

PROBLEMATICS OF HUMAN RIGHTS AND ISLAM IN INDONESIA

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Abstract

This paper describes the problems of human rights and Islam in Indonesia, starting by the definition of human rights in the West and Islam, explanation of some similarities and differences of both. And deepened by make Indonesia as an example how to harmonize between Islam, human rights and nation law there.

Key Word : *Human Rights, Islam and Indonesia*

Abstrak

Artikel ini menjelaskan masalah hak asasi manusia dan Islam di Indonesia, yang dimulai dengan definisi hak asasi manusia di Barat dan Islam, penjelasan tentang beberapa kesamaan dan perbedaan keduanya. Dan diperdalam dengan menjadikan Indonesia sebagai contoh bagaimana menyelaraskan antara Islam, hak asasi manusia dan hukum negara disana.

Kata Kunci : *Hak Asasi Manusia, Islam dan Indonesia*

A. Understanding of Human Rights

Human rights are derived from natural rights; these natural rights are being formulated based on the human basic needs. Natural rights are often associated with the concept of natural law, as introduced by John Locke (1632-1750).¹ H.J.M Milne in his book, *Human Rights and Human Diversity* defines the human rights as "Ideas are certain rights that are recognized or not, belong to all mankind at all times and in all places. These rights regardless of nationality, religion, gender, social status, wealth positions, or differences in the characteristics of ethnic, cultural or social."²

¹ John Locke, *An Essay Concerning Human Understanding*, editor: Karenth F. Walker (Cambridge University, 1998), 29.

² A. J. M. Milne, *Human Rights and Human Diversity: An Essay in the Philosophy of Human Rights* (New York : Humanities Publisher, 2001), 23.

The protection of these rights originally stated in the *Declaration of Independence of the United States* in 1776 "that all men are created equal, they are endowed by the Creator, their rights cannot be revoked, and these rights are; the right to life, the right for independence, and the right to get happiness." These rights actually also expressed in the *Declaration of the Rights of Man and of the Citizen* (*Declaration des Droits de L'Homme du Citoyen*) in 1789, with the popularity words: *liberte* (freedom) *egalite* (equality) and *fraternite* (brotherhood).³

At the same time, Americans adopt for their constitution, includes an important guarantee for the independence, and in 1791 completed by the *Bill of Rights*. Human right, which is basically a moral rather than a political, becomes important. And after World War II with the birth of the *Universal Declaration of Human Rights*, on December 10, 1948 which is supported by member countries of United Nations (UN).

The concept of human rights and then developed not only with regard to political rights and civil traditionally, but also to the protection of economic and social rights. The UN approved the development of the concept of human rights by ratifying three agreements, namely the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant in Civil and Political Rights*, and the *Optional to the International Covenant on Civil and Political Rights*. Although human rights are universal, in practice it turns out there are variations, especially between countries is liberal and socialist countries. Liberal state, gave priority to civil rights and political, while the socialist or communist country to give priority to economic rights and social issues.⁴

Human Rights Declaration is then amplified and interpreted by the countries in the Third World (Islamic World), with the intention of adapting to the philosophy and culture of the local or regional as well as to realize national stability as a prerequisite for development.

³ A. J. M. Milne, *Human Rights and Human Diversity: An Essay in the Philosophy of Human Rights.*, 23.

⁴ Bill Schulz's, *Introduction to the Future of Human Rights; U.S policy for human rights* (Boston : Antodaya Publisher, 2007), 45.

Muslim countries were trying to understand these human rights within the context of Islam, so that in 1990 the countries that are members of the Organization of Islamic Conference (OIC) set *The Cairo Declaration of Human Rights in Islam*.⁵ In this declaration, among others mentioned, that the rights and freedoms must be subject to *sharia* (Islamic laws) (article 25). Thus, in practice there are two understandings of human rights, the Universal Human Rights and the Particular Human Rights. Even human rights partikulisme also occur in Western countries, although they have the same philosophy and as formulating and supporting the universalism of human rights.

