

KOERNADA

HUMAN RIGHTS SISLAM

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However, not all Western academics' criticisms are entirely valid. This is because they often overload their arguments with stereotypes and prejudiced views of Islam. In this regard, Naer (2002: xii) argues that Islam has been portrayed by Western academics as "unchanged" and "unchangeable", and as having little or nothing to offer on issues of global importance that have risen in the last few decades; issues such as democracy, pluralism and human rights. In fact, most Western academics have traditionally engaged in a discourse with Islam solely in order to "build an argument that there is a culturally based resistance to human rights in Islam" (Strawson, 1997:33).

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Published:
Borneo Institute for International Studies
and Department of International Relations &
Faculty of Social and Political Sciences
Universitas Jember

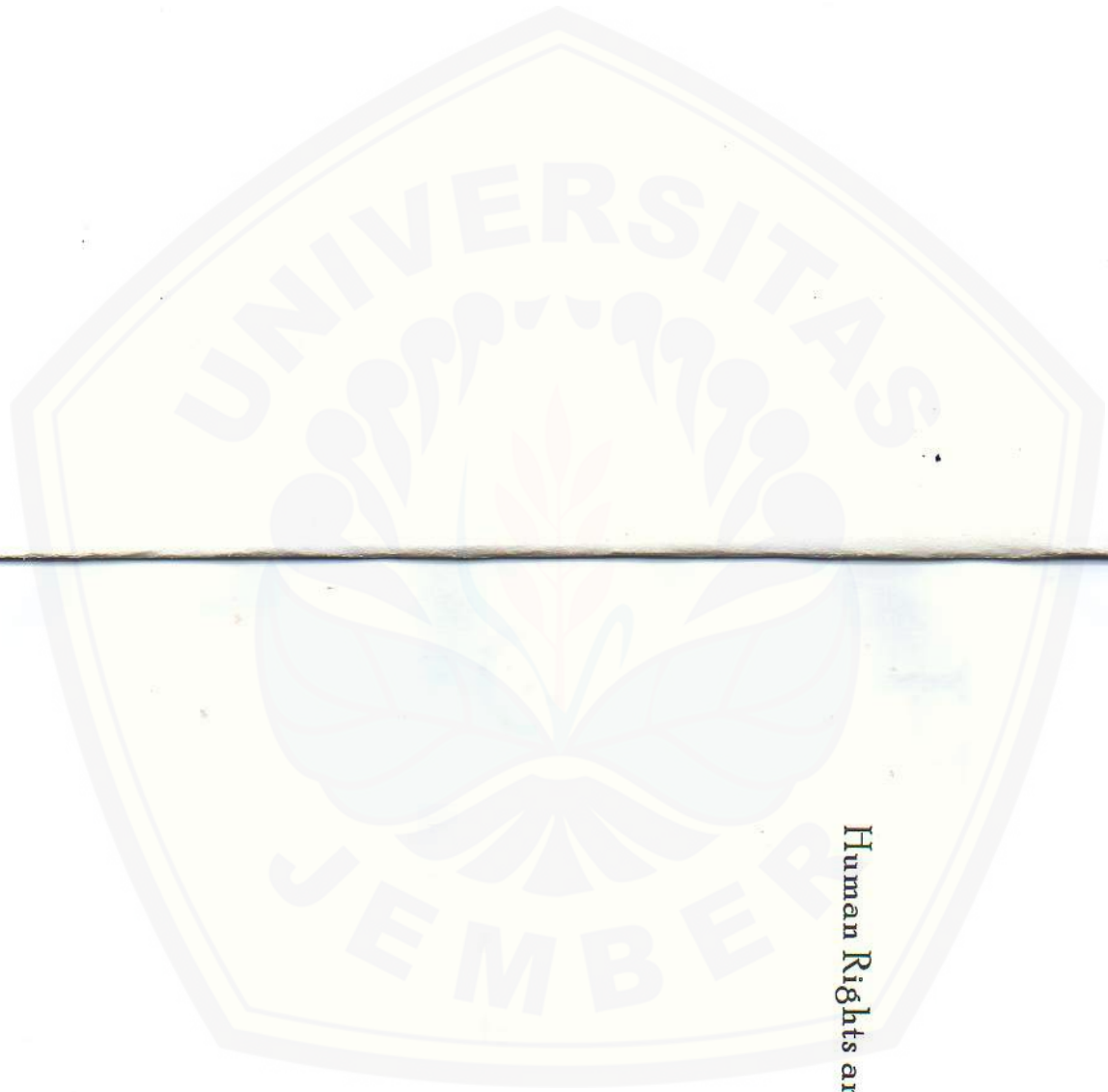
HUMAN RIGHTS & ISLAM

ISSN 40234655-X



9 784602 465559





Human Rights and Islam

EKO ERNADA

HUMAN RIGHTS & ISLAM

Muslim Experience in Egypt and Indonesia

Published:
Borneo Institute for International Studies
and Department of International Relations &
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Acknowledgments

