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THE IMPLEMENTATION OF *FIQH* OF TOLERANCE IN A NATION STATE OF INDONESIA

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ABSTRACT

The existence of *fiqh* of tolerance (Islamic perspective towards tolerance) and Indonesian Law cannot be separated as a part of Moslem's life. The study of the verses of the Holy Qur'an clarifies Islamic perspective towards tolerance. The development of Islamic teaching is reflected in the application of democratic system in the Indonesia. Nevertheless, the implementation of Islamic laws has been moving slowly due to the paradigm which has been shifted into a more western perspective and it may cause several conflicts related to tolerance. This research is intended to elaborate the *fiqh* based on Islamic Jurisprudence which application is under Indonesian Law. This research also describes how Islamic teaching has become the best model to be applied in the democratic system in Indonesia. Moreover, this research discusses the appearing problems of the *fiqh* of tolerance in Indonesia and presents several recommendations. This research also describes the *fiqh* of tolerance adopted in Indonesian Law. The juridical-normative method with comparative and statutory approach had been carried out to conduct this research. The results of this research indicates that there is an urgency to adopt the *fiqh* paradigm on tolerance values under Indonesian Law, to emphasize the implementation of tolerance values in the daily life of society and to harmonize the diversity and differences among others.

Keywords: *Application, Fiqh, Tolerance, Indonesian Law*

I. Introduction

A. Background of Research

Indonesia is a pluralistic society in the aspects of linguistic, ethnic, cultural, or religious differences. According to Helder 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 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

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

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

churches on Sunday.⁴ Recently, there was a National Ulema⁵ 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 Moqsith 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.

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.”

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 Nahdatul 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

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.

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

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 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

¹⁰ *Ibid*,

¹¹ Qur'an *surah* Al-Maidah: 17

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'.

II. Statement of Problems

What is the doctrine of *fiqh* of tolerance and how is it adopted in the Indonesian Law and regulations?

III. Research Method

A. Type of Research

This research is a juridical-normative¹³ research implementing a combination of comparative and statutory approach¹⁴ to analyze the issue of *fiqh* tolerance in a democratic state. In this research, the author applied an exploration method that aims to recognize or catch a new perspective of a phenomenon, so that the formulation of the research problem or the formulation of the research hypothesis becomes more precise.¹⁵

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

¹³ Soerjono Soekanto and Sri Mamudji, 2007, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta, PT.Raja Grafindo Persada, p.12

¹⁴ Gusti Ngurah Wairocana, 2013, *Pedoman Pendidikan Fakultas Hukum Universitas Udayana*, Bali:Fakultas Hukum Universitas Udayana, p. 75

¹⁵ Sukandarrumidi, 2002, *Metodologi Penelitian*, Yogyakarta, Gajah Mada University Press, p. 61

In this case, the research has been done by surveying the existing data, literature, and study of *fiqh* tolerance and its implementation in Indonesia. The doctrinal method has also been used in this research which focuses on reading and analyzing primary materials (such as the legislation) and secondary materials (such as legal dictionaries, textbooks, journal articles, case digest, and legal encyclopedias).¹⁶

B. Type of Approach

A statutory and case approach with particular references to history were implemented in this research. The study had been carried out by analyzing the storyline of the historical development of *fiqh* of tolerance and learning various cases to provide a comprehensive understanding of the issue. In juridical-normative researches, the statutory approach was used to explore specific statutes as the main issue analyzed in the normative legal research.¹⁷

To clearly understand the implementation of legal norms conducted in legal practices, a case approach implementation is needed.¹⁸ There are some specific recent cases that had been collected and analyzed within the research, namely the case of Saefur Rochmat from *Universitas Negeri Yogyakarta*, Nur Robi Wahidah from *Institut Agama Islam Negeri Jember*, Gabriella Febrianty Shofiana from *Universitas Airlangga* and M. Ali Haidar from *Universitas Negeri Surabaya*.

¹⁶ Mike McConville and Wing Hong Chui, 2012, *Research Methods for Law*, Edinburgh, Edinburgh University Press, p. 47

¹⁷ Johny Ibrahim, 2006, *Teori dan Metodologi Penelitian Hukum Normatif*, Second Edition, Malang, Bayu Media, p. 302-303

¹⁸ Johny Ibrahim, *Op.Cit.*

C. Type of Data

Sources of data in this research were collected by the secondary data method which means that the data collection is taken from the library research of literature study. The secondary data that were collected are namely:

1. Primary Legal Material

The primary legal materials taken from legal documents, legislation, and treaties, which are relevant to this research are:

- a) The 1945 Constitution,
- b) The Law No. 1 of 1965,
- c) The Law No. 12 of 2005, and
- d) The Law No. 39 of 1999.

