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## **Harmonizing Islam and Human Rights Through the Reconstruction of Classical Islamic Tradition**

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**Abstract:** As international human rights norms are increasingly ratified by many nation-states, including in the Muslim world. There has been an increasing debate among Muslims on the universality of human rights and their compatibility with Islam. Like any religious tradition, however, Islam is open to various and frequently conflicting interpretations about its inherent normative demands. This research is a normative legal research using a legal philosophy approach. Sources of data come from literature in the form of articles, books and all materials related to the discussion. This study concludes that there are various interpretations among Muslims regarding human rights issues. On the one hand, due to the fact that the modern discourse of human rights emerged from the West, which historically closely associated with imperialism and colonialism, certain Muslim groups maintain hostile views towards human rights. On the other, there are also Muslims who, because of their intensive engagement with the West, have produced views and thoughts that tend to be accommodating or even imitative towards everything from the West including human rights issues. The article argues that philosophically harmonization between Islam and human rights is quite possible to be carried out through the reconstruction of classical Islamic traditions, so that a dialectic occurs that builds and complements one another in the future.

**Keywords:** Islam and human rights, reconstruction of classical Islam, religious freedom, rights of minorities

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**Abstrak:** *Seiring penerimaan dan ratifikasi norma-norma hak asasi manusia (HAM) internasional oleh banyak negara-bangsa, termasuk di dunia Muslim. Perdebatan semakin mengemuka di kalangan umat Islam terkait HAM dan kompatibilitasnya dengan Islam. Namun, seperti tradisi agama lainnya, Islam terbuka untuk berbagai interpretasi yang sering bertentangan tentang tuntutan normatif yang melekat. Studi ini merupakan kajian hukum normatif dengan menggunakan pendekatan filsafat hukum. Sumber data berasal dari literatur berupa artikel, buku dan semua bahan yang terkait dengan pembahasan tersebut. Kajian ini menyimpulkan bahwa terdapat penafsiran yang beragam dari kalangan umat Islam tentang isu-isu HAM. Di satu sisi, berangkat dari fakta bahwa wacana modern HAM muncul dari Barat, yang secara historis terkait erat dengan imperialisme dan kolonialisme, muncul pandangan negatif dari kelompok-kelompok Muslim tertentu terhadap HAM. Di sisi lain, ada juga Muslim yang, karena interaksi intensif mereka dengan Barat, telah menghasilkan pandangan dan pemikiran yang cenderung akomodatif atau bahkan meniru segala sesuatu yang datang dari Barat termasuk konsep HAM. Kajian ini memetakan secara kritis beragam pandangan Muslim tentang HAM dan kemudian menawarkan pentingnya rekonstruksi wacana teologis-legal Islam klasik untuk memfasilitasi harmoni yang lebih tulus antara Islam dan wacana global HAM. Artikel tersebut berargumen bahwa secara filosofis harmonisasi antara Islam dan hak asasi manusia sangat cukup memungkinkan untuk dilakukan melalui rekonstruksi tradisi Islam klasik, sehingga terjadi dialektika yang saling membangun dan mengisi satu sama lain dimasa yang akan datang.*

**Kata Kunci:** *Islam dan HAM, rekonstruksi Islam klasik, kebebasan beragama, hak-hak minoritas*

## Introduction

The meaning and concept of human rights cannot be separated from the development of international instruments that contain them. One of the most important documents is the Universal Declaration of Human Rights (UDHR), formulated in 1948, which is considered as the most comprehensive human rights document published by all states and nations representing a variety of cultural backgrounds, beliefs, ideologies, and political orientations. The global discourse on human rights continued to develop with the formulation of other important international treaties of human rights.<sup>1</sup>

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<sup>1</sup> Mustafa Burak Şener, "A Review of The Meaning and Importance of The Universal Declaration of Human Rights," *International Journal of Political Studies* 7, No. 3 (2021), p. 15-25. Abdullahi A. An-Na'im, "Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives," *Harvard Human Rights Journal* 3, No. 1 (1990).

In 1966 two international human rights covenants were accepted, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which began to take effect in 1976. This was followed by the ratification of several other human rights conventions including: The Convention Against Torture (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW). Although it still does not rule out the possibility of further discourse, in 1993 at the World Conference on Human Rights in Vienna, a declaration was formulated as a result of a compromise of existing differences. It is formulated among others that human rights are universal, inseparable, interdependent and interconnected.<sup>2</sup>

The development of international human rights norms and their increasing ratification by many nation-states has further generated the debate on the universality of human rights and their compatibility with certain religious ethico-religious systems and traditions. Countries in the Muslim world, significant members of the United Nations (UN), have also seen the increasing debates and discussions on this issue. Like any religious tradition, however, Islam is open to various and frequently conflicting interpretations about its inherent normative demands. Such diverse interpretations also emerge in the issue of human rights. As Alexander Flores rightly asserts, “the discussion on human rights and their foundation involves a broad spectrum of opinion, not only between advocates of Islamic and “Western” positions but also in the related debate among Muslims themselves.”<sup>3</sup> The putative “clash of civilizations” often turns out to be a “clash within civilizations.”<sup>4</sup>

The concept and theory of human rights that developed in the west are individual rights that developed from modern European ideas about natural law. Through the Universal Declaration of Human Rights issued by the United Nations in 1948, and the 1966 International Covenant which entered into force in 1976, these rights have now become international law. This brings us to the discussion of the rule of law, because rights can only be institutionalized within a legal

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<sup>2</sup> Saiful Anam, “The Universality of the Universal Declaration of Human Right: Does it Merely Express Western Values? *Nation State: Journal of International Studies* 1, No. 1 (2018). p. 1-10.