Indeed, the reasons behind the adjustment of local cultural characteristics adjustment effort, Human rights sometimes intended to justify an authoritarian political system implemented by a particular government, or even to keep themselves in power. For example, for reasons not accordance with the culture, a government restricts freedom of the press and freedom of speech.⁶

Indonesian New Order government (1965-1998), for example, to understand human rights in the context of Indonesian society that "integrative", as an attempt to restrict civil rights and political citizens. This is revealed Supomo in BPUPKI in 1945 to state that the Indonesian people that the unity of life, with no dualism between state and society (*Staat und staatsfreie Gesellschaft*) as well as between the rights of individual freedom (*Grund-und Freiheitsrechte*) *vis a vis* country. But the Supomo's idea was rejected and receipt Mohammad Hatta's idea to include human rights to the UUD 1945 (Indonesian Obligations of Citizens in 1945).

⁵ Ann Elizabeth Mayer, *Islam and Human Rights; Tradition and Politic*, 3th edition (American University in Cairo (AUC), 2002), 56.

⁶Ann Elizabeth Mayer, *Islam and Human Rights; Tradition and Politic*., 59.

B. Human Rights In Islamic Perspective

Substantively Islamic sharia from the beginning has included ideas about these human rights, and some scholars make it as a primary goal of sharia (*maqasidu-s sariah*). However, because sharia had different philosophical with the Universal Declaration of Human Rights (called Universal Human Rights), then a number observers considered contrary.⁷

In the formulation of classical scholars, human rights are not as rights but as necessities (*ed-daruriyyat*) or a liability that must be realized. The main purpose of legislation in Islam is to realize the benefit of mankind by protecting and realizing the things that became its necessity. This idea became popular in the Islamic society is just the beginning of this century, because in general the teachings of religion is more emphasis on the obligations rather than rights.

The rights of a person that would be realized if he was complying its obligations. The Importance of human duty actually has been realized on 1 September 1997 by a number of important countries in the Islamic world called *Universal Declaration of Human Responsibilities*.⁸

The Muslim scholars and intellectuals in contemporary times, since the issuing of the declaration of human rights by the United Nations (UN) in 1948 was much to discuss about human rights in Islam. One of the quite famous of them is Abdul A'la Al-Mawdudi, with his book *Human Rights in Islam*, he explained that in the Islamic view, "Human rights is a gift of God, and therefore nobody and no one else can pull these rights. These rights are in fact, an integral part of faith also".

All people and all governments who claim themselves as Muslims have to accept, recognize and implement these rights. To be respect for human rights is based on evidence in Quran, that God gave mankind the certain of His glories, as stated al-Quran in Surah al-Isra: 70 "*And indeed We have honored the Children of Adam, and We have carried them on land and sea, and have provided them with At-Taiyibat (lawful good things), and have preferred them above many of those whom We have created with a marked preference.*"

⁷ Abul 'Ala Mawdudi, *Human rights in Islam* (Cairo: The Islamic Foundation, 2001), 76.

⁸ Abul 'Ala Mawdudi, *Human rights in Islam* (Cairo: The Islamic Foundation, 2001), 76.

Muslim scholars and intellectuals whose support the concept of human rights and stated that human rights as a necessity (*ed-daruriyyat*) which includes:⁹

- 1) Maintenance of religion (*hifzu-d din*), which implies also as religious rights.
- 2) Maintenance of the soul (*hifzu-n nafs*), which implies also as the right to live and gain security.
- 3) Maintenance of reason (*hifzu-l 'aql*), which implies also as the right to education.
- 4) Maintenance of property (*hifzu-l mâl*), which implies also as the right to job, own property and live in dignity.
- 5) Maintenance of nasab (*hifzu-n nasab*), which implies also as the right to get a descent.
- 6) Maintenance of honor (*hifzu-l 'ardh*), which implies also as the right to have self-esteem.

