

Global & Strategis

Th. 7, No. 2, Juli-Desember 2013

ISSN: 1907-9709

iii DAFTAR ISI

iv SUSUNAN REDAKSI

v-viii PENGANTAR REDAKSI

- Nath Aldadala'a** 159-167 "I Am Checked, Therefore I Am": A War on Terror and Muslims in Airports since 9/11
- Angel Damayanti** 169-182 Sino-Japan Action Reaction: Towards Cooperation or Competition in Asia Pacific?
- Dini Septanti** 183-195 The Buyat Case: Straddling between Environmental Securitization and De-securitization
- Al Khanif** 197-211 Protecting the Rights of Religious Minorities in the Framework of International Human Rights Law and Islamic Law
- Obsatar Sinaga** 213-225 Prospect for Indonesia's Foreign Policy in the Reformation Era
- Ziyad Falahi** 227-240 Memikirkan Kembali Arti *Million Friends Zero Enemy* dalam Era *Paradox of Plenty*
- Wasisto Raharjo Jati** 241-258 Memahami Globalisasi sebagai Evolusi Kapitalisme
- Kurnia Novianti** 259-278 Peran NGO sebagai Bagian dari Civil Society dalam Mitigasi Banjir di Praha
- I Gede Wahyu Wicaksana** 279-294 Teori Hubungan Internasional Relevan! Kritik terhadap Kritik

ix-x PARA PENULIS

xi-xv PEDOMAN PENULISAN

Protecting the Rights of Religious Minorities in the Framework of International Human Rights Law and Islamic Law

Al Khanif

*School of Oriental and African Studies
University of London, London*

ABSTRACT

This paper is a legal analysis, which tries to examine multi-dimensional problems to protect the rights of religious minorities especially their freedom of belief. The distinctive feature of religious minorities is often seen as a threat to Islamic orthodoxy as well as the concept of religious harmony within Muslim society. Therefore, the history of persecution against intra and inter religious minorities in many Muslim societies has increased over time. One of the major problems is that some Muslims still follow the out of date Islamic law produced by early Islamic jurists to respond contemporary human rights problems as well as the failure to develop humanism and equity values as the inviolability principle of human rights in Islam. This essay however assumes that Islam in nature does not oppose the norms of international human rights law and therefore Muslims should expand the application of international human rights law and Islamic law to protect the rights of religious minorities.

Keywords: *international human rights law, Islamic law, and religious minorities.*

Tulisan ini adalah sebuah analisis hukum untuk mengkaji hubungan antara hak asasi manusia (HAM) internasional dan hukum Islam mengenai hak dan kebebasan dari agama-agama minoritas. Selama ini agama-agama minoritas yang berbeda dari ortodoksi agama dianggap sebagai ancaman terhadap Islam yang berakibat meningkatnya pelanggaran terhadap sekte maupun agama minoritas di masyarakat Muslim. Salah satu sebabnya adalah banyak orang Islam yang masih menerapkan hukum Islam yang dibuat oleh para hakim yang sudah kadaluarsa karena dibuat pada waktu permulaan Islam untuk merespon permasalahan HAM kontemporer seperti dalam isu agama minoritas. Mereka gagal mengembangkan nilai-nilai keadilan dan humanisme sebagai prinsip universal Islam. Dalam tulisan ini ditegaskan bahwa Islam tidak pernah menolak norma-norma universal HAM dan Muslim harus mengembangkan penerapan HAM internasional dan hukum Islam untuk melindungi hak-hak agama-agama minoritas.

Kata-kata Kunci: *HAM internasional, hukum Islam, dan agama minoritas.*

A contention between Islam and human rights in international human rights law has taken place since the enactment of the Universal Declaration of Human Rights in 1948. Some Muslims perceive that the universal approach of rights and freedoms in international human rights instruments can threaten the uniformity of Islamic law currently applied in Muslim populace. Some others even have an observation that is more radical by arguing that the application of international human rights standard may diminish Islam, which consists of 'divine law'. Therefore, the discussion of Islam and human rights has been very tiring until recently and the application of international human rights instruments, particularly on the protection of religious minorities in some Islamic countries has become very controversial issue. It may be noted that the contention mostly affects the rights of minorities while religious minorities are the most troubled groups of people around the world.

