

## Article

# The Dialectic Between the Fiqh of Tolerance and Human Rights in the Context of Religious Pluralism: The Indonesian Experience

**Nur Chanifah**

Universitas Brawijaya, Malang, Indonesia;  
email : nur.chanifah@ub.ac.id

### Abstract

Indonesia is characterized by profound religious diversity encompassing multiple religions, beliefs, and religious practices. While such plurality has the potential to function as social capital for strengthening national cohesion, recent decades have witnessed a significant rise in religion-based intolerance, including the rejection of houses of worship, the dispersal of minority religious activities, and various forms of social intimidation. These developments indicate persistent structural and normative deficiencies in the governance of freedom of religion or belief (FoRB) in Indonesia. This article critically examines the relationship between religious plurality, practices of intolerance, and weaknesses in the governance of FoRB, while proposing a more progressive normative alternative. Employing a qualitative dialectical analysis based on document review and literature studies, the study maps the patterns and actors of religious intolerance and reassesses the normative foundations of religious governance through the integration of the fiqh of tolerance and human rights principles. The findings demonstrate that the escalation of intolerance is driven not only by regulatory weaknesses and majoritarian bias but also by exclusive religious interpretations that are misaligned with constitutional values and international human rights standards. This study argues that reconstructing an inclusive normative framework—grounded in a dialectical engagement between fiqh of tolerance and human rights—is essential for strengthening the protection of religious minorities and fostering social cohesion in Indonesia.

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### Keywords

*Fiqh of tolerance, freedom of religion or belief, human rights, religious plurality, religious tolerance*

## Abstrak

Indonesia dicirikan oleh keberagaman agama dan kepercayaan yang kompleks, yang secara teoretis merupakan modal sosial bagi kohesi nasional. Namun, meningkatnya praktik intoleransi dalam beberapa dekade terakhir – seperti penolakan rumah ibadah dan intimidasi terhadap kelompok minoritas – mengindikasikan adanya persoalan struktural dan normatif dalam tata kelola Kebebasan Beragama dan Berkeyakinan (KBB/FoRB). Artikel ini bertujuan menganalisis hubungan dialektis antara pluralitas keagamaan, praktik intoleransi, dan kelemahan tata kelola KBB di Indonesia, serta menawarkan kerangka normatif alternatif yang progresif. Menggunakan metode kualitatif melalui analisis dialektis berbasis studi literatur, penelitian ini memetakan pola serta aktor intoleransi, sekaligus meninjau kembali fondasi pengelolaan kehidupan beragama melalui integrasi konsep fiqh toleransi dan prinsip Hak Asasi Manusia (HAM). Temuan penelitian menunjukkan bahwa eskalasi intoleransi dipicu oleh bias mayoritarian dalam regulasi serta tafsir keagamaan eksklusif yang tidak selaras dengan nilai konstitusional dan standar HAM internasional. Artikel ini menyimpulkan bahwa rekonstruksi kerangka normatif yang inklusif – melalui dialektika fiqh toleransi dan HAM – merupakan prasyarat krusial untuk memperkuat perlindungan kelompok minoritas dan menciptakan kohesi sosial yang berkelanjutan di Indonesia.

## Kata Kunci

Fiqh toleransi, hak asasi manusia, kebebasan beragama dan berkeyakinan, pluralitas keagamaan, toleransi beragaman

## INTRODUCTION

Indonesia has long been regarded as a laboratory of religious plurality, characterized by the coexistence of diverse religions, beliefs, and religious practices in both public and private spheres (Chanifah & Mustapa, 2016). When managed within an inclusive normative framework, such diversity can function as social capital for strengthening national cohesion. However, over the past decades, Indonesia has experienced a notable increase in cases of religion-based intolerance, prompting serious concern from both academic and public policy perspectives (Azmi et al., 2025). These manifestations of intolerance—ranging from the rejection of the construction of houses of worship and the dispersal of minority religious activities to social intimidation of adherents of certain faiths and the proliferation of hate speech in digital spaces—reflect persistent structural and normative deficiencies in the governance of freedom of religion or belief (FoRB), locally referred to as kebebasan beragama dan berkeyakinan (KBB), in Indonesia (Muhajarah & Soebahar, 2024; Setara Institute, 2023, pp. 15–21).

Quantitatively, national monitoring institutions on religious freedom record alarming trends. The SETARA Institute, for instance, reported hundreds of incidents of violations of freedom of religion or belief (Kebebasan Beragama dan Berkeyakinan/KBB) within a single year, with a significant proportion involving both state and non-state actors – an issue with serious implications for law enforcement and human rights protection. Its annual report indicates that, beyond the increase in the number of incidents, the patterns of violations have become increasingly diversified, ranging from administrative restrictions – such as the licensing of houses of worship – to symbolic acts, intimidation, and physical violence (Setara Institute, 2023, pp. 15–21). These findings suggest that intolerance is no longer episodic but

structurally embedded within governance practices.

