamation from God and His Messenger to all people: ‘God and his Messenger are released from [treaty] obligations to the idolaters. It will be better for you [idolaters] if you repent; know that you cannot escape God if you turn away [Prophet], warn those who ignore [God] that they will have a painful punishment.’

Followed respectively by the Quranic verse 9:4 stating that this warning does not apply for

“...those who have honoured the treaty you made with them and who have not supported anyone against you: fulfil your agreement with them to the end of their term...”

Exception is also given for non-Moslems in the following category (the Quran, 4:90)

“But as for those who seeks refuge with people with whom you have a treaty, or who come over to you because their hearts shrink from fighting against you or against their own people, God could have given them power over you, and they have fought you. So if they withdraw and do not fight you, and offer you peace, then God gives you no way against them”

Having analysed, it is apparent that Samudra’s view in regards to his interpretation of Quranic verse 9:5 (step 4 of *jihad*) on fighting and killing any non-Moslem groups with no exceptional conditions is definitely unjustifiable. Understanding Quranic texts without looking at its socio-political context surrounded its revelation would be going astray and misleading. In this sense, it seems that Samudra’s principle of *jihad* is incorrect and contradictory.

⁸²M. Quraish Shihab. *Tafsir al-Mishbah: Pesan, Kesan dan Keserasian al-Quran* or al-Misbah Quranic Exegesis: Messages, Impression, and the Conformity of the Quran. (Jakarta: Lentera Hati, 2002), Vol.5, 496-497.

G. Conclusion

Having compared, *jihad* and just war theory (JWT) have something in common and something different in characters. Using JWT as a theoretical framework in approaching *jihad*, it has been proven that *jihad* is not only meant as striving or struggling, but also a set of doctrines on the conduct to war, *jus ad bellum*, and the conduct of war, *jus ad bello*. It has been argued that the principles of jihad are not as structured as JWT due to its complexities. The *Qur'an*, *Hadits*, and historical facts regarding jihad denote only values and doctrines on waging wars in Islam. Nonetheless, as suggested by Bulliet, this comparative analysis is still helpful in relating Islam and other civilization in order to trace its parallel historical lineage in terms of theories, doctrines, and principles of wars.

Furthermore, under the framework of *jus ad bellum* and *jus ad bello*, this study reveals that if jihad is seen as holy, just and sacred, no one will justified to commit terrorism and violence under the guise of jihad. Moreover, using juristic and theological approach of jihad, this study finds that Imam Samudra, one of the masterminds of Bali bombing, is guilty of using some Quranic verses regarding jihad and abusing it to justify his attacks on the island. His jihadist apologetics was compiled in his controversial book “Aku Melawan Teroris” (trans: I Fight against the Real Terrorists). In addition, this work suggests that counter ideological works against terrorists who utilize jihad as a means of justification should be addressed thoroughly.