I CANNOT FIND enough words to express my gratitude and thanks to all those who helped me in many ways at different stages in successful completion of this book. I am deeply indebted to DR. Kirril Nourzhanov and Prof Amin Saikal for helping me in channelizing my thoughts and in giving a definite form and shape to my ideas.

I would like to register my deep sense of gratitude to my lecturer and colleagues at the Centre for Arab and Islamic Studies (Middle East and Central Asia), the Australian National University, Canberra Australia for their contribution in shaping my world view.

I would not do justice if I do not acknowledge the help and encouragement given to me by my fellow lecturer at the Department of International Relations, Faculty of Social and Political Science of Universitas Jember. I am greatly indebted to them for having fruitful discussion and critical support at several stages. Specifically I address my gratitude and thanks to Mr. H. Moh Toerki, Drs. H. Nur Hasan, M.Si, Drs. Agung Purwanto, M.Si, H. Abubakaer Ebihara, Ph.D, Drs. Djoko Susilo, M.Si and Dra. Sri Yuniati, M.Si for their help and encouragement as well as affections conferred upon me.

I cannot put into words the sacrifice and encouragement of my wife Ida Farida and a deep sense of love to my daughters Nabila & Naqiba and my sons Nauval & Nawwaf, without which it was impossible for me to complete this work. I am also grateful to my parents (Alm) Imam Nasucha and Hj. Siti Archamah as well Hj. Bastion and all other members of family without whose help and affections this work would not have seen the light of the day.

Finally, I am obliged to Borneo Institute for International Studies and Department of International Relations, Faculty of Social and Political Science, University of Jember, Jember East Java Indonesia for having published this book.

Eko Z. Ernada

Introduction

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However, not all Western academics' criticisms are entirely valid. This is because they often overload their arguments with stereotypes and prejudiced views of Islam. In this regard, Nasr (2002: xii) argues that Islam has been portrayed by Western academics as "unchanged" and "unchangeable", and as having little or nothing to offer on issues of global importance that have risen in the last few decades; issues such as democracy, pluralism and human rights. In fact, most Western academics have traditionally engaged in a discourse with Islam solely in order to

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"build an argument that there is a culturally based resistance to human rights in Islam" (Strawson, 1997:33).

Other factors may contribute to the human rights violations in Muslim countries; factors that sometimes elude the attention of Western academics, most importantly, social, economic and political conditions. Moreover, Western commentators sometimes ignore Islam's complexity, which harbors various, and frequently conflicting, interpretations of its inherent normative demands, it is also ignores the reality of modern Islamic movements that have created a plurality of socio-religious groups, ideas and strategies in Muslim countries. Consequently, the issues of human rights and their implementations have incited various responses among Muslims.

With regard to the argument above, this book attempts to investigate the plurality of Muslim opinions toward the issue of human rights. In doing so, the thesis operates on two levels of analysis: philosophical and empirical. At the philosophical level, the thesis explores the notion of human rights according to both the modern conception, as outlined in the Universal Declaration of Human Rights (UDHR), and the Islamic Law (*Sharia*). At the empirical level, the thesis discusses the issues of compatibility between human rights and Islam in two influential Muslim countries: Egypt and Indonesia. They have been selected as case studies because of their size and regional influence. Both countries have developed domestic human rights movements of considerable size and visibility. However, these movements have evolved in divergent circumstances.

The discussion throughout this book will focus on the following questions: is Islam compatible with the principles of modern human rights? Is there inherent tension between Islam and the principles of modern human rights? If there is tension, then how do Muslims deal with it? How do the experiences of Muslim countries (Egypt and Indonesia) in

dealing with aforementioned challenges contribute to reconciling Islam and human rights?

Addressing these questions this book argues that, generally, Islam and modern human rights are compatible, although, they come from different sources. The principles of modern human rights (the UDHR) are based on Western secular philosophy, whereas the rights in Islam are divinely based, deriving from the *Sharia*. The conceptualisation and wording of human rights might be different but the aim is the same: to protect human honour and dignity which are based on the notion that all human beings are equal in worth, regardless of gender, religion or race.

