

# POLITICAL ASYLUM IN ACCORDING TO ISLAMIC LAW

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## ABSTRACT

Islam mengharuskan bagi setiap manusia menjaga dirinya dari segala bentuk ancaman yang dia hadapi; dalam ataupun luar. Ancaman bisa hadir kepada penduduk asli Negara tersebut atau pendatang (pengungsi) sehingga dia ingin mendapatkan suaka di negara tersebut. Namun yang dewasa ini terjadi, banyak para pengungsi yang terlantar dan tidak menemukan jalan keluar dari penderitaan yang ia alami sebelumnya, bahkan beberapa kasus bahwa suaka politik dijadikan sebagai tameng untuk melindungi dirinya dari kesalahan yang ia perbuat di negara asalnya. Maka, harus ada regulasi yang mengatur hal ini, agar suaka politik benar-benar dapat memberi perlindungan dan tidak dijadikan tameng bagi mereka yang ingin berlindung dari kesalahan. Untuk mengetahui aturan Islam terhadap isu suaka politik, tulisan ini setidaknya memberikan jawaban terhadap permasalahan yang timbul akibat peperangan, ekonomi, bencana alam, dan lain sebagainya dengan atas nama kemanusiaan.

**Kata kunci:** *suaka politik, pengungsi*

## DEFINITION OF ASYLUM IN ACCORDING TO ISLAMIC LAW

In Arabic, asylum can be called by *al-malja'*. Meanwhile, according to the origin of the word, he has several meanings. Among them as a verb, the word means "refuge" as in the phrase: "Someone took refuge in the fortress". That is, he took refuge from the danger to live is inside the fort. While *al-malja'* as a noun is a place or object that is used to shelter from dangerous things, such as forts, mountains, hills, and caves.<sup>1</sup>

<sup>1</sup> Abu El Wafa, *Hak-Hak pencari suaka politik dalam pandangan Islam dan Hukum*

defeated by the Muslims in a war, and

- 3) non-Muslims residing in the territory of the Islamic state in other ways.

As already explained, for Muslim citizens who fall into the territory of the Darus Salam then he has accepted its existence. This suggests that the regulations were implemented, or duty charged will be the same as native citizens.

As for *dzimmi*, there are some obligations that must be done in Darus Salam as long as his presence in that country. These obligations such as; both of them should help each other between citizens, pay a wage war as same as believers as long as they are still in a state of war<sup>10</sup>, paying an annual tribute to protect their lives and their derivatives.<sup>11</sup>

#### 1) Jizya

Jizya is state dues (*dharibah*) required of the people of the Book as a counterweight to attempt to defend them and protect them, or as a counterweight that they get as what were obtained by Muslims themselves, both in self-independence, maintenance of property, honor, and religion<sup>12</sup>.

Jizya is based on the Word of God in the Qur'an<sup>13</sup>:

قَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ  
وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا  
الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

*"Fight those who believe not in Allah or The Last Day, nor hold that*

10 Zuhairi Miswari. *Madinah; Kota Suci, Piagam Madinah, dan Teladan Muhammad SAW*. (Jakarta: Kompas: 2009), p.462

11 Abul A'la Al Maududi, *loc.cit.*, p.303

12 Djazuli. *Fiqh Siyasah: Implementasi Kemashlahatan Umat dalam Rambu-rambu Syariah*. 4<sup>th</sup> Edition. Revised Edition. (Jakarta: Kencana). 2009 p.229

13 QS. At-Taubah : 29

*forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the Religion of Truth, from among the people of the Book, until they pay the jizya with willing submission, and feel themselves subdued."*

Number of jizya should be set according to their financial position. Rich people should pay more, the middle class must pay the amount under the rich, and the poor pay the most inexpensive. They are poor at all or does not have a fixed income or a dependent of another person, or have absolutely no income, no need to pay the jizya, and commanded that we just picked up the jizya that are not burdensome.<sup>14</sup>

Jizya which is taken from non- Muslim citizens is zakat's balance drawn from Muslim citizens. Since every citizen who is able to give a portion of his property shall be for the public good, as a proportion of the rights they receive.<sup>15</sup>

#### 2) Kharaj (Ground Rent)

Kharaj earth is a tax imposed on the owner of the land in return for the rights they receive<sup>16</sup>.

