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## Indonesian Discourse on Human Rights and Freedom of Religion or Belief: Muslim Perspectives

*Syamsul Arifin\**

### I. INTRODUCTION

Discussion on the relationship between Islam and human rights is not a new subject. However, this topic remains an interesting subject because the development of Islam, either as a religious phenomenon or as a social and political phenomenon, is constantly connected to the issue of human rights. In the context of Indonesian Islam, the connection between Islam and human rights has developed in interesting ways because of the changing political atmosphere in the post-New Order following the fall of Suharto, the former president of Indonesia, from his office on May 21, 1998. Scholars Arskal Salim and Azyumardi Azra find at least four significant developments in the Muslim society in the post-New Order era that are connected with human rights, either on the discourse level or on the practical level.<sup>1</sup>

The first development mentioned by Salim and Azra is the replacement of Pancasila<sup>2</sup> with Islam as the dominant party ideology. Following this change, Islam-based parties, such as Partai Persatuan Pembangunan (PPP) and Partai Bulan Bintang (PBB) exclusively offered

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1. Arskal Salim & Azyumardi Azra, *Introduction: The State and Shari'a in the Perspective of Indonesian Legal Politics*, in SHARI'A AND POLITICS IN MODERN INDONESIA 1, 1–16 (Arskal Salim & Azyumardi Azra eds., 2003).

2. Pancasila is the official philosophical foundation of the Indonesian state. Pancasila consists of two Old Javanese words, "*pañca*" meaning five, and "*sīla*" meaning principles. It comprises five principles held to be inseparable and interrelated: (1) belief in the one and only God (in Indonesian, *Ketuhanan Yang Maha Esa*); (2) just and civilized humanity (in Indonesian, *Kemanusiaan Yang Adil dan Beradab*); (3) the unity of Indonesia (in Indonesian, *Persatuan Indonesia*); (4) democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives (in Indonesian, *Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan dan Perwakilan*); and (5) social justice for all of the people of Indonesia (in Indonesian, *Keadilan Sosial bagi seluruh Rakyat Indonesia*).

political ideas based on Islamic shari'ah. PPP and PBB have been very persistent in trying to amend the Constitution of 1945 with the inclusion of seven words: "dengan kewajiban melaksanakan syariat Islam bagi pemeluknya," which means "with the obligation to observe Islamic shari'ah for its adherents." PPP and PBB claim that if these seven words were included, Islamic shari'ah would officially have constitutional status in the national legal system. The agenda promoted by PPP and PBB failed in the Indonesian legislature (Majelis Permusyawaratan Rakyat (MPR) or the People Consultative Assembly) in 2000, 2001, and 2003.

Changes in ideological orientation—the second development in the post-New Order period—also take place at the societal level. In some places, there is an increasing demand for the implementation of Islamic shari'ah, similar to what has been done in the regions of Aceh and South Celebes.

The third development is the emergence of hardline Muslim groups, such as Laskar Jihad, Front Pembela Islam (FPI), Hizbut Tahrir Indonesia (HTI), and Majelis Mujahidin Indonesia (MMI). The emergence of these hardline Muslim groups often leads to social clashes as a result of the groups' use of violence. FPI, for example, often attacks discothèques, night clubs, and other entertainment places. FPI believes that through these actions, they are implementing the doctrine of *al-amr bi al-ma'ruf* and *al-nahy 'an al-munkar*.<sup>3</sup>

According to Salim and Azra, the fourth development is the increasing popularity of an Islamic magazine, *Sabili*, which, according to an AC Nielsen survey, has the second largest circulation in Indonesia after *Gadis*, a teen magazine.<sup>4</sup> *Sabili* weekly magazine prints more than 100,000 copies of each edition.<sup>5</sup> Initially, *Sabili* called itself a magazine of preaching, but recently it seems to have promoted Islamic politics, particularly those propagated by hardline Muslim groups. In some volumes, *Sabili* supports the formal implementation of Islamic shari'ah in Indonesia.<sup>6</sup> In *Sabili*'s view, the best solution to get Indonesia out

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3. This Qur'anic exhortation is often translated as "Command the good and forbid the evil," but this translation fails to reflect the subtleties of the Arabic. *Amr* refers to the enforcement function of the duly constituted government of an ummah (community). In this context, *Ma'ruf*, when applied to a particular law, means a law which is (1) known to the community (i.e., the community is aware of its existence); (2) intelligible (understood by and makes sense) to the community; and (3) generally recognized and commonly acknowledged as a good law.

4. Salim & Azra, *supra* note 1, at 1–16.

5. *Id.*

6. *Id.*

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from crisis is through returning to the way of Allah by implementing Islamic shari'ah.<sup>7</sup>

The four developments above illustrate the implications for the relationship between Islam and human rights. The most salient, of course, are violent acts, which are often used by FPI. Among hardline Muslim groups, the actions of FPI are the most publicized. FPI, for example, has been reported to have been involved in a clash with *Aliansi Kebangsaan untuk Kebebasan Beragama atau Berkeyakinan* (AKKBB), the National Alliance for Freedom of Religion or Belief at the National Monument (*Monumen Nasional*—Monas) in June 2008.<sup>8</sup> This clash happened due to the different views about Ahmadiyah, an Islamic sect. FPI views Ahmadiyah as a deviant sect that has no rights to live in Indonesia. In contrast, AKKBB advocates for Ahmadiyah. For AKKBB, the existence of Ahmadiyah should not be prohibited. AKKBB argues that it is exercising its freedom of religion or belief to advocate for Ahmadiyah.<sup>9</sup> In human rights literature, the use of violence, either by state or by society, which aims to attack another group with a different religion or belief is considered a type of persecution that contradicts human rights principles.<sup>10</sup> When this persecution involves an Islamic

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7. See Rita Ayuningtyas, *FPI Beringas, 10 Anggota AKKBB Terluka Parah [FPI Violent, 10 members of AKKBB Hurt Worse]*, KOMPAS.COM, June 1, 2008, <http://nasional.kompas.com/read/2008/06/01/16521199/fpi.beringas.10.anggota.akkbb.terluka.parah>.

8. *Id.*

9. See *id.* On June 1, 2008, the "Monas incident" occurred. The "National Alliance for Freedom of Religion and Belief" (AKKBB) was to be staged at Monas, Jakarta, on the day of the birth of Pancasila. AKKBB was attacked by a mob that was attributed to the FPI (Islam Defender Front). FPI beat the National Alliance members in various ways, destroyed equipment, and ripped and burned banners. Fourteen people were injured and nine of them were hospitalized. The police broke up and scattered the groups, and some fled to the National Gallery. The attacks were coordinated with the police, who were scattered. The Head of the Public Relations Division, Police Headquarters Inspector General Abubakar Nataprawira, denied that the police were liable for acts of omission. Munarman, as chairman of the Warriors of Islam, stated that the attack was carried out because the perpetrators were an action group supporting Ahmadiyya, and not for the anniversary of Pancasila. Munarman also disagrees that the FPI was a principal actor, and stated that the attack was carried out by the Command Warriors of Islam. Chairman of the Muslim Ummah Forum, Mashadi, also showed a video that claimed to be a provocation to the FPI and claimed that the FPI attacked AKKBB as a result of the provocation. The video contains footage of a protester who was allegedly carrying a weapon, but no clear shape was shown.

10. See Mohammed S.M. Eltayeb, *A Human Rights Framework for Defining and Understanding Intra-Religious Persecution in Muslim Countries*, in *THE CHALLENGE OF RELIGIOUS DISCRIMINATION AT THE DAWN OF THE MILLENNIUM* 83, 91 (Nazila Ghanea ed., 2003) ("[R]eligious persecution constitutes a situation of gross violations of the right to freedom of thought, conscience, and religion or belief . . . that includes violations of the right to life, to personal integrity or personal liberty.").

religious group, the use of violence influences the image of Islam in human rights enforcement. Meanwhile, many hope that either religion or society will help to develop a moral and social commitment to implementing human rights.<sup>11</sup>

## II. THE PROBLEM OF UNIVERSALISM OF HUMAN RIGHTS

Seen from a historical perspective, the development of human rights ideas has been neglected by religion and religious leaders. The Universal Declaration on Human Rights, passed on December 10, 1948, was done largely without religious influence. A fair recognition of the limited role of religion in this process is revealed by Franz Magnis Suseno, a professor of philosophy at the School of Philosophy—Sekolah Tinggi Filsafat (STF) Driyarkara Jakarta. In one of his writings on human rights in light of contemporary Catholic theology,<sup>12</sup> Suseno said that the idea of human rights did not emerge from the churches, but, on the contrary, originated from the reflections of philosophers and politicians who saw the suffering of society.<sup>13</sup> Suseno also asserts that Catholic churches were initially uncomfortable with and even attacked the modern idea of human rights, although in 1963 they became much more open.<sup>14</sup>

Although there are clear differences between Islam, Catholicism, and other religions, Islam's acceptance of human rights did not happen smoothly. Some literature discussing the relationship between Islam and human rights reveals the resistance shown by many scholars as well as Muslim states against human rights. Books written by Ann Elizabeth Mayer<sup>15</sup> and Daniel E. Price<sup>16</sup> explain the concept of "cultural relativism," which is the basis Muslim scholars cite to reject universal human rights. Using the concept of cultural relativism, human rights principles are seen as very limited when applied in the societies of Muslim countries, which have many cultural differences from the societies of the pioneers of universal human rights in Western

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11. See Khaled Abou al-Fad, *The Human Rights Commitment in Modern Islam*, in *HUMAN RIGHTS AND RESPONSIBILITIES IN THE WORLD RELIGIONS* 301 (Joseph Runzo, et al. eds., 2003).

