

CHAPTER FOUR

FINDING AND ANALYSIS

A. The *Fiqh* of Tolerance

1. Definition of *Fiqh* of Tolerance

Fiqh is the name given to the all scientific aspects of jurisprudence because it implies the exercise of intelligence in deciding a point of law in the absence of a binding text (*nas*) of the *Qur'an* and *Sunnah*.³⁸ The term of *Fiqh* is derived from the root of word *fa qa ha* which means comprehensive or accurate understanding.³⁹ The *Qur'an* has emphasized this word on several occasions, among others:

يَفْقَهُوا قَوْلِي

“That they understand my speech.”⁴⁰

The term of *yafqahu*, which means understanding, is derived from the same root of the *fiqh* as seen in previous explanation. In some hadiths which were reported by Bukhari and Muslim, the Prophet (PBUH) made *du'a* for ibn

³⁸ Zaydan Abdul Karim, 1976, *Al-Madkhal li Dirasah Al-Shariah al-Islamiyyah*, Baghdad, Mu'assasah al- Risalah and Maktabah al-Quds, p. 67

³⁹ *Ibid*,

⁴⁰ Qur'an surah Taha: 28

‘Abbas by saying: “O Allah, teach him *ad-din* (Islamic religion) and make him understand the interpretation of *Qur’an*.”⁴¹

Similarly, in this hadith, the word *faqqih hu* is used with the meaning, providing full understanding and comprehension of the interpretation of *Qur’an*.⁴² According to Abu Hanifah, *fiqh* is defined as the knowledge of what is for human self and what is against human self (*ma’rifat al-nafs ma laha wa ma ‘alayha*).⁴³ In relevance, Al-Amidi provided a broader definition of *fiqh* by saying that *fiqh* is the branch of knowledge of understanding the legal obligations which is derived from its sources (i.e., *Qur’an*, *Sunnah*, and other sources of Islamic law).⁴⁴

The majority of Islamic Jurist defined *fiqh* in terms of its four basic sources. Therefore, it is defined as the science of Islamic law which is the knowledge of one’s rights and obligations derived from the *Qur’an*, *Sunnah* of the Prophet, the consensus of opinions among the learned (*ijma’*), and analogical reasoning (*qiyas*).⁴⁵ One of the essential points that should be observed about *fiqh* is its flexibility.

⁴¹ Mohamad Akram Laldin, 2011, *Introduction to Shari’ah & Islamic Jurisprudence*, Kuala Lumpur Malaysia, CERT Publication, p. 5

⁴² Ibn Manzur, 1300 A.H, *Lisan al-‘Arab*, Beirut, Dar Sadiir, p. 1120

⁴³ Zaydan, “Al-tawdih fi Usul al-Fiqh”, *Al-Makhdal*, Volume 1(10), p. 62

⁴⁴ Opcit, Ibn Manzur, p. 1120

⁴⁵ As-Shafi’I, *Al-Risalah*, *Fiqh* is not only limited to the knowledge of one’s rights and obligations that was deduced for the prescribed sources, but it also includes the laws itself.

The Arabic word of tolerance is *tasamuh*, which means forgiving or open-minded. Etymologically, the term of *tasamuh* is rooted from the Arabic word, *samaha*, which are often translated as tolerance, or no compulsion in religion.⁴⁶ The Abrahamic concept rooted in Islamic history is based on the instruction of the Qur'an and Sunnah. *Tasamuh* also means giving freedom for all people to arrange life without violating or be against others and live peaceful in a society.⁴⁷ This "tolerance" is related to the presence of religious people. Tolerance has also been mentioned in Black's Law Dictionary which says that tolerance is a departure allowed from a standard that is not going to affect a process over its life cycle.⁴⁸

Terminologically, according to Muhammad al-Sharawi (1911), the famous Islamist writer and preacher, tolerance is the principle of no compulsion in the religious aspect, which is expressed as a virtually Islamic value.⁴⁹ In another opinion, Crispin Wreight introduced the terminology of tolerance by defining tolerance as a consequence of applying the basis of casual observation or accommodating the limits of perception, memory, and paradigm.⁵⁰ In the

⁴⁶ Scott, Rachel M, 2010, *The Challenge of Political Islam non-Muslims and The Egyptian State*, California, Stanford University Press, p. 97

⁴⁷ Ayunda Widosari, *Analyzing the Fiqh of Tolerance of Three Largest Islamic Organizationz (Nahdatul Ulama, Muhammadiyah and Front Pembela Islam): The Blasphemy Case of Ahok*. International Seminar on Islamic Civilization and Thoughts (INSIST), 20th of November 2017, p. 24

⁴⁸ Black's Law Dictionary

⁴⁹ Scott, Rachel M, 2010, *The Challenge of Political Islam non-Muslims and The Egyptian State*, California, Stanford University Press, p. 97

⁵⁰ Sorensen, A Roy, *Symposium: a Thousand Clones*, Mind Association, Volume 103(409), Oxford University, p. 47

Western perspective, Horton and Nicholson (1992) defined tolerance as holding true beliefs into an action on the grounds of main reasons.⁵¹

According to Yusuf, Al-Qaradhawi⁵², there are three stages of tolerance in religiosity. The first is giving freedom for all people to perform prayers based on their religion. The second is providing freedom for people to achieve their worship and traditional celebration. The third or the highest stage of tolerance is not blaming something *halal* in another religion except Islam; even if it is *haram* for Muslim.

From the explanation above, it can be concluded that *fiqh* of tolerance is an attitude of people on the plurality condition, especially related to religion. This attitude is needed to maintain inter-religious conflict or belief. In other word, *fiqh* of tolerance is an attitude of Muslims in the daily life of religion which intend to not break a limit, especially in concerning the *aqidah* or faith of Muslim. However, the Holy Qur'an mentions the concept of tolerance with all of its boundaries explicitly.

In religious life, *fiqh* of tolerance is an attitude which becomes one of the virtual requirements for every individual to live together respectfully and securely among each other. Thus, it is expected to create a good interaction and

⁵¹ Thomas Nys and Engelen Bart, "Tolerance: A Virtue? Towards a Broad and Descriptive Definitio of Tolerance", *Philosophy in the Contemporary World*, Volume 15(1), Katholieke Universiteit Leuven and Universiteit van Amsterdam, p. 47

⁵² Muhammad Mumtaz Ali, *Wasatiyya as a Higher Principle of the Shariah: a Civilizational Aproach*, International Seminar on Islamic Civilization and Thoughts (INSIST), 20th of November 2017, p. 12

understanding in the religious society regarding their rights and obligation boundaries in social life, which consist of various tribes, races, religions, and faiths.

In sociological view, the Islamic doctrine related to the *fiqh* of tolerance is conformable with the reality of religious pluralism existence. The faith differences in social reality cannot be denied. The acknowledgement of religious pluralism in sociological view enriches the straightforward tolerance admission, but this admission does not contain the acceptance toward the true theology of another religion. The instruction for being tolerant is emphasized in the Holy Qur'an. Allah says in Surah Al-Baqarah: 256.

لَا إِكْرَاهَ فِي الدِّينِ ۗ

*“Let there be no compulsion in religion”*⁵³

And additional verses *Surah Al-Kahfi*: 29

فَمَنْ شَاءَ فَلْيُؤْمِرْ وَمَنْ شَاءَ فَلْيُكْفُرْ

“So whoever wills - let him believe, and whoever wills - let him disbelieve.”

Based on the explanation of the verses above, Al-Bukhari recorded a similar story in His Sahih hadith from Abu Hurayrah. He said that the essential aspect of tolerance is faith. The *surah* also describes the proper behavior of the believers in their faith. Islam has never sought our people converting their belief

⁵³ Qur'an *surah* Al-Baqarah: 256

through a compulsion or threatening non-Muslims. Islam has established the great universal principle that: “there shall be no compulsion in religion, the right way is henceforth distinct from error.”⁵⁴ The freedom of beliefs is the fundamental basic right that identifies a man as a human being.