Kharaj essentially is one of the obligations that must be met by the *dhimmi*.<sup>17</sup>

Allah Al- Mighty says<sup>18</sup>:

أَمْ تَسْأَلُهُمْ خَرْجًا فَخَرَّاجُ رَبِّكَ خَيْرٌ وَهُوَ خَيْرُ الرَّازِقِينَ

*"Or is it that thou asked them for some recompense? But, the recompense of thy Lord is best."*

14 Abul A'la Al Maududi. *Hukum Dan Konstitusi Sistem Politik Islam*. (Bandung : Mizan.1995), p.305

15 Djazuli. *Fiqh Siyasah: Implementasi Kemashlahatan Umat dalam Rambu-rambu Syariah*. 4<sup>th</sup> Edition. Revised Edition. (Jakarta: Kencana. 2009), p.230

16 Abu Hasan Al- Mawardi. *Al- Ahkamus Sulthoniyah wa Wilayatud Diniyah*. (Kuwait: Maktabah Daar Ibnu Qutaibah). 1989, p. 186

17 Djazuli, *op.cit.*, p. 228

18 QS. Al Mu'minun: 72



Base on Al-Mawardi concept, *kharaj* closely related to the *jizya* though there are differences and similarities, including<sup>19</sup>:

- a) *Kharaj* and *jizya* equally taken from the unbeliever
- b) Both are seen as *fay*<sup>20</sup> and used for *ahlu-l- fay*<sup>21</sup>
- c) Both in the compulsory when it *haul*.<sup>22</sup>
- d) Regarding the limit on the amount that must be paid, *jizya* has been set in the *nash*<sup>23</sup> for the minimum and maximum limits specified by *ijtihad*<sup>24</sup>. While the minimum and maximum number *kharaj* set by *ijtihad*.
- e) *Jizya* is only taken from the pagans / idolaters, while *kharaj* according to some scholars, drawn from the pagans / idolaters nor Muslims.

In Islam, the rights of refugees get no less than what is stipulated in international law. In fact, Islam does not allow the violation of the rights of refugees or asylum seekers because of reasons of religious differences<sup>25</sup>.

### 1) Life Assurance

God Almighty also confirmed the existence of the order to help those who enter the country to seek refuge, even though he is of a different religion, as long as does not interfere with the interests of religion. Mentioned in the Qur'an<sup>26</sup>:

- 19 Abu Hasan Al- Mawardi. *Al- Ahkamus Sulthoniyah wa Wilayatud Diniyah*. (Kuwait: Maktabah Daar Ibnu Qutaibah. 1989), p. 181
- 20 Spoils of war obtained by peaceful means
- 21 Allah and His Messenger, his family, orphan and poor, a traveller, fighter for sake of Allah.
- 22 One year period/ per annum
- 23 Text
- 24 An attempt at problem solving law made by the scholars
- 25 Abu El Wafa. *Hak-Hak pencari suaka politik dalam pandangan Islam dan Hukum Internasional*. (UNHCR . 2011), p. 147
- 26 Al- Mumtahanah 8-9

لَا يَنْهَاكُمْ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوا فِي الدِّينِ وَلَمْ يُخْرِجُواكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ.

إِنَّمَا يَنْهَاكُمْ اللَّهُ عَنِ الَّذِينَ قَاتَلُواكُمْ فِي الدِّينِ وَأَخْرَجُواكُمْ مِنْ دِيَارِكُمْ وَظَاهَرُوا عَلَىٰ إِخْرَاجِكُمْ أَنْ تَوَلَّوهُمْ وَمَنْ يَتَوَلَّهُمْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ.

"Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those are just. Allah only forbids you, with regard to those who fight (your) Faith and drive you out of your homes and support (others) in driving you out, from turning to them (in these circumstance), that do wrong."

Based on the spirit of the verses of the Qur'an over the Cairo Declaration of article (12) asserts:

Every man shall have the right, within the framework of shariah, to free movement and to select his place of residence wether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as crime.