Bibliography

- Al-Hilali, Muhammad Taqiud-Din and Muhammad Muhsin Khan (trans). *Translation of the Meanings of the Noble Qur'an in the English Language*. Madinah KSA: King Fahd Complex for the Printing of the Holy Qur'an
- Bassiouni, M. Cherif. *Evolving Approaches to Jihad: From Self-defense to Revolutionary and Regime-Change Political Violence*. *Chicago Journal of International Law*, Vol.8, No.1, pp.119-146, Summer 2007.
- Bonner, Michael. *Jihad in Islamic History: Doctrines and Practice*. Princeton, N.J.: Princeton University Press, 2006.
- Bulliet, Richard. *The Case for Islamo Christian Civilization*. New York: Columbia University Press, 2004.
- Butterworth, Charles E. "Al-Fa^hra^hbi^h's Statecraft: War and the Well-Ordered Regime." Pp.79-100 cited in John Kelsay and James Turner Johnson. *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Traditions*, Westport: Greenwood Press, pp.79-199, 1990.
- Coates, A.J.. *The Ethics of War*. Manchester and New York: Manchester University Press, 1997.
- Coates, A.J. "Just War in the Persian Gulf?" pp. 33-47 in Andrew Valls (ed). *Ethics in International Affairs*. Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, inc, 2000.
- Euben, Roxanne L. *Killing For Politics: Jihad, Martyrdom, and Political Action*. *Political Theory*, Vol.30, No.1, pp.4-35, February 2000.
- Fotion, Nicholas. *Reaction to War: Pacism, Realism, and Just War Theory*, pp.15-32, in Andrew Valls (ed) (2000). *Ethics in International Affairs*. USA:Rowman and Littlefield Publisher, 2000.
- Hurka, Thomas. *Proportionality and Necessity*, in Larry May (ed). *War: Essays in Political Philosophy*. Cambridge: University Press, 2008.
- Johnson, James Turner. *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts 1200-1740*. Princeton, NJ: Princeton UP, p.34, cited in Robert Kennedy (Spring 1999). *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared*. *Terrorism and Political Violence*, Vol.11, No.1, p.6, 1975.
- Johnson, James Turner. *The Holy War Idea in Western and Islamic Traditions*. USA: the Pennsylvania State University Press, 1997.
- Kelsay, John. *Islam and War: A Study of Comparative Ethics*. Louisville, KY: Westminster/John Knox Press, p.32, cited in Robert Kennedy (Spring 1999). *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared*. *Terrorism and Political Violence*, Vol.11, No.1, pp.1-21, 1993.

- Kennedy, Robert *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared.* Terrorism and Political Violence, Vol.11, No.1, pp.1-21, Spring 1999.
- Knapp, Michael G. *The Concept and Practice of Jihad in Islam.* Parameters, pp.82-94, Spring 2003.
- Lane, Edward. *An Arabic English Lexicon*, bk. I, London: William and Norgate, p.473 cited in Roxanne L. Euben (February 2000). *Killing For Politics: Jihad, Martyrdom, and Political Action.* Political Theory, Vol.30, No.1, p.12, 1865.
- Lewis, Bernard. *The Political Language of Islam.* USA: The University of Chicago Press, 1988.
- Peters, Rudolph *Jihad in Classical and Modern Islam.* Princeton: Markus Wiener Publishers, 1996.
- Primoratz, Igor. *Michael Walzer's Just War Theory: Some Issues of Responsibility.* Ethical Theory and Moral Practice, 5: 221-243, 1997.
- Robeson, James (trans) *Mishkat al Masabih* Lahore:Sh. Muhammad Ashaf, p.838, cited in Robert Kennedy (Spring 1999). *Is One Person's Terrorist Another's Freedom Fighter? Western and Islamic Approached to 'Just War' Compared.* Terrorism and Political Violence, Vol.11, No.1, pp.1-21, 1975.
- Samudra, Imam. *Aku Melawan Teroris* trans: *I fight against the Real Terrorist.* Solo: Jazera, 2004.
- Shihab, Quraish M. *Tafsir al-Mishbah: Pesan, Kesan dan Keserasian al-Quran*, trans: 'al-Misbah Quranic Exegesis: Messages, Impression, and the Conformity of the Quran. Jakarta: Lentera Hati, Vol.5, 2002.
- Silverman, Adam L. *Just War, Jihad, and Terrorism: A Comparison of Western and Islamic Norms for the Use of Political Violence.* Journal of Church and State, Vol. 44, pp. 73-92, 2002.
- Valls, Andrew *Can Terrorism be Justified?* pp. 65-79 in Andrew Valls (ed). *Ethics in International Affairs.* Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, 2000.
- Valls, Andrew (ed) *Ethics in International Affairs.* Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publisher, 2000.
- Walzer, Michael. *Just and Unjust Wars: A Moral Arguments with Historical Illustrations.* 2nd Edition. New York: Basic Books, 1992.
- Wiktorowicz, Q. *Islamic Activism: A Social Movement Theory Approach.* Indiana University Press, 2004.