In the case of the rights of religious minorities in dealing with their religious freedom, the contention of the relation between Islam and human rights has occurred within Muslim itself. On one hand, some Muslim countries have obviously opposed the universal standard of freedom of religion or belief. For instance, Saudi Arabia was abstaining to sign the UDHR due to the provision of 'the right to change religion' because they argued that this right violates Qur'an (Sieghart 1983). They argued that the provision did not acknowledge such right to be gift of God. However, the delegation of Pakistan defended his country's support for the declaration on the grounds that Qur'an permits one to believe or disbelieve (Traer 1991). It means that Islam in nature does not refuse the concept of religious liberty but it is rather about the different interpretation of religious teaching from human beings.

Afshari (1994) argues that this problem shows certain people particularly those who stand on the orthodoxy of religion were not prepared to recognize the rights of religious minorities with their rights and freedoms and do not acknowledge a broadly construed provision of religious freedom which this was one of the fundamental prerequisites to reinforce international human rights law. They still follow out of date Islamic law produced by Islamic jurists in the early Islam. Consequently, religious minorities living under their power cannot equal rights to embrace religion and practice it either personally or publicly. In the case of Indonesia, religious minorities either intra and inter religions have been persecuted by the government and mass organisations. Based on this matter, Muslims should see Islam's becoming or perceive Islam as 'actual Islam' rather than Islam as scriptural religion to seek humanism and equity values to protect religious minorities. The reformation of Islamic law is required to restore massive persecutions against religious minorities within Islamic populace. Additionally, it is because freedom of religion is one of the oldest and the most

controversial claims and has been recognized as a corpus of human rights since the adoption of UDHR (Evans 1997). Therefore, this essay assumes that Muslims should seek the compatibility between Islam and international human rights to protect either intra or inter religious minorities.

Minorities in International Human Rights Law

Before the adoption of the UN Charter, Several documents on the protection on minorities were partially international and focused on specific regions. It was still very unfortunate because neither the UN Charter nor the Universal Declaration of Human Rights contains provisions on minority groups even though the minority question has been on the United Nations agenda since its very inception (Pentassuglia 2009). The first international human rights instrument that explicitly regulates the rights of minority is the ICCPR, which specifically mention the rights of minorities in article 27. It becomes the first international standard-setting as a way of integrating minority provisions into the international framework of human rights.

The provision on the rights of minority in article 27 of the ICCPR says that:

[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Park (2006) argues that this provision generally regulates that one criterion for identifying minority status is the existence of objective characteristics, which distinguish the group from the rest of the population within a particular state such as the distinctive characteristics of ethnicity, language and religion. The Human Rights Committee (HRC) further notes that the article also indicates that the individuals designed to be protected need not be citizens of the State party. It signifies that the essence of this article is relevantly associated to the principle of all human beings within a State party stipulated in article 2.1 of the Covenant, which obligates a State party to respect and ensure the entitlement of human rights for individuals in its jurisdiction (IHRI 2004).

However, there is no single reference to the definition of minority in international human rights instruments until recently. The absent definition is intended to avoid the reduction of scope and category of minorities and their rights due to their distinctive character different

from one country to another. Thornberry (1994) argues that it is because naturally ethnic, religious, and linguistic differences within States may be of start-ling complexity; languages branch into dialects, culture flourish in diverse forms, religions and particular beliefs, which have unique features distinguishing members of minorities from the majority, divide into sects and denominations.

In the case of religious minorities, it is not possible to explain religion in a definitive manner, and consequently the consensus on the definition of religious minorities is an even harder task (Hashemi 2006). Even the category of religious minority may at the same time be equally regarded as an ethnic and/or a linguistic minority. For instance, it is not clear whether European Jews are a religious or an ethnic minority, or incorporate elements of both. Based on this case, the main objective to provide definition of minority in this research is not to give static definition but to illustrate their common character. The types of recognized minorities are a useful way of defining the scope of the law, but they should not be used to define particular minorities in a singular and exclusive manner (Gilbert 1998).