One thing that is emphasized by the Cairo Declaration in relation to the granting of asylum to asylum seeker is if they do not conflict with the laws of sharia.<sup>27</sup>

In the address the which the Prophet (peace and blessing of Allah be upon him) delivered on the occasion of the Farewell Hajj, he said: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Ressurrection." God Almighty has laid down in the Holy Qur'an<sup>28</sup>: "Anyone who kills a believer Deliberately will receive as his reward (a sentence) to live in the Hell

- 27 Ahmad Kosasih, HAM dalam perspektif Islam: Menyingkap Persamaan dan Perbedaan Antara Barat, (Jakarta: Salemba Diniyah. 2003), p.xxii
- 28 QS. An- Nisa 93

forever. God will be angry to him and curse him, and prepare dreadful torment for him. "The Prophet (peace and blessing of Allah be upon him) has also said about the dhimmis: "One who kills a man under covenant (ie a dhimmi) will not even smell the fragrance of paradise" (Bukhari and Abu Dawud).<sup>29</sup>

The most important rights of refugees in Islamic Law is the fulfillment of the basic needs that are physical and material for refugees. Some basic needs including the food, drink and clothing.<sup>30</sup>

This is in accordance with the word of God<sup>31</sup>:

وَيُطْعِمُونَ الطَّعَامَ عَلَىٰ حَيْثُ مَسْكِنًا وَيَتِمًّا وَأَسِيرًا.

إِنَّمَا نُطْعِمُكُمْ لِوَجْهِ اللَّهِ لَا نُرِيدُ مِنْكُمْ جَزَاءً وَلَا شُكْرًا.

"And they feed, for the love of Allah, the indigent, the orphan and the captive. (Saying) "We feed you for sake of Allah alone, no reward do we desire from you, nor thanks."

They are not only limited assistance in terms of food alone, but includes a variety of other basic needs for the refugees or prisoners of war, which is needed to maintain the physical and moral health as well as maintain the security and integrity. If the verse can be practiced to sympathize prisoners of war, it is recommended to sympathize much preferred the refugees, because refugees are not running the war against the Muslims.<sup>32</sup>

The verse also indicate the existence of order in the equalization of social assurance for anyone, especially for those people who are weak. Because the distribution of welfare is a right

29 *Human Rights In Islam: The Modern perspective*, Vol.I, - Concept Of Human Right, 1<sup>st</sup> Ed, Edited By M.H.Syed. (New Delhi: Anmol Publication, 2003), p.106

30 Abu El Wafa. *Hak-Hak pencari suaka politik dalam pandangan Islam dan Hukum Internasional*. ( UNHCR . 2011), p.148

31 QS. Al- Insan:8-9

32 Ibid, p.149

that should be given to them fairly.

## 2) Freedom of Conscience and Conviction

Islam gives the right to freedom of conscience and conviction to the citizens of an Islamic State. The Holy Quran has laid down the injunction:<sup>33</sup>

لا إِكْرَاهَ فِي الدِّينِ

"There should be no coercion in the matter of faith"

Although there is no truth or virtue greater than Islam, and although Muslims are enjoined to invite people to embrace it and advance arguments in favor of it, they are not asked to spread this faith by force. Whoever accept it does so by his own choice. Muslims welcome such converts to Islam with open arms and admit them to their community with equal rights and privileges. But, Equally, Muslims have to recognize and respect the decision of people who do not accept Islam: no moral, social or political pressures may be put on them to change their minds.<sup>34</sup>

Tolerance was applied by the Prophet Muhammad in leading Medina which is consisting of various races and religions. The attitude reflected in the principles of the Charter of Medina, which contains:

"The Jews of Banu 'Awf are one nation with the mu'minin. The Jews should cling to their religion and the Muslims also hold on to their religion, as well as allies from themselves, except for those who do injustice and lawlessness. Such people will only damage themselves and their families."

As Islam respects on one in selecting a belief, it also respects one's personal life.

33 QS. Al- Baqarah : 256

34 *Human Rights In Islam: The Modern perspective*, Vol.I, - Concept Of Human Right, 1<sup>st</sup> Ed, Edited By M.H.Syed. ( New Delhi Anmol Publication). 2003



Islam recognizes the right of every citizen in an Islamic state not to interfere in his personal life indecently. Prophet also forbade people to read the papers belonging to other people even just a quick peek and trying to read the letter, then the action is reprehensible.<sup>35</sup> This is a manifestation of the right to private life.

