Islam and Human Rights: Friend or Foe?

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Abstract

In the context of the relationship between Islam and democracy along with human rights, Islam represents two opposing positions (*the two faces of Islam*). On the one hand, Islam is seen as a religion of compassion (*raḥmat li al-'ālamīn*), respects plurality, upholds tolerance and cares about human rights. On the other hand, Islam is often identified with separatism, discrimination, intolerance and violent phenomena. In Islamic countries and Muslim-majority countries, violations of human rights frequently occur. Islam often appears with a double face. In addition to being a source of law to bring about peace, it is often used as the basis for violent ideologies from state's repressive policies to terrorism movements. This article elaborates on the basic concept of human rights in Islam and the dynamics of protecting and upholding human rights. Using

a conceptual approach, this study aims to seek religious awareness in the midst of globalization where religion can strengthen the concepts of human rights. When religion is used as a source in the rational policy framework of a country, especially the protection and enforcement of human rights, it can be ascertained that human rights in that country will flourish and will be accepted by the citizens.

Keywords: *Islam, Human Rights, Two Faces of Islam.*

Abstrak

ISLAM DAN HAK ASASI MANUSIA: KAWAN ATAU LAWAN? Dalam melihat hubungan antara Islam, demokrasi, dan hak asasi manusia (HAM), meminjam terminologi dari Schwartz, bahwa agama (Islam) mewakili dua posisi yang saling bersebrangan (*the two face of Islam*). Di satu sisi, Islam sering kali ditegaskan sebagai agama yang penuh kasih sayang (*raḥmat li al-ʿālamīn*), pluralis, diskriminasi, toleran dan peduli HAM. Di sisi lain, Islam juga sering diidentikan dengan separatisme, intoleran dan fenomena kekerasan. Di negara Islam dan negara Muslim, pelanggaran terhadap HAM justru banyak terjadi. Islam sering tampil dengan dua wajah yang saling bertentangan, selain sebagai sumber hukum untuk mewujudkan kedamaian, juga faktanya menjadi landasan ideologi kekerasan. Mulai dari kebijakan negara yang represif hingga gerakan terorisme. Artikel ini mengelaborasi bagaimana konsep dasar HAM dalam Islam? Bagaimana dinamika perlindungan dan penegakan HAM? Penelitian merupakan penelitian kepustakaan dengan menggunakan pendekatan konseptual (*conceptual approach*) dengan tujuan mencari kesadaran religius di tengah-tengah globalisasi, dimana agama dapat menguatkan konsep-konsep hak asasi manusia. Ketika agama dijadikan sebagai sumber dalam kerangka kebijakan rasional suatu negara, khususnya terkait perlindungan dan penegakkan HAM maka HAM di negara hukum tersebut akan lebih mudah berkembang dan diterima oleh warga negaranya.

Kata Kunci: *Islam, Hak Asasi Manusia, Dua Wajah Islam.*

A. Introduction

Observing the relationship between Islam, democracy and human rights (HAM), borrowing Schwartz's apt phrase "the two face of Islam", this religion seems to represent two opposing

positions.[1] The two faces represent the two opposing positions where each side claims to be the truest manifestation of Islamic teachings. On the one hand, Islam is often described as a religion of tolerance and compassion (*raḥmat li al-'ālamīn*), respects plurality, and cares about human rights. The Qur'anic idea of equal rights, justice, deliberation, and freedom emphasizes the compatibility of Islamic teachings with democracy and the enforcement of human rights. These ideas also explicitly emphasize that the principles of Islamic teachings have implications for humanity, racial equality, gender and freedom.[2] If we further examine, the spirit of Islam is to revolutionize the order of the ignorant society. The Prophet Muhammad, peace be upon him and his families, carried a sacred mission to unite the tribes and restore the deviant rituals into the pathways based on the Qur'an and justice.

On the other hand, Islam is often perceived with separatism, intolerance and other violent phenomena such as the terrorism movement[3], radicalism, and a mean to persecute other group. In some Islamic countries and Muslim-majority countries[4], sexual minorities, religious minorities, women and children are often discriminated. Afghanistan, for example, as the annual Fredoom House survey reported that Muslim minorities, namely Hazaea ethnic, are marginalized and women's rights are restricted. Women's participation within the political sphere is limited by threats,

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[1]See, Stephen Sulaiman Schwartz, *Dua Wajah Islam: Moderatisme vs Fundamentalisme dalam Wacana Global*, (n.p.: Blantika, 2007).

[2]Asef Bayat, *Pos Islamisme*, (Yogyakarta: LkiS, 2011), 5.

[3]The Islamic-based terrorism movement has received serious attention since September 11, 2001 in the United States; a tragedy that marked a new era. There is a growing assumption that Islam is synonymous with terrorism. Terrorism is no longer understood as a movement like the Tamil Tigers in Sri Lanka, the Red Brigades in Italy or the Japanese Red Army (JRA). See, among others, Bambang Pranowo, "Preface" in Ali Asghar, *Men-Teroris-kan Tuhan: Gerakan Sosial Baru*, (Jakarta: Pensil-324, 2014).

[4]A Muslim country is a country where the majority of the population is Muslim, but it does not make shari'a a source of its constitutional law. While the Islamic state refers to a form of government in which the shari'a guides all aspects of human life and state law. See, Al Khanif, *Religious Minorities, Islam and The Law: International Human Right and Islamic Law in Indonesia*, (New York: Rotledge, 2021), 1.

harassment and social restrictions to travel alone and appear in the public area.[5] Eastern Arabia or the Levant[6] has been also colored by conflict and war, the mainstream of which is caused by acute sectarianism and the potential threat of a return to Islamism in its most violent form, namely terrorism.[7] These two conflicting dimensions make Islam often identified as a hostile religion against human rights.

The two conlicting faces of Islam show us that people's understanding of religion and its role becomes a vulnerable factor to the emmergence of violence actions. This can be seen, among others, based on the three functions of religion. The first is that religion has an ideological function. Religion plays as a framework for interpreting religious social relations. Religion provides a religious reference to human relations. Secondly, religion functions as an identity. At this point, religion serves to reflect on a person's self, such as outlook on life, status, and social stability. Thirdly, religion provides ethical legitimacy for social relations in which religion becomes a supporter of the social order of a society.[8] The classic question that always arises is whether Islam is incompatible with democracy and human rights? Human rights itself is a reference to the international world that affects all aspects of life in both relations between countries and international law. However, its enforcement and implementation has not been always directly proportional to its acceptance where there are often clashes between cultures, local laws and religions.

