

# Kantian Philosophy and Fiqh Siyar: A Hybrid Framework for Poverty Rights Protection

**Subehan Khalik\***

Universitas Islam Negeri Alauddin Makassar, South Sulawesi, Indonesia

**Ummu Farhah Usman**

International Islamic University Malaysia, Kuala Lumpur, Malaysia

## ABSTRACT

Property rights violations in conflict zones represent a critical failure of secular legal frameworks, particularly when government institutions collapse or act as perpetrators. This study proposes a novel, synthesized framework for protecting property rights in conflict zones by integrating Kantian political philosophy with Islamic jurisprudence on international relations (Fiqh Siyar). We employ a normative legal method integrated with comparative and critical analysis, proceeding sequentially to develop a philosophical-legal evaluative framework. The Kantian framework, operationalized through commitments to autonomy and dignity, provides specific indicators for protection, such as non-expropriation and effective remedies. In parallel, the analysis draws on core Islamic legal principles, including *hifz al-māl* (protection of wealth) and the prohibition of *ghasb* (unlawful seizure). Data sources are triangulated from international legal instruments, Islamic legal texts, judicial decisions, and reports from reputable organizations. The findings reveal that while Kantian philosophy emphasize institutional roles. Islamic law contributes two critical elements: an eschatological dimension of divine accountability and practical, identity-neutral legal tools for safeguarding non-combatants during systemic collapse. The study urges decision makers to adopt robust property-rights protections during crises through a multilayered approach that combines constitutional guarantees with enforceable mechanisms, reinforced by a Kantian-Islamic synthesis. This framework offers a viable alternative in contexts where traditional international law has fallen short, and it merits further exploration for practical implementation and potential adoption by global legal institutions.

**Keywords:** Fiqh Siyar, Islamic Law, Kantian, Property Rights

Received: 15 June 2025

Revised: 09 October 2025; 30 October 2025; 17 January 2026; 29 January 2026

Accepted: 29 January 2026

Published: Vol. 5, No. 1, 2026, pp. 23-32

## INTRODUCTION

Property rights, recognised as fundamental and affirmed in Article 17 of the Universal Declaration of Human Rights (UDHR), paradoxically remain among the rights most frequently violated during armed conflicts. Global displacement trends underscore the scale of this issue. According to the International Organization for Migration's World Migration Report (IOM, 2024), an estimated 281 million people, approximately 3.6 per cent of the world's population, are international migrants, many of whom are forcibly displaced due to conflict. Similarly, UNHCR (2025) reports that forced displacement has reached unprecedented levels, with more than 117 million people displaced globally by mid-2025, an increase from 108.4 million at the end of 2022.

A concrete example can be seen in the case of the Saleh Diab family in the Sheikh Jarrah neighbourhood of East Jerusalem. On May 2, 2025, the District Court dismissed the family's lawsuit and ordered them to vacate their home before May 20, and this case is one of many similar disputes in the region, and the family has stated its intention to appeal the ruling (Buxbaum, 2025). The impact of conflict on property rights extends beyond conventional warfare to include socio-ecological conflicts and struggles over natural resources. The effect is evident in land disputes in the Brazilian Amazon and in mining communities in Uganda, where the restoration of property rights after conflict remains a significant and complex challenge (Fetzer & Marden, 2017; Oliveira, 2008; Rugadya, 2020).

International law provides several protective frameworks for property rights during armed conflict and military occupation. The Hague Regulations of 1907 require occupying powers to respect private property and prohibit its confiscation, a rule widely recognised in customary international law (Völkerrechts, 2007). The Fourth Geneva Convention further reinforces these protections by prohibiting the destruction or appropriation of private property unless justified by imperative military necessity, classifying unlawful destruction as a grave breach under Article 147 (Arai-Takahashi, 2015). Complementing these treaty-based protections, the Pinheiro Principles (UN-Habitat, 2005) articulate internationally recognised standards for the housing, land, and property (HLP) restitution rights of refugees and internally displaced persons. Despite this normative foundation, implementation remains limited. Post-conflict environments often experience weakened or collapsed state institutions, together with the absence of effective enforcement mechanisms at the international level. This combination undermines the capacity of Hague Law and Geneva Law to deliver meaningful restitution, a challenge widely noted in the literature on displacement, reparations, and post-conflict governance (Kälin 2008; Leckie 2009). Scholars of transitional justice similarly highlight the persistent gap between legal norms and actual implementation in fragile settings, where institutional weakness and political resistance limit the effectiveness of international legal frameworks (Teitel 2000; Sriram & Garcia-Godos 2013). These recurring deficiencies point to the need for deeper inquiry into why existing mechanisms struggle to safeguard property rights and how alternative or complementary approaches might better address these shortcomings, including those grounded in local legal traditions or hybrid normative systems (De Greiff 2012; ICRC 2016).

