

ISLAMIC THOUGHT  
IN INDONESIA'S RELIGIO  
POLITICAL CONTEXT

Dr.NURROHMAN, MA

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Penulis : Dr.Nurrohman, MA

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## Preface

Many of my colleagues suggested me to compile what I write in The Jakarta Post, so it can be published in one book. But because all of my articles published since 2002 until the end of 2009 no more than twenty-two, I decide to add more articles so it is appropriate to become a book.

“Sharia law in the Era of Autonomy: Critical Voices on Formalization and Legislation of Islamic Law in Aceh and Other Regions of Indonesia”, originated from my paper presented in seminar held by DPP FORMASI (Indonesian Sharia student forum) in October 15, 2003 in Jakarta, then published by INTEGRALITA , International Journal of Islam & Culture Studies, volume 1 number 2 , July - December 2006.

“Translating Islam in the multicultural world: Indonesian effort and experience in building peace and harmony among religious follower” originated from my paper presented in International seminar on theme “Translating Islam in the multicultural world for peace justice and welfare”, hold by Bandung Sunan Gunung Djati State Islamic University at Savoy Homan Hotel in Bandung in November 8-9 , 2006

While “Between Nurcholish Madjid and Abu Bakar Ba’asyir ; a study on thoughts of the two alumni of Gontor Islamic boarding school” originated from my paper presented in International conference on theme : “Muslim Intellectual as Agents of Change” held in Batu, Malang, Indonesia from 27-29 November 2007, organized by Training Indonesia’s Young Leaders Program, the Ministry of Religious Affairs and UNISMA.

A paper entitle “Jihad, Violence and Power: in the Views of Some West Java Pesantren Leaders” is the summary of my survey-based research conducted in West Java in the mid of 2008. “Islam, Democracy and Good Governance in the Post New Order Indonesia: Challenges and Opportunities” is the title of paper presented in international conference on “Islam, Democracy and Good Governance”, organized by the Training Indonesia’s Young Leaders Program (Leiden University) in cooperation with the Ministry of Religious Affairs (Jakarta) and Institut Agama Islam Negeri Walisongo (IAIN Walisongo), in Novotel Semarang from October 6-8, 2009.

Whereas other papers such as “The Muslims Dilemma in Promoting Human Rights”, “Why pluralism and religious tolerance difficult to be accepted by some Muslims?” and “New OIC charter deserves appreciation and support” were never published before.

Through this opportunity I want to wish my deep indebt and grateful to many parties particularly The Jakarta Post and the all staff of Gunung Djati Press publisher. Without their help, this publication was difficult to be materialized.

Nurrohman

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# CHAPTER ONE

## INTRODUCTION

Not like in Western state, religion and politics in Indonesia is something difficult to be strictly separated. As a lecturer on *al-Fiqh al-Siyasa* (law and politics in Islam) as well as an activist on human rights advocacy studies I cannot evade issues related to religion, law and politics in Indonesia. So it can be understood if all of papers or articles written in this book were actually reflections or opinions related to these issues. How to deal with religious differences and blasphemous issues can be read in two articles entitle "Dealing with religious differences" and "Religious freedom and blasphemy". If we look on sharia law, one crucial problem related to religious freedom can be seen in apostasy case. How to deal with this problem can be obtained in an article entitle "The Abdul Rahman apostasy case and the need to reform sharia". The punishment for adultery is another problem that can be occurred in sharia law. This problem can be seen in article entitle "Be careful criminalizing adultery" as well as "Questioning stoning to death as punishment for adultery"

Jihad is a concept that often misunderstood by many parties not only out side Muslim community but also within them. The article entitle "Authentic jihad is about peace and coexistence" is aimed to explain what jihad actually mean. Tension between religious followers was recorded in many places in Indonesia and ironically these often resolved through violence act. The article entitle " Church attacks underline need for religious dialog" stressed the important of dialog in resolving misunderstanding among religious followers especially between Christians and Muslims.

In the discourse between Islam and politics there are some questions such as is Islam really compatible with democracy, how Islamic state will be designed, where is the position of sharia law in this state. These questions were answered in three article "Islam faces democracy", "Islamic law, state of war and peace" and "Islamic state campaigner need sharia interpretation". While caliphate maybe used as nomenclature for Islamic state, the theocratic nature of caliphate likely cannot be accepted by majority of Muslims. The article entitle "Questioning theocratic caliphate" highlighted the incompatibility of the idea of theocratic state.

While Islamic jurists often quoted the statement that sharia law is compatible wherever and whenever, the problem often surfaced is how to adjust what is considered fixed law (*qath'i*) in changing situation. An articles entitle "Islamic legal reasoning need to be broadened" encouraged Muslims to exercise their individual reasoning in discovering "new Islamic law". While other articles such as "Weighing sharia as solution of Aceh problem" and "Negotiating sharia in Aceh", "Legal



certainty on *qanun* needs to be accommodated in Aceh bill” showed the aspects of sharia law that can be adjusted in changing time particularly in the context of Indonesia national state.

The emergence of extremists among Muslims often related with the way they think or their mindset. The article entitle “Questioning JI’s way of thinking” criticized the al-Qaeda inspired organization, “Jamaah Islamiyah “ in South East Asia.

Beyond the issue of Ahmadiyah congregation in Indonesia, there is an essential question concerning relation between revelation and reason. Article entitle “Revelation and reason beyond Ahmadiyah issue” reveal the relation between revelation and reason in Islam. In connection with women rights in Islam, the injustice toward women can be read in an article entitle “Women caught in cycle of injustice”

Outsiders often not understand why some of Muslims objected when the prophet Muhammad was visualized. The article entitle “Understanding Muslims objection and reaction on Prophet visualization” aimed to made empathy to Muslims who still see the prophet Muhammad until now cannot be painted.

In facing some extremists or terrorist acts there are efforts that have been done by Indonesian government. The article entitle “Translating Islam in the multicultural world: Indonesian effort and experience in building peace and harmony among religious follower” consisting efforts that has been done by Indonesia in order to make peace in multicultural world. How to enhance Islamic role in the multicultural world can be seen in “Enhancing Islamic role in the multicultural world”

Why the rigid understanding of sharia law should be continuously criticized? One of the benefits of this criticism is in order to make Muslims not faced dilemma in promoting human rights those are worldly accepted and has been ratified by Indonesia. The two article entitle “The rigid understanding of sharia law should be continuously criticized” and “The Muslims Dilemma in Promoting Human Rights” try to explain this matter.

The article entitle “Between Nurcholish Madjid and Abu Bakar Ba'asyir ;study on thoughts of the two alumni of Gontor Islamic boarding school” supposed to explain why the ones who originated from the same alumni of boarding school can eventually have an opposite opinion.

The article entitle “Why pluralism and religious tolerance difficult to be accepted by some Muslims?” tried to explain the factors caused pluralism difficult to be accepted by some Muslims.

The article entitles “New OIC charter deserves appreciation and support” encourage Muslims to share universal values.

Politics as well as part of religion (sharia law) actually can be negotiated. The article entitles “Helsinki peace negotiations should be continued” denotes this matter.

In article entitle “Daar al-Taubah way in dealing with prostitutes” explained how prostitutes as human actually deserve human touch in order to change. While article entitle “NU, Muhammadiyah have failed to promote pluralism at grass roots” showed the saddening face of the two big Islamic organizations in Indonesia.

“Sharia law in the era of autonomy: critical voices on formalization and legislation of Islamic law in Aceh and other regions of Indonesia” revealed the pros

and cons in formalization of sharia in Indonesia. While “Death penalty debate needs victims' voices” is actually promoting restorative justice, the opposite of punitive justice, that has a root in Islamic tradition.

“Jihad, Violence and Power: in the Views of Some West Java Pesantren Leaders” indicate that potential conflict and violence still there if viewed from the views of pesantren leaders. “Ambivalency or flexibility: The position of religion in Indonesian constitution” is explained the position of Pancasila state , is it can be named religious state or secular state?

In order to make easy for the readers , the content of this book was divided into three main themes. The fist theme related to religious issues, the second related to law and politics and the third theme related to culture, human rights and others.

# CHAPTER TWO

## RELIGIOUS ISSUES

### DEALING WITH RELIGIOUS DIFFERENCES <sup>1</sup>

When I read the criteria set by the Indonesian Ulema Council (MUI) to judge a sect heretical, I was not particularly surprised, but I was rather worried about its implications. Every one, and every Muslim, has the right to judge fellow Muslims or non-Muslims based on his or her own criteria. When I was invited by the Student Executive Board (BEM) of the School of Religious Sociology at the Bandung State Islamic University to discuss Ahmadiyah's teachings and theology two years ago, I also set my own criteria.

In my mind, if measured by the five pillars of Islam and six pillars of *iman* (faith) which are accepted by all or most Muslims around the world, Ahmadiyah is still part of Islam. Abdul Musawir, one of the leaders of Ahmadiyah's youth group, said: "Our Islamic pillars are same, five, our faith pillars are the same, six, such as mentioned in the Hadith *an tu'mina billahi wa malaikatih wa kutubih*. Our Koran is also the same. It consists of 30 chapters, no more and no less, even just one letter. We say prayers five times a day like other Muslims. We also perform night prayers (*tahajud*), and fast during Ramadhan. "Practically there are no different practices in our sharia to those of our fellow Muslims. If there are differences, I think they lie in the schools of Islamic jurisprudence such as Hanafi, Syafii, Maliki and Hambali. But I think it is not something very principled."

So the more we set criteria to measure the followers of religious sects considered to be deviant, the more sects will be excluded. When recognition of the Prophet Muhammad as the last prophet is added as an additional principle, it is understood that Ahmadiyah is not merely deemed heretical, but also labeled non-Muslim. Why are followers of a sect that has been branded non-Muslim still using the terms "Islam" and "Muslim" to identify themselves? Should they be attacked, raided, expelled, destroyed or jailed? No. If we refer to the Koran (QS: 6;159) there is a clear guidance that a split in religion is actually not the business of the Prophet Muhammad to settle in this world but is the business of God.

The Koran also underlines that the followers of all prophets and messengers actually are one community and all of them worship no one other than God (QS.21:92). So we are reminded not to fight or clash with other followers of the holy book except the despots. We are obliged to believe the teachings of all holy books, because the God of all is actually the same, the only one, and all of them (the followers of the holy book) are submissive (the meaning of "Islam"), which means to bow and obey to God in the spirit of peace (QS.29:46).

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<sup>1</sup> Published by The Jakarta Post, November 16, 2007

This time, al-Qiyadah al-Islamiyah has been branded heretical. But academics on campus face the same fate. Their work is to criticize, exercise or invent methodologies used to understand and interpret the Koran, sometimes by neglecting the old ones. They are vulnerable to being categorized as interpreting the Koran in a way that is "not based on prevailing principles", according to the MUI. "Believe in or follow teachings which are not in line with the Koran and Sunnah" is another criterion set by the MUI that has a certain elasticity.

There is no single scriptural interpretation of Islam. A good example is *idribuhunna*, in verse QS 4:34, which most scholars translate as "to beat them" thereby interpreting the verse as giving the husband the right to beat his wife. The root of this word, *daraba*, actually has several different meanings -- including "to go away" -- and the Koran itself uses this word in 17 different senses.

The fact is most interpreters have chosen one meaning, and the worst, as Asma Barlas said, is that most Muslims refuse to accept alternative interpretation as its legitimacy has something to do with the gender politics of patriarchy that wants to maintain male dominance. The question in this case is which one of the two interpretations is not in line with the Koran and Sunnah.

Therefore, when the attorney general followed the recommendation of the MUI in banning the al-Qiyadah sect, it put freedom of religious thinking and expression, something which is protected by the Constitution, at risk. The MUI edict has no place in the national legal system. In a democracy, there is no institution, even religious body, which has the monopoly to act on God's behalf.

The vigilance agency in the Attorney General's Office, which monitors religious sects, may be useful as long as its job is reduced to preventing the sects from endangering the public, for instance through committing suicide bombings, or themselves through acts that put their own health and safety in peril.

Charging religious sects that spread their own teachings and convictions with religious blasphemy as stated in the Criminal Code is not appropriate. They are not intending to tarnish other religions, and faith and conviction can not be tried and judged. Judging faith is the domain of God. Dialog and respecting each other in the spirit of *lakum dinukum wa lia din and la ikraha fi al-din* is still the key to settling religious differences peacefully.

## RELIGIOUS FREEDOM AND BLASPHEMY <sup>2</sup>

All religious followers may agree that freedom of religion or freedom of expression cannot be used to undermine others. Yet, how can we actually categorize words, acts and expressions as insulting of religion? How can we settle this problem?

Furthermore, can blasphemy still be considered a crime by Indonesian law when religious freedom and freedom of expression are also guaranteed by the Constitution. The answers to these questions are not easy and here is why. Words and expressions often have many meanings and the exact intended meaning can only be acquired if we ask the person who uttered them.

When eight Catholic organizations went to *Tempo* magazine's office to protest over an edition's cover depicting a satirical version of *The Last Supper* by Leonardo Da Vinci, Thariq Hadad, the magazine's chief editor, said he was surprised by the harsh reaction. "We had no intention at all of hurting Catholics. What we did was adapt the painting's artistic composition, not the meaning of the event," he said, adding that his editors had different interpretations of the magazine's cover. In addition, the degree of outrage was different from one person to another. Even in Catholic and Christian communities, few shared the same sentiment regarding the picture.

Media observer Ignatius Haryanto from the Institute for Press and Development Studies said "We are talking about an illustration on a magazine cover which has multiple interpretations. It can either be appreciated or protested against depending on people's perceptions." Ignatius said the cover, which depicted the late former president Soeharto having dinner with his six children, did not offend him as a Catholic. "The painting itself isn't part of Christian doctrine. There have been many satirical versions of the painting." he said in *The Jakarta Post's* Feb. 11, 2008 edition.

When Denmark newspaper *Jyllands Posten* published a satirical cartoon of the Prophet Muhammad in September 2005, it sparked outrage among Muslims worldwide, but not all Muslim scholars agreed with this response. French Muslim Soheib Bencheikh, former Grand Mufti in Marseilles, was one scholar who thought the response was excessive. "Muslims were wrong to protest against Danes when cartoonists lampooned the Prophet. This is what freedom of expression means. Even if people mock, at least they're showing an interest in Islam and starting to recognize it as part of society" he said.

Even though Islam has been presumed upon me by birthright, I have no regrets at all. I still believe Islam is the best religion for me. It is the basis for my

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<sup>2</sup> Published by The Jakarta Post, February 22, 2008

belief and conviction. Therefore, when Islam is harassed or insulted there exists sadness in my heart.

But, *Insyah Allah* (God Willing), I will restrain myself from irrational response. In my mind, Islam is a noble religion, it cannot be undermined by the hatred of any person. If there is someone who dislikes or attacks Islam by words or by other means, the best response that can be taken is to emulate the actions of the Prophet.

Instead of taking revenge, the prophet prays and asks God to give guidance to the prosecutors because their acts actually resulted from their ignorance of Islam. Criticism of Islam can be contemplated by a Muslim during introspection. However, not all Muslims or even non-Muslims agree with such an attitude. Some of them would perhaps accuse me of having weak faith.

Blasphemy is cited in Article 156a of the Criminal Code. In this article it is stated that someone can be sentenced to five years in prison if he or she intentionally in public utters feelings or performs activities deemed to incite hatred, abuse or blaspheme against religions officially recognized in Indonesia.

Although the words "intentionally in public" may be difficult to define in court, they are very important. A person accused of undermining religion often has no intention of insulting others. In addition, the number of religious principles protected from any insulting act might be different according to some scholars. For instance, can using Arabic when performing regular prayer be categorized as a principle of religion? Can a person performing prayer in Arabic and Indonesian, like Yusman Roy, be deemed a blasphemer? Unfortunately, while accusations of blasphemy against Yusman Roy could not be justified in court, Yusman Roy was still imprisoned, but not for breaking Article 156a. He was imprisoned under another article and, it seems, by the result of public pressure.

It is the duty of our government to protect all religious believers and not to intervene in matters of belief. If there is outrage originating from opposing religious interpretations, the dispute should be settled through dialogue. The rule of law must be implemented through negotiation and prevailing evidence in court and not by public pressure and incomprehensive opinions

## THE ABDUL RAHMAN APOSTASY CASE AND THE NEED TO REFORM SHARIA <sup>3</sup>

Indicators used by the LSI (Indonesian Survey Institute) recently to describe the growth of conservative viewpoints in Indonesia might be not enough.

In regard to civil and criminal laws, the questions asked by the LSI to measure conservative viewpoints are: Should Muslims be banned from marrying non-Muslims?; Should people who engage in illicit sex be stoned to death?; Should a daughter receive an inheritance half the size of her brother's?; Should women be banned from becoming president?; Should bank interest be banned?; Is polygamy acceptable for men?; and is amputation of the hand a suitable punishment for thieves? (*The Jakarta Post*, March 17, 2006).

The LSI might forget to raise the most important question of all to measure conservative viewpoints related to freedom of religion. Are Muslims allowed to convert to other religions? Is the death penalty for apostasy, mentioned in classical Islamic law, still relevant today?

The case of Abdul Rahman, an Afghan citizen arrested in Kabul for converting from Islam to Christianity and who could be sentenced to death, reminds me of the importance of raising discourse on Islamic law, especially to criticize parts of the law which are no longer relevant or not in line with the spirit of directions stipulated in Koran.

Yousef Subeidi, the Beirut representative of Grand Ayatullah al-Sistani, who said: "This is Afghanistan. What is there to discuss when they are don't know what Islam is?" (*The Jakarta Post*, April 1, 2006), failed to understand the crux of the problem facing Afghans and Muslims in other parts of the world. Meanwhile the Afghan court, under pressure from the United States, the Vatican, and other Western leaders, has declared Abdul Rahman mentally unfit for trial (*The Jakarta Post*, April 7, 2006).

It only avoided the core problem by using a loophole available in Islamic law. Subeidi perhaps did not take into account an important fact that the prevailing law in Afghanistan is based on Islamic law or sharia. So it is logical to conclude that death penalty leveled on Abdul Rahman is a consequence of applying sharia.

The assessment of Rachel Morajee and Dan Murphy is more easily understood, as they said the issue of religious freedom is one in which, as in Afghanistan, modern laws clash with ancient traditions. Rahman's case illustrates a glaring contradiction in Afghanistan's constitution, which upholds the right to

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<sup>3</sup> Published by The Jakarta Post, April 19, 2006

freedom of religion on one hand, but enshrines the supremacy of sharia law on the other.

While some verses of the Koran clearly respect freedom of religion, many Muslims still follow the Islamic law formulated by ancient scholars, without considering changing circumstances, the aim of sharia and the spirit of the Koran itself. While the prophet Muhammad never imposed the death sentence in a case of apostasy, Ansarullah Mawlavezada, the judge who had been set to hear Abdul Rahman's case, said the prophet Muhammad said that anyone who rejected Islam for another religion should be executed. While some scholars see sharia as a law which can undergo evolution, others consider it sacred, immutable, eternal and unchangeable. While some progressive scholars in the modern age have vowed to pave the way for *ijtihad* (individual reasoning in deciding on such issues on Islamic law), some people in the Islamic world still depend on established schools of law.

The grand four schools of Islamic jurisprudence, Hanafi, Maliki, Syafii and Hambali, which unanimously agree on the death penalty for apostasy, still have significant influence in the Islamic world, including in Indonesia, where the Syafii school is dominant.

Most proponents of sharia I interviewed in Aceh agreed that apostasy should be punishable with a death sentence. Muslim Ibrahim, chairperson of Aceh Ulema Consultative Council said that a Muslim who converted from Islam to another religion should be ordered, under Islamic law, to return and repent. If the order is ignored at least three times, the death sentence can be executed. This, he said, was in accordance with the Koran (al-Anfal: 38) and the credible hadits (prophet tradition) narrated by Bukhari and Muslim.

Baihaqi AK, another proponent of sharia law in Aceh, acknowledged Islam upheld freedom of religion. But once someone embraces Islam, he or she should be bound by norms stipulated in Islamic law. Baihaqi did not dismiss the possibility of imposing the death penalty for apostasy in Aceh as it was in line with Islamic law. Severe punishments in Islamic criminal law in Aceh are absent as the Constitution and other laws governing Aceh special autonomy block them.

It is therefore necessary for sharia or Islamic law to be reformed in order to adjust to new circumstances and avoid human rights contradictions. There are legal maxims in Islamic law that state that changes to the law are possible if the circumstances have changed and the existence of law depends on reasoning that can be used to develop Islamic law.

To reform Islamic law Muslims need "a new paradigm", which should be based on the founding purpose of sharia and avoid dependence on the texts, especially the texts of hadits. Sharia is surely aimed to protect religious freedom and freedom of thought. A failure to reform laws which no longer suit the social climate could have two possible results: Muslims will either abandon some Islamic laws or live in a backward society.



## AUTHENTIC JIHAD IS ABOUT PEACE AND COEXISTENCE<sup>4</sup>

Basri, a Poso militant recently arrested by police, confessed that he had been involved in numerous sectarian attacks and other incidents, including the beheading of three Christian schoolgirls in 2005. He was instructed to fight against *kafir* (infidels) and *thagut* (those who do not uphold "God's law"), including security personnel. "Security personnel are *thagut* because they don't punish Muslims in accordance with Islamic law. That is why we fight them." Basri said. He claimed he was often nervous about perpetrating the acts of terrorism assigned to him and had considered surrendering to police. He refrained, however, upon being told by preachers that to surrender was *haram*, or forbidden under Islamic law (*The Jakarta Post*, Feb. 3, 2007)

Basri's confession indicates that he is trapped in a jihadist group that prefers to opt for the easy form of jihad. Basri is actually also the victim of his own ignorance of the real meaning of jihad, and the victim of incitement and indoctrination by preachers. The Poso jihadists are also the victims of their own ignorance and erroneous perceptions of contemporary human relations in the world.

Jihadist groups commonly adhere to the view that sees humanity as being separated into two hostile blocs: the Muslim community (*Dar al-Islam*), and the infidel non-Muslims (*Dar al-Harb*). They believe that Allah has commanded Muslims to conquer the entire world in order to rule it according to Koranic law. Hence, Muslims must wage a perpetual war against infidels who refuse to submit. This is the motivation for their form of jihad.

Upon the establishment of an Islamic state, the whole outside non-Muslim world will potentially become *Dar ul Harb*. Once the Islamic state, or *Dar al-Islam*, is established, as the foreign policy of the Islamic state is aimed at conquering the world, no respect will be shown for the lives or property of non-Muslims. Hence, a Muslim in such circumstances can appropriate the property of non-Muslims unless there is a treaty with them. If there is no treaty, individual Muslims can even go to *Dar al Harb* and take women to keep as slaves.

In international relations, Muslims cannot behave as a superior group by considering themselves as God's people (*ummat*), who have been mandated to rule the world. Rather, the world should be shared and ruled together based upon universal principles, like justice, liberty, equality and brotherhood. Muslims should respect other human beings, including non-Muslims, or infidels. Therefore, it is wrong for Muslims to adhere to the old perception that says Muslims are allowed to

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<sup>4</sup> Published by The Jakarta Post, February 10,2007

attack non-Muslims merely because they refuse to accept Islam, Islamic law or refuse to be treated as *dhimmi* (second class citizens with limited rights). Non-Muslims in Indonesia cannot be termed *dhimmi* because they have the same rights and liberties as Muslim citizens of Indonesia.

Neither can non-Muslims be forced to accept Islam or Islamic law. Even in the case of Muslims themselves, Islamic law, as God's law, should be treated as a set of social norms and ethics that is voluntarily accepted by Muslims based upon their consciences and without coercion from outside. Muslims in Indonesia should realize that the Taliban style of government, which adheres to the teachings of only one Islamic school, or more precisely, Wahabism, is not suitable for Indonesia, which is a plural society.

So, it is difficult to understand why Abu Bakar Ba'asyir said that sharia must be implemented in Indonesia through the institutions of state at all costs. What is needed in Indonesia now is not jihad in the sense of war or violent attacks. Although more difficult, jihad against poverty, corruption, human rights abuses and other crimes against humanity is what is really required.

In order to build peaceful coexistence between Muslims and non-Muslims, and between Muslims themselves, dialog should be encouraged, differences of opinion should be respected, and violence and the politicization of religion should be avoided. People like Basri, beside deserving a fair trial, actually deserve help as he is, in reality, the victim of misguided Islamic teaching.

## CHURCH ATTACKS UNDERLINE NEED FOR RELIGIOUS DIALOG <sup>5</sup>

In daily life, every Muslim when he or she intends to initiate a good activity is supposed to say, "*Bismillah al-rahman al-rahim*" (In the name of God the Compassionate and the Merciful). It is this sentence which was inscribed on a ceramic tile in the shape of a dove that was given by Mustafa Cagrici, the Mufti of Istanbul, to Pope Benedict XVI when the latter visited Turkey in November last year.

We don't know what is going on in the heart and mind of Benedict XVI, but what is clear is a few months later, Cardinal Tarcisio Bertone, in an interview with *La Stampa* newspaper, said the Pontifical Council for Inter-Religious Dialog would again become "a separate department". (*The Jakarta Post*, May 29, 2007) Benedict closed down this office in March 2006, by putting it under joint presidency with the Vatican's culture ministry and removing its president, Archbishop Michael Fitzgerald, a Briton. In September, six months after shutting the Muslim dialog office, in a speech in Regensburg, Germany, the pope angered many Muslims around the globe by quoting a 14th century Byzantine emperor as saying Islam only brought evil to the world and that it was spread by the sword, a method that was unreasonable and contrary to God's nature.

A month after the Regensburg speech, 38 Muslims scholars and leaders around the world signed an "Open Letter to His Holiness Pope Benedict XVI". The letter clarified issues relating to violence and reason, according to Islam, and

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<sup>5</sup> Published by The Jakarta Post, June 22, 2007

expressed an appreciation for the pope's self-declared "total and profound respect for all Muslims".

The true Islamic goal, the leaders insisted, was to live together "in peace and mutual acceptance and respect". Less than two month after that, one of the signatories of the open letter, Mustafa Cagrici, personally met with the Pope at Istanbul's Sultan Ahmed Mosque.

The plan to restore the religious dialog office indicates the Pontiff realizes that in order to disseminate the message of peace in the world, religious dialog is needed. Despite the violence perpetrated by proponents of Islamism or fundamentalism -- an ideology distinct from Islam as a religion -- the majority of Muslims all over the world strive for peace and mutual respect. Dialog will eliminate misunderstanding and might capture the essence beyond frequently disputed matters. Dialog, if conducted honestly, will highlight what is considered taboo or sensitive in each religion so the other can appreciate it. In this context, open and honest dialog between Muslims and Christians in Indonesia is badly needed because of the frequent church attacks.

Simon Timorason, the head of the Java chapter of the Indonesian Churches Communication Forum, has recorded 70 disputes involving residents and Christian communities using private homes as churches since 2004. Most of the cases took place in Bandung regency, as well as Bekasi, Bogor, Garut, Surakarta and Subang. Simon said the main problem faced by a Christian community intending to apply for a permit to establish a church was opposition from Muslim communities in the area.

It is saddening to see the growing spirit of revenge among religious followers. Christians often complain it is difficult for them to get official permits to build a church. Meanwhile, in areas where Muslims are the minority, they have the same complaint about mosques. If this way of thinking continues, the spirit of national brotherhood and national unity will be endangered. Muslims who nurture hatred toward other religions act in contradiction to the meaning of *bismillah al-rahman al-rahim* and *assalamualaikum* (peace be upon you).

Under a revised joint decree issued by Religious Affairs Minister Maftuh Basyuni, the establishment of a house of worship must gain the approval of at least 60 local residents and have a minimum of 90 followers. If a Christian community cannot fulfill the requirements to build a "permanent church", why can't their Muslim neighbors help them find a temporary location that can be used to hold religious services?

Haroon Siddiqui, an Indian-Canadian scholar, once told this story: "When Muhammad was in Medina, a Christian delegation went to see him. After he had met them, what did he tell them? He said you can hold your service in my mosque if you want."

Preventing others from conducting religious services is tantamount to repudiating their basic rights. Religious services held in temporary locations should be allowed and protected, because the Constitution guarantees religious freedom for all Indonesians. Fears that the religious activities of Christians will lead Muslims to convert are ridiculous because faith is very mysterious; it is God's domain. Even the Prophet Muhammad could not lure his uncle Abu Thalib to become a believer.

The existence of the Forum for Religious Harmony, or FKUB, a new institution mandated by joint ministerial decree, is in question if they cannot halt and resolve the problems beyond the frequent attacks perpetrated by a group calling

itself the Anti-Apostate Movement Alliance (AGAP), such as recently occurred at Sidang Jemaat Allah Church at the Gading Tutuka housing complex in Soreang, Bandung.

As a last resort, if Christians have trouble finding a location to build a church, it is the duty of the government to provide one. If the authorities in this country cannot prevent the acts of groups who take the law into their own hands, and if religious minority groups continue to be oppressed, don't be surprised if there is growing concern in the international community.

From the side of the Catholics, bolstering dialog with Muslims should be understood as bolstering Vatican Conciliation II (1962-1965), the formal acceptance by the Catholic Church of pluralism and recognizing the truths of other religions. In line with Vatican Conciliation II, professor Boland, a Protestant priest, said Christ's mercy in Indonesian society should be manifested by looking at the goodness of Muslims as Muslims.

## REVELATION AND REASON BEYOND AHMADIYAH ISSUE <sup>6</sup>

One of the problems behind the Ahmadiyah controversy is how to know and understand revelation when someone feels that he or she has received it. According to the Koran, God has given revelation to many persons in human history. There are many prophets in this world. Besides the names of prophets mentioned in the Koran there are still many that are not mentioned. Therefore some even speculate the wise men in history like Plato and Socrates may also have been prophets.

When all or most Muslims believe the prophet Muhammad is the last prophet the question is whether the revelations also ended. All Muslims scholars, at least according to my knowledge, admit the revelation still goes on. But they don't call it revelation (*wahyu*) but inspiration (*ilham*). Separating revelation from inspiration is important in theological Muslims' discourse because they believe that *wahyu* as a high level of revelation comes from God, while inspiration that may be good comes from an angel and inspiration that is bad comes from Satan. In other words, revelation is always good while inspiration can be sometimes good and sometimes bad.

How we can differentiate between revelation and inspiration? Is what Mirza Ghulam Ahmad received truly revelation or just inspiration? It is difficult to answer because the receiver of each has the same feeling in the sense he feels informed by a source external to him. Iranian scholar Abdulkarim Soroush says that in our modern age we can understand revelation by using the metaphor of poetry.

As one Muslim philosopher has put it: Revelation is higher poetry. Poetry is a means of knowledge that works differently from science or philosophy. The poet feels that he is informed by a source external to him; that he receives something. However, Soroush's explanation fails to clearly distinguish the difference between

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<sup>6</sup> Published by The Jakarta Post, May 2, 2008

revelation and inspiration. No one can verify a revelation claim. So it is dependent on people whether they trust his or her confession or not. In the matter of belief, it's actually the domain of God. Hence, true believers should not depend merely on the texts or sentences reportedly acquired from revelation. Revelations should be ready to be confronted by reason. Religious texts should be ready to be critically studied. Independent reasoning (*ijtihad*) is highly respected in Islam.

In Ahmadiyah's case there are three main problems. The first problem relates to their belief that Mirza Ghulam Ahmad is a prophet because he received a revelation. Secondly is the problem related to terminology, such as is what Ghulam Ahmad claims to have received from God a revelation, and can his followers be called Muslims? The third problem concerns the accusations of blasphemy against Ahmadiyah followers.

Since all Muslims principally agree that revelation or more precisely inspiration from God still goes on, the difference between Ahmadiyah and other Muslims is likely merely semantics. Ahmadiyah called the inspiration received by Ghulam Ahmad revelation and named him a prophet while others called it inspiration and named him just a reformer or religious leader.

Should Ahmadiyah followers be called non-Muslims? Before answering this question, another question must be asked first: Are people who believe in six pillars of faith and who are committed to five pillars of Islam non-Muslims? The judgment by MUI through its edict (*fatwa*) that Ahmadiyah followers are non-Muslim is, in my mind, a blunder.

Because if they are non-Muslims, they will be forbidden to perform daily prayers like other Muslims, or they will be banned to acknowledge two confessions that there is no god except Allah and Muhammad is the messenger of Allah. If they are allowed to do so, they automatically become Muslims in practice.

Even if they just pretend to be Muslims, it is not our business; their business is with God. I do agree with the opinion that Ahmadiyah is still within Islamic boundaries. If Ahmadiyah will further be examined, the best way is through their teachings and their deeds. Does Ahmadiyah teach something that incites hatred to others? Do they commit something that physically will endanger others or endanger this state? Concerning accusations of blasphemy and whether they have violated article 156a of Criminal Code, the best way to settle this is in court.

In human relations Muslims are told to search for common ground with non-Muslims. Then why we can't we search for common ground and similarities between us and Ahmadiyah members?

## **BETWEEN NURCHOLISH MADJID AND ABU BAKAR BA'ASYIR :Study on thoughts of the two alumni of Gontor Islamic boarding school <sup>7</sup>**

One of the Islamic education institution which associated themselves to be modern institution is Gontor boarding school (Pondok Gontor) . *Pesantren* ( Islamic boding school) which its official name is Pondok Darussalam established at September 20, 1926 or 12 Rabi'ul Awwal 1345 in Islamic calendar has produced thousands of alumni who widespread in all regions in this country.

At national stage , there are many Muslim leaders who ever stayed at Gontor Islamic boarding school as students. M. Maftuh Basyuni, the current minister of religious affair in Indonesia, Hasyim Muzadi, the chairman of the largest Muslims organization, Nahdlatul Ulama (NU), Dien Syamsudin , the chairman of the second largest Muslim organization, Muhammadiyah, Hidayat Nurwahid, the speaker of MPR (the people consultative assembly) are among the alumni of this *pesantren*.

Despite the majority of the alumni become leader of moderate Muslims , some of them turned to become radical such as Abu Bakar Ba'asyir. So it is important to understand why person like Abu Bakar Ba'asyir who ever study in the same *pesantren*, (graduated at 1963) with Nurcholish Madjid (graduated at 1960) taking different path in his life.

This paper will explore the thought and activity of the two alumni of Gontor Islamic boarding school who have the opposite opinion concerning Islam, democracy and Islamic government, Nurcholish Madjid and Abu Bakar Ba;asyir, by exposing their life before and after graduating from the *pesantren* and comparing their thought and opinion.. Analysis will be made to explain the factors that have influenced both persons so the former eventually become moderate ,liberal and pluralist while the later become radical , fundamentalist and exclusivist.

### **Nurcholish Madjid (1939 - 2005 )**

#### ***His milieu , education and activities***

Nurcholish Madjid was born at 17 Maret 1939/26 Muharram 1358 H.<sup>8</sup> from the couple K.H. Abdul Madjid and Hj. Fathonah. Cak Nur - familiarly often

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<sup>7</sup> presented in International conference on theme : "Muslim Intellectual as Agents of Change" held in Batu, Malang, Indonesia from 27-29 November 2007, organized by Training Indonesia's Young Leaders Program, the Ministry of Religious Affairs and UNISMA

<sup>8</sup> Nurcholish Madjid, *Dialog Keterbukaan: Artikulasi Nilai Islam dalam Wacana Sosial Politik Kontemporer*, (Jakarta: Paramadina, 1998), hal. 160.

called- has the aristocrat blood (*priyayi*). His father is a respected cleric in Mojoanyar, Jombang, West Java.

His parent is a genuine adherent of Masyumi. When this party was disbanded by Soekarno, they keep stayed and not move to other party. Beside known as cleric and alumnus from the Tebu Ireng boarding school, his father also a prominent figure in Masyumi (federation of all Islamic political party at that time) .

When NU joined to Masyumi on November 1945, the father of Nurcholish Madjid automatically follows Masyumi. But when NU separated from Masyumi in 1952, K.H. Abdul Madjid not return to NU but still on Masyumi. According to Nurcholish Madjid, the stance of his father was based on "edict" issued by K.H. Hasyim Asyari that "Masyumi is the only Islamic party which legally accepted in Indonesia".<sup>9</sup>

In religious mass organization , Abdul Madjid affiliated with the big family of Nahdlatul Ulama (NU). Personally he has close relationship with KH Hasyim Asy'ary one of the founding fathers of NU, grand father of Abdurrahman Wahid. Cak Nur has three relatives one brother and two sister.<sup>10</sup> Cak Nur grown in family which their religious orientation belong to *Ahl Sunnah wa al-Jamaah*, the sect of theology that was held by the majority of Muslim in Indonesia.

In the age of teenager Cak Nur has capable to distinguish which one of "Islam Madzhab" and "the true Islam". In his age he tried to develop critical thinking by escaping or distancing himself from Islamic thoughts that circulated in Sunni tradition which dominated Muslims at that time. Cak Nur developed his own opinion without being felt be restricted by his own *madzhab*.<sup>11</sup>

Cak Nur entering first education in popular school (*Sekolah Rakyat*) in the morning and in religious school (*madrasah*) in the evening. So from the elementary schools Cak Nur has aware of the two model of education in Indonesia. When he study at religious school , *Madrasah al-Wathaniyah*, his talent and intelligence has emerged. He often received awards for his achievement.<sup>12</sup>

After graduating from elementary school, Cak Nur continued his education to *Darul Ulum* Boarding School in Rejoso, Jombang. But in this pesantren Nurcholish Madjid spends his time no more than two years.<sup>13</sup> According to one source it is likely related to problem faced by his father. As mentioned above , although Abdul Madjid ,the father of Cak Nur still become the member of NU but he chose Masyumi for his political preference <sup>14</sup> When most of the NU leaders prefer to get out from Masyumi he kept his affiliation with Masyumi. His attitude has caused negative impact to Cak Nur. Cak Nur's present in *Pesantren Darul Ulum*, known as the base camp of NU, not warmly greeted by other students. Cak Nur even labeled as the son of Masyumi who wrongly enter (*nyasar*) to NU stable.<sup>15</sup>

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<sup>9</sup> Ibid. hlm. 161-162.

<sup>10</sup> Peter G. Riddell, "The Diverse Voices of Political Islam in Post- Suharto Indonesia, dalam Jurnal " *Islam and Cristian-Muslim Relations*, Vol.13, No.1, 2002, hal. 66.

<sup>11</sup> *Bunga Rampai Satu Islam Sebuah Dilema*, (Bandung: Mizan, 1991), hal. 13-34.

<sup>12</sup> *Ibid*, hal. 212.

<sup>13</sup> A. Azizy, *Ensiklopedia*, hal. 104.

<sup>14</sup> Nurcholis Madjid. *Dialog Keterburukan, artikulasi Nilai Islam dalam Wacana social Politik Kontemporer* (Jakarta: Paramadina, 1981), hal. 39.

<sup>15</sup> Madjid, *Dialog Keterukaan...*, hlm.161-162.

This situation compelled Cak Nur to seek other place. Pesantren Darussalam Gontor, Ponorogo, East Java - a boarding school that relatively more flexible in accepting reform and modernity then become the following choice. Unlike another boarding school which still maintained traditional method, this pesantren introduce modern one. This boarding school that known for its slogan *berdiri diatas dan untuk semua golongan* (stand up above and for all Muslim community ) has the mission to produce Muslims who has strong character with high morality (*berbudi luhur*), think freely (*berpikir bebas*), keep the body healthy (*berbadan sehat*) and broadly horizon (*berpengetahuan luas*). These are the four motto of Gontor boarding school which should be followed by its students.<sup>16</sup>

After graduating from this *pesantren*, Cak Nur remains in this school for one year as a teacher. Nurcholish Madjid then continued his study to Fakultas Adab ( Faculty of Islamic literature and culture) with specification on Arabic literature at Syarif Hidayatullah State Institute for Islamic Studies (IAIN) , Jakarta. He graduated at 1968 with academic paper (*skripsi*) titled "*al-Qur'an ;Arabiyyun Lughatan Wa Alamiyyun Ma'nan*" which means the Koran used Arabic local language with universal meaning.

On October 1968 Nurcholish Madjid leave for United States fulfilling invitation from State Department. At that time Cak Nur still known as an anti Western activist so it is rather strange when people heard he was invited to see the greatest Western State. An official from US envoy when asked why Nurcholish invited to US, he replied ; **just to show what he was recently hate.**<sup>17</sup>

There, Nurcholish visited universities, observing student life, performing discussion and so on. In the Sam uncle , he stayed for two months. In Washington he met Sudjatmoko, whose hobby is reading like Nurcholish. Nurcholish Madjid received books as gift from him. Soedjatmoko who is ambassador at that time warmly received and helped Nucholish. After returning from United State, the change of Nurcholish thinking begins to appear. He begins interesting on the good aspects of humanism which previously being branded as the new religion. He begins to get interested on socialism

Ten years after graduating from IAIN ( State Institute for Islamic Studies), on March 1978, he has the opportunity to continue his study, through scholarship program, to Chicago University in United State to pursue doctorate degree. The doctorate degree eventually obtained in March 1984 after finishing his dissertation titled *Ibnu Taimiyah on Kalam and Falsafah; Problem of Reason and Revelation in Islam*.

In organization, Nurcholish Madjid recorded as person who ever chaired Islamic Student Association (HMI) for two consecutive period, 1966-1969 and 1969-1971. He also trusted to become the first president of Southeast Islamic

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<sup>16</sup>Salah satu tujuan pendidikan pondok modern gontor adalah membentuk manusia yang berkarakter muslim yang berbudi tinggi, berbadan sehat, berpengetahuan luas dan berpikiran bebas. Inilah empat moto pondok gontor yang harus ditaati oleh santri-santrinya. M. Dawam Rahardjo (ed.), *Pesantren dan Pembaharuan*, (Jakarta: LP3S, 1998), hal. 139.

<sup>17</sup> " sekedar memperlihatkan apa yang dia benci selama ini." See..Djohan Effendi, Ismed Natsir, ed., *Pergolakan Pemikiran Islam, Catatan Harian Ahmad Wahib*, Jakarta, LP3ES, cet.keV, 1995.. page.161.



Student Union (PEMIAT). Deputy general secretary of IIFSO ( International Islamic Federation of Students organization) was assigned to him in 1967-1969.

In academic field, Nurcholish Madjid has been registered as a researcher in LIPI ( Indonesia's Institute for Science) since 1978 until 1984 and senior researcher awarded to him since 1984 until 2005. Beside being lecturer at Post Graduate Program at Syarif Hidayatullah Institute for Islamic Studies, Jakarta, 1985-2005 he also manages Paramadina Mulya University in Jakarta as a rector since 1998-2005. Cak Nur passed away at August 2005 at the age of 66.

### *His thoughts*

In this paper , Nurcholish thoughts mostly derived from *wawasan komunitas Paramadina* (Paramadina community insight) oration addressed by him when installing new campus of Paramadina University ,at Gatot Subroto street , Jakarta, on October 3, 2001. In this oration, Nurcholish clearly described what the kind of community he dreamed or imagined.

