

Muslim Debates on Riddah and Freedom of Religion

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Abstract: In the context of a pluralistic religious life, freedom of religion and religious conversion are the two entities that cannot be separated. I argues that the death penalty for the perpetrators of apostate is not relevant to the recent development. The scholars differ on the punishment for the perpetrators of apostate. Scholars who interpret prophetic texts declare the death penalty for apostasy, basing his argument that religious conversions are theological issues which are not negotiable. Scholars who consider apostasy from the socio-political perspective argue that the emergence of Hadith about the death penalty for apostasy is not only meant for riddah who move from Islam to another religion but also for politician who edanger the nation. The number of facts at the time showed that the phenomenon of apostasy is always associated with the issue of treason (bughat), endangering the country and hostility against Muslims. In addition, psychologically, apostasy is also the demolition of old religious tradition to a new religious tradition. This could lead to psychological confusion and mental turmoil for perpetrators of apostasy.

Key words: Riddah, freedom of religion the death penalty, socio-political perspective, psychological confusion, apostasy, country

INTRODUCTION

Freedom of religion includes the freedom to adopt a religion to believes or leave. This was regarded as fundamental rights and freedoms which are absolute-especially freedom of internal. Religious freedom cannot be reduced, restricted or interfered by anyone and under any circumstances even though in a state of war. This is because the problem of choosing and believing in a religion included in the category of human rights that are non-derogable. Religious freedom is actually also a result of their religious diversity. Religious pluralism requires that every religious community to understand and respect other religions. Thus, both were eagerly closely intertwined with each other.

Religious pluralism is also closely linked with freedom of religion. According to Madjid (1992) the commands of Allah in the Quran, 11: 118-119 asserted that Islam teaches diversity. Therefore, none of the monolithic society is similar and equal in all aspects of life. Madjid also stressed that the public should be able to manage this diversity based on the principles of pluralism. Diversity also can not be denied or avoided by anyone because it is a great design that has been established by

God. As a logical consequence of religious plurality the freedom of religion becomes a necessity. This is because freedom means that there is recognition of the choice of life in accordance with their respective religious beliefs. Therefore, Islamic vision in this regard is parallel to pluralism. Besides having an exclusive doctrine Islam also has an inclusive-pluralist doctrine which appreciate and acknowledge the truth of other religions. The Quran gives an appreciation to society that consists of diverse communities that have an individual life, so they should be able to tolerate each other. Appreciation of pluralism is illustrated in the Quran, 13: 7, 14: 4, 16: 36, and 35: 24. Thus, God values diversity because it is part of the sunnatullah. El-Fadl (2005) cites the Quran, 10: 99, 11: 118-119, 5: 49 and 16: 25, to strengthen the consideration of God's appreciation of the diversity of religions. Based on these verses, El-Fadl asserts that God gave humans free will and ordered them to recognize the beauty of tolerance. Therefore, there is no right for a group to oppress and dominate others as opposed to the principle of the creation of human beings with all the diversity of ideological orientation (Saeed, 2013). Based on the Quran, 2: 62 and 5: 48, Rahman (1980) stated that Muslims, Jews, Christians and Shabi'in have the same opportunity

to achieve God's heaven. Thus, Muslims are not the only competitors who compete in reaching the truth. Inclusive-pluralist theology has exemplified the Prophet as a political and religious leader in Medina. He guarantees protection and equal rights for non-Muslims as long as they are not hostile to Islam. Socio-theological commitment is encapsulated in the constitution of Medina that is compiled by the Prophet with all elements of society in Medina. Appreciation of the existence of other religions is also carried by generations of the Prophet's companions. Some of the success of political expansion are not always followed by success propagation quantitatively because in Islam there is the principle of respect for religious beliefs, i.e., there is no compulsion to embrace Islam. The entry of Islam into Sicily in Italy, Spain up to India is one among the evidence that Islam upholds the principle of religious freedom.