There are many definitions of minority proposed by scholars and the most widely accepted definition of minority is proposed by Francesco Capotorti. In his study submitted to the Sub-Commission of the Prevention of Discrimination and the Protection on Minorities in 1979 on the rights of persons belonging to ethnic, religious and linguistic minorities, Capotorti, as quoted by Sinha (2005), said that;

[m]inority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being nationals of the State possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

This proposition emphasizes that groups of people can be considered as minority groups if they are numerically inferior to the rest of the population of a state-possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed toward preserving their culture, tradition, religion or language (Thornberry 1994). The OHCHR (2010) asserts that the sense of solidarity refers to minorities' preservation to their own cultural identity to strengthen their social cohesion and to take pride in their cultural distinctiveness through a revival of their own traditional identity. For instance, religious minorities that are not adherents of major-state religions perceive their religious practice as a legitimate tool to construct 'strong social webs' among their members.

Religious Minorities in International Human Rights Law

Every minority has the right to be different in 'a wide range', varying from group to group according to its nature and cohesive social components. For instance, the rights of religious minorities will not be the same with the rights of linguistic, cultural, and ethnic minorities (Lerner 1991). Even in the concept of Islamic state or Muslim society, the rights of religious minorities within Islam and non-Muslim minorities are firmly different and therefore the scope of protection is also fundamentally different. However, it may be noted that the basic rights of religious minorities are mostly related to their survival and existence 'either political, social, or legal existence', promotion and protection of the identity of minorities 'either personal or collective identity', equality and non-discrimination, 'a specific right such as religious freedom' as well as the right to have effective and meaningful participation in society (OHCHR 2010).

The most basic sense of existence is existence through the lives of members, or physical existence, associated with the prohibition of genocide and crime against humanity. While the rights to non-discrimination and meaningful participation are to protect minorities not to be legally excluded by the government and socially alienated from their society. The meaningful participation is usually correlated with the government policy to integrate or assimilate certain minorities into social uniformity and national unity. In the case of religious minorities, their rights are related to their socio-religious existence whose sole interest is their religious identity and its preservation. However, if someone's rights were violated or restricted because of a group characteristic such as 'deviant belief' against a particular orthodox religion, the matter could be taken care of by protecting the rights of the individual, on a purely individual basis, mainly by the principle of non-discrimination (Lerner 1991).

Lerner (1991) further argues that the right to promote and protect the identity of religious minorities is related to the right to have a special measure to maintain group's identity even though the nature of such measurement may depend on the degree of discrimination or disadvantages suffered by the respective group. They require a broader range of rights such as 'special measurement' of the rights as a consequence of the distinguishing feature of their religions or beliefs against the religious majorities. The HRC pronounces that a State party may also be necessary to take positive measures to protect the rights of minority members asserted in article 27 of the Covenant by respecting the principles of non-discrimination and equality stipulated in article 2.1 and 26 of the same instrument (IHRI 2004). The term positive measures here can be interpreted as differential treatment as a substantive

equality for 'religious' minorities in order to experience real or substantively equal treatment in comparison with the rest of the population (Henrard 2007).

Hannikainen (in Weller 2007) argues that the substantive equality is required because minority rights as a sub-category of human rights should be seen as a form of added protection to universal human rights deemed necessary in order to secure human rights to persons in minority situation. Minority rights are legal rights, a part of the general body of human rights, and add a further element of specificity in relation to minority communities and individuals. It is a sub-category in the body of general human rights with the purpose of ensuring the de facto equality of minorities with the majority and/or the survival of minorities. Therefore, these rights may contain supportive features, such as affirmative action or special protection to ensure de facto equality or to ensure the survival of minority (Weller 2007). The problem is that some states seem reluctant to apply affirmative action to protect minorities because of the issue of self-determination and the fragmentation or separatism even though international law has insisted that minorities do not have rights to self-determination (Weller 2007).