12. Franz Magnis Suseno, *Hak Asasi Manusia dalam Teologi Katholik*, in *DISEMINASI HAK ASASI MANUSIA: PERSPEKTIF DAN AKSI*, 84 (E.Shobirin Nadj & Naning Mardinah eds., 2000).

13. *Id.* at 85.

14. *Id.* at 84.

15. See ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS* (3d ed. 1999).

16. See DANIEL E. PRICE, *ISLAMIC POLITICAL CULTURE, DEMOCRACY AND HUMAN RIGHTS: A COMPARATIVE STUDY* (1999).

countries.<sup>17</sup> Moreover, the West, which is viewed as a dominant force in creating and disseminating the idea of human rights, also has an imperfect record regarding human rights enforcement, even when compared to Muslim countries, which are often viewed critically by the West.<sup>18</sup>

Not all Muslim scholars agree with the concept of cultural relativism. Todung Mulya Lubis<sup>19</sup> regards the distinction of human rights on the basis of cultural universalism and relativism as no longer relevant, particularly after many countries ratified fundamental instruments of human rights published by the United Nations. A constructive idea on human rights is also promoted by Abdullahi Ahmed an-Na'im. Like Lubis, an-Na'im also argues that human rights constitute principally a universal idea.<sup>20</sup> At the time of its formulation as a universal idea, which subsequently became known as the Universal Declaration of Human Rights, religion was not consciously used as a justifying foundation, so that fundamental ideas of human rights could be used either by religious or irreligious people.<sup>21</sup>

Instead of rejecting the secular nature of universal human rights sparked by the United Nations, this prominent Muslim thinker of Sudan firmly calls all Muslims to recognize that the concept of universal human rights is the product of international consensus.<sup>22</sup> In an-Na'im's view, the Universal Declaration of Human Rights is an important instrument for protecting human dignity and for enhancing human welfare, thanks to the universality of the moral and political power it has.<sup>23</sup> An-Na'im is of course aware that his call and constructive views will harvest protests and rejections from some Muslims who maintain their view of cultural relativism.

With this awareness, an-Na'im persistently conducts research on Islamic law to find a more positive and reconciliatory relationship between shari'ah and human rights. Before the publication of *Islam and the Secular State*, an-Na'im published *Toward an Islamic Reformation:*

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17. *Id.*

18. *Id.*

19. Todung Mulya Lubis, *Perkembangan Pemikiran, Teori dan Perdebatan HAM, in* DISEMINASI HAK ASASI MANUSIA: PERSPEKTIF DAN AKSI 12 (E.Shobirin Nadj & Naning Mardinah eds., 2000).

20. ABDULLAHI AHMED AN-NA'IM, *ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A* 112–16 (2008).

21. *Id.* at 115.

22. *Id.*

23. *Id.*

*Civil Liberties, Human Rights and International Law* in 1990.<sup>24</sup> In both books, an-Na'im frames his arguments from the perspective of Islamic law to strengthen a positive and reconciliatory relationship between Islam and human rights. An important conclusion, according to an-Na'im, is that Islam as a religious phenomenon can be used as a tool for legitimizing universal human rights.<sup>25</sup>

An-Na'im's idea is supported by Rhoda E. Howard. Like an-Na'im, Howard also argues that human rights, as developed by the United Nations, were a product of secular thought, not divine decision.<sup>26</sup> Aware of the secular nature of human rights ideas, Howard does not regard religious legitimacy as an absolute necessity.<sup>27</sup> But if it guarantees the implementation of human rights, religious legitimacy as developed by an-Na'im deserves high appreciation. In light of the significance of the religious aspect of human rights, the views of Joseph Runzo, Nancy M. Martin, and Arvind Sharma in their introduction to *Human Rights and Responsibilities in the World Religions* should be given attention:

Religions have too often been used to justify the violation of human rights, in part through the hierarchical and selective use of role ethics and the postponement of temporal justice to divine judgment or future karmic consequences. Yet the world religions have also provided a constant voice of critique against the violation of human rights by calling for equity, and universal compassion and

love, calls which reach far beyond the mere protection of human rights.<sup>28</sup>

An important point according to Runzo, Martin, and Sharma is that religion, though often misused to justify the violation of human rights, can, in a positive construction, be used as a source of energy for the enforcement of human rights. Although human rights have become the subject of international regulation, the violation of human rights still often takes place in some countries. Among the violations of human rights that should be given attention is the violation of freedom of religion or belief. Freedom of religion or belief is a fundamental human

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24. ABDULLAHI AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS, AND INTERNATIONAL LAW* (1990).

25. *Id.* at 187.

26. RHODA E. HOWARD, *HUMAN RIGHTS AND THE SEARCH FOR COMMUNITY* 12–13 (1995).

27. *See id.*

28. Joseph Runzo et al., *Introduction*, in *HUMAN RIGHTS AND RESPONSIBILITIES IN THE WORLD RELIGIONS* 1, 1 (Joseph Runzo et al. eds., 2003).

right, which prevails universally and is codified in the international instrument of human rights. On the normative level, since the earliest phase of human rights, it has been clear that freedom of religion or belief is a fundamental right, and certainly one of the most important rights. Emerging after World War II, these rights have been formulated in Article 18 of the Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights.

As one of the most fundamental rights, the implementation of freedom of religion or belief is based on eight norms:<sup>29</sup>

First is internal freedom. Based on this norm, each individual is viewed as having the rights to “freedom of thought, conscience, and religion.” This norm also recognizes the freedom of each individual to “have, adopt, defend or change his religion or belief.”

Second is external freedom. This norm recognizes the freedom to express freedom of religion or belief in all aspects of manifestation, such as freedom in “teaching, practices, worship and observance.” The manifestation of freedom of religion or belief can be performed either in the private or public sphere. Freedom can also be manifested individually or collectively with others.

Third is non-coercion. This norm emphasizes the existence of individual freedom from any form of coercion in adopting a certain religion or belief. In other words, each individual has freedom to have a religion or belief without being compelled by anybody.

Fourth is nondiscrimination. Based on this norm, the state is obliged to respect and ensure that all individuals within its sovereignty and jurisdiction obtain the guarantee of freedom of religion or belief regardless of “race, sex, language, religion or belief,” political ideologies or other views, national origins, wealth, and birth status.

Fifth is the right of parents and guardians. According to this norm, the state is obliged to respect the freedom of legally valid parents and guardians to conduct religious and moral education for their children in accordance with their own belief. The state is also obliged to protect the rights of each child to have freedom of religion or belief according to their own ability.

Sixth is corporate freedom and legal status. An important aspect of freedom of religion or belief particularly in contemporary life is the

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29. BYU INTERNATIONAL CENTER FOR LAW AND RELIGION STUDIES & THE NORWEGIAN CENTRE FOR HUMAN RIGHTS, *FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK* xxxvii–xxxix (Tore Lindholm et al. eds., 2004).

prevailing rights of religious communities to organize themselves or to establish associations.

Seventh is the limit of permissible restrictions on external freedom. The freedom to express a religion or belief is subject to limitation by law with the reason to protect “public safety, order, health,” morality and other fundamental rights.

Eighth is non-derogability. State should not reduce the rights to freedom of religion or belief even in emergency situations.

Indonesia has a solid normative foundation guaranteeing freedom of religion or belief. The Preamble to the 1945 Constitution outlines the *Pancasila*, the first principle of which is “Belief in Almighty God.”<sup>30</sup> This sets out the Indonesian state as one with religious characteristics. The Constitution also contains two chapters containing guarantees for freedom of religion, namely Chapter XA on Human Rights, and Chapter XI on Religion. In Chapter XA, Article 28E states: “Each person is free to embrace a religion and to worship according to that religion. Each person has the right to freedom in his or her beliefs, to assert his or her thoughts and views, in accordance with his or her conscience.”<sup>31</sup>

The Constitution also states that this right may not be derogated in any circumstance,<sup>32</sup> although limitations may be put in place by law (*undang-undang*) in order to satisfy just demands based upon considerations of morality, religious values, security, and public order in a democratic society.<sup>33</sup> Article 28I of the Constitution also mandates that each person has the right to be free from discriminatory behavior and has the right to protection from such treatment.<sup>34</sup>

In Chapter XI, Article 29, the Constitution maintains that: “The State is based on belief in Almighty God. The State guarantees all persons the freedom to embrace his or her own religion and to worship according to that religion and [religious] belief.”<sup>35</sup>

Affirming the protection contained in the Constitution, Article 22 of Law No. 39/1999 concerning Human Rights repeats the Constitutional guarantees on religious freedom:<sup>36</sup> “Everyone has the right to choose his or her religion and to worship according to this religion and [religious]

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30. UNDANG-UNDANG DASAR REPUBLIK INDONESIA [CONSTITUTION] 1945, Preamble.

31. *Id.* art. 28e.

32. *Id.* art. 28i.

33. *Id.* art. 28j(2).

34. *Id.* art. 28i(2).

35. *Id.* ch. XI, art. 29.

36. Act Concerning Human Rights (Law No. 39/1999) (Indon.).

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belief. The state guarantees everyone the freedom to choose and practice his or her religion and to worship according to this religion and [religious] belief.”