These problems are caused by the development of society, law and religion which are closely related to social change. Social

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[5]Available at https://freedomhouse.org/country/afghanistan/freedom-world/2020, accessed on April 25, 2021.

[6]Hashimiya Arab Kingdom Jordan, Lebanon, Syria. Palestine is also in this region, but de facto and de jure is still not an independent and complete state.

[7]See, Ibnu Burdah, "Arab Kontemporer? Gerakan Protes, Politik Muslim, Covid dan Arah Perubahan", *Inauguration Speech of Professor in the Field of Contemporary Arab and Islamic World Studies*, delivered on September 3, 2020.

[8]Haryatmoko, *Etika Politik & Kekuasaan*, (Jakarta: Kompas. 2014), 69-72.

changes occur due to changes in geographical conditions, culture, ideology and new discoveries in society. Occasionally, a new discovery challenges the old. Conflict results in changes in rules and values which affect the balance of the society.[9] In the composition of sharia, fiqh (Islamic jurisprudence) becomes a main pillar to respond to practical problems in religious life.[10] Fiqh provides a normative framework for human actions that lead to the realization of *maqāsid al-sharī'ah*. The basic essence of *maqāsid al-sharī'ah* is to provide protection and respect for human rights. It implies that fiqh does not stand diametrically with the principles of religious diversity and human rights.[11]

The Vienna Declaration Article 5 states that: "All human rights are universal, indivisible, interdependent and interrelated…".[12] The declaration emphasizes that, in the context of safeguarding human rights, the state should not prioritize one group in order to promote and protect human rights by ignoring other. Human rights must be treated fairly and in a balanced manner taking into account historical, cultural and religious backgrounds. Promoting and protecting all citizens based on human rights and basic freedoms, regardless of the political, economic and cultural system is the duty of the state. The meaning of human rights arises from various historical, cultural and religious backgrounds.[13]

Human rights issues in Islamic countries and Muslim-majority countries bocome an interesting aspect to observe. The

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[9]Fathurrahman Azhari, "Dinamika Perubahan Sosial dan Hukum Islam", *Jurnal At-Tahriri* 16, No. 1 (2016).

[10]Abu Yazid, *Logika Hukum: Dari Mazhab Rasionalisme Hukum Islam hingga Positivisme Hukum Barat*, (Yogyakarta: Saufa, 2016), 175.

[11] Noorhaidi Hasan, "Preface" in Maufur and Nina Mariani Noor (Ed.), *Fikih dan HAM Best Practices Pengarusutamaan Hak Asasi Manuisa dalam Kebebasan Beragama, Gender, dan Hak Anak di Lingkungan Kantor Urusan Agama (KUA)*, (Yogyakarta: Postgraduate Programs UIN Sunan Kalijaga, 2019), vi.

[12] See, Vienna Declaration and Program of Action Item 5.

[13] See, Abdul Hakim G. Nusantara, "Dialog Antara Hukum Internasional Hak Asasi Manusia dan Hukum Islam", in Mashood A. Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam*, (Jakarta: Komisi Nasional Hak Asasi Manusia, 2007).

basic principles of universal Islam regarding equality and freedom are basic principles in the fulfillment of human rights. History proves that in the first Islamic constitution (the Medina Charter) human rights were placed in a very central position. The course of history also proves that the application of Islamic law has shifted from the point of vertical normativity to horizontal one. This is mainly influenced by legal developments which always go hand in hand with socio-cultural dynamics and legal politics in society.[14] To put Islam corresponds with democracy and human rights, it should be placed as a source of law used by the state in its rational policy framework. In addition, Islam explains not only about the relationship between humans and God *(ḥabl min Allāh),* but it also describes the relationship among humans (*ḥabl min-al-nās*). Islam has been revealed to answer various problems faced by human in the past as it also answers contemporary human problems (*ṣāliḥ li kull zamān wa makān*).

There have been three main theses about why religion should be placed as a source of the rational policy framework of a country. This is because religion can provide positive sources for human rights.[15] The first proposition states that when religion is used as a source of state's rational policy, it is able to expand the scope of human rights. For example, Article 3 of the Universal Declaration of Human Rights states that: "Everyone has the right to live, to be free, and to have security". When religion is used as a source, the expansion of the rights of life outside of human life can be put forward. Other forms besides human life, especially animal life or even treatment of plants can be also covered here. The second thesis explains that when religion is used as a source, it can explain the interrelationships between the articles of the declaration.

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[14] Daniel Alfaruqi, "Korelasi Hak Asasi Manusia dan Hukum Islam", *Jurnal Sosial dan Budaya Syar-I* 4, No. 1 (2017), 63.
[15] John Kelsay and Sumner B. Twiss, *Agama dan Hak-hak Asasi Manusia*, trans. Ahmad Suaaedy and Elga Sarapung, (Yogyakarta: Institut Dian/Interfidei, 2007), 113-114.

Under shari'a, for example, there is a need to encourage a reduction in the death penalty for thieves. This principle leads to Article 17 concerning property rights and under the umbrella of Article 25 concerning an adequate standard of living. These articles must not be separated. The final notion is that when religion is used as a source, it can strengthen the concepts of human rights as they are generally formulated and understood today.

The issue of protecting and upholding human rights has always been an international concern. Not infrequently conflicts, violence and several cases of human rights violations are associated with religion. However, with the different stream, religions are also claimed to be pioneers in safeguarding human rights. According to Mun'im A. Sirry, one of the obstacles to the protection and enforcement of human rights in religious communities is the shift in attitudes and mentality of society in viewing the relationship between religion and secularism, which is still understood as a different domain, even opposing each other.[16]

Based on the aforementioned explanation, this article aims to answer two main questions, namely what is the basic concept of human rights in Islam and how is the dynamics of protecting and enforcing human rights? This article attempts to seek religious awareness in the midst of globalization where religion can strengthen the concepts of human rights.