<sup>3</sup> Alexander Flores, “The Discussion within Islam on Secularism, Democracy and Human Rights,” in Werner Ende and Udo Steinbach (eds), *Islam in the World Today: A Handbook of Politics, Religion, Culture and Society* (Ithaca, London: Cornell University Press, 2010), p. 618. Sus Eko Ernada, “Issues of Compatibility of Human Right and Islam: The Experience of Egypt and Indonesia,” *Journal of Indonesian Islam* 1, No. 1 (2007).

<sup>4</sup> Alexander Flores, *The Discussion within Islam...*, p. 618.

context. Thus, human rights cannot be separated from democracy and the rule of law, because the two are intrinsically interrelated.<sup>5</sup>

The diverse Muslim responses to the concept of human rights have been shaped by a number of factors. The fact that the modern discourse of human rights emerged from the West, which historically closely associated with imperialism and colonialism, has led some Muslims to regard the human rights discourse as part or extension of the West's imperialistic or colonizing impulses. As a result, there have been less friendly views of certain Muslim groups towards human rights. However, there are also Muslims who, because of their intensive mixing with the West, have produced views and thoughts that tend to be accommodating or even imitative towards everything from the West including human rights issues. In what follows, the article will first map these competing Muslim views on human rights and then propose the importance of reconstruction of some of classical Islamic juridical discourse to facilitate a more genuine harmony between Islam and the global discourse of human rights.

Indonesian Muslim scholars, for example, today's human rights standards are largely considered valid, because they reflect the normative framework of common human experience – not only on a theoretical and abstract level, but also in the face of pervasive forces. countries and the realities of globalization in every part of the world today. It could be argued that although many Muslim scholars use the rhetoric of cultural relativism, they are not actually rejecting today's internationally recognized human rights. Instead, they only voiced a few objections, while justifying the universality of human rights values in Islam. It appears that although some Indonesian Muslim intellectuals admit that universal human rights are indeed universal, they still see differences in certain matters, due to differences in socio-cultural backgrounds. They have tried to influence the synthesis between the universality and particularity of Islam and universal human rights to suit the Indonesian context.<sup>6</sup>

Therefore, human rights that are born in the West and then develop throughout the world will be greatly influenced by the views on life, culture and ideology that develop in the West. Even so, there is a dialectic relationship where there are those who think that Islam and human rights have similarities and are

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<sup>5</sup> Ahmad Nur Fuad, et.al., "Islam and Human Right in Indonesia: An Account of Muslim Intellectual's Views," *Al-Jami'ah: Journal of Islamic Studies* 45, No. 2 (2007).

<sup>6</sup> Ahmad Nur Fuad, et.al., *Islam and Human Right...*, p. 248. Sigit Riyanto and Fajri Matahati Muhammadin, "The Urgency to Incorporate the Islamic Concept of Rights into the International Human Rights Law Course in Indonesian Law Schools," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 14, No. 1 (2019).

not contradictory, on the other hand there are those who understand the opposite theoretically or in application, in Indonesia and in the Islamic world in general.<sup>7</sup>

This research is a normative legal research using a legal philosophy approach. Legal philosophy is used as an analytical tool to examine the relationship between Islam and human rights.<sup>8</sup> Sources of data come from literature in the form of articles, books and all materials related to the discussion.

## Major Trends in Muslim Views on Human Rights

### 1. Western Progressivism

The first major trend within contemporary Muslim views on human rights is the total acceptance of modern human rights discourse as a product of the progressive civilization of the West. This trend considers that the first universal declaration of human rights, the French Revolution of 1789, or the second (UDHR) in 1948 is a declaration that is generally all-encompassing to all human beings regardless of particular race, ethnic, state or religion.<sup>9</sup> This trend does not care how Islam relates to human rights or whether they are compatible. This trend is represented by a group of secular elites who hold the view that the West is the only world civilization. For the proponents of this trend, civilizations, languages, customs, and traditions are different, but the norms are the same. In relation to the concept of human rights, this trend views that it only appeared in the Greek and Roman times in the Middle Ages and then began to take form in modern times during the religious reforms in the 15th century, the period of renaissance in the 16<sup>th</sup> century, the period of rationality in the 17th century and the period of enlightenment in the 18th century. Islamic civilization in the Middle Ages is not given a due acknowledgment as if it never existed.<sup>10</sup>

For example, Ash-Shiddieqy claims that it was Islam that fourteen centuries ago propagated the principles of human rights, not the French Revolution or the UN committee tasked with drafting the Universal Declaration of Human Rights. Although this attitude seems apologetic, it can be justified because ash-Shiddieqy consistently advocates Islamic values regarding human rights. According to him, in relation to the right to life and personal safety, as well

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<sup>7</sup> M. Anwar Nawawi, et.al., Harmonization of Islam and Human Rights: Judges' Legal Arguments in Rejecting Child Marriage Dispensation in Sukadana, Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, No. 1 (2022).

