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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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RECONFIGURING ISLAMIC DISCOURSE ON RELIGIOUS FREEDOM AND THE RIGHT OF RELIGIOUS MINORITIES: Progressive Muslim Perspective

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Abstract

Religion as a doctrine of God that guides human life is often accused of having 'failed' to protect the noble values of humanity. This can be seen with the onset of war and humanitarian conflicts in the name of religion. Consequently, religion is suspected to be only used as a tool to legitimize the actions of people to achieve all desires. Therefore, religion is regarded as outdated teachings for humanity. The question that arises is where man must seek the truth to protect noble human values? In search of answers of this question, in terms of absolutism and relativism of truth, no doubt that religion is an absolute truth because it comes from the Absolute. However, along the way, the revelation of God who has come down to man through His messengers has undergone distortion and reduction of meaning. Distortion and reduction of meaning was one of the factors that gave birth to a variety of interpretations, including those that are intolerant and exclusive. Therefore, to find the truth of the revelation of God that guarantees the protection of humans and humanity in these religions, one needs to explore the principles and values contained in substantial religious scriptures. In closing off the overall discussion of this paper, it can be stated that there is urgency in the context of Islam today, including in Indonesia, to formulate a

set of Islamic values that can be an alternative and solution for the creation of a just society that respects human values. Therefore, an Islamic reason formulation needs to be developed in the context of human life in accordance with a global ethics such as democracy, pluralism, and human rights. As such, the development of Islamic thought today needs to accommodate the values of equality, justice, and humanity. Thus, the position of all citizen is equal and the rights of religious minorities must be guaranteed and protected equally and fairly.

Keywords: *Contemporary Society, Progressive Ijtihadists, Minority Rights, Global Ethics.*

A. Introduction

Religion as a doctrine of God that guides human life is often accused of having “failed” to protect the continuity of human life and the noble values of humanity. This can be seen in the fact that the world history is beset with wars and conflicts of humanity in the name of religion.¹ Consequently, religion is suspected to be only used a tool to legitimize the actions of people in achieving several desires, or it is fundamentally considered as a means of “sense of alienation” of the human inability to reach goodness and perfection. Therefore, the teaching of religion is considered as obsolete and not at all good for humanity.²

While scepticism towards religion is growing, some people try to turn to philosophy to seek the glory of life. As a teaching, philosophy is grounded because it comes from the earth. However, because the truth is relative, philosophy also had a weakness and in its

¹ Charles Kimball, *When Religion Becomes Evil*, (United States : Harper Collins Publishers Inc. 2008), p.1-15.

² Hasan Mustafa al-Basy, *Huquq al-Insan baina al-Falsafah wa al-Adyan*, (Libya: Jami'yah al-Da'wah al-Islamiyah al-Alamiyah, 1997), read also Endang Mintarja, “HAM, dalam Perspektif Agama dan Filsafat”, in *Tanwir Jurnal Pemikiran Agama & Peradaban*, Vol. 1, No. 3 (2003), p. 206.

development, philosophy was considered even herding people towards destruction. Philosophy is considered to be incapable of protecting human on this earth and not heed the true values of humanity. The question that arises then is where we (humans) must seek the truth in order to protect people and the noble human values?³

In search of answer to the questions above, in terms of absolutism and relativism of truth, no doubt that religion is an absolute truth because it comes from Allah. However, along the way, the revelation of God who has come down to man through His messengers has undergone distortion and reduction of meaning. The distortion and reduction of meaning were one of the factors that gave birth to a variety of interpretations, including intolerant and exclusive interpretations. Therefore, to find the truth of the revelation of God that guarantees the protection of humans and humanity in these religions one needs to explore the principles and values contained in substantial religious scriptures.⁴

B. Progressive Islam

To respond the contemporary humanitarian issues above, one of the early trends in Islamic thought in the world of Islam in the contemporary era is *the Progressive ijtihadists*.⁵ They are Muslim thinkers who seek to reinterpret religious teachings in order to respond the urgent needs of contemporary society today, including issues such as Human Rights, the position of minorities (both religious minorities and ethnic minorities) and so forth.⁶

³ *Ibid*, p. 206-207.

⁴ *Ibid*, p. 207.

⁵ Abdullah Saeed, *Islamic Thought: An Introduction*, (London and New York : Routledge, 2006), pp. 142-150. Tariq Ramadan, *Western Muslims and the Future of Islam*, (New York : Oxford University Press, 2004), p. 24-28.

⁶ Syaikh Abdullah ibn Syaikh al-Mahfuz bin Bayyah, *Sina'at al-Fatawa wa Fiqh al-Aqalliyah* (Beirut : Dar al-Minhaj, 2007), p. 6-8, 162, 163.