In other hand, in the so-called modern civilized world we find that not only are the letters of other people read and censored, but even that Photostat copies are retained for future use or blackmail. Bugging devices are secretly fixed in houses so that the conversation taking place behind closed doors can be taped. In other words, in many spheres of life of individuals have no real privacy.<sup>36</sup>

The bad effect of this un-trust to another by spying on them due to their affairs is suspicion each other and bring them into awkward social intercourse and freaking out inside their mind.

### 3) Family Life

Statute of Refugees have the legal status of private life, but it is only a fraction were described, namely the respect for private life, especially marriage problems. While in Islamic law, many provisions governing family life, such as the Cairo Declaration stated that the family is the foundation of society.<sup>37</sup> One concern of Islam to the refugees is in terms of family reunification is one of his family right.

The reason why a child should not be separated between the birth mother and the immediate family is very clear, it is to fulfill the moral and psychological needs that must be possessed by humans. Therefore, Imam Ahmad ever said: "Do not separate between a

35 Mawlana Abul A'la Al Maududi. *Hak-hak Asasi Manusia dalam Islam*. Translated by Bambang Iriana Djajaatmadja. 2nd Edition. (Jakarta: Bumi Aksara). 2000, p.24

36 *Human Rights In Islam: The Modern perspective*, Vol.1, - Concept Of Human Right, 1<sup>st</sup> Ed, Edited By M.H.Syed. (Anmol Publication: New Delhi) 2003

37 Miriam Budiarto. *Dasar-Dasar Ilmu Politik*. 2<sup>nd</sup> Edition. Revision Edition. (Gramedia. Jakarta. 2008), p.239

mother with her own child, even if the mother agrees. Because this could be detrimental to the child and the mother might one day regret and hope to change the decision."<sup>38</sup>

As for marriage, Islam sets it very well. Although in Islam, actually, marriage is include human rights, but the marriage is one of the forms of worship, following the Sunnah of the Prophet.

However, the law would be different when someone will fall in *zina* (adultery) fear of not being able to control his desires, then marriage becomes a liability as the sanctity of self-preservation and fulfillment of needs, as well as the continued generation of appropriate guidance law that took him toward goodness as contemplated in *maqashid sharia*, ie *hifdzu nafs*.

### 4) Getting Education

In relation to *hifdzu-l-'aql* in *maqashid Shari'ah* principles, not only keep a person from drinking wine or prevent from harmful use of psychotropic drugs as a preventive-protective actions, but also in Islam there are rules that govern the development of brain, through the right to get an education.

Hadith of the Prophet<sup>39</sup>:

طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ

From hadis above, it could be understood that any works done by believers will surely bring results for the improvement of their lives, both in the world and the Hereafter. Thus Islam has always recognized and respect the work of someone, either in the form of objects or ideas or knowledge's results.<sup>40</sup>

Thus, the fate of asylum seekers and refugees education

38 Abu El Wafa. *Hak-Hak pencari suaka politik dalam pandangan Islam dan Hukum Internasional*. (UNHCR. 2011), p.162

39 Ibnu Majah. *Sunan Majah*. Vol1/224, p. 41

40 *Ibid*, p.85

especially children can not leave just like that, considering the importance of this right.

Associated with the right to education, Islam also stipulates that the right to enjoy the outcome of their knowledge. Mentioned in the Qur'an<sup>41</sup>:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَٰئِكَ كَانَ عَنْهُ مَسْئُولًا

"And pursue not that of which thou hast no knowledge; for surely the hearing, the sight, the heart all of those shall be questioned of."

### 5) Right to Assets; Revenue and maintenance

Work is one thing that has two essential sides in our lives. It is an obligation and rights at the same time and may not be abandoned.

In the Medina Charter stated<sup>42</sup>:

The Jews bear their livelihood and the Muslims also bear their livelihood.

This point suggests that asylum seekers Muslims and non-Muslims were given the opportunity to make a living.