Nurcholish Madjid at that time said that the main core of religion is the teaching of universal humanity based on belief in one God such as conveyed by prophets and messengers of God to every community. The universal teaching is a manifestation of the blessing of God to universe and it become the reason for equality or common ground (*kalimatun sawa*) or melting pot for all religion. (Q.3:64)  
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In the holy book, it is mentioned that the universal teaching is the way of life or *sharia* which has been taught in all religion, such as what was taught by God to the prophet Nuh, the prophet Muhammad, the prophet Ibrahim, Musa and Isa. Therefore the teaching of submission to God must be enforced and all human beings not allowed to make dispute or conflict in this teaching, something that very difficult to be understood by someone who not understand the Oneness of God or *Tauhid*, namely the polytheist group (Q.42:13)<sup>19</sup>

In order to seize the spirit of that universal teaching , people should belief to all holy books and all the prophets and messengers without differentiating among one of them accompanied by the attitude of submission ( to be Islam) to God in the spirit of peace (*salam*). (Q.2:136). Therefore the Koran underlined that the followers of all prophets and messengers actually were the one community and all of them not worshipped unless the only one God. (Q.21:92). So we are reminded not to make dispute or clash with other followers of the holy book except the despot persons

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<sup>18</sup> See : Wawasan Komunitas Paramadina Dan Partisipasinya Dalam Usaha Bersama Mewujudkan Masyarakat Madani Dalam Semangat Reformasi(Orasi dalam kesempatan presmian kampus baru UNIVERSITAS PARAMADINA, Jl Gatotsubroto, Jakarta, 3 Oktober, 2001/16 Rajab, 1422) The text is : "Inti utama agama itu diyakini sebagai ajaran hidup kemanusiaan universal berdasarkan Ketuhanan Yang Maha Esa, sebagaimana telah disampaikan para nabi dan rasul yang telah dibangkitkan Tuhan untuk setiap umat. Ajaran universal itu merupakan wujud rahmat Tuhan kepada seluruh alam, dan menjadi ajasan kesamaan ( kalimat sawa ) atau titik temu semua agama -- (Q., 3:64)"

<sup>19</sup> Dalam Kitab Suci juga disebutkan bahwa ajaran universal itu adalah jalan hidup atau Syariah yang diajarkan dalam semua agama, sama seperti yang telah diajarkan Tuhan kepada Nabi Nuh dan Nabi Muhammad, serta kepada Nabi-nabi Ibrahim, Musa dan Isa, karena itu ajaran kepatuhan kepada Tuhan harus ditegakkan, dan umat manusia tidak dibenarkan bertikai dalam ajaran itu, suatu hal yang amat berat dan sulit dipahami oleh mereka yang tidak berpaham Ketuhanan Yang Maha Esa atau Tauhid, yaitu kaum musyrik -- (Q., 42:13).

among them. We are obliged to believe the teaching of all holy book, because the God of all actually the same, the only One, and all of them (the followers of holy book) are submission (to be "Islam") bowed and obey to God in the spirit of peace namely, *salam*. ( Q.29:46) <sup>20</sup>

The prophet Muhammad SAW also highlighted that the religion of the prophets is the same and all of prophets are relative originated from one father with different mother. They are stood on the same principle of teaching though might be different in the way and method. They are practicing the same core teaching although it should be adjusted to the demand of time and place. Therefore it is understandable when the holy book also acknowledged that God has dictated *sirah* (the path) and *minhaj* (method) that are different for every community, something that cannot be used as a reason for conflict, but conversely it should be used to push a race or competition to materialize many goodness in this world. Because the authority to explain why there are so many differences among humans only belong to God , when all humans have returned to Him. (Q.5: 48)<sup>21</sup>

Therefore every sect or community in their spirit of yearning to the centrality have their own direction where they face and all of these are not necessary become the subject of dispute or conflict, but supposed to be the pushing factor for a race toward many goodness. (Q.2:148). Because the God is the owner of East and West, the owner of all directions so to where we face there is the face of God. (Q.2:115, 55:17, 70:40)<sup>22</sup>

The virtues are not the attitude to face the East or the West in a form of apparently piety but in deeds and actualization , initiated by believing in God as the basic ,then continued by determination to keep promises with other humans alongside with the patience and determination to undergo the difficult way of life , full of challenges and obstacles.<sup>23</sup>

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<sup>20</sup>Untuk dapat menangkap ruh ajaran universal itu manusia harus beriman kepada semua kitab suci dan semua nabi dan rasul, tanpa membedakan salah seorang pun dari mereka, dengan sikap semuanya berserah diri (ber-islam) kepada Tuhan dalam semangat kedamaian (*salam*) -- (Q., 2:136). Oleh karena itu Alquran menegaskan bahwa para pengikut semua nabi dan rasul adalah umat yang tunggal, dan semua mereka tidak menyembah kecuali Tuhan Yang Maha Esa -- (Q., 21:92). Maka diingatkan agar kita tidak bertikai dengan para penganut kitab suci kecuali terhadap yang zalim dari kalangan mereka. Kita diwajibkan percaya kepada ajaran semua kitab suci itu, sebab Tuhan bagi semuanya adalah Tuhan yang sama. Yang Maha Esa, an semuanya ber-islam, tunduk-patuh kepada Tuhan dalam semangat kedamaian, yaitu *salam* -- (Q., 29:46).

<sup>21</sup> Nabi Muhammad saw juga menegaskan bahwa agama para nabi itu satu dan sama, dan para nabi adalah bersaudara tunggal bapak lain ibu (Hadits). Yaitu bahwa mereka berpijak pada ajaran pokok yang sama, sekalipun mungkin berbeda-beda dalam jalan dan cara pelaksanaan ajaran pokok itu, sesuai dengan tuntutan khusus ruang dan waktu. Karena itu Kitab Suci juga menegaskan bahwa Tuhan telah menetapkan *syirah* (jalan) dan *minhaj* (cara) yang berbeda-beda untuk setiap golongan umat manusia, sesuatu yang tidak dibenarkan menjadi bahan pertikaian, tapi justru harus mendorong perlombaan menuju kepada berbagai kebaikan. Sebab, wewenang untuk menjelaskan mengapa terjadi perbedaan itu di antara manusia hanya ada pada Tuhan, kelak jika umat manusia telah kembali kepada-Nya -- (Q., 5:48).

<sup>22</sup> "Oleh karena itu masing-masing golongan, dalam semangat kerinduannya kepada sentralitas, punya arah sendiri kemana mereka menghadap, yang semua itu juga tidak perlu menjadi bahan pertengkaran, melainkan hendaknya juga menjadi pendorong terjadinya perlombaan menuju kepada berbagai kebaikan -- (Q., 2:148). Sebab, Tuhan adalah Pemilik timur dan barat, Pemilik dua timur dan dua barat, pemilik semua timur dan semua barat, yakni, Pemilik segenap penjuru angin, sehingga ke manapun kita menghadap di sana ada Wajah Tuhan -- (Q., 2:152; 55:17; 70:40)".

<sup>23</sup> "Dan kebajikan tidaklah berupa sikap menghadap ke timur ataupun ke barat dalam sikap kesalahan lahir, melainkan ada dalam tindakan dan amal nyata, dimulai dengan keimanan kepada Tuhan sebagai dasar

We should believe to the core of this universal teaching. We should uphold God guidance said that we should believe to the all holy books and all prophets awaked by God for every community. (Q.16:36). We should believe to whatever holy book, in which all religious followers should be treated fairly, because principally all of them worshipped to the same God in which every one responsible of his or her own deed, so it is not necessarily became a matter of dispute or conflict. Because eventually we are will return to God, and it is the God who will decide which one is right or wrong or which one is having good or bad activities. (Q.42:15). Therefore we believe that virtues are everywhere, and we should seek it even though we might attained the Chinese country. (Hadits)<sup>24</sup>

So it is not wrong when Budhy M.Rachman said that the ideas of Cak Nur concerning the attitude of submission (*al-Islam*) which often called "the unity of religion" is the cornerstone on his view on "the unity of prophecy" and "the unity of humanity" originated from the concept of the oneness of God "the unity of God."<sup>25</sup>

Concerning the prophet Muhammad, Nurcholish Madjid said that as a model for human being, the Prophet Muhammad has gave the example how to implement the spirit of the oneness of God into the religious, social and political life based on pluralistic and inclusive spirit of Medina society. As the last that closed the long row of Divine messenger for human beings, the prophet Muhammad with his Medina state has inherit model how to manage society and how to solve something related to governance and power, a model which really can fulfill the material and spiritual human beings demand.<sup>26</sup>

In order to strengthen Medina state as a model in managing government and using power, Cak Nur often quoted the assessment of Robert N Bellah, modern sociologist with high reputation. Bellah assesses that prophet's Medina is very modern society at that time. Medina society is very modern viewed from the highly commitment, involvement and participation of the all level of society. Medina society is also modern in the sense that its leader is open to be examined based on universal consideration and symbolized by exercising to institutionalize the highest

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dan pangkal tolak, diteruskan kepada keteguhan menepati janji antara sesama manusia, dan ketabahan hati dan jiwa dalam menempuh jalan hidup yang sulit, yang penuh dengan tantangan dan rintangan -- (2:177)."

<sup>24</sup> "Kita semua meyakini adanya inti ajaran universal itu. Kita semua berpegang kepada petunjuk Tuhan bahwa kita harus beriman kepada semua kitab suci dan kepada semua nabi yang telah dibangkitkan Tuhan pada setiap umat -- (Q., 16:36). Kita beriman kepada kitab suci manapun juga, yang semua para pengikut agama itu harus diperlakukan secara adil, sebab pada dasarnya semua mereka itu menyembah Tuhan yang sama, dengan masing-masing bertanggung jawab atas amal-perbuatan mereka sendiri yang tidak perlu menjadi bahan pertengkaran, karena kelak kita sekalian akan kembali kepada Tuhan, dan Tuhanlah yang akan menentukan benar-salah serta baik-buruk segala amal-perbuatan itu -- (Q., 42:15). Karena itu kita percaya bahwa kearifan ada di mana-mana, dan kita harus mencarinya meskipun ke Negeri Cina -- (Hadits)."

<sup>25</sup> See Budhy M.Rachman *Islam Pluralis, Wacana Kesetaraan Kaum Beriman*, (Jakarta: Paramadina, 2001), page. 62.

<sup>26</sup> "Sebagai suri teladan umat manusia, Nabi Muhammad saw telah memberi contoh bagaimana mewujudkan semangat Ketuhanan Yang Maha Esa yang bersambungan langsung dengan wawasan sosial-keagamaan dan politik yang berjiwa faham kemajemukan (pluralis) dan yang serba meliputi (inklusiv) itu dalam Masyarakat Madinah. Sebagai yang terakhir dan yang menutup deretan panjang para pembawa ajaran Ilahi untuk umat manusia, Nabi Muhammad saw dengan madinah-nya telah mewariskan suatu model, bagaimana mengatur masyarakat serta menyelesaikan persoalan penyelenggaraan pemerintahan dan penggunaan kekuasaan yang benar-benar secara utuh memenuhi dambaan lahir dan batin manusia"

leader in society not be based on heredity.<sup>27</sup> Unfortunately, the model of Medina state or society cannot be preserved in the long term because there isn't sufficient social infra structure and culture that able to support it.<sup>28</sup>

Bellah as quoted by Nurcholish Madjid said :

“There is no question but under Muhammad , Arabian society made a remarkable leap forward in social complexity and political capacity. When the structure that took shape under the prophet was extended by the early caliph to provide the organizing principle for a world empire, the result is something that for its time and place is remarkably modern. It is modern in the high degree of commitment, involvement and participation expected from the rank and file member of community. It is modern in the openness of its leadership positions to ability judged on universalistic grounds and symbolized in the attempt to institutionalize a non-hereditary top leadership. Even in the earliest time certain restrains operated to keep the community from wholly exemplifying this principle , but it did so closely enough to provide better model for modern national community building that might be imagined. The effort of modern Muslims to depict the early community as a very type of equalitarian participant nationalism is by no means entirely an unhistorical ideological fabrication.”<sup>29</sup>

Nurcholish said that institutionalization to determine the highest leader based on election was halted forty years after the death of the prophet, because the caliph Muawiyah who wield power in Damascus in 51 H, choose his own son , Yazid, as the successor. Though challenged by community leaders in Medina and Mecca as Roman and Caesar tradition which contradict with the tradition of the prophet and the blessed caliphs , but Muawiyah went ahead on his decision by any means including by using physical power of military. Islamic world then experienced fundamental change from the society which placed their highest leadership through election into society that only recognized the power of dynasty through genealogies , leadership based on blood kinship. From that time the main source of political legitimacy is heredity. Meanwhile society, without being aware of their malaise from socio political principle in Medina, compelled to race in order to show their excellent heredity. The change that returned Muslims to the clan and *Jahiliyah* tribalism still exist, for some Muslims, until this day. This malaise is the source of so many

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21 Sebagai model penyelenggaraan pemerintahan dan penggunaan kekuasaan, Madinah Nabi itu dalam penilaian Robert N. Bellah, seorang ahli sosiologi modern dengan otoritas yang sangat tinggi, merupakan model yang sangat modern untuk zaman dan tempatnya. Masyarakat Madinah itu sangat modern dilihat dari tingginya tingkat komitmen, keterlibatan dan partisipasi seluruh jenjang anggota masyarakat. Masyarakat Madinah itu juga modern karena kedudukan kepemimpinannya yang terbuka untuk kemampuan yang diuji atas dasar pertimbangan universal dan dilambangkan dalam percobaan melembagakan kepemimpinan tertinggi tidak berdasarkan keturunan.

<sup>28</sup> See. Nurcholish Madjid, *Cita-cita Politik Islam di Era Reformasi*, Jakarta, Parmadina, 1999, hlm.32-35

<sup>29</sup> See Robert N. Bellah, *Beyond Belief*, (New York- Harper and Row Publishers,1970, page 150-151 When commented on the failure of the early community Bellah said : ...In a way the failure of the early community, the relapse into pre-Islamic principles of social organization, is and added proof of the modernity of early experiment. It was too modern to succeed. The necessary social infra structure did not yet exist to sustain it.”

difficulties and disaster in Muslims world, because the tradition of genealogies dynasty then, inevitability, followed by despotic , authoritarian and totalitarian in social, politics , religion etc. <sup>30</sup> In boosting his opinion on Medina model, Nurcholish Madjid also quoted Martin Lings who stated that the prophet's Medina society is "The most recent Providences solutions to the problem of government". Medina society was not underway in long history, but because of detailed writings of the scholars, it is until now ,as Martin Lings said, remains the ideal type that always used as guidance. <sup>31</sup>

According to Nurcholish the uniqueness of Medina society is not only in its pluralism and its inclusiveness but also in its social political pillar based on *taqwa* and *ridla* Allah , namely, the principle of The oneness of God in the true meaning.<sup>32</sup> The Medina insight is the most important tradition of prophet that should be revitalized. Surely , the Medina insight is the main manifestation of sharia that should be implemented with the full determination.<sup>33</sup>

There are four elements of the structure of the Medina society, according to Bellah. The first is a conception of transcendent monotheistic God. The second, the self responsibility to the call of God through the preaching of his prophet to every individual human beings. The third is devaluation or **secularization** of all existing social structure beyond God-man relationship. And the fourth, is a new conception of political order based on the divine revelation and thus constituted themselves a new community, *umma*. <sup>34</sup>

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<sup>30</sup> Pelembagaan kepemimpinan tertinggi berdasarkan pemilihan (umum) berhenti sekitar 40 tahun setelah wafat Nabi, karena Khalifah Muawiyah yang menjalankan kekuasaan dari Damaskus pada tahun 51 Hijri menunjuk anaknya sendiri, Yazid, sebagai pengganti. Meskipun ditentang oleh para pemuka masyarakat di Madinah dan Makkah sebagai tradisi kaisar Romawi dan khusro Persi yang bertentangan dengan tradisi Nabi dan para Khalifah Rasyidun, namun Muawiyah berjalan terus dengan keputusannya, dengan mengandalkan kekuatan fisik militer. Dunia Islam mengalami perubahan fundamental dari masyarakat yang menempatkan pemimpin tertinggi melalui pemilihan menjadi masyarakat yang mengenal hanya kekuasaan dinasti geneologis, kepemimpinan berdasarkan pertalian pertalian darah. Sejak itu sumber utama legitimasi politik ialah keturunan, dan masyarakat tanpa sadar menyimpang dari salah satu prinsip sosial-politik Madinah, terdorong untuk berlomba-lomba saling unggul dalam hal garis keturunan dan silsilah. Suatu perubahan yang merupakan gerak kembali ke faham klain dan kesukuan Jahiliah itu pada banyak kalangan masyarakat Islam masih bertahan sampai sekarang. Penyimpangan itu telah menjadi pangkal berbagai kesulitan dan bencana dunia Islam, karena faham dinasti geneologis itu tanpa dapat dihindarkan disusul dan disertai oleh kezaliman despotik, otoriter dan totaliter di bidang sosial, politik, keagamaan, dan seterusnya.

<sup>31</sup> See Wawasan Paramadina

<sup>32</sup> ....keunikan masyarakat Madinah tidak hanya segi pluralisme dan inklusivismenya semata. Keunikan masyarakat Madinah ialah bahwa semua itu, serta semua sendi kehidupan sosial-politiknya didasarkan kepada asas taqwa dan ridla Allah, yaitu asas Ketuhanan Yang Maha Esa dalam arti yang sebenar-benarnya.

<sup>33</sup> Wawasan Madinah itulah sepenting-penting Sunnah Nabi yang harus dihidupkan kembali. Dan wawasan Madinah itu pulalah sesungguhnya wujud utama Syariah -- yang juga diwasiatkan Allah kepada semua nabi dan rasul -- yang wajib dilaksanakan dengan penuh keteguhan hati dan //istiqamah//.

<sup>34</sup> According to Bellah as quoted by Nurcholish Madjid in his book *Cita-Cita Politik Islam Era Reformasi*, the structural element of early Islam that are relevant to our argument. First was a conception of transcendent monotheistic God standing outside the natural universe and related to it as creator and judge. Second was the call to selfhood and decision from such a God through the preaching of his prophet to every individual human being. Third was radical devaluation , one might legitimately say secularization of all existing social structure in the face of God-man relationship...And Finally, there was a new conception of political order based on the divine revelation and thus constituted themselves a new community, *umma*. See *Cita-cita Politik Islam*...page 33-34

When these ideas transformed to Indonesian context, Cak Nur not hesitate to support the idea of nationality, *Pancasila* as Indonesia's ideology, the motto unity in diversity (*Bhineka Tunggal Ika*) and democracy. When addressing the speech to commemorate 60 years Indonesian independent day, few days before his passing away, Cak Nur said that "Modern nation state is the state based on justice, transparency and democracy. Justice means that human beings are equal, there is no discrimination based whatever reason. Non discrimination is the prerequisite for the emergence of justice." Cak Nur added that: "Justice society is society based on transparency, tolerance not allowing any coercion of opinion toward other. Transparency is condition for democracy because democracy is the open society that its core is the freedom of opinion in individual as well as in institutional level."<sup>35</sup> Justice need egalitarianism attitude that sees all human beings are equal with their same potent so it must be developed the attitude of mutual trust among society.

Cak Nur sees positively the **democratic secular state** such as United States of America. Cak Nur likely belief that even the secular democratic state like US originated from deep religious reflection carried out by the European emigrants such as represented by George Washington, Benjamin Franklin, Thomas Jefferson, John Adams and his son John Quincy Adam, Alexander Hamilton, James Madison and etc. Part of them such as Thomas Jefferson and Alexander Hamilton rightly admitted to have no formal religion. But they are acknowledged that their individuals or social moral and ethical insight, particularly their metaphysical basic, acquired from the tenets of Isa al-Masih (Jesus) as the great guru in ethics.<sup>36</sup>

Cak Nur also belief that the values of Medina such as spoken by the prophet in the last and farewell preaching or *khutbah wada'* comprised about the sacredness of lives, property and sacred honor (*al-dima wa al-amwal wa al-aradl*), have been transformed to Europe through the long chains from the crusade battle, the Italian philosopher Giovanni Pico della Miralonda who in the 1486 addressing an oration on the Dignity of Man, continued by John Lock until Thomas Jefferson who in declaring the independent of America used the formula which similar to the one formulated by the prophet Muhammad, in seeing the sacredness of life, liberty and pursuit of happiness.<sup>37</sup>

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<sup>35</sup> See Kompas Cyber Media, August 16, 2005. The original text: "Negara bangsa yang modern adalah negara yang berkeadilan, terbuka dan demokratis. Berkeadilan mengandung paham kesamaan antar manusia, tidak ada perbedaan di antara warga negara berdasarkan alasan apapun juga. Non diskriminasi adalah persyaratan bagi adanya keadilan," kata Cak Nur. "Masyarakat yang adil adalah yang terbuka, toleran, yang tidak mengizinkan adanya pemaksaan pendapat kepada kelompok yang lain. Keterbukaan ini menjadi syarat dari adanya demokrasi, karena demokrasi adalah masyarakat yang terbuka, yang intinya ialah kebebasan untuk menyatakan pendapat baik pada level pribadi maupun level institusional," kata Cak Nur.

<sup>36</sup> Mungkin kita harus mengingatkan diri kembali bahwa apa yang sekarang ada di Amerika yang disebut demokrasi sekuler-pun tumbuh dari bibit-bibit perenungan keagamaan yang mendalam, yang dibawa oleh para imigran dari Eropa ke Amerika seperti yang kelak di sana diwakili oleh pandangan-pandangan George Washington, Benjamin Franklin, Thomas Jefferson, John Adams dan anaknya, John Quincy Adam, Alexander Hamilton, James Madison dan lain-lain. Sebagian dari mereka itu, seperti Thomas Jefferson dan Alexander Hamilton, memang mengaku tidak beragama formal atau beragama dalam arti menganut Deisme, Unitarianisme dan Universalisme. Tetapi mereka juga sekaligus mengaku bahwa dalam hal wawasan moral dan etika pribadi dan sosial mereka peroleh dasar-dasar metafisisnya dalam ajaran-ajaran Isa al-Masih yang bagi mereka adalah guru agung budi pekerti luhur. See. *Wawasan Paramadina*.

<sup>37</sup> Nilai-nilai Madinah itu diringkaskan dalam wasiat terakhir Nabi yang beliau sampaikan dengan seluruh ketulusan jiwa beliau dalam Pidato Perpisahan (Khutbat al-Wada), dengan inti pesan kesucian hidup, harta dan harkat manusia (*al-dima wa al-amwal wa al-aradl*- 'lives, property, sacred honor'). Dengan telah

## Abu Bakar Ba'asyir (1938- )

### *His milieu, education and activities*

Abu Bakar Ba'asyir bin Abud Baamulim Ba'asyir was born in Jombang on August 17, 1938.. His father and grand father were Yemeni origin who have became Indonesian citizen. His mother also Arabic origin but his grand mother is Javanese. Although his parent can be called lay people but both of them are devout people who diligently kept religious ritual. His father dead when Ba'asyir turn to ten years old. After the death of his father, he then survived by his mother.<sup>38</sup>

He get first religious education from *surau* (the place of worship ) in his village as well as from his mother. He continued his senior high school in Surabaya. Unfortunately, because of "financial constrain" he terminated his study in the first grade. In order to help family's economic, Ba'asyir ever helped his brother opening textile and garment home industry.<sup>39</sup>

In the age of twenty one , in 1959, Ba'asyir enrolling Pesantren Darussalam Gontor. In this pesantren Ba'asyir ever taught by Nurcholish Madjid for one year. "When I enrolled he has in the sixth grade" Ba'asyir memorized. But it is KH Imam Zarkasyi, the founder of Gontor which gave significant influence on his character, according to his confession. After graduating from Gontor in 1963 ,he continued to Al-Irsyad University majoring in sharia. One again , he cannot finished his study but not because of financial constrain but because of his involvement as Islamic preaching activities in society. "My preaching reached to very distance place to the edges of villages." He added .<sup>40</sup>

Ba'asyir well known for highly enthusiasm in Islam. His dreaming is only one, enforcing Islamic sharia in this archipelago. When he studied in Al-Irsyad University he ever became chairperson of Student Institute for Islamic Preaching (LDMI). He also ever become general secretary of Al-Irsyad Youth , in Solo branch.

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disampaikannya wasiat itu, di sore harinya, diwahyukan kepada Nabi bahwa Allah telah menyempurnakan agama umat manusia dan melengkapkan rahmat karunia-Nya, serta menyatakan Agama Islam telah mendapat ridla atau perkenan-Nya.

Inti wasiat Nabi itu diterima dengan tulus oleh seluruh kaum beriman, dan dilaksanakan hampir-hampir secara taken for granted, tanpa masalah. Inti wasiat Nabi itu menyebar ke kalangan umat-umat lain, dan tidak lama setelah terjadi kontak dunia Eropa dengan dunia Islam akibat perang Salib, inti wasiat Nabi itu merembes ke Eropa dan mempengaruhi perjalanan masyarakat di sana melalui falsafah kemanusiaan Giovanni Pico della Mirandola. Bangsawan sekaligus hartawan dan ilmuwan dari Italia itu pada tahun 1486 menyampaikan orasi tentang harkat dan martabat manusia (*//Oratio de hominis dignitate-- 'Oration on the Dignity of Man'//*) di depan kaum intelektual Eropa yang ia undang ke Roma. Diawali oleh falsafah kemanusiaan Pico pada akhir abad 15 itu ide hak-hak asasi manusia mulai berkembang di Eropa, yang sesampainya ke tangan John Locke hak-hak itu dirumuskan sekitar kesucian 'hidup, kebebasan dan harta' (*//life, liberty, and estate'//* atau *//'property'//*). Pandangan-pandangan John Locke banyak mempengaruhi alam pikiran para bapak pendiri Amerika Serikat, khususnya mereka yang menganut Deisme, Unitarianisme dan Universalisme. Dan melalui pena Thomas Jefferson yang amat fasih kita mendapatkan dalam Deklarasi Kemerdekaan Amerika rumusan nilai-nilai kesucian manusia sekitar *//life, liberty, and pursuit of happiness'//*, yang pada kalimat terakhir Deklarasi itu rumusannya ditegaskan sebagai *//lives, fortunes, sacred honor'//*, persis seperti frasa Nabi dalam Pidato Perpisahan. See Wawasan Paramadina.

<sup>38</sup> *Tempo*, Edisi April 2004.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

During his activity in community, Ba'asyir met with Abdullah Sungkar<sup>41</sup> and Hasan Basri. They then agreed to establish Islamic Preaching Radio, named ABC (*Al Irsyad Broadcasting Commission*) and Surakarta Islamic Preaching Radio (Radis), in 1969. Few years later these two Radio prohibited to air their program by Soeharto government because it is always inciting Islamic militancy and sharply criticized government.

On March 10, 1972 Abu Bakar Ba'asyir along side with Abdullah Sungkar, Yoyo Rosawadi, Abdul Qohar H. Daeng Matase and Abdullah Baraja established Pesantren (Boarding school) in Ngruki, Sukoharjo, Central Java. When Soeharto introduced Pancasila as the sole ideology of Indonesian, he refuted. He even incited people to refuse Pancasila as the sole basic for all organization. He also prohibited his student to salute the white and red Indonesian flag, because according to him this act is part of the polytheist act.

In 1983, Abu Bakar Ba'asyir and Abdullah Sungkar were detained. The accusation is inciting people to refuse Pancasila as the sole basic ideology of Indonesia. He teaches his pupil that saluting or greeting Indonesian flag is part of the *syirk* (polytheist) deed. He was accused as the part of the movement led by Hispran (Haji Ismail Pranoto), prominent figure in DI (*Darul Islam*) and TII (Indonesian Islamic Armed Force) in Central Java. Both Abu Bakar Ba'asyir and Abdullah Sungkar sentenced to 9 years prison.

In February 11, 1985 when their case still being tried in Supreme Court for appellate, and their status are house detention, Ba'asyir and Abdullah Sungkar escaped to Malaysia through Medan. In Malaysia Abu Bakar Ba'asyir, Abdullah Sungkar and *ajengan* Masduki established *Darul Islam* in 1985. Its name then changed in 1987 and became *Jamaah Darul Islam*.<sup>42</sup> This organization led together collegially by the three. This organization then break up when *ajengan* Masduki refused Abu Bakar Ba'asyir and Abdullah Sungkar ideas to carried this organization through violence act. In the peak, they scattered, *ajengan* Masduki remain in Darul Islam while Abu Bakar Ba'asyir and Abdullah Sungkar formed a new one named *jami'atul minal muslimin* in 1996. The later congregation then well known among the follower as *Jamaah Islamiyah* (JI). During his staying in Malaysia Ba'asyir preached Islam based on his strict understanding on the Koran and Hadits. The source derived from Nasir Abas said that the scattering (*infishol*) between Ajengan Masduki in one side and Ust. Abdul Halim (Abdullah Sungkar) and Ust. Abdus Somad (Abu Bakar Ba'asyir) in other side occurred since 1993.<sup>43</sup> So there are two organization, *Jamaah Darul Islam* led by Ajengan Masduki and *jamaah Islamiyah* led by Ust. Abdul Halim who well

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<sup>41</sup> Abdullah Sungkar was born in 1937 and dead in November, 1999 in Bogor. He is a Muslim cleric and the founder and the leader of *Jamaah Islamiyah* (JI). He is one of the leader of *Fisabilillah* faction in NII ((Indonesian Islamic State) which at that time has been scattered. His reign territory including Ngruki Pesantren that is used as the base of his movement. His followers who have been trained reached 5000 persons, part of them had accepted military training. See. Al-Chaedar, *Pemikiran Proklamator Negara Islam Indonesia*, (Jakarta: Darul Falah: 1999), h. 227.

<sup>42</sup> The aim of *Jamaah Darul Islam* is returning the glory of Kartosuwiryo who had proclaimed NII (Indonesian Islamic State) in West Java on August 7, 1949. NII which deemed legal then attacked an occupied by Sukarno (The first Indonesian president). Therefore it is the obligation of all members of *Jamaah Darul Islam* to liberate the place in which God law or Islamic sharia ever declared and promulgated. See. Nasir Abas, *Membongkar Jamaah Islamiyah*, Jakarta, Grafindo, 2006, hlm. 83-84.

<sup>43</sup> see Nasir Abas, *Membongkar...* page 85.



known in Indonesia by Abdullah Sungkar. Abdullah Sungkar led *jamaah Islamiyah* until his death in 1999. After the death of Ust. Abdul Halim, the top leader of this organization taken over by Ust. Abdus Somad.<sup>44</sup>

On September 25, 2002, Abu Bakar Ba'asyir in his interview with TEMPO magazine said that during his staying in Malaysia he never established organization or movement. During there he and Abdullah Sungkar just taught Islam based on *sunnah nabi* ( prophet tradition). "I am not involved in politics. Once or twice in a month I visit Singapore. We teach *jihad* to Muslims and among them, they go to *jihad* in Philippine or Afghanistan but all of them based on individual preference." he said.

After returning from Malaysia in 1999, Ba'asyir involved in managing MMI ( Indonesian Mujahidin Council), the alliance of mass organization which determined to enforce Islamic sharia in Indonesia. When this organization for the first time performed congress in Yogyakarta in 2002 , to team up this leadership , Abu Bakar Ba'asyir was elected as the chairman. As the alliance of mass organization the member of MMI might be individual or institution. MMI aimed to become umbrella organization for all Muslims together who agree to fight for the mission ; enforcing Islamic sharia in Indonesia.

As mentioned above , Abu Bakar Ba'asyir ( Ust Abdus Somad) also an *amir* or the leader of al-Jamaah al-Islamiyah replaced Abdullah Sungkar (Ust. Abdul Halim) after the death of the later in 1999. But considering al-Jamaah Islamiyah (JI) as a form of secret organization (*tanzim sirri*) , only a few persons that have attained the level of leader who know his status as *amir*.<sup>45</sup>

### *His thoughts*

#### *On Islam*

In commenting on the core of Islam and Islamic sharia Abu Bakar Ba'asyir said that : "The core is *tauwhid* (the oneness of God). But there are many mistakes in understanding *tauwhid*. They think *tauwhid* is just belief in God and in the prophet Muhammad. If merely belief to God, it is not different with the Devil. The true *tauwhid* is to confess the oneness of Allah and the oneness of God law. This is *tauwhid* that should be explained. If you are only confessing the oneness of God but not acknowledged the oneness of God law, your *tawhid* is failure. Allah is the only one we worshipped to. We live only to worship Him. And we only allowed to be regulated by the law of God. This is the real *tauwhid*. This is that many don't understand. They think if they have belief to the almighty God it is enough, then they can recklessly nurturing their carnal desire." <sup>46</sup>

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<sup>44</sup> See. Nasir Abas, *Membongkar...* page 92. Abdus Somad is alias of Abu Bakar Ba'asyir when he stayed in Malaysia.

<sup>45</sup> See Nasir Abas, *Membongkar...* page 116 The original text : "Hanya anggota al-Jamaah al-Islamiyah yang menjabat selaku pimpinan mengetahui akan status beliau selaku Amir al-Jamaah al-Islamiyah." According to Nasir Abas one of the ten principles of al-jamaah al-Islamiyah is to perform Islam purely and totally through the system of congregation (*jamaah*) then (established) *daulah* ( Islamic state) , then *khilafah* (caliphate). Ibid. page 105.

<sup>46</sup> Interview conducted in Januari 2007. The original texts is : " Inti pokoknya itu Tauhid. Tapi orang keliru memahami tauhid, dikira tauhid itu hanya percaya kepada Allah dan percaya pada Nabi Muhammad. Kalau hanya percaya kepada Allah Iblis juga percaya. Yang disebut Tauhid itu mengesakan Allah dan

### *On sharia*

In the view of Abu Bakar Ba'asyir, Muslims should believe that Islamic sharia is absolutely correct and excellent suitable for each time and place. He further said that "Muslims very believe all of Islamic sharia are absolutely correct and excellent whenever and wherever. Believing to such sharia is dead price, there should be no compromise. This is what we called Muslim. Therefore Muslim do not want to sacrifice sharia to be exchanged by other including on behalf the unity of the nation. The unity is good including with the infidels, we are willing to live in peace with them but it should be in condition, don't abandon Islamic sharia. So the life should be in the umbrella of Islamic sharia. This condition is dead price there is nothing that can be reduced or to be bidden. This is what is called (true)believer."<sup>47</sup>

Ba'asyir was not agree if the implementation of sharia is limited to few aspects such as what is happened in Indonesia who just implement sharia limited to the matter of marriage, *wakaf* and inheritance such as regulated in KHI (Islamic law compilation). Ba'asyir intended that sharia should be implemented totally in all aspects of life. "It is right, Islamic sharia should be implemented totally (*kaffah*). It is must. It cannot be negotiated if they want to get salvation." He added.<sup>48</sup>

Back to Indonesian history, when Muslim leaders give up on Piagam Jakarta, to me it is the wrong tolerance, untrue tolerance, in which for the sake of unity with Christianity in Indonesian state, Islamic sharia then sidelined. This tolerance caused disaster until now. Strangely it is this tolerance that is developed now. Ba'asyir said<sup>49</sup>

### *On the top priority of Muslim's struggle*

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mengesakan hukum Allah. Itu namanya Tauhid. Ini yang harus diterangkan. Kalau kamu mengesakan Allah tapi tidak mengesakan hukum Allah itu gagal tauhidnya. Ini yang harus diterangkan. Mengesakan Allah dan mengesakan hukum Allah. Yang harus kita ibadahi itu hanya kepada Allah. Kita ini hidup hanya beribadah kepada Allah. Dan kita hidup hanya boleh diatur dengan hukum Allah. Itu namanya Tauhid. Ini yang nggak paham orang. Dikira kalau orang sudah percaya Allah itu maha kuasa selesai. Lalu hidupnya seenaknya sendiri diatur hawa nafsu."

<sup>47</sup> Interview conducted in Januari 2007. The original text is "...Orang Islam itu sangat mempercayai semua syariat Islam *bener* mutlak dan paling unggul dan sesuai untuk semua jaman dan setiap tempat. Iman terhadap syariat semacam itu harga mati. Maka *nggak* mau diajak kompromi. Inilah yang disebut orang Islam. Oleh karena itu tidak mau mengorbankan syariat demi yang lain. termasuk demi persatuan bangsa. Dia memang menginginkan persatuan, termasuk orang kafir, kita ingin hidup rukun damai dengan mereka. tapi Syaratnya, jangan meninggalkan syariat Islam. Jadi Harus hidup dibawah naungan syariat Islam. Kita bersatu rukun dengan orang kafir. Syarat ini harga mati tidak bisa tidak bisa ditawar. Ini yang disebut mukmin"

<sup>48</sup> *Nasional, GATRA, Edisi 40 Beredar Jumat 15 Agustus 2003* "...Ya. Syariat Islam harus dilaksanakan secara "*kaffah*" (menyeluruh). Harus. Tidak boleh tidak. Harus. Itu tidak ada tawar menawar. Mau: Selamat. Tidak mau: Tidak selamat. Selesai!

<sup>49</sup> [www.indosia.com](http://www.indosia.com). The original texts: "Menengok sejarah, saat ummat Islam melepaskan Piagam Jakarta, menurut saya, itu toleransi yang batil. Toleransi yang salah, di mana demi untuk bersatu dengan orang Kristen dalam satu wadah bangsa Indonesia, rela melepaskan syariah Islam. Ini toleransi yang batil. Itu yang menimbulkan *bala'* (kerusakan) hingga saat ini. Anehnya, toleransi inilah yang dikembangkan hingga saat ini."

Ba'asyir sees that the central of his struggle is to enforce *sharia* or God law. He said that "In this life there is no something more worthy than struggle to enforce *sharia*. There isn't any struggle in this world that is more important than the struggle to uphold God law in this earth. It is what should be understood by all Muslim. There isn't any negotiation in this process. Take it all or leave it all."<sup>50</sup>

In other occasion Ba'asyir said that "Enforcing Islamic *sharia* is absolute for every Muslim. Negotiation in whatever form cannot be accepted including consideration for maintaining the unity. Remember all and every victory that we grasp not because of humans smart or sophisticated but because of Allah blessing. The victory can only be get if we are persistent in upholding Islamic *sharia* or Allah *sharia*. It is better to break apart instead of we are not able to perform *sharia* which has been dictated by God. Life in this world just to do it."<sup>51</sup>

Ba'asyir described himself as fighter for Islamic *sharia* who ready taking risk for his struggle including to be branded as extremist. He further said that "this is the natural law (*sunnatullah*), since the age of Rasulullah until now, the infidels always tried to discredit Islam. The prophet himself ever called *majnun* (crazy) a destroyer or the breaker of community. It is what we should faced but we don't worry because it has became the song of the infidels. They (infidels) are not dare to face Islam by argument therefore they look for issues that undermine and weaken Islamic society for instance by labeling them as extremist, hard liner, terrorist and soon. So it is important to inform Muslims society that these are the songs of the enemy. What they mean extremists are Muslims who want to enforce Islamic *sharia*. They are worried, then they released the brands so Muslims will afraid and distanced themselves from the fighters"<sup>52</sup>

#### *On sharia state or Islamic state*

Regarding the opinion saying that *sharia* state or Islamic state has no clear concept, Ba'asyir refused this opinion. He said that "the concept actually has already existence, arranged by *Darul Islam* figures. Despite being called rebellion, they are

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<sup>50</sup>*Taushiah Ustad Abu Untuk Muslim Indonesia* dalam Majalah Sabili, No 12 Edisi Januari, 2003. h. 35. "The original text is ".Tidak ada yang lebih berharga dalam hidup ini daripada memperjuangkan syariat Allah. Tidak ada perjuangan yang lebih bernilai di dunia ini selain perjuangan menegakan hukum-hukum Allah di Muka bumi. Inilah yang harus dipahami dan dipegang teguh oleh kaum Muslimin. Tidak ada tawar menawar dalam proses ini. Terima sepenuhnya atau tinggalkan seluruhnya"

<sup>51</sup> *Ibid.* h. 35. The original text is ".Menegakan syariat Islam itu sifatnya mutlak bagi tiap Muslim, tawar menawar dalam bentuk apapun dalam syariat tidak bisa diterima. Termasuk pertimbangan-pertimbangan seperti persatuan dan kesatuan. Tolong diingat semua dan setiap kemenangan yang kita raih ini bukan karena kecanggihan dan kepintaran manusia tetapi lebih karena anugrah dan rahmat Allah semata. Kemenangan itu bisa diraih hanya jika kita teguh memegang syariat Islam. Syariat Allah. Lebih baik kita bubar daripada kita tidak bisa melaksanakan syariat yang telah ditetapkan Allah. Hidup di dunia ini hanya untuk itu saja"

<sup>52</sup> [www.indosiar.com](http://www.indosiar.com). "...itu memang sudah sunatullah, sejak Rasulullah hingga sekarang, kaum kafir selalu berusaha mendiskreditkan Islam. Nabi sendiri pernah disebut *majnun* (gila), dan pemecah belah umat. Hal itu memang perlu kita hadapi, tapi tidak perlu khawatir karena itu memang sudah menjadi nyanyian orang kafir. Mereka tidak berani menghadapi Islam secara hujjah, mereka tidak bisa menghadapi Islam dengan argumen. Karena itu dicari isu-isu yang menjelekkan umat Islam. Misalnya, ekstrim, keras, teror dan sebagainya. Kepada umat Islam perlu dijelaskan, begitulah lagunya musuh itu. Yang mereka maksudkan ekstrim itu adalah umat Islam yang mereka rasakan benar-benar akan menegakkan syariat Islam. Mereka khawatir. Lalu mereka melempar cap-cap agar umat Islam takut atau menjauh dari orang-orang yang berjuang itu"

actually has prepared these concepts. Now it is just to be revised. Islamic sharia actually a simple matter. For instance related to criminal code there are *hudud* and *qishash*, both have been mentioned in the Koran. So it just promulgate it. Of course the real application of sharia will be determined by situation. So it is important to promulgate it first, whereas the real application will be step by step. There are too much concept (on sharia state), if we are compare with Indonesian when they are fighting for independent aren't there any concept? Pancasila is their only concept, so in order to manage the new state then they borrowed it from the West, isn't it? Why so many people said that Islam has no concept (on Islamic state)? The concept is there and *Majlis Mujahidin* ( mass organization that he chaired) will revise and elaborate it."<sup>53</sup>

Ba'asyir strongly attacks the notion of secularism which will separate religion from the government. To him Islam has regulated all aspect of life from individual or private matter to public or state matter. "Secularists no less dangerous compared to the other enemy of Islam because they are blurring so many people assume that they good people but actually they are such as a hypocrite. Their acts like a hypocrite but I don't dare to called them hypocrite"<sup>54</sup>

When asked about the mission or program of MMI, Ba'asyir said that there are two main programs of MMI, firstly, socialization. This program stressed on building Muslim's awareness that fighting for sharia enforcement is obligatory in the same level as obligation to conduct *shalat* (daily prayer). Enforcing sharia is the sole solution in overcoming the so many problems faced by Indonesia. In order to socialize sharia MMI will managed a seminar inviting pastors or priests. "We are willing to inform them that the application of sharia will not suppress them. Conversely, they will receive circumstance, more comfortable , more justice for them". Ba'asyir said.<sup>55</sup>

The second program is crushing secular thinking firmly. MMI will release guidance to determine who secularists are and how to treat them according to Islamic jurisprudence. We will highlighted that secularists are the enemy of Islam although they use Muslim "cloth". If they are become leaders, Muslims forbidden to follow their leadership so it is suggested to Muslims not follow them.