The characteristics of prominent progressive Muslim thinking include adopting the view that some areas of traditional Islamic law need to change and substantial reform in order to match the Muslim community needs today, supporting the need for fresh *ijtihad* (fresh thinking) and new methodologies in *ijtihad* to address contemporary issues, trying to combine existing treasures of Islamic scholarship and creatively integrate them with modern Western thought and education, with an optimistic view that the dynamics and social change, both in the realm of intellectual, moral, law, economics or technology, can be reflected in Islamic law. Another characteristic of progressive Muslims is that they do not feel bound by dogmatism or a specific school of Islamic law or theology, and put more emphasis on Islamic essential values such as social justice, fairness/equality, human rights and harmonious relations between Muslims and non-Muslims.⁷

In a more technical nature, what distinguishes progressive Muslims from other trends of Islamic thought is that they support reinterpretation and re-implementation of the law and the basic principles of Islam, emphasize gender justice in Islam, argue that inherently all religions are equal and should be constitutionally protected; all human beings are equal; beauty denotes inherent part of Islamic tradition as found in art, architecture, poetry and music, support on freedom of speech, conscience and association; show compassion to all beings; the rights of “others” that exist to be respected; maintain moderation and avoid violence in resolving problem of society; and very appreciative and highly excited when discussing issues related to the role of religion in the public sphere.⁸

In view of the progressive Muslims, the values of justice, goodness and beauty are the universal values of Islam which is the soul of all

⁷ Tariq Ramadan, *Western Muslims...*, p. 150-151.

⁸ Omid Safi, *Progressive Muslims: On Justice, Gender and Pluralism* (Oxford: Oneworld Publication, 2003), p. 9-15; Omid Safi, “What is Progressive Islam,” in *The International Institute for the Study of Islam in the Modern World (ISIM) News Letter*, 13, December 2003, p. 10.

the provisions of the law. All the conditions and status of traditional Islamic law that is not in favor of justice, goodness and beauty should be abandoned and then replaced with legal status in accordance with the universal principles of Islam by using the approach of *progressive ijtihad*.⁹

In this way, Islam and Islamic law will be able to exist and live in the world arena and able to answer contemporary problems such as issues of human rights, pluralism and so forth. In the language of Omid Safi, progressive Islam “is not so much an epistemological rupture from what has come before as a fine-tuning, a polishing, a grooming, an editing, a re-emphasizing of this and a correction of that.”¹⁰

Based on the above explanation, it is clear that the *progressive ijtihad* is a progressive Islamic framework. This framework does not create a new religion but rather tries to re-interpret traditional Islamic religious foundation to accommodate the contemporary life, especially in response to issues of Muslim life today.

The model of *ijtihad* carried out by progressive Muslims mentioned above is one of the three models of *ijtihad* that were very influential in the history of Islamic law. The first model is text-based *ijtihad* which is commonly done by the classical and middle era jurists and still have a lot of influence among traditionalist thinkers.

This model of *ijtihad* is based on texts, be they the Qur’an, hadis or previous scholarly opinions either in the form of *ijma* or *qiyas*. The second model is The second model is eclectic *ijthad*, which attempts to select texts or previous scholarly opinions as the most supportive opinion or position. The third model is context-based *ijthad*, a new model that attempts to understand issues in both historical and contemporary context. In general, and usually, the opinion will eventually refers to the common good as *Maqasid al-Shari’ah*.¹¹

⁹ Omid Safi, *Progressive Muslim*, p. 16.

¹⁰ *Ibid.*

¹¹ Abdullah Saeed, *Islamic Thought...* p. 55, Jamaluddin Atiyah, *Nahwa Taf’il Maqasid al-Shariah*. (Damascus : Dar al and al-Fikr al-Alam Ma’had li al-Fikr al-Islami, 2001), pp. 221-222 and 235-239.

Of the three models of *ijtihad* mentioned above, the third model of *ijtihad* is an alternative and choice made by the *Progressive Ijtihadists*.¹² The model of Progressive *Ijtihad*, when compared with traditional *fiqh* methodology, is a methodology of *ijtihad* which usually solves legal problems based on the text of the Qur'an, then understands what the text says about the problem, and then connects the text with the socio-historical context.¹³

Meanwhile the *Progressive Ijtihadists* try to further connect the religious texts with the present context so as to keep up to date and can be applied. This model is verily conducted by, among others, Amina Wadud, Tariq Ramadan, Muqtader Khan, Bassam Tibi, Farid Essack, Ebrahim Moosa, Fazlur Rahman, Mohammed Arkoun, Muhammad Abid al-Jabri, Hassan Hanafi, Khaled Abou al-Fadl and many others.¹⁴

The progressive *ijtihad* methodology thus reinterprets the texts of the Qur'an by paying attention on the context and dynamics of socio-historical life; according to this methodology, some topics are not covered by the Qur'an because the time has not yet arrived when the revelation of the Qur'an; reading scripture of the text should be guided by the principles of compassion, justice and fairness; Qur'an consists of the hierarchy of values and principles; that switching from one concrete example to generalizations or vice versa; caution is needed when using any other text of the classical tradition, especially with regard to its authenticity; and the main focus on the needs of the contemporary Muslims.¹⁵ With such kind of approach towards the texts, it is expected that Islam, especially *fiqh*, is able to give an answer

¹² Abdul Hamid A. Sulayman criticized the method of classical jurists thinking on two very substantial: *the first* is the *lack empiricism* due to the use of a *multi-disciplinary approach*, such as sociology, psychology, economics and other in determination process of law; *The second* is the *lack of overall systemization* as also stated by Ismail R. al-Faruqi and Fazlur Rahman. See his book *Towards an Islamic Theory of International Relations: New Direction for Methodology and Thought* (Herdon, Virginia: II IT, 1993), p. 87-94.