ISLAMIC PERSPECTIVE ON RELIGIOUS FREEDOM

Freedom of religion is a principle that has been accepted by almost all religious communities as a universal norm but the mission of religious traditions such as Islam, Christianity and Judaism there are still some groups that have ideological of triumphal. Triumphalistic ideology is an understanding that requires a religion beat and subdue other religions and the view that freedom of religion does not exist. Freedom of religion and respect for other people's religion or belief constitute any religious teachings. Thus, defends the freedom and respect other people's religion or belief is an integral part of the value and the quality of one's religion. Therefore, the real freedom will be created only by means of letting other people have the same freedom. In the context of Islam there is the principle that a spirit for the enforcement of fundamental human rights which are summarized in the concept of *al-dharuriya al-khamsa*. Five basic human rights may include rights and freedom of religion (*hifz al-din*) the right to survive and sustain life (*hifz al-hayat*), ownership of the property (*hifz al-mal*) the right to freedom of thought and opinion (*hifz al-'aql*) and the right of descent through the institution of marriage and preserve offspring (*hifz al-nasl*). According to Abdullah the discourse on religious freedom involves three entities, namely: human beings have dignity (humanity; human dignity) that can not be reduced for any reason; human as citizens (nation states) are constrained by administrative and territorial boundaries and human as followers of religions.

In the context of enforcement of basic human rights, especially regarding freedom of religion based on some verses of the Quran. Freedom encompasses the freedom

of the external and internal freedom. External freedom is the freedom for a person to enter or not enter into a particular religion. While internal freedom to be meaningful the two sides, namely: first, the freedom for people to choose certain sects and religious groups are concerned and second, the freedom to commit to the teachings of their religion. If someone has decided to choose a particular religion then he should have a commitment to maintain and implement the teachings of their religion as well as possible (Shihab, 2004). Islam teaches that human rights is a divine gift. This is as observed by Mawdudi that human rights have been given by God not by the king or the legislature. Human rights in the Islamic concept is very comprehensive and multi-dimensional because it covers all aspects of life, political, economic, social and cultural (Laluddin *et al.*, 2012). Thus, freedom of religion, either choose, exit or enter religion is a basic human rights are also recognized in Islam.

Beside guarantee of freedom of religion Islam also upholds tolerance, even the Prophet Muhammad did not teach and bless his followers attacking and insulting believers of other religions (Hamdan, 2003). Islam explicitly gives complete freedom to humankind in matters of religion and religiosity. The Quran also adheres to the principles of the reality of religious plurality (Quran, 2: 62); peaceful coexistence and tolerance (Quran, 109: 1-6); orders compete in goodness (Quran, 5: 48); orders are proactive in establishing relations and cooperation with other faith communities (Quran, 60: 8); ban arguing with the people of the book (*ahl al-kitab*) except the good (Quran, 29: 46); protect houses of worship of all religions (Quran, 22: 40); freedom to believe or not believe (Quran, 18: 29); rights are treated well and interaction with fellow human beings (Quran, 49: 11-13); orders upholding equality and justice (Quran, 5: 8) and presence of Islam as a mercy to all the worlds (Quran, 21: 107).

The essence of freedom of religion or belief is included in the eight major components, namely: first, internal freedom that everyone has the freedom of thought, conscience and religion. This right includes freedom to adopt or establish religion or belief of his choice including to change their religion or belief. Second, external freedom that everyone has the freedom, individually or collectively in private and public to manifest his religion or belief. Third, there is no compulsion no individual may be subject to coercion which would reduce the freedom to have a religion or belief of his choice. Fourth, non-discriminatory that the state has the obligation to respect and guarantee the freedom of religion all its citizens without discrimination on any basis. Fifth, the rights of parents and guardians

that the state has an obligation to respect the liberty of parents and legal guardians (if any) to ensure that the religious and moral education for their children in accordance with their own convictions. Sixth, freedom of organization and legal status that is a vital aspect of freedom of religion or belief for the religious community or association which is to organize as a community. Therefore, the religious community has the freedom of religion or belief includes the right of self-reliance in the organizational setting. Seventh, the permissible restrictions on freedom of the external, i.e., the freedom to practice one's religion or belief can only be restricted by law, solely for the sake of safety and to protect public order, health or morals and protect the rights and freedoms others. Eighth, non-derogability that the state does not have the right to reduce religious freedom in conditions and for any reason.