Therefore, Muhammad Imarah write a book *Huququ-l Islam wa-l Insan; Doruriyyat la Huquq* (Islam and Human Rights; it is Necessity not a Rights). Does not mean that he rejects the human rights, but rather, that Islam known human rights well from the beginning. And in fact, it is not just a right, but a necessity that must be realized.¹⁰

In addition to the primary goal of sharia (*maqasidu-s sariah*), there are also the principles of Islamic law must be realized, namely: justice, compassion (*rahmah*), wisdom (*hikmah*), benefit (*manfaat*), both in relationship with God and fellow human beings with nature.¹¹ Muslim scholars and intellectuals then developed the concept to various rights as contained in the declaration of human rights, especially:¹²

- 1) The right to life.
- 2) The right to religious freedom.
- 3) The right to freedom of thought and speech.
- 4) The right to education.
- 5) The right to work and own property.
- 6) The right to work.
- 7) The right to choose his own residence.

⁹ Abul 'Ala Mawdudi, *Human rights in Islam.*, 79.

¹⁰ Muhammad Imarah, *Hukukuku-l Insan fi-l Islam* (Daru-l Kutubu-l Masri Publisher, 2003), 97.

¹¹ Muhammad Thair b. Asur, *Maqasidu-s Syariah el-Islamiyyah* (Daru-l Kutubu-l Masri Publisher, 2001), 43.

¹² Muhammad Imarah, *Hukukuku-l Insan fi-l Islam.*, 101.

However, in some cases there is a difference between universal human rights and the rights of Islam, especially about the limits of freedom and about the position of women in Islam that in certain matters, such as marriage and inheritance, are not entirely the same as between women and men. Lies the fundamental difference is philosophy among Western countries which secular as the main reference in the implementation of human rights in Muslim countries who cannot escape from the aspect of sharia.¹³

And to show that Islam is also very appreciative of human rights at the same time draw up a formula which is in line with sharia, so in 1990 the Muslim countries which are members of the Organization of the Islamic Conference (OIC) issued a *Cairo Declaration of Human Rights*. This declaration approved by all members after 13 years ongoing debate between them.

The contents of the declaration consists of 25 chapter include the rights of the individual, social, economic, and political. All the rights and freedoms contained of this declaration obey to sharia (chapter 25). Civil rights and political consist of, for example, the right to obtain equality of human dignity as well as the obligations and responsibilities of humanity (chapter 1), right to equality under the law (article 19), the right to life is a gift of God (chapter 2), and the right to express opinions freely extent not contrary to the principles of sharia (chapter 22). Social rights and economic consist of, for example, the right to education (chapter 9), the right to work (article 13), the right to own property (Article 15), the right to earn a decent living (chapter 17), right to life in security for one's self, his religion, his dependents, his honor and his property (article 18), etc.¹⁴

In the social and economic fields, this declaration makes a lot of fundamental rights, but in politics it does not include, such as the right to freedom of association. This is probably due to the many Muslim countries that signed the declaration is not yet fully give political rights to its citizens. Thus, in addition due to philosophical differences between the West and Islam, it also caused because the political will of a government in a Muslim country.

¹³ Muhammad Imarah, *Hukukuku-l Insan fi-l Islam.*, 104.

¹⁴ Muhammad Imarah, *Hukukuku-l Insan fi-l Islam* (Daru-l Kutubu-l Masri Publisher, 2003), 106.

Many Muslim countries have attempted to adjust human rights practice to fit the culture of the people. But in reality, this adjustment is more intended to justify the political system promoted by the government of that country, not to bring the concept of human rights is the doctrine of Islam. In fact, there is also reason to adjust to the concept of Islam, but behind it, the adjustment was intended to justify its political system and keeping its power.

On the other hand, the implementation of human rights in Muslim countries are not in accordance with Islam and the double standards of Western countries in some cases inviting the emergence of "Islamic fundamentalism" in some Muslim countries.