¹³ *Ibid*, Abd al-Jawad Yasin, *al-Sultah fi al-Islam al-Aql al-Fiqh al-Salafi baina al-Nas wa al-Tarikh*, (Beirut: al-Markaz al-Saqafi al-Arabi, 1998), p. 25-30 and 33.

¹⁴ *Ibid*, Muhammad Jabir al-Ansari, *al-Taazzum al-Siyasi inda al-Arabi al-Islam wa Susiyulujiya Mukawwanat al-Halat al-Mazmanat*, (Beirut: Dar al-Syuruq, 1999), p. 185-197.

¹⁵ IDSS, " *Progressive Islam* "; p. 5. Ali Jumat Muhammad, *al-Tariq ila at-Turas al-Islami Muqaddimah Mar'ifiyat wa Madakhil Manhajiyat*, (Mesir: an-Nahdah, 2009), p.107-110.

(as an alternative) over a wide range of contemporary issues, including human rights issues.

Two human rights issues will be highlighted in the following description: freedom of religion and the right of minorities. However, before discussing the rights of minorities and religious freedom, it needs to be clarified in advance what religious freedom is the Islamic perspective.

C. Freedom of Religion

One example of concrete application of the above methodology concerns the case of apostasy (*riddah*)¹⁶ that under article 18 of the Universal Declaration of Human Rights (UDHR) was included as human rights. Article 18 of the UDHR states:

“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.”

In line with above article, Article 18 paragraph 2 of the ICCPR (International Covenant on Civil and Political Rights) states that, *No one shall be subject to coercion, roomates would impair his freedom to have or to adopt a religion or belief of his choice.* ICCPR is valid from the date of March 23, 1976.¹⁷

Meanwhile in the traditional *fiqh*, an apostate must be executed. In this connection the question arises whether Islam is contrary to human rights as agreed by the United Nations. Does Islam give the freedom to convert from Islam to another religion? Abdullah Saeed answers this

¹⁶ Ellen F. Davis, "Report of the Sudan", this article is part of the series "Apostasy & Proselytism-2007", this article is distributed by the Common Ground News Service (CGNews) and can be accessed at www.commongroundnews.org. Source: Common Ground News Service (CGNews), October 9, 2007, this article is quoted from <http://www.cgnews.org/article.php?id=21781&lan=ba&sp=1> accessed January 21, 2017.

¹⁷Article 18 of the UDHR and Article 18 paragraph 2 of the ICCPR (International Covenant on Civil and Political Rights). Mohammad Hashim Kamali, *The Dignity of Man: an Islamic Perspective*, (Malaysia: Scientific Publishers, 2002), p.102-104.

question in his article entitled “Article 18 of the UDHR and the Need for Rethinking Muslim Conception of Religious Freedom.”¹⁸

It is well known that *riddah* in traditional Islamic law is defined as a transfer to a non-Islamic religion after voluntarily accepting Islam. The majority of classical and middle era scholars stated that once a person embraced Islam he or she is forbidden to convert to another religion. *Riddah* is regarded as a criminal offense (*hudud*) whose legal sanction is death. At that time, *riddah* is associated and considered synonymous with rebellion in the family of the believers.¹⁹

To explore the development of the ideas above, one should examine the historical aspect of *riddah*. It turned out that in the period or phase of Mecca, the meaning of the basic freedom of religion is that it is a matter between God and man. Because it is a matter of individual, in fact *riddah* is a sin between servant and his Lord, and not a criminal act or a crime.²⁰

New meaning in the form of distortion and reduction on *riddah* emerged in the Medina phase. Nevertheless religious community at this stage still work side by side in the absence of excessive emphasis on the superiority of Islam. It was only during the caliphate period, that the new “meaning” of *riddah* was coloured by the superiority of Islam. Islamic community is associated and considered as a political force. Invasion of new areas eventually charted in black and white communities, entered in religious matters. Furthermore, during the Umayyad and Abbasid dynasties, meaning of political honor met with the Islamic superiority. At this time any dissenting Muslims were regarded as an act of subversion and treason because it is considered a criminal act and therefore must be punished.²¹

¹⁸ *Ibid.* p.540 and Syamsul Arifin, *Attitudes to Human Rights and Freedom of Religion or Belief in Indonesia Voices of Islamic Religious Leaders in East Java*, edited and rendered into English by Nelly van Doorn-Harder, Tore Lindholm and Nicola Colbran, (Yogyakarta: Publisher Kanisius, 2010), p. 95-98.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

On the basis of the explanation of historical developments as mentioned above, it is proper to put *riddah* back on its actual position, i.e as a vertical sin (sin against the Lord's servant) and not criminal act. Moreover, the condition is now different from the past. This is evidenced from the criticism over the views of classical and middle era Islamic law on *riddah* with arguments that there are nearly 150-200 verses of the Qur'an which support freedom of religion, conscience, vote and others; there is not a single verse in the Qur'an that mentions punishment for the apostate.²²

The emergence of punishment²³ of *riddah* above is based on the hadith and *riddah* legal determination is based on ijihad, not directly from God, and therefore it can be questioned and negotiable; faith is a matter between a servant and his Lord, the state has no business with this matter; *riddah* law is harmful to people because it kills the creativity and innovation of thought which is part of human rights; *riddah* is a sin but not a criminal act.²⁴

Thus, what is stated by Article 18 of the UDHR is not contrary to the principles of Islamic law.

