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(IJIIS)



The Indonesian Journal of Interdisciplinary Islamic Studies, published biannually by the Doctoral Program in Islamic Law, Islamic University of Indonesia, serves as a platform for intellectual exchanges and interdisciplinary studies on various aspects of Islam including, but not limited to, theology, law, education, economy and politics and how they are historically and contingently embedded, expressed and articulated in a variety of historical contexts. The journal welcomes contributions from scholars and researchers of various disciplinary backgrounds in the form of original (theoretical or empirical) research articles on various issues related to Islam in both its normative and historical dimensions.

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EDITORIAL

We are very pleased to present The Indonesian Journal of Interdisciplinary Studies (IJIIS) Volume 2, No. 2, 2019. This issue mainly consists of a good mix of selected papers discussing several interesting topics covering Islamic law, Islamic economy, religious freedom, Islamic education, and inheritance law.

The first article by Muhammad Iqbal Juliansyahzen discusses the authoritative hermeneutics offered by Khaled Abou el-Fadl as an attempt to challenge authoritarianism in Islamic law. The second article by Imam Khoiri then examines the current debate on the epistemological basis of Islamic economy by referring to the ideas proposed by Abbas Mirakhor. Following this, Eva Fadilah turns to the issue of Islam and freedom and religion by specifically examining the progressive and contextualist thinking of Australia-based Muslim scholar Abdullah Saeed. The next article by Khairun Nissa then discusses the humanistic educational thought of Soedjatmoko, one of Indonesian prominent intellectuals and social thinkers. The last article by Azmi Siradjudin then examines practice of the inheritance law among different ethnic groups in Metro city, Lampung. This issue is then concluded by a review of Muhammad Yasir Alimi's book titled "*Mediation of Religion, Post-Truth, and National Resilience: The Sociology of Religion in the Digital Age*".

It is hoped that this publication will encourage further research and discussion on various issues concerning Islam and Muslim societies from various disciplinary backgrounds.

Editor in-Chief

ABDULLAH SAEED'S CONTEXTUALIST PERSPECTIVE ON THE FIQH OF RELIGIOUS FREEDOM

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Abstract

One areas of conflict between international human rights law and traditional Islamic law is the question of religious freedom. The classical Islamic law provision on the capital punishment for riddah (apostasy) is particularly considered as contradictory with international human rights norms. Some contemporary Muslim scholars, however, have proposed a fresh thinking in dealing with this tension. This paper seeks to examine the thinking of Abdullah Saeed as one of leading Muslim scholars in the contemporary debate on this issue. It argues that Abdullah Saeed is one of the modern thinkers positioning Human Rights as global ethics that must be admitted in the modern era. With his contextual methodology, he put forward an argument that Islam should be open to the idea of religious freedom as stipulated in the Universal Declaration of Human Rights and that the right to have religion and belief has become a vertical matter between humans and God.

Keywords: Human rights, fiqh of religious freedom, Abdullah Saeed

A. Introduction

One areas of conflict between international human rights law and traditional Islamic law is the question of religious freedom. In this question, the classical Islamic law provision on the capital punishment

for *riddah* (apostasy) is considered as contradictory with international human rights norms. Some contemporary Muslim scholars, however, have proposed a fresh thinking in dealing with this tension. One of the leading Muslim scholars on this debate is Australia-based Muslim scholar Abdullah Saeed. In many of his writings, he argues that human rights and religious freedom have a strong foundation within Islamic tradition. More explicitly he argues that the death penalty in the case of *riddah* was not specified in the Qur'an and was not supported by the actual practice of the prophet.