Freedom of religion also gets juridical guarantees in law and human rights instruments of an international nature such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). UDHR is received and announced by the United Nations (UN) General Assembly on 10 December 1948 by Resolution 217 A (III) of Article 18 that states that every person has the right of freedom of thought, conscience and religion. In this context includes the freedom to change religion or belief with the freedom to express religion or belief in how to teach do, worship and obey him, either alone or together with others in public as well as themselves.

Article 18 of the ICCPR also stated everyone has the right to freedom of thought, conscience and religion. This right includes freedom to adopt a religion or belief of his choice and freedom, either individually or jointly with others, either in public or closed to practice a religion or belief in worship activities, observance, practice and teaching. No one may be compelled or disturbed liberty to embrace or adopt a religion or belief of one's choice freedom to manifest one's religion or beliefs may only be restricted by legal regulations and are necessary to protect public safety order, health or morals or the rights and fundamental freedoms of others. States parties to the present covenant undertakes to respect the liberty of parents and when applicable, legal guardians to ensure that the religious and moral education for their children in accordance with their own convictions (ICCPR).

In understanding the content of the UDHR and ICCPR, quoting the views of Krishnaswami, Saeed argues that there are two kinds of freedom if it is connected with religion, namely the freedom to maintain or change religion or belief and freedom to manifest. For the first freedom, according to Saeed and Hassan (2011), it does

not only include the freedom of individuals to maintain their religion or belief which is named "inner freedom" but also includes the freedom of the individual to profess no religion. As for the freedom associated with manifestations of religion or belief, it is understood that each person is allowed to practice their religion through worship, religious service and teaching of religion (Arifin, 2015).

In the Indonesian legal system, freedom of religion is guaranteed by the state. This can be seen in Article 28 of paragraph, Article 28 of paragraph and and Article 29 paragraph of Constitution of 1945; Article 22 Paragraph and of Law No. 39 of 1999 on human rights and Law No. 12 of 2005 on the ratification of ICCPR. The law gives freedom to everyone to embrace their religion and to worship according to their religion or belief, respectively. This is a proof that the state guarantees, appreciation and recognition of the religious right as part of a personal right of every citizen. Thus, religious conversion which is part of the personal rights also guaranteed by the state. In addition to the existing laws that guarantee freedom of religion there is also law that prohibit blasphemy, namely Law No. 1 of 1965 on the prevention of blasphemy.

Normatically there is a special religious freedom in Malaysia. Though most recognize an individual freedom to choose and embrace the religion of choice but this country adopted the strict view of religious conversion. Conversion of religion is regarded as a serious crime in Islam. In this context, even some states in Malaysia such as Pahang, Perak, Kelantan, Sabah and Malacca criminalize apostasy. All states in Malaysia, except Penang, Sabah, Sarawak and the federal territory also limit the spread of religious doctrines and beliefs to others, among the Muslims. Such limitation as seen in Article 11 of the Federal Constitution. In addition to providing for the special position of Islam as the state religion, Malaysia also has instituted various restrictive laws such as incitement Act, internal security Act and various state laws that restrict the spread of non-Muslim religions among Muslims. The aim of these are to set up inter-ethnic and inter-religious in order to maintain racial and religious harmony (Mohamad, 2008).

ISLAM AND RIDDAH: NORMATIVE AND HISTORICAL PERSPECTIVE

In Islam, religious conversion issues related to religious freedom. In the Quran there are several verses that give signals about these things which are mentioned in the Quran, 2: 148 and 256, 10: 99, 18: 29, 42: 15 and 109: 6. There are no verses in the Quran or Hadith that

inflame hatred, hostility and all forms of negative behavior that threatens the peaceful quality of life. However, a misnomer is still just emerging violence in the name of religion. Therefore, we need the right formula for building a peaceful life which becomes the basis for the relationship between religious community.

