

## MURTAD SEBAGAI ALASAN PERCERAIAN DI PERADILAN AGAMA

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### I. PENDAHULUAN

"Murtad" menurut bahasa berarti "rujū'" (kembali). Maksudnya ialah kembali dari atau keluar agama Islam, kemudian kembali menganut agama yang pernah dianutnya. Seperti seorang penganut agama Hindu masuk Islam, kemudian ia keluar dari agama Islam dan menganut agama Hindu kembali. Dalam istilah syara' murtad berarti umum, yaitu keluar dari agama Islam, apakah ia kembali menganut agama yang dianut sebelumnya atau menganut agama yang lain atau tidak menganut agama apapun. Termasuk dalam pengertian murtad: orang yang sejak lahirnya menganut agama Islam kemudian ia keluar dari agama Islam.<sup>1</sup> Ada pula ahli fiqh yang menamakan murtad dengan "riddah".<sup>2</sup>

Dasar hukum murtad, ialah firman Allah SWT:

وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فِيمْتَهُ وَهُوَ كَافِرٌ فَأُولَئِكَ حَبِطَتْ  
أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ  
(البقرة : ٢١٧)

Artinya:

".... Barangsiapa yang murtad diantara kamu dari agamanya, lalu dia mati dalam kekafiran, maka mereka itulah yang sia-sia amalannya di dunia dan di akhirat ....." (Al Baqarah 217)

Dan firman Allah SWT:

إِنَّ الَّذِينَ ارْتَدَوْا عَلَيَّ أَدْبَارِهِمْ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُمُ الْهُدَى الشَّيْطَانُ

<sup>1</sup>Abdul Qadir 'Audah, *At Tasyri' il Jinā'il Islāmī*, Darul 'Urūbah, cet. 2, tahun 1964, Kairo, jil. 2, hal. 706. Lihat juga Abdurrahman Al Jaziri, *Kuābul Fiqh 'alā Mazāhibil Arba'ah*, Dārul Makmūn, cet. 1, tanpa tahun terbit Kairo, jil. 4, hal. 223.

<sup>2</sup>Abdul Qadir Audah, *ibid.*, hal. 707.

## سَوَّلَ لَهُمْ وَأَمَلَى لَهُمْ (محمد: ٢٥)

Artinya:

"Sesungguhnya orang-orang yang kembali ke belakang (kepada kekafiran) sesudah petunjuk itu jelas bagi mereka. Syaitan telah menjadikan mereka mudah (berbuat dosa) dan memanjangkan angan-angan mereka" (Muhammad 25)

Ayat-ayat di atas tidak menyebutkan sangsi duniawi dengan tegas terhadap para pelaku murtad. Diterangkan bahwa para pelaku murtad akan merugi. Semua amal dan perbuatan yang pernah dilakukan selama hidup di dunia tidak akan diberi pahala oleh Allah SWT, baik perbuatan itu dilakukan sebelum atau setelah murtad. Mereka akan dimasukkan ke dalam neraka dan kekal di dalamnya.

Hadis menyatakan bahwa bagi para pelaku murtad diancam dengan hukuman mati.

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ بَدَّلَ دِينَهُ فَأَقْتُلُوهُ  
(رواه البخاري)

Artinya:

Bersabda Rasulullah saw. : "Barangsiapa yang menukar agamanya, maka bunuhlah ia". (HR. Bukhari)

Dari ayat-ayat dan hadis di atas dapat dipahami bahwa ada dua macam murtad itu, yaitu :

- Orang murtad semata-mata keluar dari agama Islam.
- Orang murtad, di samping ia keluar dari agama Islam, ia juga menantang kaum muslimin.<sup>3</sup>

Orang murtad semata-mata keluar dari agama Islam ada yang melakukannya dengan qaul (perkataan), fi'il (perbuatan) atau i'tiqad (hati).<sup>4</sup> Orang murtad yang menantang kaum muslimin, seperti menimbulkan permusuhan, ingin melemahkan atau menghancurkan Islam dan kaum muslimin dan sebagainya.

Dalam pembahasan ini dipakai murtad dalam arti yang umum, ialah setiap orang yang keluar dari agama Islam, apakah ia sejak lahir telah menganut agama Islam, atau sebelumnya ia menganut agama lain, kemudian ia menganut agama Islam, atau setelah ia keluar dari agama Islam, ia kembali menganut agama yang pernah dianutnya dahulu atau agama lain atau tidak menganut agama apapun.

Karena pembahasan murtad dalam uraian ini berhubungan dengan perkara di Pengadilan, maka yang dimaksud dengan murtad di sini, ialah murtad yang dilakukan dengan resmi, dengan alat-alat bukti yang dapat

<sup>3</sup>Alā'udin Al Kāsānī, *Badā'us šanā' i' fi tartībisy Syar'i*, Mesir 1327 H. jil. 7, hal. 134.

<sup>4</sup>Abdul Qadir Audah, *op.cit.*, hal. 706.

menimbulkan kepastian hukum. Hal ini sesuai dengan surat Mahkamah Islam Tinggi tanggal 7 Januari 1939 No. A/6/9 yang menyatakan bahwa murtad itu harus di hadapan Pengadilan Agama.

Sejak abad keenam belas, terutama di pulau Jawa telah ada semacam pengadilan seperti pengadilan agama sekarang ini. Hampir pada semua kabupaten para bupati didampingi oleh seorang penghulu, yang mengepalai semacam pengadilan yang mengadakan sidang-sidang di serambi masjid, sehingga dinamakan "Pengadilan Serambi", yang kemudian diberi nama "Pengadilan Agama".<sup>5</sup> Sejak tahun 1830 Pengadilan Agama berada di bawah peradilan kolonial yang bernama "Landraad" (Pengadilan Negeri).

Yang diangkat menjadi penghulu adalah orang yang sebelumnya menjadi kepala ta'mir masjid, yang pada dasarnya adalah seorang pejabat yang diangkat oleh raja atau priyayi setempat. Karena itu pada umumnya para penghulu diangkat dari keluarga raja atau keluarga priyayi setempat.<sup>6</sup>

Sekalipun tugas penghulu sebagai ketua Pengadilan Agama tidak begitu jelas, namun ia mempunyai kedudukan terhormat di samping raja atau bupati, bahkan ia adalah orang yang dihormati masyarakat. Keadaan yang demikian berlangsung sampai tahun 1950, terutama sebelum masa pengangkatan ketua Pengadilan Agama dilakukan oleh pemerintah c.q. Departemen Agama. Ketidakjelasan wewenang hakim Pengadilan Agama ini berakibat tidak ada pula kepastian hukum pada setiap keputusannya. Hampir setiap keputusan Pengadilan Agama harus dikokohkan lebih dahulu oleh Landraad atau Pengadilan Negeri. Hal ini akan tampak nanti dalam sikap Pengadilan Agama dan juga Departemen Agama dalam menghadapi perkara murtad ini. Baru setelah tahun 1975, setelah dilaksanakan undang-undang no. 1 tahun 1974 tentang perkawinan, tugas dan wewenang Peradilan Agama agak semakin jelas, sehingga keputusan-keputusannya telah mulai dirasakan mempunyai kepastian hukum. Hal ini ditambah lagi oleh hembusan angin segar yang ditimbulkan oleh:

- a. Pengangkatan Hakim Agung pada Mahkamah Agung RI, yang membawahi hakim-hakim pada Peradilan Agama.
- b. Adanya usaha-usaha kompilasi hukum Islam.

Pada tahun 1882 diadakan perubahan susunan Peradilan Agama dengan diterbitkan Keputusan Raja Belanda tanggal 19 Januari 1882, no. 24, Staatsblad 1882, no. 152. Sejak itu Pengadilan Agama bernama "Raad Agama" (Priesterraad) yang mempunyai wewenang mengadili perkara-perkara pernikahan, segala jenis perceraian, mahar dan nafqah, sah tidaknya anak, perwalian, warisan, waqaf hibah, sadaqah, baitulmal: jadi hal-hal yang dipandang erat hubungannya dengan agama Islam.<sup>7</sup> Pada tahun 1938 didirikan Mah-

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<sup>5</sup>Prof. Mr. Notosusanto, *Peradilan Agama di Jawa dan Madura* (Yogyakarta, 1953), hal. 7.

<sup>6</sup>Daniel S. Lev, *Peradilan Agama Islam di Indonesia*, terjemahan H. Zaini Ahmad Nuh (In-termasa, Cet. 1, tahun 1980, Jakarta), hal. 125.

<sup>7</sup>Prof. Notosusanto, S.H., *Organisasi dan Yurisprudensi*, (Yayasan Penerbit Gadjah Mada, tahun 1975, Yogyakarta), hal. 7.

kamah Islam Tinggi (MIT) sebagai pengadilan banding, yang juga disebut Hof voor Islamietsche Zeken.

Negara Republik Indonesia menganut faham kebebasan bagi setiap penduduk untuk menganut dan melaksanakan ibadah agama yang mereka sukai. Karena itu murtad atau pindah agama dari suatu agama ke agama yang lain dibolehkan dan mungkin saja terjadi. Hal ini dipahami dari Bab XI pasal 29 Undang-Undang Dasar 1945, yang berbunyi:

- (1) Negara berdasar atas Ketuhanan Yang Maha Esa.
- (2) Negara menjamin kemerdekaan tiap-tiap penduduk untuk memeluk agamanya masing-masing dan untuk beribadat menurut agamanya dan kepercayaannya itu.

Bila dihubungkan dengan perkawinan, maka murtad itu mungkin pula terjadi pada setiap pasangan suami isteri penduduk Negara Republik Indonesia. Seperti seorang suami semula menganut agama Islam kemudian pindah agama menjadi penganut agama Budha. Demikian pula seorang isteri yang semula penganut agama Hindu, kemudian pindah agama menjadi penganut agama Kong Hu Cu dan sebagainya.

Hal ini dapat dipahami dari penjelasan atas Undang-Undang Republik Indonesia No. 1 tahun 1974, tentang Perkawinan:

Sesuai dengan landasan falsafah Pancasila dan Undang-Undang Dasar 1945, maka undang-undang ini di satu pihak harus dapat mewujudkan prinsip-prinsip yang terkandung dalam Pancasila dan Undang-Undang Dasar 1945, sedang di lain pihak harus dapat pula menampung segala kenyataan yang hidup dalam masyarakat dewasa ini. Undang-undang Perkawinan ini telah menampung di dalamnya unsur-unsur dan ketentuan-ketentuan Hukum agamanya dan kepercayaannya itu dari yang bersangkutan.

Sehubungan dengan murtad sebagai alasan perceraian di Pengadilan Agama, dirasakan adanya perbedaan antara isyarat-isyarat dan kemungkinan-kemungkinan penafsiran dari undang-undang yang berlaku di Indonesia dengan kenyataan-kenyataan yang terjadi. Sekalipun tidak dinyatakan dengan tegas, namun pada undang-undang terdapat isyarat-isyarat dan kemungkinan-kemungkinan penafsiran bahwa murtad dapat dijadikan alasan perceraian, sedang Pengadilan seakan-akan enggan menjadikannya sebagai alasan perceraian.

Bab I pasal 1 undang-undang no. 1 tahun 1974 menyatakan :

Bahwa perkawinan adalah ikatan lahir batin antara seorang pria dengan seorang wanita sebagai suami isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa.

Kemudian pasal 2 ayat 1 menyatakan:

Bahwa perkawinan adalah sah apabila dilakukan menurut masing-masing agamanya dan kepercayaannya itu.

Pada penjelasan dari undang-undang tersebut diterangkan bahwa perkawinan mempunyai hubungan yang erat sekali dengan *agama dan kerohanian*, sehingga perkawinan bukan saja mempunyai unsur lahir dan jasmani, tetapi unsur batin dan rohani juga mempunyai peranan yang penting. Dari pasal ini

juga dipahami tujuan perkawinan adalah membentuk keluarga bahagia dan kekal, termasuk pula di dalamnya pemeliharaan dan pendidikan anak yang lahir dan tumbuh dalam keluarga. Karena itu merekapun berhak dan dapat pula mengicip kebahagiaan yang kekal itu. Kemudian pasal 2 ayat 1 mengisyaratkan bahwa salah satu syarat tercapainya kebahagiaan yang kekal itu ialah bila suatu perkawinan dilakukan dengan sah, yaitu bila dilakukan menurut hukum agama dan kepercayaan mereka masing-masing.

Jiwa pasal 2 ayat 1 ini, senada dengan hadiŕ:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: تُنكَحُ  
الْمَرْأَةُ لِأَرْبَعٍ: لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَأَظْفَرُ بِذَاتِ  
الدِّينِ تَرِبْتُ يَدَاكَ . (رواه الجماعة إلا الترمذی)

Artinya:

Dari Abi Hurairah r.a., dari Nabi saw, beliau bersabda: "Biasanya wanita dinikahi karena empat perkara, karena hartanya, karena kedudukannya, karena kecantikannya dan karena agamanya. Maka pilihlah yang beragama, niscaya engkau akan beruntung". (Hr. Jamā'ah kecuali At Tirmuzi)

Jika diambil mafhum mukhalafah (pemahaman kebalikan) dari pasal-pasal dan hadiŕ di atas, dapat dirumuskan sebagai berikut:

- a. Perkawinan antara seorang laki-laki dengan seorang wanita yang berbeda agama, amat sedikit kemungkinan dapat mencapai tujuan perkawinan yang mereka harapkan, sesuai dengan yang dimaksud oleh undang-undang, apalagi untuk mencapai kebahagiaan hidup di akhirat nanti.
- b. Jika terjadi juga perkawinan antara laki-laki perempuan yang berbeda agama itu, kemudian terjadi perselisihan atau pertengkaran antara keduanya, maka perselisihan yang demikian itu sukar diselesaikan, apalagi perselisihan itu menjadi perkara di pengadilan.