Law No. 39/1999 also contains the same provisions in relation to derogations and limitations but does not permit limitations based upon considerations of religious values. Under Law No. 39/1999, limitations may be placed on the right to freedom of religion by law to guarantee recognition and respect for the basic rights and freedoms of other persons.<sup>37</sup> Each person has the right to protection of human rights and basic freedoms without discrimination.<sup>38</sup>

In addition to the protection provided by the Constitution and Law No. 39/1999, Indonesia ratified the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)<sup>39</sup> in 1999 and the International Covenant on Civil and Political Rights (ICCPR)<sup>40</sup> in 2005. It made no reservations in relation to freedom of religion or belief at the time of ratification or subsequently.

Once Indonesia ratified these two treaties they became national law,<sup>41</sup> and the government was immediately obliged to respect, protect, implement, and advance the human rights contained in them.<sup>42</sup>

The ICCPR contains specific guarantees in relation to freedom of religion or belief. Article 18 reads:<sup>43</sup>

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others, in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and

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37. UNDANG-UNDANG DASAR REPUBLIK INDONESIA [CONSTITUTION] 1945, arts. 4, 70, 73.

38. *Id.* art. 3(3).

39. International Convention on the Elimination of All Forms of Racial Discrimination, March 7, 1966, 660 U.N.T.S. 195.

40. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

41. Act Concerning Human Rights (Law No. 39/1999), art.7(2) (Indon.).

42. Act Concerning Human Rights (Law No. 39/1999), art.71 (Indon.).

43. *Supra* note 40.

freedoms of others.

4. The States Parties to the present Covenant respect the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions.

As Indonesia has ratified the ICCPR and it immediately became national law, it is important to understand what its legal obligations are, and therefore what constitutes the normative core of the human right to freedom of religion or belief.

The ICCPR has certain *core values* that must be protected by governments if freedom of religion or belief (as a universal standard) is to be respected. These core values constitute a set of minimum standards.

Freedom of religion or belief, as codified in legally binding international human rights instruments, applies to every human being in Indonesia's jurisdiction, without exception. Human beings are the *primary holders* and beneficiaries of this right. States, ideally under continual critical scrutiny by informed citizens in each country, are the *primary addressees* burdened with the correlative obligations to respect, protect, and fulfill this right. Beyond the religious freedom provisions of the Universal Declaration of Human Rights and the ICCPR, key elaborations and specifications of the human right to freedom of religion or belief are provided by, among others, the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.<sup>44</sup> General Comment No. 22 (48)<sup>45</sup> of the United Nations Human Rights Committee provides normative substance to Article 18 of the ICCPR, which states that "[e]veryone shall have the right to freedom of thought, conscience and religion."<sup>46</sup> Relevant regional sources are the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>47</sup> the American Convention on Human Rights (ACHR),<sup>48</sup> and the African Charter on Human and

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44. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. Doc. A/Res/36/55 (Nov. 25, 1981).

45. Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 153 (2003).

46. *Supra* note 40.

47. Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, C.E.T.S. No. 005; 213 U.N.T.S. 221.

48. Organization of American States American, Convention on Human Rights, Nov. 21, 1969, O.A.S.T.S. No. 36; 1144 U.N.T.S. 123.

Peoples' Rights (ACHPR).<sup>49</sup>

Although it has strong normative foundations, Indonesia is not yet free from violations of freedom of religion or belief. Based on an analysis by Imparsial,<sup>50</sup> violations committed by the state against freedom of religion or belief employ two modes.<sup>51</sup> The first mode is when the state indirectly commits violations by allowing various violent acts to occur.<sup>52</sup> In some cases it is clear that the police let violent acts happen and do not prevent the actions, thereby encouraging a group of people to continue their violent actions to close places of worship or to attack the beliefs of other groups. As an institution which has the authority to control the security and order of society, the police ought to take actions against the doers of violent acts. But it is very often the police who allow the violations, as if the acts were justified. The acts of connivance on the part of the security officers, according to Imparsial, cannot be justified because, it means that state does not guarantee and protect the freedom of religion or belief of the people.<sup>53</sup>

In the second mode, the state directly violates rights through the formulation and strengthening of various policies which limit and repress freedom of religion or belief.<sup>54</sup> According to Ghufon Mabruuri,<sup>55</sup> this violation is caused by the inability of a state to distance itself from affairs of religion. Freedom of religion or belief is a part of civil and political rights categorized as negative rights. These are different from social, economic, and cultural rights which are categorized as positive rights. Positive rights (social, economic, and cultural) can be fulfilled if a state takes an active part in promoting the rights. On the contrary, negative rights can be fulfilled and manifested only when a state does not intrude too far into the affairs of society.

Mabruuri mentions the existence of the Directorate of the Surveillance of Society Belief and Religious Stream as an example of state intervention in the affairs of religion and belief.<sup>56</sup> This Directorate is

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49. Organization of African Unity, African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, 245.

50. Imparsial is an NGO engaged in monitoring and investigating human rights abuses in Indonesia. See IMPARSIAL, [www.imparsial.org](http://www.imparsial.org) (last visited Sept. 22, 2012).

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. Ghufon Mabruuri, *Kebebasan Beragama dalam Negara Demokrasi*, 4 HURIDOCs-IMPARSIAL 4 (2007).

56. *Id.*

under the Grand Attorney and was established through a regulation<sup>57</sup> that set up a Coordinating Board for Monitoring Mystical Beliefs in Society. According to Maburri, the role of the state ought to be limited only to guaranteeing the rights of each individual citizen.<sup>58</sup> Maburri argues that in regards to freedom of religion or belief, the state should do two things. First, it should not create regulations which limit and repress freedom of religion.<sup>59</sup> Freedom of religion or belief is a non-derogable human right held in any condition and by any person, consisting of the right to life, the right not to be tortured, the right to individual freedom, the right of religion, the right not to be enslaved, the right to be respected as an individual, the right to equality before the law, and the right not to be persecuted on the basis of retrospective law.<sup>60</sup> The protection of these fundamental human rights is regulated in Law Number 39<sup>61</sup> on human rights. In its explanation, it states that “in any condition” includes war, armed conflict, and/or emergencies.<sup>62</sup> “Any person” means states, governments, and/or members of society.<sup>63</sup> This law can obviously be understood to mean that in Indonesia, freedom of religion is guaranteed and protected by the government. Therefore, all forms of unfair and discriminative practices on the basis of ethnicity, race, color, culture, nation, religion, sex, and social status that can result in anguish, misery, and social discrepancy should be abolished. Second, the state should prevent any potential disturbances and constraints that might keep an individual from being able to choose and observe his belief in the midst of society.<sup>64</sup>

The violation of freedom of religion or belief by the state provides an opportunity for members of society to conduct the same violations. In other words, society also becomes an actor performing violations of freedom of religion or belief after the state has created an opportunity. But, is violation by society only caused by an opportunity given by the state? Although the state’s influence should not be dismissed, the internal conditions of society that cause violations of freedom of religion or belief also need to be explored. Is the violation of freedom of religion or

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57. Letter of Decision of the General Attorney Number KEP-108/JA/5/1984 (1984).

58. Maburri, *supra* note 55.

59. *Id.*

60. *Id.*

61. Act Concerning Human Rights (Law No. 39/1999), art. 4 (Indon.).

62. *Id.*

63. *Id.*

64. Maburri, *supra* note 55.

belief by society related to the way one group perceives another group? A study by Fatimah Husein, a professor at the State Islamic University of Yogyakarta, deserves special attention in answering this question.<sup>65</sup>

Muslim-Christian relations, the focus of Husein's study, is an important and sensitive subject. Conflict and violence often color the development of Islam and Christianity in Indonesia. In Husein's view, Muslim-Christian relations cannot be separated from the way the adherents of both religions perceive their own religion and the religion of others.<sup>66</sup> In her study, Husein reveals two perceptions dominant among Muslims which influence Islam-Christian relations—exclusive and inclusive. Exclusive Muslims have the conviction that Islam is the last religion which corrects the faults of previous religions. This perception, according to Husein, results in an intolerant attitude toward other religions.<sup>67</sup> Inclusive Muslims hold the conviction that Islam is a true religion,<sup>68</sup> but they do not negate religions outside Islam, which can also provide salvation for their adherents.<sup>69</sup> With this view, inclusive Muslims behave more openly toward other religious groups.<sup>70</sup>

Husein's categories can be used to explain the violations of freedom of religion or belief conducted by members of society. The violations of freedom of religion or belief are influenced by the way the actors perceive other religions or beliefs. Among these two perspectives, the one with the most potential to commit violations is the exclusive perspective. When discussing Husein's definition of exclusivism, it is important to quote Joseph Runzo's definition of religious exclusivism: "the religious attitude which holds that the only true religion is one's own religion or belief, while other religions or beliefs are false."<sup>71</sup> Why are some people exclusive, while others are inclusive? Is this perspective influenced by religious doctrines? If exclusivism is influenced by religious doctrine and it potentially leads to the violation of freedom of religion or belief, can it be said that religion is responsible for this violation? Religion is often suspected of not having contributed to the strengthening of freedom of religion.

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65. Fatimah Husein, *Muslim-Christian Relations*, in *THE NEW ORDER INDONESIA: THE EXCLUSIVIST AND INCLUSIVIST MUSLIMS' PERSPECTIVES* 29 (2005).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Runzo et al., *supra* note 28, at 18.

