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Abstraksi: *Hampir semua pemerintah di dunia, termasuk yang otoriter sekali pun, mengklaim bahwa sistem politik mereka adalah demokrasi. Namun, tidak semua pemerintah di Dunia Islam menerima sistem ini. Di kalangan 'ulama dan intelektual Muslim sendiri terdapat perbedaan pendapat tentang sistem dan konsep demokrasi ini. Pada umumnya kelompok Muslim modernis menerima sistem ini, karena ia dinilai kompatibel dengan Islam, sedangkan kelompok Muslim "fundamentalis" dan sebagian Muslim konservatif menolak sistem ini, karena ia dianggap meniadakan kedaulatan Tuhan.*

Di lain pihak, di antara pengamat, ada yang menilai bahwa Islam tidak kompatibel dengan demokrasi, karena Islam itu suatu agama yang berdasarkan pada kepercayaan kepada Tuhan, sedangkan demokrasi didasarkan pada paham sekular. Beberapa di antara mereka bahkan mengatakan bahwa Islam itu anti-tesis terhadap demokrasi, seperti terlihat dalam ketidaksamaan kedudukan antara Muslim dan non-Muslim dan antara wanita dengan pria. Namun, Banyak juga di antara mereka yang mengakui akan kompatibilitas Islam dengan demokrasi.

Diskusi tentang demokrasi juga terjadi di Indonesia, yang mayoritas penduduknya (88 prosen) beragama Islam. Memang sudah banyak studi tentang demokrasi Indonesia, tetapi studi-studi itu umumnya menekankan pada aspek sosiologis dan yuridis. Sebaliknya, studi yang akan dikemukakan ini lebih menekankan pada aspek teologis (Islam), yang diungkapkan oleh intelektual Muslim Indonesia. Penekanan pada aspek teologis ini tidak kalah pentingnya dari pada aspek sosiologis, karena sebenarnya terdapat hubungan timbal balik antara aspek sosiologis dengan aspek teologis ini.

*Semua intelektual Muslim Indonesia menerima sistem demokrasi, dan bahkan mendukungnya sebagai sistem yang harus dipraktikkan dalam masyarakat Islam. Dalam hal ini, meskipun ada beberapa intelektual Muslim yang bisa memahami pendapat yang menilai anti-tesis antara nilai-nilai Islam dengan nilai-nilai demokrasi, tetapi mereka melihat kompatibilitas antara Islam dengan demokrasi ini, baik dari segi doktrin maupun sejarah. Secara umum dukungan mereka terhadap demokrasi ini didasarkan pada dua alasan. Pertama, nilai-nilai demokrasi itu sejalan dengan nilai-nilai Islam dalam kehidupan sosial, terutama prinsip musyawarah (al-Qur'ân 3: 159, 42: 38). Kedua, sistem demokrasi merupakan cara yang tepat untuk mengartikulasikan aspirasi Islam, karena umat Islam di Indonesia adalah mayoritas, sedangkan demokrasi mengandung pengertian pemerintahan mayoritas (*major rule*).

Di samping itu, intelektual Muslim juga memperkuat dukungan terhadap demokrasi dengan argumentasi historis. Menurut mereka, cikal bakal metode demokrasi dalam sejarah Islam sudah muncul sejak masa Nabi, yakni ketika Nabi menerima pendapat mayoritas sahabat yang mengusulkan agar menghadapi musuh di luar kota. Demikian pula, pemilihan Abu Bakar sebagai khalifah pertama juga dilaksanakan melalui musyawarah para sahabat secara demokratis. Praktik al-Khulafâ' al Rasyidûn yang demikian inilah yang menunjukkan bahwa Islam telah menjalankan kehidupan politik modern.

Dalam diskursus tentang demokrasi ini, intelektual Muslim juga membicarakan tentang persoalan hak-hak asasi manusia yang secara historis merupakan akar bagi munculnya demokrasi. Berbeda dengan ide demokrasi yang masih diperdebatkan di dunia Islam, semua ulama dan intelektual Muslim menyetujui ide hak-hak asasi manusia ini, karena secara esensial hak-hak asasi manusia ini sudah diakui oleh Islam sejak awal, meskipun dari segi istilah mulai populer di kalangan dunia Islam sejak abad ini. Hal ini disebabkan karena pada umumnya ajaran agama itu lebih menekankan pada kewajiban dari pada hak. Dalam Islam kewajiban menjadi aspek aktif dari peristiwa, sedangkan hak menjadi aspek pasifnya.

Persoalan yang sering muncul adalah bagaimana melaksanakan hak-hak asasi manusia ini dalam masyarakat Islam. Maka pada 1990 negara-negara Muslim yang tergabung dalam Organisasi Konferensi Islam mengeluarkan "Cairo Declaration of Human Rights in Islam", setelah selama 13 tahun mendiskusikan masalah ini di antara para anggotanya. Dengan demikian, terdapat dua deklarasi bagi masyarakat Islam, yakni; Deklarasi Kairo di atas dan "Universal Declaration of Human Rights".

مشكورلي عبد الله

الإجابات الألوهية على الفهم الديمقراطى وحقوق الإنسان: مشكلة المثقفين المسلمين الإندونيسيين المعاصرين

الخلاصة

كادت كل حكومة العالم بما فيها الحكومة الفردية/الاستبدادية تدعى بأن نظامها السياسى ديمقراطى. بيد أنه ليست كل حكومات العالم الإسلامى تتقبل هذا النظام. فإن فى وسط العلماء والمثقفين الإسلاميين أنفسهم يوجد اختلاف فى الرأى بخصوص النظام الديمقراطى ومشروعه. على وجه العموم أن الكتلة الإسلامية التجديدية تقبل هذا البرنامج، لأن قيمته مساجمة والإسلام، بينما الكتلة الإسلامية المتعصبة وبعض المسلمين المحافظين يرفضونه، لأنه ينفى السلطة الإلهية.

فى الطرف الآخر فبين المراقبين من يقيم أن الإسلام غير منسجم والديمقراطية، لأن الإسلام دين مؤسس على الاعتقاد بالله والديمقراطية مبنية على رأى علمانى. بعض منهم من رأى أن الإسلام ضد رأى علمى والديمقراطية كما يرى فى‌عدم توافقه وضعا بين المسلم وغير المسلم وبين المرأة والرجل ولكن كثيرا منهم الـذى يعترف بمساجمة الإسلام والديمقراطية.

والجدال حـول الديمقراطيـة قـد أجـرى فـى إندونيسيا، التـى أغلبيـة سكانها مسلمون (٨٨٪))، ففى الواقع كثير من الدراسات حول الديمقراطية قـد حدثـت فى إندونيسيا ولكن هذه الدراسات -على وجه العمـوم- تركزت على الناحية

الاجتماعية والقضائية. بالعكس، أن الدراسة التى سنقدمها متركزة أكثر على النظرية الألوهية الإسلامية التى قام بكشفها المثقفون الإسلاميون الإندونيسيون. إن التركيز على النظرية الألوهية هذه ليست بأقل أهمية من النظرية الاجتماعية، لأن فى الحقيقة توجد صلة متبادلة بين النظرية الاجتماعية والنظرية الألوهية.

كل المثقفين الإسلاميين الإندونيسيين قد قبلوا البرنامج الديمقراطى بل احتضنوه باعتباره البرنامج اللازم تطبيقه فى المجتمع الإسلامى. ففى هذه الحالة رغم وجود بعض المثقفين المسلمين الذين فى قدرتهم تفهم الرأى الذى يقدر تضادد الرأى العلمى بين القيم الإسلامية والديمقراطية، ولكنهم دائمو النظر إلى الانسجام بين الإسلام وهذه الديمقراطية، سواء من الناحية الإديولوجية أو التاريخية. على وجه العموم فإن تأييدهم للديمقراطية مؤسس على دليلين، الأول، أن تلك القيم الديمقراطية متمشية مع القيم الإسلامية فى الحياة الاجتماعية ولاسيما أساس المشاورة (القرآن ٣ : ١٥٩ والقرآن ٤٢ : ٣٨). والثانى، أن البرنامج الديمقراطى يصور الوسيلة الحقيقية لتصوير المشاعر الإسلامية، لأن الأمة الإسلامية فى إندونيسيا أكثرية بينما الديمقراطية تتضمن معنى حكم الغالبة.

بجانب ذلك، فالمثقفون المسلمون أيضا يؤكدون التأييد للديمقراطية بدليل تاريخى، فحسب رأيهم أن مقومات الفكرة الديمقراطية فى التاريخ الإسلامى قد برزت منذ عهد الرسول صلى الله عليه وسلم، وذلك أثناء الرسول يقبل رأى أكثرية الصحابة الذين اقترحوا بمواجهة العدو خارج المدينة. وكذلك اختيار أبى بكر، فى بيعة له لتوليته خليفة أول بعد الرسول قد أجرى عن طريق المشاورة بين الصحابة على أساس ديمقراطى. تطبيق الخلفاء الراشدين مثل ذلك صور أن الإسلام قد أظهر حياة سياسية حديثة.

فى الجدال حول هذه الديمقراطية، فالمثقفون المسلمون يدرسون كذلك موضوع حقوق الإنسان الأساسية حسب التاريخ إنها تعتبر جذورا الديمقراطية.

وهذا يختلف عن الفكرة الديمقراطية التى مازالت تحت البحث فى العالم الإسلامى. كل العلماء والمثقفون المسلمون يوافقون فكرة حقوق الإنسان الأساسية، لأن جوهرية حقوق الإنسان الأساسية هذه قد اعترف بها الإسلام منذ الأول رغم أنها من الناحية الاصطلاحية قد ابتدأت شهرة فى وسط العالم الإسلامى فى أوائل هذا القرن. وسبب هذه الحالة على وجه العموم أن التعاليم الإسلامية ركزت على الواجبات أكثر من الحقوق، ففى الإسلام الواجبات تصبح عاملا فعليا فى الأحكام بينما الحقوق العامل السلبى.

والمسألة الأكثر ظهورا هى كيف تتطبق حقوق الإنسان الأساسية فى المجتمع الإسلامى. ففى سنة ١٩٩٠ قامت الدول الإسلامية المنضمة تحت لواء منظمة المؤتمر الإسلامى بإصدار بيان القاهرة لحقوق الإنسان فى الإسلام بعد طيلة ١٣ عاما تحت البحث بين أعضائها. على هذا الأساس، يوجد بيانان للمجتمع الإسلامى وهما البيان الدولى (البيان العالمى لحقوق الإنسان) وبيان القاهرة هذه.