Bab I pasal 1 Undang-undang no. 1 tahun 1974 menyatakan: "perkawinan semacam ikatan lahir dan batin". Suatu ikatan akan terjadi bila terjadi perjanjian perikatan. Setiap perjanjian perikatan tentu ada syarat-syarat yang harus ada dan dipenuhi dalam perjanjian itu.<sup>8</sup> Seperti seorang laki-laki bersedia kawin dengan seorang wanita karena keduanya sama-sama menganut agama tertentu. Seagama itu termasuk salah satu syarat, yang menyebabkan mereka bersedia melakukan perkawinan. Sekalipun syarat-syarat itu tidak tertulis atau tidak mempunyai bukti-bukti, namun syarat itu telah melekat pada perjanjian itu dan telah terpatri dalam hati suami isteri, bahkan syarat itu telah disepakati pula oleh wali dari pihak isteri. Perpindahan agama yang dilakukan oleh salah satu pihak suami-isteri, berarti pembatalan sepihak terhadap syarat yang telah disepakati. Hal ini berakibat ada pihak yang dirugikan

<sup>8</sup>Kitab Undang-undang Hukum Perdata, pasal 1233 s/d 1238.

dalam perkawinan itu. Kerugian itu merupakan kerugian yang fatal bagi seorang penganut agama yang benar-benar yakin akan kebenaran agama yang dianutnya.

Dalam pada itu kenyataan menunjukkan bahwa sekalipun telah ada isyarat-isyarat yang terdapat pada undang-undang dan peraturan-peraturan yang berlaku, baik sebelum maupun sesudah diberlakukan Undang-undang no. 1 tahun 1974, namun para hakim peradilan agama enggan menyelesaikan dan memberi keputusan terhadap perkara perceraian karena murtad itu.<sup>9</sup>

Selubungan dengan ketentuan-ketentuan, kenyataan dan penjelasan di atas timbul persoalan-persoalan berikut :

- Pertama* : Dapatkah riddah dijadikan sebagai alasan perceraian menurut ajaran Islam?
- Kedua* : Bagaimana pendapat para ahli hukum Indonesia tentang riddah di jadikan sebagai alasan untuk bercerai?
- Ketiga* : Seberapa jauh kemungkinan menjadikan murtad sebagai alasan perceraian di Peradilan Agama di Indonesia?

## II. SIKAP AJARAN ISLAM TERHADAP SUAMI ATAU ISTERI YANG MURTAD

Banyak ayat-ayat Al Qur'an dan Al-Hadis yang menerangkan sikap ajaran Islam terhadap seorang yang murtad dari agamanya. Ayat-ayat Al-Qur'an dan Al-Hadis ini dapat dijadikan dalil dengan menafsirkan dan memahaminya, terutama dengan memperhatikan isyarat-isyarat yang terkandung di dalamnya, sehingga dapat dijadikan dasar bahwa murtad itu dapat dijadikan alasan untuk bercerai. Ayat 221 surat Al-Baqarah umpamanya, melarang dengan tegas seorang laki-laki mu'min dan wanita mu'min melaksanakan perkawinan dengan seorang musyrik dalam keadaan bagaimanapun, karena orang-orang musyrik itu dapat mempengaruhi iman seseorang yang menyebabkan ia masuk neraka. Dari larangan ini dapat dipahami bahwa seorang mu'min, laki-laki atau perempuan dilarang keras melaksanakan perkawinan atau hidup berumah tangga dengan seorang musyrik. Hal ini dapat juga diartikan bahwa setiap terjadi atau ada pasangan suami isteri yang terdiri dari seorang mu'min dengan seorang musyrik, maka perkawinan itu dinyatakan putus (terjadi perceraian), baik perceraian itu dengan keputusan hakim atau pasakh atau dengan proses talak.

Pengertian murtad atau riddah di kalangan ahli fiqh berarti bahwa secara hukum orang itu tidak beragama lagi, sekalipun setelah murtad itu ia memeluk sesuatu agama. Orang yang tidak beragama disamakan kedudukannya de-

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<sup>9</sup>Beberapa orang hakim pengadilan agama berpendapat demikian, seperti hakim-hakim pengadilan Agama Yogyakarta, Tasikmalaya, Jakarta, Surakarta dan lain-lain.

ngan orang musyrik. Pendapat ini berlaku di kalangan ulama Hanafiyah<sup>10</sup> namun ada pula pendapat yang lain menyatakan, bahwa seorang murtad mungkin ia keluar dari agama Islam kemudian masuk agama lain atau ia menjadi orang yang tidak beragama. Orang yang tidak beragama disamakan kedudukannya dengan orang musyrik, sedang yang masuk agama Ahli Kitab mempunyai kedudukan tersendiri.<sup>11</sup>

Karena itu jika terjadi murtad ada beberapa kemungkinan:

- a. Sepasang suami-isteri beragama Islam, kemudian kedua-duanya murtad, apakah ia menjadi penganut agama Ahli Kitab atau bukan, atau ia tidak menganut agama apapun.
- b. Sepasang suami-isteri menganut agama Islam, kemudian suami melakukan murtad dengan menganut salah satu agama Ahli Kitab atau agama lain atau tidak menganut agama apapun.
- c. Sepasang suami-isteri menganut agama Islam, kemudian isteri melakukan murtad. Hal ini mengandung beberapa kemungkinan:
  1. Kemungkinan pertama, ia menjadi musyrik atau tidak menganut agama apapun.
  2. Kemungkinan kedua, ia menganut agama salah satu dari Agama Ahli Kitab.

Butir *a* tidak dibahas dalam makalah ini, karena menurut hukum Indonesia, perkara mereka tidak lagi diproses di Pengadilan Agama, tetapi diproses di Pengadilan Negeri. Pengadilan Agama hanya berwenang mengadili perkara suami isteri yang beragama Islam.

Butir *b* berhubungan dengan: Apakah riddahnya suami dapat dijadikan alasan oleh suami untuk bercerai?

Para ulama berpendapat bahwa riddahnya suami dapat dijadikan alasan oleh isteri untuk bercerai. Mereka hanya berbeda pendapat tentang bentuk perceraian yang terjadi dan proses terjadi perceraian itu.<sup>12</sup> Menurut Hanafiyah: jika suami riddah berarti telah terjadi fasakh. Fasakh menurut mereka berbeda dengan perceraian. Fasakh terjadi dengan sendirinya, yaitu pada saat tidak terdapat lagi pada sepasang suami isteri hal-hal tertentu, seperti suami menganut agama Islam. Jika hal yang dimaksud tidak ada, berarti akad nikah tidak ada lagi pada saat hal itu tidak ada, apakah hal itu tidak ada pada saat akad nikah dilakukan atau pada saat pelaksanaan kehidupan suami-isteri. Jika hal itu tidak ada atau hilang pada saat kehidupan suami isteri, maka kedua pasangan itu otomatis bukan lagi dinamakan sebagai suami-isteri, tetapi hubungan mereka telah sama dengan hubungan seorang laki-laki dan perempuan yang tidak ada hubungan mahram. Setiap hubungan badaniyah yang mereka lakukan, berarti mereka telah melakukan zina. Sehubungan dengan itu mereka berpendapat bahwa fasakh karena murtad tidak akan mengurangi jumlah talak yang mengakibatkan talak ba-'in kubra.<sup>13</sup>

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<sup>10</sup>Abdurrahman Al Jaziri, *op.cit.*, hal. 223.

<sup>11</sup>Abdurrahman Al Jaziri, *ibid.*

<sup>12</sup>Abdurrahman Al Jaziri, *ibid.*, hal. 224.

<sup>13</sup>Abdurrahman Al Jaziri, *ibid.*

Mālikīyah berpendapat bahwa murtadnya suami dapat dijadikan alasan untuk bercerai<sup>14</sup>, sedang Syāfi'iyah berpendapat bahwa jika suami murtad kepadanya diberi kesempatan berfikir, selama isteri menjalani masa iddah. Jika dalam masa iddah isteri, pihak suami kembali menganut agama Islam, maka hakim mengurungkan keputusan perceraian yang telah direncanakannya, sebaliknya jika suami tetap riddah, maka hakim langsung memberikan keputusan perceraian. Hanabilah sependapat dengan Syāfi'iyah.<sup>15</sup>

Sebagai dasar pendapat-pendapat di atas pada umumnya para ulama menggunakan alasan: Orang kafir tidak boleh menjadi pemimpin orang Islam. Sedang suami adalah pemimpin rumah tangga yang para anggotanya terdiri dari kaum muslimin dan muslimat.

Allah SWT berfirman:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا  
 أَنْفَقُوا مِنْ أَمْوَالِهِمْ ... (النساء : ٣٤)

Artinya:

"Kaum laki-laki itu pemimpin bagi kaum wanita, karena Allah telah melebihkan sebahagian mereka (laki-laki) atas sebahagian yang lain (wanita), dan karena mereka (laki-laki) telah menafkahkan sebahagian dari harta mereka ..... (An Nisā' ayat 34).

Dan firman Allah SWT:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَتَّخِذُوا بَطَانَةً مِّنْ دُونِكُمْ لَا يَأْلُونَكُمْ خَبَالًا  
 وَدُّوْا مَا عَنِتُّمْ قَدْ بَدَتِ الْبَغْضَاءُ مِنْ أَفْوَاهِهِمْ وَمَا تُخْفِي صُدُورُهُمْ  
 أَكْبَرُ ... (آل عمران : ١١٨)

Artinya:

"Hai orang-orang yang beriman, janganlah kamu ambil menjadi teman kepercayaanmu orang-orang yang di luar kalanganmu, (karena) mereka tidak henti-hentinya (menimbulkan) kemudharatan bagimu. Mereka menyukai apa yang menyusahkan kamu. Telah nyata kebencian dari mulut mereka, dan apa yang disembunyikan oleh hati mereka adalah lebih besar lagi ..... (Ali Imrān ayat 118)

Mereka juga menggunakan sebagai dalil Surat (60) Al Mumtahanah ayat 1, Surat (5) Al Mā'idah ayat 51 dan sebagainya.

Butir c berhubungan dengan: Apakah murtadnya isteri dapat dijadikan

<sup>14</sup>Abdurrahman Al Jaziri, *ibid*.

<sup>15</sup>Abdurrahman Al Jaziri, *ibid*, hal. 225.

oleh suami sebagai alasan untuk bercerai?

Di kalangan Hanafiyyah terdapat tiga pendapat (qaul):<sup>16</sup>

*Qaul pertama:* Nikah mereka dinyatakan fasakh. Si isteri dikenai hukuman ta'zir yang berupa hukuman pukul (jilid) sampai ia menjadi muslimat kembali. Jika si isteri menjadi muslimat kembali, ia boleh kawin dengan bekas suaminya dengan akad dan mahar yang baru.

*Qaul kedua* berpendapat: jika isteri murtad, kemudian memeluk salah satu agama Ahli Kitab, tidak terjadi pasakh dan tidak pula perceraian. Pendapat mereka itu berdasarkan ayat 5 Surat (5) Al Mā'idah, Allah berfirman:

الْيَوْمَ أُحِلَّ لَكُمْ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ وَالْمُحْصَنَاتُ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ ... (الْمَائِدَةُ : ٥)

Artinya:

"Pada hari ini dihalalkan bagimu yang baik-baik. Makanan (sembelihan) orang-orang yang diberi Al Kitab itu halal bagimu dan makanan kamu halal pula bagi mereka. (Dan dihalalkan kamu mengawini) wanita-wanita yang menjaga kehormatan di antara wanita-wanita yang beriman dan wanita-wanita yang menjaga kehormatan di antara orang-orang yang diberi Al-Kitab sebelum kamu ..... (Al Mā'idah ayat 5).

Ayat di atas menerangkan bahwa seorang mukmin boleh melakukan akad nikah dengan wanita Ahli Kitab, yang berarti bahwa seorang mukmin boleh mempunyai isteri seorang wanita Ahli Kitab. Dengan murtadnya isteri, kemudian memeluk salah satu agama Ahli Kitab, berarti pasangan suami isteri itu masih termasuk *pasangan suami isteri yang dihalalkan* oleh ayat di atas.

*Qaul ketiga* berpendapat bahwa dengan murtadnya si isteri berarti ia telah menjadi budak kaum muslimin, walaupun ia memeluk agama Ahli Kitab. Karena itu suaminya boleh membeli dari hakim.

Mālikiyah berpendapat dengan qaul kedua Hanafiyyah. Sedang Syāfi'iyah berpendapat bahwa setelah pihak isteri murtad dan menganut salah satu agama Ahli Kitab, maka perceraian ditangguhkan sampai habis masa 'iddah isteri. Jika masa 'iddah isteri telah habis, ada dua kemungkinan. Kemungkinan pertama si isteri kembali memeluk agama Islam. Dalam hal seperti ini tidak terjadi perceraian. Jika si isteri tetap murtad, terjadilah perceraian. Masa 'iddah dihitung sejak isteri melakukan murtad. Pendapat ini sama dengan pendapat Hanabilah.

