

ISLAM AND HUMAN RIGHTS IN INDONESIA
Perspectives on Freedom of Religion / Belief

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Abstract

This study wanted to reconstruct the discourse of human rights which focused on the issue of freedom of religion/belief (FORB) in Indonesia. This topic always has an appeal considering the development of Islam, both as a phenomenon of religion as well as social and political phenomenon, always in touch with human rights issues. For the majority, Islam is involved in human rights discourse needs to be viewed as a natural thing as it also occurs in the majority group in other countries. The natural state is increasingly gaining affirmation when also considering the doctrine of Islam which is also related to human rights. So the involvement of Islamic parties to human rights talks in Indonesia is not as excessive when considering the sociological position and character of Islamic doctrine. But because of who made the object of conversation, namely human rights and particularly freedom of religion or belief again, not something that is taken for granted, then the diversity within Islam itself impossible can be avoided. In this study the diversity of views presented in the trial which categorically can be grouped into two views, namely: inclusive and exclusive.

Introduction

Discussion on the relation between Islam and human rights is actually not a new subject. However, this topic remains an interesting subject because the development of Islam, either as a religious phenomenon or as social and political phenomena, is constantly connected to the issue of human rights. In the context of Indonesian Islam, the connection between Islam and human rights shows an interesting development after the changing political atmosphere in the post-New Order, following the fall of Suharto from his office on May 21, 1998. Arskal Salim and Azyumardi Azra (2003) find at least four significant developments in the Muslim society in the post-New Order era that seems to have connections with the issue of human rights, either in the discourse level or in the practical level.

The first development mentioned by Salim and Azra is the replacement of Pancasila as party ideology with Islam. Following this change, Islam-based parties –Salim and Azra mention Partai Persatuan Pembangunan (PPP) and Partai Bulan Bintang (PBB)- diligently offer discourses on Islamic shari'ah. Even PPP and PBB have been very persistent in amending the Constitution of 1945 with the inclusion of 'seven words,' i.e., "dengan kewajiban melaksanakan syariat Islam bagi pemeluknya" (with the obligation to observe Islamic shari'ah for its adherents). With the inclusion of these seven words, according to PPP and PBB, Islamic shari'ah will officially have a constitutional status in the national legal system.

But the agenda promoted by PPP and PBB found its failure in three yearly sessions of People Consultative Assembly - Majelis Permusyawaratan Rakyat (MPR) in 2000, 2001, and 2003.

Changes in ideological orientation –the second development in the post-New Order period– also took place in the level of society. In some places, there happened an increasing demand toward the implementation of Islamic shari’ah as developing in Aceh and South Celebes.¹

The third development is the emergence of hardliner Muslim groups, such as Laskar Jihad, Front Pembela Islam (FPI), Hizbut Tahrir Indonesia (HTI), and Majelis Mujahidin Indonesia (MMI). The emergence of these hardliner Muslim groups in society often leads to social clash as a result of using violence in their actions. FPI, for example, often attacks disco tic, night clubs, and other entertainment places, the acts which are believed as the implementation of the doctrine of *al-amr bi al-ma’ruf* and *al-nahy ‘an al-munkar*.

According to Salim and Azra, the fourth development is an increasing popularity of an Islamic magazine, *Sabili*, which according to AC Nielsen survey becomes the second magazine with large circulation after a girl magazine, *Gadis*. *Sabili* weekly magazine is printed more than 100.000 copies for its each edition. Initially, *Sabili* called itself as a magazine of preaching, but recently it seems to have promoted Islamic politics particularly propagated by hardliner Muslim groups. In some volumes, *Sabili* supports the implementation of Islamic shari’ah formally in Indonesia. In *Sabili*'s view, the best solution to get Indonesia out from crisis is through returning to the way of Allah, i.e. by implementing Islamic shari’ah.

The four developments above indicate, on the one hand, the existing contact between Islam and human rights. The most salient is of course violent acts which are often used by FPI. Among hardliner Muslim groups, FPI is the most publicized. FPI, for example, has been reported to get involved in clashes with *Aliansi Kebangsaan untuk Kebebasan Beragama atau Berkeyakinan* (AKKBB) – National Alliance for Freedom of Religion or Belief around National Monument (*Monumen Nasional* – Monas) on June 1, 2008. This clash happened due to the different views concerning Ahmadiyah. On the one hand, FPI views Ahmadiyah as a deviant sect which has no rights to live in Indonesia. On the other, AKKBB advocates Ahmadiyah. For AKKBB, the existence of Ahmadiyah should not be prohibited. AKKBB uses an argument of freedom of religion or belief to advocate Ahmadiyah. In human rights literature, the using of violence –either by state or by society– which aims to attack another group of different religion or belief is considered a type of persecution that contradicts human rights principles (Mohamed S.M. Eltayeb, 2003). As this persecution involves a religious group in Islam, the using of violence influences the images of Islam in human rights enforcement. Meanwhile, either religion or social entity is hoped to develop moral and social commitment toward human rights implementation (Khaled Abou al-Fadl, 2003).

The Problem of Universalism of Human Rights

Seen from a historical perspective, the process of development of human rights ideas which subsequently was put into effect universally after the publication of the Universal

¹ In another article, Arskal Salim and Azyumardi Azra (2003) describe that the implementation of Islamic shari’ah has been actually carried out sporadically in November 1999, when a young man, accused of committing adultery, was stoned (*rajam*) 100 times in front of the public. Meanwhile, in South Celebes, according to Salim and Azra, there has been increasing aspiration to the implementation of Islamic shari’ah particularly after Nanggroe Aceh Darussalam (NAD) receives status of special autonomy.

Declaration of Human Rights on December 10, 1948, the role of religion and religious leaders is neglected. A fair recognition to the limited role of religion 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 lights of contemporary Catholic theology, Suseno (2000) 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. Suseno also asserts that Catholic churches initially was cool and even attacked the modern idea of human rights, although in 1963 they became much more open.

Although there are differences between Islam, Catholicism and other religions, the acceptance of Islam toward human rights did not happen smoothly. Some literature that discusses the relation between Islam and human rights reveals the resistance shown by many scholars as well as Muslim states toward human rights. A book written by Ann Elizabeth Mayer (1999) and Daniel E. Price (1999), for example, treat the concept of cultural relativism which becomes the basis of rejection by some scholars in Muslim countries toward the idea of the universality of human rights. Using the concept of cultural relativism, human rights is seen to have limitations when applied in a society of Muslim countries which have cultural difference from the pioneers of universal human rights of the Western countries. Moreover, the West as supposed to dominant in creating and disseminating the idea of human rights is also views to have black record with regard to human rights enforcement compared to Muslim countries which are often viewed severely by the West.