2. Secondary Legal Material

Secondary legal materials consist of several books, journals, news, and related articles to the topic.

3. Tertiary Legal Material

The tertiary legal material means any other materials which support the research. It covers the legal materials that provide instructions or explanations of primary and secondary legal materials from the outside field of law, e.g., the field of politics, sociology, and language as supporting material of complementary. In this research, the tertiary legal materials are:

- a) Law Dictionary: Black's Law Dictionary written by Henry Campbell; and
- b) English Dictionary: Kamus Inggris Indonesia, written by John M. Echols and Hassan Sadily.

D. Method of Data Collection

The method of data collection in this research had been done by a library research which included reading, analyzing, and deriving conclusion from related documents such as Charters, Declarations, Law Books, Legal Journals, Websites, and other materials related to the main problem of the research.

E. Method of Data Analysis

The method of data analysis had been carried out systematically through a consistent juridical qualitative analysis. Consistently here means that the research was analyzed according to municipal laws, *fiqh*, and other norms related to the constitutional law matters, especially the *fiqh* tolerance in the democratic state of Indonesia. Meanwhile, a juridical qualitative analysis here means that the analysis was conducted according to the principle of law, *fiqh*, and other related regulation.¹⁹

IV. Finding and Analysis

A. The *Fiqh* of Tolerance

1. Definition of *Fiqh* of Tolerance

¹⁹ Mukti Fajar ND and Yulianto Achmad, 2009, *Dualisme Penelitian Hukum*, Yogyakarta: Pencil Komunika, p. 123

Tolerance means giving freedom for all people to arrange life without violating or be against others and live peaceful in a society.²⁰ Terminologically, according to Muhammad al-Sharawi, the famous Islamist writer and preacher, tolerance is the principle of no compulsion in the religious aspect, which is expressed as a virtually Islamic value. According to Yusuf, Al-Qaradhawi²¹, there are three stages of tolerance in religiosity. The first is giving freedom for all people to perform prayers based on their religion. The second is providing freedom for people to achieve their worship and traditional celebration. The third or the highest stage of tolerance is not blaming something *halal* in another religion except Islam; even if it is *haram* for Muslim.

2. History of *Fiqh* of Tolerance Based on Islamic Perspective

Based on the historical background, Islamic Jurisprudence (*fiqh*) has experienced a condition in which some people tend to confine *fiqh* to vertical worship issues without intensively addressing the question of how Muslims should live in the midst of plurality. *Fiqh* is more temporary and its existence tends to follow

²⁰ Ayunda Widosari, *Analyzing the Fiqh of Tolerance of Three Largest Islamic Organizationz (Nahdatul Ulama, Muhammadiyah and Front Pembela Islam): The Blasphemy Case of Ahok*. International Seminar on Islamic Civilization and Thoughts (INSIST), 20th of November 2017, p. 24

²¹ Muhammad Mumtaz Ali, *Wasatiyya as a Higher Principle of the Shariah: a Civilizational Aproach*, International Seminar on Islamic Civilization and Thoughts (INSIST), 20th of November 2017, p. 12

social dynamics.²² There are several examples of tolerance during the caliphate era, as mentioned below:

- a) The negotiation conducted by the Prophet Muhammad (PBUH) and Quraisy that led to the success of the peace negotiation.²³
- b) The Constitution of Medina is reported to be an agreement between Muslims (Anshar and Muhajirin) and the Jewish tribes in Medina.
- c) The prophet did not follow the celebration of Christians at that time, although the Christians tried to invite the Prophet.

B. *Fiqh* of Tolerance under Indonesian Law

1. The 1945 Constitution

The substance of tolerance explain that freedom is the essence of tolerance which mentioned in Article 28E paragraph (1) stated that:

“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.”

The Constitution has provided the freedom of religion as rights for all Indonesia's citizens to choose the religion which is supported

²² Qodri Azizy, 2014, *Hukum Nasional; Eklektisismen Hukum Islam dengan Hukum Umum*, Jakarta, Teraju, p. 30-31

²³ Sharaf al-Qudah, Akram Muhammad Nemrawi, and Faisal Ahmad Shah, “Negotiation Skills in the Sunnah: A Case Study on Hudaibiyah Peace Negotiation”, *Al-Bayan: Journal of Qur'an and Hadith Studies*, Volume 12, 2014, p. 3

by The Constitution. Indonesia encourages only five beliefs. They are Islam, Christian, Catholic, Hindu, and Buddha. The Constitution do not allow Indonesian citizens to become atheists. However, the freedom is to have one religion as the identity of people to get the protection in term of worship and also perform the prayer.

