



**HUMAN RIGHTS AND ISLAMIC LAW DISCOURSE:  
THE EPISTEMOLOGICAL CONSTRUCTION OF ABUL A'LA AL-MAUDUDI,  
ABDULLAHI AHMED AN-NAIM, AND MASHOOD A. BADERIN**

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DOI: 10.21154/justicia.v19i1.3282

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*Received: Sept 17, 2021*

*Revised: April 15, 2022*

*Approved: June 27, 2022*

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**Abstract:** This study aims to analyze the epistemological construction of human rights from the orthodox perspective of Al-Maududi, the liberalism perspective of An-Na'im, and the moderatism perspective of Baderin. This study uses library research with a descriptive-qualitative approach. This study shows that the presence of Al-Maududi's human rights orthodoxy seeks to campaign that the concept of human rights owned by Islam is far more humanistic than the ones campaigned for and standardized by the Western. On the other hand, the presence of liberalism belief moderated by Abdullahi Ahmad An-Na'im strives to fight for Islamic human rights, which can comply with the human rights standards of the Western. The standardization of An-Na'im's liberalism departs from the view that human beings are the measure of everything. Therefore, that human rights liberalism is anthropocentric and secular. In the middle of those two different points of view about human rights, Mashood A. Baderin tried to mediate Islam and human rights harmoniously. For Baderin, instead of making those two piles contradict, they should be synergized with each other. Theoretically and practically, this article offers a discourse between the dialectical discourse of Islamic and western human rights.

Penelitian ini bertujuan menganalisis bagaimana konstruksi epistemologi ortodoksi HAM dalam perspektif Al-Maududi, konstruksi epistemologi liberalisme HAM dalam perspektif An-Na'im, serta konstruksi epistemologi moderatisme HAM dalam pandangan Baderin. Penelitian ini merupakan penelitian kepustakaan dengan pendekatan

deskriptif-kualitatif. Adapun hasil dari studi ini menunjukkan bahwa kehadiran ortodoksi HAM Al-Maududi berupaya mengkampanyekan bahwa konsep HAM yang dimiliki Islam merupakan konsep HAM yang jauh lebih humanis ketimbang HAM yang dikampanyekan dan distandarkan oleh Barat. Sebaliknya, kehadiran liberalisme HAM ala Abdullahi Ahmad An-Na'im berupaya memperjuangkan bahwa HAM Islam harus mengikuti standar HAM yang dimiliki oleh Barat. Standarisasi liberalisme HAM An-Na'im berangkat dari pandangan yang menjadikan manusia sebagai ukuran dari segala sesuatu. Oleh karena itu, liberalisme HAM bersifat antroposentris dan sekuler. Di tengah kedua kutub pemikiran HAM yang berbeda tersebut, Mashood A. Baderin berusaha mendudukkan Islam dan HAM secara harmonis. Bagi Baderin, keduanya tidak harus dipertentangkan, melainkan disinergikan satu sama lain. Secara teoritis dan praktis, artikel ini menawarkan sebuah diskursus antara wacana HAM Islam dan barat yang dialektis.

**Keywords:** Human Rights; Islamic Law; Abul A'la Al-Maududi; Abdullahi Ahmed An-Na'im; Mashood A. Baderin.

## INTRODUCTION

The issues of human rights enforcement and infringement are always warmly discussed and have become one of the essential international concerns nowadays.<sup>1</sup> It does not become a sudden anymore, while religions are often used as the scapegoat for several cases of human rights violations worldwide. However, religions also claim to be pioneers in upholding human rights at different levels. After all, history had recorded that human rights regulation played a fundamental role as a control against human rights violations in both eras of World War I and II. So, there is no doubt that all human beings with any religious background will give considerable attention to enforcing human rights. Jazim Hamidi even once stated that almost all countries had ratified the concept of human rights within their constitutional framework. Western and some Eastern countries have made Western human rights something they called "the umbrella constitution." In contrast, the Eastern countries, in this case, are Muslim majority countries that also do not want to be left behind in case of ratifying the concept of human rights in Islam itself, as stated in the Cairo declaration.<sup>2</sup>

The birth of the Universal Declaration of Human Rights by the United Nations on December 10, 1948,<sup>3</sup> became a new standard and undermined human rights standards in Islam. Several controversial issues include the freedom to change religion, same-sex marriage, democracy, and gender discrimination.<sup>4</sup>

<sup>1</sup> Mujaid Kumkelo, Moh Anas Kholish, and Fiqh Vredian Aulia Ali, *Fiqh Hak Asasi Manusia* (Malang: Setara Press, 2015). i.

<sup>2</sup> Kumkelo, Kholish, and Ali.5.

<sup>3</sup> Majda El-Muhtaj, *Hak Asasi Manusia Dalam Konstitusi Indonesia: Dari UUD 1945 Sampai Dengan Amendemen UUD 1945 Tahun 2002* (Jakarta: Kencana, 2007). 52.

