

## CHAPTER TWO

### LITERATURE REVIEW

#### A. The Concept of Tolerance

Based on Muslim scholars who are in the categories of religious construction who are inclusive like Nurcholis Madjid's point of view, pluralism must be understood as an actual diversity in civilization.<sup>13</sup> This general religious construction, in reality, has a positive impact on realizing a harmonious and tolerant social life order. The illustration of the attitude of recognition and respect for differences of opinion or *madzhab*<sup>14</sup> during social life in the present study has three accompanying terms. These include inclusive Islam, moderate Islam, and Islam *Wasathiyah*.<sup>15</sup> Nevertheless, all terms are actually based on the concept of Islam of *Rahmatan Lil 'Alamiin*, a universal idea that shows the flexibility of Islamic teachings, which is very important as a paradigm in different social lives.

However, these might seem strange; they can influence modern Muslims' thought regarding tolerance, plurality, and respect, among others. According to

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<sup>13</sup> Furhan, M Yani, Ali M Haidar, and Sri, FX Sadewo, "The Religious Construction of KIAI on Pluralism and Multiculturalism", *el-Harakah*, Volume 20(2), 2018, Surabaya State University

<sup>14</sup> The foundation of Islamic law schools to the end of the Umayyad period there are Hanafi School of law, Maliki School of law, shafi'I school of law, Hanbali School of law.

<sup>15</sup> *Ibid*,

Hanafi madhab supports the notion of stoning to death as a punishment for adultery, which is clearly against modern conceptions of human rights. By this explanation, it is important to highlight the issue regarding the opinions related to Islam, equality, and social tolerance, as these topics are very much reality today.

The term ‘tolerance’ comes from the Latin word “*tolerantia*” and in Arabic refers to *tasamuh* which means excuse, to tolerate, to be indulgent and merciful. The word *tasamuh* has meaning tolerance, kindness, and toleration.<sup>16</sup> In Islam, the term *tasamuh* means to take and to give. *Tasamuh* includes providing action and demand in some particular limitation.<sup>17</sup> However, the Holy Qur’an already explains the tolerance concept with all of its boundaries explicitly. In the implementation, the verses related to tolerance concept can be used as a reference for human life.

In the Indonesian dictionary written by Poerwadarminta, the word tolerance can be formulated as one attitude of openness to listen to different views which have two functions, namely giving an opinion and taking another idea and not disturbing others’ faith in the agreed scope.<sup>18</sup> According to Azyumardi Azra, there are two things related to the Islamic perspective

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<sup>16</sup> Rohi Baalbaki, 2004, *Al-Mawrid: A Modern Arabic English Dictionary*, Beirut: Dar El-Ilm Lil Malayin, p. 314

<sup>17</sup> Muchtar, Adeng Ghazali, “The Concept of Tolerance in Islamic Education”, *Na’zi*, Volume 1(1), 2014

<sup>18</sup> Poerwodorminta, W,J,S, 1996, *Kamus Umum Bahasa Indonesia*, Jakarta: Balai Pustaka, p. 4010

regarding a harmonious life among religions and its consequences among religious adherents. First, it is an Islam doctrine about a relationship among human beings and the connection between Islam and other religions. Second, it is the historical experience of people concerning other people's religions.<sup>19</sup>

The concept of *tasamuh* or tolerance in the diversity of life is one of the primary attitudes and behavior accepted by God's will.<sup>20</sup> The religious tolerance does not mean to have freedom on following particular religion for today and change into another religion in the future. Not only that, the freedom of religion does not expect to have freedom on doing various religious practices and rituals, as well as respect their rights as individuals and part of the society.

Meanwhile, it must be understood by people as an acceptance of the existence of other religions besides his religion with all systems form and ways of worship, as well as their freedom to practice their faith without conflict in social life. Islam doctrine strictly forbids its adherents to practice other religions, but proclaims to respect the different religions with all rights and obligations that must be appreciated. This is mentioned in Q.S Al-Hujurat: 12:

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<sup>19</sup> Azra, Azyumardi, 2006, *Bingkai Teologi Kerukunan Hidup Antarumat Beragama: Perspektif Islam*, Gunung Mulia, Jakarta, p. 92

<sup>20</sup> Wahyudin, dkk, *Pendidikan Agama Islam untuk Perguruan Tinggi*, Bandung: Grasindo, p. 93

يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَبَ بَعضُكُمْ بَعضًا

”O you who have believed, avoid much (negative) assumption. Indeed, some assumption is a sin. And do not spy or backbite each other.”<sup>21</sup>

If tolerance in religious life taught by Islam is implemented appropriately, it will be the solution to the dynamical issue of life — Islamic teaching which is appropriately fitted with *nubuwwah*<sup>22</sup> mission and Islam *rahmatan lil ‘alamiin*.

