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ISLAMIC HUMANITARIAN PRINCIPLES AND MIGRATION: RECONSTRUCTION OF FORCED MIGRANT RIGHTS IN ISLAM

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Abstrak

Kata Kunci:

Fundamental
Rights, Forced
Migran, Islamic
tradition

Studi ini bertujuan untuk menganalisis hak-hak migran paksa di dalam Islam. Terdapat banyak literatur keislaman, terutama Al-Qur'an dan sejarah kehidupan para Nabi—mulai dari Nabi Ibrahim, Musa, hingga Mubammad SAW yang membahas tentang istilah migrasi dan pentingnya pemenuhan berbagai hak atas mereka. Tetapi, realitas kehidupan dunia modern hari ini, tradisi ini kerap diabaikan, padahal di negara-negara Muslim saat ini telah menampung sekitar 50 persen populasi pengungsi dunia. Berbasis pendekatan kualitatif-deskriptif dengan merujuk pada sumber-sumber tertulis, terutama Al-Qur'an, Sunnah dan tradisi generasi Muslim awal yang berbicara tentang musta'min, hasil studi menunjukkan bahwa tradisi Islam telah menyediakan kerangka kerja yang kuat dan pentingnya memperbaiki jaminan perlindungan bagi para migran paksa, terutama terkait dengan hak-hak dasar, seperti hak atas martabat, non-refoulment, perlakuan yang sama, tempat tinggal, perawatan kesehatan, reunifikasi keluarga dan properti yang dimiliki. Dari sinilah sangat penting bagi umat Islam untuk kembali membuka dan memelihara wacana teologis tentang masalah perlindungan migran paksa. Sebuah langkah yang dapat memberikan kontribusi penting dalam membantu negara-negara Muslim dalam mengelola krisis migran paksa, sejalan dengan prinsip-prinsip Islam.

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Abstract

Keywords:
Capitalism;
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Work
Orientation

This study aims to analyze the rights of forced migrants in Islam. Much Islamic literature, especially the Qur'an and the life history of the Prophets—starting from Prophet Abraham, Moses to Muhammad SAW- discusses the term migration and the importance of fulfilling various rights over them. However, this tradition is often ignored in the reality of modern world life, even though Muslim countries have accommodated about 50 percent of the world's refugee population. Based on a qualitative descriptive approach by referring to written sources, especially the Qur'an, Sunnah, and the traditions of the early Muslim generation that talk about *musta'min*, the results of the study show that the Islamic tradition has provided a robust framework and the importance of paying attention to protection guarantees—for forced migrants, especially concerning fundamental rights, such as the right to dignity, non-refoulment, equal treatment, housing, health care, family reunification, and property. As a result, it is essential for Muslims to reopen and maintain theological discourse on the issue of the protection of forced migrants. A move that can make a necessary contribution to assisting Muslim countries in managing the crisis of forced migrants, in line with Islamic principles.

Introduction

More than 600 million Muslims live in Muslim countries, where Islam is the "recognized" religion by the government.¹ This presupposes that Islamic jurisprudence is enshrined in the constitution as a source of legislation. Some people question the possibility of using Islam constructively to realize the fulfillment of human rights in Muslim-majority countries. Because of the conflict between secular international norms and Islamic law,² such as when addressing the issue of forced migration.

Forced migration has been an important phenomenon throughout human history, including in Islamic history. Islamic tradition has much to say about migration and teachings about the importance of protecting them. Abdol Karim Soroush stated, "It is the language of duties, not rights

¹ T. Stahnke & R.C. Blitt, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitution of Predominately Muslim Countries," *Georgetown Journal of International Law* 36 (2005): 9–54.

² M.A. Baderin, "Islam and Human Rights in the Muslim World: A Reflection on Approaches," in *Reframing Islam: Politics into Law* (Galway, Ireland: Irish Centre for Human Rights, National University of Ireland, 2005), 10–11. diakses pada 28 Juni 2022.

[...which] imply respecting the rights of others at the expense of oneself. What is at issue here is not my rights which are to be respected by my neighbors, but their rights which I am supposed to respect.”³ Migration and flight from persecution have been an important part of several stories of the Prophet. Like the story of Abraham's migration to Canaan (*Q.S. al-'Ankabut* [29]: 26) or the migration of Moses to Midian (*Q.S. al-Qashash* [28]: 20-28). Even migration has become an important part of the life history of the Prophet Muhammad and his companions. In 615 AD, about 100 early Muslims sought refuge in the Christian King, Negus of Abyssinia, to escape the brutal persecution of the Quraish tribe ruling Mecca.⁴ Likewise, in the migration to Medina in 622 AD,⁵ the Qur'anic narrative highlights the importance of paying attention to the status of those who seek refuge from persecution and those who provide protection.

Linguistically, in the Islamic legal tradition, there is no proper equivalent for the term "forced migrant." The term *hijrah* (migration) and its derivatives are mentioned 27 times in the Qur'an.⁶ Zaat notes that there are 650 *hadiths* of the Prophet that speak of protection and assistance.⁷ The centrality of migration in the Islamic tradition is evidenced by the Islamic calendar system that uses the term *hijriyya* (referring to the hijrah of the Prophet Muhammad). It does not make the birth of the Prophet the beginning of revelation or the conquest of Mecca (*fath al-Makkah*).⁸

Several scholars of the study of religions and leading international

³ M. Sadri & A. Sadri Abdol Karim Soroush, *Reason, Freedom, & Democracy in Islam* (New York: Oxford University Press US, 2000), 62.

⁴ Tariq Ramadan, *The Messenger: The Meanings of the Life of Muhammad* (London: Penguin Books, 2008), 59.

⁵ Saeid Rahaee, "The Rights of Refugee Women and Children in Islam," in *Forced Migration Review* (London: University of Oxford, 2009), 4.

⁶ Muhammad Munir, "Refugee Law in Islam," *Journal of Social Sciences* 4, no. 2 (2011): 1–18.

⁷ Kirsten Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research* (Geneva, 2007), 6–7.

⁸ Muddathir 'Abd Al-Rahim, "Asylum: A Moral and Legal Right in Islam," *Refugee Survey Quarterly* 27, no. 2 (2008): 15–23.

bodies agree that Islam can play a significant role in a global framework for protecting forced migrants. Over the centuries, Muslim scholars have formulated comprehensive teachings, ethics, and legal orders regarding the security of forced migrants by referring to the teachings of the Qur'an, *Sunnah*, and cultural practices that are prominent in the Muslim world."⁹ A conference on Asylum and Islam (2007) organized by the United Nations High Commissioner for Refugees (UNHCR) stated, "a highly sophisticated tradition" with a "fundamental humanitarian spirit" in Islam has strong similarities with international law.¹⁰ The 2012 Ashgabat Declaration on Refugees in the Muslim World by the Organization of Islamic Cooperation (OIC) states, "We recognize that more than Fourteen Centuries ago, Islam laid the foundation for the importance of providing protection, which is now ingrained in the faith, heritage and traditions of Islam."¹¹ "Rahaei, meanwhile, spoke of how respecting asylum seekers and those who provide protection has a "special place in sharia" and that "Islam pays special attention to the plight of forced migrants."¹²

Unfortunately, today such a tradition is rarely practiced. With the collapse of the Islamic caliphate in 1924, many Muslim countries (referring to the 57 OIC member states) such as Turkey, Egypt, and Tunisia underwent a central secularization process, with "most Muslim governments [replacing] Islamic law with legal systems inspired by Western secular codes."¹³ Scholars have no fundamental role in providing advice on state matters. As a result, Muslim scholars are no longer required to make laws regarding the framework of Islamic protection or adapt classical Islamic teachings to suit the conditions of the modern world.

