

Refleksi

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Kusmana

Gerakan Sosial dan Anarkisme: Sebuah Analisis Teoritis

Chaider S. Bamualim

Fundamentalisme Islam, Krisis Modernitas dan Rekonstruksi Identitas

Jajang Jahroni

Islamic Fundamentalism in Contemporary Indonesia

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Ridda (Apostasy) and the Ambiguity of Islamic Legal Discourses

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Agama Sebagai Faktor Konflik dan Integrasi

ANALISIS BUKU

Ismatu Ropi

Melacak Akar Perang Suci: Perkembangan Ide *Jihād* dalam Tradisi Islam

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FUNDAMENTALISME ISLAM

TEMA yang diangkat oleh redaksi *Refleksi* untuk edisi kali ini adalah *fundamentalisme Islam*. Pengusungan tema ini diilhami oleh munculnya beberapa organisasi/ gerakan Islam yang kurang lebih bernuansa radikal di Indonesia, terutama setelah tumbanganya rezim Orde Baru, ditambah dengan semaraknya berbagai aksi yang dilakukan oleh organisasi/ gerakan tersebut di atas, tentunya dengan tidak mengabaikan aspek historis dari kemunculan dan perkembangan gerakan sosial keagamaan masyarakat Islam secara umum.

Ada enam artikel yang berkaitan dengan tema ini yang masuk ke meja redaksi, lima artikel dikategorikan ke dalam rubrik wacana dan satu artikel ke dalam rubrik analisis buku. Pertama, artikel Kusmana *Gerakan Sosial dan Anarkisme: Sebuah Analisis Teoritis*. Tulisan ini sesungguhnya tidak berkaitan secara langsung dengan tema edisi *Refleksi* kali ini, tapi substansi bahasannya —walau merupakan penjabaran awal atau catatan *preliminary*— memberi kepada pembaca informasi teoritis fenomena gerakan sosial di mana fundamentalisme agama itu sendiri merupakan salah satu fenomena gerakan sosial. Penulis mencoba menjelaskan hubungan gerakan sosial dan anarkisme dalam wacana gerakan sosial, demokrasi dan gerakan sosial keagamaan. Dia menggali kemungkinan model ekspresi hubungan keduanya melalui penjelasan pengertian, ruang lingkup, sejarah dan inferensi teoritis gerakan sosial dan anarkisme dari jendela demokrasi dan keagamaan.

Dua artikel berikutnya merupakan tulisan yang sebagian data atau *remarksnya* diambil dari hasil penelitian yang dilakukan oleh Pusat Bahasa dan Budaya (PBB) UIN Jakarta bekerja-sama dengan Pemda DKI pada tahun 2000, di mana kedua penulis ini menjadi salah satu penelitiannya. Artikel Chaider S. Bamualim, artikel kedua edisi ini, *Fundamentalisme Islam, Krisis Modernitas dan Rekonstruksi Identitas*, berupaya menjelaskan fenomena gerakan radikal Islam atau fundamentalisme Islam sebagai upaya pencarian umat Islam, terutama kaum mudanya, akan identitas eksistensial modernnya yang bersifat resistan. Sifat resistensi ini merupakan implikasi logis dari gerakan pencarian identitas mereka ke

fundamen-fundamen agama. Sebagai ilustrasi, penulis mengambil fenomena fundamentalisme Islam Indonesia kontemporer yang diambil dari penelitian di mana ia sendiri terlibat.

Artikel yang ditulis oleh Jajang Jahroni, berjudul “*Islamic Fundamentalism in Contemporary Indonesia*,” merupakan artikel ketiga edisi ini, memberikan gambaran sekilas tentang beberapa gerakan yang dicakup dalam penelitian. Penulis juga memberikan kerangka teoritis. Menurutnya, secara doktrinal, Islam radikal mempunyai landasan teologisnya dalam al-Qur’an. Secara historis, penulis menambahkan bahwa gerakan Islam radikal dapat ditelusuri sampai pada Ahmad bin Hanbal yang terus turun ke Ibn Taymiyya. Ide-ide mereka kemudian diadopsi oleh gerakan Wahhabiyah di Arab Saudi. Ketika menjelaskan gerakan munculnya fenomena gerakan ini di Indonesia, penulis menggunakan teori deprivasi kultural yang diakibatkan oleh arus modernisasi dan sekularisasi yang diterapkan di Indonesia. Deprivasi kultural ini melahirkan aleansi yang pada gilirannya memunculkan “*resistant identity*.”

Artikel keempat ditulis oleh Noryamin Aini dengan judul “*Ridda (Apostacy) and the Ambiguity of Islamic Legal Discourses*.” Di tengah maraknya berbagai tuduhan murtad yang dilontarkan oleh beberapa kelompok Islam radikal terhadap sesama saudaranya yang seiman, artikel ini mempunyai tempat yang signifikan. Penulis berpendapat bahwa konsensus jumah *fuqahā’* menyatakan bahwa hukuman bagi seorang Muslim murtad adalah pidana mati. Namun analisis hermeneutik dan kritisisme gramatologis menunjukkan sejumlah kelemahan baik dalam bentuk ambiguitas atau inkonsistensi metodologis logika hukum yang dipakai para *fuqahā’* ketika mereka menafsirkan serangkaian *nass* yang menjadi dasar penetapan hukuman mati bagi orang murtad tersebut. Satu kesimpulan yang mengakhiri tulisan ini bahwa peristiwa-peristiwa hukum yang dijadikan rujukan para *fuqahā’* untuk menetapkan ketentuan hukuman bagi orang murtad sarat dengan muatan politik, dan karenanya, peristiwa-peristiwa tersebut harus dilihat dalam konteksnya secara proporsional.

Sementara itu, artikel kelima “*Agama sebagai Faktor Konflik dan Integrasi*” ditulis oleh Muhamad Ali. Artikel ini mencoba menganalisis berbagai konflik yang berbau keagamaan yang akhir-akhir sedang terjadi di berbagai wilayah di Indonesia, terutama di Maluku. Dalam analisisnya,

penulis berpendapat bahwa agama memang bisa saja diumpamakan pedang bermata dua, yang satu diarahkan untuk kebaikan (perdamaian) dan yang lainnya diarahkan untuk memotivasi konflik. Namun demikian, sebenarnya agama netral saja, bahkan semua ajaran agama mengandung perdamaian bagi semua umat manusia. Satu hal yang tidak dapat dipungkiri adalah pemanfaatan agama oleh kelompok-kelompok tertentu untuk kepentingan yang berbeda. Jika kepentingan ini berbenturan, maka agama sangat mungkin untuk difungsikan sebagai bahan bakar guna menyulut konflik.

Di samping artikel-artikel tematis di atas, redaksi juga menerima beberapa artikel lepas. Pertama artikel Amsal Bakhtiar *Agama dan Tantangan Sains Modern*. Dalam tulisannya, Bakhtiar memotret tantangan dan kemungkinan peran yang dapat dimainkan agama di zaman modern ini. Sejarah mencatat selalu ada gesekan antara ilmu termasuk sains dan teknologi di dalamnya dengan cara pandang, pandangan dunia dan termasuk agama yang dianut masyarakat. Dalam setiap gesekannya selalu terjadi *sharing* baik berat sebelah atau saling mempengaruhi. Tantangan agama di zaman kemajuan sains dan teknologi adalah bagaimana agama atau agamawan merespons perubahan nilai, tradisi, dan teknik hidup yang semakin bersandar pada sains dan teknologi. Menjawab pertanyaan ini penulis yakin akan keharusan agama beradaptasi dengan situasi barunya. Sedangkan peran yang mungkin dilakukan agama di zaman modern ini adalah agama harus difungsikan sebagai *agent of values* (sumber nilai) yang memberi spirit dan moralitas universal bagi penggunaan sains dan teknologi.