Introduction

One of the modern political systems frequently discussed in Muslim countries is the term "democracy". This term has been accepted by almost all governments in the world; even authoritarian governments use the attribute "democratic" to characterize their regimes and their aspirations. One result has been a proliferation of terms using the word "democracy" and a corresponding change in the word's original meaning to produce terms, such as "liberal democracy", "guided democracy", "popular democracy", "socialist democracy", and so on.[1] Such altered usages are partly intended to bring the concept of democracy closer to the cultures of certain societies and partly intended to justify political systems promoted by certain governments. Of course, there remains a basic concept of democracy as well as certain minimal conditions which must be fulfilled by a democratic system. Today the term "democracy" and the democratization process are becoming international themes, especially since the collapse of the socialist regimes in Eastern Europe. Samuel P. Huntington calls the present process of democratization in the world "democracy's third wave" which has been under way since 1974.[2]

In the context of Muslim countries, many Islamologists, social scientists, journalists and Muslim scholars themselves have observed and discussed the affinity between Islam and democracy. Most governments in Muslim countries claim that their political systems are moving toward democratization, although each of them interprets it with a different way. The Saudi government is one of the few governments in the Muslim countries that openly rejects the democratic system, because, according to King Fahd, it is not suitable for the Saudi people.[3] Meanwhile, there have in fact been various responses among the 'ulamâ' (Muslim religious scholars), Muslim intellectuals and activists to the term and to the concept of democracy. In general it can be said that the so-called "fundamentalist Muslims" and some conservative Muslims reject democracy, because this concept means negation of Allah's sovereignty over men, and the term does not originate from Islamic vocabulary.[4] Conversely, Muslim modernists support it, because it is compatible with Islamic values, especially the concept of *shûrâ*.[5]

In fact the increasing participation of Islamic movements in the democratic process in the late 1980s and 1990s is continuing to make inroads into the centers of power. Such a tendency brings into focus

the question of the compatibility of Islam and democracy, in particular because the latter is based on secularism, while the former is a religion based on the belief in God. John L. Esposito and James P. Piscatori have observed that both the principle of democracy and the process of democratization are subjects of vigorous debate among Muslims. For others, Islamic values and democratic values are inherently antithetical, as seen in issues such as inequality between believers and non-believers, and between men and women. Nevertheless, they also note that, whereas some Muslim radicals reject any form of parliamentary democracy as a form of Westernization and incommensurate with local traditions, many, if not most, Islamic intellectuals and activists have tried to come to terms with democratic ideas and processes. Moreover, in attempting to carry out their political programs, the Islamic movements in many Muslim countries, such as in Algeria (currently subject to a government restriction), Egypt, Jordan, Pakistan and Tunisia, have seen the utility of working within the political system, and they have successfully contested parliamentary seats and held cabinet positions.[6]

In accordance with the international trend toward democratization, the concept of democracy has, over the past few years, been a subject of intense discussion, far more so than in the preceding period. There have also been several studies on democracy in Indonesia, but most of them are from sociological and legal perspectives. No special study has been carried out from a theological perspective. In the Indonesian context, where the majority (88 percent) of the population are Muslim, a study from a theological perspective is important because, according to Max Weber's theory, the structure and actions of a social group are derived from its commitment to a particular belief system, from which the goals, standards of behavior and legitimacy (and, ultimately, the power) of the authorities derive.[7]

In fact, although Islam is not mentioned in the Indonesian Constitution, it has a significant role in the social and political life of this country. Since the establishment of the first Islamic Kingdom in Indonesia at the end of the thirteenth century, Islam has become one of the sources for the formation of values, norms and behavior of the Indonesian people. In the period of Dutch colonial rule it helped to maintain, sustain and even symbolize the identity and distinctiveness of the Indonesian people as well as its opposition to foreign Dutch colonial rule.[8] In modern day Indonesia, it has maintained its function as a standard of morality and behavior for the Muslim commu-

nity. It is one of the important inputs in the process of public policy-making, and even a giver of legitimacy to the process of political development, particularly regarding principal matters such as the basis of the state philosophy as well as power and authority.[9] Without legitimacy from Islam, the process of political development or national development in general would not run effectively. This means that although the process of political development in most other countries tends to run in line with the process of secularization, in Indonesia this process cannot ignore the prevailing religious orientation.[10]

This theological perspective is explored through the responses of Muslim intellectuals to the concept of democracy. The Muslim intellectuals referred to here are those who express systematic ideas in responding to social and societal problems, while being committed to Islamic values in the life of the society and nation. The word "responses" here indicates that democracy originated not from the Islamic civilization, but from another civilization.

Concepts of Democracy and Human Rights

Literally, democracy means rule by the people, from the Greek *demos* (people) and *kratos* (rule). Historically, the term "democracy" has been known since the fifth century B.C., initially as a response to the bad experiences of monarchy and dictatorship in the city-states of ancient Greece. In that time democracy was practised as a system in which the whole citizen body formed the legislature. This was made possible by the fact that a city-state's population rarely exceeded 10,000 people and that women and children as well as slaves enjoyed no political rights. There was no separation of powers, and all officials were fully accountable to the popular assembly which was qualified to act in executive and judicial as well as legislative matters.[11]

Modern democratic ideas were shaped to a large extent by the ideas and institutions of the enlightenment tradition which began in the sixteenth century. These were the ideas of secularism initiated by Niccolo Machiavelli (1469-1527), the idea of state contract by Thomas Hobbes (1588-1679), the ideas of state constitution and liberalism, as well as the separation of power into legislative, executive and federal bodies by John Locke (1632-1704), completed by Baron de Montesquieu (1689-1755) with his idea of the separation of power into legislative, executive and judicial bodies, and the ideas of popular sovereignty and social contract introduced by Jean-Jaeques Rousseau (1712-1778).[12] Although with different interpretations, there

existed great similarities on the ideas of secularism and natural rights. Those ideas were responses to the absolute monarchies at the end of the medieval period in European history, which had replaced the church authority (theocracy). Democracy in its present day form started to emerge with the American revolution in 1776 followed by the French revolution in 1789.

As mentioned earlier, the term "democracy" has today been accepted by almost all governments in the world, even authoritarian governments use the term "democratic" to characterize their regimes and their aspirations. The term, therefore, has several senses in the contemporary usage, including in the view of liberal democracy itself, as can be seen in the following definitions :

1. The definition most commonly used by social scientists is that of Joseph A. Schumpeter in his book, *Capitalism, Socialism and Democracy* : "the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote".[13]

2. Sidney Hook in the *Encyclopaedia Americana* defines: "Democracy is form of government in which the major decisions of government —or the direction of policy behind this decisions— rest directly or indirectly on the freely given consent of majority of the adults governed".[14]

3. Philippe C. Schmitter and Terry Lynn Karl in their article, "What Democracy is...and is not", define political democracy as "a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives".[15]

These three definitions imply that democracy consists of the elements of : majority rule, popular vote, free elections and accountability. This means that in its contemporary usage, democracy is defined more pragmatically than philosophically. In the enlightenment period democracy was defined firstly in a more philosophical manner, namely by the idea of popular sovereignty as against the sovereignty of God claimed by the priesthood (theocracy) and as against the sovereignty of a monarch. Besides these definitions, there also exist concepts of democracy promoted by the Communist states and Third World countries, including the Muslim countries. These concepts are intended either to justify a government's policy or to adjust the

democratic concept to the indigenous values and culture of a certain nation. Nevertheless, there are certain criteria of democracy which must be fulfilled by a democratic system. Robert A. Dahl points out seven such criteria that must exist in the democratic system :

1. Control over government decisions about policy is constitutionally vested in elected officials.
2. Elected officials are chosen in frequent and fairly conducted elections in which coercion is comparatively uncommon.
3. Practically all adults have the right to vote in the election of officials.
4. Practically all adults have the right to run for elective offices in the government, though age limits may be higher for holding office than for the suffrage.
5. Citizens have a right to express themselves without the danger of severe punishment on political matters broadly defined, including criticism of officials, the government, the regime, the socioeconomic order, and the prevailing ideology.
6. Citizens have a right to seek out alternative sources of information. Moreover, alternative sources of information exist and are protected by law.
7. To achieve their various rights, including those listed above, citizens also have a right to form relatively independent associations or organizations, including independent political parties and interest groups.[16]

Today the term "democracy" for many people is considered to be a word implying many values, struggle for freedom and a better way of life. It is not only a method of majority rule through the popular participation and free competition, but also consists of universal values, especially equality, freedom and pluralism, although their operational concepts can be variable according to a certain country's cultural condition. Democracy's existence is also connected with the existence of human rights. Philippe C. Schmitter and Terry Lynn Karl even characterize democracy as not "autocratic, authoritarian, despotic, dictatorial, tyrannical, totalitarian, absolutist, traditional, monarchic, oligarchic, plutocratic, aristocratic, and sultanistic".[17] This also means that democracy is related not only to its formal institutions, but also to the existence of its values in social and political life.