Islam is among the great world religions that are often perceived with prejudice and pessimism with regard to the freedom of religion or belief. In the discourse of political science and academic literature, particularly among Western scholars, Islam is often regarded as incompatible with human rights.<sup>72</sup> This sparks criticism and rejection from Muslim scholars and academics. They disagree with the view that Islam is incompatible with human rights. When compared, Islamic doctrine spoke about human rights earlier than its western counterparts. The history of human rights in the West began with the Magna Charta (1215), which was followed by the Bill of Rights (1688), the Declaration of Independence of the United States (1776), the Déclaration des droits de l'Homme et du Citoyen, France (1789), the Four Freedoms speech given by Franklin D. Roosevelt in 1941, and the Universal Declaration of Human Rights (1948). Islam has spoken about freedom, including freedom of religion or belief, since the seventh century, as revealed by many Qur'anic verses. Ebrahim Moosa argues that at least two narratives can be used as proofs of the compatibility between Islam and human rights.<sup>73</sup> First is the farewell speech of the Prophet Muhammad during a pilgrimage (*hajjatul-wada'*), in which he reasserted the Islamic vision of fundamental human rights protection. The substance of the Prophet's speech at the pilgrimage, according to Moosa, was a reassertion of the substance of the Qur'anic verses dealing with the protection of human property, dignity, and honor.<sup>74</sup> The second narrative regards the actions of the guided caliphs to punish the violation of human rights. One of the most important examples in human rights enforcement was Umar ibn al-Khattab's warning to the governor of Egypt, 'Amr ibn 'As, who gave punishment without the process of court. The two historical narratives above, according to Moosa, are often referenced by Muslims to endorse theological arguments on the relation between Islam and modern human rights.<sup>75</sup>

In light of this historical account, Muslims have rejected the view that Islam is incompatible with human rights. However, it should be taken into account that some groups of Muslims draw on theological considerations when they exhibit an exclusive attitude toward certain

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72. Sus Eko Ernada, *Issues of Compatibility of Human Rights and Islam: The Experience of Egypt and Indonesia*, 1 J. INDON. ISLAM 100–01 (2007).

73. Ebrahim Moosa, *The Dilemma of Islamic Rights Schemes*, 15 J.L. & RELIGION 185, 188 (2000).

74. *Id.*

75. *Id.*

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religious groups, which can lead to the violation of freedom of religion or belief. This exclusive attitude can easily emerge because Islamic doctrine as stated in the Qur'an allows for multi-interpretation. On the one hand, the Qur'an gives recognition to freedom of religion as stated in al-Baqarah (2) 256, al-Shura (42) 48, al-Ghashiyah (88) 21, Yunus (10) 99, al-Kahfi (18) 29, Qaf (50) 45, and al-Kafirun (109) 6. These verses, according to Muhammad Hashim Kamali,<sup>76</sup> prove that Islam is a religion which affirms freedom of religion and pluralism. However, on the other hand, there are some verses in the Qur'an which may, with a particular interpretation, create a complicated relationship between Islam and human rights as explained in a book entitled *Tolerance and Coercion in Islam*.<sup>77</sup> Meanwhile, Abdullahi Ahmed an-Na'im finds at least five cases in the Qur'an, which are often used by some Muslims to justify their discriminatory actions due to differences in gender, religion, and belief. The five cases presented by an-Na'im are as follows:<sup>78</sup>

First, a Muslim man is allowed to marry a Christian woman, whereas a Christian or Jewish man is not allowed to marry a Muslim woman. Muslim men and women are not allowed to marry polytheists.

Second, religious differences become a constraint on mutual inheritance relationships. A Muslim man cannot receive or give inheritance to a non-Muslim, and vice versa.

Third, a Muslim man may marry up to four women at the same time, whereas a woman can only marry one man.

Fourth, a Muslim man can divorce his wife or his wives simply by leaving them alone without any contract, *talaq*, with no obligation on the part of man to give reasons or justification for his action. On the contrary, a woman can only divorce with the permission from her husband or the decree of a state court which allows her to do so for particular reasons, such as inability or ignorance of husband in treating his wife.

Fifth, concerning inheritance, a Muslim woman receives a lesser part than that of a Muslim man, even if they both have a family relationship with the dead.

The influence of theological considerations, either exclusive or

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76. MOHAMMAD HASHIM KAMALI, *SHARI'AH LAW: AN INTRODUCTION* 215 (2008).

77. YOHANAN FRIEDMANN, *TOLERANCE AND COERCION IN ISLAM: INTERFAITH RELATIONS IN THE MUSLIM TRADITION* 1–12 (2003).

78. Abdullahi Ahmed An-Na'im, *Sharia and Basic Human Rights Concerns*, in *LIBERAL ISLAM: A SOURCEBOOK* 228–38 (Charles Kurzman ed., 1998).

inclusive, cannot be neglected in the discourse and praxis of freedom of religion or belief. Following the theoretical explanation in sociology that human action is influenced, among other things, by the system of meaning one has, the problem of freedom of religion

or belief in Indonesia can also be traced back to the system of meaning used by society.

### III. DISCOURSE OF HUMAN RIGHTS AND FREEDOM OF RELIGION OR BELIEF IN INDONESIA

In the context of evolving human rights in Indonesia, Muslim engagement began while Indonesia was preparing for independence. As has been much discussed in historical literature, prior to Indonesia's independence, the Japanese occupation established an institution called Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI), the Board for Investigating the Effort of Indonesia's Independence Preparation. Aptly named, this board prepared for Indonesia's independence. The establishment of BPUPKI began debates on human rights, which would become crucial parts of the Indonesian constitution.

Historical literature has recorded human rights debates between two poles, Supomo on the one side, and Hatta and Yamin on the other, concerning the significance of human rights in the constitution. Supomo argued that the constitution, which would be used after the independence of Indonesia, should be free from chapters and articles concerning human rights.<sup>79</sup> In Supomo's view, human rights focus much more on individualism. He argues that the Indonesian state should be founded on the principles of familial values (*kekeluargaan*) and integralism.<sup>80</sup> He believes that because individualism is embodied in human rights, it has no place in Indonesia, as it can separate individuals from the state.<sup>81</sup> The Indonesian state, Supomo asserts, should maintain a totalistic unity between the population (individuals) and the state.<sup>82</sup> With his view on integralism, Supomo seemed to have underestimated the possibility of the state committing violent acts on the citizens.<sup>83</sup> On the other hand,

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79. Jimly Asshiddiqie, *Pengantar*, in HAK ASASI MANUSIA DALAM KONSTITUSI INDONESIA: DARI UUD 1945 SAMPAI DENGAN AMANDEMEN UUD 1945 TAHUN 2002 v–ix (2005); see also MARSILLAM SIMANJUNTAK, PANDANGAN NEGARA INTEGRALISTIK 13–14; 109–11 (1997).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

Hatta, supported by Yamin, had anticipated the rise of this negative possibility, which was consciously underestimated by Supomo.<sup>84</sup> According to Hatta and Yamin, state authority can avoid negative practices when the constitution includes chapters and articles that recognize the basic human rights of Indonesian people.<sup>85</sup>

The persistence of Hatta and Yamin resulted in compromise. One day after the declaration of independence (August 17, 1945), Indonesia passed the Constitution (Undang-Undang Dasar), which was formulated by BPUPKI in July 1945. In the Constitution of 1945, which consists of thirty-seven articles, there are five articles which contain regulations on human rights: articles 27, 28, 29, 30, and 31.<sup>86</sup> The article that contains the recognition of freedom of religion or belief is article 29, which reads as follows: (1) The state is based on the Oneness of God; (2) The state guarantees the freedom of each citizen to adhere to his own religion and to worship in accordance with his religion or belief.<sup>87</sup> The incorporation of human rights into the Constitution of 1945 represented significant progress over Supomo's ideas. Three years later, on December 10, 1948, the United Nations declared the Universal Declaration of Human Rights (UDHR).<sup>88</sup>

In some literature, religious preference, which was the basis of human rights discourse prior to independence, had never been discussed. Therefore, it is hard to assert that either Supomo or Hatta and Yamin were representatives of certain religious groups in Indonesia, such as Islam. A piece of literature that can be used as a reference to disclose the participation of Islam in national politics, at least during the Konstituante assembly (1956–1959), is *Islam dan Masalah Kenegaraan: Studi tentang Percaturan dalam Konstituante*.<sup>89</sup> In this work, Maarif does not elaborate on the religious preferences referred to by Supomo, Hatta, and Yamin in their debates in the BPUPKI assembly. However, Maarif does mention religious preferences in human rights debates during the Konstituante assembly.<sup>90</sup> During the assembly, discourse regarding human rights had

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84. *Id.*

85. *Id.*

86. UNDANG-UNDANG DASAR REPUBLIK INDONESIA [CONSTITUTION] 1945, arts. 27, 28, 29, 30, 31.

87. *Id.* art. 29

88. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

89. See AHMAD SYAFII MAARIF, *ISLAM DAN MASALAH KENEGARAAN: STUDI TENTANG PERCATURAN DALAM KONSTITUANTE* (1987).

90. *Id.*

been relatively less vigorous than debates on state ideology and governmental system.<sup>91</sup> The intensity of the debates on the two issues was shown by the polarization of ideologies among the members of the Konstituante into three groups: nationalist, Islamist, and socialist, which then finally crystallized into two mutually contradicting poles: Islamist and secularist.<sup>92</sup> Although it was less intense than debates on state ideology and governmental system, human rights discourse in the Konstituante ought to be studied, for, as asserted by Todung Mulya Lubis, Islamic thoughts have contributed greatly to the evolving human rights ideas in Indonesia.<sup>93</sup>

How did Muslim groups respond to human rights issues in the Konstituante? The research conducted by Maarif<sup>94</sup> reveals a comparatively prominent figure who responded to the issue of human rights from an Islamic perspective, namely Hasbi Asshiddiqie, a Masyumi politician. Asshiddiqie, also well known as a reputable Muslim jurist, believed that the basis of human rights on Islamic grounds was quite necessary, as the Qur'an and the Sunnah provided a more complete discourse on human rights when compared to other religions or ideologies outside of Islam.<sup>95</sup> Asshiddiqie asserted that using the Qur'an to influence thinking on human rights could help avoid the diversity and conflict that had occurred as a response to human rights in the West, because human rights in the West were based solely on philosophical thoughts resulting from human thinking.<sup>96</sup> Asshiddiqie became more optimistic to the possibility of basing human rights on the Qur'an as he found many verses asserting the dignity of humankind.<sup>97</sup> One of the Qur'anic verses quoted by Asshiddiqie is al-Isra' (17) 70, which reads: "We have bestowed blessings on Adam's children and guided them by land and sea. We have provided them with good things and exalted them above many of Our creatures."<sup>98</sup> According to Asshiddiqie, this verse proves that Islam appreciates universal humanity regardless of ethnicity,

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91. *Id.*

92. See Ahmad Nur Fuad et al., *Islam and Human Rights in Indonesia: An Account of Muslim Intellectuals' Views*, 45 AL-JAMI'AH J. OF ISLAMIC STUD., 241 (2007).