<sup>8</sup>Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*, (Jakarta: Rajawali Press, 2018). Zainuddin Ali, *Penelitian Hukum*, Jakarta: Sinar Grafika, 2014, p. 22-44.

<sup>9</sup> Hassan Hanafi, *Al-Mauqif al-Islâmi al-Muâshir wa Huqûq al-Insân*, Markaz Dirasat al-Wahdah al-Arabiyyah, p. 2.

<sup>10</sup> Albert Babaih, *Târikh I'lân Huqûq al-Insân*, translated by Muhammad Mandur, (Lajnah at-Ta'lif wa at-Tarjamah wa an-Nashyr, 1950), p. 7.

as the right to self-protection, dignity and property, for example, he emphasized that Islam guarantees the right to life and protects human life and dignity and property. Everyone has this absolute right, except in circumstances where precedence is tolerated by the sharia. Killing one person is equated with killing all of humanity, because the act of killing is considered a denial of the right to life.<sup>11</sup>

Proponents of this trend tends to show antipathic attitudes. They reject efforts to extract and develop human rights values from the perspective of Islamic civilization. For them Islam does not know the terms of freedom and rights and only knows obligations. Islamic civilization cannot harmonize between rights and obligations unless it is fully integrated into Western civilization. To them, the West bases and develops its concept of human rights only on human rights without any obligations. This is, however, a premature and partial judgment. In fact in the late 90s of the 20th century there were efforts by people concerned with human rights to establish a Universal Declaration for Human Responsibilities.

## 2. Reactionism

The second major trend in Muslim views on human right has the opposite view to the first. It is of the view that the UDHR is only a special declaration under special conditions and is based only on a certain philosophical school of individualism, personal freedom that leads to chaos, denial of the values and principles of a society.<sup>12</sup> Western-style human rights are considered to replace the position of religion and sharia. Thus, it cannot be applied to all societies considering that some of its articles are contrary to the law of religions, including Islamic *shari'a* which has regulated personal laws, the position of women, criminal laws including the laws of apostates.<sup>13</sup> Therefore, in countries that adhere to this orientation, any system of Western-style human rights cannot be applied on the grounds that there are differences in customary customs between peoples. There is no other reason for this rejection except an a priori attitude towards the West and the view that the West is unclean.<sup>14</sup> One of the clear weaknesses of this view is that while it is true that the UDHR rests on certain Western philosophies and situations it contains within it moral values, general human principles that transcend the traditions and customs of nations, emerging from pure reason, the nature of man such as respect for life, reason, wealth of the nation and human

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<sup>11</sup> Teungku Muhammad Hasbi Ash-Shiddieqy, *Islam dan Hak Asasi Manusia*, (Semarang: Pustaka Rizki Putra, 1999), p. 7. Ahmad Nur Fuad, et.al., *Islam and Human Right...*, p. 279.

<sup>12</sup> Muhammad Ahmad Mufti and Sâmî Shâlih al-Wakîl, *Huqûq al-Insân fi al-Fikr as-Siyâsi al-Gharbi wa asy-Syar' al-Islâmi*, Dar an-Nahdhah al-Islamiyyah, p. 8.

<sup>13</sup> Hassan Hanafi, *Al-Mauqif al-Islâmi al-Muâshir wa Huqûq al-Insân...*, p. 6.

<sup>14</sup> Hassan Hanafi, *Al-Mauqif al-Islâmi al-Muâshir wa Huqûq al-Insân...*, p. 6.

self-esteem. Torture, punishment of innocent people, arresting citizens without investigation, killing of political enemies, ethnic massacres are all contradictory with Islamic values and also inconsistent with the UDHR.

### 3. Compromism

Adherents of this orientation originally refer to the West and recognize the UDHR and then read it with Islamic framework. They refer and use certain Qur'anic verses and hadiths of the prophet to essentially confirm that the modern idea of human rights had been established by Islam before the declaration of Westerners more than 14 centuries ago. Human rights for this group are not something new. Nor did they pledge something that Islam had never known. The history of Islam has recorded a comprehensive, just and balanced system for protecting individual rights and human rights long before other nations knew them.<sup>15</sup> This kind of attitude is basically a reflection of laziness of thinking and the inability to understand the texts of both human rights and Islamic texts despite trying to compromise them. It accepts the UDHR but puts the context aside as if it is an ahistorical text. This attitude sacrifices the historicity of human rights texts because it is only satisfied in textual readings. The UDHR was finally considered eternal in meaning as the verses of the Qur'an.