From the explanation, it may be concluded that religious freedom in the 1945 Constitution is very comprehensive; there are no restrictions regarding the principle of tolerance. Freedom of religion means that everyone has to choose a religion which is recognized by the Constitution as mentioned in the Article. Regarding the pillars of democracy, freedom of religion is one of the critical contents of rights that should not be ignored.²⁴

2. The Law No. 1 of 1974 Article 2 paragraph (1) stated that:

“A marriage is legitimate if it has been performed according to the laws of the respective religions and beliefs of the parties concerned.”²⁵

The implementation of regulation has not covered all matters yet. Nevertheless, the philosophical and historical perspective in this regulation is still enforced. The idea of Marriage Law is to unify every jurisprudence from different religions without causing conflicts between religious people. The purpose of the establishment of Marriage Law is to give a tolerance among other people. Actually,

²⁴ Abd, Moqsith, “Tafsir atas Hukum Murtad dalam Islam”, *Ahkam*, Volume 13(2), UIN Syarif Hidayatullah Jakarta, 2013, p. 284

²⁵ The Law No 1 of 1974 article 1 paragraph (1)

the Law of Marriage is already in line with the *fiqh* of tolerance based on the doctrine of Islam and moral values which may be reflected in the legislations. But practically, there are many people in Indonesia who violate the regulation for some private interests.

3. The Law No. 1 of 1965 on the Prevention of Religious Abuse and Defamation or the Blasphemy Law.

The Law No. 1 of 1965 Article (1) stated that:

“Every individual is prohibited in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious-based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion”²⁶

The regulation on blasphemy covers two types of blasphemous acts: deviation from the five officially recognized religions²⁷ and defamation of these religions.²⁸ Practically, before a person can be prosecuted for a blasphemous act under Article 1, the person must receive an official warning under Article 2(1). In Article 2(1), it provides that the Minister of Religion, the Attorney General and

²⁶ The Law No 1 of 1965 on the Prevention of Religious Abuse and/or Defamation on Article 1
²⁷ According to the Elucidation (Explanation) to the Presidential Decree No. 1/PNPS/1965, these are Islam, Christianity (Protestantism), Catholic, Hinduism, Buddhism and Confucianism. The Presidential Decree does not ban other religions or beliefs, such as Judaism, Zoroastrianism, Shintoism and Taoism, and their believers are free to practice their beliefs and religious activities as long as they do not violate other laws. This argument was reaffirmed by the Constitutional Court’s Decision No. 140/PUU-VII/2009 concerning the Request for Judicial Review of Law No. 1/PNPS/1965, 19 April 2010, p290, Supranote No. 16. However, in practice there are limitations on the followers of these non-mainstream religions in Indonesia.
²⁸ Melissa A, “Crouch, Law and Religion in Indonesia: the Constitutional Court and the Blasphemy Law”, *Supranote*, Volume 11, p. 3&5

Minister of Home Affairs can issue a joint decree to warn a person who has violated Article 1 by supporting deviant teachings.

Due to the existence of Blasphemy Law, it is constitutional and its nature prevents the occurrence of blasphemy, and it is also recognized by the state. Therefore, the presence of the Blasphemy Law is still needed and is not against the constitution at all, especially related to the regulation of human rights protection as stipulated in the 1945 Constitution.

4. The Joint Ministerial Decree No. 3 of 2008 on the Administrative Procedure of the Construction of Places of Worship to Justify its Policies

This regulation is effective for religious minority rights because the regulation requires all religions including minority religions, to obtain the signatures of a certain number of people who support the building of a place of worship. The requisites of a certain number of signatures to build places of worship assert that all religions including the minorities in a region may potentially become victim and face difficulties to build their places of worship.²⁹

The government gives an instruction to the community to build a place of worship by adjusting them to spatial planning. The regulation has several purposes to guarantee the recognition and

²⁹ Al-Khanif, The Paradox of Religious (In)tolerance in Indonesia, The Jakarta Post, retrieved from <https://www.thejakartapost.com/news/2015/10/16/the-paradox-religious-intolerance-indonesia.html>, accessed on 26th of May 2019 at 11.00 am

respect for the rights and freedoms of others and to fulfil the demands based on the consideration of morals, religious values, security and public order in a democratic society.

C. Selected Cases on the Issue of Application of *Fiqh* of Tolerance in Indonesia

1. The Blasphemy Case Conducted by the Governor of Jakarta (Ahok).

The protection of freedom of religion also regulated on numerous regulation in Indonesia. But in the Islamic teaching in terms of tolerance in belief (*aqidah*), there is no tolerance for it. It is the one element to maintain the belief (*aqidah*) of Muslim. The main problem on the implementation of Blasphemy Law is the lack of enforcement, which caused the increasing number of religious conflicts. This situation is similar with that quoted by Lord Acton which stated that “Power tends to corrupt, and absolute power corrupts absolutely.”