In the case of religious minorities, their members seek equality in law and fact with the religious majority to maintain their 'religious' traditions and characteristics, rather than the majority of the population as represented by the state (Gilbert 1998). Additionally, the persons belonging to 'religious' minorities should also have access to the 'socio-political life' in their state of residence, thus achieving de facto parity with the dominant 'religious' majority population who control various matters affecting the rights of 'religious' minorities (Park 2006). Besides having equal socio-cultural life to the majority, religious minorities should be guaranteed to have effective participation in 'decisions', concerning the minority, not only on the national level but also on the regional level (Kawashima 2004). Thornberry (1994) argues that the architectural principles of equality and non-discrimination can also be applied to protect collective human rights as well as individual human rights because members of religious minorities share a particular religious belief as general characteristics within their groups.

Religious minorities also need religious freedom as their most essential right because both of them are closely related to each other. Religious minorities should enjoy the right to profess religion or belief (*forum internum*) and the right to manifest religion or belief (*forum externum*) as regulated in several international human rights instruments. The right to freedom of religion or belief implies that no one can be compelled to reveal his thoughts or adherence to a religion or belief. The recognition of broadly construed religion and the far-reaching and

profound provision of religious freedom is the most essential provision for religious minorities because the absent of explicit definition of religion can protect the distinctive character of religious beliefs practiced by religious minorities, more specifically religious minorities within a certain religion (Lerner 2000). Consequently, article 18 is related to the scope of article 27 because in the case of religious minorities, the principle in both article are interrelated even though the HRC argues that rights stipulated in article 27 of the ICCPR are distinct from, and additional to, all the other rights, which, as individuals in common with everyone else stipulated in the Covenant (IHRI 2004).

The correlation between those two articles is significant not only to reinforce equality principle among major religious adherents but also to protect religious minorities to adopt particular religion or belief because the majority often justify their rule over the minority based on their religious orthodoxy. For instance, even though Quran unclearly stipulates apostasy, it has even been directed to Muslims who deviate from orthodox Islamic beliefs such as the case of Ahmadiis in Pakistan, Baha'is in Iran, as well as Ahmadiyah and Syiah in Indonesia.

It may be noted that religious minorities should enjoy equal religious freedom to religious majorities as stipulated in international human rights instruments. In this matter, Gilbert (1998) argues that because religious freedom is primarily a matter of individual conscience inter alia freedom to manifest her or his religion or beliefs, the rights of religious minorities is solely individual. However, the distinctive character of religious minorities requires special recognition to be accepted as a part of community. Therefore, in the context of the rights of religious minorities, the provision of religious freedom has human rights implication for both religious minorities as communities and for religious minorities as the individual membership of composing them (Nazila 2004).

Islamic Law on Religious Minorities: A Challenge for Egalitarian Perspective

According to Muslim scholars, the second Caliph, Umar b. al-Khattab granted the people of the book (ahlul kitab), Christians and Jews, *dhimmis* or protection under the shelter of Islam in exchange for their acceptance of certain conditions, which demonstrated their submission to Muslim rule, their recognition of Islam's superiority, and their dishonour (Tsadik 2003). It implies that non-Muslim minorities will be granted the status *dhimmis* or the protected groups if there is a treaty, either constitution or national ordinances, between Muslim ruler and non-Muslim minorities. Cole in (Shatzmiller 2005) argues that the

status of *dhimmis* in the concept of Islamic law theoretically refers to the adherents of religions revealed before Islam and consequently, the status of *dhimmi* is not available for post-Islamic religions as well as religious minorities within Islam. However, as Islam expanded eastward, the pre-modern doctrines of Islamic law on the status of *dhimmi* have to be adjusted and Muslims have to learn to co-exist with other religious adherents such as Hindus, Buddhists, Confucians, Zoroastrians, and other Polytheists (Mayer 2007).

Despite the incidents of mistreatment of non-Muslims religious minorities and religious minorities within Islam, the rise of secular nationalism in the Muslim world seemed to diminish the significance of distinction status between Muslim and non-Muslim religious minorities. The proponents of egalitarian Islamic human rights scheme, such as Subhi Mahmassani in Mayer (2007) argues that there can be no discrimination based on religion in an Islamic system and therefore there should be a harmony between Islam and international law. Similarly, Mahmud Muhammad Taha also asserts that the applicability of legal rules in various Qur'anic verses must be rethought. By distinguishing verses that were meant to govern the early Islamic community from those that were meant to have enduring validity, Taha could derive Islamic human rights principles that abolish the status of *dhimmis* and mandate an end to all discrimination on a religious basis (Mayer 2007).