2. The Scope and Importance of *Fiqh* of Tolerance

a. Tolerance in belief

A review of the Qur’an shows that Islam believes intolerance in the scene of beliefs. Tolerance in Islam does not arise from indifference towards religion and relativity in knowledge.⁵⁵ The logic of the Qur’an in tolerating opposing beliefs is based on this freedom in their acceptance and accordingly.⁵⁶ Islam has appealed to human intellect, asking them to think about its arguments.

أَفَلَا يَتَذَكَّرُونَ ۗ الْقُرْآنَ ۚ وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلَافًا كَثِيرًا

“Then do they not reflect upon the Qur’an? If it had been from [any] other than Allah, they would have found within it much contradiction.” (Q.S.4:82)

There is no tolerance in terms of faith and belief. Islam is very strict about belief which is tolerated due to someone’s faith is the fundamental identity of Muslims.

⁵⁴ Sayyid Qutb, “In the Shade of the Qur’an Tafsir (Commentary on the Qur’an) about verse 2:256”, *The Maythr Surahs*, Volume 1(2), p. 348

⁵⁵ Shadi Nafisi, “Tolerance in Islam”, *AOSIS*, 2018, p. 5

⁵⁶ Interview with Dr. Muchammad Ichsan, on 1st of July 2019 in Universitas Muhammadiyah Yogyakarta

b. Tolerance in worship (*ibadah*)

Tolerance in worship is similar to tolerance in belief. In Islam, there is no tolerance for worship because worship is related to rights and obligation of Muslim to Allah. Therefore, there is no bargain. The element of worship was revealed in Qur'an and Sunnah. It should be clear, that Muslim have a restriction in tolerance.

c. Tolerance in behavior (*muamalat*)

In addition to bearing conflicting beliefs, tolerance in behavior has a great importance in the provision of a society who have a high capacity to carry other people.⁵⁷ It can be seen in the instruction of patience, which is emphasized in the Holy Qur'an:

“Be patient about anything they may say, and steer clear of them in a polite manner” (Q.S.73:10)

From the verses above, it can be concluded that Islam has already explained the *fiqh* of tolerance. It seems that tolerance in behavior provides the society an ethical ground to the tolerance of belief and it becomes prevalent. So, a Muslim is supposed to extend forgiveness and pardon to non-Muslim as Muslims' attitude in the same way as Allah mentioned in the Qur'an.⁵⁸

⁵⁷ Ghani, R.A. and Awang, J, “A review on writings on religious tolerance in Malaysia”, *International Journal of Islamic Thought*, Volume 12(12), 2017, p. 72–82

⁵⁸ *Opcit*, Shadi Nafisi, p. 7

Hence, the scope of *fiqh* of tolerance and the field in which tolerance in Islam is applied can be divided into three fields, namely tolerance in belief, tolerance in worship and tolerance in behavior.

Then, the importance of the *fiqh* of tolerance does not lead to indifference. It also rejects any retreatment from the main beliefs of Islam. In a society, tolerance is important to have governance continuity among its residents or people living in that place. If there is no tolerance within a society, people may become uncooperative and lack mutual respect, the lasting peace in the community cannot be maintained, and loyalty to one another cannot be established.

3. History of *Fiqh* of Tolerance Based on Islamic Perspective

Based on the historical background, Islamic Jurisprudence (*fiqh*) has experienced a condition in which some people tend to confine *fiqh* to vertical worship issues without intensively addressing the question of how Muslims should live in the midst of plurality. *Fiqh* is more temporary and its existence tends to follow social dynamics.⁵⁹

There are various concrete evidence showed that Islam is the most tolerant and fair religion in the world. Prophet (PBUH) and *sahabah* as the figure during the caliphate era, had provided a normative ideal way to organize

⁵⁹ Qodri Azizy, 2014, *Hukum Nasional; Eklektisismen Hukum Islam dengan Hukum Umum*, Jakarta, Teraju, p. 30-31

Muslims people thought toward non-Muslims. *Tasamuh* concept is filtered through contemporary issues and its priority is called as tolerance. There are several examples of tolerance during the caliphate era, as mentioned below:

1. The negotiation conducted by the Prophet Muhammad (PBUH) and Quraisy that led to the success of the peace negotiation.⁶⁰ Peace negotiation honoured Muslim space in the propagation of Islam, which was called as the landslide conquest. The role of Prophet Muhammad was a negotiator and also mediator on the *Hudaibiyah* agreement in 628 M/6 H.⁶¹ He had a prediction that the agreement would have positive impacts for all Muslim at that time. Although the Quraisy betrayed the Rasulullah and his *Sahabah*⁶², Rasulullah decided to ignore it and the Prophet did *Umrah* and *Haj* without any war in Makkah.⁶³ The Prophet succeeded in leading Makkah at that time and almost all people in Makkah from Quraisy followed the belief of the Prophet Muhammad (PBUH).

The history has been enshrined in the Qur'an *surah* Al-Fath: 1

⁶⁰ Sharaf al-Qudah, Akram Muhammad Nemrawi, and Faisal Ahmad Shah, "Negotiation Skills in the Sunnah: A Case Study on Hudaibiyah Peace Negotiation", *Al-Bayan: Journal of Qur'an and Hadith Studies*, Volume 12, 2014, p. 3

⁶¹ Abu Haif, "Perjanjian Hudaibiyah", *Jurnal Rihlah*, Volume 1 (2), 2014, UIN Alaudin Makassar, p. 119

⁶² According to Shaykh al-Sa'di said: Those who are acknowledge the blessing and affirm it, and who do what have command by Allah and prophet in order to requires of righteous deeds, and also are the one whom Allah bestows His blessing, for Allah is wise and He does not place His bounty with one who is not qualified to receive it.

⁶³ Mohammad Kosim, "Institusi Politik di Zaman Nabi Muhammad SAW", *Islamuna*, Volume 2(1), 2015, IAIN Pamekasan, p. 5

إِنَّا فَتَحْنَا لَكَ فَتْحًا مُّبِينًا

*“Indeed, We have given you O Muhammad, a clear conquest.”*⁶⁴

The history on “Fathul Makkah” is a monumental event that appears in the history of Muslims about the ethics of warfare. Establishing political forces did not move the heart of the Prophet to make it a moment of revenge. As a result, bloodshed did not occur, and the glory of Muslims was even more brilliant.⁶⁵

The text of the agreement between the Messenger of Allah and the Jewish people indicates that, the *fiqh* of tolerance is related to the suggestion of being fair with the scribes. Within the framework of Islam, there is a doctrine of the victory needs over the others and there calls for mutual counsel in kindness.⁶⁶

2. The Constitution of Medina is reported to be an agreement between Muslims (Anshar and Muhajirin) and the Jewish tribes in Medina. The Jews who helped the believers were entitled to have the same rights and it was granted to believers under the document of Medina Charter.⁶⁷ This situation is emphasized in Article 16 of the Medina Charter which states that: “Those Jews who follow the Believers will

⁶⁴ Qur’anic Verses Al-Fath: 1

⁶⁵ Hikmah, *Toleransi Rasulullah dalam Peristiwa Fathul Makkah*, retrieved from <http://www.nu.or.id/post/read/81447/toleransi-rasulullah-dalam-peristiwa-fathul-makkah>

⁶⁶ Ahzami samiun jazuli, 2006, *Kehidupan dalam Pandangan Al-Qur’an*, Depok, Gema Insani, p. 249

⁶⁷ Anver Emon, “Reflections on the ‘Constitution of Medina’: an Essay on Methodology and Ideology in Islamic Legal History”, *UCLA J. Islamic & Near E.L.*, Volume 1, 2001

be helped and will be treated with equality.” (Social, legal and economic equality is promised to all citizens of the State).⁶⁸

Islam is the first religion that fully introduces the view of tolerance and religious freedom to humanity. This concept also has an impact on cosmopolitanism for the development of brilliant culture and civilization because the culture is characterized by tolerance and religious freedom.