God created human beings differently, so logically, he gave his protection to the followers of different religions and the places where they worship to glorify the authority they believe (Quran, 22: 40). Hence, in another verse Allah forbids Muslims revile other religions (Quran, 6: 108). Religious faith is the most personal, exclusive and hidden in the human heart. Therefore there is no power other than the power of God that can force anyone to follow his teachings (Quran, 88: 22 and 10: 99). Is God's power to decide whether the beliefs of each person's right or wrong in the accountability in the Hereafter (Quran, 22: 17). In the external context, freedom of religion has implications for the demand for Muslim tolerance towards religions other woods. If people outside of Islam is allowed to be Muslims then the Muslims are also allowed to move to another religion. In this context, it can not be denied that even in the Quran does not explicitly mentioned penalty for Muslims who convert to another religion but in the traditions of the prophet are found which are listed by Bukhari (1999).

Hadith about death penalty for a Muslim apostate needs to be analyzed to underlie the emergence of context, namely: first, politically the Prophet of Muhammad need to strengthen theological Muslims in order political establishment, second it should be viewed in context and position as to what the prophetic is when he said these traditions whether as a religious leader and the state, a judge, a part of society in general or in his capacity as an ordinary human being. This is important because it has implications for the presence or absence of necessity to follow and practice it. On this context, discussion about Islam and human rights dialogue should be positioned. With this framework as a charter that departs from the tradition of culture and context specific experience the process of dialogue between human rights and religious traditions and spiritual values, dignity and glory of the essence of humanity needs to be done. According to Ayoub as quoted by Haq and Triana the tradition of Islam, Hinduism, Buddhism, Confucianism and spiritual traditions that exist have moral values to support the realization of the essence of human rights in accordance with the character of their own community. Religious conversion is also an empirical fact of the diversity that must be addressed in a wise and proportionate. Even pejorative are often people who do religious conversion, referred to the person in denial

creed. The emergence of social change which was followed by the increase of the intelligentsia, simply plays a role in the system and a rigid doctrine but religion is not the case. Religion is a unique entity and its uniqueness was obtained with the independence of spirit and commitment in religion though not necessarily anti groups. Iqbal's criticism against fatalistic religiosity also shows that only a pseudo religious Muslims struggling to maintain tradition. Religious power is not always white as well as historical events in the form of human tragedy as "infidelity" religion and politics. The most phenomenal example in this context is the Crusades that occurred in 11-13 century (Shihab, 2004).

Although, Islam is the religion of the mission (convert seeker) conversion is universally hated not only because of theological arguments but also because of socio psychological reasons. Apostasy is viewed as a process that makes the apostate experiencing psychological confusion. This is because the apostate will experience a "reversal" habits that have been formed by the construction of a particular religion tradition but had to change due to follow the construction of a new religion that was followed. Therefore, logic is no one who does tyrannical Caliph of Islam to other faiths. In the context of social life, religion is a conscious human choice and not of necessity. Therefore, propaganda is no longer aiming to force someone into a particular religion but the mission has social significance in real life.

In the Islamic concept, preaching is not intended to force others to follow Islam but a means of calling others to goodness by adhering to the principles of preaching and argue in a good way (Quran, 16: 125). Basic philosophy for human rights in the Islamic teachings contained in the main that is tawhid because it contained the notion that there is only one Creator of the universe and the universe and its contents come from the Almighty. In the context of human rights the doctrine of monotheism contain the idea of equality and brotherhood of all mankind (Quran, 4: 1 and 49: 13). Therefore men are brothers and have the same degree then people should not be enslaved by another man. Man in Islam is a free man (Quran, 33: 72) in free will and act (Quran, 76: 2-3), free from pressure and coercion, exploitation and possession of another man (Quran 90: 13) and free in religion (Quran, 2: 256 and 10: 99) of the basic teachings of equality, fraternity and human freedom there arose another human rights. Man was given the right to live and obtain safety (Quran, 4: 29) the right to make family (Quran 4: 1 and 30: 21) the right to get education (Quran 2: 129 and 3: 164) the right to obtain employment, wages and wealth (Quran, 2: 188 and 4: 29) the right to mobility (Quran, 30: 20 and 67: 15) the right to think, speak, give

different opinions and associate (Quran, 3: 159 and 42: 38) and the right to social security (Quran, 51: 19 and 90: 14-16) the right to self determine (Quran, 13: 11) the right to get justice before the law and protection from inhuman treatment in the resolution of social order (Quran, 4: 58 and 5: 8) and the right to free of exploitation and all forms of discrimination (Quran, 49: 13).