For Abdullah Saeed, freedom of religion is part of global ethics as well as part of the most fundamental principles in Islam. With his progressive thought, Saeed is keen to fight for upholding the humanistic values without leaving the Islamic values. In reinterpreting the Qur'anic texts regarding freedom of religion, Saeed proposes a contextual approach that does not accept what is expressed by the text literally, but rather attempts to understand what is behind the texts. This way, he argues, interpreters can capture the whole idea and spirit which is the moral message of the Qur'an which is compatible with all times and places (*sahih fi kulli zaman wa makan*)

The methodology of interpretation proposed by Abdullah Saeed could contribute to the thinking that puts human rights, including freedom of religion, as global ethics that must be recognized. In what follows, the paper seeks to assess the thinking of Abdullah Saeed about human rights, especially freedom of religion, and how he frames his thinking within the existing Islamic legal thought.

B. Theoretical Framework

Religious Freedom in the Universal Declaration of Human Rights (UDHR)

In the Handbook of International Human Rights Terminology as quoted by Muhammad Nur Islami, "Human rights are legally enforced claims or entitlements that are held by individual human being vis a

vis the State for the protection of the inherent human dignity of the human being”¹

The matters of religious freedom in the Universal Declaration of Human Rights (UDHR) are regulated in article 2 and article 18. Article 2 of the UDHR states:

“Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.”

Article 18 of the Universal Declaration also states that:

“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance”².

To make the rules in the UDHR more effective, legally binding and not merely regarded as moral prescription, the General Council of the United Nations on 16th December 1966 also ratified the International Covenant on Civil and Political Rights (ICCPR). In the ICCPR the provisions on religious freedom are stipulated in more detail in Article 18, Article 20 paragraph 2 and Article 27.³

In Article 18 of the ICCPR, it is stated that:

“Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.”⁴

1 Muhammad Nur Islami, “Deklarasi Kewajiban Asasi Sebagai Sarana Untuk Mempertemukan Ideologi, Kepercayaan dan Pandangan Politik Masyarakat Internasional” dalam *Mengurai Kompleksitas Hak Asasi Manusia* (Yogyakarta: Pusat Studi Hak Asasi Manusia (PUSHAM) UII, 2007, hlm.13

2 Dokumen Deklarasi Universal Hak Asasi Manusia

3 Ahmad Suaedy, dkk, *Islam, Konstitusi dan Hak Asasi Manusia: Problematika Hak Kebebasan Beragama dan Berkeyakinan di Indonesia* (Jakarta: The Wahid Institute, 2009), p. 22

4 Lihat Dokumen International Covenant on Civil and Political Rights (ICCPR)

Article 18 paragraph 1 of the ICCPR recognizes the freedom of a person to choose a religion, changed religions or accept a religion with consciousness itself as defined in the sentence “this right includes the freedom to establish a religion or belief on the choice itself”. It is also mentioned in Article 18 paragraph 2 that the imposition of the religion is not justified, “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.⁵

Essentially Article 18 differentiates between freedom of religion and belief in the freedom to manifest religion and belief. Freedom of religion and belief is an absolute right and cannot be restricted or non-derogable while freedom of manifesting a religion is a right that can be restricted or a derogable right. The ICCPR allows restrictions on religious practices to protect public safety, morals, and freedom of others.⁶

Furthermore, Article 20 paragraph 2 also contains restrictions on spreading hatred based on religion. In this case, countries are required to take legislative steps to prevent it. Article 20 paragraph 2 reads:

“Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”⁷

Obligations of the state to protect the right to freedom of religion is reinforced in Article 27 of the ICCPR which reads:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture, to profess and practice their religion, or to use their language”.⁸

Close observation suggests that the provisions on freedom of religion in the ICCPR further confirms the Covenants such as a strong

5 See ICCPR Art 18 verse 2

6 Suaedy, *Islam...*, p. 23

7 See ICCPR Art 20 verse 2

8 See ICCPR Art 27

instrument and an agreement that binds in law and has been ratified by many countries, including Arabic countries and Indonesia. It shows that the Covenant is accepted widely even by Islamic countries.