This research is a liteterature study, using the conceptual approach. This study aims to seek religious awareness in the midst of globalization where religion can strengthen the concepts of human rights. When religion is used as a source in the rational policy framework of a country, especially in the protection and enforcement of human rights, it can be ascertained that human rights in that country will flourish and will be accepted by the citizens.

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[16] Mun'im A. Sirry, *Dilema Islam Dilema Demokrasi: Pengalaman Baru Muslim dalam Transisi Indonesia*, (Bekasi: Gugus Press, 2002), 15-16.

B. Discussion

1. The Basic Concepts of Human Rights in Islam

Human rights issues in Islamic perspective must be seen and based on the concept of human stated in the Qur'an. Human's relation with God is put in a central position in both human's behaviors from the internal and external dimensions. This is an implication of the teaching of monotheism which emphasizes that the relationship between humans and their fellow creatures of God must promote equality and honor.[17] This equality is articulated as a belief that all humankinds, in their creation, are equal regardless of their degree, lineage, race, and ethnicity and that no one group of humans is superior to other.[18] Therefore, any intolerant actions are not justified. Humans are noble creature onto whom God bestow dignity.[19]

It seems that the above argument is clear and not questionable because Qur'an already asserts rights and wrong. Yet, the question that remains important is that is it true that Qur'an is the constitution of Muslim? Some Muslim thinkers such as Mohamed Talbi and Muhammad Said al-Ashmawy believed that Qur'an should be understood as a set of ethical and social codes rather than a set of legal rules.[20] This argument will lead to the reintepretation of Quranic verses and adjust them into human rights realm. The founder of Islamic school of law, Imam Abu Hanifa, for example advanced and developed Islamic universal human rights called *al-isma bi al-adamiyyah* also known as personhood and humanity in Islam.[21] The concept of personhood and humanity emanates from

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[17] Rusjidi Ali Muhammad, *Hak Asasi Manusia dalam Perspektif Syari'at Islam*, (Aceh: Raniri Press, 2004), 93.

[18] Abdul Wahid Wafi, *Persamaan dalam Islam*, (Bandung: PT. Al-Ma'rif, 1984), 14.

[19] See, the Qur'an Surah 70th verse 17.

[20] Marie Juul Petersen, Islam and Human Rights: Clash or Compatibility? (https://blogs.lse.ac.uk/religionglobalsociety/2018/06/islam-and-human-rights-clash-or-compatibility/)

[21] Al Khanif, Religious Minorities, Islam, and the Law: International Human Rights and Islamic Law in Indonesia (New York: Routledge, 2021), 42.

Quran 95:4 and 49:13 which basically assert that all human beings, Muslims and non-Muslims should be granted equal rights for the shake of their humanity.[22]

In an Islamic perspective, the concept of human rights is explained through *maqāṣid al-sharī'ah* (the purposes of sharia). The purpose of sharia is to realize the benefit of mankind by maintaining essential needs (*ḍarūrīya*) and fulfilling secondary matters (*ḥājīya*) as well as tertiary needs which support one's prestige (*taḥsīnīya*). *Maqāṣid al-sharī'ah* embraces protection of five essential matters (*al-ḍarūrīya al-khams*). The first is protection of religion (*ḥifẓ al-dīn*). The protection of religion is found in Sura al-Baqarah verse 256.[23] Protection of religion also means the notion of religious rights. This right develops and is interpreted as freedom to embrace religion, namely a freedom (no coercion) to embrace religion according to the will and belief of everyone. The source of the collective agreement is found in the first Islamic constitution (the Medina Charter) in Article 25 where it is stated that: "For the Jews their religion and for the Muslims their religion." This article guarantees freedom of religion. One form of religious freedom is to worship according to the teachings of each religion.[24] This right is also found at the Geneva Conference and in Article 18 of the Cairo Declaration.

The second goal is the protection of the soul (*ḥifẓ al-nafs*). Protection of the soul implies the right to live and obtain security. The right to life is fundamental and highly protected by Islam. In the context of human rights, the right to life is included in the category of non-derogable rights, a right which cannot

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[22] Al Khanif, 42.

[23] Meaning: "There is no compulsion in (adhering to the religion) (Islam), in fact it is clear (the difference) between the right path and the misguided path."

[24] Ahmad Sukardja, *Piagam Madinah & Undang-Undang Dasar NKRI 1945: Kajian Perbandingan Dasar Hidup Bersama dalam Masyarakat yang Majemuk*, (Jakarta: Sinar Grafika, 2014), 167.

be reduced, ommitted, or restricted under any circumstances.[25] Therefore, killings, both the killing of individuals and genocide are extremely prohibited in Sharia.[26] Islam was revealed to create a society in which all individuals can witness for justice. It may be noted that Islam principally protect all individuals because all of them are the basis of honor and responsibility, which are the pillars of Islamic society.[27]

In addition, sharia also aims to protect the mind (*ḥifẓ al-'aql*). *Ḥifẓ al-'aql* is interpreted as preventing the mind from intoxicating substances which disturb its consciousness and health. The interpretation then develops into protection of freedom of expression.[28] The fourth goal is to provide protection of property (*ḥifẓ al-māl*). The law regarding the prohibition of stealing and harsh penalties for theft is a translation of the protection of property. In the present context, some scholars have developed this concept as the right to get occupation, the right to get proper compensation, and the right to be free from eviction.[29] The last goal is to provide protection of lineage (*ḥifẓ al-nasl*) which is the right to marry and have descendants. Some scholars state that protection of honor (*ḥifẓ al-'irḍ*) is a substitute for *ḥifẓ al-nasl* which is the right to have self-respect and maintain one's honor.[30]

Al-Qur'an Surah al-Isra' verse 17 confirms that Islam highly glorifies human status. Based on this verse, Ash-Shiddiqy concludes that there are three dignities of human onto whom God has bestowed without any discrimination. The first is regarding

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[25] See Al Khanif, Hak Asasi Manusia: Internasionalisme, Islamisme, Post-Kolonialisme, dan Praktiknya di Indonesia, (Malang: Intrans, 2020), 42.

[26] Bahtiar Effendy, et. al., *Dialog Islam dan HAM: Menghidupkan Kembali Spirit Liberasi Islam*, (Jakarta: Elsam, 2010), 24.