### 4. Idealistic Textualism

Idealistic textualists are purely textual attitudes that are based on the exploration of the texts of the Qur'an and Hadith that reveal many of the needs of the present such as freedom, democracy, justice in distributing wealth and social solidarity. This attitude arises from a sincere intention to provide a contemporary concept in Islam about human rights which is no less than what is stated in the UDHR as conducted by Islamic organizations in the West to answer the question of whether there are human rights in Islam. This attitude is represented by a number of Muslim legal and constitutional experts. They live in the West and must defend Islam amid Western criticisms of Islam. For example, the Muslim Council of Europe seeks to answer the above question by basing on the five *maqashid al-shari'a* established by Asy-Syathibi, namely the protection of life, reason, religion, glory (self-esteem), and wealth. These five things can be detailed in several rights such as the right to life which includes the right to work, the right to live, eat and drink. These are primary needs. The right of reason includes the right to learn, the prohibition of the monopoly of knowledge or the means of knowledge production. Self-esteem is not only about the person's self-esteem but also the self-esteem and glory of the nation. The protection of property is also not

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<sup>15</sup> Ahmad Hâfidz Najm, *Huqûq al-Insân bain Al-Qur'ân wa al-I'lân*, (Mesir: Dar al-Fikr al- 'Arabi, n. d), p. 63.

only limited to private property but also public wealth and protection against it from exploitation, monopoly, squandering and unequal distribution.<sup>16</sup> What Muslim scholars in the West are doing is also done by scholars in other parts of the world. For example, the African document on human rights explores human rights values from African culture itself, not imported from the West. The conclusion is the same. The difference is only in methodology, source and purpose. This document is more about cultural originality than westernization. The same is true for Jewish, Christian and Asian cultures.<sup>17</sup>

## 5. Social Realism

This attitude leads to a direct empirical reality of knowing the extent of human rights violations regarding freedom of expression and movement. This stance draws thesis from reports of regional and national human rights organizations. The proponents of social reality are based more on statistical data than on human rights documents in order to analyze the implementation of human rights. For them, the UDHR is final and there is no difference at the world level. The challenge now is the extent to which it corresponds to social reality. The Islamic phenomenon in this school is not so obvious because it is not usually directly based on religious texts or Islamic history. For this kind of orientation, reality is a series of problems that are then responded to by the text as it is known in the science of *asbabun nuzul* (causes or contexts of revelation). In other words, for the proponents of this trend, it is reality that changes and evolves so that the law changes according to the change of reality as clearly depicted in the theory of *nasikh mansukh* (the abrogation of certain Quranic verses by other later verses). Therefore, the proponents of this trend are more concerned with efforts to change reality through real actions, propaganda, mass media than in building theories or discourses.

## The Need of Reconstruction of Classical Islamic Tradition

Having critically mapped some of major trends in Muslim views on human rights, it will be argued here that a more adequate response to the debate on Islam and human rights is the reconstruction of classical Islamic tradition to facilitate its harmonization with the premises of modern discourse of human rights. This view departs from an observant examination of the classical tradition of Islam in general to then sort out whether there really is a concept or phenomenon of human rights in Islam. The next question is whether the concept of human rights in Islam if it exists is adequately applied in reality. Thus, this point of view is not just a matter of accepting the concept of human rights in the style of UDHR or

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<sup>16</sup>Hassan Hanafi, *Al-Mauqif al-Islâmi al-Muâshir...*, p. 10.

<sup>17</sup>Hassan Hanafi, *Al-Mauqif al-Islâmi al-Muâshir...*, p. 12.



immediately rejecting it. On the other hand, it also does not merely compromise the UDHR with verses of the Qur'an and hadith of the prophet or seek to explore for itself the concept of human rights through the Qur'an and hadith. The reconstruction of classical tradition means rebuilding the classical tradition into something that the *shari'a* aspires to. In this context, it is important to note that the Qur'an is a sacred text that is not culturally empty. This is not to suggest that the Qur'an is a cultural product, but the exclamations of the Qur'an are familiar to the ears of its *mukhatabs* (the audience). The Qur'an greets, moves and directs its *mukhatab* towards the divine path. From the understanding, the interpretation of these *mukhatabs* either by the recipient of the revelation, namely the Prophet Muhammad or his companions to this holy book, Islam became systemized. Thus, the mere taking of the text of scripture as an Islamic perspective is an ahistorical attitude. From this logic, it is important to trace the classical tradition in order to get an answer to whether there is a human rights phenomenon in it. Furthermore, the reconstruction of classical Islamic tradition is critical in building genuine harmony between texts, classical phenomena and contemporary realities. The classical tradition is still alive in the consciousness of the majority of Muslims. It is predominantly formed in the culture of the nation. Meanwhile, the theme of human rights is a theme formed because of contemporary conditions that refer to the Western civilization and their interests. In this context, the reconstruction of the classical tradition on human rights can be a more sustained strategy for the long-term goal of having human rights rooted in Islamic civilization.