But such acceptance is not without compromises. There are some disagreements and debate, particularly about the clause on the freedom to change religion and belief. Some Islamic countries like Egypt, Saudi Arabia, Yemen, and Afghanistan essentially have attempted to reject the clause because it contains multiple interpretations. The clauses are also considered as biased toward missionary activities to change religion.⁹ Moreover, some countries also believe that the clause is not necessary so that in the end a compromise resulted in the recognition of the right to change religion in the phrase “to have or to adopt a religion or belief of his choice”.¹⁰

Based on the description of the various chapters of various documents of international Human Rights, it can be formulated eight components of the right to freedom of religion that is: internal freedom, external freedom, no compulsion, not discriminatory, rights of the parents or guardian, right to legal status, and non-derogability.¹¹

Religious Freedom in Islam

Human rights in Islam are a matter of great concern even before the birth of the UDHR itself through the Medina Constitution. Not only that, human rights in Islam have also been regulated in detail in *maqashid sharia*. They are considered as part of *maslahah dharuriyat* which includes *hifdz ad-din* (protection of religion), *hifdz al-'aql* (protection of reason), *hifdz an-nafs* (protection of life), *hifdz an-nasl* (protection of descent) and *hifdz al-maal* (protection of property).¹²

9 Suaedy, *Islam...*, p, 27

10 Ifdhal Kasim, *Konvensi Hak-Hak Sipil dan Politik Sebuah Pengantar* (Jakarta: EL-SAM,2005), p. 243

11 Suaedy, *Islam...*, hlm.77-78

12 Al-Imam Abu Ishaq Asy- Syatibi, *al-Muwafaqat fi Ushul as-Syari'ah*. (Beirut: Dar al-kutub al-Islamiyyah,tt), hlm.8

In Islam the basis for the right to religious freedom can be known through the words of Allah SWT in the QS. al-Baqarah verse 256 which means:

“There is no compulsion in (adhering to) religion (Islam); indeed, it had been clear (the difference) between the road that is true to the road that go astray. Whoever reneges to thaghut and faithful to Allah, then indeed he has adhered (firmly) to knot the rope are very strong which is not going to break up, God almighty heard, God almighty knows”.¹³

Furthermore, the argument was also emphasized by Allah in Al-Kafirun verse 6 which reads: “For your religion and for me my religion”.¹⁴

Ismail al-Faruqi underlines that QS. Al-Baqarah verse 254 as the opportunity for every human being with all his ability to know God by the use of reason that is honest and true. Interpreters of traditional such as al-Tabari explains that the verse on no compulsion in religion only applies to the People of the Book like the Christians and Jews and do not include the worship of idols or polytheist Arabs who reject religion divine.¹⁵

The view is based on the specific context of revelation (*asbabun nuzul*) of the verse that there were two sons of a Muslim from the tribe of Salim ibn Awf who were both Christian before the arrival of Islam to visit his father in Medina. The father was sad to see the two children were Christians and asked both to embrace Islam, but they refused. Then the father brought two sons to the Prophet and asked for his direction so that the verse was revealed. The father had to give up both his sons still embraced Christianity.¹⁶

13 See the translation of QS. al-Baqarah ayat 256 dalam Kementerian Agama RI, *Ummul Mukmini al-Qur'an dan Terjemahan untuk Wanita*, (Jakarta: Wali, 2010), p. 42

14 Ibid, p.603

15 Mashood A Baderin, *Hukum Internasional Hak Asasi Manusia dan Hukum Islam*, (Jakarta: Komisi Nasional Hak Asasi Manusia, 2010), p. 124

16 M. Al-Thabari, *Tafsir Al-Tabari Vol 9*, (Cairo: Mustafa al-Babi, 1958), hlm.347, lihat juga Mashood A Baderin, *Hukum Internasional Hak Asasi Manusia dan Hukum Islam*, (Jakarta: Komisi Nasional Hak Asasi Manusia, 2010), p. 124

Al- Zamakhsyari, citing QS. Yunus (10: 99-100), asserts that the purpose of the clause is not only applied to the People of the Book but all humans because only by the will of God man can be faithful.¹⁷

“And if thy Lord willed, surely He will make all people believe on earth entirely. But do you (want to) force man so that they become people of faith? And no one will believe except by Allah’s permission, and Allah inflicts doom on those who do not believe”¹⁸

