



Lisan Al-Hal : Jurnal Pengembangan Pemikiran dan Kebudayaan

Volume 16, Issue 2, December 2022

e-ISSN : 2502-3667, p-ISSN : 1693-3230

<https://journal.ibrahimy.ac.id/index.php/lisanalhal>

INITIATING CITIZENS FIQH: SOLUTIONS FOR MINORITY MUSLIMS IN NON-MUSLIM COUNTRIES

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Abstract:

This article finds that fiqh had historical roots, where history had a functional relationship with ushul fiqh. It referred to in terms of ushul fiqh with the causality of an event, namely *asbāb al-nuzūl* (chronological text of the verses of the Qur'an) and *asbāb al-wurūd* (chronological text of hadith). This type of research was field library research. This was done by studying and analyzing the sources of literature with the approach used was qualitative. These two things inspired the formation of civic fiqh that can be applied in non-Muslim countries. Because Muslim minorities living in non-Muslim countries difficult to apply the teachings of Islam in a normal and comprehensive manner. Therefore, the application of civic fiqh had historical roots in the Prophet SAW and followed the historical process of its formation, namely: gradual, minimal burden, and no narrowness. The construction of civic fiqh for the Muslim minority was an emergency. If one day the conditions were good and normal, then Islam must be carried out comprehensively. Islam had two eternal dimensions that always survive (*tsawabit*) and was flexible according to benefit (*taghayyurat*).

Keywords: Jurisprudence, Citizenship, a Muslim minority, state, non-Muslim

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Received : October 20, 2022; Revised : December 8, 2022; Accepted : December 14, 2022; Published : December 21, 2022

INTRODUCTION

Currently, the world's Muslim population is recorded at one and a half billion people or about 23% of the entire population of the earth.¹ Muslims are scattered in more than 120 countries, while in 35 to 44 countries, Muslims are recorded as the majority, while in about 29 countries, Muslims are an influential minority. In 28 countries, Islam is established as the official religion such as in the Islamic Republic of Iran, Egypt, Kuwait, Iraq, Morocco, Pakistan and Saudi Arabia. The four countries whose population is Muslim are Indonesia, Pakistan, Bangladesh and India. This last country (India) is interesting to observe in terms of numbers. Although the number of Muslims in this country is quite large (more than 200 million people),

¹ L. Carl Brown, *Religion And State : The Muslim Approach To Politics* (New York : Columbia University Press, 2000), 143.

Muslims in this country are still in a position as a minority when compared to Hindus who are much larger in religion dominating India. The position of Muslims as a majority and a minority is not only determined by the large number of Muslims in this country but is also determined by the proportion of the population that embraces other religions. While the Middle East countries and several countries in Asia. Even though 90% of the people are Muslim, they are not the country with the most Muslim population.²

When the word minority is combined with Muslims, what is meant is to become a minority group united in the same religious character, namely with “a group of Muslims living under the rule of a non-Muslim government in the majority of people who are not Muslim”.³ In other words, they live in a country where Islam is a religion that is neither a reference to the rules nor a culture of the majority of the population. The number of this Muslim minority is very significant. Estimated total Muslim population in the world is estimated at 1,160,095,000 billion people, with about 336.42 million people living as minorities.⁴

Based on tragic discrimination against Muslim minorities in several Asian countries, such as Rohingya Muslims in Myanmar, Pattani Muslims in Thailand, Moro Muslims in the Philippines, and Uighur Muslims in China's Xinjiang. This has very implications for their religion whether they can practice Islam as a whole or not. This is because religion has a significant function in human life (what religion does). In other words, what is the view of Islamic law on the existence of their citizenship, so that it can be used as a guide in carrying out Islamic sharia properly?

The purpose of this research is to find out the existence of minority Muslim citizenship in non-Muslim countries and the views of Islamic law regarding the existence of minority Muslim citizenship in non-Muslim countries. The three stages in the activity are not linear but run simultaneously. This research relates to how is the existence of minority Muslim citizenship in non-Muslim countries. what is the view of Islamic law regarding the existence of minority Muslim citizenship in non-Muslim countries?

This type of research is field library research. This is done by studying, studying, and analyzing the sources of literature with the approach used is qualitative. This study uses three analyses, namely data reduction, data display and conclusions or verification.

Previous research includes *Fiqh al-Aqalliyāt* (minority fiqh). Among the initiating figures are Thāhā Jābir al-Alwānī and Yūsuf al-Qarḍāwī. Thāhā Jābir wrote *Nazarat al-ta'sisiyah fī fiqh al-aqalliyāt*. Yūsuf al-Qarḍāwī wrote a book entitled, “*Fiqh al-Aqalliyāt al-Muslimāt Hayāt al-Muslimīn Wasaṭ al-Mujtama'āt al-Ukhrā*”. The book “*Ṣinā'ah al-Fatwā wa Fiqh al-Aqalliyāt*” by Shaykh Abdullāh bin Bayyah. In Indonesia, Ahmad Imam Mawardi wrote a work entitled “Minority Fiqh” (Dissertation of IAIN Sunan Ampel 2008). Mawardi explained the relationship between *fiqh al-aqalliyāt* and *maqāṣid al-sharī'ah* and fiqh's answers regarding the citizenship status of Muslims living in non-Muslim countries. However, this study does not touch on Muslim citizenship in non-Muslim countries from the perspective of Islamic law.

² Ibid, 156

³ Taj al-Sirr Ahmad Harran, *Hādir al-'Alām al-Islāmī* (Riyādh: Maktabah al-Rushd, 2007), 142.

⁴ Ahmad Imam Mawardi, *Fiqh Aqalliyāt: Pergeseran Makna fiqh dan Ushul Fiqh*, (makalah), 43.