MUSLIM DEBATE ON RELIGIOUS CONVERSION

According to Saeed and Hassan (2011) objection to the conversion of Muslims is caused by two things: first, an error in the “read” the text of the Quran and the reliance on pre-modern formulation of Islamic law; second the notion that the UDHR and other documents such as the ICCPR which forms the basis for freedom of religion that is nothing but the product of western secular therefore it cannot be a basis for Muslim’s understanding about human rights. For Saeed, UDHR can not be equated with the Divine Law but the human rights and freedoms embodied therein are also guaranteed by divine law. Even Saeed considers that freedom of religion includes universal values that need to be aligned with the five aspects of maqasid al-shari’ah formulated by the scholars such as Shatibi. In this context, Saeed stated.

“Although, the number of universal values was limited to five by many earlier scholars and even by Shatibi (d. 790/1388) in later times such as the contemporary period a number of new values could be developed by following the same method of inductive corroboration and keeping in mind the new context. For instance, a range of new human right that are important today such as the protection of the disadvantaged and protection of freedom of religion can be considered to be universal values today” (Saeed, 2013).

Five universal values that are meant covering *hifz al-din*, *hifz al-hayat*, *hifz al-mal*, *hifz al-’aql* and *hifz al-nasl* overall by Shatibi referred to as the interests that are *dharuriyat*. In this case the term keeping (*al-hifz*) in the context of the maqasid al-shari’ah describes the action “keep” something that has been selected. Thus the word is described a subsequent action or a result of which must be accepted by humans because of his choices but do not represent actions show “cause”, “origins” of why something must be protected and maintained. Therefore, *al-hifz* are more accurately understood to include measures to guarantee and protect the rights and freedoms. Within such a framework then *hifz al-din* in this context must be intended as a guarantee of human rights and freedom in terms of religion or belief as well as the protection of these freedoms (Baidhawi, 2005).

In line with Auda (2008) believes that the goal of Islamic law (*Maqasid al-Shariah al-Islamiyyah*) is a fundamental principle of that very tree and at the same methodology in the analysis which is based on systems. Therefore, Auda replaces the classic paradigm of maqasid as initiated by Ghazali and Shatibi that emphasize the protection and maintenance (preservation), towards a new paradigm that is more emphasizing on the development and the right. Empirically the development and fulfillment of basic human rights of these five can be controlled and verified by achieving the Human Development Index (HDI) as endorsed by the world body the United Nations.

The views J. Raz as quoted by Baidhawi (2005) one is judged autonomous choice when it fulfills the elements, namely: first the choice should be free in the sense should not be forced or manipulated. This means that choosing a religion or not is also the choice of the trust should not be based on coercion. This is because the act of coercion is a violation of human autonomy at once autonomous choice; second, one’s autonomous choice must be voluntary and based on a thorough consideration. This principle insists that religion should be based on rational considerations which are supported by the sincerity and sincer intentions; third, one’s choice must relate to important issues. In this context, choosing a religion has met these elements for it is essentially a religion deals with issues of life and death. Fourth, the choice must be true in the sense of being among the different choices and have the same value. Choose one religion or leave it, choose a belief or neglect in others is an option that is as valuable by-ethical considerations of human rationality. Fifth, the choice should be revised and reviewed because it was likely the wrong decision or even in order to find reasons against the initial decision. This means that someone who has chosen a particular religion or belief, still have a chance to scrutinize the decisions that have been taken. This process can then produce two possibilities, namely obtaining supporting evidence on religion and beliefs that have been chosen and getting another argument to reject religion and belief has been chosen. Thus, it seems that Article 18 of the UDHR and the ICCPR which has been cited previously, implies an understanding that religious freedom includes not only freedom that must be protected unconditionally in the sense of faith but also give the opportunity for a person to implement his beliefs both personally as well as in the community. The restrictions as set forth in Article 18 of the ICCPR, Paragraph 3 is merely refers to their opposition to morality and public order which includes practices such as human sacrifice, self-sacrifice, mutilation of self or others and slavery or prostitution conducted in