Murtad dapat pula dijadikan alasan perceraian dengan menqiaskan aqad nikah kepada aqad mu'āmalah yang terjadi karena tujuan mengambil manfaat, seperti sewa-menyewa, jasa (ijārah) dan sebagainya. Pada aqad sewa menyewa

<sup>16</sup>Abdurrahman Al Jaziri, *ibid*.

rumah umpamanya, terkandung pengertian bahwa rumah itu disewakan selama dapat diperoleh manfaat darinya, seperti rumah itu layak didiami. Dapat didiami menjadi syarat tidak tertulis bagi si penyewa, sehingga ia mau menyewa rumah itu. Jika rumah itu tidak dapat didiami tentu si penyewa tidak akan mau menyewanya. Jika manfaat itu hilang, maka 'aqad sewa menyewa itu dapat diputuskan atau berakhir. Demikian pula halnya jasa. Seorang buruh digaji oleh majikannya, selama buruh itu dapat memberikan jasa tertentu kepadanya. Jika si buruh tidak dapat memberikan jasa, maka majikannya tidak mau lagi melanjutkan 'aqad (perjanjian) kerja yang pernah dibuatnya itu.<sup>17</sup>

Demikian pula halnya dengan akad nikah. Seorang bersedia melaksanakan perkawinan dengan orang lain, jika ia dapat memperoleh manfaat dari orang itu. Manfaat itu ialah dengan perkawinan itu ia dapat mencapai tujuan hidupnya sebagai seorang muslim, yaitu beribadat kepada Allah dan berbahagia hidup di dunia dan di akhirat dan sebagainya.<sup>18</sup> Harapan akan tercapainya tujuan perkawinannya itu dapat diduga dengan melihat keadaan calon suami atau calon isteri sebelum dilaksanakan perkawinan, seperti salah satu syarat tercapainya tujuan perkawinan yang diharapkan itu, ialah calon isteri atau suaminya beragama Islam. Dengan murtadnya suami atau isteri pada saat kehidupan rumah tangga berlangsung, berarti pihak yang masih menganut agama Islam adalah pihak yang dirugikan, karena dengan murtad si suami atau isteri pihak yang masih menganut agama Islam selalu dalam keadaan kemungkinan terpengaruh mengikuti agama pihak yang murtad itu.<sup>19</sup>

Menqiaskan akad nikah kepada akad mu'amalah yang bertujuan mengambil manfaat ini termasuk qias aulā. Karena akad nikah adalah akad yang berat (*mišāqan galīza*)<sup>20</sup>, sedang akad mu'amalah adalah aqad biasa. Qias aulawi dapat dijadikan hujjah.<sup>21</sup>

Dalam pada itu pada beberapa kitab fiqh<sup>22</sup> dinyatakan bahwa tidak membayar nafkah, cacad, mafqud (suami atau isteri hilang tidak tentu rimbanya) dapat dijadikan alasan untuk bercerai. Jika demikian halnya maka murtad lebih dapat dijadikan alasan untuk bercerai, dibanding dengan tidak membayar nafkah, cacad dan mafqud, karena murtad suami atau isteri akan besar pengaruhnya terhadap kemungkinan isteri atau suami yang tidak murtad untuk mencapai tujuan hidupnya.

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<sup>17</sup>Muhammad Salam Madkūr, *Al Fiqhul Islāmī*, (Cet. 2, 1955, Kairo), hal. 368. Bandingkan dengan Bada'iuš sinā'i karangan 'Alā'uddin Al Kasani, *op.cit.*, hal. 22.

<sup>18</sup>Drs. Kamal Muchtar, *Azas-azas hukum Islam tentang Perkawinan* (Bulan Bintang, cet. 2. 1987, Jakarta), hal. 12—15.

<sup>19</sup>Surat (2) Al-Baqarah: 221.

<sup>20</sup>Surat (4) An-Nisa': 21.

<sup>21</sup>Muhammad Abu Zahrah, *Usulul Fiqh*, (Darul Fikril 'Arabi, tanpa tahun terbit, Kairo), hal. 247.

<sup>22</sup>Drs. H. Kamal Muchtar, *op.cit.*, hal. 213.

### III. MURTAD SEBAGAI ALASAN PERCERAIAN DI PENGADILAN AGAMA

Sampai dengan tahun 1930 banyak wanita yang beragama Islam yang hendak bercerai dari suaminya, tetapi tidak mempunyai alasan-alasan yang dapat dibenarkan undang-undang dan peraturan yang berlaku pada waktu itu. Karena itu mereka mencari-cari alasan perceraian yang dikehendaki itu. Di antara alasan yang mereka peroleh, ialah murtad. Dengan menyatakan pengakuan murtad di hadapan hakim, sekalipun dengan murtad yang palsu, mereka merasa telah mempunyai alasan untuk bercerai. Dalam pada itu mereka mendengar para ulama menerangkan bahwa pada umumnya kitab-kitab fiqh menyatakan bahwa murtad termasuk dosa besar. Orang yang murtad dapat diancam dengan hukuman maximum berupa hukuman mati, sehingga dapat dijadikan alasan untuk bercerai. Karena murtad yang mereka lakukan adalah murtad yang palsu dengan arti melakukan korupsi hukum, para ulama mencelela perbuatan mereka. Perbuatan tercela, tidak dapat dijadikan alasan untuk bercerai. Mendengar pendapat para ulama itu para penghulupun enggan menerima murtad sebagai alasan untuk bercerai.<sup>23</sup>

Di samping itu Pengadilan Agama (Priesterraad) juga berpendapat bahwa Pengadilan Agama hanya dapat menerima pernyataan murtad. Setelah pernyataan murtad itu perkara perkawinan dan perceraian orang yang murtad itu diselesaikan oleh Raad van Indie (semacam Pengadilan Negeri sekarang). Raad van Indie memprosesnya dengan hukum Adat, sesuai dengan peraturan yang berlaku pada waktu itu. Tetapi tidak ditemukan keputusan Raad van Indie yang berhubungan dengan perceraian dengan alasan murtad itu.<sup>24</sup>

Pada tahun 1938 didirikan Mahkamah Islam Tinggi (MIT) atau Hof voor Islamietische Zaken. Mahkamah cenderung kepada pendapat para ulama dan keputusan para Penghulu itu. Bahkan Mahkamah menegaskan lagi dengan mengeluarkan keputusannya pada tanggal 31 Oktober 1938 yang menyatakan bahwa setelah salah seorang dari suami isteri menyatakan murtad, maka MIT tidak lagi berwenang memutuskan perkara suami isteri itu. Sejak murtad itu bagi suami isteri berlaku Staatsblad 1890 no. 150 tentang Perkawinan campuran. Pasal 134 ayat (2) Indische Staatsregeling dan pasal 2 ayat (1) Peraturan Peradilan Agama Jawa dan Madura menyatakan bahwa Pengadilan Agama Islam hanya berwenang menyelesaikan perkara suami isteri yang keduanya menganut agama Islam. Pengadilan Agama tidak berwenang memutuskan perkara suami isteri yang berbeda agama, baik perbedaan itu terjadi pada saat aqad nikah maupun terjadi setelah perkawinan berlangsung. Keputusan MIT itu kemudian hari dapat membendung keinginan menjadikan murtad sebagai alasan untuk bercerai di Pengadilan Agama. Kemungkinan lain yang menyebabkan murtad tidak dijadikan alasan perceraian terjadinya Perang Dunia kedua dan Indonesia dibawah penjajahan Jepang, kemudian dilanjutkan

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<sup>23</sup>Daniel S. Lev, *op.cit.*, hal. 213.

<sup>24</sup>Daniel S. Lev, *ibid.*

dengan Perang Kemerdekaan, sampai tahun 1949. Pada saat-saat itu Pengadilan Agama, seperti halnya Pengadilan Negeri hampir-hampir tidak melaksanakan fungsinya.

Keinginan menjadikan murtad sebagai alasan untuk bercerai, timbul kembali di Sumatera Selatan pada awal tahun 1950, sehingga Biro Peradilan Agama dan Sekretariat Jenderal Departemen Agama mengeluarkan surat-surat edaran serta petunjuk-petunjuk dengan melampirkan surat keputusan MIT tahun 1938, yang isinya tidak menerima murtad sebagai alasan perceraian.

Setelah persoalan tersebut reda, pada tahun 1953 dan 1954 terjadi kembali perkara yang serupa di Sumatera Selatan juga. (baca surat-menyurat antara sekretariat Jenderal dan Biro Peradilan Agama dengan Pengadilan Agama Palembang bulan November dan Desember 1953 dan bulan September dan Oktober 1954.

Nampaknya, sebagai reaksi dari kejadian di Sumatera Selatan itu, Konferensi Kementerian Agama di Tretes yang dilangsungkan tanggal 25 sampai dengan 30 Juni 1955, merasa perlu membicarakan persoalan murtad sebagai alasan bercerai itu. Akhirnya konferensi itu memutuskan: menyetujui Instruksi Kepala Biro Peradilan Agama tanggal 13 September 1954 No. B/II/35/54 lampiran 3, yaitu melarang Pengadilan Agama memberikan keputusan tentang murtadnya seorang wanita dalam perselisihan suami isteri yang hanya akan mempergunakan murtad itu sebagai alat untuk memutuskan tali perkawinan yang sah dengan suaminya.

Pengadilan Agama Nganjuk, Jawa Timur berbeda pendapat dengan Biro Peradilan Agama. Pada tahun 1958 menjatuhkan fasakh kepada wanita yang suaminya mengaku murtad dari Islam dengan menganut agama Buddha Jawa sebagaimana dalam surat keputusannya tanggal 6 Desember 1958 No. 342. Tidak diperoleh reaksi dari Biro Peradilan Agama terhadap keputusan Pengadilan Agama Nganjuk itu.<sup>25</sup>

Dengan banyaknya terjadi murtad, terutama setelah terjadinya Gerakan 30 September Partai Komunis Indonesia (PKI), akan selalu timbul masalah murtad sebagai alasan perceraian.<sup>26</sup> Murtad dalam arti yang sebenarnya dapat mengakibatkan seseorang gagal mencapai tujuan hidupnya yang diharapkan akan diperolehnya melalui jalan perkawinan, sebagaimana yang dimaksud oleh undang-undang no. 1 tahun 1.

Sebagaimana terdapat perbedaan pendapat antara MIT dan Biro Peradilan Agama dengan Pengadilan Agama Nganjuk, Jawa Timur, demikian pula perbedaan pendapat itu terlihat pula di kalangan para ahli hukum Indonesia.

Prof. Mr. Notosusanto sependapat dengan MIT dan Biro Peradilan Agama. Beliau menyatakan sebagai berikut:

Memang tidak baik suatu pengadilan memberi akibat hukum kepada riddahnya seseorang kalau sudah terang bahwa riddahnya itu hanya untuk mencapai suatu hal yang diinginkan olehnya. Lagi pula harus diingat bahwa tidak tepat untuk me-

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<sup>25</sup>Daniel S.Lev, *ibid.*

<sup>26</sup>Daniel S.Lev, *ibid.*

lakukan sebahagian akibat riddah itu, sedang akibat lain tidak dapat dijalankan. Andaikata akibat riddah itu dijalankan seluruhnya menurut hukum syari, misalnya saja si isteri dimasukkan penjara, sudah barang tentu wanita tidak akan menggunakan riddah sebagai jalan untuk mendapat cerai dari lakinya. Dalam negara kita yang berdasarkan kemerdekaan beragama akibat yang demikian itu (yakni memasukkan penjara orang yang keluar agama Islam) sudah tentu tidak dapat dijalankan.

Riddah yang pura-pura dengan suatu tujuan di luar keagamaan tidak saja korupsi terhadap agama, akan tetapi juga korupsi terhadap hukum, harus dijaga janganlah tindakan sendiri dari satu pihak dapat mengakibatkan perubahan hukum untuk pihak yang lain, demikian itu akan merusak kepastian hukum dan mungkin juga pihak ketiga.<sup>27</sup>

Prof. Notosusanto tidak menjelaskan tentang orang yang murtad dengan sebenarnya. Beliau hanya menyinggung orang yang pura-pura murtad, sehingga hal itu dapat dijadikan alasan perceraian. Mahkamah Islam Tinggi tidak pula menyinggung murtad yang sebenarnya, tetapi hanya menerangkan murtad yang pura-pura yang dijadikan sebagai alasan perceraian. Hal ini dapat dipahami dari sinyalemen Prof. Notosusanto<sup>28</sup> sebagai berikut:

Pendapat Mahkamah Tinggi Islam dan Biro Peradilan Agama dapat dibenarkan berdasarkan kenyataan bahwa:

1) Negara Republik Indonesia merupakan negara yang terdiri atas penduduk yang berbeda agama, berbeda suku bangsa, dan adat istiadat. Kaum muslimin merupakan salah satu dari bahagian dari kesatuan yang terdiri dari yang beraneka ragam itu. Karena itu perlu dihindari hal-hal yang dapat merusak kesatuan dan persatuan bangsa itu.

2) Kesimpulan penyelidikan Dr. G. F. Pijper:

(a) Bahwa riddahnya wanita-wanita itu pura-pura saja, mereka menerangkan di muka hakim agama Islam bahwa mereka menjadi murtad dari agama Islam itu semata-mata dengan tujuan supaya dapat putus perkawinannya dengan suaminya yang tidak disukainya. Sesudah perkawinannya putus, wanita itu di muka Pengadilan Agama masuk Islam dan mengucapkan kalimah syahadat.

(b) Bahwa kebanyakan Pengadilan Agama segan campur tangan dalam hal itu.

Mr. Wirjono Projodikoro, (pernah menjadi ketua Mahkamah Agung RI) membuka kemungkinan menjadikan murtad sebagai alasan perceraian, seandainya murtad itu dilakukan dengan sungguh-sungguh. Beliau menyatakan sebagai berikut:

Akan tetapi ada kemungkinan dalam keadaan tertentu suatu murtad itu bersifat penting sedemikian rupa, sehingga dapat merupakan salah satu sebab untuk mohon faskh dari perkawinan.