RESULT AND DISCUSSION

The phenomenon of Muslim Minority Citizenship Discrimination

Its reality clearly illustrates that the number of Muslim minorities is not small, let alone accumulated with the number of other minorities. Therefore, their existence needs to get serious and maximum attention from world countries, especially Muslim countries so that their fate is not always marginalized and their rights are not often forgotten. However, this debate about minority rights continues in the academic arena and has not yet found an endpoint, because the issue of minority rights is also still ongoing along with the political issues of interest that surround it.⁵ But on the other hand, Muslim citizenship in a country where the majority of the population is non-Muslim does not fully receive fair and humane treatment. Some of them received discriminatory treatment, were pressured politically and economically, experienced physical oppression, and even faced systematic genocide. Surprisingly, their screams and suffering did not get the attention they deserved from the world. The oppression and slaughter they experienced seemed to be a thing of the past. Even Muslim countries did nothing to save them. These Muslim minorities have to fend for themselves to survive under the tyranny of the non-Muslim majority.⁶

Reality shows that there has been discrimination against Muslim minorities in several Asian countries. Among them are the bad luck experienced by Rohingya Muslims in Myanmar, Pattani Muslims in Thailand, Moro Muslims in the Philippines, and Uighur Muslims in China's Xinjiang, as follows:

1. Rohingya Muslims in Myanmar

The tragic fate of the Rohingya minority living in northern Arakan, precisely in Rakhine State, Myanmar. A record shows, more than 6,000 Muslims died as a result of the atrocities of the Buddhist majority supported by Myanmar's military junta. As a result of these atrocities, thousands of Rohingya Muslims were forced to flee to the closest countries, namely Bangladesh and Malaysia, and even reached Aceh. Those who could not leave the country had to accept the cruel treatment of the army.⁷

Statistically, Rohingya Muslims in Myanmar account for around 4.0% or about 1.7 million people of the country's total population of 42.7 million. According to records in Images Asia: Report On The Situation For Muslims In Myanmar in May 1997, this number has decreased dramatically. Previously the number of Muslims there was about 7 million people. They mostly came from India during the British colonial period in Myanmar. After the death of Britain, the anti-colonial movement in Myanmar tried to get rid of people from ethnic India, including those who embraced Islam. This discriminatory action continues systematically. In

⁵ Patrick Loobuyck, *Liberal Multiculturalism A Defence of Liberal Multicultural Measures without Minority Rights*, dalam *Ethnicities*, Vol. 5, No. 1, 2005, 113-114.

⁶ KH. Tijani, Makalah, *Umat Islam di Negara-negara non-Muslim*, disampaikan dalam kuliah umum di Ma'had Aly Sukorejo, 1995, 22.

⁷ <http://hizbut-tahrir.or.id>. Diakses 10 mei 2014 jam 20.00 wib.

1978 and 1991, the Myanmar military launched special operations to eliminate Muslim leaders in Arakan, triggering a massive exodus of Rohingya to Bangladesh.⁸

Myanmar's military junta known as the State Law and Order Restoration Council (SLORC) has always tried to trigger racial and religious conflicts. The goal is to divide the population so that the regime can still control the political and economic spheres. In 1988, SLORC provoked anti-Muslim upheaval in Taunggyi and Prome. Then in May 1996, anti-Muslim writings believed to have been written by SLORC spread across four cities in Shan State. This resulted in violence against Muslims. In September 1996, SLORC demolished a 600-year-old mosque in Arakan State and used the rubble to pave the road connecting the new military headquarters to the area. From February to March 1997, SLORC also provoked anti-Muslim movements in Karen State.⁹

Many mosques were destroyed, and the Koran was torn up and burned. Muslims in the state were forced to flee. Based on Myanmar Digest, in 2005, an order appeared that Muslim children born in Sittwe, Rakhine State (Arakan), were not allowed to obtain birth certificates. As a result, until now many children do not have birth certificates. In addition, National Registration Cards (NRC) or resident cards in the State of Myanmar are no longer given to those who embrace Islam. Those who desperately need the NRC must be willing to include Buddhism in their religion column. Since 1982, the Myanmar Citizenship Act has not recognized Rohingya Muslims as citizens of Myanmar. The government regards them as illegal immigrants from Bangladesh or their descendants. This also triggered the Rohingya Muslims to leave the country. Even though they are not an exodus, they are like being imprisoned in their homeland. They cannot freely travel anywhere, even to neighbouring cities in the country. The military junta always asks for official letters.

Due to the atrocities of the military junta, more than 200,000 people are currently living in refugee camps in Bangladesh. They live modestly, just to avoid atrocities in their country. This is still tolerable because the fate of hundreds of other people who were stranded in Thailand was worse. The land of the White Elephant, Myanmar's closest neighbour, refuses to host them.¹⁰

2. Pattani Muslims in Thailand

Muslims in southern Thailand feel no longer strong under the rule of the King of Thailand. The cruelty and suffering they experienced under Buddhist rule made them intend to separate themselves. Various attempts were made but failed because the Thai government faced it with a much more powerful and sophisticated rifle muzzle. Muslims in Thailand are in three provinces namely Yala, Pattani, and Narathiwat. Their number is not much, only about 1.8 million people. This is a small number compared to Thailand's population of more than 64 million people. The suffering they experienced was nothing new. From the beginning, these Pattani Muslims had to accept 'Siamization' in all fields. This is difficult for them to accept because of the very different culture. Siamization means 'Buddhaization'.

⁸ KH. Tijani, *Umat Islam di Negara-negara non-Muslim*, 23.

⁹ Ibid, 24.

¹⁰ Ibid, 25

Pattani Muslims are very different from the Thai population in general. At first, Pattani was an Islamic empire. Citing the 2007 book Thailand published by the local government, Pattani Province along with Songkhla, Yala and Narathiwat Provinces, the four were dubbed as Pattani Darussalam which means the combination of the four Muslim-majority provinces in southern Thailand.¹¹

Thailand itself took control of the Muslim country in 1875. When the British controlled the Malacca Peninsula. There was a division of power. The territory of Pattani was still controlled by Thailand, while Perlis and the area that became the State of Malaysia were now controlled by the British. The Kingdom of Thailand in its development carried out acts of discrimination against them. One of them is injustice in all fields. Economically, Pattani's development is far behind compared to the Buddhist-majority region. The Pattani people are even explicitly shackled to their freedom, especially with the enactment of alternating laws ranging from martial law, and civil emergency to terrorism law.