Democracy and human rights are interrelated with each other. Democracy cannot exist without the existence of human rights, and

human rights generally cannot exist without democracy.[18] In the history of political theory, democracy derived from the ideas of human rights, and human rights derived from the ideas of natural rights. Natural rights have often been linked to the concept of natural law, as introduced by John Locke (1632-1705).[19] In the traditional doctrine, rights were always asserted defensively against invasions of the individual's private interests, especially those committed by the state. In the theory of limited government, which always accompanied the doctrine of natural rights, the state was morally forbidden to cross the boundary lines, around the individual, established by these rights. According to Locke, the state was not the creator of individual rights, but was to be committed to their enforcement which were considered as inalienable.[20] In today's world rights are not merely asserted defensively against state action, but are interpreted as legitimate claims on government to satisfy human needs. Whereas traditional rights were called the "negative" rights, such as the right to life, to free expression, to property, right of free association, and so on; the new rights are called the "positive" rights or economic and social rights, such as the right to medical care, to a minimum wage and to holidays with pay, and so on.[21]

The protection of those rights was also developed in the Declaration of Independence of the United States in 1776 : "... that all men are created equal, that they are endowed by their Creator by certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness...". These rights were also expressed in the Declaration of the Rights of Man and of the Citizen (Declaration des Droits de l'Homme at du Citoyen) in 1789,[22] with the popular slogan : *liberté* (liberty), *égalité* (equality) and *fraternité* (fraternity). At this same epoch, the American people adopted their Constitution. It contained an important safeguard of liberty, which was in 1791 completed by the Bill of Rights, the first 10 Amendments to the Constitution.[23] The idea of human rights was defined as :

> the idea that there are certain rights which, whether or not they are recognized, belong to all human beings at all times and in all places. These are the rights which they have solely in virtue of being human, irrespective of nationality, religion, sex, social status, occupation, wealth, property, or any other differentiating ethnic, cultural or social characteristic.[24]

Human rights, which are basically moral and not political, became a subject of importance once again after the second World War

with the birth of the Universal Declaration of Human Rights on December 10, 1948, supported by the members of the United Nations. Since that time the concept of human rights has been expanded, and concerns not only traditional civil rights, but also economic and social rights. The United Nations agreed to these expanded rights in 1966 with the ratification of three covenants, that is, the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights. Civil and political rights consist of, for instance, the right to life (article 6), the right to liberty and security of the person (article 9), the right to equality before the courts and tribunals (article 14), the right to freedom of thought, conscience and religion (article 18), the right to hold opinions without interference (article 19), the right to peaceful assembly (article 21) and the right to freedom of association (article 22), and so on. The economic, social and cultural rights consist of, for instance, the right to work (article 6), the right to form trade unions (article 8), the right to social security (article 9), the right to an adequate standard of living for oneself and one's family (article 11), the right to education (article 13), the right to take part in cultural life (article 15), and so on.

Nevertheless, the expansion thereafter led to controversy, especially between the liberal state and the socialist state. The liberal state gave priority to civil and political rights, whereas the socialist or Communist state gave priority to economic and social rights. The universal concept of human rights was then spelt out by some Third World countries, particularly with the aim of adjusting the concept of human rights appropriately to regional or local conditions and culture. There thus exist several regional declarations of human rights, such as the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 supported by the European countries united in the Council of Europe, and the African Charter of Human and People's Rights in 1981. Besides that, there is also the Cairo Declaration on Human Rights in Islam in 1990 supported by the Muslim States united in the Organization of the Islamic Conference (OIC). Meanwhile, Asia is the only region that still has no charter of human rights. It is true that in 1983 a Declaration of the Basic Duties of ASEAN Peoples and Governments was formulated, but it was organized by the Regional Council of Human Rights in Asia, not by the ASEAN governments.[25] In April 1993 the governments of

the Asian States signed "The Bangkok Declaration" which reaffirmed their commitment to the principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights. This declaration was prepared for the World Conference on human rights held on June 14-25, 1993 in Vienna.

Responses to the Concept of Democracy

Since the beginning of the national resurgence in the early part of this century, Muslim leaders and intellectuals in Indonesia have responded to democracy as a system which must be practised in social and political life. The Sarikat Islam (SI, Islamic Union) in its second congress (1917) demanded the colonial government to implement a democratic system. Then in the sessions of the BPUPKI which discussed the basis of the state and the Indonesian constitution, the Muslim leaders supported conducting these discussions democratically. Moreover, during the periods of Parliamentary Democracy and Guided Democracy, the Islamic parties as well as Muslim intellectuals manifested their support of democracy.

Mohammad Natsir, a Chairman of Masyumi (1952-1958), for instance, supported democracy, although he had a distinct interpretation of democracy. According to him, Islam is democratic, in the sense that Islam is opposed to *istibdâd* (despotism), absolutism, and authoritarianism. This does not mean that all matters in the Islamic polity are decided upon by *Majlis Shûrâ* (Consultative Council). Democratic decisions are implemented only in the matters not specifically mentioned in the *Sharî'ah*, so that there is no democratic decision on, for instance, prohibiting gambling and adultery.[26] According to Natsir, "Islam has its own concept and own characteristics. Islam must not be 100% democratic, and must not be 100% autocratic. Islam is...Islam".[27] Islam can be a synthesis between democracy and autocracy. Although he was known as a true democrat and supporter of democracy, Natsir still promoted the sovereignty of God.[28] Among other intellectuals who supported democracy was Z.A. Ahmad. He was even more progressive than Natsir. Whereas Natsir promoted the sovereignty of God, Ahmad accepted popular sovereignty. In an Islamic state, the people have two rights; firstly, the right to draw up a constitution, and secondly, the right to elect the head of state. This idea was based on the Qur'ân 3:159, translated as "and consult them (people) in the affairs of the state", the Qur'ân 42:38, translated as "who conduct their government by mutual consultation among

them", and the Qur'ân 4:59 on the concept *ûlî al-amr minkum* (authorities among you).[29]

During the period of the New Order, from 1966 up to 1993, Muslim leaders as well Muslim intellectuals have been advocates of democracy too. They advocate democracy for two reasons. Firstly, its values are in accordance with the Islamic values on society. Secondly, it is an appropriate way to articulate Islamic aspirations and interests, because Muslims in Indonesia are the majority, while the democratic system is essentially a system of majority rule. In fact, in the real democratic system the Muslims have had an advantage, such as in the debates on the basis of the state in 1945 which bore a compromise in the form of the Jakarta Charter. In the 1955 general election, although the Islamic political parties did not obtain the majority vote, they were optimistic of getting their point of view accepted that Islam should be the basis of the state in the debates at the Constituent Assembly in 1956-1958. The supporters of Islam as the basis of the state in fact gradually increased, but the President finally promulgated the Decree of July 5, 1959 on the return to the 1945 Constitution, and dismissed the Constituent Assembly.[30]

Theologically the Muslim intellectuals' acceptance of democracy is based on the Qur'ânic teachings and the historical practices in the period of the Prophet and of the Righteous Caliphs (*al-Khulafâ' al-Râshidûn*). Like Muslim intellectuals in other countries who support democracy, they also base their opinions on the Qur'ân 3:159 : *"wa shâwirhum fî al-amr"* (and consult them in affairs) and the Qur'ân 42:38 : *"wa amruhum shûrâ baynahum"* (who conduct their affairs by mutual consultation). They have their own concept of democracy, which is not the same as liberal democracy or as socialist democracy. The older generation of Muslim intellectuals were certainly advocates of democracy, but most of them still continue to recognize the sovereignty of God; whereas most of the younger generation accept popular sovereignty in the practical sense, and only a small minority still cling to the concept of the sovereignty of God. This means that the younger generation are apt to interpret Islam contextually with political realism, as will be shown later on.

Ismail Suny is one of those who still cling to the idea of the sovereignty of God. According to him, real sovereignty is vested in God, while popular authority is a sacred trust which must be within the bounds of Allah's will. Also, popular sovereignty, as understood in Indonesia too, is essentially the implementation of the sovereignty of

God by all people as His servants, in which the implementation of God's orders in social and political life is realized by the people through their representatives.[31] In accordance with Suny, Abdoerraoef also introduced the notion of the sovereignty of God, and popular sovereignty merely functions as implementation of the sovereignty of God. Abdoerraoef however disagreed with Suny that the sovereignty of God, popular sovereignty and legal sovereignty can be lumped together and that all three are all equal in status.[32] Abdoerraoef also did not agree that an Islamic political system is a theocracy which means that the authority is held by God, and hence the people have to obey this authority which implies obeying God. He described his rejection of theocracy by stating that if there were a dispute or a war between two theocratic countries, it would be impossible to decide which one should be supported, because according to the theory of theocracy, both of them originated from God.[33] Abdoerraoef argued that the Islamic political system is what today we call a democratic system. He defined democracy as a system consisting of self-government, participatory politics of its members, spiritual freedom and equality before the law. The first and the second elements are compatible with the Qur'ânic injunction, that is, "the state organ is elected among and by you" (Qur'ân 4:59).[34]

Meanwhile, Jalaluddin Rahmat sees democracy as a term with many different meanings. He supports democracy as a concept for a political system based on two principles, participatory politics and human rights. These principles induce the people to participate in public decisions and to protect the people's rights, i.e., the right to free speech, the right to control the authority and the right of equality before the law. This concept of democracy is not only compatible with Islam, but is also a realization of Islamic teachings in the life of the nation.[35] On the other hand, according to Rahmat, the Islamic political system cannot compare with the democratic system in following two meanings. Firstly, democracy is a secular political system, whose sovereignty is vested in the people, whereas in Islam sovereignty is vested in God. The majority vote cannot and will not change the Sharî'ah. Secondly, in practice, the people's vote can be manipulated either through rough treatment or gentle persuasion. Islam is a unique system, which promotes principles of *shûrâ* (mutual consultation or deliberation) and human rights. To implement these principles, Islam must not use the concept of democracy. Rahmat prefers instead to extend the meaning of *tawhîd* (oneness of God or

monotheism), which implies rejecting all forms of tyranny and abuse of human rights. Yet he is aware that most Indonesian Muslims support democracy, and of course, they understand democracy in the first meaning.[36] Thus, Suny, Abdoerraoef and Rahmat support democracy, but they basically agree on the sovereignty of God replacing popular sovereignty.

Unlike Suny, Abdoerraoef and Rahmat, today most Muslim intellectuals in Indonesia have no problem with the idea of popular sovereignty. According to Munawir Sjadzali, it is undeniable that ultimate sovereignty is essentially vested in God, but the concept of popular sovereignty was never meant to reject the sovereignty of God. Historically, popular sovereignty was introduced to oppose the sovereignty of the monarch, who at that time had absolute authority.[37] In accordance with Sjadzali, Ahmad Syafii Maarif criticizes Maududi's opinion on the sovereignty of God as confusing. He also criticizes what H.A.R. Gibb said :

> The Head of the ummah is Allah, and Allah alone. His rule is immediate, and His commands, as revealed to Muhammad, embody the Law and Constitution of the umma. Since God is Himself the sole Legislator, there can be no room in Islamic political theory for legislation or legislative power, whether enjoyed by a temporal ruler or by any kind of assembly. There can be no "sovereign state", in the sense that the state has the right of enacting its own law, though it may have some freedom in determining its constitutional structure. The Law precedes the State, both logically and in terms of time; and the State exists for the sole purpose of maintaining and enforcing the Law.