<sup>4</sup> See Ahmad Nabil Amir and Tasnim Abdul Rahman, "The Protection of Human Rights In Islam: As

These issues are considered incompatible with the teachings of Islamic law, as voiced by the orthodox human rights group fronted by Abu Al-A'la Al-Maududi. With his orthodox concept of human rights, Al-Maududi revealed that long before Western countries declared these humanitarian issues, Islam had offered a very humanist and transformative concept of human rights. Human rights are conceptually configured in the Qur'an, Hadith, the Medina Charter, and the Sermon of Wada' Rasulallah.<sup>5</sup>

On the other hand, the existence of orthodox human rights groups that Al-Maududi has voiced made the image of Islam in the eyes of the West even worse because it is considered impartial to the values of humanism that the West has standardized in the name of universal truth.<sup>6</sup> This requires the birth of a counter-movement to restore the image of Islam in international eyes, that Islam is very pro-human rights enforcement. This group is then referred to as the genealogy of human rights liberalism, which in this paper is represented by Abdullahi Ahmad An-Naim.<sup>7</sup>

In addition to the two camps above, there is also Mashood A. Baderin, who seeks to build a dialogue between international human rights law and Islamic law to realize human rights in the context of applying Islamic law in Muslim countries. Baderin believes that although Islam is not the sole factor in realizing human rights, it is an essential factor that can be used as a constructive means to improve the situation of human rights enforcement in countries with a Muslim majority.<sup>8</sup>

So far, previous studies have only looked at the relationship between Islam and human rights using a monolithic and sich perspective. Such as the study conducted by Yulianto<sup>9</sup>, which looks at the method used by an-Naim in looking at the relationship between Islam and human rights issues. Alternatively, Rojak's study<sup>10</sup> looks at Baderin's thoughts on the relationship between Islamic law and

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Discoursed In The Works of Al-Qaradawi," *Justicia Islamica* 14, no. 2 (November 14, 2017), <https://doi.org/10.21154/justicia.v14i2.1221>.

<sup>5</sup> Muhammad Tahir Azhary, *Negara Hukum: Suatu Studi Tentang Prinsip-Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah Dan Masa Kini*, 2nd ed. (Jakarta: Kencana, 2003). 18.

<sup>6</sup> Abdullahi Ahmed An-Na'im, "Islam, Hukum Islam Dan Dilema Legitimasi Budaya Bagi Hak Asasi Manusia Universal," in *Etika Terapan I: Sebuah Pendekatan Multikultural*, ed. Larry May (Yogyakarta: Tiara Wacana, 2001).

<sup>7</sup> Muhyar Fanani, *Membumikan Hukum Langit: Nasionalisasi Hukum Islam Dan Islamisasi Hukum Nasional Pasca Reformasi* (Yogyakarta: Tiara Wacana, 2008).

<sup>8</sup> Mashood A. Baderin, *International Human Right and Islamic Law* (New York: Oxford University Press, 2003). 2.

<sup>9</sup> Rohmad Adi Yulianto, "Hak Asasi Manusia dan Hukum Islam (Pandangan An-Naim Terhadap Reformasi Hukum Islam)," *Veritas* 5, no. 2 (September 30, 2019): 43-54, <https://doi.org/10.34005/veritas.v5i2.486>.

<sup>10</sup> Jeje Abdul Rojak, "Hak Asasi Manusia Dan Hukum Islam: Telaah Terhadap Pemikiran Mashood A. Baderin," *Al-Manahij: Jurnal Kajian Hukum Islam* 5, no. 2 (2011).

international human rights law. The two studies only present thoughts on the relationship between Islam and human rights from one point of view, namely an-Naim and Baderin. Therefore, it is at this moment that this paper tries to fill the void of previous studies that have not examined the epistemological construction of Islam and human rights relations from the perspective of al-Maududi, an-Naim, and Baderin, each of which represents orthodoxy, liberalism, and moderatism schools. Therefore, this paper will focus on the question: how is the epistemological construction of orthodoxy, liberalism, and human rights moderatism in the perspective of al-Maududi, an-Naim, and Baderin.

This study uses library research with a qualitative descriptive approach whose data are in the form of theories, concepts, and ideas.<sup>11</sup> The researcher collected various kinds of literature, direct works from the thoughts of al-Maududi, an-Naim, and Baderin on the discourse of Islam and human rights, and various supporting literature. Data from the literature that has been collected by researchers to be read and studied in depth. Then the collected data is sorted and classified for later analysis.<sup>12</sup> Based on the data obtained, the author uses content analysis techniques to conclude efforts to find the characteristics of the message, and is carried out objectively and systematically from the thoughts of the three characters studied.<sup>13</sup> The data is then presented using a descriptive method, which is used to describe everything related to the third thought about Islam and human rights.<sup>14</sup>

## **THE HUMAN RIGHTS DISCOURSE: A THEORETICAL BASIS OF AL-MAUDUDI, AN-NA'IM, AND BADERIN'S THOUGHT**

Terminologically, human rights are known by four terms, namely (a) human rights; (b) fundamental rights; (c) citizens' rights; and (d) collective rights. Human rights are considered the most adequate and most comprehensive terminology and this terminology can accommodate international and national aspects. Meanwhile, fundamental rights terminology only refers to national aspects. The term citizens' rights is found in the *Declaration des droits de l'Homme et du Citoyen* in 1789 in France. The mention of citizens' rights is still possible as long as the rights in question are freedom of speech, organization, and assembly, including the freedom to move across national borders. Today, few political rights can be called citizens' rights, such as the right to vote and be elected. The fourth terminology is collective rights, found in the African Charter on Human and Peoples' Rights

<sup>11</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2006). 4.