Therefore, until now the Pattani Muslim community lives in fear, similar to the atmosphere in Aceh during the Military Operations Area/DOM. Their lives are closely monitored by the Thai military. The atrocities of the Thai soldiers were recorded in the mass killings at the Kerisik Mosque in Pattani and Tak Bai in the Menara area (2004) and the al-Furqan Mosque in the Menara area (2009). Nearly 100 people died at the hands of the army and that does not include the rape of Muslim girls and the destruction of Muslim youth through drugs. This gave birth to the liberation movements of Patani Darussalam to rise to fight back until now.¹²

3. Moro Muslims in the Philippines

Moro Muslims in the Philippines as in other non-Muslim majority countries, discrimination against Muslim minorities is very strong in the country, and Moro Muslims in the Philippines are no exception. In a country that was once a Muslim-majority population, there are only 5-7 million Muslims or 8.5% of the Philippines' population of 66 million.¹³

Compared to their non-Muslim brethren, the Muslims who live mostly on the island of Mindanao are far behind. This is because the Philippine government regards them as rebels. Though the region is the most fertile and rich in natural resources in the Philippines. But the facts show, this area is the poorest region in the country and there is no development, after the conflict that began four decades ago. The Philippine government forbids Muslims from ruling their territory and controlling their wealth. It is not strange if they feel they are still being colonized. Therefore, shortly after independence, the Muslims there fought against the government. The rebellion peaked in the 1970s. Their fight is inseparable from a long history. Since the days of Spanish colonialism, Muslims have tried to expel the infidel invaders. This is mainly done by the Sultans who are in the south of the Philippines. The sultans could not be subdued by the Spanish. However, the attempt failed. The Philippines before being

¹¹ Ibid, 26.

¹² Ibid.

¹³ Ibid 26.

colonized by Spain was still predominantly Muslim, turning into Catholicism, except in the southern part.¹⁴

The atrocities began with the rule of Spain. It continued to happen when America colonized the Philippines. Again, Muslims are being targeted. By deceit, America scattered the Moro Muslims and oppressed them. Likewise, when the Philippines became independent in 1946, the government that was formed continued the same policy, namely oppressing Muslims.¹⁵

4. Uighur Muslims in China's Xinjiang

Tragic fate also continues to be experienced by Muslims of Xinjiang, China. There are about 8.5 million Muslims in this region with 23 thousand of mosques. China's population alone reaches 1.3 billion people. They are constantly afflicted with extreme suffering and labelled as terrorists.

Xinjiang is an autonomous region -not a province- in China. Its full name is Xinjiang Uyghur Autonomous Region. It is bordered by the Tibet Autonomous Region to the south and Qinghai and Gansu Provinces to the southeast. Xinjiang is also bordered by Mongolia to the east, Russia to the north, and Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan and Kashmir to the west.

The indigenous people of Xinjiang come from Turkic races who are Muslim, especially the Uighurs (45.21%) and the Kazakhs (6.74%). In Xinjiang, there is also the Han tribe, which is the majority ethnic group in China. Statistically, Uighur Muslims are the majority in Xinjiang, but day by day they are increasingly marginalized. The term 'autonomous region' set by the Chinese government is just a name. Their religion and culture were severely suppressed by the Chinese government. In the economic field, the people of the Han tribe were in power, including controlling oil fields and trade routes. Besides being rich in minerals, oil and gas, China's largest reserves, Xinjiang is very important geopolitically. Therefore, to control Xinjiang, the Chinese government has taken various steps, including shackling the rights of Muslims to practice their religious rituals and teachings. For example, the existence of Islamic schools, mosques and imams is strictly controlled. In this case, Muslims in this country experience significant discrimination from all aspects of life, including their religion.

In the period 1995-1999 AD, the government demolished 70 places of worship and revoked the permits of 44 priests. The government has also implemented a ban on individual worship in state-owned places. This prohibition includes a ban on praying and fasting during Ramadan in state-owned offices or schools. The tremendous pressure from both the State and the Han people can trigger them to choose to secede from China. As a result, the plan further puts the Chinese government in control of Xinjiang and oppresses Muslims. Victims have fallen in recent months. Although there are many human rights violations in these non-Muslim majority countries, the world has not made a real defence. The world only gives

¹⁴ Ibid, 27.

¹⁵ Ibid, 28.

criticism and curses without any real action. Meanwhile, discussions and meetings only resulted in decisions that could not stop their atrocities against Muslims directly.¹⁶

In the case of Rohingya, ASEAN Secretary-General Surin Pitsuwan expressed deep concern over the violence against Rohingya Muslims in Myanmar. The Indonesian government is doing the same thing as the country with the largest Muslim population in the world. Reality describes the many sufferings experienced by Muslims from Pattani, Moro, to Rohingya. In this case, Indonesia does not see its role in saving the Muslims there. Even though Indonesia is one of the most populous countries, it is very logical that it can play a role in preventing discrimination against Muslims in the Rohingya.

The attitude of the Organization of the Islamic Conference (OIC). As in the past, the OIC has always condemned atrocities against Muslims without being able to do much. Various OIC meetings were held with zero results. They simply held a meeting ritual to show the existence of the organization. Meanwhile, the United Nations (UN) is busy planning to issue resolutions in its various sessions. There is never any story of the UN sending troops to prevent atrocities against Muslims unless there are political interests behind it. On the other hand, the United Nations is behind the massacre of Muslims like what happened in Bosnia and Herzegovina. This attitude of the United Nations for the umpteenth time proves the existence of Western double standards towards the Islamic world. They seem to 'bless' the extermination of Muslims from the face of the earth. On the other hand, when there are violations against non-Muslims – especially Christians/Catholics – the organization is very alert. Therefore, there has never been a story about peacekeepers protecting Moro people, Pattani residents, Xinjiang residents, Palestinians and other Muslims around the world. This is a fact that Muslims are oppressed in their country and also indirectly oppressed by the world's global conspiracy.¹⁷