93. TODUNG MULYA LUBIS, PERKEMBANGAN PEMIKIRAN, TEORI DAN PERDEBATAN HAM 12 (2000).

94. See MAARIF, *supra* note 89, at 172–73.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

political preference, religious background, or other differences.<sup>99</sup> Moreover, on the basis of the above verse, Asshiddiqie elaborates three types of honor that God has bestowed upon humankind: (1) personal (individual) honor (*karamah fardiyyah*), consisting of material and spiritual dimensions; (2) collective honor (*karamah ijtima'iyah*), which is that humankind, whatever his background, has an equal rank; and (3) political honor (*karamah siyasiyyah*), which means that Islam gives each individual political rights to elect and to be elected to political positions.<sup>100</sup>

According to Asshiddiqie, the three concepts of honor elaborated from al-Isra' (17) 70 can be used as the foundation to develop the relationship between Islam and important aspects of human rights: the right to life, self-salvation, self-protection, dignity, and property.<sup>101</sup> As when dealing with human dignity, Asshiddiqie also searches for justification for these aspects of human rights in the Qur'an. The Qur'anic proof which Asshiddiqie refers to when mentioning the first right above is al-Ma'idah (5) 32, which reads: "whoever killed a human being, except as a punishment for murder or other wicked crimes, should be looked upon as though he had killed all mankind."<sup>102</sup>

Second is the right to freedom of religion and to adhere to a belief. This right is also based on the Qur'an, Yunus (10) 99 which reads: "Had your Lord pleased, all the people of the earth would have believed Him Would you then force faith upon men?"<sup>103</sup> This verse, according to Asshiddiqie, contains an Islamic assertion of the principle of voluntarism in religion.<sup>104</sup> Therefore, according to this principle, Asshiddiqie asserts that each individual is obliged to respect other people who adhere to the religion or belief he or she wishes.<sup>105</sup> Other people cannot be compelled to adhere to Islam. To strengthen his statement, Asshiddiqie quotes the Qur'an, al-Baqarah

(2) 256, which reads: "There shall be no compulsion in religion. True

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99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

guidance is now distinct from error.”<sup>106</sup>

Third is the right to own property. Asshiddiqie bases this right on the Qur’an, al-Nisa’ (4) 32: “Do not covet the favors by which Allah has exalted some of you above others. Men as well as women shall be rewarded for their labors. Rather implore Allah to bestow on you His gifts. Allah has knowledge of all things.”<sup>107</sup> Although Islam gives recognition to property, Asshiddiqie reminds us of the social values embodied in the property of individuals. Those who have more property are obliged to distribute proportionally to other people who need.<sup>108</sup>

Fourth is the right to choose and obtain occupation. This right is based on al-Mulk (67) 15: “It is He who has subdued the earth to you. Walk about its regions and eat of that which He has given you. To Him all shall return at the Resurrection.”

Fifth is the right to freedom of opinion, expressing ideas, and the right to learning and education.<sup>109</sup> According to Asshiddiqie, these rights indicate that Islam respects the use of reason, which allows people to avoid blind imitation (*taqlid*).<sup>110</sup> Asshiddiqie mentions two proofs from the Qur’an that illustrate this right. The first proof is from al-A’raf (7) 179: “We have predestined for Hell many jinn and many men. They have hearts, yet they cannot understand; eyes, yet they do not see; and ears, yet they do not hear. They are like beasts indeed, they are less enlightened. Such are the heedless;”<sup>111</sup> The second proof is from al-Tawbah (9) 122: “It is not right that all the faithful should go to war at once. A band from each community should stay behind to instruct themselves in religion and admonish their men when they return, so that they may take heed.”<sup>112</sup>

Observing Asshiddiqie’s view above, Lubis’ assessment that Islam contributes to the development of human rights thinking in Indonesia is not an exaggeration. Asshiddiqie’s view—as constructed by Maarif—does not reject the universal principles of human rights, including the freedom of religion or belief. He elegantly reveals an Islamic vision that affirms these crucial and sensitive freedoms. In fact, there are Islamic teachings that can be used to reconcile Islam and human rights, including

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106. *Id.* at 174.

107. *Id.*

108. *Id.*

109. *Id.* at 175.

110. *Id.* at 176.

111. *Id.*

112. *Id.*

the freedom of religion or belief.

In addition to Asshiddiqie, there are many other Muslim figures that have a constructive interpretation of human rights. After Indonesia passed the Konstituante Assembly, human rights continued to be a subject of debate among Muslims. The discourse on the relationship between Islam and human rights blossomed in Indonesia almost a decade after the Konstituante Assembly, a period which Greg Barton calls neo-modernism.<sup>113</sup> The neo-modernism period is an important phase in the history of Indonesian Islamic intellectualism. Fachry Ali and Bahtiar Effendy have fully recorded the process of proliferation of Islamic thought during this period.<sup>114</sup> One of the important issues—besides democracy—which receives responses from Muslim intellectuals in this period, according to the research of Masykuri Abdillah,<sup>115</sup> is the issue of human rights. Abdillah points out that Muslims have been much more intellectually open in response to human rights than to democracy.<sup>116</sup> Abdillah assesses that this difference is normal when considering the affinity between democracy and human rights in Islam.<sup>117</sup> Compared to democracy, Abdillah asserts that human rights are much easier to recognize because of language similarities.<sup>118</sup> In Arabic, the term *haqq* has been known earlier and translated into “right,” while democracy is not only seen as new vocabulary, but it is also seen as coming from the West.

In Islamic intellectual tradition, the term *haqq* has been discussed before the term *democracy*. For example, the rights of Allah (*huquq*

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113. The term “neo-modernism” originates from Fazlur Rahman’s writings. Rahman uses this term to describe the four phases of the Islamic reform movement from the end of eighteenth century to the twentieth century. The first phase is the revivalist movement. This movement emerged in the end of eighteenth century and early nineteenth century (i.e., the Wahhabi movement in Arabia, the Sanusi movement in North Africa, and the Fulaniyah movement in West Africa). The second phase is the modernist movement. In India, this movement was pioneered by Sayyid Ahmad Khan. In Egypt, the modernist movement was pioneered by Jamal al-Din al-Afghani, Muhammad ‘Abduh, and Rashid Rida. The third phase was the neo-revivalist movement. This movement was exemplified by al-Mawdudi in Pakistan. The fourth phase is neo-modernism. See GREG BARTON, *THE EMERGENCE OF NEO-MODERNISM: A PROGRESSIVE, LIBERAL MOVEMENT OF ISLAMIC THOUGHT IN INDONESIA: A TEXTUAL STUDY EXAMINING THE WRITING OF NURCHOLISH MADJID, DJOHAN EFFENDI, AHMAD WAHIB AND ABDURRAHMAN WAHID (1968–1980)* (1995).

114. See FACHRY ALI & BAHTIAR EFFENDY, *MERAMBAH JALAN BARU ISLAM: REKONSTRUKSI PEMIKIRAN ISLAM INDONESIA MASA ORDE BARU* (1986).

115. See MASYKURI ABDILLAH, *RESPONSES OF INDONESIAN MUSLIM INTELLECTUALS TO THE CONCEPT OF DEMOCRACY* (1997).

116. *Id.* at 97.

117. *Id.*

118. *Id.*

*Allah*), the human rights or the rights of individuals (*huquq al-'ibad* or *huquq al-nas*), and the common rights of Allah and humans are discussed in classical Islamic sciences.<sup>119</sup> The rights of Allah are all the rights and obligations that are ordained through revelation and religious teachings. The rights of Allah can be an obligation in the form of commandments and rituals. Additionally, the rights of Allah can also be in the form of a number of activities that benefit a larger segment of society, including protecting society from destruction and recommending virtuous acts. Various obligations embodied in the pillars of Islam, such as a profession of faith, praying, giving alms, fasting during Ramadan, and performing pilgrimage, are ways to fulfill the rights of Allah.

Individual rights, whether secular or civilian, constitute a realm that embodies general and specific rights. The right to health, the right to have children, and the right to safety are examples of general individual rights. Individual rights can also be specific, such as the protection of property ownership or the right to conduct a commercial transaction.

Common rights originate from religious teachings or human reason. An example of common rights is divorced women's obligation to have a *'iddah* (waiting period) of three menstruation periods in order to determine whether the women are pregnant. The logic is that God (*Allah*) decides genealogy based on the father and that genealogy can only be received through a valid marriage. Thus, the waiting period should be observed for divorced women or widows before they will be allowed to marry again.

