

**PROSECUTING THE HOUSE OF GOD: THE IRONY OF RIGHTS
TO FREEDOM OF WORSHIP FOR DHIMMI MINORITY
IN INDONESIA**

(Menggugat Rumah Tuhan: Ironi Kebebasan Beribadah Minoritas
Dhimmi Di Indonesia)

M. Alifudin Ikhsan & Yusuf Hanafi

Universitas Negeri Malang, Indonesia

Email: um.alifudin93@gmail.com; yusuf.hanafi.fs@um.ac.id

DOI: 10.21154/justicia.v16i1.1535

Received: 25 Feb 2019

Revised: 15 Mei 2019

Approved: 27 Juni 2019

Abstrak: Kebebasan memeluk agama dan keyakinan serta menjalankan peribadatannya merupakan hak asasi setiap warga negara yang dilindungi oleh konstitusi, termasuk bagi minoritas dhimmi. Pemerintah sebagai pemegang kekuasaan negara telah mengeluarkan Peraturan Bersama Menteri Agama dan Menteri Dalam Negeri No 8 dan 9 Tahun 2006 tentang Pedoman Pemberdayaan Forum Kerukunan Umat Beragama dan Pendirian Rumah Ibadah. Ironisnya, Peraturan yang sejatinya memberi rasa keadilan bagi seluruh elemen masyarakat, justru terkesan membatasi aktivitas peribadatan minoritas dhimmi. Untuk mewujudkan kesamaan hak beribadah dan mendirikan rumah ibadah bagi minoritas dhimmi, Peraturan tersebut perlu diajukan ke meja Mahkamah Agung guna menjalani *judicial review*. Usulan untuk meninjau kembali beberapa pasal yang dianggap diskriminasi tersebut merupakan wujud pengawasan masyarakat terhadap produk hukum Pemerintah. Tulisan ini mengkaji problematika pendirian rumah ibadah dalam konteks hak beribadah minoritas dhimmi melalui perspektif Alquran. Konsepsi Alquran yang dihasilkan dituangkan dalam gagasan fikih HAM yang berupaya untuk membangun kesetaraan hak beribadah bagi warga negara. Fikih HAM diharapkan mampu membentuk kesadaran masyarakat untuk menghargai dan menghormati aktivitas peribadatan minoritas dhimmi, mengurangi retensi kekerasan antar umat beragama, dan menciptakan kehidupan yang harmonis berdasarkan prinsip-prinsip syariat Islam dalam Maqasid al-Syariah.

Kata Kunci: Rumah Tuhan; Kebebasan Beribadah; Minoritas Dhimmi.

Abstract: The freedom to embrace a religion and belief as well as worshiping are the rights of each citizen protected by the constitution, including the Dhimmi minority. The Government as the state authorities have issued a Joint Regulation Number 8 and 9 of 2006 on the Guideline of Empowering the Forum of Religious Harmony and Constructing Worship House. Ironically, instead of giving the sense of justice for all elements of society, regulations are deemed to limit the activity of worshiping of dhimmi minority. In realizing the equal rights to worship and constructing the

house of worship for the Dhimmi minority, the Regulation should be submitted to the Supreme Court to undergo juridical review. The suggestions utilized to review several articles considered as discriminating us the actualization of the society on the government's product of law. This piece of writing explored the problems of constructing the house of worshiping the context of the rights to worship for dhimmi minority through the perspective of the Quran. The conception of the Qur'an generated is reflected in the idea of the jurisprudence of human rights which strives for establishing the equality of rights to worship for citizens. The jurisprudence of human rights is expected to be able to raise the social awareness to appreciate and respect the worshiping activities of dhimmi minority, reducing the retention of inter-religious violence, and creating a harmonious life based on the principles of Islamic law in Maqasid al-Syariah.

Keywords: *House of God, Rights to Freedom of Worship, Dhimmi Minority*

INTRODUCTION

The issues of the worship house construction for minority people, both inter-faith and religious minorities and certain religious sects, have become consequential. This phenomenon generates a complexity in diverse aspects of life, including religion, law, custom, culture, belief, social order, social culture, and politics. Ironically, these issues keep on escalating since the mid of 21st century. The Ministry of Religious Affairs released at least 47 violation cases on the name of religion within the last decade.¹ From the condition, 87% occurred due to social issues related to the constructions of worship house belong to certain religious groups. This conflict of worshiping emerges due to the presence of group pride² or class which is not

¹ M. Alifudin Ikhsan, "Nilai-nilai Cinta Tanah Air (Hubb al-Wathan) dalam Perspektif Al-Quran", *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*. Vol. 2, 2 (2017):108-114.