Not all Muslim scholars agree with the distinction of human rights ideas based on the concept of cultural relativism. Todung Mulya Lubis (2000) regards the distinction of human rights on the basis of cultural universalism and relativism is 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 in his *Islam and the Secular State* (2008). Like Lubis, an-Na'im also argues that human rights is principally a universal idea. At the time of its formulation as universal idea which subsequently became known as Universal Declaration of Human Rights, religion is evidently (consciously) not put as the justifying foundation in order that fundamental ideas of human rights could be used either by religious man or irreligious people.

Toward the secular nature of universal human rights sparked by the United Nations, instead of rejecting this prominent Muslim thinker of Sudan firmly calls all Muslim to recognize that universal human rights was the product of international consensus. 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 moral and political power they have. An-Na'im is of course aware that his call and constructive views will harvest protests and rejections from some Muslims who remain in their view of cultural relativism.

Being aware of this matter, an-Na'im persistently conducts researches on Islamic law to find a more positive and reconciliatory relation between shari'ah and human rights. Before the publication of *Islam and the Secular State* (2008), in 1990 an-Na'im published *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. In both books, an-Na'im exhibits his arguments from the perspective of Islamic law to strengthen a positive and reconciliatory relation between Islam and human rights. An important conclusion from an-Na'im's thought is that Islam as a religious phenomenon can be used as legitimizing factor of the idea of universal human rights.

An-Na'im's idea is supported by Rhoda E. Howard. Like an-Na'im, Howard (2000) also argues that human rights which are developed by the United Nations were a product of secular thought, not based on divine decision. Being aware of the secular nature of human rights ideas, Howard actually does not regard religious legitimacy as an absolute matter. But if it is seen as giving guarantee for the implementation of human rights, religious legitimacy as developed by an-Na'im deserves a high appreciation. In light of the significance of 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* (2003) should be given attention:

Religions have too often 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 of 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, call which reach far beyond the mere protection of human rights.

An important point in the views of Runzo, Martin and Sharma is that how religion in a positive construction –although religion is often misused to justify the violation of human rights- is used as a source of energy for the enforcement of human rights in all aspects. Although human rights have become international regulation, the violation of human rights often takes place in some countries. Among the violation of human rights that should be given attention is the violation of freedom of religion or belief. Freedom of religion or belief is fundamental human rights which prevail universally and is codified in the international instrument of human rights. In the normative level, since the earlier phase of human rights it has been clear that freedom of religion or belief is a fundamental right, and certainly one of the most fundamental rights. Having emerged since 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 (Tore Lindholm, W. Cole Durham, Jr., Bahia G. Tahzib-Lie and Nazila Ghanea, 2004) as follows:

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, worships and obedience. The manifestation of freedom of religion or belief can be performed either in private or public sphere. Freedom can also be manifested individually or collectively with other.

Third is non-coercion. This norm emphasizes on 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 religions or belief without being compelled by any body.

Fourth is nondiscrimination. Based on this norm, state is obliged to respect and ensure that all individuals in 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 parent and guardian. According to this norm, state is obliged to respect the freedom of legally valid parent and guardian to ensure religious and moral education for their children in accordance with their own belief. State is also obliged to give protection for the rights of each child to 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 prevailing rights for religious community 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 as 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 emergent situations.

Although having many normative foundations, in fact Indonesia has not yet been free from violation of freedom of religion or belief. Scrutinizing again the above report, violation of freedom of religion or belief is done by state and society. Based on analysis by Imparsial (2006), violations which are done by state against freedom of religion or belief employ two modes. The first mode is that state commits violations indirectly through letting various violent acts done by society occur. In some cases it can be seen that the police let violent acts and do not prevent the actions, therefore suggesting a group of people continue their violent actions as to close worship places or to attack against the belief of other group. As an institution which has the authority to control the security and order in society, the police ought to take actions against the doers of violent acts. But it is very often that the police do the letting as if the act of violations is justified. The act of connivance by 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. In the second mode, state violates directly through the formulation and strengthening of various policies which limit and repress freedom of religion or belief.

It is still about violation by state. According to Ghufron Maburi (2007), this violation is caused by inability of state in taking distance from affairs of religion evolving in society. Freedom of religion or belief is parts of civil and political rights which are categorized as negative rights –different from social, economic and cultural rights which are categorized as positive rights. Positive rights (social, economic, and cultural) can be fulfilled if state takes an active part in promoting these rights. On the contrary, negative rights can be fulfilled and manifested if state does not interfere too far in religious affairs in society. Maburi mentions the existence of the directorate of the surveillance of society belief and religious stream (Direktorat Pengawasan Aliran Kepercayaan Masyarakat dan Keagamaan –Pakem) as an example of state intervention over the affairs of religion and belief. This directorate is under the Grand attorney established on the basis of the letter of decision of General Attorney Number KEP-108/JA/5/1984 on the institution of coordinating team of surveillance of society belief stream. According to Maburi, the role of state ought to be limited only in guaranteeing the rights of each individual citizen. In relation to freedom of religion or belief,

state according to Mabruri should do two things: first, it does not create regulations which limit and repress freedom of religion. Freedom of religion or belief in part of non-derogable human rights 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 rights to be respected as individual and equality before the law and the right not to be persecuted on the basis of retrospective law. The protection of these fundamental human rights is regulated in Article 4 the Law Number 39 (1999) on human rights. In its explanation it is stated that what is meant by "in any condition" include the situation of war, armed conflict and/or emergencies. What meant by "any person" is state, government and/or members of society. The formulation of Article 4 of the above Law can obviously be understood that in Indonesia freedom of religion is guaranteed and protected by the government regulation. Therefore, all forms of unfair and discriminative attitude 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 (Fernando J.M.M. Karisoh, <http://www.psik-paramadina.org>). Then, the second point to be carried out by state according to Mabruri is preventing any potential that may lead to disturbances and constraints for each individual to choose and observe his belief in the midst of society.

The violation of freedom of religion or belief by state provides an opportunity for society to conduct the same action. In other words, society also becomes actors who perform violation of freedom of religion or belief after state. But, is violation by society is only caused by an opportunity given by state? Although state may not be neglected, the internal conditions of society alone as the cause of violation of freedom of religion or belief need to be explored. Is the violation of freedom of religion or belief by society related to the way one group perceives another group? A Study by Fatimah Husein, *Muslim-Christian Relation in the New Order Indonesia: The Exclusivist and Inclusivist Muslim Perspectives* (2005) deserves a special attention to answer the above question.

Muslim-Christian relation which becomes 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 relation cannot be separated from the way each adherent of religion perceives either his own religion or the religion of others. In her study, Husein reveals two ways of perception dominant among Muslims which influence Islam-Christian relations; i.e. exclusive and inclusive. Exclusive Muslims have the conviction that Islam is the last religion which corrects the faults of previous religions. this way of perception according to Husein brings about intolerant attitude toward the existence of other religions. whereas inclusive Muslims hold the conviction that Islam is a true religion. However, they do not negate religions outside Islam which can also provide salvation for their adherents. With this view, inclusive Muslims behave more open toward other religious groups.