Similarly, the National Commission on Human Rights (Komnas HAM) identifies regulatory deficiencies and maladaptive implementation practices as key factors contributing to violations of religious freedom. Its assessment confirms the existence of systemic problems that cannot be adequately addressed through reactive or ad hoc policy responses alone (Komnas HAM, 2020, p. 32). This phenomenon raises several interrelated concerns. First, there is a persistent gap between constitutional guarantees of religious freedom and administrative as well as social practices that effectively restrict these rights. Second, the politicization of religious discourse often undermines its legitimacy and places minority groups in a structurally vulnerable position. Third, weak law enforcement mechanisms and the neglect of the principle of non-discrimination contribute to the normalization of intolerant acts. Fourth, the dynamics of popular religious education and digital media ecosystems accelerate the reproduction of exclusive attitudes. Taken together, these issues underscore the need for cross-disciplinary analysis that integrates fiqh discourse, human rights law, and socio-political realities in order to formulate more inclusive and sustainable normative frameworks (Kholish, 2021).

In academic and practical religious discourse, there is a demand to reformulate an interpretive normative framework that can bridge the authority of the fiqh tradition with the demands of modern human rights (An-Na'im, 1990; Khaliq, 2004). The term *tolerance fiqh* that has often appeared lately tries to assert that fiqh is not only about ritual rules and private law, but also contains hermeneutic potential that supports respect for plurality and civil rights. Several regional comparative studies show that fiqh reconstruction efforts emphasize moderation and accommodation to religious differences, but their implementation still faces conceptual and institutional obstacles.

Previous research on religious freedom and intolerance in Indonesia can be broadly classified into three main streams. First, empirical studies focus on mapping incidents of religious intolerance and identifying their patterns, actors, and underlying triggers. These include annual monitoring reports published by institutions such as the SETARA Institute, the Wahid Foundation, and the National Commission on Human Rights (Komnas HAM), which provide extensive quantitative and qualitative data on violations of freedom of religion or belief (Kebebasan Beragama dan Berkeyakinan/KBB) (Komnas HAM, 2020, p. 32; Setara Institute, 2023, pp. 15–21; Wahid Foundation, 2021).

Second, normative-legal studies critically examine regulatory frameworks governing religious life, particularly the licensing of houses of worship and the unequal enforcement of human rights protections at the local level. Third, theological studies seek to formulate conceptual frameworks such as the fiqh of tolerance or fiqh of moderation, aiming to reconcile Islamic normative traditions with the realities of religious plurality and coexistence.

Empirical studies have been effective in establishing a robust evidence base concerning the frequency, distribution, and typology of KBB violations. Legal analyses, meanwhile, highlight structural weaknesses in ministerial joint regulations and the discriminatory application of local legal instruments. Theological studies contribute by opening hermeneutical spaces that enable reinterpretations of classical Islamic texts in dialogue with contemporary human rights principles. Despite these contributions, integration across these three strands remains limited, resulting in fragmented analyses that insufficiently address the normative, legal, and theological dimensions of intolerance in a coherent framework.

At the theoretical level, several international studies on freedom of religion or belief (FoRB) in Indonesia offer analytical insights that are relevant to a fiqh-human rights approach. Colbran (2010), for example, emphasizes that challenges to FoRB in Indonesia stem from the interaction between state law, social norms, and identity politics. Other studies similarly underscore the role of local institutions and non-state actors in constraining religious freedom. These perspectives are particularly useful for understanding how religious texts are interpreted within local political contexts and how international human rights norms may be internalized within Islamic legal traditions.

Nevertheless, significant research gaps remain. First, although empirical studies have extensively documented incidents of intolerance, there is still a lack of systematic research that integrates fiqh-based theological-normative analysis with human rights frameworks – especially in articulating how Islamic legal reasoning can serve as a normative foundation for the protection of minority rights. Second, few studies offer an operationalizable framework that connects principles of reconstructive fiqh with existing local and national human rights legal instruments. These gaps point to the need for interdisciplinary and applied research that moves beyond descriptive analysis toward normative and practical solutions (Muhajarah & Soebahar, 2024).

In response, this study aims to synthesize reconstructive fiqh perspectives with human rights principles into an analytical framework that is both theoretically grounded and practically applicable. It further seeks to explore the potential for a constructive reconstruction of fiqh that is responsive to human rights norms by drawing on the tradition of *uṣūl al-fiqh* and modern hermeneutical theory. Ultimately, this research endeavors to formulate an operational framework of the fiqh of tolerance that can inform public policy and institutional practices, thereby positioning fiqh hermeneutics as a normative foundation for pro-human rights governance. In doing so, the study bridges the gap between theological theory and social practice and contributes to the development of contemporary fiqh discourse and the advancement of human rights in Indonesia (Alvian & Ardhani, 2023).

## RESEARCH METHOD

This study employs a qualitative research approach grounded in library-based research, which is appropriate for normative, conceptual, and interpretive analysis in social and legal studies (Aspers & Corte, 2021; Cooper & White, 2012; Flick, 2018; Hannes et al., 2022; Hennink et al., 2020). The research focuses on the systematic search, critical reading, and in-depth analysis of both primary and secondary sources. These sources include classical and contemporary works on fiqh and *uṣūl al-fiqh*, writings by modern Muslim thinkers on tolerance and human rights, international human rights legal instruments, constitutional texts, as well as reports issued by human rights and freedom of religion or belief (Kebebasan Beragama dan Berkeyakinan/ KBB) monitoring institutions. Data collection was conducted through the identification, classification, and systematic documentation of normative arguments related to the construction of the fiqh of tolerance and human rights discourse within the context of religious plurality.