This movement often exclusive and reject all Western civilization, including democracy and human rights, and confirms the existence of a conflict between Islam and the West. And this condition is exacerbated by claims of most Western societies, they awarded the most superior civilization, and therefore he should be disseminated throughout the world, without realizing that other people actually own social values and civilization like them.¹⁵

C. Human Rights and Islamic Law in Indonesia

The government of Indonesia in the era (1999-present) is committed to the respect to human rights; especially clarify the concept of human rights in constitution UUD 1945.

In chapter 28 J, article 2 also mentioned that limits one's rights are the rights of others. As explained "In exercising their rights and freedoms, everyone shall obey the restrictions set by law with the aim to ensure respect for the rights and freedoms of others, and to meet the demands of a fair in accordance with considerations of morality, religious values, security and public order in a democratic society".¹⁶

¹⁵ Nilover Ahmad, Majdood Ahmad, *Human Rights in Islam* (Oxford, 2001), 76.

¹⁶ Muladi, *Hak Asasi Manusia* (Yogyakarta, Mizan, 2000), 68.

A few years prior to the amendment of Law No. 39/1999 on Human Rights. In this law also mentioned about the limits of expression of these human rights, namely article 23 paragraph 4, explained: "Everyone is free to have, issue and disseminate his opinions in accordance conscience, orally or in writing through the print and electronic media with regard religious values, morals, public order, public interest, and the integrity of the nation."¹⁷ This provision is intended, that although human rights are universal, its implementation cannot be separated entirely from the particularism of the philosophy and culture of Indonesia. Restriction of freedom for such purposes is not opposed to good government, because democracy is a combination of freedom and order.

And then in 2005, Indonesia ratify *the International Covenant on Economic, Social and Cultural Rights* by Law No. 11 of 2005, and ratified the *International Covenant on Civil and Political Rights* by Law No. 12 in 2005. This ratification is very advanced step for Indonesia to uphold human rights for the better democratic process. With this national legislation also, they makes human rights as a principle of nation, although in some cases there is a debate on various issues relating to compliance with human rights.

The Human Rights Enforcement also be the direction for the development of law Indonesia, as stated in No. 17 of 2007 of the Indonesia Long-Term Development Planing (2005-2025) explained "The legal development of law have to carried out through legal reforms with regard to the plurality of the prevailing legal order, and the impact of globalization, in order to increase certainty and legal protection, law enforcement and human rights, legal awareness and legal services based on justice and truth, order, and prosperity in executing the nations that are orderly and organized so that the implementation of national development will be more smoothly."¹⁸ In reality, the enforcement of human rights through legislation or legal reform is still unfinished, as the criminal law in which is a legacy of the Dutch colonial era, though most of the chapters already amended.

¹⁷ R. Wiyono, *Pengadilan dan Hak Asasi Manusia di Indonesia*, 2nd Edition (Bandung : Mizan, 1999), 78, Read also *Undang-Undang Hak Asasi Manusia (HAM) Indonesia* (Jakarta : KOMNASHAM Publisher, tt), 86.

¹⁸ R. Wiyono, *Pengadilan dan Hak Asasi Manusia di Indonesia*, 69.

In the context of Islamic law, at the moment only a few Muslim countries that adopted the Islamic law (*sharia*) as a whole. Mostly they just adopted the family law and Islamic economics as a positive law.¹⁹ Therefore, in many Muslim countries there are still efforts to re-Islamization of the law, though not entirely. However, these efforts are not easily realized because among Muslims they are many differences in the implementation of this. Those who refuse reasoned, "Because many provisions of Islam are incompatible with human rights and democracy". But our trend is "democratization" and "shariatization" that could not be dammed, while fully accommodate was not easy to implement. Because Democracy with based on the Western secularism model is difficult fully accepted by most citizens that the majority of people in a pluralistic country like Indonesia.²⁰

In Indonesia after the reform period (1998-now) there are some Muslims movement, who demanded to impose Islamic sharia and Piagam Jakarta (Jakarta Charter)²¹ as a rule whole in Indonesia. Their efforts to incorporate this idea in the UUD 1945 did not succeed, because it is contrary to the basic pluralism of Indonesian state.