According to him, what Gibb says just implies that the gate of *ijtihâd* (individual judgement or interpretation of Islamic doctrine) is closed and makes Islamic political thought confusing.[38]

Besides this, Maarif denies Gibb's idea as well as the idea of the sovereignty of God, because if God were the head of state of the *ummah* (Muslim community), what would have occurred if His state were to collapse and fall to a foreign power? Who would be responsible? Moreover, if a certain nation does not believe in God, does it mean that He needs to establish something like an exile government? These strange ideas, according to Maarif, emerge because of a totally false understanding of the Qur'ânic verses which explain that Allah has power and sovereignty over all things. This is absolutely right, because nature and its inhabitants are created by Him and completed by the natural laws. Nature obeys fully God's orders, whereas only

men are given the freedom to choose either obedience or disobedience with their respective risks. Therefore, according to him, one should not confuse the absolute sovereignty of God and the political sovereignty of a certain state, because the consequences would be too great. At first glance the idea of the sovereignty of God elevates God to a very high position, but essentially it lowers His position to an inappropriate level purely because of a confusion in the understanding of the Qur'ânic verses.[39]

There are some arguments for accepting the concept of democracy through references to the Qur'ân as well as the practices of the Prophet and the Righteous Caliphs. Amien Rais, for instance, interprets *shûrâ* (mutual deliberation) in the Qur'ân 3:159 and 41:38 mentioned above, as a principle which rejects elitism. Elitism is a view which upholds that only the leaders (elite) know how to organize and manage the state, while the people are just a passive mass who follow the elite's will. According to Rais, it may be true to say that the *shûrâ* can be called democracy, but he would deliberately avoid this term in the context of the Islamic political system, because today the term democracy is a misunderstood concept, in the sense that some countries, which are more or less anti-democratic, can call their system democratic.[40] This certainly does not mean that Rais denies democracy itself, but simply notes that the term democracy is today misunderstood, in accordance with the political interests of certain regimes. In an interview he accepts democracy on the basis of three reasons : (1) the revealed injunction (the Qur'ân) exhorts Muslims to conduct *shûrâ* (deliberation or consensus) to solve their problems, (2) historically the Prophet implemented this shûrâ with the Muslims to solve their problems, and (3) the rationality, which Muslims are ordered to use in solving their dilemmas and problems, shows that the democratic system is the highest form of a political system in human history. Thus, Rais does not see an antithesis between Islam and democracy.[41] Conversely, he argues that democracy is the most compatible with the spirit and substance of the Qur'ân and the Sunnah. He therefore denies that democracy is appropriate only for the Western countries.[42]

The concept of *shûrâ*, according to Rais, can act as a strong bulwark against state violation, authoritarianism, despotism, dictatorship and other systems that ignore people's political rights. People's political participation is fully respected in the management of the state, because they are the real "owners" of the state; it is as if they

had accepted a mandate from God, whereas the leaders were just the people's servants. This principle also introduces the condition that the state authorities must be freely elected by the people, based on the principle that sovereignty is vested in the people. This means, according to Rais, that the monarchic system is incompatible with Islam. A monarchic system, where the king is just a symbol but the real authority is vested in the people as in the United Kingdom, is clearly more compatible with Islam than is the monarchic system of the Kingdom of Saudi Arabia for example. In other words, the United Kingdom is more Islamic (in this sense) than the Kingdom of Saudi Arabia, because in the first the sovereignty is vested in the people and the real authority is elected by the people every four years, whereas in the latter the king and the princes are the hereditary state owners and are not accountable to the people.[43]

Meanwhile, Nurcholish Madjid is aware of the opinion that Islamic values and democratic values are antithetical, but he nevertheless sees a compatibility of Islam and democracy. He bases his acceptance of democracy not only on the two last verses but also on the Qur'ân 1:6 : "*ihdinâ al-sirât al-mustaqîm*" (Show us to the straight way). According to him, Islam views Man as having a fundamentally positive and optimistic nature (*fitrah*), while at the same time having potential shortcomings. The Qur'ân and the Sunnah guide Man, but this is in a general form, not in detailed matters; and these give no explanation of how to implement this guide. For detailed and practical matters, Man is required to conduct *ijtihâd*. In the social mechanism, the *ijtihâd* produces democracy which certainly implies discussions and arguments. Because of Man's limitations, the *ijtihâd* must be conducted collectively and democratically, especially in matters pertaining to public affairs, and through asking God to guide the participants to the "straight way".[44] Madjid also bases his opinion on the practices of the Righteous Caliphs. Quoting Robert Bellah, he says that during the period of the Righteous Caliphs, Islam displayed a form of modern political life, in the sense that there was a universal political participation of the people, and the system of leadership-recruitment was based on personal talent and capability, not on privileges gained through family connections. It was considered to be too modern for that time, which explains its failure and replacement by the monarchy of the Umayyad dynasty.45 As an egalitarian and participatory society, Madjid argues that the classical period of Islam really resembled the image of a fair, open and democratic society, as

described in modern concepts of society and politics.[46]

Historically the *shûrâ* was practised by the Prophet during the Uhud war, when the majority of Muslims at that time asked him to face the enemy outside the city. This shows, according to Syafii Maarif, that the origin of the democratic method in Islamic history emerged in the Uhud war. In the period of the Righteous Caliphs the first *shûrâ* was held at Banî Sa'îda's house just a moment after the death of the Prophet. The *Shûrâ* led to the electing of Abû Bakr as the first caliph. In accordance with Fazlur Rahman, Maarif says that Abu Bakr in his inauguration as the caliph declared categorically that he accepted the mandate from the people who demanded him to implement the Qur'ân and the Sunnah. As long as he implemented them, he should be supported. But if he made any fatal mistake, he should be discharged from the caliphate. This means, according to Maarif, that an Islamic state requires the agreement of the Muslim community, and therefore, it could indeed be classed as democratic. The model of democracy can be variable according to the circumstances under which the Muslim community lives, and for this reason, the *ijtihâd* has a significant role in the community.[47]

Unlike those who do not specify an essential form of Islamic political system, M. Tahir Azhary characterizes this Islamic political system as a "nomocracy", that is, where sovereignty is based on the laws derived from Allah. The Islamic nomocracy consists of nine principles : (1) authority as *amânah* (trust), (2) *shûrâ* (mutual consultation), (3) justice, (4) equality, (5) human rights, (6) free courts, (7) peace, (8) welfare, and (9) loyalty of the people to the authority. Quoting Majid Khadduri, Azhary denies that the Islamic political system is a theocracy, because theocracy, as defined in the Oxford Dictionary, is "a form of government in which God (or deity) is recognized as the king or immediate ruler", a political system only prevailing in medieval Europe.[48] Yet he agrees with the compatibility of Islam and democracy, expanding the concept of *shûrâ*, but prefers to speak of the "divine democracy of Islam", because popular sovereignty is justified as long as it is not in contradiction with the principles of the Qur'ân and the Sunnah.[49]

The limitation of popular sovereignty by the Qur'ân and the Sunnah is also referred to by Rais who views popular sovereignty as not absolute, because Islam is a moral paradigm for the democratic system implemented in a Muslim society. Democracy must therefore be conducted within the framework of this moral paradigm. In this

case, he gives two examples of democratic practice in the United States. In the early part of this century alcoholic drink was forbidden in several states, but the people then demanded the revoking of this prohibition. This demand was finally accepted and the law changed, even though excesses of alcohol continued. A second example is that of homosexuality which was previously considered to be abnormal behavior; today however the US government accepts homosexuality as a normal social phenomenon. These cases do not occur in Islam, because there are moral and legal principles which cannot be changed through reference to democracy. Thus, the excesses of democracy can be controlled by Islamic ethics and morality.[50]

Realizing that democracy is more a method of organizing the state, Dawam Rahardjo, who also sees the compatibility of Islamic values with democratic values, argues that democracy is not able to solve all human problems, because the popular will is not always the best means of achieving such, considering that most people do not have exact knowledge about everything of import (in the Qur'ân's words: *wa lâkinn akthar al-nâs lâ ya'lamûn*). There exist other more fundamental and essential values that Islam has introduced since the beginning of its history, in particular those of justice, equality and mutual consultation. Democracy is actually very historically limited, in the sense that it is not a fundamental value, but emerged at a certain time and under certain social conditions. As such, if the development of a Muslim society attains such conditions, it will lead to a democratic system.[51]

Some Muslim intellectuals would not give democracy an exact definition, because it is actually very difficult to define it appropriately. According to Rais, the democratic system cannot be defined by the existence of formal state institutions, such as a popular representative body, political parties, general elections and the citizen's franchise. It must rather be defined by reference to the idea of "substantial democracy". There are some political systems that are only apparently democratic, but which are essentially authoritarian and even anti-democratic.[52] Therefore, according to Rais, it is more appropriate to determine the criteria for democracy rather than to attempt to define it. He mentions at least ten criteria for democracy to be achieved : (1) popular participation in decision-making, (2) equality before the law, (3) just distribution of income, (4) equal opportunities in education, (5) freedom of speech, freedom of the press, freedom of association and freedom of religion, (6) availability and open-

ness of information, (7) respect of the political ethic, (8) individual freedom, (9) co-operation, and (10) the right to protest.[53] In another article Rais mentions some other criteria for democracy to become effective : (1) continuity of the mechanism of checks and balances among the rulers as well as between them and the people, (2) the guaranteeing of at least four freedoms : freedom of expression, freedom of the press, freedom of religion and freedom from want, (3) implementation of the people's control of their leaders, (4) the sharing of power among social groups, and (5) free election of people's representatives to Parliament.[54]

There are also differences of opinion among Muslim intellectuals concerning the democratic method. According to Azhary, the *shûrâ* can produce consensus (*ijma'*), and the method of decision-making can be based on the majority vote, as practised by the Prophet, when he and the Muslims at that time faced the problem of the Quraysh surrounding the Medina city. There were two alternatives for Muslims to face up to the enemy, either offensive or defensive actions. Personally, the Prophet chose the defensive position, but the majority chose the offensive attack against the Quraysh. The result was that the majority decision was adopted. Nevertheless, Azhary argues that the concept of *shûrâ* is not the same as that of liberal democracy with its concept of the majority vote or "half plus one", because in the *shûrâ* the main aim is the spirit of brotherhood and cooperation based on belief in Allah and the public interest, and not in the name of victory for a certain group.[55] Today the mechanism of decision-making without recourse to certain methods (such as voting) is very difficult to operate, especially if there are differences of opinion all of which are in accordance with Islam and the rule of law. Therefore, it is reasonable when Munawir Sjadzali criticizes Maududi's opinion on the possibility of the head of state rejecting the majority vote of the *Majlis Shûrâ* (Consultative Council) and accepting the minority vote or even ignoring its decisions all together.[56]