Kedua, tulisan Romo Mudji Sutrisno berjudul *Humanisme Fruedian dan Pandangannya tentang Agama*. Romo Mudji menjelaskan pokok-pokok pemikiran Fred tentang *Id*, *Ego* dan *Super Ego* dan kata kunci lain yang menunjukkan humanisme Freud. Kemudian dia menganotasi beberapa karya Freud yang ada kaitannya dengan agama dan memberi catatan kritis.

Ketiga, *Profil Politik Ahmad Khan* karangan Masykur Hakim menjelaskan bahwa Ahmad Khan adalah salah satu figur intelektual Muslim India fenomenal, dikritik karena praktik agamanya yang longgar dan dipuji karena pemikirannya yang segar. Dia dianggap telah memberikan kontribusi penting dalam wacana pembaharuan pemikiran dalam Islam abad 19 di dunia Islam umumnya dan khususnya di ranah

sub-Continent. Namun demikian, selama ini, pembahasan tentangnya lebih banyak dalam pemikiran keagamaan, sosial dan pendidikan, dan masih jarang yang memotret pemikiran politiknya. Menurut penulis, secara politis, Akhmad Khan menganut pandangan yang bercampur antara pragmatisme dan idealisme. Pragmatismenya terlihat dalam sikapnya untuk mencairkan kecurigaan Inggris, penjajah, agar tidak melakukan penyerangan-penyerangan terhadap bangsa India, sedangkan idealismenya terkesan tidak realistis, seperti misalnya ia berpendapat bahwa negara harus berbasis agama dalam hal ini agama Islam, padahal mayoritas penduduk masyarakat India adalah Hindu.

Satu artikel lagi terkait dengan radikalisme agama untuk rubrik analisis buku, ditulis oleh Ismatu Ropi, dengan judul “*Melacak Akar Perang Suci: Perkembangan Ide Jihad dalam Tradisi Islam.*” Artikel ini merupakan analisis terhadap buku Reuven Firestone yang berjudul *Jihad: The Origin of Holy War in Islam*. Sebelum mengurai buku ini, penulis menyinggung sebuah paradoks yang muncul akibat perbedaan sikap dan penafsiran terhadap doktrin keagamaan. Paradoks yang dimaksud adalah bagaimana kita menjelaskan agama yang selalu mengajarkan kebaikan dan perdamaian di satu sisi, tapi juga membenarkan peperangan? Dalam konteks ini, isi buku ini menjadi penting, karena buku ini, menurut penulis, mengungkap evolusi konsep jihad dalam Islam.

Terakhir, kritik dan saran sangat kita harapkan. Untuk edisi yang akan datang kita akan memotret fenomena “gerakan” pemikiran Islam liberal sebagai pengimbang wacana gerakan “fundamentalisme” atau “radikalisme” Islam. Selamat membaca.

Ciputat, 20 April, 2002

Tim Redaksi

RIDDA (APOSTASY) AND THE AMBIGUITY OF ISLAMIC LEGAL DISCOURSES

Noryamin Aini

Introduction

The emergence of Islamic liberalism has been viewed as a treat for Islam especially for those who claim themselves as a major “protector” of the pureness of Islam. However, this obsession often results in fundamentalism in the way of religious behaviors. One amongst typical features of fundamentalism is its intolerance about the diversity of religious understandings. Historical evidence documented that Muslim fundamentalists often accuse other Muslim as *murtad* for their opinion on Islam which differs from the more established Islamic view. A very tragic case on this issue is the death execution of a Sudanese leader, Mahmoud M. Thaha on January, 18, 1985, in Khartoum by Nimeiri's regime. Many other miserable incidences of the application of *ridda* law in Muslim societies have led to polemical debates.¹ Mahmoud M. Thaha has been sentenced to death for his uncommon concept on *naskh* [abrogation] and *mansūkh*. Thaha's in-

terpretation is totally diverse from the very well-established Islamic doctrine of abrogation and he elaborates his concept in his book “the Second Messages of Islam”.

Ridda [apostasy, *murtad*=apostate] has recently become a contentious topic. The increasing awareness of human rights in part has positioned *ridda* at the Centre of serious debate. Another point which seems appropriate to be mentioned here is the fact the law of *ridda* is often utilized as a “deathly weapon” by many fundamentalist groups to battle against their opponents. In relation to this context, the discourse of *ridda* is a legal construction designed by the classic and medieval Muslim jurists; hence it directly reflects particular political and social contexts of the Muslim community and state. By and large, the controversy regarding *ridda* is not a new phenomenon within Muslim community, even during the early course of Islamic history. Several cases of *ridda* can be mentioned here during the period of *Khulafā al-Rāshidīn*, for instance, the polemic between ‘Umar and Abu Bakr on the policy of war against *ridda* groups, ‘Umar’s critique towards Mu’adh’s legal opinion for killing a *murtad*, and Al’s controversial decision of burning a *murtad*. Denying such contentious debates amongst great Companions on the case of *ridda*, the medieval Islamic law is profoundly in favor of beheading a *murtad*, even a consensus was widely held among jurists on the death penalty for a *murtad*.

In this paper, I will argue not only that the traditional Islamic law of *ridda* is in conflict with the notion of religious human rights promoted by many Qur’anic verses, but, more importantly, there are ambiguities in its very construction. For example, the argument developed by jurists to underpin their legal opinion on *ridda* in many ways lacks an epistemological and methodological basis.² In addition, the law of *ridda* is largely based on Prophetic Traditions, which also inherently suffer from an internal contradiction.³ Furthermore, the “precedence” of the execution of the *murtad* [apostate], which has often been taken by jurists as a juridical base for *ridda* rulings in fact has been detached from its original highly specific contexts. It is also interesting to note that Shāfi’ī’s legal reasoning [*tarīqa istinbāt al-hukm*] which leads him to such rulings of *ridda* shows a serious contradiction against his doctrine of the Islamic legal theory of abrogation and *qiyās*.

At this point, we should ask ourselves several questions. What are Quranic basis and Prophetic Traditions used by jurists to build up their opinions concerning *ridda*? How was the jurist’s argument framed in a case

of *ridda* law? What legal matters are involved in the construction of the Islamic legal discourse concerning *ridda*? *Firstly*, I will briefly discuss the general notions of *ridda*, followed by a critical exploration of its existence during the early period of Islamic history. *Secondly*, I will examine the methodological approach by which jurists and scholars built and developed their argument about the issue of *ridda*. In the final section, I will discuss some possible implications of the present study for the notion of Islamic legal discourses. The comprehensive legal jurisprudence regarding the law of *ridda* such as the implication of *ridda* on the law of contract and inheritance, is not the concern of this paper. The paper will limitedly discuss the methodological aspects of the law of *ridda*.

***Ridda*: Nature, Scope and Its Incidence in Islamic History**

The word *ridda* comes from the word *radd*, Arabic, meaning *rujū' min*,⁴ that is turning away, retreating, retiring, withdrawing, falling back from or rejecting something. The Qur'anic notion of *ridda* is functionally represented by several terms, namely, *kufri*, *irtidād*,⁵ and *nifāq*,⁶ and their use is sometimes overlapped.⁷ The term *irtidād*, however bears more directly than the others upon notion of *ridda*. Historically, the term *ridda* became a major discourse when directly after his appointment [*bay'a*] as a caliph, Abi Bakr proclaimed war against *ridda*, the war being known as *ḥurūb al-ridda*.⁸ Later on, the term *ridda* or *irtidād* became commonly used in legal discourses, especially after the second century of Islam [*hijra*], after the time when Islamic law was being constructed.