The egalitarian Islamic human rights scheme is also proposed by Imam Hanafi as the founder of Hanafi School of Islamic law. Centurk (in Baderin 2006) argues that Hanafi and his followers advanced the cause of universal human rights-universally and unconditionally granted to all by birth, on a permanent and equal basis, by virtue of being a human – which cannot be taken away by any authority. He established the concept of *adamiyyah* (personhood or humanity) and the concept of *ismah* (inviolability) which means that every human being, whether Muslim or not, serves as the legal ground for possessing basic rights (*al-ismah bi al-adamiyyah*). Centurk further argues that the basic human rights in this concept are such the rights to inviolability of life, property, religion, reason, family and honour, and those rights should be granted to all human beings for the sake of their humanity (Baderin 2006). It may be concluded that the term *dhimmis* or 'protected minorities' should apply to all non-Muslims or other Islamic religious minorities that numerically inferior within the Islamic ruling majority.

The concept of *al ismah bi al-adamiyah* recognizes the 'universality of human rights' because it establishes the uniformity of human rights for all human beings. This concept proposes that all human beings should achieve human rights and they must be equally protected because their

responsibility cannot be achieved unless they are granted sanctity and freedom. Additionally, they should be protected because God in Qur'an and Prophet Muhammad in his sayings strictly prohibited assaulting and slaying any human being (Baderin 2006). Freedom is fundamentally and ultimately an act of respect for God's sovereignty and for the mystery of His plan for man. To respect man's freedom is to respect God's plan (Bielefeldt 1995). These arguments are all based on the notion of a universal human and aims to establish peaceful relations not only between Muslims and non-Muslims but also among religious adherents from different religion, as well as the adherents of religious minorities within Islam.

The concept of *al ismah bi al-adamiyah* emanates from the principle of human dignity stipulated in Quran 95:4. The verse says that God created human beings of the best statures and bestowed great dignity and honour on them. Quran 49:13 further emphasizes that all human beings are equal according to the revealed Book of Islam and the superiority of one over the other in the Sight of Allah is due to one's virtues and merits (Chaudhry 1995). It means that human rights in Islam are sacred and inviolable as these rights have been granted by God and cannot be violated by any human authority even by Islamic state at any pretext in any circumstance (Chaudhry 1993). The degree of treatment, which may cause inequality against human being, is only owned by God in the Day of Resurrection due to one's virtues and merits based on her/his pious and righteous. Because in Islam, sovereignty belongs to God and His commandments are the supreme law. Similarly, the Prophet Muhammad also said that there should not be distinction of treatment for all human beings except on the basis of *taqwa* or piety (Chaudhry 1993). These arguments affirm that human rights are sacred matters, because those are owned by God as He bestowed the divine rights for human being.

Ahmad in (Baderin 2006) similarly argues the other verse that promotes universality of Islamic human rights is Quran 16:90, which regulates that 'Surely, Allah commands justice'. Similarly Sachedina (2009) further explains that the premise 'justice' owned by God essentially shows that Islamic doctrines speak about equal creation of human beings, sharing the parentage and endowed with honour and dignity as the children of Adam. The word 'Adam' in Quran referred to 'human being' as a perfect creation of God. Granting freedom and rights in Islamic concept should solely refer to the status of Adam as God's creation and consequently 'all religious minorities' should also have equal rights as the consequence of being Adam. Centurk (in Baderin 2006) similarly writes Imam Hanafi argues that the treaty between Muslim ruler and non-Muslim religious minorities is not a reason for

inviolability of the rights of *dhimmi* rather it is an alliance against the third parties and allegiance to the state.

The Prophet Muhammad is also convinced that matters of religious belief are in the hands of God, and that any attempt to spread his faith by coercion would be an exercise in futility. Quran 5:92 and 5:99 also declare that the Prophet can only deliver the divine message and it is not within His power to assure its acceptance or implementation. He is clearly and firmly warned to respect human freedom and God's mystery (Talbi in Kurzman 1998). It indicates that compelling people to embrace religion not only nullify people's faith but also humiliate God plan. For instance, a *dhimmi* compelled to embrace Islam is not considered as a Muslim unless he retained his new faith after the compelling force was no longer applied to him. If he dies while still under compulsion, his conversion is not valid (Friedman 2003).