² In other language, it is known with the term of ethnocentrism, which is the fanatic concept on the class or group by view other groups as wrong. This concept is born from the exaggerated nationalism behavior which leads to the defense to the group even though the group is wrong in the perspective of the law.

properly positioned.³ This problem will also make social conditions worse.⁴

The efforts to prevent the construction of a religion's house of worship with a group sentimental objective certainly cannot be justified. Essentially, the rights to freedom of religion and belief as well as performing the worshipping are the rights of each human which are protected by the constitution,⁵ including *dhimmi* minority.⁶ The fact from various religious conflicts involving the house of worship in Indonesia shows that this action tends to be provoked by the illegal status of the building, the indication of heresy, and misunderstanding among the congregation.⁷ Initially, this intended to enforce the law (orderly building), expel and/or deactivate the activities of these cults. However, it causes intolerance.

The government as the state authority has issued a Joint Regulation Number 8 and 9 of 2006 on the Guideline of Empowering the Forum of Religious Harmony and Constructing Worship House. This regulation is issued as the direction of government regulation in national development in the field of religion.⁸ Ironically, instead of giving the sense of justice for all elements of society, regulations are deemed to limit the activity of worshipping of *dhimmi* minority. Article 14 paragraph (2) the regulation requires a new house of worship can be constructed after obtaining the agreement of at least 60 people around the location, permit from the society figures and the regional head in the particular region.

³ Taufiqurrahman, *Sang Nahkoda: Biografi Suryadarma Ali* (Malang: UIN Malang Press, 2013).

⁴ Aida Hayani, "Social Problem of Modern Society in Applying Islamic law in Aceh (Tracing the Past Culture Society Aceh in the manuscript)", *Justicia Islamica*, Vol. 15, no. 2 (2018): 161-178

⁵ Article 29 paragraph (1) and (2) the 1945 State Constitution of the Republic of Indonesia.

⁶ The non-Moslem citizens who reside on the Moslem region and obey the legitimate government according to the state constitution.

⁷ Mujaid Kumelo, *Fiqh HAM: Ortodoksi dan Liberalisme Hak Asasi Manusia dalam Islam* (Malang: Setara Press, 2015), 16.

⁸ The national development in the field of religion is one of programs by President Joko Widodo with the concept of Nawacita which he proposed.

The impression of worshipping activity limitation above emerges with the assumption so that the refusal on the construction of the house of worship no longer occurs. This makes this regulation flawed in values and norms, where Indonesian society has pluralist and multiculturalist social cultures⁹ whose activities are strenuous to be tracked.¹⁰ The problem on the house of worship conflict often occurs due to its complex condition's sensitivity level. This is also caused the low of social awareness in understanding and interpreting the plurality of inter-religious life. If this continues, then the potential of state disintegration is greater.¹²

This article was born as an effort to mature the community through the study of Jurisprudence of Human Rights (HAM) which is explored from the universal values of Quran, hadith, ijthad of scholars, and other Islamic literature. The description on the house of worship construction as the reality of life will be explored in the perspective of the Quran on the rights to the worship of *dhimmi* minority. The results of the Quran conception are reflected in the idea of the jurisprudence of human rights which strives for establishing the equality of rights to worship for citizens. *Fiqh* of human rights or jurisprudence of human rights is expected to be able to raise social awareness to appreciate and respect on the worshipping activities of *dhimmi* minority, reducing retention¹³ inter-religious violence,

⁹ This term is firstly drafted by Drs. Suparlan Al Hakim, M.Si (lecturer of Indonesian Social Studies in Universitas Negeri Malang) which means that the Indonesian society is a plural society and has diversity but has the same vision and objectives in terms of state.

¹⁰ Ahmad Zainal Abidin, Thoriqul Aziz. "Javanese Interpretation of Moderatism:Contribution of Tafsir Al-Ibriz on Moderate Understanding in Sharia and Mu'amalah". *Jurnal Justicia Islamica*. Vol. 15, 2 (2018): 241-264

¹¹ Suparlan Al Hakim, *Pendidikan Kewarganegaraan dalam Konteks Indonesia* (Malang: Setara Press, 2016), 87.

¹² Suko Wiyono, *Reaktualisasi Nilai-nilai Pancasila dalam Kehidupan Berbangsa dan Bernegara* (Malang: Wisnu Wardhana Press, 2015), 96. He is a professor in Constitutional law Universitas Negeri Malang and also the Rector of Universitas Wisnuwardhana Malang.

¹³ Retention is a term in the law which means "the number of violence" or "the number of criminalities". The word retention is used in several lawbook in

creating a harmonious life based on Islamic laws in *Maqasid al-Syariah*.

PROBLEMS OF ESTABLISHING *DHIMMI* MINORITY'S HOUSE OF WORSHIP

The newest issue related to the horizontal conflicts of *dhimmi* minority is the blasphemy case by the ex-governor of Special Capital Region of Jakarta Basuki Tjahaya Purnama. This case provokes reactions of most Moslems in Indonesia. This phenomenon impacted on classification and marginalization of certain social classes. This shows that the sensitivity of religious problems in Indonesia is extremely high. On the other hand, it has not disappeared from the memory of the Indonesian people over the riots that resulted in at least one person being killed and dozens injured to the burning of a mosque in Tolikara Papua in 2017, the community was again presented with riots in the name of religion in North Aceh Singkil.