Ridda by definition has its own typical features. Qur'anic verses [2:217, 5:54 for instance], limitedly characterize *ridda* as the willful rejection of faith [*kufri*]. This rejection must be in the absence of any coercion⁹ and must be affirmed by two witnesses. In spite of this, *ridda* can only be committed by a Muslim who satisfies several conditions: for example, a *murtad* must have reached the age of majority; he must not be under intoxication, and he must be mentally healthy.¹⁰ Nonetheless, later on, jurists defined *ridda* in very a broad sense. Qalyūbī, who agreed with Shāfi'ī's concept of *ridda* defined it as "the intentional rejection of Islam by any statement, action or belief denoting the notion of *kufri*, whether these statements are expressed facetiously, seriously or faithfully [*i'tiqady*]"¹¹

During the later development of Islamic legal discourses, the concept of *ridda* has in fact been expanded to include any disrespectful behavior or

deviant statement regarding Islam and its sacred tradition. Therefore, disdainfully disposing of a copy of the Qur'an, or even a scrap of paper containing one word of this sacred Book, and mocking or even detesting the Prophets' wives and Companions¹² may constitute an act of *ridda*.¹³ Thus, any of its perpetrators is theologically, socially and politically displaced outside of the accepted norms of Islam and the Muslim community.

As stated previously, *ridda* [*kufr*] is conceptually the rejection of faith by a Muslim. Thus, *ridda* is a matter of faith, a matter of heart. It is not a legal or political issue, although the legal and political spheres are nowadays commonly associated with the notion of *ridda*. According to the Qur'an 16:106, *ridda* is clearly considered to be an innately religious matter, and it is treated an aspect of [*vis-a-vis*] faith, based on the principle of free choice between absolute submission [*islām*] to the will of God, and willful rebellion against Him. In other words, *ridda*, while not regarded as a *ḥadd* [*ḥudūd*.pl.]¹⁴ by most jurists,¹⁵ is an infringement against a right of God.

It is noteworthy that Islam treats faith in a unique manner. As an inner matter, none can know and understand the faith of others, and it is not a human's place to try.¹⁶ In relation to this issue, the Qur'an categorically repudiates religious coercion and affirms that faith and the rejection of faith ultimately rest with God to give or withhold as He will. The Qur'an 2:256 clearly says that "*Let there be no coercion in religion*". However, it is crucial to stress here that the free-choice of religion does not mean Irresponsible religious anarchy, rather it is a freedom conditioned by the knowledge of truth [Qur'an 18:29]. Therefore, it is safe to suggest that *ridda* is a very personal inner moral decision to withdraw from Islam, which lies beyond the authority of Islamic law, and political control.¹⁷

The Qur'anic verses clearly indicate that, operating as it is within the notion of religious freedom, it is quite possible for *ridda* to be committed by a Muslim. This possibility is not hypothetical: it is by definition real. Hence, we ask whether there actually was any incident of *ridda* during the course of Islamic history, especially in its very early time? This question is important because the notion¹⁸ of *ridda* law was predominantly based on, and referred to, the real incidents of *ridda* itself within Islamic history.

Apart from such little disagreement, generally speaking, Muslim scholars hold the consensus that *ridda* occurred during the time of the Prophet

and *al-Khulafā al-Rāshidūn*. I will mention several cases, which are commonly cited as references when the legal punishment of *ridda* is discussed. It is crucial, however, to stress in this paper that these cases were not purely incidence of *ridda*, but also concerned several other issues [political and criminal], which are subject to hudud penalty and other capital punishment with its own right [such as murder, highway robbery, and rebellion against the state's political and societal stability].

Firstly, it was reported that men from the 'Ukl tribe came to the Prophet as Muslims and were welcomed by him and many other Muslims.¹⁹ The men were reported to have suffered serious stomach pains, and following their request, the Prophet sent them with his shepherd to the countryside where they lived for convalescence. However, when they recovered from their illness, they brutally killed the shepherd and ran away with the flocks. The Prophet had ordered Muslims to capture them, and bring them back to him, and ordered that their hands and feet be severed on opposite sides and their eyes gouged with hot iron.

Secondly, it is said that a man, Abdullah ibn Sa'ad ibn Abi Sarh, took shelter with 'Uthman ibn 'Affan, on whose intercession the Prophet pardoned him. In another version, it was claimed that Uthman ibn 'Affan requested the Prophet's pardon for a man, Abdullah, who had embraced Islam, then apostatized, and finally the Prophet let him go.²⁰ It was narrated by Abi Dawid that Abdullah ibn Abi Sarh was at one time secretary to the Messenger of God, and used to write what was dictated to him by the Prophet.²¹ However, he was seized by Satan and then joined the polytheist Quraysh. When Mecca was conquered, the Messenger of God ordered that he should be killed. This was never followed through, because 'Uthman sought refuge for him, and this was granted by the Messenger of Allah.

Thirdly, it was narrated by the authority of 'Aisha that the Prophet had ordered the execution of a female *murtadda*. The story was that on the occasion of the battle of *Uhud* [when the Muslims suffered serious defeat], a woman had apostatized. In response to this, the Prophet said: "Let her repent. If she does not repent, she should be executed".²² This same hadith was also narrated by the authority of Jabir ibn Abdullah. It was reported that a woman, 'Umm Ruman, or 'Umm Marwan, had apostatized. The Prophet then ordered that it would be better that she be offered Islam again and then repent. Otherwise, she should be executed.²³

Fourthly, Abd Musa al-Ash'ari reported that the Prophet had appointed and sent him to the Yemenite region as governor.²⁴ Then later, he sent Mu'adh ibn Jabbal to be his jurist assistant. When Mu'adh arrived there, he announced; "People, I am sent by the Messenger of God for you". Abd Misa then placed a cushion for him to be comfortably seated. Meanwhile, a person, who had previously been a Jew, then turned Muslim, and then returned to Judaism, was presented to the governor. Mu'adh said to crowds; "Not by God, I will not sit down unless this person is executed, for this is the judgement of God and His Messenger". Mu'adh repeated the statement three times. Finally, the man was brought forth and killed, before Mu'adh sat down.

Fifthly, it was reported that a man who was formerly a Christian, had become Muslim, and returned to being a Christian, was brought before 'Ali ibn Abi Talib.²⁵ 'Ali asked him: "What is the cause of your conduct?" to which he replied "I have found the religion of the Christians to be better than your religion". 'Ali then asked "What is your belief about Jesus?" He said "He is my Lord [*Rabb*]" or he said "He is Lord of 'Ali". Hearing this answer, 'Ali ordered that he be executed. In different tradition, it was narrated that Ali was informed about a group of Christians who had become Muslims and then became Christians again.²⁶ 'Ali arrested them, summoned them before himself and inquired about the truth of the matter. They said "We were Christians. Then we were offered the choice of remaining Christians or becoming Muslims. We chose Islam. But now it is our opinion that no religion is better than our first religion. Therefore, we are now Christians". Hearing this, 'Ali ordered these people to be executed and their children enslaved.²⁷

Historically, *fatwas* regarding the *ridda* were largely diverse. It is argued that for example, the *fatwa* issued in medieval Spain was frequently very harsh.²⁸ However, it was also found that a jurist interestingly often revised previous *fatwa* on the same circumstance, especially after accommodating public hearings. In addition, Mas'ud found that many *fatwas* on *ridda* often differed from the dominant opinion in the established doctrines of school.²⁹ Marin and el-Hour argue that the law of *ridda* was not only to affect the perpetrator, but also their descendants.³⁰ Marika Tamim even asserts strongly that the notion of *ridda* has terrified many potentially Muslima to convert from Islam.³¹ Therefore, It is safe to argue the diversity of Islamic law regarding the *ridda*.