Zamakhsyari’s view is supported by Abu Zahra who asserts that the second caliph, Umar, never took a woman of Christian parents to embrace Islam but the lady was rejected. Umar also said, “My Lord, I do not intend to force it because I realize there should be no coercion in religion, the true path is different from the heretical way”¹⁹

In contrast with al Zamakhsyari and Abu Zahra, fuqaha like Ibn Hazm confirm that paragraph no compulsion in religion has been abolished with paragraph sword that exists in the QS. At- Taubah (9:36) so that coercion of religion is permissible: “fight against the polytheists all as they fight you all”.

Besides QS. Al-Baqarah verse 256, the letter which is usually used as the basis of religious freedom is the QS. Al- Kafirun verse 6 which means “for you your religion and for me my religion”. A source mentioned that the *asbabun nuzul* of this verse is because the disbelievers or the idolaters of Quraysh affected the Prophet by offering the treasure of wealth so that he becomes one of the most affluent in the city of Mecca and will be mated with a woman who pleases. An effort is delivered by saying: “This is what we provide to you O Muhammad, with the proviso that you do not curse God, or worship our gods during the year”. The Prophet answered, “I will wait for the revelation from my

17 Al-Zamakhsyari, *al-Kashaf An-Haqaiq al-Tanzil* (Beirut: Dar al-Ma’rifah, nd), in Baderin, *Hukum...*, p. 124

18 QS. Yunus (10: 99-100) lihat Kementerian Agama, *Ummul Mukminin: Al-Qur’an dan Terjemahan untuk Wanita* (Jakarta: Wali, 2012), p. 220

19 Baderin, *Hukum...*, p. 125

Lord”. So, then the verse comes down.²⁰

Based on the description of the various views of jurists above, it can be known that the interpretation of the passages that intersect with freedom of religion that exist in the realm of *ijtihadiah* are filled with dynamics and even controversy. From here we know that Jurisprudence essentially is relative because it was born of the idea of man is not resistant to the new idea that appeared later.

In addition to understanding the differences in the interpretation of Muslim scholars, human rights in Islam can also be understood through the Charter of Medina and the Cairo Declaration of Islamic Human Rights. As has been widely discussed and recognized, the Medina Charter was the first human rights charter in Islam that was born long before the birth of other human rights documents. The Medina Charter is the basis of a democratic nation and state amidst a plural society. In its journey, it has brought justice and harmony in the life of the people of Medina at that time. Suyuti Pulungan said that the Charter of Medina is referred to as human rights document because it contains the right to freedom of religion and believes that it creates justice and unity among people.²¹

Imam Amrusi Gilani outlines that the Prophet Muhammad laid the basis and foundation of the life of society in the Madina Charter which consists of 10 Chapters and 47 Articles, including the principles of *al-ikhwah* (brotherhood), *al-musawah* (equality), *al-tasamuh* (tolerance), *al-tasyawur* (deliberation), *al-ta'awun* (mutual help) and *al-qist* (justice).²² The Medina Charter contains the principle of justice in accepting rights and carrying out obligations in social life according

20 Qamarudin Shaleh, HAA Dahlan, MD Dahlan, *Asbabun Nuzul Latar Belakang Historis Turunnya Ayat-Ayat al-Qur'an*, Cet-11 (Bandung: CV Diponegoro, 1989), p.619; See also Nur-chalis, *Asbabun Nuzul Sejarah Turunnya Ayat-Ayat al-Qur'an* (Surabaya: Pustaka Anda, 1997), p. 640

21 Suyuti Pulungan, *Prinsip-Prinsip Pemerintahan Negara Madinah Dalam Perspektif Al-Qur'an* (Jakarta: Rajawali Press, 1996)

22 Imam Amrusi Jailani, “Piagam Madinah: Landasan Filosofis Konstitusi Negara Demokratis”, *Ad-Daulah: Jurnal Hukum dan Perundangan Islam*, Volume.6, Nomor. 2, 2016, p. 28

to their respective positions.