<sup>27</sup>Prof. Mr. Notosusanto, *op.cit.*, hal. 52.

<sup>28</sup>Prof. Mr. Notosusanto, *ibid.*, hal. 54.

Yang saya maksudkan bahwa mungkin sekali semula perkawinan dilakukan di antara keluarga yang sangat mendalam perihal menganut agama Islam, sehingga layak dianggap apabila kedua belah pihak mempelai sangat gemar kepada agamanya. Kalau dalam hal ini kemudian ternyata salah satu pihak murtad dan beralih kepada agama lain, maka dapat dikatakan bahwa kini ditemukan suatu keadaan di mana salah satu pihak kemudian ternyata tidak memenuhi syarat dalam peribadinya yang semula dianggap ada padanya. Dan ini seperti yang telah saya katakan di atas dapat merupakan alasan untuk fasakh perkawinan.<sup>29</sup>

#### IV. KESIMPULAN

Dari keterangan di atas dapat disimpulkan sebagai berikut:

1. Jika dipahami Undang-undang no. 1 tahun 1974 serta penjelasannya, Undang-Undang Dasar 1945 dan Pancasila, terdapat peluang untuk menjadikan murtad sebagai alasan untuk bercerai, selama tidak mengganggu ketertiban dan keamanan masyarakat.
2. Pendapat-pendapat para ulama yang terdapat dalam kitab-kitab fiqh, menunjukkan bahwa murtad salah seorang suami isteri dapat dijadikan alasan perceraian oleh pihak yang masih memeluk agama Islam.
3. Departemen Agama c.q. Direktorat Peradilan Agama (sekarang Ditbinbapera), Mahkamah Islam Tinggi dan hakim-hakim Peradilan Agama enggan menjadikan murtad yang pura-pura sebagai alasan perceraian, namun ada Pengadilan agama yang memberi keputusan perceraian dengan alasan murtad. Keputusan ini senada dengan pendapat pakar hukum Indonesia.
4. Keputusan Pengadilan Agama di atas merupakan jurisprudensi. Jurisprudensi dan pendapat ahli hukum itu dapat dijadikan dasar keputusan, jika perkara yang diadili itu mempunyai latar belakang yang sama dengan jurisprudensi dan pendapat pakar hukum Indonesia itu.

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<sup>29</sup>Mr. Wiryono Projodikoro, *Hukum Perkawinan Indonesia*, (van Hoeve, Cetakan 3, Bandung), hal. 110.

# CONCEPT OF SHŪRĀ IN SUNNĪ ISLAM

Oleh : Drs. Abdul Muis Naharong, M.A.

## I. Introduction

Nowadays, shūrā is a persistent topic whenever people discuss the Islamic concept of state or democracy in Islam. This is primarily due to the fact that the Qur'ān commands Muslims to manage their affairs through shūrā.

Etymologically, shūrā means to extract honey from the small hollow in the rock in which it is deposited by the wild bees; or to gather it from its hives and from other places.<sup>1</sup> In its technical sense it may be defined as mutual consultation or debate in order that one may see another's opinion.<sup>2</sup> Shūrā can also be defined as "mutual advice through mutual discussions on an absolutely equal footing,"<sup>3</sup> or "a collective endeavour for seeking an objective truth."<sup>4</sup> The Qur'ān employs the term shūrā in these two latter senses when it asks the Prophet to consult the companions in the affairs concerning community.<sup>5</sup> This verse (3:159), together with chapter 42, verse 38<sup>6</sup> lay down the basic principle which guide Muslims in managing their affairs.

Shūrā, as an institution, was not an Islamic innovation. It was a custom dating back to the pre-Islamic era. Before Islam came, the Arab had an institution called *nādi* (assembly). It was a tribal council composed of the elders of the tribe. Important matters of the tribe, such as peace, war and security, were decided by mutual consultations in the council.<sup>7</sup> This tradition was so strongly rooted in Arab society that even the Bedouins conducted their affairs by mutual consultation. Ibn'Atiyya (d. 993), an early Qur'ān interpreter, related that a Bedouin chief said that he would never be cheated until his people were also cheated, because he would do nothing until he had consulted them.<sup>8</sup> It is this institution which was reorganized in Islam and was given the name shūrā.

In pre-Islamic Mecca, after the death of Qusayy ibn Kilab, the founder of the confederacy of Mecca, who decided public affairs by himself, supreme authority was vested in a relatively small number of privileged persons whose distinction was based on social status. These persons were the heads of the various clans of the Quraish and of their allies who together constituted the body known as *al-Malā'* (council of elders) or *nādi* which regulated the religious, social, political, economic and cultural life of the community. This body decided all matters it chose to consider and their decision was final. All free members of different clans and their allies above the age of forty were al-

lowed to attend the meetings of the council at *Dār al-Nadwah*. But it appears that this age condition was not strictly observed because it was said that Abū al-Ḥakam (Abū Jahl) attended its meeting when he was only thirty years old and Ḥākim b. Ḥizām attended its meeting when he was 20 years old.<sup>9</sup> At least in theory, all the members of the council had equal status and none could exercise authority or supremacy without the consent or permission of the other members. But persons or leaders of high caliber, such as Hāshim, 'Abd al-Muttalib and others, could overrule the decisions of the members of the council or at least get them around to agree with their points of view.<sup>10</sup>

This council of elders had only legislative and juridical powers. It did not have any executive power, the execution and implementation of the decision of the elders was left to the clans and families.<sup>11</sup> It therefore lacked the coercive power to execute its will. In spite of this, in an extraordinary circumstance, it could give an effective sanction to the recalcitrants or adversaries by bringing economic or social pressures against them.<sup>12</sup>

This paper will discuss *shūrā* under the Prophet and the first four Caliphs, and the viewpoints of pre-modern and modern Muslim scholars on *shūrā*. In expounding these issues, I shall put forward two different lines of opinion held by the Muslim scholars.

## II. *The Prophet and Shūrā*

The authority exercised by the Prophet was total in the sense that the believers had no right to question him. They are called upon to obey God and His Prophet unconditionally.<sup>13</sup> The Qur'ān says that he who obeys the Prophet obeys God.<sup>14</sup> But this is not to say that the Prophet was an absolute ruler. This is clear from the aforementioned verses which enjoin the Prophet to consult his followers in conducting the affairs of the Muslims where there is no clear-cut divine guidance in the Qur'ān. The Prophet when asked as to what they should do after his demise in matters where there were no specific injunctions in the Qur'ān, said that they should resolve their matters through mutual counsel on condition that the consultants be men of piety and sound opinion.<sup>15</sup> The Qur'ān refers to these people as *ūlū'l amr*. It states:

And when there comes to them any tidings whether of peace or of war, they spread it about: Whereas if they had referred it to the Messenger and to those in authority (*ūlū'l amr*) among them, surely those of them, who can elicit the truth from it, would have understood it. And had it not been for the grace of Allah upon you and His mercy, you would have followed Satan, save a few.<sup>16</sup>

In this verse 'those in authority (*ūlū'l amr*) means men of exceptional talent and wisdom capable of deriving knowledge from the matter referred to them.<sup>17</sup> Such a body of men was found around the Prophet who gave their opinion on matters referred to them. According to Muḥammad Imārah, the contemporary Egyptian intellectual, the most important members of this group are Abū Bakr al-Siddīq, 'Umar b. al-Khaṭṭāb, Uthmān b. Affān, 'Alī b. Abī Talib, Talha b. 'Ubayd Allāh, al-Zubayr b. al-Awwām, 'Abd al-Rahman b. 'Awf, Sa'd b. Abi Waqqāṣ, Sa'id b. Zayd b. Nufail, and Abū 'Ubaida b. al-

Jarrāh.<sup>18</sup> 'Imārah, however, did not provide a source for his statement.

In the history of Islam, it is reported that consultations with close associates was the general practice of the Prophet in spite of the fact that his actions were guided by revelation. He usually sought advice from his leading companions on all important matters of the state. Ā'isha, the Prophet's wife, said that she did not see anyone who consulted people more than the Prophet.<sup>19</sup> For instance, on the advice of Ḥubāb b. al-Mundhir, the Prophet changed his early decision as to where Muslims should encamp during the battle of Badr,<sup>20</sup> Before the battle of Uḥud, the Prophet also sought advice from his followers.<sup>21</sup> Not only in matters of war did the Prophet consult his companions, but also in worldly affairs where there were no specific injunctions in the Qur'ān. For example, before God sent down a revelation which deals with the accusation of the slanderers against his wife. Ā'isha, the Prophet consulted 'Alī b. Abi Ṭālib and Usāmah b. Zayd as to what he should do about that matter.<sup>22</sup> Even the call to prayers (adhān) resulted from mutual consultation.<sup>23</sup>

It should be noted that once the decision was made the Prophet abided by it. We observe this from the rejection of the Prophet to change his decision as to where the Muslims should fight the attacking Meccans. Before the battle of Uhud, the Prophet and some of his leading and experienced companions wanted to defend Medina from within but the majority of his followers, especially the younger and newly converted Muslims, wanted to go out to confront the enemy. The Prophet accepted the majority's opinion and later rejected the advice of some of his companions to change his decision. When they asked him to stay, the Prophet replied that "a Prophet should not take off his armour after he has put it on (for the battle) until Allah decides the case."<sup>24</sup> This is, in fact, in accordance with the command of Allah in the Qur'ān which reads "Consult them (O Muḥammad!) in the affair; when you have determined (upon a course), then put your trust in God."<sup>25</sup> The Prophet, when asked about the meaning of *'azama*, said that "consult knowledgeable people then follow them."<sup>26</sup> Al-Qurṭubī (d. 1273), quoting the early Qur'ān interpreter, Qatāda (d. 736), asserted that God commanded the Prophet to carry out the decision he has taken, and he should put his trust in God.<sup>27</sup> Abd al-Ḥamīd Mutawallī, a contemporary Muslim scholar, asserted that *'azama* meant that "after obtaining advice from the community, the Prophet should determine upon a course in accordance with the advice tendered and for its practical consequences, whatever they be, he should put his trust in God."<sup>28</sup>

During the time of the Prophet, the *shūrā* was not a formal institution. The Prophet consulted his companions if need be. The *ahl al-shūrā* or the consultative body was also informal. The people in this consultative body were not the representatives of the whole community in the sense that they were elected by them in the modern sense.

#### IV. *The First Four Caliphs and Shūrā*

After the demise of the Prophet, Abū Bakr was elected Caliph. Abū Bakr, as reported, was elected initially by a few leading companions from the

Meccan Immigrants and the Medinese Anṣār after a long debate in the hall of Banū Sā'ida. In this meeting, the leaders of the Medinese Anṣār rejected Abū Bakr's and Abū al-Nu'mān's<sup>29</sup> claim that the *Muhājirūn al-Awwalūn* (the First Immigrants), who were from the Quraish, were more entitled to succeed the Prophet as the leader of the Muslim community. They (the leaders of the Medinese Anṣār) proposed that the Muhājirūn and the Anṣār elect their respective leaders.<sup>30</sup> They also turned down Abū Bakr's proposal that 'Umar b. al-Khaṭṭāb or Abū 'Ubayda b. al-Jarrāḥ be elected Caliph. 'Umar, fearing a complete breach would occur, asked Abū Bakr to raise his hand. When Abū Bakr did so, 'Umar gave him his allegiance followed by the Muhājirūn and the Anṣār who were present in the hall of Banū Sā'ida.<sup>31</sup> On the next day, people swore allegiance to Abū Bakr as a body after the pledge in the hall.<sup>32</sup>

Abū Bakr, in his inaugural speech, said to the people: You have elected me (as your chief executive) although I do not think I am the best among you. If you think I do right support me; If I am wrong, set me right. Obey me as long as I obey God and His Messenger.<sup>33</sup>

During his caliphate, Abū Bakr, as the first successor of the Prophet, must have followed the precedence set up by the Prophet in the matter of consulting the leading companions when he was confronted with a problem. But this consultation was vague and informal. The "consultative body" whom the caliph could consult with was, as Montgomery Watt stated, also some what informal.<sup>34</sup> The members of this "consultative body" were mainly the leading members of *al-Muhājirūn al-Awwalūn*<sup>35</sup> and several leading companions from the Medinese Anṣār.<sup>36</sup>

According to the classical Sunnī image, during the caliphate of Abū Bakr, it is reported that whenever he wanted to make a decision, he referred to the Qur'ān. If he found a nass (text/provision) relating to the matter, he based his decision on that text, but in the absence of a clear nass, he referred to the Sunnah of the Prophet. If he found one which can be employed to decide the matter under consideration, he used it. But if he did not, he asked people whether they knew the Prophet had made a decision about the same matter or not; and if that too failed, he then summoned the leaders of the Muslims to be consulted. Finally, he decided the matter based on the consensus reached by the *shūrā*.<sup>37</sup> In spite of this, it is a historical fact that Abū Bakr sometimes did not agree with the members of his "*shūrā*" on several matters. For example, he decided to fight those who declined to pay the *zakāt* (alms tax) despite the fact that most of the members of his "*shūrā*", including 'Umar ibn Khaṭṭāb, opposed Abū Bakr's opinion.<sup>38</sup> Another instance of Abū Bakr's opposition to the opinion of the *ahl al-shūrā* is that despite the opposition of the majority of the members of the *shūrā*, he sent an expedition to Syria under a young and inexperienced commander. Usāmah b. Zayd.<sup>39</sup>

Abū Bakr appointed 'Umar b. al-Khaṭṭāb caliph after he (Abū Bakr) consulted 'Abd al-Raḥmān b. 'Awf and 'Uthmān b. Affān.<sup>40</sup>

During the caliphate of 'Umar, we have details of two important *shūrās*, one on the eve of the battle of al-Qādisiyya, a battle fought between the Mu-

slim and the Persian armies in 636, to decide whether or not the Caliph (Umar) should lead the Muslim army in person, and the other to elect his successor.