⁹ Muddathir 'Abd Al-Rahim, "Asylum: A Moral and Legal Right in Islam,"

¹⁰ UNHCR, "Kuala Lumpur Conclusions of the United Nations Conference on Asylum and Islam," *Refugee Survey Quarterly* 27, no. 2 (2008): 64–65.

¹¹ Organization of the Islamic Conference, Ashgabat Declaration of the International Ministerial Conference of the Organization of Islamic Cooperation on Refugees in The Muslim World, 2012

¹² Saïd Rahaei, "The Rights of Refugee Women and Children in Islam."

¹³ John L. Esposito, *Retreat from the Secular Path: The Democracy-Secularism Debate in the Muslim World* (Quaderni di Relazioni Internazionali, 2010), 51.

Modern phenomena, such as increasing restrictions on movement between countries, or the growing prominence of the nation-state as the gatekeeper and primary provider for citizens, have replaced the framework of societal and individual obligations in which Islamic law developed regarding protection rules become irrelevant or no longer relevant to be practiced.

Consequently, many Muslim countries retain their culture and traditions to accommodate forced migrants. However, popular understanding and awareness of the Islamic framework for protecting forced migrants are still weak. Regardless of the separation between classical teachings and modern contexts, reviving awareness of these teachings among host and migrant communities can play a fundamental role in improving conditions for forced migrants globally. It can even help improve relations between host communities and migrants.

The need for a comprehensive framework for protecting forced migrants within Islam has become urgent. According to 2005 statistical data, about 50 percent of the world's refugees come from OIC countries,¹⁴--not including internally displaced people (IDPs) and asylum seekers. In addition, the 57 OIC countries have become home to some of the largest, most protracted, and most complex forced migration situations in the world.¹⁵ OIC countries currently host about 10.7 million refugees¹⁶ or 50 percent of the people of concern to UNHCR.¹⁷ The 2011 Syrian crisis has resulted in an estimated 2.6 million refugees¹⁸ and 6.5

¹⁴ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*.

¹⁵ Organization of the Islamic Conference, *Enhancing Refugee and IDP Protection in the Muslim World: OIC Ministerial Conference on the Problems of Refugees in the Muslim World*, 2006, 5.

¹⁶ Organization of the Islamic Conference, "Ashgabat Declaration of the International Ministerial Conference of the Organization of Islamic Cooperation on Refugees in The Muslim World," *Organization of the Islamic Conference*, last modified 2012, <https://www.refworld.org/pdfid/595c95ba4.pdf>.

¹⁷ Antonio Guterres, *Stretching the Limits*, 2012.

¹⁸ UNHCR, "Syrian Regional Refugee Response: Inter-Agency Information Sharing Portal," *unhcr.org*, last modified 2014, <http://data.unhcr.org/syrianrefugees/regional.php>.

million forced migrants.¹⁹ Meanwhile, countries such as Jordan, Lebanon, and Turkey are at the forefront of global efforts to provide protection and provision for forced migrants.

While the friendliness of these countries is praiseworthy, the protection framework remains weak. It can be seen from the fact that only 36 of the 57 OIC Member States have signed the 1951 Refugee Convention. These countries still have relatively few domestic laws on asylum, so refugees and other forced migrants are forced to live in a 'legal vacuum.'²⁰ Criticisms leveled by some of these countries at the 1951 Refugee Convention included concerns that the Convention did not reflect the values and circumstances of non-European countries.²¹ This concern emphasizes the need for a broader discussion of the rights of forced migrants in the Islamic tradition and to develop a framework of protection rooted in the host country's positive values and the forced migrant population itself.

Indeed there has been some progress in recent years. In 2012 UNHCR and the OIC jointly organized the International Conference on Refugees in the Muslim World (the first ministerial meeting to address this issue). As a result, the international community still lacks a framework that clearly outlines the rights and obligations of asylum seekers and grantors in the Islamic tradition.

Organizations such as Islamic Relief, which has been working with forced migrants for almost 30 years, have produced a framework for protecting them rooted in Islamic values to apply to modern challenges and will have significant practical importance. This framework requires further research and consultation with Muslim scholars. This is particularly the case with forced migrant populations, states, and communities hosting forced migrants. As a starting point, this paper outlines the overarching

¹⁹ UNOCHA, "Syria Crisis Overview," *unocha.org*.

²⁰ Muhammad Munir, "Refugee Law in Islam."

²¹ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*.

principles and classical practices of protecting forced migrants in the Islamic tradition that can guide the current practice of protecting forced migrants.

Many studies on migration and Islam have been carried out. Especially studies that try to compare the concept of migration in Islam and the concepts of migration that have developed in a modern context. Sabila Munir and Amir Latif, who described current theories on migration, such as macro theory, micro theory, push and pull approach, and world system theory, proposed two recommendations for managing migration. First is establishing more intensive cooperation between host and guest countries, such as creating national policies and organizations to guide and train possible immigrants (more functional organizations, such as overseas employment companies and the like). Secondly, formulate policy plans for each country for poverty reduction, as the fundamental reason for most of immigrants.²²

Meanwhile, for Ray Jureidini and Latife Reda, the Islamic tradition and several contemporary perspectives show many approaches and instruments to encourage cooperation, protection of the vulnerable and oppressed, equality regardless of religion, and promote the principles of equality, non-discrimination, decent living conditions, and wages for migrant workers and refugees must be prioritized. Most migration occurs on an employment basis, but migrants are made up of refugees and workers and are generally rooted in religious forms of oppression.²³

Endal S. Mekonnen asserts that the Greco-Roman world has taught the importance of reciprocal relations as a natural phenomenon because humans are social creatures designed to repay life. Social exchange theory has confirmed this. Such reciprocity is also part of the world's great religions. Caring for one's good requires caring for the good of others.

²² Sabila Munir & Amir Latif, "Migration in Islam and Contemporary Approaches of International Migration," *Journal of Islamic Studies and Culture* 2, no. 1 (2014): 55–67.

²³ Ray Jureidini & Latife Reda, "The Convergence of Migrants and Refugees: Western and Muslim Perspectives," *Sociology of Islam* 5, no. 2–3 (2017): 224–247.

Therefore, there is no relationship without reciprocity. This is where reciprocal relations are ideological. A benefit exchange system, both tangible and intangible, is based on mutual respect, shared moral obligations, and shared values. Ideology as a mental model influences migration policymakers at the leadership level and interactions between indigenous peoples and migrants at the grassroots level. This kind of reciprocity results in social bonds, trust, self-confidence, self-esteem, participation, positive obligations, and negotiating power between natives and immigrants, both at the religious and secular levels.²⁴

Khaled Abou El Fadl emphasized that Muslim traditions are full of ethical impetus that can substantially contribute to forced migration and displacement. Among these ethical thrusts is the critical concept of counter-*istid'af*—against oppression and powerlessness through mobility and accessibility, among Muslims, between Muslims and “non-Muslims”; and the ethics of *mu'akha* (brotherhood), *diyafa* (hospitality), and *ijara* (asylum). This ethical concept quickly finds common ground with other faith-based traditions and beliefs, rather than simply being subject to modern international law. Although the effort to apply the moral idea is hard, it alleviates and eliminates human suffering as illustrated in *Q.S al-Taubah* (9): 60, related to the concept of *al-gharimin wa fi sabilillah wa ibn al-sabil*.²⁵

Ashgar Ali, Ali Mohamed, and Farheen Baig Sardar Baig, while highlighting issues related to employment relations, stated that Islam emphasizes the pattern of employer-employee relations based on the concept of brotherhood. Not the idea of superiors and subordinates. Employers must be considerate, fair, and kind to workers. Including the employer's obligation to maintain the comfort and welfare of employees, treat workers as relatives, and the work given must be in accordance with

²⁴ Endale S. Mekonnen, “Reciprocity and Migration: The Interface between Relig,” *African Human Mobility Review* 4, no. 2 (18AD): 1285–1309.