Citizenship Jurisprudence: Solutions for Minority Muslims

Based on the data above, Muslim citizenship in non-Muslim countries has experienced some grievous discrimination. As a result, their practice of Islam is not optimal. Even the most tragic pressure from non-Muslim groups is in the political, economic, educational and so on. Whereas in the early history of Islam, the Prophet SAW tried to avoid the continuous oppression in Mecca by emigrating to Medina with his Companions as the first community in Islam. Previously the Prophet SAW allowed some of his Companions to emigrate to Habasyah (Ethiopia) a country with a majority Christian population on the African continent. The Muslims received protection and security from King Najash for a long time until the news was heard that Islam had triumphed in Medina. During this period, some of the Muslims in Mecca were found to have received protection from several Quraysh infidel figures,¹⁸ including the Prophet SAW on several occasions also receiving security guarantees from bū Ṭālib¹⁹ and other Quraysh figures such as Muṭ'im bin 'Adī.²⁰

¹⁶ Ibid, 30-31.

¹⁷ Ibid, 30.

¹⁸ Sa'īd Ramaḍān al-Būṭī, *Fiqh al-Sirāh* (Damaskus: Dār al-Qalām, 1998), 126.

¹⁹ Ibid, 124.

²⁰ Ibid, 138.

The Prophet SAW in Medina established the capital city of the rapidly growing Islamic State. After organizing the State capital in Medina the Prophet allowed the Bedouin tribes who had embraced Islam but did not wish to emigrate to Medina to remain in their hometowns. However, the Prophet SAW emphasized the virtue of emigrating and joining him and his companions in Medina. From a tactical point of view, the capital city of the Islamic State, the fledgling Medina needs the support of the entire fledgling Muslim community, as well as from an ideological perspective for a new Muslim (*Muallaf*), staying close to the Prophet and his Companions is an opportunity to be able to receive and study and transfer the knowledge of the new religious teachings directly (*talaqqī*). Apart from that, the Prophet himself still allowed Muslims to move and live outside the Islamic area, he did not want every Muslim to move and migrate to the capital of the Islamic State, Medina as was the case with some of the Companions who remained in the city of Mecca.²¹

Minorities of Muslim citizenship have long lived in non-Muslim areas since the first century of Islam, and after the eleventh century, many Muslim communities came under the non-Muslim rule. As a result, extensive juristic discourses have long emerged, discussing the legal status of living in these non-Muslim territories and the obligations and duties of these Muslim minorities. As stated in the Qur'an and Sunnah that the message of the Prophet SAW is a universal message and mercy for all humans and the universe.²² Therefore, it is not natural to question the existence of Muslims in non-Muslim countries or infidel countries, as the classical fiqh experts used to say. If we agree with the opinion of some scholars who are against their existence in infidel countries, then the door of Islamic da'wah and its spread throughout the world will automatically be closed and locked.

If we re-open the pages of history and reflect on it deeply, then we find the reality that the spread of Islam throughout the Arabian peninsula and other Islamic regions is due to the da'wah struggle of the scholars, traders, and Sufis who wandered far from their home countries to convey the message of Islam anywhere. they are. So that Islam is currently the official religion in parts of Asia, Africa, and Europe such as Indonesia, Malaysia, Sudan, Tunisia, Egypt, Morocco, Bosnia, and other countries throughout the world.

The Islamic preachers got along well with the natives, sincerely helped, and had *akhlaq al-karimah*, until they were loved and the locals flocked to embrace Islam willingly and with joy. Even nations that were conquered militarily by Islamic leaders, basically aimed at introducing Islam to the indigenous population. It is proven that when the Islamic da'wah has been delivered by scholars, they have the opportunity to study it and embrace it voluntarily. So that the Muslim government during the Umayyad period took a legal policy to continue to enforce the *jizya* on the Egyptian population who converted to Islam at that time, and it was only cancelled during the leadership of Khalifah Umar Bin Abd al-'Aziz with his famous motto:

²¹ Ibid, 191.

²² Nawawi, "Ta'sis Maqashid asy Stari'ah li Radd al-Fikr al-Irhabi wa at-Tatharrufi," dalam QIJIS (Qudus International Journal of Islamic Studies) 2017/8/26

إِنَّ اللَّهَ بَعَثَ مُحَمَّدًا هَادِيًا وَلَمْ يَبْعَثْهُ جَائِيًا

Meaning: "Verily Allah SWT sent Prophet Muhammad SAW as a giver of guidance, not a tax collector"²³

In this context, the response of Islamic law to the issue of citizenship of Muslim minorities is not entirely new, because the early Muslims had received practical answers and solutions from the Prophet SAW in facing the difficulties and challenges of the Quraysh infidels so that they were able to maintain their faith and Islam well. Security guarantees from several Quraysh figure to the Prophet SAW and his Companions, the protection of King Najasy, and the acceptance of the Yathrib population to the Hijrah of the Prophet SAW and the Muhajirin Companions are some of the forms of reality in the life of the early Muslim minority.

Jamāl al-Dīn 'Aṭīyyah Muhammad gives the character of minority as a limitation of his definition. According to him, a group is called a minority if: first, in terms of numbers, it is less than the total population of the majority. Second, they do not have power and power so their rights and obligations need to be protected. Third, it has the characteristics of its minority that distinguishes it from the majority, whether based on group, ethnicity, culture, language or religion.²⁴ Salaḥ Sulṭān, an observer of Muslim minorities and at the same time a supporter of the presence of *fiqh al-aqalliyyāt*, stated that the term Muslim minority is not only seen in terms of numbers, but also from the legal rights they have. According to him, there are two forms of Muslim minorities: first, are minorities based on the number of souls, as exists in Europe, America, India and China; and the second is a minorities based on legal rights. In this second case, even though they are in the majority position, Muslims suffer the same fate as most minorities, which are constantly being abused and discriminated against, such as in Kashmir, Chechnya, Uzbekistan and Azerbaijan.