the name of promoting religion or belief. Likewise with other activities that could threaten the stability of countries such as rebellion (subversion) (Baidhawi, 2005). More specifically, restrictions on freedom of religion or belief can be described as follows: first, restrictions to protect the safety of the public, means unjustified restrictions and prohibitions on religious teachings that endanger the safety of its adherents as religious doctrine requires its followers to commit themselves both individually and bulk; second, restrictions to protect public order, namely the restriction of freedom manifest his religion with a view in preserving public order. These restrictions on them in form of compulsory registration for the legal entity to religious organizations of society, must obtain permission to conduct rallies, must establish places of worship only at the location designated for the public as well as restrictions on freedom to practice religion rules for convicts; third, restrictions to protect public health, restrictions relating to public health permitted are intended to provide an opportunity for the government to intervene to prevent other diseases such as governments require vaccinations; fourth, restrictions to protect public morals such as prohibiting the implementation of religious teachings which call upon its believers to be naked when performing rituals; fifth, restrictions to protect the fundamental freedoms and the freedoms of others.

RIDDAH: DEBATE AND ITS IMPLICATION IN ISLAMIC LAW

In the context of religion, freedom of the individual can not be restricted if it was about religion choosing. Likewise the right to move from one religion to another religion (apostasy) is in the terminology of fiqh is defined as the return of Muslims who understands and puberty to kufr and without coercion from anyone. In this context, apostasy is divided into three categories, namely apostate faith (al-i'tiqad), like someone doubts about the nature of God are skeptical about the apostolate of Muhammad the Quran is doubted whether it comes from God or not and so on. Besides apostasy conviction the scholars also mention the apostate act (af'al) such as prostrating to an idol the sun or moon. In addition there is also an apostate word (aqwal) as calling the Muslims to call, O Jews, O Christians or boasting by saying if God put me into heaven undoubtedly I rejected him (Irbili, 2006).

In understanding the Hadith with says "whoever changes his religion then let assassinated" the companions of the Prophet do not contend that the apostate should be asked to repent (tawbat). According to them the command to assassinate context of

this Hadith does not include orders that are absolute but conditional that they should be sentenced to death for not willing to repent. This understanding is assessed in line with the word of God in the Quran, 9: 5: "if they repent, establish regular prayers and practice regular charity then give them the freedom to walk". Differences of opinion among scholars also concerns in the requirement to repent for apostate women. Based on the Hadith narrated from Imam 'Ali followed by Ata and Qatada, a history of Thauri from most of his friends, history Ashim ibn Abi Bahdalalah and Razin, argued that women are not required apostate repents. Meanwhile, according to Ibn Abbas, women apostate should not be sentenced to death but only detained and forced to return to Islam (Ibn Batal, 16: 20). However, scholarly view that there is no difference between men and women which lapsed in terms of the need to repent (Ibn Batal, 16: 20).

According to the traditional scholars the punishment for apostasy is killed and his blood must be shed unconditionally (Baidhawi, 2005). This is because apostasy rated among one of the seven cases in view of a group of scholars categorized as hudud criminal punishment specified in the Quran as well as other hudud criminal as adultery, qadzaf theft, robbery, drinking intoxicating and rebellion. Most scholars categorize others lapsed as crime punishable by ta'zir because it does not include penalty provisions of crimes specified in the Quran. Because the punishment for apostasy handed over to the authorities and judges in accordance with the public interest by considering changes in the conditions and time.

The scholars who support the death penalty for apostates pioneered by traditional scholars such as madhab Shafii, Maliki and Hanbali. According to them, apostasy pertained great sin that can not be forgiven by Allah unless repented. This view is based on the sound of the text of the Quran, 2: 217 the following.

"And whoever of you apostates from his religion (to disbelief) and dies while he is a disbeliever for those their deeds have become worthless in this world and the Hereafter and those are the companions of the fire they will abide therein eternally".

In addition to the Quran verse, scholars categorize apostasy as a crime which must be sentenced to death as well as adhering to the prophet in Hadith narrated by Bukhari, Ahmad, Abu Dawud, Tirmidhi, Nasai and Ibn Majah through Ibn 'Abbas (Asqalani the Section XII, 309).