Land rights in conflict-affected areas frequently expose the limitations of international legal frameworks in guaranteeing the enforcement of such rights. As stated by Joireman & Tchatchoua-Djomo (2023), instruments like the Pinheiro Principles provide important normative standards for housing, land, and property restitution but remain non-binding and often inadequate when applied to customary tenure systems in post-conflict settings. The challenges of implementation are compounded by the coexistence of formal state law, customary norms, and *de facto* practices, which frequently clash and generate competing claims, as illustrated by Braak (2023). These structural tensions reveal broader weaknesses in the international protection of property rights, including the limited capacity of states to uphold the guarantees articulated in human rights instruments such as the Universal Declaration of Human Rights, particularly in situations of armed conflict, displacement, and institutional collapse. Moreover, academic debates highlight that property rights are neither absolute nor purely individualistic and that they inevitably intersect with broader social and public interests. This interaction is evident in comparative discussions on the social function of property, which emphasise the need to balance individual ownership with collective welfare. Gavriil (2024) further notes that divergent interpretations by international courts and arbitral bodies reinforce the absence of a coherent and universal approach to property rights, leading to inconsistencies that undermine the normative strength of these protections.

Property rights often unravel when public institutions collapse in armed conflict, while existing international frameworks struggle to ensure effective enforcement on the ground. A productive way forward is to integrate Kantian legal theory with Fiqh al-Siyar (Islamic international law) so that protection of housing, land, and property (HLP) is both rightful in public-law terms and legitimate within local normative orders. Scaglia (2024) illustrates how critical reason can interrogate and refine tradition, modernising Islamic thought without sacrificing cultural identity, which is an approach resonant with Kant's call to examine reason's limits and uses and with al-Jabri's Critique of Arab Reason. In Kant's legal philosophy, claims to external objects are merely provisional absent a

public juridical condition; only a rightful state transforms private claims into enforceable property rights through an omnilateral will and public law (Ripstein, 2009; 2017). Building on this, Stilz (2011; 2019) develops a Kantian justification for territorial and resource claims: legitimacy depends on occupancy, basic justice, and collective self-determination, not solely on pre-institutional titles.

Islamic jurisprudence offers a complementary lens. In classical *fiqh*, *al-milk* (ownership) denotes a Sharia-recognised specific authority over *al-māl*, valid when acquired through lawful causes (sale, inheritance, gift, etc.), thereby anchoring property in the Sharia legitimacy of acquisition and use (Islam, 1999; Agustina et al., 2021). This linkage provides the conceptual bridge between Kant's demand for public law and the valid Sharia basis of transactions, enabling a framework that resonates with local legal sensibilities rather than merely importing "western" instruments.

Furthermore, enforcement remains the principal bottleneck. International humanitarian law (IHL) lacks direct individual enforcement mechanisms. Hence, strategic or public-interest litigation before domestic courts (e.g., Germany) has emerged as a *de facto* path to push compliance, though change is incremental and politically contingent (Strobel, 2025). In the investment law domain, Haridi & Dadwal (2024) analyse the protection of intangible property amid conflict under ISDS (FET, FPS, and war clauses), emphasising that while treaty protections exist, evidentiary and scope challenges are substantial for wartime losses, signalling limits, not a wholesale incapacity, of positive law in modern conflicts. For cultural property, van Woudenberg (2024) highlights persistent impunity and enforcement gaps under the 1954 Hague framework and its 1999 Protocol. These issues are highly salient where identity-laden assets are targeted.

Normatively, Fiqh *al-Siyar* supplies principles for treaties, jurisdiction, rules of war, and diplomatic relations (Baderin, 2021; Munir, 2017). The ICRC likewise stresses convergence between IHL and Islamic law (protection of life and property, humanity, and proportionality), suggesting the two traditions are compatible at the level of objectives and core duties (ICRC, 2025). Crucially, legal-theory literature warns that over-reliance on coercive measures can erode legality's normativity and public legitimacy, even within positivist accounts (Thomas, 2021). A framework that privileges local normative acceptance alongside international standards is therefore better positioned to secure durable compliance.

This study contributes a novel hybrid framework for protecting property rights in modern conflict zones by synthesising Immanuel Kant's notion with the classical Islamic jurisprudence of Fiqh Siyar. The proposed integration of this study addresses a clear theoretical gap. The existing literature on housing, land, and property in conflict zones rarely synthesises Kantian justifications for property (public-law conditions) with Fiqh *al-Siyar* (lawful acquisition and inter-polity conduct) to craft an alternative, legitimacy-aware protection scheme (Stilz, 2019; Baderin, 2021). Contextually, because many conflicts occur in predominantly Muslim regions, a framework rooted in local legal traditions can increase acceptance and compliance, improving outcomes over purely external models (Munir, 2017; ICRC, 2025). This study seeks to bring Kantian thought into dialogue with Fiqh Siyar, developing a middle path that draws on the strengths of both traditions. It argues that the protection of property is a rightful concern of public law and a legitimate interest for local communities. By grounding property-rights protection in a framework that resonates with local legal traditions, the study offers a model that can enhance stability in conflict-affected areas. Many protracted conflicts unfold in Muslim-majority contexts, where externally imposed frameworks often face legitimacy deficits. A hybrid approach rooted in familiar normative foundations can improve acceptance, strengthen compliance, and reduce resistance to external interventions.