Data analysis follows the interactive model developed by Miles and Huberman, which consists of three interrelated stages: data reduction, data display, and conclusion drawing and verification (Ridder, 2014). During the data reduction stage, all collected materials—including fiqh and *uṣūl al-fiqh* texts, works by contemporary Muslim thinkers, international human rights instruments, constitutional documents, and KBB reports—were read repeatedly, coded, and organized into key analytical themes. These themes include, but are not limited to, the concept of the fiqh of tolerance, *maqāṣid al-sharī‘ah*, freedom of religion or belief, minority rights protection, and practices of religious plurality in Indonesia.

The data display stage involved the construction of thematic matrices and analytical charts that juxtapose fiqh-based categories with human rights principles—such as non-discrimination, freedom of religion, and minority protection—alongside empirical findings on KBB violations. This analytical mapping enables the identification of points of convergence, tension, and potential normative negotiation between Islamic legal reasoning and human rights frameworks. In the final stage, conclusion drawing and verification were carried out through iterative interpretation, including the comparison of classical fiqh arguments with contemporary reconstructive fiqh approaches and international human rights standards. Cross-source consistency was examined to ensure analytical rigor, leading to the formulation of a dialectical conceptual model of the fiqh of tolerance that is compatible with human rights principles and responsive to the realities of religious pluralism in Indonesia.

## RESULTS AND DISCUSSION

### *Tolerance Fiqh as a Normative Framework for Religious Freedom*

Fiqh tolerance is a hermeneutic approach to Islamic law that seeks to integrate the principles of justice, humanity, and respect for basic

human rights, especially freedom of religion. Epistemologically, the fiqh of tolerance grows from basic sharia values such as *al-'adl* (justice), *al-rahmah* (compassion), *al-hurriyyah* (freedom), and *al-karāmah al-insāniyyah* (human dignity). These principles are not only normative, but also have practical significance in the context of a pluralistic society such as Indonesia. Moreover, the fiqh of tolerance seeks to interpret the texts of the Qur'an and Hadith within the framework of social reality, so that Islamic law can be an instrument to strengthen social cohesion and guarantee the basic rights of every citizen (Fadl, 2002).

Religious freedom, as affirmed by international human rights scholars, is a human right that is *non-derogable*—it cannot be diminished under any circumstances and is the foundation for respect for other rights (Bielefeldt et al., 2016). This principle resonates strongly with Islamic teachings, especially verses such as *lā ikrāha fī al-dīn* (Q.S. 2:256) which affirms the prohibition of coercion in religion. However, in the Indonesian context, the implementation of these principles is often faced with socio-political issues and legal approaches that are not always in line with sharia principles and universal human rights values (Kholish, 2021). This is where the fiqh of tolerance plays an approach that is able to present a bridge between religious norms and constitutional norms.

The Indonesian Constitution affirms that the state guarantees the freedom of every citizen to embrace religion and practice worship according to his or her beliefs (1945 Constitution Articles 28E and 29). Philosophically, this guarantee is rooted in the concept of the Pancasila state which positions religion as the moral foundation of the public without making it a tool of exclusivity. Thus, freedom of religion is not only a legal guarantee, but also a common social ethics. However, its implementation is not always in line with these values. Some administrative norms such as the licensing of houses of worship and regulations regarding the flow of beliefs often create tension between the rights of individuals/minorities and the perception of the majority.

The fiqh of tolerance can strengthen these constitutional guarantees by offering a theological basis that diversity is *sunnatullah*, God's decree that cannot be negated. The Qur'an states that humans were created into nations and tribes to know each other (Q.S. 49:13), not to eliminate each other. Contemporary Islamic thinkers such as Abdullah Saeed emphasize the need for a contextual approach in understanding the verses of interreligious relations to avoid exclusive interpretations that can hinder religious freedom (A. Saeed, 2006). Thus, the fiqh of tolerance is not only harmonious, but also enriches the guarantee of religious freedom provided by the constitution.

Historically, the practice of tolerance in Islam has emerged since the time of the Prophet Muhammad. The Charter of Medina, considered the first multireligious constitution in history, stipulates that Jews, Muslims, and pagans are positioned as one political community (*ummah wāhidah*)

without discrimination in civil rights. Many modern Muslim scholars, such as Muhammad Abu Zahrah and Fazlur Rahman, view the charter as strong evidence that Islam recognizes religious rights and legal protection for minorities (Raḥmān, 2002).

In the treasures of classical fiqh, the principle of tolerance is also seen through the concept of *ahl al-dhimmah* which provides legal protection, security, and freedom of worship for non-Muslims in Islamic jurisdictions. Although this concept is no longer politically relevant today, its normative essence—the protection and recognition of differences of belief—is still in harmony with the idea of modern religious freedom. Wael Hallaq, in his study of sharia ethics, emphasized that Islamic law essentially has a flexible moral basis and is able to adapt to the development of society (Hallaq, 2009a, 2009b, 2013).