The cases reported above may facilitate further discussion on the complicated matter dealing with the punishment for *ridda*, I intentionally have not commented on these Traditions, however, In the subsequent section they will be critically assessed.

Issues of Islamic Legal Methodology within the Law of *Ridda*

In this section I will discuss some methodological Issues concerning the law of *ridda* particularly with reference to Shafi'i's point of view.

1. Legal Sources of the Law of *Ridda* [Qur'anic Verses]

Generally speaking, many scholars, especially theologians, agree that Qur'anic verses state no real punishment of *ridda* in the mundane world.³² However, jurists who are of the opinion that a *murtadd* should be executed have in fact argued that many Qur'anic verses implicitly describe the law of *ridda*. Accordingly, there are various Qur'anic verses which bear either directly or indirectly on the notion of *ridda*. I will discuss several verses, which are deemed by jurists to strongly support the argument for the execution of a *murtad*:

"...And fight them until there is no more Tumult or oppression and there prevail justice and faith in God. But if they cease, let there be no hostility except towards those who practice oppression" [Qur'an 2:193].

"Then fight and slay the pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem [of war]. But if they repent, and establish regular prayers and practice regular charity, then open the way for them" [Qur'an 9:6].

"But it has already been revealed to thee as it was to those before thee - 'If you are to join [gods with God] truly fruitless will be thy work [in life] and thou will surely be in the ranks of those who lose fall spiritual goal'" [Qur'an 39:65].

"They [the Makkans] will not desist from fighting with you [Muslims] until they turn away from your religion, if they can. But whoever among you turns away from his religion and dies as a rejecter of faith, their works will come to naught in this world and the hereafter. They shall be the inmates of the Fires to dwell forever" [Qur'an 2:217].

"The only reward for those who make war upon Allah and His messenger and strive to create disorder in the land will be that they will be killed or crucified or have their hands and feet, on alternative sides, cut off or will be expelled from the land. Such will be their degradation in the land and in the Hereafter."

Theirs will be an awful doom, save those who repent before you overpower them. For know that Allah is Forgiving, Merciful” [Qur’an 5:33-4]

“How shall Allah guide a people who disbelieved after their belief and who bore witness that the Messenger is true and to whom clear proofs had come... Their doom shall not be lightened nor shall they be reprieved. Save those who afterwards repent and do right. Surely those who disbelieved after their [profession of belief and then increased in their disbelief, their repentance will not be accepted. These are they who have one astray. As for those who have disbelieved and die while they are disbelievers, the [whole] earth full of gold would not be accepted from any one of them, if it were offered as a ransom [for his soul]. Theirs will be a painful doom and they will have no helpers” [Qur’an 3:86-91].

“Those who believe, then disbelieve, and then [again] disbelieve, and then increase in disbelief, Allah will never pardon them nor will He guide them to the [right] way” [Qur’an 4:137].

Shafi’i refers to the first three Qur’anic verses when he discusses the punishment of *ridda*, while ignoring the other verses.³³ For Shafi’ argues that the verses clearly order Muslims to fight *musyrikīn* [polytheists] and *kāfirīn* [unbelievers]. He inferred that it is more important to kill people who have apostatized from Islam than to kill those from the first two groups. This is because the *murtads* rejected the truth that they had recognized before.

Here, Shafi’i simply applied *qiyās* [analogy]³⁴ to draw the ruling of *ridda*. To support his *qiyās*, Shafi’i cites only a Hadith by the authority of Uthman ibn ‘Affan. The hadith implies that “the Prophetsays that ‘It is not lawful to shed the blood of a Muslim except in one out of three cases; [namely] a person who apostatizes after accepting Islam, or who fornicates after marriage, or one who kills a person without retaliation for the murder of another’.”³⁵ It is, however, interesting that when he drew an analogy based on these verses, he did not attempt to scrutinize the verses with special reference to the *asbāb al-nuzūl* [the condition around the revelation] of the verses, nor did he qualify the Hadith.

The way Shafi’i interpreted the previous verses reflects several methodological problems. *Firstly*, the verses which seem to order Muslims to fight against infidels, polytheists and *kāfirīn*, were clearly revealed in the highly specific context of time when the Prophet and Muslims were under the shade of aggression from Quraysh. If Shafi’i is methodologically correct to

apply the *qiyās* here, then, the execution of *murtads* can only be implemented under the condition that the *murtad* is really threatening the stability of the Muslims community. However, Shafi'i did not specify whether his opinion on *ridda* can be applied to more general contexts such as those in which are mainly understood and maintained by his later disciples, especially by those who often used the law of *ridda* against their opponents.

Secondly, Ibn Kathir who was in favor of Shafi'i's support for the death penalty for *murtad*, says in his *Tafsir* that the verses 3:86-91 were revealed in relation to an incident of *ridda*. More specifically another medieval jurist, al-Qurtubī, in response to the above verses limits true religiosity to Islam. Therefore, the verses should be read as saying that any non-Muslim who knows about Islam but still refuses to embrace it is a *murtad*, and he/she must be killed. However, Ayoub³⁶ critically comments that both Ibn Kathir or al-Qurtubī who interpreted the verses in the sense of fight, historically lived at a time of great conflict between Western Christendom and the world of Islam. Muslim power in Spain, where al-Qurtubī lived, was being severely undermined by the Reconquista, while in Syria, where Ibn Kathir flourished, was terrified by the tragic wars of Crusades.

Thirdly, when discussing the verses, Shafi'i did not critically scrutinize the whole meaning of the Qur'anic verses [cited previously] in relation to other verses. Be Shafi'i's opinion as it may, it is interesting to explore the meaning of verses from other angles. The Qur'an 4:137 [the last verse quoted above] obviously denotes that a person can re-apostatize several times. If the punishment of a *ridda* is death, therefore, the verse will be meaningless, it does not make sense. The death punishment would not allow a *murtad* to re-apostatize several times, as the verse 4:137 indicates. Thus, the verse leads us to believe that the act of *ridda* must be a *sin*, and not a *crime*.

Fourthly, the Qur'an 2:217 and 3:87-92 accentuate another critical point. It is significant that these verses clearly envisage a natural death [*yamūt*] for *murtads* but that there will be a painful fate awaiting them in the hereafter. The word used in the Arabic text "*fa yamūt*" as mentioned in these verses is particularly significant on this point. Elsewhere, the Qur'an 3:198 distinguishes between natural death [*māta*] and *death by being slain* [*qutila*]. The Qur'an 3:193 says that "and Muhammad is but a messenger; messengers [the like of him] have passed away before him. If then

he *dies* or is *slain*, will you turn back on your heels.” The two words in the original text are *māta* [dies] and *qutīla* [being slain]. The implication of the verse is unmistakable that the Qur’anic scheme visualizes a *murtadd* dying a natural death, and there is no indication here that he/she can be killed for defection. Therefore, the differentiation of the words *māta* and *qutīla* falsifies, or at least undermines, the jurist’s opinion supporting the punishment of the death for *ridda*.