In 1990 the Organization of the Islamic Conference (OIC) agreed on the Cairo Declaration of Human Rights in Islam.²³ In the Cairo Declaration, a chapter is set on freedom of religion enshrined in Article 10 that reads:

“Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance to force him to change his religion to another religion or atheism”.²⁴

Dalizar Son said that the freedom of religion in Islam can be seen from a variety of things such as no compulsion to embrace a certain religion or belief or coercion to abandon a religion that is already embraced. Islam also allows non-Muslims to be able to carry out their rights and obligations.²⁵

C. Biography of Abdullah Saeed

Abdullah Saeed is a professor of Arabic and Islamic studies at the University of Melbourne, Australia. Saeed was born in Maldives on September 25, 1964 and is a descendant of the Omani Arab tribes.²⁶ The history of Abdullah Saeed's formal education began in Arabic language study, Institute of Arabic language, Saudi Arabia in 1977-1979. After that Saeed continued his education to the High School Certificate, Secondary Institute, Saudi Arabia in 1979-1982.²⁷

In 1982, Abdullah Saeed continued his education in the field of Islamic Studies and earned the title of Bachelor of Arts at the University of Saudi Arabia. After that Saeed continued levels of master and

23 Sunaryo, “Studi Komparatif Antara Universal Declaration of Human Rights 1948 Dan The Cairo Declaration on Human Rights in Islam 1990”, *Fiat Justitia Jurnal Ilmu Hukum* Volume 5 No.2, 2012, p. 390

24 Cairo Declaration of Islamic Human Rights, Art 10

25 Dalizar Putra, *Hak Asasi Manusia Menurut al-Qur'an* (Jakarta: PT. al-Husna Zikra, 1995), p.32

26 Annas Rolli Muchlisin, “Penafsiran Kontekstual: Studi Atas Konsep Hierarki Nilai Abdullah Saeed”, *Maghza*, Vol. 1, No. 1, 2016, p. 20

27 Tasmuji, “Pemikiran Abdullah Saeed tentang Riddah dan Hak Asasi Manusia”, *Religio: Jurnal Studi Agama-agama*, Volume 1, Nomor 1, 2011, p.71

earned the title of MA in the field Applied Linguistic at the University of Melbourne. He got his Ph.D. in the field of Islamic Studies at the University of Melbourne, Australia in 1988-1992.²⁸

Based on his level of education, it is known that Abdullah Saeed has competence in assessing the West and East objectively in order to revive the breath of Islam that is *rahmatan lil 'alamin*. Some of the works that he has made include *Interpreting the Qur'an towards a Contemporary Approach*, *Islamic Thought: an Introduction*, *The Qur'an: an Introduction*, *Freedom of Religion, Apostasy and Islam*, *Reading the Qur'an in the Twenty-First Century: A Contextualist Approach*, *Approaches to the Qur'an in Contemporary Indonesia*, *Human Rights, and Islam: An Introduction to Key Debates on Islamic Law and International Human Rights Law* and many others.

D. Construction of Abdullah Saeed's Thinking

In formulating his methods, Abdullah Saeed departs from an understanding that the Qur'an is a holy book that was sent to the Prophet Muhammad as the primary foundation and guidance for Muslims' life.²⁹ Agreeing with the other interpreters (*mufassirs*), Saeed also believes that the Quran is not just a book of scriptures but also as the revelation that authentic sent to the Prophet Muhammad and revealed for the first time in the Cave of Hira in the year 610 H.