Because the source of rights is different, the tension between the principles of modern human rights and Islam is inescapable, especially when it relates to the issue of women's rights, religious freedom and minority rights, and corporal punishment. These issues have led to controversial assessments of Islam among Western academics. With regard to these three issues, Muslims' commitment to the implementation of human rights is regarded as low. Yet, in practice Muslims have sought to tackle these issues. In reality, Muslim politics and religion are not of single stripe. They have various schools of thought and social-religious groups which provide differing interpretations of politics and normative religious demands. Accordingly, the issue of human rights has been treated differently among different group of Muslims. In other words, an analysis of the compatibility of Islam and the modern perspective of human rights cannot rely only on one view of Muslims; it should consider other views and factors.

Meanwhile, the conception of human rights itself is problematic and invites constant interpretation. In particular, this relates to the claim that the modern conception of human rights is universal. In this regard, the universalism of human rights is contrasted with so-called cultural relativism. Since the UDHR was declared in 1948, there have been

cultural challenges to its universality. Ignatieff (2001, 102-16) outlines three cultural challenges from different sources: from resurgent Islam, from within the West itself and from Asian values. These challenges indicate that the conception of modern human rights itself is problematic, when the claim of universality of human rights collides with traditional culture (Bielefeld, 1995:587). As culture and a religion, they cannot hide from the open interpretation and evolutions. Therefore, the frequently perceived antagonism between universal human rights and cultural identity appears at least questionable.

The debates between Islam and the modern conception of human rights are extensive among Western and Islamic scholars. A number of works address this issue. One strand of the literature discusses the relationship between Islam and the West. This tends to be based on the orientalist school of thought, and include such works as *Islam and the West* written by Bernard Lewis (1993), and *The Arab Mind* by Raphael Patai (1973). Another strand contains books that focus specifically on the issues of Islam and human rights, such as *Islam and Human Rights: Traditions and Politics* by Elizabeth Mayer (1995), and *Islam, Liberalism and Human Rights* by Katerina Dalacoura (1998). Although, these books do not explicitly states that Islamic rights involve a reduced meaning of rights, they provide numerous examples illustrating that the various Islamic human rights schemes have one significant thing in common: "they all strip away, with various degrees of severity, protections that the individual ought to enjoy under international human rights" (Alshari, 2000: 318).

Some of literature is based on conservative interpretation of Islam toward the conception of universal human rights, which simply merges the language of human rights with the Islamic law (*Sharia*). Basically, those literatures suggest that Islam does not require a modern conception of human rights, since Islam itself encompasses the way of

life. The book of Abul Ala Maududi (1903-1979), translated by Kurshid Ahmad and Ahmed Said Khan (1980) as *Human Rights in Islam*, and *A Muslim Commentary on the Universal Declaration of Human Rights*, by Sulhanhussein Tabandeh (translated into English in 1970) take this approach. Meanwhile, parts of the literature explore the situation of Islam and human rights in Egypt, such as Sayyid Qutb (1906-1966), on the conception of *Jahiliyya* (ignorance), and *Human Rights in Islam and the United Nations Instruments* written by Mohammad Abdel Haleem (1999).

Some authors argue that Islamic law on human rights can be reconciled with the modern conception of human rights through a liberal interpretation of the texts of Islamic teachings. *Toward an Islamic Reformation* (1990) by Abdullah An-Na'im a Muslim from Sudan is an example of this area of the literature. The liberal interpretations of Islamic teaching are outlined in a book entitled *Liberal Islam: A Sourcebook*, edited by Charles Kurzman (1998). Meanwhile, there are some articles and books on liberal interpretation of Islam from the Muslim intellectuals in Indonesia, for instance Abdurrahman Wahid's *Muslim Di Tengah Pergumulan* (1981), Nurchoish Madiid's *Cita-Cita Politik Kita* (1983), Munawir Sadzali's *Islam and Governmental System: Teaching, History and Reflections* (1991), and Uli Absar Abdalla's *Islam Liberal dan Fundamental: Sebuah Pertarungan Wacana* (2003).

The organisation of discussion in this book will be as follows: the first chapter explains the conception of human rights. The discussion of this chapter is based on the socio-philosophical problems of the issues of human rights. The conception of human rights in this chapter refers primarily to the Universal Declaration of Human Rights, and at the same time is potentially open to a variety of different cultural interpretations. Understanding this issue will give guidance for later discussion.