Mohammad Hashim Kamali further states that:

*"It may be said by way of conclusion that apostasy was a punishable offense in the early years of the advent of Islam due to its subversive effects on the nascent Muslim community and state. Evidence in the Qur'an is, on the other hand, clearly supportive of the freedom of belief, the which naturally includes freedom to convert... The Qur'an prescribes absolutely no temporal punishment for apostasy, nor has the Prophet, peace be upon him, sentenced anyone to death for it."*²⁵

²² *Ibid.*

²³ *Hammurabi, Maimonides*, and most of the major legal systems asserted that apostasy must be punished. Syaikh Abdallah Adhami, "Moving Right to Religion", this article is distributed by the Common Ground News Service (CGNews) and can be accessed at www.commongroundnews.org, this article is quoted from the Source: Common Ground News Service (CGNews), October 23 2007, this article is quoted from <http://www.cgnews.org/article.php?id=21781&lan=ba&sp=1> accessed January 21, 2017.

²⁴ Report of the Seminar with the theme of *Civil and Political Rights (Fundamental Liberties)*, MIEHRI, Hilton Malaysia May 16, 2006, p. 74.

²⁵ *Ibid.*

D. Rights and Religious Freedom of Minority Citizens

After discussing of the issue of *riddah*, I will further explain the problems faced by minority groups. The rights of minorities in this context may be a non-Muslim minorities in Muslim countries and Muslim minorities in countries with a non-Muslims majority in the West.²⁶

According to estimates of the Union of Islamic Organisations in Europe (UIOE), there are approximately 15.84 million Muslims who live in western Europe. They are 4.45 percent of the total population. While in the United States, based on estimates of *the Council on American Islamic Relations* (CAIR), their number ranges from 6 to 7 million people. They generally are immigrants who from generation to generation have citizenship in the country where they live and reside until today. While the number of natives who converted to Islam is growing on daily basis. That number is likely to continue to grow so that is expected in 2050, one in five Europeans will be Muslim, and in 2100, 25 percent of Europe's population is Muslim. In the United States, Islam also leads into the third largest religion after Christianity and Judaism.²⁷

In everyday life, Muslim minorities in such an environment are often faced with one or several issues that make their religious disturbed. The reality of life that surrounds them shows aspects that can be considered unfavorable, do not coincide or conflict with religious teachings that they believed all along. In other words, diversity which they live must be

²⁶ Patricia Bezunartea, José Manuel López and Laura Tedesco, *Muslims in Spain and the Islamic Religious Radicalism*, (Brighton: MicroCon, 2009), Harry Norris, *Islam in the Baltic Europe's Early Muslim Community*, (London and New York: IBTauris Publishers, 2009), Ala Al-Hamarneh and Jörn Thielmann (Ed), *Islam and Muslims in Germany*, (Leiden and Boston: Brill, 2008), Ilyas Ba-Yunus Kassim Kone, *Muslims in the United States*, (London: Greenwood Press, 2006). Saeed Abdullah *Muslim Communities in Australia* (Melbourne: University of Melbourne, 2001), Abdullah Saeed, *Freedom of Religion, Apostasy and Islam* (Melbourne: University of Melbourne, 2003), Joel S. Fetzer and J. Christopher Soper, *Muslims and the State in Britain, France, and Germany*, (New York: Cambridge University Press, 2005). Hamid Reza Kusha, *Islam in American Prisons Black Muslims' Challenge to American Penology*, (East Carolina University, USA: Ashgate Publishing Company, 2009).

²⁷ Abd. A'la, "Pengembangan Fiqh Minoritas, Representasi Islam yang Menyejarah", in Ahmad Imam Mawardi, *Fiqh Minoritas Fiqh al-Aqalliyat dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan*, (Yogyakarta: LKiS, 2010), p. vii.

confronted and often get stuck (in the conflict) by power and values that develop in the host societies.²⁸

Ironically, the traditional Islamic jurisprudence as their religious references could not give an answer or a solution that is adequate to the reality of life. Therefore, as long as the minority of Muslims stick to such legal doctrine, it is certain that they will not be fully integrated into Western society. Moreover, they would find it difficult to live reasonably and naturally.²⁹

They certainly can not remain silent. As part of the human race (which of course has the basic rights of human beings are the same as the others) and as a citizen of a country, they might have to live a decent and normal as the host societies. On top of that, as part of the Muslim ummah, they are obliged to present the face of Islam (the one through *fiqh*) are intact and tolerant, which should be very far from the public's perception of the West during this period. In this context, the need of *fiqh* that can accommodate their problems in the field of jurisprudence becomes very urgent.³⁰