However, the protection against religious minorities by Muslims provides the egalitarian and universalistic principles in Islamic law have not been fully developed by Many Muslims. Some of them have still practiced Islamic laws and restricted particular rights of religious minorities, which lay *dhimmi* population and religious minorities within Islam differed internally in degree of social privilege (Hodgson 1974). For instance, Al Maududi argues that Muslims were to be accorded superiority over non-Muslims (Mayer 2007). Both the privilege given to Islamic ruling majority and the degree of treatment against religious minorities derives from Islamic law, which consequently any rights and duties from those groups shall be without prejudice to the Islam. The principle of universal-egalitarian Islamic human rights schemes seem only to be written on holy book because the application of Islamic law has still differentiated the rights of human beings. Consequently, even though the concept of *dhimmi* in Islamic law has been re-formulated, it lays the rights to equality for non-Muslim as well as religious minorities within Islam in contention.

The reformulation can be seen from the provision of religious freedom and the rights of minorities in the Universal Islamic Declaration of Human Rights (UIDHR) adopted in 1981. Article 10 of the UIDHR asserts that the rights of non-Muslim minorities to embrace and practice their religion and their own laws are protected by Qur'anic principle. While article 13 further regulates that, everyone is entitled to have right to freedom of conscience and worship in accordance with her/his beliefs. These provisions reflect the egalitarian principle of Islamic human rights but the practical matters illustrate differently. Some Islamic states and Muslim populace still rely on Islamic law, produced by Islamic jurists at an early stage of Islamic community, which reflect the circumstances of that era (Mayer 2007). Those laws imitate old-fashioned Islamic human

rights schemes, which may fail to resolve some contemporary human rights problems.

Some cases related to this may be seen from the case of religious minorities in Iran and Pakistan. The Iranian law, constructed by *ulama* as doctors of divine law, asserts that heretical books and matters hurtful to perspicuous religion (Islam) are forbidden while societies and associations are permissible so long as they do not threaten good order and are not productive of mischief to religion or the state (Tsadik 2003). The term 'perspicuous Islam' here should be understood as referring to Shi'i Islam while Sunni and other Islamic minority sects are practically seen as heretics. Actually the Iran's Constitution regulates that (Twelver) Shi'i Muslims as the adherents of official religion, other Muslims (Sunni) as de jure recognized and respected, *dhimmi* as de jure tolerated, and non-Muslims as the adherents of non-Abrahamic religions as not granted rights (Temperman 2010). Another case is Ahmadiis in Pakistan who adhere to Islamic minority sects or Islamic schools of thoughts and were demoted by governmental policy to the category of 'non-Muslims'. The government, on behalf of Islamic ruling majority perceive them as heretics, threatening Islamic belief because they believe that Mirzu Ghulam, the founder of Ahmadi, is a prophet (Mayer 2007).

The Iranian and Pakistani cases illustrate that to examine the rights of religious minorities should also consider religious freedom because the rights of non-Muslim and religious minorities within Islam are curtailed by Islamic law especially about the equal right to embrace religion and perform religious rituals. Religious freedom in Islamic concept is pertinent not only to non-Muslims who live in a Muslim state, but also to Muslims who deviate from beliefs considered orthodox by the religious establishment of their time and place (Friedman 2003). The cases also signify that Islamic state as a theocracy model, which is official religion (Islam) exists as a state policy and forms the social framework in civil society, is premised upon a state ruling on behalf of a specific religious community, which raises difficult questions about the position of religious minorities (Rajan 2002). The persecution against religious minorities has been triggered by many reasons such as a threat to the purity of state religion (particular Islamic sects), religious harmony, national security, as well as common ethical and morality within society.