In the democratic system, political decisions and other actions of the authority or government must be accountable to the people. According to Azhary, authority is essentially a form of trust (*amânah*) accorded by and bestowed upon people in order to be well implemented, as stated in the Qur'ân 4:58 : "Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice". Hence the authority, which in the large sense implies the executive, legisla-

tive and judicial bodies, and so on, must be executed fairly and must not be abused. This authority, of course, must be accountable not only to the people, but also to God in the next to Last Day, as stated by the Prophet : "Surely all of you are leaders, and you are accountable to your leadership". This Hadîth (Prophet tradition) implies both kinds of leadership, formal and informal leaders. The formal leaders are those who hold leading positions in governmental organizations, while the informal leaders are heads of families or those who hold leading positions in society.[57] Madjid also cites this Hadîth as the basis of his argument on the accountability of authority. In the context of the state, this takes the form of a government's effort to realize public welfare.[58]

In this theological perspective, Muslim intellectuals in Indonesia generally respond to the concept of democracy on purely normative and ethical levels. They do not respond to such concepts on an operational level, for example as regards democratic political institutions or mechanisms of the democratic system. This is because they seem to consider democratic institutions as political practice that can be changed in accordance with social change. They also seem to consider that the political institutions prevailing during the period of the Prophet and of the Righteous Caliphs do not prevail universally.[59] Yet in the context of the political process and political development in Indonesia, their responses are more operational than that of the theological perspective.

Among the Muslim intellectuals who express their ideas on political institutions at an operational level is Abdoerraoef. He recognized that there is no definite injunction concerning the form of the state, so Muslims are relatively free to decide the form of the state according to their culture and condition. It can be a kingdom, a republic or even a Führerstaat.[60] Obviously, Abdoerraoef is an advocate of the democratic system, so that, like Rais, he does not agree with the pure monarchic system such the one in Saudi Arabia. He even compares Islamic political ideas with the theory of the separation of powers (executive, legislative and judicial bodies) introduced by Montesquieu. According to him, the Qur'ân 4:58-59 explain that there are three functions within a state, i.e., the function of deliberation to legalize laws, the function of implementation or execution of the laws, and the function of judgement for use with the laws.[61] The word "*ulî al-amr minkum*" (authority among you), mentioned in the Qur'ân 4:59, means consultative council that has authority to decide upon public

affairs, while "among you" indicates that the authority (consultative council) must consist of persons elected by the people themselves. In the context of the state, the consultative council is a legislative body. It could be a parliament, constituent assembly, or another organ whose decisions are binding upon the people. However, its authority to make legislation is limited in that it must not be contrary to the Qur'ân.[62] The council's decision is a form of trust (*amânah*) given by the people, which must be respected by the executive body, while the judicial body must judge the people's affairs fairly. Yet Abdoerraoef argues that the Qur'ân does not specify whether these three functions be separated or be integrated, so Muslims may choose according to which solution is more appropriate to their particular condition, and where and when they live. He claims that the theory of the separation of powers does not guarantee people's freedom, but that the functioning of the three bodies can guarantee such freedom.[63]

Responding to Abdoerraoef's justification for comparing Islamic political ideas with the theory of separation of power, Azhary says that Muslims may adopt political institutions which have originated from non-Muslims and which have empirically shown their effectiveness, such as the theory of checks and balances as well as that of the distribution of power. This view is based on the theory of *maslahah* (utility) introduced by Malik ibn Anas.[64] In this context, Madjid prefers to adjust Islamic political theory introduced by the classical ulama to modern forms. He recognizes that in the historical perspective, the *ulî al-amr* (authority) was manifested in the form of *ahl al-hall wa al-'aqd* (the group of ulama who are competent to judge public matters) which was implicitly approved by the people. In the modern context, this can be achieved through a Parliament or a People's Assembly whose members are elected by the people through general elections.[65] Like Madjid, Rahardjo supports institutionalization of general elections to elect the *ahl hall wa al-'aqd* or *majlis shûrâ* (consultative council) or whatever its name be, such as a People's Consultative Assembly. This institution can be likened to a body of the people's representatives, which carries out the people's mandate and functions as the holder of the highest power of state.[66]

Finally, it can be concluded that Muslim intellectuals in Indonesia appear to accept the democratic elements in the above definitions introduced by Hook, Schumpeter and Schmitter and Karl, i.e. majority rule, the people's vote (political participation), free elections and accountability. The main problem in comparing democracy in

the Islamic view with liberal democracy is, that the popular will under liberal democracy, which is secular in nature, can be fully implemented, whereas the popular will under Islam can be implemented only as long as it is not contrary to God's orders. Dealing with this reality, Nurcholish Madjid argues that it is true that there are certain orders of Allah in the Qur'ân and in the Sunnah which must be obeyed and which cannot be changed by the popular will, but such also occurs, for example, in American democracy. In the United States there is the Declaration of Independence which must be the ultimate source and basis of the law and which cannot be changed by the popular will of a given epoch.[67]

This shows that Muslim intellectuals in Indonesia accept and even advocate democracy in the view of political realism, because they accept it in a purely practical sense understood in the contemporary usage, as mentioned by the above definitions. In the philosophical sense, however, they still recognize the supremacy of God's injunction *(Sharî'ah)* as the basic standard, which can be regarded as the ultimate source of sovereignty. Unlike them, Wahid, as far as I know, is the only Muslim intellectual who accepts and advocates democracy as well as fully recognizing popular sovereignty in the context of the life of a nation. According to him, the popular will must be controlled by the state constitution, while Islam *(Sharî'ah)* must function as a complimentary factor toward other components in the life of a nation. The implementation of the Islamic injunction is an individual affair, which can optimally function as a social ethic and as a moral force.[68] Unfortunately, Wahid does not base his opinion upon arguments with references to Islamic doctrine.

Responses to the Concept of Human Rights

Whereas the term of democracy is still debated among Muslim intellectuals and activists, especially outside Indonesia, all of them agree on the concept of human rights, and there exists of course a certain concept of Islamic human rights. This is reasonable enough, because the notion of democracy derives not from the Islamic language, but from Western languages; whereas the essence of human rights has been recognized by Islam since the beginning. There does however exist in Arabic the word "*haqq*" translated precisely as "right", and human rights are called "*huqûq al-insân*". It is true that this term and its formulation have been popular in Muslim societies only since the beginning of this century. This is because religious teachings gen-

erally emphasize obligations rather than rights. Rights will be achieved if the individual fulfils his obligations. Yet the classical ulama have formulated the terms "*al-umûr al-darâriyyah*" (human necessities) and "*al-umûr al-hâjiyyah*" (human importances), which must be catered for and protected in human life. These terms are similar to the concept of human rights today. Therefore what Alasdair MacIntyre says is not acceptable to the notion of a right not being found in every society supported by the fact that there are no expressions in any ancient or medieval language correctly translatable to the expression "a right" until almost the close of the Middle Ages.[69]

The formulation of Islamic human rights was defined in the Cairo Declaration of Human Rights in Islam, issued on August 5, 1990 in Cairo. The declaration was only agreed upon by the OIC members after long discussions which went on for 13 years. It consists of 25 articles, encompassing individual, social, economic and political rights. All rights and freedoms stipulated in this declaration are subject to the Islamic *Sharî'ah* (article 24), which is precisely mentioned as the only source of reference for the explanation or clarification of any of the articles of the declaration (articles 25). The civil and political rights consist of, for instance, the right to equality in terms of basic human dignity and basic obligations and responsibilities (article 1), the right to equality before the law (article 19), the right to life which is a God-given gift (article 2), and the right to express one's opinion freely in as far as it is not contrary to the principles of the *Sharî'ah* (article 22). The social and economic rights consist of, for instance, the right to education (article 9), the right to work (article 13), the right to own property (article 15), the right to certain adequate basic living conditions (article 17), the right to live in security for oneself, one's religion, one's dependents, one's honor and one's property (article 18), and so on. In the social and economic spheres, this declaration encompasses the fundamental rights, but in the political sphere it does not mention any other political rights that are actually fundamental, such as the right of association. This is probably because many, if not most, Muslim States that signed this declaration do not yet fully guarantee the political rights of citizens.

All Muslim intellectuals in Indonesia support these human rights, although their opinion on them vary. Abdurrahman Wahid, for instance, says that human being has a high position in the cosmology, so that s/he must be treated proportionally in such a "glorious" position. Before an individual was born (as an unborn child) and after s/

he has passed away, s/he has had or still has the rights clearly formulated and protected by the law. Because the individual has rights and the capability to use them/her, Allah makes him/her as His vicegerent *(khalîfah)* on earth, as stated explicitly in the Qur'ân.[70] According to Wahid, Man's inclination to misuse his/her rights does not reduce his/her elevated position, so it is understandable that Islamic theology does not recognize original sin. There is certainly an imbalance between the rights a Muslim has and his obligations toward Allah, but the rights irrefutably show his/her freedom of will and of choice. This freedom then shows the strong basis for the maintenance and development of human rights in Islam.[71]

In accordance with the high position of man as Allah's vicegerent on earth, Maarif and Azhary, quoting Hasbi Ash-Shiddieqy, an Indonesian intellectual who died in the mid-1970s, state that Allah bestowed on Man certain glories, as stated by the Qur'ân 17:70 : "We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our Creation". There exist three *karamahs* (glories as a human nature) bestowed by God on Man regardless of ethnic, religious and political background : (1) *karâmah fardiyyah* (individual human nature), which means that Islam protects both the spiritual and material aspects of individual life, (2) *karâmah ijtimâ'iyyah* (collective human nature), which means that Islam guarantees full equality among individuals, and (3) *karâmah siyâsiyyah* (political human nature), which means that Islam gives the political rights to individuals to elect or to be elected to political positions, because of their status of God's vicegerents *(khalîfah)*.[72]