The accumulation of anxiety actually originated from the Muslim minority communities in the West when it had to do something related to their religion. On the one hand, they have to obey the teachings of religion which is believed to be perfect and chosen by God as a guide in accordance with human nature to find peace in the world and the hereafter, while on the other hand there is a discrepancy between the provisions of the classical *fiqh* that they can understand and social reality culture in which they live. For them, this fact means that implementing the teachings that they understand will make them alienated from the environment, while leaving religion is something they had never imagined. From here arises the question of the universality of Islam that state that all aspects of Islam, both related to *aqidah*, *syari'ah*, and morality is as manifestation of God's grace is universal for all his servants.³¹

²⁸ *Ibid*, p.viii.

²⁹ *Ibid*.

³⁰ *Ibid*, p.viii-ix.

³¹ Ahmad Imam Mawardi, *Fiqh Minoritas Fiqh al-Aqalliyat dan Evolusi Maqashid al-Syari'ah dari Konsep ke Pendekatan*, (Yogyakarta: LKiS, 2010), p.109-110.

The problem arises when they understand Islamic law is no longer adaptable and easy to follow as a guide in Western countries where they live and make a living. The difficulty of implementing *fiqh* in this context produces two options when they should remain as a good Muslim: *The first* is get out of the West and returned to their home countries where they understand Islamic law can be implemented easily. The second is reinterpret Islamic law on the basis of courage and spirit that Islam is indeed in accordance with all the places and times as well as the that Islamic law changes with time and place, and that the existence of the law depends on *illat* (reason behind the law).³² Apart from the above two options, the Muslim minority living in Western countries is in fact the growing old. They have lived many years from one generation to another. Earlier reviews have clearly illustrated their reflection of tension, social, economic, political, and demographic developments. Problems of Islamic law that they face is unique not only because of differences in the area with the majority of *dar al-Islam* which necessitates the time difference, weather, and seasons could cause problems in setting up a schedule of worship, but also because of differences in national and state life policy that the dialogue and assimilation.³³

Classical *fiqh* is not able to clearly give answer to Islamic legal issues they face,³⁴ since it was written in the past in the area where the majority people is Muslim. Problems of modernity faced by Muslim minorities in the West and psycho-social conditions experienced by them were not able to be imagined and perceived by the classical jurists. That's why contemporary Muslim scholars who are concerned and even live as minorities in Western countries seek to reinterpret of the text (*nash*) of the existing laws with *ijtihad* devices continue to be encouraged in an effort to find a form of jurisprudence that can address the problems of Muslim minorities in Western societies.³⁵

The idea of the minority *fiqh* above is a response to the fact that many Muslims are becoming a minority, living in Western countries that

³² *Ibid*, p. 111.

³³ *Ibid*, p. 114.

³⁴ *Ibid*, p. 154-173.

³⁵ *Ibid*, p.114-115.

do not apply the principles of the Islamic state. The discourse of minority fiqh, however, can also be developed in Indonesia, especially in terms of how Muslims as a majority treat religious minorities³⁶ in Indonesia. In the Reform Era, there are many cases of violence, intolerance, and conflicts over or in the name of religion.

According to the findings Equivalents Institute, in 2009 alone there were 291 violations of religious freedom in Indonesia. 152 cases were committed by residents of the country, 139 others by state actors. One reason for the high number of violations by the state is the proliferation of laws that tend to invade the private sphere of citizens, including freedom of religion.³⁷ One the most powerful case of violence recorded in the memory is the violence and attacks against members of Jamaah Ahamadiyah Indonesia (JAI) in various places. This group suffered from loss of life, residence or home, places of worship, livelihoods and security. Ironically, In the name of stability and will of the majority, they are ostracized and imprisoned in earth where they were born.³⁸ legal basis usually applied in Indonesia relating to religious freedom is PNPS 1965 on blasphemy.

Judicial review of PNPS 1965 on Blasphemy was proposed by a number of NGOs and individuals in late 2009. The applicants argue that the law violates fundamental rights protected by the Constitution. Wave of rejection to this petition appeared in a number of areas. Whenever the hearing, some religious organizations such as the Islamic Defenders Front (FPI), the Forum of Muslim Ummah

³⁶Rumadi, "Membaca Ulang Fikih Minoritas" from http://gusdurian.net/news/2011/04/04/7/membaca_ulang_fikih_minoritas.html accessed 13 of January 2012. Hisham al-Zoubeir, "Live Together, Message from the Prophet", this article is part of a series on apostasy and proselytism distributed by the Common Ground News Service and can be accessed at www.commongroundnews.org. Source: Common Ground News Service (CGNews), 25 of September 2007, the article quoted from <http://www.cgnews.org/article.php?id=21781&lan=ba&sp=1> accessed January 21, 2017.

³⁷ Otto Gusti Madung, *Politik Diferensiasi Versus Politik Martabat Manusia?* (Maumere: Ledalero, 2011), p. 205-206.