Categories made by Husein can be used to describe the process of violation of freedom of religion or belief conducted by society. Accordingly, it can be said that the violation of freedom of religion or belief is influenced by the way they perceive other religions or beliefs. Among these two perspectives, the most potential to commit violation is the exclusive perspective. Just asserting the definition of exclusivism from Husein, it is important to quote the explanation of Joseph Runzo (2003) about what religious exclusivism is meant; i.e. religious attitude which regards that the only true religion is the religion or belief of his own, while other religions or beliefs are false. Why some people are exclusive, while others inclusive? Is this perspective influenced by religious doctrines? If exclusivism is influenced by religious doctrine and it potentially leads to violation of freedom of religion or belief, can it

be said that religion should be responsible for this violation? As series of questions needs to be raised for prejudices and pessimistic attitudes often emerge and question the contribution to the enforcement of freedom of religion or belief.

Among the great world religions often seen with prejudices and pessimism in light of freedom of religion or belief is Islam. In the discourse of political science and many academic literatures particularly among Western scholars, Islam is often regarded as not compatible with human rights (Sus Eko Ernada, 2007). This view brings about criticism and rejection from Muslim scholars and academics. They disagree with the view that Islam is not compatible with human rights. For if compared to the West, Islam even speaks much earlier about human rights. The history of human rights in the West began with Magna Charta (1215) which was followed by Bill of Rights (1689), Declaration of Independence, USA (1776), Declaration des Droit de l'home et du Citoyen, France (1789), Four Freedoms (Roosevelt) in 1941, and finally Universal Declaration of Human Rights (1948). Whereas Islam has spoken about freedom, including freedom of religion or belief since the seventh century as revealed by many Qur'anic verses (Wahyu Hidayati, 2008). Ebrahim Moosa (www.jhfc.duke.edu) reveals at least two narratives which can be used as proofs the compatibility between Islam and human rights. First is farewell speech of the Prophet Muhammad when performing pilgrimage (*hajjatul-wada'*) which reasserted Islamic vision of fundamental human rights protection. The substance of the Prophet's speech at the pilgrimage, according to Moosa, in principle was just a reassertion of the substance of the Qur'anic verses dealing with the protection of human property, dignity and honor. Second is a number of the guided caliphs' action 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 used as reference by Muslims to endorse theological arguments on the relation between Islam and modern human rights.

Comparing this historical account, Muslims rejected the view that Islam is not compatible with human rights. However, it should be taken into account that few groups of Muslims draw on theological consideration when they exhibit an exclusive attitude toward certain groups of religion or belief 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 the emergence of 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 (2006), are proofs 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 –after a particular interpretation – create a complicated relation between Islam and human rights (Heiner Bielefeldt, 2001) as pictured in a book entitled *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (2000), written by Yohanan Friedmann. Meanwhile, Abdullahi Ahmed an-Na'im (1998) 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 six cases presented by an-Na'im are as follow:

First, Muslim man is allowed to marry a Christian woman, whereas a Christian or Jewish man is not allowed to marry a Muslim woman. Muslim man and woman are not allowed to marry polytheists (*mushrik*) – al-Ma'idah 5, al-Baqarah 221.

Second, religious difference becomes constraint of mutual inheritance relation. A Muslim man cannot receive or give inheritance to a non-Muslim, and vice versa.

Third, Muslim man can/may marry one to four women at the same time, whereas a woman can only marry one man – al-Nisa 2.

Fourth, a Muslim man can divorce his wife, or a wife and his wives simply by leaving them alone without any contract, *talaq*, with no obligation in the part of man to give reasons or justification for his action. On the contrary, a woman can only divorce with the permission from his husband or decree of state court which allows her with particular reasons such as inability or ignorance of husband in treating his wife – al-Baqarah 226-232.

Fifth, concerning inheritance, a Muslim woman receives part less than those of Muslim man, when both at the same time have family relation with the dead – al-Nisa' 11, 176.

The influence of theological considerations, either exclusive or inclusive, cannot be neglected in the discourse and praxis of freedom of religion or belief. Following theoretical explanation in sociology that human action is influenced among other things by the system of meaning he/she has, the problem of freedom of religion or belief in Indonesia can also be traced back to the system of meaning used by society.

Discourse of Human Rights and Freedom of Religion or Belief in Indonesia

In the context of evolving human rights in Indonesia, Muslim engagement has begun when Indonesia was at the period of preparation for independence. As has been much discussed in historical literatures, prior to Indonesia's independence the Japanese occupation rule established an institution called *Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia (BPUPKI)*, i.e., Board for Investigating the Effort of Indonesia's Independence Preparation. As it is named, this board carried out a preparation for Indonesia's independence. Since the establishment of BPUPKI, debates on human rights, which would become crucial parts of Indonesian constitution, had started.

Historical literatures have 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. The former argued that the constitution which would be used after the independence of Indonesia should be freed from chapters and articles concerning human rights. In Supomo's view, human rights emphasize much more on individualism. Indonesian state – at least in Supomo's view- should be founded on the principles of familial value (*kekeluargaan*) and integralism. With these principles, individualism, embodied in human rights, has no place as it can separate individuals from state. Indonesian state, Supomo asserts, should maintain a totalistic unity between the population (individuals) and state. With his view on integralism, Supomo seemed to have underestimated the possibility of committing violence toward the citizens by the state. On the contrary, Hatta, supported by Yamin, had anticipated the rise of this negative possibility which is consciously undermined by Supomo. According to Hatta and Yamin, state authority can avoid negative practices when the constitution includes chapters and articles which give recognition toward basic human rights of Indonesian people (Jimly Asshiddiqie, 2005; Adnan Buyung Nasution, 2000).

The persistence of Hatta and Yamin resulted in compromise. One day after the declaration of independence (August 17, 1945), Indonesia has had the Constitution (Undang-Undang Dasar) 1945 which was formulated by BPUPKI in July 1945. In the Constitution of 1945 which consisted of 37 articles, there have been 5 articles which contain regulations on human rights, i.e., articles 27, 28, 29, 30, and 31. An article that contains the recognition towards 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. The incorporation of human rights in the Constitution of 1945 formed a significant progress when compared to Supomo's ideas, and especially when three years later, on December 10, 1948, the United Nations declared the Universal Declaration of Human Rights (UDHR).

