

## ISLAM AND PROBLEMS OF STATE: CONSIDERING THE POSITION OF SHARIA IN DEMOCRATIC COUNTRY INDONESIA

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### INTRODUCTION

The jargon stating that humans are social beings seems to have become the proportion accepted by Islamic thinkers from past to present. Neither of the Islamic experts refuses the fact that to be able to develop their self-potencies and humanitarianism, human beings impossibly can live alone without requiring someone else's aids or helps. However, when they talk about the relationship between religion and power, Islam and politics or Islam and state, not all of the Islamic experts have the same viewpoints.

Their distinction in history can be investigated from the difference among them in seeing what is the main mission brought by Prophet Muhammad, is it right that Prophet Muhammad is as the head of state? If yes, is it part of his treatise mission or part of the tactics, procedure or *ijtihad* (reinterpretation) in his efforts to build egalitarian society guided by the universal moral values?

How do the Muslims follow Rasulullah's example? What messages can be taken from Rasulullah's "involvement" in the affairs of state? How is the relationship between religion and state? Do the Islamic countries exist? If yes, what criteria or indicators can be used to determine them? Is it right that the Islamic countries must be named caliph (*khalifah*)? Why do the Islamic countries now have different forms of state or governmental systems? Where is the position of *sharia* (religious law) in Muslims' social life? Where is the position of *sharia* in state and political life? How are the opportunities and challenges for the *sharia* of Islam in democratic countries?

Although it is possible that the questions will be touched upon and answered at first glance, this writing will focus on three last questions. It then will be ended up with the answer for the question whether Indonesia still requires the caliph system.

#### **A. The Sharia in Muslims' Social life**

The *sharia* of Islam is very close to way of life or Muslims' social life. The closeness is described by Joseph Schacht in his book *An Introduction to Islamic Law* as follows: Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself... it is impossible to

understand Islam without understanding Islamic law.<sup>1</sup> In Islamic history, another Islamic discipline, the popularity of which is nearly comparable with *fiqh* (study of Islamic laws) is only mysticism.

Mahmud Syaltut is famous with his jargon *al-Islam Aqidah wa Syari'ah*. The jargon becoming the title of his book contains the meaning that *akidah* (faith) is not *sharia*; and on the contrary, the *sharia* is not the *akidah* as well. However, in Muslims' real life, both of them are difficult to be separated from one another, for among Muslims the *sharia* or Islamic law is believed as God's decree sent to rule the behavior of *mukallaf* (sensible adults). It is this belief, which makes *sharia* for Muslims having sacral values, and it is, therefore, difficult to be separated from the affairs of *akidah*. That is way, Professor Juhaya S. Praja, the Professor of Islamic law at State Islamic University Sunan Gunung Djati Bandung uses the theory of credo to understand Muslims' behavior in undergoing their religious rules. This theory essentially states that Muslims, wherever they are, will try to undergo the religious norms lying in *sharia* of Islam merely due to their belief demands.<sup>2</sup> This theory succeeded in giving the understanding why in spite of living in secular countries, Muslims keep undergoing what they think is the demand from their *sharia*. This belief demand is like a two-bladed knife. On the one hand, it has given the sacral nuances to the *sharia* or the Islamic law, but on the other hand, it also makes it difficult to go through the changes from time to time.

As a matter of fact, there are theories or philosophies of Islamic law which enable the existence of change of the Islamic law from time to time. One of them is the philosophy stated by Ibn Qayyim. In the book *I'lam al-Muwaqi'in*, he states, *fa inna al-syari'at mabnahā wa asāsuhā 'alā hikām wa mashālih al-'ibād fī al-ma'asy wa al-ma'ad wa hiya 'adl kulluhā wa rahmat kulluhā wa mashālih kulluhā wa hikmat kulluhā* (In fact, *sharia*, its bases and pillars are the wisdom (*hikmah*) and the benefits (*kemaslahatan*) for God's servants in the world and in the afterlife. It is all fair; it all brings the mercies (*rahmat*); it all brings the benefits, and it all contains the wisdom).<sup>3</sup>

By making justice, benefits, affection, and wisdom as foundation of *sharia*, at first glance as if he wanted to give the impressions that the *sharia* in the form of *fiqh* was progressive, easy to change in accordance with the age development, provided that it keeps referring to the justice, benefits, affection, and wisdom. However, the impressions could be erroneous if the methodology and the epistemology of the Islamic law or *sharia* used by Muslims from time to time did not go through the development. The impressions are erroneous too if the Muslims view that the determination of *sharia* or for the most part has become their belief which cannot change or be changed.

<sup>1</sup> Joseph Schacht, *An Introduction to Islamic Law*, Oxford University Press 1982, page 1.

<sup>2</sup> Juhaya S. Praja, *Teori-teori Hukum Islam: Suatu Telaah Perbandingan dengan Pendekatan Filsafat*, Bandung, Program Pascasarjana Universitas Islam Negeri (UIN) Bandung, 2009, p. 107.

<sup>3</sup> Ibn Qayyim, *I'lam al-Muwaqi'in*, jilid III, Bairut Dar al-Kutub al-Ilmiyah, p. 37.