<sup>12</sup> Sapari Imam Asari, *Suatu Petunjuk Praktis Metodologi Penelitian Sosial* (Surabaya: Usaha Nasional, 1989), 31.

<sup>13</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: RajaGrafindo Persada, 2003). 29.

<sup>14</sup> Moleong, *Metodologi Penelitian Kualitatif*. 179.

in 1981. This charter provides a reasonably clear distinction between individual rights and collective rights. Among the four terms, “human rights” is considered the most comprehensive, adequate, and, in practice, the most widely used.<sup>15</sup>

Whenever we talk about human rights, the primary reference is often used, namely the Universal Declaration of Human Rights (UDHR), which is seen as the pinnacle of global human conceptualization that includes support for and recognition of human rights. Although, indeed, the standard or version used is closely related to the socio-cultural background, ideology, and Western political system, which are believed to have universal virtues.<sup>16</sup>

The Universal Declaration of Human Rights is the first element of the Legislative Rights Act, a tabulation of fundamental international rights and freedoms. International Covenants establish tabulations of legally binding rights and additional protocols to the International Covenant on Civil and Political Rights. The two committees monitoring each Covenant’s implementation provide a mechanism for enforcing these rights.

To better understand the basic concepts of human rights, it is interesting to examine four human rights theories as mentioned by Todung Mulya Lubis, namely; first, natural rights, which hold the view that human rights are rights that are owned by all human beings at all times and places based on their destiny as human beings. human rights are rights that belong to all human beings at all times and in any virtue of being born as human beings). Natural rights theory, which is the origin of the idea of human rights, stems from natural law theory. This theory can be traced back as far back as ancient times with Stoic philosophy to modern times through the natural law writings of Saint Thomas Aquinas. Hugo de Groot (Latin name: Grotius), a Dutch jurist who has been named the “father of international law,” further developed Aquinas’ natural law theory by breaking its theistic origins and making it a product of rational, secular thought.<sup>17</sup>

Second, the positivist theory holds that because rights must be contained in the fundamental law, they are seen as rights through constitutional guarantees (rights should be created and granted by the constitution, laws, and contracts). This theory or school of positivism reinforces the attacks and rejections of utilitarian circles, developed later more systematically by John Austin. The positivists argue that the existence and content of rights can only be derived from state law. The only valid law is an order from the sovereign. It does not come from “nature” or “morals.”<sup>18</sup>

<sup>15</sup> Baharuddin Lopa, *Al-Qur'an Dan Hak-Hak Azasi Manusia* (Yogyakarta: Dana Bhakti Prima Yasa, 1996), 1.

<sup>16</sup> Rhona K. M. Smith, *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2008).

<sup>17</sup> Edmund Burke, ed., *Reflection on the Revolution in France* (London: Conor Cruise O'Brien, 1968).

<sup>18</sup> Burke, 12.

The third is cultural relativist theory (cultural relativist theory). This theory is one form of anti-thesis of the theory of natural rights (natural rights). This theory is of the view that the assumption that rights are universal violates one cultural dimension against another or cultural imperialism. What is emphasized in this theory is that humans are social and cultural interactions and differences in cultural traditions and civilizations contain different ways of being human. Therefore, adherents of this theory say that rights belonging to all human beings at all times in all places would be the rights of desocialized and deculturized beings. Fourth is Marxist doctrine (Marxist doctrine and human rights). Marxist doctrine rejects natural rights theory because the state or collectivity is the repository of all rights.<sup>19</sup>

The conflict between two different “ideologies” in applying human rights on a national and international scale, namely universalism and cultural relativism, has become the hottest debate in the last two decades. On the one hand, universalism states that more and more “primitive” cultures will eventually develop to have the same legal system and rights as Western culture. Cultural relativism, at another level, states the opposite, namely that traditional culture cannot be changed.<sup>20</sup>

In universalism, an individual is a social unit that has absolute rights and is directed at the fulfillment of personal interests. In the model of cultural relativism, a community is a social unit. In this context, there are no known concepts such as individualism, freedom of choice, and equality. The interests of the community are the top priority. This doctrine becomes the legitimacy of countries that oppose any application of the concept of rights from the West and regard it as “cultural imperialism.” However, according to Rhona K. M. Smith, these countries have unwittingly ignored that the nation-state concept was adopted, a “product” of the West and the goal of modernization, including economic prosperity.<sup>21</sup>

The issue of cultural relativism only emerged towards the end of the Cold War as a response to the universal claims of international human rights ideas. The idea of cultural relativism postulates that culture is the only source of legitimate moral rights or codes. Thus, human rights are deemed necessary to be understood from the cultural context of each country. All cultures have the same right to life and dignity, which must be respected.<sup>22</sup>

Based on this argument, the defenders of the idea of cultural relativism reject the universalization of human rights, mainly if it is dominated by one particular culture – in this case, Western culture. Developing and Islamic countries generally

<sup>19</sup> Peter Davies, ed., *Hak Asasi Manusia: Sebuah Bunga Rampai* (Jakarta: Yayasan Obor Indonesia, 1994). 1-30.