In Ba'asyir opinion state should be ruled by Ulama (cleric) that understand and belief of the excellently of sharia. Since Indonesia from the beginning managed by secular leader, it is understood if the result is a chaos

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<sup>53</sup> [www.indosiar.com](http://www.indosiar.com) "...Sebenarnya konsep-konsep itu sudah ada, dibuat oleh tokoh-tokoh Darul Islam. Terlepas dianggap sebagai pemberontak, tetapi mereka telah menyiapkan konsep-konsep itu. Sekarang tinggal direvisi sana-sini. Syariah Islam itu sebenarnya sederhana saja. Misalnya, menyangkut kriminal, ada *hudud* dan *qishas*, keduanya ada dalam al-Qur'an. Tinggal mengundang saja. Soal penerapannya tentu saja melihat kondisi. Tapi yang penting diundangkan dulu, penerapannya nanti secara bertahap. Jadi, konsep-konsep itu sebenarnya sudah terlalu banyak. Bandingkan dengan bangsa Indonesia dulu saat memperjuangkan kemerdekaan, bukankah malah tidak punya konsep? Konsepnya hanya Pancasila. Untuk mengatur negara mereka tidak punya konsep, lalu konsepnya mengambil dari Barat. Kan begitu. Lalu mengapa orang selalu mengatakan Islam belum punya konsep? Konsep itu sudah ada, tinggal merevisi dan Majelis Mujahiddin akan melakukan hal itu

<sup>54</sup> ([www.indosiar.com](http://www.indosiar.com) "Jadi kaum sekuler ini tidak kalah bahaya dibanding musuh-musuh Islam yang lain, bahkan lebih bahaya. Karena apa? sebab ia kabur, sehingga rakyat menganggap ia itu baik. Mereka itu semacam munafik. Pekerjaannya seperti orang munafik, tapi kami belum berani mengatakan munafik"

<sup>55</sup> [www.indosiar.com](http://www.indosiar.com).

and moral degradation. "Since the independence day, this state always ruled by secular groups such as Soekarno, Soeharto and now (when Ba'asyir was saying) Abdurrahan Wahid. So Islam never has an appropriate place according to its sharia. The maximum it (Islam) was placed in religious ministry. In Soeharto era there is a broader space for Islam but it just given for the sake of his political interest. So, **Indonesia from the beginning until now ruled by secular people not ruled by ulema. So it is understood if it lead to the destruction of the nation and Islam.**"<sup>56</sup>

### *On inhumanity of sharia*

Ba'asyir also refuted opinion which branded Islamic laws inhuman by referring to cutting hand for theft and other penalty code in Islamic law. While in the man made law, the theft commonly punished by prison, cutting hand, he said, likely deemed inhuman. Well, it is the prison that surely inhuman for such reasons. Firstly, persons who jailed, their family are neglected because there is no breadwinner anymore. Secondly, prison not always make someone repentance. The evidence that prison not able to make someone wary is the *petrus* (mysterious killing policy aimed to curb criminal) in the era of Orde Baru ). The background of *petrus* is because the government has desperate in dealing with criminal act. Prison not make them repentance whereby the government has spend so much money for their food during in prison. Eventually , the government makes *petrus* policy. Imagine ! if there is a cutting hand.

(In sharia penal code) the thief who is his hand being cut is not picked up recklessly. If he steal because of hungry he is not punished but released and be given an aid. The cutting hand penalty just applied to somebody who cannot be revised. After his hand being cut he released and not jailed so he still can support family with his earning. Secondly cutting hand will shocked him or her so he or she become wary. It is narrated in a *hadits* (written tradition associated to the prophet) if the thief repentance, his hand will in advance entering paradise, conversely if he don't wary , his or her hand will previously enter to hell. So it is clear, Ba'asyir said, that cutting "hand is proved more effective , more human and lesser cost. So, Ba'asyir added , if it is discussed , cutting hand is more logic. Why not logic, it is ruled by the Creator of human. What is decided by Allah , of course, suitable for human until the end of the days. Punishment for adultery, theft and soon certainty effective whenever. If this punishment not effective, it means that there is something imperfect in the Creator. But because of political interest, Islamic law, recently, often described as cruel law. This cannot be separated from the deeds of secular supporters."<sup>57</sup>

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<sup>56</sup> (www.indosiar.com) "Bahkan sejak merdeka negara ini dikuasai kelompok sekuler, seperti Soekarno, Soeharto dan sekarang Abdurrahman Wahid. Sehingga Islam tidak pernah mendapat tempat sesuai syariahnya. Paling-paling hanya ditaruh di Departemen Agama. Pada jaman Soeharto tempat itu sedikit lebih luas, tapi itu pun untuk kepentingan politik dia. Jadi, Indonesia ini sejak merdeka hingga sekarang dikuasai orang-orang sekuler, **bukan dikuasai ulama**. Wajar kalau kemudian semuanya mengarah kepada kerusakan, baik orangnya (bangsa) maupun Islamnya."

<sup>57</sup> www.indosiar.com. The ooriginal texts: " Contoh lain, misalnya soal hukum potong tangan. Seolah-olah hukum ini tidak manusiawi. Pada hukum yang dibuat manusia, umumnya orang yang mencuri dipenjara. Sebenarnya, hukuman ini tidak manusiawi. Pertama, orang yang dipenjara keluarganya jadi telantar, tidak ada yang memberi nafkah. Kedua, dia juga belum tentu kapok dan

### *On ideal model of sharia state*

Ba'asyir realized that until now there is no single nation that has implemented Islamic sharia comprehensively (*kaffah*). He said that "there isn't any. In this world there is no state that has enforced Islamic sharia comprehensively. In one state that is more and in the other there is less. But there isn't any state that has totally implemented *sharia* including Pakistan. The problem is there is no will. Arab Saudi is rather better although still not complete yet"<sup>58</sup>

Regarding the model or reference for sharia state, Ba'asyir prefer to use Saudi Arabia or Pakistan. Ba'syir cautioned to the Iran model considering that they are not *ahlu sunnah wal jamaah*. He said that concerning Iran, the problem because they are Syi'I so we should be cautious. "We don't negate the possibility of some aspects of their economics were in line with Islam. But because they are Syi'ah, their teaching contrary to *Ahlu Sunnah wal Jamaah* so we don't make them as the basic reference."<sup>59</sup>

### *On steps to implement sharia, just follow the example of the prophet*

Abu Bakar Ba'asyir said that Muslims should follow the steps have been done by the prophet (*sunnah nabi*). Because the prophet should be treated as model. It is said (in the Koran) *laqad kana lakum fi Rasulullah Uswatun Hasanah*. Islam, in the prophet era, according to Ba'asyir were implemented in the form of government by enforcing Islamic sharia.<sup>60</sup> It is clear, in Ba'asyir view, sharia cannot be fully implemented if there is no state or government.

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nyatanya memang banyak yang tidak kapok. Bukti bahwa penjara itu tidak mampu membuat orang jera, pada jaman Orde Baru dulu ada 'petrus' (penembakan misterius). Apa latar belakang petrus, karena pemerintah sudah putus asa menghadapi para kriminal itu. Mereka dipenjara juga tidak kapok, padahal pemerintah sudah keluar biaya banyak, karena harus memberi makan selama dipenjara. Akhirnya diputuskan 'dipetrus' saja. Coba dalam hukum potong tangan. Pencuri yang dihukum tangan itu bukan asal pencuri. Kalau mencuri karena kelaparan, bukannya dihukum malah dilepas dan dikasih bantuan. Hukum potong ditimpakan bila dianggap benar-benar sudah tidak bisa diperbaiki. Dan setelah dipotong ia dilepas, tidak dipenjara lagi, agar tetap bisa mencari nafkah untuk keluarganya. Kedua, potong tangan itu bakal memukul dirinya secara telak, sehingga ia kapok. Dalam sebuah hadits dikatakan, bila kemudian ia tobat maka tangannya itu akan mendahuluinya masuk surga. Sebaliknya, bila tidak kapok, tangannya itu mendahului masuk neraka. Jelas hukum potong tangan terbukti lebih efektif, lebih manusiawi dan lebih hemat biaya, Jadi, kalau mau dibahas, hukum potong tangan lebih logis. Bagaimana tidak logis *wong* yang menciptakan itu yang membuat manusia. Apa yang telah ditetapkan oleh Allah, pasti sesuai dengan manusia, sampai akhir zaman. Seperti hukum zina, mencuri dan sebagainya, itu mesti efektif dalam segala zaman. Sebab kalau tidak sesuai, tentu ada kekurangan pada diri Khaliq. Selama ini, karena kepentingan politik, hukum Islam digembar-gemborkan sebagai hukum yang kejam. Ini juga tidak lepas dari perbuatan orang-orang sekuler"

<sup>58</sup> www.indosiar.com. Memang kita harus mengakui, sekarang belum ada negara di dunia ini, sekalipun mengaku negara Islam, yang sepenuhnya melaksanakan hukum Islam, termasuk Pakistan. Persoalannya hanya tidak ada kemauan saja. Arab Saudi itu lumayan, meski juga belum sepenuhnya.

<sup>59</sup> Ibid. "Kalau Iran, persoalannya karena dia Syi'ah, jadi kita harus hati-hati. Kita tidak menafikan, mungkin beberapa aspek ekonomi mereka sesuai dengan Islam. Tetapi karena mereka Syi'ah, yang ajarannya bertentangan dengan *ahlu sunnah wal jama'ah*, kami tidak menjadikan mereka sebagai rujukan pokok"

<sup>60</sup> Interview conducted in January 2007. The original text said: Langkahnya itu harus mengikuti sunnah nabi. Karena nabi itu contoh. Nabi itu *laqod kana lakum fi Rasulillah...uswatun hasanah*. yang paling baik.

Concerning the name of the state, Abu Bakar Ba'asyir said that the name of state isn't very important. To him Islamic state or Unitary State can be accepted as long as their positive law based on Islam." About nomenclature it doesn't matter to be called Islamic State or Unitary State of Republic Indonesia. The most important one is that the law should be based on Islam. This is the prophet tradition (*sunnah nabi*). This is the way to perform Islam.<sup>61</sup>

#### *On Muslim brotherhood (ukhuwwah Islamiyah)*

Abu Bakar Ba'asyir opposed the concept of human brotherhood and national brotherhood introduced by Abdurrahman Wahid and other clerics in Nahdatul Ulama. He said that "according to Abdurrahman Wahid, there are three kinds of brotherhood : *ukhuwah Islamiyah*, *ukhuwah basyariyah* and *ukhuwah wathoniyah*. This concept is very dangerous, in Islam there is no brotherhood except Muslims brotherhood. Outside Islam all are enemy. However in certain condition they can be treated well in line with sharia norms. According to Islam, world can be divided into two: Islam and Jahiliyah (ignorance). Between Islam and Jahiliyah there isn't any brotherhood. Between Islam and Jahiliyah are an endurance enmity. Like pure water and dirty water when they were mixed, all becoming dirty water there is no third water. Therefore the concept of *ukhuwah basyariyah* ( human brotherhood) and *ukhuwah wathaniyah* (national brotherhood) are poison and dangerous.<sup>62</sup>

#### *On Pancasila*

In his reaction to Soeharto regime in imposing Pancasila as the sole ideology of Indonesia , Ba'asyir said that Pancasila is the product of engineering made or fabricated by Christian to destroy all institution in this country. In Ba'asyir view , the idea to make Pancasila as the sole ideology is the peak of politics to suppress political force of Muslims. He said : " surely the only one ,Pancasila as the base of ideology is the Christian/ Catholics engineering aimed to destroy all of Islamic institution in this country." <sup>63</sup> In his view making Pancasila as the sole ideology is a great evil and part of the polytheist act. Therefore, as devout Muslim, Abu Bakar Ba'asyir feel that this matter cannot be abandoned. As the consequence of his

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termasuk contoh mengamalkan Islam dan contoh cara memperjuangkan Islam. contoh mengamalkan Islam yaitu Islam harus diamalkan dalam bentuk pemerintahan.itu bukan politik tapi contoh Nabi. cara memperjuangkan adalah dengan menegakan syariat Islam

<sup>61</sup> Wawancara Januari 2007 Masalah nama mau Negara Islam mau Negara NKRI ataiu Negara apa terserah. Tapi yang penting Negara itu dasarnya Islam hukumnya positifnya Islam, itu sunnah nabi. Itu cara ngamalkan Islam

<sup>62</sup> [www.indosiar.com](http://www.indosiar.com) Menurut Abdurrahman Wahid, ukhuwah itu ada tiga yaitu *ukhuwah Islamiyah*, *ukhuwah bashariyah* dan *ukhuwah wathaniyah*. Konsep ini berbahaya sekali. Di dalam Islam tidak ada ukhuwah, selain ukhuwah Islamiyah. Di luar Islam, semuanya musuh. Meskipun demikian, musuh itu, di saat tertentu bisa diberlakukan dengan baik, sesuai dengan ketentuan syariah. Menurut Islam, dunia ini dibagi dua, yaitu Islam dan jahiliyah. Antara Islam dan jahiliyah tidak bisa ukhuwah. Selamanya, antara Islam dan jahiliyah itu bermusuhan. Ibarat air bening dan air kotor, bila dicampur tidak akan menjadi air ketiga. Yang terjadi adalah air menjadi kotor. Karena itu konsep ukhuwah basyariah dan ukhuwah wathaniyah itu racun dan berbahaya.

<sup>63</sup>Majalah, *Sabili*, No.12 edisi Januari 2003. Original text said "Sesungguhnya asas tunggal Pancasila itu hanyalah rekayasa dari pihak Kristen/ katolik untuk menghancurkan semua Institusi Islam di negeri ini"

statement he questioned by police in 1985. It is in this years Ba'asyir then escaped to Malaysia. Until now , Ba'asyir likely hasn't get a positive outlook on Pancasila as the sole state ideology.

### **Comparative analysis and critics directed to both Nurcholish Madjid and Abu Bakar Ba'asyir**

There are many similarities between Nurcholish and Abu Bakar , both are graduated from Gontor Islamic boarding school and both are also admitted that the most important element of Islamic teaching is *tauwhid*. They are also agree that the prophet Muhammad is an ideal model or a good example for every Muslims. Both are acknowledged from Sunni tradition.

Both Nurcholish Madjid and Abu Bakar Ba'asyir has the same stance that the core teaching of Islam is *tauhid* ( The oneness of God). But while Cak Nur used tauhid as the ground of liberty, equality and solidarity or brotherhood among all humans before the God, Ba'asyir used *tauhid* the basic of human obligation to adhere the God laws as the sole law in the world. Since what he perceived by God laws is Islamic law or sharia, he then placed sharia as the superior law over others. The further implication can be predicted, Ba'asyir, for instance, wishes the Muslim jurist be placed as the ruler.

In the eye of Cak Nur tauwhid creed should lead Muslims to accept the equality of human being and human brotherhood. While in the eye of Abu Bakar Ba'asyir tauwhid or to acknowledge the oneness of the God should be followed to tauwhid in the law which it means that there is no law in the world except God law.

While Nurcholish Madjid accustomed in circumstance that respected differences , Abu Bakar Ba'asyir accustomed in tradition which highly influenced by Wahaby puritan way of thinking. While according to the most of Muslims , the pillar of faiths is only six, belief in God, his angels, his books, his messengers , the day of judge and *qadar* (measurements), Ba'asyir indirectly added sharia as the part of Muslim faith. Unfortunately, while the others ulema considered the result of *istinbath al-hakam* ( jurisprudence conclusion) is *dzanniyyu dilalah* (not absolutely true) therefore subjects to evaluation , Ba'asyir often sees it as an absolute one.

While in Ba'asyir opinion there is no brotherhood except in Islamic brotherhood (*ukhuwwah Islamiyah*), Nurcholish can easily accept the human brotherhood (*ukhuwwah insaniyyah*). For Ba'asyir, there is only one God, one book and one way of salvation while for Nurcholish it can be said that there is only one God, many books and many way of salvation. While Nurcholish can equating nation state with the *ummat* concept which was inclusive , Ba'asyir had difficulties in adjusting his concept of *ummat* with the idea of nationality because *ummat* according to him limited to the community of Muslims.

Both Nurcholish Madjid and Abu Bakar Ba'asyir acknowledged the important of sharia. But while Ba'asyir sees sharia as an absolutely correct and excellent suitable for each time and place, Nurcholish just sees sharia as one path of the many paths toward God and can be developed and experienced evolution from time to time. Nurcholish respected sharia of other prophet as something that is valid. He said that we should belief to whatever holy book, in which all religious followers



should be treated fairly , because principally all of them worshipped to the same God in which every one responsible of his or her own deed.

Nurcholish sees sharia as the moral guidance , whereas Ba'asyir sees sharia as a set laws ordained by God that should be strictly implemented to Muslim. While Nurcholish more sees sharia as a set of laws based on reasonable argument, Ba'asyir more sees sharia as a set of law based on faith. Ba'asyir treat sharia law not merely as the ethics and religious norms aimed to guide community but also treated it as part of Islamic faith. As part of faith sharia law in his views isn't the matter that can be negotiated or revised.

While Nurcholish Madjid lets pluralistic apparent of Muslim as long as their essence still the same , Ba'asyir tend to make homogenization of Islam emphasizes ritual and code of conduct based on texts more than substance a vision of Islam lead believers to think of the religion as an absolute truth, that all other religions are false. As a consequence , there can be no meeting ground between a Muslim and a non-Muslim.

Concerning democracy, Ba'asyir like Pakistani scholar , Abul Ala al-Maududi, can only accept democracy in limited area such as how to elect leader while in the area of laws , sharia isn't the object that can negotiated. Therefore Islamic state imagined by Ba'asyir is actually theocratic state. While Nurcholish Madjid can accept whatever form of state as long as this state based on Islamic values. In fact Nurcholish is one of the great supporter of democratization process in Indonesia. While Nurcholish can accept secular state , Ba'asyir denied the idea of secularization. In sum while Nurcholish promoted the inclusive understanding of Islam, Ba'asyir opt to push exclusive understanding of Islam.

Both Nurcholish Madjid and Abu Bakar Ba'asyir received critics from other intellectual. Nur Khalik Ridwan in his book *Pluralisme Borjuis; Kritik atas Pluralisme Cak Nur* ( Bourgeois Pluralism ;critics on the logic of Cak Nur Pluralism) said although Cak Nur's thinking is in high the degree of liberal and supported by his mastery of classic and modern reference but it has later becoming such as a true regime or intellectual hegemony with logo centric style.

Based on tracing of his family genealogy and his social community , Khalik said that Cak Nur originated from Islamic bourgeois circle. The typology of bourgeois Islam used by Khalik to identify the upper middle class of urban Muslim whose economically established, ideologically tend to Masyumi-HMI and tend to convey the symbols of formalistic Islam.

According to Khalik, the pluralism of Cak Nur ,that using the notion of Islam is universal religion as the basic, still lingering on particular communal because he still sees the truth of other religion by using his own religious perspective. His pluralism also has no sensitivity toward liberation of workers, poor farmers, slums and other vulnerable segment of society experienced marginalization, oppression and injustice. The Cak Nur concept of Islam as justice religion can be accessed only by young professionals and the have executives in starring hotels. While his slogan " Islam yes , Islamic party no", introduced during Soeharto regime is no more then neo-Masyumi strategy in order to make symbiosis with the interest of regime so they are no more accused as the fighters of formalistic Islam in political arena.

Whereas one of the harsh criticizer toward Abu Bakar Ba;asyir is Ziauddin Zardar , intellectual Muslim Pakistani origin. When he visited Indonesia and interviewed by journalist he said that Indonesian Muslim cleric

Abu Bakar Ba'asyir has no understanding of what power is in the contemporary world or modernity. Everything is seen from simple slogan : Islam is the answer and the Koran is the law. This is basically very stupid mistake. If Islam is the answer what is the question? If you don't understand the question, how are you going to come up with answers. The kind of fundamentalism he represents is all slogans with no programs. The only program is violence and imposing their own will because they cannot talk to people. There is no reason behind their idea. <sup>64</sup>

### *Factors caused differences between Nurcholish Madjid and Abu Bakar Ba'asyir*

As mentioned above that the analysis will be made to explain the factors that have influenced both persons so the former eventually become moderate , liberal and pluralist while the later become radical , fundamentalist and exclusivist. There are factors that influenced Nurcholish Madjid and Abu Bakar Ba'asyir. Nurcholish was growing in family that relatively more tolerance and moderate. He also experiences academic education . His study on philosophy give additional ammunition to broaden his horizon. His overseas journey particularly when he visited US for the first time has turned his negative perception on the West. While Abu Bakar Ba'asyir from the beginning has live in environment heavy influenced by Wahhabi's thinking as represented in al-Irsyad. But merely influenced by Wahhabi not compelled him to become radical and fundamentalist if he is not knit close relationship with Abdullah Sungkar. The radical aspect of Ba'asyir attitude likely caused by influence of Sungkar who well known for his adamant and dissident.

Despite encouraging the freedom of thinking Gontor boarding school not give significant influence to them. Ba'asyir confessed that he is emulate Gontor on the aspect of its language and the character of KH Imam Zarkasyi, one of the founder of the Gontor boarding school. The family milieu and the journey after someone leaving Gontor likely more determined in making somebody's paradigm.

### **Conclusions**

All of the mentioned explanations confirmed that Nurcholish Madjid is moderate, liberal and pluralist. Nurcholish can be called moderate in the sense that all of his opinion denote that he is not taking the extreme stance in facing problem related to Islam and politics. He might be called liberal in the sense that he respected liberal and individual thinking on religious matter without any restriction. And he can be called pluralist because he can accept the plurality of society and opinion as a matter of fact and treated it positively and inclusively.

While Abu Bakar Ba'asyir can be called radical, fundamentalist and exclusive in the sense that he keep an extreme opinion and condoned violence acts. " I support Osama Bin Laden's struggle because his is the true struggle to uphold Islam, not

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<sup>64</sup> *The Jakarta Post*, October 15,2006.

terror - the terrorists are America and Israel." Abu Bakar Ba'asyir said in October 2002 <sup>65</sup> He can be called fundamentalist in the sense he encourage political Islam as opposed to cultural Islam. He always fighting for sharia in the context of Islamic state or in order to gain political power and clearly differentiated Muslim community with non Muslim community in state-citizen relationship. Despite so many similarities , Abu Bakar Ba'asyir has different mindset with Nurcholish Madjid because of different methodology, epistemology and theology.

### **Recommendation**

According to the *New York Times* database , there are four spectrums of Islamic followers: 50 to 60 percent moderate pluralists, 30 to 40 percent conservative fundamentalists, 10 percent radical fundamentalist and 1 percent extreme fundamentalist. Abu Bakar Ba'asyir can be categorized as radical fundamentalist. 10 percent of the total 220 million Indonesian population is a huge amount. It is the challenge of Muslim intellectual in Indonesia "to help" them. Since there are so many factors that caused someone to become radical, merely condemning them is not enough. Although overseas experience can turn someone to become moderate such as experienced by Nurcholish Madjid when he was still young , I am not sure that Abu Bakar Ba'asyir will change his mindset if he is given opportunity to visit US.

### **WHY PLURALISM AND RELIGIOUS TOLERANCE DIFFICULT TO BE ACCEPTED BY SOME MUSLIMS? <sup>66</sup>**

In the mids of so many intolerance religious attitude appeared in some regions in Indonesia, panel discussion entitle Islam, pluralism and religious tolerance held by Post Graduate Program , UIN ( State Islamic University),Bandung on May 18, 2006 should be apreciated. In this discussion, in which I also participated, all speakers agree that pluralism and religious tolerance should be promoted.

Etin Anwar, for instance said that religious pluralism is part of Islam that should be preserved by Muslim. She said why can we engage in racing each other in conducting righteous ( *fastabiqu al-khairat*) if there are no competitors? She added that as vicegerent of God (*khalifatullah*), the excellency of humanbeing can be measured by their capability to perform righteous works in the earth.

Concerning Ahmadiyah congregation, Jaih Mubarak, another speaker who also the vice director of Psot Graduate Program, said that although they are can be considerd infidel but according to him there is no legal opinion that can be used by someone to justify to attack and expel Ahmadiyah from their home. As well as there is no legal opinion that can be used to terrorize JIL (Liberal Islamic Network). So each religious follower should respect each other although their truth claims are different.

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<sup>65</sup> see :BBC News/World/ Asia-Pacific/ Profile: Abu Bakar Ba'asyirbbc. co.uk.

<sup>66</sup> Not yet published

Gustiana Isya Majani, who his paper focused on Indonesian experience concluded that from the early beginning the face of Islamic civilizations are friendly and tolerance.

Irfan A. Omar , professor on religion from Marquette University , Milwaukee ,USA who also speaker in this discussion said that holy Qur'an's call for respect for other religions is based on its idea of the unity of scriptures. He said that all revelations came from the divine source, the 'well-guarded tablet' or *lawhi mahfuz*. In conclusion he said that we can say that the Qur'an accepts pluralism of religions. It only asks for two things as criteria for having faith. 1) sincere faith in God and the day of judgment 2) righteous works. In Q.2.62 and Q.5.69 the Qur'am makes it clear that others who may not be Muslim may also have faith and may be saved on the Day of Judgment. While Muhammad Asad in his commentary to these verses said that "the idea of "salvation" here made conditional upon three elements only: belief in God, belief in the Day of Judgment, and righteous action in life.

To me one of the important question t is why some followers of Islam difficult to tolerate others and even attacked them physically such as cases experienced by Ahmadiyah congregation in many regions in Indonesia. In my opinion there are many factors that caused some Muslims difficult to accept pluralism and tolerance.

The first related to concept of *hifdzu al-din* (protection of religion) in Islamic law. Actually this concept should be used to protect someone in performing religion conviction and religious obligation. In Qur'an there is a guaranty that there is no coercion in religion, for you your religion and for us our religion. Qur'an said *la ikraha fi al-din* and *lakum dinukum wa liya din*. But some Islamic scholars still uphold the opinion that someone who convert from Islam to other religion or someone who blaspheme Islamic religion can be considered apostate. And the punishment for apostasy, in classical Islamic law, is to be killed. Therefore it can be understood that following the issuance of the verdict, said that Ahmadiyah is heretical sect and it followers are apostate (murtad) some hard-line groups declared the blood of the Ahmadiyah congregation *halal* (permissible). On Lia Aminudin or Lia Eden community case, although what they actually performed just a sort of religious expression , she was charged with the blasphemy on religion.

Secondly related to the concept of *amar ma'ruf nahi munkar* ( ordering something considered good and preventing something considered bad ) derived from the prophet tradition. The prophet said *man ra'a minkum munkaran fal yughayyir biyadihi* (whoever see something considered bad please change it with utmost effort). So it is correct if we said that the prophet is an agent of change in his society. Unfortunately the hardliners among Muslims often translated or replaced the word *falyughayyir* (to change) with *falyudammir* (to destroy). Admittedly it is difficult and need more effort ,strive and patient to change something without destroying it. It needs deep study to understand factors caused it and the interrelation between one factor to another. When some hardliners in Bandung eager to close and destroy Saritem area ( place notoriously used by prostitute to serve their clients) KH Imam Sonhaji, chief of lawmaker body in Bandung NU district, for instance, instead, choose to establish Daar al-Taubah boarding schools in this location and approached them peacefully.

The third is the concept of cancellation (*nasakh mansukh*). This concept based on assumption that there are many verses in Qur'an that contradict each other. To overcome this problem some scholars said that the verse revealed earlier should be

cancelled by the verse received later. Whereas Qur'an itself encourage Muslims to study Qur'an deeply (*tadabbur*). Q.4.82. If someone ready to study Qur'an deeply he or she can catch that there are actually no contradiction in this book. Unfortunately, those verses encourage pluralism and tolerance in Qur'an such as two mentioned above by Omar , according to some scholars, had been cancelled. Assessing that verses strengthened pluralism and tolerance had been cancelled was equivalent to ignoring part of the verses of Qur'an that actually can be used as proposition to develop religious pluralism and tolerance.

The fourth is the lack of law enforcement from the law officers in Indonesia. In many cases it is the victims not the attackers who arrested and investigated by police. Actually it is the right of MUI to issue the fatwa (edict) said that religious teachings influenced by pluralism, liberalism and secularism are against Islam. It is the right of MUI to said that Muslims must consider their religion to be the true one religion, and to consider other faiths as wrong. In democratic society , it is the right to someone to say that Ahmadiyah, an Islamic group that does not recognize Muhammad as the last prophet, is a heretical sect, and its followers are murtad (apostate). But when the hardliners used this edict to attack others physically it is the duty of police to prevent it.

The fifth is the lack of education among Muslims . I agree with Zulkiflimansyah , the vice chairman of PKS fraction in the House when interviewed by Pieter F.Gontha in STV few days ago , who said that the main cause of intolerance and fundamentalism in Indonesia is a lack of education among Muslims as result of poverty. It should be acknowledged that religious violence in many cases often related to political conflict or political interest. Some persons used religious symbol as political commodity to gain power but it is difficult politicize religion if Indonesian Muslims more smart and prosper.

## TOLERATING ATHEIST ? <sup>67</sup>

In order to respond to excessive religious campaigns, atheists in London designed a poster carrying the slogan, "There is probably no God. Now stop worrying and enjoy your life". Although more than 300 people complained about this advertisement being misleading and offensive to believers, British watchdogs ruled that this advertisement does not breach advertising rules. (The Jakarta Post, Jan. 23, 2009).

Thanks to the maturity of British society, there have been no mass demonstrations or acts of violence to be seen so far, although this advertisement attacked the heart of the fundamental tenet of religion. This advertisement reminds me of Ahmad Wahib's reflection on believing in God. Ahmad Wahib, a journalist from Tempo magazine, who passed away at a very young age three decades ago, wrote in his diary, "Surely, how can people be asked to voluntarily believe in God, if they are not allowed to think of the possibility of the truth of the 'belief' that there is no God?" While people are free to query or doubt God, in line with the principle of there being no coercion in religion, it is not easy to become atheist. Why? Because the existence of God is not merely backed by religious dogma, but is also supported by so many rational arguments. There are ontology, teleology, cosmology and moral arguments developed in philosophy, or more precisely, in the philosophy of religion.

Even in traditional Islamic boarding schools (pesantren), for a long time when I was still a student there, students were allowed to choose and become followers of one of the schools of Islamic thought (madzhab), such as Syafii, Maliki, Hanafi and Hanbali, as moral and normative guidance for their daily life. But students were not allowed to become followers of others in the matter of believing in God. In Islamic boarding schools, students were trained, logically and spiritually, to realize the existence of God. If there are people in this world who choose to be or declare themselves "atheists" or "agnostics", how do we treat them? First, since becoming the follower of a religion is a matter of choice, in this case I agree with the spirit of Wahib's reflection, in condoning or tolerating people who still think of the possibility of there being no God. People should be free to become believers or nonbelievers. Second, in my opinion, atheism or agnosticism is a matter of a process, as people find it difficult, in fact, to become truly atheist. The remark that "There is probably no God" indicates that those who identify themselves as atheists are not convinced enough in their refusal of God. Because, at least to me, if somebody understands who he or she is, they will understand their God, as the Prophet Muhammad said "he who can recognize his soul will recognize his God" (man arafa nafsahu fa qad arafa rabbahu). There is a spirit of God in every human being which no one, including those who do not verbally acknowledge it, can refuse. How to treat atheists in this country? If there is someone who silently still prefers to become

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<sup>67</sup> Published by The Jakarta Post on March 20, 2009

an atheist or an agnostic, his or her right as a fellow citizen of Indonesia should be respected. It is, partly, because of his or her frustration with religion, that a person silently embraces atheism or agnosticism. It is true that religion sometimes becomes evil, as elaborated on by Charles Kimball in his book, *When Religion becomes Evil*. It is also true that religion sometimes poisons everything, as discussed in the best-selling book by Christopher Hitchens entitled *God is not great; how religion poisons everything*, which was recently reviewed by Simon Marcus Gower (*The Jakarta Post*, Jan. 11, 2009) But there is always another author who strives to correct a misunderstanding. Through his book *Religion is not opium (Agama itu bukan candu)* Eko P. Darmawan endeavors to explain that even Karl Marx, who was often accused of being a supporter of atheism because of his words, "it [religion] is the opium of the people", was not. In conclusion, the maturity of being a religious follower can be measured by our readiness to respect different and conflicting interpretations of religion without forcing one another to change, our readiness to build a peaceful coexistence and to work together to make this world better for all.

# CHAPTER THREE

## LAW AND POLITICS

### ISLAM FACES DEMOCRACY <sup>68</sup>

Reports by Muslim scholars concluding that most Muslim countries are undemocratic comes as no surprise. Although *musyawarah mufakat* (deliberation directed by wisdom to reach consensus) is widely accepted among Muslims, not all of them can easily accept democracy.

To some scholars, deliberation is not the same as democracy. Deliberation is ordered by the Koran, while democracy is not. The main argument rejecting democracy is that the truth and the good cannot be dictated by the vote of the majority. Gambling, adultery, liquor are all forbidden under religious teaching, which cannot be changed even if the majority of people so desire. The truth and the good should come from God. God is the final measure of the truth. Human beings did not understand the truth and what is good until God revealed them through His prophet.

Therefore, the attitude of Muslims toward regulations that are clearly featured in the Koran is just taken for granted. These type of regulations are deemed sacred and immutable. It should be imposed wherever and whenever. They are outside the domain of *ijtihad* (interpretation). To the *mutasyabihat* (verses that have no clear meaning), laymen are not allowed to interpret them. Muslims should leave these matters to *ulemas* who are qualified to understand Islamic teaching. This is because just one opinion is right while the other is wrong. Clerics should search for it individually or collectively. In this regard, *ulemas* behave on behalf of God.

In this regard, the view that only a limited form of democracy, called *teo-democracy*, which is held by some Muslim scholars, such as al-Maududi a noted Pakistani scholar, has a big influence in Indonesia. According to this view, democracy must be directed by religious tenets or *sharia* (Islamic law). To guarantee that the law does not contradict *sharia*, the body, made up of *ulemas*, should be established to oversee the law-making process that is commonly conducted by the legislature. Therefore, that body should have the power to halt or revoke the law, even though it has been accepted by the legislature, if they deem it to be not in accordance with *sharia*.

This type of thinking is based on the premise that religion cannot be separated with politics or state (*al-Islam din wa dawlah*). *Sharia* is viewed as an exclusive law rather than an inclusive law which offers laymen the opportunity to participate in formulating its rule. Iran adopts this view. Taken from the concept suggested by Khomaeni, Iran has a body named the Guardian Council that can veto

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<sup>68</sup> Published by The Jakarta Post, July 11,2002



legal affairs. This model of interpretation, although it is not democratic, has large numbers of followers in Muslim countries.

To develop democracy in Muslim countries, therefore, another model of interpretation should also be introduced. Of course, this model may be the opposite of the former model. Muslims should begin to accept that the truth not only came from revelations carried by the Prophet but that it possibly came from the human mind itself through common sense. The combined effort of human minds, known as *ijtihad*, should be defined. Borrowing Fazlul Rahman words, it is a multiple effort of thinking minds -- some naturally better than others, and some better than others in various areas -- which confront each other in an open arena of debate, resulting eventually in overall consensus.

In an open arena of debate, all opinion, wherever it comes from and whoever addresses it, should be treated equally. Nobody should be given a privileged position. Everybody has the right to participate in decision making, especially when it concerns public matters. If consensus cannot be achieved through debate, a majority vote will be taken.

This thinking is based on the assumption that human beings actually know what is good and bad. With or without revelations, men and women, irrespective of their religion, are actually aware of what is wrong and right, as long as their opinion is guided by their consciousness. Consciousness is the spirit of God that is given to each person, man or woman, from the early beginning. That is what makes human beings different to animals. Therefore, in public matters, as long as there is no political engineering or oppression, *vox populi vox Dei* (the voice of the people is the voice of God). Prophet Muhammad was once asked by his friend, who was unable to make a decision, for suggestions. He answered that it is better to ask your own consciousness.

From the above explanation, it is clear that there are two types of thinking that can be used to encourage or discourage the process of democratization in Indonesia. It is also clear that these two types of thinking are linked to theology. Since both of them are rooted in Islamic teaching, it is up to each Muslim to choose. What we must bear in mind is that someone or some group should not be allowed to undermine the other. Freedom of thinking should be preserved. I personally choose the second type of thinking because it is more appropriate to develop democracy in Indonesia.

## ISLAMIC LAW, STATE OF WAR AND PEACE <sup>69</sup>

The confession of a terror suspect, who was recently arrested in Central Java for his alleged link to Jamaah Islamiyah (JI) mastermind, NoordinM.Top, that he had been involved in armed robberies to collect funds for terrorist activities, has proven police suspicions. The terrorists see themselves as living in a state of war, in which killing and stealing are acceptable means to winning the war. For someone familiar with Islamic law, such opinions are not new. In classical Islamic law theories, a state of *Dar al-Harb* (war) is the opposite of a state of *Dar al-Islam* (peace). The world during the classical Islamic period was merely divided by scholars, into these two categories.

Theoretically, peace is always in conflict, trying to prevent a state of war. Muslims who adopt or live in *Dar al-Islam* are obliged to persuade other nations to abide by Islam. If they (other nations/religious believers) deny Islam, there are only two options for them: paying *jizyah* (taxes), or being attacked and conquered through jihad – Holy War.

Non-Muslims who are ready to pay the taxes will be protected by the Islamic state and get the status of *dzimmi* bestowed upon them. Non-Muslims are protected in *Dar al-Islam* with limited political rights. While non-Muslims who refuse Islam and refuse *dzimmi* status, their blood and wealth are not protected. It means that jihad against non-Muslim nations/peoples, is used by an Islamic state to change *Dar al-Harb* into *Dar al-Islam*.

As Islam was born in Arabia, as explained by Majid Khadduri in his book *War and Peace in the Law of Islam*, Islam was strongly influenced by Arabic characters who were eager to go to war. Arab tribes, at that time, were always in a state of war against each other. War as the principle relation among Arab tribes was then adopted by early Islamic law scholars and they renewed its role and definition as holy war toward people who refused to accept Islam. While noting that Islamic law was the very essence of Islam, scholars then measured and determined the states that can be grouped to *Dar al-Islam*/ or *Dar al-Harb* by seeing how far Islamic sharia can be implemented.

In Islamic law theory, a state of peace is defined as a state that assures, or at least, does not hinder sharia to be performed freely by Muslims. A state of war was thus defined as any situation where people were not able to implement Islamic law.

The debate on whether Indonesia can be categorized as being in *Dar al-Harb* or *Dar al-Islam* emerged well before Indonesia proclaimed independence. After the proclamation in 1945, to ensure Indonesia's position as an Islamic state, some of the founding fathers insisted on including seven words of the Jakarta Charter, which ensured and obliged Muslims to incorporate sharia law into the Constitution.

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<sup>69</sup> Published by The Jakarta Post, February 20, 2006

Although the now famous seven words were eventually omitted, the 1945 Constitution of Indonesia actually does ensure that all Muslims can freely perform their religious obligations.

The argument that posits that the principle relation between nations in the world is based on war -- as mentioned above -- is not derived from the spirit of the Koran. The spirit of the Koran, as mentioned in many verses, reveals that the principle of relationships among nations is peace.

Muslims should be aware and able to differentiate between the spirit of Islamic laws and Arabic culture over a thousand years ago, which is not always suitable to Indonesian culture in the year 2006 -- or 1427 for devout Muslims.

### ISLAMIC LEGAL REASONING NEEDS TO BE BROADENED <sup>70</sup>

In neighboring country Malaysia, "an affront to Islamic principles" has occurred, according to human rights lawyer Latheefa Koya.

Why? While under Islam there is no force, no compulsion and a person has the freedom to choose whatever he or she believes, Najeera Farvinli Mohamed Jalali was detained by the Islamic Department because her marriage to ethnic Indian truck driver Magendrian Sababathy, 25, under Hindu rites was illegal because she was Muslim.

Magendran's case is the latest of several disputes this year to have occurred that involve the religions and rights of minority groups. These disputes are straining ties in multiethnic Malaysia, where Islam is the dominant religion.

Selangor Islamic officials also forcibly separated a Hindu man from his Muslim wife of 21 years and their six children recently. He won custody of his children, but the couple could not live together legally and decided to separate.

Lim Kit Siang who chairs the opposition Democratic Action Party said this is a disturbing reflection of greater Islamization in the country, regardless of the costs to national unity and interracial harmony (*The Jakarta Post*, May 10, 2007).

However, in reality this is not a reflection of Islamization, but rather a reflection of conservatism and traditionalism opposed to progressive thoughts and rationalism.

A legal maxim exists saying that Islamic law can be changed when the reason behind it has changed (*al-hukmu yaduru ma'a illatihi wujudan wa adaman*). Conservative Muslims tend to implement this legal maxim in limited cases where they consider there to be uncertainty (*dzanniyyu dilalah*). However, they believe that what they see as the fixed meaning of sharia should be implemented unconditionally.

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<sup>70</sup> Published by The Jakarta Post, May 21, 2007

Unfortunately, what conservatives see as the fixed meaning of sharia (*qathiiyyu dilalah*), particularly in the age of *taqlid* (blind submission), has grown broader. So now many Islamic laws exist and jurists are prohibited to use reasoning to adjust or to revise them.

Whereas the Koran specifies that people can be believers or unbelievers, some conservative groups still uphold the death penalty for apostasy.

The Madina Charter, which was used in the age of the prophet Muhammad, highlights the equal status between Muslims and non-Muslims as citizens responsible for collective defense. However, Islamic scholars in the classical period, influenced by laws from Sassanid Persia, viewed conquered Jews and Christians as second-class citizens.

Despite the fact the Prophet Muhammad let his step daughter Zaenab marry Abul Ash bin Rabi, an unbeliever who once joined the prophet's enemies, many clerics today still uphold the old belief which prohibits Muslim women from marrying non-Muslim men. However, the Koran allows Muslims to marry *Kitabiyat* (female Christians).

If Muslim men in the past were allowed to marry non-Muslim woman, the same treatment should be adopted for Muslim women who marry non-Muslim men, as long as men are ready to respect the beliefs of their wives.

This means there would be no reason to separate Muslim women from their non-Muslim husbands if they had not been forced to follow the religion of their husbands. In other words, there is no reason to separate married couples if each party respects their partner's religious choice.

A policy raised by reformists in the early twentieth century to return to the Koran and Sunnah (written tradition of the prophet) is wrong if it means that Muslims should adhere to the literal meaning of the holy books without considering the spirit and purpose of sharia law.

In the modern era, there are many scholars and Islamic thinkers who encourage *ijtihad* (using individual reasoning to pursue the truth of Islamic law), but since the method of abrogation used is still the same as the method used in classical theory, Islamic laws that are no longer suitable in the modern age still appear in some Muslim countries.

Since reason is a gift from God to human beings and the Koran and the Prophet Muhammad himself encourage followers to use reasoning, clergymen and members of the general public using this noble gift to capture the essence of Islam cannot be accused of being liberalist and against Islamic tenets. If understood comprehensively, there is no contradiction between reason and revelation in Islam.

If Islamic scholars at the present time do not dare to challenge the restricted or prohibited area of legal reasoning (*la majala lil ijtihad*) formulated in classical theory, Muslims will face difficulties in dealing with the multi-faith and multicultural world.

Although sharia law is often considered as being a divine and sacred set of laws which comes from God, Islamic jurists, in the real sense, are actually the "creators" of sharia. Therefore, to change sharia depends largely on their mind-sets. Strict adherence to the literal meaning of the texts accompanied with blind submission concerning methods of interpretation may cause the emergence of a perception that Muslims are backward.