The definition of *fiqh* of tolerance here does not confuse the religion itself, but it is giving a space and time to harmoniously interact with other people as long as they do not violate the Islamic teachings. These rules are binding. Generally, the non-muslims accepted the rules. The main teachings in the Islamic religion related to values of tolerance can be seen in the Medina Charter. They are, as follows:

- a) The first is freedom without coercion. In Islam, full of tolerance and life creations based on helpful interactions is related to freedom of religion without coercion, both conceptually and practically. This evidence has been mentioned in the Qur'an *Surah* Al-Baqarah: 256 which explains that there is no compulsion in religion (religious freedom).

⁶⁸ Full Text Medina Charter- Constitution Article 16, Constitution org, retrieved from <https://www.constitution.org/cons/medina/macharter.htm>, accessed on 31st of May 2019 at 1.00 pm

b) The second is Muslim unity. He tried to merge the class, ethnic, race, and structures while removing human biases arising from various factors of discrimination, which is contained in Q.S. Al-Baqarah: 213.

c) The third is the enforcement of justice. Islam is full of social inspiration that encourages people to socialize with each other and remains consistent with the formulation of "good deeds" based on the spirit of divinity.

Consequently, justice and ethics become a necessary foundation in the community order. Thus, the enforcement of legitimacy of a social system based on justice cannot be separated from two things which are (1) based on *Shari'a* provisions, and (2) fair legal/*qanun* laws.

d) The fourth is Muslim attitudes towards non-Muslims. Islam has a broad opinion for coexistence and living together with people who have different faiths in social matters by respecting, loving, creating peace and harmony between people so they are not divided.

There are many hadiths of the Prophet that explain the pattern of Muslim attitudes towards non-Muslims, including: treating everyone well, creating peace and security, being fair by giving rights proportionally, and so on.

3. The prophet did not follow the celebration of Christians at that time, although the Christians tried to invite the Prophet. It was known that the prophet only gave the best smile to the Christians and left them. This attitude was exemplified by the Prophet when he faced non-Muslims at that time. Then, the following verse arose that describes tolerance of this kind.

Islam is a religion that highly upholds justice. Divinity for anyone means that it is putting something in its place and giving rights according to their rights. Likewise with tolerance in religion, Islam forbids strict acts of wrongdoing with religions other than Islam by depriving them of their rights. It is based on the instruction from Qur'an *Surah Al-Mumtahanah*: 8-9.

“Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes - from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly. (8)” “Allah only forbids you from those who fight you because of religion and expel you from your homes and aid in your expulsion - [forbids] that you make allies of them. And whoever makes allies of them, then it is those who are the wrongdoers. (9)”⁶⁹

Shaykh Abdurrahman bin Nashir As-Sa'diy rahimahullah interpreted that Allah does not forbid Muslim to do good with non-Muslim, as long as the non-Muslim do not fight the Muslims, because having a

⁶⁹ Qur'anic verses Al-Mumtahanah: 8-9

relationship with them in such circumstances is fine.⁷⁰ Yet, *fiqh* of tolerance has a limitation and it should not be excessive, such as saying "Merry Christmas" and attending religious services or rituals for other religious occasions because if you have religious affairs, there is no tolerance and mutual support.

4. Brief History of Tolerance in Indonesia

The Republic of Indonesia, as the largest Muslim nation, has become well known internationally. According to Abdurrahman Wahid, the fourth president of Indonesia, there are three paradigms of the relationship between Islam and the state in the modern era, which are: the theocratic view (Islam as religion and state); the secular view (the separation of religion from state); and the *fiqh* view (mutual legitimacies of religion and state)⁷¹. These three paradigms competed for each other to monopolize the interpretation of Pancasila, as the national identity⁷² of the Republic of Indonesia.⁷³

⁷⁰ Taisir Karimir Rahman, 1424 H, Dar Ibnu Hazm, Beirut, p. 819

⁷¹ Abdurrahman Wahid, 2007, *Bagaimana Membaca Nu*, in *Gus Dur Menjawab Kegelisahan Umat*, Jakarta, Kompas, p. 17

⁷² Erickson defines national identity as "the permanent self-identification within the inside of the person and the reciprocal relationship of a principal character which share among others". The modernization process the national identity very critical significance and universal character spreading almost all countries.

⁷³ An ideological approach may lead to the outbreak of violence if it is understood exclusively so as to stop the process of dialectical dialogues with other ideologies; Stephen Vertigans, *Militant Islam and Weber's Social Closure: Interrelated Secular and Religious Code of Exclusion*, Contemporary Islam, Volume 1(4), 2007, p. 303.

As people known that Pancasila is the ideology of Indonesia and an ideology is the soul of the state.⁷⁴ The purposes of Indonesia implementing Pancasila as its ideology are mentioned in the Preamble of the 1945 Constitution, “subsequent thereto, to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice.”⁷⁵

The ideology of Pancasila is the combination of mindset and belief, and it aims to be used as the fundamental of basic understanding and interpreting.⁷⁶ The norms and moral values of Pancasila were known by the people of Indonesia since the first time it was mentioned in the speech of Ir. Soekarno as the first President of the Republic of Indonesia. It contains five moral values which are named by “*sila*.”

The five moral values mentioned in Pancasila is the reflection of National identity as the inherent dignity of Indonesian citizens. Pancasila has the function

⁷⁴ Gabrielia Febrianty Shofiana, “Philosophy Pancasila and Modern Technology”, *Yuridika*, Volume 29(2), Universitas Airlangga, 2014, p. 10

⁷⁵ The Preamble to the 1945 Constitution of the Republic of Indonesia.

⁷⁶ Noorhaidi Hasan, “Religious Diversity and Blasphemy Law Understanding Growing Religious Conflict and Intolerance in Post-Suharto Indonesia”, *Al-Jamiah: Journal of Islamic Studies*, Volume 55(1), 2017, UIN Yogyakarta, p. 107

to complete legal ideas of Indonesia which covers either written or unwritten statutory of state. Every law, which is going to be created and formed, can be appropriated to the community. Pancasila as an ideology and national identity cannot be influenced by modernization, in fact, Pancasila harmonizes and combines with modernization itself.

Soekarno and Hatta which had a role as the President and Vice President of Indonesia at that time was officially active during two postcolonial aggression by the Dutch Empire after the proclamation of Indonesia in 1945.⁷⁷ During the rapid condition on the development of Indonesia, the protection of freedom was only regulated on Article 28 of the 1945 Constitution, which stated that:

“The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.”⁷⁸

Based on the 1945 Constitution Article 29 related to freedom of religion, Indonesian regulation had enacted the rules to protect Indonesian citizens. Moreover, the legal apparatus tried to enforce the punishment against the Constitution although the enactment and enforcement of this Constitution were not implemented well. On the other hand, Soekarno was very dictatorial. It can be seen from the way he dissolved the Masyumi party and Soekarno's policies

⁷⁷ Adrian, 2005, *A History of Modern Indonesia*, Cambridge, Cambridge University Press, p. 99

⁷⁸ The 1945 Constitution

was often criticized by the issuance of the Presidential Decree of 5th of July 1959.

In fact, Masyumi is an Islamic-ideological party opposed Communism, as called *Partai Komunis Indonesia (PKI)* or Indonesian Communist Party. Hamka, one of Masyumi's representative, was repressed by Soekarno after the dissolution of Masyumi party. Even more, Hamka's magazine entitled *Panji Masyarakat* was banned.⁷⁹ The newspapers supporting the Indonesian Communist Party (PKI) are Guided Democracy, namely *Harian Rakjat*, *Bintang Timur*, and *Lekra*. The end of the Soekarno's regime was a rejection of his speech in front of the Temporary People's Consultative Assembly or *Majelis Permusyawaratan Rakyat Sementara (MPRS)*. On 12th of March 1967, President Soekarno was replaced by Soeharto.⁸⁰ Recently, there was a massive democratic era that happened in Indonesia. Then, the new issues in Indonesia were mentioned on infrastructure, corruption, and economy.