Thus, the emergence of some Islamic experts offering the change of methodology in understanding the Islamic law or holy book's text deserves the appreciation, I think. It is because the emergence of "new" methods will also generate the *fiqh's* "new" products, so that the Muslims have plenty of choices in carrying out the dogma which is the most appropriate with their condition and ability. I think such choice is the valid choice with two reasons: firstly, in religion Allah will not load someone down except in accordance with his capability, *lā yukallif 'l-Laāh nafsān illā wus'ahā* (Q. S. 2: 286). Secondly, Allah Himself also motivates His servants to do the comparison study, comparing one opinion with the other ones, then choosing which of the opinions is better for themselves, *yastami'ūn al-qawla fa yattabi'ūn aḥsanah* (Q. S. 39: 18).

However, the problem is, the offer emergence of the "new" law methodology which enables the inception of new *ijtihad* product is not positively accepted as part of the mercy which will give the benefits for Muslims, but it is instead often considered the enemy as "new" concept which will make Islam as a control-free, "liberal" religion, and therefore, it will ruin Muslims' belief. The conservative *ulama(s)* (mufti) frequently act as the authority holders in "giving choices" which of the *tafsir syari'at* may not be chosen and which one is judged misleading. The Hadith stating that *ma ra'ahu almuslimūn ḥasanah fahuwa 'inda 'l-Lāh ḥasanun* which motivates more on populist Islamic dispositions seems to be considered unimportant.

My objection towards their point of view is particularly to the assumption, which they use. Their viewpoints are always based on the assumption of contradiction between mind (*akal*) and apocalypse (*wahyu*), and there is a must of subjecting the mind before the apocalypse; whereas, in my opinion the mind and the apocalypse are, in fact, complementary. Both of them have symbiotic mutualism. It means that the mind requires the apocalypse, so does the apocalypse. At the beginning of the Islamic law formation, both *Ahl al-Ra'yu* and *Ahl al-Hadīts* were equally burgeoning. The Islamic philosophers, like al-Kindi, regard the mind and the apocalypse as *anugerah* (gifts from God). The mind functions to find the truth; the apocalypse also comes to describe the truth. Therefore, the truth of the mind and of the apocalypse should harmonize, support each other, and not be contradictory.

In describing the harmony between the mind and the apocalypse, al-Ghazali, one of the philosophers and figures of Sunni who was influential enough in Islam, stated that the mind was like the sight, while *syara'* was like glows or lights. It is no use of the sight if there are no glows from outside, and it is no use of the glows if there is no sight. *Syara'* is the mind which derives from outside, while the mind is the *syara'* which derives from inside. *Al-'aql ka al-bashar wa al-syar' ka al-su'aai wa lan yughni bashar mā lam yakun syu'aun min khariji wa lan yughni al-syu'a'u*

*ma lam yakun al-bashar. Al-Syar' 'aql min kharījin wa al-aql syar'un min dakhīlin.*<sup>4</sup> According to al-Ghazali, this viewpoint of his is in accordance with Allah's Commandment, *fithrata 'l-Lah allati fathhara al-nass 'alaihā lā tabdīla li al-khalq 'l-Lāh dzālika al-dīn al-qayyīm* (Q. S. 30: 30). In giving the reason why the mind is also called religion, al-Ghazali quotes the Qur'an's verses saying *nurun 'ala nurin* (Q. S. 24: 35). Here the mind unites with the *syara'*; both of them are equally the lights.<sup>5</sup>

By considering that every human is given the mind, it means that he is naturally religious and good. So, it is proper if al-Ghazali in defining *ijma*, one of the theorems of *syar'i*, is populist, not elitist. According to him, *ijma* is *ittifāq ummatī Muḥammadin shalla 'l-Lāh 'alaiyh wasallam khāshshat 'ala amr min al-umūr al-diniyah*.<sup>6</sup> This opinion is interesting because it is not like *ulama ushul* in general who define the *ijma* as agreement of *mujtahid* (experts in Islamic law). Al-Ghazali defines it with agreement of Muhammad's followers, including not *mujtahid*. Al-Ghazali, in my opinion, is not only populist but also humanist who appreciates every human being to use his respective common sense.

So, how does the *sharia* in order to keep showing its dynamic face in Muslims' social life. Even if the *sharia* is positioned as part of *akidah*, not separated from *akidah*, the *akidah* itself in Islamic teachings cannot be dogmatically taught, for the strong *iman* or *akidah*, according to Muḥamad Iqbal in his book, *The Reconstruction of Religious Thought in Islam*, requires the existence of reasoning process. *Iman* (faith) must pass the process of thought before extending to the strong level (discovery). It is right that *iman* which is thought is surely risky by bringing about a variety of concepts; however, if the *iman* is accepted only dogmatically, not through critical thinking, it will become the brittle *iman*.

## B. The Sharia of Islam in Political and State Life

If the *sharia* or Islamic law will grow and burgeon by itself in Islamic society as its basis is the faith, the question is how far is the importance of political or state life? This problem can be investigated through *ulama*'s debate about the law of founding the state, *imamah*, or *khilafah*. If in historical reality the Muslims founded the power organization or *imamah*, the question is, is the emergence of the power organization, which is called *imamah* or *khilafah*, motivated by the order of *syara'* or merely because of the demands of people's needs over the rational consideration or both of them?

In general, *imamah* or leadership is absolutely very much suggested by The Prophet. In one of the Hadiths, it is said that if you travel in three or more people, one of you should be made as a leader.<sup>7</sup> However, if we talk about *imamah* in the

<sup>4</sup> Hasbi Ash Shiddieqy, *Filsafah Hukum Islam*. Jakarta, Bulan Bintang, 1975, p. 199.

<sup>5</sup> *Ibid.*

<sup>6</sup> Al-Ghazali, *al-Mustashfa min 'Ilmi al-Ushul*, juz II, Madinah al-Munawwarah, Dār al-Hikam, 1988, p. 294.