The second chapter explores the compatibility of Islam and human

rights and the plurality of Muslim responses to the idea of modern human rights. In this chapter, the conception of rights according to Islamic law will be explored. At the same time this chapter acknowledges some significant challenges in reconciling Islamic rights and the modern conception of human rights, particularly with respect to women's rights, religious freedom and minority rights, and corporal punishment.

After critically examining the compatibility of Islam with the principles of modern human rights at the philosophical level, the third chapter presents an empirical analysis by discussing issues of compatibility between human rights and Islam in Egypt and Indonesia. In doing so, the issues of women's rights, religious freedom and minority rights, and corporal punishment form the centrepiece of a comparative discussion. The book concludes with a summary of the argument and an assessment of the compatibility, diversity, and possible interaction of Islam and human rights. It also provides some recommendations for further discussion.

The Authenticity of Human Rights

I

The MAIN PURPOSE of this chapter is to explore the modern concept of human rights, which refers primarily to the Universal Declaration of Human Rights (UDHR). At the same time, this chapter also explores the challenges of the modern conception of human rights, which is potentially open to various interpretations. An understanding the concept of human rights lays out a background to the further discussion of the compatibility of Islam and human rights throughout this thesis. In doing so, the discussion of this chapter focuses on some significant questions: what are human rights? Are human rights universal? And what kinds of theories exist that support the concept of human rights?

With regard to these questions, this chapter argues that human rights are rights that people possess simply because they are human, and that those rights are inalienable and inviolable. Those rights are essentially rights to be free and equal. Therefore, human rights are universal, i.e.

to the unfathomable divine should lead to the mutual recognition of human beings in their freedom of conscience, because no one can pretend to know God's plans concerning his or her fellow humans. Moreover regarding the traditional form of corporal punishment, Talbi distinguishes the practical legal law in early Islam and in the current situation. In that context, the Qur'anic text remains true but in applying such punishment it needs to be adjusted to modern circumstances. Corporal punishment may have only applied to the people in Arabia in the seventh century. In the modern era, the Qur'anic text might become an inspiration as to how Muslims conduct such punishment. In other words, the Qur'an only gives a framework *vis-a-vis* how Muslims should behave in their community. As Bielefeldt summarises Talbi's argument:

When the Qur'an refers to justice and equality as the ultimate goals underlying amputation punishments this means that the true purpose to be pursued is life, not mutilation as such or death. Were it possible for us today to ensure a life of justice and equality in a different way, this would certainly be a way pointing in the same direction as the Qur'an does (as quoted in Bielefeldt, 1995:609).

The arguments of liberal Muslims above show that the obstacles to the endorsement of human rights can be overturned critically. Therefore, Islam might share common ground with the West on the issues of human rights. Furthermore as globalisation has increased political commitment to human rights is necessary, in solidarity with people of different religious beliefs and philosophical convictions, in accordance with the Qur'anic verses Muslim all over the world (Talbi, 1991:31). Consequently, with the atrocities occurring worldwide, when human rights are manipulated or blatantly ignored, the Islamic scholar must denounce all forms of discrimination as crimes strictly and explicitly condemned by the Qur'an.

Conclusion: the Compatibility between Islam and Modern Human Rights

In conclusion, the conceptualisation of human rights in Islam is different from that of the rights in the UDHR. While universal human rights are based on secular philosophy, rights in Islam are divinely ordained. The Islamic concept of human rights is derived from the classical *Sharia*. The *Sharia* defines practices of rights as ensuing from the teachings of the Qur'an, the prophetic tradition, jurists' consensus and reason. This means that rights in Islam are framed within a religious-moral framework where the omission of duty/rights is subject to religious sanction and its commission results in the acquisition of virtue. Although the sources of rights in Islam and universal human rights are different, the theme is same — to protect human honour and dignity regardless of religion, race and gender. Thus, in general, it could be argued that Islam is compatible with universal human rights.

However, although Islam is in general compatible with universal human rights, there are some controversial issues which occur in the discourse of human rights and Islam, which include issues of women's rights, freedom of religion, and corporal punishment. These controversial issues are usually used by Western scholars to label Islamic teachings as an obstacle to the implementation of human rights in many Muslim countries. However, this claim is not entirely true, because Islam as a religion has many social, political and cultural variants. Thus, the Islamic interpretation of these controversial issues is different from one people/society to another. In other words, Islam is not to blame for human rights' violations in Muslim countries. Other factors that might need to be taken into account in analysing human rights violations in Muslim countries, such as social, cultural, economic and political systems.

