

CHAPTER ONE

INTRODUCTION

A. Background of Research

Indonesia is a pluralistic society in the aspects of linguistic, ethnic, cultural, or religious differences. According to Heldred Geertz¹ in Indonesia, almost all dominant culture embrace the Islamic religion. That pluralism is an occurrence that cannot be avoided. However, religious plurality is also inevitably a challenge in Indonesia nowadays. It means that if the plurality of religion is not appropriately addressed, it could cause not only social conflict and disintegration but also interreligious conflict. Based on historical perspective, violence and intolerance occurred from the followers of each religion. Therefore, the tolerance issue is very crucial to be discussed in Indonesia.

On February 2018, Kyai Hakam Mubarak² as Head of the Islamic Boarding School Karangasem Paciran, Lamongan, East Java, was ill-treated by

¹ Hamami Zada, 2006, *Agama dan Etnis: Tantangan Pluralisme di Indonesia*,” in Sururin and Maria Ulfa (eds), *Nilai-Nilai Pluralisme dalam Islam*, Jakarta: Nuansa-Fatayat NUFord Foundation, p. 184.

² According to Mustafa al-Maraghi, *Kyai* are people who are knowing the power and majesty of Allah SWT so that they are afraid commit immoral acts. According to Sayyid Qutb, it means that *Kyai* are people who think and live the verses of Allah amazing so that they can reach *ma`rifatullah* in a way intrinsic

a suspected mentally ill man on Sunday.³ Kyai Mufti Labib as the Deputy Head of the boarding school, confirmed the incident. Moreover, another case happened in Surabaya and Sidoarjo, where the members of Jama'ah Ansharud Daulah launched several bombings of Surabaya's churches on Sunday.⁴ Recently, there was a National Ulama⁵ Conference and the Nahdlatul Ulama (NU)⁶ Grand Conference held at the Miftahul Huda Islamic Boarding School in Al-Azhar, Banjar, and West Java. The *Bahtsul Masail* Commission Session Leader *Maudluiyyah*, Abdul Moqsih Ghazali, suggested that Indonesian non-Muslim citizens no longer be called infidels. The word *kafir*⁷ is considered to contain elements of religious violence.⁸ Based on the data above, it is important issue to discuss how to apply the *fiqh* tolerance in the nation-state of Indonesia.

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- ³ Dadang, *Mentally ill man attacks Kiai Hakam Mubarak*, *Republika.co.id*, retrieved from <https://www.republika.co.id/berita/en/islam-in-archipelago/18/02/19/p4ee06414-mentally-ill-man-attacks-kiai-hakam-mubarak> Accessed on 5th of March 2019 at 9.11 p.m
- ⁴ Zara Amelia, *Sidoarjo Bombs Death Toll Reaches 21*, *Tempo.co*, retrieved from <https://en.tempo.co/read/918423/sri-mulyani-surabaya-bombings-wont-rock-indonesias-economy>, accessed on 7th of March 2019 at 11.10 a.m
- ⁵ Imam Al Ghazali said on his book *Ihya' Ulumuddin*, Ulama are divided into two, are ulama akhirah and ulama suu'. The Ulama who got the title of Hujjatul Islam emphasized the importance of knowing the differences between *haq* and *bathil*. The ulama suu' are those who use their knowledge to seek world enjoyment, gain respectable power and position before the public. A typical ulama is the one who gets a strong threat from several verses and hadith.
- ⁶ Nahdlatul Ulama is the largest Islamic organization in Indonesia. This organization was established on 31st of January 1926 and engaged in the religious, educational, social, and economic fields.
- ⁷ Dr. Zakir Naik define *Kafir* the word *kafir* means someone who denies. *Kafir* comes from the word *kufr*, which means hiding or denying. In Islamic terminology, *kafir* means people who hide or deny the truth of Islam and those who reject Islam. In English, they are called non-Muslims
- ⁸ Adeng Bustomi, *NU calls for end to word 'infidels' to describe non-Muslims*, *The Jakarta Post*, retrieved from <https://www.thejakartapost.com/news/2019/03/01/nu-calls-for-end-to-word-infidels-to-describe-non-muslims.html>, accessed on 7th of March 2019 at 3.16 pm

Regarding Indonesian regulation on tolerance, the case is regulated through some regulations. Article 28E paragraphs 1 and 2 of the 1945 Constitution which states that:

- 1) “Everyone is free to choose and practice the religion of his choice, choose one's education, choose a job, choose one's citizenship, and choose one's residence within the state territory, to go to it and then go back there.”
- 2) “Everyone has the right to freedom to believe in his faith, and to express his views and thoughts, according to his conscience.”