In some literatures, religious preference, which became the basis for human rights discourse prior to independence, had never been exposed. Therefore, it is hard to assert that either Supomo on the one hand, or Hatta and Yamin on the other, were representatives of certain religious groups in Indonesia, let's say Islam. In one of literature that can be used as 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* (1987) written by Ahmad Syafii Maarif. In this work, Maarif does not elaborate religious preferences referred to by Supomo, Hatta and Yamin in their debates in BPUPKI assembly. However, Maarif then mentioned religious preferences in human rights debates during the Konstituante assembly. During the assembly, discourse around human rights had been relatively less hard than debates on state ideology and governmental system. The hardness of debates on the two issues was indicated by the polarization of ideologies among the members of the Konstituante into three groups; namely, nationalist, Islamist and socialist; which had finally been crystallized into two mutually contradicting poles: Islamist and secularist (Ahmad Nur Fuad, et. al., 2007). Although it was less hard 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 (2000)- Islamic thoughts have contributed greatly to the evolving human rights ideas in Indonesia.

How did Muslim group respond human rights issues in the Konstituante? The research conducted by Maarif reveals a comparatively prominent figure who responded the issue of human rights from an Islamic perspective, namely Hasbi Asshiddiqie, a Masyumi politician. Asshiddiqie, also well known as a reputable Muslim jurist, regarded that the basing of human rights on Islamic ground is quite necessary as the Qur'an and the Sunnah provide a more adequate description on human rights when compared to other religions or ideologies outside Islam. Leaning on the Qur'an, Asshiddiqie asserts, human rights thinking can avoid the diversity and conflict as happened to human rights in the West as it is solely based on philosophical thoughts resulted from human thinking. 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. 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 creature." According to Asshiddiqie, this verse proves the appreciation of Islam toward universal humanity regardless of ethnicity, political preference, religious background, and of other differences. Moreover, basing on 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 ijtimaiyyah*), i.e. that humankind whatever his background has an equal rank; (3) political

honor (*karamah siyasiyyah*), which means that Islam give each individual political rights to elect and to be elected to a particular political position.

The three concepts of honor elaborated from al-Isra' (17): 70, according to Asshiddiqie, can be used as the foundation of developing the relation between Islam and at least five aspects of human rights. First is the right to life and self salvation; the right to self protection, dignity and property. As when dealing with human dignity, Asshiddiqie also searches for the justification of these five aspects of human rights from the Qur'an. The Qur'anic proof which is referred to by Asshiddiqie, when mentioning the first right above, is among others: 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."

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?" This verse, according to Asshiddiqie, contains an Islamic assertion on the principle of voluntarism in religion. Therefore, according to this principle, Asshiddiqie asserts that each individual is obliged to respect other people who adhere to religion or belief he/she wishes. Other people who have adhered to a religion cannot be compelled to adhere to their religion. To strengthen his statement, Asshiddiqie quotes the Qur'an, al-Baqarah (2): 256, which reads: "There shall be no compulsion in religion. True guidance is now distinct from error."

Third is the right to own property. This right is based by Asshiddiqie on the Qur'an, al-Nisa' (4) 32: "Do not covet the favors by which Allah has exalted some of you above others. Mean 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." Although Islam gives recognition to property, Asshiddiqie reminds social values embodied in the property of individuals. Those who have more property are obliged to distribute proportionally to other people who need.

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. According to Asshiddiqie, these rights become significant indicators that Islam respects the use of reason in order for people to avoid blind imitation (*taqlid*). Asshiddiqie mentions two proofs from the Qur'an to strengthen 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"; 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."

Observing Asshiddiqie's view above, Lubis' assessment that Islam provides contribution to the development of human rights thinking in Indonesia is not an exaggeration. Asshiddiqie's view –as constructed by Maarif- does not show rejection towards the universal principles of human rights, including freedom of religion or belief. To this crucial and sensitive issue, Asshiddiqie even reveals elegantly an Islamic vision that gives affirmation to freedom of religion or belief. A conclusion, which can be taken from Asshiddiqie's view for further discussion, is that there are Islamic teachings which can be used as reference to reconcile

Islam and human rights, including freedom of religion or belief. Undoubtedly, the issue of human rights challenges the Muslim world, a fact that everyone will never reject. However, the issue of human rights, particularly after its being as a universal idea, according to Mohammed Arkoun (Suadi Putro, 1998), provides an opportunity for Muslims to radically revise all systems of traditional thinking towards a new system of thought which can endorse the respect towards human rights, regardless of differences of religion, group, race, language and others. What has been done by Asshiddiqie in 1950s would demonstrate that theologically Islam respects human rights.

In addition to Asshiddiqie, there are still 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 relation of Islam and human rights finds its fertile soil when the development of Islamic thought in Indonesia –almost a decade after the Konstituante assembly- entered a phase, which Greg Barton (1995) calls neo-modernism.² This phase is an important phase in the history of Islamic intellectualism in Indonesia. Fachry Ali and Bahtiar Effendy (1986) have fully recorded the process of proliferation of Islamic thought in this phase through a study entitled *Merambah Jalan Baru Islam: Rekonstruksi Pemikiran Islam Indonesia Masa Orde Baru* (1986). One of the important issues –besides democracy- which receives responses from Muslim intellectuals in this stage, according to the research of Masykuri Abdillah (1999), is the issue of human rights. An interesting point, published by Abdillah, is that Muslim intellectual responses to human rights in fact have been much more open than their responses to democracy. Masykuri Abdillah assesses that this difference is normal when considering the affinity between democracy and human rights in Islam. Compared to democracy, Abdillah asserts, human rights are much easier to recognize since it has similarities in term of language. In Arabic, the term *haqq*³ has been known earlier and

² The term neo-modernism originates from Fazlur Rahman. This term is used by Rahman to describe four phases of Islamic reform movement from the end of eighteenth century to the following two centuries. The four phases meant by Rahman are; (1) Revivalist movement. This movement emerged in the end of eighteenth century and early nineteenth century (i.e., the Wahhabi movement in Arabia, Sanusi movement in North Africa, and Fulaniyah in West Africa); (2) 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); (3) Neo-revivalist movement, exemplified by al-Mawdudi in Pakistan; and (4) Neo-modernism. Fazlur Rahman calls himself part of Islamic neo-modernist movement. Rahman's category can be compared to that of Mark R. Woodward (2001) who classifies Islamic thought into five groups: (1) Indigenized Islam, i.e., an expression of local Islam. Formally they claim to be Muslims, but this formal claim is not followed by their commitment to observe Islamic teaching. They even prefer to perform rituals based on local beliefs; (2) Traditional Islam. This group choose an accommodative approach to local belief as long as it does not contradict Islam. Nahdatul Ulama (NU) is often used as an example of traditional Islam, particularly due to its accommodative attitude to local traditions; (3) Modernist Islam. Muhammadiyah is often used as an example of this category. Modernist Islam is characterized by its tendency to accommodate modern ideas rather than traditional ones; (4) Islamism. This name is another designation of fundamentalism and radicalism; and (5) neo-modernist Islam. This group criticizes established Islamic visions. They usually reject all forms of formalization of Islamic teaching.

³ This term, according to Ali Yafie (1994), has meanings, one of them being truth; what actually exists; the right; the right power over a thing or to demand

translated into 'right', while democracy is not only seen as a new vocabulary, but also seen as coming from the West.