Ṭabarī reported that before the battle of al-Qādisiyya, 'Umar intended to lead the Muslim army in person and he, therefore, made 'Alī the deputy in charge in Medina before he headed towards Iraq. However, when the Muslim army stopped at Sirār, a spring near Medina, there arose a serious debate as to whether the caliph should go back to Medina or continue to be the commander of the Muslim army. 'Umar, therefore, ordered his army to congregate, explained the purpose of the meeting to them and waited for an answer. The people said that he should go with them. He agreed with them and said he would go unless there was a better opinion. Then he sent for the *ahl al-Ra'y* (the well-informed persons) and asked for their opinion about his intention to lead the Muslim army in person. All of them but Ṭalḥa were of the opinion that he should stay in Medina and send another companion to lead the Muslim army if he wanted to be victorious.<sup>41</sup> Abd al-Raḥman b. 'Awf was against 'Umar's intention to lead the Muslim army in person because he was afraid that the defeat of the Muslim army under the Caliph's command or his death in the battle would bring disaster to the Muslim.<sup>42</sup>

After holding *shūrā* with the *ahl al-Ra'y*, he asked his army to congregate and addressed them:

Verily God, the Honoured and the Great, has united through Islam its adherents and bound their hearts together. He has made them brothers in it (Islam). Among themselves the Muslims are like a body, if one limb is afflicted, the others cannot escape the consequence. Therefore, it is enjoined upon the Muslims that their affairs should be settled by consultation among themselves and among the well-informed persons. The (common) people must follow those in authority and adhere to those things which are agreed upon and approved by them, and those in authority must follow their important opinion of the strategy of war. O people, I was a man who had the same opinion as yours (that I should go to the front) until the well-informed dissuaded me from going. Now I am of the opinion that I should stay behind and send somebody else.<sup>43</sup>

The second case of *shūrā* was the *shūrā* conducted by the *majlis al-shūrā* (the electoral body) constituted by 'Umar to elect his successor. This electoral body consisted of six persons chosen from the members of the *ahl al-Ra'y* or *al-Muhājirūn al-Awwalūn*. They are 'Uthmān b. Affān, 'Alī b. Abī Ṭālib, Ṭalḥa, al-Zubayr b. 'Awwām, 'Abd al-Raḥman b. 'Auf, and Sa'd b. Abī Waqqās.<sup>44</sup> Umar ordered these people to elect a caliph from among themselves and added that they should consult each other for three days until they could elect a caliph on the fourth day.<sup>45</sup> It is reported that when this group gathered and consulted each other, 'Abd al-Raḥman b. 'Awf said to them that he was not going to compete with them, and if they wished, he could select a caliph from among them. All of them agreed to let 'Abd al-Raḥman decide the

case.<sup>46</sup> 'Abd al-Raḥman, in carrying out the task of selecting a caliph, consulted not only the members of the *majlis al-shūrā* constituted by 'Umar but also the companions of the Prophet, the leaders of the armies and the distinguished people who were present in Medina.<sup>47</sup> Despite the fact that there was difference of opinion over the procedure of the election and the contention of the people from Banū Hāshim that 'Alī should be elected caliph, 'Uthmān was finally elected caliph.<sup>48</sup>

The members of *shūrā* during the caliphate of 'Umar, besides those from the period of Abū Bakr, also included the Qur'ān reciters (*qurrā'*). They (the members of the *shūrā*) consisted of the young and the aged.<sup>49</sup> 'Umar was also reported to have said about the importance of *shūrā*, that "the opinion of one man was like the cloth woven of one thread; the opinion of two was like the cloth made of twisted thread; and the opinion of three (or more) was like a piece of cloth woven of several threads together that could hardly be torn to pieces."<sup>50</sup>

During the caliphate of 'Uthmān and 'Alī, due to the unfavorable circumstances, the institution of *shūrā*, as it existed under 'Umar, disappeared. From this period onwards, *shūrā* seems to lose its practical significance. It again became an issue when Mu'āwiyah decided to appoint his son, Yazīd, as his heir-apparent. Several sons of the leading companions of the Prophet, among them 'Abd Allāh b. 'Umar, 'Abd Allāh b. al-Zubayr, and 'Abd al-Raḥman b. Abī Bakr, opposed Mu'āwiyah's decision. Ibn 'Umar, when asked by Mu'āwiyah about his opinion on this matter, replied that the Muslims should elect the best man as caliph,<sup>51</sup> and 'Abd al-Raḥman b. Abī Bakr and Ibn al-Zubayr stated that the election of the caliph should be conducted by way of *shūrā*.<sup>52</sup> Mu'awiyah, however, rejected their proposals.

During the Umayyad period, it was 'Umar b. 'Abd al-Azīz who tried to revive the institution of *shūrā* when he became the governor of Medina in 700. When he arrived in Medina, he sent for ten jurists<sup>53</sup> of the city. When they had gathered before him, he said to them:

Verily I have summoned you for a business of which you shall be rewarded, and in it you will become the upholders of the truth. I do not wish to decide any matter except with the opinion of all of you or with the opinion of those who are present among you. If you see someone breaking the laws or if you know my administrative officer (*'amil*) does something wrong, you must inform me.<sup>54</sup>

It should be pointed out that with the political victory of Mu'āwiyah, the *shūrā* was gradually replaced by autocratic decision-making. Since then dynastic rule was established and the system of *shūrā* was greatly changed if not abolished. According to the classical Sunnī tradition, the Umayyads altered the very character of the early caliphate and imposed their own political system, restricting *shūrā* to their supporters with the exception of 'Umar b. 'Abd al-'Azīz. In addition, some of the learned ('ulamā) supported the Umayyads' claim that they reigned by the *qadar* (divine predestination)<sup>55</sup> and will of God as His viceregents. This claim implied that the caliphate had been

bestowed on the Umayyads by God and that disobedience to the Caliph and his subordinate officers was a refusal to acknowledge God and so tantamount to unbelief.<sup>56</sup>

This tendency towards emphasizing a complete and unconditional obedience to the caliphs was adopted from this period onwards. Some of the 'ulamā even rationalized the religious obligation of absolute obedience to the existing powers by citing sayings attributed to the Prophet. One of them is the Ḥanafī jurist, Abū Yūsuf (731—798), who was appointed *qādī* of Baghdad in 782 and later became the chief *qādī* of the caliphate. In his *Kitāb al-Kharāj* dedicated to the Caliph Hārūn al-Rashīd, Abū Yūsuf cited several traditions attributed to the Prophet which supported a complete and unconditional obedience to the Caliph, among which are: "Fear God and obey Him; and even if a flat-nosed shrunken-headed Abyssinian slave is invested with power over you, hearken to him and obey him."<sup>57</sup> This is, in fact, an off-quoted tradition to show that Islam treats human beings equally and that Islam supports the democratic principle. Abū Yūsuf, however, used it as an argument in defence of blind submission to authority. He quoted another tradition, "He who obeys God obeys me and he who obeys the imam obeys me. He who rebels against me rebels against God and he who rebels against the imam rebels against me."<sup>58</sup> In support of the opinion that the obligation to obey the imam is not limited to a good imam, he cited a tradition which stated, "When God intends good to a people, He appoints over them governors who are forbearing and puts their properties in the hands of tolerant men; and when He wants to put them to ordeal, He appoints over them stupid governors and entrusts their goods in the hands of avaricious men."<sup>59</sup>

From the Umayyad period onwards, *shūrā* came to indicate the ideal to which a ruler should stick in deciding political matters. This can be seen from the writings of the Qur'ān interpreters and the political theorists.

#### IV. Muslim Scholars' View on *Shūrā* in Pre-modern History

The Qur'ānic verses relating to *shūrā* have been differently interpreted by early and Medieval Muslim scholars. However, unlike their modern counterparts, they only discussed two important issues: the nature and the subjects of *shūrā*.

##### 1. The Nature of *Shūrā*

Many Muslim scholars of the pre-modern period were of the opinion that *shūrā* was compulsory and, therefore, it was incumbent upon the rulers to carry it out. Ibn 'Atiyya (d.993), an early Qur'ān interpreter, stated that *shūrā* was one of the principles of the shari'ah and the basis of rule. Therefore, the ruler who did not consult those who were well-informed and those who had knowledge of religion had to be deposed. According to him, there was no difference of opinion (among the scholars) on this matter.<sup>60</sup> The same line of opinion was put forward by Ibn Khuwayzīmandad (d.?), asserting that it was incumbent upon the rulers to consult the 'ulamā when the rulers were ignorant of or in doubt about matters of religion, the leaders of the army in

matters related to war, the people in matters concerning their welfare, the secretaries, the ministers, and the governors in matters related to the welfare of the country and its structure.<sup>61</sup> Ibn Kathīr stated in his *Tafsīr* that some of the *fuqahā'* were of the opinion that *shūrā* was compulsory by basing their opinion upon two hadiths of the Prophet, namely that the Prophet said to Abū Bakr and 'Alī that if they agreed on a counsel, he would not oppose them. The second hadith is the explanation of the Prophet about the meaning of 'azama in the verse" .... fa idhā 'azamta fa tawakkal 'alā'l Allāh". He said that 'azama meant "consult knowledgeable people and follow them."<sup>62</sup>

Al-Māwardī (947—1058), one of the Medieval political theorists, made *shūrā* obligatory by mentioning it as one of the ten duties of an *amir* (ruler or governor). Al-Māwardī asserted that an *amir* had to consult those who were well-informed in difficult matters, and turn to the people of prudence whenever he was in doubt in order to avoid making mistakes and to be successful.<sup>63</sup> Ibn Taymiyya (1263—1328), a Ḥanbali jurist, theologian, and *mujaddid* (reformer) also held the opinion that *shūrā* was compulsory, saying that the ruler could not dispense with consultation because God had enjoined the Prophet to consult his companions. When a ruler took counsel with his *ahl al-shūrā* and one of them indicated to him what he had to practice as prescribed by the Book of God (the Qur'ān) the Sunnah, or the *Ijmā'* (the consensus of the community), he had to comply with it. There was no obedience to someone who deviated from that even though he was very well-informed in matters of religion and the affairs of the world.<sup>64</sup> Muḥammad b. 'Alī Muḥammad al-Shāwkani (1760—1832), basing his opinion upon the form of the verb "shāwirhum" in the verse "wa shāwirhum fī'l amr" (Qur'ān 3:159), which is in the imperative, held that *shūrā* was obligatory because the imperative indicated obligation. It is, therefore, he contended, incumbent not only upon the Prophet but also upon the rulers after the Prophet's demise to perform *shūrā*, because the verse "wa shāwirhum fī'l amr" was not a command limited to the Prophet".<sup>65</sup>

Contrary to the first group who asserted that *shūrā* was compulsory, some scholars stated that *shūrā* was only *mandūb* (recommended). This group reasoned that the Prophet consulted his companions because he wanted to conciliate their hearts, not because he needed their opinions. They quoted Muqātil b. Sulaymān (d.767), Qatāda (d. 736) and al-Rabī' b. Anas (d.756) who said that the Arab chiefs felt bad if they were not consulted in the matters. God, therefore, commanded the Prophet to consult them in the matter because this consultation made them sympathize with him, removed their rancor, and conciliated them.<sup>66</sup> To support their view, this group quoted Imām Shāfi'i (767—820) who held that *shūrā* was recommended based on the Prophet's hadith, namely that the virgin girl was consulted regarding her marriage in order to conciliate her heart, not because it was obligatory to do that. In fact, her father could coerce her into marriage, although it was preferable to consult her.<sup>67</sup>

## 2. The Subjects of Consultation

There are two lines of interpretation with regard to the word *amr* in the verse "wa shāwirhum fi'l amr". Some of the Muslim scholars were of the opinion that God commanded His Prophet to consult his companions in matters relating to war in order to win their loyalty and secure their cooperation.<sup>68</sup> Zamakhsharī (1075—1144) and Ibn Kathīr (1301—1373) mentioned this line of opinion, asserting that God commanded His Prophet to consult his companions in matters relating to war and the like where there was no revelation dealing with them.<sup>69</sup> Many 'ulamā, according to al-Rāzī (1149/50-1210), held that the word "*amr*" in the verse "wa shāwirhum fi'l amr" referred specially to the matter of war because they were of the opinion that *alif* and *lam* in the word "al-amr" did not indicate the whole matter.<sup>70</sup>

Most of the early Qur'ān commentators held that the term *amr* in the verse "wa shāwirhum fi'l amr" referred to affairs relating to war not covered by revelation. This is, according to Mutawallī, because most of the issues which the Prophet referred to his companions were concerning matters of war.<sup>71</sup>

Among the Medieval political theorists, al-Māwardī, following the opinion of the early Qur'ān commentators, put forward the same opinion, stating that the Prophet was enjoined to consult his companions in matters of war in order to obtain a correct opinion to be implemented.<sup>72</sup>

The second opinion supports the idea that the term *amr* in the verse "wa shāwirhum fi'l amr" includes all matters not covered by revelation. Among the classical Qur'ān commentators, Ṭabarī (838—923), al-Rāzī, and Qurtūbī (d.1273) mentioned this kind of interpretation in their Tafsīrs. While Ṭabarī and Qurtūbī simply asserted that the objects of *shūrā* could be in all matters not touched by revelation.<sup>73</sup> al-Rāzī put forward his opinion with an emphasis on the human aspect of the Prophet. He held that, in spite of the fact that the Prophet was the most perfect man, he had limited knowledge about human worldly affairs. It is not unlikely, al-Rāzī argued, that people knew things which the Prophet did not. In addition, the Prophet himself said to his companions that "you know better your worldly affairs and I know better your religious affairs." That is why the Prophet is reported to have said that "no people practice *shūrā* except that they will be led to the very best in their affairs."<sup>74</sup>

### V. Muslim Scholars' View on *Shūrā* in Modern Period

It is clear from the previous account that the early and Medieval Muslim scholars did not pay much attention to *shūrā*. Most of the discussions on *shūrā* were mainly found in the historical reports, in the Tafsīrs written by the Qur'ān interpreters when they explained the term "*shūrā*" encountered in several verses of the Qur'ān, and in the writings of several political theorists. But since the 19th century, with the challenge of the West with its concept of democracy to the Islamic world, which was largely under their domination, the Muslim scholars revived the concept of *shūrā* with great zeal. Besides discussing the nature and the subjects of *shūrā*, they discuss new topics,

among them the problem of the participation of the community in *shūrā*, the concept of the sovereignty of the people, and the functions of the Legislative Assembly.