It is also noteworthy that the way Shafi’i applied *qiyās* leads to two crucial points. *Firstly*, Shafi’i did not clearly mention the original reason [*illa*] for allowing fighting against the infidels and polytheists. *Secondly*, Shafi’i seemed right to use the *qiyās* since he believed that there is some similarity of *murtads* at the time of the Prophet or during the period of Companion with the nature of Quraysh Polytheists or other of Muslim’s enemies during the Prophetic period. It was reported that the Prophet ordered Muslims to slay several *murtad*: who either brutally murdered other Muslims, or were involved in military conspirations against the Islamic State. However, Shafi’i again seemed to ignore the complex nature of the *ridda* case here. The cases that he referred to when building argument in favor of the death penalty for *murtads* were multidimensional. Take for example the case of men from ‘Urayna or ‘Ukl. There were several reasons for the Prophet ordering Muslims to kill them; *firstly*, because they committed a highway robbery; *secondly*, their crimes were so frightening to the wider community; *thirdly*, they had apostatized. Thus, *ridda* was far from the primary reason for the imposition of the death penalty in this case. Therefore, the methodology of legal reasoning by which Shafi’i drew the law of *ridda* from the *qiyās* suffers from serious ‘misinterpretation’.

2. Legal Sources of the Law of *Ridda* [Prophetic Traditions]

I will now explore the Prophetic Traditions that were recognized as supporting the death penalty for *ridda*. In contrast with the numerous Qur’anic references to *ridda*, there are only a few Traditions, which are directly relevant to this issue. There are, even, only fewer prophetic Hadiths, which contain specific legislation regarding the status of *murtadd* and the death penalty for *ridda*.

Early Traditions involving *ridda* generally fall into two categories; anecdotal, and hence inferential, legislative narratives, and direct legislative commandments.³⁷ It is noteworthy that in spite of their scarcity, these Traditions present internal problems that cast serious doubt on their legislative

authority. Yet apart from the paucity and problematic nature of these Traditions, they have played a determinant role in shaping the harsh legislations concerning *ridda*, as well as the social and political attitudes towards *murtads*.

The first hadith is about the men who came to the Prophet.³⁸ A traditionist-jurist, al-Nawawi,³⁹ saw this incident as a primary source for the legislation of harsh punishment of those who waged war against God and His Prophet and, by extension, against the whole Muslim community. He cited the following Qur'anic verse as a proof-text:

Surely, the recompense of those who wage war against God and his messenger and spread corruption in the land is that they be killed or crucified, or their hands and feet be severed on opposite sides, or that they be banished from the land [Qur'an 5:33].

This verse is commonly deemed to refer to highway robbers rather than thieves, whose punishment is far less severe. This is because thieves may only steal without causing physical injury or committing murder, whereas highway robbers may often commit all three offenses simultaneously. They are therefore a greater threat to public order and safety. The verse, however, does not refer specifically to *murtads*. Nevertheless, al-Nawawi, who was aware of this fact, argued that the men's criminal acts of the theft and murder imply *ridda* from Islam. It seems that al-Nawawi was over impressed by the aspect of *ridda*, while he denied other factors, which are definitely deemed as crimes that qualify their perpetrator to be sentenced to death.⁴⁰

It is important to note that there are some controversies over al-Nawawi's view. Ayoub, for example, argues that no account of this incident mentions the men actually renouncing Islam; hence they were punished not for their act of *ridda*, but for the crime of highway robbery and brutal murder.⁴¹ Furthermore, as we shall see later,⁴² *murtads* must be given the time and opportunity to repent to the community, yet the men were denied this right, and therefore, the tradition cannot be said to support for the death penalty for *ridda*. It should therefore not be used as a source to direct such legislation. This incidence, in fact, has been widely used by jurists, but only as an argument from precedence, not as a primary source for the law of *ridda*.⁴³

Another anecdotal tradition used by jurists for the death penalty of *murtadd*s only has an obscure reference to a prophetic Sunnah. The Sunnah was concerned with the Mu'adh's judgement ordering death penalty for a *murtad*.⁴⁴ Methodologically, there are several points can be made about this incidence to show that it is not a sufficient basis for the law of *ridda*. *Firstly*, Mu'adh, as far as indicated by the Tradition, did not cite either Qur'anic verses or any specific Prophetic judgement as a basis for his insistence on the immediate execution of the *murtad*. Since there was no specific hadith to support his argument, it carried little weight in the development of the *ridda* law.

Secondly, it is noteworthy that the Mu'adh's incident occurred in the Yaman, a region with notable Jewish and Christian communities. This was important in later developments, since the special political, religious and social relations between Muslims, Christians and Jews, called for new law to govern these special relations.⁴⁵

Thirdly, Mu'adh's sentence is vehemently opposed by the caliph 'Umar ibn al-Khattab, a very important authority.⁴⁶ It was reported that Umar asked a man coming from the Yemenite region for news of any *murtads*. The man replied that "there was a man who rejected his faith after he had accepted Islam". 'Umar then asked "What did you do to him?" The man answered "we brought him forth and cut off his head". Umar said "Why did you not lock him up for three days, feeding him a loaf of bread each day and urge him to repent? Perhaps he would have repented and returned to God's command". In closing his dialogue, Umar said "O God, I was not present, nor did I command it, and when the news reached me, I did not approve".

The incident in the Yemenite region reveals an important issue for the purpose of legislating the death penalty for a *murtad*. It is possible to argue that the two Traditions by the authority of Mu'adh and 'Umar just discussed, clearly contradict one another. This and the fact that neither appears to have a credible historical nor legal context, leads one to believe that they are legally fictitious and devised to support two mutually exclusive juristic positions. Mu'adh's account has been used to argue for an immediate execution of a *murtad*, whereas that of Umar is claimed to support the widely held view that a *murtad* should be given a three-day respite to repent. Although a general consensus has emerged in support of giving a *murtad* the opportunity to repent, this practice appears to have begun as a

moral expedient based on the Qur'anic principles of human repentance and divine forgiveness, rather than as a specific hadith legislation. In addition, the different response given by Mu'adh and 'Umar to the same case of *ridda* illuminates another critical point. It may be argued that this difference of opinion between Mu'adh and 'Umar was simply their personal *ijtihad*. Therefore, it cannot be used as a source to the legislation of the death penalty for *murtads*.

To sum up, the three anecdotal Traditions mentioned above clearly have some internal weaknesses. These hadiths, so far concerned, are not genuine [*ṣaḥīḥ*], since they are not found in *Ṣaḥīḥ al-Bukhārī* and Muslim. Therefore, they are problematic to serve as material sources for the *ridda* law. In contrast to these anecdotal Traditions, there are three other hadiths, which directly stipulate the death penalty for *ridda*, and these will be discussed below.

The first Hadith is the one most widely accepted amongst jurists, that is, "He who changes his religion, kill him!"⁴⁷ This hadith is mentioned in Bukhari's *Ṣaḥīḥ* and there is another related hadith which can help us to understand its meaning more accurately. It is reported by the authority of Ikrimah that some dualists *zanādiqah* were brought to Ali who burnt them alive.⁴⁸ When Ibn 'Abbas learnt of this, he said "Had I been in his place, I would not have burnt them, in compliance with the Messenger of God's prohibition: 'Punish not with the punishment of God'. I would have rather treated them in accordance with his saying, 'He who changes his religion, kill him'".⁴⁹

Two points should be made regarding the previous hadiths. The first is that the *murtads* involved were neither Christians nor Jews. Rather, they could have been Persian or other non-Arab political converts whose Islamic belief could not be ascertained. Malik ibn Anas makes a comment concerning these people that "When they are captured, they should be killed without being asked to repent, because their repentance cannot be ascertained. Because they are used to pretending adherence to Islam and concealing their rejection of faith, their word should not be accepted."⁵⁰ Malik's comment illuminates that these men were not common *murtads*. The paraphrase that "their word should not be accepted" indicates that they were in some ways individually significant. This significance was either due to their political resistance against Islam, or to their detesting Islam. Therefore, their execution was not simply due to their apostatizing,

but rather due to something else, which seemed to lead more obviously to the conviction and death.