## ISLAMIC STATE CAMPAIGNERS NEED SYARIAH INTERPRETATION

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Two of the most important questions that arose from the recent controversies surrounding Az-Zaitun Boarding School in Indramayu, West Java -- where Islamic separatists were allegedly at work -- were these: Which form of an Islamic state did the activists aspire to establish, and how?

Let us look to neighboring Malaysia for a lesson. Following its vow to establish an Islamic state should it win the elections, Parti Islam Se-Malaysia (PAS) had a difficult time answering questions about the place of non-Muslim and women in their concept of an Islamic state. Would women be allowed to become national leaders, and would their Islamic state accommodate demands from the international community on subjects such as freedom of expression, religious freedom, and freedom to assemble?

Other questions include whether non-Muslim would be placed as "second-class citizens" or *dzimmi*, as delineated in the classic Darul Islam concept. Whether an Islamic state would respect and democratically involve all interests in decision making. To what extent could an Islamic state intervene in how people observe their religion? Whether the sharia Islamic law would automatically be taken as positive law and be interpreted by clerics with certain positions like those in Iran?

Scholars such as Nurcholish Madjid and Amien Rais have maintained that an Islamic State (*dauwlah Islamiyyah*) is a modern issue that cannot be traced back to the Qur'an and the traditions of the Prophet (*hadith*), leading to a conclusion that the concept is nonexistent in the Qur'an. One who studies the history of the Islamic political thought, however, would note that propagators of Islamic state often use the concepts of *darul Islam* and *darul harbi* for their reference.

The classic theory says there are three definitions of *darul Islam*. The first defines *darul Islam* as a *dar* (region) inhabited and led by Muslims and where the sharia or Islamic law can be fully implemented. That is why Javid Iqbal in his book, *The Concept of Islamic State*, requires three conditions for the establishment of an Islamic state, namely that it is ruled by Muslims, the majority of its population are Muslim and the Islamic law is used as the state law.

Solahuddin Wahid in his paper entitled *Negara Sekuler No, Negara Islam No*, also offered three criteria for an Islamic state: that it makes Islam the basis of the state, that it regards Muslims as the first class citizens and relegates non-Muslims to second-class citizenship, and that it implements the sharia to all citizens.

By these definitions, Indonesia is not a *dar al-Islam* or an Islamic state.

The second definition of *darul Islam* places emphasis on the question of state ruler. Al-Rafi'i, one of the figures in the Syafi'i school of thought, for instance, said that a country can be named *dar al-Islam* as long as the ruler is a Muslim. The last

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<sup>71</sup> Published by The Jakarta Post, May 11, 2002

definition deems the implementation of the sharia as the main criterion of an Islamic state.

Imam Abu Yusuf, a figure in the Hanafi school, for instance, said that a country was darul Islam as long as the sharia was implemented there even though the majority of its population were not Muslim. Conversely a country should be named darul harbi if the Islamic law cannot be implemented there even though the majority of its population are Muslim. By the second and third definitions Indonesia can be called darul Islam because since its inception its rulers have always been Muslim and people can implement the sharia freely here.

Therefore, those who are not satisfied with this state and campaign for an Islamic state should first clarify the model of an Islamic state that they wish to build. Do they want to imitate the Taliban regime, those of Iran, Sudan, Pakistan or Saudi Arabia? Abu Toto or Panji Gumilang who leads the Az-Zaitun Boarding School should also explain what Islamic state he had in mind.

If the campaigners for an Islamic state chose the first definition, they would be rejected by both Muslim and non-Muslim alike because their wish would in effect go against the principle of equality upheld by a democracy, and by most Muslims in Indonesia who are affiliated to major organizations such as Nahdlatul Ulama (NU) and Muhammadiyah.

Learning from the constitutions of a number of Islamic countries, the place of religion (Islam, in this case) and the sharia is classified as follows: The first group are states whose constitutions stipulate Islam as the official religion and decree the sharia as the primary source of legislation. Examples of such states are Saudi Arabia, Iran, Libya, Pakistan and Egypt.

The second group consists of states whose constitutions stipulate Islam as the official religion but do not name the sharia as the main source of legislation. The sharia is just one of many sources of legislation. Examples of this group would be Malaysia and Iraq.

The third group consists of states whose constitutions do not mention Islam as the official religion or the sharia as the main source of legislation, but acknowledge it as the one of the many resources. Indonesia is an example.

The fourth group is decidedly small, namely countries that proclaimed to be secular states and campaigned against the inclusion of the sharia in any of their legislation. An example would be Turkey.

Problems concerning the employment of the sharia in the constitution usually stem from differing interpretations -- especially when it comes to the question of human rights and international demands. The establishment of Islam as the official religion in Malaysia, for example, is not a source of objection for the non-Muslim as long as their rights are guaranteed and as long as Islam here is understood as a cultural or symbolic entity.

The sharia, which is the core of an Islamic state, contains various norms that are potential violators of human rights if they are taken literally. There is also the important question: Will state decisions be attributed to divine reasoning rather than based on logic and reason? Unless there are clear provisions in the constitution, a ruler can force arbitrary interpretations of those norms, on his people.

Abdullahi An-Na'im, a noted Muslim scholar of Sudan origin who now serves as a professor of law in the Emory University Atlanta, in his book entitled *Toward an Islamic Reformation*, pointed out that countries that implement the

sharia faced problems of global nature such as international human rights and laws. He said Muslim and non-Muslims alike might lose some of their fundamental rights if the sharia is established as the public law.

Campaigners of an Islamic state would not face as strong an opposition from the public if they stopped fighting for the inclusion of the seven words of the Jakarta Charter in the constitution, and started to employ this "soft approach" of keeping Article 29 (on religious freedom) as it is, even as they campaign to have Islam as the official religion.

## WEIGHING SHARIA AS THE SOLUTION OF ACEH PROBLEM <sup>72</sup>

Indonesian Muslim Congress (KUUI) performed ahead Asia African Summit didn't attract mass media. Press likely more interested in covering the preparation of Asia African Summit. The congress that reportedly disbursed more than two billions rupiah resulted such recommendations. Recommendations that latter named Jakarta Declaration contains fourteen points.

I am interested with the first point of this declaration because there is a spirit to overcome Indonesian problems via syari'at. More or less the first point of declarations said, making syari'at Islam as the solution in dealing with various problem faced by his nation and forced the central and regional government to fasten syari'at implementation in Nanggroe Aceh Darussalam.

Particularly for Aceh, my question is can Islamic syari'at be used to overcome problem there? Why after more than four years syari'at Islam officially declared in Aceh problem remains unsolved?

I agree with Aguswandi's remark that the present conflict in Aceh has nothing to do with religion. It is a conflict based on injustice practices and policies from a central government. (*The Jakarta Post*, April 14, 2005). But it is not fair if in dealing with Aceh problem religion not be counted as consideration.

If traced from early period of Indonesian independence, it is clear that Aceh people especially follower of Daud Beureuh are disappointed with Soekarno, the first Indonesian president, attitude who not fulfill his promise to guarantee Aceh people to fully implement syari'at law in all aspect of life. They feel restricted when they intend to make decree or bylaw on syari'at then it is annulled by central government. The first Perda (bylaw) decided by Regional Representative Council then rejected by Central Government is bylaw number one 1963 on *Syi'ar Agama Islam* (Celebration on Islamic Event) in Aceh Special Province. This occurs in Soekarno era. In Soeharto era same accidents reveal again. The victim is bylaw number 6 / 1968. Bylaw about implementation of some aspect of Islamic syari'at in Aceh Special Province annulled by Central Government. The reason used to reject this bylaw is very simple that religious affair not yet be given to Aceh Province as one of it's autonomy, so it isn't a matter that can be regulated by Acehnese people themselves. Since that time Aceh leaders no more held discussion on implementation of Islamic syari'at. Discourse on syari'at Islam implementation is

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<sup>72</sup> Published by The Jakarta Post, May 20, 2005

considered a taboo. But it is not mean that demand for implementation of syari'at Islam in Aceh in all aspect of life has vanished. What should be remembered is these accidents had caused growing of disappointment in Aceh people to Central Government.

In Aceh history the problem connected with syari'at implementation had caused the emergence of insurgence demanded Indonesia to became Islamic State and the problem based on injustice practices and policies from central government during Soeharto era caused the emergence of movement to separate Aceh from Indonesia.

The falling of Soeharto authoritarian regime has brought new hope. Reformation era had caused Aceh people dared to demand more autonomy especially in implementing syari'at Islam. This aspiration then responded by President Habibbi by giving law number 22/1999. But because there is no clear authority that given to Aceh province, forty eight members of People Representative Council trough their initiative right proposed new law on special aspect of Aceh. As a result , law number 44/1999 then enacted. This law clearly gave four aspects that can be regulated by Aceh province. First , the implementation of religious life based on syari'at. Second the actualization of *adat* (custom) which in concordance with syari'at .Third, performing general and religious education based on Acehnese aspiration and fourth raising the role of Ulema in decision making. This law then followed by the law number 18/2001 on special autonomy.

After some revisions on the law concerning Aceh autonomy the question is whether Aceh people have getting guarantee to implement syari'at in all aspect of life freely ? Unfortunately the answer is not yet. Bylaw produced by regional representative council still possibility be annulled by central government and decree released by Aceh court can be cancelled by Indonesian supreme court. Section 27 of the law number 18/2001 said that dispute about competency of syar'iyah and national court in the final stage is returned to the authority of Supreme Court. Therefore I agree with Kirsten E.Schulze remark in his writing *A Jumble Purpose of Syari'ah Law in Aceh* when he said that the key question at the national level is , of course , whether the syari'ah is compatible with Indonesia's constitution. In practical sense this may result in cases tried under the syari'ah in Aceh being appealed to the Supreme Court under national law. If the Supreme Court upholds the validity of the syari'ah it has effectively undermined national law, and if it doesn't the syari'ah in Aceh isn't worth the paper it was written on.( *The Jakarta Post*, April 22, 2002).

So how to make syari'ah give significant influence in dealing with Aceh problem?

In my opinion., at least there are two notes in order to make syari'at Islam has more significant influence in dealing with Aceh problem. The first is revision of autonomy law for Aceh. This revised law should give guarantee to Aceh people so that syari'at formulated by Aceh people in *qanun* or bylaw can be implemented without any fear that it can be annulled by central government or Supeme Court in Jakarta. Secondly, considered that Aceh people now realize that human rights should be preserved and there are some problems connected with human rights violations especially that occurred during military operation , syari'at Islam in the form of *qanun* enacted in Aceh should also guarantee that there is no draft in bylaw which potentially will violate the right of people especially women and minority of non Muslim.



It means that syari'at Islam enacted in Aceh should absorb inclusive model that upholds justice , democracy and equality among all Aceh people . Syari'at that contextually and democratically reformulated, not syari'at that rigidly imposed and not syari'at that can caused discrimination since discrimination based on religion , gender or ethnic should be avoided. If it can be realized Aceh people will feel free to regulate their self especially in matter connected with domestic affair.

But before all of these can run , reconciliation among victims and perpetrators especially in gross violation of human rights cases occurred in Aceh should be settled first. Reconciliation that can halt war. Of course reconciliation that can give restitution ,compensation or rehabilitation to victims or their family should be based on truth and justice.

## NEGOTIATING SHARIA IN ACEH <sup>73</sup>

There is ongoing debate over whether the formalization of sharia has reached the point of undermining development in Aceh. Security and the implementation of sharia are prominent issues in Aceh which raise concern among foreigners. Aceh-Nias Reconstruction and Rehabilitation Agency chair Kuntoro Mangkusubroto and former Free Aceh Movement (GAM) leader Kamaruzzaman admit that the implementation of sharia has hindered development in the province (*The Jakarta Post*, Sept. 21, 2007).

Kamaruzzaman suggests that his constituency doesn't support formalization of sharia in Aceh; that sharia was formalized without approval of the Acehnese society. Aceh People's Party activist Rahmad Djailani has said the implementation of sharia law doesn't boost investment in Aceh due to "a kind of brutality" from groups who claim to be supporters of sharia law but are linked to acts of violence. Both Kuntoro and Rahmad have said sharia was introduced by the military to curb the separatist movement in the province. In conclusion, sharia implementation in Aceh is politicized, as one student put it (the *Post*, Sept. 27, 2007).

The existing debate indicates there is something amiss with the process of sharia formalization in the province. The process should be constantly evaluated to ensure alignment with the concepts of *maslaha* (general good, public interest) and *al-adalah* (justice), the aims of sharia.

As a set of moral and religious norms based on conscience, sharia can take effect in a secular or Islamic state because it does not require outside coercion. But when formalization through national law is contemplated, there is surely a need for public debate, research and examination. When it takes the form of legislation, sharia law must be in the public interest.

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<sup>73</sup> Published by The Jakarta Post, October 3,2007

Therefore, when sharia is formalized and given force through state power, negotiation between Muslims and non-Muslims is required. Talks are also needed to determine the most acceptable interpretation of sharia. Finally, there must be an agreement with the prevailing legal system of the state where sharia will be implemented.

Why is negotiation among Muslims necessary? Because not all Muslims agree to sharia formalization. Why is negotiation between Muslims and non-Muslims important? Because sharia implementation will potentially "endanger" non-Muslims. Why is negotiation between so many interpretations of sharia required? Because there are so many schools of sharia law, so many *madzhab* (schools of Islamic jurisprudence) that can be adopted as the formal legal reference. For instance, the largest Islamic organization --Nahdlatul Ulama (NU)-- recognizes as valid four major schools. How can we thus choose only one of these, rejecting the rest?

When the formalization of sharia was aired in 2000, my first question was, what model of formalization would be chosen? In my opinion, at least, there are two principal models of sharia formalization: exclusive textual and inclusive substantial. In the exclusive textual model the interpretation of sharia tends to be monopolized by experts who act on behalf of God; therefore it leads to a theocratic model and room for individual reasoning is limited if not prohibited. Alternatively, the inclusive substantial model takes a more open approach and all may make interpretations. Individual reasoning (*ijtihad*) is encouraged, so all are able to participate in enriching the meaning of sharia.

There is no monopoly of interpretation because -- particularly in public matters -- the voice of the people is also the voice of God, as long as the people truly exercise their conscience without oppression or manipulation. In private matters, the state -- in principle -- has no right to intervene. This model is more compatible with democracy.

Based on research I conducted in 2002, I concluded that Acehese leaders were confused as to which model of Aceh sharia formalization would be adopted. While ulema in Aceh have an important role in decision making, they have refused to support a theocratic model.

Next, at the same time they have supported human rights campaigns, most ulema have also upheld certain classical norms of sharia, such as capital punishment for apostasy, which is not in accordance with the freedom of religion, a basic human right.

Finally, while these leaders have acknowledged the unitary state of Indonesia, they have developed an understanding of the sharia penal code that is actually not capable of implementation except if Aceh province is treated as a federal state.

Sociologically, there are three parties interested or involved in the ongoing formalization of sharia. First, the supporters of the unitary state of Indonesia whose ultimate ideology is Pancasila. What is important for this group is the values, not the formalization. For this group it would be satisfactory to insert the values of sharia into existing law. Second are the supporters of an Islamic state ideology. They position sharia so that it may be enforced exclusively by the state. This group tends to adopt a theocratic model. Last is the party that sees sharia in Aceh as something that has taken root primarily in Acehese culture and tradition; they do not actually fight for sharia formalization. Most of GAM members belong to the third group.

Social justice and fair distribution of resources between central and local government have been the primary concerns of GAM from the beginning.

A precise model of sharia may ultimately be possible after patient, untiring negotiation and the formalization should be guided by sharia's purpose, higher law and the Constitution. What is important is that there should be no monopoly or authoritarian interpretation of sharia.

Ultimately, the formalization of sharia will lose its true meaning if there is no justice, no welfare and no feeling of security for the people of Aceh and the foreigners who are present there.

#### **LEGAL CERTAINTLY ON QANUN NEEDS TO BE ACCOMMODATED IN ACEH BILL <sup>74</sup>**

If we want to get a lesson from the history of insurgence in Aceh, especially after Indonesian independent, we can obtained that the basic problems caused rebellious movement in Aceh are two . The first , dispute related to the power division between central and regional government especially in managing natural resources. Secondly, is the lack of legal or juridical assurance for Acehnese to implement what they perceive as sharia law.

The first problem resulted the emergence of GAM ( Free Aceh Movement) lead by Hasan di Tiro. Unsatisfied with the power division , at that time, he aimed to separate Aceh from Indonesian Unitary State. The second problem caused Daud Beureuh, a charismatic leader in Aceh , taking a lead to establish Islamic state by joining with the NII ( Indonesian Islamic State ) movement which erupted at that time in many regions in Indonesia such as in West Java and South Sulawesi.

Although NII rebellion has long been resolved but the Acehnese passion to be assured their rights in implementing sharia as they understand without any intervention or disturbance from the central government still high. They are very disappointed when the central government in President Soekarno era, revoking the bylaw NO.1/1963. Acehnese assessed the revoke is a blatant breach of Soekarno's oral promise spoken directly to Daud Beureuh when he visited Aceh. After the authority of the central government changes to President Soeharto, Acehnese , for the second time disappointed again due to the cancellation of bylaw NO 6/1968.

Thank to the tireless dialog of both side and thank to the support from foreign country, the approximately thirty years war between Indonesian government and GAM can be halted. MOU (Memorandum of Understanding) which signed by

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<sup>74</sup> Not yet published before

Indonesian government and GAM in Helsinki has answered most of previous problem. MOU assured that Acehese has absolute control over its own affairs in the executive as well as legislative. It means that if what is written in MOU accommodated and transformed into the law on Aceh government, which recently being deliberated in the House of Representative (DPR) it will resolve the problem concerning with division of power except defense and religious affairs. Acehese want the central government to responsible for external defense , not defense in general, which would infringe on the civil lives of the Acehese; and give religious affairs to the Acehese , considering that Aceh has adopted sharia. ( see Riyadi Suparno, "Aceh bill a decentralization bill at best" *The Jakarta Post*, March 6, 2006)

While the central government maybe still difficult to fulfill Acehese demand to uphold their internal defense , the central government, logically as a consequence of adopting sharia, should allowed Acehese to take responsible on religious affairs. Delivering religious affairs to Acehese will give two benefits for the central government. First it will give satisfaction and proud to Acehese, especially Ulemas . Secondly it will avoided central government to be blame or be accused of intervene when Acehese tried to adopt and select the model of sharia implementation, considering there are so many models that can be adopted by Acehese in line with Indonesian legal system.

If there are contentious issues or debates concerning the Aceh model of sharia implementation, it is no more the business of the central government. Let Acehese decided the model of sharia implementation trough democratic mechanism. Aceh is very rich with local wisdom in harmonizing religious norm with custom norm. There is an Aceh proverb said *hukom ngoen adat lagee zat ngoen sipeut* ( law and custom like subject and predicate) .It means that to implement sharia, Acehese actually not solely depend on state. Sharia can be actualized trough culture or custom. It means also that Acehese actually used both *receptie* theory introduced by Snock Hurgronye and Van Vollenhoven and *receptie in complexu* theory introduced by LWC Van den Berg. Therefore , the most important , for current time, is how the bylaw on sharia ( *qanun* in Aceh term) gives certainty and not contrary to human rights demand , not cause discrimination and not cause oppression especially against women and non Muslim.

Someone may said that law on Aceh government resemble constitution or quasi constitution ( see, Omar Halim, The last phases of the Aceh peace agreement, *The Jakarta Post*, Nov.15, 2005) and the other maybe said that Aceh has federal state appearance or quasi federal. Maybe someone said that Aceh still use primitive punishment.( see Ridarson Galingging, "Public caning a primitive punishment" , *The Jakarta Post*, September 22, 2005). For the last accusation, it is better if everyone restrain to hurriedly asses the negative impact of the caning before independent research to evaluate the effectiveness of this punishment in deterring offences act performed.

If Aceh seem different from other region in Indonesia what is wrong? Isn't Aceh from the early beginning named special region ( *daerah istimewa* ).? It is natural if special region has specifications compared to other region.

Considering the revocation of bylaw (*qanun*) by central government , such as occurred in the past , has caused Acehnes unrest, the most important one should be

assured in the future is how *qanun* promulgated by Aceh legislative council , can't be canceled or revoked by central government although assessment from the supreme court still needed. It means that it should be clearly stipulated, in Aceh bill, that president or central government can't use article 145 of the law on regional government ( law No.32/2004) to revoke *qanun*. Aceh bill should also give Aceh government the right to rule on religious affairs. Acehnese should realize that it is impossible to implement all of Islamic law including the harshest penalties under Islamic criminal law, but the most important one for Acehnese is certainty of law.

In order to perform law reform in Indonesia it is better if we borrow the words of Macaulay (1883) when he arranges codification and unification in India which maybe still relevant for Indonesia. He said "uniformity when you can have it; diversity when you must have it; but in all cases , certainty."

## BE CAREFUL CRIMINALIZING ADULTERY <sup>75</sup>

One of the article in criminal code revision which sparked controversy among activists is the inclusion of adultery or extramarital sex as criminal that could be punished by state. Hendaradi for instance said that " The government has no right to decide what is right and wrong about sexual orientation of its citizens or to punish a couple that lives together outside of wedlock. It has no authority to interfere with what may occur in citizen's bedrooms" (The Jakarta Post, Oct.01,2003) In other occasion Frans H. Winarta also said that **this matter is too private in nature to be regulated by the state**. Issues like corruption, bribery, money laundering, crimes against humanity, genocide and terrorism are truly big problems that are worthy of the full attention of the state and need to be tackled together with other nations.

Because proponent of this article ( article 422 in criminal code draft revision) widely believed from sharia supporters it is better if other opinion derived from the understanding of sharia also be heeded. Although all Muslim , the predominance of Indonesian citizens , and maybe all believers acknowledge that adultery or fornication is a sinful act that should morally be avoided but there is a different opinion about whether this illicit act should be included in criminal code.

Discussion on this matter can't be separated from discussion on the relation between sharia and state. The proponents of sharia that suggesting sharia be implemented by state had the way of thinking more or less like this. Sharia as Islamic law is the legal basis of Islam that controls and orders all areas of life . It is not only moral law based on human conscience but also a penal law requiring the punishment of violators through an instrument of the state therefore Islam demand a religious state as an executor to enforce the law. The proponent of this kind of

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<sup>75</sup> Published by The Jakarta Post ,June 16,2005

thinking commonly also the proponent of Islamic state or at least , in Indonesian context, the proponent of the Jakarta Carter.

While the proponent of sharia as moral guidance beliefs that the implementation of sharia not depend on state. Ahmad Syafii Maarif chairman of Muhammadiyah ,the second largest Islamic organization in Indonesia ,has interesting remark regarding the accomplishment of sharia in Indonesia. He rhetorically said are Muslims in Indonesia so weakness that should depend on or relying to state in implementing sharia? He often insists, "why should we hang our hopes on sharia (law) on the government? Are we (Muslims) such a weak people that we expect that the sharia must be ruled by the state?" ( The Jakarta Post May 7,2005)

Back to adultery or extra marital sex there is accident occurred in the prophet Muhammad era. When the culprit coming to the prophet and confessed that he has committed adultery and asked to be punished to death , the prophet turned his face and refused to listen. Since the act had been accomplished in secret , **and thus public order and morality did not suffer**, the matter concerned only the culprit, who , is his soul and conscience , had simply to beg the Lord's forgiveness. The man , however earnestly renewed his confession and his request , so as to prove his sincerity toward God and to deter other from committing the same act; again, the prophet turned his face. The same thing happened a third time , but when the culprit repeated his words a fourth time , the prophet asked him if he had become insane, or had really admitted being guilty of the deed. First by refusing to listen , then by questioning the fact , the prophet promoted him to retract , but the man so insisted , that in the end his demand had to be heard. At the moment of execution , however, he regretted his declaration and run away; the punishment squad ran after him and killed him. The prophet then pronounced his famous sentence : **"would that you had left him alive: he would have repented , and God would have been merciful to him."**

This story indicates that in the prophet period sinful act like adultery if conducted in secret areas , not witnessed by four witnesses were present at the accomplishment of the sexual act, can be categorized as private matter. So it is suggested to violators to repent and ask for God forgiveness. It can be categorized public matter if it begin to disturb public order such as if it performed in public places that can be seen by some people.

It also indicates that punishment, in the case of adultery one hundred lashes for unmarried person or stoning to death for a married person, is optional. It is conducted after the requisite from the culprit as a mean to repent and purify her or himself from the sin in this life and so to escape punishment in here after.

In relating with adultery I am in favor with opinion who not agree to criminalize it.

Because sharia for sure is moral guidance for Muslim individually or collectively therefore not all sharia norms can be adopted in criminal code which is a public law of all Indonesian irrespective of their religion. Adultery maybe can be punished by customary law in such region like Aceh which has special position in relating with their customs.

I am not opposing who abides the different opinion what I actually against is the single way interpretation of sharia. What I want to promote is there are so many

interpretations about sharia implementation. Finally, in democratic state every thing , related with public matter, should be decided by people themselves. But before decision took everything should be openly debated.

## DEATH PENALTY DEBATE NEEDS VICTIM'S VOICES <sup>76</sup>

Every time the death penalty is to be carried out, there is a debate on capital punishment. Amrozi, Imam Samudra and Ali Ghufron, were sentenced to death for masterminding and carrying out the 2002 Bali bombing, killing 202 people. They will probably be executed before Ramadhan, which begins in early September.

Domestic and international rights groups have persistently demanded abolition of the death penalty, arguing there is no evidence capital punishment deters crimes. Death penalty supporters demand its extension to corruptors.

But have we thought about the views of the victims of the crimes?

The father of one of the Australians killed in 2002 Bali bombing, Brian Deegan, joined the call for clemency for the trio, saying the death penalty did "no good, only harm". But not all the victim's families agree. Parents, children, wives and friends of Australians killed in the first Bali bombing may not be as forgiving as Deegan. For many of them, the trio deserve the death penalty, as an example of punitive justice.

In criminal justice there is a theory known as restorative justice. Restorative justice is a theory of criminal justice that focuses on crime as an act against another individual or community, rather than against the state. Restorative resolution engages those who are harmed, wrongdoers and affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships.

In criminal cases, victims have an opportunity to express the full impact of the crime upon their lives. Victims play a major role in the process and may receive some type of restitution from the offender. In criminal cases, types of compensation may include, but are not limited to: Money, community service in general, community service specific to the deed, self-education to prevent recidivism, and/or expressions of remorse.

Restorative justice and efforts to eliminate or at least to minimize use of the death penalty have recently gained more public support and may also fit better with sharia criminal code penalties. Therefore except for extraordinary cases, ideally the death penalty should be abolished.

The question do the trio deserve an alternative penalty to the death penalty? Unfortunately, not, at least not in my mind. Allow me to explain my stand. It is

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<sup>76</sup> Published by The Jakarta Post, August 8,2008

correct that life and death are in the hand of God, the creator of life. No institution has the right to kill others for whatever reason. Human life is considered to be so sacred that one man's murder is considered to be the murder of all the human race , and whoever saves a life it is as if he had saved the lives of all mankind (Q.5:32).

So it is the duty of human beings to avoid homicide. But when a murder occurs, what is the just sentence that can be imposed on the murderer who has stolen the right of God? It is God (the Koran) who gives options to Muslims in facing this dilemma.

The first option is the law of equality (qisas). During the jahiliyah (ignorance) period before Islam, the Arabs were prone to take revenge even if the crime was done centuries before. If a member of their clan or tribe was killed by a member of another clan, the revenge was taken by killing any person from the offending clan, even though this person was actually innocent and not involved in any killing. When the Koran came, it shifted the focus away from random or revenge killing.

The injunctions on qisas in the Koran are based on the principles of strict justice and equality of the value of human life. So it should be applied to the killer only and cannot be applied to the innocent person. Beside qisas there is also possible remission and compensation.

If remission is made by the brother of the slain it is the obligation of the murderer to grant any reasonable demand and compensation to the relative of the murdered, accompanied with handsome gratitude.

This means that compared to random killing, the qisas law is better, but there is another better option ; compensation and reconciliation between victims and offenders. That is what I mean by restorative justice. But any change of penalty should be arrived at by taking into account the views of the victims.

Back to the Amrozi case, do they deserve to be forgiven and that their lived be spared?

While restorative justice accompanied by an effort to abolish the death penalty gets wide international support, in the Amrozi case it is difficult to apply this. Why? Because they express no remorse for their actions. It is true that the constitution gives the president the right to pardon convicts who are sentenced to death, but these murderers have refused to seek presidential clemency, on the grounds that would require them to admit they did something wrong. (The Jakarta Post July 22, 2008).

It is possible state executions may make them martyrs as feared by Bramantyo Prijosusilo. (The Jakarta Post, July 25 , 2008). This may be so in the eyes of their followers, but the proportion of Muslims who see their act as part of jihad is very small. A recent survey of pesentren leaders in West Java by the Malindo Institute for social research shows that only 3 percent of those surveyed agreed that what Amrozi did was part of jihad.

So if they are to be finally executed, it is actually more in compliance with the sense of justice among the majority of their victims.



**SHARIA LAW IN THE ERA OF AUTONOMY:  
Critical voices on formalization and legislation of Islamic law in Aceh and  
other regions of Indonesia <sup>77</sup>**

*Introduction*

The downfall of the centralized new order regime, which followed by the emergence of the decentralization and autonomy era, deemed, by some people, has carried out new wind because it will pave opportunity for the region to implement sharia law through bylaw ( PERDA) instrument. Not only Aceh, which strive to make experience on sharia implementation, other regions also tried to impose bylaw aimed to eradicate sinful, acts prohibited by sharia.

Garut regent, for instance, issued bylaw No.6/200 on immoral acts. Tasikmalaya regent released bylaw No.1/2000 on eradicating prostitutes. Cianjur regent released bylaw No.21/2000 on prostitution prohibition. Tangerang Council endorsed the two bylaws on Nov.21, 2005. Bylaw No.7/2005 bans the distribution and the sale of alcoholic drinks, except in three to five-star hotels and designated restaurants. Bylaw No.8/2005 bans people in public places, places visible from the street or in red-light districts from persuading or coercing – either through gesture or words - others into acts of prostitutions.<sup>78</sup>

But, unfortunately, some bylaws or *qanun* (term used in Aceh) often deemed as troublemaker bylaws, gender biased and not suitable to human rights demand.

Critical voices on formalization and legislation of Islamic law in Aceh and other regions in Indonesia that come from academician, human rights activists and others can be grouped to five. The first critic come from people who fear that Islamic law will not completely implemented, not *kaffah*, it means it will not regulate all aspect of life. The second groups are the opposite of the first. Their critic based on the sense of fear should sharia will be fully implemented. According to them, if sharia in the shape of Islamic laws that were written in classical books or as interpreted by some of rulers, it will cause more problems for society. The third group, people who criticize the effort to make formalization and legislation of sharia particularly in Aceh. According to them this efforts not concordance with the wish of Aceh people on sharia and has no significant impact in solving Aceh problem. . The fourth, people who questioning the relationship between legislation of sharia with the need of Indonesian people to build good governance, civil society and democracy. The fifth, people who questioning the synchronization of sharia legislation or bylaw based on sharia with the national system of law.

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<sup>77</sup> Published by INTEGRALITA , International Journal of Islam & Culture Studies, volume 1 number 2 , July – December 2006.

<sup>78</sup> Article 4 (1) of the bylaw states that “every person who acts and behaves suspiciously , and comes across as being a sex worker, is prohibited from being on streets , on playing fields, in hotels or dormitories, in residential areas or coffee shops, at amusement centers or theaters, on street corners or under bridges, or in any public place”

This paper will elaborate those critics and in the end will be closed by writer comment and conclusion.

### *Critics on formalization and legislation of sharia in such regions*

#### *The first group*

The first group, people who have high enthusiasm and fear if sharia implemented in Aceh only its cover its twigs not its trunk. Example of this critic voiced by a reader of *Serambi Indonesia*, daily news published in Aceh. According to him only the complete sharia which will can solve all of the problems faced by Aceh.

He pronounced in Indonesian language :“ *yang terbaik menurut masyarakat Aceh sekarang adalah tegaknya hukum Allah (syari’at Islam) secara kaffah. Cuma yang kita takuti bila syari’at Islam yang diberikan kepada Aceh ranting-rantingnya saja . Ranting-ranting syari’ah adalah bank syari’ah, takaful, baitul qiradl, bismillah di amplop surat , assalamualaikum di radio dan televisi. Sedang pokok syari’ah adalah melaksanakan hukum rajam, potong tangan dan qishash. Bila syari’at Islam kaffah benar-benar terwujud, Aceh akan jaya kembali. Hukum Allah pasti baik. Dengan hukum rajam orang tak berani berzina, hukum potong tangan maling tak berani mencuri, hukum qishash pembunuh tak berani membunuh. Dengan hukum Allah rakyat akan selamat...Insyallah ta’la, cukup banyak uang negara yang bisa kita hemat. Sebab sejumlah penjara akan kosong, sejumlah hakim akan nganggur, sejumlah rumah sakit akan kekurangan pasien, sejumlah polisi akan dialihkan tugasnya.*”<sup>79</sup> ( *what is the best for Aceh society now is the enforcement of God law or sharia law completely. What we fear is if sharia given to Aceh just its twigs or its small branch. The twigs of sharia are like sharia bank , takaful insurance, baitul qiradl, bismillah in the envelope of letter, assalamualaikum in radio and television. While the trunks of sharia were imposing rajam punishment , cutting the hand and qishash. If the full sharia can be implemented, Aceh might be will gain back its triumph. God law certainly better . By rajam punishment people not dare to make adultery or fornication , by cutting hand , thief not dare to steal and by qishash people not dare to kill someone. By God law , people will be salvaged. Insyallah or with God will, much state money can be saved. Because many prisons will empty, many judges will be idle, some of hospital will lack of patients, some of polices will be removed from their jobs*)

#### *The second group*

The second groups are the opposite of the first groups. Their critics based on the fear if sharia completely and forcedly implemented through power and political instrument while in other hand the interpretations used were classical interpretation backed by state or ruler. History shows that forced implementation of sharia that follows conservative viewpoint has caused more problems particularly in relation with human rights demand.

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<sup>79</sup> Serambi Indonesia, Juni 16, 2002.

Muslim Abdurrahman, one of the noted scholars in Indonesia, said that experience from other countries like Sudan , Iran , Afghanistan under Taliban regime tell us that forced implementation of sharia has caused more victims especially among women <sup>80</sup>, non Muslims, and the poor. According to him if we are ready to get lesson from experience of Sudan, Pakistan or other countries that have previously imposing sharia law , I think , the first people who realize the bad impact of sharia implementation are women. Because in sharia law there are many regulations directed to women such as regulation on dress and inheritance. For instance, because of poverty, woman who has deprived socially, enable to work in garment factory and so on, eventually with no choice available, sinks in the prostitution world. Meanwhile, actually there is no woman who has an ideal to become prostitute unless circumstance forces her; to become prostitute is not woman choice. Then, when sharia law implemented, they are ordered, raided, captured and punished with flogging or stoning.

The second victims are non-Muslims, because they are treated as second class of citizens with limitations on political rights. The third victims are poor family or the lower class of society because when they steal chicken, for instance, it is clear that they have stole something while if the officers or rulers performed corruption or abused their power the evidence often not so clear. So it is easy for them to evade punishment. <sup>81</sup>

Critics concerning the treatment of women, particularly in Aceh, often released by such women activists like MISPI (The partnership of true Indonesian women) and Flower Aceh. Cut Hasnyadin, one of the women activists, for instance, said that we are Aceh society actually wish if sharia implemented to all aspects of life not only focused to women such as their dresses and veils. *Jilbab* just a little part of sharia. The most important one in performing sharia is to reform the system of government. Regional government is incorrect in performing sharia, they are too emphasizing on symbols. "*Jangan perempuan yang dijadikan objek, tapi harus semuanya.*" (Don't make women as a sole target of sharia but should be all) she said.<sup>82</sup>

Suraiya Kamaruzzaman activist of Flower Aceh in his writing published by *Serambi* daily said: according to my observation questioning violence toward women perpetrated by military more easy to obtain support from wider community compared when we raise problems of violence toward women as an impact of unclear policy of sharia implementation. This is because, religion has used as tool to justify and to make violence against women. If we want to see honestly and fairly, recent violence practiced against women in Aceh, which conducted in the name of religion, actually can be categorized as violence against women, in which, it is the concern of women movement. The problem faced by such activists is that brand of anti Islam (and possibility the brand infidel/ kafir) easily be accused to the groups or

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<sup>80</sup> G.Bertrand , a Muslim, through his letter published at *The Jakarta Post*, september 30,2003 gives a comment on *rajam* imposed in Nigeria: *On stoning, Does the open-minded Muslim community in Indonesia know that in a few days a woman in Nigeria will be executed by stoning because she had a baby out of wedlock? Will this community try to intervene through the Nigerian Embassy? A baby of two months old will be left without its mother. As a Muslim, I am ashamed of this barbaric act done in the name of our religion.*

<sup>81</sup> Source : interview conducted by Jaringan Islam Liberal (JIL) with Dr.Muslim Abdurrahman in 2002. see: [www.Islamlib.com](http://www.Islamlib.com).

<sup>82</sup> Interview with Cut Hasnyadin conducted at MISPI office in Banda Aceh, date July 10, 2002.

individual who questioned it. It is the background why, in my opinion, the position of women, particularly in Aceh, weaker if they are faced violence practiced in the name of religion (read: Islam).<sup>83</sup>

The fierce critic also comes from non-Muslim, especially Christian. But considered their position as minority, their critics implemented in the form of points of views accompanied with some expectations and hopes. The points of views of MPG (Christian Consultative Council) released in Banda Aceh date January 16, 2002, partly, said: they hope sharia that will be implemented in Aceh more focused on rising comprehensive understanding of the values of religion and spiritual life without accompanied by coercion act in conducting formalistic apparent. They also ask in imposing qanun (bylaw) the rights of women be protected, including the right of women to refuse polygamy and other regulation that contrary to the principle of equality between men and women be it in family or in social circumstance. They also ask that the punishment for the offenders which will be imposed in qanun in sharia judiciary system more aimed to remedy and to improve human dignity, not punishment which caused physical invalid such as cutting hand and leg and so on.

On behalf of individuals freedom to perform their religion according to their spiritual conscience, they also ask that the tool of state or police not to be involved in supervision of women dress or in the practice of religious ritual. They also hope that regional and central government can protect all of Indonesian people from all of forms of violence or colonial domination in the name of power and religion. To maintain Indonesian reputation in International forum, they also hope that there are no regulations with contradict to 1945 Indonesian constitution and to general policy. To maintain harmony among religious followers, it is better if in anon on sharpie law, clearly stipulated the rights of minority of Christian Catholic or Protestant to perform gathering together for praying be it in the house of worship or in the house of congregation members. They also hope that in imposing sharia law, it should be conducted after being socialized to all layers of society in order to ensure that sharia law that will be enacted is really the result of free choice of Aceh community themselves.

### *The third group*

The third groups, people who criticize formalization and legislation of sharia law on the reason that it has no significance impact in resolving Aceh conflict comprehensively.<sup>84</sup> Alyasa Abu Bakar, for instance, said that in the context of decentralization, everything would be granted to local government unless five affairs: religious affairs, monetary, foreign affairs, defense and security and law and judiciary. As special region Aceh actually ask to be granted more, compared with other regions. Central government often pledges that everything will be given to Aceh as long as Aceh not demand independent. In relation with sharia law there are two laws; Law No.44/1999 and Law No.18/2001. In Law No.44/1999, the

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<sup>83</sup> Source: Serambi Indonesia, date December 31, 1999.

<sup>84</sup> See also : Nurrohman, *Weighing the benefits of sharia as solution to Aceh's problems*, The Jakarta Post, May 20, 2005.

specification of Aceh given in the form of the right to implement sharia law, while in the Law No.18/2001, the specification of Aceh granted through sharia court engaged by Mahkamah Syar'iyah in the frame of national law system.

Article 25 verse (1) of Law No.18/2001 said that sharia court in Aceh as part of the national judicial system engaged by Mahkamah Syar'iyah. Verse (2) said that the jurisdiction of Mahkamah Syar'iyah, based on sharia law, in national law system, would further regulated by *qanun*.<sup>85</sup> Verse (3) said that this jurisdiction applied for Muslims only.

Article 27 said that dispute on jurisdiction between Mahkamah Syar'iyah and other courts in Aceh should be returned to Indonesian Supreme Court that had final decision on this. This formulation gives no satisfaction to Aceh people because it means that Aceh not granted autonomy in law and judiciary. It means that Aceh just be authorized to formulate their own sharia law through *qanun* as long as the *qanun* in line Indonesian law hierarchical system.

As a discourse, Aceh society from the early beginning has demanded sharia. What is aimed by sharia is Islamic law. The central government give it or not, it is their demand. Their demand never end as long as hasn't fulfilled, Alyasa said. Toward law No.18/2001, they are disappointed. Nanggroe Aceh Darussalam or NAD, the term given by this law to Aceh not greeted enthusiastically by Aceh people. So if we talk about politics, the people here disappointed to central government, this is the core problem. And it is not disappear because the formulation of law is like this, Alyasa added.

Concerning the institution of ulema in Aceh, there is a change in nomenclature. Formerly it called MUI (Indonesian Ulema Council), now it called MPU ( Ulema Consultative Council). The change of nomenclature was aimed to add its role and quality. But ulema recruitment system in MPU, which based on regions representative, has caused this institute the target of critic from Alyasa.

Surely, ulama, Alyasa said, not think about representation. They represent their own self through their individual competency. Surely, it should be like this. Ulama is ulama, he not represented anyone. Ulama can be called the representative of truth, the representative of Koran and the representative of their own understanding. Thus, ulema can originated from one region because in this regions there are so many intellectual while in other regions there aren't. Actually ulema should be like this. But society hasn't accepted it. Ulema should bow to the reality including in manner, in which, ulama be recruited.

Alyasa also criticized the use of personal active theory not territorial active theory since in Aceh sharia law just imposed to people who embraced Islam. So, Christians who committed criminal offense can't be prosecuted and tried by Aceh

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<sup>85</sup> MOU between Government of Indonesia and GAM ( Free Aceh Movement) signed in Helsinki, Finland on August 15 ,2005 said that kanun Aceh will be re-established for Aceh respecting the historical traditions and customs of people of Aceh and reflecting contemporary legal requirements of Aceh ( 1.1.6)

law. So this law (Law No.18/2001) violated legal maxim, which anonymously agreed upon by the world, he said.<sup>86</sup>

Although not as fierce as Alyasa Abu Bakar in criticizing law No.18/2001, Rusydi M.Ali Muhammad, rector of Ar Raniry IAIN, has similar assessment. According to him the legal basic used to implemen sharia law still weak. It is better if sharia law in Aceh protected by Indonesian constitution so it can provide more certainly for Aceh. The implementation of sharia beside faced juridical obstacle, it also faced social obstacle. There is a discourse that made person phobia on sharia law such as discourse on cutting hand, stoning and flogging. In addition there is *receptie* theory introduced by Snuck Hurgronye.<sup>87</sup>

Mohamad Nazar one of the Aceh figure among young generation said that formalization and legislation of sharia has no significance impact in resolving Aceh conflict. In an interview, the chairman of SIRA (the center for Aceh referendum) said that the emergence of sharia formalization idea in Aceh produced more questions. Offering sharia as solution to Aceh problem just raised by Aceh politician in Jakarta, in collaboration with few local Aceh politicians, not come from Acehnese aspiration. Sharia law has been used by Jakarta as political instrument to influence opinion and aspiration of Aceh people and to appease international support toward Aceh. According to Nazar, sharia law is not good solution to solve Aceh conflict. Sharia law deliberately produced to turn people from the real issue faced by Aceh. Sharia law in Aceh not intended to restore community order because its departure is not from people conscience. People of Aceh, according to him, do not support the formalization of sharia. Sharia law in Aceh only camouflage.<sup>88</sup> There is no significance realization from the package of sharia law in Aceh.