## METHOD

### Research Type and Design

This study adopts a normative (doctrinal) legal methodology and integrates it with comparative and critical analysis. The normative component guides the interpretation of authoritative legal texts and principles governing property rights, drawing on established public-law theory and legal doctrine. The comparative component examines convergences and divergences between international law and Islamic jurisprudence, particularly within Fiqh *al-Siyar*, as reflected in classical juristic works and contemporary scholarship (al-Shaybānī 1979; Khadduri 1966; Bassiouni 2014). The design proceeds sequentially: (i) the development of a philosophical-legal evaluative framework, (ii) doctrinal-comparative mapping of relevant norms, and (iii) application to selected case studies.

The study adopts Kantian property rights theory as its principal philosophical framework to examine state obligations to safeguard property in conflict zones. The framework operationalises Kantian commitments to autonomy and dignity, and non-instrumentalisation to derive indicators for the protection of property rights: non-expropriation, due process, proportionality in public policy, and effective remedies (restitution, compensation, and guarantees of non-repetition). In Islamic law, the

analysis draws on *maqāṣid Sharīa*, particularly *ḥifẓ al-māl* (protection of wealth), *qawā'id fiqhīyah* (general legal maxims), and the prohibition of *ghasb* (unlawful seizure) as core normative touchstones. While alternative frameworks are acknowledged, the Kantian approach is prioritised for its clarity on moral duties of the state and its compatibility with rights-based reasoning in conflict.

### Scope and Units of Analysis

The temporal scope covers 2020–2025 to capture recent developments in international and Islamic legal reasoning and major events relevant to property disputes in conflicts. The geographic and thematic scope encompasses five conflict zones: Sheikh Jarrah (Jerusalem), Ukraine, Nagorno-Karabakh, Iraq (post-2020 responses), and Burundi (post-2015 ethnic conflict with continued relevance through 2020–2025). The unit of analysis is a property dispute arising in a conflict setting, framed by state invasion, ethno-territorial conflict, occupation by non-state actors, or internal ethnic conflict.

### Data Sources and Analytical Procedures

Data sources are international legal instruments (e.g., humanitarian law, human rights treaties, rules of occupation), Islamic legal texts on property rights (Qur'an, Sunnah, classical and contemporary juristic writings), judicial decisions (national and international), and national legislation/regulations pertinent to property and conflict. It also includes peer-reviewed journals, scholarly monographs and textbooks, and reports from reputable international organisations.

The analysis proceeded in three interlinked dimensions. The first dimension utilised Kantian property rights theory to evaluate state obligations in safeguarding property rights within conflict zones. The second dimension conducted a comparative legal analysis of property rights protection under both international law and Islamic jurisprudence during periods of conflict. The third dimension presented Bridging Kantian Philosophy and Islamic Law.

Interpretive analysis included textual, systematic, historical, and teleological approaches. For Islamic law, *uṣūl al-fiqh* and *maqāṣid*-based reasoning were applied. Data were corroborated through triangulation of primary sources with scholarly commentary and institutional reports. This triangulation used cross-verification among international instruments, Islamic legal texts, case law, and credible institutional reports.

## RESULTS AND DISCUSSION

### Property Rights in Kant's Philosophy

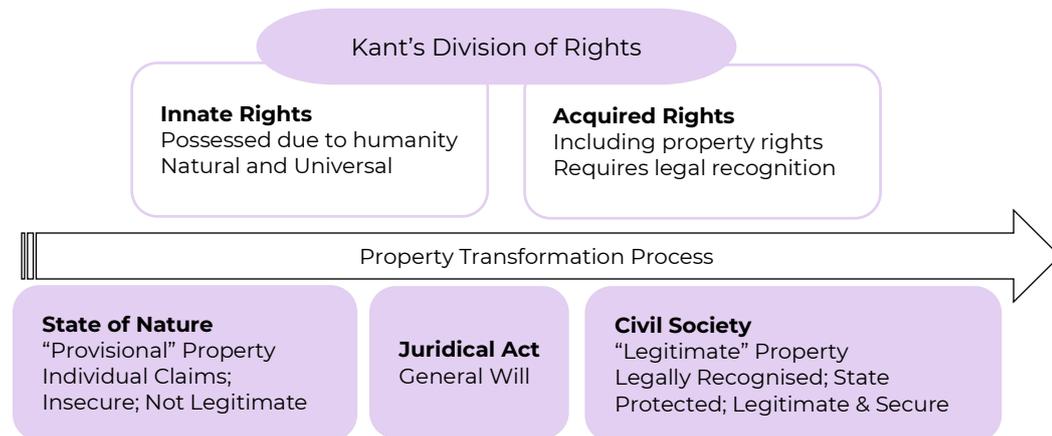
In Kant's *Metaphysics of Morals*, the central "innate right" is not a form of innate ownership but the innate right to freedom, which grounds all juridical relations and makes possible the distinction between what is "mine" and "yours" (Kant, 2017). Kant differentiates between innate possession (the set of attributes inherently inseparable from a person), such as bodily integrity and external freedom, and acquired possession, which requires a juridical act and public recognition in order to constitute rightful ownership (Byrd & Hruschka, 2006; Ripstein, 2020; Tomassini, 2023). The structure of "Mein und Dein" in Kant's *Rechtslehre* thus functions not as a claim to natural property rights but as a rational framework for determining the external conditions under which individual freedom can coexist with that of others. This framework explains why property rights can be only provisional in the state of nature: they rest on unilateral acts of will, are insecure, and lack publicly shared criteria of enforcement (Hasan, 2018). Only in the civil condition, where a general will can provide public authorisation, do such claims become conclusive and fully juridical. Tomassini (2023) emphasises that Kant's commitment to a general will shows that rightful ownership presupposes the establishment of a state capable of transforming provisional possession into a legitimate entitlement.