Ironically, the series of violence cases, rejection of the burning and destruction of worship house often occur in Indonesia showing that the society's interpretation of interfaith diversity is relatively low. The stability threat to state disintegration due to a horizontal conflict is susceptible to happen in Indonesia.¹⁴ This takes place due to the diversity of the Indonesian nation. Whereas, this diversity is the biggest strength in establishing a strong community. Diversity has also been reflected in the Quran Surah (Q.S.) al-Hujurat verse (13) as follow:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا، إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاهُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

O mankind, indeed, We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the noblest of you in the sight of Allah is the

indonesia as KUHP (Criminal Code) KUHPer (Code of Civil Law) and KUHS (Civil Code Act).

¹⁴ The report of the Ministry of Religious Affairs of the Republic of Indonesia of 2015 on the condition of religious harmony in Indonesia (Jakarta: Direktorat Jendral Pendidikan Agama Kementerian Agama Republik Indonesia, 2015), 6.

*most righteous of you. Indeed, Allah is Knowing and Acquainted.*¹⁵

The meaning of plurality in verse is interpreted by Quraish Shihab as a form of plurality granted by Allah. Human beings were asked to respect and appreciate the differences. These differences are not weaknesses; instead, they become advantages and strengths. This verse becomes the fundamental of the importance of being respectful and appreciative on human rights reviewed from the equality of degree and position before Allah SWT.¹⁶ In preventing and minimizing the potential of retention of interfaith between people conflict in Indonesia, government has issued this regulation. With the existence of the regulation, it is expected that the potential of conflict in the region can be reduced. However, if studied further, instead this regulation has the potential to provoke new conflicts among society.

One of the conflict potentials in the regulation is the obligation of each religion who which to establish the house of worship needs to attain the agreement at least around 60 people, obtaining the permit from society figures and head of regions where the house of worship is established.¹⁷ This will be burdensome to fulfill by the *dhimmi* minority religion who is not accepted in the environment. Why so? For *dhimmi* minority people, obtaining the acknowledgment among the Moslem majority is significantly difficult even impossible. Pressure, intimidation, and cynical perception will always be stated by the majority of people so that the minority of people will not construct the house of worship in their environment. On the other hand, obtaining approval from society figures and the head of the region also tends to be made complicated. Such a condition impacted

¹⁵ Q.S. al-Hujurat: 13.

¹⁶ Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Quran* (Jakarta: Lentera Hati, 2012), 309.

¹⁷ Article 14 paragraph (1) and (2) the Joint Regulation of the Minister of Religion and the Minister of Home Affairs Number 9 and Number 8 in 2006, sets guidelines as to how regional heads and deputy regional heads are to maintain religious harmony, establish a forum for religious harmony and regulate the establishment of houses of worship.

on the inequality of rights to build the house of worship for the citizens.

The fact of the above problem among them is the destruction case of Gereja Kristen Jawi Wetan (Christian church) in Ponorogo East Java in 2016 prosecuted by Front Pembela Islam (FPI) due to the accusation of the house of worship construction did not have a permit. A similar condition also provokes the incident in Tolikara Papua and Aceh Singkil. The phenomenon of violence in the name of religion signifies the failure of fostering the tolerance values of interfaith people. Whereas, various efforts have been conducted by the government to prevent the occurrence of religious conflicts. The state also places the rights to worship as the basic rights which are obligatory to be upheld by every citizen.

The freedom of worship for religious people has become the global agreement through the International Covenant on Civil and Political Right (International Convention on Civil and Political Rights).¹⁸ The international convention has been set by the United Nations (UN) in 2006 and signed by 152 countries in the world. This means that the international world places the rights to freedom of religion. This means that the international world places the rights to religion as the absolute right which cannot be contested by anyone in choosing the godly belief. The international agreement draft on civil rights and politics has been ratified by all countries in the world including Indonesia. Indonesia ratifies the international agreement in Constitution Number 12 of 2008 on civil rights and politics.

Regarding to the joint regulation of the Ministry of Religious Affairs and the Ministry of Domestic Affairs on the construction of house of worship above, this Joint Regulation tends to be contradictory with the Constitution Number 12 of 2008 on Civil Rights and Politics as well as the 1945 Constitution of the Republic of Indonesia article 29 on religion.¹⁹ Basically, the rights to embrace

¹⁸ Ahmad Rodli, *Stigma Islam Radikal* (Yogyakarta: UIN Sunan Kalijaga Press, 2013), 16.

¹⁹ According to the provision of the People's Consultative Assembly of the Republic of Indonesia Number III/MPR/2000 on the source of law and the order of laws

religion is human rights which cannot be reduced or limited in any condition by anyone. Moreover, each person has the right to freedom of religion and select the religion and belief as well as perform worshipping according to each religion and belief.