The second point is that Malik's Tradition is not mentioned in the *Ṣaḥīḥ* of Muslim. A similar variant of the above-mentioned hadith has been related here by a well-known Companion, Zayd ibn 'Aslam. According to Ayoub, it is claimed that the hadith is *mursal* because of its lack of proper chain transmission.⁵¹ The hadith reads as follows: "the Messenger of God said 'he who changes his religion, strike off his neck'."⁵² 8 There was much disagreement amongst jurists even at the very beginning of the formation of Islamic law. Malik ibn Anas, the founder of the Maliki school, interpreted the prophetic command as follows:

*The meaning of the Prophet's saying—in our view, but God knows best (italic is added)—is that anyone who abandons Islam for another religion, such as the dualists and their likes ... these should not be made to repent, nor should their word be accepted. As for [those] who publicly leave Islam for another religion, I say that [they] should be invited anew to Islam and enjoined to repent. If they repent, it should be accepted from them, but if they do not, they should be killed... We do not think this [Hadith] refers to those who leave Judaism for Christianity or Christianity for Judaism, nor those who change their religion of the people of all religions other than Islam.*⁵³

The previous quotation clearly demonstrates that Malik simply expresses his own opinion, but still remains cautious. Thus, he qualifies every statement with the phrases "is our view" and "but God knows best". This cautions no doubt demonstrates the confusion, at least doubt, which this tradition and its variant created at this early stage of the development of the Islamic law of *ridda*. Therefore, the law of *ridda* is not only controversial, but it also is its very basis much confusing.

Even if the hadith stipulating the death penalty for *ridda* is considered to be genuine [*Ṣaḥīḥ*], it, faces a methodological problem, because of the use of the word "*uqtul*", which conventionally means 'kill', or beheaded. In fact for other meaning, this word "*uqtul*" does not only mean to literally "kill", For example when the Bani Isra'il had taken to worship of the calf [Qur'an 2:54], Moses advised them "to turn to their God, Creator" and added "*fa uqtulū anfusakum*" If this phrases taken literally means kill yourselves, but the phrases were interpreted by some commentators as an admonition to kill their evil passions.⁵⁴ To say differently, the word of *qatala*

is *mushtarak*,⁵⁵ and thus, to take one meaning over the others for the hadiths under discussion, a person should consider the appropriate context of the use of this word. Nonetheless, were hardly found any jurists who totally aware of the problem regarding this matter when they drew the law of *ridda* by referring to this Prophetic Tradition.

Reference may be made in this connection, *inter alia*, to *Bahr al-Muḥīṭ*. It was reported that following the Prophet's death on the day of *Thaqifa*, when there was a gathering of the Ansar, at which the chief of the Khazraj named Sa'ad set himself up as a candidate for the Caliphate, 'Umar was said to have called out "*Uqtulū al-Sa'ad, aqtalah Allah*". Indeed 'Umar did not really order the conference's participants to kill Sa'ad, but his exclamation had other meanings. In this sentence, the word "*uqtul*" which literally means "kill" is thought to have meant "*treat him as if he is dead, and do not advert to what he says*" [*wujuduh ka 'adamih*]. Therefore, there is also a weakness in the hadith' by the authority of Ibn 'Abbas and 'Ikrimah regarding the word "*uqtul*".

Final Remarks

Overall, as had been discussed above, it is safe to conclude that the notion of *ridda* law within the orthodox Islamic school reflects many serious problems. In the last part of this paper, I will try to elaborate several things, at the first point, in special reference to Shafi'i methodology. *If is actually difficult to conclude whether Shafi'i based his argument on qiyās when drawing the law of ridda or he based purely on Sunna*. The first thing that bears on mind is that, if Shafi'i really applied *qiyās*, then he was not consistent with his theory of *qiyās*. For he argued that *qiyās* can only be used on such this case, if there is no text is to be found in the Qur'an and the Sunna, which clearly explain its ruling.⁵⁶ Second, so far concerned, the Qur'anic verses clearly state that the punishment of *ridda* should be awaited until the Hereafter, and, on the other hand, several Prophetic Traditions apparently mention the ruling of *ridda*. Therefore, Shafi'i seemed to follow such a theory suggesting that, when Qur'anic verses do not specify the ruling of a particular issue, then the Sunna may play a decisive role in legislation of this issue. If this speculation is correct, then Shafi'i's *ijtihad* in some sense is also problematic, because the Qur'an states clearly the punishment of a *murtad*. Third, if he simply drew his *jihad* on the Prophetic Traditions, then, Shafi'i seemed to apply the medium of abrogation.

If this alternative is correct, his *ijtihad* is in conflict with a general consensus. ‘Ulama held a consensus that the Prophetic Tradition cannot abrogate the Qur’an. However, this probably happens to Shafi’i, because he had not enough time to reanalyzed the issue: like he often revised his argument, for example in the case of *qawl qadim* and *qawl jadid*.

Secondly, I have demonstrated that not only do the Prophetic Traditions, which were widely applied by jurists to draw their opinion on the *ridda*, suffer from serious problems, but so do the methodological approaches developed by jurists in order to draw their opinions from them. If the previously mentioned hadiths are genuine, they are still problematic to be used as the basis of the law of *ridda*, because ‘ulama agree that a hadith, certainly *mursal*, cannot abrogate the Qur’anic rulings. So far, the Qur’an does not mention the death penalty for *ridda*, even Qur’an 2:256 strongly promotes the religious freedom, and thus the legislation of *ridda* law by taking Prophetic Traditions into account contradicts the most accepted theory of abrogation.

Finally, how then can the issue of *ridda* be explained more adequately? I will speculate that political approaches seem quite helpful to do so, especially from the notion of spying. Several films may illustrate my argument, such “No Way Out”, “No Way Back” “Fire Fox”, “Russian Affairs” and “Assassination”. These movies show that an American spying officer [intelligent], who has joined Russian regime, must be killed, otherwise he would destroy the Americans by exposing the American military strategy and installation to the Russian. This condition was also clearly demonstrating at the early period of Islamic history. It was by definition true that almost all Muslims at that time were also soldiers [warriors]. Therefore, the incident of *ridda* [apostatizing] would jeopardize the existence of the Muslim community and state. This point is supported by the Prophetic tradition telling us that on the occasion of the battle of Uhud [when the Muslims suffered serious defeat], a woman had apostatized, and in response to this, the Prophet said: “Let her repent. If she does not repent, she should be executed”. Consider that this case happened during the war, and the woman was very possibly a warrior.

Therefore, the harshness of *ridda* punishment at the early period of Islamic history should be interpreted from this context. As a result, the law of *ridda* may not be generalized, because its very basis itself reflects this notion. It is also important to note that the law of *ridda* should not be in

conflict with the freedom of conscience because it contradicts the very basic notion of human rights, which are accentuated by the Qur'an, except if the context really requires it.

The last point, but not the least, is that the early history of Islam demonstrated that Muslims used to be exposed to *khilāfiyya* even on the very crucial and substantial issues. Umar 's interpretation on several legal aspects is the case in point. What is so surprising from these historical cases is that *ṣahāba* and *ṭābi'un* as well hardly accused others for being *murtad* for their radical or unusual interpretation on Qur'anic and Prophetic *nuṣuṣ*. Nowadays, the phenomenon is really different from what is Suggested above. It is the fact that many people [mostly fundamentalists] easily and less carefully use the law of *ridda* to fight their opponents. In other words, the law of *ridda* has been politicized by many groups of Muslims to establish their regime by using religious symbols.