²⁵ Khaled Abou El Fadl, “Islamic Ethics, Human Rights and Migration,” in *Migration and Islamic Ethics: Issues of Residence, Naturalization and Citizenship* (Leiden: Brill, 2020), 13–27.

their capacity. While employees must do their work carefully and can be trusted. Unfortunately, the exploitation of migrant workers is still a recurring phenomenon worldwide, including in the Islamic world.²⁶

A more specific study on migrant rights in the perspective of Islam and human rights, conducted by Hacı Ali Acikgul, confirms that the phenomenon of migration as old as human history can be found in almost all civilizations including in Islamic history, known as the "hijrah" of the Prophet Muhammad SAW from Mecca to Medina. The Qur'an itself commands to help those in need. In this context, there is an order for the state and citizens to respect and protect the fundamental rights of people who migrate to other countries and endanger their own lives.²⁷

The emergence of the notion that the principles of Islamic law regarding refugee assistance and protection are ignored in academic and political discourse needs attention. Islam recognizes rights, rights that must be fulfilled and obeyed by humans as God's creatures and rights that must be obtained from fellow human beings. This seems to have some contradictions with the concept of human rights in the Universal Declaration of Human Rights (UDHR). In Islam, these rights come from and are obtained through belief in God and religion. Therefore these rights can be obtained through this belief system, thus potentially excluding people who do not believe in God.²⁸

This study focuses on depicting the principles that can form the basic framework for the protection of forced migrants—elaborating and elaborating on the primary sources of Islam, the Qur'an, *Sunnah*, and other secondary works that discuss the safety of forced migrants. The term “forced migrant” is used in this study to include “refugee” and “displaced

²⁶ Ashgar Ali Ali Mohamed & Farheen Baig Sardar Baig, “Treatment of Migrant Workers: The Islamic Perspective,” *Australian Journal of Basic and Applied Sciences* 6, no. 11 (2012): 97–105.

²⁷ Hacı Ali Acikgul, “Rights of Migrants from Islamic and Human Rights Perspective,” *Adalet Dergisi* 2, no. 6 (2021): 105–150.

²⁸ UNHCR, “High Commissioner’s Dialogue on Protection Challenges Theme: Faith and Protection,” *unhcr.org*, last modified 2012, <https://www.unhcr.org/high-commissioners-dialogue-on-protection-challenges-2012.html>.

people”—two words that have different legal meanings in the current international framework. While the term *musta'min* refers to all categories of forced migrants, who have been granted protection by the Islamic state.

This study uses a qualitative approach to literature (library research), whose data is extracted from written sources.²⁹ Data collection techniques are carried out through documentation techniques,³⁰ where all information scattered in much literature is treated equally, then classified, determined, investigated, and compared.

Migration in Islamic Tradition

In the Islamic tradition, there is no specific term equivalent to “refugee”, “forced migrant,” or “asylum seeker.” Unlike in international law, there are no legal distinctions between the different categories of forced migrants,³¹ partly because Islamic law developed in the context of community or royal rule. Meanwhile, the international legal framework operates in the context of the state.

There are several symbols of strong emotion in Islam that praise the idea of refugee protection. The process of displacement, which includes the triad of escape, asylum, and refuge, is widely discussed in the Islamic tradition—especially in the Qur'an and *Hadith*. For refugees and asylum seekers in Muslim-majority countries, the redrawing and mobilization of such practices have the potential to pave the way for the expansion of protection rights.³² Even in Islamic tradition, calling asylum is a "moral

²⁹ Kaelan, *Metode Penelitian Agama Kualitatif Interdisipliner* (Yogyakarta: Paradigma, 2010), 134.

³⁰ Secara sederhana, teknik dokumentasi bisa dipahami sebagai upaya mencari dan mengumpulkan data dari bahan-bahan tertulis, seperti catatan, transkrip, buku, artikel, surat kabar, dan lain sebagainya. Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik* (Jakarta: Rineka Cipta, 2006), 231.

³¹ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 13.

³² G.M. Arnaout, *Asylum in the Arab-Islamic Tradition* (Genewa, 1987), <https://www.unhcr.org/50ab90399.pdf>; Khadija Elmadmad, “An Arab Convention on Forced Migration: Desirability and Possibilities,” *International Journal of Refugee Law* 3, no. 3 (1991): 461–481.; S.A.F. Muzaffar, “Practicable Ideals? A Proposal for Revitalizing the Rights of Forced Migrants in Islam,” *Journal of Refugee Studies* 14, no. 3 (2001): 250–275.; M.N.

and legal right.”

If traced further, the Qur'an provides extensive information and references regarding the relationship between persecution and forced migration, for example, about "the oppressed" (*Q.S. al-A'raf* [7]: 137 and *Q.S. al-Nisa'* [4]: 97), "those who were unjustly expelled from their homes" (*Q.S. al-Hajj* [22]: 40) and those who were "expelled from their homeland" (*Q.S. al-Baqarah* [2]: 246). It is here that it appears that most Islamic traditions regarding forced migrants refer to people fleeing persecution or oppression.

Concerning the form of oppression, it is not always explicitly clarified. The Qur'an and *Hadith* often refer to examples of religious persecution. Abou-El-Wafa argues that “if a Muslim cannot profess his religion or perform his religious obligations in a non-Muslim country, he is obliged to immigrate.” Ibn Arabi broadens the definition of persecution by stating that asylum is mandatory in countries with injustice, intolerance, physical abuse, disease, and financial insecurity.³³ From this definition, it can be understood that any person forgoing a place due to the above factors can be considered a forced migrant, including those who suffer from severe poverty or disasters.

The early Muslims who migrated to Medina in 622 AD was motivated by the desire to escape persecution, later called *muhajirun*. But the concept of *hijrah* in contemporary legal terminology is the closest equivalent to territorial asylum, the movement of a person from a place where there are fears of a threat to life, family, and protection, to a place where a person can obtain safety and security.³⁴

This is where the fundamental difference between Islamic and mainstream international understandings of the rights of forced migrants

Manuty, “The Protection of Refugees in ISLAM: Pluralism and Inclusivity,” *Refugee Survey Quarterly* 27, no. 2 (2008): 24–29.; A.M. Shoukri, *Refugee Status in Islam: Concepts of Protection in Islamic Tradition and International Law* (London: I.B.Tauris, 2010).

³³ Khan & Palmer Kirmani, *Does Faith Matter? An Examination of Islamic Relief's Work with Refugees and Internally Displaced Persons*, Islamic Relief, 2008, 4.

³⁴ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 255.

becomes clear. Shahrani and Malkki stated that the efforts of international organizations to portray forced migrants as symbols of "common humanity" and "universal suffering" caused forced migrants to be seen as passive, powerless, and de-politicized parties that had no historical, cultural, or nation roots.³⁵

As an alternative, Islam emphasizes the importance of the fundamental dignity of humankind (*Q.S. al-Isra'* [17]: 70). The honor given to human beings is unconditional and must be respected regardless of their gender, race, class, nationality, or legal status. Forced migrants must be treated equally with the dignity and honor God has given them.