*Jilbab* (headscarf) and the closure of shopping center during Friday gathering is not new, not a result of sharia law policy. Aceh people have long practiced it. Even it is an irony and funny if there is jilbab obligation area. Islam not recognize the limited area, in which, people obliged to use jilbab. Our survey reveal that prostitution raised in Loksumawe , coincide with sharia formalization. And also it is impossible to perform sharia law if there is still military operation in Aceh. Sharia law cannot be effectively performed because it will contradict to their political interest. For instance criminal law in Islam, it is difficult to be implemented to military and police that have killed Aceh people.

Amdi Hamdani and Amni Ahmad Marzuki both are Free Aceh Movement (GAM) activists; also criticize the formalization and legislation of sharia law in Aceh. According to them, the main problem faced by Ache actually three; 1) the unclear

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<sup>86</sup> Source : interview with Prof.Dr.Alyasa Abu Bakar, which conducted in Banda Aceh, date September 28, 2001. NU and Muhammadiyah until recently have different opinion on the scope of the sharia court. NU representative Soleh Amin said they should cover all people in Aceh, including non-Muslims and the military. He argued that it would be illogical and inefficient to impose separate legal system in an area. "The same treatment for all Acehnese would make more efficient". Muhammadiyah responded that non-Muslim should not be subject to sharia because Indonesia adheres to national law. "We couldn't remove district courts in Aceh because it is part of the Unitary Republic of Indonesia." Said Hasballah M.Saad, an Acehnese who chairs the Muhammadiyah legal department. See : The Jakarta Post, March 3, 2006.

<sup>87</sup> Source : interview with Dr.Rusydi M.Ali Muhammad, date July 10,2002 in Banda Aceh

<sup>88</sup> After the government officially declared the application of sharia in Aceh, name of stores , offices , streets and schools were all written in Arabic. Therefore some critics said that waht is occured in Aceh actually not Islamization but Arabization.

status of this region since the hand over of Dutch sovereignty to Indonesian republic; 2) economic injustice, Aceh rich but its people are poor 3) the gross human rights violation perpetrated by the state.

According to them, it should be distinguished between internalization and institutionalization of sharia. The process of internalization of sharia among Aceh people, regardless of their various understanding, actually has enough. But when sharia will be institutionalized by the state or government the possibility to become tool of power is high. If it is happen sharia law will be malaise from its original purpose. The wearing of *jilbab*, for instance, cannot be forced but should be adjusted to the conscience of Muslim community themselves. Cut Nyak Dien, female hero from Aceh, in her many image, not wear *jilbab*. But Aceh ulema never questioning it. Sharia law under state umbrella will caused state violence in the name of religion. It is very dangerous.

Aceh Islam is part of the Aceh people, it means that Islam in Aceh heavy contained with local content and not necessary similar with Islam in other region. . Aceh people actually pluralistic and democratic in nature, *resam* ( local custom) that agreed upon in one region might be different from *resam* in other region. In wedding ceremony, for instance, Pidie custom different from Loksumawe. In Pidie the parent of bride usually prepared house for bridegroom while in Loksumawe , the parent of bridegroom who prepared house.

Sharia should be implemented democratically and contextually. *Hudud* (criminal law in Islam) should be adjusted to situation of society. In the theft case, for instance, what should be investigated first was the motive behind. If somebody steals because of scarcity while there are so many rich people who not released their *zakat*(obligatory almsgiving), the fault should be addressed to the rich.

Aceh ulema also give attention to public interest in implementing sharia. Concerning women leader, for instance, although there are sharia norms prohibited it, Aceh ulema allowed it as long as there is public interest that should be preserved and disadvantages that should be avoided.

Naqiyatuddin is one of example of Aceh queen that the process of her installment caused controversy among ulema. But eventually, Aceh ulema more choosing in install her because if she was not installed might be there are more dangerous will prevail. Aceh people highly respected consensus, especially consensus conducted by leaders who represent their will.

The struggle of GAM not different from the struggle of proponent of sharia engaged by followers of Daud Beureuh. Both sides went on the basis of Aceh people interest. What is different is that GAM based their struggle on Aceh sovereignty. Although there is different, GAM highly respected Daud Beureuh.

Concerning law No.18/2001, GAM just considered it as starting point to engage further dialog. Sharia law and Law No.18/2001 were the central government solution to Aceh people. There is no correlation with GAM. Sharia law that implemented now just symbol or merely formality. Ulemas who seriously and eagerly want to implement sharia faced some difficulties because they have no power. Sharia law cannot be enforced if there is no power on it. The power held by Indonesian government. Beside it, people trust to ulemas has decreased.

In Aceh there is no coercion on religion. The problem of Aceh was not religious problem. Aceh has no history of conflict among religious followers, from the early beginning non-Muslim in Aceh feel safe. Religion actually sacred, but it can't be exaggerated. The previous ruler (New Order regime) was hypocrite, not consistence in their promises and always sidelined and deprived Aceh people.<sup>89</sup>

Prof.Dahlan, dean of Law Faculty in Syahkuala University, also criticized the formalization of sharia. According to him, the implementation of sharia should be initiated from building people prosperity and encouraging reformation on Islamic thought. Reformation on religious thought should be engaged from within. If Muslims reluctant to reform their own thought who will ready to reform them. He questioned. Concerning Islamic criminal law it should be sidelined because according to him, criminal law that loaded in KUHP (Indonesian Code Penal) has contained Islamic values. Imposing official ceremony for implementing sharia was counter productive if the government they're self not showing their ability to combat corruption. Islamic institutions like *sidiq* (integrity) *amanah*(trust) *,tabligh*(transparence) and *fathanah*(competency) should be internalized first, he said.

In his opinion, the offering of sharia by central government is connected with political bargaining. It means that central government hoped that the offering of sharia to Aceh would solve Aceh problem. But according to him, by solely sharia , the conflict cannot be ended. The most important conflict in Aceh is the sovereignty conflict, therefore Aceh likely better if treated as state in federal system. Because all people actually want federal, but how far the central government ready to amend or change current constitution. If Aceh still in Indonesian unitary state, the most important one is how to build morality among government officers. The state might be arranged as federal or unitary state, but as long as the moral of the leaders or government officers was decadence there is no hope. Corruption now widespread. He is not agreeing if punishment stipulated in Islamic criminal law implemented, because the most important one is morality and prosperity. He is more choosing prison sanction as long as the prison managed well. Because as long as there is no law enforcement, whatever regulation and sanction would not brought benefit to people. Actually Indonesian law is good enough, he said.

He also criticized the way of Acehnese people make *qanun*, by citing al-Qur'an and al-Hadits in its considering. It is undermined al-Qur'an because it is equating al-Qur'an with the laws. We don't want to place al-Qur'an at first, then followed by al-Hadits and laws because al-Qur'an was not manmade. In making regulations there are mechanism and KEPRES ( President decree) that should be followed. In additions, making regulations through bottom up approach might be performed, but the problem is whether the central government ready to legitimize it because we are in context of unitary state not federal state, he said.<sup>90</sup>

## The fourth group

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<sup>89</sup> Source : interview with Amdi Hamdani and Amni Ahmad Marzuki in Banda Aceh , date July 15,2002.

<sup>90</sup> Source : interview with Prof.Dahlan, SH,MH, that conducted in his office at SyahkualaUniversity , date July 10,2002.



The fourth group who questioned the relationship between formalization and legislation of sharia law with the need of Indonesia to make good governance<sup>91</sup>, civil society, democracy and human rights protection. This group including people who criticized KUHP revision that proposed by minister of justice and human rights, Yusril Ihza Mahendra. Because according to them the problem actually not in the law, so it should be revised, but in the system of judiciary, in which, corruptions in this institution, are rampant. Reformatations on judiciary system are badly needed. That is why some scholars said that judiciary reformation has failed.

Adnan Buyung Nasution , for instance , said that "*The inclusion of articles bearing the influence of certain religious teachings into the KUHP will go against the universal principles of criminal codes adopted by almost every country in the world,*" He also added that revision of KUHP, as arranged in new draft, will undermines the ideals of democratic society that imagined by the founding fathers of this country . "*Citizens from other religious beliefs would be discriminated against if the criminal code accommodated only one religious teaching as its foundation,*" Buyung said as quoted by The Jakarta Post daily <sup>92</sup>.

Public caning such as recently applied in Aceh, also criticized by some scholars. Ridarson Galingging said that public caning is a primitive punishment prohibited by the Universal Declaration of Human Rights, which declares in Article 5 that "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." <sup>93</sup>

## The fifth group

The fifth groups are people who doubt that the demand to fully implement sharia law fully (*kaffah*) will bring harmony with national law system. Kirsten E. Schulze in his writing entitle *A Jumble of Purposes of Syari'ah Law in Aceh* raised a question, whether in national level sharia law will compatible with Indonesian constitution. Completely Schulze said that : *The key question at the national level is, of course, whether the syariah is compatible with Indonesia's constitution. In a practical sense this may result in cases tried under the syariah in Aceh being appealed to the Supreme Court under national law. If the Supreme Court upholds the validity of the syariah it has effectively undermined national law, and if it doesn't the syariah in Aceh isn't worth the paper it was written on.*<sup>94</sup>

Indonesian constitution stipulates that the Supreme Court holds the authority to review regulation below the level of legislation. Local administration, through the amended 2004 Regional Autonomy Law, are given the autonomy to handle governmental duties, but it does not extend to all spheres.

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<sup>91</sup> Seppo Tiihonen, a Finnish scholar defined good governance as a process , where rules and well-funtioning institutions are applied to manage a nation's affairs in a manner that safeguards democracy , human rights, good order and human security , and economy and efficiency follow in the management of a country's resources.The jakarta Post., December 31,2005.

<sup>92</sup> *The Jakarta Post, October 1, 2003.*

<sup>93</sup> See The Jakarta Post, September 22,2005

<sup>94</sup> See , The Jakarta Post, April 19,2002.

Religion is one issue that does not come under the authority of local administrations, along with foreign affairs, defense and security, judicial and national monetary issues, as stipulated in Article 10 of the law. According to Article 145 of the law, the government can cancel local regulations that contravene national law and the Constitution.

### **Comment on conclusion**

As a closing remark, the writer will try to make some comments. Although Indonesia now entering autonomy and decentralization era, and although Muslims as Indonesian citizen have the right to propose law or bylaw draft that will be deliberated in House of Representative ( DPR) or in Regional Representative (DPRD) which contained sharia norm, but Muslims should realize their political power and should act according of the rule of the game. In Indonesian history, the proponent of sharia law never reach majority in the House.

So it is better, instead, if Muslims uphold firmly reformation ideals to build civil society based on democratic mechanism and strive to build non-discrimination and justice society. Sharia law would be better if placed as moral guidance for Muslims. Forcing sharia law through power instrument, if not accompanied by conscience will caused hypocrite attitudes. As a moral guidance the implementation of sharia need the conscience<sup>95</sup> from within. As part of the nation , it is better if Muslims gave more attention to such issues related common interest or public interest like injustice, poverty, ignorance, unemployment and corruptions.

. Good governance will become reality, if this nation capable to use human and natural resource effectively and efficiently, if there are consistencies from all the laws in enforcing social justice, if there are clear accountability, transparency and participation from the all layers of society. If Muslims intended to participate in drafting law, the law aimed to strengthen good governance should be prioritized.

Since politics is the art of compromise and the art to accept reality, Muslims should able to prepare to accept non-idealistic norms that agreed upon by the majority of the lawmaker body. Muslim should avoid conducting violence act in the street because it will tarnish the image of Muslims themselves. Muslims also should able see the critics positively. Severe punishment in Islamic criminal law such as stoning to death and cutting hand likely impossible to be absorbed to Indonesian law.

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<sup>95</sup> After Tangerang council endorsed bylaw on prostitution, to avoid capture, Novi Ariyanti, a 23 year-old sex worker who usually waits for clients at bus shelter on Jl.Gatot Subroto in Cimone, has made a more drastic change to her appearance. She now wear Muslim dress – covering her neck, ears, hair and body shape – and a headscarf. “with my new look, I am earning more money because men these days are more intersted in women wearing *jilbab*” she said. Novi charges clients between Rp.200,000 and Rp.500,000. The Jakarta Post, March 11,2006, reported.

## HELSINKI PEACE NEGOTIATIONS SHOULD BE CONTINUED <sup>96</sup>

After a fourth round of talks and will entering a fifth round in July and hopefully a final round, if God will, both parties, GAM and the government concluded that negotiations were progressing, with the government claiming some 90 percent of the issues put on the table had been resolved. But other voice and pessimistic remark emerged. Some demanded that ongoing process of negotiation should be halted while the other not sure that the agreement will be achieved. "By observing Jakarta's rigid position. We may conclude that the fifth round of talk, if any, will end up in a failure as none of the two conflicting camps are likely willing to restrain themselves and pursue a peaceful solution as earlier regulated by the People's Consultative Assembly (MPR)" Razak said. (The Jakarta Post June 10,2005)

Therefore, now it is a good time for both sides to show their pledge and commitment to fulfill Aceh people hope of peace and prosperous. The issue of Aceh should not be reduced to that of a mere rebellion. Most of Aceh's population of 3.6 million people have been waiting for peace for a long time. The Acehnese are tired of the three decades of armed conflict that has claimed more than 12,000 lives. RI government and Free Aceh Movement (GAM) should seriously struggle for final agreement.

After the issue of independence and special autonomy are removed and the new term, such as in CMI press release called, "the self government of the province of Aceh within the Republic of Indonesia" maybe will be used, the most important points of this terms is which units can Aceh province make decisions that the central government cannot overrule. In case of sharia implementation for instance, referring to my opinion "weighing the benefits of sharia as a solution to Aceh's problem" (The Jakarta Post May20,2005) there should be an assurance that sharia regulation set out in *qanun*(bylaw) can be implemented without any fear that they will be annulled by the central government or the Supreme Court in Jakarta.

Since the conflict in Aceh is politics in nature, armed forces of both TNI / POLRI and GAM should respect the process and the final result of agreement.

After the signing of the peace agreement with the rebel Free Aceh Movement (GAM) in 2002, Susilo Bambang Yudhoyono, still assumed Coordinating Minister for Political and Security Affairs at the time, at the office of Indonesia's Permanent Representative in Geneva, said "Take the guns out of the politics and let us together build a peaceful, democratic and peaceful Aceh within the framework of the Republic of Indonesia". Albeit this agreement eventually failed to fully be implemented, partly because Indonesia (under Megawati) unilaterally canceled its peace agreement with GAM in 2003, this directive sentence is still relevant today

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<sup>96</sup> Never published before

when Susilo Bambang Yudhoyono has become president of the Republic of Indonesia.

Considering the remaining problem that not yet be solved only 10 percent both sides should hardly try to move so they can meet in same point. Whatever the shape of the final agreement and whatever its name viewed from political theory, it should be treated as , borrowing the words of Wiryono Sastrohandoyo, chief of negotiator team of Indonesian government in 2002, significant victory for both sides and for all that were interested in peace. House of representative as law making body should gives support as the consequences of this agreement there should such revisions on some laws. Conversely GAM should restrain from making public disinformation campaign to promote a public perception that the final result of the implementation of agreement would be independence for Aceh such as occurred in previous agreement. Maybe Aceh will get such independence but it is limited on such units which had been agreed. .

While awaiting for new governor , regent or mayor who elected directly by Aceh people in democratic manner , it maybe will consume long time for preparations , the existing officials should be accepted . So there is no double government officials . It means that GAM should not built or expand political structure in the villages which competed with the provincial government for administrative control and GAM should halted what is called "collecting Nanggroe tax".

Concerning with local political party , I am personally in favor with this idea at least for Aceh. It will show that Aceh, with special status, is really different from other provinces in Indonesia. I am like other observers also convicting that it is impossible to resolve the insurgency in Nanggroe Aceh Darusalam (NAD) by force alone.

Before agreement signed , considering it is still enough time, in my mind, because Aceh is a big problem for Indonesia , it is better if crucial matter that not yet be solved disclosed publicly so everyone academicians , politicians or the else can taking participation and can offer their suggestions and opinions.

Finally both sides should realize the bad consequences if peace negotiations end up in failure.

## QUESTIONING JI'S WAY OF THINKING <sup>97</sup>

"Don't link the terrorists to any religion, particularly Islam." This sentence often comes out of the mouths of some religious leaders here.

The leaders, as well as their followers, are disappointed by their religion being linked to terrorists. A recent survey conducted by the Wahid institute and pollster Indo Barometer confirmed this stance. Most respondents (71.8 percent) rejected the notion that terrorism is linked directly to a specific religion (*The Jakarta Post*, June 22, 2007)

But how we do not link terrorists, particularly those who are involved in bombing attacks in this country, such as Imam Samudra and Abu Dujana, to Islam? They named their organization Jamaah Islamiyah (which means Islamic community). JI aims to establish a Pan Islamic State in Southeast Asia under Indonesia. Even when they are captured by police or stand trial, the attorneys defending them call themselves the Muslim Defender Team. So we actually, albeit indirectly, must acknowledge that some Muslim activists were involved in terrorist attacks in this country.

In my opinion, openly and honestly admitting that some Muslims activists are linked to terrorism will be more helpful in addressing the root problems than refuting or concealing this reality.

There are many reasons for individuals to get involved in acts of terror such as economic, education and political ideology. For me, however, the most important factor is the way of thinking. The black and white way of thinking that divides the world into followers of Allah (*hizbullah*) and followers of Satan (*hizbu al-syaitan*) or between *Darul Islam* (state of peace) and *Darul harby* (state of war) and attacks others based on the difference is more relevant. Indonesia's experience shows that victims of terror attacks are not only "infidels" but also Muslims. There has been no single scholar of Islamic law who has condoned random killings.

In his book *War and Peace in the Law of Islam*, Majid Khadduri says there was a significance change in the Muslim world after the establishment of the United Nations. He says the decision of Muslim states to join the UN was an important moment, because traditional Islamic law is not in accordance with the principles embraced by UN Charter.

Muslims, which in the seventh century appeared to be the conquerors of other nations, did not acknowledge a system of law other than their own. Therefore it was assumed that Muslim states' alignment with the UN was temporary, pending the achievement of their own political ideals to conquer the world. But this assumption

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<sup>97</sup> Published by The Jakarta Post, July 6,2007

lately was proven wrong. Traditional Islamic laws have undergone reforms in order to be adjusted to modern situations.

There are many scholars in Islam who back the principles of international relations which consist among other the principle of peace and mutual respect. Even there is the speculation that the principle of international relations adopted by the UN was inspired by Islamic law.

Hugo Grotius, a Dutchman known as the father of international law, said international law grew alongside the growth of humankind in this world but as a complete science it was produced by Islamic law. Islam which was spread by the Prophet Muhammad originated from the Koran which brought the principle of international law teachings. Grotius' opinion was underlined by Prof. Baron Michel de Tubb, another international law expert in the Hague, through his speech in 1936.

So there is no reason for Muslim states to reject the UN charter or the principles of international relations.

For Indonesia, principles of Islamic law do not run counter to the Pancasila state ideology, the 1945 Constitution and its amendments. There is no single part of Islamic law that cannot be implemented in Indonesia.

As a moral guidance for individuals or community, Islamic law does not depend on the state. That is why, if viewed under one of the criteria of an Islamic state, Indonesian can be called an Islamic state. If JI really wants to establish a Pan-Islamic state, they should explain what a Pan-Islamic state is. Imitating the theocratic state which was established by the Taliban regime in Afghanistan would be difficult to accept here.

JI's way of thinking is close to Arab Wahhabi or the Salafi variant of Islam. The group emphasizes rituals and codes of conduct rather than the substance of Islam. Such a vision of Islam leads believers to think of the religion as an absolute truth, while other religions are false and there can be no meeting ground between a Muslim and a non-Muslim.

Even among Muslims, this way of thinking causes disharmony and can lead to violence especially if combined with political ends. It's not suitable for Indonesian Muslims who believe that tolerance between all religious communities is important.

Due the fact that some Muslims are involved in acts of terror under Indonesian law, Muslim leaders in this country have the moral duty to remind and guide them to the "right path" by opening intensive communication and dialog with them. It is not enough to echo the words "don't link terrorism to Islam

## QUESTIONING THEOCRATIC CALIPHATE<sup>98</sup>

After discussions on political Islam with caliphate activists on and off my campus, I've got the impression that their ideal caliphate system is still the same as that described by EIJ Rosenthal in his book *Islam in the Modern National State* -- that sovereignty belongs to God and authority is vested in the *khalifa* as the vicegerent of the prophet, the messenger of Allah.

It is the duty of the caliph to implement sharia to defend the faith against heresy and the faithful against attack, and to ensure their ability to live by the prescriptions of sharia and thus attain happiness in this world and in the hereafter. If it is translated into a state constitution the formulation will be close to Iran's constitution: All legislation for the administration of society will revolve around the Koran and Sunnah. Accordingly, the exercise of meticulous and earnest supervision by just, pious and committed scholars of Islam is an absolute necessity.

In the caliphate system it is the elites, rather than people, who represent God's absolute power. Therefore, in criticizing this system, Khaled Abou El-Fadl, in his book *Rebellion and Violence in Islamic Law*, said that while Muslims in general, arguably, are God's viceroys on this earth (*khulafa fi al-ard*), it is the rulers and jurists who traditionally have enjoyed the power to speak for the divine law.

So if the caliphate will be reestablished in Muslim countries the challenges might come not only from non-Muslims but also from Muslims themselves who believe that a democratic and secular or at least neutral state would be more suitable and better for them.

However, the two traditional duties of the caliphate, *harasatu al-din* (protecting religion) and *siyasatu al-dunya* (managing the world) might be still relevant if their application is adjusted to the current demand. *Harasatu al-din* in the current context should be translated into protecting religion in its broader meaning, not merely the religion of the mainstream, which means that every religion or sect has the right to exist and must be protected. Meanwhile *siyasatu al-dunya* should be understood as the effort to establish a world order based on peace, equality, justice and welfare for all.

The caliphate should be based on principles agreed upon by all elements in society, as exemplified by the prophet Muhammad through Madina charter. It should be focused on systems rather than figures. But considering the spirit of nationalism embedded in the heart of every Muslim in various nations, the idea to establish the caliphate as the sole theocratic political system for Muslims in the world is unrealistic if not utopian.

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<sup>98</sup> Published by The Jakarta Post, August 24, 2007

Since the Koran is polyphonic in nature, and since everyone has the inner power that can illuminate from within no one deserves a monopoly on understanding the Koran. In religious matters, the problem faced by Muslims is how they can respect each other by keeping unity in diversity and by leaving the final decision to God.

The main problem faced by Muslim countries in worldly matters is the low quality of human resources, which in turn produce unemployment, poverty and dependency. Muslims, especially in Indonesia, need concrete answers to their economic difficulties not merely political rhetoric such as *dengan khilafah hidup menjadi berkah* (by the caliphate the life will be blessed). Muslims as well as well non-Muslims should work together to create a better world order.

In discussion with fellow non-Muslims it is difficult to answer when they ask me to show them an example of a sharia state that has successfully brought welfare and social justice to its people. Speaking frankly, I dare not point to Saudi Arabia, Iran or Pakistan as examples of the good governance mandated by Islamic political ideals.

In a democratic atmosphere, it is the right of Hizbut Tahrir Indonesia to promote the caliphate, but it also the right of others to criticize the content of this concept, particularly that which has no relevance the current situation.

## THE RIGID UNDERSTANDING OF SHARIA LAW SHOULD BE CONTINUOUSLY CRITICIZED <sup>99</sup>

In a sermon in Friday prayer at the nearby mosque from my house the preacher said that Indonesia is not Islamic state therefore we cannot hung up to the state in imposing Islamic law. In Islamic law, he added, adultery is a big sin. If it is committed by unmarried couple it should be punished by hundred of stroke. If it is committed by married couple there is no way to repent unless by stoning them until death. The parent unnecessary to compassionate or get mercy to them in enforcing the law of God since it is better for the sinners to experience wound or torture in this world rather than to be burnt in the hell in the day of judgment.

Since the government not adopted Islamic law yet, it is the duty of parent, their family or Muslims community to execute the culprits. The family of the culprit can take offer, for instance, by flogging their own unmarred son or daughter witnessed by their own relatives. He continued his explanation. This sermon remind me to the case happened in Ambon at 2001 when Laskar Jihad (defunct fundamentalist Muslims movement lead by Ja'far Umar Thalib) executed his member, Fulan ( not his real name) for committing adultery. (*Pikirtan Rakyat*, April 20,2001)

His sermon actually not surprised me. In democratic atmosphere freedom of opinion as well as freedom of speak should be preserved and protected. It is his

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<sup>99</sup> Never published before



right of Indonesian citizens to raise his political ideal including his ideal to establish Islamic state and imposing sharia law or sharia-inspired bylaws through available democratic mechanism. The recently released survey conducted by LSI ( Indonesian survey circle) confirmed that not all Indonesian Muslim can accept Pancasila state as the final ideal of their political aspiration. Some 11,5 percent of them still dreamed to establish what is called Islamic state to replace Pancasila state. And some 27 percent of them agreed that adulterers should be stoned to death. But when the matter has attained to the campaign of self execution of what is deemed as violation of Islamic criminal law without considering Indonesia national law, it should be countered and challenged for some reasons.

Firstly, punishment and executing somebody based on Islamic criminal law by skipping the process of law in judicial body is tantamount to taking law in their own hand. Law of domestic violence for instance clearly forbade parent torturing or wounding their own son or daughter for whatever reason let alone stoning them to death. The first *rajam* (death penalty through stoning) in Indonesian history which imposed to the member of Laskar Jihad who confessed has committed adultery cannot be justified by national law although they argue that what was performed in Ambon was in order to conduct their own religious conviction which is guaranteed by Indonesian constitution. Their argument is untrue and it should be denounced for violation Indonesian criminal law.

Constitutional guarantee should be understood as state duty to protect Indonesian people in conducting their religious ritual or belief. Whatever religious belief or ritual, as long as it is not harm other it should be protected by state because it is part of the freedom of religion. Constitutional guarantee in religious matter cannot be used as a tool to attack, exclude, torture, destroy or killing other people. Ahmadiyah community or Eden community equally has the right to exist in Indonesia. In conducting their ritual, they should be protected by the state.

Secondly, sharia law actually religious ethic therefore the allegiance to its norms should be based on conscience. There is no coercion in religion, the Koran said. So it is wrong if the married spouses who committed adultery has no other option to repent unless by experiencing *rajam* in this world. Repent and ask forgiveness from God, except for polytheist, is always opened in Islam. In addition, Koran itself not mentioned the *rajam* punishment

Thirdly, the campaign to impose Islamic law and to establish Islamic state is often based on wrong assumption on Islamic law and Islamic state. As divine law or God law, Islamic law often perceived as immutable and unchangeable law. In reality Islamic law experiences changes and evolutions, adapting to social development. The will of God was never expressed in term of so rigid as the classical doctrine maintained, but that it enunciates broad general principles with admit of varying interpretations and varying applications according to the circumstances of the time. The corporal punishment set up in old Islamic criminal law has been abandoned by the majority of Islamic countries in the World.

What should be preserved according to some scholars is the purpose of Islamic law. The purpose of Islamic law is to preserve religion (freedom of religion), mind ( freedom of thinking) , to protect property so it is forbidden to steal or destroy belongings of other , protecting offspring and protecting the soul. From the philosophical view Islamic law should be and always be favored to uphold justice, equality and human interest (*almashlaha*). Legal maxim in Islamic law said that

Islamic law can be changed if the circumstance has changed. Substantially speaking, all of Islamic law has been and can be conducted in Indonesia. So, Indonesia substantially can be categorized as Islamic state although its constitution not mentions it literally.

While it is impossible to totally evade the influence of the values and norms of religion in Indonesian society, what is important is how to adjust sharia inspired bylaw so it is in conformity with universal human rights demand and democracy and not turning this country into theocratic state dictated by the body of clergy which hijacked religion through their authoritarian interpretation.

In Islam, especially in Sunni Islam, clergy actually cannot assume as the sole vicegerent of God since God himself has bestowed all of human being as his viceroys (*khulafa fi al-ardli*). It means that Islam actually encourage democracy by acknowledging all of individuals the same right before the God. All Muslims have the right to give new meaning of sharia law, Islamic state or caliphate. When Mustafa Kamal in Turkey abolished Caliphate in 1924 it means that he is actually replaced the old form of Caliphate based on God sovereignty to the new one based on people sovereignty. In democratic atmosphere people should dare to speak out and criticize the opinion that is not suitable to human interest (*al mashlaha*). It is the time for Indonesian people to challenge elitism in religion which has the tendency to become authoritarianism. Because it will hinder the growth of democracy and harm religious prime mission to bring peace and harmony.

#### **NEW OIC CHARTER DESERVES APPRECIATION AND SUPPORT<sup>100</sup>**

In the mid of so many people who still doubt on the compatibility of Islam with the universal values such as democracy and human rights alongside with the Islamophobia campaign from a few narrow mindedness people in the West, the decision recently made by the leaders of Muslim countries in Dakar should be seen as a step forward. One of the crucial question directed to Muslim community in the world is whether they can live under the universal values envisioned in Universal Declaration of Human Right and other covenants agreed upon by United Nations.

Despite the fact hat all Islamic state grouped in Organization of Islamic Conference (OIC) became member of Unites Nations there are differ in accepting some conventions produced by this world body. Concerning CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women), adopted in 1979 by the UN General Assembly, for instance, among 38 Muslim countries only six countries that adopted and ratified it without reservation. There are Ghana (signature 1980, ratification 1986), Nigeria (signature 1984, ratification 1985), Philippine (signature 1980, ratification 1980) , Senegal ( signature 1980, ratification 1985) Srilangka ( signature 1980, ratification 1981) and Tanzania (signature 1980, ratification 1985).

In the end of the Nineteenth Islamic Conference of Foreign Ministers held in Cairo from 9-14 Muharram 1411H (31 July to 5 August 1990), all participants agree to

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<sup>100</sup> Never published before

issue the Cairo Declaration on Human Rights in Islam (CDHRI) that will serve as a general guidance for Member States in the field of human rights.

Article one of the CDHRI said that: All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. This article is similar to the article one of Universal Declaration of Human Rights (UDHR). Article one of UDHR said : all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

But despite the suitability and compatibility between Islam and human rights there is potential conflict between sharia law and human rights if Muslims still uphold the traditional and conservative way in interpreting sharia law. Why ?, because article 24 of CDHRI said : all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah. And article 25 said: the Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration. It means that CDHRI still maintain the superiority of sharia by making it as the only source of reference over human rights

That is why, David Littman in his writing entitle *Islamism Grows Stronger at the United Nations*, published by *Middle East Quarterly* , September 1999, said : by establishing sharia law as "the only source of reference" for the protection of human rights in Islamic countries, the Cairo Declaration gives it supremacy over Universal Declaration of Human Rights.

Why new OIC charter deserves appreciation? Firstly, it clearly spelled out good governance, democracy, human rights and fundamental freedoms, and the rule of law.(article 3).The charter also mandated the establishment of an independent permanent commission on human rights.(article 15). Compared to CDHRI, this charter uses softer language. Instead of using Islamic sharia with all problematic interpretations because of so many schools within, this chapter uses Islamic values which relatively has no problem with universally accepted values. It means the supremacy of Islamic sharia has been reduced in this charter. It is not exaggeration when OIC secretary general, Ekmeleddin Ihsanoglu said that “ The adoption of the new charter itself is an historic event”. “This new charter expresses the new vision of the Muslim world.” “The new charter embraces the United Nation language to reflect moderation and tolerance of Islam and focus on development and solidarity in action between members.” he added.

Secondly, it reaffirms so many results of surveys that said most Muslims in the world are moderate and accepted democracy. The survey conducted by the Gallup polling agency over six years between 2001 and 2007 showed that about 93 percent of the World 1.3 billion Muslims are moderate and only seven percent are politically radical. The survey conducted by myself to 105 Islamic boarding school leaders in three regions in West Java, Cianjur, Tasikmalaya and Garut, in the mid of 2007 showed the support for democracy is high. Most of them ( 76,2% ) agree that democracy not contradictory with Islamic teaching although these regions , historically, close to conservative and fundamentalist Islam. It confirms that fundamentalist radical among Muslims are minority and cannot speak for Islam. Thirdly , this charter also concerns on crucial issues faced by Muslims countries like

terrorism in all its forms and manifestations, organized crime, illicit drug trafficking , corruption, money laundering and human trafficking.

Why the new charter need support? Because to become operational, the charter needs to be ratified by the legislative branch of each country with a two third majority. The charter that will create respect for human rights, especially the rights of women, likely not easy be ratified in countries with autocratic regime. In Indonesia ,despite some covenants on human rights have been adopted in constitution and other related laws, one of the respected cleric still said that Islamic values are better than human rights, “ we know that Islam comes from God. We don't know who created human rights" he added. Although has practicing democracy for ten years there is people who still said that democracy is not compatible with Islam.

Indonesia can become a role model for Muslims countries if immediately ratifies, and spreading the values of this new charter to other OIC member countries.

## **JIHAD, VIOLENCE AND POWER:**

Survey and Analysis on the Views of West Java *Pesantren* Leaders <sup>101</sup>

### **Abstract**

*Radical Islam movement always has connection with the way they embrace the meaning of jihad particularly in order to combat vices (munkar) or what they called the situation of injustice. Radical Islam also always close to practical politics in the sense gaining, defending or destroying political power deemed as an obstacle to their own political agenda. In order to pursue power or establish Islamic state, they no hesitate to use violence and criminal acts. It is hypothesized that some of pesantren in West Java still promoting the religious understanding that can be viewed as a form of legitimating to use violence or in accordance with political idea of Islamic radical groups. This survey based on assumption that the more Muslims give their support for certain Islamic teaching legitimizing the use of violence, the more violence will happen. This survey also based on assumption the more Muslims give support to political ideology of radical group, the future of Pancasila ideology and democracy in Indonesia are in danger. The amount of pesantren in West Java according to data from EMIS (Education Management Information System,2007) is 6.930. The population of pesantren in five locations in which survey has been conducted are 1459 consisted; Cirebon 397, Indramayu 56, Majalengka 323, Kuningan 430, and Ciamis including Pangandaran 353. Not all of them are surveyed or investigated. After being separated based on the types of pesantren (traditional, modern and semi modern) only some 20 pesantren represents the three types of pesantren in each region are randomly picked. So the total amount of pesantren used as sample is some 100 pesantren. By exploring the opinion and attitude of pesantren leaders about , jihad and terrorism, violence and*

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<sup>101</sup> Not yet published before.

*intolerance, political power, Islamic state and Pancasila state, the result of survey confirmed the above assumption that some of pesantren in West Java still developed religious understanding that can be deemed as a form of justification to violence and in concordance with the political ideal of radical Islam. So, it is actually not in line with the spirit of tolerance and pluralism*

*Key words: radical Islam, Islamic state, politics*

## **Introduction**

Radical Islam movement always has connection with the way they embrace the meaning of *jihād* particularly in order to combat vices (*munkar*) or what they called the situation of injustice. Radical Islam also always close to practical politics in the sense gaining, defending or destroying political power deemed as an obstacle to their own political agenda. In order to pursue power or establish Islamic state, they no hesitate to use violence and criminal acts.

Historically, West Java is one of the regions that ever used as the base of struggle to hold power and establish Islamic state. Preliminary survey indicates that some of *pesantren* (Islamic boarding schools) in West Java has a potential to be used for the basis of the growing movement allowing violent act. The early research also reveals that *Jamaah Islamiyah* (JI), Islamic hardliners group striving to build caliphate (*khilafat*) in South East Asia also use *pesantren* as the basis to instill their political ideology.

The latest report from International Crisis Group (ICG) in Brussels entitle: *Jamaah Islamiyah's Current Status*, reveals that JI still harbor an idea to establish Islamic State in Indonesia. This report also mentions that the power of JI in various areas in Indonesia will be determined by some factors such as *pesantren* affiliation with JI, the history of Dar al-Islam in this region, business and family relationship among their member, their success in recruiting cadres from campus and the recruitment process occurred within the prison.

There are many factors can drag somebody to become radical, such as education, economics, environment including political ideology which developed in his or her milieu. Not all of these factors be searched and investigated, this research focused only on the religious views mirrored on the views of religious leaders in this case *pesantren* leaders.

It is hypothesized that some of *pesantren* in West Java still promoting the religious understanding that can be viewed as a form of legitimating to use violence or in accordance with political idea of Islamic radical groups. This research based on assumption that the more Muslims give their support for certain Islamic teaching legitimizing the use of violence, the more violence will happen. This research also based on assumption the more Muslims give support to political ideology of radical group, the future of Pancasila ideology and democracy in Indonesia are in danger.

The amount of *pesantren* in West Java according to data from EMIS (Education Management Information System) is 6.930. The population of *pesantren* in five locations in which research has been conducted are 1459 consisted; Cirebon 397, Indramayu 56, Majalengka 323, Kuningan 430, and Ciamis including Pangandaran

353. Not all of them are surveyed or investigated. After being separated based on the types of *pesantren* (traditional, modern and semi modern) only some 20 *pesantren* represents the three types of *pesantren* in each region are randomly picked. So the total amount of *pesantren* used as sample is some 100 *pesantren*. In addition to survey, data also collected through depth interview for the aim to enrich analysis. The research conducted in 2008 in four month from April until July.

## The results of survey

### *On jihad and terrorism*

When *pesantren* leaders encountered with the statement: "Jihad is not identical with war and violence act" some 62 percent of them agree and 23 percent of them very agree. While 12 percent of them disagree and 2 percent very disagree. The remaining 1 percent is doubt. It means that most of *pesantren* leaders (85%) disagree to equate *jihad* with war and violence act. It also denotes that the opinion equating *jihad* with war is only supported by small amount of respondents.

When faced with the statement : " *jihad akbar* or *jihad al-nafs* is more important than *jihad al-ashghar*" most of respondents (60%) agree and 32% very agree. While 6% of them disagree and the remaining 2% of them are in doubt. It means that although some of *pesantren* leaders still had the opinion that *jihad al-asghar* (the war) is more important than *jihad al-akbar* (selfrestrain) , most of the *pesantren* leaders (92%) agree that selfrestrain is more important than waging the war toward other.

In responding the statement : "combating stupidity, poverty and backwardness of Muslims are the *jihad* needed for current time" some 62% respondents agree and 37% of them vary agree while the remaing 1 % disagree. It means that almost all (99%) of *pesantren* leaders realize the most important problems faced by Muslims are stupidity, poverty and backwardness.

In unswearing the statement : "Muslims now should accumulate weapon to face the enemy of Islam" some 30 % of them agree and 4 % of them vary agree while 57% of them disagree and 3% very disagree. The remaing 6% are doubt. It means that although most of the leaders of *pesantren* (60%) disagree to accumulate weapon there ara many (34%) who see weapon as the imortant tool to defend Islam. It also means that goodness, truth and justice according to same religious leaders should be achived through power.

Concerning suicide bomb, when faced by statement : " Suicide bomb to destroy the interest of the West especially United State of America is part of *jihad*" 61% of them disagree and 13% of them very disagree while 13% agree and 3% very agree. The remaing 10% are doubt. It means that although most of *pesantren* leaders (74%) not condoning the act of suicide bomb to destroy the West but some of them (16%) still embracing the sadening opinion by allowing suicide bomb to destroy United States.

When faced with statement : "Osama bin Laden is an Islamic warrior strives to combat state terrorism performed by United State and Israel" 36% of responents agree and 3% of them very agree while 25% disagree and 3 % very disagree. The remaining 33 % doubt. It means that there is an ambivalence attitude among *pesantren* leaders ini dealing with Osama bin Laden.

In dealing with the statement : “what is done by Amrozi, Imam Samudra, Abu Dujana and the others is a form of *jihad* needed for current time” some 67% of them disagree and 12% very disagree. 18 % in doubt and the remaining 3 % agree. It means that although Osama bin Laden as well as Amrozi can be called terrorist using religion to justify violence , they are differently judged by *pepsantren* leaders. If to Osama bin Laden they are exposed the ambivalence attitude, to Amrozi cs they are more firm in condemning. The worrying attitude is there are *pesantren* leaders who still agree to what was done by Amrozzi cs and acknowledged it as part of *jihad*.

#### *On violence and intolerance*

When encountered by statement : “People who contempt Islam or the Koran such as Kurt Westergaard (Denmark citizen who made cartoon deemed blasphemy to the prophet Muhammad) and Geert Wilders (Dutch citizen who made the film “Fitna”) are allowed to be killed” most respondents 50% agree and 9 % very agree. While 23% disagree and 2% very disagree. The remaining 16 % are in doubt. It means that Muslims commonly still sensitive to speechs or expressions deemed insult or blasphemy to Islam. It also means that the potential of “clash of civilization” is occured in certain degree.

When faced by statement : “Muslims principally impossible to build eternal peace coexistence with non Muslims or infidels” 28% of respondents agree and 5% very agree. While 43 % disagree, 5% very disagree and 9 % in doubt. It means that potential conflict between Muslims and non-Muslims is high.

When faced by statement : “Islamic sect which performed *shalat* in two languages ( Indonesian and Arabic) was allowed to be attacked and destroyed” 32% of them agree and 7% very agree. While 52% disagree and 1% very disagree. The remaining 8 % are in doubt. It means that potential conflict not only occured between Muslims and non-Muslim but also between Muslims and Muslims . It also means that some Muslims still feel obliged to supervise the way of worship conducted by others , including what is considered privat matter such as *shalat*.

When faced by statement : “Ahmadiyah sect should be disbanded in order to not grow in Indonesia.” most of respondents (53%) agree with 32% vary agree. Whereas 6% disagree and 9% in doubt. It means that most of *pesantren* leaders not ready to live in peace with sects considered deviant and blasphemy to orthodox tenet.

When faced by statement: “Islamic teaching allowed husband to beat his *nuzuz* ( not obedient) wife” 68% respondents agree and 5% very agree, 22% disagree and 1% very disagree. While the remaining 4% are in doubt. It means that the potential domestic violence legitimized by religion is still high although domestic violence has been included in criminal code in Indonnesia law system.

When faced by statement : “ *Jilid* (whipping) and *rajam* (stoning to death) is still appropriate to be imposed to adulterer as penalty” 55% respondents agree, 20% very agree, 20% disagree and the remaining 5% are in doubt. It means that corporal punishment that has been abolished in advanced country still believed by some *pesantren* leaders as something good.

When faced by statement : “The act of FPI (Islam Defenders Front) in attacking the site of prostitution and gambling should be praised and supported.” 49% of them agree , 7 % very agree and 29% disagree , 1% very disagree while the remaining 14 % are in doubt. It means that there are many *pesantren* leaders based on religious conviction allowed the emergence of violence and taking the law by their own hand.