But, more than differences in language, in Islamic intellectual tradition the term *haqq* has been elaborated earlier than the term democracy. Those who are concerned in classical Islamic sciences will find conceptual categories, such as the rights of Allah (*huquq Allah*), the rights of human or the rights of individuals (*huquq al-'ibad* or *huquq al-nas*), and the common rights of Allah and human (Ozlem Denli Harvey, 2000; Ebrahim Moosa, www.jhfc.duke.edu). *Huquq Allah* is all rights and obligations which are ordained through revelation and religious teachings. The rights of Allah can be an obligation in the form of command of rituals. The rights of Allah can also be in the form of various activities that are beneficial for a larger segment of society. Various obligations embodied in the pillars of Islam, such as two sentences of confession (profession of faith), praying, giving alms, fasting in Ramadan, and performing pilgrimage, can be regarded as fulfilling the rights of Allah. Various services which can protect society from destruction and recommending of doing virtues in a wider sense can also be included in the category of the rights of Allah.

Individual rights are realm, which clearly asserts –secular or civilian- what exists in their command and consideration. These rights exist in the interest of each individual or group. The same right is general, such as the right to have health, the right to have children, the right to safety. The rights can also be specific, such as the protection of property ownership or the right to conduct commercial transaction in trade.

Common rights originate from the command and teaching of religion or human reason. Examples of common rights of God and humankind can be seen in the obligation of putting into effect *'iddah* (waiting period) for divorced women during three times of menstruation in order to observe whether the women are pregnant. The logics is that God (Allah) decides that the genealogy of a person from his father can only be received through valid marriage and the command to observing pregnancy should be performed for divorced women or widows as a waiting period before she shall be allowed to conduct a new marriage.

The existence of the term *haqq* and its elaboration which subsequently evolves in Islamic intellectual tradition into the concept of *huquq al-ibad* or *huquq al-nas* besides *huquq Allah*, and the common rights (Allah and human being) indicates that human rights have received a sufficient attention from Islam. This reality can be used as reference to challenge an opinion which over-generalizes that Islam *in totum* is a religion which cannot be used as the cultural foundation of universal human rights principles. One of the experts who argues like this is Samuel Huntington. He is well known as an adherent of the theory of cultural relativism, which rejects the view of human rights universality. According to Huntington, who proposed 'the clash of civilizations' thesis, human rights are the product of the West. For Huntington, efforts at promoting the universality of human rights by the West are counterproductive. Related to the efforts of human rights dissemination to the Muslim world, Huntington purports terrifying opinions. For Huntington, the dissemination of human rights to the Muslim world even becomes the factor of the emerging Islamic fundamentalist movements (Ann Elizabeth Mayer, 1994). Mayer rejects this negative view of Huntington. To Mayer, Islamic fundamentalism is a complex phenomenon; if it is related only to the issue of human rights, it is chronologically false.

something; authority to conduct something (because it has been determined by regulation, laws and so on). It also means property. In its original language, it contains the meaning of justice, conviction, necessity; part; death; decision; and certainty.

In contemporary human rights discourse, Huntington can be regarded as the follower of the adversarial perspective who tends to create a contradiction between Islam and human rights. This perspective, according to Mashood A. Baderin (2007), cannot help disseminate human rights in a society which is culturally diverse. In the context of Muslim society, Baderin prefers to choose the harmonic perspective, because it will help make use of Islam as a medium to promoting human rights. For Baderin, the harmonic perspective has a great opportunity to be developed, because Islam has the potentials, theologically or scientifically, as indicated by the Qur'anic verses and the fundamental concept of human rights as mentioned in the previous paragraphs. In this part, it is necessary to add how the fundamental concept of *huquq al-nas* is elaborated in the field of *fiqh* (Islamic law) to strengthen the argument of the harmony between Islam and human rights as asserted by Baderin. *Fiqh* (Islamic law) is proposed in this part because of its popularity in the field of Islamic education, including in Indonesia. In this branch of Islamic sciences, there are many discussions called *maqasid al-shari'ah* (the objectives of shari'ah). Satria Effendi (2005) perceives *maqasid al-shari'ah* as the intention (the objectives of Allah) and His messenger in formulating Islamic laws. This objective can be traced in the Qur'an and the Prophetic tradition as logical reason for the formulation of law, which is oriented to human benefit. Among the experts of Islamic law, there has been a popular opinion on the objectives of shari'ah, i.e. to maintain human benefit and to avoid destruction (*mafsadat*), either in this world or in here after (Fathurrahman Djamil, 1995). To decide benefit and avoid destruction, there are five points which should be given attention; i.e. religion, soul, reason, offspring and property. These five points are also called the core of Islamic law (shari'ah) objectives. In other words, the objective of shari'ah in Islam 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 benefit, and can avoid destruction (*mafsadat*), if he/she is able to maintain these five points.

These five points in the objectives of shari'ah are always referred to as a consideration by Muslim intellectuals when developing the concept of human rights from an Islamic perspective. Related to the issue of freedom of religion or belief, one of the five points in the objectives of shari'ah usually referred to is the protection of religion. It is interesting that, when the concept of religion (*hifz al-din*, the protection of religion) is connected to the issue of freedom of religion or belief, Muslim intellectuals have inclusive points of view. Let's mention Masdar F. Mas'udi's views in this regard. In one of his articles, *Hak Azasi Manusia dalam Islam* (2000), Mas'udi argues that the principle of freedom of belief is part of the protection of religion. Therefore, Mas'udi asserts, compulsion in religion is prohibited. As a consequence of this view, Mas'udi then reveals his disagreement with the regulations of Islamic law which punish those who convert (*riddah*, apostasy). Mas'udi gives his reason as follow:

Initially, *riddah* 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 was 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 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 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.

Besides Mas'udi, the following Muslim intellectual who has an inclusive opinion in understanding the concept of the protection of religion is Jalaluddin Rakhmat (1993). 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. With this doctrine, religion- Rakhmat asserts- must be protected from any aggressive action. Rakhmat mentions four types of freedom of religion decided by Islam, which should be protected from aggressive actions; i.e. (1) freedom to choose religion; (2) freedom to adhere to religion; (3) freedom to conceal religion; (4) freedom to express religion.

In this part, Dawam Rahardjo's points of view should also be mentioned. As a Muslim intellectual, Rahardjo has developed thinking of wide spectrum. One of intellectual concerns of Rahardjo is religious pluralism (diversity). Rahardjo has a firm and definite point of view concerning this matter which is also related to the issue of freedom of religion or belief. The firmness of Rahardjo can be discerned from his articles, *Dasasila Kebebasan Beragama*, published in the websites of *Jaringan Islam Liberal* (Networks of Liberal Islam), www.islamlib.com. In this article, Rahardjo firmly asserts that religion is an individual affair which cannot be interfered by any authority, either state or a certain religion. To support his argument, Rahardjo refers to the principles of *la rahbaniyah fi al-Islam* (no priesthood in Islam). For Rahardjo, religious authority tends to reduce religious freedom. 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 (law) is absolutely needed. The law, called by Rahardjo the Law of Freedom of Religion, should guarantee freedom of religion which includes the following:

First is freedom of religion in the sense of freedom to choose a religion or to decide a religion he adheres to, and freedom to worship in accordance to his own religion or belief.