In addition, the problem is increasing rapidly and cruelly when the political system is separated from the religious aspect because the opinions come from public figures and politicians of Indonesia. They brought the western perspective into the democratic system of Indonesia. However, the

⁷⁹ Fauzan, 2003, *Mengubur Peradaban: Politik Pelarangan Buku di Indonesia*, Yogyakarta, LKIS dan YSIK, p. 119

⁸⁰ Roosa, John, 2006, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat in Indonesia*, Wisconsin, The University of Wisconsin Press, p. 69

society's moral values in Indonesia follow an ethical norm, especially for the religious norms.

B. *Fiqh* of Tolerance under Indonesian Law

1. The 1945 Constitution

The substance of tolerance explain that freedom is the essence of tolerance which mentioned in Article 28E paragraph (1) stated that:

“Everyone is free to choose and practice the religion of his choice, choose one's education, choose a job, choose one's citizenship, and choose one's residence within the state territory, to go to it and then go back there.”

The Constitution has provided the freedom of religion as rights for all Indonesia's citizens to choose the religion which is supported by The Constitution. Indonesia encourages only five beliefs. They are Islam, Christian, Catholic, Hindu, and Buddha. The Constitution do not allow Indonesian citizens to become atheists. However, the freedom is to have one religion as the identity of people to get the protection in term of worship and also perform the prayer.

This condition is supported in Article 29 paragraph (1) which mentions that: “The state shall be based upon the belief in the One and Only God.” Paragraph (2) stated that: “The state guarantees all persons the freedom of worship, each according to his/her religion or belief.”

Freedom to embrace religion or belief and practice worship is a personal rule. Meanwhile, if it is in order to have a peace, it is also an interpersonal rule.⁸¹ The state has a role in protecting and providing the place for performing worship. Giving secure condition to perform worship as the guarantee of state based on the Constitution is a must. Therefore, the balance between individual rights and government obligations must be emphasized because Indonesia is a state of law. It is mentioned in Article 1, paragraph (3) which states that every citizen has the same position before the law.

According to A. V Dicey, the three essential features of the rule of law are human rights guaranteed by the Law, equality before the law as the supremacy of law, and the absence of arbitration without clear rules.⁸² Freedom is a fundamental right for humans; this include the freedom in choosing religions.⁸³

Based on the Sharia perspective, religion is divided into two categories. The first is the religion of *samawi*, which refers to the religion delivered to the world based on *wahy* from God, through Jibril informing the

⁸¹ Purnadi Purbacaraka dan Soerjono Soekanto, 1982, *Perihal Kaidah Hukum*, Bandung, Bandung press, p.16.

⁸² Muhammad Alim, 2001, *Demokrasi dan Hak-Hak Asasi Manusia dalam Konstitusi Madinah dan UUD 1945*, Yogyakarta, UII Press, p. 67

⁸³ Hefner, Robert W, "Islam, State, and Civil Society: the Struggle for the Indonesian Middle Class", *Indonesia*, Volume 56, 1993, p. 28

Prophets and spreading them to all people in the world. This statement is emphasized in the Holy Qur'an *Surah Al-Baqarah*: 2.⁸⁴

The explanation from the verse above is that religion as the *wahy* of God has concrete evidence called *Kitab* (Zabur, Taurat, Injil, and Qur'an). The last *Kitab* which is the complete instruction of God was delivered to Prophet Muhammad (PBUH), is named the Al-Qur'an. Al-Qur'an has several functions: the guideline for human; the direction to attain a solution in every single problem in the world; and informed about the situation in the hereafter. Therefore, Islam is the only one religion which is completed and protected by God. It is already mentioned in Qur'an *Surah Al-Maidah*: 3.

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا

*“this day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion.”*⁸⁵

The second is the religion of *Ardi* which means that, there was a development of religion based on culture, region, and opinions of the people themselves. There is no *Kitab* and *wahy* which is delivered by God. The example of this religion is Buddha or Hindu. Although these religions are not obtained from *wahy* of God, the Constitution has been protecting the rights for all followers of this religion.⁸⁶ Religious pluralism must be

⁸⁴ Qur'an *surah Al-Baqarah*: 2

⁸⁵ Qur'an *surah Al-Maidah*: 3

⁸⁶ Misrawi Zuhairi, 2007, *Al-Qur'an Kitab Toleransi*, Jakarta, Pustaka Oasis, p. 74

appropriately maintained. The principles of *fiqh* of tolerance are practiced in the daily lives of religious people, among others. Respecting one's ethical choice means respecting diversity and differences in the teachings of each religion.⁸⁷

From both explanation, it may be concluded that religious freedom in the 1945 Constitution is very comprehensive; there are no restrictions regarding the principle of tolerance. Freedom of religion means that everyone has to choose a religion which is recognized by the Constitution as mentioned in the Article. Regarding the pillars of democracy, freedom of religion is one of the critical contents of rights that should not be ignored.⁸⁸

But in terms of religious freedom in Islamic teaching, it has a limit and should not be excessive, for example in the case of apostasy. According to Muslim Jurist, Islam never forced people to embrace Islam, and non-Muslims are free to enter Islam. Yet, doing apostasy is prohibited in Islam.⁸⁹ The legal consequence for people who attends apostasy should be killed. There are several Quranic verses, or the Prophet's hadith were presented related to the doctrine of Islam protects the *aqidah* of Muslims. The frequently referred hadith concerning apostasy is “*man baddala dīnahu fa*

⁸⁷ Ghazali, Abd Moqsith, 2009, *Argumen Pluralisme Agama: Membangun Toleransi Berbasis Al-Qur'an*, Depok, Kitakita, p. 43

⁸⁸ Abd, Moqsith, “Tafsir atas Hukum Murtad dalam Islam”, *Ahkam*, Volume 13(2), UIN Syarif Hidayatullah Jakarta, 2013, p. 284

⁸⁹ Idrus, “Membumikan Fiqh Toleransi dalam Arus Pluralitas Agama”, *Hakam*, Volume 2(1), 2018, p. 42

‘*qtulûh*’ (Anyone converts, then kill it). It may be concluded that freedom of religion on *fiqh* has a restriction principle, and there is no tolerance in term of *aqidah*.

2. The Law No 1 of 1974 on Marriage

The Law No 1 of 1974 Article 2 paragraph (1) stated that:

“A marriage is legitimate if it has been performed according to the laws of the respective religions and beliefs of the parties concerned.”⁹⁰

Historically, in 1950, the Minister of Religion established the Governmental Committee to draft the Bill on Marriage regulation; it was completed in 1952 and 1954.⁹¹ In the first draft, the Bill was unified on marriage law for all religions in Indonesia, but it was rejected. The second draft was completed, based on the diversity of law which refers to different religious groups.⁹² The result has not been established yet.

The main problem on the Marriage Law is, there have been questioned whether or not the principle of unification of laws on Marriage Law for all different religious groups or diversity of rules should be applied in Indonesia. In July 1973, the Government submitted a new Bill to the parliament. It was

⁹⁰ The Law No 1 of 1974 article 1 paragraph (1)

⁹¹ Nani Soewondo, “The Indonesian Marriage Law and its Implementing Regulation”, *Archipel Anne*, Volume 13, 1977, p. 284

⁹² *Ibid*,

based on the unification of laws and recognizing the principle of equal rights between men and women in marriage and in terms of divorce.⁹³

The objections were raised by several Muslim leaders who considered specific articles to be inconsistent with the general principles of the Muslim religion.⁹⁴ Consequently, the Marriage Bill was adopted with several amendments dealing with adoption, parental system, betrothal, and the stipulation that nationality difference, race, and country of origin, religion/belief and the birth will not be an obstacle to marriage.⁹⁵ The most important on the provisions of Marriage Law is the implementation of the regulation.