But in fact, the laws that already now are enough to accommodate the Islamic law in Indonesia, both in the formally form, such as laws on marriage and Islamic economics, or in substantive form, like the law of anti-pornography, anti-liquor, and so on.²² This legislation, this showed that between Islam, human rights and the law very harmony in Indonesia.

¹⁹ Muladi, *Hak Asasi Manusia* (Yogyakarta, Mizan, 2000), 68

²⁰ Muladi, *Hak Asasi Manusia.*, 72.

²¹ Piagam Jakarta is a historical document of compromise between the Islamic and national parties in Investigation Agency Efforts Preparation of Indonesian Independence (BPUPKI) to bridge the differences in Islam and the state. Another name is "Jakarta Charter". Jakarta Charter is a charter or manuscript compiled in the committee meeting nine or nine figures Indonesia on June 22, 1945. (Marwati Djoened Poesponegoro, *Sejarah Nasional Indonesia*; Jakarta, Balaipustaka, 1998), 67.

²² Muladi, *Hak Asasi Manusia* (Yogyakarta, Mizan, 2000), 74.

In fact, in some cities, such as West Sumatra, Gorontalo, Cianjur, Tasikmalaya, Solok and Tangerang, their regulations very accommodate the Islamic law and until now there is more than 68 PERDA (local regulation) "nuanced sharia". Several NGOs and observers consider that regulation nuances of sharia is contrary to human rights and pluralism, because it gave rise to discrimination between Muslims and non-Muslims, and between men and women.

For this reason, in 2007, there are three residents from Tangerang city, namely Lilis Maemunah, Turi Rahmawati, and Hesti Prabowo requested judicial review to the Supreme Court (Mahkamah Agung) about Tangerang City Regulation No. 8/2005 in *Prohibition of Prostitution*). But, the Supreme Court rejected the petition, stating that these laws are not infringing on the higher laws like human rights and the UUD 1945 (Indonesian Constitution).

In general, these Perda (local regulation) that did not contra with the national legal system, because this rules are different in the private area, which allows for legal pluralism and disobedience in laws only to reinforce the legal provisions in the Criminal Code, except in Bulukamba that already so far include to criminal laws.

Indeed, in a number of Perda (local legislation) there are some chapters which in its implementation have potential to violate human rights, for example related to the freedom of women in the context of the prohibition of prostitution. This can be solved by improving the competence of law enforcers so they truly understand the principles of human rights.

D. Conclusion

The above description can be concluded, that the human rights (HAM) has been known since the beginning of Islam, and it is not just a right, but rather a necessity or an obligation that must be realized for human being. In fact there are many governments in Muslim countries that do not provide to protect human rights, this is due, because their policy was not in order to implement the teachings of Islam, but in order to keep their power. Certainly there are a number of things that there is a difference between Islam and human rights (International/liberal), but it can be pursued through the harmonization between the two.²³

In the Indonesian context, given the enforcement of human rights is one of the government's commitments in this era, while most people still do not know and have not aware of this, then this human rights education needs to be done, both within and outside the school.

And human rights education in schools must integrate with civic education and religious education. And in outside school this integration by regulations or training, especially for law enforcement and community leaders. And religion is an important factor in the life of Indonesian society, the human rights education in religious context becomes important as well, especially Islam as the majority religion. Moreover, a number of Perda (local legislation) in some regions in Indonesia have adopted provisions of the sharia (Islamic law).

²³ Muhammad Imarah, *Hukukuku-l Insan fi-l Islam* (Daru-l Kutubu-l Masri Publisher, 2003), 134.

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