Wa Allāh 'a'lam bi al-Sawāb

Endnotes

1. It is reported that a husband must be separated from his wife because of his conversion from Islam [Economist, August, 10, 1996, Vol. 340, p. 32]: Mehdi Dibaj, an Iranian Christian, was charged for death for his apostatizing from Islam. For Mehdi's trial defense delivered to the tribunal Court for his trial as a *murtad* from Islam on December 3, 1993, see Appendix D attached in al-Maududi's [*The Punishment of the Apostate according to Islamic Law*]. In India, the law of *ridda* has been abused by many wives for an ideological and practical reason of pursuing divorce of their marriage [Mas'ud, *Apostasy and Judicial Separation in British India*], see also Mayer, *Islam and Human Rights; Tradition and Politics*, pp.152-3. On the other hand, Zwemer's, *The Law of Apostasy* especially chapter I attempts to explain Why so Few Muslim Converts, pp.1229. Tendentiously, at the early time when western scholars started investigating the issue of the orthodox law of *ridda*, they did so merely in an attempt to answer the question of the failure of the imperial and missionary project. When Nasr Hamid Abu Zayd, an Egyptian Muslim scholar, was accused *murtad*, tremendous comments were made, for examples, Amira Howeidy, "The Persecution of Abu Zeid [ordered to annul his marriage after Egyptian court ruled him an apostate]", *World Press Review*. Vol. 42, Oct 1995, p. 18-19; Judith Miller, "New tack for Egypt's Islamic Militants: Imposing Divorce [case of N. Abu Zeid]", *New York Times*. Dec. 28 1996, p. 22; Mary Anne Weaver, "Revolution by Stealth [N. Abu Zeid Ruled an Apostate by Egyptian Court]", *The New Yorker*. Vol. 74 No.15, June 8 1998, pp. 38-48. For other cases, see for examples, Kim A. Lawton, "Another Pastor Martyred in Iran [M. B. Yusefi]", *Christianity Today*. Vol. 40, Nov. 11 1996, p. 99; Barbara G. Baker, Arab press says Hussein has returned to Islam [R. Hussein], *Christianity Today*. Vol. 41, Apr. 7 1997, p.56; Gandjeih, Djalal. "The Satanic *Fatwa*: an Iranian Ayatollah Defends Salman Rushdie [Excerpt from For Rushdie]". [Article. Book excerpt] *Utne Reader*. Sep./ Oct. 1994, pp. 131-3. For more examples of the execution of *murtads*, see the website: www.domini.org/openbook/home
2. For example, classical and medieval jurists seemed not to pay adequate attention to the different meaning between *māta* [die naturally] and *qutila* [die by slay or beheading]. When Qur'an bears upon the notion of *ridda*, it always uses the word *māta* to describes typically the way of a *murtad* dies. This indispensably denotes that a *murtad* shall not be killed as classical and medieval Muslim jurists generally constructed it.
3. Rahman, Punishment of Apostasy in Islam, Ahmad, Conversion from Islam. Khadduri in his comment on Shaybani's Siyar on the law of *ridda* contends that "Qur'anic injunctions do not specifically state the punishment for apostasy should be death The practice of the prophet Muhammad, as shown in the Hudaibiya treaty, seems to indicate that those from among his followers who wanted to return to Makka and join the polytheists were allowed to do so. ... However, traditions have been later ascribed to the Prophet ordering the execution of *murtads*". Khadduri, *The Islamic Law of Nations*, p. 1955.
4. al-Samara'i, *Ahkām al-Murtadd*, n.d., Rahman, Punishment of Apostasy in Islam, p.9.
5. Hallaq, *Apostasy*, unpublished document, 1. See for example, Qur'anic verses [2217, 5:54] which obviously denote the concept of *ridda* with the terms *irtidād* and *kufr*.
6. Kraemer, *Murtads, Rebels and Brigands*, p. 37. See for example the Qur'an 4:88-91.
7. Arzt, *The Treatment of Religious Dissidents under Classical and Contemporary Islamic Law*, p. 436. The word *ridda* was often practically confused by the blasphemy and the critic against the established Islamic regime. For example, Faraj Fouda, one of Egypt's leading

- secular intellectuals and a vocal critic of militant Islamists as well as the Egyptian government, was murdered in June 1992, and his teenage son also wounded in the attack. A statement by the group of *al-Jamā'a al-Islāmiyya*, which took responsibility, justified the killing because Fouda was as *murtad*, an advocate of separation of religion and state, and an opponent of the use of Shari'a as Egyptian law [Arzt p. 429].
8. Shoufani, *al-Riddah and the Muslim Conquest of Arabia*, see especially Chapter 3-4. Lewis, *The Arab in History*, Watt, *Muhammad at Medina*, especially chapter IV, al-Maududi, *the Punishment of the Apostate according to Islamic Law*, pp. 25-7.
 9. al-Qurtubi [*Jāmi*, Vol. 10, p. 180, cited also by Ayoub, *Religious Freedom and the Law of Apostasy*, p. 80] mentions a *sabab al-Nuzūl* of the Qur'an 16:106. It was reported that under torment by the people of Quraysh, 'Amamār renounced and denounced Islam. But soon after he was released, he ran to the Prophet to express his remorse and seek forgiveness. The Prophet asked him "How do you find your heart?" and "Ammar replied that his heart was steadfast in faith. Then, Qur'an 16:106 was revealed -" Anyone who rejects faith in God after having accepted faith, except for him who is coerced, while his heart remains at peace in faith, but anyone who opens a willing breast to the rejection of faith, upon these shall be God's wrath and theirs shall be a great torment " .
 10. al-Simara'i, *Ahkām al-Murtadd*, pp. 47-69; Shafi'i, *kitab al-Umm*, Vol. VI, pp. 145, 149-151. After analyzing several definitions of *ridda*, al-Samara'i prefers Qulyubi's definition to the others.
 11. Qalyubi and 'Umayra, *Matn Minhāj al-Tālibin*, Vol. 4, p. 174.
 12. Al-Samara'i, *ibid*, pp. 111-13.
 13. The case of Salman Rusdhi with his controversial book "*The Satanic Verses*" is a case in point. The execution of Abu Yazid al-Bustami, known by al-Hallaj, and Ibn Muqaffa' are the other examples.
 14. *Hadd* [*hudūd*, pl. Arabic] is a crime of its punishment is clearly mentioned in al-Qur'an and Prophetic Traditions, el-Awa, *Punishment in Islamic Law: A Comparative Study*, p. 50, 64.
 15. See for instance al-Sarakhsi's Commentary [*Sharh*] to *al-Siyar al-Kabir of al-Shaybani*, ed. Salah al-Din al-Munaqqid and 'Abd al-Aziz Ahmad, Vol. 5, 1938. See also the discussion by the Hanbali Ibn Qudama, *Kitab al-Mughni*, ed. Rashid Ridha, Vol 10, pp. 80-81.
 16. The Prophet Muhammad was reported to admonish 'Usama b. Zayd for killing a man after he complied out of fear of [Muslim] arms. The Prophet asked Usama if he had split open the man's heart, impressing upon Usama, that he knows not what is in another man's heart [For the dialogue between Muhammad and Usama, see Abi Yusuf, *Kitāb al-Kharāj*, p. 179-80, p. 276-78; Ahmad, *Conversion from Islam*, p. 81.
 17. Al-Na'im, *The Islamic Law of Apostasy and Its Modern Application*. An-Na'im always discusses the issue of *ridda* in relation to the political significance, and religious human rights. See an-Na'im, *Islamic Foundations of Religious Human Rights*, and his most provocative book *Toward an Islamic Reformation of: Civil Liberties, Human rights and International Law*, and also Ayoub, *Religious Freedom and the Law of Apostasy in Islam*, p. 90, Arzt, *The Treatment of Religious Dissidents under Classical and Contemporary Islamic Law*, especially pp. 427-51; al-Nayfar, *Min al-Ridda "Ilā al-'Iman 'Ila al-Tanāqud*.
 18. Islamic laws must be based on the Qur'an and the Prophetic tradition [*hadith*]. However, it is also true that, in a certain case, a Muslim jurist inferred his opinion from such traditions maintained during the post-Prophetic succession. Even Malikite recognizes that the Madina Tradition can be used as the source of Islamic Law.