Saeed, however, regrets that some pre-modern Muslim commentators or intellectual only consider revelation as the word of God by denying the role of the prophet and the Muslim generations at the time of revelation was handed down. According to Saeed, in the understanding of the majority of Muslims, the Prophet was considered a passive recipient of revelation and the process of revelation was at the

28 Abdullah Saeed, *Reading the Qur'an in the Twenty-first Century: A Contextualist Approach*, translated by Ervan Mutawab, *Al-Qur'an Abad 21 Tafsir Kontekstual* (Bandung: Mizan Pustaka, 2016), p. 316

29 Abdullah Saeed, *Islamic Thought an Introduction*, translated by Sahiron Syamsudin, M.Nur Prabowo S (ed), *Pemikiran Islam Sebuah Pengantar* (Yogyakarta: Baitul Hikmah Press, 2014), p. 23

historical meta-level which did not accept the influence of the actual context. It is different from the understanding the Qur'an with the contextual approach to be able to extract a more extensive role of the Prophet Muhammad and the socio-historical context.³⁰

Abdullah Saeed formulates four levels of revelation, at the first level of first referred to as the revelation of the supernatural in which all the people of Islam agree that Allah was the first time revealed the Qur'an to *al-lawh al mahfuz* and then to the sky. From there, the Angel Gabriel brought the revelation to the Prophet Muhammad. Before the revelation to the Prophet here called that the Quran is at the level of the supernatural that goes beyond the understanding of man.³¹

At the second level, the revelation reached the Prophet and he revealed to the heart, such as that expressed the Qur'an. After that, the Prophet pronounced it in Arabic, and for the first time in the context of humanity. In terms of the pronunciation of the Prophet in Arabic should be believed as the will of the divine. It was God who allowed the Prophet to express what was revealed in any form and then made the Qur'an a miracle.³²

In this case, Abdullah Saeed stresses that at this second level, it must be acknowledged that the Quran is presented in human language to provide guidelines for human life and humanitarian problems. So, it is not possible to associate the Qur'an with the lives of human beings in the context that continues to change.³³

At the next level, the revelation became part of the lives of the people of Islam every day so that it becomes part of living in the community. The process of engagement of revelation in social life is what later termed as the actualization of revelation. Finally, at the fourth level, there are two dimensions of revelation viz communities of Muslims who elaborate on what is implied in revelation and from

30 Saeed, *Reading...*, translated by Ervan Mutawwab, *Al-Qur'an...*, p. 9

31 *Ibid*

32 *Ibid*

33 *Ibid*

the angle of view of the Qur'an. God gives guidance to those who are aware will be the presence of Him and strive to practice the word of his in the life of them.³⁴

After formulating the level of revelation, Abdullah Saeed also classifies the type of text in the verses of the Quran to several themes such as theological verses, historical verses, and ethico-legal verses.³⁵ These paragraphs are passages which concern the rules and provisions of the law. Some examples of paragraphs that included ethico-legal verses include the belief in God, the prophet and life after death, the regulations are associated with marriage, divorce, and inheritance; what is allowed and prohibited, orders related to fasting, spending, jihad and hudud, the prohibition associated with theft, dealing with non-Muslims; instruction that relates to ethics, the relationship between religion and governance.³⁶ As for the characteristics of the ethico-legal verses, in terms of the language, they are fairly quite simple.³⁷

In addition to developing the concept of the ethico-legal verses, Abdullah Saeed also develops what is called action to create or develop a hierarchy of value that is contained in the Qur'an. As for its consideration in developing the theory of the hierarchy of the value of this is the belief in the pillar of faith, the pillars of Islam and what is prohibited and permitted in the Quran, such as the prohibition of murder or theft, or of allowing the consumption of goods the food specified. He adds that he also considers what was accepted in the Muslim tradition. The hierarchy of values that is intended is (1) obligatory values³⁸; (2) fundamental values³⁹; (3) protection values⁴⁰ (4)

34 Ibid

35 Abdullah Saeed, *The Quran an Introduction* (New York: Routledge, 2008), p.74-75

36 Abdullah Saeed, *Interpreting the Qur'an: towards a Contemporary Approach* (New York: Routledge, 2006), p.1

37 Eka Suriansyah dan Suherman, "Melacak Pemikiran al-Qur'an Abdullah Saeed", *Jurnal Kajian Islam*, Vol.3 No.1, 2011, p. 50

38 Obligatory values are the part that contains the basic and essential values in Islam

39 Fundamental values are values that come into contact with humanity that is substantially mentioned in the Qur'an

40 Protection values are values that provide support for legislative or legislative support for fundamental values.

implementation values⁴¹ (5) instructional values⁴².