Muslim intellectuals in Indonesia have no shared opinion about the particular points on human rights. Yet they mention six essential points of human rights : (1) the right to life, (2) the right to freedom of religion, (3) the right to freedom of thought and of speech, (4) the right to property, (5) the right to work, and (6) the right to choose one's place of residence.[73] Quoting Ishaque, Wahid mentions 14 points concerning human rights stated in the Qur'ân, which on the whole support the aims of developing and forming a morally perfect being. These human rights are : (1) the right to life, (2) the right to justice, (3) the right to receive equal treatment, (4) the duty to uphold the truth and the right to refuse an illegal proposition, (5) the right to take part in social and state life, (6) the right to freedom, (7) the right to freedom from pursuit and prosecution, (8) the right to speech, (9)

the right to protection against prosecution based on religion, (10) the right to privacy, (11) economic rights, including the right to work and the right to proper payment, (12) the right to protection of honor and reputation, (13) the right to own property, (14) the right to proper repayment and fair compensation. The last is especially directed against governmental institutions that make decisions without consideration of the possible detrimental effects of a certain decision on the individual. Besides these rights, Wahid states the possibility of deriving from the above rights further human rights, such as the right to get protection against torture committed by the state apparatus.[74] Then in another article he mentions certain rights not stated above, namely those pertaining to legal protection, the fulfillment of basic needs, educational enhancement, equal opportunities and freedom of association.[75]

Meanwhile, A.M. Saefuddin classifies human rights into civil rights and political rights. The civil rights consist of (1) equality before the law, (2) equality before the courts, (3) individual freedom, (4) freedom of religion, (5) the right to residence (5) the right to work, (6) freedom of thought and speech, (7) the right to education, and (8) the right to security from the state. The political rights consist of (1) the right to vote, (2) the right to take part in mutual deliberation, (3) the right to call the government to account, (4) the right to discharge, (5) the right to be elected, and (6) the right to occupy a position in a state organization.[76]

Whereas Wahid, Saefuddin and Azhary formulate human rights in Islam referring to the Universal Declaration of Human Rights, Harun Nasution formulates them referring to the slogan of the French revolution (liberty, equality and brotherhood). According to him, the basic philosophy of human rights exists in the doctrine of *tawhîd* (monotheism) religion. The *tawhîd*, to which Islam holds firmly, means that Allah is the only creator of nature. This implies the ideas of equality and brotherhood among men, and even implies brotherhood among other creatures too. Islam not only teaches humanity but also kindness to and protection of animals and the environment. From these basic principles of equality, brotherhood and freedom, human freedom is developed, such as freedom from slavery, freedom of religion, freedom of speech, freedom from want, freedom from fear, and so on. Human rights are derived from this freedom, such as the right to life, the right to property, the right to education, the right of speech, the right to work, and so on.[77]

Unlike other Muslim intellectuals who view the term of human rights as a response to the Universal Declaration of Human Rights or the French revolution, Ali Yafie supports human rights with argument about the concept of *maslahah* (public interest), introduced by the classical jurists (*fuqahâ'*).[78] In the legal theory (*usûl al-fiqh*) there is a maxim "the general aim of legislation in the Islamic *Sharî'ah* is to realize public interests through protecting and guaranteeing their necessities (*al-darûriyyât*) as well as fulfilling their importances (*al-hâjiyyât*) and their embellishments (*tahsîniyyât*)".[79] According to Yafie, the human necessities (*al-darûriyyât*) consist of life (*al-nafs*), reason (*al-'aql*), descent (*al-nasab*), property (*al-mâl*) and religion (*al-dîn*). Islam protects these primary human needs and prohibits any violation of them. Yafie then states that the protection of life, for instance, implies the rights to life and to not be tortured; the protection of reason implies the rights to education, the right to freedom of thought and to free expression; the protection of descent implies the right to marriage; the protection of property implies the rights of property and to work; and the protection of religion implies the right to freedom of religion. Besides this, in some cases secondary human importance can be accepted to mean human necessity (*al-hâjah tanzil manzila al-darûrah*). According to him, the rights stipulated in the Universal Declaration of Human Rights are actually included in both the *darûriyyât and hâjiyyât*.[80]

In this discourse I will describe in detail Muslim intellectuals' responses to several rights, considered to be fundamental. The Qur'ân 17:70 mentioned above, according to Azhary, contains the principle of the recognition and protection of human rights as the basic rights bestowed by Allah. This principle consists of three main rights, that is, equality among men, human dignity, and human liberty. Humans differ physically and spiritually from other creatures, and one of their characteristics is their capacity for thinking.[81] He states that one of the aspects of human dignity which must be recognized and protected is the right to life, based on the Qur'ân 17:33 : "Nor take life — which Allah has made sacred —except for just cause", and the Qur'ân 5:32 : "...that any one slew a person —unless it be for murder or for spreading mischief in the land— it would be as if he slew the whole people". These two verses, according to Azhary, indicate that one is forbidden to kill another individual, except for a reason justified by law, that is, *qisâs* (retaliation). Whoever kills without reason of *qisâs* must be sentenced to death, except if the victim's family forgives him.[82]

Regarding these two verses, Maarif, quoting Ash-Shiddieqy again, says that the right to life implies the right to life as a free human being and the right to obtain protection for one's household. The first, which is also supported by Nasution, is based on the 'Umar ibn Khattab statement to 'Amr ibn 'As, the Egyptian governor who treated one of his people roughly. "Why did you treat the people as slaves, whereas they were born by their mothers as free (people)". The latter is based on the Qur'ân 24:27-28: "O ye who believe ! Enter not houses other your own, until ye have asked permission and saluted those in them; that is best for you, in order that ye may heed (what is seemly). If you find no one in the house, enter not until permission is given to you; if you are asked to go back, go back; that makes for greater purity for yourselves; and Allah knows well all that you do".[83] As regards this right to life as a free human being, Sjadzali has another opinion which other intellectuals have never explained. According to him, it is true that the Prophet appealed to slave owners to treat their slaves more humanely or to set them free all together, but up until the death of the Prophet, Islam did not totally abolish slavery. In our current age, humanity condemn slavery in all its manifestations as a human evil. If Muslims had maintained the verses which recognize slavery as part of the status quo of the Prophet's period and had not finished what the Prophet had begun in setting slaves free, they would not have been able to discuss the question of human rights, because the most fundamental right is the right to live as a free human being. Hence, Sjadzali suggests reinterpreting not only the "relative" texts (*nas zannî*) of the Qur'ân and the Sunnah which certainly can be interpreted, but also their "absolute" texts (*nas qat'î*) which are not interpretable, such as some verses recognizing slavery.[84]

In general Muslim intellectuals agree with Sjadzali's opinion on slavery, and not on the reinterpretation of "absolute" texts, but Azhar Basyir attempts to explain the position of slavery in Islam. According to him, the Qur'ân did not explicitly forbid slavery because of the condition of the social structure at that time, in which the society as a whole recognized slavery. Each set of people made slaves of their captured enemies, including Muslim soldiers captured in war. As a balance, the Qur'ân also allowed them to enslave the captured enemies on the basis of reciprocal treatment. If the Qur'ân had explicitly forbidden slavery, the Muslim internees would have suffered as the infidel's slaves. Obviously, according to Basyir, both the Qur'ân

and the Hadîth strongly motivated Muslims to set the slaves free. If the Muslims had practised these teachings, slavery would have been abolished in a short space of time. The Muslims' practices in the Umayyad and Abbasid dynasties which traded in slaves was un-Islamic. Today international opinion has accepted the abolition of slavery. Hence discussing slavery in a time when the Islamic aim of abolishing slavery has been realized, is no longer relevant; not because the Qur'ânic verse is not relevant, but because its object no longer exists.85

As for the right to possess property, Azhary bases his opinion on the Qur'ân 4:32 : "to men is allotted what they earn, and to women what they earn". He interprets this verse as meaning that every individual, whether man or woman, child or adult, has the right to property, and the state must protect this right. No one may confiscate another's property, and the state may not do so either, except in cases of public interest justified by law. The state may use individual property with the agreement of its owner and give proper compensation to him. According to Azhary, although Islam fully recognizes individual property, property also has a social function. It must be used for private as well as for public benefit compatible with Islam, because property is essentially a part of Allah's trust. The social function of property is realized in the form of *zakâh* (tithe), *sadaqah* (alms) and waqf (property donated for religious or community use). With these forms of social function, the owner established a kind of social solidarity, and the existence of property rights therefore makes a balance between individual and social interests.86

In connection with the right to property, there also exist the right to work and freedom to choose the form of work. These are, according to Azhary, not only rights for every individual, but also obligations upon the individual. God provides this earth and its natural resources in order that men process and manage these in accordance with their capabilities in science and technology, as stated in the Qur'ân 67:15 : "It is He who has made the earth manageable for you, so traverse ye through its tracts and enjoy of the sustenance which He furnishes, but unto Him is the Resurrection".87 As regards this right to work, Maarif, quoting Ash-Shiddieqy, states that it is not only a right for the individual to initiate the working and processing of the natural resources, but also a duty of government to wipe out all forms of unemployment and to give food to the unemployed until they have found work.88 This verse also means that the individual

has the right to choose and to decide upon his place of residence and his citizenship.[89]

The important position of human rights in Islam is described by Rais, who argues that a state which protects human rights, maintains justice, and implements the rule of law upon all citizens without discrimination, has implemented the Islamic doctrines.[90] According to him, the overlapping or intersection between the Universal Declaration of Human Rights and Islamic human rights is almost total. There is certainly a special injunction that Islam tends to treat women more protectively, such as the necessity for a woman to be accompanied by her *muhrim* (relative) on her travels. He agrees with this protective treatment, because Islam recognizes the physical and biological distinction between men and women.[91] Yet in fact most Muslim intellectuals as well as ulama in Indonesia seem not to view this law as an obligation, but simply as a suggestion. This is probably because social conditions are presently more secure than formerly, and women's education level are presently higher than they were formerly, so generally speaking a woman now has few problems when travelling alone. The real problem is not about the more or less protective treatment of women, but about their position in society as a whole.