In Islam, seeking asylum is rooted in the attributes of moral autonomy and free will—which God uniquely bestows on humankind.³⁶ Thus, in Islam, seeking asylum is more of an "obligation" than a "right" (*Q.S. al-Nisa'* [4]: 97). With the freedoms conferred on humanity comes the obligation to safeguard human dignity by seeking protection from oppression and persecution. The concept of forced migration in Islam implies not only a victim of a helpless situation but also a person who has taken an active choice to defend his life in accordance with Allah's commands. This understanding gives agency and dignity to forced migrants. Early Muslim migrants were defined as *muhajirun*, or 'immigrants,' which did not distinguish them from other categories of migrants. They emphasized their decision to immigrate rather than their need for protection.

Meanwhile (*Q.S. al-Nisa'* (4): 98) refers to the specific context of the early Muslim migration to Medina. Due to the impossibility of practicing Islam in Mecca, the early Muslims were encouraged to migrate to Medina in 622 AD.³⁷ The majority of the early Muslims at that time did and obeyed the Prophet's advice. Al-Dahhak asserts that this verse refers to the

³⁵ Khan & Palmer Kirmani, *Does Faith Matter? An Examination of Islamic Relief's Work with Refugees and Internally Displaced Persons*, 6-7.

³⁶ Muhaddathir Al-Rahim, "Asylum: A Moral and Legal Right in Islam," 16

³⁷ Tariq Ramadan, *The Messenger: The Meanings of the Life of Muhammad* (London: Penguin Books, 2008), 59.

minority of hypocrites who did not migrate to Medina but pretended to be weak to remain in Mecca and ultimately chose to fight against the Muslims in the battle of *Badr*. It is people like this who do injustice to themselves. From this, it can be understood that people with the means of power to avoid injustice are morally obligated to do so. Failure to fulfill this obligation is not only a denial of God's love—His vast and abundant earth—but has the potential to become a significant sin when the individual is involved in injustice.³⁸ In Islam, persecution is considered one of the thebrutalsevere acts of injustice and is “worse than murder” (*Q.S. al-Baqarah* [2]: 191 and 217). On the other hand, Islam encourages self-control and peaceful behavior (*Q.S. al-Maidah* [5]: 32, *Q.S. al-Anfal* [8]: 61 and *Q.S. al-Zukhruf* [43]: 89). Even in some parts, the Qur'an calls for “establishing justice, including against oneself and one's family” (*Q.S. al-Nisa* [4]: 135). As the Hadith of the Prophet (*H.R. Muslim*) states, “Whoever among you sees an evil, he should change it with his hand; if unable, verbally; and if he is not able, with his heart, and that is the weakest of faith.”

These verses and hadiths remind those who have experienced persecution that they are not helpless. Many have the power and right to change their situation and are therefore obliged to do so. In addition, these verses and hadiths clearly emphasize the importance of protecting oneself and one's dignity from oppression and persecution. Such assertiveness is reserved only for those capable of migrating – “but not so for those who are utterly powerless, having no means in their power or way to go.”

Furthermore, the Qur'an also encourages the persecuted to migrate by promising security and reward (*Q.S. al-Anfal* (8): 26); Allah's pleasure and heaven (*Q.S. al-Taubah* (9): 100); a better place in this world, and the hereafter (*Q.S. al-Nabl* (16): 41). However, there are exceptions for those who are incapable and powerless and do not know the way to migrate. Ibn Kathir himself emphasized that the persecuted people, if they emigrated

³⁸ Sharifah Nazneen Agha, *The Ethics of Asylum in Early Muslim Society, Refugee Survey Quarterly* 27, vol. 1, 2008, 36.

because they hoped to please Allah, were promised safe protection and an "abundance" of sustenance and wealth.³⁹

As a universal religion, Islam's teachings are certainly not aimed only at specific groups or groups. However, they include various races, nationalities, and ethnicities because the emphasis of the Qur'an is a reference to justice and the importance of creating a just society. The justice framework in question is the relationship between individuals, the poor and needy, and between the community and the nation. This includes asylum seekers and refugees.

The historical event in 662 AD, when the Prophet Muhammad avoided persecution in Mecca and sought refuge in Medina, proves that *hijrah* or migration symbolizes the movement from infidel lands or oppression to Islamic countries.⁴⁰ The explanation (*Q.S. al-Nisa'* [4]: 98) indicates that seeking asylum is an obligation and obtaining asylum is a right. In other words, the persecuted person has the right to seek protection. Rights that have been bestowed by God and must be fulfilled by fellow human beings. Meanwhile, as guardians and not owners of the earth, humans have no right to deny territorial protection to others. This right of asylum can be claimed by both Muslims and non-Muslims of the Muslim community (*Q.S. al-Taubah* (9):6).⁴¹

The term of protection used in the above verse is *istijarah*, which etymologically means "protection." This expression refers to the custom in ancient Arab society to respect and protect neighbors to the best of their ability.⁴² The discussion on the protection of forced migrants also focuses on using the word *safe* at the end of the verse, which can be translated as "safety protection" or "certainty of protection."⁴³ There are many references in the Qur'an and hadith about the obligation of Muslims

³⁹ Abu al-Fida' Ibn Kathir, *Tafsir Al-Qur'an Al-'Azhim*, 1st ed. (Cairo: Dar al-Taufiqiyah li al-Turats, 2009), 238-239.

⁴⁰ Astri Suhrke, "Refugees and Asylum in the Muslim World," in *The Cambridge Survey of World Migration*, ed. Robin Cohen (Cambridge: Cambridge University Press, 1995), 457.

⁴¹ Muhammad Munir, "Refugee Law in Islam."

⁴² Muddathir 'Abdul Al-Rahim, "Asylum: A Moral and Legal Right in Islam."

⁴³ Muhammad Munir, "Refugee Law in Islam."

to grant asylum to seekers of refuge and protect those persecuted. In Islam, protecting forced migrants is not just an ordinary act of kindness but is. Still, it is of justice, referring to the case of the early Muslim community persecuted and migrated to Medina (*Q.S. al-Anfal* (8): 72).

The verses above clearly mandate Muslims to stand up for justice (*qawwamin bil qisbt*) and remind them that saving one life is the same as saving all humankind (*Q.S. al-Maidah* [5]: 32). Helping the oppressed is at the core of Islamic teachings. The Qur'an talks about how God "loves those who are oppressed in this land" (*Q.S. al-Qashash* [28]: 5) and calls on Muslims to fulfill the role of protector and helper towards those who protect those who are oppressed. (*Q.S. al-Nisa'* [4]: 75). The Prophet repeatedly demanded that Muslims help the oppressed. Even to those who did wrong, though, the Prophet also suggested to help him (*H.R Bukhari and Muslim*). In the context of the *hijrah*, the Qur'an attributes the people of Medina, who were the first to offer protection and assistance to the persecuted Muslims of Mecca, as "true believers" and "people who deserve forgiveness and abundant sustenance" (*Q.S. al-Anfal* (8): 74).

There is a consensus among classical and modern scholars that Muslims are obliged to grant asylum to those who seek it. Arnaout claims that it is not permissible to refuse asylum seekers to enter the country's territory or where they seek protection.⁴⁴ Although there are differences of opinion regarding granting asylum as a collective obligation (*fard kifaya*) or individual obligation (*fard 'ayn*), the classical Islamic tradition shows that individuals play a central role in protecting forced migrants. Some thinkers claim that "refugee law in Islam is not an area where Muslim countries and non-Muslim countries have much to do"—but citizens are involved in this law.⁴⁵ Elmadmad argues that granting asylum is an obligation for everyone living in an Islamic country.⁴⁶

⁴⁴ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 19.

⁴⁵ Muhammad Munir, "Refugee Law in Islam."

⁴⁶ Khadija Elmadmad, "Asylum in Islam and in Modern Refugee Law," *Refugee Survey Quarterly* 27, no. 3 (2008): 54.