### 1. *The Nature of Shūrā*

Many Muslim scholars in the modern period, like their early and Medieval counterparts, were of the opinion that *shūrā* was compulsory and, therefore, it was incumbent upon the rulers to carry it out. Muḥammad 'Abduh (1849—1905) expressed this line of opinion, asserting that *shūrā* was obligatory and it was, therefore, incumbent upon the rulers to consult the well-informed persons in matters related to the welfare of the country and the benefit of human beings.<sup>75</sup> He continued that *shūrā* was one of the matters of *shari'a*, so whoever abandoned it, he abandoned a matter of *shari'a*.<sup>76</sup> Dr. 'Abd al-Ḥamid Ismā'il al-Anṣārī, Professor at the Faculty of Law and Islamic studies at-Qatar University, stated that *shūrā* was obligatory. He based his opinion on the form of the verb "shāwirhum" in the verse "wa shāwirhum fi'l amr" (Qur'ān 3:159), which is in the imperative. Al-Anṣārī asserted that, following the main principle (*al-qā'idah al-uṣūliyah*) which was laid down concerning *amr*, *shūrā* denoted obligation if it was free from averting evidence (and this is the case of the verse "shāwirhum fi'l amr").<sup>77</sup> He continued that *shūrā* would lose its meaning if it was deprived of its obligatory character.<sup>78</sup> Dr. Ismā'il al-Badawī, Professor of Public Law at al-Azhar University, in his comment on this issue, stated that it was incumbent upon the rulers to practice *shūrā* in all matters because it was one of the pillars of Islamic government and one of its fundamental characteristics, especially because God commanded even the Prophet to perform it.<sup>79</sup>

In spite of the contention of many of the Muslim scholars that *shūrā* was compulsory, some of them claimed that *shūrā* was not compulsory, but only recommended. This group put forward several reasons to support their contention,<sup>80</sup> namely because 1. the verse "wa amruhum *shūrā* bainahum" (42:38) was a statement indicating a recommendation. On the other hand, although the verse "wa shāwirhum fi'l amr" indicated an obligation, it became recommended because *shūrā* was a means of conciliating hearts, as the Prophet said, "The father seeks the permission of the virgin girl regarding her marriage, her silence symbolizes her agreement." It is, however, also permissible that her father coerces her into marriage, although it is preferable that he takes her consent." Similarly, it was permissible to ignore the outcome of *shūrā*, although it was preferable to follow it, because the Arab chiefs felt bad if they were not consulted in the matters. God, therefore, commanded the Prophet to consult them in the matter because this consultation made them sympathize with him, removed their rancor, and conciliated them. When the Prophet consulted them, they knew that he honored them. 2. the Prophet's saying that "the consultant is entrusted" is not in the imperative mood. If *shūrā* were compulsory, the hadith would have been put in obligatory style. 3. the Prophet did not need consultation. To

support this assertion, this group quoted Ḥasan al-Baṣrī (d. 728) and Daḥḥak b. Muzāhim (d. 723) who said that God commanded the Prophet to consult his companions not because he needed their opinions, but because he wanted to teach them by way of consultation beneficial things, so that his people would practice it after his demise.

One of the few contemporary Muslim scholars who held this opinion is 'Abd al-Ḥamīd Mutawallī, a former Professor of Law and Political System at Omdurman al-Islamiyah University in Alexandria. He contended that *shūrā* was not compulsory because, according to the convention of the scholars of Islamic Jurisprudence, *shūrā* was an action whose performers God extolled, but He did not criticize those who left it.<sup>81</sup>

## 2. The Subjects of *Shūrā*

Most modern Muslim scholars were of the opinion that the term *amr* in the verse "we shāwirhum fī'l amr" includes all matters not covered by revelation. Rashīd Riḍā (1865—1935), in his *Tafsīr al-Qur'ān al-Ḥakīm*, expressed this line of opinion, saying that the term *amr*, in general, meant important policy regarding war and peace, fear and security, and other things concerning the worldly affairs of human beings.<sup>82</sup> He continued that the matters to be consulted were important issues of worldly affairs, and not religious matters such as *'aqa'id* (doctrines), *ibādāt* (worship), *ḥalāl* and *ḥarām* (lawful and unlawful), and other things, which had been decided by revelation.<sup>83</sup> Sayyid Quṭb (1903—1966), an Egyptian scholar, in his support of his opinion that the objects of *shūrā* can be in all fields not touched by revelation, based his opinion on the verse 42:38 of the Qur'ān (*wa amruhum shūrā bainahum*) rather than verse 3:159 (*wa shāwirhum fī'l amr*). This is because according to him, the verse "amruhum *shūrā bainahum*" was revealed by God when the Prophet was still in Mecca, and hence before the Muslim state in Medina was established. He, therefore, contended that *shūrā* was applied not only on the political system of the state because it was the principal character of the whole society.<sup>84</sup>

Muḥammad 'Imārah, Muḥammad Abū Zahrah and Ismā'īl al-Badawī are three contemporary Muslim scholars who maintained that the subjects of *shūrā* were in all fields not covered by revelation. 'Imārah stated that the subjects of *shūrā* included worldly affairs and those things which did not have clear-cut injunctions in the Qur'ān.<sup>85</sup> Abū Zahrah expressed this line of opinion, asserting that al-Qur'ān had made *shūrā* a general principle for the Muslims when they were confronted with an issue not covered by revelation.<sup>86</sup> Al-Badawī, on the other hand, held that the subjects of *shūrā* were not limited by considering the form of the word "*amr*". The term *amr*, he maintained, signified general (matters), and this interpretation, he argued, was in accordance with the practice of the Prophet and the four Caliphs who did not limit the fields of *shūrā*. In support of his contention, he mentioned several Qur'ān commentators who expressed the same opinion, such as Nāsir al-Dīn al-Shirāzī (d. 1372) who wrote *Tafsīr* entitled *Anwār al-Tanzīl wa*

*Asrār al-Ta'wil*, Abū al-Barakāt 'Abd Allāh al-Nasafī (d. 1310), the author of *Madārik al-Tanzil wa Haqā'iq al-Ta'wil*, and Muḥammad Jamāl al-Dīn al-Fāsi Al-Qāsimī (1866/7-1914) who wrote *Mahāsin al-Ta'wil*.<sup>87</sup>

In the modern period, Mutawallī is one of the few Muslim scholars who limited the scope of *shūrā*. Contrary to the widely accepted view that *shūrā* covers all matters not touched by revelation, he contended that *shūrā* could not include all matters despite the fact that there was no revelation dealing with them. He put forward two reasons in support of his view, namely that some of the matters, by the very nature of their cases, were outside of the jurisdiction of the representative body (*ahl al-shūrā*), and that the Prophet did not consult his companions in several important matters not covered by revelation. He cited the incident which occurred at the battle of Tabūk as an example. Before the battle took place, some of the hypocrites asked the Prophet's permission not to participate in the battle. The Prophet gave them permission in spite of the weakness of their excuses and the absence of several other Muslims. As a result, God sent down a revelation reproving the Prophet (9:43: "God has forgiven you for granting them permission before you know those who are sincere and those who are not"). In his comment on this verse, Mutawallī stated that if the Prophet had consulted his companions, the reproof would have been directed to the opinion of *ahl al-shūrā* and not to the action of the Prophet.<sup>88</sup>

### 3. The Problem of the Participation of the Community in *Shūrā*

It was mentioned in the previous discussion that there was a body of people around the Prophet and the pious Caliphs whom they could consult. In modern times, the Legislative Assembly, that will represent the will of the people, performs the same function. In relation to this, Muhammad Asad, a Pakistani scholar, was of the opinion that "such representative character can be achieved only through free general election."<sup>89</sup> Since the method of election, he said, was not laid down in the shari'ah, it was left to the community to decide whether to use direct or indirect, transferable or non-transferable vote, or other kinds of methods.<sup>90</sup> The same opinion was expressed by Professor Fazlur Rahman when he asserted that "... elections may be direct or indirect, depending on prevailing conditions."<sup>91</sup> Professor Rahman contended that there were three steps towards the direct participation of the community. Firstly, the masses had to be educated in order that they gained political consciousness. Secondly, after achieving this objective, the community was asked if they wanted to implement *shūrā*. This is, according to Professor Rahman, due to the Islamic injunction that people could not force others to do or receive something (*la ikrāha fī al-dīn*). Thirdly, if they said "yes", then *shūrā* could be fully implemented and direct or indirect election could be executed. In other words, the government had to be run by the community.<sup>92</sup>

Another opinion is represented by Abū-l-A'la Maudūdī and 'Abd al-Ḥamīd mutawallī. For all that they believed in the necessity of establishing a Legislative Assembly, they expressed different viewpoints with

regard to the participation of the entire community in government. Maudūdi was against general elections, asserting that "the shūrā is to be appointed by the head (of state) rather than being elected."<sup>93</sup> This is, according to Professor Rahman, "a clear retrogression from the classical Sunnī theory of the state, since according to that theory the shūrā or the people of loosening and binding ... have to elect a head of state and therefore preexist him."<sup>94</sup> Likewise, Mutawallī opposed general election, claiming that the Islamic concept of shūrā disallowed general elections or the direct participation of the community in the political process.<sup>95</sup>

They (Maudūdi and Mutawallī) proposed two premises for disallowing general public participation in electing a government. Firstly, they said, the average man could not come to any correct decision concerning affairs of public life; and secondly, he/she was lacking in the moral faculties necessary for choosing representatives of the right and virtuous conduct while the conduct of states required both to the maximum degree possible.<sup>96</sup> Mutawallī supported his thesis by declaring that nothing could be found in verse 42:38 (wa amruhum shūrā bainahum) which required Muslims to run their affairs through shūrā which clearly indicated a system of general elections.<sup>97</sup> Against the populist thesis that verse 3:110 (You are the best community (ummatun) brought out for mankind) speaks of the entire community, he, following the traditional interpretation, stated that only certain special groups in the community had access to shūrā.<sup>98</sup> This is because, according to him, this verse was addressed to the Prophet and his companions, not to the whole community. In his support of his claim, he cited Ibn 'Abbas' (d. 681) interpretation of this verse found in Ibn Kathīr's *Tafsīr*, which said that this verse addressed the companions who migrated with the Prophet from Mecca to Medina. Then Mutawallī asserted that the word "ummatun" (community) in this verse (3:110) had the same meaning as the word "ummatun" in the verse "wa'takun minkum ummatun yad'ūna ilā 'l-khair ..." (there should be among you a group who calls to good..).<sup>99</sup> He quoted several other verses to show that only a number of people could participate in shūrā, such as "most people do not understand", "but most of them are ignorant", and "therefore, ask the people of knowledge if you do not know".<sup>100</sup> Although in another place he asserted that the "system of universal franchise may be introduced in a Muslim country that deems it suitable, but that this principle cannot be regarded as universally binding,"<sup>101</sup> he proposed two other reasons for rejecting the principle of direct franchise. First, direct franchise might be feasible in a geographically restricted area but it is unpracticable for a global religion (Islam). Secondly, the field of public affairs was left flexible so that necessary adjustments can be made with changes in society.<sup>102</sup>

In relation to this issue, it is necessary to put forward Muḥammad al-Ghazali's critique of Mutawallī's contention.<sup>103</sup> Al-Ghazali, a visiting Professor at the university of Omdurman al-Islamiyyah, stated that it was unacceptable to say that the general public was incapable of participating in general election since it contradicted the Qur'ān and the Sunnah. Mutawallī's contention, he argued, that verse 3:110 referred only to the companions of the

Prophet was not acceptable since there was no genuine interpretation which supported such view. He continued that Mutawalli's effort to find a support from certain verses of the Qur'ān, for example, "But most people are ignorant," was futile because such verses referred (not to Muslims but) to deviant peoples and to pagans.

#### *4. The Concept of the Sovereignty of the People*

Like the issue of the participation of the entire community in general election, the issue of the sovereignty of the people in an Islamic state also produced two major groups, who held different opinions, namely those who claimed that it was God who was sovereign, and those who believed that it was the people who were sovereign.