In the discourse on human rights we cannot forget to discuss the question of individual rights and collective rights, which is still often debated in contemporary times, especially as regards the question about which one must be given priority. In *The Oxford English Dictionary*, individualism is defined as "the social theory which advocates the free and independent action of the individual, as opposed to communistic methods of organization and state interference";[92] whereas collectivism is defined as "the socialistic theory of the collective ownership or control of all the means of production, and especially of the land, by the whole community or state, i.e. the people collectively, for the benefit of the people as a whole".[93] Liberal democracy gives priority to individualism, whereas socialist democracy gives priority to collectivism. Many political elites as well as intellectuals in the Third World, including in Indonesia, do not accept either the concept of individualism or of collectivism for their societies. Many of them are currently reformulating, redefining and adapting traditional cultural and philosophic doctrines to incorporate and justify modern notions of rights within their tradition. One such attempt is inclined to take on the form of communalism by recasting

and transposing traditional communal value systems which articulate interpersonal reciprocal relations to the national level of the modern state.[94] Instead of communalism, the Indonesian government prefers to use the term "integralism" to characterize its national system.

According to Abdoerraoef, the Qur'ân 49:13 states that Allah created men in the form of males and females, and made them into nations and tribes. This means that men exist both as individuals and as members of a community, and for these two dimensions there must be a balance between individual and collective interests. This equilibrium is realized by the spiritual approach of humanism. For example, the expression of kindness to another person must spring from human spiritualism, so that one who behaves with such a character, apparently sacrificing himself for another person, does so not because of compulsory collectivism, but because of an inner impulse coming from his own soul.[95] In accordance with this opinion, Nasution states that Islam prohibits giving priority to an individual's interests, as against another's or the public interest. An individual certainly has no priority over the public, but the public interest may not impede individual interests. Both of them must be maintained equally.[96] According to Nasution, human rights and freedom which give priority to individualism are incompatible with the concept of human rights and freedom in Islam based on the *tawhîd*.[97]

To achieve those basic rights Wahid argues that an individual must be aware of society's incapability of providing and fulfilling all of its members' needs. Every individual, therefore, must obey the principle of the maintenance of equilibrium between his own need and the social need. This obedience does not mean that collective rights cancel out individual rights. It actually means that society is obligated to protect those rights, because the submission of part of the individual need to society demands clearer protection from society towards its members as individuals. The equilibrium between them can only be reached through a simultaneous development process of the individual's creativity so as to fulfil his own needs and social requirements.[98] In Madjid's words, Islam recognizes both individual and social (collective) rights. The individual right produces common responsibility for the members' welfare, while the social right of the individual produces a duty for individuals towards society. Thus, rights and obligations are two sides of human dignity.[99]

Whereas other Muslim intellectuals agree that Islam maintains the

equilibrium between individual and collective rights, Rais prefers to distinguish each sector separately. According to him, in a certain sector Islam is inclined to collectivism, but in another sector it is inclined to individualism, and in yet another it is inclined to an intermediate position. Therefore, he would not say definitely whether Islam tends toward individualism or collectivism. In the context of science and technology, for instance, Islam is more individualistic, in the sense that everyone has the maximum right to develop his capabilities. In the context of morality, Islam justifies state intervention based on collective morality. For example, a man and a women who are not a legal couple cannot freely associate, because Islamic morality prohibits this. In the context of economic life, Islam adopts an intermediate position between individualism and collectivism, in the sense that it encourages its adherents to attain wealth, but it simultaneously controls them, in that property contains a social function in order to create economic distribution among the people, as stated by the Qur'ân 59:7 : "...in order that it may not (merely) make a circuit between the wealthy among you".[100]

Muslim intellectuals do not actually explain in an explicit fashion the classification of rights, but analyzing their opinions quoted above, it can be concluded that most, if not all, Muslim intellectuals agree on both "negative" rights and "positive" rights. As described earlier, the negative rights, also called the traditional human rights, mean that the state may not interfere and may not limit the individual's freedom, such as the right to life, freedom of religion, freedom of thought and speech, the right to property, freedom of association, and so on. The positive rights, also called social and economic rights, are the citizen's rights to attain a proper standard of living in the economic and social spheres, such as the right to a proper income and education. These are called positive rights, because the government is also obligated to improve these rights for its citizens.

Conclusion

The above discourse of Muslim intellectuals in Indonesia on democracy indicates that they support it not merely because it is an appropriate way to articulate Islamic aspirations and interests, but also because its values are in accordance with Islamic values in society. However, they accept and even advocate democracy in the purely practical sense understood in its contemporary usage. In the philosophical sense, most of them still recognize the supremacy of God's

injunctions (*Sharî'ah*) as the basic standard, which can be regarded as the ultimate source of sovereignty.

In line with their support of democracy, they support the existence of human rights, which were historically the root of the emergence of democracy. Their concept of human rights is almost fully in accordance with the concepts of the Universal Declaration of Human Rights, but not in accordance with liberal concepts. The differences between their concept and liberal concepts in particular concern the concept of freedom and equality. Another aspect which must be explored is how Muslim intellectuals put this theological perspective into practice, and how far this theological perspective has influenced Muslims' behavior in Indonesia.

Their support of democracy also indicates that although Islamic thought and movements in the Islamic world exert a certain influence upon Islamic thought and movement in Indonesia, there are also some differences between them in substance and form. If in the rest of the Islamic world many Muslim intellectuals and ulama reject democracy, in Indonesia, no members of these groups, as far as I am able to ascertain, do so. Obviously, their support of certain concepts of democracy and human rights is not intended to justify a political system promoted by the government, but to bring the concepts of democracy and human rights closer to Islamic values.

Endnotes

1 C.f. *The Encyclopaedia Americana*, Vol. 8, (Danbury, Connecticut: Grolier Incorporated, 1984), p. 684.

2 Samuel P. Huntington, "Democracy's Third Wave", in *Journal of Democracy*, Vol. 2, No. 2, Spring 1991, p. 12.

3 See Leon T. Hadar, "What Green Peril ?", in *Foreign Affairs*, Spring 1993, p. 39.

4 See, for example, Hâfiz Sâlih, *Al-Dimuqratiyyah wa Hukm al-Islâm fîhâ*, (Beirut: Dâr al-Nahda al-Islâmiyyah, 1988), p. 95-96. See also, Hasan Turabi, as cited in Ahmad S. Mousalli, "Hasan al-Turabi's Islamist Discourse on Democracy and Shura", in *Middle Eastern Studies*, Vol. 30, No. 1, January 1994.

5. See, for example, Muhammad Asad, *The Principles of State and Government in Islam*, as cited in John L. Esposito and James P. Piscatori, "Democratization and Islam" in Middle East Journal, Vol. 45, No. 3, Summer 1991, p. 435.

6. John L. Esposito and James P. Piscatori, *ibid.*, p. 428.

7. Edmund Burke III, "Islam and Social Movements: Methodological Reflection", in Edmund Burke III and Ira M. Lapidus (eds.), *Islam, Politics and Social Movements*, (Berkeley, Los Angeles and London: University of California Press, 1988), p. 19. Weber's work on the Protestant Ethic and the Spirit of Capitalism (Die protestantische Ethik und der Geist des Kapitalismus), which was an application of his theory, was debated by social scientists, as reflected in Johannes Winckelmann (ed.), *Die protestantische Ethik II: Kritik und Anti Kritiken*, (München und Hamburg: Siebenstern Taschenbuch Verlag, 1968). As elsewhere, Weber's theory is still debated in Indonesia by those who support it and those who reject it. There is also a third opinion about it, that is, acceptance of the theory while maintaining that the belief system is not the only determinant factor. In this view, there are other factors that also determine social behavior, such as political and economic conditions and the level of education of a society.

8 Cf. W.F. Wertheim, *Indonesian Society in Transition: A Study of Social Change*, (Bandung: W. van Hoeve Ltd-The Hague, 1956), p. 205; and cf. Bilveer Singh, "Indonesian Islam and the Challenge of Change", in *The Jakarta Post*, July 3, 1993.

9 Concerning this religious legitimacy in Indonesia, see Susan Selden Purdy, *Legitimation of Power and Authority in a Pluralistic State: Pancasila and Civil Religion in Indonesia*, unpublished dissertation at Columbia University, 1984.

10. Donald Eugene Smith observes that both processes of secularization of politics and the involvement of religion in politization are taking place simultaneously. But, according to him, secularization is by far the more fundamental process, and it will in time devour the phenomena of religious political parties and ideologies. See his book, *Religion and Political Development* (Boston: Little Brown and Company, 1970), p. 124.

11. *The New Encyclopaedia Britannica*, Vol. 4, Micropaedia, Ready Reference, Encyclopaedia Britanica Inc. (Chicago: University of Chicago Press, 1988), p. 5; See also Werner Becker, Die Freiheit, die wir Meinen: *Entscheidung fnr die liberale Demokratie*, (München-Zürich: Piper, 1984), p. 47.

12. Cf. David A. Apter, *Introduction to Political Analysis* (Cambridge and Massachusetts: Winthrop Publisher, Inc., 1977), p. 75-89.

13. Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (London: George Allen & Unwin Ltd., 1943), p. 269. In German edition, *Kapitalismus, Sozialismus und Demokratie*, (Bern: A. Franke AG, 1945), p. 427.