After formulating the values above, Abdullah Saeed mentions the operational steps of contextual interpretation namely: (1) conducting early considerations; (2) starting the task of interpretation, (3) analyzing the meaning of the Qur'an and (4) analyzing the relationship between the meanings of the Qur'an in context.

E. Arguments of Abdullah Saeed on Freedom of Religion

Abdullah Saeed argues that although there is a hadith of the Prophet which sanctioned to kill the perpetrators, the prophet himself did not ever do such a thing as the mission of the Prophet is to invite humans to embrace Islam, not to force them to accept Islam.⁴³ Another source also explains that although the Prophet did give punishment to those who committed *riddah*, the punishment was not solely because of their apostasy but also because of other factors.⁴⁴ Muslim scholars such as Ibrahim Nakha'i, Sufyan Tsauri, Subhi Mahmassani, Muhammad Syaltut assert in their respective works that the imposition of the death sentence for perpetrators of *riddah* was due to political situation, i.e their affiliation with the enemies of Islam to fight Islam.⁴⁵

Reflecting on the history of the early Muslims in Mecca, it is safe to assert that Muslim society lived peacefully despite various existing differences as long as they were not contrary to the affairs of politics. It was only during the preaching of the Prophet in Medina that Islam developed quite rapidly and dominated in Arabia, especially in the Hijaz. Many tribes who later converted to Islam, even those who did

41 Implementation values are specific measures that can be used to practice the values of protection

42 Instructional values refer to the number of specific instructions, directives, advice, and guidance in the Qur'an associated with a variety of issues, situations, conditions, environments that are also context specific. See Saeed, *Al-Qur'an ...*, p. 116

43 Abdullah Saeed, *Freedom of Religion, Apostasy and Islam* (USA: Ashgate Publishing Company, 2004), p. 51

44 Ahmad Suaedy, *Islam ...*, p. 92

45 *Ibid*, See in Subhi Mahmassani, *Arkan al-huquq al-Insan* (Beirut: Dar al-Malayyin, 1979), p. 123-124;

not embrace Islam fully, submitted to the peace agreement or the non-aggression pact with the prophet Muhammad.

In the history of the prophetic era, there were at least 12 people who left Islam and embraced other religions such as Christianity. One of these 12 people was al-Harith ibn Suwaid al-Ansari. Also, there was also ‘ Ubaidullâh ibn Jahsy who after moving with his wife (Umm Habîbah bint Abî Sufyân who is Muslim) to Habasyah, he instead embraced Christianity and died in a Christian condition.⁴⁶ In dealing with these people, the Prophet did not kill them and did not order his companions to kill them.⁴⁷ This historical fact is a proof that the Prophet himself greatly appreciated the freedom of religion. On this basis, American leading sociologist Robert N Bellah also mentions that what is done by the Prophet Muhammad was an unprecedented and significant achievement for upholding the high principles of tolerance and egalitarianism among citizens.⁴⁸

In line with this thinking, Abdullah Saeed, citing the opinion of Hasan Ahmad Abidin, explains that the change of religion was prohibited at the time of the Prophet because some people claimed Islam to undermine the religion. To prevent that the Prophet forbade someone to change religion as anticipation and prevention to protect the Muslim community.⁴⁹ The prophetic traditions associated with *riddah* developed in times of war with the infidels. In the past, it often happened that those who apostate were conspiring with unbelievers to antagonize Muslims. So, it can be concluded that the threat of punishment to death for the perpetrators of *riddah* was associated with the conspiracy of the pagans, and not solely because of the choice of his religion.