[27] Khanif, Religious Minorities, Islam, and the Law, 55.

[28] Al Khanif, 25.

[29] Al Khanif.

[30] See, Masykuri Abdillah, "Islam dan Hak Asasi Manusia: Penegakan dan Problem HAM di Indonesia", *Jurnal Miqot* 38, No. 2.

personal dignity (*karāma fardīya*). In this case, Islam maintains human personality and material personality (*maddī*). The second is social dignity (*karāma ijtimā'īya*) in which the status of human equality is fully guaranteed. The third is political dignity (*karāma siyāsiya*). In this context, Islam gives humans all political rights to vote or to be elected within political positions as they are considered the caliph of God (*khalīfat Allāh*) on earth.[31]

The glory bestowed by God on humans that must be protected is not limited only to their existence, but also all matters which animate them such as protection of religion, mind, soul, honor, and property. Protection of these essential matters are referred to as the five basic benefits (*al-kullīya al-khams*).[32] There are some basic rights inherent in every human being. The first is the right to life. This fundamental right is clearly mentioned in the Qur'an Surah al-Ma'idah verse 32. The verse emphasizes severity of the consequences of killing as an injustice that has a bad impact on the life of the world and the hereafter, so that it is likened to having killed all humans. The act of eliminating the right to life is considered a crime and will be enforced by *qiṣāṣ* as retaliation for serious human rights violations. Islam also forbids hurting human feelings such as swearing, reproach, giving bad names, making fun of, backbiting, and prejudice.[33]

The second is the right to wellbeing and security. The Qur'an confirms that: "...and whoever saves the life of a human being, then by his actions it is as if he saved the life of all mankind..." (Surah al-Ma'idah verse 32). Other aspects of life such as forgiving, preventing murder, and helping others are manifestations of the right to safety and security in life.[34]

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[31] Mujaid Kumkelo, et. al., *Fiqh HAM: Ortodoksi dan Liberalisme Hak Asasi Manusia*, (Malang: Setara Press, 2015), 44-45.

[32] Kumkelo, 45.

[33] Yusuf al-Qardhawi, *Karakteristik Islam: Kajian Analitik*, (Surabaya: Risalah Gusti, 1994), 95. See also, the Qur'an Surah Al-Hujurat verse 11-12.

[34] Fauzi, *Hak Asasi Manusia dalam Fikih Kontemporer*, (Depok: Prenadamedia Group,

The third element given by Islam is respect for women. Islam forbids entering areas that can encourage adultery, especially to the point of doing so.[35] The fourth is protection of property (property rights). This protection is based on the prohibition of obtaining property in a vanity way.[36] The fifth is individual freedom rights. An individual freedom means providing everyone a space to realize his/her goals and desires without any obstacles from any other parties. However, the freedom in question must remain within the approved moral corridors and shared values.[37]

In terms of normative values, human rights in Islam are based on four principles. The first is the principle of equality. The principle of equality views the position of humans as equal before God; only piety that distinguishes them (Surah al-Hujarat verse 13). All humans come from the same ancestor (Adam), therefore no one race or tribe has a higher status than another. This is a manifestation of human's glory. Humans are given advantages over other creatures with perfection (Surah al-Isra verse 70). Islam justifies no discrimination between a Muslim and a non-Muslim, even the human rights of a *dhimmi* who live in an Islamic country or an area under Muslim rule are not distinguished, both the rights relating to privileges or the sanctions imposed on them equally. All legal provisions apply in the area or country they live in are not distinguished, except the laws and regulations related to perform religious deeds.[38]

Regarding religious rights, classical Islamic jurists argued that the rights of *dhimmi* should be protected due to their loyalty to the Islamic state by providing *jizya* (tax). However, the current status

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2018), 76.

[35] See, the Qur'an Surah al-Isra' verse 32.

[36] See, the Qur'an Surah al-Nisa' verse 29.

[37] Fauzi, *Hak Asasi Manusia*, 78.

[38] Ali Abdul Wahid Wafi, *Prinsip Hak Asasi dalam Islam*, (Solo: Pustaka Mantiq, 1991), 19.

of *dhimmi* no longer applies as pre-modern Islamic legal teachings must be adjusted, especially Muslims have learned to live side by side with adherents of other religions. In modern times, all Muslims must recognize religious plurality. Although they believe that Islam is the sole religion recognized by Allah, embracing certain faith is a matter of choice that must be respected.[39]

The second principle is personal freedom. This principle is closely related to the prohibition of slavery and the recommendation to free slaves (Surah al-Baqarah verse 177).[40] Human life is limited not only to natural life, but also the development of life. Humans are always faced with the possibilities of freedom to will and choose. The Qur'an hints at these possibilities as freedom to act according to his/her will and consciousness.[41] These signals indicate that humans are given the freedom to determine decisions and actions in the field of religious morals, for which these decisions and actions must be accounted for.[42] There is a system that must be obeyed and accounted for at the same time.

Ikhtiyār (endeavor) and *taqdīr* (fate) are the origins of the concept of freedom in Islam which is closely related to freedom and human's action. The concept of freedom has been subsequently developed in line with the flow of modernization which was marked by encounter with the Western world so that the scope of the concept has become wider. Political freedom, freedom of expression, freedom of thought, and economic freedom are essential matters that should not be harmed.[43] However, all decisions and actions taken by a person must be accounted for. The Qur'an encourages humans to underlie every attitude, choice

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[39] Al Khanif, *Religious Minorities*, 41.

[40] Kumkelo, et. al., *Fiqh HAM*, 51.

[41] Achmad Charris Zubair, "Kebebasan Manusia Menurut Konsep Islam", *Jurnal Filsafat 7,* No. 1 (2019), 5.

[42] Zubair.

[43] Muh. In'amuzzahiddin, "Konsep Kebebsan dalam Islam", *Jurnal at-Tawaddum* 7, No. 2 (2015), 5.

and decision on awareness,[44] meaning that these attitudes must be based on benefit (*maṣlaḥa*).