THE CONCEPTION OF THE QUR'AN ON *DHIMMI* MINORITY'S RIGHT TO WORSHIP

Etymologically, *dhimmi* means non-Moslem citizens²⁰, among the Moslem-majority of citizens, who abide and obey the legitimate government based on Islamic laws.²¹ Literally, the *dhimmi* is a group of non-Moslems who live in the region under the Moslem authority and non-contradictory with Islamic laws.²² The meaning of *dhimmi* is different from *harbi*. *Harbi* is a non-Moslem who contradicts and opposes Islam. In this context, what needs to be highlighted is the position of Indonesia which is not a country of religion. Indonesia is a unitary stated whose ideology is Pancasila (five principles), by prioritizing unity in building the independent country. Indonesia is not build based on specific religion but based on unitary principles.²³

and regulations as reviewed based on the provision MPR RI number I/MPR/2003 on judicial review the material and the law status of provision of the Temporary People's Consultative Assembly of the Republic of Indonesia (MPRS) and The People's Consultative Assembly of the Republic of Indonesia (MPR RI of 1960 to 2002) stated that each regulation made by the government or legal institution cannot be contrary to the higher regulation.

²⁰ The writers used the term "non-Moslem", not kafir in the original version. The non-Moslem term is deemed to be more respectful and appreciative to the diversity of belief of everyone. The term "kafir" is perceived as harsh and blaming other religions. Whereas, each human being is demanded to live side by side harmoniously in the community and socializing. If we use the term "kafir" to the people who have different belief with us, then we (Moslems) are also considered as "kafir" by them. Therefore, to realize the Islamic egalitarianism attitude, the writers preferred to use the non-Moslem term in interpreting the meaning of *dhimmi* in this piece of writing

²¹ Mahmud Yunus, *Kamus Yusuf* (Jakarta: Hidakarya Agung, 1989), 135.

²² Smith Jonatan, *the Happercollins Dictionary of Religion* (New York: American Academy, 1995), 17. He also argued that, "... *dhimmi* is the other religious community within the adobe of Islam."

²³ Suko Wiyono, *Reaktualisasi Nilai-nilai Pancasila dalam Kehidupan Berbangsa dan Bernegara* (Malang: Wisnu Wardhana Press, 2015), 96. He is a professor in Constitutional law Universitas Negeri Malang.

According to Sayyid Sabiq, the *dhimmi* is also different from *mu'ahad* people. *Mu'ahad* is a non-Moslem citizen who made an agreement with Moslems, both in terms of requesting guarantees of security and safety from Moslems as well as based on *fidyah*.²⁴ Besides that, *al-musta'min* is a non-Moslem *harbi* citizen who enters the Moslem country safely. If seen from this condition, then the religious diversity in Indonesia can be categorized as *dhimmi* people (non-Moslem citizen) which needs to be protected and appreciated to create a excellent social harmony. The concept of *ahl al-dhimmah* is the pioneer of the emergence of inferior concept on non-Moslems. *Ahl al-dhimmah* is a non-Moslem community who sets an agreement to live under the sanctuary and protection of Moslem majority. They obtain protection and security as well as the rights to live and reside among the Moslem majority.²⁵ In classical fiqh books, *ahl al-dhimmah* is demanded to perform the obligations but not to obtain equality²⁶ as other Moslem communities. Based on this opinion, *dhimmi* people is called as second-class people.²⁷

The understanding of most people in responding the classical fiqh is still relatively ethnocentrism²⁸ which does not appreciate and uphold the rights equality. Whereas, the Quran calling for a spirit of appreciation and respect for *ahl al-dhimmah*. Quran also explicitly gives the freedom to them to worship according to their religion and belief. This is reflected in Q.S. al-An'am: 108 as the following:

²⁴ Smith Jonatan, *the Happercollins Dictionary of Religion* (New York: American Academy, 1995), 21.

²⁵ Fahmi Huwaidi, *Muwathinun la Dhimmiyun*, Cetakan ke-3 (Kairo: Dar El-Shuruq, 1999), 112.

²⁶ The classical *Fiqh* also mentions the inequality of rights and obligations owned by *ahl al-dzimmah*. Among them is the regulation of tax payment which is higher than the Moslems as the form of the loyalty and obedience. On the other hand, inequality is also experienced *ahl al-dzimmah* in the field of leadership, where non-Moslems cannot lead or have the strategic title in the government. These kinds of aspects create the stigma of making the non-Moslems are inferior before the society.

²⁷ Wahbah az-Zuhaili, *Fiqh al-Muwathinah* (Kairo. Dar El-Hikmah, 1426 H).

²⁸ See footnote page 1

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ كَذَلِكَ زَيَّنَّا لِكُلِّ أُمَّةٍ عَمَلَهُمْ ثُمَّ
إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ

*And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge. Thus, We have made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do.*²⁹

Al-Maraghi interpretation states that the above verse forbids human beings to curse the worship of other religions. This means that it is not allowed to disrespect other religions to respect and appreciate religion. Islam places morals as part of its identity. The verse above teaches one of the tolerance values in a good way. This will also raise the spirit of love of the homeland in the current era.³⁰ In another verse, tolerance in Islam has also been taught its requirements and objectives. Allah SWT has said in Q.S. al-Mumtahanah: 180 as the following:

لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا
إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

*Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly.*³¹

It is described in *Fathul Bayan* interpretation to respect and do good to non-Moslem (*ahl al-dhimmah*) both in words and deeds. In line with that, Al-Misbah interpretation mentions that the verse orders to all of us to be assertive to non-Moslems. However, this is applied to those who oppose or fight against Moslems. This shows that Islam is very respectful to opinions and traditions as well as the

²⁹ Q.S. Al-An'am: 108.