2. Polemic on *Bahtsul Masail* National Conference in the Term Word of *Kafir*

This statement had increased triggering issues among Indonesian people. The interpretation of the word of *kafir* in the midst of the diversity nowadays has become very difficult to interpret without being aware of the knowledge. Recently, many people are arbitrary in the use of the word *kafir* to communicate and differentiate among other people, neglecting ethical norm and ethics. The history of Islam during the caliphate era already exemplified

how Muslims' should behave toward minority religions, as seen in Qur'an *Surah Al-Ahzab: 21*.³⁰

Moral obligation is one of the problems in Indonesia which goes beyond the identification of specific rights. There are three approaches from Islamic jurisprudence methods, namely: (1) revelatory commands (*shar\ nass*); (2) legal, voluntary contracts, and (3) considerations of universal communal welfare or public interest (*maslaha*).³¹

3. Intolerance Crisis in Aceh and Bekasi on Building Places for Worship

The pluralism of religion is acknowledged not only in the Constitution, but also in Pancasila as the ideology of the nation. Unfortunately, until the present day, some people abuse their religion to set a particular standard of rights for others. The situation indicates that religious violence will potentially happen again in Indonesia, especially in a region where a majority religion manipulates the religious solidarity among members to persecute the minority.³²

The existence of Joint Ministerial Decree No. 8 of 2008 is expected to be able to reduce turmoil of conflict in the community.

³⁰ Qur'an *surah Al-Ahzab: 21*

³¹ Andrew F, March, "Sources of Moral Obligation to non-Muslims in the "Jurisprudence of Muslim Minorities" (fiqh al-aqaalliyat) Discourse", *Islamic Law and Society*, Volume 6(1), 2009, p. 45

³² Firdausi Nuri, 2013, *Fikih Minoritas: Hak Asasi Manusia Dzimmi di Tenah Mayoritas Muslim*, Malang, Makalah Ilmiah Al-Qur'an, p. 16

As an effort to be a mainstream of *fiqh* human rights discourse, the government shall try to construct the basis of legal making and religious justification for human rights.³³

Variation or construction model above is a universal part recognized as fundamental human rights in the world. Qur'an as a primary source extracts sources of Islamic law to a position of human rights within the framework of *Maqasid Al-Shari'ah*.³⁴

V. Conclusion and Recommendations

A. Conclusion

Based on the analysis that has been mentioned previously, it may arrive at a conclusion, that the doctrine of *fiqh* of tolerance is a valid form of Islamic teachings formulating the concept of Islamic behavior towards followers of other religions or communities. Therefore, *fiqh* aims to build *fiqh* of tolerance that includes *Tasamuh* values in it which can be implemented as a guideline to not get lost while living in Indonesia. Tolerance, both in the field of religion and society, with the existence of the concept of *Fiqh* of tolerance, is strengthened by the interpretation of the verses to be followed and implemented into the personality of Indonesian society.

Indonesia has adopted the doctrine of *fiqh* of tolerance comprehensively in all legislations by incorporating Islamic values in every

³³ Opcit, Kumelo Mujaid, p. 80

³⁴ Wiyono, Suko, 2015, *Reaktualisasi Nilai-Nilai Pancasila dalam Kehidupan Berbangsa dan Bernegara*, Malang, Wisnu Wardhana Press, p. 53

philosophical, sociological, and juridical consideration. It needs to trace back on *Risalah* all laws and regulations, whether the formers of laws inspired by the concept of *fiqh* of tolerance in Islam. This is in line with the opening text of the 1945 Indonesian Constitution. The main principle of the establishment of this nation is to advance the general welfare, peace and social justice. It is impossible to achieve those goals without Islamic law values reflected on it, as mentioned in several regulations such as the 1945 Constitution on Freedom of religion, Law of Marriage, Blasphemy Law, and the Joint Ministerial decree of 2008. Those regulations cannot be regulated and implemented without the consideration of *fiqh* of tolerance in diversity of religion and ethnics in Indonesia. It proves that Indonesia highly promotes the value of pluralism to create peace and togetherness based on *fiqh* of tolerance.

B. Recommendations

For the good purposes, education is actually considered as an important instrument. Therefore the first recommendation is that, scholars need additional learning time on religious education and not only focus on rituals and beliefs, but also focus to the level of social and human morality. Through such an educational atmosphere, there will be a harmonious atmosphere in the religious life and no difference in human behavior life.

Then, the second recommendation aims to provide the harmonization on diversity in Indonesia. It is the needs of the political will which is necessary to uphold justice in tolerance. No matter how many

religions conflicts happened in the past, if there is no political will to do justice, it will be nonsense. Having a functional democracy by letting people experience the freedom of choosing religion is a model of a good governance.

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