This principle of freedom cannot be interpreted as an action that has no limitations, because one's freedom is always limited by the rights of others. However, state intervention on these freedoms is necessary to achieve equality and protection as one of the principles of human rights itself.[45] In another sense, a person's freedom is always limited by the public interest. A person cannot do everything he/she wants because there is a limit to not violate the rights of others. These restrictions on freedom are then manifested in the form of laws and other applicable rules.[46]

The third principle is the safety of souls. The principle of salvation of souls means that anyone who preserves the life of a human being is as if preserving the life of entire humans.[47] There are three keywords which refer to safety in the Qur'an, namely *al-najāt*, *al-salām* and *inqādh*. The term *al-najāt* in contextual interpretation is understood as monotheistic faith and pious deeds regardless of formal religious identity.[48] The term *al-najāt*, found in Surah *al-Shu'arā* verses 88-89), *fī qalb salīm* is defined as "a pure heart". In the context of this entire verse, "pure heart" is a reflection of one's faith which is used as a condition for obtaining salvation in the afterlife.[49] The term *inqādh* means "to save" and "to be saved". Contextual interpretation views that the meaning of *inqādh* is not solely limited to Muslims but also includes people whose principle belief is total surrender to God Almighty and who believe in the hereafter and do virtuous deeds.[50]

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[44] In'amuzzahiddin, 6.
[45] Mahmud Muhsinin and Dhiya' Atul Haq, "Studi Komparasi: Hak Asasi Manusia dalam Perspektif Islam dan UUD 1945", *Al-Hikmah: Jurnal Studi Agama-agama*, Vol. 4, No. 2, (2018).
[46] Muhsinin and Haq.
[47] See, the Qur'an Surah al-Ma'ida verse 32.
[48] Salamah Eka Susanti, "Konsep Keselamatan dalam al-Qur'an", *Jurnal Humanistika* 4, No. 2 (2018), 86.
[49] Susanti.
[50] Susanti, 86-87.

The fourth principle is justice. Justice is a right that must be upheld (Surah al-A'raf verse 29). The term justice in the Qur'an is mentioned in various words such as *'adl*, *qisṭ*, and *wasaṭ}*. The word *'adl* is defined as what is upright in the human soul. *Qisṭ* is defined as something made into parts, debts that must be returned at a certain time. *Wasaṭ* means middle, balanced, neither leaning to the right nor to the left.[51] Doing justice is a firm command in the Qur'an: "... do justice, because it is closer to piety...".[52]

The term justice generally implies the determination of the law. However, justice in Islamic law covers various aspects. According to Wahbah al-Zuhayli: "God's commandments are not addressed because of their essence, because God does not benefit from obedience and does not get harm from human actions. Obedience is only a way to expand behavior and a way of educating that can bring benefits to individuals and society."[53] Whatever its nature, justice in Islam is formulated by adhering to the divine law which is jointly formulated as a mutual agreement, which brings about laws and regulations in a country, and is adhered to together. Justice is a shared ideal where it is idealized as a harmonious relationship among social organs. Every element of the state, i.e. society and government, must function in accordance with its position and nature.[54]

2. The Dynamics of Religious Freedom in Muslim Countries

In general, there three types of Muslim's perspectives about Islam and human rights. The first perspective argues that all rights and freedoms are subject to Sharia. This perspective will lead to the

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[51] M. Samson Fajar, "Keadilan dalam Hukum Islam: Tinjauan Multidisipliner dalam Kasus Poligami", *Jurnal Al-'Adalah* 22, No. 1 (2014), 35.

[52] See, the Qur'an Surah *al-Mā'ida* verse 8.

[53] M. Samson Fajar, "Keadilan dalam Hukum Islam", 36.

[54] Fauzi Almubarok, "Keadilam dalam Perspektif Islam", *Jurnal Istighna* 1, No. 2 (2018), 122.

incompatibility between Islam and human rights which potentially results in the infringement of human rights. The second perspective is conditional relation between Islam and human rights. Islam will accept a certain right as long as it does not challenge Islamic law such as the right to education and the right to work. The third perspective believes that islam is compative with human rights norms especially the concept of dignity and equality.[55] The proponent of this perspective asserts that Islam was revealed to diminish the discriminatory treatment and to protect the honor of human being.

According to these tree types, this article asserts that Islam is principally compatible with human rights and democracy. Islam also respects plurality and tolerance as well as cares about human rights. A set of universal values such as equality, freedom and other fundamental values in human life, has existed in Islam since this religion was revealed. Human rights uphold honor by providing basic rights regardless of ethnicity, nation, skin color, and religion. Human rights strengthen the existence of human in which they possess freedom and embedded basic rights that cannot be deprived by anyone.[56] *Al-musāwa* and *al-ḥurrīya* are among the principal Islamic teachings that correspond to human rights. *Al-musa>wa* arises from the brotherhood, including equal rights and appreciation of the results of thought, scholarship, work and so on, though they come from different tribes and nations. *Al-musāwa* also departs from the togetherness of the Muslims on the basis of the equality of creation which is not influenced by any individual factors so that there will be no anyone who does not get his/her rights in accordance with the demands of the Shari'a.[57]

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[55] Khanif, Religious Minorities, Islam, and the Law, 50.

[56]Ngainun Naim, "Islam dan HAM: Perdebatan Mencari Titik Temu, Ijtihad", *Jurnal Wacana* Hukum *Islam dan Kemanusiaan* 15, No. 1 (2015), 84.

[57]Muhsinin dan Haq, "Studi Komparasi", 56.