In Figure 1, this framework describes how Immanuel Kant understood the relationship between rights, ownership, and legal legitimacy in human life. For Kant, rights are divided into two main categories: innate rights and acquired rights. Innate rights are rights that every human being possesses universally, simply because they are human. These rights are natural, do not require legal institutions, and include basic principles such as individual freedom. On the other hand, acquired rights arise through actions, social relationships, or specific legal processes. Property rights fall into this category, because ownership can only be recognised as valid when there are regulations and ratification from public authorities.

This framework emphasises that Kant's concept of ownership cannot be fully valid based solely on personal claims. In the state of nature, or the natural state before the existence of the state, claims of ownership are provisional (temporary or tentative). Individuals can claim an object, but the claim is not secure and does not have full legitimacy because there is no authority to guarantee or regulate that right. Therefore, even though a person can "control" an object, their ownership cannot

truly be called a valid right. An important transition occurs through juridical acts, namely legal actions carried out collectively by society through general will. These actions are not individual decisions but the result of mutual agreements to form a legal order that binds everyone. This is where property changes status from a temporary claim to a legitimate right. Kant emphasises that legitimacy only arises when there is a collectively agreed legal structure.

After this legal act is formed, humans enter civil society. It is at this stage that property acquires the status of legitimate property (ownership that is recognised by law), is protected by the state, and has certainty and security. In civil society, acquisition rights such as property rights become stable because there is a legal system that ensures that these rights are not only recognised by the person claiming them but also respected by all members of society.



**Figure 1.** The Theoretical Framework of Immanuel Kant's Law and Property

**Source:** Compiled by author(s)

The entire process demonstrates Kant's view that law is not merely a repressive tool but rather a moral foundation that enables humans to live together peacefully and justly. Legitimate property cannot arise from force or physical possession alone; it must be born of the collective action of society in creating rules that bind all parties. Thus, this theoretical framework illustrates the Kantian principle that the legitimacy of law, including in matters of ownership, can only be realised through a transition from a state of nature to a civil society governed by public law.

### Property Rights in Fiqh Siyar

Islamic law grounds the concept of ownership in the principle that all property ultimately belongs to Allah, while humans serve as entrusted stewards (*amānah*) who may utilise resources within the moral and legal limits of the Sharia. Although individual ownership is recognised, it is not absolute. It is circumscribed by obligations that ensure justice, prevent harm, and protect communal welfare (Asmuni et al., 2024). Studies on Islamic economic law similarly affirm that property, whether tangible or intellectual, derives its legitimacy from righteous acquisition and ethical use, rendering illicit appropriation a breach of this trust (Fariana & Jinan, 2023; Ratnawati & Al-Farizi, 2023).

Within this framework, the institution of *al-hisbah* serves as a state mechanism for safeguarding market integrity by enforcing *amar ma'ruf nahi munkar*. Salim et al. (2015) highlight that the *muhtasib* is tasked with preventing fraud, ensuring fairness, and maintaining ethical conduct in economic interactions, reflecting Ibn Taymiyyah's broader doctrine of *wilāyah al-hisba* as elaborated in Public Duties in Islam (Ibn Taymiyyah, 2007).

In the context of Fiqh Siyar, property rights also arise in contexts of warfare and interstate relations, particularly regarding captured property (*ghanimah*), public spoils (*fay'*), and the rights of protected foreign groups (*musta'man*). Modern analyses of Islamic political economy indicate that the contemporary Iranian state was the first to institutionalise the classical doctrine of *al-anfāl*, treating certain categories of public or unowned property (*res nullius*) as assets vested in the Imamate, thereby distinguishing its system from both capitalism and socialism (Kirat, 2023). This development underscores the enduring relevance of Islamic legal principles in defining the scope and limits of property rights in both peace and conflict.

Classical Islamic international law establishes clear protections for non-combatants in times of conflict. Jurists emphasise that civilians, including women, children, the elderly, and other non-fighters, must not be harmed, and their property remains inviolable, reflecting the principle of non-combatant immunity recognised in both the Qur'anic directives and the juristic tradition (Munir,

2019). Likewise, Islamic rules of warfare rooted in early Muslim practice prohibit aggression and protect civilian property even in active conflict zones.