Zaat argues that security protection (safe) can be given to people in need, whether men, women, or small children (according to the way individuals provide protection), whether Muslim or non-Muslim, and regardless of the political, civil, social, cultural, religious or economic background of the people fleeing persecution and oppression.⁴⁷ Even some experts state that enemy combatants are entitled to receive security protection, as long as they prove their non-combatant status first.⁴⁸ According to Yacoob and Aiman, security protection (safe) can be given verbally or by gesture or request.⁴⁹ Meanwhile, Elmadmad emphasized that providing security protection does not require asylum seekers to prove their persecuted status.⁵⁰ This kind of practice is not always applicable in modern contexts. To be sure, this practice in Islamic teachings is considered an individual obligation to protect forced migrants.

According to Ibn Juzay (d. 1340 AD), a jurist of the Maliki school, security protection is given to those in need, whether a Muslim or a non-Muslim, and his obligations apply to leaders (*imam*) and citizens as long as there is no harm in it.⁵¹ This kind of “individual” protection can be found in the life history of the Prophet (*Sira Nabawiyya*). His uncle, Abu Talib, gave the Prophet himself protection, then by al-Muth'im ibn 'Adi from the attacks of the Quraish.⁵²

Islam has provisions for protecting non-Muslims who seek refuge. *Musta'min* (protected person) must uphold Islam and the prevailing social order but then be saved. The Qur'an (*Q.S. al-Taubah* (9):6) has arranged for the polytheists to be given protection so that they can hear the message of Islam and be given a safe path. The context is one of a long period of tension and struggle for an Islamic homeland against the prevailing

⁴⁷ Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 20.

⁴⁸ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 22.

⁴⁹ Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 20.

⁵⁰ Khadija Elmadmad, “Asylum in Islam and in Modern Refugee Law.”

⁵¹ Muhammad Munir, “Refugee Law in Islam.”

⁵² Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 95.

orthodoxy marked by polytheism. *Hijra* was seen as a necessity for the emergence of a weak Islamic government and an attempt to build garrison towns and strengthen its presence in the expanding territory. But as Islam has become established and dominant, the importance of the *hijrah* has diminished with some claims of its cancellation “by the Muslim conquest of Mecca” (Verskin, 2015, p. 33).⁵³ According to Gerhard Hoffstaedter, *hijrah* is used as a revolutionary tool by splinter groups within Islam to create new, sustainable communities. They marked the Islamic government as an infidel or had deviated from true Islam and urged their followers to migrate to Medina or the headquarters from where they would try to conquer the surrounding areas following the traditions of the Prophet.⁵⁴

The right to provide more general security protections (e.g., large groups of forced migrants or inter-state protection agreements) rests only with the *imam* or the relevant state representative.⁵⁵ In the history of Islam, everyone has the right to security protection in *Darul Islam* (Islamic State).

In the terminology of Islamic law, the person given protection is called *musta'min*, that is, the person who gets security protection.⁵⁶ However, there are several cases where an Islamic state can refuse asylum: *first* if the migrant is a non-political criminal (especially one who has filed a complaint in the country of origin and sought protection as a means of evading punishment);⁵⁷ *secondly*, if the migrant is an enemy combatant whose combat status has not been revoked;⁵⁸ *thirdly*, if accommodating a

⁵³ A. Verskin, *Islamic Law and the Crisis of the Reconquista: The Debate on the Status of Muslim Communities in Christendom* (Leiden: Brill, 2015), 33.

⁵⁴ Gerhard Hoffstaedter, “Refugees, Islam, and the State: The Role of Religion in Providing Sanctuary in Malaysia,” *Journal of Immigrant & Refugee Studies* 15, no. 3 (2017): 287–304.

⁵⁵ Muhammad Munir, “Refugee Law in Islam.”

⁵⁶ Organization of the Islamic Conference, *Enhancing Refugee and IDP Protection in the Muslim World: OIC Ministerial Conference on the Problems of Refugees in the Muslim World*.

⁵⁷ Ahamed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study, 181-184*.

⁵⁸ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 20.

migrant is contrary to an agreement with another country. The latter case can be found in the history of the *Hudaibiyya* Agreement between the Prophet Muhammad and the Quraish tribe in Mecca. The deal banned the Muslim community in Medina from accepting Muslim refugees fleeing Mecca. When one refugee tried to seek asylum from the Prophet Muhammad, the Prophet replied; we have given that person what you know (agreement), and in our religion, treason is not suitable for us.⁵⁹

Migrant Rights in Tradition

Under international law, the protection of refugees and IDPs is guaranteed by International Humanitarian Law (IHL)—especially the 1949 Geneva Conventions and two additional 1977 Protocols, and the 1951 Refugee Convention and 1967 Protocol. While the broader framework is *International Human Rights Law* (IHRL); the main inspiration is the *Universal Declaration of Human Rights* (UDHR) 1948. This UDHR is a step toward adopting human rights treaties as in 1966 of the Covenants on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights. There are also subsequent regional and topical instruments and many specific Conventions and international treaties relevant to the protection and assistance of displaced people.⁶⁰

Arendt's study shows that once refugees lose their membership in the political community and no longer have a government willing to protect their rights; they also lose their human dignity and essential qualities as human beings. For Arendt, the only way for refugees to recover their human dignity is by obtaining new citizenship and membership in a new political community.⁶¹

This argument supports the human rights discourse model in the

⁵⁹ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 188.

⁶⁰ Musab Hayati, *Islam, International Law and the Protection of Refugees and IDPs*, 2009.

⁶¹ Jera Beah H. Lego, "Protecting and Assisting Refugees and Asylum-Seekers in Malaysia: The Role of the UNHCR, Informal Mechanisms, and the 'Humanitarian Exception,'" *Journal of Political Science and Sociology* 10, no. 17 (2012): 75–99.

religious sense of human dignity. As opposed to the secular model, which “bases human rights on pragmatic considerations, that practices that are compatible with certain rights for all human beings produce desirable social consequences.” This secular model rests on the premise that human rights should not be based on religion,⁶² but on a “general mention of different cultural and political viewpoints.”⁶³ In fact, adopting the religious model removes doubts about the universality of human rights⁶⁴ and legitimizes human rights “in diverse religious traditions.”⁶⁵ The religious model ensures that human rights are implemented effectively across different religious traditions and are “owned” by the local population,⁶⁶ rather than being perceived as another form of Western hegemony.

The legitimacy of such human rights in religious traditions (including Islam) requires internal dialogue, or in Abdullahi An-Na'im's terms, "enlightened interpretation" of existing religious norms and values, according to "cultural legitimacy."⁶⁷ It presupposes that emerging religious traditions, which happen to be seen as 'incompatible' with human rights, can adapt to human rights standards.⁶⁸ Because cultural norms and institutions have different degrees of ambivalence and flexibility in meeting the standards of followers' needs and circumstances, various

⁶² Louis Henkin, “Religion, Religions, and Human Rights,” *The Journal of Religious Ethics* 26, no. 2 (1998): 229–239, <https://www.jstor.org/stable/40008655>.

⁶³ Michael Ignatieff, *Human Rights as Idolatry* (Princeton: Princeton University Press, 2000), 64.

⁶⁴ Abdulaziz Sachedina, “The Clash of Universalisms: Religious and Secular in Human Rights,” *Hedgehog Review*, last modified 2007, <https://hedgehogreview.com/issues/human-dignity-and-justice/articles/the-clash-of-universalisms-religious-and-secular-in-human-rights.2>

⁶⁵ Diane Orentlicher, “Relativism and Religion,” in *Human Rights as Politics and Idolatry*, ed. Michael Ignatieff (Princeton: Princeton University Press, 2000), 139–156.