Human rights violations in reality are caused because humans have not yet been regarded as an independent being in classical Islamic tradition. The term man has always been associated with God. It is as if the two are two opposing sides face to face. When God's will is stronger and more dominant, man's will fades and always depends on His will. This is seen in the science of *ushuluddin* or theology. The science is heavily focused on the substance, nature, deeds and names of God. In turn human themes such as human freedom become dependent on God's will, as can be found in the Asy'arian theory of *al-kasb*. Man's intellect also depends on the Divine text or hadith of the Prophet pointing him to the path of truth. Man's past is the history of the prophets while his future is doomsday, then resurrected after the end of time. Merit and torment are not the law of man to obtain it but the grace of God and the intercession of the prophet. Faith and disbelief as well as guidance and misguidance are all god's doings. Man's duty is only to pronounce the faith even though his deeds are contrary to its the rules. Therefore, the classical concepts of the obligatory-laden behaviors of Muslims must be reconstructed into rights-bearing creatures or beings. Hadith qudsi "I am a hidden dissent, I want to be known, so, I created creatures" must be understood that beings, especially humans, have the right to be created. The first revelation

that came down to the Prophet Muhammad (Al-'Alaq [96]:1-5) should also be interpreted as the right of man to be created and taught by God.

In the science of *ushul fiqh* there is also a struggle between rights and obligations. *Shari'a* is basically a set of rights and obligations, although throughout history it turned into mostly obligation-laden rulings without significant emphasis on rights. The laws of *shari'a* are closer to obligations than rights. *Fardhu*, *haram*, *sunnah*, *makruh*, *mubah* are all obligations. Meanwhile, *maqashid sharia* are closer to rights than obligations. First, the protection of life can be translated as the right to life such as eating, drinking, living. Second, the protection of reason can be translated to the right to know, to learn, to acquire and to seek knowledge. Three, the protection of religion can be understood as the right to determine the objective nature of truth in order to avoid the relativity of knowledge. Fourth, protection of self-esteem can be taken as that glory and independence as citizens are not just the glory of men and women. Fifth, protection of wealth can be understood as the right to natural wealth for the sake of resisting waste, pollution, monopoly and greed. Most Muslims can remember the pillars of Islam which *note bene* closer to obligations than to rights while they forget the *maqashid sharia* which are closer to the discourse of rights rather than obligations.

In *qawaid fihiyyah* there are also principles that can be reconstructed as guarantees of human rights, for example *Idra'û al-hudûd bisy-syubuhât* (avoiding punishment for various reasons). The goal of *shari'a* is not how to set the punishment but to provide for the perpetrator an opportunity to defend why he did this. Another example is *la dharara wa la dhirâra* (one neither should harm oneself, nor harm others). This means that the public interest is the principle of *shari'a*. While the rule of *adh-dharûrât tubihul mahdzûrât* (a state of emergency causes the permissibility of prohibitions), *al-masyaqqatu tajlibut taisîr* (difficult circumstances can attract ease) all emphasize that human life is one of the purposes for which the *shari'a* is established, and at the same time the prohibition of exploiting man against things that he is not capable of.

Through the reconstruction of classical tradition, it is not difficult to conceptualize the rights that must be given to humans as stated in the UDHR. There is one principle in the Islamic classical tradition about human rights, namely that human beings, both men and women, are noble beings who are glorified by God. They will be tested by God with various tests whether they can maintain their glory. They have freedom and rights that they will be accounted for. The right to life, the right to work, the right to study, the right to think and speak, freedom of religion, the right to marry and have children, equal rights before the law, the right to defend oneself and so on are all inherent to every human being. Every human being could exercise all these rights, yet they have to take responsibility for the consequences. In the next section, the reconstruction of

classical Islamic tradition will be further elaborated with regard to two main issues in the current debate on Islam and human rights, namely religious freedom and the rights of religious minorities.

### Religious Freedom

Many scholars have pointed out the potential conflict between the modern discourse on freedom of religion or belief and classical Islamic law in certain areas. Classical Islamic law prohibits conversion out of Islam to another religion and considers it as tantamount to apostasy (*ridda*), and thus an offense punishable by death, according to most legal schools of thought.<sup>18</sup> Many consider this to be in conflict with the notion of the right to freedom of religion or belief, as stipulated in a number of internationally recognized human rights instruments that confer the right to freedom of thought, conscience and religion, including the right to change one's religion and belief.<sup>19</sup>

A number of Muslim scholars of traditionalist persuasion also typically claim that human rights always have been recognized in Islam which, due to its divine origin, provides an absolute foundation for protecting the rights and duties of every human being. For traditionalist or conservative Muslims, Islamic tradition has always included a discourse on the rights of God and the rights of man (*huquq Allah/huquq adam*), with the former having primacy and priority over the latter. The normative and theological bases underpinning their Islamic perspectives therefore emphasize human duties and moral obligations. According to their interpretation, rights are entirely owned by God and moral obligations to other persons and peoples take precedence over individual human rights. More importantly, for them, *shari'a* is the source of human rights.<sup>20</sup> Abul A'la al-Maududi can be considered as one of main proponents of this view. While adopting modern rights language in his work on human rights, Maududi never

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<sup>18</sup> See, among others, Ebrahim Moosa, "The Dilemma of Islamic Rights Schemes," *Worlds & Knowledge Otherwise*, Fall 2004; Abdulaziz Sachedina, "Islam and Religious freedom: Freedom of Conscience and Religion in Qur'an," in David Little, John Kelsay and Abdulaziz Sachedina (eds.), *Human Rights and the Conflict of Culture* (Columbia: USC Press, 1988); and Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Burlington: Ashgate, 2004).