In addition to wartime protections, Fiqh Siyar categorises territories into *Dār al-Islām*, *Dār al-'Ahd*, and *Dār al-Ḥarb*, with the legal status of inhabitants determining the degree of obligation and protection afforded to them (Nyazee, 2022). Non-Muslims entering Muslim lands under a temporary safe-conduct (*aman*) are classified as *musta'min*, enabling them to travel, trade, and reside temporarily while enjoying protection of person and property. Those who seek permanent residence receive the status of *ahl al-dhimmah*, which grants ongoing protection in exchange for compliance with agreed conditions (Kharanbeh, 2019). The *dhimmah* contract ensures that the property, religious freedom, and civil rights of non-Muslims are safeguarded, forming a foundational element of Islamic legal order concerning minority rights. Prophetic hadith further reinforce the gravity of violating the rights of a *dhimmi*, warning that those who oppress or harm them shall not experience the fragrance of Paradise, which is a statement repeatedly cited in juristic literature as proof of the seriousness of such violations.

### **Bridging Kantian Philosophy and Islamic Law: Innovative Solutions for International Property Disputes**

The synthesis of Kant's theory in "Angeborne Mein und Dein" and the protection of property in Fiqh Siyar reveal notable similarities. Both frameworks underscore the state's pivotal role in safeguarding personal rights, whether for citizens or foreigners. Kant's assertion that the state delineates specific rights related to ownership, alongside the inherent rights recognised as human rights, is equally applicable to Fiqh Siyar. This approach can be employed to address disputes over property rights in both peaceful and conflict situations. Cases involving the seizure of property rights by ruling regimes, colonisers, and looters from 2020 to 2025 can be examined in a fair and balanced manner. What is happening in Palestine, Uganda, Ukraine, Brazil, Nagorno-Karabakh, Iraq, and Burundi highlights the United Nations' failure to enforce the UDHR regarding property rights, as well as the ruling regime's inability to protect its citizens' property rights.

Similar dynamics can be observed in various regions, where state or elite actors manipulate legal frameworks to dispossess citizens, often under the pretence of development, security, or national interest. These processes are not merely historical; they are perpetually renewed through contemporary legal, economic, and political infrastructures. The failure of ruling regimes to safeguard property rights undermines economic development, social stability, and justice, while simultaneously fuelling cycles of conflict and displacement. To effectively address these issues, it is essential to reimagine property rights beyond individual ownership, placing greater emphasis on communal use, historical justice, and international accountability (Acemoglu & Johnson, 2005; Bhandar, 2018).

Safeguarding property rights relies on governing institutions, such as states or international organisations like the UN, to provide necessary guarantees. However, when these institutions fail to deliver, a more effective alternative becomes imperative. Fiqh Siyar presents itself as a compelling option, offering an eschatological foundation for the enforcement of property rights. Unlike secular frameworks, Fiqh Siyar connects the guarantees of property rights to accountability in the afterlife, implying divine punishment for those who violate these rights. Thus, the protection of property rights transcends mere worldly assurances, becoming intertwined with divine promises and threats in the afterlife for those who breach these sacred provisions (Asmuni et al., 2024).

The enforcement of property rights operates at two interconnected levels (Khrebtova & Taran, 2022). The first level consists of constitutional guarantees that establish the fundamental principles governing the protection of property. The second level consists of enforcement practices that enable individuals and communities to exercise these rights in practice. Within this second dimension, the eschatological aspect of Islamic law provides an additional layer of moral reinforcement that supports and legitimises the protection of property through a non-material normative framework (Kamali, 2008; Hallaq, 2009). The effectiveness of enforcement at both levels is shaped by factors such as state capacity, political stability, and the inclusiveness of legal institutions. Comparative studies in political economy show that weak or unstable states often fail to protect property rights adequately, and such failures tend to benefit powerful groups disproportionately while undermining justice and social stability (Acemoglu & Robinson 2012; North et al., 2009). These dynamics highlight the importance of both formal legal guarantees and practical institutional performance in ensuring equitable and effective property-rights protection.

Furthermore, the theory of property rights enforcement highlights the crucial need for clearly defined and effectively enforced property rights to ensure legal protection, promote social justice, and drive economic development. While property rights are generally enshrined in the constitution, their actual safeguarding largely hinges on the implementation of laws by law enforcement and judicial institutions, including the availability of appeal mechanisms for property owners impacted by the actions or negligence of executive officials (Khrebtova & Taran, 2022).

### Kantian and Islamic Norms on Property

Kant's Doctrine of Right distinguishes between inherent rights in the form of freedom and acquired rights over external objects. Within this framework, claims of ownership that arise outside civil society are only temporary and only become certain when they obtain public authorisation and coercive protection from the state (Hasan 2018; Stone & Hasan 2022; Yeomans, 2020). In classical *fiqh al-siyar*, the protection of life and property for foreigners (*musta'min*) and non-Muslim permanent residents (*dhimmi*) is regulated through the institutions of safe conduct (*aman*) and the *dhimma* contract. These mechanisms operate within a territorial sovereignty framework and rely on state enforcement to ensure security and legal recognition (Hamidullah, 2011).

When analysed together, these two traditions reveal a clear point of convergence. Property rights can only function effectively and fairly if they obtain public authorisation and institutional guarantees. This finding is in line with contemporary institutional economics, which asserts that property rights institutions, especially those that limit expropriation by rulers or elites, have a direct impact on investment, financing, and long-term growth (Acemoglu & Johnson, 2005). At the same time, critical legal studies show that modern property law in many contexts actually facilitates dispossession, thereby encouraging the development of concepts of ownership that are more sensitive to communal use and historical justice (Bhandar, 2018).