³⁰ Musthafa al-Maraghi, *Tafsir Al-Quran al-Karim al-Maraghi* (Jakarta: Pustaka Media, 1976), 221.

³¹ Q.S. Al-Mumtahanah: 8.

habits of people before Islam with the terms that they do not oppose or fight against Moslems.³²

This verse is related to *asbab al-nuzul* (the context of verse derivation) which is described by Quraish Shihab in this interpretation:

Asma' binti Abu Bakar told that her mother that time in the condition of *musyrikah* (non-Moslem) visited her, she went to the messenger of Allah and asked, "May I maintain a good relationship with my mother? The prophet then answered, "Yes, maintain a good relationship with her" (HR. Bukhari and Moslems). Imam Ahmad narrated through Abdullah bin Zubair that the mother of Asma' named Qutailah visited and brought some presents for her daughter, but she refused to accept it. Then the verse was revealed.³³

The verse taught us to be fair and tolerant to anybody and religions. This is the order from Allah SWT which also has a limitation and key terms which must be fulfilled such as not fight against or oppose Moslems and such. Sayyid Quthb in interpreting this verse has conducted a study that Islam is a religion of peace and love. It is one natural component which aims at bringing grace to every human. It is started from the story of *Fathu Makkah* in the era of the messenger of Allah when the Makkah infidels felt frightened on the revenge of the messenger of Allah. Whereas, the Messenger of Allah gives a statement which protected the *dhimmi* people in Makkah.

As what is performed by the messenger of Allah, Khalifah Umar bin Khattab also did the same thing when he succeeded to conquer Persia and took over Palestine. In the *sahih* hadith, the Messenger of Allah said, "*I will testify (leave) my ahl al-dhimmah! Whoever hurts him is like hurting me. Whoever hurts me has hurt God.*

³² Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Quran* (Jakarta: Lentera Hati, 2002), 227.

³³ Quraish Shihab, *Membumikan Al-Quran* (Jakarta: Lentera Hati, 2013), 114.

Whoever hurts God, he must be fought".³⁴ Basically, Islam as the religion of *rahmatan lil alamiin* does not teach to do discrimination to non-Moslems. Instead, on the contrary, Islam teaches the deeds of being respectful and appreciative to each other on to Adam descendants as Allah said in Q.S. al-Isra': 70 in the following:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

*And We have certainly honored the children of Adam and carried them on land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.*³⁵

Ibnu Katsir explained in this interpretation that Allah had made the virtues of mankind more than anything he has created, nobler than all creatures in this universe. From several mufassir's opinions and the above narration, it is clearly illustrated how the attitudes of tolerance and egalitarianism of the Messenger of Allah in respecting and appreciating the minority *dhimmi* people. The cooperative and sympathetic attitudes of his are also shown in Medina charter. Therefore, it can be concluded that the rights to freedom of religion and worship according to religion and beliefs has obtained legitimation from the Quran and hadith. This shows equality of rights between Moslem and *dhimmi* minority.

FIQH OF HUMAN RIGHTS AND EQUALITY OF RIGHTS TO WORSHIP FOR CITIZEN

Talking about *Fiqh*, the first impression which emerges is its relationship with *ubudiyah* affairs. *Fiqh* means the guidance or the way to do worship. In this modern era, we do not only face with classical problems related to *ubudiyah*. The life which is increasingly complex makes a human think more dynamically. Nowadays, there have been many views related to sensitive aspects by adding the

³⁴ أوصيكم بأهل ذمتي ومن أذى ذمتي فقد آذاني، ومن آذاني فقد أذى الله، ومن أذى الله فقد أذنت بحربه

³⁵ Q.S. Al-Isra': 70.

word “*fiqh*” in front of it. For example, this moment we are familiar with the *fiqh* of journalism, *fiqh* of social media, *fiqh* of education, *fiqh* of women and others. The *fiqh* intended in this context strives to persuade society to think globally and religiously.

As previously explained that the international world has acknowledged human rights as the global agreement which cannot be violated by anyone. However, many among Moslems who consider that human rights us the product of Jews and is not in accordance with Islamic laws. To decrease the stigma and to socialize human rights to Moslem, the writer offers the *fiqh* of human rights as an effort to mature the society. The society becomes the inseparable part of building Moslem civilization. The equality of rights between Moslems and *dhimmi* minority is crucially needed as a part of the implementation of Islamic teaching in the society.