The concepts of *ahl al-dhimmah* and the Charter of Medina are frequently cited as classical references for Muslim–non-Muslim relations. However, both frameworks reveal significant limitations when applied to the context of contemporary religious pluralism and modern citizenship. Normatively, the doctrine of *dhimmah* provides protection for non-Muslims (*ahl al-kitāb*) in exchange for political loyalty and the payment of *jizyah* (Saeed, 2025). While historically this system offered a degree of security that, in some periods, surpassed the treatment of religious minorities in pre-modern Europe, it nevertheless rests on a hierarchical legal structure. From the perspective of human rights and equal citizenship, the *dhimmah* framework positions non-Muslims in a differentiated legal status, involving restrictions on access to public office, the construction of houses of worship, and unequal fiscal obligations. Contemporary scholars argue that adopting *dhimmah* as a normative model for modern nation-states risks legitimizing structural discrimination, as modern citizenship is founded on the principle of equal rights regardless of religious affiliation (An-Na‘im, 1990; Abou El Fadl, 2002; Bhat, 2023).

In contrast, the Charter of Medina is often highlighted as an early precedent for a “pluralist constitution” that unites various religious tribes and communities in a single political entity (*ummah wāhidah*), while still recognizing their respective religious autonomy: “for the Jews of their religion and for the Muslims of their religion” (Arjomand, 2009). Socio-legal analysis shows that the Charter of Medina is not a *dhimmah*-style protection contract, but a horizontal political agreement that affirms the basic equality of the parties in terms of security, defense responsibilities, and dispute resolution. This is where the limitations of classical fiqh appear: many constructions of post-classical political fiqh were developed more on the paradigm of *dhimmah-dār al-Islām-dār al-Harb* than on the spirit of citizenship with the Charter of Medina, making it difficult to apply directly within the framework of the modern constitutional state.

Therefore, many contemporary scholars propose an epistemological

shift from fiqh *ahl al-dhimmah* to fiqh *al-muwāṭanah* (citizenship fiqh) (Malik, 2018.), which reinterprets the proofs of shari'i with the rules of *'illah* and *maqāṣid*. When the historical causes underlying *jizyah* and political subordination are lost (the structure of the caliphate, the wars between religious blocs), then the law is no longer relevant. In this framework, the Charter of Medina is read as a source of value for the model of equal citizenship—not as a literal legal package—while terminology such as *ahl al-dhimmah* is suggested to be removed from positive legal discourse because it is no longer ethically and politically acceptable to today's non-Muslims. For the Indonesian context, this kind of critical reading opens up space to formulate a fiqh of tolerance and fiqh of citizenship that departs from the spirit of protection and coexistence in the classical tradition, but leads to the format of equal rights and obligations of citizens under the constitution, not to a subordinate protection status. This can be used as a guideline for Indonesia in guaranteeing religious freedom.

Indonesia faces a number of challenges in guaranteeing religious freedom, including: (1) increasing religious conservatism; (2) politicization of religious identity; (3) administrative discrimination against minority groups; and (4) violence or social intolerance against groups that are considered different. Human rights reports show that restrictions on religious freedom are often rooted in exclusive religious interpretations as well as local political practices that exploit religious sentiments (Crouch, 2011)

The fiqh of tolerance offers a normative solution to these challenges. First, the fiqh of tolerance provides a theological basis that coercion or discrimination on the basis of religion is contrary to *maqāṣid al-syārī'ah*, especially the principles of the protection of the soul (*hifz al-nafs*), reason (*hifz al-'aql*), and religion (*hifz al-dīn*). Second, he encouraged the reconstruction of the Islamic education curriculum that emphasizes plurality as an ethical value, not a threat. Third, the fiqh of tolerance directs religious people to see differences as a space for dialogue, not confrontation.

One of the important elements of tolerance fiqh is the commitment to interreligious dialogue. Dialogue, according to David Tracy, is a form of "authentic encounter" that allows different communities to establish ethical relationships without losing their respective identities (Tracy, 1990) In Islam, interreligious dialogue has a strong foundation through the principle of *ta'āruf* (knowing each other) and the command to be fair to everyone, including adherents of other religions (Q.S. 60:8).

In Indonesia, interreligious dialogue is an important part of efforts to reduce social tensions. Islamic organizations such as Nahdlatul Ulama and Muhammadiyah have a long tradition of building harmonious relations with non-Muslim communities. Theoretically, however, the fiqh of tolerance provides a more systematic foundation for the practice of dialogue: it affirms that dialogue is a moral imperative, not just symbolic diplomacy. Thus, the fiqh of tolerance has the potential to become a national ethical framework

in strengthening religious freedom.

Religious freedom cannot be guaranteed only through moral appeals; It needs public policy support. The fiqh of tolerance can serve as an ethical foundation in the formulation of more inclusive policies, for example:

1. Revise the regulation on the licensing of houses of worship so that it does not depend on the approval of the majority, but on the principles of human rights and minority protection.
2. Strengthening multicultural education at all levels of education.
3. Training of state apparatus on the right to freedom of religion and sensitive approaches to religion.
4. Community-based mediation mechanisms inspired by the values of tolerance fiqh, such as deliberation, minority protection, and justice.

In the context of the Pancasila state, this integration is very relevant because the fiqh of tolerance does not contradict the values of Pancasila, but rather enriches its practice through a more inclusive religious perspective.