## B. Nation-State

The meaning of the word ‘democracy’ is rooted from the Greek word “*demos*” which means society. Based on etymology, democracy means government by the people. Based on the historical background, this term had been used for five centuries before Crist. “*Cleisthenes*” is a character of the Athenian reformer initiating a government system. Democracy is a form of the government where the highest power is in the people’s hands and it is carried out directly by the people, or by elected representatives in a free electoral system.<sup>23</sup> According to Abraham Lincoln, as the former President of the United

<sup>21</sup> Qu’an *surah* Al-Hujurat: 12

<sup>22</sup> According to Muslim terminology, Nubuwah means the exalted position of the prophet which he enjoys in the presence of the God. <https://www.al-islam.org/prophethood-sayyid-saeed> akhtar-rizvi/nubuwwah, accessed on Sunday, 24<sup>th</sup> of March 2019 at 9.00 p.m

<sup>23</sup> Ali, Nawaz Memon, 2002, *Membincang Demokrasi dalam Islam Liberalisme Demokrasi*, Jakarta: Paramadina, p. 3

States, democracy is the process which requires people's participation in deciding on a problem and control the power of government itself.<sup>24</sup>

Most of the Muslim opinions argue that democracy and *shura* are the same term which have the same purposes, but on another side, say that both of the terms are contradictive. Based on the American Congress in 1989, the result of a democratic state's criteria are namely that: (1) it is established by a full democratic political system and the representatives are chosen based on fair elections, (2) it effectively recognized the fundamental freedom and independence, (3) it omitted all laws and regulations which obstruct the function of political parties, (4) a judicial body is created free, and (5) military, security, and police forces are established as impartial ones.<sup>25</sup> The several principles above appear in the concept of democracy.

The issue which is being concerned for the debate is whether Islam is both a religion and political ideology, or only a religion. Most Muslims believe that Islam cannot be separated from politics (*al-Islam din wa daulah*). Other people argue that Islam is only a religion, thus is separated from politics. Meanwhile, according to Ali Abd al-Raziq's opinion in his famous work *al-*

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<sup>24</sup> M, Kiki Hakiki, "Islam dan Demokrasi: Pandangan Intelektual Muslim dan Penerapannya di Indonesia", *Wawasan: Jurnal Ilmiah Agama dan Sosial Budaya*, Volume 1(1), 2016

<sup>25</sup> Sukron Kamil, 2002, *Islam dan Demokrasi; Telaah Konseptual dan Historis*, Jakarta: Gaya Media Pratama, p. 32

Islam wa Usul al-Hukm, religion is separated with political issues.<sup>26</sup> Islamic identity in Indonesia is represented by groups of Islamic organizations such as FPI (Islamic Defender Front), PKS (Social Welfare Party), and HTI (Indonesian Liberation Party), while Muhammadiyah and NU represent the non-political Islamic groups.

### C. Freedom of Religion

Based on the historical background after Indonesian independence, some people who were Muslims proposed to realize the Islamic Law contained in the “Jakarta Charter.”<sup>27</sup> This matter was initiated by Boedi Oetomo as a reflection of nationalism, *Indische Partij* as a reflection of political nationalism of radical intellectuals, and *Serikat Dagang Islam* as a reflection of economic nationalism.

The policy of religious tolerance has been formulated in legislation, but practically the ideal formulation cannot be comprehensively implemented by some communities in daily life. In 1943, the organization of Putera was disbanded and replaced by *Hookookai*, a religious organization led by Indonesia and Japan, and MIAMI was changed to Masyumi (Majelis Syuro Indonesian Muslim) to strengthen the unity of people. The text of Jakarta Charter mentioned that “Belief in the one supreme God with all the obligation to live

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<sup>26</sup> M Zainuddin, “Plurality of Religion’ Future Challenges of Religion and Democracy in Indonesia”, *Journal of Indonesian Islam*, Volume 9(2), 2015