Some experts also divide Muslim minority groups into two groups, namely:²⁵ first, the indigenous people, most of them are scattered in several Eastern European countries and Russia such as Bosnia Herzegovina, Kosovo, Macedonia, Albania, Bulgaria, and several former colonial Asian countries. Soviet Union such as Uzbekistan, Tajikistan, Kazakhstan, Azerbaijan and others. Many of their lives have been deprived of the noble values of the teachings of the creed, sharia, and Islamic morals, including the disconnection of communication with the Islamic world. They do not know much about Islamic thought and Islamic behaviour in daily life. One thing that only connects them with Islam is the phrase *Lā ilāha illa Allāh Muhammad Rasūlullāh* which was taught by their parents without knowing its meaning and essence, not understanding the consequences of the testimony, not knowing much about the figure of the Prophet Muhammad, and it is very difficult to get mushaf and study the Qur'an. an. Second,

²³ Yūsuf Qarḍāwī, *Fī Fiqh al-Aqalliyyāt al-Muslimāh* (Kairo: Dār al-Syurūq, 2005), 33

²⁴ 'Aṭīyyah Jamāl al-Dīn Muhammad, *Nahwa Taf'īl Maqāšid al-Sharī'ah* ('Ammān: al-Ma'hād al-Ālamī li al-Fikr al-Islāmī, 2001), 7-8. Definisi senada juga dipakai oleh Yūsuf al-Qarḍāwī dalam bukunya *Fī Fiqh al-Aqalliyyāt al-Muslimāt Hayāt al-Muslimīn Wasaṭ al-Mujtamā' at al-Ukhrā* (Kairo: Dār al-Syurūq, 2005) 15-16.

²⁵ al-Qarḍāwī, *Fī Fiqh al-Aqalliyyāt*, 21-22.

the immigrants, come from several Islamic countries in Asia such as Afghanistan, Pakistan, and some Arab countries. At first, they consisted of ordinary people who came to several countries in Europe, America and Australia to seek sustenance for the sake of improving economic conditions. However, this continues with the positive development of Muslims in these countries which causes not only economic motives to be the only factor in the occurrence of Muslim migration in non-Muslim countries.

The following are some of the reasons why someone migrates and lives in another country, including Muslims in non-Muslim countries, as follows: First, the aspect of student exchange is one of the main factors for migration. In every country that has diplomatic relations with other countries, it is possible to do so. In addition to studying abroad, students can also understand the culture of the destination country.

Second, the financial economy aspect, when we look at it from an economic point of view, people migrate to get 'financial stability and prospects. Here's an example - of another country offers the anticipation of a better future, higher wages and an established lifestyle, everyone will think about migrating to that country. Third, the aspect of lifestyle, nowadays some people emphasize a high standard of living. It is often seen that parents send their children abroad to achieve a better lifestyle. The conclusion is that they try to reach the best level to provide their children with better career prospects and a lifestyle that is not possible in their lifetime. Immigration is the perfect answer to such parental concerns.

Fourth, the political aspect, is that political factors can be expanded with several examples, namely reasons for the security of a country and the envoy of a country/ambassador with a country that has diplomatic relations. Security reasons are one clear example that recently there have been many incidents of illegal migration, such as the example of people in Middle Eastern and South Asian countries (Iraq, Afghanistan, Iran, Pakistan and so on) who flock to seek political asylum in the United States. Other countries, such as Australia, Italy, France and other European countries.

Fifth, the business aspect, is one of the activities to improve one's lifestyle and economy. One example of a country that migrates the most to do business in China. Sixth, the tourism aspect, is trying to find another atmosphere in a culture of another country, namely travelling. Someone will migrate by travelling to meet their personal needs. Seventh, Aspects of labour, employment is a sub-category of economic reasons that have a big contribution to someone migrating. For example, Indonesia has sent its citizens as workers abroad. Although there are no accurate data guidelines, the percentage of Indonesians who migrate is around 70% in labour, 20% in terms of education and another 10% in politics. Eighth, the aspect of matchmaking, is some of the main reasons why people migrate. If one of them is planning to migrate, then he must hire the services of a professional immigration expert, in this case, namely interbreeding.²⁶

Some of these factors also have a big influence on the spread of Islamic da'wah in non-Muslim countries and it is proven that day by day more and more Western and European people are interested in knowing and studying Islam. Not even a few of them then voluntarily embraced Islam and became Islamic preachers who called on the teachings of the truth of

²⁶ Mawardi, *Fiqh Minoritas*, 57. lihat juga <http://anunyabudi.blogspot.com>. Diakses 10 mei 2014 jam 10.00 wib.

Islam. In principle, the Islamic government system has characteristics and a firm foundation, it must not submit to the demands of any power other than fulfilling the commands of Allah SWT and the Prophet SAW.

In this regard, classical fiqh scholars have different opinions regarding the Muslim population living in *dār al-kuffār*. According to Imām Mālik, al-Shāfi'ī, and Imām Ahmad, they are considered the same as Muslims who live in the State of *dār al-salām*, they still maintain their honour, blood and property. If they are going to enter the countries of *dār al-salām* they must remain protected and should not be hindered like Muslims who are citizens of the State. The majority of these fiqh scholars require Muslims living in infidel countries to be able to practice and show their religious teachings. Meanwhile, those who do not meet these requirements, he is obliged to emigrate to another country that gives them the freedom to practice their religion.

Meanwhile, Imam Ab Hanīfah believes that Muslims who are domiciled in *dār al-kuffār*, countries are not protected by their honour, blood and property, because maintaining or protecting a law is not based on Islam alone, but is also needed under the authority of Muslims. A Muslim who lives in *dār al-kuffār* cannot be guarded by the ruler of *dār al-salām*, so he is not guaranteed his honour, blood and wealth. Ibn Hazm from the ahiriyah circles forbids Muslims to live in non-Muslim countries.