The purposes of giving rights to minority citizens of the *dhimmi* are to guide and build a robust social community. This is needed to build togetherness and unity in a country or nation. This as exemplified by the Messenger of Allah in building the multicultural Medina society. The social development conducted by the Messenger of Allah was based on Allah’s statement in Q.S. al-Nisa’: 1 as the following:

يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا
كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

*O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed, Allah is ever, over you, an Observer.*³⁶

From the aspect of Balaghah knowledge, the verse above has the characteristics of *kalam al-khabar* containing an informative message. This means that human beings are created by men and women from different ethics and nations. However, they possess the

³⁶ Q.S. al-Nisa’: 1.

same dignity, degree, and prestige before Allah. According to Ali al-Shabuni in the book of *Shafwatut Tafasir, asbab al-nuzul*, this verse according to Ibnu al-Syakir is related to the desire of the Messenger of Allah to marry Abu Hindun with a woman from Bani Baidhah people. Then, Bani Baidhah said with a cynical tone "O, the Messenger of Allah, is it appropriate for us to marry our daughter with our slaves?" Not having had the chance to answer the question, Jibril revealed the verse. Therefore, Islam views the equality of dignity among human beings. Based on this equality of dignity, Islam forbids to hurt and treat the people of *ahl al-dhimmah* as inferior.

The frequently appeared problems in Indonesia related to this aspect is the problems of the house of worship construction. Why does that happen? It is because society still thinks that the community in their environment must be sterile from other groups and stay in the domination and authority. This condition will place the society to have the feeling of cynical and sentiment to each other on certain groups. This cannot be justified further related to the problems of the house of worship, many of us understand that the freedom of worshipping according to each religion and belief must be placed according to the social condition.

The *Fiqh* of human rights is born because there is a social gap between the freedom of religion of the majority of people with the freedom of religion of the *dhimmi* minority. If we see the equality of human beings' dignity before Allah, certainly this is not only in the context of religion, but this human right here is interpreted as the form of tolerance between religious people. Indeed, in the belief of each Moslem, it must be fostered that Islam is the truest religion. However, this cannot be interpreted in the social life of society exaggeratedly. As an effort to mainstream the *fiqh* of human rights discourse in the community, the writers attempted to construct some basis for legal making and justification of human rights in the Al-Quran as followings.

Table 1. The variance of *Fiqh* of Human Rights Construction³⁷

No.	Variance of Human Rights	Basis of Legal Making
1.	Right to life	Q.S. Al-Maidah: 52 Q.S. Al-An'am: 151
2.	Right to security	Q.S. Al-Maidah: 52
3.	Right to obtain basic needs	Q.S. Ad-Dzariyat: 19
4.	Right to freedom of independence	Q.S. An-Nisa': 93 Q.S. Al-Baqarah: 188 Q.S. Al-Hujurat: 12-13
5.	Right to freedom of worship, opinion, and association	Q.S. Al-An'am: 180 Q.S. At-Taubah: 67 Q.S. At-Taubah: 71 Q.S. Al-Hajj: 41 Q.S. Ali Imron: 110

The variance or model of Human Rights *Fiqh* construction above can be adjusted to *Fiqh Maqasidi* construction.³⁸ *Fiqh Maqasidi* is a *fiqh* study which attempts to get out of the Quran textual genre by seeing the social phenomena that occur. The word *Maqasidi* shows that there is a relationship between this *fiqh* and *Maqasid al-Syariah*. *Maqasid al-Syariah* prioritizes the novelty of thought and the flexibility of laws but remain to base on the five main studies, namely: *hifdz al-din*, *hifdz al-mal*, *hifdz an-nasl*, *hifdz al-aql*, and *hifdz al-nafs*. Those five studies are inseparable from Human Rights *Fiqh*.

The *Fiqh* of Human Rights belongs to the new genre of *fiqh* study. This *fiqh* tries to integrate the equality of rights in Islam and in general. The combination of both is expected to become a new

³⁷ The construction of this human rights *fiqh* is taken from various sources of primary references which discuss a lot about this human right in the perspective of Islam. Certainly, the basis of legal making of *fiqh* on this human right will not be separated from the study of other Islamic literature study, such as hadith and opinions of the scholars. The construction of this human rights need a judicial review and to be adjusted with the discourse of the future development.

³⁸ *Fiqh Maqasidi* is the social *fiqh* which becomes a new genre which tries to get out of the rigid classical texts in terms of religious affairs towards the contemporary social problem solving. In the context of religious life, this *fiqh* captures the social phenomenon in the society thoroughly but maintains the principles of *hifdz al-din* as the fundamental of problem solving.

discourse in the scientific study of Islam. If related to the problems of worship house construction, then this *fiqh* functions as the media of delivering religious information in its relationship with the tolerance of religious people. The tolerance of religious people which is fostered well will make the society calm and at peace. The riots on the name of religion can be prevented by understanding and appreciating each other between groups.