<sup>27</sup> Moh, Rosyid, *Op.cit*

according to Islamic law for Muslims.” It was removed due to the suggestion of Latuharhary (Christianity), thus leading Ki Bagus Hadikusumo to change the word to “The one and only God.” Even though Indonesian people have different beliefs, they are united as the citizen of Indonesia. This statement was emphasized by Q.S Al-Maidah: 48:

وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ أُمَّةً وَاحِدَةً وَلَكِنْ لِنَبِّئُكُمْ فِي مَا آتَاكُمْ فَأَسْتَبْشِرُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا  
فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ

*”To each of you, We prescribed a law and a method. Had Allah willed, He would have made you one nation [united in religion], but [He intended] to test you in what He has given you; so race to [all that is] good. To Allah is your return all together, and He will [then] inform you concerning that over which you used to differ”.*<sup>28</sup>

The philosophical values in the first principle of Pancasila are the recognition of the freedom to embrace religion, respect for religious freedom, no coercion, and no discrimination among religious people. As a democratic state, Indonesia is responsible to guarantee the existence of legal protection against human rights in religious freedom<sup>29</sup> State authority and obligation related to religion is to give assurance to society to embrace religion and worship. Indonesia has six recognized religions in Article 29 paragraph 2 of the 1945 Constitution, and it is explained more deeply on Law No. 1 of 1965 concerning the prevention of misuse and Blasphemy. Article 1 of a quo Law

<sup>28</sup> Qur’an *surah* Al-Maidah: 48

<sup>29</sup> Peter Mahmud Marzuki, 2012, *Pengantar Ilmu Hukum, Cetakan Keempat*, Jakarta: Kencana Prenada Media Grup, p. 137

states that: “Every person is forbidden to recite publicly, advocate, or endorse public support, to make interpretations of a religion held in Indonesia.”

Based on the 1945 Constitution, Article 1, paragraph (3), Indonesia is a state of law. As a state of law, Indonesia has a principle of equality before the law. According to A. V Dicey, the three essential features of the rule of law are human rights guaranteed by the Law, equality of the population before the law, the supremacy of the law and the absence of arbitration without clear rules.<sup>30</sup> The guarantee of freedom of religion can be seen in the 1945 Constitution. The regulation is stipulated in Article 28E paragraphs 1 and 2 of the 1945 Constitution 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.”

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

- 1) “Everyone has the 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.”

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<sup>30</sup> Muhammad Alim, 2001, *Demokrasi dan Hak-Hak Asasi Manusia dalam Konstitusi Madinah dan UUD 1945*, Yogyakarta, UII Press, p. 45



Under international law, Indonesia has ratified the International Covenant on Civil and Political Rights (ICCPR) under Law No. 12 of 2005. With such ratification, Indonesia has become a part of States Parties that must comply with the rules in the ICCPR. In Article 18, the ICCPR states that: “Everyone has the right to freedom of thought, confidence, and religion. The right includes the freedom to have or adopt a religion or belief in his choice, and freedom, individually and in community with others and society or private, to realize his religion or belief in worship, obedience, practice, and instruction.”

#### **D. Previous Studies**

The study of *fiqh* tolerance in the Nation State of Indonesia has been examined by other scholars, such as the work entitled “Islam, Politics, and Democracy: Mohamed Talbi and Islamic Modernism” by Ronald L. Nettler. The study explains the position of Islamic teaching and political system in a democratic state and its functions. Furthermore, there are problems that are caused by the gap between government policy support and the democracy system that is based on *fiqh* tolerance in Islamic perspective. Therefore, in this study, the author recommends the policies as the problem solutions.

Furthermore, this issue had also already been researched by Jan Teorell with his paper, “Political Participation and Their Theories of Democracy: A Research Inventory and Agenda.” Jan Teorell described the existence of theories of democracy and political participation. Another research had been

done by Andrew F March with his paper, “Sources of Moral Obligation to non-Muslims in the “Jurisprudence of Muslim Minorities” (*Fiqh al-aqalliyat*) Discourse.” Andrew F March discussed the application of *fiqh* tolerance and Muslim attitude towards minorities based on Islamic jurisprudence.

Based on all of the studies above, discussing *fiqh* tolerance and democracy is still considered as a new issue. No researcher has done the research of combining both of the problems. It is going to be a new insight for the Islamic literature, especially related to democratic system and Islamic Jurisprudence. Therefore, this research aims to harmonize between the Islamic teaching on the tolerance and the application of democratic system in the nation-state of Indonesia.