<sup>7</sup> Hadits Riwayat Abu Dawud. Teksnya berbunyi: *idza kharaja tsalâtsatun fi safarin fal-yu'ammir ahaduhum*.

meaning of power organization, the Islamic leaders from the beginning already have the different views.

Ibn Hazm states: all *Ahl al-Sunnah* and *Murji'ah*, all *Syi'ah* and *Khawarij* have agreed with the obligation of *imamah*, and in fact the Muslims must be subject to the equitable imam(s) (Islamic leaders) who uphold Allah's laws, rule them with laws of *sharia* which have been brought by Rasulullah, except al-Nadjat from Khawarij. They state that the human beings must not fix on the *imamah*, what is obliged to people is giving their rights to each other. This group is addressed to Najdat ibn 'Amr al-Hanafi.<sup>8</sup> Likewise Abu Bakar al-Asham from Mu'tazilah, he thinks it is not obligatory to found the *khilafah* either according to the *syara'* or according to the mind. What is obligatory is carrying out the laws of *syara'*. If a group of people have been able to act fair and have carried out Allah's laws, then it no longer requires imam(s) and not obligatory to found them.<sup>9</sup>

Qadli Abdurrahman al-Iji and Sayyid al-Syarif al-Jurjani in matan *al-Mawaqif* and their syarah state briefly as follows: they argue concerning whether or not it is obligatory to found imam. Those who say obligatory is different from the way of fixing on their obligation. In our opinion (Ahl al-Sunnah), founding the imam is obligatory (*wajib sayr'i*). According to Mu'tazilah and Zaidiyah, it is rational (*wajib aqli*). According to al-Jahidz, al-Ka'bi and Abu al-Husain from Mu'tazilah, it is obligatory according to *syar'i* and *aqli*. According to Imamiyah and Isma'iliyah, founding the imam is not obligatory to us but obligatory to Allah SWT. According to Khawarij, founding the imam is not at all obligatory, for it is something possible (*ja'iz*). According to Hisyam al-Quthi and his followers, it is obligatory at a safe time, not at a slander time. According to al-Asham and his followers, it is obligatory at a slander time, not at a safe time.<sup>10</sup>

This controversy indicates the existence of *ulama's* differences in seeing the relationship between religion, or more exactly, the *sharia* and the state. Against their agreement that the Muslims are bound to carry out the *sharia* which they believe, they differ from the viewpoint whether or not the experience of *sharia* of Islam requires the state. It means that from the beginning, in fact, there have been the viewpoints which separate the *sharia* from the state.

Before entering the modern era – a period in which the Muslims acquired a lot of influences from European culture in separating the religion from politics/power – all the political thoughts from the Islamic thinkers were colored with religious features. In other words, the political thoughts in Islam, despite plenty of varieties, are all not free from the linkage of religion.

Based on his socio-historical analysis, Ibnu Khaldun divides the process of

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<sup>8</sup> Muhammad Yusuf Musa, *Nizhâm al-Hukm fî al-Islâm*, Kairo, 1963, p. 25.

<sup>9</sup> *Ibid.*, p. 27.

<sup>10</sup> *Ibid.*, p. 28.

political power formation (*siyâsah*) or government into three types: firstly, the politics or the government whose process of formation is based on human beings' political instinct to be social and to form the power; secondly, the politics or the government whose process of formation is based merely on the consideration of mind without trying to seek the clues from God's lights; thirdly, the politics or the government whose process of formation is done by paying attention to the religious rules which have been determined by *sharia*. This politics is based on the belief that God as the creator of *sharia* is the one who knows most about the benefits required by human beings in order that they can be happy in the world and in the afterlife. Ibnu Khaldun calls this first type as *al-mulk al-thabi'iy*,<sup>11</sup> the second one is called *al-siyâsah al-madaniyah*,<sup>12</sup> and the third one is called *al-siyasah al-dîniyah*<sup>13</sup> or *syar'iyah*.

Although Ibnu Khaldun divides the types of politics or power seen from its process of formation into three, yet when dividing the types of government in Islam he only divides them into two, namely: *khilafah*<sup>14</sup> and *mulk*, since he refuses what is called *siyasah al-madaniyyah* which is only the philosophers' speculation. The starting point which he uses to position a government as *khilafah* or *mulk* is by seeing how far the government positions the *sharia* of Islam.

*Khilafah* is the government whose rules are based on Islamic law (*syari'at*). By referring to Ibnu Khaldun's viewpoint, Rosenthal calls the *khilafah* as the state based on the *shari'a* of Islam,<sup>15</sup> while *mulk* is the government which is based on the mixed rules between the *sharia* of Islam and the laws which are made by the ruler. Rosenthal calls the *mulk* as the state with a mixed constitution based on the *shari'a* and on the political laws of the ruler.<sup>16</sup> On the first government, the type of rules which is applied is called *siyasah diniyah*, while on the second government the type of *siyasah* which is used is not only *syasah diniyah* but also *siyasah aqliyah*.<sup>17</sup>

<sup>11</sup> Ibn Khaldun, *Muqaddimah*, Bairut, Dar al-Fikr, t.th., His text says *al-mulk manshibun thabi'iyyun li al-insân li annâ qad bayyannâ anna al-basyar la ymkinu hayâtuhum wa wujuduhum illa bi ijtîmâ'ihim wa ta'âwunihim...wa ihtâjû min ajli dzâlika ila al-wâzi' wa huwa al-hâkim 'alaihim*. p.187. In his another text it is said that: *al-Mulk al-thabi'iy huwa hamlu al-kâffah 'ala muqtadla al-ghardli wa al-syahwah wa al-siyâsi wa huwa hamlu al-kâffah 'ala muqtadla al-nazhri al-aqliyyi fi jalbi al-mashâlih al-dunyâwiyyah wa daf'u al-madlâr*, p. 191.