Conclusion

It should be assumed that examining the rights of religious minorities not only needs to discuss the special measurement to protect their rights but also to understand 'consensus' on religious matters within religious majorities. It hence lays the implementation of universality principle of

human rights does not solely depend on legal written documents but also regard to the acceptance of the religious majority. It means there is a unanimous society's sense of justice that the law-maker (government) must somehow discover before framing the rule or implementing the proper rights and freedom for its people (Lev 2000). It is because religion operates like a sort of social cement, binding its adherents by providing them a set of collective shared norms and many Muslims perceive Islam as a sole or primary source to validate the rights of religious minorities.

The refusal of some Muslims about the rights of religious minorities and their swift reaction against Muslims who criticise Islam illustrates that the doctrine of human rights, specially stressing the equality of all, and the need to respect the equal dignity of all, may encounter problems when it explicitly supports the rights of minorities against the majorities (Trigg 2012). It is because the majority Muslims has still been divided even though some Muslim scholars have proposed the compatibility of Islamic doctrine to international human rights. Additionally, it remained a great variety of Muslims voices on the issue of human rights, which cause the Islamic egalitarian and universality principles of human rights have been greatly ignored and misunderstood by Muslim populace. It signifies the fact that a contention of the rights of religious minorities is not based on Islam but it is a matter of Muslims hermeneutical perspective.

In this matter, Muslims should consider to establish and promote universal-religious rationale society, which embrace all human beings by granting them equal distribution of rights, equality before impartial law and impartial court, as well as deliberate, conscious and rational choices. Even though equality is not uniformity, but there should be a minimal standard of justice and freedom to achieve rights and freedom, especially for vulnerable groups like religious minorities. Muslims can use moral principles from Quran to support their human conduct to preserve universalism of Islamic human rights and establish religious-humanism in Islam. Islam can play a positive and important normative role in international human rights law because many aspects of human rights are all underpinned by consideration of morality and human dignity, mandated in Islam. Muslims should understand that Islam does not only provide spiritual capital but it can also be used as social capital to generate humanity principle for all human beings.

Bibliography

Books

- Baderin, Mashood A., et al. (eds.), 2006. *Islam and Human Rights, Advocacy for Social Change in Local Contexts*. New Delhi: Global Media Publications.
- Chaudhry, Muhammad Sharif, 1993. *Human Rights in Islam*. Lahore: All Pakistan Islamic Education Congress.
- _____, 1995. *Islam's Charter of Fundamental Rights and Civil Liberties*. Lahore: Al-Matbaat-ul-Arabia.
- Evans, Malcolm D., 1997. *Religious Liberty and International Law in Europe*. Cambridge: Cambridge University Press.
- Friedman, Yohanan, 2003. *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition*. Cambridge: Cambridge University Press.
- Hodgson, Marshall G.S., 1974. *The Venture of Islam: Conscience and History in a World Civilization, Volume 1: The Classical Age of Islam*. Chicago: The University of Chicago.
- Kurzman, Charles (ed.), 1998. *Liberal Islam: A Source Book*. New York: Oxford University Press.
- Lerner, Natan, 1991. *Group Rights and Discrimination in International Law*. Dordrecht: Kluwer Academic Publishers.
- Lev, Daniel S., 2000. *Legal Evolution and Political Authority in Indonesia: Selected Essays*. The Hague: Kluwer Law International
- Mayer, Ann Elizabeth, 2007. *Islam and Human Rights: Tradition and Politics*. 4th Ed. Colorado: Westview Press.
- Menski, Werner, 2006. *Comparative Law in a Global Context: The Legal Systems of Asia and Africa*. Cambridge: Cambridge University Press.
- Rajan, Nalini, 2002. *Democracy and the Limits of Minority Rights*. New Delhi: Sage Publications.
- Sachedina, Abdulaziz, 2009. *Islam and the Challenge of Human Rights*. New York: Oxford University Press.
- Shatzmiller, Maya (ed.), 2005. *Nationalism and Minority Identities in Islamic Societies*. Quebec: McGill-Queen's University Press.
- Sieghart, Paul, 1983. *The International Law of Human Rights*. Oxford: Oxford University Press.
- Tayob, Abdulkader, 2009. *Religion in Modern Islamic Discourse*. London: Hurst & Company.
- Temperman, Jeroen, 2010. *State-Religion, Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance*. Leiden, Boston: Martinus Nijhoff Publishers.
- Thornberry, Patrick, 1994. *International Law and the Rights of Minorities*. Oxford: Clarendon Press.