In Islamic law, accountability is both legal and moral. In addition to worldly sanctions, normative texts emphasise severe consequences for violations of the protection of *mu'āhad* or *dhimmi*. The hadith "whoever kills a protected person will not smell the fragrance of paradise" (Ṣaḥīḥ al-Bukhārī, no. 6914/3166) reinforces the seriousness of protecting life and property<sup>1</sup>. Thus, the enforcement of property rights operates on two levels: constitutional or legal guarantees and practical enforcement through the courts and executive agencies. When institutions fail to perform this function, the result tends to favour powerful actors and undermine justice and stability (Cato Institute, 2022).

An integrated framework that combines public authorisation in Kantian thought and legal and moral accountability in the *dhimma* system provides a coherent basis for assessing property rights disputes in both peaceful and conflict contexts. This approach allows for a more balanced analysis, as it does not reduce the enforcement of Islamic law to being purely eschatological and does not ignore the political and economic structural constraints that affect the protection of property rights.

## CONCLUSION

This study emerges from the persistent and devastating global crisis of property rights violations in modern conflict zones, where traditional legal and international frameworks have demonstrably failed. Its primary objective is to construct and propose a novel, hybrid theoretical framework by synthesising two distinct but potent intellectual traditions: the Enlightenment philosophy of Immanuel Kant, specifically his concept of "Angeborene Mein und Dein" (*innate mine and thine*), and the classical Islamic jurisprudence of international relations, known as *Fiqh Siyar*. The impetus for this synthesis is the analysis of contemporary cases from 2020 to 2025 across diverse regions, including Palestine, Ukraine, Nagorno-Karabakh, Iraq, Burundi, Uganda, and Brazil, which collectively reveal a pattern of systematic breakdown. This pattern highlights not only the failure of state authorities to protect property, often because they are too weak or complicit, but also the profound inadequacy of international enforcement mechanisms, particularly the United Nations' implementation of the Universal Declaration of Human Rights. This study uncovers the unique and complementary strengths each tradition brings to a potential solution. Kantian philosophy provides a robust secular, rational foundation, emphasising the a priori innate nature of property rights and the indispensable role of governing institutions in securing them through law and civic order. However, in war-torn regions where such institutions are absent or corrupt, this institutional emphasis reaches a practical limit.

The finding introduces its crucial implications. Firstly, it adds a powerful eschatological dimension linking the protection of property, especially of non-combatants and those of different faiths, to divine accountability and judgement. This transcendental sanction offers a potent normative force for compliance that operates independently of a functioning secular judiciary. Secondly, and just as practically, *Fiqh Siyar* offers detailed, context-sensitive legal scaffolding. Its classical territorial classifications (*Dar al-Islam*, *Dar al-'Ahd*, *Dar al-Harb*) and its explicit protective measures for the lives and properties of non-combatants, including non-Muslims (*dhimmis*, *musta'mins*), provide a comprehensive set of safeguards based on territorial presence and conduct,

<sup>1</sup> Sahih al-Bukhari. (n.d.). Hadith no. 6914/3166 (Mu'āhad/Dhimmi). Sunnah.com; HadeethEnc.

rather than on citizenship or religious identity. This makes it applicable precisely when identities are politicised and legal statuses are stripped away.

Therefore, the study suggests that the most effective path forward for protecting property rights in conflict zones lies in a multi-layered, synthesised approach. This proposed framework would combine the Kantian vision of constitutional guarantees and institutional enforcement with the unique mechanisms and motivational drivers found in Fiqh Siyar. The synthesis is not merely theoretical, but it presents a viable alternative for situations where traditional law has proven inadequate. By grounding protection in both a rational, innate right and a transcendent, ethical-legal obligation that includes specific rules for wartime conduct, this hybrid model aims to create a more resilient and universally applicable standard. Ultimately, although the finding remains fragmented and descriptive, rather than offering a synthesised argument that reflects the collaborative use of Kantian thought and Islamic law, the study argues that addressing the global property rights crisis requires looking beyond the confines of Western-centric international law and engaging with other profound legal and ethical traditions. It calls for future research to focus on a well-developed analytical framework, leading the practical implementation of specific conflict contexts and exploring how established international legal institutions might integrate these principles to develop a more robust and truly global regime for the protection of what Kant called our "innate mine and thine" and what Islamic law deems a sacred trust demanding protection under pain of ultimate accountability.