<sup>19</sup> Major relevant international norms on right to freedom of religion or belief include Article 2 of The Universal Declaration of Human Rights, Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights and the 1981 United Nations Declaration on Intolerance and Discrimination Based on Religion or Belief. For more detail account see Natan Lerner, "Religious Human Rights Under the United Nations," in Johan D. Var der Vyver and John Witte Jr., (eds.), *Religious Human Rights in Global Perspective: Legal Perspective* (The Hague: Martinus Nijhoff Publishers, 1997), p.79-134.

<sup>20</sup> See also Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Burlington: Ashgate, 2004), p. 9.

addresses critically the conflict between shari'a and human rights. On the question of religious freedom in particular, al-Maududi fails to address crucial issues, such as the ban on conversion from Islam to another religion and the restrictions on interreligious marriage that still stand as obstacles to the full recognition of religious freedom in most contemporary Islamic countries.<sup>21</sup>

Yet the tendency to "Islamize" human rights or to confine them within an unquestioned shari'a framework has been increasingly challenged by several Muslim scholars with a liberal persuasion. With regard to the question of religious freedom, Tunisian scholar Mohamed Talbi, for example, demands unambiguous and full recognition of religious freedom beyond the boundaries of the traditional concept of limited tolerance. Talbi argues that a faithful Muslim's submission to the unfathomable Divine Will should lead to mutual recognition of human beings' freedom of conscience, because no one can pretend to know God's plans concerning his or her fellow human being. For Talbi, "religious liberty is fundamentally and ultimately an act of respect for God's sovereignty and for the mystery of His plan for man." More importantly, Talbi argues that "to respect man's freedom is to respect God's plan. To be a true Muslim is to submit to this plan."<sup>22</sup> Similar lines of thinking were also put forward more recently by a number of Muslim scholars, like Abdulaziz Sachedina and Abdullahi A. An-Na'im. Sachedina argues that "differences in matters of faith should be tolerated because, "although deplored as originating from human insolence," they are ultimately "tolerated by God."<sup>23</sup> An-Na'im similarly relates the Islamic imperative of religious freedom to preservation of the "noble nature" of humanity within God's creation. He suggests that "the fact that knowing and upholding shari'a is the permanent and inescapable responsibility of every Muslim means that no human being or institution should control the process."<sup>24</sup>

The traditional notion of apostasy and its associated punishment has also been revisited by these Muslim scholars, who offer a more historical and contextual reading of shari'a. Sachedina, for example, explains that while the Qur'an advocated religious freedom, the disruptive events and political realities in early Islam managed to restrict the interpretation of such freedom. In his view, the restriction of religious freedom was made possible in a time when the state was regarded as the guardian of the faith, and hence any threat to the state was consequently regarded as an attack on religion. In such a political context, Sachedina argues that the deep Qur'anic impulse toward religious freedom steadily lost ground—in practice and in theory—to the equally strong concern for

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<sup>21</sup> Heinner Bielefeldt, "Muslim Voices," *Human Rights Quarterly* 17, No. 4 (1995), p. 599.

<sup>22</sup> Heinner Bielefeldt, *Muslim Voices ...*, p. 612

<sup>23</sup> Abdulaziz Sachedina, *Islamic Roots of Democratic Pluralism*, p. 94-45.

<sup>24</sup> Abdullahi An-Na'im, *Islam and the Secular State*, p. 14.

defending the faith against active persecution and violent assault.<sup>25</sup> In a similar vein, Abdullah Saeed notes that the apostasy laws with the death penalty as the ultimate punishment was developed by the early Muslim jurists in a time when joining Islam was identical to becoming part of the community of believers and converting to another religion exclusion from it.<sup>26</sup> In such political context, the whole notion of apostasy and the issues associated with it in the pre-modern period are understandable. However, as most Muslim polities today have no longer formed based on this conjunction between a religious community and political identity, the notion of apostasy and its associate punishment is no longer tenable.<sup>27</sup>

Indonesian intellectuals, for example, Masykuri Abdillah argue that a person can change religions, because Islamic law does not prohibit changing religions. According to him, the tradition that obliges people to kill apostates is weak. On the contrary, as Abdillah said that apostasy is actually related to rebellion against the government, however, those who convert to religion then invite other people to fight against Muslims submit to be fought, and in this case apostasy is associated with acts of rebellion (*baghy*).” Meanwhile Komaruddin Hidayat, explained that *riddah* is a kind of political dissent or military dissent, because Islam is often seen from a political perspective. Because the caliph saw apostasy as a threat to the nascent Muslim community, conversion was treated as a political issue rather than a matter of theology or faith.<sup>28</sup>