In the view of the classical fiqh scholars above, at least they have different attitudes and views regarding Muslim citizens who are residents of infidel countries. According to Hanabilah, it was sunnah to migrate from the country even though he was free to practice Islam. By moving to an Islamic land, the number of Muslims is expected to increase. For that jihad can be carried out.²⁷ In contrast to Imam al-Mawardi of the Shafi'iyah circles. According to him, settling in an infidel country that frees Muslims to practice their religion, is politically more profitable. According to al-Mawardi, staying in the country is more important than emigration because he can preach to non-Muslims and increase followers.²⁸

However, al-Syarkhasī's opinion was rejected by al-Baghāwī that the obligation of hijrah never ends as long as there is an infidel state. A Muslim is obliged to emigrate from an infidel country if he feels trampled on and intimidated. Hijrah is no longer obligatory if in that country he is given the freedom to practice the religion he embraces.²⁹

Muslim jurists use vague expressions such as *iqāmah amr al-dīn* (establishing religious affairs), *izhār al-dīn* (manifesting religion), and *al-qiyām bi wājibāt al-Islām* (carrying out obligations). the religion of Islam) to describe how much religious freedom must exist before the residence of a Muslim in non-Muslim lands is considered legal. These expressions seem to throw away all determinations of the legality of settling in a particular area on a case-by-case basis. How much religious practice is deemed sufficient before a Muslim's residency can be considered legal will depend on the specific circumstances and each case is required to disclose the facts.³⁰

²⁷ Abdullāh Bin Ahmad Bin Muhammad Bin Qudamah, *Al-Mughnī*, juz 9 (Kairo: Perpustakaan Kairo, 1968), 295.

²⁸ Sa'id Hawwa, *al-Islām*, Cet. Ke-7 (Kairo : Dār al-Salām, 1432 H/2011 M), 399.

²⁹ Ahmad bin Alī bin Hajar, *Fath al-Bārī*, juz 7 (Beirut: Dār al-Ma'rifah, 1379 H), 230.

³⁰ Salamun Ali Mafaz, *Wacana Islam tentang Minoritas Muslim; Sebuah Upaya Menegakkan Keseimbangan* (Makalah, 2013), 7.

For Ibn Bayyah this problem is included in the rules of facilitating (*al-taisr*) and the rules of positioning the condition of the *hājah* in the position of the arurat condition (*tanzīl al-ḥājah manzilah al-ḍarūrah*). Therefore, every Muslim living in a non-Muslim country should estimate the extent of his emergency and his needs. The level of emergency and need will greatly affect the legal provisions of their stay in the country. Ibn Bayyah has an interesting analysis of this issue, he begins with a question about what is the essence of the definition of an Islamic State. Is the Islamic State (*dār al-Islām*) seen in terms of its population, which is mostly Muslim or in terms of the laws used in the country based on Islamic law? If the basic standard is the law, is it the whole of the Islamic law that must be applied or can it be only part of it? This basic question has made the ulama differ in their opinion in defining an Islamic State and a non-Islamic State.³¹

Therefore, being a citizen (*jinsiyyah*) in non-Muslim countries also varies according to considerations of the benefit and legal benefit of residing (*iqāmat*) in a particular country. The existence of the Muslim community, however, as a minority is very important and should not be neglected by the attention of all Muslims. Muslims as bearers of the universal message must have a strong influence and really serious concern for non-Muslim countries, especially America and European nations. Given that the West currently has a strong hegemony in the international world, both politically, economically and culturally. Thus, the condition of Muslims in these conditions must still survive, so a bargaining position is needed for the sake of creating benefits in everyday life in these countries, as the rules of convenience and eliminating difficulties (*al-Taisīr wa raf'i al-ḥaraj*).

In state law, broadly speaking, a person's citizenship can be obtained, namely first, based on the citizenship of the parents (*ius sanguinis*). Second, based on the place of birth (*ius soli*), third, based on the principles of *ius sanguinis* and *ius soli*. Fourth, through naturalization (through marriage, for example, a wife who takes her husband's citizenship, or by an application submitted to the State). Based on the criteria above, it is clear that Muslims have fulfilled the requirements for legal citizenship. For this reason, the state guarantees freedom to its citizens to exercise freedom of thought, attitude, action and so on.³² Consequently, Muslim minorities in non-Muslim countries do not need religious discrimination, because they are legal citizens under the applicable legal system of the State.

Actually, between Muslim and non-Muslim nationalities there is no principle difference because their status is also the same as residents. The difference between residents and non-residents, citizens and non-citizens are related to differences in rights and obligations between people who are in the territory of the State. The status of a citizen has a close relationship with the government of the country concerned. The citizenship status of a country will have the following implications: first, the right to diplomatic protection abroad is a citizenship right. A country has the right to protect its citizens abroad. Second, citizenship demands loyalty, and one form of loyalty is the obligation to carry out military service. Third, a country has the right to refuse to extradite its citizens to other countries.³³ In addition, the

³¹ Abdullah Ibnu Bayyah, *Ṣinā'ah al-Fatwā Wa Fiqh al-Aqalliyāt*, (Beirut: Dār al-Minhāj, 2007), 280.

³² Adji Samekto dan Dobby Kridalaksana, *Negara dalam Tata Tertib Hukum Internasional* (Semarang: Rosda Karya, 2008), 59.

³³ *Ibid*, 59.

power of the State applies to everyone in the territory of the State concerned. No citizen can exclude himself from the influence of state power. In this regard, the regulations made by the State in principle apply to everyone in the territory of that State without exception. When the rules have been made or established, everyone is considered to know and must obey them. Anyone who violates will be subject to sanctions under applicable regulations. Being a citizen is not something that is based on involuntary membership, and herein lies the difference between membership in a country and membership in other voluntary associations or organizations.³⁴

In the legal aspect, Muslim minority citizenship has protection from any country in the world. However, because there is political power and power that dominates certain majority religions, the implication is that minority religions are discriminated against. According to Achmad Gunaryo,³⁵ the law, whether in the form of a law or otherwise, is not value-free or neutral. Its existence, especially national law, represents the outcome of the struggle to attract various political interests. However, in this tug-of-war, the winners are those who have power or in sociological terms the dominant group.