<sup>12</sup> *Siyasah madaniyah* which is meant by Ibn Khaldun is like Plato's republic or *Ideal City State* of Greece's policy Yunani. *Siyasah madaniyah* was refused by Ibn Khaldun. According to Rosenthal, Ibn Khaldun's refusal was because he thought in ideal Islamic political framework combining the religion with the world or the religion with the politics. See Rosenthal, *Islam in the Modern National State*, Cambridge, 1965, p. 20.

<sup>13</sup> *Siyasah Diniyah* in Ibn Khaldun's viewpoint is identical to *khilâfah* or *imâmah*. See Rosenthal, *Islam in the Modern National State*, p. 17.

<sup>14</sup> His text: *al-khilâfah hiya hamlu al-kâffah 'ala muqtadla al-nadli al-syar'iyyi fi mashâlihihim al-ukhrâwiyyah wa al-dunyâwiyyah al-râji'ati ilaiha idz ahwâlu al-dunya tarji'u kulluha 'inda al-syari' ila l'tibâriha bi mashâlihi al-akhirat fa hiya fi al-haqîqah khiâfatun 'an shâhibi al-syar'I fi hirasati al-din wa siyâsati al-dunya*. Lihat Ibn Khaldun, *Muqaddimah*, p. 191.

<sup>15</sup> Rosenthal, *Islam in The Modern National State*, p. xiii.

<sup>16</sup> *Ibid*.

<sup>17</sup> The meaning of *siyasah aqliyah* here is the laws which are made by the ruler based on political and practical consideration. see Rosenthal, *Islam in The Modern national State*, p. 20. The division of *siyasah* becomes two parts, those are, these *diniyah* and *aqliyah* are also followed by Muhammad Yusuf Musa. See *Nizhâm al-Hukm*

According to Ibnu Khaldun, the type of the first government only held on up to the period of *al-khulafâ al-râsyidin*, while the government from various dynasties which emerged next is by him called *mulk*.<sup>18</sup> The emergence of Mu'awiyah as the founder of the dynasty of Umayyah, according to Ibnu Khaldun, was as something which could not be avoided because the religious roles had declined since the period of the fourth caliph government, Ali. Therefore, despite plenty of criticism addressed to Mu'awiyah, Ibnu Khaldun did not blame them.<sup>19</sup>

On the type of the first government, the *sharia* is applied to all aspects of life. It means that there are no rules coming from 'outside' or merely made by the rulers. If the rules used are not directly from God, it must be the results of *ijtihad* from *fuqaha* (experts of *fiqh*) by referring to the holy book or *Sunnah* of Prophet. Thus, the *ulama* or *mujtahid* in the system of *khilafah* have important roles, as they are the one who have the most authorities to make or to apply the rules which accord with God's clues. In the period of *al-khulafa al-rasyidin*, the system of *khilafah* could run because the rulers (*imam* or caliph) were recognized as the people having the authorities to interpret the religious teachings or *mujtahid*, so that its products of *siyasah* are all *diniyah*.

At that time the product of *siyasah aqliyah* called *qanun* had yet to emerge. The caliph has the authorities not only in the field of executive but also in legislative and judicative field. This type of caliph government is judged by the experts of Islam as ideal form. This ideal government only held on up to the fourth caliph after The Prophet. Afterwards, there emerged the *mulk*.

This form of the second government, besides being based on the laws taken from *sharia* which is called *fiqh* (jurisprudence), uses the rules which are made by the rulers called *qanun*, so that its form of *siyasah* is not only *diniyah* but also *aqliyah*. For Ibnu Khaldun, the government, by using only *siyasah diniyah* (*khilafah*) or by using *siyasah diniyah* and *siyasah aqliyah* (*mulk*), can be accepted even though he thinks the second level is under the first one.<sup>20</sup>

Thus, in Islamic government, whether it is *khilafah* or *mulk*, the position of religion in the understanding of *sharia* remains important. In other words, the politics cannot be separated from the religion. The importance of *sharia* then influences the

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*fî al-Islâm*, p. 11. A. Djazuli divides *siyasah* into two as well, but by calling them *siyasah syar'iyah* and *siyasah wadl'iyah*. See: *Pengantar Fiqh Siyasi*, Diktat, Bandung, IAIN Sunan Gunung Djati, p. 4-5.

<sup>18</sup> Ibn Khaldun, *Muqaddimah*, p. 208. Ibn Khaldun admits that the caliph title is absolutely still used for the rulers after Khulafa al-Rasyidin, however, he says that it is just the name without the meaning. His text *walam yabqa illa ismuha wa shâra al-amru mulkan bakhtan*.

<sup>19</sup> Rosenthal, *Islam in The Modern National State*, p. 19. Ibnu Khaldun in one of his comments states that when disagreement occurred between Ali and Mu'awiyah as a consequence of the emerging social solidarity, they were guided by the truth and *ijtihad*. They did not war for worldly purposes or for invaluable preferences or for personal hate as alleged by most people and supposed by atheists. However, the cause of their dispute was the *ijtihad* about the position of the truth. See: *Muqaddimah*, Translated by Ahmadie Thoha, Jakarta, Pustaka Firdaus, 1986, p. 252-253.