<sup>20</sup> Todung Mulya Lubis, *Bantuan Hukum Dan Kemiskinan Struktural* (Jakarta: LP3ES, 1986).

<sup>21</sup> Smith, *Hukum Hak Asasi Manusia*, 2008.

<sup>22</sup> Smith, 21.

promote the idea that human rights are tied to a cultural context. This idea was so prominent in the 1990s—especially before the World Conference on Human Rights in Vienna—was voiced loudly by leaders and intellectuals (who usually represent the interests of the status quo) in these countries. Leaders of countries in the Western Pacific Valley region, for example, make claims that what they call “Asian values” are more relevant to progress in the region than “Western values” (such as human rights and democracy), which are considered not so urgent for Asian nations.

Furthermore, the assumption is that the West carries out a “cultural domination” over an Eastern perspective. The East and South countries underline the existence of diversity or cultural diversity. These countries think that what they want to implement or enforce globally is the western version of human rights. According to Didi Nazmi, diversity must be guaranteed democratically, and the dissemination of human rights must be done democratically. Furthermore, in the same song, the spread of human rights must not violate human rights.<sup>23</sup>

Regarding conceptual and actual, human rights are vulnerable to being influenced by various ideological, political, and cultural aspects. The dialectic of thinking between universality or relativity or particularity of human rights will still occur in various forums of various circles until now.

## **THE EPISTEMOLOGICAL CONSTRUCTION OF ISLAM AND HUMAN RIGHTS ORTHODOXY BY AL-MAUDUDI**

Al-Maududi’s epistemological construction is based on three principles, namely *Tauhid* (oneness of God), *Risalah* (apostolate), and *Khilafah* (caliphate). *Tauhid* means that God almighty is the creator, maintainer, and owner of the universe and the contents, both organic and non-organic. According to Al-Maududi, Allah has the right to give orders or prohibit them. Only Allah is worthy of worship and obedience. Not a single aspect of all life forms of human organs and senses exist. Control over physical objects or objects themselves is created or acquired of our own volition. Everything is part of God’s gift and bestowed by Him.<sup>24</sup>

Therefore, in Al-Maududi’s conception, no one has the right to make a human rights consensus based on anthropocentric *a sich*. This right belongs only to God. The principle of the oneness of God causes the concept of the rule of law and human politics to be meaningless. No individual, family, class, or race can place him above the authority of God. God is the Ruler, and his order becomes an Islamic law.<sup>25</sup>

<sup>23</sup> Eko Riyadi and Supriyanto Abdi, eds., *Mengurai Kompleksitas Hak Asasi Manusia: Kajian Multi Perspektif* (Yogyakarta: PUSHAM UII, 2007).

<sup>24</sup> Abul A’la Al-Maududi, *Hak-Hak Asasi Manusia Dalam Islam*, trans. Bambang Iriana Djadjaatmaja (Jakarta: Bumi Aksara, 2008). 1.

<sup>25</sup> Al-Maududi.

In Al-Maududi's perspective, *Khalifah* is interpreted as a "representative." Meanwhile, according to Islam, man is God's representative on earth because he carries out the power delegated to him. Within the prescribed limits, he is required to exercise God's power.<sup>26</sup> In Islam, humans are representatives (Khilafah) of God worldwide. Therefore, humans must be able to carry out the mandate in managing and maintaining this earth by the instructions that have been set through religious laws.

Al-Maududi emphasized that absolute sovereignty is in the hands of God, not in the hands of humans. Thus, it is different from the theory of democracy in general<sup>27</sup>, which states that sovereignty is in the hands of the people. According to Al-Maududi, the words "people's sovereignty" are often just empty words because popular participation in most democracies is only done once in four or five years in the form of elections. After that, the absolute control of power is in a small group of rulers who determine all policies in a country. This ruling group acts on behalf of the people, although some of their thoughts and energy are not for the people, only to maintain the power they hold and to secure their interests. That is why Al-Maududi is not eager to approve of democracy as practiced by most modern countries because it turns out that the most modern political system has failed to create socio-economic, socio-political, and legal justice.<sup>28</sup>

Al-Maududi's rejection of the theory of popular sovereignty is not only based on evidence of democratic practices that are too often distorted but mainly based on his understanding of the verses of the Qur'an, which show that the ultimate authority and sovereignty are in the hands of God. Furthermore, Al-Maududi views that only God has the right to give law to humans. Humans have no right to create laws and determine what is permissible (halal) and prohibited (haram). The law referred to here is the fundamental norm for creating a just and prosperous society, not administrative law or traffic law, and so on. In this sense, humans are allowed to make regulations as detailed as possible.<sup>29</sup>

Based on the verses of the Qur'an, which assert that the ultimate authority and sovereignty is in the hands of God, and only God has the right to create laws (see Al-Quran 12:40; 3:154 and 79; 16:116, Etc.), Al-Maududi revealed several principles, namely; First, no one person, group of people or even the entire population of a country can claim sovereignty (sovereignty). Only God alone

<sup>26</sup> Munawir Sjadzali, *Islam Dan Tata Negara: Ajaran, Sejarah Dan Pemikiran* (Jakarta: UIP, 2003). 164.