⁶⁶ Abdullahi An-Na'im, “Conclusion,” in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Pennsylvania: University of Pennsylvania Press, 2011), 427–436.

⁶⁷ Abdullahi An-Na'im, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment,” in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* (Pennsylvania: University of Pennsylvania Press, 2011), 19–43.

⁶⁸ Bonny Ibhawoh, “Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State,” *Human Rights Quarterly* 22, no. 2 (2000): 838–860.0

interpretations of cultural norms can usually be presented in multiple possibilities.⁶⁹ Likewise, the Qur'an and *Sunnah* texts are open to different possible interpretations to find textual authority, both for liberalism and conservatism.⁷⁰

Security protection (safe) in Islam does not only include allowing asylum seekers into a country, city, or community. Islam provides a comprehensive framework for the protection and provision of *musta'min*, or what the Arab Parliamentarians' Symposium calls "traditions, customs, and practices that developed in Arab countries. Islamic values also provide "a solid foundation for the integrative protection of refugees and respect for their human integrity."⁷¹

When security protection has been given, a *musta'min* must get all the rights as a citizen.⁷² Such a conceptual framework can be found its foundation in the Medina Charter, which among its contents is to guarantee protection for all citizens of Medina, whether immigrants or natives, Muslims or non-Muslims.⁷³ According to Aminu-Kano, the concept of forced migrant rights must include the five main objectives of Islamic law (*ushul al-khamsah* or *maqashid al-Shari'ah*), which form the basis of Islamic governance and the rights of citizens, namely the protection of life, religion, reason, property, and lineage.⁷⁴ These principles provide a comprehensive framework related to the rights of *musta'min*, which include the right to protection, the right not to be forcibly returned to their country of origin (refoulement), the right to meet physical needs, the right

⁶⁹ Abdullahi An-Na'im, "Cultural Transformation and Normative Consensus," *Human Rights Quarterly* 22, no. 2 (2000): 838–860.

⁷⁰ Abdullahi An-Na'im, "What Do We Mean by Universal?," *Index on Censorship* 23, no. 3–4 (1994): 20–125.

⁷¹ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 52.

⁷² Khadija Elmadmad, "Asylum in Islam and in Modern Refugee Law."

⁷³ Ramadan, *The Messenger: The Meanings of the Life of Muhammad*, 88.

⁷⁴ Muhtari Aminu-Kano, "Human Development in Islam," *Studocu.Com*, last modified 2014, <https://www.studocu.com/my/document/multimedia-university/islamic-constitutional-law/human-development-in-islam/14697594>.

to freedom of belief, the right to do business and protection wealth, the right to marry and raise children, and the right to be reunited with one's family.⁷⁵

The obligation to fulfill the rights of forced migrants is rooted in the broader ethos of Islamic teachings on human rights. In Islam, Allah alone gives dignity and human rights so that the fulfillment of the rights of others is an obligation that applies to all Muslims. Later, each individual will be held accountable in the afterlife. This obligation is fulfilling God's rights over His servants, which is realized by protecting fellow human beings.⁷⁶ While modern protection frameworks tend to place the government as the gatekeeper, Islam emphasizes responsibility at all levels of society, from individuals, families, and communities to the broader civil society. Thus, the government's main task is to be the main guarantor of protection and justice.

This is the basic foundation that is a guarantee for a *musta'min* to obtain his rights. This guideline applies to all citizens of the host country (*Q.S. al-Rum* (30): 38) and *Q.S. al-Isra'* (17): 26). For this reason, the fulfillment of the rights of *musta'min* should not be considered a burden or a source of hatred. But as a good deed full of blessings.

From the description above, this study emphasizes that in Islam, there are at least nine (9) rights of forced migrants that must be fulfilled: *first*, the right to protection. This is the first and foremost right of a *musta'min*. Because this right is the fundamental purpose of seeking and providing protection (*Q.S. al-Taubah* [9]: 6). In *fiqh*, the term safe refers to "protection guarantee."⁷⁷ Protection of life is the main goal of the *Shari'a*. Islam clearly emphasizes the importance of preserving life. Islam expressly commands its adherents to not only refrain from killing but also to seek to protect the lives of others actively. The Qur'an itself equates the act of killing a person with "[killing] all mankind," and "the effort to save one life

⁷⁵ Muhammad Munir, "Refugee Law in Islam."

⁷⁶ Muhtari Aminu-Kano, "Human Development in Islam."

⁷⁷ Muhammad Munir, "Refugee Law in Islam."

is like saving the life of all mankind" (*Q.S. al-Maidah* [5]: 32). This is where then there is an order to uphold justice (*Q.S. al-Nisa'* [4]: 135) and protect the oppressed (*Q.S. al-Nisa'* [4]: 75).

Second, the right not to refolement (forced return to their country of origin). As part of the protection agreement, it is forbidden to force *musta'min* to return to their country of origin against their will. It is rooted in the Prophet's teaching that "a Muslim is the brother of another Muslim, so he should not oppress or leave it to the oppressor." One consensus is that this right applies to Muslims and non-Muslims. Imam al-Shaybani stated that even if an enemy fighter came to seek safety, he should not be forced to return to his country if he feared being killed. Legal experts agree that forced refolement can be a betrayal and severe injustice. Islamic countries must protect them, even if the refugees' country of origin threatens to go to war if the *musta'min* are extradited.⁷⁸

Imam al-Shaybani asserted that "if someone enters a Muslim country safely, and kills a Muslim intentionally or without (accidentally) intention, or commits robbery, or spies on Muslims and transmits [information] to the polytheists, or raping a Muslim or a non-Muslim woman [a non-Muslim citizen of a Muslim country], or committing theft, neither of these acts constitutes a violation of her right to protection of security."⁷⁹

The sanctity of non-refoulment has been supported by a modern jurist, Sheikh Faisal Mawlawi.⁸⁰ One example of non-refoulment that has ever been practiced in Islamic history is the story of the Negus, the Abyssinian King, with whom the early Muslims of Mecca sought refuge (before migrating to Medina). When representatives of the Quraish arrived, pleading with the Negus to return the asylum seekers to Mecca,

⁷⁸ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 181-184.

⁷⁹ Muhammad Munir, "Refugee Law in Islam." *Bandingkan dengan Muddathir Al-Rahim*, "Asylum: A Moral and Legal Right in Islam."

⁸⁰ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 20. *Bandingkan dengan Conference, Enhancing Refugee and IDP Protection in the Muslim World: OIC Ministerial Conference on the Problems of Refugees in the Muslim World.*

where they could face justice for their treacherous behavior, the Negus replied:

No, for God's sake, they will not be betrayed – the people who sought my protection, made my country their home, and chose me above all else! I will not give them up until I call them and ask them what these people say about them. If it is as they say, I will hand them over to them so they may return to their people. But if not, I will be their good protector, as long as they seek my protection.⁸¹

After assessing the case, the Negus said to the refugees, “Go, for you are safe in my country. Not for the sake of a mountain of gold, I will hurt one of you.”⁸² Similarly, when the Quraish demanded that Abu Talib surrender the Prophet, Abu Talib replied, “I will not give up Muhammad; and we will fight to the death for him. We will not hand him over until we are killed around him and taken from our sons and daughters. Then others will rise with the same sword against you.”⁸³

The third is the right to dignity. The Islamic protection framework emphasizes the importance of ensuring that *musta'min* are able to maintain their dignity. This derives from the nobility inherent in all human beings (*Q.S. al-Isra* [17]: 70). In the history of the migration (*hijrah*) of the early Muslim community to Medina, the Prophet was aware of the hardships and poverty experienced by the emigrants of Mecca at first arrived in Medina. They had fled from intolerable conditions and came with a loss of property, wealth, and income.⁸⁴ The Prophet emphatically stated that the emigrants of Mecca and the hosts in Medina (*Ansar*) were brothers. The Prophet established the system of protection, in which each *Ansar* family is responsible for one family of Emigrants, sharing in the wealth, food, housing, and protection of the tribe. The system facilitates the integration of the Emigrants into society, gives them a sense of belonging,

⁸¹ Martin Lings, *Muhammad: His Life Based on the Earliest Sources* (London: The Islamic Texts Society, 1984), 83-84.