When faced by statement : “Islamic teaching allowed parents to beat their children who reach 10 years age if they are refused to perform shalat ritual” some 71% of them agree and 22% very agree, 2% in doubt while the remaining 5% are disagree. It means that although intended to make good or for educational purpose , the emergence of domestic violence is potentially still high because almost all respondents (93%) allowed parent’s act to beat their children refused to perform *shalat*.

When faced by statement : “ The cutting of female clitoris is part of teaching endorsed by Islam” 73% of them agree, 6% very agree, 9 % in doubt and 12% disagree. It means the acts which in international community had been categorized as violence against women still supported by large amount of *pesantren* leaders (79%) for religious reason, although the Indonesian ministry of health has released circular prohibiting paramedic to serve female circumcise.

When faced by statement: “Woman Muslims not allowed becoming president” 42% of them agree, 3% very agree, 40% disagree, 2% very disagree while the remaining 13% are in doubt. It means that gender biased opinion or discrimination against woman still lingers in *pesantren*.

When faced by statement: Church or the place of worship for Christians / Catholics built without official permit should be destroyed or closed” 61% of them agree, 14% very agree, 16% disagree and the remaining 9% are in doubt.

When faced by statement: “Muslims should refuse application to build Church in their area” 60% of them agree, 26% very agree, 11% not agree while the remaining 3% are in doubt. It means that the resistance of *pesantren* leaders toward church very high as indicated by 86% of them supports Muslims who refuse to give permit for Church building in their area.

When faced by statement: “Muslims not allowed telling Merry Christmas and attended the invitation to celebrate Natal conducted by Christians” 64% of them agree, 17 % very agree, 6% disagree and the remaining 13% are in doubt.

When faced by statement: “Death penalty for apostasy still relevant to be applied at this time” 42% of them agrees, 2% very agree, 39% not agree, 1% very disagrees, while the remaining 16 % are in doubt.

When faced by statement: “Cutting hand for thief is still relevant for today” 44% of them agree, 11% very agree, 32% not agree while the remaining 13% are in doubt.

When faced by statement: “Non Muslims not allowed becoming head of state in Indonesia” 55% of them agree, 22% very agree, 20% not agree, 1% very disagree, and the remaining 2% are in doubt.

*On political power, Islamic state, Pancasila state and NKRI (Unitary State of Republic of Indonesia)*



When faced by statement: "Muhammad PBH (peace be upon him) beside prophet (religious leader), he also head of state (political leader)" 46% of them agree, 50% very agree, 2% not agree while the remaining 2% are in doubt.

When faced by statement: "Muslims should strive to build the unity of political leadership in the world level by establishing the caliphate system" 66% of them agree, 12% very agree, 14% not agree, 1% very disagrees, while the remaining 7% are in doubt.

When faced by statement: "Muslims should become member of the political party based on Islam" 53% of them agree, 8% very agree, 25% not agree, while the remaining 14% are in doubt.

When faced by statement : "Islam is religion and state (*din wa daulah*), thererofe secularism or other tenets separated religion from political affairs should be prevented" 69% of them agree, 9% very agree, 7% not agree and the remaining 15% are doubt.

When faced by statement: "The movement to make Indonesia an Islamic state no more needed" 51% of them agree, 2% very agree, 37% not agree, 1 % very disagrees while the remaining 9% are in doubt.

When faced by statement: "Indonesia can be grouped to Islamic state" 47% of them agree, 6% very agree, 39% not agree, while the remaining 8% are in doubt.

When faced by statement: "Muslims should always strive to include Jakarta Carter as part of the Indonesian constitution" some 51% agree, 7% very agree, 21% not agree, 1% very disagrees and the remaining 20% are in doubt.

When faced by statement: "Some regional *sharia* inspired bylaws should be supported by all Muslims" some 71 % agree, 18% very agree, 9% not agree and 2% in doubt.

When faced by statement: "For Indonesian Muslims, Pancasila state should be accepted as the final of Muslims political ideal" 58% agree, 7 % very agree, 27% not agree while the remaining 8% are in doubt.

When faced by statement : "Muslims obliged to support and defend the Unitary State of Republic Indonesia (NKRI) by whatever means "73% of them agree, 19% very agree, 4% not agree while the remaining 4% are in doubt.

## Discussion, comparison and analysis

### *Jihad and terrorism*

Considering that *jihad* actually has broader meaning instead of merely battle or war it is very normal when most of *pesantren* leaders objected to equate *jihad* with war or other violence attack. What is strange is that many *pesantren* leaders still indirectly agree to equate *jihad* with violence. However when they are asked about their opinion on what is more important between *jihadul akbar* or *jihad al-nafs* (self restrain) and *jihadul asghar* or war, almost all of them opt *jihad al nafs* as the more important *jihad*. As well as when they asked about combating stupidity, poverty and backwardness of Muslims, almost one hundred percent (99%) of *pesantren* leaders agree that all of them are *jihad* needed for current time. It means that they are

indirectly acknowledged and realize that the most important problems faced by Muslims are stupidity, poverty and backwardness.

Although combating stupidly, poverty and backwardness, according to *pesantren* leaders, are the most problem should be faced by Muslims recently, many of them still keep the opinion that Muslims should accumulate weapon for preparation to war. It means that there are many who see weapon maybe including weapon of mass destruction as the important tool to defend Islam.

There is an important fact concerning suicide bomb, when aimed to destroy the interest of the West particularly United State of America. While the most *pesantren* leaders not agree to the radical Islam used suicide bomb to destroy the interest of the West, there are many who still embraced the saddening opinion by allowing suicide bomb to destroy United State and considered it as a part of *jihad*. There is an important fact concerning suicide bomb, when aimed to destroy the interest of the West particularly United State of America. While the most *pesantren* leaders not agree to the radical Islam used suicide bomb to destroy the interest of the West, there are many who still embraced the saddening opinion by allowing suicide bomb to destroy United State and considered it as a part of *jihad*. How *pesantren* leaders see Osama bin Laden, the most fugitive terrorist in the eyes of the West? While most of *pesantren* leaders either disagree or in doubt about the status of Osama, there are signifacant amount of them who see Osama bin Laden as an Islamic warrior who strives to combat state terrorism performed by United State and Israel.

If the attitude of *pesantren* leaders toward Osama bin Laden seems ambivalence, their attitude toward domestic terrorist convicts such as Amrozi and Imam Samudra was more clear. Almost all of them cannot condone to what is done by Amrozi and Imam Samudra and they also refused to name their acts which caused more than 200 people lose their lives as a form of *jihad*. Unfortunately there are *pesantren* leaders who still agree to what is done by Amrozi etc and accepted it as part of *jihad*.

What is important from this finding is that the potential of radicalism among Muslims is remain. These findings were supported by other survey such as what is conducted by Gallup. According to survey conducted by Gallup, only seven percent of total Muslims population in the World embraces radical politics. The majority of Muslims see the West positively they wish the West able to respect them, help them better , teach technology and develop their economics and the most important one is not support authoritarian regime in Muslims countries.<sup>102</sup>

Concerning terrorism in Indonesia, although the three of convicted terrorists (Amrozi, Imam Samudra and Ali Ghufron) has been executed, the threat remains. What's the best approach for the government to effectively combat terrorism is by studying the real drivers for terrorism. The real drivers for terrorism in Indonesia, according to Sidney Jones, are local; the conflict in Ambon and Poso were the best recruitment tools terrorist organizations ever had. The government needs to understand how communal tensions arise, know where potential hot spots are, and take steps to ensure they do not erupt into violence, while at the same time protect the rights of religious minorities. It needs to look areas where Christian and Muslim

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<sup>102</sup> See interview conducted by Bunga Manggiasih, Oktamandjaya, dan Grace S. Gandhi from Tempo magazine when John Louis Esposito visited Indonesia in the mid of August 2008. This interview received by writer through mailing list.

proselytizing may come in conflict. The government also needs to look at the schools – some 40 in all- affiliated with *Jamaah Islamiyah* (JI), and understand the aspirations of the youth being educated there. JI as political organization may be much weaker than it was five years ago, but as social network, it will be around for generation.<sup>103</sup>

In addition to what is suggested by Jones, the government as well as Muslims organization, particularly Nahdlatul Ulama which historically has close relationship with *pesantren*, should join hand in preventing the possible infiltration of JI mindset<sup>104</sup> which are commonly dominated by Wahhabi radical to Islamic boarding schools in Indonesia. Muslims in general should also promote the authentic jihad with more stressing on peace and mutual coexistence.<sup>105</sup>

### *On violence and intolerance*

Not like rhetoric often released by prominent Muslim leader that Islam is blessing for universe (*rahmatan lil alamin*) or the supreme religion (*ya'lu wala yu'la alaih*); the fact revealed in this survey not totally supported it. If Islam really was a supreme religion why Muslims should bother or fear to the attitude or speech deemed insulting to Islam. If really Islam inherently superior there aren't any able to undermine it. When some of Muslims, in this case *pesantren* leaders still support the opinion that anyone who undermines the prophet Muhammad or Islam such as Kurt Westergaard and Geert Wilders were allowed to be killed, it means that they actually not really believe the supremacy of Islam. Muslims commonly still sensitive to speeches or expressions deemed insulting or blaspheming to Islam. It also means that for certain degree, the potential of "clash of civilization" is still there. The potential conflict between Muslims and non-Muslim more clear when we see that the significant amount of Muslims leaders still kept the opinion that Muslims principally impossible to build eternal peace coexistence with non Muslims or infidels.

Westergaard himself ever said that his drawing was not disigned to offend Muslims but instead aimed at those who use religion to justify violence. "I have no problems with Muslims. I made a cartoon which was aimed at the terrorists who use an interpretation of Islam as their spiritual dynamite."<sup>106</sup>

When Denmark newspaper *Jyllands Posten* published a satirical cartoon of the Prophet Muhammad in September 2005, it sparked outrage among Muslims worldwide, but not all Muslim scholars agreed with this response.

French Muslim Soheib Bencheikh, former Grand Mufti in Marseilles, was one scholar who thought the response was excessive. "Muslims were wrong to protest against Danes when cartoonists lampooned the Prophet. This is what freedom of expression means. Even if people mock, at least they're showing an interest in Islam and starting to recognize it as part of society" he said.

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<sup>103</sup> See Sidney Jones , *Terror threats remain, even with bombers now dead*, The Jakarta Post, Nov.10,2008

<sup>104</sup> For further understanding of JI mindset see: Nurrohman :*Questioning JI's way of thinking* , The Jakarta Post, July 6,2007

<sup>105</sup> See Nurrohman, *Authentic jihad is about peace and coexistence*, The Jakarta Post, February 10, 2007

<sup>106</sup> See Kim Mclaughlin, *Danis Prophet cartoonist says has no regrets.*, The Jakarta Post, March 30,2008

Intolerance and potential conflict not only occurred between Muslims and non Muslims but also between Muslims and Muslims themselves. There are significant amount of *pesantren* leaders who see Islamic sects that performed *shalat* in two languages (Indonesian and Arabic) were allowed to be attacked and destroyed. When some Muslims still feel obliged to supervise the way of worship conducted by others, including what is considered private matter such as *shalat* it means that differences among Muslims not become blessing yet. The "experiment" to make *shalat* in two languages has compelled Yusman Roy to be jailed for more than one year.

Although religious freedom and freedom of expression are guaranteed by Indonesian constitution, blasphemy still be considered a crime by Indonesian law. Blasphemy is cited in Article 156a of the Criminal Code. In this article it is stated that someone can be sentenced to five years in prison if he or she intentionally in public utters feelings or performs activities deemed to incite hatred, abuse or blaspheme against religions officially recognized in Indonesia. Although the words "intentionally in public" may be difficult to define in court, they are very important. A person accused of undermining religion often has no intention of insulting others. In addition, the number of religious principles protected from any insulting act might be different according to some scholars. For instance, can using Arabic when performing regular prayer be categorized as a principle of religion? Can a person performing prayer in Arabic and Indonesian, like Yusman Roy, be deemed a blasphemer?

Unfortunately, while accusations of blasphemy against Yusman Roy could not be justified in court, Yusman Roy was still imprisoned, but not for breaking Article 156a. He was imprisoned under another article and, it seems, by the result of public pressure. After leaving the prison, the leaders of *Pondok Iktikaf Ngaji Lelaku*, in Malang regency East Java, is not free to conduct what he believed.

In addition to the evidence that intolerance still there is that most of *pesantren* leaders not ready to live in peace with sects considered deviant and blasphemy to orthodox tenet. Therefore many of them endorsed the opinion said that Ahmadiyah sect should be disbanded in order to not grow in Indonesia. In Ahmadiyah's case there are three main problems. The first problem relates to their belief that Mirza Ghulam Ahmad is a prophet because he received a revelation. Secondly is the problem related to terminology, such as is what Ghulam Ahmad claims to have received from God a revelation, and can his followers be called Muslims? The third problem concerns the accusations of blasphemy against Ahmadiyah followers.

It is not easy to verify one's confession to receive revelation. One of the problems behind the Ahmadiyah controversy is how to know and understand revelation when someone feels that he or she has received it. According to the Koran, God has given revelation to many persons in human history. There are many prophets in this world. Besides the names of prophets mentioned in the Koran there are still many that are not mentioned. Therefore some even speculate the wise men in history like Plato and Socrates may also have been prophets. When all or most Muslims believe the prophet Muhammad is the last prophet the question is whether the revelations also ended. All Muslims scholars, at least according to my knowledge, admit the revelation still goes on. But they don't call it revelation (*wahyu*) but inspiration (*ilham*). Separating revelation from inspiration is important in theological Muslims' discourse because they believe that *wahyu* as a high level of

revelation comes from God, while inspiration that may be good comes from an angel and inspiration that is bad comes from Satan. In other words, revelation is always good while inspiration can be sometimes good and sometimes bad.

How we can differentiate between revelation and inspiration? Is what Mirza Ghulam Ahmad received truly revelation or just inspiration? It is difficult to answer because the receiver of each has the same feeling in the sense he feels informed by a source external to him. Iranian scholar Abdulkarim Soroush says that in our modern age we can understand revelation by using the metaphor of poetry. As one Muslim philosopher has put it: Revelation is higher poetry. Poetry is a means of knowledge that works differently from science or philosophy. The poet feels that he is informed by a source external to him; that he receives something. However, Soroush's explanation fails to clearly distinguish the difference between revelation and inspiration. No one can verify a revelation claim. So it is dependent on people whether they trust his or her confession or not. In the matter of belief, it's actually the domain of God.

Hence, true believers should not depend merely on the texts or sentences reportedly acquired from revelation. Revelations should be ready to be confronted by reason. Religious texts should be ready to be critically studied. Independent reasoning (*ijtihad*) is highly respected in Islam.

Since all Muslims principally agree that revelation or more precisely inspiration from God still goes on, the difference between Ahmadiyah and other Muslims is likely merely semantics. Ahmadiyah called the inspiration received by Ghulam Ahmad revelation and named him a prophet while others called it inspiration and named him just a reformer or religious leader.<sup>107</sup>

The potential domestic violence legitimized by religion is still high although domestic violence has been included in criminal code in Indonesian law system. When faced by statement: "Islamic teaching allowed husband to beat his *nuzuz* (not obedient) wife" the majority of respondents agree. Although intended to make good or for educational purpose, the emergence of violence against children is potentially still high because almost all *pesantren* leaders (93%) allowed parent's act to beat their children refused to perform *shalat*. The acts which in international community had been categorized as violence against women still supported by large amount of *pesantren* leaders for religious reason. Although the Indonesian ministry of health has released circular prohibiting paramedic to serve female circumcise, the majority of *pesantren* leaders (79%) agree when faced by statement: "The cutting of female clitoris is part of teaching endorsed by Islam" The gender biased opinion or discrimination against woman still lingers in *pesantren*. When faced by statement: "Woman Muslims not allowed becoming president" most of them agree.

In daily lives women are still often marginalized, cornered and treated as creatures that are worth less than men. This treatment originates not only from the values preserved in the established culture but also from the law and religious interpretations. While culture is a human construct, some people still see it as a given unchangeable reality. For decades, even after Indonesia won its independence, women were often perceived, in Javanese tradition, as *kanca wingking swarga nunut neraka katut*, (Javanese proverb -- companion behind, following the husband to heaven or dragged by the husband to hell). Ironically, many Muslims, including

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<sup>107</sup> See, Nurrohman, *Revelation and reason beyond Ahmadiyah issue*, The Jakarta Post, May 2, 2008.

scholars, often use the Koran to justify their treatment of women. When this treatment comes from tradition or religious interpretation, and is then strengthened by biased laws, women then become the victim of triple oppression: tradition, religion and law. Oppression then becomes institutionalized and structured.<sup>108</sup>

While torture or corporal punishment has been abolished in advanced countries, some *pesantren* leaders still believe it as something good. When faced by statement : “ *Jilid* (whipping) and *rajam* (stoning to death) is still appropriate to be imposed to adulterer as penalty” majority of respondents agree. Adultery or fornication as immoral act was accepted by all Muslims. But the way the adulterer treated or punished is something that should be studied carefully.

Adultery or extra marital sex there is accident occurred in the prophet Muhammad era. When the culprit coming to the prophet and confessed that he has committed adultery and asked to be punished to death, the prophet turned his face and refused to listen. Since the act had been accomplished in secret, and thus public order and morality did not suffer, the matter concerned only the culprit, who, is his soul and conscience, had simply to beg the Lord’s forgiveness. The man, however earnestly renewed his confession and his request, so as to prove his sincerity toward God and to deter other from committing the same act; again, the prophet turned his face. The same thing happened a third time, but when the culprit repeated his words a fourth time, the prophet asked him if he had become insane, or had really admitted being guilty of the deed. First by refusing to listen, then by questioning the fact, the prophet promoted him to retract, but the man so insisted, that in the end his demand had to be heard. At the moment of execution, however, he regretted his declaration and run away; the punishment squad ran after him and killed him. The prophet then pronounced his famous sentence: “would that you had left him alive: he would have repented, and God would have been merciful to him.”

This story indicates that in the prophet period sinful act like adultery if conducted in secret areas, not witnessed by four witnesses who present at the accomplishment of the sexual act, can be categorized as private matter. So it is suggested to violators to repent and ask for God forgiveness.<sup>109</sup>

Beside corporal punishment applied to adultery, majority of *pesantren* leaders agree to use this kind of punishment to thief. When faced by statement: “amputation of the hand of the thief is still relevant for today” most of them agree.

There are many *pesantren* leaders, based on religious conviction, allowed the emergence of violence and taking the law by their own hand. When faced by statement : “The act of FPI (Islam Defenders Front) in attacking the site of prostitution and gambling should be praised and supported.”the majority of them agree. This attack often related to the concept of *amar ma’ruf nahi munkar* ( ordering something considered good and preventing something considered bad ) derived from the prophet tradition. The prophet said *man ra’a minkum munkaran fal yughayyir biyadihi* (whoever sees something considered bad please change it with utmost effort). So it is correct if we said that the prophet is really an agent of change in his society. Unfortunately the hardliners among Muslims often translated or replaced the word *falyughayyir* (to change) with *falyudammir* (to destroy). Admittedly it is difficult and need more effort, strive and patient to change something without

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<sup>108</sup> See. Nurrohman, *Women caught in cycle of injustice*, The Jakarta Post, October23, 2007.

<sup>109</sup> See.Nurrohman, *Be careful criminalizing adultery*, The Jakarta Post, June 16,2005

destroying it. It needs deep study to understand factors caused it and the interrelation between one factors to another. When some hardliners in Bandung eager to close and destroy Saritem area ( place notoriously used by prostitute to serve their clients) KH Imam Sonhaji, chief of lawmaker body in Bandung NU district, for instance, instead, choose to establish Daar al-Taubah boarding schools in this location and approached them peacefully. It means, instead of destroying this area, Sonhaji chooses to gradually change this area through the establishment of *pesantren*.

The resistance and intolerance toward church and Christianity is also high among *pesantren* leaders. When faced by statement: "Church or the place of worship for Christians / Catholics built without official permit should be destroyed or closed" as well as when faced by statement "Muslims should refuse application to build Church in their area" most of them agree. Their attitude not different when faced by statement: "Muslims not allowed to tell Marry Christmas and attended the invitation to celebrate Natal conducted by Christians".

Open and honest dialog between Muslims and Christians in Indonesia is badly needed because of the frequent church attacks. Simon Timorason, the head of the Java chapter of the Indonesian Churches Communication Forum, has recorded 70 disputes involving residents and Christian communities using private homes as churches since 2004. Most of the cases took place in Bandung regency, as well as Bekasi, Bogor, Garut, Surakarta and Subang. Simon said the main problem faced by a Christian community intending to apply for a permit to establish a church was opposition from Muslim communities in the area.

It is saddening to see the growing spirit of revenge among religious followers. Christians often complain it is difficult for them to get official permits to build a church. Meanwhile, in areas where Muslims are the minority, they have the same complaint about mosques. If this way of thinking continues, the spirit of national brotherhood and national unity will be endangered. Muslims who nurture hatred toward other religions act in contradiction to the meaning of *bismillah al-rahman al-rahim* and *assalamualaikum* (peace be upon you).

Under a revised joint decree issued by Religious Affairs Minister Maftuh Basyuni, the establishment of a house of worship must gain the approval of at least 60 local residents and have a minimum of 90 followers. If a Christian community cannot fulfill the requirements to build a "permanent church", why can't their Muslim neighbors help them find a temporary location that can be used to hold religious services?

Haroon Siddiqui, an Indian-Canadian scholar, once told this story: "When Muhammad was in Medina, a Christian delegation went to see him. After he had met them, what did he tell them? He said you can hold your service in my mosque if you want."

Preventing others from conducting religious services is tantamount to repudiating their basic rights. Religious services held in temporary locations should be allowed and protected, because the Constitution guarantees religious freedom for all Indonesians. Fears that the religious activities of Christians will lead Muslims to convert are ridiculous because faith is very mysterious; it is God's domain. Even the Prophet Muhammad could not lure his uncle Abu Thalib to become a believer.

The existence of the Forum for Religious Harmony, or FKUB, a new institution mandated by joint ministerial decree, is in question if they cannot halt

and resolve the problems beyond the frequent attacks perpetrated by a group calling itself the Anti-Apostate Movement Alliance (AGAP), such as recently occurred at Sidang Jemaat Allah Church at the Gading Tutuka housing complex in Soreang, Bandung.

As a last resort, if Christians have trouble finding a location to build a church, it is the duty of the government to provide one. If the authorities in this country cannot prevent the acts of groups who take the law into their own hands, and if religious minority groups continue to be oppressed, don't be surprised if there is growing concern in the international community.

From the side of the Catholics, bolstering dialog with Muslims should be understood as bolstering Vatican Conciliation II (1962-1965), the formal acceptance by the Catholic Church of pluralism and recognizing the truths of other religions. In line with Vatican Conciliation II, professor Boland, a Protestant priest, said Christ's mercy in Indonesian society should be manifested by looking at the goodness of Muslims as Muslims.<sup>110</sup>

Although the Koran clearly states that to be believers or not believers are up to human beings themselves many *pesantren* leaders still fear of the apostasy. When faced by statement: "Death penalty for apostasy still relevant to be applied at this time" most of them agree.

While some verses of the Koran clearly respect freedom of religion, many Muslims still follow the Islamic law formulated by ancient scholars, without considering changing circumstances, the aim of sharia and the spirit of the Koran itself. While the prophet Muhammad never imposed the death sentence in a case of apostasy, many Muslims uphold invalid tradition said that anyone who rejected Islam for another religion should be executed. While some scholars see sharia as a law which can undergo evolution, others consider it sacred, immutable, eternal and unchangeable. While some progressive scholars in the modern age have vowed to pave the way for *ijtihad* (individual reasoning in deciding on such issues on Islamic law), some people in the Islamic world still depend on established schools of law.

The grand four schools of Islamic jurisprudence, Hanafi, Maliki, Syafii and Hambali, which unanimously agree on the death penalty for apostasy, still have significant influence in the Islamic world, including in Indonesia, where the Syafii School is dominant.

Most proponents of sharia I interviewed in Aceh agreed that apostasy should be punishable with a death sentence. Muslim Ibrahim, chairperson of Aceh Ulema Consultative Council said that a Muslim who converted from Islam to another religion should be ordered, under Islamic law, to return and repent. If the order is ignored at least three times, the death sentence can be executed. This, he said, was in accordance with the Koran (al-Anfal: 38) and the credible hadiths (prophet tradition) narrated by Bukhari and Muslim.

Baihaqi AK, another proponent of sharia law in Aceh, acknowledged Islam upheld freedom of religion. But once someone embraces Islam, he or she should be bound by norms stipulated in Islamic law. Baihaqi did not dismiss the possibility of imposing the death penalty for apostasy in Aceh as it was in line with Islamic law. Severe punishments in Islamic criminal law in Aceh are absent as the Constitution and other laws governing Aceh special autonomy block them.

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<sup>110</sup> See Nurrohman, Church attacks underline need for religious dialog, The Jakarta Post, June 23, 2007



It is therefore necessary for sharia or Islamic law to be reformed in order to adjust to new circumstances and avoid human rights contradictions. There are legal maxims in Islamic law said that changes to the law are possible if the circumstances have changed and the existence of law depends on reasoning that can be used to develop Islamic law.

To reform Islamic law Muslims need "a new paradigm", which should be based on the founding purpose of sharia and avoid dependence on the texts, especially the texts of hadits. Sharia is surely aimed to protect religious freedom and freedom of thought. A failure to reform laws which no longer suit the social climate could have two possible results: Muslims will either abandon some Islamic laws or live in a backward society<sup>111</sup>.

Many *pesantren* leaders also still uphold discriminative attitude by supporting the opinion that said non Muslims not allowed becoming head of state in Indonesia.

*On political power, Islamic state, Pancasila state and NKRI (Unitary State of Republic of Indonesia)*

Political jargon such as *al-Islam din wa dawlah* likely was very popular among Muslims. Therefore when *pesantren* leaders faced by statement: "Islam is religion and state (*din wa daulah*)" most of them (78%) agree. This jargon often seeks its legitimacy from historical experience when the prophet Muhammad trusted to become leaders in Medina society. Many scholars such as Montgomery Watt see that Muhammad when in Medina not only as a prophet but also as a statesman. In concordance with their acceptant of *Islam din wa dawlah*, almost all of them (96%) also agree to the statement that Muhammad PBH (peace be upon him) beside prophet (religious leader), he also head of state (political leader). Unless Ali Abd Raziq, likely there isn't any scholars who publicly refuse the fact that Muhammad became the head of state in Medina.

The question is whether this position picked by the prophet based on his own preference or it is part of his message directly ordained by God. Although there isn't any verse or paragraph in the Koran which directly order Muhammad SAW to establish political government, many scholars in Islamic tradition who said that established political government (*imamah/ khilafah*) is part of religious duty. If really religion cannot be separated from politics the problem emergence is how this unity not produce the tyrant or authoritarian ruler? How the unification between religion and power not make state become theocratic and oppose democracy. How this unity still gives room for religious freedom which commonly protected by constitution?

The high support from *pesantren* leaders toward Muslims to involve in political game to gain power indicate that many *pesantren* leaders sometime forget that the supreme mission of prophet as claimed by himself is not politics but moral.

While many *pesantren* leaders agree that Muslims should strive to build the unity of political leadership in the world level by establishing the caliphate system, there are many questions which still difficult to be answered. Such as how the shape

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<sup>111</sup> See Nurrohman Abdul Rahman apostasy case and the need to reform sharia, The Jakarta Post, April 19, 2006

of the caliphate system that will be built whether it will adhere theocratic system or democratic. Where is the center of government of caliphate system, how the fate the nation states which until now embraced by all of Muslims countries.

The height of support for caliphate system indirectly indicates that they are not wholeheartedly supporting Pancasila state as the final state for Muslims. In other word Pancasila state is only a middle target before Muslims have the power to establish political leadership in the world level by reviving caliphate system. The height of support to political party based on Islam indicates that the majority of *pesantren* leaders (61%) still maintain formalistic Islam although Islamic party in Indonesian history never gained majority support from the people. Therefore it can be understood if the significant amount of *pesantren* leaders (38%) not agrees when faced by statement: "The movement to make Indonesia an Islamic state no more needed". Their disagreement can be interpreted that many of them indirectly still support to the movement to change Indonesia becoming Islamic state, considering Indonesia according to many of them (39%) cannot be named Islamic state.

Unfortunately, concerning Islamic state, there are many questions that difficult to be answered by people who aspire to make Islamic state such as the place of women and non-Muslim. Would women be allowed to become national leaders, and would their Islamic state accommodate demands from the international community on subjects such as freedom of expression, religious freedom, and freedom to assemble?

Other questions include whether non-Muslim would be placed as "second-class citizens" or *dzimmi*, as delineated in the classic *Dar al-Islam* concept. Whether an Islamic state would respect and democratically involve all interests in decision making. To what extent could an Islamic state intervene in how people observe their religion? Whether the sharia Islamic law would automatically be taken as positive law and be interpreted by clerics with certain positions like those in Iran?

Scholars such as Nurcholish Madjid and Amien Rais have maintained that an Islamic State (*dauwlah Islamiyyah*) is a modern issue that cannot be traced back to the Koran and the traditions of the Prophet (*hadith*), leading to a conclusion that the concept is nonexistent in the Koran. One who studies the history of the Islamic political thought, however, would note that propagators of Islamic state often use the concepts of *dar al-Islam* and *dar al-harbi* for their reference. Scholars such as Nurcholish Madjid and Amien Rais have maintained that an Islamic State (*dauwlah Islamiyyah*) is a modern issue that cannot be traced back to the Koran and the traditions of the Prophet (*hadits*), leading to a conclusion that the concept is nonexistent in the Koran. One who studies the history of the Islamic political thought, however, would note that propagators of Islamic state often use the concepts of *dar al-Islam* and *dar al-harbi* for their reference.

The classic theory says there are three definitions of *dar al-Islam*. The first defines *dar al-Islam* as a *dar* (region) inhabited and led by Muslims and where the sharia or Islamic law can be fully implemented. That is why Javid Iqbal in his book, *The Concept of Islamic State*, requires three conditions for the establishment of an Islamic state, namely that it is ruled by Muslims, the majority of its population are Muslim and the Islamic law is used as the state law.

Solahuddin Wahid in his paper entitled *Negara Sekuler No, Negara Islam No*, also offered three criteria for an Islamic state: that it makes Islam the basis of the state,

that it regards Muslims as the first class citizens and relegates non-Muslims to second-class citizenship, and that it implements the *sharia* to all citizens.

By these definitions, Indonesia is not a *dar al-Islam* or an Islamic state.

The second definition of *darul Islam* places emphasis on the question of state ruler. Al-Rafi'i, one of the figures in the Syafi'i school of thought, for instance, said that a country can be named *dar al-Islam* as long as the ruler is a Muslim. The last definition deems the implementation of the *sharia* as the main criterion of an Islamic state.

Imam Abu Yusuf, a figure in the Hanafi school, for instance, said that a country was *dar al-Islam* as long as the *sharia* was implemented there even though the majority of its population was not Muslim. Conversely a country should be named *dar al-harbi* if the Islamic law cannot be implemented there even though the majority of its population is Muslim. By the second and third definitions Indonesia can be called *darul Islam* because since its inception its rulers have always been Muslim and people can implement the *sharia* freely here. Therefore, those who are not satisfied with this state and campaign for an Islamic state should first clarify the model of an Islamic state that they wish to build.<sup>112</sup>

While *sharia* law as social ethic surely can be accomplished by Muslims themselves wherever and whenever they are live, without depending on state, many *pesantren* leaders still see the state as an important instrument to implement *sharia* as evidenced by their support to Jakarta Carter. When faced by statement: "Muslims should always strive to include Jakarta Carter as part of the Indonesian constitution", majority of them (58%) agree. Their highly agreement (71%) to the statement "Some regional *sharia* inspired bylaws should be supported by all Muslims" gave additional evidence that they are still hope state as the protector of *sharia* law.

The interesting point is although they are splinted in accepting Pancasila as the final ideology almost all of them agree to support and defend unitary state of Republic Indonesia (NKRI) when faced by statement: "Muslims obliged to support and defend the Unitary State of Republic Indonesia (NKRI) by whatever means" 92% of them agree.

## Conclusions and recommendations

### *Conclusions*

- 1) *Pesantren* leaders in five areas surveyed (Indramayu, Cirebon, Kuningan, Majalengka dan Ciamis) commonly view that *jihad* is the important tenet of Islam. *Jihad* not identical with war or terrorism. They are commonly blasted terrorism used *jihad* flag. Although they admitted that some of the meaning of *jihad* is a war but *jihad* in this sense as little *jihad*. The great *jihad* is *jihad* to conquer their carnal desire. The great *jihad* needed i curent time is *jihad* to combat stupidity, poverty and backwardness. However there are some of them who still support violence acts perpetrated by some Muslims using *jihad* language.

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<sup>112</sup> See Nurrohman , *Islamic state campaigner need syari'ah interpretation*, The Jakarta Post, May 11, 2002

- 2) *Pesantren* leaders in five areas surveyed (Indramayu, Cirebon, Kuningan, Majalengka dan Ciamis) commonly agree that deviance and heresy should be straightened, vices in society should be prevented as part of *amar ma'ruf nahi munkar*. However they are different in treating violence act using religious symbol. Many *pesantren* leaders who still support or condoning such violence acts, so it is potentially can erupt conflict and violence in society.
- 3) *Pesantren* leaders in five areas surveyed (Indramayu, Cirebon, Kuningan, Majalengka dan Ciamis) commonly view that Islam is religion and state. *Islam din wa daulah*. This understanding originated from the view that Muhammad SAW beside prophet also head of state.

Generally the result of survey confirmed the prior assumption that some of *pesantren* in West Java still developed religious understanding can be deemed as a form of justification to violence and in concordance with the political ideal of radical Islam.

### *Recommendations*

From the early beginning this research based on assumption: *the more Muslims give their support for certain Islamic teaching legitimizing the use of violence, the more violence will happen*. This survey also based on assumption *the more Muslims give support to political ideology of radical group, the future of Pancasila ideology and democracy in Indonesia are in danger*.

- 1) Considering that conflict and violence among other originated from the mindset in understanding religion, the religious understanding supported tolerance, moderate and inclusive should be included in *pesantren* curriculum.
- 2) Considering the factors caused conflict can be vary, the solution should also be approached through various approaches comprehensively including economics, politics, law, education and cultural approach.
- 3) In order to decrease or to pressure the development of radical or extreme religious understanding, the government needs to continuously encourage *pesantren* that have developed moderate understanding and supervise *pesantren* which still developed extreme or radical understanding.
- 4) Toward *pesantren* which still maintained radical or conservative understanding, they should not be treated harshly but through dialog accompanied by support so they are ready to broaden their horizon and renewed their commitment on nationality.
- 5) Considering West Java has close relationship with history of radical Islam as evidenced by the establishment of Dar al-Islam, the research about radical Islam need to be continuously performed so the potential of conflict and violence can be early detected.

## **AMBIVALENCY OR FLEXIBILITY: The position of religion in Indonesian constitution**

Although directed to same attitude or case the use of language often denote different meaning and connotation. Hypocrisy and ambivalence for instance often used to denote something considered negative while flexibility and elasticity often used to something considered positive. In relation between religion and state, when Indonesia assessed as neither theocratic or secular, someone can easily say that it proves that Indonesia is flexible and the other ambivalence attitude with all of its consequences. In one side Indonesia assured freedom of religion as mandated by its constitution. It means that becoming adherent of one religion is just optional. Atheist should be allowed to exist. . Someone can't be forced to embrace certain religion. But in other side state ideology mentioned the belief in one God. Is it mean that all Indonesian obliged to embrace religion ? Why until now there is no single law clearly obliged Indonesian to embrace at least one religion who they believe in it ? It is the problem that J. Soedjati Djihadono addressed in his article entitled *The birth of Pancasila: unfolding tragedy*. ( *The Jakarta Post*, June 1, 2006). Djihadono suggests that we need to use inter-religious dialogs to develop common , universal human values and he acknowledges that it will take a long process of learning to develop it.

Of course , inter-religious dialogs was important , but it can't be used to solve the actual problem because the core of problem lied on the unclear relation between religious institution and state institution in our constitution and unclear area which state can middle religious affair. Where is the place of religious institution in our constitution and how far or what kinds of aspect of religious life that state allowed to intervene it ?

Religious education , in my mind, is one of the constitutional duty that state or government should perform it. State obliged to promote religion but to become believer is fully depend on of each individuals. Each citizens freely to embrace or not embrace religion, state or government not allowed to intervene it. It is correct if judges mentioned in each of their decrees or decisions: on behalf of justice based the one of God.( *Demi keadilan berdasarkan ketuhanan yang Maha Esa.*) because judges represent state.

In Muslims world the relation between political institution and religious institution faced crucial problem when the question directed to determine the sovereignty. MUI (Indonesian Ulema Council) can be used as an example of the unclear position. Our constitution not acknowledged MUI as state institution or government institution. MUI in my mind, except MPU in Aceh, can't be included to government institution. But in daily activities their budget supported by government. To make the position of MUI more clear in our political and religious life , the status of MUI should be raised. At national level , MUI can replaced the omitted DPA ( State Advisory Council) but it should be widened in order to include

other non Islamic religion so the suitable name is Religious Council or Religious Committee. The task of Religious committee are to give advise to government about religious issues, to promote pluralism and religious tolerance and understanding and to engage inter faith or multi faith dialog and promoting common universal values.

### **QUESTIONING STONING TO DEATH AS A PUNISHMENT FOR ADULTERY<sup>113</sup>**

Allowing adulterers to be stoned to death is not just improper but is generally perceived as uncivilized nowadays. Stoning is neither in line with the Indonesian legal system, nor with the spirit of how the Prophet Muhammad dealt with adulterers.

During the time of the Prophet, an adulterer came to the Prophet and confessed he had committed adultery and asked to be punished by death. The Prophet turned his head and refused to listen. Since the act of adultery had been accomplished in secret, and thus public order and morality had not suffered, the matter concerned only the culprit, who, for his soul and conscience, had simply to beg the Lord's forgiveness. The man, however, earnestly renewed his confession and his request, so as to prove his sincerity toward God and to deter others from committing the same sin; and again, the prophet turned his head.

The same thing happened for the third time, but when the culprit repeated his words a fourth time, the prophet asked him if he had become insane, or had really admitted to being guilty of the deed. First by refusing to listen, then by questioning the fact, the prophet prompted him to retract his request, but the man insisted so, that, in the end his demand had to be met. At the moment of execution, however, the man regretted his declaration of guilt and ran away; the punishment squad ran after him and killed him. The Prophet then pronounced his famous sentence: "would that you had left him alive: he would have repented, and God would have been merciful to him."

This story indicates that, at the time of the Prophet, a sinful act like adultery, if conducted in secret, could be categorized as a private matter. Thus violators were encouraged to repent and ask God for forgiveness. It also indicates that punishment, in the case of adultery, of one hundred lashes for unmarried people or stoning to death for a married person, is optional and can be changed to another form of punishment. As part of the unitary system of Indonesia, local regulations in Aceh should not contradict higher law.

It is right that many Muslims, not only in Aceh but also in other part of Indonesia, still uphold the conservative understanding of sharia law (fiqh). A survey conducted by the Indonesian Survey Institute (LSI) in 2006 with 2000 respondents

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<sup>113</sup> Published by The Jakarta Post, October 1, 2009

from various backgrounds showed that 45 percent of them agreed that adultery should be punished by stoning to death (rajam).

Supporters of this kind of punishment often argue that rājam is God's law and, therefore, it must be better than human law. This argument has at least two weaknesses. First, stoning is not directly mentioned in the Koran; there is no single verse in the Koran that speaks of stoning as a form of punishment.

Second, not all punishments mentioned in the Koran were supposed to be applied textually, literally and eternally. There were many kinds of Islamic teaching that were adopted from local, or Arabic, culture at that time.

Mahmoud Mohamed Taha, in his book *The Second Message of Islam*, among others, said that jihad in the sense of war, slavery, discrimination between men and women, polygamy, divorce and hijab (segregation of men and women) was not genuine Islamic teaching.

Fazlur Rahman, a noted scholar from Pakistan who has significant influence on Indonesian scholars such as Nurcholish Madjid and Syafii Ma'arif, never said the Koran was entirely the word of God, but that it was wholly the sayings of the Prophet Muhammad.

The Koran was a divine response, through the memory and the mind of the Prophet toward the Arab socio-moral situation at that time, especially the problems of Mecca as a trading society.

Therefore, the spirit of the Koran is the moral spirit, which stresses monotheism and social justice.

Moral norms are eternal, that is what is called God's laws (*hukum Allah*). "The eternity of the Koran's specific legal content was laid on its moral principles not in literally wordily norms," Rahman added.

Many Muslims do not realize that respecting human rights is the basic principle of Islamic teaching.

George Maqdisi, in his book *The Rise of Humanism in Islam* said: Islamic civilization arose out of the notion of the urgency of respecting humanity and humanism, a notion that believes in human dignity as natural or *fitriah*.

It means there is no contradiction between human rights and Islam. Islam encourages human rights and human rights that are applied in Muslim society will increase Muslims' dignity. Khaled Abou El-Fadl, a professor in Islamic law from UCLA, said that: People who argue that they have to prioritize God's rights over human rights are ignorant about the classical *fiqh* literature of the previous *ulema*.

Those *ulema* stated that human rights must be prioritized over God's right (*'haqqul insân muqaddam 'ala haqqil Ilâh*), because Allah was well capable of defending His rights in the hereafter, while humans had to defend their own rights. A book written in the third century of Hejra mentioned that when there was a contradiction between laws, the more humanistic one (*'arfaq bin nâs*) should be chosen. When Aceh Deputy Governor Muhammad Nazar says, "It is final that the Aceh administration will not enforce stoning for Islamic sharia law violators. In Islam, the law must protect its citizens' human rights," he actually has sufficient backing from Islamic history and authoritative references. The Acehnese are still able to apply sharia law in their daily lives but they should adopt an inclusive, contextual model instead of an exclusive, formalistic and textual model of sharia application.

**ISLAM, DEMOCRACY AND GOOD GOVERNANCE IN THE POST NEW  
ORDER INDONESIA:  
CHALLENGES AND OPPORTUNITIES <sup>114</sup>**

*Background*

Indonesians, particularly Muslims, maybe proud as their nation not only the most populous Muslim country in the world but also became the third largest democratic country after United State and India. Hilary Clinton, state secretary of United State, when visited Indonesia on February 2009 used this fact not only to praise Indonesia but also to prove the compatibility of Islam, democracy and modernity. She said "Islam, democracy and modernity cannot only coexist but thrive together,". "As I travel around the world over the next years, I will be saying to people, if you want to know whether Islam, democracy, modernity, and women's rights can coexist, go to Indonesia." she added.

The praise also comes from OIC (The Organization of Islamic Conference) Secretary-General Ekmeleddin Ihsanoglu when he visited Jakarta on March this year. He said "What you have achieved here is what we are trying to reach at the global level." "It is good when Christians are invited to Muslim celebrations and Muslims also come to their neighbors' Christian celebrations." he added.

The polling conducted by the Indonesian Survey Institute (LSI) in 2006 revealed that 82 percent of the Indonesian Muslims believed that democracy was compatible with Islam and the state ideology of Pancasila. When the Malindo Institute conducted a poll in 2007 to 100 leaders of *pesantren* (Islamic boarding school) from Cianjur, Tasikmalaya and Garut, in West Java, the result also, relatively the same. More then 76% of them agree that democracy not contradictory with Islamic teaching. In 2008, when this institute conducted the same survey in five regencies; Cirebon, Indramayu, Kuningan, Majalengka and Ciamis , also in West Java, the result also not so different. Some 79 percent of *Pesantren* leaders believed that democracy was compatible with Islam.