The phenomena of inequality of the rights to the worship of *dhimmi* minority and Indonesian Moslem majority are not only caused by the society's perception or behaviors as the object but also influenced by the implemented rules in the society. The Joint Regulation, of the Minister of Religion and the Minister of Home Affairs No. 9 and No. 8 in 2006, sets guidelines as to how regional heads and deputy regional heads are to maintain religious harmony, establish a forum for religious harmony and regulate the establishment of houses of worship, is not in line with its purpose. Moreover, the regulation is deemed as "violating the rights to worship" for the citizens.³⁹ To actualize the equality of rights to worship and construct the house of worship for *dhimmi* minority, nowadays the regulation is proposed to the judicial review ⁴⁰ in the Supreme Court.⁴¹

The suggestion for juridical review some articles which are considered as discriminating is delivered as a form of social supervision on the government's product of law. In the

³⁹ M. Alifudin Ikhsan. "Fiqh HAM dan Kebebasan Beribadah Minoritas Dzimmi di Indonesia". *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2017): 34-40.

⁴⁰ The judicial review on a legal regulation which is considered as contradictory to the legal law above that.

⁴¹ Since the joint regulation of the Minister of Religious Affairs and the Minister of Domestic Affairs Number 8 and Number 9 of 2006 is under the constitution, then to convey the juridical review is conducted in the Supreme Court. This means that the joint regulation of both Ministers is tested on its appropriateness to the constitution number 12 of 2008 on civil and political rights. If what is tested is the constitution with the state constitution, then the authority who deserves to conduct juridical review is the Constitutional Court. This is based on the provision of the People's Consultative Assembly of the Republic of Indonesia Number III/MPR/2000 on the source of law and constitutional regulation order.

constitutional hierarchy in Indonesia, each constitutional regulation issued by legislative and executive institution cannot be contrary to the higher constitution. The proposal of judicial review on the Ministry regulation is delivered by the Center for Pancasila Studies Universitas Negeri Malang. With the existence of human rights jurisprudence and attempts at judicial review of these discriminatory regulations, it is expected that the non-Moslem citizens of *dhimmi* minority can perform worshipping according to the study of Quran Q.S. Al-An'am verse 108 above.⁴²

CONCLUSION

The problems of *dhimmi* minority's house of worship construction are not only related to the religious matter, but also all aspects of social life such as custom, culture, law, politics, economy, and social culture. The phenomena of refusal on the construction of worship house among the majority are not only experienced by the *dhimmi* minority, but also other minority or religious groups. *Ahl al-dhimmah* often considered as the "second-class" human by the majority of citizens. This means that they do not have the same opportunities in several fields, as aforementioned in the previous subchapter. Whereas, the conception of the Quran on the equality of rights to worship for *dhimmi* has been clearly regulated. On the other hand, the government has strived to realize the atmosphere of tolerance and equality between citizens.⁴³

Apart from various polemics and phenomena occurring in the society, essentially, the rights to religion and worship according to the religion and belief are the absolute rights which cannot be contested by anyone and in any condition. This writing attempted to build a moderate thinking framework which prioritizes the Shari'a

⁴² Nofi Sri Utami, dkk. "Faith in God, Independence of Law and Independence of Judges (Study of Theistic Legal Realism in legal settlement)". *Justicia Islamica*, Vol. 15, no. 2 (2018): 197-210.

⁴³ Borrowing the term from Fahmi Huwaidi in his book entitled "*Muwathininun la Dhimmiyun*" which means that all citizens (including *dhimmi*) are also the citizens who deserve to obtain the equality of rights and obligation.

principles in *Maqasid al-Syariah* through the construction of human rights fiqh. This *fiqh* of human rights is a new treasure in contemporary Islamic science towards the harmony of life which is *baldatun thayyibatun wa rabbun ghafur*.⁴⁴

REFERENCES

Journal article

- Abidin, Zainal Ahmad and Thoriqul Aziz. "Javanese Interpretation of Moderatism: Contribution of Tafsir Al-Ibriz on Moderate Understanding In Sharia And Mu'amalah". *Justicia Islamica*, Vol. 15, no. 2 (2018): 241-263.
- Astawa, Ketut Diara. "Strategi Penyelesaian Konflik Sosial." *Jurnal Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2015): 31-39.
- Hayani, Aida. Social Problems of Modern Society in Applying Islamic Law in Aceh (Tracing The Past Culture Society Aceh in The Manuscript). *Justicia Islamica* 15, no. 2 (2018): 161-178.
- Ikhsan, M. Alifudin. "Nilai-nilai Cinta Tanah Air (Hubb al-Wathan) dalam Perspektif Al-Quran". *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 2, no. 2 (2017): 108-114.
- Ikhsan, M. Alifudin. "Fiqih HAM dan Kebebasan Beribadah Minoritas Dzimmi di Indonesia'. *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 2, no. 1 (2017): 34-40.
- Utami, Nofi Sri. "Faith in God, Independence of Law and Independence of Judges (Study of Theistic Legal Realism in Legal Settlement)". *Justicia Islamica* 15, no. 2 (2018): 197-210.

Book

- Ali, Abi Hasan. *Asbab an-Nuzul*. Mesir: Dar al-Kitab al-Islamiyyah, 468H.
- al-Hakim, Suparlan. *Pendidikan Kewarganegaraan dalam Konteks Indonesia*. Malang: Setara Press, 2016.