The term *haqq*, in Islamic intellectual tradition, has evolved into the concept of *huquq al-'ibad* or *huquq al-nas* (human rights or the rights of individuals) besides *huquq Allah* (rights of Allah). The concept of common rights indicates that human rights have received sufficient attention from Islam. This reality directly challenges the over-generalized opinion that Islam cannot be used as the cultural foundation for universal human rights principles. One expert that argues the over-generalization is Samuel Huntington.<sup>120</sup> He is well known as an adherent to the theory of cultural relativism, which rejects the view of universal human rights. According to Huntington, who proposed "the clash of civilizations"<sup>121</sup>thesis, human rights are the product of the West.<sup>122</sup> For

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119. See OZLEM DENLI HARVEY, ISLAM AND THE FREEDOM OF RELIGION OR BELIEF: PERSPECTIVES FROM CONTEMPORARY TURKEY 43–44 (2000).

120. Samuel Huntington, *The Clash of Civilizations?*, 72 FOREIGN AFF. 22 (1993).

121. The Clash of Civilizations is a theory, proposed by political scientist Samuel P. Huntington, which posits that cultural and religious identities will be the primary source of conflict

Huntington, the West's efforts to promote universal human rights are counterproductive.<sup>123</sup> Huntington believes that the West's dissemination of human rights to the Muslim world is a factor that fosters the emergence of Islamic fundamentalism.<sup>124</sup>

In contemporary human rights discourse, Huntington follows the adversarial perspective that tends to create a contradiction between Islam and human rights. The adversarial perspective, according to Mashood A. Baderin, cannot help disseminate human rights in a culturally diverse society.<sup>125</sup> In the context of Muslim society, Baderin believes that Islam promotes human rights. This view is known as the harmonic perspective.<sup>126</sup> Baderin argues that the harmonic perspective has a great opportunity to be developed, because Islam has the necessary theological and scientific foundations, as indicated by the Qur'anic verses and the fundamental concept of human rights mentioned in the previous paragraphs.<sup>127</sup>

It is necessary to add how the fundamental concept of *huquq al-nas* (rights of individuals) has taken root in the field of *fiqh* (Islamic law) to strengthen the harmony between Islam and human rights. *Fiqh* (Islamic law) is discussed in this part of the article because of its popularity in the field of Islamic education, including education in Indonesia. In the study of Islamic law, there are many discussions called *maqasid al-shari'ah* (the objectives of shari'ah). Satria Effendi<sup>128</sup> perceives *maqasid al-shari'ah* as the objectives of Allah and His messenger in formulating Islamic laws. These objectives can be traced to the Qur'an and the Prophetic tradition as a logical reason for the formulation of law, which

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in the post-Cold War world. This theory was originally formulated in a 1992 lecture at the American Enterprise Institute, which was then developed in a 1993 *Foreign Affairs* article titled "The Clash of Civilizations?", in response to Francis Fukuyama's 1992 book, *The End of History and the Last Man*. Huntington later expanded his thesis in a 1996 book *The Clash of Civilizations and the Remaking of World Order*. The book has been translated into Indonesian: SAMUEL P. HUNTINGTON, BENTURAN ANTARPERADABAN DAN MASA DEPAN POLITIK DUNIA (M. Sadat Ismail trans., 2000).

122. Huntington, *supra* note 120, at 40.

123. *Id.* at 31.

124. *Id.* at 41. Other scholars adamantly disagree with Huntington. See Ann Elizabeth Mayer, *Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?*, 15 MICH. J. INT'L L. 307, 311 (1994).

125. Mashood A. Baderin, *Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives*, 4 MUSLIM WORLD J. HUM. RTS., 1, 10–13 (2007).

126. *Id.* at 13–24.

127. *Id.*

128. SATRIA EFFENDI & M. ZEIN, USHUL FIQH 233–37 (2005).

is designed to benefit humankind. Among the experts of Islamic law, there has been a consensus of opinion regarding the objectives of *shari'ah* (Islamic law), which are to maintain human benefit and avoid destruction (*mafsadat*), either in this world or in hereafter.<sup>129</sup> To achieve this benefit and avoid destruction, there are five points which should be given attention: religion, soul, reason, offspring, and property. These five points are also called the core of Islamic law. In other words, the objective of Islamic law is to provide protection for religion, soul, reason, offspring, and property. A Muslim who is called *mukallaf* (a person obliged to perform the regulations of Allah) can receive the benefit and can avoid destruction if he or she is able to achieve these five points.

Muslim intellectuals always refer to these five points, or the objectives of Islamic law, when developing the concept of human rights from an Islamic perspective. One of the five points of Islamic law is the protection of religion, which is closely related to the issue of freedom of religion or belief. It is interesting that when the concept of protection of religion (*hifz al-din*) is connected to the issue of freedom of religion or belief, Muslim intellectuals have inclusive points of view. Masdar F. Mas'udi's views are illuminating in this regard.<sup>130</sup> In one of his articles, Mas'udi argues that the principle of freedom of belief is part of the protection of religion.<sup>131</sup> Therefore, Mas'udi asserts that compulsion in religion is prohibited by Islamic law.<sup>132</sup> Consequently, Mas'udi disagrees with Islamic law regulations that punish those who convert to other religions. Mas'udi reasons as follows:

Initially, *riddah* (apostasy) is the right of each individual since it is said in the Qur'an "those who wish to believe, believe, and those who wish to disbelieve, disbelieve." The choice of belief or disbelief is an individual choice. It is the case with *salat* (prayer); indeed there is no punishment for those who do not perform *salat*. But later on, Muslim rulers (in Islamic history, *the writer*) claimed themselves as the manifestation of God. Therefore, the rights of Allah then were taken over by rulers (state) and the state then tried to enforce the rights of Allah towards human beings. Accordingly, *salat*, which is initially the affair of individuals with Allah, then became the affair of individual

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129. *Id.* at 238.

130. MASDAR MAS'UDI, *Hak Asasi Manusia dalam Islam*, in *DISEMINASI HAK ASASI MANUSIA: PERSPEKTIF DAN AKSI* 63 (E. Shobirin Nadj & Naning Mardinah eds., 2000).

131. *Id.* at 64.

132. *Id.* at 65.

with sultans (rulers), where they had the right to punish those who do not pray. It is also the case with those who convert (apostates). This is actually the right of the individual, related to the right of Allah, to believe or not to believe in God. But then these rights of Allah were taken over by the rulers; therefore, the rulers functioned as God, compelling individuals and giving punishment for the apostates who change their religion.<sup>133</sup>

Jalaluddin Rakhmat<sup>134</sup> is another Muslim intellectual who has an inclusive opinion in understanding the concept of the protection of religion. Like Mas'udi, Rakhmat also includes "the doctrine of no compulsion in religion" as an important point of the concept of the protection of religion.<sup>135</sup> Rakhmat asserts that freedom of religion must be protected from any aggressive action to limit this freedom.<sup>136</sup> Rakhmat mentions four specific religious freedoms mandated by Islam that should be protected from aggressive actions: (1) freedom to choose religion; (2) freedom to adhere to religion; (3) freedom to conceal religion; and (4) freedom to express religion.<sup>137</sup>

Dawam Rahardjo's points of view should also be mentioned in this part of the Article. One of Rahardjo's intellectual concerns is religious pluralism or diversity.<sup>138</sup> Rahardjo firmly asserts that religion is an individual affair which no state or religious authority can interfere with.<sup>139</sup> To support his argument, Rahardjo refers to the principle of *la rahbaniyah fi al-Islam* (no priesthood in Islam).<sup>140</sup> For Rahardjo, religious authority tends to reduce religious freedom.<sup>141</sup> Yet, faith cannot be compelled by any authority, as emphasized by the principle of *la ikraha fi al-din* (no compulsion in religion). To guarantee the implementation of freedom of religion or belief, according to Rahardjo, the existence of regulation or law is absolutely needed.<sup>142</sup> The law,

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133. *Id.*

134. Jalaluddin Rahmat, *Hak-hak Rakyat: Perspektif Islam*, in *AGAMA DAN HAK RAKYAT* 106–114 (Masadar F. Mas'udi ed., 2003).

135. *Id.* at 109.

136. *Id.*

137. *Id.* at 110.