19. In other traditions, it was reported that the men were from the Urayna tribe. See Muslim ibn al-Hajjāj al-Nisabūrī, *Ṣaḥīḥ Muslim bi-Sharḥ al-Nawāwī*, 3rd ed. Vol. 6, pp. 153-57; ‘Alī ibn Hajar al-Asqalānī, *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī*, Vol. 12, p. 109 ff. It is quite unique that al-Maududī’s, *The Punishment of the Apostasy*, which strongly supports the death punishment of *murtad*, does not mention this Hadith.
20. He actually ‘Uthmān’s foster-brother, Ahmad, *Conversion from Islam*, p. 8; al-Maududī, *The Punishment of the Apostasy*, pp. 21-2.
21. Abi Dāwud, *Sunan Abū Dāwud*. See *Kitāb al-Ḥudūd, Bāb al-Ḥukm fī Man Irtadd*. The hadith was also narrated from the authority of Abi Sa’id, for more information on how Abdullah ibn Sa’ad fabricated Qur’anic passages, deceived Muhammad and Later, under ‘Uthman, became a general and governor. See *The Life of Muhammad, A Translation of Ishaq’s Sirat Rasul Allah* by Guillaume, p. 550.
22. Bayhaqī, *Sunan*.
23. Dāraqutni and Bayhaqī, *Sunan*.
24. Abū ‘Abd Allāh Muḥammad ibn Ismā’il al-Bukhārī, *Ṣaḥīḥ al-Bukhārī, Bāb Ḥukm al-Murtadd wa al-Murtadda wa Istitabathum*, Vol. 8, p. 50.
25. Cited from al-Maududī, *The Punishment of the Apostasy according to Islamic Law*, p. 24.
26. *Ibid.*
27. For more information concerning the execution of *murtads* during the early periods of Islamic history, see, for instance, *Kanz al-Ummāl*, Tahāwī, *Kitāb al-Siyar, Bahth Istiāba al-Murtadd*; Shoufani, *al-Riddah and the Muslim Conquest of Arabia*.
28. Wasserstein, *A Fatwa on Conversion in Islamic Spain*.
29. Mas’ud, *Apostasy and Judicial Separation in British India*.
30. Marin and el-Hour, *Captives, Children and Conversion: A Case from Late Nasrid Granada*.
31. Tamm, *Freedom of Expression in the Muslim World*, especially pp. 27-41; Mayer’s *Islam and Human Rights*.
32. Almost one quarter of Rahman’s book *Punishment of Apostasy in Islam*, attempts to discuss the issue of whether there are Qur’anic verses, which may be interpreted as being support of the mundane punishment of *ridda*.
33. Shafi’i, *al-Umm*, Vol. VI. p. 145. Similar things have been reported from the authority of Ibn Mas’ud. The Prophet said “Any Muslim who bears witness that there is no god except God and that I am the Messenger of God, his blood is unlawful to shed except under one of three circumstances: a married Muslim who commits adultery, a man who kills an innocent person unjustly, and who abandons his religion and thus separates himself from the community” al-Tirmidhi, *Sunan al-Tirmidhi*, ed. Muḥammad ‘Abd al-Raḥmān ‘Uthmān, Vol. 2, p. 429.
34. According to Shafi’i, *qiyās* and *ijtihād* are two terms with the same meaning. More clearly, he said that *ijtihād* is *qiyās*. [al-Shafi’i, *Risāla*, p. 288]
35. *Sunan al-Nasā’ī*, especially *Bāb Dhikr mā Yaḥill bihī dam al-Muslim*, Vol. 2, p. 161, 236.
36. Ayoub, *The Qur’an and its Interpreters*, Vol. 2, p. 247, 243-7; Ayoub, *Religious Freedom*, p. 79.
37. Ayoub, *Religious Freedom and the Law of Apostasy in Islam*, 81; al-Sāmarā’ī, *Aḥkām al-Murtadd*; Rahman, *The Punishment*.
38. The complete version of this hadith is mentioned earlier.
39. Muslim ibn al-Hajjāj al-Nāsābūrī, *Ṣaḥīḥ Muslim bi I-Sharḥ al-Nawāwī*, Vol. 6, pp. 159-157.
40. Jurists held the consensus that the crime of highway robbery will be punished for death, also an intentional homicide [*qatl bi I-’Amdī*], unless the victim’s agnates [family] agree

- to pardon the murder. For examples regarding some controversy over the *fatwa* concerning the application of the death punishment in medieval Islam, see Hallaq, 1994, *Murder in Cordoba: Ijtihad, Ifta' and the Evolution of Substantive Law in Medieval Islam*.
41. Ayoub, *Religious Freedom and the Law of Apostasy in Islam*, pp. 81-2.
 42. See for example a hadith by the authority of 'Aisha earlier.
 43. Shafi'i, however, as far as has been found, did not use this incident to support his argument. However, other jurists from a variety of schools mostly did use the incident. See Rahman, *Punishment of Apostasy in Islam*, especially pp. 78-9, 104-29.
 44. The complete version of this hadith is mentioned earlier.
 45. The context of the incident was quite possible considering the Islamic political movement against the south tribes, who were actively resisting the wider program of Islamization of Arabia. [For a critical assessment of the political struggle at the Yemenite region, see Shoufani, *al-Riddah and the Muslim Conquest of Arabia*, especially p. 89-95].
 46. Malik ibn Anas, *al-Muwatta'*, ed. Muhammad Fu'ad 'Abd al-Baqi, p. 459. See also 'Abd Bakr Ahmad ibn Muhammad ibn Harus al-Bagdadi, ed. Ibrahim ibn Hamad al-Sultani, *'Ahl al-Milal wa I-Ridda, wa I-Zanādiqa, wa I-Tārik al-Ṣalāt wa I-Farā'id*, p. 44, 87-92.
 47. Abdulaziz Sachedina's *Freedom of Conscience and Religion in the Qur'an* discusses critically this Hadith. Almost all books which discuss the law of *ridda* mention this Hadith or its other versions. See also Abu Bakr Ahmad ibn Muhammad ibn Harus al-Bagdadi, ed. Ibrahim ibn Hamad al-Sultani, *'Ahl al-Milal wa I-Ridda, wa I-Zanādiqa, wa I-Tārik al-Ṣalāt wa I-Farā'id*, pp. 485-486; al-Sāmarā'i, *Aḥkām al-Murtadd*, pp. 35-6.
 48. al-Bukhārī, *Ṣaḥīḥ*, Vol. 8, p. 50.
 49. Malik ibn Anas, *al-Muwatta'*, *Bab al-Qada*, p. 458.
 50. Ayoub, *Ibid*, p. 83.
 51. *Ibid*.
 52. Malik ibn Anas, *al-Muwatta'*.
 53. See Rahman for his critical review of this issue, *Punishment of Apostasy in Islam*, p. 68-9.
 54. Term *mushtarak* semantically denotes several meanings. The term *mushtarak* is commonly discussed in very detailed within almost all books of *Usul al-Fiqh*.
 55. Ibn Hayyan, *Babr al-Mubīt*, Vol. 1, p. 209.
 56. Shafi', *Risāla*.

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