<sup>20</sup> See Rosenthal, *Islam in The Modern National State*, hlm. 21. His text says *if the mulk is Islamic it comes second in rank after the khilafa*.

way *ulama* make criteria of definitions regarding *dar al-Islâm* or Islamic country.

Al-Rafi'i (w. 623 H.), one of the figures of the sect of Syafi'i, makes the means of measurement to determine whether it is a state of *dar al-Islam* or a state of *dar al-harb* by considering the power holder in the state. A state is viewed as *dar-al-Islam* if led by a Muslim. In the second definition, supported by Abu Hanifah (80-150 H.), what distinguishes *dar-al-Islam* and *dar-al-harb* is based on the safety which is enjoyed by its population. If the Muslims feel safe in undergoing their religious activities, the state belongs to *dar-al-Islam*. On the contrary, if there is no safety for the Muslims, the state belongs to the category of *dar-al-harb*.<sup>21</sup>

The third definition is supported by Imam Abu Yusuf (w. 182 H.). The biggest figure of Hanfi's sect thinks that a state is called *dar-al-Islam* if applying the Islamic law in it even though the majority of its population is not Muslims; while he thinks that *dar-al-harb* is the state which does not apply the Islamic law even though the majority of its population is Muslims. Al-Kisani (w. 587 H.), also the expert of fiqh from Hanfi's sect, reinforces Imam Abu Yusuf. According to him, *dar-al-harb* can become *dar-al-islam* if the state applies the Islamic law.<sup>22</sup>

The fourth definition is used by OKI (Organisasi konferensi Islam/Islamic Conference Organization). OKI categorizes the states whose population is majority of Muslim as its members. Currently, there are seven countries which state themselves as Islamic countries, namely: Afghanistan, Bahrain, Iran, Mauritania, Oman, Pakistan, and Yemen; and there are only twelve countries which state Islam as the State religion, namely: Algeria, Bangladesh, Egypt, Iraq, Kuwait, Libya, Malaysia, Maldives, Morocco, Qatar, Tunisia, and Union of Arab Emirate. However, if we see the membership of OKI, there are fifty seven countries.<sup>23</sup>

Seeming to feel like making the maximum definition, Javid Iqbal in his writing *The Concept of State in Islam* dar-al-Islam is the state whose government is held by Muslims, majority of its population is Muslims, and uses the Islamic law as its laws.<sup>24</sup> This maximum definition seems to be used by a number of figures in Indonesia who view that Indonesia cannot be called Islamic country yet as long as it has yet to formalize or to declare itself as Islamic country or at least it makes Islam as the State religion.

All these definitions absolutely remind us that in Islam, the religion is difficult to be separated from the state life. In Islamic history, the unity of religion and power could be seen in political concept from two biggest political groups in

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<sup>21</sup> Wabbah al-Zuhaili, *Atsar al-harb fi al-fiqh Islam*, Syria, Dar al-Fikr, t.th., p. 56.

<sup>22</sup> Al-Sarkhasi, *Mabsuth*, Bairut, Dar al-Ma'rifah, t.th. Juz 10, p. 144.

<sup>23</sup> Scheherazade S. Rehman and Hossein Askari, *How Islamic are Islamic Countries?*, Global Economy Journal, volume 10, 2010.

<sup>24</sup> Javid Iqbal, *The Concept of State in Islam*, dalam Mumtaz Ahmad, ed., *State, Politics and Islam* Washington: American Trust Publication, 1986, p. 38.

Islam, namely: Sunni and Syi'i. On the two biggest political groups in Islam, it seems that they do not separate the religion from politics. The difference is, in the group of Syi'ah (especially Syi'ah twelve), *imamah* or politics is part of *akidah* (the basis of religion); while in the group of Sunni, *imamah* is not made as part of *akidah*. Syi'ah views the *imamah* as a religion's main problem; while Sunni views the *imamah* as the branch of religion.

Al-Ghazali, one of the figures of Sunni, describes the relationship between religion and power like two twins which are born from one mother's uterus by saying as follows: *al-din wa al-mulk, tau'amani mitsl akhawaini wulida min bathnin wâhidin*.<sup>25</sup> In explaining the functions of the prophet and the king, Al-Ghazali states that Allah SWT chose from Bani Adam, two groups of human being. Firstly, The Prophets are assigned to give the explanations to His servants about the theorems to worship Him. Secondly, the rulers or the kings who do duty for protecting His servants so that they do not attack each other or have hostility and in order that they can be bound in the bond of togetherness in order to reach a better life in the world through their wisdom, and in order that they can live their lives in a more noble degree.

That is why the rulers are Allah's shadows in His earth. It should be understood that the people who have been given the power by Allah and have been made His shadows are obligatory to be loved and to be obeyed. Allah says: "O' the believers, obey Allah, His prophets and the rulers among you" (Q. S al-Nisa: 59). The people who have been given the religious abilities (*ulama*) should love their king and follow his orders and should realize that it is Allah who has given him the power. Allah gives the power to anyone whom he wishes as mentioned in His Commandment: *tu'ti al-mulka man tasyâ' wa tanzi'u al-mulka man tasyâ wa tu'izzu man tasyâ wa tudzillu man tasyâ biyadika al-khayr innaka 'ala kulli syai'in qadîr* (Q. S. 'Ali Imran: 26).<sup>26</sup>