⁸² Martin Lings, *Muhammad: His Life Based on the Earliest Sources*.

⁸³ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 54.

⁸⁴ Sharifah Nazneen Agha, “The Ethics of Asylum in Early Muslim Society”.

and is a source of spiritual assistance.⁸⁵ Abou-El Wafa noted that in Islamic history, “it has been established that refugees, be they Muslim or non-Muslim, are treated equally or better than those given to citizens.”⁸⁶ The generosity of the friends of the Ansar towards the migrants (*Muhajirin*) is mentioned in *Q.S. Al-Hasyr* (59: 9).⁸⁷

So, it should not be rejected and betrayed once protection is given.⁸⁸ Instead, forced migrants must be treated with consistent love and generosity. The Prophet also encouraged the emigrants to take advantage of their experience in the trade to build their wealth, not to burden their hosts. This order demonstrates that migrants are also obligated to seek financial self-sufficiency and ensure they are not recipients of perpetual charity;⁸⁹ Fostering an environment of self-reliance, where forced migrants are given long-term support to utilize their skills and experience, is an important aspect of reaffirming the dignity and dignity of the *musta'min*.

Fourth is the right to non-discrimination. *Musta'min* are entitled to equal rights with citizens of the host country. Regardless of whether they are expelled from their country of origin, refugees, or stateless people. However, it should be noted that within the framework of Islam, forced migrants are entitled to receive security protection regardless of religion, race, color, or wealth.⁹⁰ Because Islam respects people from all backgrounds (*Q.S. al-Rum* [30]: 22) and (*Q.S. al-Hujurat* (49): 13). This universal value is also reflected in the Cairo Declaration on Human Rights in Islam article (1):

All humans form one family whose members are united by submission to God and descend from Adam. All men are equal in

⁸⁵ Tariq Ramadan, *The Messenger: The Meanings of the Life of Muhammad*, 92.

⁸⁶ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 245.

⁸⁷ Abu al-Fida Ismail bin Umar bin Katsir, *Tafsir Al-Qur'an Al-'Azhim*, VIII. (Cairo: Dar al-Hadiths, 2005).

⁸⁸ Kristan Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 19.

⁸⁹ Sharifah Nazneen Agha, “The Ethics of Asylum in Early Muslim Society.”

⁹⁰ Ahamed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 71.

terms of basic human dignity and basic obligations and responsibilities, without discrimination based on race, color, language, sex, religious belief, political affiliation, social status, or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection. All human beings are God's subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except based on piety and good deeds.⁹¹

Based on the universality of human dignity, Al-Shaybani explicitly states that a Muslim leader must save, protect, and do justice to any *musta'min* during their stay in Muslim territory.⁹² Fifth is the right to freedom of religion. This right is often the cause of conflicts, controversies, and misunderstandings. In this regard, the Qur'an has described the obligation of a Muslim to protect non-Muslims (*Q.S. al-Taubah* [9]: 6). At first glance, this verse does seem counterproductive to the situation and context of *da'wah*. However, what must be underlined is that the protection concept does not depend on the recipient's faith. Every Muslim and non-Muslim must be respected under the protection agreement, and their rights must be fully granted. The verse instructs Muslims to take the *musta'min* "to a safe place for [them]" regardless of whether the *musta'min* is Muslim or not. Wahbah al-Zuhaili stated that state authorities must protect non-Muslims who need protection.⁹³

Islam itself recognizes that religious freedom exists and is recognized as the essence of humanity. The Qur'an asserts that the purpose of the creation of the jinn and humans is to worship God (*Q.S. al-Dzariyat* [51]: 56). But such worship must be based on belief, reflection, and choice. Therefore, Allah warns that "there is no compulsion in religion" (*Q.S. al-Baqarah* [2]: 256). If God had willed, surely all humankind on this earth would have believed (*Q.S. Yunus* [10]: 99).

⁹¹ [icrc.org](https://clearing.icrc.org/), "Cairo Declaration on Human Rights In Islam," *icrc.org*, accessed June 22, 2022, [https://clearing.icrc.org/..](https://clearing.icrc.org/)

⁹² Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 174.

⁹³ Muhammad Nur Manuty, "The Protection of Refugees in ISLAM: Pluralism and Inclusivity."

Throughout Islamic history, many examples of non-Muslims being afforded protection by Muslim countries, for instance, after the collapse of the Kingdom of Granada in 1492 AD. Then during the increasing cases of persecution and anti-Semitism in Spain by Ferdinand and Isabella, large numbers of Iberian Jews fled to various parts of the Muslim world. Russian Jewish and Christian refugees were re-accepted in the Muslim world after the terrible expansion of Ivan's empire in the 16th Century and after the Bolshevik Revolution of 1917 C.E.⁹⁴ Thus, forcing people, whether by force, emotional demands, or bribes to convert to Islam, is fundamentally against God's command. The Qur'an teaches Muslims to grant asylum to non-Muslims (*Q.S. al-Taubah* (9):6) as a step in introducing Islam. But non-Muslim asylum seekers should not feel obligated or compelled to embrace Islam.⁹⁵

Sixth is the right to meet physical needs (food, shelter, clothing, and economic provision). This is the right of every vulnerable citizen and forced migrant within an Islamic state.⁹⁶ Islamic institutions that regulate zakat and alms should be able to help fulfill the right to provide food for vulnerable citizens.⁹⁷ Islamic teachings are tired of calling for an obligation for every Muslim to set aside a part of their income for zakat or alms to help eight groups who deserve to receive zakat (*al-ashab al-tsaminah*), one of which is "the traveler in need" (*Q.S. al-Taubah* (9).): 60).

According to Yusuf al-Qaradawi, the obligation of zakat should be used to provide food, shelter, clothing, and transportation to travelers in need.⁹⁸ Collecting Zakat is one of the tasks of the state, or related agencies, to ensure that the distribution process goes well, including for groups of forced migrants. The Qur'an itself encourages Muslims to help travelers according to their capacity

⁹⁴ Muddathir 'Abd al-Rahim, "Asylum: A Moral and Legal Right in Islam."

⁹⁵ Khadija Elmadmad, "Asylum in Islam and in Modern Refugee Law."

⁹⁶ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*.

⁹⁷ Kristen Zaat, *The Protection of Forced Migrants in Islamic Law: New Issues in Refugee Research*, 23.

⁹⁸ Yusuf Al-Qardhawi, *Fiqh Az-Zakat: A Comparative Study* (London: Dar Al Taqwa Ltd, 1999), 429-437.

(Surah al-Baqarah [2]: 177); (Q.S al-Baqarah (2): 215); and (Q.S al-Qashash (28): 25).