Fiqh tolerance emphasizes that religion should be a source of peace, not conflict. Thus, it can be the basis of public ethics for a pluralistic society. Public ethics that are rooted in the fiqh of tolerance have at least three main characters. The first is moral inclusivity, which is equal recognition of the dignity of all human beings. The second is Justice which is respecting the rights of minorities and preventing the tyranny of the majority. The third is dialogue, which is to make differences a space for social cooperation.

These characteristics are parallel to John Rawls's concept of public reason, which emphasizes that public ethics in democratic societies must be capable of mediating moral and religious differences (Rawls, 2005). In this sense, the fiqh of tolerance functions as a bridge between Islamic normative principles and modern democratic ethics. Accordingly, the fiqh of tolerance can be understood as an integrative framework that connects core values of shari'a with human rights principles and the reality of Indonesia's religious plurality. Its strength lies in its capacity to provide both normative guidance and practical relevance for the protection of religious freedom and social harmony. To support this framework, the hermeneutical approaches of Fazlur Rahman and Nasr Hamid Abu Zayd offer methodological tools for reinterpreting fiqh texts in light of contemporary Indonesian pluralism, democracy, and human rights discourse (Rahmān, 2002).

In Rahman's framework, the theory of double movement requires two simultaneous movements: first, to return to the historical context in which the text was born (the Qur'an, Sunnah, and the formulation of fiqh) in order to capture the ethical rationality behind particular provisions. Second, move back from these general-moral principles to contemporary issues (Rahmān, 2002; M. Yusuf et al., 2021). When applied to the fiqh of tolerance, the first step demands a rereading of the classical postulate of ahl al-dhimmah, jihad, or Muslim-non-Muslim relations as a historical response to a particular

political and security situation, not as an immutable final construction. The second step is to formulate normative principles – such as justice, protection of the soul, freedom of belief, and protection of minorities – which are then rearticulated within the framework of the nation-state and the Indonesian constitution that guarantee the equality of citizens. With this approach, the fiqh text of tolerance is not canceled, but “elevated” to the level of principles and then relegated in the form of regulations and social ethics compatible with pluralism and human rights.

Abu Zayd complements this perspective with humanistic hermeneutics that emphasizes the textuality and *discoursiveness* of religious texts: texts are always the product of interaction with socio-cultural contexts and only acquire meaning through historical and critical reading (Zayd & Wright, 2018). Fiqh tolerance, in this lens, is understood as a historical discourse that reflects the power relations and social horizons of its time, so it must be read critically: which are the ethical-universal layers (respect for human dignity, prohibition of the imposition of faith) and which political-historical layers can be revised. For the Indonesian context, this opens up space to formulate citizenship fiqh and harmony fiqh that no longer depart from the dichotomy of *dzimmi-harbi*, but from the category of equal citizens bound by the constitution, so that tolerance fiqh functions as a criticism of the practice of intolerance – not as a legitimacy of religious hierarchy.

### ***Religious Intolerance in Indonesia: Constitutional Gap and Practice on the Ground***

Religious intolerance in Indonesia shows a sharp paradox between constitutional guarantees and practice on the ground (Lindsey & Pausacker, 2016). The 1945 Constitution guarantees freedom of religion and worship (Hefner, 2000), but various international reports show a recurring trend of violations against minority groups through restrictions on houses of worship, the use of blasphemy articles, and discriminatory regulations at the central and regional levels (Hefner, 2013; Marshall, 2018). This gap shows that the state's normative commitments are often reduced when faced with intolerant group pressure and local political calculations, so that the constitutional rights of minorities are easily negotiated on the grounds of “order” and “harmony”

One clear indicator of this gap is the repeated closure or restriction of minority houses of worship in recent years (Human Rights Watch, 2024). Reports from the Setara Institute and international monitors show an increase in disturbances to places of worship, from 50 cases in 2022 to 65 cases in 2023, predominantly affecting churches and non-mainstream religious groups (Setara Institute, 2023, pp. 15-21). Several cases in West Java illustrate how local governments justify closures by citing permit deficiencies or community objections, despite constitutional guarantees and court rulings that protect the right to worship (Imparsial, 2025). These cases demonstrate how administrative

regulations – particularly house of worship permit requirements – function as effective tools for restricting religious freedom at the local level.

The closure of the Immanuel prayer house in Garut in 2025 exemplifies this pattern. Local authorities, supported by religious leaders, permanently sealed a prayer house that had served the Christian community since 2010 and compelled its leader to leave the area after signing a statement under official supervision (Majid, 2025). This action goes beyond an administrative dispute and reflects a violation of the principle of non-discrimination, as state actors acted not as protectors of constitutional rights but as enforcers of local pressure.

The gap in norms and practices is also evident in the use of blasphemy articles and the expansion of new criminal laws that expand the criminalization of religious expression. A report by the United States Commission on International Religious Freedom (USCIRF) (Davern, 2024) and other policy analyses show that the new Criminal Code expands the “blasphemy” and insult to religion sections, potentially reinforcing the climate of fear among minorities and believers. In many cases, reports of blasphemy start from differences in intra-religious interpretations or expressions on social media, then develop into mass pressure that the authorities respond to with a swift criminal process, while protection for suspects, which should be legally guaranteed, is weak. Thus, laws that are supposed to be protectors often turn into tools of legitimizing intolerance.