Although in his book *al-Tibr al-Masbuk* al-Ghazali describes that the power is so sacral (*muqaddas*), in his book *Ihyâ' Ulûm al-Din* he divides the *siyasah* (politics) into four parts.<sup>27</sup> Firstly, the highest politics is The Prophets' politics. The Prophets in their politics tried to manage and control their people in general and specific fields and in inner (*batin*) and outer (*lahir*) aspects. Secondly, the politics of caliphs, kings and sultans, they managed and controlled their people in specific and general fields but limited to only outer aspects, not to inner or spiritual aspects. Thirdly, the politics of *ulama*, they as the heirs of religion from The Prophets do duty for controlling and managing the people to only inner or spiritual aspects, not to outer aspects. They do not have the power to force or to prevent. Fourthly, the politics of *al-wu'ad* (missionaries), they simply manage the inner or spiritual aspects from the

<sup>25</sup> al-Ghazali, *al-Tibr al-Masbûk*, p. 50.

<sup>26</sup> al-Ghazali, *al-Tibr al-Masbûk*, p. 43.

<sup>27</sup> Siyasah dalam pandangan al-Ghazali ialah: *istishlâhu al-khalqî wa irsyâdihim ilâ al-tharîq al-mustaqîm al-munjiyyi fî al-dunya wa al-âkhirat*. Lihat: *Ihya Ulum al-Din*, jilid I, p. 13.

general public.<sup>28</sup>

Thus, although the religion and the power are related to each other, al-Ghazali clearly distinguishes between the functions of *ulama* or the leaders of religion and the functions of rulers or kings. The kings do duty for upholding the justice and making their people prosperous. The upholding of justice is very much emphasized by al-Ghazali, so that he states that the tyrannous ruler simply will poison the people, and therefore his power will get overturned. On the contrary, the fair ruler will keep holding his power even though he is an infidel. He quotes The Prophet's utterance which says *al-mulku yabqâ ma'a al-kufri wa la yabqâ ma'a al-zhulmi*.<sup>29</sup>

Al-Ghazali reinforces his opinions with historical arguments. According to him, the people of Zoroastrian religion (*Majusi*) managed to rule the world for four thousand years through the kingdom they built. The perpetuity of their kingdom was because they treated their people fairly and treated their people without discrimination. Their religion did not allow the tyrannical deeds and betrayals, so that they made their country prosperous fairly and also treated their people fairly. That is why, in a Commandment, Allah revealed His commandment to Prophet Dawud As not to blaspheme the Persian rulers (non-Muslims or non-Arabs), for they had made the world prosperous and had given the shelters to My servants.<sup>30</sup>

The difference of function between the leaders of religion and the leaders of politics also seems to the definition of *syasah* stated by Ibnu Abidin. According to Ibnu Abidin, *siyasah* is the endeavor to actualize the human beings' benefits by directing them to the way which can save them in the world and in the afterlife. The *siyasah* is from The Prophets specifically and generally in both its materiality and its spirituality, and from the power holders (sultans and kings) specially on the affairs of materiality, and from *ulama* specially on the affairs of spirituality.<sup>31</sup>

For al-Mawardi, the relationship between religion and politics can be seen in his clarification stating that the world in general or the state in the understanding of politics requires six main principles: (1) the vivified religion, (2) the ruler with authority, (3) the holistic justice, (4) the equal safety, (5) the continuous fertility of ground, (6) the hopes of survival.

The religion is required as the controller of natural desires and as the controller which adheres to human beings' conscience; hence, it is the most forceful principle for the State's welfare and peacefulness. In relation to this, al-Mawardi also quotes Abdullah bin al-Mu'taz's utterance stating that the power will be eternal

<sup>28</sup> al-Ghazali, *Ihya Ulûm al-Dîn*, Kairo, jilid I, al-Masyhad al-Husaini, t.th., p. 13.

<sup>29</sup> al-Ghazali, *al-Tibr al-Masbûk*, p. 43. Maybe it is such opinion which inspires some of the Islamic countries in making policy to separate the affairs of religion from those of politics.

<sup>30</sup> *Ibid.*, p. 44.

<sup>31</sup> Ahmad Fathi Bahansi, *al-Siyâsah al-Jinâ'iyah Fi al-Syari'ati al-Islâmiyyah*, Mesir, Mathba'ah Dar al-Arubah, p. 61. See also A. Djazuli, *Pengantar Fiqh Siyasi*, Diklat, IAIN Bandung, 1982, p. 2.

if supported by religion, and the religion will be forceful if supported by the power (*al-mulk bi al-dīn yabqā wa al-dīn bi al-mulk yaqwā*).<sup>32</sup> Al-Mawardi also quotes some of philosophers' utterances: the power can be perpetual with infidelity but cannot be everlasting with tyranny.<sup>33</sup>

That is why, up to now the Islamic world in general does not separate the religion from the politics. If in classical period the viewpoint which allowed the existence of separation between religion and politics or state was not popular, when Muslims entered the modern era, such viewpoint also remained unpopular even if in real life such viewpoint kept existing. These days the three kinds of relation, namely: integrated, intersectional and separated each of them obtains the place in various countries in accordance with the choices and conditions of each country. The choices will appear when they arrange their respective constitutions.