The implementation of regulation has not covered all matters yet. Nevertheless, the philosophical and historical perspective in this regulation is still enforced. The idea of Marriage Law is to unify every jurisprudence from different religions without causing conflicts between religious people. The purpose of the establishment of Marriage Law is to give a tolerance among other people. It was supported by the philosophy of Pancasila and also the aspirations to promote the national law concerning marriage to be enforced to the Indonesians.

⁹³ *Ibid*,

⁹⁴ Arskal Salim, 2003, *APPENDIX 1- The Law of the Republic of Indonesia No 1 of 1974 on Marriage*, ISEAS, Yusof Ishak Institute, p. 235

⁹⁵ *Ibid*,

Actually, the Law of Marriage is already in line with the *fiqh* of tolerance based on the doctrine of Islam and moral values which may be reflected in the legislations. But practically, there are many people in Indonesia who violate the regulation for some private interests. For example, this of issue interfaith marriage has been becoming a debate among scholars in Indonesia. There are many people who conduct marriages in countries that legalize interfaith marriages. Then, they give the wedding legalization from the other country which results to holding a legalization from the Indonesian government. Meanwhile, the Islamic teaching strictly prohibited interfaith marriage as written in the Qur'an the *Surah* al-Baqarah: 221.⁹⁶

The prohibition of marriage between Muslim and non-Muslim is strictly regulated in Qur'an because the marriage will affect inheritance for the family in the future. Regarding article 1 and 2 (1) on Law Marriage, the doctrine of *fiqh* of tolerance in the Islamic jurisprudence has a limitation which is adopted in Law of Marriage. However, the *fiqh* fundamentally concerns about the tolerance in the aspect of marriage.

This evidence shows the world that Islam is the most tolerant religion in the earth in every single aspect of human and this is the best way to teach human on the *fiqh* of tolerance by giving a limitation of tolerance to avoid the violation of *aqidah*. The main problem in the application of *fiqh* of

⁹⁶ Qur'an *Surah* Al-Baqarah: 221

tolerance in the matter of marriage is the lack of enforcement by legal apparatus who organize the marriage for an Indonesian citizen.

3. The Law No 1 of 1965 on the Prevention of Religious Abuse and Defamation or the Blasphemy Law.

The Law No 1 of 1965 Article (1) stated that:

“Every individual is prohibited in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious-based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion”⁹⁷

The regulation on blasphemy covers two types of blasphemous acts: deviation from the five officially recognized religions⁹⁸ and defamation of these religions.⁹⁹ Practically, before a person can be prosecuted for a blasphemous act under Article 1, the person must receive an official warning under Article 2(1). In Article 2(1), it provides that the Minister of Religion, the Attorney General and Minister of Home Affairs can issue a joint decree to warn a person who has violated Article 1 by supporting deviant teachings.

⁹⁷ The Law No 1 of 1965 on the Prevention of Religious Abuse and/or Defamation on Article 1

⁹⁸ According to the Elucidation (Explanation) to the Presidential Decree No. 1/PNPS/1965, these are Islam, Christianity (Protestantism), Catholic, Hinduism, Buddhism and Confucianism. The Presidential Decree does not ban other religions or beliefs, such as Judaism, Zoroastrianism, Shintoism and Taoism, and their believers are free to practice their beliefs and religious activities as long as they do not violate other laws. This argument was reaffirmed by the Constitutional Court’s Decision No. 140/PUU-VII/2009 concerning the Request for Judicial Review of Law No. 1/PNPS/1965, 19 April 2010, p290, Supranote No. 16. However, in practice there are limitations on the followers of these non-mainstream religions in Indonesia.

⁹⁹ Melissa A, “Crouch, Law and Religion in Indonesia: the Constitutional Court and the Blasphemy Law”, *Supranote*, Volume 11, p. 3&5

If a religious organization commits the violation, the President has the power to prohibit the group on the suggestion of the three authorities listed above. If people have been warned and the people in the organization continues to act in breach of Article 1, then according to Article 3 they can be prosecuted and it should be convicted as well as imprisoned for a maximum of five years.

On November 2009, there are several Indonesian activists requested for a judicial review of paragraph (1), paragraph (2) and paragraph (3) of Blasphemy Law which had been submitted and decided to be rejected by the Constitutional Court. This view is in line with the Constitutional Court Decision number 140 / PUU-VII / 2009, which stated that Pancasila has become the basis of the state, which must be accepted by all citizens.¹⁰⁰

Due to the existence of Blasphemy Law, it is constitutional and its nature prevents the occurrence of blasphemy, and it is also recognized by the state. Therefore, the presence of the Blasphemy Law is still needed and is not against the constitution at all, especially related to the regulation of human rights protection as stipulated in the 1945 Constitution.

Blasphemy laws in Indonesia it should be implemented and should prosecute people who express the deemed blasphemous or insult to certain

¹⁰⁰ Erfandi, *UU PNPS masih Diperlukan untuk Kehidupan Beragama*, Alinea.id, retrieved from <https://www.alinea.id/kolom/uu-pnps-masih-diperlukan-untuk-kehidupan-beragama-b1UsC9re>, accessed at 28th of June 2019 at 1.00 am

religions. This is because it contravenes against Indonesia's obligations is respecting and protecting the freedom of thought or the freedom of choosing religion. Furthermore, implementing the regulation on blasphemy laws will likely contribute to an atmosphere of religious tolerance in the country.

Based on Sharia perspective, the prohibition of insulting the false Gods of the disbelievers that do not insult Allah has been mentioned in Qur'an *Surah Al-An'am*:108.¹⁰¹

And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge. Thus We made pleasing to every community their deeds. Then to their Lord is their return, and He will inform them about what they used to do."¹⁰²

Insulting other deities will lead to a bigger evil than its interest, for the figures might react by insulting the God of the believers, Allah, none has the right to be worshipped. According to Imam al-Quthubi, the majority of Ulama decided that *Kafir* or infidels are people who abused, denounced or demeaned the position of the Prophet (PBUH), or related to the invitation of

¹⁰¹ Alim Muhammad, 2010, *Asas-Asas Negara Hukum Modern dalam Islam Kajian Komprehensif Islam dan Ketatanegaraan*, Yogyakarta, Lkis Yogyakarta, p. 56

¹⁰² Qur'an surah Al-An'am: 108

kufr, as they are going to be given a *ta'zir*¹⁰³ punishment.¹⁰⁴ This statement is emphasized on Qur'an *Surah At-Taubah*: 66.

لَا تَعْتَذِرُوا قَدْ كَفَرْتُمْ بَعْدَ إِيمَانِكُمْ ۗ إِنَّ نَعْفَ عَنْ طَائِفَةٍ مِّنْكُمْ نُعَذِّبُ طَائِفَةً
بِأَنَّهُمْ كَانُوا مُجْرِمِينَ

*“Make no excuse; you have disbelieved after your belief if We pardon one faction of you. We will punish another faction because they were criminals.”*¹⁰⁵

Necessarily, Islam has protected the rights of people in respecting other religions.¹⁰⁶ Based on the Constitution and Sharia perspective, both perspectives have similar purposes and aim to protect the religion against deviation and blasphemous act. Therefore, the Constitution also has a procedure to prosecute by giving punishments for a person who is convicted. The Prophet has exemplified the method based on the instruction of God.