46 See also Muhammad Syaltut, *Islam ‘Aqidah wa Shari’ah* (n.d: Dar Qalam, 1966), p. 288-289.

47 Ibid

48 Ismail Fahmi Ar Rauf Nasution, *Contemporary Islamic Studies* (Aceh: PENA Publisher, 2012), p. 38

49 Abdullah Saeed, *Freedom ...*, p.167

Looking at the modern era, Abdullah Saeed explained that the community of Muslims is already quite strong, so it no longer needs a protection.⁵⁰ In finding the formula of freedom of religion in Islam, Saeed also attempts to look back in the history of Islam to discover that in the first phase of the history of Islam in Makkah, freedom of religion was considered as a private matter between God and man. The *riddah* that was used as the basis of the conflict between Islam and freedom of religion in the phase of Mecca was considered as a sin between a servant and his Lord, not a criminal act.⁵¹

The punishment of *riddah* as criminal punishment appeared during the phase *khulafa al-rashidin* or the phase of the caliphate. At that time the Islamic community was associated and regarded as a political force. The invasion of the new area mapped the community in black and white categories including in matters of religion.⁵² Furthermore, the practice continued in the following Umayyad and early Abbasid dynasties where *riddah* was considered as an act of subversion or acts of a criminal that should get punishment.⁵³

The Qur'an and Sunnah reveal that apostasy is a very big sin. But the sentence to death for apostasy is not based on the Quran, and the matter was raised in the context of particular sociopolitical contexts in the history of early Islam. The death penalty is not specified in the Qur'an and the actual practice of the prophet also did not support the sentence to death.⁵⁴

Based on these two arguments, it is obvious that Allah does not sanction the *hudud* (capital punishment) sentence for the perpetrators of *riddah* and reflecting on the historical fact above, Abdullah Saeed views that the Muslim community needs to restore the essence of

50 Ibid.

51 Abd al-Qadir ' Ouda, *at- tasyri ' al Jinaa'I al- Islami* (Cairo: Dar al- Arabiyah, 1963), p. 706

52 Yusdani, *Jurisprudence of Progressive Muslim Politics* (Yogyakarta: Kaukaba Dipantara, 2015), p. 305

53 Ach. Musif, "Abdullah Saeed's Contemporary Islamic Thought and Its Implementation in the Riddah Case", *Ulumuna*, Journal of Islamic Studies, Vol. 19, No. 1, 2015, p. 89

54 Saeed, *Al-Qur'an*, p.156

the original meaning of *riddah* as a vertical sin between human and his Lord. Moreover, the Qur'an itself contains many verses about freedom of religion and does not ever mention capital punishment as punishment in the world for people who change religion. Because the Quran supports freedom of religion then no one has the right to judge other people who have a religion that is different from his.

The penalties regarding the case of *riddah* should be determined through *ijtihad* because the matter of faith is a matter between humans and their Lord, and the state does not have a business in it. The death penalty can be very dangerous for people because not only it will kill the creativity and innovation of thought but also can damage the harmony among people. Based on the description above, it can be said that Article 18 of the UDHR is not in conflict with the principles of Islamic law.

F. Concluding Remarks

In contemporary Muslim thought, Abdullah Saeed can be regarded as a progressive *ijtihadist*. With the contextualist *ijtihad* model, he tries to present Islam with a warm and peaceful nuance especially when it comes to human rights issues. Based on what is described by Abdullah Saeed in a variety of his work, it can be said also that he is a figure who has an advanced thinking in looking at the relationship of Islam and human rights. Abdullah Saeed positions himself with a critical and objective attitude towards Western thought (international human rights) and Eastern thought (Islam) in a balanced manner.

It can be concluded that Abdullah Saeed views the freedom of religion in the Universal Declaration of Human Rights are guaranteed in Islam based on the Qur'anic texts such as QS. Al-Baqarah verses 256 and QS. Al- Kafirun verse 6. The death sentence for perpetrators of *riddah* in Islam was a product of particular socio-political contexts. Furthermore, the Islamic legal thought framework used by Abdullah Saeed concerning religious freedom is a contextual interpretation

based on ijtihad and based on this framework, it is not excessive to refer to Abdullah Saeed as a figure of contextualist futurist humanist thinker.

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