<sup>27</sup> See Moh. Anas Kholish and Yulianto Yulianto, "Dialektika Pemikiran Islam Dan Demokrasi Manhaj Indonesia: Sebuah Potret Historisitas, Kontinuitas, Dan Perubahan," *Waskita: Jurnal Pendidikan Nilai dan Pembangunan Karakter* 2, no. 2 (July 1, 2017): 25-38, <https://doi.org/10.21776/ub.waskita:jurnalpendidikanilaiandnpembangunankarakter.2018.002.02.3>.

<sup>28</sup> Abul A'la Al-Maududi, *Islamic Law and Constitution* (Lahore, 1960). 31.

<sup>29</sup> Amin Rais in Abul A'la Al-Maududi, *Khilafah Dan Kerajaan*, trans. Muhammad Al-Baqir (Bandung: Mizan, 2007), viii-ix.



holds sovereignty in the truest sense. All human beings are only implementers of God's sovereignty. Second, God is the objective lawgiver, so only He has the absolute right to make laws and regulations. Humans can make laws and regulations as long as they do not conflict with the basic laws and regulations that come from revelation. Third, a government that carries out the basic rules from God as explained by His prophet will get the people's obedience because the government, in principle, acts as a political body that enforces God's rules.<sup>30</sup>

Al-Maududi, in his work entitled *Human Rights in Islam*, said that although the Islamic State can apply elsewhere on earth, Islam - with a system of its caliphate - never restricts human rights only at the level of the territorial Islamic State. Islam has laid down fundamental rights for humankind that must be obeyed and must be respected in all circumstances. Al-Maududi exemplifies this fundamental right in the context of a murder case. According to him, the conception of blood is a sacred thing that should not be spilled without foundation and a clear legal basis. So killing is part of Islam's most fundamental human rights violations.<sup>31</sup>

Al-Maududi said that the conception of human rights in Islam is very accommodating to issues that are not covered by Western human rights. According to him, in an Islamic perspective, a small child or a newborn baby must obtain their fundamental rights as human beings even if the baby is born from a non-Muslim family. Al - Quran and hadith explicitly state that the purpose of the existence of the state in Islam is to build prosperity and peace for all humankind.<sup>32</sup>

## **THE EPISTEMOLOGICAL CONSTRUCTION OF ISLAM AND HUMAN RIGHTS LIBERALISM BY AN-NA'IM**

There is a confrontation between two "ideologies," universalism and cultural relativism. These two ideologies have become the most heated debate in the last two decades.<sup>33</sup> In universalism, an individual is a social unit with absolute rights to fulfill personal interests. In the model of cultural relativism, a community is a social unit. In this context, there are no known concepts such as individualism, freedom of choice, and equality. The interests of the community are the top priority. This doctrine becomes the legitimacy of countries that oppose applying the concept of rights from the West and regard it as "cultural imperialism." However, according to Smith's idea<sup>34</sup> introduced by An-Na'im, these countries have unwittingly ignored the fact that the nation-state concept was adopted,

<sup>30</sup> Al-Maududi, ix.

<sup>31</sup> Al-Maududi, *Hak-Hak Asasi Manusia Dalam Islam*. 5.

<sup>32</sup> Al-Maududi, *Khilafah Dan Kerajaan*. 18.

<sup>33</sup> Rhona K. M Smith, *Hukum Hak Asasi Manusia* (Yogyakarta: PUSHAM UII, 2008). 18-19

<sup>34</sup> Smith. 20.

which is a “product” of the West and the goal of modernization, which includes economic prosperity.<sup>35</sup>

On another level, An-Na’im, through his monumental work “deconstruction of sharia,” also stated that Western countries such as in Europe and America, with the mouthpiece of the United Nations and various products of human rights conventions, desire to equalize perceptions about the universality standards of human rights that must be met – adhered to in the regional context of the whole country.<sup>36</sup> However, this effort certainly raises a very significant debate. Because every country, especially Eastern countries, including Muslim countries, already has its concept. However, for An-Na’im, the regional concept of human rights must be adapted to a universal umbrella of human rights, namely the International Human Rights Convention, so that all countries should not reject this international principle.<sup>37</sup>

This international human rights principle, according to An-Na’im, is considered a correct principle and does not conflict with the actual sharia principles. Because the principles of international human rights are based on the side of humanism values as Islam when it was revealed in Mecca, at this point, An-Na’im stated that classical Islamic jurisprudence actually could not respect universal human rights because it was based on Madaniyah verses. In this modern era, new Islamic law based on Makkiyah verses must continue to be built and fought for so that Islamic Law is more egalitarian and prioritizes solidarity among human beings without discrimination.

An-Na’im emphasized that from the standard variants of the concept of human rights that countries in the east have owned, it must be harmonized with the international concept of human rights. All traditions and cultures share one common normative principle, which can support universal human rights standards. The universal principle is that one should treat others the same way one expects treatment from others. These regulations and rules adhere to and refer to the principle of reciprocity adopted by all major religions worldwide. On another level, the moral strength of a simple international human rights proposition can be easily captured and even appreciated by all human beings, both culturally and philosophically.<sup>38</sup>

According to An-Na’im, international human rights tries to deconstruct the discrimination of men against women and discrimination from one religion to another. However, ironically, according to An-Na’im, these discriminatory

<sup>35</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 2003). 89-93.