The case shows that the main problem is not the absence of norms, but the institutional and regulatory configurations that allow the majority to veto minority rights. State institutions such as local governments, religious harmony forums, and technical ministries often act as facilitators or facilitators of violations, for example by not taking action against perpetrators of violence, delaying permits, or pushing for relocation solutions instead of full restoration of rights. From the perspective of tolerance and human rights fiqh, this situation underscores the need for an approach that not only emphasizes inclusive religious ethics, but also criticizes legal and policy structures that give birth to “conditional tolerance” for minorities. Reform of the regulation of houses of worship, restrictions on blasphemy articles, and strengthening the accountability of the apparatus are conditions for bridging the distance between constitutional ideals and the practice of religious freedom in the daily lives of Indonesian citizens. In this context, the fiqh of tolerance is urgent as an approach as well as a reference in the formulation of regulations.

The fiqh approach to tolerance in other Muslim countries can be an important lesson for the Indonesian context. In Malaysia, the concept of *wasatiyyah* (moderation) is positioned as a framework for fiqh and state policies to manage multireligious societies (Abd Khahar et al., 2025; Muhajarah & Soebahar, 2024; F. Yusuf et al., 2025). The concept emphasizes a balance between commitment to sharia and respect for the religious rights

of non-Muslims, based on the principles of *lā ikrāha fī al-dīn, rahmatan lil-ālamīn*, and *maqāṣid al-syarī'ah*. This concept is institutionalized in official discourse (constitution, da'wah policy, and interfaith programs) as a theological justification for coexistence, although recent research shows that tensions persist when the claim of Islam as the religion of the Communion intersects with the demand for full equality of minorities.

Turkey offers a different model, in which state institutions such as the *Diyanet* manage religion within the framework of a secular-secularized state, with Sunni-Hanafi as the main reference of fiqh (Kars, 2014; Ozturk & Gozaydīn, 2014; *Yabancı*, 2022). On the other hand, contemporary studies show that state policies often marginalize groups such as Alevi and minority churches because the official definition of "Sunni-Turkic Islam" is used as a "normal" standard of citizenship. This model is relevant for Indonesia as a warning that the centralization of fiqh authority by the state without strong protections for intra-religious diversity can give birth to new forms of structural intolerance.

Morocco presents another configuration: the king as *Amīr al-Mu'minīn* becomes the official guarantor of the religious field, with a 2011 constitution affirming Islam as the state religion (U.S. Department of State, 2024) at the same time recognizes the Jewish community as an integral component of the nation and promises the protection of freedom of worship. The renewal of the "religious sphere" made *Mālikī* fiqh and the value of tolerance a normative reference for the protection of Jewish minorities and foreign Christian communities, although international reports still noted restrictions on apostasy and non-Muslim preaching to Muslims. For Indonesia, Malaysia's experience emphasizes the importance of explicit articulation of *maqāṣid* and *wasatiyyah* in policy; Turkey warns of the dangers of the state's monopoly of Sunni interpretation; and Morocco shows the role of religious political authorities in making fiqh tolerance an umbrella of constitutional protection for minorities.

### ***The Dialectic of Fiqh and Human Rights: A Space for Value Negotiation***

In discussions of human rights jurisprudence, fiqh is often initially associated with matters of 'ubūdiyyah. Traditionally, fiqh has been understood as a normative guide for religious practice (Kholish, 2021). However, contemporary social realities present increasingly complex issues that extend beyond classical ritual concerns. In response, fiqh has undergone conceptual expansion, reflected in the emergence of terms such as journalistic fiqh, educational fiqh, and women's fiqh. These developments indicate an effort to reposition fiqh as a dynamic framework capable of engaging with modern challenges while maintaining its religious orientation (Fadl, 2002).

The international community has recognized and championed the recognition of human rights through various international conferences. However, many people around the world consider that human rights are not in accordance with Islamic law, and are even considered a kafir product. The

purpose of granting rights to non-Muslim citizens is to build and strengthen a strong social community (Jandra et al., 2020) This is exemplified by the Prophet PBUH and is based on the words of Allah in Surah An-Nisa' verse 1 as follows:

"O people, fear your Lord who created you from one person and from whom God created his wife; and from both Allah multiplied many males and females. And fear Allah in whose name you ask each other and maintain friendship. Indeed, Allah is always watching over you."

The role of fiqh in the life of the nation and state is important in providing legal guidance based on Islamic religious values. Fiqh has a major role in regulating the relationship between individuals and God (vertical relationships) and relationships between individuals and other individuals (horizontal relationships).

1. Provides legal guidance: Fiqh regulates various aspects of life such as worship, muamalah (economic transactions), criminal law, civil law, and others. Fiqh provides rules that become guidelines for Muslims in carrying out their daily lives.
2. Maintaining justice: Fiqh plays a role in maintaining justice and equality in society. The principles of fiqh respect human rights, avoid oppression, and provide protection to the weak or marginalized.
3. Maintaining social harmony: Fiqh teaches moral and ethical values that are the basis for interacting with others. This helps in maintaining social harmony, promoting mutual respect, tolerance, and cooperation between citizens.
4. Helps in the formation of public policy: Fiqh provides guidance and principles that are relevant in the formation of public policy. These principles include justice, social welfare, law enforcement, and the state's responsibility to its citizens.
5. Maintaining morality and integrity: Fiqh has a role in shaping the morality and integrity of individuals. The principles of jurisprudence teach Muslims to act honestly, fairly, and avoid acts that harm themselves and others.