138. M. Dawam Rahardjo, *Dasasila Kebebasan Beragama [Ten Principles of Religious Freedom]*, ISLAMLIB.COM (NOV. 25, 2005), <http://islamlib.com/id/artikel/dasasila-kebebasan-beragama>.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

which Rahardjo calls the Law of Freedom of Religion, should guarantee religious freedoms including the following:

First is an individual's freedom to choose a religion and the freedom to worship in accordance with his own religion or belief.<sup>143</sup>

Second is freedom to not have a religion.<sup>144</sup> Although the Indonesian constitution states that the state is based on the "Oneness of God,"<sup>145</sup> freedom of religion also means freedom to not believe in God or to have an atheistic belief. However, not all atheisms can be given a guarantee. Rahardjo restricts atheism that must be given a guarantee to atheism in the form of scientific discourse.<sup>146</sup> Concerning atheism in the form of anti-religion and anti-God, Rahardjo recommends it be banned by the state because it contradicts the Pancasila, particularly the first pillar, which is the Oneness of God.<sup>147</sup>

Third is freedom to convert to another religion.<sup>148</sup> According to Rahardjo, changing religions cannot be regarded as apostasy but rather an effort to find a new consciousness in religiosity.<sup>149</sup> Rahardjo also rejects the view that a person who converts to another religion is called *kafir* (infidel) because the term *kafir* only describes a person opposing the command of God.<sup>150</sup>

Fourth is the freedom to preach.<sup>151</sup> According to Rahardjo, the

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143. *See id.*

144. *See id.*

145. *See id.*

146. *See id.*

147. *See id.*

148. *See id.*

149. *See id.*

150. Although many people in Indonesia convert to other religions, for example from Islam to non-Islam, the converts are not punished in accordance with positive law in Indonesia. This is somewhat different from other countries with Muslims as the majority. One prominent example which received special attention internationally is the case of Lina Joy. Initially this Malaysian citizen was named Azlina Jailani. But, after conversion from Islam to Christianity at age 26, this woman of ethnic Malay heritage changed her name to Lina Joy. Joy's conversion did not receive certification from the Malaysian Federal Court, although Joy herself wished to be certified so that her new identity (Christian) would be apparent from her MyKad (citizen identity card) of Malaysia. According to the Federal High Court, only the Islamic Shari'ah Court had the authority to permit the change in religious identity in Joy's identity card. Meanwhile, Joy rejected the argument of the Federal High Court because she is an adherent of Christianity and argued she need not follow the regulation of Islamic Shari'ah Court. This rejection by the Federal High Court impacted the planning of Joy's marriage to her Christian fiancé. The marriage between a Muslim and a non-Muslim is not allowed by the legal regulation of Malaysia and shari'ah law. *See Kisah Lina Joy [Lina Joy Story]*, TRULY ISLAM BLOG, <http://trulyislam.blogspot.com/2009/01/kisah-para-mantan-muslim-murtadin.html> (last visited Sept. 22, 2012).

151. Rahardjo, *supra* note 138.

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activities of preaching (*da'wah*) that should be protected are those which are not conducted through violence or compulsion, either directly or indirectly.<sup>152</sup> Besides preaching without violence and compulsion, preaching activities cannot be unethical, as asserted by Rahardjo below:

Activities of preaching (*da'wah*) to gain followers, through distributing food and scholarship for the children of the poor or giving free health services with the requirement to adhere to a certain religion, are not ethical efforts because “buying” the belief of individuals humiliates human dignity. But, assistance programs like this are allowed to be conducted by a religious organizations as far as they do not compel people to adhere to a certain religion.

The spreading of religion through offering faith and salvation directly from person to person or through visits to people’s houses with the intention for proliferation is an impolite and a disturbing action; therefore it should be prohibited. The activities of spreading religion through giving information are not prohibited, but the efforts of Christianization or Islamization for proliferation is not allowed. If the mechanism of religious preaching can be regulated, there is no longer an accusation of Christianization, Islamization, or apostatizing.<sup>153</sup>

Fifth, freedom of religion also means that the state must be just toward all religions.<sup>154</sup> In order for a state to be fair and just, it needs to revise policies which potentially lead to injustice among certain religious group. For example, Rahardjo is critical of the Indonesian citizen identity card (KTP) that requires citizens to disclose their religious identities.<sup>155</sup> Rahardjo sees this policy as an opportunity for state favouritism and discrimination.<sup>156</sup>

Sixth, the state should allow a marriage between two persons of different religions if the marriage is an individual or family decision.<sup>157</sup>

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152. *See id.*

153. *See id.*

154. *See id.*

155. *See also* Act Concerning Population Administration (Law No. 23/2006), art. 64 (1) (Indon.). In article 64 (1) there is a provision that the ID card must include the symbol of Garuda Pancasila, the map of the territory of the Republic of Indonesia, and load a description of NIK (main number of population), name, place and date of birth, sex, religion, marital status, blood type, address, occupation, nationality, validity, place and date of ID card issuance, ID card holder’s signature, and the names and employee identification numbers of the officials that sign it.

156. *See id.*

157. *See id.*

Although a religious authority can issue *fatwa* (religious advices), which discourage inter-religious marriage because they are seen as unlawful, the *fatwa* issued by religious authority cannot not bind the state. Individual and family views should not be binding on the state.

Seventh, in education, each student is given the right to decide what religion to study.<sup>158</sup> Although the parents can influence and even decide what their children will study, their choice cannot automatically prevail. These rights also include a student's choice not to take a course on a certain religion. Regardless of a student's choice to either study or not study a particular religion, the student must still take an ethics course, because the course helps students become good citizens.

Eighth, each citizen has the right to create a religious group, or even build a new religion, provided that he does not disturb the public order and does not perform practices that are illegal or unethical or use the religion to deceive someone else.<sup>159</sup> This freedom is applied to those who will establish associations for health, emotional, and spiritual well-being based on the teachings of many

religions, as long as adherence to a particular faith is not a requirement.

Ninth, the state or a religious authority is not allowed to make legal decisions that affirm that a certain religious group is heretical and misleading, except if the group conducts illegal or unethical practices.<sup>160</sup> A religious authority can give guidance concerning rituals, faith, and law (*shari'ah*), but it cannot bind the state or its citizens.

Nurcholish Madjid is another Muslim intellectual who must certainly be mentioned when discussing the development of Islamic neo-modernism in Indonesia. Madjid's thoughts have a much wider spectrum than those of Mas'udi, Rakhmat, Rahardjo, and Mulia. Madjid addresses almost all subjects of Islamic thought in his analysis. Like other Muslim intellectuals, Madjid also refers to the Qur'an when dealing with the issue of freedom of religion or belief. Like other Muslim intellectuals, Madjid argues that Islam can be used as the theological foundation of freedom of religion or belief.<sup>161</sup>

Madjid's perspective of looking at freedom of religion or belief is

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158. *Id.*

159. *Id.*

160. *Id.*

161. See NURCHOLISH MADJID, ISLAM DOKTRIN DAN PERADABAN: TELAAH KRITIS TENTANG MASALAH KEIMANAN, KEMANUSIAAN, DAN KEMODERNAN Ixviii (1992).

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based on an understanding of the spirit of Islamic teachings.<sup>162</sup> According to Madjid, in the spirit of Islamic teaching, after the deity (*habl min Allah*), is humanity (*habl min al-nas*).<sup>163</sup> In regards to humanity, Islam teaches that human life is essentially characterized by diversity.<sup>164</sup> This diversity, Madjid asserts, cannot be rejected or avoided by human beings because it is one of God's grand designs.<sup>165</sup> Madjid's affirmative view on diversity is based on the Qur'an, Hud (11) 118–119: "Had your Lord please, He would have united all mankind. But only those whom He has shown mercy will cease to differ. For this end He has created them. The word of your Lord shall be fulfilled: 'I will fill the pit of Hell with jinn and men.'"<sup>166</sup> According to Madjid, Allah's commandment in this verse affirms that Islam teaches diversity. "Thus, there is no monolithic society, which is same and equal in all aspects," says Madjid.<sup>167</sup> He asserts that human beings must manage this diversity on the principles of pluralism.<sup>168</sup> Islam, besides affirming the plurality of human life, provides freedom for different groups to exist and take on life in conformity with their own beliefs.<sup>169</sup> Islamic vision in this regard, for Madjid, is parallel to pluralism.<sup>170</sup> He asserts:

If in the Sacred Book (the Qur'an) it is mentioned that a human being is created to nations and races in order for them to mutually recognize and respect one another (al-Hujurat [49]: 13), plurality develops into pluralism, i.e. a value system which perceives diversity positively and optimistically, accepts it as reality, and performs the best on the basis of this reality. In the Sacred Book it is also mentioned that differences of human being in language and color should be accepted as positive reality, as one of the signs of God's greatness. (Q. al-Rum [30]: 32). There is also affirmation in the Sacred Book regarding diversity in opinions and ways of life among human beings, which need not to be feared, but ought to be used as a basis for racing into goodness, and that it is God who will explain why human being is diverse, later when

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162. *See id.* at x.

163. *See id.*

164. *See id.* at lxix.

165. *See id.* at lxx.

166. *See id.* at lxxi.

167. NURCHOLISH MADJID, *ISLAM AGAMA KEMANUSIAAN: MEMBANGUN TRADISI DAN VISI BARU ISLAM INDONESIA* 196 (1995).

168. *Id.*

169. *Id.* at 199.

170. *Id.*

returning to Him (Q. al-Ma'idah [5]: 48).<sup>171</sup>

In Madjid's view, this inclusive view of Islam characterized by diversity, which is parallel to pluralism, can be used as a basis for guaranteeing freedom of religion or belief. Madjid seemingly has no issue connecting freedom of religion or belief to Islam, although this issue is complicated and touches on emotional aspects. For Madjid, discussing freedom of religion or belief from an Islamic perspective is normal because the Qur'an elegantly guarantees it. Since the Qur'an provides this guarantee, Madjid asserts that Muslims must be mature when dealing with the issue of freedom of religion or belief.<sup>172</sup> He states:

The principle of freedom of religion is concerned with complicated matters, as it relates to emotional aspects and deep feelings of our life. The implementation of the principle of freedom of religion will work very well if each of us is able to prevent emotional victory over healthy reasoning. This ability is concerned with the level of a certain maturity and our own consistency, either in individual or collective levels. In the Qur'an, the principle of religious freedom is clearly related to an attitude with no emotion, with healthy reasons and our stability in our selves, because we believe in the existence of clear criteria of the right and the false: "There shall be no compulsion in religion. True guidance is now distinct from error. He that renounces idol-worship and puts his faith in Allah shall grasp a firm handle that will never break. Allah hears all and knows all." (Q. al-Baqarah [2]: 256).<sup>173</sup>

Because Madjid understands the Qur'an to be so inclusive regarding some issues relating to human rights at the empirical level, openness is also needed towards human rights which have become universal ideas of mankind.<sup>174</sup> In some of his books, Madjid seems to have not contradicted human rights on the basis of a particular cultural preference, such as Islam and Indonesian society, as normally occurs among cultural relativists.<sup>175</sup> In his book, *Islam Agama Kemanusiaan*, Madjid makes an interesting affirmation that the Universal Declaration of Human Rights formulated by the United Nations constitutes a standard reference when dealing with human rights.<sup>176</sup>

For Madjid, the relation between Islam and human rights and one of

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171. MADJID, *supra* note 161, at lxviii.