Maudūdi, basing his opinion on the verse of the Qur'ān which reads "The authority rests with none but Allah, He commands you not to surrender to anyone save Him. This is the right way (of life),"<sup>104</sup> and the verse which reads "They ask: 'have we also got some authority,' Say: 'all authority belongs to God alone',"<sup>105</sup> rejected the concept of sovereignty of the people. He contended that in an Islamic state sovereignty, in all its aspects, belonged to God. He alone was the law-giver and the authority of absolute legislation was vested in Him. No one, therefore, could legislate or modify any law which God had laid down.<sup>106</sup>

Professor Rahman, in his critique of Maudūdi's contention, asserted that 'Maudūdi's designation of God as sovereign is a misunderstanding, because God does not possess or does not exercise directly the effective political power.'<sup>107</sup> He argued that the verses quoted by Maudūdi had nothing to do with the specific concept of political sovereignty. They only conveyed the meaning of God's general power over the entire creation as creator, sustainer, guide or judge.<sup>108</sup> Professor Rahman expounded that the idea of sovereignty in a state was a modern growth which denoted that coercive power belonged to definite and defined factor (or factors) in a society in order to obtain obedience to its will. It was absolutely obvious, he averred, that God was not sovereign in this sense and that only the people could be and were sovereign, since only to them belonged ultimate coercive force, i.e. only their "word is law" in the politically ultimate sense.<sup>109</sup>

With regard to the sovereignty of people and God, it is necessary to put forward Ahmad Hasan's point of view.<sup>110</sup> Before explaining what those two terms meant in an Islamic state, he, quoting Earnest Barker's theory on sovereignty, asserted that there were two kinds of sovereignty: the ultimate and the immediate. The ultimate sovereign was the constitution, while the immediate sovereign was the law-making body. Then he contended that God was sovereign in the Islamic state in the sense that every law enacted by the people had to be in accordance with the obvious teaching of the Qur'ān, the word of God. But God did not make the law, the people did. Therefore, he claimed that the whole community was the immediate sovereign, while God or the Qur'ān was the ultimate sovereign. But since the whole community

could not function as a law-making body, the representatives of the community will serve as the immediate sovereign.

### 5. The Functions of the Legislative Assembly

Muhammad Rashid Riḍā, in his book entitled *al-Khilāfah aw al-Imāmat al-Uzma* (the Caliphate or the Supreme Imamate), asserted that the people of 'loosening and binding' (*ahl al-ḥāll wa'l-'aqd*) were the only people qualified to pass judgement on the conduct of the rulers. They elected the Caliph and represented the community. They made law or legislated and it was in consultation with them that decisions of the state acquired a religiously binding force.<sup>111</sup>

Maudūdi, on the other hand, discussed the functions of the legislature (*ahl al-ḥāll wa'l-'aqd*) in the light of the Qur'ānic injunctions. Basing his opinion on chapter 33, verse 36,<sup>112</sup> and chapter 5, verse 44,<sup>113</sup> he asserted that the legislature of an Islamic State could not legislate in contravention of the directives of God and His Prophet.<sup>114</sup> He then stated that in spite of this limitation, the legislature in an Islamic state had a number of functions:

1. Where the explicit directives of God and His Prophet are available, although the legislature cannot alter or amend them, yet the legislature alone will be competent to enact them in the form of sections, devise relevant definitions and details and make rules and regulations for the purpose of enforcing them.
2. Where the directives of the Qur'ān and the Sunnah are capable of more than one interpretation, the legislature would decide which of these interpretations should be placed on the Statute Book.
3. Wherever there is no explicit provision in the Qur'ān and the Sunnah, the function of legislature would be to enact laws relating to the same, of course, always keeping in view the general spirit of Islam, and, where previously enacted laws are present in the books of *Fiqh*, to adopt any one of them.
4. Wherever and in whatever matters even basic guidance is not available from the Qur'ān, or the Sunnah, or the conventions of the Righteous Caliphs, it would be taken to mean that God has left us free to legislate on those points according to our best lights. In such cases, therefore, the legislature can formulate laws without restriction, provided such legislation is not in contravention of the letter and the spirit of the Shari'ah—the principle herein being that whatever has not been disallowed is allowed.<sup>115</sup>

Concerning the functions of the Legislative Assembly, Professor Rahman asserted that since "legislation in Islam is the business of the community *as a whole* (.) it is, therefore, the function of the representatives of the people who sit in the Legislative Assembly to make laws."<sup>116</sup> Then he contended that many 'ulamā had been patently wrong in claiming that Islamic legislation was a function that properly belonged to them. The task of the 'ulamā was, he claimed, in fact, not to legislate or veto legislation (since no such right existed in Islam), but to constitute religious leadership for the community.<sup>117</sup> What is interesting in his view concerning the consensus (*ijmā'*) of the community is his contention that the ideas (*ijtihād*) created and

formulated by religious leadership would be disseminated and discussed widely in the community through the various media of mass-communication until a general public opinion, i.e., *ijmā'*, has crystallized. This would be embodied in the form of law, which would be perfectly Islamic law, by the representatives of the people. He claimed that the law enacted could be abrogated, amended or replaced by another.<sup>118</sup> This is, of course, due to the fact that non-divine law is not final; what was true yesterday, may not necessarily so today. Therefore, the contention of many Islamic scholars that the gate of *ijtihād* was wide open, was justifiable.

It should be pointed out that the Legislative Assembly holds the legislative power, whereas the executive power belongs to the Head of State. His task is to carry out the law. Also, it is the representatives of the community, who sit in the Legislative Assembly, who elect the Head of state and not the other way around as some Muslim scholars<sup>119</sup> claim.

As for the question whether the opinion or decision on certain matter arrived at and tendered by the Legislature is binding or not on the holders of the executive power, particularly the Head of state, Muhammad Asad and Hasan Shah asserted that the decisions arrived at by the Legislature through a majority vote were not merely consultative, to be accepted or rejected by the holders of executive power at their discretion, but were legally binding for them.<sup>120</sup> On this issue, Maudūdi and Mutawalli again put forward an opposing opinion. They claimed that the opinion of the *shūrā* (Legislative Assembly) was not binding for the ruler.<sup>121</sup>

## VI. Concluding Remarks

It is clear from the account above that *shūrā* or mutual consultation enjoined by the Qur'ān was, according to the Sunnī tradition, carried out by the Prophet and his immediate successors. However, it remained operative only for a short period of time. The implementation of *shūrā* began to decline during the reign of the third and fourth caliph due to political upheavals, and with the political triumph of Mu'āwiyah, the democratic processes in Islamic polity was abolished. Since then, except perhaps during 'Umar b. 'Abd al-'Azīz's governorship in Medina, *shūrā* has been only preserved in theory, not in practice. Also, except during the caliphate of 'Umar, during the era of Prophet and the first four Caliphs, there was no Legislative Assembly (*Majlis al-Shūrā*) in the modern sense of the word. They consulted the leading companions or the leaders of the community both from the Medinese Anṣār and particularly from the Meccans Immigrants on important problems of policy; but neither were the persons thus consulted properly elected by the community for this purpose, nor did the rulers feel themselves bound in every instance to follow the advice tendered to them. They asked for advice, considered it on its merits, and made their decisions in accordance with what they thought was right. Like the consultative body, the consultations practiced by the Prophet and his immediate successors were also informal, except perhaps in the case of consultation performed by *the group of six*

appointed by 'Umar to elect his successor.

Since the 19th century, with the challenge of the West with its concept of democracy to the Islamic World, *shūrā*, which had received little attention from the Muslim scholars of the pre-modern period, came to be discussed with great zeal and enthusiasm by Muslim scholars, especially by modernists. The Muslim modernists, who consciously reformulated the idea that Islam was applicable to the whole gamut of life and was not confined to a specific time, accepted certain key social values (one of them is democracy) from the modern West and interpreted the Qur'ān to confirm those values. In this process, they tried to re-understand the Qur'ān and the legacy of the Prophet. In the case of democracy, as a result of this effort, they were convinced that the Qur'ān (3:159 and 42:38) espoused democracy, and the adoption of it, therefore, was not a legitimation but a genuine rediscovery. It is, therefore, natural that, unlike their counterparts in the pre-modern period, the Muslim scholars in modern era widened the scope of *shūrā* to include several new subjects not discussed by their precursors.

Although the Muslim scholars in modern period held that the implementation of *shūrā* in the Islamic polity was important, they had different opinions on its details. Some of them supported the concept of popular sovereignty, while some others held an opposing opinion. Whatever their differences were, all of them were of the opinion that the only way to preserve democracy in Islamic polity and character was to run the government in the spirit of *shūrā*.

## NOTES

<sup>1</sup>Edward W. Lane, *An Arabic-English Lexicon*, 8 Vols. (Beirut: Librarie du Liban, 1968), IV: 1616.

<sup>2</sup>*Ibid.*, pp. 1616-17.

<sup>3</sup>Fazlur Rahman, "Principle of Shūrā and Role of Ummah," *Journal of the University of Baluchistan* 1 (?): 7.

<sup>4</sup>Ahmad Hasan, "The Political Role of Ijma'," *Islamic Studies* 8 (June 1969): 140; Muhammad Nazeer Ka Ka Khel, "The Conceptual and Institutional Development of Shura in Early Islam," *Islamic Studies* 19 (Winter 1980); 271.

<sup>5</sup>*Qur'ān*, 3:159 "Consult them (O Muhammad!) in the affair; when you have determined (upon a course), then put your trust in God."

<sup>6</sup>*Qur'ān*, 42:38 "their communal business (affair) is to be (transacted in) consultation among themselves.

<sup>7</sup>Fazlur Rahman, "The Islamic Concept of State," in *Islam in Transition*, ed. J. Donohue and John L. Esposito (New York: Oxford University Press, 1982), p. 263; *Idem*, "Principle of Shura," p. 7; *Idem*, Islam and Political Acation: Politics in the Service of Religion," in *Cities of God: Faith, Politics and Plurolism in Judaism, Chroritory and Islam*, ed. Nigel Giggar, Jamie S. Scott, and William Schweiker (New York: Greenwood Press, 1986), p. 156; *Idem*, "Islamic Resurgence and Its Neglected Duty," *An Address submitted to a Conference on "Modernization in Islamic Perspective,"* University of Southern California (February 17, 1987): 16; Souran Mardini, "Fundamental Religio-Political Concepts in the Sources of Islam: The shura in the Islamic Umma," *Hamdard Islmicus* 9 (Winter 1986): 25; Muhammad Shafiq, "The Role and Place of Shura in the Islamic Polity," *Islamic Studies* 23 (Winter 1984): 433—34.

<sup>8</sup>Qurtubi, *al-Jāmi' li-Aḥkām al-Qur'ān*, 20 Vols. (Cairo: Dār al-Kutub al-Misriyya, 1957) IV:249—50.

<sup>9</sup>Muhammad Nazeer Ka Ka Khel, "Political System in Pre-Islamic Arabia," *Islamic Studies* 20 (Autumn 1981): 383-85; *Idem*, "The Conceptual," pp. 271-72.

<sup>10</sup>*Idem*, "Political System," p. 384; *Idem*, "The Conceptual," p. 272.

<sup>11</sup>Mardini, "Fundamental," pp. 25-6.

<sup>12</sup>Ka Ka Khel, "Political System," p. 385; *Idem*, "Theory and Practice/p. 272.

<sup>13</sup>*Qur'ān*, 4:15

<sup>14</sup>*Qur'ān*, 4:80-81.

<sup>15</sup>*Quoted in* Ka Ka Khel, "Conceptual," p. 273.

<sup>16</sup>*Qur'ān*, 4:83.

<sup>17</sup>Hasan, "Political Role," p. 143.

<sup>18</sup>Muhammad Imārah, *al-Islām wa Falsafat al-Ḥukm* (Beirut: ?, 1979), p. 60.

<sup>19</sup>Mahmud b. Umar al-Zamakhsharī, *al-Khashāf 'an Haqā'iq al-Tanzīl wa 'Uyūn al-Aqāwīl fī Wujūh al-Ta'wīl*, 4 Vols. (Beirut: Dār al-Kutub al-'Arabiyya, 1947), I, p. 245.