¹⁰³ Hanafi scholar defines *ta'zir* as “crime which has no specified punishment in *shari'a*. It is a crime either against the right of God such as abandoning the prayer and fasting, or against the right of the individual such as harming a Muslim with a word or deed. According to Maliki jurist in his commentary on *Mukhtasar al-Khalil* gives its definition as a “punishment [for a crime] which has no (specified retribution). It differs according to people and their words and deeds (al-‘uquba allati laysa fiyha shay’un ma,,lumun bal yakhtalifu bi ikhtilaf al-nas wa aqwalihim wa af,,alihin)

¹⁰⁴ Muhammad al-Khurashi, *Sharh al-Khurashi ‘ala Mukhtasar Saydi Al-Khalil*, Beirut, Dar al-Sadr, Volume 8, 1990, p. 110

¹⁰⁵ Qur'an *surah At-atubah*: 66

¹⁰⁶ Al-Nawawi, Yahya b. Sharaf, “Minhaj, in the margins of Mughni al-Muhtaj”, *Matba., a Mutafa al-Halabi*, Volume 4, 1958, p. 191, Egypt.

Blasphemy Law is not a law regulating on religious freedom as a human right, but it is a law regulating the prohibition of blasphemy against religions in Indonesia.¹⁰⁷ It can be concluded that the establishment of Blasphemy Law gives broader place or an anticipatory act towards the possibility of an anarchic action, if there is a successor to a religion that feels its religion is tainted. Precisely, with the existence of the Blasphemy Law, the blasphemy problem which may cause a big reaction can be minimized and even resolved due to the interreligious harmonization in Indonesia through the existence of the law.

4. The Joint Ministerial Decree No 3 of 2008 on the Administrative Procedure of the Construction of Places of Worship to Justify its Policies

The Joint Ministerial Decree mentioned in the consideration point (a) and (b) is that; religious rights are human rights which cannot be reduced within in any case, everyone is free to embrace his or her religious worship according to his religion and belief, the state guarantees independence each resident to embrace his faith and to worship according to his religion and his beliefs, and in exercising his rights and their freedom must be respected by

¹⁰⁷ Hwian Christanto, "Arti Penting UU No. 1/PNPS/1965 Bagi Kebebasan Beragama: Kajian Putusan Mahkamah Konstitusi Nomor 140/PUU-VII/2009", *Jurnal Yudisial, Menakar Res Judicata*, Volume 6(1), 2013

other people in an orderly manner within the community life, nation and state, and subject to restrictions stipulated by law.

This regulation is effective for religious minority rights because the regulation requires all religions including minority religions, to obtain the signatures of a certain number of people who support the building of a place of worship. The requisites of a certain number of signatures to build places of worship assert that all religions including the minorities in a region may potentially become victim and face difficulties to build their places of worship.¹⁰⁸

Based on the Islamic perspective, religious minorities are called *dhimmi*, short for *ahl al-dhimmah*, or people of the *dhimmah*.¹⁰⁹ The original meaning of *al-dhimmah* means the protection and it is an abbreviation of *dhimmat-Allah wa-rasulih*, or “protection of God and His Prophet.”¹¹⁰ Consequently, it has become a legal term and not a reference to the recipient of divine protection. It is essential to discuss that people are

¹⁰⁸ Al-Khanif, The Paradox of Religious (In)tolerance in Indonesia, The Jakarta Post, retrieved from <https://www.thejakartapost.com/news/2015/10/16/the-paradox-religious-intolerance-indonesia.html>, accessed on 26th of May 2019 at 11.00 am

¹⁰⁹ Bat Ye'or, 1985, *The Dhimmi: Jews and Christians Under Islam*, Cranbury, Associated University Presses, p. 36

¹¹⁰ Milka Levy-Rubin, 2011, *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence*, New York, Cambridge University Press

protected on behalf of God and His Prophet (PBUH) as an enormous responsibility.

The values which are fundamental are started by reflecting some historical backgrounds relevant to the treatment of religious minorities. The time the Prophet (PBUH) arrived in Medina agreeing to a treaty between Muslims and non-Muslims which primarily established the rights and responsibilities between the various Muslim groups and the Jewish tribes.¹¹¹ Hence, Muslim leaders need to be held accountable and the treatment of minorities today and must reflect the justice and ethics designed by the Prophet (PBUH) in the Charter of Medina. In any case, the treaty serves people a starting point for an interreligious relationship; in essence, the Jews are allowed to continue their lives without interference.¹¹²

The rights and responsibilities of religious minorities are not always a simple matter. The *dhimmi* paradigm that was established at an early stage of Islamic civilization is a consequence of flexibility and it results intolerant societies. In other words, Islamic law is not intolerant in their teachings and actually in line with the social life nowadays with the existence of the spirit

¹¹¹ Tasneem Alkiek, *Religious Minorities under Muslim Rule*, Yaqeen, Yaqeen Institute for Islamic Research, University of Michigan, p. 4

¹¹² *Ibid*,

of Islam continues to be reflected. It is supported by Qur'an Surah An-Nisa: 86, as follows:

*“And when you are greeted with a greeting, greet (in return) with one better than it or (at least) return it (in a like manner).”*¹¹³

One step from the government to implement the *fiqh* of tolerance is by establishing the regulation on the construction of a place of worship. The aims of Joint Ministerial Decree No 3 of 2008 are to create harmony and peace between religions and having a certainty of law.¹¹⁴ However, it must actually be understood that the establishment of places of worship does not exist in space. It must be part of a social community which is not identical with an adherent of particular religions, but broadly, it is about the order of social space and psychological aspects of society because it involves the lives of many people.

The government gives an instruction to the community to build a place of worship by adjusting them to spatial planning. The regulation has several purposes to guarantee the recognition and respect for the rights and freedoms of others and to fulfil the demands based on the consideration of morals, religious values, security and public order in a democratic society. It is under the of Article 28J 1945 Constitution: This is a general principle, and a

¹¹³ Qur'an *surah* An-Nisa:86

¹¹⁴ Moh, Mahfud MD, 1998, *Politik Hukum di Indonesia*, Jakarta, LP3ES, p. 34

juridical motive requires permission to establish a place of worship. So, the regulation does not protect against the Constitution.

Based on the situation, it is appropriate to stipulate the provisions of sociological support for the establishment of places of worship. Here is the Indonesian culture: Human rights are absolute, but it must be combined with a primary obligation to maintain social harmony and public order. It can be concluded that the provision's regulation is based on the consideration on the *fiqh* of tolerance in Islamic Jurisprudence because the prophet has given an example toward Muslim attitude on minorities by the concrete evidence of the Medina Charter.

C. Selected Cases on the Issue of Application of *Fiqh* of Tolerance in Indonesia

1. The Blasphemy Case Conducted by the Governor of Jakarta (Ahok)

The case that happens to Ahok had triggered some actions and many protests from the society, especially from Islamic groups. They blamed Ahok because he was believed to be insulting the Qur'an *Surah Al-Maidah: 51*. The Constitutional Court has made very important decisions in the context of religious life in Indonesia.¹¹⁵ The theory of freedom of religion known as *derogable* and *non-derogable* rights, is mentioned by Article 18 of

¹¹⁵ Peter Mahmud Marzuki, 2012, *Pengantar Ilmu Hukum, Cetakan Keempat*, Jakarta, Kencana Prenada Media Grup, 2012, p. 137

International Covenant on Civil and Political Rights (ICCPR) and has been ratified by the Indonesian government through Law No 12 of 2005.¹¹⁶ In this case, Jalaludin Rahmat as the judge of Constitutional Court, suggested that the court should make a “middle way” by giving an official interpretation of Law No 1 of 1965 on Blasphemy.

Yusril as a lawyer said that Indonesia is not an Islamic state and a secular state, but takes the middle ground based on the principle of God with the obligation to enforce Islamic sharia as the basis of humanity and civilized.¹¹⁷ Before making the verdict, the Constitutional Court mapped out the existence of three groups of views regarding Blasphemy Law, which were recorded in the trial process.