Meanwhile, *al-ḥurrīya* can be broadly classified into four perspectives. The first is the moral perspective as it was also known during the Ja>hiliya period and its existence was maintained (*al-ḥurra* means dignity or *al-karīma)*. The second is the legal perspective as used in the Qur'an like *tah}rir al-raqaba* means freeing slaves. The third is the sociological perspective which asserts that free people are the people free from taxes. The fourth is the Sufi perspective which emphasizes that *al-ḥurrīya* means getting out of material slavery, dependence on creatures, and malice.[58]

According to an-Naim, freedom of religion is important because the conflict of rules between religion and the right to freedom of religion does not occur only in Islam but also in other religious traditions and ideologies.[59] Respect and protection of human dignity is also an equally important principle. This principle gives moral validity to the protection and respect of the people. The principle of equality is also the main anchor of human rights. Equality is one of the conditions for the growth of democracy and constitutionalism in a country. Equality before the law, equality of access to natural resources, equality of equal opportunity, and equality in embracing religion regardless of majority or minority status are manifestations of *al-ḥurrīya*.[60]

Humans as creatures of God, along with their sense of humanity, have two complementary elements, namely horizontal and vertical elements which always move in a dialectical process. Horizontal elements consist of interactions between humans regardless of their ethnicity, religion and race. While the horizontal element is a manifestation of religious appreciation. The implied

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[58] Fauzi, *Hak Asasi Manusia*, 43-44.
[59] Kumkelo, et. al., *Fiqh HAM,* 138.
[60] Al Khanif and Dina Tsalist Wildana (Ed.), *Kebebasan Beragama atau Berkeyakinan di Indonesia: Perspektif Filosofis, Hukum, dan Politik,* (Malang: Intrans Publishing, 2020), 180-181.

meaning contained in the *isrā'* and *mi'raj* of the Prophet Muhammad, for example, has been a horizontal dialogue and a vertical one.[61]

Freedom of religion is an acknowledgment and respect so that the dignity of all human beings must be respected. Such actions lead to the creation of peace, democracy and advanced economic development. Once these aspects are realized, the state will be certainly able to create stability, reduce violence, and even terrorism. Freedom of religion should not stand alone—as a solution to prevent violence, intolerance and injustice—but this is a principle that has intrinsic values that has a pivotally great impact to other principles of human rights.[62]

Human rights in democratic states will easily develop as they have the basic character of protecting, recognizing and fulfilling human rights themselves. However, in some Islamic countries and Muslim-majority countries, some basic rights such as women's rights are not fully recognized and protected to some extent. Therefore, it is not surprising that there have been upheavals in several Islamic and Muslim-majority countries in order to demand the promotion of human rights, as happened in Tunisia and several other Arab countries during the Arab Spring.

Freedom of religion, which is the basic teaching of Islam, is often harmed by, for example, the imposition of the death penalty on *murtaddīn* (apostates). The death penalty is considered denying Islamic values, especially Islamic respect for the right to religion. Sometimes, the death penalty is imposed by the ruling power or groups, which hold an anti-establishment attitude, as a means of purge of political opponents and to silence critical public reasoning.[63] Violent acts are sometimes based on the

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[61] Piet H. Khaidir, *Nalar Kemanusiaan Nalar Perubahan Sosial*, (Jakarta: Teraju, 2006), 9.

[62] Daniel Philpott, *Religiuos Freedom in Islam: The Fate of a Universal Human Right in the Muslim World Today*, (United States: Oxford University Press, 2019), 228.

[63] Mahmud Arif, "Islam Humanis, HAM, dan Humanisasi Pendidikan", *Jurnal Masawa* 18, No. 2 (2016), 236.

fulfillment of a sacred religious mission so that some adherents justify these actions.[64]

In the Indonesian context, a movement based on religious justification appeared, namely identity political populism in the 2017 regional head election and 2019 presidential election. In this political contest such issues as anti-Muslims, infidels, religiously devout candidates, religious choice candidates and various terms have emerged. Populism itself is an element that carries anti-establishment or it also means leadership authority which stands out through charisma or personal figures or through tendentious and apocalyptic messages.[65] Populism can take various forms like a political movement that uses religion as a justification for realizing its political ideals. The action is based on a certain religious understanding which is then filled with political content or it can also occur due to a political content which is then given a religious justification.[66] Ainur Rofiq Al Amien called this phenomenon "political sacralization" where the face of religion is voiced with narration of hatred and enmity. Political sacralization is an attempt to frame practical politics with religious teachings in which individuals or groups who embrace it try to always avoid an open discussion against their opponents.[67] Not infrequently, positive law is neglected by practical political interests.

The root of the decline in religious freedom in Indonesian context is not ideological factors, but the tireless efforts of state officials and institutions to control religion with political motives and considerations as a result of democratic changes in the political

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[64] Arif.

[65] See, Aryojati Ardipandanto, "Dampak Politik Identitas Pada Pilpres 2019: Perspektif Populisme", *Politica* 11, No. 1 (2020), 49-53.

[66] Cornelis Lay, "Kekerasan Atas Nama Agama: Perspektif Politik", *Jurnal Ilmu Sosial dan Ilmu Politik* 13, No. 1 (2009), 14-15.

[67] Ainur Rofiq Al Amien, *Interview*, Surabaya, July 17, 2019. Also see, Ainur Rofiq Al Amien, "Sakralisasi Politik", available at https://www.kompas.id/baca/opini/2019/04/02/sakralisasi-politik. Accessed on July 22, 2021.

situation in indonesia.[68] SARA issues have been shown to have a significant electoral effect in heterogeneous ethnic and religious areas. Moreover, in areas that are sociologically divide, such as Central and West Kalimantan. This primordial effect has been shown to be effective in influencing choices. Its true that socially life is peaceful, but during Pilkada the potential for SARA was raised by candidates and successful teams who chose shortcuts by exploiting theese issues for short-term interest, even though they have the potential for communal and sectarian conflicts in the name of religion.[69]

It is undeniable that the existence of religion has an important position in Indonesian society. Religion, as a belief system, has a concrete meaning when religion is lived by its adherents with a system of teachings, moral norms, institutions, rites, and symbols. all these elements can crystallize at any time in the form of a disclaimer of different. so that it often triggers the vulnerability of religious conflicts. especially when religion is framed in practical politics, let alone narrated with hate narratives.[70]

In the field of theology, for example, a spectrum of Khawarij thought emerged as a reaction to the settlement of the dispute between the Caliph Ali b. Abi Talib and Muawiyah who took the path of arbitration (peace). The Khawarij group was disappointed with the outcome of the arbitration which was detrimental to Ali. Finally, on the one hand they hated Ali for being willing to make peace with Muawiyah's rebels, on the other they loathed Muawiyah

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[68] See Hurriyah, "Dynamic of Shrinking Religious Freedom in Post-Reformasi Indonesia", *Journal of Southeast Asian Human Right* 4, No. 2 (2022), 335-356. Compare with Delmus Puneri Salim, Srifani Simbuka, dan Muzwir Luntajo, "Politics and Religiuos Freedom in Indonesia: The Case of West Sumatra and North Sulawesi", *Journal of Government & Politics* 7, No. 4 (2016), 595-616.