Moreover, Muslims' participation in the discourse on human rights issue is inevitable, although their position on the issue is not monolithic.

University 25-28 October 2001

- Lubis, Todung Mulya (1993) *In Search of Human Rights Legal-Political Dilemmas of Indonesia's New Order 1966-1990*, Jakarta: PT Gramedia
- Pustaka Utama in cooperation with SPES Foundation
- Madjid, Nurcholish (1980) "The Necessity of Renewing Islamic Thought and Problem of the integration of the ummat," in Hassan, M.K., *Muslim Intellectual Responses to "New Order" Modernisation in Indonesia*, KUALAI LUMPUR: Dewan Bahasa dan Pustaka, pp. 211-215.
- Masood , M Khalid, (1989) *Islamic Legal Philosophy: A study of Abu Ishaq al-Shatibi's life and Thought*, New Delhi: International Islamic Publishers
- Mas'udi, Masdar F (1994) "Reinterpreting Islamic Teaching on Women" in *Islam and te Advancement of Women*, Jakarta: The Forum for Islam and the Advancement of women.
- Mayer, A Elizabeth, *Islam and Human Rights: Tradition and Politics. (2nd)*, London: Pinter Publisher, 1995
- Moosa Ibrahim, "The Dilemma of Islamic Rights Scheme", *Journal of Law & Religion*, 2002 Vol XV
- Monshipouri, Mahmood (1998) *Islamism, Secularism and Human Rights in the Middle East*, Boulder: Lynn Rienner Publisher
- Mitchell , R.P.(1969) *The Society of Muslim Brothers*, Oxford: Oxford University Press
- National NGO Committee. 1994. *Egyptian NGO Platform Document to the International Conference on Population and Development*. Cairo, Egypt: Matba'at al-Geel.
- Oliver Roy, (1994) *The Failure of Political Islam*, Cambridge: Harvard University, translated by Carol Volk
- Rahman, H. R.,(1983) "The Concept of Jihad in Egypt - A Study of *Majalat al Azhar* (1936-1982), in Warburg, G. R. and Kupferschmidt, U.M. (eds) *Islam, Nationalism and Radicalism in Egypt and the Sudan* New

York Praege pp. 257-

- Ramage, Douglas Edward, (1995) *Politics in Indonesia: Democracy, Islam and The Ideology of Tolerance*, London: Routledge
- Sadzali, Munawir (1988) "Reaktualisasi Ajaran Islam" in Iqbal Abdurrauf Saimima (Ed) *Polemik Reaktualisasi Ajaran Islam*, Jakarta: Pustaka Panjimas
- _____ (1997) "Penegakan HAM dalam Pluralisme Agama: Tinjauan Konseptional" in Anshari Thayib, Arief Affandie, Hermawan Malik and Bambang Parianom, *HAM dan Pluralisme Agama*, Surabaya, Indonesia: PKSK
- Schemm, Paul (2003). "Ibrahim: the Hight Price of Free Speech Amnesty Intenational" online at: <http://www.amnestyusa.org/amnestynow/Ibrahim.html>, accessed on 14 May 2003
- Shihab, Qur'ain (1994) *Membumikan Al-Qur'an: Fungsi dan Peran Wahyu dalam Masyarakat*, Bandung: Mizan
- Simmons, Geoff., (2000), *Indonesia: the Long Oppression*, London: Macmillan Press Ltd.
- Springborg, R. (1989) *Mubarak's Egypt: Fragmentation of the Political Order*, Bouldae, CO: Westview Press
- Talhami, Ghada. 1996. *The Mobilization of Muslim Women in Egypt*. Gainesville, FL [USA]: University of Florida Press
- Tibi, Bassam (2001), *Islam between Culture and Politics*, New York: Palgrave
- _____ (1995) *Indonesia, a Model for the Islamic Civilization in Transition to the 21st Century*, translated from Frankfurter Allgemeine Zeitung, 27 October 1995, available online at <http://www.arches.uga.edu/~godlas/tibi.html> visited on 14 May 2003
- Wahid, Abdurrahman (1983) "Hukum Pidana Islam dan Hak-Hak Asasi Manusia" in *Muslim Ditengah Pergumulan*, Jakarta, LAPPENAS,

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,

and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.