Firstly, the group declared that the Blasphemy Law wanted its existence to be preserved as it is, without any changes and revision. Secondly, the group announced that the Blasphemy Law wanted a review because some parts were problematic. Thirdly, groups who reported that Blasphemy Law was unconstitutional and should be cancelled and revoked.¹¹⁸ Finally, Ahok, as the governor of Jakarta to be proven, had

¹¹⁶ Bahtiar Effendy, 1999, *Islam dan Negara Transformasi Pemikiran dan Praktik politik Islam di Indonesia*, Jakarta, Paramadina, p. 87

¹¹⁷ Endang Turmudi, “Masalah Kerukunan Umat Beragama di Indonesia”, *Jurnal Harmoni*, Volume 10 (3), 2011, p. 45

¹¹⁸ Carly Carlberg, “Freedom of Expression in Modern Age: An Obscure Blasphemy Law”, *Rutger Journal of Law and Religion*, Volume 11 (3), 2009, p. 56

committed a criminal act on Article 156 (a) of Penal Code Indonesia, with two years' imprisonment.

This dynamical issue happened on religious conflict become rapid and cruel because there were political interests between the governments and also the parties. However, the interreligious tolerance in Indonesia has stipulated on legislation. The protection of freedom of religion also regulated on numerous regulation in Indonesia. But in the Islamic teaching in terms of tolerance in belief (*aqidah*), there is no tolerance for it. It is the one element to maintain the belief (*aqidah*) of Muslim. The main problem on the implementation of Blasphemy Law is the lack of enforcement, which caused the increasing number of religious conflicts. This situation is similar with that quoted by Lord Acton which stated that "Power tends to corrupt, and absolute power corrupts absolutely."

2. Polemic on *Bahtsul Masail* National Conference in the Term Word of *Kafir*

The discussion that emerged from *Kyai* of Nu which was held in Banjar, West Java. The *Kyai* categorized infidels based on the classic books of scholars of jurisprudence, namely *kafir harbi*, *kafir mu'ahad*, *kafir mustahman*, and *kafir dzimmi*.¹¹⁹ The primary purpose of *ulama* was to

¹¹⁹ Fathoni, *Penjelasan Perumus Bahtsul Masail Munas NU soal Polemik 'Kafir'*, Nu or .id, retrieved from <http://www.nu.or.id/post/read/103272/penjelasan-perumus-bahtsul-masail-munas-nu-soal-polemik-kafir>, accessed on 27th of May 2019 at 9.11. pm

clarify the status of non-Muslims in the situation of society, nation, and the state of Indonesia as a unitary state.¹²⁰

This statement had increased triggering issues among Indonesian people. The interpretation of the word of *kafir* in the midst of the diversity nowadays has become very difficult to interpret without being aware of the knowledge. Recently, many people are arbitrary in the use of the word *kafir* to communicate and differentiate among other people, neglecting ethical norm and ethics. The history of Islam during the caliphate era already exemplified how Muslims' should behave toward minority religions, as seen in Qur'an *Surah Al-Ahzab: 21*.¹²¹

Moral obligation is one of the problems in Indonesia which goes beyond the identification of specific rights. There are three approaches from Islamic jurisprudence methods, namely: (1) revelatory commands (*shar\ nass*); (2) legal, voluntary contracts, and (3) considerations of universal communal welfare or public interest (*maslaha*).¹²²

- a) The first approach refers to the explicit verse where the revelatory sources are recorded as demanding the rights for

¹²⁰ Anonim, *Bahaya Memanggil dengan Kafir atau Fasiq*, Al-Manhaj or.id, retrieved from <https://almanhaj.or.id/3042-bahaya-memanggil-dengan-kafir-atau-fasiq.html>, accessed on 27th of May 2019 at 11.47 pm

¹²¹ Qur'an *surah Al-Ahzab: 21*

¹²² Andrew F, March, "Sources of Moral Obligation to non-Muslims in the "Jurisprudence of Muslim Minorities" (fiqh al-aqaalliyat) Discourse", *Islamic Law and Society*, Volume 6(1), 2009, p. 45

non-Muslims. It is supported in the Qur'an *Surah At-Taubah*: 29. This verse describes the overall status of non-obligation discussed above and also indicates the revelatory warrant for non-Muslims having the right to enter into a relationship of immunity.¹²³

- b) Second, the revelatory sources serve as a source of moral obligation to non-Muslims that they demand a general attitude of treating non-Muslims with justice or equity. It is emphasized in Qur'an *Surah An-Nisa*: 135. The general obligation to uphold justice is universally affirmed and it is very often extended to relations with unbelievers.¹²⁴
- c) Third, the revelation commanding moral obligation to non-Muslims suggested above relate to the specific contracts that Muslims are commanded to offer and honor to non-Muslims. There are series of Quranic verses regarding Muslims to accept any agreement which is mentioned in Qur'an *Surah Al-Baqarah*: 177.¹²⁵

The main argument of this explanation is that many of the contemporary Islamic literature works on the jurisprudence of Muslim

¹²³ *Ibid*,

¹²⁴ *Ibid*,

¹²⁵ *Ibid*,

minorities attempt to provide an Islamic foundation for moral obligation and solidarity with non-Muslims. Based on the issue regarding Islamic perspective, it is clear that it has violated God's law and God's decree it should be called as *kafir*. It also emphasized that Allah has declared the infidelity of the polytheists, namely the idol worshipers and those who make besides Allah a rival in worship, which has already been mentioned in the Q.S Al-Maidah: 17.

Tolerance in terms of belief (*aqidah*) by calling the non-Muslim as *kafir* is permitted and derived from the Qur'an, but on the other hand, Allah already mentioned the moral obligations for Muslims' attitude regarding non-Muslims, and how the application of tolerance between non-Muslim and also has been exemplified by the Prophet. So, democracy and politics had been regulated in the Qur'an. This means Allah already guaranteed that democracy and politics are in line with the commands of Allah. Muslim brotherhood attitude towards non-Muslim societies is as pure as being *sharia*-minded.

3. Intolerance Crisis in Aceh and Bekasi on Building Places for Worship

Indonesia has witnessed religious violences regarding the clash between a minority and majority group. The abuse of religion occurred in Aceh Singkil and it brought to the destruction of a church in Aceh, in consequence, with one man dead and the other people injured. Moreover, an

incident happened again in Tolikara, Papua, where a mosque was burned by the majority community to violate Muslims.¹²⁶ In the latest case, on 5th May 2019, in Bekasi, West Java, there were citizens of Bekasi protesting the planned construction of what would be the first Hindu temple.¹²⁷ All of those cases and other religious-violence in Indonesia demonstrates the disadvantage of religious pluralism in the country that was introduced by the founders of Indonesia years ago. The condition also illustrates that relations between members of the majority and minority religions remain tense.

The pluralism of religion is acknowledged not only in the Constitution, but also in Pancasila as the ideology of the nation. Unfortunately, until the present day, some people abuse their religion to set a particular standard of rights for others. The situation indicates that religious violence will potentially happen again in Indonesia, especially in a region where a majority religion manipulates the religious solidarity among members to persecute the minority.¹²⁸

¹²⁶ Al-Khanif, The Paradox Religious Intolerance Indonesia, The Jakarta Post, retrieved from <https://www.thejakartapost.com/news/2015/10/16/the-paradox-religious-intolerance-indonesia.html>, accessed on 29th May 2019 at 5.18 pm

¹²⁷ Anonim, Intolerance Crisis, The Jakarta Post, retrieved from <https://www.thejakartapost.com/academia/2019/05/11/intolerance-crisis.html>, accessed on 29th of May 2019 at 08.00 pm

¹²⁸ Firdausi Nuri, 2013, *Fikih Minoritas: Hak Asasi Manusia Dzimmi di Tenah Mayoritas Muslim*, Malang, Makalah Ilmiah Al-Qur'an, p. 16

The situation also occurs if the majority use religion as the primary source for validating the rights of others. They consider an absolute minority right, for example to build a place of worship, as the main conflict and it needs to be eliminated to avoid tensions in society. This solidarity generally creates mutual understanding among adherents of a particular religion. The government then faces challenges to preserve religious pluralism because of the demand from the majority to restrict the rights of minorities.