In the context of a State, any State is obligated to protect its citizens regardless of race, culture, ancestry, and religion. In the context of religion, there are many clashes and even religious discrimination. This is because every country, regardless of the ideology it adheres to, carries out an absolute minimum function. First, carry out enforcement (law and order). To achieve common goals and prevent clashes in society, the State must carry out enforcement. It can be said that the State acts as a stabilizer. Second, seek the welfare and prosperity of its people. This function is considered very important, especially for new countries where the level of public welfare still needs attention from the government. Third, defence, where its function is to defend the State from possible attacks from outside so the State must be equipped with defence tools. Fourth, uphold justice. To realize justice, the state has judicial bodies.³⁶ Likewise, according to Charles E. Merriam, the functions that must be carried out by the state include the function of external security, the function of internal order, the function of justice, the function of public welfare, and the function of freedom.³⁷ Thus, Muslim minorities must obtain protection and guarantees from the State fairly and social welfare following the function of the State itself.

Likewise, minority Muslim citizens in non-Muslim countries can develop in all aspects of life, including their religion freely. This is in line with the opinion of Roger H. Soltau, that the State aims to enable its people to "develop and carry out their creativity as freely as possible" (the freest possible development and creative self-expression of its members). Meanwhile, according to Harold J. Laski, the goal of the state is "to create conditions in which its people can achieve maximum satisfaction of their desires" (creation of those conditions under which the members of the state may attain the maximum satisfaction of their

³⁴ Miriam Budiarjo, *Dasar-dasar Ilmu Politik*, (Jakarta: Gramedia, 2010), 50.

³⁵ Achmad Gunaryo, *Pergulatan Politik dan Hukum Islam* (Semarang: Pustaka Putra dan Pascasarjana IAIN Walisongo, 2006), 375.

³⁶ Budiarjo, *Dasar-dasar Ilmu Politik*, 55.

³⁷ Ibid

desires).³⁸ In this regard, America and Europe politically, culturally, and philosophically must not be allowed to grow stronger under the influence of Jewish interests and conspiracies. Muslims should not remain silent and allow this to happen by hiding in their respective countries leaving this opportunity to the other party. Every condition of Muslims in a certain space of time a legal consideration of syar'i law as the rules of placing the Muslim community in the position of judges (*Qiyām Jamā'ah al-Muslimīn Maqām al-Qāḍī*).

With the advancement of the State and the modern standard of living of human civilization, all forms of discrimination automatically disappear and are no longer valid. Therefore, the rights of Muslim minorities in non-Muslim countries must be guaranteed by the State. Likewise, the State must guarantee their freedom of religion so that violence does not occur in the name of religion. According to Budiarjo, in new countries where the national consensus on common goals is not yet strong, the nature of this coercion is more visible. In more democratic countries, efforts are made to use violence to a minimum and as far as possible to put forward persuasive ways to resolve various national problems.³⁹

At the political level, non-Muslim minorities have the same sovereign rights as the rest of the population. Benedict Anderson views the nation as an imagined political community within a clearly defined and sovereign territory. It is said to be an imagined political community because even the smallest nation whose members do not know each other. Imagined in a limited way because even the largest nation with a population of hundreds of millions has clear boundaries. Imagine being sovereign because this nation is under a state that has power over the entire territory and nation. Finally, the nation is referred to as an imagined community because regardless of the gap, the members of that nation always view each other as brothers and sisters in the country. It is this feeling of compatriotism that causes millions of people to be willing to die for the imagined community.⁴⁰

In principle, the citizenship of Muslim minorities in non-Muslim countries is equal in solidarity with other citizens. According to Ernest Renan, a professor at Sorbonne University that the nation is a unity of solidarity, a unity consisting of people who feel loyal to each other, and friends with one another. the people concerned are willing to be made in the future. The state has a past, but it continues itself in the present through a clear reality: namely, an agreement, a clearly expressed desire to continue to live together. Therefore, a country does not depend on the common origin of race, ethnicity, religion, language, geography, or other similar matters. However, the presence of a State is as if a collective agreement occurs every day.⁴¹

In the face of some pressure from non-Muslims, they cannot practice Islam as a whole, so Islam gives dispensation according to the needs that surround them, as in the book of ushul fiqh which is known as *rukḥṣah* (dispensation). Even in the Hadith it is explained that Allah SWT gives *rukḥṣah* as Allah gives a law in the form of *'azīmah* (original law). Of course, this is in line with the goals of Islamic law, namely for the sake of achieving human benefit. In

³⁸ Miriam Budiarjo, *Dasar-dasar Ilmu Politik* (Gramedia. Jakarta, 2010), 54.

³⁹ Ibid, 50.

⁴⁰ Ramlan Surbakti, *Memahami Ilmu Politik* (Jakarta: PT. Grasindo, 1992), 42.

⁴¹ Harsja W. Bachtar, *Wawasan Kebangsaan Indonesia: Gagasan dan Pemikiran Badan Komunikasi Penghayatan Kesatuan Bangsa* (Jakarta: Bakom PKB Pusat, 1992), 23.

principle, Islamic law adheres to the principle of “*jalb al-maṣālih wa dar’u al-mafāsid*” (maintaining benefit and rejecting damage).⁴² Meanwhile, the purpose of Islamic law is inseparable from three main points, namely maintaining *maṣlaḥat arūriyyāt* (primary needs), *maṣlaḥat hajjiyyāt* (secondary needs), and *maṣlaḥat taḥṣiniyyāt* (tertiary needs). Islam maintains the benefit of arūriyyāt by giving freedom to carry out worship practices and legal provisions.⁴³