Thus, fiqh has a broad role in the life of the nation and state, both in providing legal guidance, maintaining justice, maintaining social harmony, assisting in the formation of public policies, and maintaining morality and integrity in society (Darmawan, 2020)

The Islamic legal system that regulates ritual worship and the relationship between humans and Allah, between humans and fellow humans, and with other creatures, is based on two main sources, namely the Qur'an and al-Hadith, as well as two legal principles, namely ijma' and qiyas. Basically, this legal structure is the basis for thinking about ijtihad in the current context (Husni, 2020) The importance of this delivery

is to avoid misunderstandings related to the principles of Islamic ideology. Today, the concept of human rights is still heavily influenced by Western ideology, so Islamic values that are often different from Western ideologies are considered not universal.

To understand the value system embraced in Islam, it is very important to refer to one of the verses from the Qur'an:

O you who have believed! Obey Allah and obey the Messenger (Muhammad), and Ulil Amri (the ruler) among you. Then, if you have a difference of opinion about something, then return it to Allah (the Qur'an) and the Messenger (the Sunnah), if you believe in Allah and the Day of Resurrection. That is more important (for you) and better as a result.

This verse explains several concepts that, according to Maududi's view, are related to the basic constitution of Islam. According to him, the highest law for believers, in accordance with the Qur'an, is obedience to Allah and His Messenger, which is derived from shari'ah (Islamic law) and not the result of human ijтиhad. This shari'ah is fixed and unchangeable, in contrast to the results of ijтиhad in Fiqh. In Maududi's view, no Muslim has the right to issue a law in a matter that has been regulated by Allah and His Messenger. Breaking the law of Allah and His Messenger is considered an act contrary to faith and is the opposite.

The meaning of freedom, as described in item number 4 of the declaration of human rights in France published in 1879, is the ability of human beings to carry out their activities and activities without harming others (Mu'ti & Burhani, 2019) This means that freedom is not absolute in terms of time and place. Freedom has a relative nature in civil law and in the context of modern democracy in Western countries, as well as relative within the framework of Islamic democracy (Muhlashin, 2021)

In legal terminology, freedom means that individuals have the ability to be different from others, so that they can speak, act, and behave according to their own will without external pressure or coercion. However, it is important to note that this freedom still has certain limitations.

To understand the limits of these freedoms, we can refer to two main concepts: the concept of freedom in Islam and the concept of freedom in human rights (HAM). These two concepts play an important role in determining how individual freedom is governed and explained within a variety of legal and social frameworks (Mu'ti & Burhani, 2019)

This statement states that every individual has the right to freedom of religion or belief. Consequently, there should be no acts of coercion that interfere with a person's right to choose and adhere to his religion or personal beliefs (Budijanto, 2016). This right is a very important issue in various religions and beliefs. However, it is often the subject of debate, even among religious scholars, including among Muslim scholars and the general public.

The debate on the relationship between Islam and Islamic culture

with Western views on community organizations and human rights has been widely discussed (Warjiyati, 2019) One of the striking points of debate is the issue of religious freedom. This illustrates that there is a fundamental difference between Islam and Western views on important issues such as religious freedom. It should be noted that this view can be the subject of complicated debate and many different interpretations.

Debates on religious freedom reflect divergent perspectives regarding its scope, limits, and implementation within different social and political contexts. While some individuals and groups advocate for the full protection of religious freedom, others emphasize contextual restrictions shaped by cultural, political, and normative considerations

Adda Bozeman highlights these divergences by contrasting Islamic and Western cultural perspectives on religious freedom. She argues that Western interpretations often perceive Islamic culture as pragmatic and authority-centered, particularly in matters related to religious norms and the use of coercive power. From this viewpoint, Islam and the West are seen as operating within fundamentally different cultural logics that shape their respective understandings of religious freedom and authority (Cesari, 2019; Mesrati, 2022). However, this perspective represents one strand of interpretation and remains subject to substantial scholarly debate, given the internal diversity within both Islamic and Western traditions.

In contrast, James Piscatori offers a more nuanced assessment of Islam's relationship with human rights. He argues that Islamic teachings on the sanctity of life, protection of property, tolerance, and social solidarity reveal points of convergence with modern human rights principles. At the same time, Piscatori notes that classical Islamic legal traditions do not formulate the concept of inalienable individual rights in the modern sense and retain distinctions based on religion and gender (Seeth, 2021). Taken together, these positions illustrate the plurality of scholarly interpretations, suggesting that the relationship between Islam and human rights is neither monolithic nor static but shaped by ongoing negotiations between normative traditions and contemporary contexts.

Piscatori's analysis further implies that while Islamic values support human dignity and social ethics, they do not automatically translate into modern human rights frameworks centered on individual autonomy and religious freedom. Islam places strong emphasis on devotion to God and on human dignity as a divinely granted status rather than as a purely legal entitlement. In this regard, the Qur'anic concept of *al-karāmah al-insāniyyah* (human dignity) and *al-faḍīlah* (moral virtue) affirms the elevated status of human beings. The prophetic mission as *raḥmatan li al-‘ālamīn* underscores the universal orientation of welfare and benefit for humanity and the broader environment (Rahmat, 2017). These concerns are not limited to theological discourse but are also central to the reflections of classical jurists, particularly *al-Shāṭibī*, who emphasized the protection of human welfare (*maṣlahah*) as a core objective of Islamic law.