The results of the Quranic conception are expressed in the idea of human rights *fiqh* that seeks to build equal rights of worship for a citizen in this universe.¹²⁹ The *fiqh* on human rights is expected to create public awareness.¹³⁰ In this extent, Indonesia's position needs to be reaffirmed because Indonesia is not a religious state. Indonesia is a nation of the state which is called a unitary state based on Pancasila by promoting unity in building a sovereign country. Indonesia was not founded by the belief of particular religion only, but also by the principle of unity.

Basically, Islam is a *rahmatan lil 'Alamin* religion which does not teach to carry out acts of discrimination against non-muslim. On the contrary, Islam teaches deeds for mutual respect.¹³¹ The purpose of giving

¹²⁹ Huwaydi Fahmi, 1999, *Muwathhinun la Dzimmiyatun*, Kairo, Dae el-Shoruq, p. 48

¹³⁰ M Alifudin Ikhsan, "Fiqh HAM dan Hak Kebebasan Beribadah Minoritas Dzimmi di Indonesia", *JIPPK*, Volume 2(1), p. 38

¹³¹ Kumelo, Mujaid, 2015, *Fiqh HAM: Ortodoksi dan Liberalisme Hak Asasi dalam Islam*, Malang, Setara Perss, Kementerian Agama Republik Indonesia, p. 79

rights to non-Muslim is to foster and to build a sturdy community. This act has been exemplified by Prophet (PBUH) based on Allah's word in *surah An-Nisa: 1*.¹³²

The existence of Joint Ministerial Decree No 8 of 2008 is expected to be able to reduce turmoil of conflict in the community. As an effort to be a mainstream of *fiqh* human rights discourse, the government shall try to construct the basis of legal making and religious justification for human rights.¹³³

Variation or construction model above is a universal part recognized as fundamental human rights in the world. Qur'an as a primary source extracts sources of Islamic law to a position of human rights within the framework of *Maqasid Al-Shari'ah*.¹³⁴ Human rights jurisprudence is also parallel to *Maqasid Al-Shari'ah* which is trying to get out of textual class towards problem-solving contemporary life today. Recognition of the concept of human rights in Islam is reflected in the meaning of the Qur'an against various events of the social and humanitarian community.¹³⁵ The Qur'an always responds to every event, which is less human by strengthening *kalam ilahiyah*.¹³⁶ Basically, Islam and the Qur'an are very

¹³² Qur'an *surah An-Nisa: 1*

¹³³ Opcit, Kumelo Mujaid, p. 80

¹³⁴ Wiyono, Suko, 2015, *Reaktualisasi Nilai-Nilai Pancasila dalam Kehidupan Berbangsa dan Bernegara*, Malang, Wisnu Wardhana Press, p. 53

¹³⁵ Opcit, M Alifudin Ikhsan, p. 39

¹³⁶ Anonim, 2013, *Membumikan Al-Qur'an*, Jakarta, Lentera Hati, p. 17

respectful and respect human rights in the general context and proportion of Islamic law.¹³⁷

4. The Tolerance which Shown by Islamic Defense Front (*Front Pembela Islam*) During the Demo of 212

In the midst of the demonstration crowd, the marriage couple, a pair of brides and their entourage were seen walking towards the Cathedral Church which was located opposite the Istiqlal Mosque, where the mass gathered. Due to the road condition in front of the Cathedral was too crowded, some of the mass action 112 from Islamic Defense Front (*Front Pembela Islam*) took the initiative to give a way and escort the bride and groom through the crowd who had packed the road while seeing the bride and groom and his entourage.¹³⁸

From this event, it shows that tolerance in Islam is very important for every Muslim. The paradigm that has been shown by the public because of the existence of FPI related to radicalism and hardline Islam, is actually very different from the practice. In fact, Muslims as a majority in Indonesia also respect minority rights. It may be concluded that, interfaith conflict related

¹³⁷ Opcit, Wiyono Suko, p. 54

¹³⁸ Luqman Rimadi, *Menikah di Katedral saat Aksi 212 Pengantin ini Dipayungi oleh FPI*, retrieved from https://www.liputan6.com/news/read/2852975/menikah-di-katedral-saat-aksi-112-pengantin-inidipayungifpi?related=dable&utm_expid=.9Z4i5ypGOeGiS7w9arwTvQ.1&utm_referrer=https%3A%2F%2Fwww.google.com%2F accessed on 2nd of July 2019 at 1.00 am

to tolerance can be greatly reduced, if each individual understands the role of their respective rights and obligations.

5. Safeguarding the Security Carried out by Pecalang during *Eid al-Fitr*.

Thousands of Muslims in the city of Denpasar, Bali, performed the prayer of 1 Syawal 1438 Hijriah in Lumintang. The prayer went solemnly secured by armed police and Hindu Pecalang.¹³⁹ This event shows that the awareness of Indonesian people is still there to protect and respect each other's religious practice in Indonesia. They did not participate in the celebrations, but they were able to maintain the security of a religious celebration showing high level of tolerance.

Based on Islamic perspective, tolerance in the freedom of worship has a limitation. Muslim people cannot participate in the traditions of non-Muslim, because following other big tradition of another religion is not allowed (*aqidah*). But Islam do not prohibit non-Muslims to maintain and protect a big day for Muslim is called as respect for the attitude and the moral ethics in society. The condition is in line with The 1945 Constitution Article 28E on the freedom of religion that everyone has the right to freely conduct worship, and everyone also has to respect the other rights.

¹³⁹ Benedikta Desideria, 4 Bukti Toleransi Masih Hadir di Indonesia, retrieved from https://www.liputan6.com/health/read/3165084/4-bukti-toleransi-masih-hadir-di-indonesia?related=dable&utm_expid=.9Z4i5ypGOeGiS7w9arwTvQ.1&utm_referrer=https%3A%2F%2Fwww.google.com%2F accessed on 2nd of July 2019 at 1.28 am

6. *Semana Santa* Tradition in Flores

Indonesian history recorded that, the two adherents of the religion have existed and lived side by side since time immemorial in the regency to the end of Flores Island. Larantuka people are in majority Catholics and the place is also known as a City of Reinha. There are several major religions, namely Protestant, Hindu and Buddhist, as well as Muslim as minority.

In addition, *Semana Santa* is basically the tradition from Catholics which was held on Great Friday with a procession or parading the statue of the Virgin Mary around the City of Larantuka. Responding to the situation, some local Muslims from Ekasapta in Larantuka were willing to share free housing for *Semana Santa* pilgrims. They even provided their homes and prepare meals for guests.¹⁴⁰

This condition showed that tolerance is highly upheld in the Islamic teaching and the implementation of the Muslim community in Indonesia. The conclusion from the number of events and cases that occur in society related to tolerance is that there is an importance of tolerance values in life. An adequate level of tolerance has been taught in Islam, as well as regulated and stipulated under the Indonesian Law. Respecting and understanding

¹⁴⁰ Ola Keda, Gema Toleransi dalam Pekan Suci *Semana Santa* di Larantuka, retrieved from https://www.liputan6.com/regional/read/3946185/gema-toleransi-dalam-pekan-suci-semana-santa-di-larantuka?related=dable&utm_expid=.9Z4i5ypGQeGiS7w9arwTvQ.1&utm_referrer=https%3A%2F%2Fwww.liputan6.com%2Ftag%2Ftoleransi accessed on 2nd of July 2019 at 2.00 am

differences is a very wise attitude that must be implemented by every Indonesian society.