<sup>36</sup> Abdullahi Ahmed An-Na’im, *Dekonstruksi Syariah I*, 4th ed. (Yogyakarta: LKiS, 2004). 266.

<sup>37</sup> An-Na’im., 277.

<sup>38</sup> An-Na’im. 267.

efforts are reflected in the sharia, which was dropped after the hijrah as a discriminatory religion towards women. Because in many verses and hadiths, there is a tendency to place women in a lower position than men. On the other hand, sharia has also instituted a culture of slavery that is inhumane and irrelevant in the present context. In fact, according to An-Na'im, sharia also often provides a discriminatory wall between Muslims and non-Muslims, as the author has alluded to earlier.<sup>39</sup>

Even epistemologically, An-Na'im also ultimately criticized the concept of sovereignty adopted by Islam -which is widely adopted and believed by many Eastern countries, in this case, Islam-is, the teaching of God's sovereignty. Not solely the sovereignty of the Western model of the state. Talks about human rights lead to the rights given by God as the holder of the highest sovereignty. For An-Na'im, this kind of sovereignty is often hijacked by the authorities to legitimize his power to discriminate against the rights of non-Muslims. So An-Na'im argues that sovereignty in a modern state is in the hands of the people or humans. From this conceptual problem, An-Na'im recommends reconstructing understanding for Muslims against discriminatory verses that violate international human rights provisions.<sup>40</sup>

## **THE EPISTEMOLOGICAL CONSTRUCTION OF ISLAM AND HUMAN RIGHTS MODERATISM BY BADERIN**

Many circles, especially Western countries, view Islamic law as not following international human rights ideals. Even human rights cannot be realized by applying Islamic law as a state legal system. At the same time, there is also a significant pessimism in the Muslim community regarding the current disposition of international human rights principles proclaimed by the United Nations. This created endless discussions and debates to this day.

In that context, Mashood A. Baderin seeks to establish a dialogue between international human rights law and Islamic law to realize the fulfillment and protection of human rights in Muslim countries. Many UN member states are Muslim-majority countries that apply Islamic law wholly or partially as domestic law in their territory. In practice, these Muslim countries, in addition to participating in various human rights agendas carried out by the United Nations, have also included declarations and reservations from sharia or Islamic law when ratifying international human rights treaties.<sup>41</sup> Baderin stated:

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<sup>39</sup> Abdullahi Ahmed An-Na'im, *Islam Dan Negara Sekuler: Menegosiasikan Masa Depan Syariah* (Bandung: Mizan, 2007). 178-179.

<sup>40</sup> An-Na'im, *Dekonstruksi Syariah* I.270.

<sup>41</sup> Baderin, *International Human Right and Islamic Law*, 2.

“...there are some scope differences between Islamic and international human rights law, but that does not create a general antithesis between the two. Differences can be honestly discussed, and the noble notion of international human rights can be realized in the Muslim world if the concept of international human rights can be convinced to build from within the themes of Islamic law rather than express it as a foreign concept in Islamic law. Substantive justice is the main principle that can be applied to the philosophy of both Islamic law and international human rights law...”<sup>42</sup>

Regarding the debate on Islamic and international human rights law, citing Halliday, Baderin sees at least four views on the relationship between Islam and human rights. First, Islam is in harmony with international human rights. Second, genuine human rights can only be fully realized under Islamic law. Third, the goal of international human rights is an imperialist agenda that must be opposed. Furthermore, fourthly, Islam is not in harmony with international human rights. However, Baderin adds the fifth view Halliday misses: international human rights goals have a hidden anti-religious agenda.<sup>43</sup>

In Baderin’s view, if the concept of international human rights is understood as a universal humanitarian goal to protect individuals against abuse of power and to promote human dignity, then the view that Islam is incompatible with human rights is incorrect. While there may be some conceptual differences between Islamic and international human rights law, this does not make the two incompatible. There is an opinion that humans do not have the right to determine the law and must only submit to God’s commands. This opinion, for Baderin, is misleading because although humans have to submit to God’s commands, it does not mean they do not have the rights inherent in Islamic law. The principle of legality is fundamental in Islamic law, where all actions can be carried out except those prohibited by the provisions of *syara’*. This means that the opinion that humans have no rights but only carry out obligations and God’s commands are contrary to the principle of legality, making lifeless human dynamic and complicated.<sup>44</sup> So this is inconsistent with the objectives of the Shari’a (maqashid al-sharia), which aims to deliver the benefit and welfare of humans.<sup>45</sup>

## **POSITIONING THE PERSPECTIVE OF AL-MAUDUDI, AN-NAIM, AND BADERIN IN THE ISLAM AND HUMAN RIGHTS DISCOURSE**

In Michael Foucault’s perspective, discourse is a system of thinking, ideas, thoughts, and images that build the concept of culture. For Foucault, the discourse

<sup>42</sup> Baderin, 14-17.