## References

- al-Shaybānī, Muḥammad ibn al-Ḥasan (1979). *The Islamic Law of Nations: Shaybānī's Siyar*. Translated by Majid Khadduri. Johns Hopkins University Press. <https://archive.org/details/islamiclawofnati00shay>
- Acemoglu, D., & Johnson, S. (2005). Unbundling Institutions. *Journal of Political Economy*, 113(5), 949–995. <https://doi.org/10.1086/432166>
- Acemoglu, D & Robinson, J.A. (2012). *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. Random House.
- Agustina, I. L., Susiani, R., Saudi, M. H., & Sinaga, O. (2021). Sharia ownership concept. *Review of International Geographical Education*, 11(6), 217–224. <https://doi.org/10.48047/rigeo.11.06.26>
- Arai-Takahashi, Y. (2015). Protection of private property. In *The 1949 Geneva Conventions: A Commentary* (pp. 1515–1534). Oxford University Press. <https://academic.oup.com/oxford-law-pro/book/56224/chapter/473511852>
- Asmuni, A., Fajrillah, & Anggraini, T. (2024). The concept of ownership in fiqh muamalah: A sharia perspective and its implications in the modern economy. *International Journal of Multidisciplinary Research and Growth Evaluation*, 5(4), 845–850. <https://doi.org/10.20525/ijrbs.v12i8.2908>
- Bhandar, B. (2018). *Colonial Lives of Property*. Duke University Press. <https://doi.org/10.2307/j.ctv11smjpm>
- Baderin, M. A. (2021). *International law (al-siyar) (Chap. 8)*. Oxford University Press.
- Bassiouni, M. Cherif (2014). *Shari'a and Islamic Criminal Justice in Time of War and Peace*. Cambridge University Press. <https://doi.org/10.1017/CBO9781139629249>
- Braak, B. (2023). Graves, trees, and spray-paint: Land tenure formalisation and five normative repertoires in post-conflict South Sudan. *Legal Pluralism and Critical Social Analysis*, 55(1), 58–76. <https://doi.org/10.1080/27706869.2023.2189391>
- Buxbaum, J. (2025). Israeli court upholds order expelling prominent Palestinian activist and his family from their Sheikh Jarrah home. *Jerusalem Story*. <https://www.jerusalemstory.com/en/article/israeli-court-upholds-order-expelling-prominent-palestinian-activist-and-his-family-their>
- Byrd, S., & Hruschka, J. (2006). The natural law duty to recognize private property ownership: Kant's theory of property in his Doctrine of Right. *University of Toronto Law Journal*, 56(2), 217–282. <http://www.jstor.org/stable/4491687>.

- Cato Institute. (2022). Property rights and the Constitution. <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policymakers-9th-edition-2022/property-rights-constitution>
- De Greiff, Pablo (2012). *The Handbook of Reparations*. Oxford University Press. <https://doi.org/10.1093/0199291926.001.0001>
- Fariana, A., & Jinan, A. S. (2023). The urgency of intellectual property rights in the digital era from the perspective of Sharia economic law in Indonesia. *International Journal of Research in Business and Social Science*, 12(8), 552–556. <https://doi.org/10.20525/ijrbs.v12i8.2908>
- Fetzer, T., & Marden, S. (2017). Take what you can: Property rights, contestability and conflict. *The Economic Journal*, 127(601), 757–783. <https://doi.org/10.1111/eoj.12487>
- Gavriil, E. (2024). Protection of property under human rights and international investment law: A case-law analysis. *Laws*, 13(1), 6. <https://doi.org/10.3390/laws13010006>
- Hallaq, Wael B. (2009). *Shari'a: Theory, Practice, Transformations*. Cambridge University Press.
- Hamidullah, M. (2011). *The Muslim Conduct of State*. The Other Press.
- Haridi, S., & Dadwal, V. (2024). The protection of intangible property during armed conflict. *ICSID Review*, 39(2), 227–239. <https://doi.org/10.1093/icsidreview/siae019>
- Hasan, R. (2018). The provisionality of property rights in Kant's Doctrine of Right. *Canadian Journal of Philosophy*, 48(5), 850–876. <https://doi.org/10.1080/00455091.2018.1429181>
- Ibn Taymiyyah. (2007). *Public duties in Islam: The institution of the hisba* (M. Holland, Trans.). The Islamic Foundation. (Original work published 1982).
- ICRC (2016). *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. International Committee of the Red Cross. <https://www.icrc.org/en/publication/international-humanitarian-law-and-challenges-contemporary-armed-conflicts-building>
- ICRC. (2025). *Islamic law and international humanitarian law (Briefing Paper)*. International Committee of the Red Cross.
- IOM. (2024). *World Migration Report 2024*. International Organization for Migration. <https://worldmigrationreport.iom.int/msite/wmr-2024-interactive/>
- Islam, M. W. (1999). Al-Mal: The concept of property in Islamic legal thought. *Arab Law Quarterly*, 14(4), 361–368. <http://www.jstor.org/stable/3382152>
- Joireman, S. F., & Tchatchoua-Djomo, R. (2023). Post-conflict restitution of customary land: Guidelines and trajectories of change. *World Development*, 168, 106272. <https://doi.org/10.1016/j.worlddev.2023.106272>
- Kälin, Walter (2008). *Guiding Principles on Internal Displacement: Annotations*. USA: American Society of International Law.
- Kamali, M. H. (2008). *Shari'ah Law: An Introduction*. Oxford: Oneworld Publications.
- Kant, I. (2017). *Kant: The Metaphysics of Morals*. (M. Gregor, Trans., L. Denis, Ed.) (2nd ed.). Cambridge University Press.
- Khadduri, Majid (1966). *War and Peace in the Law of Islam*. Johns Hopkins University Press.
- Khranbeh, S., & Sawaed, S. (2019). The Rights of Dhimmis in Islam. *The International Journal of Humanities & Social Studies*, 7(6), 97-99. <https://doi.org/10.24940/theijhss/2019/v7/i6/HS1905-083>.
- Kirat, T. (2023). [Review of Destructive Coordination, Anfal and Islamic Political Capitalism. New Reading of Contemporary Iran, by M. Vahabi]. *Revue d'économie Politique*, 133(4), 645–648. <https://www.jstor.org/stable/27403088>
- Leckie, Scott (2009). *Housing, Land and Property Rights in Post-Conflict Societies*. Cambridge University Press.
- Munir, M. (2017). Islamic International Law (Siyar): An Introduction. SSRN. <http://dx.doi.org/10.2139/ssrn.1835823>