### Rights of Religious Minorities

Another area of conflict between the classical Islamic political and legal tradition and the modern human rights discourse revolves around the status and treatment of non-Muslims and their rights. The root of conflict in this issue is the traditional classification of citizens based on religion, with the concept of *dhimma* providing a charter of rights and duties of non-Muslim citizens within the Islamic state.<sup>29</sup> The classical theory of *shari'a* classifies the subjects of an Islamic state in terms of their religious belief: Muslims, *ahl al-Kitab* or believers in a divinely revealed scripture (mainly Christian and Jews), and unbelievers. Under this classification, only Muslims enjoy all the rights and freedoms granted by *shari'a*, subject only to the limitations and restrictions imposed on women. *Ahl al-Kitab* are entitled to the status of *dhimmis*, a special compact with the Muslim state

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<sup>25</sup> Abdulaziz Sachedina, “Islam and Religious Freedom . . . , p. 94.

<sup>26</sup> Abdulaziz Sachedina, “Islam and Religious Freedom . . . , p. 168-169.

<sup>27</sup> Abdulaziz Sachedina, “Islam and Religious Freedom . . . , p. 168-169.

<sup>28</sup> Masykuri Abdillah, *Demokrasi di Persimpangan Makna*, (Yogyakarta: Tiara Wacana, 1999), p. 143. Ahmad Nur Fuad, et.al., *Islam and Human Right* . . . , p. 271.

<sup>29</sup> See Abdullahi A. An-Na'im, “Religious Minorities under Islamic Law and the Limits of Cultural Relativism,” *Human Rights Quarterly* 9, (1987), p. 11.

which guarantees them security of persons and property and a degree of communal autonomy to practice their religion and conduct their private affairs in accordance with their customs and laws. In exchange for these limited rights, *dhimmi*s undertake to pay *jizya* or poll tax and submit to Muslim sovereignty and authority in all public affairs.<sup>30</sup> According to a stricter theory of shari'a, *dhimmi*s are not allowed to participate in the public affairs of an Islamic state, nor are they allowed to hold any position of authority over Muslims. While they may practice their religion in private, they are not allowed to proselytize or preach their faith in public.<sup>31</sup>

While most of political constructions and institutions of the Muslim world have undergone dramatic changes with the introduction of modern nation-states, there are some Muslim scholars and activists today who still advocate for a traditional understanding of tolerating *ahl al-Kitab*, Christians and Jews, as protected communities with specific rights, privileges and duties. These Muslim scholars and activists are mainly associated with traditionalist and neo-revivalist movements. For the traditionalists, represented by traditionalist *ulama*, non-Muslims living in an Islamic state should be treated as protected minorities (*dhimmi*) according to the classical understanding developed by classical Muslim jurists and theologians. Some of them also perpetuate the classical concept of *jizya* imposed on these protected minorities.<sup>32</sup> Neo-revivalists, largely represented by the Muslim Brotherhood of Egypt and Jammaat-i-Islami of Pakistan, are more flexible on the question on non-Muslims, but still restrict their rights in certain ways.<sup>33</sup> Maududi, for instance, classifies non-Muslims in an Islamic state into three categories. The first group are the contractees who are to be treated according to the provision of the treaty they enter into, either voluntarily or by war. The second group are those whose territories are conquered by an Islamic state; for this they have to pay the poll tax. The final group are those non-Muslims living in an Islamic state in any other capacity, who are to be treated according to the general rules of the *dhimmi*.<sup>34</sup> In terms of political participation, Maududi also argued that non-Muslims are no different from Muslims in many ways. However, he insists that the Islamic state is an "ideological state", and that it is reasonable that only those who share the official ideology can fully participate in the state.

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<sup>30</sup> Abdullahi A. An-Na'im, *Human Rights in the Muslim World...*, p. 24.

<sup>31</sup> Abdullahi A. An-Na'im, *Religious Minorities Under Islamic Law...*, p.11-12.

<sup>32</sup> Abdullah Saeed, *Islamic Thought: An Introduction* (London and New York: Routledge, 2006), p. 124. Rumadi Ahmad, "Speaking the Unspeakable: The Status of "non-Muslims" in Indonesia," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 2 (2022).

<sup>33</sup> Abdullah Saeed, *Islamic Thought...*, p. 124-125.

<sup>34</sup> Abdullah Saeed, *Islamic Thought...*, p. 125.

Therefore, he concludes, public expressions of minority religion must be restricted.<sup>35</sup>

There are, however, an increasing number of Muslim scholars who have pointed out that the Islamic justifications for the *dhimmi* are weak and that the *dhimmi* was not an Islamic invention but one that existed before Islam.<sup>36</sup> Tariq al-Bishri, for instance, stresses the political nature of this concept, suggesting that in the early Islamic community, Muslims were numerically inferior. It was therefore natural for Muslims to fear the political participation of non-Muslims and insist on their subjugation.<sup>37</sup> With the introduction of the nation-state, however, al-Bishri argues that the political concept of *dhimmi* has been overtaken by the concept of citizenship.<sup>38</sup> A similar argument is also made by Salim al-'Awwa, who suggests that references to the institution of *dhimmi* are irrelevant today.<sup>39</sup>