³⁸ Basyarat Asgor Ali, "Relasi Agama dan Negara: Problematika Kebijakan di Ranah Publik", in *Suluh* Majalah Antariman, (Yogyakarta: Forum Persaudaraan Umat Beriman, 2011), July-August edition 2011, p. 4.

(FUI), and Hizb At-Tahrir Indonesia (HTI) always demonstrate their rejection. Most of those who opposed the repeal also accused the applicants and supporters of the petition of promoting “religious freedom without limits”. The question is, is it true that there is religious freedom without limits.³⁹ Restrictions are allowed for religious freedom.⁴⁰ On the nomenclature of human rights there are domains of religious freedom, *forum internum* and *forum externum*. The first one concerns the internal dimensions of thought, conscience, religion or belief, which both related manifestations of religion and beliefs. *Forum externum* includes the right to worship, assemble, establish, preserve, and develop a religion; obtain and use the material to perform the rituals and traditions, write and spread the teachings of religion, teach at the right place, establish associations and religious organizations, the construction of places of worship, religious holidays, and the right of parents to the religious education of their children.⁴¹

The existence of such restrictions should only be imposed in the second realm, not for the first one. In a state of war though, the first domain (*forum internum*) cannot be violated or reduced (*non-derogable*) by the state. Herein lies the absolute freedom. The permissible restrictions are stipulated in various international instruments such as in Article 18 paragraph (3) of the Covenant on Civil and Political Rights (ICCPR), Article 9, paragraph (2) of the European Convention on Human Rights (European Convention on Human Rights / ECHR), and Article 12 paragraph (3) of the American Convention on Human Rights.⁴²

There are two main requirements of state restrictions. *First*, the restriction must be prescribed by law. For example, it is determined by a parliamentary law and democratically determined. *Second*, it is intended to meet one of the reasons, among others, public safety, public

³⁹ Otto Gusti Madung, *Politik*, p. 205-206.

⁴⁰ Tore Lindholm, W. Cole Durham, Jr. Bahia G. Tahzib Lie, Eds., Refael Edy Bosko, dkk (pen), *Kebebasan Beragama atau Berkeyakinan: Sejauh Mana? Sebuah Referensi tentang Prinsip-Prinsip dan Praktik*, (Yogyakarta: Kanisius, 2010).

⁴¹ *Ibid*, p. 203.

⁴² *Ibid*.

moral, public health and the rights and fundamental obligations of others.⁴³

Discourse on minority *fiqh*, while originally developed in the West, are highly relevant in Indonesia. *First*, Indonesian Muslims are in the majority position, so that there is the necessary foundation to develop minority *fiqh* in dealing with religious minorities. *Second*, Indonesia is not an Islamic state, so that all religions have the same position in Indonesia. In this regard, one of the important themes of minority *fiqh* is to look at is the issue of the status of the state and citizens. The question is whether Muslims who do not live in an Islamic state can be referred to as *dar al-harb*? This question has become a serious issue in the discourse of minority *fiqh* based on the fact that they live in countries that, not only, are not Islamic countries, but also in some respects contrary to the normative teachings of Islam.⁴⁴

In the treasure of Islamic political thought (*siyasa*) it is well-known a firm distinction between *dar al-Islam* and *dar al-harb*. *Dar al-Islam* is a political territory controlled by Muslims and Islamic law in its basic settings. Communities who live there are usually referred to as *the ummah*. This kind of state is assumed to provide protection and guarantees to non-Muslims who want to be subject of its rule and pay *the jizyah* (tax) to the Muslim rulers. They are called *zimmi*, which is a protected minority community and can freely practice their faith. In classical Islamic teachings, everything that is outside the *dar al-Islam* is *dar al-harb*, i.e countries are politically declared war against Islam. It also refers to areas categorized as a war zone, which applies the law of war.⁴⁵

In between these two areas, there is another category called *dar al 'ahd* (regional agreements) or *Dar al-sulh* (Peaceful region). It must be said here that these concepts have no further relevance in the context of the modern state. The understanding of citizenship in

⁴³ *Ibid*, p. 206.

⁴⁴ Rumadi, "Membaca Ulang

⁴⁵ *Ibid*.

fiqh al-siyasah, especially concerning minorities, can not be based on *zimmah* system, but the system of human rights-based citizenship. The concept of human rights-based citizenship means substantive norms, procedures, and processes the status of human rights standards which apply universally. International human rights charter does not define the concept of citizenship in detail and rigid, but it contains principles that can be applied in various countries.⁴⁶

Moving on from the exposure, the spirit of anti-discrimination cannot be enforced if the *dzimmi* paradigm still sneak in mind. Thus, the concept of *zimmi* should not be practiced and encouraged in any Muslim country that uses a system of human rights-based citizenship. This is the entrance to make minority *fiqh* as *fiqh* without discrimination. There is also no guarantee that in countries that have adopted the human rights-based citizenship there would be no discrimination.⁴⁷

Based on the example of application of progressive fiqh methodology in the issues of *riddah* and minority rights, it can be understood that the contents of the present and future fiqh need to accommodate the demands of human values in a globalized world. Global human values, among others, are human rights that can guarantee freedom of religion and protect the rights of minorities.