⁴⁴ M. Alifudin Ikhsan, "Nilai-nilai Cinta Tanah Air (Hubb al-Wathan) dalam Perspektif Al-Quran", *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*. Vol. 2, 2 (2017): 108-114.

- Hamka. *Tafsir Al-Azhar Jilid 1*. Jakarta: Gema Insani, 2015.
- Hikam, Muhammad. *Peran Masyarakat Sipil Indonesia Membendung Radikalisme Deradikalisasi*. Jakarta: Kompas, 2016.
- Husaini, Ardian. *Kerukunan Beragama dan Kontroversi Penggunaan Kata "Allah" dalam Agama Kristen*. Jakarta: Gema Insani, 2015.
- Huwaidi, Fahmi. *Muwathhinun la Dzimmiiyuun*. Cetakan ke-3. Kairo: Dar El-Shoruq, 1999.
- Ikhsan, M. Alifudin. *Divine Solutions from the Quran: Dialektika Langit dan Bumi*. Malang: Dream Litera, 2015.
- Jonathan Z, Smith. *The Heppercollins Dictionary of Religion*. New York: American Academy, 1995.
- Kementerian Agama Republik Indonesia. *Al-Quran dan Terjemahannya*. Jakarta: Direktorat Bimas Islam Kementerian Agama Republik Indonesia, 2016.
- Khalil, Muhammad Hassan. *Islam dan Keselamatan Pemeluk Agama Lain*. Bandung: Mizan, 2016.
- Kosasih, Ahmad. *HAM dalam Perspektif Islam: Menyikap Persamaan dan Perbedaan Antara Islam dan Barat*. Jakarta: Salemba Diniyah, 2003.
- Kumelo, Mujaid. *Fikih HAM: Ortodoksi, dan Liberalisme Hak Asasi Manusia dalam Islam*. Malang: Satara Press, 2015.
- Lembaga Pengembangan Pendidikan dan Pembelajaran (LP3) UM. *Islam Nusantara: Meneguhkan Moderatisme dan Mengikis Ekstrimisme Kehidupan Beragama*. Malang: UM Press, 2015.
- Maarif, Ahmad Syafii. *Fikih Kebhinnekaan: Pandangan Islam Indonesia tentang Umat, Kewargaan dan Kepemimpinan Non-Muslim*. Bandung: Mizan, 2016.
- . *Islam dan Pancasila sebagai Dasar Negara: Studi Tentang Perdebatan dalam Konstituante*. Bandung: Mizan, 2017.
- al-Maraghi, Mustofa. *Tafsir Al-Quran al-Kariim al-Maraghi*. Jakarta: Pustaka Media, 1976.
- Nafis, Kholil. *Fikih Kebangsaan: Studi Histori dan Konseptual Perlindungan Kehidupan Beragama dalam Negara Bangsa*. Jakarta: Mitra Abadi Press, 2015.

- Qurbani, Zainul Abidin. *Islam dan Hak Asasi Manusia Sebuah Kajian Komprehensif*. Jakarta: Citra, 2016.
- Rodli, Ahmadi. *Stigma Islam Radikal*. Yogyakarta: UIN Sunan Kalijaga Yogyakarta Press, 2013.
- Sahal, Ahmad. *Islam Nusantara: Dari Ushul Fiqh Hingga Paham Kebangsaan*. Bandung: Mizan, 2015.
- Shihab, Alwi.. *Islam Inklusif: Menuju Sikap Terbuka dalam Beragama*. Bandung: Mizan, 1999
- Shihab, Quraish. *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Quran Volume 2*. Jakarta: Lentera Hati, 2002.
- . *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian Al-Quran Volume 12*. Jakarta: Lentera Hati, 2002.
- . *Membumikan Al-Quran*. Bandung: Mizan, 2013.
- Tim Dosen Pendidikan Agama Islam UM. *Pendidikan Islam Transformatif: Membentuk Pribadi Berkarakter*. Malang: Dream Litera, 2015.
- Wiyono, Suko. *Reaktualisasi Nilai-nilai Pancasila dalam Kehidupan Berbangsa dan Bernegara*. Malang. Wisnu Wardhana Press, 2015
- Yunus, Mahmud. *Kamus Yusuf*. Jakarta: Hidakarya Agung, 1989.
- al-Zuhaili, Wahbah. *Fiqh al-Muwathinah*. Kairo: Dar el-Hikam, 2014.

Laws

- Ketetapan MPR Republik Indonesia Nomor III/MPR/2000 tentang sumber hukum dan tata urutan peraturan perundang-undangan sebagaimana telah ditinjau berdasarkan ketetapan MPR RI nomor I/MPR/2003 tentang peninjauan kembali materi dan status hukum ketetapan MPRS dan MPR RI tahun 1960 sampai 2002.
- Pusat Kerukunan Umat Beragama. *Himpunan Peraturan tentang Layanan Negara terhadap Kehidupan Beragama*. Jakarta: Kementerian Agama Republik Indonesia, 2015.
- . *Himpunan Peraturan Terkait Pendirian Rumah Ibadah*. Jakarta: Kementerian Agama Republik Indonesia, 2015.