These surveys suggest that although most Muslims in Indonesia endorsed the concept of democracy there are still a few Muslims who see that democracy was not compatible with Islam. From the early beginning there are many things that potentially can challenge the new democratic regime in Indonesia. From theological perspective, there is a challenge come from a few Muslims who see democracy not compatible with Islam. From cultural perspective there are some Indonesians who enjoyed feudalistic culture which still deeply embedded in society. From structural perspective there are many law and regulation which still hampering the development of democracy.

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<sup>114</sup> This paper is presented in the "Islam, Democracy and Good Governance" conference , organized by the Training Indonesia's Young Leaders Program (Leiden University) in cooperation with the Ministry of Religious Affairs (Jakarta) and Institut Agama Islam Negeri Walisongo (IAIN Walisongo), in Novotel Semarang from October 6-8, 2009.



The 2008 global competitiveness report launched by the World Economic Forum on competitiveness ranked Indonesia 55th out of 134. According to Transparency International's CPI in 2006, 2007 and 2008, Indonesia remains one of the world's most corrupt countries. The country ranks 130th among 163 countries surveyed in 2006, and 143rd among 179 countries surveyed in 2007. Although Indonesia managed to improve its position to 126th among 180 states surveyed in 2008, this is still not sufficient since some ASEAN countries are better in combating corruption, including Vietnam, Thailand and Malaysia. Another survey conducted by the Corruption Eradication Commission (KPK) in 2008 on public sector integrity, gives an indication that government officials remains corrupt.

In addition, if some quantitative indicators released by many pollsters can be used to measure the implementation of good governance in Indonesia as well as in Muslims' countries, it can be said that the application of good governance is still poor. Susilo Bambang Yudhoyono, Indonesia's president, in his address to Muslims leaders said "If we look at the world's 25 biggest economies, the United States of America at the top of the list with GDP of about US\$11 trillion. In the top 25, there are only three Muslim majority countries: Turkey, Indonesia and Saudi Arabia. If we look at the world's top trading nations. No Muslim country is in the top 10 or top 20 traders. If we look at the world's human developing index we will find no Muslim country in the top 10, top 20 or top 30 best performing nations. Only if we expand the list to the top 50 will you find five Muslim societies - Brunei, Bahrain, Kuwait, Qatar and United Arab Emirates- between the ranking of 33 and 47. How about global competitiveness? Well of the top 20 most competitive countries, there are not single Muslim country. According to UNICEF, over 4.3 million children under the age of five in OIC countries die each year from preventable diseases and malnutrition.<sup>115</sup>

If democracy cannot brings peace, justice and prosperity it is feared that Muslims' trust on democracy will decline and Indonesian Muslim's pride of becoming the third largest democratic country will disappear. But since peace, justice and prosperity actually more related to good governance, this paper will explore Islam and democracy, Islam and good governance ,then continued by challenges and opportunities faced by post New Order regime in Indonesia.

### *Islam and Democracy*

Democracy etymologically means people sovereignty. In a simple understanding democracy is government ruled by the all or majority of people. Abraham Lincoln, in his speech in Gettysburg, 1864, describes democracy as government of the people, by the people, and for the people. But in its development democracy is not merely understood as government ruled by majority. Democracy also should override tyranny, protecting human rights and enforcing the rule of law. There is a causality relationship between democracy and human rights. It means that human rights can only be protected in democratic state and democracy able to flourish only in state that respected human rights. Democracy also requires checks and balances among the branch of government. Tyranny which was conducted by majority or minority is contradictory with the spirit of democracy.

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<sup>115</sup> Susilo Bambang Yudhoyono, *Muslims capable of driving globalism*, The Jakarta Post, April 28, 2006

Respecting *syuro* (deliberation) along side with the voices of majority, protecting human rights and enforcing the rule of law are principles that were very appreciated in Islamic teaching. If deliberation which frequently commanded in the Koran not able to reach consensus, it is natural when decision made by the voices of majority. The concept of deliberation in order to reach consensus is very familiar in Islamic teaching through the concept of *ijma*. The *ijma* itself sometime contains a consensus and sometime contains the voices of majority. When the *Ijma*, further developed in modern context, the meaning of it, borrowing Fazlur Rahman words, is a multiple effort of thinking minds -- some naturally better than others, and some better than others in various areas -- which confront each other in an open arena of debate, resulting eventually in overall consensus.

The Koran said that every body has the same position as vicegerent (*khalifah*) of Allah on earth. "It is He who hath made you (His) agents, inheritors of the earth" (Al-An'am 6:165). Everybody has the right to participate in decision making process, especially when it concerns public matters. Everybody irrespective of their religion has the right to contribute in making this world better for all.

A basic understanding of humanness, human rights and human kindness is that everyone has equal dignity as human before being Christian, Jew, Hindu, Buddhist, atheist, straight, gay, and so forth. If people belief in God, but they use different terms for God, then they share that humility before God. If some believe and others do not believe in God, they still share that human kindness. The Koran uses the term "children of Adam".

American thinker, George Maqdisi, in his book entitles *The Rise of Humanism in Islam*, stated that Islamic civilization arouse out of the notion on the urgency of respecting humanity and humanism, a notion that believes in human's dignity as a '*fitrah* or nature. It means that there is no contradiction between human rights and Islam. Islam encourages human rights and human right that was implemented in Muslims society will raise Muslims dignity.

Further more, Khaled Abou El-Fadl, a professor of Islamic Law at UCLA, even said that people who argue that they have to prioritize God' rights over human rights, are ignorant about the classical *fiqh* literature of the previous ulema. Those ulema stated that human rights must be prioritized over God's right ('*haqqul insân muqaddam `ala haqqil Ilâh* ), because Allah is well capable of defending His rights in the hereafter, while humans have to defend their own rights. A book written in the third century of *Hejra* mentioned that when there is a contradiction between laws; the more humanistic one ('*arfaq bin nâs* ) should be chosen.

So it is understood if protecting human rights has long been preserved by Muslims scholars through what they are called as the five purposes of sharia (*maqasid al-syari'ah* or *kulliyatul khams*) there are protecting religion and belief (*hifdzu al-din*), protecting mind (*hifdzul aql*), protecting property (*hifdzu al-mal*), protecting life (*hifdzu al-nafs*), and protecting humans race or heredity (*hifdzu al-nasl*). Protecting religion means that religious freedom and belief should be guaranteed. All humans are free to be adherents of religion, to be a believers or non believers. There is no coercion in religion (*la ikraha fi al-din*). People cannot be punished because of having religious interpretation differs with others. Protecting mind means that freedom of opinion, freedom of speech, freedom of expression should be guaranteed. People, for instance, cannot be persecuted merely because they have different opinion with the mainstream. Protecting property means that each person has an equal right in

possessing property. Property be it belong to private or public should be guarded. Protecting life means that everyone forbidden to kill other or terminate other right to live. Protecting humans race or heredity means that some body forbidden to cheat his or her origin or his or her parents.

Upholding the rule of law in order to bring justice even to the “enemy” is very commended in the Koran. “Let not the hatred of other to you make you swerve to wrong and depart from justice. Be just; that is next to piety.” (al-Ma’idah 5:8)

### *Islam and Good Governance*

Since the downfall of New Order regime and replaced by the reform movement, the term of good governance is so popular. Almost in every important moment this term usually quoted. In short, good governance becomes popular discourse in society although people understand is with different meanings. Some people equated good governance with good government in the sense that good government should uphold good governance, in which it should be characterized by strong legitimacy, accountability, competency, and respecting on human rights. Other defines good governance as direct translation of democracy which its civic culture sustained it. One definition drawn up by Seppo Tiihonen , a Finnish scholar , said that: it is a process , where rules and well-functioning institutions are applied to manage a nation’s affairs in a manner that safeguards democracy, human rights , good order and human security, and economy and efficiency follow in the management of a country’s resources.<sup>116</sup>

Sjahir, a noted Indonesian economics, in his article entitle “Good governance in Indonesia still utopia: critical review on good governance” (*Good governance di Indonesia masih utopia, Tinjauan Kritis Good Governance*), said that good governance, at least, should be supported by three factors. These are political support, the quality of government administration and the capability to arrange, implement and evaluate policies particularly that relates to economic affairs. Whoever leads this country, including who has enough legitimacy cannot conduct good governance if these three elements cannot be mitigated or managed well.

Imagine, if there is government that get strong political support but incapable to make policies that can raise economics growth, its support will gradually decline even vanish. As well as if there is government with good policies and political support but it has serious problem in government administrative that caused dysfunctional situation, this government will face problems, even when the possible success actually has in the front of eyes<sup>117</sup>

Generally, there are some principles that can be used as a tool to measure the quality of government and other institution in applying good governance. These principles are:

- 1) Public or social participation. It means that all of citizens have a vote in decision making process, directly or through legitimate representative

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<sup>116</sup> The Jakarta Post, December 31, 2005

<sup>117</sup> See [MTI] [Jurnal Transparansi Edisi 14/Nov 1999] [Jurnal Transparansi Online], <http://www.transparansi.or.id>

institution. The wide participation of society is based on freedom of congregation, freedom of opinion and constructive participation.

- 2) Enforcing the supremacy of law. It means that justice should be made as the frame and the goal of law, applied without discrimination, including law that protecting human rights.
- 3) Transparency. It means that transparency should be built based on the freedom of information flow. Information of all governance process, institutions should be able to be accessed by each party concerned and the information should be appropriately available in order to be understood and to be monitored.
- 4) Caring to stakeholders. It means that all institution and all process of governance should be directed to serve all interested parties.
- 5) Consensus orientation. It means that good governance should bridges different interest in order to build a whole consensus in dealing with what is the best for all groups in society, and if possible, including the consensus policies and procedures.
- 6) Equality. It means that all citizens in society should have a same chance to improve and to defend their welfare.
- 7) Effective and efficiency. It means that all of the process in government and other institution should able to produce a result that suitable with the need of society by using available resource optimally.
- 8) Accountability. It means that all decision makers in government as well as in private sector and in social organizations should responsible to society or other concerned institution. The form of responsibility is different between one another it depends on the type of organization.
- 9) Strategic vision. It means that leaders and society should have broad and future perspective about good governance and human development and have enough sensitivity toward what is needed to achieve this goal. In addition they also should understand history, culture and social complexity used as the basis of this perspective.

If we use these nine principles of good governance, it is actually not difficult to search these values from Islamic teachings.

Public and social participation, if it is understood as the involvement of people directly or indirectly in decision making process or in determining their own fate in the future, this is in line with the message of verse Q.S. 13:11 that said *innallaha la yughayyiru ma biqawmin hatta yughayyiru ma bi anfasihim* (Surely, God not change to people fate until they are changing their character and mindset). Enforcing the supremacy of law, for instance, is in line with the verse *wa idza hakamtum baina al-nas an tahkumu bil adli* (And when you judge between man and man , that you judge with justice (QS 4:58). Transparency is the appropriate translation of *tabligh* , one of the four character possessed by the prophet Muhammad. Caring to stakeholders, for instance, is in line with the saying of prophet *khairu al-nas anfa'uhum li al-nas* (the best humans are who gave advantages to humans. Consensus orientation, for instance, is in line with the verse *wa amruhum syuro bainahum* ( their affairs are deliberated among them) QS42:38 . Equality, for instance, is in line the verse *kana al nasu ummatan wahidatan* ( humans are single community) QS 2:213. Effective and efficiency, for instance, is in line with the verse *wa la tubadzir tabdzira* (don't waste something beneficial) QS 17:26

Accountability, for instance, is in line with the verse *wa la taqfu ma laisa laka bihi ilmun inna al sam'a al abshara wal fu'ad kullun ula'ika kana 'anhu mas'ula* (And pursue not that of which thou hast no knowledge: for every act of hearing, or of seeing or of (feeling in) the heart will be enquired into (in the day of reckoning). (QS 17:36). Strategic vision, for instance, is in line with the verse *wa lal akhiratu khairu laka minal ula* ( And verily the hereafter will be better for thee than the present) (QS. 93:4) and *wabtaghi fi ma ataka Allahu al dara al-akhirah* ( But seek , with the (wealth) which Allah has bestowed on thee, the home of hereafter.)( QS. 28:77)

Encouraging wider participation from all elements in society has long been practiced by Muhammad since he was very young not yet appointed as prophet. Remember what was done by Muhammad when he was trusted by Mecca people to put black stone (*hajar aswad*) when Ka'ba was renovated. Instead of putting it alone, Muhammad asks all of the community leaders to participate. From the very young people Muhammad was well known as *al-amin* ( trustworthy person).

All Muslims, I think, believed that the prophet Muhammad has four characters which contribute to his success in dealing with social and state affairs. There are *sidiq* (integrity), *amanah* (accountability), *tabligh* (transparency), and *fathonah* (capability). That is why Muhammad PBUH (peace be upon him) was well known as successful businessman and statesman.

When the prophet Muhammad SAW will be trusted to become a ruler in Medina, he together with elements in society formulated "constitution" later known by Medina Charter. Through this charter he promotes some principles, among others are: (a) being a good neighbor (b) mutual help in facing common enemy (c) protecting those persecuted (d) mutual advise and (e) respecting freedom of religion.<sup>118</sup>

According to Nurcholish Madjid the values of Medina such as spoken by the prophet in the last and farewell preaching or *khutbah wada'* comprised about the sacredness of life, property and sacred honor ( *al-dima wa al-amwal wa al-aradl*), have been transformed to Europe through the long chains from the crusade battle , the Italian philosopher Giovanni Pico della Miralonda who in the 1486 addressing an oration on the Dignity of Man , continued by John Lock until Thomas Jefferson who in declaring the independent of America used the formula which similar to the one formulated by the prophet Muhammad, in seeing the sacredness of life, liberty and pursuit of happiness.

### *The Challenges of Democracy and Good Governance*

As mentioned above, although there are some Islamic teachings that endorsed democracy as well as good governance, the challenges remain there. These challenges emerge because although reform movement following the fall of Soeharto in 1998 gave birth to democracy and a sense of freedom, this newly acquired freedom not only been used by pro democracy campaigners but also by entities and people promoting hard line approach. They know that nothing will happen to them right now, unlike under Soeharto. They feel free to preach a narrow minded perspective of life. Thus, religious extremism and radicalism among Muslims are unexpected product of the country's ongoing reform movement. Beside can be seen from

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<sup>118</sup> Munawir Sjadzali, *Islam and Good Governmental System*, Jakarta, INIS, 1991, page 12

theological perspective, challenge also might come from cultural and structural ones.

### *Challenges from theological perspective*

Islam as revealed religion through the prophet Muhammad SAW is static but Muslims interpretation of Islam in facing changing situation is dynamic. Concerning democracy not all Muslims can receive democracy and not all Muslims countries can be grouped in democratic nation. There are a lot of parties opposed to the concept of democracy. The concept of democracy is often contrasted against Islamic values. For some, the sovereignty belong to people is a strange concept. For them the sovereignty should belong to almighty Allah. Therefore reports by Muslim scholars concluding that most Muslim countries are undemocratic come as no surprise. Not all Muslims in this country endorsed democracy. Many Muslim figures still see democracy as Western concept and not compatible with Islam. For them sovereignty belong to God not belong to human.

Although protecting human rights has long preserved by Muslims scholars through what they are called as the five purposes of sharia (*maqasid al-syari'ah* or *kulliyatul khams*) they are differ in translating the meaning of , for instance, protecting religion and belief. For some, protecting religion means protecting the interpretation of mainstream, therefore any interpretation other than mainstream should be prohibited. That is why Ahmadiyah congregation that acknowledged the prophet after the prophet Muhammad deemed defiant and they are prohibited to spread their teachings although they did no physical harm to others. Some Muslims still uphold the opinion that freedom of religion means the freedom to embrace Islam, people free to be or not to be a Muslim. But when they have embraced Islam they are banned to depart from Islam or to be apostasy. Apostasy should be punished to death. When faced by statement: "death penalty is still relevant to be applied to apostasy" more than 50 percent of *pesantren* leaders in Garut, Tasikmalaya and Cianjur agree. More than 90 percent of them also agree when faced by two statements: "Ahmadiyah congregation is defiant sect so they cannot call themselves Muslims" and "Ahmadiyah sect should be disbanded in order to not develop in Indonesia".

Although *musyawarah mufakat* (deliberation directed by wisdom to reach consensus) is widely accepted among Muslims, not all of them can easily accept democracy. To some scholars, deliberation is not the same as democracy. Deliberation is ordered by the Koran, while democracy is not. The main argument rejecting democracy is that the truth and the good cannot be dictated by the vote of the majority. Gambling, adultery, liquor are all forbidden under religious teaching, which cannot be changed even if the majority of people so desire. The truth and the good should come from God. God is the final measure of the truth. Human beings did not understand the truth and what is good until God revealed them through His prophet.

Therefore, the attitude of Muslims toward norms that are clearly mentioned in the Koran is just taken for granted. These types of regulations are deemed sacred and immutable. It should be imposed wherever and whenever. They are outside the domain of *ijtihad* (interpretation). To the *mutasyabihat* (verses that have no clear meaning), laymen are not allowed to interpret them. Muslims should leave these

matters to ulemas or clerics who are qualified to understand Islamic teaching. Clerics should search for it individually or collectively.

That is why, some Muslim scholars, such as al-Maududi a noted Pakistani scholar, only accepted a limited form of democracy called teo-democracy. According to this view, democracy must be directed by religious tenets or sharia (Islamic law). To guarantee that the law does not contradict sharia, the body, consisted of of *ulemas*, should be established to oversee the law-making process that is commonly conducted by the legislature. That body should have the power to halt or revoke the law, even though it has been accepted by the legislature, if they deem it contravene to sharia.

Sharia is viewed as an exclusive law rather than an inclusive law which offers laymen the opportunity to participate in formulating its rule. Iran adopts this view. Taken from the concept suggested by Khomaeni, Iran has a body named the Guardian Council that has the right to veto legal process conducted by legislative body. This model of interpretation, although it is not democratic and tends to become authoritarian has large numbers of followers in Muslim countries.

Abu Bakar Ba'asyir, a cleric notoriously for radical stance, in commenting the core of Islam and the important of sharia, ever said that: "The core is *tauhid* (the oneness of God). But there are many mistakes in understanding *tauhid*. They think *tauhid* is just belief in God and in the prophet Muhammad. If merely belief to God, it is not different with the Devil. The true *tauhid* is to confess the oneness of Allah and the oneness of God law. This is *tauhid* that should be explained. If you are only confessing the oneness of God but not acknowledged the oneness of God law, your *tauhid* is failure. Allah is the only one we worshipped to. We live only to worship Him. And we only allowed to be regulated by the law of God. This is the real *tauhid*. This is that many don't understand. They think if they have belief to the almighty God it is enough, then they can recklessly nurturing their carnal desire."

In the view of Ba'asyir, "Muslims should belief that Islamic sharia is absolutely correct and excellent suitable for each time and place. He further said that "Muslims very belief is that all of Islamic sharia are absolutely correct and excellent whenever and wherever. Believing to such sharia is dead price, there should be no compromise. This is what we called Muslim. Therefore Muslim do not want to sacrifice sharia to be exchanged by other including on behalf the unity of the nation. The unity is good including with the infidels, we are willing to life in peace with them but it should be in condition, don't abandon Islamic sharia. So the life should be in the umbrella of Islamic sharia. This condition is dead price there is nothing that can be reduced or negotiated. This is what is called (true) believer."<sup>119</sup>

On human and national brotherhood Ba'asyir opposed the concept of human brotherhood and national brotherhood introduced by Abdurrahman Wahid and other clerics in Nahdlatul Ulama. He said that "according to Abdurrahman Wahid, there are three kinds of brotherhood : *ukhuwah Islamiyah*, *ukhuwah basyariyah* and *ukhuwah wathoniyah*. This concept is very dangerous, in Islam there is no brotherhood except

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<sup>119</sup> "...Orang Islam itu sangat mempercayai semua syariat Islam *bener* mutlak dan paling unggul dan sesuai untuk semua jaman dan setiap tempat. Iman terhadap syariat semacam itu harga mati. Maka *nggak* mau diajak kompromi. Inilah yang disebut orang Islam. Oleh karena itu tidak mau mengorbankan syariat demi yang lain. termasuk demi persatuan bangsa. Dia memang menginginkan persatuan, termasuk orang kafir, kita ingin hidup rukun damai dengan mereka. tapi Syaratnya, jangan meninggalkan syariat Islam. Jadi Harus hidup dibawah naungan syariat Islam. Kita bersatu rukun dengan orang kafir. Syarat ini harga mati tidak bisa tidak bisa ditawar. Ini yang disebut mukmin" (sumber :wawancara Januari 2007)

Muslims brotherhood. Outside Islam all are enemy. However in certain condition they can be treated well in line with sharia norms." "According to Islam, world can be divided into two: Islam and *Jahiliyah* (ignorance). Between Islam and *Jahiliyah* there isn't any brotherhood. Between Islam and *Jahiliyah* there is an endurance enmity. Like pure water and dirty water when they were mixed, all becoming dirty water there is no third water. Therefore the concept of *ukhuwah basyariyah* (human brotherhood) and *ukhuwah wathaniyah* (national brotherhood) are poison and dangerous" Ba'asyir added.

In *pesantren* milieu which traditionally claimed as the basis of Nahdlatul Ulama, most of their leaders tend to choose Muslims brotherhood if they faced two options: Muslims brotherhood or national brotherhood. When they faced with statement " Muslims brotherhood (*ukhuwah Islamiyah*) is more important than national brotherhood *ukhuwah wathaniyah* " more than 74 percent of them agree. The sense of nationalism is still need to be endorsed among Muslim community. Many of them feel that they should be treated as first class in this country because of their majority. They are still not ready if this country led by non-Muslim. When faced by statement: "As the majority, Indonesian Muslims deserve special privilege from state" more than 85 percent of *pesantren* leaders agree. When faced by statement "The possibility of non Muslim become head of state should be hampered" more than 90 percent of them agree. They even agree if there is regulation that explicitly requires the head of state a Muslim.

Hizbut Tahrir Indonesia (HTI), is one of the Muslim organization which clearly rejected the concept of Pancasila state and instead proposed the concept *khilafah* (caliphate) which tend to be theocratic. Because, caliphate according to them, is the kind of government ruled by caliph advised by council of religious scholars representing a monolithic interpretation of Islam. Their intense campaign has significant influence among students. Survey conducted by nationalist group in 2006 revealed that 80 percent of university students choose to uphold sharia over Pancasila. The survey revealed that only 4,5 percent of students of prominent state universities in Jakarta, Bandung, Yogyakarta and Malang polled said they believed in Pancasila.

### *Challenges from cultural and traditional values*

Traditional values embraced by some regional communities are hampering efforts to nurture Indonesia's democratic political system. Some cultural practices and beliefs adopted in regional communities were incompatible with democracy. Aristocracy, patriarchy, patronage and caste system - inherited from past local monarchies - were values that still influence certain sections of national community but clash with the ideals of democracy. A strong sense of patriarchy in Hindu island of Bali, for instance, has caused only small number of women participating actively in the province's political processes. Balinese women still have no inheritance rights to their families' properties.

While our system of electing our heads of government - from the national government down to village government - has become democratic, our way of conducting governance cannot be called democratic or precisely not in line with the principles of good governance. Our government bureaucracy is still very feudal in character. The feudalistic culture prevails in the bureaucracy hinders dialogue



mechanism among the rank and file which is actually required to invent new and creative method to help improve public services. It also caused the lack of merit system especially with regard to deployment of the right person to the right post within structural positions in the bureaucracy. The bureaucracy also fails to attract the best brains available in the market, due to low salaries, lack of adequate health care and their reward system.

Feudalistic culture also produced patrimonial state that placed leader and political elite as the holder of power who can dominate economics and political resources. As the holder of political power, the ruler behaved as patron who builds patronage relationship with the clients in unequal position. The clients become subordinate so they fully depend to the patron. They should ready to dedicate and serve the patron if they wish to get an access in economics and political resources. In this circumstance it is difficult to expect all citizens in society have a same chance to improve their welfare. Public or social participation becomes very low. That is why the demand for transparency in governance process still difficult to be materialized in many government office. That is why corruption and collusion in this country is still high. This is why the level of professionalism of more than 3.5 million Indonesian civil servants is among the lowest compared with the other ASIAN countries. The low level of professionalism among civil servant in Indonesia can hinder efforts to push bureaucratic reform in this country.

The feudalistic culture in turn is not only challenge good governance but also democratic atmosphere in a whole. In this circumstance democracy is often understood merely as procedural only not a mean to empower people and their rights.

### *Challenge from structural perspective*

After 10 years of reforms, the aims of legal reform have yet to be fulfilled in Indonesia. It is true that in the level of constitution there are some improvements that had been made. But in the level of laws and its implementation there are some confusing realities. There are many laws or part of its articles that actually no more suitable with the new amended 1945 constitution. The new film law is one of the laws that promote feudalism in the public sphere. This law which passed on Sept. 8, 2009 is far from the spirit of democracy and freedom of expression. This law still regulates the existence of the Censorship Body (Article 58). Censorship Body remind us of the era of Soeharto's regime, when he use it as the extension of authoritarianism.

In the law related to woman rights, for instance, the government actually has ratified the Convention on the Elimination of all form of Discrimination Against Women (CEDAW) in 1984, five years after it was adopted by the UN. But the ratification - which was later on implemented in Law No.7/1984 - was setback. It is still stipulated that the implementation of the law must adjust to Indonesian culture. It's strange because the CEDAW is aimed to affirm women's rights and not adjust to any culture that might oppress women.

State Minister for Women's empowerment Meutia Hatta said "We still have 16 national laws that do not support woman's rights, on top of many regional bylaws that also allow for discrimination. No wonder we have problems of violence and discrimination." Meutia added many women in certain areas still faced problems over dressing and attitude. "Some of the problems are because the review of Marriage

Law No.1/1974 is still not implemented and because of the strong patriarchal system in Indonesia.”. “In more remote areas, people ignored national laws and adopted customary laws that provided far more benefits to men than women,” she added.

The Compilation of Islamic Law (229 articles) that was passed by the instruction of President Soeharto in 1991 and have been used in the Islamic courts throughout Indonesia ever since also contains discriminative articles such as:

- 1) Women cannot bear witness to marriage (article 25)
- 2) Unmarried women must be married by male relatives (article 14)
- 3) Only the husband has the right to earn money ( article 80)
- 4) The man is the head of family and woman is housewife (article 79)
- 5) Polygamy is allowed (article 55-59)
- 6) Only a man may instigate remarriage with his ex-wife (article 163)
- 7) A man receives twice as much inheritance as woman. (article 176)

In order to fully adopting CEDAW(The Convention on the Elimination of All Forms of Discrimination against Women), adopted in 1979 by the UN General Assembly, Indonesia is not alone in facing constrains, other Islamic countries also faced problem, among 38 countries with their Muslims population only six countries that adopted and ratified it without reservation. There are Ghana (signature 1980, ratification 1986), Nigeria (signature 1984, ratification 1985), Philippine (signature 1980, ratification 1980), Senegal ( signature 1980, ratification 1985) Srilangka ( signature 1980, ratification 1981) and Tanzania (signature 1980, ratification 1985). Other countries including Indonesia adopted CEDAW with reservation or declaration.

In sum, in their daily lives women are still often marginalized, cornered and treated as creatures who are worth less than men. This treatment originates not only from the values preserved in the established culture but also from the law and religious interpretations. So it is not exaggerated if said that women was still caught in cycle of injustice in this country.

In relation to religious freedom and pluralism despite the protection from the 1945 constitution, many regulations and ordinances made after local autonomy was introduced stipulate the recognition of six faiths only - Islam, Protestantism, Catholicism, Buddhism, Hinduism and Confucianism. The law on Civil Administration recognizes only the six faiths and deprives other believers of the same basic citizen's rights.

The potential challenge maybe comes from Indonesian Ulema Council (MUI). Ma'ruf Amin, chairman of the fatwa commission of MUI, in commenting on the fatwa rejecting pluralism, said that Islamic values are better than human rights. "We know that Islam comes from God. We don't know who created human rights" he said.<sup>120</sup> This understanding actually not surprised if we are able to see the dilemma faced by Muslim countries.

In Islamic Conference of Foreign Ministers held in Cairo from 9-14 Muharram 1411H (31 July to 5 August 1990), all participants agree to issue the Cairo Declaration on Human Rights in Islam (CDHRI) that will serve as a general guidance for Member States in the field of human rights. Article one of the CDHRI said that: *All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and*

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<sup>120</sup> *The Jakarta Post*, June 5, 2006.

*responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.* This article despite having differences in wording actually has similarities with the article one of Universal Declaration of Human Rights (UDHR). Article one of UDHR said: *all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

It means there is no substantial difference between CDHRI and UDHR in defining human rights. In other world Islamic teaching is compatible with human rights. But despite the suitability and compatibility between Islam and human rights there is potential conflict between sharia law and human rights if Muslims still uphold the traditional and conservative way in interpreting sharia law. Why?, because article 24 of CDHRI or Islamic version of human rights formulated by foreign ministers in Cairo in 1990, said : *all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.* And article 25 said: *the Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.* It means that CDHRI, because of its ambiguities, can be misused by some of conservative groups in Islam to challenge human rights that have been recognized universally. From this point we can see the differences between the CDHRI and the UDHR. While UDHR does not refer to any religion or to the superiority of any group over another, but stresses the absolute equality of all human beings, CDHRI still refer the superiority of one religion.

Therefore, despite some covenants on human rights have been adopted in Indonesian constitution and other related laws, some elite Muslims still facing difficulties in adjusting their old opinion with the "new one".

In relation to judicial power, the wave of reformation following the downfall of the New Order authoritarian regime actually has brought new hope. Through amendment of constitution, Indonesia more defined itself as *Rechtsstaat* or state based on law. (article 1 verse 3 of the amended 1945 constitution). The constitution said that judicial power established to enforce law and justice independently (article 24 of amended 1945 constitution). The judge should possessed integrity and good personality, fairly and professional. (article 24A verse 2 of amended 1945 constitution). The amended 1945 constitution also mandated to establish new institution called Judicial Commission (Komisi Yudisial) in order to maintain the dignity of justice.(Article 24 B of amended 1945 constitution).

But after 10 years of reform, judicial institution still deemed as untouchable institution and it is very slow in responding reform demand. Judicial institution still has negative image in society. The marginalized people were more difficult to access justice. The low performance of our judiciary, where the practice of "judicial corruption" remains excessive was still difficult to be revised. Many court decisions failed to satisfy the public sense of justice and invite controversy. Court decision that do not reflect independence, impartiality, honesty and competence can be seen easily from legal considerations and decisions made by courts, which are not synchronized and often illogical.

In addition, in trying cases, justices in Indonesia still have their eyes fixed on the principle of legality and the formality of the law. This condition results in the judges' lack of attention to the philosophical and sociological elements of cases.

Ironically, there is a sign of resistance of judicial reform in this country. In early

2006, 31 supreme justices filed a judicial review against the Judicial Commission Law to the Constitutional Court, demanding the commission's authority to oversee justices be removed. In what is considered an anti reform ruling, the court granted the request, adding that the commission did not have the power to oversee Constitutional Court justices. "It was a clear sign that there was resistance," Busyro Muqadas , chairman of Judicial Commission said.

So it is understood if the performance of Judicial institution still bad as it can be seen in the results of a survey conducted by the Political and Economic Risk Consultancy (PERC) in 2008, on the judicial systems in Asia, in which Indonesia was ranked 12<sup>th</sup> – far below Singapore which came in 2<sup>nd</sup>.<sup>121</sup>

Misinterpretation on democracy likely still lingers in some people that have structural position in this country for a long time. On democracy, Sukarno, the first president of Indonesia ever said, "If the Indonesian people really are Muslims for the greater part, and if it is true that Islam here is a religion which is alive in the heart of the masses , let us leaders move every one of the people to mobilize as many Muslim delegates as possible for this representative body... Then automatically laws issuing from this people's representative body will be Islamic also... if for instance, Christian desire every letter of the regulations of Indonesian state to conform with the Bible, then let them work themselves to death in order that the greater part of the delegates who enter the Indonesian representative body are Christians"

Understanding democracy simply as a system or mechanism of decision making by the majority may lead to suppress the right of marginal groups. The growth in the number of local ordinances in cities, regencies and districts based on sharia, although these are clearly against the constitution, and against the general interest in public welfare based on justice, likely based on misinterpretation of democracy.

While good governance obliged to protect human rights such as freedom of opinion and freedom of religion, religious intolerance is getting worse in this country, with state agencies, radical groups and community organizations involved in violation of freedom of faith and religion, according to report released Setara institute. The report found 265 cases of violence against religions from January- December last year, a significant increase from only 135 cases in 2007. The Wahid institute also reported that religious violence rose to 232 cases in 2008 from 197 in the previous

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<sup>121</sup> A 2008 survey by Political and Economic Risk Consultancy (PERC) ranked the country's Supreme Court as the worst in Asia. These are the ranks of countries and their score

1. Hong Kong, 1.45
2. Singapore, 1.92
3. Japan, 3.5
4. South Korea, 4.62
5. Taiwan , 4.93.
6. Philippines, 6.10
7. Malaysia , 6.47
8. India, 6.50
9. Thailand , 7.00
10. China, 7.25
11. Vietnam , 8.10
12. INDONESIA, 8.26

Source : Abdul Khalik, *Supreme Court reform in danger: Experts*, the Jakarta Post, September 24, 2008

year.

### *Some opportunities acquired by Indonesia*

Although Indonesia faced some challenges in consolidating democracy, the opportunity remain open particularly if the spirit of reform always be revitalized. Support from the majority of Muslims who see democracy was compatible with Islam is actually a social capital that can be employed to develop democracy further. If Muslims in Indonesia have gave significant influence in making democracy widely acceptable by so many people in Indonesia, it is expected that Muslims also gave significant contribution in boosting good governance in this country. Structurally, the newly amended constitution beside give more protection on human rights it also give more balanced among the branch of government so the checks and balanced mechanism supposedly can be maintained. Press freedom as the fourth pillar of democracy, as well as civil society organization can also boost democracy if they are able to bear their role positively.

The general election that mandated to be held every five years also can be used as opportunity to boost and improve democracy. For anyone who doubts that poorly-educated and most of them being Muslims – could embrace democracy, the Indonesian people proved that such a cynical view is totally wrong. For three consecutive elections since the nation ousted Soeharto in 1988, Indonesians have shown that they are as civilized as any other mature democracy in the world. As a nation we need to move forward to preserve and strengthen our great achievements in democracy, but we also need to remember that democracy is only an intermediate goal, as the ultimate one should be on how we utilize democracy to make this nation better for all its people. In other world how democracy also produced good governance and gradually eliminates the culture of KKN (corruption, collusion and nepotism). Therefore opportunity should also be given to KPK (Corruption Eradication Commission) that have proved able to sent high official to jail.

### *Conclusion/Summery*

Democracy as well as good governance have enough roots and back up in Islamic teaching. Although the majority of Muslims in Indonesia supported democracy, there are some Muslims who still not able to accept democracy. Beside from theological perspective, challenge also might come form cultural and structural ones.

There is still a few Muslims who embraced theology of hatred, discrimination and taking law with their own and not fully able to accept pluralistic sate based on Pancasila. There are some traditional values, such as aristocracy, patriarchy, patronage and caste system these are not compatible with the ideals of democracy. There are also law and bylaw that not in line with the spirit of reform and contradict with Indonesian constitution.

Although Indonesia faced some challenges in consolidating democracy, the opportunity remain open particularly if the spirit of reform always be revitalized. There is a support from the majority of Muslims who see democracy was compatible with Islam. Structurally, the newly amended constitution beside give more protection on human rights ,people sovereignty it also give more balanced among the branch of

government so the checks and balanced mechanism supposedly can be maintained. Press freedom as the fourth pillar of democracy, as well as civil society organization can also boost democracy if they are able to bear their role positively.

While democracy supposedly can be used to push good governance but in reality good governance is not automatically appear in democratic country. Good governance need support from good quality of government administration as well as the capability of bureaucracy to arrange, implement and evaluate policies particularly that relates to economic affairs.

### *Recommendations*

These recommendations are based on challenges of democracy and good governance in Indonesia

- 1) Since Muslims constitute the majority of Indonesian population, Muslims should ready to bear greater burden and ready to be more proactive in promoting democracy.
- 2) Remembering that there is still misunderstanding among few Muslims concerning democracy and human right, moderate and progressive Muslims in Indonesia should be given greater role in promoting and explaining the compatibility between Islam democracy and human rights.
- 3) In order to suppress the growing or the infiltration of Islamic radicalism to Islamic institution, democracy, human rights and good governance should be gradually introduced to *pesantren* (Islamic boarding school) as well as *madrasa* through civic education. In this regard the recent government's efforts to amend the current anti terrorism law need to be supported.
- 4) Cultural barriers of democracy can be addressed, in the short term, through upholding the rule of law but in the long term should be through education.
- 5) Structural barriers gradually can be done by revising law or bylaw by legislative body or by reviewing it through Supreme Court of Constitutional Court.
- 6) Considering the quality of government administration is very important in boosting good governance, efforts to conduct bureaucratic reform should be supported.

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# CHAPTER FOUR

## CULTURE, HUMAN RIGHTS AND OTHER

### WOMEN CAUGHT IN CYCLE OF INJUSTICE <sup>122</sup>

In their daily lives women are still often marginalized, cornered and treated as creatures who are worth less than men. This treatment originates not only from the values preserved in the established culture but also from the law and religious interpretations.

While culture is a human construct, some people still see it as a given unchangeable reality. For decades, even after Indonesia won its independence, women were often perceived, in Javanese tradition, as *kanca wingking swarga nunut neraka katut*, (Javanese proverb -- companion behind, following the husband to heaven or dragged by the husband to hell).

Ironically, many Muslims, including scholars, often use the Koran to justify their treatment of women. When this treatment comes from tradition or religious interpretation, and is then strengthened by biased laws, women then become the victim of triple oppression: tradition, religion and law.

Oppression then becomes institutionalized and structured.

Faqihudin Abdul Kodir, in his book *Hadits and Gender Justice: Understanding the Prophet Traditions*, strives to rectify misunderstandings surrounding the Prophet's actions and behavior.

Since hadiths (written traditions of the Prophet Muhammad) are deemed by Muslims a secondary source of Islamic teaching after the Koran, Muslims acknowledge the pivotal role of the hadiths in explaining the meaning of Koran.

Unfortunately, although codified more than one century after the death of the Prophet, many Muslims, including Islamic jurists, follow the hadiths without critical assessment.

They use hadiths without examining the text or pondering the social context of when they were released.

Many hadiths have weaknesses in their text, and many hadiths cannot be understood properly if merely read from the text without considering the social context.

In his book, Abdul Kodir conveyed some examples of hadiths often used by conservative Muslims to ban women's involvement in public or political affairs; hadiths used to prohibit woman from leadership roles; and hadiths that produce unbalanced marriages between men and women.

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<sup>122</sup> Published by The Jakarta Post, October 23,2007

In describing the crucial political role of woman, Abdul Kodir presents a dramatic moment after the treaty of al-Hudaibiyah agreed to by the Prophet. Most of his companions emotionally regarded the treaty as a humiliation for Muslims. Consequently, many of them either refused to accept it or did not support the decision made by the Prophet. Despite their refusal, the Prophet went ahead with it.

The treaty required that the Prophet Muhammad should not be named as the Messenger of Allah. Further, the content of the treaty was felt to be very detrimental to Muslims, because Muslims were forced to return to Medina and not allowed to set foot in Mecca under any circumstance, even for the purpose of the pilgrimage. In return a ceasefire was announced.

In response to this treaty, Umar (ra) personally approached the Prophet and asked: "You are a prophet aren't you?" "Yes," the Prophet replied. "Aren't we on the right path, and they are the misled ones?" "Yes." "Then why do we have to accept being humiliated by this treaty?" The Prophet said, "I am the Messenger of Allah, I will never disobey what Allah has ordered me to do, and I am convinced that Allah will help me."

Another interesting, but also controversial, issue among Muslims today is polygamy. Abdul Kodir points out how with little or no regard to the historical context, men declare that they will wed multiple wives because they are following the precedent of the Prophet and thus acting virtuously.

"Conversely though, they do not follow the many other practices of the Prophet which ensured that women were treated with justice and love. For example, the Prophet's additional wives were women who are poor, old, and ignored by society. In this, we know that the Prophet was marrying these women to protect them, and not for satisfying the desire for creating a harem," the scholar wrote.

Learning from Abdul Kodir, we need to shift Muslims' paradigm in reading the texts from textual normative-deductive into contextual historic-inductive by using the guidance of the principles of Islamic teachings in upholding justice and equality among humankind.

Since the gender inequality often seen in society consists of ideological and institutional malaise, efforts to reconstruct society should be done through these two factors. Religion has a huge influence in Muslim-dominated Indonesia, therefore reforming the way of Muslims in understanding religious messages is important as a step toward reform.

## UNDERSTANDING MUSLIMS OBJECTION AND REACTION ON PROPHET VISUALIZATION <sup>123</sup>

If the prophet Muhammad depicted by words as a handsome, brave, friendly, can be trusted, like to defend the weakly people such as poor, children, widows and elderly, shortly, all the positive, respected and admirable adjectives, without to be visualized in the form of image, film or caricature will Muslims get protest on it?

The *Barzanji* book which describes the physical shape of the prophet Muhammad such as the color of his skin, his hair, his tall or his posture, the way he walk and so on is common to be read by *santri*(religious) community every Thursday evening. Tradition which showed Muslims loving to their prophet, in my knowledge, never questioned unless by several peoples who have a bit of worried of negative impact such as the emergence of individual cult toward prophet. In some places particularly in rural *santri* community this tradition still ongoing.

In 1976, when *The Message*, film describing the message of prophet Muhammad, widespread for the first time in the West, Indonesia Ulema Council (MUI) in their meeting decided : 1) refused to depict the prophet Muhammad in whatever shape both in the image or in the film. 2) if there is any depiction of the prophet of Muhammad in the shape of image or film, they urge Government to prohibit this film or image entering Indonesia territory.

But after, the Ulemas lead by Prof Dr.Hamka directly saw this film and proved that there isn't any depiction of the Prophet Muhammad at all, they are, through a long discussion among them, declared in March 23, 1980, that there is no objection of the spreading of the *Message* film in Indonesia territory.

The decision of MUI not accompanied by explanation or reason why the image of the prophet Muhammad be banned to be showed. Some explanations said that the prohibition to expose the prophet image in the shape of painting or film based on the fear that the prophet will be cult, idolized as a god then worshiped by their followers.

This fear are without unreason. Islam is abiding the abstract concept of God. The Koran said *laisa ka mitslihi syai'un* ( there isn't any similar with God) and *lam yalid wa lam yulad walam yakun lahu kufuwan ahad*( He begetteth not, Nor is He begotten and there is none Like unto Him.) .

Therefore visualization of God is absolutely forbidden in Islam. The prophet Muhammad as the messenger of God often described, especially in Islamic mysticism, as the prototype of perfect human being (*Insan Kamil*) . He not only a messenger but also a vicegerent of Him in the earth. Compared to other human being, in Muslim conviction, he is the most and the perfect person who implemented God characters. In Arabic language he often pronounced as *basyarun la kalbasyari* ( the outstanding human being) or in Indonesian popular language maybe *manusia setengah dewa* ( demigod).