"Whoever that replaces religion (from Islam to another religion) then slay him". In another Hadith narrated by Bayhaqi (Part 2: 225) also stated: "it is not lawful blood of a Muslim who has testified there is no god

but Allah and I am the messenger of God unless caused by the three cases, namely, intentional killing, adultery Muhsan and leave the religion (separation from the group of the Muslims)". In contrast to the literal view of the above, Asqalani states that a Muslim converting to Jews and Christians will be given punishment of hell. Even in the afterlife the sins of the Muslims will be imposed also to Jews and Christians. This Hadith also provides a lesson that in the hereafter there will be two places, namely heaven and hell. Heaven only be occupied by those who believe while the hell will only be a place for those who disbelieve. Thus, the *ahl al-kitab* in the context of the definition of the scope of this Hadith is according to Asqalani equated with pagan groups. They will be placed in hell for being disbelief and sins of their (Bukhari, 1999).

The views of scholars that have come out of Islam shall be killed, according to Ali (n.d: 591) due to their misunderstanding of the issue of this apostate. As affirmed that Islam forbids the deprivation of the person's right to live. Thus, it is applicable not only to those who convert from Islam or those who never converted to Islam though. In other words, the application of laws for those who commit apostasy contrary to the rule of law is more fundamental. It means the death penalty for apostasy is the literal, partial and ignores the context of the emergence problems of apostate in society. In addition the Quran itself did not confirm the death penalty for the perpetrators of religious conversion. The punishment for those sins that are accounted for in the hereafter (Gibb and Kramers, 1961). It can be seen for example in the Quran 16: 106, 2: 217, 3: 36-90, 3: 72 and 5: 54. The meaning of the verse contained in the Quran, 5: 54 it's not just denying legal death sentence for apostasy but God actually provides religious freedom to all his people, *la ikrah fi al-din* as affirmed in the Quran, 2: 256.

The scholars who reject the death penalty for apostates pioneered by the contemporary scholars such as Saidi, Nakhai, Abduh and Kamali. For these contemporary thinkers, sanctions against apostates is *ta'zir*. This is because human beings are given the freedom to adopt a religion of their preferences (Adil, 2005). They also see that the statement of the Prophet Muhammad on the death penalty for apostasy is not caused by his apostasy but due to his resistance to Islam. This example can be seen in the following facts: first, Hadith which is used as a backrest law for the death penalty for the perpetrators of apostasy by Bukhari included in *kitab al-muharibin min ahl al-kuffar wa al-riddah* and *kitab al-istitabah al-murtadin wa al-mu'anidin wa qitalihim*. Thus, the discussion regarding the Hadith of apostasy was related to the war against the

Islamic government and hostility towards Islam. Second, in the event of war between Muslims and infidels, apostates someone who often join and cooperate with the enemy against the Muslims. Therefore, the law of apostasy is not because they kill for their relocation to other religions but because of hostility and opposition against Muslims. Third, the emergence of Hadith narrated by Bukhari relates to the behavior of a group of *Ukul* tribes who had converted to Islam and come to Medina. Therefore climate didn't match them the prophet finally put them in the camel maintenance of land outside the Medina, so that they can live freely and enjoy camel milk. However, one day they actually kill the camel's shepherd and returned to disbelief. The news was finally heard by the Prophet and finally sent troops to kill them. Fourth, according to Kamali (1997) in addition to this argument, accuracy rate of this Hadith is still disputed among scholars because the Hadith status is *ahad* that is not representative and convincing enough to be used as evidence in law enforcement.

In contrast to the views of jurists who categorize apostasy as a crime that must be punished to death or *ta'zir*, Saeed said that by recognizing the historical development then it is proper to judge apostasy as a sin, not a crime. According to Saeed there are about 150-200 verses the Quran that support freedom of religion, conscience and choice. There is no single verse in the Quran that mention the existence of a certain penalty in the world over the apostate. Punishment for *riddah* is only found in the Hadith of the Prophet. The majority of Muslim thinkers argued that the punishment for such *riddah* is based only on *ijtihad* scholars and not a direct command from God. In addition, faith is a matter between a servant with his God and therefore the state does not have the right to intervene and take care of the problems of the private (Saeed and Hassan, 2011).