In his work, “*al-Muwafaqat fi Ushul al-Ahkam*,” Imam al-Syatibi formulated five main purposes of sharia that were revealed for mankind. With an inductive-thematic approach (*al-istiqra’ al-ma’awi*), al-Syatibi concluded that the purpose of establishing sharia is into five categories, namely maintaining religion (*hifzh al-din*), preserving the soul (*hifz al-nafs*), preserving reason (*hifzh al-aql*), preserving posterity (*hifzh al-nasl*), and preserving property (*hifzh al-mal*). These five sharia goals are known as *maqasid al-shariah*.

This approach underscores the importance of safeguarding essential aspects of human life. Within the development of Islamic thought—particularly through the framework of *maqāṣid al-shari‘ah*—there remains ample space for scholars to reinterpret and adapt these objectives in response to evolving social contexts and contemporary challenges (Johnston, 2007). This adaptability reflects the resilience and continuity of Islamic legal thought in addressing changing realities.

In this regard, Islam affirms the freedom of individuals to practice their religion while rejecting coercion in matters of faith. Religious belief, in Islamic theology, is grounded in conscious conviction rather than compulsion or blind imitation (*taqlīd*) (Fasa, 2017). Consequently, faith is understood as a domain open to reflection, inquiry, and ethical reasoning.

The Qur'an further reinforces this orientation by repeatedly inviting human beings to reflect upon nature, the earth, and the broader cosmos as signs (*āyāt*) of divine wisdom. Such reflection is intended to cultivate informed belief and moral awareness, suggesting that genuine religious commitment emerges through critical thought, observation, and openness to the signs of God in creation. As Allah says:

“They even said, ‘We have found our fathers to follow a religion, and indeed we are the ones who are guided by the footsteps of the brand.’” (Q.S. Azkhruf/33:22).

Then in another verse Islam itself does not require coercion on religion:

“There is no compulsion to (enter) the religion (Islam); Indeed, it is clear that the right path is from the wrong path. Therefore, whoever disobeys Thaghut and believes in Allah, then he has held on to a very strong rope that will not be broken. and Allah is All-Hearing and All-Knowing”. (Q.S. Al-Baqorah/2:256).

In Islam, basic beliefs are usually built through rational thinking and a deep understanding of the verses of the Qur'an. The use of reason and deep understanding is highly emphasized in Islam. With this approach, naturally grown and well-understood understandings and beliefs tend to be stronger and more solid.

In addition, it should be emphasized that in Islam, it is important to avoid *taqlid* (blind proclaim) and coercion in religious affairs. Islam respects the freedom of individuals to choose and practice their religion according

to their beliefs without any pressure. Changing or embracing a different religion is a personal decision that must be made consciously and with the right understanding. As stated in the Quran:

“So warn me, for indeed you are only the one who warns. You are not the one who has power over them.” (Q.S. Al-Ghosiyah/88:21-22).

In Islam, freedom and independence are considered human rights, including the right to practice religion according to individual beliefs. It is important to note that in Islam, sharia (Islamic law) is a product of Allah, who first announced the foundations of freedom and human rights, both theoretically and practically. This was before the modern world began to recognize such rights, which did not happen until the late 17th century AD.

As a natural consequence of the recognition of human rights, there is cooperation between individual human beings, groups of individuals, and individual institutions in safeguarding these rights. It reflects the freedom to convert and the fundamental recognition of human unity emphasized in the Qur'an. Thus, Islam views that individual freedom and respect for human rights are an integral part of its teachings, and this has been recognized by Islam long before the development of modern human rights concepts (Faezy & Asmak, 2020)

## **CONCLUSION**

Thus, the fiqh of tolerance as a normative framework of reconstructive fiqh offers an integrative solution to the crisis of religious freedom in Indonesia, by synthesizing the principles of *maqāṣid al-syarī'ah* (protection of religion, soul, intellect, descent, property, and dignity) with universal human rights standards such as Article 18 of the ICCPR and the Pancasila constitution, thus being able to bridge the gap between the authority of traditional texts and the demands of contemporary pluralism. In the midst of rampant intolerance, this approach not only criticizes discriminatory regulations such as PBM and SKB 11, but also formulates an inclusive hermeneutics based on *wasaṭiyah* that rejects exclusivism, affirms *lā ikrāha fī al-dīn* (QS. al-Baqarah: 256), and recognizes plurality as *sunnatullah* (QS. al-Hujurāt: 13). The operationalization of tolerance fiqh is used as a dialogical model that combines empirical analysis of cases of intolerance, reconstruction of social fiqh. The policy recommendation is in the form of a revision of the rules for houses of worship so that the permit requirements are based on technical-administrative criteria, not majority approval. The role of FKUB is limited as a facilitator of non-binding dialogue. Apply deadlines for decisions and sanctions as well as the obligation to protect the authorities on the right to worship minorities.

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