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<sup>123</sup> Never published before

That is why , visualization of The prophet Muhammad in what ever shape such as statue , image , painting and so forth, is in highly risk for it prone to be worshipped as a God such as what occurred in Christianity toward Jesus.

In Islamic law perspective it can be said that prohibition on God visualization is absolute (*haram lidzatihi*) while the prohibition to visualize the prophet Muhammad is because negative excesses allegedly will emerge(*haram lighairihi*).

When the prophet still alive , he ever banned his follower to visit the shrine or grave but later he revoke this ban. This banning was connected with the fear that Muslims will worship the grave. After this fear disappear , the prophet allowed Muslims to visit grave because there are so many benefices such as reminded somebody on the existence of the hereafter or the second life.

The question is , if the negative excesses can be eliminated whether Muslims allowed to visualize their prophet in the form of image, statue or painting?

I myself chose the opinion that the visualization of the prophet still forbidden (*haram*), while depiction the prophet by proper and beautiful words is allowable.

Then what is the correlation between this discussion with the widespread protest by Muslim in the World toward twelve caricatures depicting the prophet Muhammad published in *Jyllands-Posten* Denmark newspaper ? To my mind , this newspaper, viewed from Islamic law perspective, has violated two offenses. Firstly, it violates because it is printing visual depiction of the prophet. Secondly, and it is more heavier, it is violate because it described the prophet Muhammad as terrorist with a bomb in his turban. The second violation contained humiliation to Muslim societies. Should just the first violation performed by this newspaper Muslim reaction maybe not as wide as today.

Although Denmark news had violate norms of Islamic law , Muslims supposedly treated them properly. To burn Denmark mission is a manifestation of excessive anarchic reaction , while demanding execution or death punishment for who made caricatures is also has no strong ground in Islamic law. Islamic law as ethical norms which should be respected by Muslim is highly in respect to forgiveness , particularly if the offender has ask for apology and forgiveness.

## **TRANSLATING ISLAM IN THE MULTICULTURAL WORLD: (Indonesian effort and experience in building peace and harmony among religious follower) <sup>124</sup>**

### **Introduction**

The polling conducted by the Indonesian Survey Institute (LSI) shows religious radicalism and extremism remain strong in the nation with the world's largest Muslim population. The survey of 1,092 Muslim respondents found that 9 percent of them felt the Bali bombings were justified as a form of "jihad to defend Islam". <sup>125</sup> The survey found a significant number of Indonesian Muslims sympathize with the violent tactics of the al-Qaeda-linked regional terrorist group Jamaah Islamiyah, which has been fighting for the establishment of an Islamic state in Southeast Asia. In the survey , 17.4 percent of respondents said they supported Jamaah Islamiyah, 16.1 percent backed the Indonesian Mujahidin Council (MMI) and 7.2 percent supported Hizbut Tahrir Indonesia. The latter two are hard-line Islamic group campaigning for the introduction of sharia in the country.<sup>126</sup>

Another survey , conducted from 2001 to March 2006 by the Center for Islamic and Social Studies (PPIM) involving 1,200 Muslims in 30 of the country's 33 provinces showed that 43.5 percent of respondents were ready to wage war on threatening non-Muslim groups, 40 percent would use violence against those blaspheming Islam and 14.7 percent would tear down churches without official permits. Even 0.1 percent of them admitting their involvement in demolishing or arson of churches constructed without official permits. While 1.3 percent of them had committed "intimidation" against those they considered had blasphemed Islam.

The percentage looks very small but it is very high in its real figure when you note that 85 percent , or 200 million, of the country's 230 million population are Muslims" PPIM researcher Jajat Burhanudin said.<sup>127</sup>

These figures suggest that the challenge faced by Indonesian Muslims and non-Muslim in building peace and harmony among religious follower still high.

### **The gaps between Islamic ideals and the reality of Muslim world**

There are so many gaps between Islamic values and the reality of Muslim world. Some scholars who visited Western country even said that in the West they obtain Islam without Muslim but in the Muslim world they obtain Muslims without Islam. These are some example

Islam promoting peace co existence among tribes ethnic and nations. The Koran QS: al-Hujurat 49: 13 said : "O mankind ! we created you from a single (pair) of a male and a female , and made you into nations and tribes, that ye may know each other ( not that ye may despise (each other). Verily the most honored of you in

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<sup>124</sup> From the paper presented in International seminar on theme *Translating Islam in the multicultural world for peace justice and welfare*, hold by Bandung Sunan Gunung Djati State Islamic University at Savoy Homan Hotel in Bandung in November 8-9 , 2006

<sup>125</sup> The Jakarta Post, October 16,2006.

<sup>126</sup> The Jakarta Post, October 20,2006

<sup>127</sup> The Jakarta Post, July 28,2006

the sight of Allah is (he who is) the most righteous of you” . But in reality there are still many sectarian conflict in the world such as between Syi’i and Sunni in Iraq.

Islam promoted religious freedom and there is no coercion in religion. The Koran QS al-Baqarah 2:259 said: “ Yet there is no compulsion in religion: truth stands out clear from error: whoever reject evil and believes in Allah hath grasped the most trustworthy handhold.” .Abdullah Yusuf Ali in his commentary said that compulsion is incompatible with religion because religion depends upon faith and will and these would be meaningless if induced by force. <sup>128</sup> The Koran QS al-Kafirun 109:6 said : “To you be your way and to me mine” Even the Prophet Muhammad prohibited to compel others. The Koran QS Yunus 10:99 said: “ If it had been the Lord will, they would all have believed all who are on earth. Wilt thou then compel mankind , against their will, to believe”

Yusuf Ali in his commentary said that compelling faith to other include : imposing it on others by physical compulsion or any other forms of compulsion such as social pressure , or inducements held out by wealth or position, or other adventitious advantages. Forced faith is no faith, Ali added in his commentary.<sup>129</sup> But in reality some Muslims scholars still uphold death punishment for apostasy.

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Islam treated the emergence of sect in religion as natural consequences of the different way of thinking, experience and circumstance. The diversity of religious sect should be submitted to God. The Koran QS al-An’am 6: 159 said : “As for who divide their religion and break up into sects, thou hast no part in them in the least: their affair is with Allah: He will in the end tell them the truth of all they did.”

Islam promoted their follower to engage in *syuro* and democracy but there is still authoritarian interpretation among Muslims. Khaled Abou El-Fadl in his book *Speaking in God's name , Islamic Law, Authority and Women* (2003), as quoted by Hilaly Basya said : “ Authoritarianism is the act of locking or captivating the will of Divine or the will of the text into the specific determination as inevitable , final and conclusive” According to Abou El-Fadl the problem of interpretation is authoritarianism. It will become stronger if it is supported by power such as a regime and the elite of institutionalized religion. This kind of authoritarianism often serves the political interest of a regime that wishes to protect the status quo and extend its own hegemony over the people. Such an attitude will destroy Islamic civilization. We have to criticize an authority that is dogmatic. Throughout history, dogmatic interpretations have produced violence and oppression. <sup>131</sup>

Islam respected ahl al-Kitab especially Christian by not judging and not generalize them as infidel and the enemy of Islam. On *Ahl al-Kitab* for instance The Koran QS Ali Imran 3:113 said: “Not all of them are alike: of the people of the Book are a portion that stand (for the right) : they rehearse the signs of Allah all night long and they prostrate themselves in adoration.” But in reality many Muslim, in order to keep enmity, prefer to use the Koran QS al-Baqarah 2:120 that said ; “Never will

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<sup>128</sup> Abdullah Yusuf Ali, *The Holy Qur'an; text, translation and commentary*, Maryland, Amana Corporation, 1989,P.106

<sup>129</sup> Yusuf Ali ,*The Holy Qur;an*, p. 505.

<sup>130</sup> See, Nurrohman, ‘The Abdul Rahman apostasy case and the need to reform sharia’ , *The Jakarta Post*, April 19,2006.

<sup>131</sup> M. Hilaly Basya, *Radicalism and Authoritarianism* , *The Jakarta Post*, Jan.30,2006

the Jews or the Christians be satisfied with thee unless thou follow their form of religion." Instead of understanding this verse contextually, many Muslims use this verse to spread hatred.

Islam promoted and respected individual reasoning (*ijtihad*) among Muslims and denounce blind adherence (*Taqlid*) to other. Hamka well known as modernist thinker in Indonesia, former chairman of MUI (Indonesian Ulema Council) highly condemned *taqlid* by saying that *taqlid* to be worse than slavery because it does not allow any freedom of thought.<sup>132</sup> But in reality Muslim preacher in East Java Yusman Roy was jailed for two years for leading Islamic prayers in Bahasa Indonesia rather than Arabic. It means that some Indonesian scholars still difficult to respect the effort and the result of *ijtihad* conducted by other although the prophet Muhammad itself encouraged his follower to dare *ijtihad*. I think what Roy said is correct when he said "The problem with many Muslims in Indonesia is that they don't think for themselves. They just follow whatever the leader says. They stand in the mosque and mumble , but they don't understand what the clerics are saying because they don't know Arabic." "What's the problem with using Indonesian? God understands everything we think and say, whether the language."<sup>133</sup>

Muslims encouraged to act and worship by considering the goal or the purpose of each. Concerning *shalat* (daily praying) for instance the Koran clearly said that it is performed in order to remember Me. (*aqimi al-shalata li dzikri*). *Shalat* also aimed to make Muslims can restrain from the evil deeds (*tanha ani al-fakhsya wa al-munkar*). But in reality many Muslims in this country involved in corruption. It is irony that Indonesia with the largest Muslim population in the world also in high index of corruption in the world.

### **Factors caused conflict and disharmony among religious follower**

There are some factors that can cause disharmony and conflict among religious followers such as a lack of understanding of others. To understand other Muslims should communicate and mingle with other. Sympathy , empathy , compassion difficult to emerge from each of religious followers if they are rarely involve in social activities together and shared the problem they faced together.

Other factor that can caused disharmony is the claim of self salvation. Tense relation and mutual suspicions between Indonesia's Muslim majority and its significant Christian minority were also reflected in Christian fear of the prospect of an Islamic state and Muslim anxieties about domestic Christian missionary activities.

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In Muslim-Christian relationship, the second conciliation of Vatican which recognize the path to salvation other than Christianity very helpful. Because it means Catholic follower no more asses Islam as heretical religion. For along time ,although with such conditions, Islam actually has recognize the possibility of

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<sup>132</sup> Soe Tjen Marching, 'Exposing moderation of Indonesian Islam' at *The Jakarta Post*, Oct.22,2006

<sup>133</sup> Duncan Graham, "Yusman Roy Fighting to pray in peace", *The Jakarta Post*, November 23,2006

<sup>134</sup> See Mujiburrahman, *Feeling Threatened :Muslim-Christian Relations in Indonesia's New Order*, dissertation , published by ISIM.

someone getting salvation through other path. Three conditions needed are belief in God, belief in the day of judgment and conducting righteous acts. (see the Koran QS al-Baqarah 2;62)

The monopoly of truth is also other factor that can caused disharmony. If we accept that absolute truth is only belong to God, the truth captured by human being should be treated relative. That is why someone forbidden to arbitrary forced their religious conviction to other. Therefore it is improper to stigmatize other groups as hell occupants since the last decision to enter somebody to hell or paradise is in the hand of God.

The perpetual battle between people or Muslims who more emphasize on essence (*hakikat*) and people who more emphasize on formalistic (*syari'at*) are other factor that caused conflict in society. In Islamic history this conflict caused victims such as death punishment perpetrated by mainstream to al-Halaj merely because the latter has different way in practicing religion. The case repeated again in Indonesia when Siti Jenar executed by other saints in Java.

The last and the most important point that caused conflict on religious matter is the political interest covered by religious rhetoric. History both in Islam or in Catholic showed that when politics mixed with religion the possibility to make conflict is high. Therefore the separation of religion from politics in Catholic history should be the lesson for Muslims. Muslims should aware of the abuse of power conducted by tyrants with the support from religious leaders.

### **Efforts conducted by Indonesia in making peaceful coexistence among religious follower.**

Making ideological and philosophical basic. Realizing the pluralistic manner of Indonesia in the sense of ethnic and religion, the founding fathers persisted to keep Pancasila (five principles) as state ideology. The first of the principle of Pancasila clearly states "Belief in one God", not belief in one religion. It means that the government of Indonesia should recognize all religions of the world. Every religion in Indonesia should be considered equal.

Translating the ideological and philosophical basic into constitution, law and regulation. Freedom of religion, freedom of conviction and freedom to worship are among freedom that assured by Indonesian constitution. Law on human rights elaborates what is mentioned in constitution.

Indonesian government also actively combating violence acts using religious symbols such terrorism and extremism. Indonesia has special law for anti terror.

Promoting dialog among religious follower encouraged not only through religious leader but also through community meeting and through education since kinder garden to university. The government also facilitated the establishment of forum for harmony among religious follower (FKUB) in each region.

### **Handicaps faced by Indonesia in materializing peaceful coexistence among religious follower**

Low level of education and low attention to education is the main factor that caused coexistence among religious follower are difficult. From philosophical perspective the higher someone studied religion the more similarities he can obtains.



Therefore it is no room for hatred to other religion whatever they act as long as they not disturbed other followers. And the more someone emphasizing differences the potential conflict will occur. Furthermore the more Muslims give their support for certain Islamic teaching legitimizing the use of violence, the more violence will happen. One survey conducted in West Java summarized that the simplistic understanding of teachings and the introduction of so called "yellow books" , detailing religious law and regulations, in Islamic boarding schools contributed to the emergence of hard line groups who demand the issuance of sharia bylaws and sowed hostility toward non-Muslims. ( The Jakarta Post, July 28,2006, *Survey reveals Muslim views on violence* ).

Research conducted by the Jakarta-based International Center for Islam and pluralism (ICIP) at 20 schools in West Java showed a generally held belief among student and clerics that there was no compromising on the matter of religion. Tolerance should only be limited to sociopolitical and economic issues . In practical terms , their unbending view of religious right and wrong means no uttering of a Merry Christmas greeting to Christians, or any other expression of acceptance toward a faith other than Islam. In their opinion, the recognition of other faiths is a sin, because Islam is the only true religion. The respondents said the involvement of women in politics or society in general must be limited , because their roles were merely domestic, with men as a leaders. The idea of feminism and gender equality was branded part of liberal thought concepts which, according to them, were not in line with Islamic teachings.

Source: The JP Jan.18,2006, '*pesantren*' no hive of tolerance: survey

The other handicaps are theological basic , there are many Muslims who still grasp exclusive rather than inclusive theology. The exclusive theology indicated by the acknowledgment that sharia is the complete law from God. So it has no room for change and evolution or adjustment . The society that should adjust to sharia not vice versa. This model of understanding brought sharia into rigid law and often monopolized by somebody or some group who realize to be the sole agent of God.

The other handicap is the different interpretation on how to protect religion and belief in Indonesia. There is still complicated and contradicted laws resulted confusion among law enforcers. The verdict imposed to Eden community lead by Lia Aminudin and the verdict imposed to Yusman Roy for his effort to translate Arabic language in *shalat* ( daily compulsory praying) into Indonesia showed that in the grass root the group of minority or the weakness group often be victimized merely because of refutation of other groups. Handicap for religious harmony also emerge from political interest involved in religious matter. But the difficult point is that the majority of religious follower in Indonesia still trapped in emotional rather than rational attitude.

## **Conclusion and reflection**

We should realize and distinguish between Islam and Muslim, because the attitudes and behaviors of certain people do not always reflect the Islamic message of peace, tolerance and other basic values of the religion.

In order to instill harmony among religious follower in Indonesia effort can be conducted through two steps; long term effort through education and short term

efforts through law enforcement . Since religion often related with other problem such as economy and social, these problem should also be tackle together. The Nobel committee in their consideration to give Muhammad Yunus a Nobel laureate for peace said “ Lasting peace cannot be achieved unless large population groups find ways in which to break out poverty”. It means that efforts to build peace and harmony among religious follower cannot be separated by efforts to develop other aspect of life including eradicating poverty from this world.

## THE MUSLIMS DILEMMA IN PROMOTING HUMAN RIGHTS <sup>135</sup>

In the end of the Nineteenth Islamic Conference of Foreign Ministers held in Cairo from 9-14 Muharram 1411H (31 July to 5 August 1990), all participants agree to issue the Cairo Declaration on Human Rights in Islam (CDHRI) that will serve as a general guidance for Member States in the field of human rights. Article one of the CDHRI said that: All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

This article despite having differences in wording actually has similarities with the article one of Universal Declaration of Human Rights (UDHR). Article one of UDHR said : all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Mirza Tirta Kusuma in her writing *Religious intolerance a betrayal of Islam*, (*The Jakarta Post*, April 20,2006) said that not only was Adam created with rights, but the entire cosmological universe (the heaven and the earth) was similarly created with *haqq*, an Arabic term that can mean “right”, “truth” or “justice”. The idea that all created things posses rights that are part of their ontological nature is fundamental to the Islamic conception of justice. The Koran strongly guarantees all fundamental human rights. These rights are so deeply rooted in our humanness that their denial or violation is tantamount to a negation or degradation of that which make us human.

The non-Muslim American thinker, George Maqdisi who wrote a book on humanism in Islam, *The Rise of Humanism in Islam* also stated that Islamic civilization arouse out of the notion on the urgency of respecting humanity and humanism, a notion that believes in human’s dignity as a *'fitrah* or nature. It means that there is no contradiction between human rights and Islam. Islam encourages human rights and human rights that was implemented in Muslims society will raise Muslims dignity.

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<sup>135</sup> Not yet published.

Khaled Abou El-Fadl, a professor of Islamic Law at UCLA, even said that people who argue that they have to prioritize God' rights over human rights, are ignorant about the classical *fikh* literature of the previous ulema. Those ulema stated that human rights must be prioritized over God's right ('*haqqul insân muqaddam `ala haqqil Ilâh* ), because Allah is well capable of defending His rights in the hereafter, while humans have to defend their own rights. A book written in the third century of *Hejra* mentioned that when there is a contradiction between laws; the more humanistic one ('*arfaq bin nâs* ) should be chosen. In Indonesian context, it means if there is any law which violated human rights , although this law aimed to protect God's right, this law should be rejected or sidelined.

But despite the suitability and compatibility between Islam and human rights there is potential conflict between sharia law and human rights if Muslims still uphold the traditional and conservative way in interpreting sharia law. Why ?, because article 24 of CDHRI said : all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah. And article 25 said: the Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration. It means that CDHRI , because of its ambiguities, can be misused by some of conservative groups in Islam to challenge human rights that have been recognized universally

In one hand CDHRI acknowledges that there is no discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations but in the other hand it in its preamble and articles 24 and 25 still refer the superiority of one religion with the sharia as the primacy and that God has made the Islamic community (*umma*) the best nation with its role to guide humanity. From this point we can see the differences between the CDHRI and the UDHR , which does not refer to any religion or to the superiority of any group over another, but stresses the absolute equality of all human beings.

That is why, David Littman in his writing entitle *Islamism Grows Stronger at the United Nations*, published by *Middle East Quarterly* , September 1999, said : *by establishing sharia law as "the only source of reference" for the protection of human rights in Islamic countries, the Cairo Declaration gives it supremacy over Universal Declaration of Human Rights.* . Abdullahi An-Na'im in his book also said yet when the so called Islamic alternative in the term of sharia has been attempted in countries like Iran, Pakistan and the Sudan, it has created more problems in connection with global demand like international law and human rights.

Concerning CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women), adopted in 1979 by the UN General Assembly, for instance, among 38 countries with their Muslims population only six countries that adopted and ratified it without reservation. There are Ghana (signature 1980, ratification 1986), Nigeria (signature 1984, ratification 1985), Philippine (signature 1980, ratification 1980) , Senegal ( signature 1980, ratification 1985) Srilangka ( signature 1980, ratification 1981) and Tanzania (signature 1980, ratification 1985). Other countries including Indonesia adopted CEDAW with reservation or declaration although gender equality actually not foreign to Islam.

The potential challenge maybe come from Indonesian Ulema Council (MUI). Ma'ruf Amin, chairman of the fatwa commission of MUI, in commenting on the fatwa rejecting pluralism, said that Islamic values are better than human rights. "We know that Islam comes from God. We don't know who created human rights" he

said. (*The Jakarta Post*, June 5, 2006) . Therefore, despite some covenants on human rights have been adopted in Indonesian constitution and other related laws, the support from religious scholars and community still needed in promoting human rights in Indonesia.

## ENHANCING ISLAMIC ROLE IN THE MULTICULTURAL WORLD<sup>136</sup>

In order to give bold message that Islam supported peace, justice and welfare in the multicultural world, the Post Graduate Program of Bandung Sunan Gunung Djati State Islamic University (UIN) held two days International seminar last Tuesday and Wednesday. The seminar on the theme “Translating Islam into multicultural world for peace, justice and welfare” attended by some scholars from domestic and overseas countries discussed many topics. In his preface speech Afif Muhammad, chairman of the Post Graduate Program said this seminar attempts to explore present situation of the world and the possible roles that can be played by Islamic values, considering that religions, including Islam, in these recent years have been considered problem makers rather than problem solvers.

Some Islamists or political Islam believe in Islam as the solution to all problems in the Muslim world but in reality Muslim world still rampant with decadence and corruption. Therefore, I who were given the chance to become speaker at that seminar also reiterated the gaps between Islamic ideals and the Muslims world. While Islam promoted peace coexistence among tribes, ethnics, religious adherences and sects, sectarian conflict still rampant in the Muslim world. While Islam supported religious freedom and tolerance, many Muslims scholars still uphold death punishment for apostasy. While the Koran guided Muslims that the diversity of religious sect or Islamic sect should be submitted to God since it is not human affair but Allah affair so He will in the end tell them the truth( QS 6:159) some Muslims in Indonesia attacked even evicted other religious sect from their own village such as experienced by Ahmadiyah congregation in Lingsar district , West Lombok. While Islam promoted and respected individual reasoning (*ijtihad*) and denounced blind adherence (*taqlid*) to other, some Indonesian clerics still condemned liberal Islam as heretical merely because they have different opinion from the mainstream.

The plurality of opinions and of groups in the midst of the *umma* is not considered to be something negative and could be welcomed as a blessing, said Olaf Schumann, the speaker from Department of Religion Studies at University of Hamburg, Germany. , Shalahudin Kafrawi from Moravian College , Bethlehem, Pennsylvania, USA, who also lecturer in UIN Bandung said while the second article of Islam’s two testimonies is the recognition of Muhammad as God’s messenger, this testimony in fact is very inclusive because Islam did not begin with Muhammad, but with Adam. All prophets are Muslims, the followers of them including the followers of Jesus are Muslims ( in a sense) because Islam means a total submission to the Principle of Being.

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<sup>136</sup> Never published before

So to enhance peace and tolerance in the multicultural world, Muslims should firstly strive to make peace and tolerance among themselves and then extended to the others. Since the religious-nuanced-conflicts usually related to political interest Muslims should aware of the possibility of be used as political commodity by politicians used religious symbol to fulfill their greedy of power and money.

In order to make positive contribution to multicultural world, Muslims should able to capture the spirit conveyed by some of greatest Muslim thinkers in the past in developing culture and civilization and implemented this spirit in current situation. This contribution acknowledged by all of the sincere world historians.

Therefore it is not strange if *Recommendation 1162 (1991) of the Parliamentary Assembly of the Council of Europe on the contribution of the Islamic civilisation to European culture*, as quoted by Hugo Baetens Beardmore, one of the speaker in seminar from Vrije Universiteit Brussel, said (in article 6) that there is very little awareness in Europe either of the importance of Islam's past contribution or of Islam's potentially positive role in European society today. The Assembly is aware of this situation, of the need for a better knowledge of the past so as better to understand the present and prepare the future, and of the valuable contribution that Islamic values can make to the quality of life through a renewed European approach on an overall basis to the cultural, economic and social fields.(article 9). Greater attention moreover should be given to co-operation with the Islamic world. The Council of Europe has already done a considerable amount of work on multicultural understanding and this should be further developed with specific reference to Islamic culture.(article 10)

Other recommendations said that a balanced and objective account of the history of Islam should be included in education curricula and textbooks along the lines of the international research project: "Islam in textbooks". Scientific research on Islamic matters should be encouraged, *inter alia*, by increasing the number of Arabic and Islamic professorial posts in universities. Islam should also be included in mainstream studies, for example Islamic history should be taught in history departments, Islamic philosophy in philosophy departments and Islamic law in law departments.

In order to integrate Muslim community with Western culture places of cultural and intellectual expression are needed for immigrants from the Islamic world. The development of their own culture, however, should not entail their isolation from the society and culture of the host country. Selected Islamic works, classic and modern, should be translated and published in a manner more conducive to greater understanding in Western society.

If mutual understanding between Muslims and Western society can be built it is not impossible that Islam's potentially positive role especially in European society would become reality and the voices objected of the presence of immigrant Muslims in Europe can be diminished. But Muslims should dare to live in open society and uphold inclusive rather than exclusive attitude.

## ***DAAR AL-TAUBAH WAY IN DEALING WITH PROSTITUTES*** <sup>137</sup>

The wave of reformation following the downfall of Soeharto regime prompt to Muslims activists to require Bandung Mayor to eliminate all sinful deeds such as gambling and prostitution especially which practiced in the heart of town dubbed by Saritem complex. Responding people demand, especially Muslim hard liners, the Bandung mayor, at that time Aa Tarmana, eventually closed prostitution practices officially and forbid such practices to be opened again. Accompanied with official closure, at January 19,2000, the mayor released decri No.017/2000 to rearrange Saritem area. But official closing that followed by regularly getting “razia” to capture prostitutes apparently can’t solve the problem. After being captured and sent to rehabilitation center almost all of them returned to old or “normal” job.

In the mid of public pressure toward government to close Saritem area permanently , FKPP ( Boarding School Communication Forum) led by KH Imam Sonhadji proposed to government to build pesantren (boarding school) in this site. Sonhadji, who led Sukamiskin Islamic boarding school and also chairman of NU *Syuriah* ( NU lawmaker body) at Bandung mayoralty , argues that sinful deeds such as prostitution in Saritem that has taking a root in this area for a long time, cannot be eradicated fastly and totally. Because most society who life in this area feel that the existence of prostitutes not disturb them. Peoples who reside in this area can get economics benefit from this activities by selling foods , renting the rooms , acting as pimp and mediator between prostitute and their guests and etc.

The survey conducted before the attendance of pesantren on the feeling of peoples who reside in this area, reveal that 69% of them feel they are in “normal” condition (*biasa-biasa saja*) , 19 % of them feel convenience and only 12% of them who feel disturbed or inconvenience. While concerning the relationship between residences and prostitutes, 60% of them feel in “normal” condition, 21% of them acknowledge that they had a good relation with them , and the remaining said that they are in lack or in bed relation. Cooperative and permissive attitude showed by peoples surrounding this area can be understood because most of them relented their daily life from the business related to prostitution.

According to Sonhadji, prostitution , which has exist since the Dutch colonial era when the Dutch built realway , should be eliminated gradually since it need conscience , time and preparations. By taking comparation from big *pesantren* experience in West Java such as Tebuireng in Jombang , which formerly built at black location, he beliefs that Saritem eventually will be cleared from prostitution practices if there is pesantren..

Established in more then five years ago, precisely at Mei 2, 2000, coincide with National Education Day, Daar al-Taubah (the literal mean is the house for repentance) is the unique model of pesantren. Dada Rosada, cofounder of pesantren and currently the mayor of Bandung replaced Aa Tarmana , once said that it is one

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<sup>137</sup> Never published before

of the world "miracle". It's located side by side with prostitutes complex well known by "Saritem" at RW ( community member ) 07 at Kebon Jeruk village and the sub district of Andir at the Bandung City. It is not far or just about 400 meters from Bandung railway station.

Currently in pesantren , that in daily activities run by Ahmad Haidar , son of Imam Sonhadji, there are 85 *santri mukim* or students who inhabited in this pesantren and about one hundred of *santri kalong* or students who followed religious and education activity in pesantren without living in dormitory. Now pesantren takes about 620 square meters with one mosque located in second floor of the building..

Beside giving religious teaching to the santri (pupils) , pesantren which managed by eight *ustadz* and *ustadzah* (men and women teachers) also give service to surrounding people. Pesantren often invited by pimp or prostitute to lead praying for salvation (*selamatan*), for mourn (*tahlilan*) and thanksgiving ceremony (*syukuran*) or when some of them being entered by a spirit (*kesurupan*).

There are kinder garden schools and madrasah for santri. Pesantren also performing *Majlis Taklim* ( community teaching) for the society weekly. In pesantren complex there is a center for health care( POSKESTREN). Periodically, pesantren conducting skill training for his own santri as well as for community including prostitutes.

Imam Sonhadji who take responsible of this *pesantren* narrated to writer that one of the pimp has getting rid and has performing pilgrimage to Mecca, and the other has repent and joined in managing pesantren affairs. In other occasion Sonhadji told to me that a children, a daughter of pimp, who getting lesson in pesantren has able to recite Koran fluently and dares to pose publicly in the event of pesantren ceremony.

In this context it is obvious although there are indication of progress , pesantren actually not pretended to able to change Saritem complex totally and drastically. In line with its name Daar al-Taubah ( House of repentant) , pesantren actually just opened the door to somebody who want to repent while offering the alternative way of life based on spiritual and moral conviction. Pesantren realize that all prostitutes, pimps and mediators actually the victims of social and economics system which can't provide better condition for them. . But viewed from Islamic spiritual life, all of them also the victims of their own greed and their own carnal desire which exploited them. Sex intimate which actually sacred then commercialized as a means to make money fast by violating religious value and norm.

Solving this problem by social and economics arrangement maybe beneficial for same one who turn to this world because of social or economic reason. But for somebody who freely and voluntarily choose prostitute as their profession, they can't be salvaged unless if there are inner desire to liberate themselves from hedonistic and materialistic attitude.

Ustadz Budi has special experience in dealing Santi , one of prostitute in Saritem. He said that although Santi has been approached, guided and has trained with tailor ability, she still complain to him when asked why she returned to old profession. She said that her income as tailor is far below her income as prostitute, imagine as prostitute with the tariff Rp 150.000,- for each service how much I can earn the money if there are five visitors in average in a

day . It can't be compared with the income of tailor who difficult to earn Rp 50.000,- a day. Ustadz Budi give another story to me, once he ask Rina another prostitute, when will you get rid from prostitution , she simply replied if you ready to marry me please.! Ustadz Budi said that as normal ordinary human being I actually interested on her beautiful and his good body, I don't know if I has yet a wife and son.

Viewed from religious perspective, sinful deeds, acted secretly or transparency, actually undermined their own dignity as human being , undermined themselves as noble creation of the God and endanger their own health, particularly soul and spiritual health since religion is panacea for soul, a light for life.

Immanuel Kant and other philosophers including Muslim philosophers said that peoples actually has bestowed the ability to differ what is good and what is bad. People endowed with the spring of the truth within and moral imperative to favor the good things. Through their intellect, God pleased to human being to freely choose their own path, the right or the left , the light or the dark.. From theological perspective good and bad for sure originated from God. It is difficult to understand dark if there is no light. Therefore evil deeds cannot be totally disappeared from the surface of the world. The most important one is how people directed to use their own enlighten within..

People as well as government likely should use realistic approach not merely formalistic approach such as recently acted by some regents and mayors in Indonesia by issuing sharia bylaw forbidding prostitution. As reported by such media, formalistic approach proved not touch the core of problem. Formalistic approach if not accompanied by the awareness and conscious just caused hypocrisy attitude.

Prostitution is not merely social and economics problem but the heaviest is moral and spiritual problem. Daar al-Taubah boarding school has pioneered to touch prostitution problem more spirituality and more realistically. Since from religious perspective what is important is the effort and struggle not the result, Daar al-Taubah has chosen wise and non violence means such as mandated in Koran QS 16:125 : "invite (all) to the way of your Lord with wisdom and beautiful preaching and argue with them in ways that are best and most gracious, for your Lord knoweth best who have strayed from His path and who receive guidance."

## **NU, MUHAMMADIYAH HAVE FAILED TO PROMOTE PLURALISM AT GRASS ROOTS <sup>138</sup>**

I am rather relieved as I read the results of a survey conducted by the Center for Islamic and Society Studies (PPIM) at the Syarif Hidayatullah State Islamic University.

Since the middle of this year -- in June and July to be exact -- I helped conduct a similar survey together with friends sponsored by the Malindo Institute (for social research and Islamic development). While the respondents picked by PPIM are

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<sup>138</sup> Published by The Jakarta Post, December 9,2008



Islamic studies teachers, our survey respondents are pesantren (Islamic boarding school) leaders. While the respondents of the first live in all Java provinces, the population of the latter live in West Java.

I am relieved because the conclusions of both surveys were relatively the same. Like Islamic teachers, most pesantren leaders oppose pluralism, demonstrate an intolerant attitude and tend to use religion to justify some violent acts.

For instance, most pesantren leaders, 75 percent, have allowed churches built without official permits to be destroyed or closed. Most agreed (86 percent) that Muslims should reject applications to build church in their areas. Muslims also are not allowed to say "Merry Christmas" or to accept invitations to celebrate that holiday alongside Christians, according to 81 percent.

When asked to give their opinion of the statement, "Non-Muslims are not allowed to become heads of state in Indonesia", 77 percent agreed. Only 33 percent agreed with the statement, "It is impossible in principle for Muslims to coexist peacefully with non-Muslims or infidels".

Some 55 percent believe that cutting off the hand of a thief is still a relevant punishment today. Jilid (whipping) and rajam (stoning to death) are still appropriate penalties for adulterers, according to a larger majority, 75 percent. When asked about the statement, "FPI (Islam Defenders Front) attacks on prostitution and gambling sites should be praised and supported", 56 percent of them agreed.

An overriding majority of pesantren leaders (89 percent) also support the idea of new sharia-inspired bylaws to improve the morality of the nation. When given the statement, "Muslims should always push for the Jakarta Charter to be included as part of the Indonesian Constitution", 58 percent of them agreed. More than a quarter, 27 percent, still disagree that the values embodied in Pancasila should be considered as the overarching political ideal for Indonesian Muslims.

In the case of Ahmadiyah, when presented with the statement, "The Ahmadiyah sect should be disbanded so it will not develop in Indonesia", most respondents (85 percent) agreed. This means most pesantren leaders are not ready to live in peace with sects considered deviant or blasphemous according to orthodox tenets. Fully 44 percent agreed with the statement, "The death penalty for apostasy is still applicable now."

Concerning jihad and terrorism, although most pesantren leaders (92 percent) agreed that self-restraint (jihad al-akbar) is more important, 6 percent still held the opinion jihad al-asghar (the war) is more important. Some of the pesantren leaders (39 percent) still see Osama bin Laden as an Islamic warrior, but only a few still consider the actions of Amrozi, Imam Samudra and Abu Dujana as a form of jihad which present conditions call for (3 percent). The pesantren leaders are exposed to ambivalent attitudes toward Osama bin Laden, but they are firmer in condemning Amrozi and his fellow Bali bombers. The worrying attitude is that a few pesantren leaders still agree (3 percent) that what the Bali bombers did was an act of jihad.

In this survey, 81 percent of respondents said they were members of Nahdlatul Ulama (NU); 1 percent each said they were members of United Islam (Persis), Muhammadiyah and the United Supremacy Party (PUI); the remaining 16 percent classified themselves as independent.

I was hesitant to release this survey publicly because it interviewed only 100 pesantren leaders in five regencies. But PPIM's latest survey has confirmed the results of Malindo's survey. Pesantren number 6,930 in West Java, according to 2007

data from Education Management Information Systems. The population of the pesantren in the five locations in which research was conducted totaled 1,459, consisting of: Cirebon 397, Indramayu 56, Majalengka 323, Kuningan 430, and Ciamis (including Pangandaran) 353. The pesantren were randomly selected from three types: traditional, semimodern and modern.

These polls do give a true snapshot of attitudes in time and attitudes can always change. But when the findings of two surveys confirm one another, it should be treated as a temporary truth albeit an inconvenient truth, to borrow Al Gore's catch phrase.

With 81 percent of the respondents claiming membership in Nahdlatul Ulama, I agree with PPIM director Jajat Burhanudin's comments on his own survey's implications that NU, as well as Muhammadiyah, have failed to promote pluralistic values at the grassroots.

There is no need to create a state of denial by saying, for instance, that pesantren are not hives of radicalism or by blaming the survey methodology. Radicalism -- meaning religious understanding justifying the use of violence -- is still present. Gallup's worldwide survey also finds that 7 percent of the world's Muslim population embraces radical politics.

We need to understand that religious intolerance in this country is no longer a myth. The results of these surveys should stand as a warning. Maintaining an environment of religious tolerance is an obligation that should be exercised not only by the government but also by all of us if we are really committed to defending this pluralistic state based on Pancasila.

## **A LESSON TO DRAW FROM THE SWISS BAN ON MINARETS <sup>139</sup>**

Switzerland is a tiny state, with a population of around 7.5 million – less than the population of Jakarta. As recently as the 1970s there were fewer than 20,000 Muslims living in Switzerland. Because of immigration from Turkey and the former state of Yugoslavia, as well as conversion among Swiss nationals, the population of Swiss Muslims has now grown to about 400,000, around 5 percent of the total population.

Thanks to globalization, news of “strange” conditions affecting Muslims in Switzerland spread rapidly to other Muslims worldwide. In response to mounting criticism from Muslim figures and human rights activists worldwide on its recent ban on minarets, Swiss Justice Minister Eveline Widmer-Schlumpf said the recent referendum banning the building of new minarets was not “a referendum against Islam ... but a vote directed fundamentalist developments” (The Jakarta Post, Dec. 1, 2009).

While the move to limit the growth of fundamentalism, particularly in its radical forms, is understandable, banning minarets is not the right way to go about

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this because fundamentalism as a form of religious understanding has no correlation with building minarets.

For this reason, among the Swiss people there are also those for and against the ban. Swiss government officials and business leaders in fact recommended a “no” vote for this referendum, and most people did not expect it to be passed. Nevertheless, on Nov. 29, 2009 the ban was passed, with 57.5 percent of the vote in 22 of 26 cantons (provinces) in favor – the double approval that makes it part of the Swiss constitution.

According to the proponents of the ban, the minaret is symbolic of “political Islam” and a desire to expand Muslim power in Europe. They see “Islamism” as a foreign ideology and legal system that has no place in a European secular democracy. They fear that the growing Muslim population may be violent, power-hungry terrorists who want to implement Islamic law in Europe.

Those who have argued against the law base their argument on several points. Freedom of religion is fundamental to Swiss law and European human rights treaties. A minaret is a simple and common architectural feature of a mosque, and is neither a safety risk nor a public nuisance. A minaret carries no political symbolism or significance. Advertising campaigns to promote the law were racist. The law may alienate Swiss Muslims, who are largely of European origin and are known to be moderate. The international outcry against the law may have negative impacts on the Swiss economy and foreign relations.

Government and religious leaders worldwide have denounced the ban. The UN Human Rights Committee has said it may also be a violation of international law. Swiss opposition groups have vowed to challenge the law in the European Court of Human Rights.

So, what is the lesson we can learn from religious adherents who really want to make “humanity an authentic family of which each of us is a member”, a phrase used by Cardinal Jean Louis Tauran, the president of the Pontifical Council For Inter-religious Dialogue at Vatican, who recently visited Indonesia.

To my mind, the lesson that can be drawn from this fiasco is that intolerance and potential violence is caused by misunderstanding between non-Muslims and Muslims prevails worldwide, including in our home country. If people in predominantly Christian secular states fear that a growing Muslim population may have negative impacts on them, the same is felt among predominantly Muslim secular states such as Indonesia.

Many religious leaders in West Java’s grassroots, for example, are firm believers that Muslims should refuse to allow Christians to build churches in their neighborhoods. They have also forbidden Muslims from wishing their Christian brothers a “Merry Christmas” or from attending Christmas celebrations. Many of them also fear that the growth of the Christian population West Java will change its demographic structure. When surveyed in 2008, for example, 86 percent of those surveyed agree with the statement: “Muslims should refuse to allow churches to be built in their area”. Meanwhile, in response to the statement: “Muslims are not allowed to send ‘Merry Christmas’ greetings or attend Christmas celebrations among Christians” 81 percent agreed.

Intolerance and conflicts have not only occurred between Muslims and non-Muslims, but also between Muslims and other Muslims. In January 2009, for instance, a gathering in Cirebon aimed at commemorating the birthday of Sayyid

Husein (the grandson of the Prophet Muhammad) was set upon by a group of 20 men wearing robes and riding motorcycles. They demanded the gathering be disbanded, claiming that the celebration was influenced by Shiah and ran contrary to Islamic beliefs.

The other lesson is that dialogue, mutual understanding and religious tolerance still need to be promoted in this region. As an understanding that sees religion as something inseparable from worldly power and the use of religious symbols for political target, fundamentalism exists not only in the Muslim community but also in other religious communities, such as Hindu and Christian. In daily life, even in secular states, mixing religion with politics is difficult, if not impossible, to avoid completely. This is because the public sphere is an area also of religious concern. Therefore, what is important is how to reduce the level of fundamentalism, so that its followers do not become extremist or radical.

Tolerance is the fruit of mutual understanding, while mutual understanding can be achieved through intensive dialogue. In this regard, respecting what is universally accepted as human rights is very important for Muslims as well as non-Muslims, so that there are no more stories of oppressed religious adherents in conflict with minority groups.

While we may agree that freedom of religion is not without limit, limitation of religious expression should be based on rational and indiscriminative consideration.

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## BRIEF CV OF NURROHMAN

Nurrohman ,was born in Tegal, August17,1958. His father is HM Syarif and his mother is Hj.Syamsiyah. The level of his education : elementary school in Tegal (1971) , secondary school in Kediri (1974), senior high school in Kediri (1979); bachelor of art in Bandung state of Islamic studies (1982) graduated from S1 degree IAIN Bandung (1984); S2 degree IAIN Jakarta (1990) , S3 degree or Doctoral from UIN Jakarta on Fiqh Siyasah (law and politics in Islam) ( 2004). During 1972-1977 he also become a student of Hidayatul Muftadiin Lirboyo boarding school in Kediri.. Activist of PMII (Indonesian Muslim Student Movement) 1980, IMM (Muhammadiyah Student Association) 1982; general secretary of ISNU (NU Scholars Association) since 2000 until 2005, chairman of LAKPESDAM PWNU in West Java 2006-2011.

History of his career: teacher in various Islamic institutions during 1984-1988. Lecturer at Law and Sharia Faculty in Bandung State Islamic University since 1988 until now. Chair person of department of comparative school and law in Law and Sharia Faculty in UIN Bandung 1996- 2004. Director of IRHAS ( *Institute for Religion and Human Rights Advocacy Studies*) since 2001- until now. Activist of JP2M (Networking for Empowerment Madrasah and Pesantren) since 2003-until now. Conducting research since 1998. Writing in various mass media such as *Rupublika*, *Pikiran Rakyat*, *The Jakarta Post*, *Forum Studi* journal, *Tashwirul-Afkar* journal, *Wacana* POSTRA bulletin. Active in discussion, seminar and conference in various academic forums as a presenter or participant. Now he is assigned as secretary of Ph.D. degree in Islamic law in UIN Bandung.