Second is freedom of not having a religion. Although the constitution states that the state is based on the Oneness of God, freedom of religion means also freedom to not believe in God or to have an atheistic belief. However, not all atheisms can be given guarantee. Rahardjo restricts atheism in its form of scientific discourse that must be given guarantee. While concerning atheism in the form of anti-religion and anti-God, Rahardjo recommends it to be banned by the state, because it contradicts the Pancasila, particularly the first pillar, the Oneness of God.

Third is freedom to convert, or to change a religion with another religion. According to Rahardjo, changing religion cannot be regarded as apostasy, but rather as an effort to find a new consciousness in religiosity. Rahardjo also rejects the view that a person who converts is called *kafir* (infidel), as the term *kafir* (infidel) cannot be meant as having another religion, but rather opposing the command of God.⁴

⁴ Although in Indonesia there many who convert to other religions, for example from Islam to non-Islam, the converts are not punished in accordance to the regulation of positive law in Indonesia. This is somewhat different from other countries with Muslims as the majority. One prominent example which receives a

Fourth is freedom to disseminating religion (preaching). According to Rahardjo, the activities of preaching (*da'wah*) that should be protected are those which are not conducted through violence or compulsion, directly or indirectly. Besides preaching without violence and compulsion, the activities of preaching must avoid unethical practices, 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 it humiliates the dignity of human being, buying the belief of individuals. But, programs of assistance like this are allowed to be conducted by a religious organization as far as not compelling 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 accusation of Christianization, Islamization or apostatizing.

Fifth, freedom of religion also includes fair or just attitude of the state towards all religions. In order for state to be fair and just, it needs to revise policies which potentially lead to injustice towards a certain religious group. Rahardjo gives an example of citizen identity card (KTP) that requires the mentioning of religious identity. This policy is regarded by Rahardjo as opening the opportunity for favoritism and discrimination which give much benefit to a religion adhered to by the majority or those who are influential in the government.

Sixth, the state should allow marriage between two persons of different religions, if it has been individual or family decisions. Religious authority can issue fatwa (religious advices) which prohibited inter-religious marriage; or family and individuals may regard inter-religious marriage as unlawful. But, the fatwa issued by religious authority shall not bind the state. The views of family and individuals are valid only for themselves.

special attention internationally is the case of Lina Joy. Initially this Malaysian citizen has the name Azlina Jailani. But, after conversion from Islam to Christianity at his 26, this woman of ethnic Malay changes her name as Lina Joy. Joy's conversion did not receive certification from Malaysian Federal Court, although Joy himself wishes to be certified in order to mention her new identity (Christian) in her MyKad (citizen identity card) of Malaysia. According to the argument of Federal High Court, who has the authority to permit the change in religious identity in Joy's identity card is Islamic Shari'ah Court. Meanwhile, Joy rejects the argument of Federal High Court because she is an adherent of Christianity and needs not to follow the regulation of Islamic Shari'ah Court. The rejection of Federal High Court brings about an impact on 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 (<http://www.rileks.com/ragam/detnew/31052007025922.html>).

Seventh, in education each student is given the right to decide religion to be studied. The choice cannot prevail automatically according to the parents' religions, although the parents can influence and even decide the choice of their children. These rights include the choice to not taking courses on a certain religion. However, at least there is an obligation for each student to attend a course on ethics, such as those based on Pancasila, as this course is important for educating students to be good citizens.

Eighth, in the evolving religious life each citizen has the right to create a certain religious stream (group), even build a new religion, provided not disturbing the public order and not performing practices which violate the law and ethics, or deceiving someone using religion. This freedom is applied for those who will establish associations for health or emotional and spiritual intelligence based on the teachings of many religions, according to the choices of its members, as far as not forcing faith to another religious faith as requirement.

Ninth, the state or a religious authority is not allowed to make legal decisions which affirm that a certain religious stream or sect is heretical and misleading, except if this stream or sect violates the law or ethics. But religious authority can give enlightenment and guidance concerning rituals, faith, and law (shari'ah), but not binding any body, either state or citizens.

These nine types of freedom of religion mentioned by Rahardjo in his article in JIL's website are affirmed by a woman Muslim intellectual, Siti Musdah Mulia. In her article, *Hak Asasi Manusia dan Kebebasan Beragama* (<http://www.icrp-online.org>), Mulia re-asserts the scope of religious freedom already elaborated by Rahardjo as follows:

First, freedom of each citizen to choose religion or to decide religion or belief he adheres to, and freedom to worship in accordance to his own religion or belief.

Second, freedom to spread, disseminate and preach religious mission, with the conditions that all activities of religious preaching must not use violence or compulsion, either directly or indirectly. Moreover, the spreading of religion should not exploit the ignorance and the poverty of people, or humiliate human dignity. Therefore, it is prohibited to give any assistance, distribute food, and give scholarship or social fund for children from the poor family or free health services with the condition to adhere to a certain religion.

Third, freedom of religion ought to include also freedom to convert, i.e., changing of choice from a religion to another religion. Each individual citizen has the right to choose religion and belief which he/she is assured to bring salvation in this world and here after. Therefore, conversion should be understood as a process of searching or finding a new consciousness in religiosity.

Fourth, freedom of religion ought to include the permission of marriage of two people of different religions or different sects or different religious ideas as far as the marriage does not contain the element of compulsion and exploitation. This means that marriage is not conducted for the purposes of trafficking in women and children which is now very controversial.

Fifth, freedom of religion ought to include freedom to study any religion in formal educational institutions, including those owned by state or government. In consequence, each student has the right to choose or to decide a religion he/she wishes to study. It is not limited to the religion adhered to by students. Also, freedom to choose not attending courses on a certain religion. But, educational institution can oblige students to attend courses on ethics based on Pancasila, as this course is important for creating good character of citizens.

Sixth, freedom of religion allows state to welcome the coming of new religious sects, concepts, and streams as far as not disturbing public tranquility and not performing practices which violate the law, such as violent actions, deceiving, or humiliating people using religious mask.

Seventh, freedom of religion leads to the emergence of various religious organizations which aim to enhance the piety of its members, increase the quality of emotional and spiritual intelligence based on a certain religious teaching as far as not obliging faith on a religion or belief as its conditions. As a consequence, state or any religious authority may not issue fatwa or legal decision which judges that a person is infidel, apostate or sinful, or which labels a certain religious concept, sect and stream of belief is heretical.