[69] Burhanuddin Muhtadi, *Populisme Politik Identitas & Dinamika Elektoral: Mengurai Jalan Panjang Demokrasi Prosedural*, (Malang: Intrans Publishing, 2019), 51.

[70] Fathuddin, "Kebebasan Bergama dalam Bingkai Otoritas Negara", *Jurnal Legislasi Indonesia* 12, No. 2 (2015), 2-3.

for his deceitful deed against Ali.[71] The Khawarij consider all people involved in the arbitration as infidels. Any action that is not in accordance with God's law is a grave sin. The sinners are punished as unbelievers and expelled from the community of faith *(takfīr)*. The perpetrators of grievous sins are not only seen as a violation of religious law but are also considered apostates, guilty of treason and deserving of death, unless they repent.[72]

There has been also the story of Ahmad ibn Hanbal who received a *miḥnah* punishment from the authorities when he opposed the thoughts of the Caliph al-Ma'mun (reigned during 817-833 AD) about the textuality of the Qur'an[73], which was later accused of being deviant by the state. This is a tragic historical account of the deprivation of freedom of thought in an effort to develop religious discourse.[74] Nasr Hamid Abu Zayd was also another example of Muslim scholar who, like ibn Hanbal, received a *miḥnah* sentence. Zayd was blasphemed, convicted of infidel, accompanied by threats of divorce from his wife to the death penalty. This is because he was considered to have destroyed the monopoly on the mature and standardized study of the Qur'an. His proposition regarding the textuality of the Qur'an, which is the most sensitive and important issue in the study of the Qur'an, is considered to have deviated and blasphemed against Islamic orthodoxy.[75]

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[71] Muhammad Iqbal, *Fiqh Siyasah: Kontektualisasi Doktrin Politik* Islam, (Jakarta: Prenamedia Group, 2016), 140.

[72] Fahrurrozi Dahlan, "Fundamnetalisme Agama: Antara Fenomena Dakwah dan Kekerasan Atas Nama Agama", *Ilmu Dakwah: Academic Jurnal for Homiletic Studies* 6, No. 2 (2012), 333-334.

[73] The issue of the textuality of the Qur'an is directly related to other issues that have attracted a lot of attention, and even led to the upheaval of the inquisition (*mih}nah*) among the previous scholars. The main question is "Whether the Qur'an is an eternal and uncreated word of God (*ghayr makhluq*) or the word of God that was put into human language and therefore created (*makhluq*). See, Mun'im Sirry, *Tradisi Intelektual Islam: Rekonfigurasi Sumber Otoritas Agama*, (Malang: Madani, 2015), 14.

[74] Piet H. Khaidir, *Nalar Kemanusiaan Nalar Perubahan Sosial*, (Jakarta: Teraju, 2006), 5-6.

[75] Alfitri, "Studi Qur'an Kontemporer: Telaah Atas Hermeneutik Qur'an Nashr Hamid Abu Zayd", *Jurnal Millah*, Vol. 2, No. 1, (August, 2002), 52. See also, Imam Subchi, "Nashr Hamid Abu Zayd dan Gagasan Hermeneutika dalam Tafsir Al-Qur'an", *Jurnal Mimbar Agama Budaya* 36, No. 2 (2019).

The emergence of a spectrum of thought such as the Mu'tazila, Shi'a, Sunni and other groups during the classical Islamic period as well revivalist, substantialist, puritanist, liberal, fundamentalist, traditionalist, and modernist religious schools in the contemporary modern age has been an inevitable phenomenon due to social dynamics. Such phenomenon is beneficial for the passion of individual freedom to think of public reality as well as the articulation of freedom.[76] Khawarij's view as mentioned earlier, for example, is a democratic opinion when it is understood from the sociological point of view of Arab society which prioritizes deliberation in determining decisions. Muhammad Iqbal explained that the Khawarij desired to re-establish the tradition of deliberation which was justified in Islam after being suppressed by Mu'awiyah's political ambitions. In addition, the political reality marked by the conflict between "Ali and Mu'awiyah" influenced the crystallization of this thought. The lack of development of the *shūrā* tradition has been caused by the prominence of personal and group ambitions. It was for this reason that the Khawarij abandoned these ambitions and returned to the principle of deliberation.[77]

In Islamic and Muslim-majority countries human rights has become a prominent issue. The universal Islamic values of equality and freedom are the basic principles in the fulfillment of human rights. History proves that in the first Islamic constitution (the Medina Charter) human rights were placed in a very central position. The historical accounts also prove that the enactment of Islamic law has shifted from the point of vertical to horizontal normativity. This is influenced by legal developments which always go hand in hand with socio-cultural dynamics and legal politics in society.[78] Religion is often required to answer various problems that go hand

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[76] Subchi.

[77] Muhammad Iqbal, *Fiqh Siyasah: Kontektualisasi Doktrin Politik* Islam, (Jakarta: Prenamedia Group, 2016), 141.

[78] Daniel Alfaruqi, "Korelasi Hak Asasi Manusia dan Hukum Islam", *Jurnal Sosial dan Budaya Syar-I* 4, No. 1 (2017), 63.

in hand with socio-cultural dynamics. The existence of a "double movement" between secularization and Islamization is one of the obstacles to upholding and protecting human rights in religious communities. To answer various obstacles in the enforcement and protection of human rights, religion must be placed as a source of law used by the state in its rational policy framework. However, this does not mean that religion should be institutionalized into an authority called a state institution.