E. Progressive Islam versus Conservative Islam

Challenges faced by progressive Islamic thought or progressive as stated by Abdullah Saeed above is based on, the assumption that there is only one *set of* Islam or Islamic law that can be accepted as the sole truth and the other is considered wrong. Truth claims are still dominant among Muslims. In other words, as put forward by Engineer, the *key obstacle* lies in the internal community, namely the loss of freedom and lack of democracy. In this connection, Chandra Muzaffar states that

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* Abd al-Rahim Muddathir, *Muslim and Non-Muslim Minorities*, (Penang : Just World Trust, 1997), p. 1-20.

there are four constraints for the spread of progressive Islamic ideas: the discourse of conservative Muslim groups who spread their ideas using violence; the work of certain intellectuals who claim to care about the future of Islam but wrap old ideas with new outfits; repressive actions of nation-states and the global system of power that does not allow dissents in discussing socio-economic issues.⁴⁸

One prominent figure in the context of Progressive Islam is Abdullah Saeed. Abdullah Saeed is a scholar whose educational background and literary Arabic language and Middle Eastern studies are very good. The combination of institutions of education that he followed, namely education in Saudi Arabia and Australia making him competent to assess the two worlds, Western and Eastern, objectively.

Abdullah Saeed is very concerned with the contemporary Islamic world. In him there is the spirit of making Islamic teachings *salih li kulli zaman wa al-makan*.⁴⁹ It is this kind of spirit that he calls as a Progressive Islam, an attempt to reactivate the progressive dimension of Islam.⁵⁰ He calls the method of thinking used by progressive Muslims progressive *ijtihad*.

As recognized by Abdullah Saeed, the mindset of progressive *ijtihad* still faces many obstacles. The greatest challenge are internal constraints, such as lack of preparation of Muslims to disassociate themselves from the culture of *takfir* which stems from the *truth claims*.

⁴⁸Report of the Seminar with the theme of *Civil and Political Rights (Pundamental Liberties)*, MIEHRI, Hilton Malaysia May 16, 2006, p. 74.

⁴⁹His works for instances *Interpreting the Qur'an: Towards a Contemporary Approach*. (London: Routledge, 2006); 'Muslims in the West and Their Attitudes to Full Participating in Western Societies: Some Reflections' in Geoffrey Levey (ed.). *Religion and Multicultural Citizenship*. (Cambridge: Cambridge University Press, 2006); 'Muslims in the West Choose Between Isolationism and Participation' in *the Zinc* vol 16. (Seoul: Asia-Pacific Centre for Education and International Understanding/ UNESCO, 2006). 'Jihad and Violence: Changing Understanding of Jihad Among Muslims' in Tony Coady and Michael O'Keefe (eds). *Terrorism and Violence*, (Melbourne: Melbourne University Press, 2002); and his research entitled *reconfiguration of Islam Among Muslims in Australia* (2004-2006).

⁵⁰ N.J. Coulson stating that the so-called modern *ijtihad* is still hobbled into contact with the existing problems because it is not ditatanya systematic approach. See NJ Coulson, *A History of Islamic Law*, (Edinburgh: Edinburgh University Press, 1964), p. 75, 80-81, 152-154 and 220-223; Majid Khadduri, "From Religion to National Law," in J. Thompson and R. Reischauer (Eds), *Modernization of the Arab World* (New York: Van Nostrand, 1966), p. 41.

Indeed, according to Abdullah Saeed, progressive Islamic trend is a further development of the modernist, which evolved into a neo-modernist and then becomes progressive. As a trend, not a movement, Progressive Muslims accommodate all groups and people who have stood for values of universal Islam so as to answer the needs of modern society. Omid Safi mention several important issues to be answered by the progressive Muslims, among others, gender inequality, discrimination against minorities either religion or ethnic minorities,⁵¹ violations of human rights, lack of freedom of speech, belief and practice religion, unequal distribution of wealth, and authoritarian governments.⁵² When Abdullah Saeed was asked who is most entitled to interpret Islam, he replied:

“Although Islam does not have a clergy or a centralized church structure, exert a considerable Muslim religious establishments influence in terms of how Muslims view and practice Reviews their religion. If they are antithetical to progressive Islam, their constituences would be averse to it as well.”⁵³

The contribution of progressive Islamic thinking or progressive fiqh is critical in formulating a set of Islamic law that can offer solution for the creation of a just society that respect human values and the realization of benefits for all mankind. In other words, there is a need