172. *Id.*

173. NURCHOLISH MADJID, *CITA-CITA POLITIK ISLAM ERA REFORMASI* 73 (1999).

174. *Id.*

175. *Id.*

176. MADJID, *supra* note 167, at 207.

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its derivatives, the freedom of religion or belief, is not contradictory. However, opposite points of view should also be considered. In Indonesia, hardliner Muslim groups openly reject human rights.<sup>177</sup> One of these groups is Hizbut Tahrir Indonesia (HTI). HTI categorically rejects human rights which emerge from democracy.<sup>178</sup> HTI is a well-known religious group that opposes democracy.<sup>179</sup> Consequently, HTI rejects all thought which is derived from democracy, such as freedom.<sup>180</sup> In this book, Zallum, an HTI activist, categorically rejects democracy as it originates from Western culture.<sup>181</sup> For Zallum, democracy sold by the West is an infidel system; democracy has no relation to Islam, either directly or indirectly.<sup>182</sup> He holds the following view on democracy:<sup>183</sup>

First, democracy is part of the product of human reason, not from Allah. Democracy is not based on revelation and does not have a relation to any religion which has ever been revealed by Allah to His messenger.

Second, democracy emerges from the belief in the separation of religion from life, which subsequently results in the separation of religion from state.

Third, democracy is founded on two ideas: (1) sovereignty in the hand of people; and (2) people are the source of authority (power).

Fourth, democracy is the system of government by the majority. The election of rulers and members of legislature is conducted on the basis of the majority of electorates. All decisions in these institutions are also taken on the basis of majority opinions.

Fifth, democracy states the prevalence of four types of general freedom: (1) freedom of religion; (2) freedom of speech; (3) freedom of ownership; (4) personal freedom.

With the above understanding, Zallum labels democracy as infidel. As an infidel system, Zallum asserts its legal implication is clear. He

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177. ABDUL QADIM ZALLUM, PEMIKIRAN POLITIK ISLAM 200 (2001).

178. *Id.* at 201.

179. *Id.* at 202–03.

180. See ABDUL AL-QADIM ZALLUM, DEMOKRASI SISTEM KUFUR: HARAM MENGAMBIL, MENERAPKAN, DAN MENYEBARLUASKANNYA [DEMOCRACY INFIDEL SYSTEM: ADOPTING, IMPLEMENTING, AND SPREADING IT UNLAWFULLY] 11 (2003).

181. *Id.*

182. *Id.*

183. *Id.* See also SYAMSUL ARIFIN, IDEOLOGI DAN PRAKSIS GERAKAN SOSIAL KAUM FUNDAMENTALIS: PENGALAMAN HIZB AL-TAHRIR INDONESIA 144–54 (2010).

maintains that Muslims are prohibited from adopting a democratic system because it is unlawful to adopt a capitalist economic system.<sup>184</sup> To support his argument, Zallum highlights some aspects of democracy which he sees as contradictory to Islam.<sup>185</sup> First is the concept that sovereignty is in the hands of people. In Zallum's view, this concept contradicts Islam, which perceives sovereignty as in the hand of God, the shari'ah (law) giver, not in the hand of human (*ummah*).<sup>186</sup> Zallum then asserts the following:<sup>187</sup>

*Ummah* in its entirety has no right to make law, even one law. If all Muslim *ummah* gather, then they agree on various aspects which contradict Islam—such as allowing *riba* (interest) in order to enhance economic conditions; allowing the localization of adultery in order to prevent its spread in society; abolishing individual ownership; abolishing fasting in Ramadan in order to increase productivity; or adopting the idea of individual freedom which gives freedom to an individual Muslim to adhere to whatever belief he wishes, giving the right to enhance his property with whatever means (although unlawful), giving freedom to enjoy life as he wants, as to drink wine (*khamr*) and conduct adultery—all these decisions mean nothing. Yet, in the view of Islam, these agreements have no value at all, although when compared to the value of a wing of a mosquito. If there is a group of Muslims which agrees with these matters, they should be offended until they release themselves from these agreements.

Another element of democracy that Zallum says is contradictory to Islam is the concept of government by the majority.<sup>188</sup> In Zallum's thought, the majority should not decide the law; instead, the law should be based on the sacred text (*shari'ah*) because Allah is the only law maker.<sup>189</sup> Therefore, who has the authority to adopt the law of *shari'ah*? Zallum says that the caliph, who concludes the law from *shar'i* texts of the Qur'an and the Traditions of the Prophet, has the authority.<sup>190</sup>

Then, Zallum views the democratic principles of general freedom, which consists of freedom of religion, freedom of speech, freedom of ownership, and freedom of behaviour as contradictory to Islam.

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184. ZALLUM, *supra* note 180, at 12.

185. *Id.* at 13.

186. *Id.* at 63.

187. *Id.* at 63–64.

188. *Id.* at 73.

189. *Id.* at 80.

190. *Id.*

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According to Zallum, these four freedoms are not found in Islam. A Muslim is obliged to legally bind himself to the *shari'ah* in all his deeds. A Muslim is not allowed to behave as he wishes. In Islam, there is no freedom, except freedom of slaves from slavery, and slavery itself has been abolished by Islam.

After explaining HTI's views, it can be concluded that Muslims have different opinions regarding human rights. These differences will become even more apparent in the following part.

#### IV. ISLAM, HUMAN RIGHTS, AND FREEDOM OF RELIGION OR BELIEF: CONCLUDING REMARKS

With exposure to HTI's views, it is clear that Muslims differ in opinion in response to human rights issues. Basically, there are leaders who have an inclusive outlook on Islam while others have an exclusive one. The inclusive leaders accept the universal idea of human rights, including the freedom of religion or belief. For them, human rights ought not to be regarded as a concept contradictory to Islam. Although many Muslim countries have recognized and ratified human rights instruments issued by the United Nations, the inclusivist thinkers employ theology and history to support their position. Theologically, Islam has an authentic source which can be used as a legitimizing factor for Muslim acceptance of human rights. That source is the Qur'an.

According to the inclusivists, there are many verses in the Qur'an that support the fundamental ideas of human rights emerging in the West. The Qur'anic verses often quoted by the inclusivists are: al-Baqarah (2) 256—"There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path. Whoever disbelieves in Taaghoot (false gods, etc.) and believes in Allaah, then he has grasped the most trustworthy handhold that will never break. And Allaah is All-Hearer, All-Knower"; al-Kahfi (18): 29—"And say: "The truth is from your Lord." Then whosoever wills, let him believe, and whosoever wills, let him disbelieve. Verily, We have prepared for the Zalimun (polytheists and wrong-doers, etc.), a Fire whose walls will be surrounding them (disbelievers in the Oneness of Allah). And if they ask for help (relief, water, etc.) they will be granted water like boiling oil, that will scald their faces. Terrible the drink, and an evil Murtafaqa (dwelling, resting place, etc.)!"; and al-Kafirun (109): 6—"To you be your religion, and to me my religion (Islamic Monotheism)." For the inclusivists, these verses are evidence of Islam's recognition of freedom of religion or belief,

which is within the scope of human rights. Basing their views on the three verses above and others, the inclusivists argue that religion is essentially a private affair which cannot be interfered with by anybody, including the state.

Inclusivists differ drastically from exclusivists or those who believe that Islam and human rights are mutually exclusive. According to exclusivists, human rights cannot be applied in a Muslim society. They argue that the concept of human rights issued by the United Nations cannot be applied universally because human rights are dominated by Western ideas. One human right often criticized by the exclusivists is freedom of religion or belief. In their view, freedom of religion or belief cannot be applied universally in Muslim society although the Qur'an often deals with the issue of freedom. Freedom in the Qur'an applies only externally, so only non-Muslims who want to convert to Islam are afforded freedom of religion, while those who have embraced Islam have no other choice except to remain Muslims.

The inclusivist and exclusivist perspectives are apparently hard to reconcile. As can be expected, the development of religious freedom discourse will likely remain divided into two views. This prediction is based on the transitional democratization process that is underway in Indonesia. What is the relationship between the discourse of freedom of religion or belief and these two polarizing perspectives? The transitional phase of democratization is characterized by transparency. At this stage, the various elements of society gain the freedom to articulate their opinions even if they are different from the state and other groups. Religious discourse is also growing rapidly at this stage of the so-called "reform era."

Therefore, the emergence of inclusive and exclusive discourse should not be viewed as a strange phenomenon. The discourse has not caused a state of anarchy in Indonesia, contrary to wide-spread reports. Therefore, religious differences and ideas do not always lead to anarchy. The diversity discourse in Indonesia was unavoidable. However, the development of a more affirmative and positive discourse on human rights and freedom of religion or belief is possible. A more positive and beneficial discourse can be achieved by using Muslim education institutions owned by Muhammadiyah and Nahdlatul Ulama (NU) to promote human rights and freedom of religion or belief.