Article 28G paragraphs (1) and (2) of the 1945 Constitution states that:

- 1) “Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right.”
- 2) “Every person shall have the right to be free from torture or inhumane and degrading treatment and shall have the right to obtain political asylum from another country.”

Law No. 39 of 1999 on Human Rights provides a normative ground that religion and belief are inviolable fundamental rights. Article 22 emphasizes:

- 1) “Everyone has the right to freedom to choose his religion and worship according to his religious teachings and beliefs.”
- 2) “The State guarantees the freedom of every person to elect and exercise his religion and worship according to his religion and belief.”

Indonesian regulation mentioned every citizen has their rights, and another citizen cannot disturb the rights of others. It means that every citizen is responsible to respect each other in terms of honor, dignity, and religion. Politics (*siyasah*) in the perspective of Islam which contains the meaning of the

way Muslims make the teaching of Islam as life curriculum (*manhajul hayah*).⁹ Politic (*siyasah*) does not mean that the state must be based on the Qur'an and Sunnah, but the value should be reflected. Political Islam (*siyasah Islamiyah*) aims to elevate the dignity of humanity towards a higher quality and to be more civilized based on the functions and duties of the caliph of Allah (*Khalifah of Allah*). Islamic politics is achieved if the society has morality and responsibility to God and other people in this universe.

Referring to the democracy in Islam, there are the principles of moderate (*at-tawassuth*). This do not include anti-concept of the state, such as theocracy, democracy, or others. That is to fulfill the aspects of *shura* (deliberation), *al-'adl* (justice), *al-musawah* (equality of degrees) and *al-Hurriyat* (freedom) by guarding five human principles (*al-usul al khamsah*).¹⁰ So, democracy and tolerance was regulated in the Qur'an. It means that Allah already guaranteed that democracy and politics are in line with the commands of Allah.

Recently, there had been a controversial case which happened on the tolerance of religion. It was the case of Bahsul Masail of NU on the word *kafir* to non-Muslim citizens of Indonesia. Based on that issue, it is clear that he had violated God's law and God's decree. Allah has declared the infidelity of the

⁹ Moh Rosyid, "Konsep Demokrasi Politik dalam Islam", *ADDIN*, Volume 9(1), 2015, p. 22

¹⁰ *Ibid*,

polytheists, namely the idol worshipers and those who make besides Allah a rival in worship. It has already been mentioned on the Q.S Al-Maidah: 17.

لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ

“They have certainly disbelieved who say that Allah is Christ, the son of Mary.”¹¹

The diversity of Muslim attitudes towards Christian beliefs present in the “jurisprudence of Muslim minorities” (*fiqh al-aqalliyyat*) is an effort to provide an Islamic foundation for a relative relationship of moral obligation and solidarity with non-Muslims.¹² The aspect of such citizenship is at the foundation of both positive Islamic law (*fiqh*) and theology in our democracy. NU carries the concept of Islam that emphasizes the value of peace, harmony, and mercy for facing the dynamics of differences in flow, understanding, and religion. Muslims should be pioneers in the middle of the road of tolerance between rationalist and scripturalist. Regarding to the *fiqh* tolerance, Muslims should also have good behavior based on the Qur’an, Sunnah, and Ijma’.

B. Statement of Problems

1. What is the doctrine of *fiqh* of tolerance?
2. How is it adopted in the Indonesian Law and regulations?
3. What are cases on the issue of application of *fiqh* of tolerance in Indonesia?

¹¹ Qur’an *surah* Al-Maidah: 17

¹² Andrew, F March, “Sources of Moral Obligation to non-Muslims in the “Jurisprudence of Muslim Minorities” (Fiqh al-aqalliyyat) Discourse”, *Islamic Law and Society*, Volume 16(34), 2009

C. Objective of Research

The objectives of the research are:

1. To describe the doctrine of *fiqh* tolerance based on Islamic perspective.
2. To analyze the application of *fiqh* tolerance in the Nation State of Indonesia.
3. To propose some suggestions on a better democracy and harmonize the tolerance in the Nation State of Indonesia.

D. Benefits of Research

The benefits of the research are:

1. Theoretically

The research will grant a better understanding and provide more in-depth knowledge in the application of *fiqh* tolerance that is going to be applied to the issue of political tolerance in a democratic state, especially the experience of Indonesia. The research will open the view on the importance of evaluating the harmonization of tolerance in Indonesia.

2. Practically

The research will propose appropriate recommendations to settle the problems that occur on the execution and application of *fiqh* tolerance in Indonesia based on the doctrine of *fiqh* and also the 1945 Constitution.