Seen from the position of religion or the *sharia* in the constitution, the Islamic countries can be divided into six groups. (1) The state which makes the *sharia* (the Qur'an and Hadiths) as the constitution, for example Saudi Arabia.<sup>34</sup> (2) The state whose constitution and other basic rules (like president's decree or the basic determination loaded beyond the constitutional articles) mandate so that all state's enforcement activities are directed and guided by the *sharia*, for example Iran, Libya, and Pakistan.<sup>35</sup> (3) The state whose constitution states that Islam is the State religion and makes the *sharia* of Islam as the main sources of making laws, for example Egypt.<sup>36</sup> (4) The state whose constitution states that Islam is as the State religion but does not state that the *sharia* is as the main sources of making other laws. It means that the *sharia* is simply viewed as one of the sources from various

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<sup>32</sup> Al-Mawardi, *Adab al-Dunya wa al-Dīn*, p. 137-138.

<sup>33</sup> Teksnya: *al-mulk yabqā 'ala al-kufri wa la yabqā 'ala al-zhulmi*.

<sup>34</sup> Article 1 The Constitution of Saudi Arabia states: *The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capita.*

<sup>35</sup> Article 4 The Constitution of Iran says as follows: *All civil, penal financial, economic, administrative, cultural, military, politica, and other law and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations and the wise persons of the Guardian Council are judges in this matter.* Article 12 states: *The official religion of Iran is Islam and the Twelver Ja'fari school, and this principle will remain eternally immutable. Other Islamic schools are to be accorded full respect, and their followers are free to act in accordance with their own jurisprudence in performing their religious rites.*

Article 2 The Constitution Libya when it was under the president Muammar Gadafi, states: *Islam is the religion of the State and Arabic is its official language. The state protects religious freedom in accordance with established customs.* This formulation of constitution is reinforced by the green Book written by Gadafi which is revolutionarily used to reform the law through the program of Islamization. The Qur'an as the law of the society (*The Holy Qur'an is the law of the society*) is made as slogan which is assembled in the streets in Tripoli and other cities in Libya.

Article 2 The Constitution of Pakistan states: *Islam shall be the State religion of Pakistan and the Injunctions of Islam as laid down in the Holy Quran and Sunnah shall be the supreme law and source of guidance for legislation to be administered through laws enacted by the Parliament and Provincial Assemblies, and for policy making by the Government.*

<sup>36</sup> Article 2 The Constitution of Egypt states: *Islam is the religion of the State. Arabic is its official language, and the principal source of legislation is Islamic Jurisprudence (Shari'ah).*

other sources of making laws, for example Iraq<sup>37</sup> and Malaysia<sup>38</sup>. (5) The state which does not make Islam as the State religion and does not make the *sharia* as the main sources of making laws but recognizes the *sharia* of Islam as the law living in society, for example Indonesia.<sup>39</sup> (6) The state stating itself as secular country and trying in order that the *sharia* does not influence its law system, for example Turkey.<sup>40</sup>

If the first, second, and third group are combined into one, the position of Islam and its *sharia* in constitution can be divided into four. The State whose constitution recognizes Islam as the State religion and makes the *sharia* of Islam as the main sources of making laws. Here it can be categorized such as, Saudi Arabia, Libya, Iran, Pakistan and Egypt. (2) The State whose constitution states that Islam is as the State religion but does not state that the *sharia* is as the main sources of making law. It means that the *sharia* is simply viewed as one of the sources from various other sources of making law, for example Iraq and Malaysia. (3) The State which does not make Islam as the State religion and does not make the *sharia* as the main sources of making law but recognizes the *sharia* of Islam as the law living in society, for example Indonesia.<sup>41</sup> (4) The State stating itself as the secular country and trying in order that the *sharia* does not influence its law system, for example Turkey.

Although juridically and formally Turkey follows secular system, socially Turkish government cannot prevent Turkish people from making the norms and the values of the *sharia* of Islam as reference in their private lives. As said by Schacht, the *shari'a* actually cannot be separated from Islamic community's life or way of life. Schacht's opinion is supported by Ali Unsal, Director of Fethullah Ghulan Chair UIN Jakarta. In his paper which was presented in an international seminar concerning "Islamic law, Democracy and Human rights", Unsal says: There is persistent problem for definitions of democracy which insist on strict separation between religion and state. This separation has in fact never been truly implemented in any state anywhere in the world.<sup>42</sup>

<sup>37</sup> Article 4 The Constitution of Iraq simply states: *Islam is the religion of the State*.

<sup>38</sup> In Malaysia based on the 1948 constitution, the Islamic law as well as its administration in jurisdiction of the State is given the formal recognition. Then after making the federal constitution in 1957 which was then renewed with the 1963 federal constitution, the system which has been built keeps being held by supplementing one statement that Islam is the State religion. See Tahir Mahmood, 1987, p. 219.

<sup>39</sup> Article 29 The Constitution of Indonesia only states: the State is based on the Almighty God (verse 1). The State secures the independence of each resident to embrace his respective religion and to worship according to his religion and faith (verse 2).

<sup>40</sup> The generals in Turkey who appoint themselves "*guardian of secularism*" really suspect the Islamic movements which are alleged to have the concealed agendas to change the secular regulations with *shari'a*-based law.

<sup>41</sup> Ahmad Sukardja, when comparing the Medina Charter with the 1945 Constitution states that these two constitutions adhering to the concept of religious affairs are part of the affairs of State, and religious laws are the sources for the laws of the State. The difference is that the Medina Charter points at the *shari'a* of certain religion, that is, the *shari'a* of Islam, while the 1945 Constitution does not explicitly point at the *shari'a* of Islam. See: *Piagam Madinah dan Undang-Undang Dasar 1945*, Jakarta, UI Press, 1995, p. 176-177.