The objectives of Islamic law can be broken down into five objectives (*al-maqāsid al-khamsah* or *al-kulliyat al-khamsah*).⁴⁴ The five goals are, first, to maintain religion (*hifẓ al-dīn*). Religion is something that must be owned by humans so that their dignity can be raised higher than other dignities, to fulfil the needs of their souls, confession of faith, pronounce the two sentences of creed, perform prayers, fast for Hajj and so on, and maintain the sanctity of religion, are part of the application to maintain the religion. Second, maintaining the soul (*hifẓ al-nafs*). To preserve the soul, Islam prohibits murder, and persecution and the perpetrators of such murder or persecution are subject to *qiṣās* law. Third, maintain the mind (*hifẓ al-‘aql*). What distinguishes humans from other creatures, is first: humans have been made in the best form, compared to other creatures, and second: humans are endowed with reason. Therefore reason must be preserved, and what destroys reason needs to be prohibited. The application of mind maintenance includes the prohibition of drinking khamr and drinks that can damage the mind because khamr can damage and eliminate the function of the human mind. Fourth, maintain offspring (*hifẓ al-naṣl*). To maintain the purity of offspring, Islam regulates marriage procedures and prohibits adultery and other acts that lead to such adultery. Fifth, maintaining property and honour (*hifẓ al-mal wa al-‘ird*). Property maintenance applications include the recognition of personal rights, muamalat arrangements such as buying and selling, leasing, pawning and so on. The prohibition of usury, the prohibition of fraud, the prohibition of theft, the threat to thieves and so on. Maintenance of honour, it is forbidden to insult others and the threat of punishment for accusers of adultery.⁴⁵

Socio-politically, the citizenship of Muslim minorities in non-Muslim countries is clearly in a state of emergency that can be left to a minimum. In addition, the socio-political aspects of Muslim minorities are in the realm of mu‘amalah, where mu‘amalah is *ta‘aqquli* (rational), such as social, economic, state, civil law and criminal law. Allah does not explain in as much detail as possible in the field of muamalah, but only in the form of general rules and principles. This allows the mujtahid to practice ijtihad according to the context of his time so that Islamic law is not narrow forever.⁴⁶ In this context, Islam has provided a wide space for them, both textually and contextually based on the Qur’an and the Sunnah of the Prophet

⁴² Izz bin Abdusalām, *Qawā’id al-Ahkām*, Juz II (Beirut: Dār al-Fikr, 1985), 9.

⁴³ Al-Shāṭibi, *al-Muwāfaqāt*, Juz II (Beirut: Dār al-Fikr, 1985), 4-6.

⁴⁴ Nawawi, *Ushul Fiqh: Sejarah, Teori Lughawy Dan Teori Maqashidy*, CV Literasi Nusantara Abad, 2021/12/1.

⁴⁵ Nawawi, “Konstruksi Maqashid Syari’ah Progresif: Dari Maqashid Eksklusif Menuju Inklusif,” dalam *Lisan Al-Hal: Jurnal Pengembangan Pemikiran dan Kebudayaan*, 14.1 (2020), 109-136.

⁴⁶ Abdu al-Karīm Zaidan, *al-Wajīz fī uṣūl al-fiqh*, (tp.: 1976), 158.

SAW.⁴⁷ Through a set of instruments and technical instructions from the work of scholars based on *maqāṣid al-sharī'ah* (sharia goals) and fiqh rules, which are broad and flexible.

Historically, history has a functional relationship with *ushul fiqh*. Historical studies according to the context of the term *ushul fiqh* become '*illat*' the determination of one law following the causality of an event that occurred, in other languages, it is more popular as *asbāb al-nuzūl* (chronological text of the verses of the Qur'an) and *asbāb al-wurūd* (chronology of Hadith texts).⁴⁸ These two things have inspired the formation of civic fiqh that can be applied in non-Muslim countries as a form of mercy from Allah SWT. Because Muslim minorities living in non-Muslim countries are very difficult to apply the teachings of Islam in a normal and comprehensive manner. Therefore, the application of civic fiqh has historical roots in the Prophet SAW legally. Likewise, it is following the historical process of establishing Islamic sharia (*tarīkh al-tashrī'*), namely: gradually, with less burden, and no narrowness. This is a characteristic of Islamic law which is always accommodating and solutions to contemporary problems.

Based on the explanation above, citizenship fiqh is closely related to Muslim minorities in non-Muslim countries and has varied legal implications. The construction of the framework on the citizenship of Muslim minorities following Islamic Shari'ah is perfect and comprehensive in various human needs in every space and time without change or change. This is in line with Sayyid Muhammad al-Mālikī's opinion that Islamic Shari'a includes two basic principles, namely: the Qur'an and the Sunnah. The eternal Islamic Shari'ah always survives and is flexible in its legal content following the general benefit, but on the condition that it must not ignore the law of Allah SWT, contradict Islamic principles, and change Islamic Shari'ah.⁴⁹

CONCLUSION

Based on the explanation above, it can be concluded that civic fiqh has historical roots, where history has a functional relationship with *ushul fiqh*. It referred to terms of *ushul fiqh* with the causality of an event that occurs, namely *asbāb al-nuzūl* (chronological text of the verses of the Qur'an) and *asbāb al-wurūd* (chronological text of Hadith).⁵⁰ These two things have inspired the formation of civic fiqh that can be applied in non-Muslim countries. Because Muslim minorities living in non-Muslim countries are very difficult to apply the teachings of Islam in a normal and comprehensive manner. Therefore, the application of civic fiqh has historical roots in the Prophet SAW and is following the historical reasoning of the formation of Islamic sharia, namely: gradual, minimal burden, and no narrowness. This is a characteristic of Islamic law which is always accommodating and solutions to contemporary problems. The construction of civic fiqh for the Muslim minority is an emergency. Namely, if

⁴⁷ Nawawi, "Moderation of Islam and Local Culture in Indonesia: An Argument of Islamic Law," dalam *Jurnal Italienisch*, 2022/9/19, 744-752.

⁴⁸ Nawawi, *Pengantar Studi Hadis*, Malang, 2021, CV Literasi Nusantara Abad.

⁴⁹ Sayyid Muhammad bin Alawī al-Mālikī, *al-Insān al-Kāmil*, (Jeddah: Sahar, 1980), 342-349.

⁵⁰ Nawawi, *Pengantar Studi Hadis*, Malang, 2021, CV Literasi Nusantara Abad.

one day the conditions are good and normal, then Islam must be carried out comprehensively because Islam has two eternal dimensions, always survive (*tsawabit*) and are flexible in legal content according to benefit (*taghayyurat*).

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