⁵¹ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*, (London, IIIT, 2008), p. 177-179. Shaykh Abdullah ibn Shaykh al-Mahfuz bin Bayyah, *Sina'at al-Fataawa*, p. 6-8, 162, 163 ff. Similar thought can be read in Iqbal reform proposals as can found in his magnum opus, *The Reconstruction of Religious Thought in Islam*, (Lahore: Ashraf Press, 1971). The concept of renewal of its very distinctive with its new model naskh theory can be read in his work translated by his students, Abdullahi Ahmed An-Na'im into English under the title: *The Second Message of Islam*, (Syracuse: Syracuse University Press, 1987). Thought of renewal his usul which basically is a further development of the idea of the teacher, Mahmud Muhammad Taha, stated in his famous work entitled *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law*, (Syracuse: Syracuse University Press, 1990). Muhammad Said Ashmawi, *Usul asy-Syari'ah*, (Beirut: Dar Iqra', 1983). Fazlur Rahman, "Toward reformulating the Methodology of Islamic Law: Sheikh Yamani on Public International on Islamic Law" in *the New York University Journal of International Law and Politics* 12 (1979): 219-24. Rahman's theory that became known in the regulation of Islamic thought is *double movement* which is always an ideal link between moral and legal-specific Koran in public in the integrity of the dialectic movement. Muhammad Shahrur, *Al-Kitab wa al-Qur'an: Qir'ah Mu'asirah* (Damascus: Al-Ahlab li li Thiba'ah ath-an-Nasyr wa at-Tauzi, 1992). Shahrur popularized the "theory of hudud" taken inspiration from the natural sciences in understanding the Allah commands in the scriptures.

⁵² Omid Safi, *Progressive Muslims*, p. 2-3.

⁵³ IDSS, " *Progressive Islam*", p. 14.

for a new formulation of Islam or *fiqh* according to contemporary public life in the present time.

Stemming from the idea of Islam or *fiqh* as mentioned above, the position of all citizens as can equal and entitled to equal treatment, minorities are protected and guaranteed equally and fairly. Therefore, the transformation of Islamic law that is synonymous with social Islam and democracy and humanitarian values not only deliver public law jurisprudence that can be accepted by all people, but also match with people's lives today.

This description clearly indicates that Islamic thought, and especially Islamic law as a scientific discipline should reflect the values of equality, justice and humanity.

It can be understood from the above explanation that the basic principles of the formation of progressive jurisprudence include pluralism (*ta'addudiyah*), nationality (*muwatanah*), enforcement of human rights (*iqama al-huquq al-insaniyah*), democracy (*dimuqratiyah*), benefit (*maslahah*), and gender equality (*al-musawah al-jinsiyah*).⁵⁴

This line of thinking is certainly different from previous Islamic thought or Islamic law as it associates legal interpretations of the texts of the Qur'an and hadith with the perspective of democracy, pluralism, human rights and rule of law applicable in the context of the contemporary Muslim world.

The offer of Islamic thought and *fiqh*, however, is still open to dispute and controversial, and maybe rejected by groups who support the formalization of Islam (*shari'a*). However, the presence of Islamic thought and *fiqh* such as alternative formalization means that Islamic *shari'a*, especially Islamic law is compatible with life and can meet or

⁵⁴ Public Reason (*public reason*) is public policy objectives or legislation that must be based on the premise in which ordinary citizens can accept or reject, and make counter proposals through public debates without fear of being accused of infidels or apostates, read Abdullahi Ahmed An-Na'im, *Islam dan Negara Sekular Menegosiasikan Masa Depan Syariah*, Trans by Sri Murniati, (Bandung: Mizan, 2007), p. 22-23.

even to support the livelihood of contemporary society related to humanitarian issues in various aspects of life.⁵⁵ Rejection of Islamic thought and *fiqh* above by the groups who support the formalization of shari'a in Indonesia is due to the unpreparedness of these groups in receiving the perspective of democracy, pluralism, human rights,⁵⁶ and various other humanitarian issues.

F. Concluding Remarks

In closing off the entire preceding discussion of this some conclusions can be drawn as follows:

1. There is an urgency in the context of Islam today, including in Indonesia to formulate a set of Islamic values that can be an alternative and solution or the creation of a just society that respects human values. In other words moslems need a new formula of Islam in accordance with the life of contemporary society today.
2. Islamic reasoning that should be developed in the context of Muslim life today including in Indonesia is the Islamic perspective on democracy, pluralism, and human rights. Therefore, the development of Islamic thought today should reflect the values of equality, justice, humanity.
3. According to Islamic thought in Indonesia, the position of all citizens is equal and should have equitable treatment, especially in term of freedom of religion and belief. The rights of religious minorities thus must be guaranteed and protected equally and fairly. Therefore, the transformation of Islam will not only deliver a public reference that can be accepted by all

⁵⁵ Yusdani, *Menuju Fiqh Keluarga Progresif* (Yogyakarta: Kaukaba, 2015) and Yusdani. "Menguji Kompatibilitas HAM dan Syari'ah", paper in Workshop *Does Shari'a Protect and Promote Human Rights? Concepts and Practices in Contemporary Indonesia*, PSI UII dan NCHR, Thursday, 10 of November 2011 at Hotel Jayakarta, Jl. Laksda Adisucipto Yogyakarta.

⁵⁶ Suparman Marzuki, *Tragedi Politik Hukum HAM*, (Yogyakarta: PUSHAM UII and Pustaka Pelajar, 2011), p. 432.

people, but also meets the demands of public life today.

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