<sup>42</sup> Ali Unsal, "Islamic Law, Democracy and Human Rights in Contemporary World: Fethullah Gulen's Ideas About Them", the paper was presented at an International Seminar on Islamic law, Democracy and Human

Thus, if in social life the Muslims are different from understanding and carrying out their *sharia*, in political or state life they also have the different choices. This clarification reinforces H.A.R Gibb's opinion or thesis as quoted by Hamid Enayat in the book *Modern Islamic Political Thought*: in the Sunni community there is no one universally accepted doctrine of caliphate. The very basis of Sunni thought, he goes on to say, excludes the acceptance of anyone theory as definitive and final. What it does lay down is a principle: that caliphate is that form of government which safeguards the ordinances of Sharia and sees that they are put into practice. So long as that principle is applied, there may be infinite diversity in the manner of its application.<sup>43</sup> In my opinion, Gibb's thesis applies not only to Muslims of Sunni but also to the Muslims on the whole, including Muslims of Shi'i.

### C. The Sharia of Islam's Opportunities and Challenges

Although the democracy in fact has the understandings and the practices which are different from one place to another one, there are at least four common elements in the democratic countries. Firstly, there is rule of law (law-based countries, not only power-based countries). Secondly, there is the process of fair, honest and free elections (free and fair elections). Thirdly, there is the protection on the human rights. Fourthly, there is active participation from citizens in civil and political life.

In order that the democracy, which basically very much appreciates the majority voices does not lead to majority dictator, it needs to be controlled by rule of law. In order that the democracy is not misused to limit and omit the rights of citizens who lose in general election, it should keep securing the rights of all the citizens without distinguishing whether they belong to majority or minority. In order that the democracy is not abused to build the dynasty and the oligarchy, the process of changing and electing the ruler should be done fairly, honestly and freely. In order that the citizens' participation in civil and political life can be continually maintained, the democratic countries should be able to secure their citizens' civil and political rights.

However, because the democracy is basically the appreciation to majority voice by fully giving the sovereignty to people, the *sharia* of Islam in democratic countries cannot be applied in its elitist form, let alone if followed by the authoritarian attitude. The *sharia* of Islam in democratic countries should be able to demonstrate its populist, pluralist, flexible and tolerant face. The populist, pluralist and flexible character of *sharia* of Islam can simply be actualized if the Muslims stress more on the basic principles, the purposes and the objectives of *sharia* of Islam, giving tolerance towards the difference of respective ways and choices as long as the choices do not contradict to or break the laws of state.

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Rights, held by Faculty of Syari'ah and Law UIN Sunan Gunung Djati Bandung, on 28<sup>th</sup> November 2013 in Hotel Puri Khatulistiwa, Jatinangor, Sumedang.

<sup>43</sup> Hamid Enayat, *Modern Islamic Political Thought: The Response of the Shi'i and Sunni Muslims to Twentieth Century*, London, The Macmillan Press Ltd., 1982, p. 14.

Such viewpoints or paradigms require some assumptions, which base them. Firstly, Muslims personally or collectively should be allowed to choose the opinions or the interpretations, which they think it good for both themselves and their groups. Secondly, every human being without viewing ethnic group, religion, gender or race is basically equally the caliph of God in the world who is demanded to act freely and responsibly. Thirdly, that God basically does not load Muslims down except in accordance with their capability and ability. Fourthly, although the *sharia* in its form constituting holy texts in both the Qur'an and the Hadiths does not change, the interpretation towards it is dynamic and can change from time to time as long as its purposes and essences do not change. Fifthly, in the context of state life, the regulations or the laws which have been agreed and decided through mechanism existing in the parliament can be regarded as *ijma* in its understanding which is more populist, not elitist. *Ijma*, in its more populist understanding which is pioneered by al-Ghazali, is developed by Fazlur Rahman by saying: *Ijtihad must be multiple effort of thinking minds -- some naturally better than others, and some better than others in various areas -- which confront each other in an open arena of debate, resulting eventually in overall consensus*".<sup>44</sup> Hence, in Indonesian context, Muslims as citizens should be bound either legally or morally to obey what has been validly decided by the legislative institution in Indonesia.

Thus, although the Muslims are basically free to choose the opinions or the interpretations which are in accordance with their personal beliefs, they keep being demanded to choose or to tailor their beliefs when they interact with more expansive contexts in pluralistic Indonesia. Meanwhile, the debate about whose opinion or interpretation is the most correct before God is fully God's authority to decide it. The Muslims' debate concerning the *sharia* should be directed to choose the views or the interpretations which accord more with the demands of constitution.

## CONCLUSION

Seen from the point of view of institutional and political sciences in Islam, NKRI (*Negara Kesatuan Republik Indonesia*/Unitary State of Indonesia), in fact, can be called as one of the forms of *khilafat* in Indonesian context. This is based on the fact that Indonesia secures and protects the Muslims in undergoing their religious teachings and *sharia*. What distinguishes the *khilafat* in Indonesian version and in another one is that the *khilafat*, which is developed in Indonesia is democratic, pluralistic, and inclusive *khilafat*, not theocratical, authoritarian, and exclusive *khilafat*. What differentiates Indonesia and other countries in undergoing the *sharia* is its model and style. By accepting the democracy as the governmental system in Indonesia, Indonesian people or Muslims no longer require the theocratical, authoritarian, and exclusive system of *khilafat*.

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<sup>44</sup> Fazlur Rahman, *Islam Challenges and Opportunities*, in *Islam: Past Influence and Present Challenge*, Edited by Alford T. Welch and Pierre Cachia, Edinburgh, Edinburgh University Press, 1979, p. 325.

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