Eighth, freedom of religion obliges the state to be fair and just in treating all adherents of religions and beliefs that exist in the state. The state may not incline to a certain religious group and discriminate other religious groups. In this context, there should be neither terms such as majority and minority, nor terms such as the followers of heavenly religions or not-heavenly religions. There should be no terms such as main religions or deviant religions. There should be no terms official religions and unofficial religions or recognized and not-recognized religions. Each citizen has the right of freedom to choose his own religious preference.

Observing the views of Mas'udi, Rakhmat, Rahardjo and Mulia above, it seems that these thoughts are not far from the thought of Nurcholish Madjid, a Muslim intellectual who must be mentioned over and over when dealing with the development of Islamic neo-modernism in Indonesia. The thought of Madjid also has a much wider spectrum. Almost all subjects of Islamic thought are given attention by his deep analysis. Madjid also has deep concerns with the issue of freedom of religion or belief. Like other Muslim intellectuals, Madjid also refers to the Qur'an when dealing with the issue of freedom of religion or belief. The core point of view, promoted by Madjid, has been the very point of view advocated by Mas'udi, Rakhmat, Rahardjo and Mulia, that is, Islam can be used as the theological foundation of freedom of religion or belief.

The way used by Madjid, when coping with freedom of religion or belief based on an Islamic perspective, is firstly through understanding the spirit of Islamic teachings. According to Madjid, as stated in the first part of his introduction to his book, *Islam Doktrin dan Peradaban: Sebuah Telaah Kritis tentang Masalah Keimanan, Kemanusiaan dan Kemodernan* (1992), the spirit of Islamic teaching, after the deity (*habl min Allah*), is humanity (*habl min al-nas*). According to Madjid, giving emphasis on the aspect of humanity, Islam wishes to provide awareness that human life is essentially characterized by various aspects of plurality (diversity). This diversity, Madjid asserts, cannot be rejected and avoided by human being as it has been a grand design of God. Madjid's view, affirmative on plurality,

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.'" According to Madjid, this commandment of Allah provides an affirmation toward pluralistic reality which cannot be disputed by human beings. "Thus, there is no monolithic society, which is same and equal in all aspects," says Madjid in his *Islam Agama Kemanusiaan: Membangun Tradisi dan Visi Baru Islam Indonesia* (1995). Madjid asserts that human beings have only one choice, i.e., managing this diversity on the principles of pluralism. For Madjid, pluralism ought not to be viewed as a concept contradictory to Islam, because it will meet at the same end when responding the issue of diversity. As a consequence of human spirit, according to Madjid, Islam –besides affirming the plurality of human life- provides freedom for each group to exist and take on life in conformity with his own belief. Islamic vision on this regard, for Madjid, is parallel to pluralism. The following is Madjid's assertion in his *Islam Doktrin dan Peradaban*:

... If in the Sacred Book (the Qur'an) it is mentioned that human being is created to nations and races in order for them to mutually recognize and respect (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 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 returning to Him (Q. al-Ma'idah [5]: 48).

This inclusive view of Islam, which is parallel to pluralism, in Madjid's view, can be used as legitimacy for guaranteeing freedom of religion or belief. Madjid seemingly has no burden when connecting freedom of religion or belief to Islam, although this issue is recognized as having a relation to very complicated matters and in touch with very emotional aspects. For Madjid, discussing freedom of religion or belief on the basis of Islamic perspective ought to be seen as normal, because –as a consequence of Islamic acceptance (recognition) toward diversity- the Qur'an elegantly provides guarantee for this issue. As the Qur'an provides its guarantee, Madjid asserts, Muslims are demanded to have maturity in dealing with the issue of freedom of religion or belief. The following is Madjid's view as asserted in his book, *Cita-Cita Politik Islam Era Reformasi* (1999):

The principle of freedom of religion is concerned with complicated matters, as it relates to emotional aspects and deep feeling 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).

Because the Qur'an –in Madjid's understanding- is so inclusive in some issues relating to human rights, in the empirical level, openness is also needed towards human rights which have become universal ideas of mankind. In some of his books, Madjid seems to have not contradicted human rights on the basis of a particular cultural preference, let's say Islam and Indonesian society, as normally existing among cultural relativists. 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 most standard reference when dealing with human rights.

For Madjid, the relation of Islam and human rights including one of its derivatives, i.e. freedom of religion or belief, seems to have been no contradiction with each other. But, in order to understand more comprehensively the map of discourse on the relation between Islam and human rights, opposite points of view should also be observed. In Indonesia, the rejection or opposition towards human rights is openly advocated by religious groups of Muslim society, usually known as hardliner Muslim groups. One of these groups is Hizbut Tahrir Indonesia (HTI). HTI categorically rejects human rights which emerge from the worm of democracy. HTI is well known as a religious group which opposes democracy. Therefore, all thought which are derived from democracy such as freedom is also rejected by HTI. One of the books often referred to by HTI activists to refuse democracy and its derivatives such as freedom and human rights is *Demokrasi Sistem Kufur: Haram Mengambil, Menerapkan dan Menyebarkannya* (2003) –Democracy Infidel System: Adopting, Implementing and Spreading It Unlawful-, written by Abd al-Qadim Zallum, one of the leading figures of International Hizbut Tahrir. In this book, Zallum categorically rejects democracy as it originates from the western culture. For Zallum, democracy sold by the West is an infidel system; there is no relation to Islam, either direct or indirect. It is normal that Zallum comes to this conclusion, as he holds a view on democracy as follows:

First, democracy is part of the product of human reason, not from Allah. Democracy is not based on the revelation and does not have any 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 is 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; (3) personal freedom.

With the above understanding, it is enough for Zallum to label democracy as infidel. As an infidel system, its legal implication is clear, Zallum asserts. He maintains that Muslims are prohibited to adopt the system of democracy as it is unlawful to adopt capitalist economic system. To support his argument, Zallum reveals some aspects of democracy which he sees

contradictory to Islam. First is the concept of democracy that sovereignty is in the hands of people in Zallum's view, this concept contradicts Islam which perceives sovereignty in the hand of God, the shari'ah giver, not in the hand of *ummah*. The entire *ummah* are not allowed to make law, although it is only one law. Zallum then illustrates the following:

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 side of democracy regarded as contradictory to Islam, according to Zallum, is the concept of democracy as the government by the majority, and the law of the majority. This concept is contradictory to Islam. In Zallum's thought, in terms of deciding the law, the criteria depend not on the opinions of the majority or the minority, but rather on the sacred text (shari'ah). It is because the only law maker is Allah, not *ummah* (human being). The, who has the authority to adopt or legislate the law of shari'ah? Zallum says, it is the caliph who concludes the law from *shar'i* texts of the Qur'an and the Traditions of the Prophet.