<sup>43</sup> Baderin, 11.

<sup>44</sup> E. Rajae, *Islamic Values and Worldview: Khomeyni on Man, the State and International Politics*, 1983, 42-45

<sup>45</sup> Febri Hijroh Mukhlis, “International Human Right and Islamic Law: Sebuah Upaya ‘Menuntaskan’ Wacana-Wacana Kemanusiaan,” *Dialogia: Jurnal Studi Islam Dan Sosial* 15, no. 2 (December 1, 2017): 285-307, <https://doi.org/10.21154/dialogia.v15i2.1195>. 300.

has the effect of truth, produced through either true or false statements.<sup>46</sup> From Foucault's perspective, if it is related to the issue of Islam and Human Rights, then the narrative of Islam and Human Rights has also unconsciously become a discourse when the perspective of Islam and Human Rights is viewed with three glasses, namely al-Maududi with its textuality, an-Naim with his interpretation of liberalism and Baderin with his moderation genre. The three thoughts above certainly have their standards of truth with their respective epistemes. If al-Maududi sees the relationship between Islam and human rights with its Bayani epistemology, then an-Naim uses its Burhani epistemology more.

Meanwhile, Baderin tends to compromise between al-Maududi's centric Bayani and an-Naim's centric Burhani. However, what Baderin put forward is closer to an-Naim's thinking. However, the author tries to go beyond the three perspectives and place the three thoughts above proportionally in this article.

The discourse on Islam and Human Rights from the three trains of thought above is the point of the problem lies in whether the narratives in Islamic law must comply with the provisions of the Universal Declaration of Human Rights or vice versa, the provisions of the Universal Declaration of Human Rights must be subject to the provisions of the Universal Declaration of Human Rights on Islamic law. Alternatively, the two are bridged proportionally by both eclectic. For al-Maududi, the values of Human Rights teachings in Islam are considered more authoritative and universal than the provisions stated in the Universal Declaration of Human Rights. So, if both are *vis a vis*, then the Universal Declaration of Human Rights, which is "man-made law," must be subject to Islamic teachings with its divine law system. The universality of Islamic law, according to al-Maududi, lies in the human rights texts contained in the Qur'an and Sunnah.<sup>47</sup> Even further than that, al-Maududi said that the Universal Declaration of Human Rights was made with the doctrinal and ideological interests of Western liberalism. Thus, human products in the form of the Universal Declaration of Human Rights must not be subordinate to Islam's universal absolute and authoritative teachings.

Meanwhile, in the opposite perspective, an-Naim sees that the Universal Declaration of Human Rights is a global consensus that must be adhered to and obeyed by all human beings. Suppose there are Islamic narratives that conflict with the provisions of the Universal Declaration of Human Rights. In that case, the provisions of the Islamic law must adopt the Universal Declaration of Human Rights and adapt them to the present and contemporary context (anthropocentrism). For an-Naim, the values contained in the Universal Declaration of Human Rights are universal values used as "guidance" to prevent

<sup>46</sup> Michel Foucault, *Arkeologi Pengetahuan*, terj. Inyak Ridwan Muzir (Yogyakarta: IRCiSoD., 2012).

<sup>47</sup> Al-Maududi, *Hak-Hak Asasi Manusia Dalam Islam*.

various human rights violations. For an-Naim, the universality values of Islamic law lie in its substance, not its textual aspect. Therefore, it is unsurprising that an-Naim offers a theoretical perspective on “dekonstruksi syariah.”<sup>48</sup> In his theory, an-Naim criticized madaniyah verses considered quite controversial and discriminatory against human rights values. Thus, the makiyyah verses, considered by an-Naim to be more accommodating and compatible with human rights values, can interpret the particular madaniyyah verses.

It is different from Baderin, who tries to be eclectic between the textuality of Human Rights in Islam and the Universal Declaration of Human Rights values, which are compatible with Islamic teachings.<sup>49</sup> For Baderin, not all the Universal Declaration of Human Rights teachings can be used as guidelines, such as Human Rights regarding same-sex marriage, whose existence is contrary to all teachings of any religion, including Islam. For Baderin, not all products of western thought in the form of the Universal Declaration of Human Rights are wrong, so Muslims must distance themselves from it. Muslims must understand that the Universal Declaration of Human Rights plays a vital role in preventing human rights violations that are likely to be carried out by the authorities against weak people.

At this point, Islam as a cosmopolitan religion must answer various humanitarian problems that occur in the context of the present and here. The relationship between Islam and human rights is no longer seen in a dichotomous way as the confrontation of al-Maududi and an-Naim’s thoughts. According to Baderin, several crucial issues related to confrontation and reconciliation between Islamic law and human rights can be viewed from at least three perspectives. First, human rights and Islamic law can be seen as legal systems that have different foundations; secondly, there are certain aspects of human rights and Islamic law that contradict each other; and Third, there is a point of contact and meeting between the fundamental principles contained in Human Rights and Islamic Law.<sup>50</sup>

Harmony of international human rights with Islamic law, according to Baderin, can be seen in the goals of the International Covenant on Civil and Political Rights, which are considered to be in line with the general provisions and the highest goals of Shari’a, as seen in the Cairo Declaration of the Organization of the Islamic Conference on Human Rights. The declaration emphasizes the aspirations that express the desire of Muslim countries “To be involved in the efforts of mankind to uphold human rights, protect human beings from

<sup>48</sup> Abdullah Ahmad An-Na’im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*, trans. Ahmad Suaedi and Amirudin Arrani (Yogyakarta: LKiS, 1994).