Seventh is the right to own property and protected funds. Along with the right to get a job and develop economic independence, a *musta'min* has the right to be protected by his property and wealth. This property and property may not be confiscated. The act of confiscation can violate the trust and honor of the protection guarantee. This protection (for practical reasons) can only cover property brought by the asylum seeker and not left behind in the country of origin. Related to this, al-Nawawi stated;

If an infidel enters under a safe agreement or *zimma* into a Muslim land, he will get guaranteed security for his property, children, and belongings. However, he will not have the right of security protection for property, children, and relatives left in a non-Muslim country.⁹⁹

Eighth is the right not to be separated from the family. The *Sunnah* of the Prophet forbids the separation of a family for all Muslims. On the contrary, Islam emphasizes the importance of family unity, which plays an important role in society's moral and psychological needs.¹⁰⁰ The fulfillment of this right is part of the duty of the host country to maintain family unity and help *musta'min* to reunite with their families.

Ninth is the rights of vulnerable groups. In Islamic law, vulnerable groups are often given special rights in terms of provision and protection. Weak people can include people with disabilities, parents, children (especially orphans), or categories of vulnerable women, such as widows. In addition, there is also a special commandment for individuals to take care of their parents; Islam repeatedly emphasizes the importance of collaborative care for parents (Q.S. *al-Nur* (24): 62) and (Q.S. *'Abasa* [80]: 1-11). Provisions for vulnerable women enshrined in the Qur'an, such as women with widow status are entitled to protection (Q.S. *al-Baqarah* [2]:

⁹⁹ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 158.

¹⁰⁰ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 154-155..

234 and 240, *Q.S. al-Nisa'* [4]: 12) and not expelled from his house (*Q.S. al-Baqarah* [2]: 240). Meanwhile, a woman whose husband dies has the right to receive guarantees for the necessities of life (*Q.S. al-Baqarah* (2): 241). Meanwhile, the protection and fulfillment of the rights of vulnerable children, such as orphans, is also a special concern in Islam (*Q.S. al-Nisa'* [4]: 36). However, the Islamic tradition provides a broader framework for children's rights, including the right to life, identity, family, freedom, care, education and culture, rest and activity, health, justice, and liberty..

The OIC has developed a Covenant on the Rights of the Child in Islam,¹⁰¹ which is more detailed. Article (21) of the Covenant on the Rights of the Child states that “States parties to the present Covenant shall ensure, as far as possible, refugee children, or those who are legally assimilated to this status, have the rights provided for in the present Covenant in their national laws”. Following the principle that *musta'min* are entitled to the same rights as citizens of the host country, forced migrants are also entitled to receive what is given to vulnerable groups in the host country and to receive *zakat* distribution (as poor people and travelers in need) and alms.

There is disagreement about whether this protection is temporary or permanent. Munir claims that security is not limited in time, and the departure of the protected or *musta'min* from *Darul Islam* or his place of residence will depend on individual decisions.¹⁰² Meanwhile, according to Abou-El-Wafa, the protection provided is temporary, i.e., when the migrant has been recognized as a *musta'min* for up to one year.¹⁰³ After this period, sustainable solutions should be considered on three (3) points; *First*, Violation of protection. Abou-El-Wafa stated that if a *musta'min* commits a dangerous act, especially threatening state security, his asylum

¹⁰¹ Organization of the Islamic Conference, *Covenant on the Rights of the Child in Islam*, 2004.

¹⁰² Munir, “Refugee Law in Islam.”Bandingkan dengan Muddathir 'Abd al-Rahim, “Asylum: A Moral and Legal Right in Islam.”

¹⁰³ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 201.

status must be terminated. However, asylum should not be stopped suddenly. *Musta'min* must be given a warning with reasons, explanations, and timeframe for the transfer arrangement. After the end of the period, the *musta'min* must be escorted to a safe place (Surah al-Taubah [9]: 6) and not be attacked or injured in any way.¹⁰⁴

The second is integration into the host community. Security guarantees may also expire when the *musta'min* formally integrated into the host community. This would require the *musta'min* to be legal citizens with the right to stay for the long term. According to the classical tradition, Muslim and non-Muslim *musta'min* are entitled to citizenship in an Islamic state. Thus, guarantees of protection for them must be provided on an ongoing basis. Non-Muslims in Islamic countries (as *dhimmis*) traditionally have the same rights and obligations as fellow Muslims. The difference between the two is that Muslims are required to fight for territory in times of war, while *dhimmis* are freed; Muslims are required to pay *zakat*, while *dhimmis* are not; and in return for freedom from these two obligations, the *dhimmis* are required to pay a tax (*jizya*).

Abu Yusuf once wrote a letter to Caliph Harun al-Rashid, "...O *Amir al-mu'minin*, you may have to show leniency to the *dhimmis* who have the protection of the Prophet, and ensure that they are not oppressed, injured, and overworked beyond their capacity, or disarmed of wrongdoing. one of their property except the rights which they have". On the eve of his death, Caliph Umar ibn al-Khattab ordered his successors to "keep the *dhimmis* under the protection of the Prophet, honor the security treaty given to them, fight for their defense and not burden anything beyond their capacity."¹⁰⁵ Muslims are encouraged to live in countries that allow them to practice their faith to the fullest and adhere to sharia principles. Sheikh Faysal Maulawi explained that if *Darul Islam* is a place

¹⁰⁴ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 203-224.

¹⁰⁵ Ahmed Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 212-214.

where Islam is practiced, then most Muslim countries can no longer be considered Darul Islam.¹⁰⁶ Thus, fiqh experts who are members of the OIC think that if Islamic law is not practiced in a Muslim's country of origin, it will be permissible to seek citizenship in a non-Muslim country. Abdullah Bah added, "as long as the naturalization does not result in the disruption or reduction of his religious obligations."¹⁰⁷

The third is voluntary repatriation to their country of origin. As an alternative, *musta'min* can choose to end the asylum period voluntarily and return to their country of origin. This is with a note that there has been a change in circumstances. For example, after the *Hudaibiyya* truce, the Prophet sent 'Amr ibn Umayyah al-Dhimari to the Negus to ask the Muslims who had taken refuge in him to be returned to Medina.¹⁰⁸ However, the host country is obliged to ensure that it is safe for the *musta'min* to return to their home country and facilitate safe passage for them (*Q.S. al-Taubah* [9]: 6).

Conclusion

Muslim countries, such as Afghanistan, Pakistan, Iraq, Sudan, and Syria, are among the largest sources of forced migrants globally. Islamic countries and communities are central in hosting about 50 percent of the global refugee population. Despite the reality, the practice of the framework of protecting forced migrants in Islamic history has been abandoned. Twenty-one countries in the Muslim world still have not agreed to the international refugee covenant. Few countries have developed comprehensive national policies for refugees. Many refugees are still denied fundamental rights and legislative protections in Muslim countries. Sexual and gender-based violence is still a significant problem

¹⁰⁶ Sami A. Aldeeb Abu-Salieh, "The Islamic Conception of Migration," *International Migration Review* 30, no. 1 (1996): 51.

¹⁰⁷ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 217.

¹⁰⁸ Abou-El-Wafa, *The Right to Asylum between Islamic Shari'ah and International Refugee Law: A Comparative Study*, 206 dan 226.

in the refugee camps. Educational provisions for refugee children are insufficient, while unaccompanied and separated children are not protected. In addition, there remains a fundamental lack of durable solutions, with refugees remaining on the margins of society in fragile society.

The teachings of Islam, the Qur'an, *Sunnah*, and early Muslim traditions have shown much evidence that supports the framework of protection for forced migrants. Legal decisions may have been developed on these issues in the past but still need to be evaluated and adapted to the modern context, especially on matters related to the obligations of the state versus the individual or society and the unprecedented scale of mass migration. In recent years, the OIC has made progress in understanding these general principles. However, breakthroughs are still needed to develop further theological understanding in contextualizing classical teachings with modern contexts and to support the practice of protecting refugees so that this tradition can play an important role in helping Muslim countries to manage the forced migrant crisis in a way that is more in line with Islamic principles and help forced migrants to get their rights.

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