- 20 Ibn Ishaq, *Sīrat Rasūl Allāh*, transl. by A. Guillaume (London: Oxford University Press, 1905), p. 297.
- 21 *Ibid.*, pp. 371-72.
- 22 *Shahīḥ al-Bukhārī*, Kitāb al-I'tisām, Vol. XXV, p. 91.
- 23 Ka Ka Khel, "Conceptual," p. 276.
- 24 *Shahīḥ al-Bukhārī*, Kitāb al-I'tisām, Vol. XXV, p. 91; Qurtubī, *al-Jāmi'*, Vol. IV, p. 203; Ibn Ishaq, *Sīra*, pp. 371-72.
- 25 *Qur'ān*, 3:159.
- 26 Abd al-Ḥamīd Ismā'il al-Anṣārī, *al-Shūrā bayna al-Ta'thir wa'l- Ta'athur* (Cairo: Matābi' al-Shurūq, 1982), p. 27; Ibn Kathīr, *Tafsīr*, 9 Vols. (Cairo: al-Manar, 1969), II, 277.
- 27 Qurtubī, *al-Jāmi'*, Vol. IV, p. 202.
- 28 Abd al-Ḥamīd Mutawallī, *Mabda' al-Shūrā fī al-Islām* (Cairo: 'Ālam al-Kutub, 1972), p. 47.
- 29 I have not been able to identify this companion.
- 30 Al-Ṭabarī, *Tārīkh al-Rusul wa'l Mulūk*, 10 Vols. (Cairo: Dār al-Ma'ārif, 1970), III, pp. 220-21; Imārah, *al-Islām*, p. 60.
- 31 Al-Ṭabarī, *Tārīkh*, Vol. III, p. 221; Ibn Ishaq, *Sīra*, p. 686.
- 32 Ibn Ishaq, *Sīra*, p. 687.
- 33 Al-Ṭabarī, *Tārīkh*, vol. III, 224; Ibn Ishaq, *Sīra*, p. 687.
- 34 Montgomery Watt, *Islamic Fundamentalism and Modernity* (London: Routledge, 1988), p. 89.
- 35 Al-Ṭabarī, *Tārīkh*, Vol. III, p. 219; Imārah, *al-Islām*, p. 60.
- 36 Mutawallī, *Mabda'*, p. 28; Ismā'il al-Badawī, *Mabda' al-Shura* (Cairo: Dār al-Fikr al-'Arabi, 1981), p. 60' Hasan, "Political Role," p. 142; Ka Ka Khel, "The Conceptual," pp. 277-78.
- 37 Mutawallī, *Mabda'*, p. 25; Badawī, *Mabda'*, p. 52.
- 38 Mutawallī, *Mabda'*, p. 16. 16; Badawī, *Mabda'*, p. 54; Ka Ka Khel, "The Conceptual," p. 278.
- 39 Mutawallī, *Mabda'*, p. 16 n. 12; Ka Ka Khel, "The Conceptual," p. 278.
- 40 Al-Ṭabarī, *Tārīkh*, Vol. III, p. 428.
- 41 *Ibid.*, p. 480; According to al-Balādhurī, 'Abbas b. 'Abd al-Muṭṭalib and most of the leading companions of the Prophet advised 'Umar to stay behind. 'Alī, however, advised him to go himself. Al-Balādhurī, *Futūḥ al-Buldān* (Cairo: al-Maktabah al-Tijāriyyah al-Kubra, 1959), p. 255.
- 42 Al-Ṭabarī, *Tārīkh*, Vol. III, pp. 481-82.
- 43 *Ibid.*, p. 481.
- 44 Al-Ṭabarī, *Tārīkh*, Vol. IV, p. 228; Al-Balādhurī, *Anṣāb al-Ashraf*, ed. S.D.F. Gortein (Jerusalem: Hebrew University Press, 1936), Vol. V, p. 18.
- 45 Al-Ṭabarī, *Tārīkh*, Vol. IV, pp. 228-29.
- 46 *Ibid.*, p. 230; *Shahīḥ al-Bukhārī*, Kitāb al-Ahkām, Vol. XXIV, p. 240.
- 47 Al-Ṭabarī, *Tārīkh*, Vol. IV, p. 231.
- 48 *Ibid.*, pp. 232-34; Balādhurī, *Anṣāb*, Vol. V, p. 19; *Shahīḥ al-Bukhārī*, Kitāb al-Ahkām, Vol. XXIV, p. 241.

<sup>49</sup>*Shahīh al-Bukhārī*, Kitāb al-Ṭiṣām, Vol. XXIV, p. 92; Badawī, *Mabda'*, p. 60; Hasan, "Political Role," p. 141; Ka Ka Khel, "The Conceptual," p. 279.

<sup>50</sup>Badawī, *Mabda'*, p. 14; Muhammad Rashīd Riḍā, *Tārīkh al-Ustād̄h al-Imām al-Shaykh Muhammad 'Abduh*, 3 Vols. (Cairo: al-Manar, 1906), II, pp. 209-10. 209-10.

<sup>51</sup>Muhammad b. Abd. Allāh al-'Arābi, *al-Awasim min al-Qāwasim fi Tāhqiḳ al-Sahābah ba'da Wafāt al-Nabī* (Cairo: Salafiyya, 1976), p. 216.

<sup>52</sup>*Ibid.*, pp. 217 & 221. Ibn al-Zubayr proposed to Mu'awiyah three methods of electing caliph: 1. He (Mu'awiyah) could do what the Prophet did, i.e., he did not appoint his successor until he passed away, or 2. He could do what Abū Bakr did, i.e., he chose a man from the Quraish, who was not from his clan, to be caliph, or 3. He could do what 'Umar did, i.e., he could constitute *majlis al-shūrā* which consisted of six persons from the Quraish, none of them was the son of his father. Mu'awiyah, however, rejected Ibn Zubayr's proposal. *Ibid.*, pp. 220-21.

<sup>53</sup>They are the following: 'Ubayd Allāh b. 'Abd Allāh b. 'Utbah, Abū Bakr b. 'Abd al-Rahman, Abū Bakr b. Sulaymān b. Abu Hathamah, Sulaymān b. Yasār, al-Qāsim b. Muhammad, Sālim b. 'Abd Allāh b. 'Umar, 'Abd Allāh b. 'Umar, 'Abd Allāh b. 'Amir b. Rabi'a, and Khārijah b. Zayd. Al-Ṭabari, *Tārīkh*, Vol. VI, p. 427, 'Imārah, *al-Islām*, p. 70.

<sup>54</sup>Al-Ṭabari, *Tārīkh*, Vol. VI, pp. 427-28; 'Imārah, *al-Islām*, p. 70.

<sup>55</sup>Hasan al-Baṣrī (d.728) wrote a treatise on *qadar* addressed to 'Abd al-Malik b. Marwan, the fifth Caliph of the Umayyads who reigned from April 685 until October 705. This treatise appears to have been written in part as a defence against those who attacked his doctrine of *qadar* as an innovation, and in part as a protest against the corruption and tyranny of officials who justified their acts by appealing to *qadar*. In this treatise Hasan accused them of using *qadar* as an excuse for their sinful appetites and treacherous iniquities. He contended that so far as man's conduct was concerned, *qadar* did not extend beyond the metaphysical realm of God's administration of the affairs of man and denied the incompatibility of the *qadar* of God with the moral and religious freedom of man. He stated that violence and tyranny were not of the decree of God: God did not order abominations. Guidance, he said, came from God, but error was man's own doing. Julian Obermann, "Political Theology in Early Islam: Hasan al-Basri's Treatise on Qadar," *Journal of the American Oriental Society* 55 (1935), pp. 138-62.

<sup>56</sup>Ann K.S. Lambton, *State and Government in Medieval Islam* (New York: Oxford University Press, 1981), p. 46; W. Montgomery Watt, "God's Caliph: Qur'anic Interpretations and Umayyad's Claims,;" in *Iran and Islam*, ed. Clifford E. Bosworth (Edinburgh: Edinburgh University Press, 1971), pp. 570-71.

<sup>57</sup>Lambton, *State and Government*, p. 57; Qamar-ud-in Khan, *al-Mawardi's Theory of the State* (Lahore: Maazm-i-Iqbal, ?), pp. 11-2.

<sup>58</sup>Lambton, *State*, p. 57.

<sup>59</sup>Qamar-ud-in Khan, *al-Mawardi*, pp. 11-2.

<sup>60</sup>Qurṭubī, *al-Jāmi'*, p. 249.

<sup>61</sup>*Ibid.*, p. 250.

<sup>62</sup>Ibn Kathīr, *Tafsīr*, Vol. II, p. 277.

63'Alī Ibn Muhammad Ḥabīb al-Baṣrī al-Māwardī, *al-Ahkām al-Sultāniyyah al-Wilāyah al-Dīniyah* (Cairo: Dār al-Fikr, 1983), p. 40.

64'Taqī al-Dīn Ahmad ibn Taymiyya, *al-Siyāṣah al-Shar'iyyah* (Cairo: Dār al-Matba'ah al-Salafiyyah, 1399), p. 80.

65'Quoted in Badawī, *Mabda'*, p. 23.

66'Qurtubī, *al-Jāmi'*, Vol. IV, p. 250; Ibn Kathīr, *Tafsīr*, Vol. II, pp. 276-77.

67'Quoted in Fakhr al-Dīn Muḥammad b. 'Umar al-Rāzī, *al-Tafsīr al-Kabīr*, 32 Vols. (Cairo: al-Bahiyya al-Misriyyah, 1928), XXVII, p. 67; al-Qurtubī, *al-Jāmi'*, Vol. IV, p. 250.

68'Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān 'an Ta'wīl Ay al-Qur'ān*, 30 Vols. (Cairo: Mustafā al-Bābī al-Halibī, 1954-68), III, p. 102; Qurtubī, *al-Jāmi'*, Vol. IV, p. 250; Ibn Kathīr, *Tafsīr*, Vol. II, p. 276.

69'Al-Zamakhsharī, *al-Kashshāf*, Vol. I, p. 432; Ibn Kathīr, *Tafsīr*, Vol. II, p. 276.

70'Al-Rāzī, *al-Tafsīr al-Kabīr*, Vol. IX, p. 67.

71'Mutawallī, *Mabda'*, p. 20.

72'Al-Māwardī, *al-Ahkām al-Sultāniyyah*, p. 40.

73'See Ṭabarī, *al-Jāmi'*, Vol. III, p. 152; Qurtubī, *al-Jāmi'*, Vol. IV, p. 250.

74'Al-Rāzī, *al-Tafsīr al-Kabīr*, Vol. IX, p. 66.

75'Rashīd Ridā, *Tārīkh al-Ustadh*, Vol. II, p. 208.

76'*Ibid.*

77'Al-Anṣārī, *al-Shūrā*, p. 13.

78'*Ibid.*, pp. 13-4.

79'Badawī, *Mabda'*, p. 28.

80'*Ibid.*, pp. 22-3.

81'Mutawallī, *Mabda'*, p. 11.

82'Muhammad Rashīd Ridā, *Tafsīr al-Qur'ān al-Hakīm*, 12 Vols. (Cairo: al-Manār, 1906-35), III, p. 199.

83'*Ibid.*, p. 200.

84'Sayyid Quṭb, *Tafsīr Sura al-Shūrā* (Beirut: Dār al-Arabiyya, 1963), p. 71; *Idem, Fi Zilāl al-Qur'ān*, 29 Vols. (Cairo: Dār al-Kutub al-'Arabiyya, 1953), XXV, p. 47.

85'Imārah, *al-Islām*, p. 59.

86'Mutawallī, *Mabda'*, p. 19; Badawī, *Mabda'*, p. 50, n. 2.

87'Badawī, *Mabda'*, pp. 50-51.

88'Mutawallī, *Mabda'*, p. 20; Badawī, *Mabda'*, p. 48.

89'Muhammad Asad, *The Principles of the State and Government in Islam* (Berkeley and Los Angeles: University of California Press, 1961), p. 45; Nasim Hasan Shah expressed the same line of opinion, asserting that a truly representative of the entire community could be achieved only through free and general elections. Therefore, he said, the members of the Assembly had to be elected by means of the widest possible suffrage. Nasim Hasan Shah, "Islamic Concept," p. 46.

90'Asad, *Principles*, p. 146.

91'Rahman, "The Islamic Concept," p. 263.

92'Fazlur Rahman's lecture on "Introduction to Islamic Political Thought" on December 2, 1985, University of Chicago.

<sup>93</sup>Fazlur Rahman, "A Recent Controversy over the Interpretation of Shūrā," *History of Religions* 20 (May 1981), p. 293.

<sup>94</sup>*Ibid.*

<sup>95</sup>Mutawalli, *Mabda'*, pp. 29-30.

<sup>96</sup>*Ibid.*

<sup>97</sup>Mutawalli, *Mabda'*, p. 29.

<sup>98</sup>*Ibid.*, p. 30.

<sup>99</sup>*Ibid.*

<sup>100</sup>*Ibid.*, p. 32.

<sup>101</sup>*Ibid.*, pp. 34-5.

<sup>102</sup>*Ibid.*

<sup>103</sup>*Ibid.*, pp. 48-9.

<sup>104</sup>*Qur'ān*, 12:40.

<sup>105</sup>*Qur'ān*, 3:154.

<sup>106</sup>Maudūdi, *First Principles*, pp. 16-25; *Idem*, "Political Theory of Islam," in *Islam in Transition*, ed. J. Donohue and John L. Esposito (New York: Oxford University Press, 1982), p. 253; *Idem*, *The Islamic Law and Constitution*, trans. and ed. Kurshid Ahmad (Lahore: Islamic Publication Ltd., 1960), pp. 177-78.

<sup>107</sup>Rahman, "A Recent Controversy," p. 297.

<sup>108</sup>*Ibid.*

<sup>109</sup>Rahman, "The Islamic Concept," p. 264.

<sup>110</sup>Hasan, "Political Role," p. 136; Ka Ka Khel, "Legitimacy," p.168.

<sup>111</sup>Quoted in Hamid Enayat, *Modern Islamic Political Thought* (Austin: University of Texas Press, 1982), pp. 72-81.

<sup>112</sup>This verse reads "It is not for a believing man or believing woman to have a say in any affair when it has been decided by Allah and His Messenger; and whoever disobeys Allah and His messenger, he goes astray manifestly."

<sup>113</sup>This verse reads "And those who do not make their decisions in accordance with that revealed by Allah, are (in fact) the disbelievers."

<sup>114</sup>Maudūdi, *First Principles*, p. 29.

<sup>115</sup>*Ibid.*, pp. 30-1.

<sup>116</sup>Rahman, "The Islamic Concept," p. 262.

<sup>117</sup>*Ibid.*

<sup>118</sup>*Ibid.*, p. 263.

<sup>119</sup>Among them are Maudūdi and Hamoodur Rahman. See Hamoodur Rahman, *Islamic Concept of State* (Karachi: The Times Press, 1978), p. 15.

<sup>120</sup>Asad, *Principles of State*, p. 52; Hasan Shah, "Islamic Concept," p. 47.

<sup>121</sup>Rahman, "A Recent Controversy," p. 293; Mutawalli, *Mabda'*, pp. 14-7.

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