There have been three main theses about why religion should be placed as a source of the rational policy framework of a country. This is because religion can provide positive sources for human rights.[79] Religion becomes a positive source of human rights and is able to expand the scope of human rights itself. Article 3 of the Universal Declaration of Human Rights, for example, states that: "Everyone has the right to life, to be free and to have security." When religion is used as a source, the expansion of the rights of life outside of human life can be put forward. Other forms besides human life, especially animal life or even treatment of plants, can be covered here. Furthermore, when religion is used as a source, it can explain the interrelationships between the articles of the declaration. Under Islamic shari'a, for example, there is a need to encourage a reduction in the death penalty for thieves. This principle leads to Article 17 concerning property rights and Article 25 concerning an adequate standard of living where the two are not completely separate things. Therefore, when religion is used as a source of human rights, it can strengthen the concepts of human rights as they are generally formulated and understood today.[80]

When religion is used as a source of state's rational policy framework, especially regarding the protection and enforcement of human rights, it will facilitate the development of human rights

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[79] Kelsay and Twiss, *Agama dan Hak-hak Asasi Manusia*, 113-114.
[80] This article focuses only on this third thesis where religion can strengthen the concepts of human rights.

in the country. In addition, citizens will more easily accept it. Law and human rights cannot be separated, because law protects human rights. Human rights is an attempt to translate beliefs about human dignity into concrete legal language with the aim that the implementation of these rights can be fully enforced. There should not be any law or regulation that reduces the upholding of human rights. Natural law theory asserts that positive law must comply with moral standards within standard formulations as well as in the form of concrete rights formulated into positive law as an assurance that the law does not violate pre-positive norms.[81]

In line with the aforesaid statement, Jürgen Habermas—through his theory of deliberative democracy—proposes that cultural sources derived from religious faith have semantic potential (rational values) and positive functions. Habermas presupposes that there is a public space open to various cultural resources owned by citizens, including religion, to express their aspirations.[82] This means that whenever a democratic state desires people's legitimation, the state must carry out public deliberation involving various elements of society, including religious groups. These religious aspirations must then be taken into account as part of the deliberation process in the public sphere as an effort to legitimize laws and state's political decisions.[83] Consequently, religious communities can rationally explain their religious reasons and also positively contribute to political coexistence.[84]

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[81] Nomensen Sinamo, *Filsafat* Hukum, (Jakarta: Permata Aksara, 2019), 111.

[82] Habermas' views on the existence and role of religion are summarized in his works, such as *The Future of Human Nature* (2001) and *Between Naturalism and Relogion* (2008).

[83] With this idea, Habermas emphasizes that religion should not be confined to the private sphere. Religion must intervene in the public sphere by using its documents and traditions to present its moral intuitions. See, Gusti A. B. Menoh, *Agama dalam Ruang Publik: Hubungan Agama dan Negara dalam Masyarakat Postsekuler Menurut Jurgen Habermas*, (Yogyakarta: PT. Kanasius, 2015), 102-110.

[84] Menoh, 94.

However, it should be underlined that the source of the state's rational wisdom does not have to be formally institutionalized. Classical Islamic history has proven that there will be a monopoly of truth in the name of religious authority when religious articulation is institutionalized in state policy.[85] There will be also some real disadvantages when the interpretation of religious texts is institutionalized in state policy. The first cost is there will be no longer any other interpretation in religion as it becomes only a "religious instrument". The second weakness is that religion will only be political and make it merely as a means to legitimize politics. Since political logic is a constituent, religion will only be repressive and radical. The last disadvantage is that there will be no guarantee of free religious expression in the public sphere. Religion will only become a cover for the interests of the ruling group.[86] These losses will certainly have negative implications for the process of translating universal human values.

How to achieve religious freedom and avoiding clash against the existing cultural values. Normatively, Islam teaches its adherents to live in peace and harmony with non-Muslims. Islam is a religion of peace and it firmly rejects all forms of oppression, discrimination, persecution and murder. However, the wave of hatred against Islam increased after the September 11, 2001 tragedy in the United States.[87] Not only is religious freedom Western, Islamoskeptic say, but Islam is hardwired against it. The problem lies in Islam's text and its founding. Islamoskeptic tirelessly upbaird fellow citizens, and especially policymakers, for their naivated toward Islam's violence. Freedom of religion places the demands of a secular repressive society as well as a religiously repressive

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[85] Piet H. Khaidir, *Nalar Kemanusiaan*, 5-6.

[86] Khaidir, 7.

[87] See, Kazeem Oluwaseun Dauda, "Islamophobia and Religious Intolerance: Threats to Global Peace an Harmonious Co-Existence", *Qudus International Journal of Islamic Studies* (QIJIS) 8, No. 2 (2020), 258-260.

society.[88] Religius freedom can be realized if: *firstly*, reaffirming religious freedom as a universal human right, not a Western value. Freedom of religion is not considered a value that comes from the West but it is a universal human value. Freedom of religion in international humanity should not be seen as a historical root that is hegemonized by the West but is a manifestation of respect and protection for human beings. *Secondly*, accept the teachings of Islam as a spirit of recognition of human rights, because the seeds of the value of freedom can be found in many verses of the Qur'an along with their interpretations. The life of the Prophet Muhammad and the treatment of dhimmis are among the vibrant examples in history of how Islam highly cherished freedom and humanity.

C. Conclusion

The concept of human rights in Islam is explained through *maqāsid al-sharī'a* which covers the protection of five essential matters *(al-ḍarūrīya al-khams)*. The first is the protection of religion (*ḥifẓ al-dīn*) which is interpreted as the freedom to embrace religion. The second is the protection of the soul *(ḥifẓ al-nafs)* which is interpreted as the right to live and obtain security. The third is the protection of mind (*ḥifẓ al-'aql*) which is translated as preserving the mind from intoxicating substances which disturb its consciousness. This definition has been later developed into the protection of freedom of opinion. The fourth goal is the protection of property (*ḥifẓ al-māl*). The fifth goal is the protection of offspring (*ḥifẓ al-nasl*), which is the right to marry and have children. Meanwhile, from a normative perspective, human rights are built on the principles of equality, freedom, life safety, and justice.

In a religious community, obstacles to the enforcement and protection of human rights are unavoidable problem due to conflicting rules between religion and human rights. One of

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[88] Philpott, *Religiuos Freedom in Islam*, 229-231.

the obstacles is the existence of a "double movement" between secularization and Islamization in which each side obscures how religious freedom should be enforced. To answer the obstacles, religion must be placed as a source of law used by the state in its rational policy framework. This is because religion becomes a positive source for the enforcement and protection of human rights. However, the source of the rational policy of the state does not have to be formally institutionalized into an authority called a state, rather it merely becomes an intrinsic and integral value that animates the policy.

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