- Munir, M. (2011). The protection of civilians in war: Non-combatant immunity in Islamic law. *Hamdard Islamicus*, 34(4), 7-39. SSRN. <http://dx.doi.org/10.2139/ssrn.1797045>
- North, Douglass C., Wallis, John J., and Weingast, Barry R. (2009). *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge University Press.
- Nyazee, I. A. K. (2022). The Fiqh of the Two Houses: Dar al-Islam and Dar al-Harb. In book: *Islamic Legal Maxims*. Federal Law House, Islamabad
- Oliveira, Puppim de, J. A. (2008). Property rights, land conflicts and deforestation in the Eastern Amazon. *Forest Policy and Economics*, 10(5), 303–315. <https://doi.org/10.1016/j.forpol.2007.11.008>
- Ratnawati, E. T. R., & Al-Farizi, R. S. (2023). Protection of intellectual property rights in the perspective of Islamic law. *Millah: Journal of Religious Studies*, 22(2), 377–408. <https://doi.org/10.20885/millah.vol22.iss2.art4>
- Ripstein, A. (2009). *Force and Freedom: Kant's Legal and Political Philosophy*. Harvard University Press.
- Ripstein, A. (2017). *Freedom and Force: Essays on Kant's Legal Philosophy*. Bloomsbury.
- Ripstein, A. (2020). *The justification of property rights*. In J. E. Penner, *Property Rights: A Re-Examination* (pp. 157–200). Oxford University Press.
- Rugadya, M. A. (2020). Land tenure as a cause of tensions and driver of conflict among mining communities in Karamoja, Uganda: Is secure property rights a solution? *Land Use Policy*, 94, 104495. <https://doi.org/10.1016/j.landusepol.2020.104495>
- Salim, S., Abdullah, S. F., & Ahmad, K. (2015). Wilayat al-hisba: A means to achieve justice and maintain high ethical standards in societies. *Mediterranean Journal of Social Sciences*, 6(4 S2), 201–206. <https://doi.org/10.5901/mjss.2015.v6n4s2p201>
- Scaglia, L. (2024). Tradition and Critique in Kant and al-Jabri. *Tópicos, Revista de Filosofía*, 70, 317–345. <https://doi.org/10.21555/top.v700.2688>
- Sriram, Chandra Lekha and García-Godos, Jemima (2013). *Transitional Justice and Peacebuilding on the Ground*. UK: Routledge.
- Stilz, A. (2011). Nations, states, and territory. *Ethics*, 121(3), 572–601. <https://doi.org/10.1086/658937>
- Stilz, A. (2019). *Territorial Sovereignty: A Philosophical Exploration*. Oxford University Press.
- Stone, M. J., & Hasan, R. (2022). What is provisional right? *Philosophical Review*, 131(1), 51–98. <https://doi.org/10.1215/00318108-9415141>
- Strobel, V. (2025). *Litigating and enforcing IHL before German courts: Public-interest litigation via individual rights*. T.M.C. Asser Press.
- Teitel, Ruti (2000). *Transitional Justice*. Oxford University Press. <https://doi.org/10.1093/oso/9780195100648.001.0001>
- Thomas, J. (2021). Coercion in social accounts of law: Can coerciveness undermine legality? *Law & Philosophy*, 40, 471–508. <https://doi.org/10.1007/s10982-020-09395-2>
- Tomassini, F. (2023). Property and the will: Kant and Achenwall on ownership rights. *Kantian Review*, 28(2), 297–313. <https://doi.org/10.1017/S1369415423000080>
- UNHCR. (2025). *Figures at a glance*. <https://www.unhcr.org/about-unhcr/overview/figures-glance>
- van Woudenberg, N. (2024). Attacks against cultural property in armed conflict—How to reduce the risk of impunity? *Santander Art and Culture Law Review*, 10(2), 105–134. <https://doi.org/10.4467/2450050XSNR.24.014.20825>
- Völkerrechts. (2007). *Property rights for individuals under international humanitarian law*. <https://www.jstor.org/stable/40800189>

Yeomans, C. (2020). Kant and the provisionality of property. In *Kant on Morality, Humanity, and Legality* (pp. 253–277). <https://doi.org/10.1215/00318108-9415141>