Saeed and Hassan (2011) believes that the issue of *riddah* is sin between the slave with his God and not a criminal act. For him, overemphasis on this *riddah* new law occurred during the Islamic caliphate. This is because this era puts the development of Islam as a political force. Therefore, it should be perceived as a *riddah* law of God with human affairs not criminal matters or the death penalty for those who practice it. This means that there is no social sin for the people who wished to perform religious conversion because once again it is simply a sin to those who do so in the presence of his God (Mansyur, 2012). The same view was also expressed by Shaltut. After conducting an analysis of the verses about the condemnation of the perpetrators of *riddah*, Shaltut (1997) concluded that *riddah* did not result in the collapse of the world punishment for the culprit but resulted in the punishment of the hereafter.

Qaradawi states an opinion that mediation between the factions rejected the death penalty for perpetrators riddah and the group receiving the death penalty for apostasy. For al-Qaradawi the offender must be distinguished whether some one does apostasy only for himself or in his apostasy, he also invites others to do similar things. If the only special apostasy to himself then he can not be sentenced to commit because, it can be considered as the expression of a person's freedom to adopt a religion believes. It is described in the letter of Quran, 2: 256.

“There shall be no compulsion in (acceptance of) the religion. The right course has become clear from the wrong. Therefore, however disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is hearing and knowing”.

In contrast, if someone is offended and invites others to follow him then he should be sentenced to death. This is because apostasy, according to Qaradawi is included in the category of murtad al-daiyah which means not only out of Islam but to attack Islam and Muslims, against Allah and His Prophet and spreading corruption on earth. Under death penalty is in accordance with the Hadith of the Prophet which states “it is not lawful blood of a Muslim who has testified there is no god but Allah and I am the messenger of God unless caused by three concerns, namely: intentional killing, adultery and leave the religion (separation of the group a Muslim). Therefore, in Islam, meaning an apostate is not only limited to the “converted to the faith” but also includes loyalty to a non-Muslim therefore means are also separated from the congregation of Muslims (Riswanto, 2010).

Although, Islam is the religion of the mission (convert seeker), apostasy or conversion in the rules of the Islamic religion is an abomination. This is not only because of the theological arguments but also socio psychological reasons. Apostasy is seen as a process that makes the apostate experiencing psychological confusion. The apostates will experience a “reversal” habits that have been formed by the construction of the traditions and teachings of a particular religion but then had to change due to follow the construction and new religious teachings espoused. Another issue will also appear when the conversion is done by a person who is not solely based on the choice of conscience but there are other factors such as economic, marital or compulsion. Therefore, logical that in the history of Islam there is no one who does a tyrannical Caliph of Islam to other faiths. The success of expansion is not always followed by the addition of Muslims significantly as Muslim rulers but give the option to the people of the territories conquered

whether to follow Islam or remain in religion before but committed nothing against the people and Muslim leaders.

The concept is no compulsion in (entering) the religion (Islam) as stated in Quran, 2: 256, seems to have become a high religious commitment which upheld honorably by the Muslim rulers of classical and medieval era. Expression most tolerant committed Muslims in history is a rescue action undertaken by the authorities of the Ottoman Turks (Ottoman Chalif) against Jewish communities Savardik Spain who was having a war of extermination racial (ethnic cleansing war) of Christian Spain after the reconquest (Reconquista). Had the Ottoman authorities did not grant political asylum to them, we can be sure the Jews Savardik become extinct from the face of the earth (Hamim, 2003).

CONCLUSION

The death penalty for the perpetrators of religious conversion (riddah) based on the Hadith which is understood by the scholars in differently. Classical scholars group, especially a priest four schools, banning religious conversion and gave the death penalty to do it. Contemporary scholars generally do not agree with the law for the perpetrator to commit the conversion. It is based on the indication of hostility, warfare and destruction efforts against Islam. It was due to the conversion to the history issue is not only converted to the faith or religion but also to the conversion behavior against the Prophet and the Muslim leader. Thus, it can be affirmed that the death penalty for the perpetrators riddah can only be applied to those who convert from Islam with an indication of treason against the state not merely out of religious conviction.

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