Other Muslim scholars such as Fahmi Huwaydi and Rashid Ghanouchi have a similar line of thinking, advocating equality between Muslims and non-Muslims in most of their rights and duties.<sup>40</sup> For these scholars, the early jurists did not establish total equality between Muslims and non-Muslims, partly due to the fact that Islam, at that time, was the foundation of a state that symbolized the united faith of the Muslim community. Total equality under these conditions may not have been feasible. But with the introduction of modern political structures and constitutions in the Muslim world, the equality of rights and obligations for different religious denominations is a realistic prospect.<sup>41</sup> Mohammad Hashim Kamali shares the view of these scholars, noting that "equality, integration and fair treatment of all citizens is the preferable approach, one that realizes the public interest and *maslaha* of the people, in pursuit of greater harmony and unity of purpose among them."<sup>42</sup> Kamali further argues that the concepts of *dar al-Islam* and *dar al-harb* have no clear origin in the Qur'an or the prophetic tradition

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<sup>35</sup> Abul A'la al-Maududi, *Rights of Non-Muslims in Islamic State* (Lahore: Islamic Publications, 1961) as quoted in Jorgen S. Nielsen, "Contemporary Discussions on Religious Minorities in Muslim Countries," *Islam and Christian-Muslim Relations*, 14, No. 3 (2003), p. 328.

<sup>36</sup> Quoted in Rachel M. Scott, "Contextual Citizenship in Modern Islamic Thought," *Islam and Christian-Muslim Relations*, Vol. 18, No. 1 (January 2007), p. 8

<sup>37</sup> Quoted in Rachel M. Scott, *Contextual Citizenship...*, p. 8.. See Tariq al-Bishri, *Bayn al-Jami'a al-Diniyya wa al-Jami'a al-Wataniyya fi al-Fikr al-Siyasi* (Cairo: Dar al-Shuruq, 1998)

<sup>38</sup> Quoted in Rachel M. Scott, *Contextual Citizenship...*, p. 8.

<sup>39</sup> Quoted in Rachel M. Scott, *Contextual Citizenship...*, p. 8. See Salim al-'Awa, *Al-Fiqh al-Islam fi Tariq al-Tajdid* 2<sup>nd</sup> edn (Beirut: al-Maktab al-Islami, 1998).

<sup>40</sup> See Fahmi Huwaydi, *Muwatinun la Dhimmiyyun: Mawqi' Ghayr al-Muslimin fi al-Mujtama al-Muslim* (Cairo: Dar al-Shuruq, 1999); Rachid al-Ghanousi, *Huquq al-Muwatana, Huquq Ghayr al-Muslim fi al-Mujtama al-Islami*, 2<sup>nd</sup> edn (Herndon, Va & Tunis: Al-Ma'had al-Alami li'l-Fikr al-Islami, 1993), p. 134.

<sup>41</sup> Mohammad Hashim Kamali, "Citizenship: An Islamic Perspective," *Journal of Islamic Law and Culture* 11, No. 2 (2009), p. 134.

<sup>42</sup> Mohammad Hashim Kamali, *Citizenship...*, p. 139.

(*sunna*), and its juristic development in later times was most likely promoted by the political interests of the Abbasid Empire. For Kamali, contemporary Muslims are not necessarily bound by it, especially in view of the changed realities of international relations and geo-political considerations in the world today.<sup>43</sup>

The rights of religious minorities in Indonesia are another challenge to religious freedom. This issue is a sensitive issue, it even strained inter-religious relations in the country. The tension usually begins with a religious nature, but then quickly turns to political significance. Amien Rais, emphasized that the rights of minority religious groups to speak in public, have religion, have free will, and be free from fear must be fully guaranteed, including their right to become government ministers or occupy positions in the state administration. Even now they can obtain special citizen status, which exempts them from participating in the defense of the state.<sup>44</sup>

## Conclusion

The issue of Islam and human rights has been long debated by Muslims with different persuasions and yet there is no consensus among them about whether Islam and human rights can be reconciled. While some Muslims embrace wholeheartedly global discourse of human rights and argue that they are compatible with Islam, others have different positions. After critically mapping the competing Muslim views on human rights, this article proposes that it is possible to reconcile Islam and global discourse of human rights by way of reinterpreting and reconstructing some concepts and doctrines within classical Islamic tradition to bring the two systems closer together and find agreement between the two. Referring to the work of a number of Muslim scholars working on the issue of human rights, and especially the right to freedom of religion and religious minorities, the article suggests that through the reconstruction of classical Islamic theological and legal tradition, a more genuine dialogue and harmony between Islam and global discourse of human rights become more tenable and sustainable. In the context of the philosophy of law, the harmonization of Islam and human rights also strengthens the evidence that Islamic law can still be in dialogue with the development of modern world law, including human rights issues.

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<sup>43</sup> Mohammad Hashim Kamali, *Citizenship...*, p. 151-152.

<sup>44</sup> Ahmad Nur Fuad, et.al., *Islam and Human Right...*, p. 271.



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