<sup>49</sup> Baderin, *International Human Right and Islamic Law*.

<sup>50</sup> Baderin, *International Human Right and Islamic Law*, 50.

exploitation and persecution, and affirm their freedom and right to a life with dignity following the guidance of the Shari'a."<sup>51</sup> The declaration also states that universal human rights and freedoms are an integral part of Islam and a binding divine commandment that cannot be suspended, violated, or ignored by anyone. Although the reference to a 'binding divine commandment' in the Cairo Declaration reaffirms the theocentric approach to human rights in Islamic law, which differs from the anthropocentric approach in the International Covenant on Civil and Political Rights, it does not eliminate the common goal of protecting and promoting human dignity in international human rights law and Islamic law.

The scope of international human rights, according to Baderin, can be further enhanced in the Muslim world through a moderate, dynamic, and constructive interpretation of sharia as opposed to a hard-line and static interpretation. Especially about the rights of women and minorities and the application of criminal penalties in Islam. The jurists and early Islamic scholars even emphasized the importance of moderation and have accepted constructive views, which can now be relied upon to encourage the realization of international human rights norms in the religious system of Islamic law. The Qur'an describes Muslims as 'just people,' an image that hints at the importance of moderation.<sup>52</sup>

From the three thoughts above, it can be concluded that ignoring the textuality of the teachings of Human Rights in Islam is tantamount to deconstructing the legal certainty that has been stipulated in the Qur'an and Sunnah. On the other hand, ignoring the values and spirit behind these sacred texts is the same as deconstructing the values of justice in the Qur'an and Sunnah itself. Thus, legal certainty and justice in human rights fiqh must be balanced, not subordinated to one another. Thus, Baderin's thoughts are more relevant to answering the discourse between Islam and human rights. However, Baderin also seems to have forgotten the post-colonial narrative as a lens for viewing the relationship between Islam and human rights. So far, the Universal Declaration of Human Rights as a Western product is considered superior to human rights teachings in Islam. An-Naim and Baderin also deny the reality of America's injustice of human rights enforcement and its allies against Middle Eastern countries with their new colonial-style model.<sup>53</sup> For example, the human rights violations committed by non-Muslims against Muslim minorities tend to be blunt to enforce from human

<sup>51</sup> See Endrika Widdia Putri, "Memahami Hak Untuk Hidup Dalam Islam Berdasarkan Deklarasi Kairo," *Legalite Jurnal Perundang Undangan dan Hukum Pidana Islam* 5, no. 1 (September 10, 2020): 1-13, <https://doi.org/10.32505/legalite.v5i1.1908>.

<sup>52</sup> Mashood A. Baderin, "Dialogue among Civilisations as a Paradigm for Achieving Universalism in International Human Rights - A Case Study with Islamic Law," *Asia-Pacific Journal on Human Rights and the Law* 2 (2001): 1, 22-19.

<sup>53</sup> Emmit B Evans, "Iraq and the New American Colonialism," *Moebius* 1 (2003): 5.

rights violations against Bosnian Muslims, Muslim minorities in the Moro Philippines, Myanmar, and India, Arab Spring conflict to the Israeli-Palestinian conflict,<sup>54</sup> and the many more.

Various scriptural narratives that violate human rights, such as the death penalty for apostates, stoning for adulterers, *qisas* for murderers, or cutting off hands for thieves, must be interpreted according to the era's spirit. However, it was no later than these verses were deleted and deconstructed as An-Naim offered. Because the existence of these verses is removed, the sacredness of Islamic law as revealed law will be questioned for its authenticity and originality. From the author's perspective, the relation between Islam and human rights must use the perspective of the-anthropocentrism.

## CONCLUSION

Islam is often the scapegoat in human rights enforcement because some consider its norms to be contrary to Western concepts of human rights, such as on issues of discrimination against women, slavery, relations with non-Muslims, and so on. So An-Na'im's construction of human rights tries to fuse the concept of Islamic human rights with western human rights. In fact, according to An-Naim, the standards used by Islamic human rights must comply with Western human rights. On another level, in Al-Maududi's construction, long before Western countries declared human rights, Islam with its Medina Charter had offered a very humanist and transformative concept of human rights. This construction is the background for the birth of the Cairo declaration as to the antithesis of the Western concept of human rights configured in the Universal Declaration of Human Rights. The construction of Al-Maududi's Human Rights Orthodoxy requires Western human rights to comply with Islamic human rights standards because Islamic human rights are considered more humanistic. Amid the debate, Baderin also offered a concept that reconciled the two poles by way of harmonization. According to Baderin, Islamic and international law aim to protect and elevate human dignity.

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<sup>54</sup> Manny Rodriguez, "The Israeli-Palestinian Conflict in the Trump Era: A Human Rights Perspective," n.d., 36.



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