Along with security of life, Islam has equal clarity conferred the right of security of ownership of property. The holy Quran goes so far as to declare that the taking of people's passions or property is prohibited unless down by lawful means: The law of God categorically declares<sup>43</sup> "Do not devour one another's wealth by false and illegal means".<sup>44</sup>

In Islamic law, the refugees' assets secured and should not be disturbed or taken outside the wishes of its owner or used

41 Al-Israa': 36

42 Zuhairi Miswari. *Madinah; Kota Suci, Piagam Madinah, dan Teladan Muhammad SAW*. (Jakarta Kompas, 2009), p.464

43 QS. Al-Baqarah : 188

44 *Human Rights In Islam: The Modern perspective*, Vol.1, - Concept Of Human Right, 1<sup>st</sup> Ed, Edited By M.H.Syed. (New Delhi: Anmol Publication) 2003, p.106

carelessly. Associated with the status of a *musta'min*<sup>45</sup>, Imam al-Nawawi says: "If there is an infidel enter the Islamic State safely or by security assurance, then the property, their children and families with guaranteed security."<sup>46</sup>

### 6) Equality in Law and Deliberation

Everyone is equal before the law (Equality before the law principle), without differentiated in terms of status or position. Similarly, a person is not found guilty before the verdict stating that he was found guilty by a judge (*qadi*) based on the evidence that is strong and reliable.<sup>47</sup>

As for *dzimmis*, they also have the same standing in law, both criminal and civil.

*Dzimmi* are bound by the same criminal law to criminal law which binds a Muslim. For example, If a *dzimmi* committed the crime of theft, the hands should be cut as will be done to the Muslims who commit the same offense. Similarly, the punishment given to a person who commits adultery with the opposite sex, the same penalty will be given to both men and women of *dzimmi* as well as Muslim and *Muslimah*. However, penalties for drink-liquor act to *dzimmi* excluded.<sup>48</sup>

Civil law also applies to both Muslims and *dzimmis*. Thus there are similarities between the two classes of full of these deals with the problem of civil law. It was meant by 'Ali when he stated that their property as sacred as the property of the Muslims themselves. The corollary of this state equation is that whatever restrictions

45 Non-Muslim people who lives at Darus Salam permanent or temporary

46 Abu El Wafa. *Hak-Hak pencari suaka politik dalam pandangan Islam dan Hukum Internasional*. ( UNHCR. 2011), p.168

47 Ahmad Kosasih. *HAM dalam perspektif Islam: Menyingkap Persamaan dan Perbedaan Antara Barat*. ( Jakarta: Salemba Diniyah, 2003), p.48

48 Abul A'la Al Maududi. *Hukum Dan Konstitusi Sistem Politik Islam*. (Bandung : Mizan.1995), p.307



granted to Muslims under the Civil Law Act, shall apply also to the dzimmis.<sup>49</sup>

Similarly, in discussing for the good and interest of all parties. All elements of trial participants have an equal opportunity to argue.

In Islamic countries, all non-Muslims will have the same freedom to embrace the beliefs, views, giving opinions (through words written and unwritten), as well as association and assembly sec-owned by the Muslims themselves, which is subject to restrictions imposed by law on Muslims. Among such restrictions, they will be given the right to criticize the government and its officials, including the Head of State.<sup>50</sup>

#### b. Offender's Treatment

In *fiqh siyasah* theory there is no obstacle between countries Darus Salam to decree anything to surrender criminals who commit crimes in one area of Darus Salam states that, provided that the country in question has not been convicted of crimes in accordance with the provisions of the Islamic law in force appropriate legislation constitution.<sup>51</sup>

Islamic law does not justify the state Darus Salam submits of the people, whether Muslims or dhimmis to be examined his case in Darul Kuffar on crimes that have been carried out in the country and so is not permissible for state authorities Darus Salam handed people are hiding in the country Darus Greetings else to state authorities for questioning his case Darul kuffar, simply because they are considered in terms of Islamic law mandatory in law as his own people. And Islamic law does not justify the Darus Salam bring

49 Ibid, p.308

50 Abul A'la Al-Maududi, *op.cit.*, p.320

51 L. Amin Widodo. *Fiqh Siasah Dalam Hubungan Internasional*. (Yogyakarta:Pustaka). 1994, p. 31

Muslim ruler who is a citizen of Dar al Kuffar even if requested by the authorities of Darul Kuffar, according to the agreement during International law. If there has been, subject needs to be filled, unless there is agreement that the terms are deemed invalid.<sup>52</sup>

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52 Ibid, p.34

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