Then, the concept of democracy which is seen by Zallum as contradictory to Islam is the concept of general freedom, which consists of freedom of religion, freedom of speech, freedom of ownership, and freedom of behavior. 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, whereas slavery itself has been abolished.

Besides HTI, Majelis Mujahidin Indonesia (MMI) is worthy to mention. Compared to HTI, MMI is relatively more open to human rights. This can be discerned from the concept of *Amandemen UUD '45 Disesuaikan dengan Syariat Islam* (the amendment of the constitution –must be- appropriated with Islamic Shari'ah, published by Markaz Pusat (Central Board) Majelis Mujahidin Indonesia (MMI) in Yogyakarta. In this concept, MMI includes chapters on human rights as found in the amended constitution. The difference between the amendment of the Constitution of 1945 according to the version of MMI and the version of the People Representatives Assembly (MPR) can be found in Article 28E and Article 29. In Article 28E verse 1 of the Constitution of 1945 in the version of MMI, there is a statement which reads: "each individual has the right to adhere to a religion and worship in accordance to his religions, and for Muslims it is prohibited for them to convert from Islam." In Article 29, there is a following statement: (1) the state is obliged to regulate and control their citizens in order for them to worship in accordance to their own religions; (2) the state guarantees freedom of each citizen to adhere to his own religion and to worship in accordance to the religion he adheres to." In the amended Constitution of 1945 in MMI's version, there are two regulations which are contradictory to the principles of human rights,

i.e., first, the prohibition for Muslims to convert to other religions (become apostates). Second, the state is allowed, even obliged, to regulate the practices of worship in order to fit with the religion adhered to by an individual.

With the explanation of HTI's and MMI's views above, it can be concluded that among Muslims there have been different opinions in responding the issue of human rights. These differences will be more apparent in the views of informants of this study, as elaborated in the following chapter.

Islam, Human Rights, and Freedom of Religion or Belief: Concluding Remark

By describing the view of the timber and the MMI, it can be concluded that among Muslims themselves there is a difference of opinion in response to human rights issues. If the categorization is made, there are leaders who have an inclusivist outlook, while others exclusivist. The inclusivist leaders accept the universal idea of human rights including the regulation on freedom of religion or belief. For them, human rights ought to be not regarded as a concept contradictory to Islam. Beside many Muslim countries have recognized and ratified human rights instruments issued by the United Nations, the inclusivist informants employ theological and historical reason. Theologically, Islam has authentic sources which can be used as legitimizing factor for Muslim acceptance of human rights. The source is the Qur'an.

According to the inclusivists, in the Qur'an there are many verses which 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; al-Kahfi (18): 29; al-Kafirun (109): 6. For them, these verses are evidence of Islamic recognition of freedom of religion or belief emphasized by human rights. Basing at least on the three verses above, the inclusivists then argue that religion is essentially an individual (private) affair which cannot be interfered by any body, including state.

Since religion is a private matter, one's choice of a particular religion must be respected, and it is prohibited to compel other people to embrace a certain religion. "Please choose your own religion," says one of the inclusivist informants. Another informant asserts: "Other people do not need to be compelled to worship God called Allah." As a consequence of the inclusivist attitude, this group even regards as normal those who convert to other religions. "People may convert, provided there is no compulsion, but due to his self-consciousness," says one of informants. For them, conversion ought to be regarded as autonomous, individual choice. Therefore, they disagree with the idea of death sentence (penalty) applied to the converts.

The views above are different from those of leaders who are categorized as the exclusivists. If the inclusivist view negates the contradiction between human rights and Islam, the exclusivist view tends to put human rights and Islam in a mutually contradictory position. Therefore, human rights cannot be applied in Muslim society. They argue that the concept of human rights issued by the United Nations cannot be applied universally for they are dominated by the Western ideas. One of human right aspects 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, while those who have embraced Islam have no other choices except that they should remain Muslims. For them, if a Muslim converts to other religions, he is called an apostate (*murtadd*), and can be sentenced to

death. As a consequence of this exclusivist vision, they show a very careful attitude toward non-mainstream religious groups, such as Ahmadiyah, Lia Aminuddin and al-Qiyadah al-Islamiyah. The exclusivists reveal their disagreement when the state protects these groups. In their view, these non-mainstream religious groups should be banned and destroyed in order to sterilize Islam from any insulting and humiliating action.

The views of the exclusivist group seemingly tend to position religion as a public affair that can be intruded by outsiders, such as state. For religion is seen as a public matter, they agree with state policies which regulate religious life such the mentioning of religious identity in citizen identity card (KTP), the recognition of official religions, the prohibition of interfaith marriage, the regulation of worship places and so on. For them, the state may regulate and even intrude the affairs of religion if it is regarded as useful for creating social order and security. State intervention does not need to be regarded as a violation of human rights.

Although there are different views in responding the issue of human rights particularly freedom of religion or belief, there are similarities between the inclusivist and exclusivist informants in their views on the issue of interfaith marriage. Both the inclusivists and exclusivists assert the sufficiency of the Qur'anic explanation and the *fiqh* (Islamic law) regulations, which prohibit the practice of interfaith marriage, particularly for Muslim women.

The way of perception of the inclusivists and exclusivists –except in the matter of interfaith marriage- is difficult to be reconciled. It can be predicted that the discourse of freedom of religion or belief will be categorized into two poles of views. This prediction is based on the process of transitional democracy evolving in Indonesia. What is the relation between this process and the discourse of freedom of religion or belief, either the inclusivists or exclusivists? Transitional democracy as the second phase in the process of democratization is characterized by openness and transparency. It is in this phase that various elements of society have their rights to articulating their ideas although different from those of state and other groups. Religious discourse will also increasingly develop in this phase, which is also called the era of reformation.

Therefore, the rise of the inclusivist and exclusivist discourse should not be regarded as odd and strange. What needs to be given enough attention is how the difference of discourses would not result in the practice of anarchistic actions as occurring recently. This should be given attention for when anarchistic actions with the nuance of religious difference take place, these are strongly related to certain religious discourses. For example is violence in the campus of Mubarak, Parung, Bogor West Java, which struck down the followers of Ahmadiyah on July 15, 2005. This violence was committed by a group of people who acted in the name of Islam, disagreeing with the religious view of Ahmadiyah. The most apprehensive was that the violence above – and other violent actions in Indonesia - seems to have happened easily, for –as revealed by Trisno S. Sutarto (2006) - the state or security officer seemingly connive the violent actions to occur, usually called “the politics of connivance.”. Sutarto also questions the response of Nahdatul Ulama and Muhammadiyah, which tend to be “silent majority,” not giving adequate responses to such violent actions.

Although diversity of discourses is difficult to be avoided, this does not mean that the promotion of a more affirmative discourse on human rights and freedom of religion or belief cannot be carried out. Among the possible means is the using of Islamic educational institutions owned by Muhammadiyah and Nahdatul Ulama to promote human rights and freedom of religion or belief.[]

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