- Traer, Robert, 1991. *Faith in Human Rights: Support in Religious Traditions for a Global Struggle*. Washington D.C: George Town University Press.
- Trigg, Roger, 2012. *Equality, Freedom, and Religion*. New York: Oxford University Press.
- Weller, Marc (ed.), 2007. *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. New York: Oxford University Press.
- Whitaker, Ben (ed.), 1984. *Minorities: A Question of Human Rights?* Oxford: Pergamon Press Ltd.

Journals

- Afshari, Reza, 1994. "An Essay on Islamic Cultural Relativism in the Discourse of Human Rights", *Human Rights Quarterly*, **16** (2): 235-276.
- Between, Mohamed, 2006. "Non-Muslims in the Islamic State: Majority Rule and Minority Rights", *International Journal of Human Rights*, **10** (2): 91-102.
- Bielefeldt, Heiner, 1995. "Muslim Voices in the Human Rights Debate", *Human Rights Quarterly*, **17** (4): 587-617.
- Doswald-Beck, Louise & Sylvain Vite, 1993. "International Humanitarian Law and Human Rights Law", *International Review of the Red Cross*, March-April, **293**: 94-119.
- Gilbert, Geoff, 1998. "Religious Minorities and Their Rights: A Problem of Approach", *International Journal on Minority and Group Rights*, **5** (2): 97-134.
- Hashemi, Kamran, 2006. "The Right of Minorities to Identity and the Challenge of Non-Discrimination: A Study on the Effects of Traditional Muslims' Dhimmah on the Current State Practices", *International Journal on Minority and Group Rights*, **13** (1): 1-25.
- Henrard, Kristin, 2007. "The Protection of Minorities Through the Equality Provisions in the UN Human Rights Treaties: The UN Treaty Bodies", *International Journal on Minority and Group Rights*, **14** (2-3): 141-180.
- Kawashima, Saeko, 2004. "The Right to Effective Participation and the Ainu People", *International Journal on Minority and Group Rights*, **11** (1-2): 21-74.
- Lee, Man Yee Karen, 2008. "Universal Human Dignity: Some Reflections in Asian Context", *Asian Journal of Comparative Law*, **3** (1): 1-33.
- Muedini, Fait, A., 2010. "Examining Islam and Human Rights from the Perspective of Sufism", *Muslim World Journal of Human Rights*, **7** (1): 1-23.

- Nazila, Ghanea-Hercock, 2004. "Human Rights of Religious Minorities and of Women in the Middle East", *Human Rights Quarterly*, **23** (3): 705-729.
- Park, Jungwon, 2006. "Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with Reference to Self-Determination under International Law", *International Journal on Minority and Group Rights*, **13** (1): 69-93.
- Pentassuglia, Gaetano, 2009. "Evolving Protection of Minority Groups: Global Challenge and the Role of International Jurisprudence", *International Community Law Review*, **11** (2): 185-218.
- Sinha, Manoj Kumar, 2005. "Minority Rights: A Case Study of India", *International Journal on Minority and Group Rights*, **12** (4): 355-374.
- Tsadik, Daniel, 2003. "The Legal Status of Religious Minorities: Imami Shi'i Law and Iran's Constitutional Revolution", *Islamic Law and Society*, **10** (3): 376-408.

Online Articles

- International Human Rights Instruments (IHRI), 2004. "Compilation of General Comment and General Recommendations Adopted by Human Rights Treaty Bodies" [online]. in [http://www.unhchr.ch/tbs/doc.nsf/o/ca12c3a4ea8d6c53c1256d500056e56f/\\$FILE/Go441302.pdf](http://www.unhchr.ch/tbs/doc.nsf/o/ca12c3a4ea8d6c53c1256d500056e56f/$FILE/Go441302.pdf).
- Office of the High Commissioner of Human Rights (OHCHR), 2010. "Minority Rights: International Standards and Guidance for Implementation" [online]. in http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.