14. Sidney Hook, *op. cit.*, p. 683.
15. Philippe C. Schmitter and Terry Lynn Karl, "What Democrcy is...and is not", in *Journal of Democracy*, Vol. 2, No. 3, Summer 1991, p. 76.
16. Robert A. Dahl, *Dilemma of Pluralist Democracy* (New Haven and London: Yale University Press, 1982), p. 11.
17. Philippe C. Schmitter and Terry Lynn Karl, *op. cit.*, p. 76.
18. In his book, *Human Rights and Human Diversity*, A.J.M. Milne says: Human rights are moral not political rights. People not only can live, but historically have lived, together without formal political organization: for example, in communities of food-gathers, hunters and nomads. There are therefore no political rights which people have solely in virtue of being human, no political rights which belong to them at all times and in all places. Only when contextual interpretation requires it can any human rights be political rights. See A.J.M. Milne, *Human Rights and Human Diversity* (Houndmills, Basingstoke, Hampshire and London: Mcmillan, 1986), p. 154. Today we still find people who live without formal political organization, that is, in a number of isolated regions in both developing and under-developed countries.
19. See Norman P. Barry, *An Introduction to Modern Political Theory* (New York: St. Martin's Press, 1981), p. 182-183.
20. *Ibid.*, p. 183-184.
21. *Ibid.*, p. 184.
22. See Kent Greenawalt, "Civil Rights and Liberties", in *The Encyclopaedia Americana*, Vol. 7, *op. cit.*, p. 768.
23. *Ibid.*, p. 770.
24. A.J.M. Milne, *op. cit.*, p. 1.
25. Cf. Miriam Budiardjo, "Hak-Hak Asasi Manusia dalam Dimensi Global", in *Jurnal Ilmu Politik*, vol. 10, 1990, p. 49; and *SOA-Informationen*, vol. 1, 1988, p. 4-5.
26. Mohammad Natsir, "Islam 'Demokrasi' ?", in his book, *Capita Selecta* (Jakarta: Bulan Bintang, 1973), p. 452.
27. *Ibid.*, 451.
28. Muhammad Natsir, *Islam sebagai Dasar Negara* (Bandung: Pimpinan Fraksi Masyumi dalam Konstituante, 1957), p. 38, as cited in Ahamd Syafii Maarif, *Islam dan Masalah Kenegaraan: Studi tentang Percaturan dalam Konstituante* (Jakarta: LP3ES, 2nd ed., 1987), p. 130.
29. Z.A. Ahmad, *Republik Islam Demokratis*, (Tebing Tinggi, Deli: Pustaka Maju, 1951), p. 36 and 39, as cited in Ahmad Syafii Maarif, *ibid.*, p. 135. The original translation of the Qur'ân 3:159 (*wa shâwirhum fi al-amr*) is "and consult them in affairs of (moment)", and of the Qur'ân 42:38 (*wa amruhum shûrâ baynahum*) is "who conduct their affairs by mutual consultation".
30. Cf. Jalaluddin Rahmat, "Islam dan Demokrasi", in Franz Magnis-Suseno et al., *Agama dan Demokrasi* (Jakarta: Perhimpunan Pengembangan Pesantren dan Masyarakat, 1992), p. 43.
31. Isma'il Suny, *Mekanisme Demokrasi Pancasila* (Jakarta: Aksara Baru, 6th ed., 1987), p. 7. He has been Professor of Constitutional Law at the University of Indonesia (UI), Jakarta. He received his doctor's degree on legal science in 1963 at the University of Indonesia.
32. Abdoerraoef, *Al-Qur'an dan Ilmu Hukum* (Jakarta: Bulan Bintang, 1971), p. 205. He received his doctor's degree on legal science in 1970 at the Islamic University

of Jakarta.

33. *Ibid.*, p. 195-196.
34. *Ibid.*, p. 227. His comprehension of democracy is a response to the definition of democracy introduced by W.A. Bonger in his book, *Masalah-Masalah Democracy*, translated by L.M. Sitorus, (Jakarta: Jajasan Pembangunan, 1952), 32-33.
35. Jalaluddin Rahmat, *op. cit.*, p. 40. He was born on August 29, 1949 in Bandung, has been a lecturer at the University of Padjadjaran, Bandung, and received his master's degree on communication science at the Iowa State University. Now he is known as the Shi'i leader in Indonesia.
36. *Ibid.*, p. 42-44.
37. Munawir Sjadzali, *Islam dan Tata Negara: Ajaran, Sejarah dan Pemikiran* (Jakarta: UI Press, 1990), p. 172. He was Minister of Religious Affairs (1983-1993). He received his master"s degree in political science at Georgetown University, Washington (1959).
38. Ahmad Syafii Maarif, *op. cit.*, p. 51, and H.A.R Gibb, "Constitutional Organization", in Majid Khadduri and Herbert J. Liebesny, *Law in the Middle East* (Washington, D.C.: The Middle East Institute, 1955), p. 3. Maarif was born on May 31, 1935 in West Sumatra, has been a lecturer at the Institute for Teachers' Training (IKIP) Yogyakarta. He received his doctor's degree on Islamic studies at the University of Chicago (1982).
39. Ahmad Syafii Maarif, "Islam, Politik dan Demokrasi di Indonesia", in Basco Carvallo and Dasrizal (eds.), *Aspirasi Umat Islam Indonesia*, (Jakarta: Leppenas, 1983), p. 54-55.
40. M. Amin Rais, "Beberapa Catatan Kecil tentang Pemerintah Islam", in his book, *Cakrawala Islam Antara Cita dan Fakta* (Bandung: Mizan, 5th ed., 1992), p. 47. He was born on April 26, 1944 in Solo, has been a lecturer at the University of Gajahmada, Yogyakarta, is Chairman of Central Board of Muhammadiyah. He received his doctor's degree in political science at the University of Chicago (1981).
41. Interview with M. Amien Rais on November 29, 1993 in Berlin.
42. M. Amien Rais, "Indonesia dan Democracy", in Basco Carvallo and Dasrizal (eds.), *op. cit.*, p. 72.
43. M. Amin Rais, "Beberapa Catatan Kecil tentang Pemerintah Islam", *op. cit.*, p. 47-48. Not all Muslim intellectuals in Indonesia agree with Rais. Quoting Robert Lacey in his book, The Kingdom, *Arabia and the House of Su'ud*, Madjid, for instance, says that Saudi Arabia has roots of democracy called "desert democracy". Although it is considered "primitive", it contains an essential element of democratic society, that is, egalitarianism. There is a "*majlis*" (forum) that functions as a medium of communication between the people and the king. In this majlis they can directly complain about their problems to the king, and he normally responds to the complaints. Of course, it is too extreme to consider it to be a model of democracy, but it can be a foundation for establishing a modern democracy with the building blocks and designs provided by the increasing education and welfare of the people. See Nurcholish Madjid, "Demokrasi di Saudi", in *Tempo*, April 18, 1992.
44. Interview with Nurcholish Madjid on December 4, 1992 in Jakarta.
45. *Ibid.* Robert N. Bellah's complete opinion as Madjid cites it is :

There is no question but that under Muhammad, Arabian society made a remarkable leap forward in social complexity and political capacity. When the

structure that took shape under the Prophet was extended by the early caliphs to provide the organizing principle for a world empire, the result is something that for its time and place is remarkably modern. It is modern in the high degree of commitment, involvement, and participation expected from the rank and file members of the community. It is modern in the openness of its leadership positions to ability judged on universalistic grounds and symbolized in the attempt to institutionalize a non-hereditary top leadership. Even in the earliest times certain restraints operated to keep the community from wholly exemplifying these principles, but it did so closely enough to provide better model for modern national community building that might be imagined. The effort of modern Muslims to depict the early community as a very type of equalitarian participant nationalism is by no means entirely an unhistorical ideological fabrication.

In a way the failure of the early community, the relapse into pre-Islamic principle of social organization, is an added proof of the modernity of the early experiment. It was too modern to succeed. The necessary social infrastructure did not yet exist to sustain it. See Robert N. Bellah, "Islamic Tradition and Problems of Modernization", in Robert Bellah (ed.), *Beyond Belief* (New York: Harper & Raw, 1976), p. 150-151, as cited in Nurcholish Madjid, "Suatu Tatapan Islam terhadap Masa Depan Politik Indonesia", in *Prisma*, Nomor Eksta, 1984, p. 19-20; Nurcholish Madjid, "Akar Islam, Beberapa Segi Budaya Indonesia dan Kemungkinan Pengembangannya bagi Masa Depan Bangsa", in Nurcholish Madjid (ed.), *Islam, Kemodernan dan Keindonesiaan* (Jakarta: Mizan, 3th ed., 1989), p. 62.; and Nurcholish Madjid, "Iman dan Tata Nilai Rabbaniyyah", in his book, *Islam Doktrin dan Peradaban Sebuah Telaah Kritis tentang Masalah Keimanan, Kemanusiaan dan Kemoderenan* (Jakarta: Yayasan Wakaf Paramadina, 1992), p. 13.

In the interview it was also said that when the former German Chancellor, Helmut Schmidt came to Indonesia in the 1980s, Madjid and some other Muslim intellectuals were invited by Schmidt to discuss the Indonesian ideology, Pancasila. Schmidt was interested in Pancasila and asked how a compromise between the first principle (Belief in God) and the fourth principle (Democracy) could be reached, because according to his experience, it was impossible to find a compromise between religion and democracy. Among Madjid's answers was that mentioned above. Madjid was born on March 17, 1939 in Jombang, has been a researcher at the Institute for Sciences (LIPI). He received his doctor's degree on Islamic studies at the University of Chicago (1984).

46. Nurcholish Madjid, "Iman dan Perwujudan Masyarakat yang Adil, Terbuka serta Demokratis", in his book, *Islam Doktrin, ibid.*, p. 114.
47. Ahmad Syafii Maarif, Islam dan Masalah Kenegaraan, *op. cit.*, p. 50. See also Ahmad Syafii Maarif, "Islam, Politik dan Demokrasi", in Basco Carvallo and Dasrizal (eds.), *op. cit.*, p. 53.
48. Muhammad Tahir Azhary, *Negara Hukum: Suatu Studi tentang Prinsip-Prinsipnya, Dilihat dari Segi Hukum Islam, Implementasinya pada Periode Megara Madinah dan Masa Kini*, (Jakarta: Bulan Bintang, 1992), p. 64-65. He was born on May 12, 1939, and has been a lecturer at the University of Indonesia, Jakarta. He received his doctor's degree on legal science at the University of Indonesia (1991). His theory on Islamic nomocracy originated from Majid Khadduri. Khadduri not only denied the theory of Islamic theocracy but also introduced a theory of divine universal nomocracy. As he said :

It is to be noted that in Judaism, Christianity and Islam God never had been regarded as the immediate ruler of his subjects; only his representatives (vicegerents) on earth were the real executives. Hence the divine law (or a sacred code), regarded as the source of governing authority, was the essential feature in the process of control under these systems. The law, it will be recalled, precedes the state: it provides the basis of the state. It is therefore not God, but God's law which really governs; and, as such, the State should be called nomocracy, not theocracy. *The Oxford Dictionary* defines nomocracy as "a system of government based on legal code; the rule of law in a community." Since the Israelite, Christian and Islamic states were based on divine legal orders, it follows that their systems might be called divine nomocracies. See Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore and London: The John Hopkin, 1955), p. 16.

49. Interview with M. Tahir Azhary on November 10, 1992 in Jakarta.

50. Interview with M. Amien Rais on November 29, 1993.

51. Interview with M. Dawam Rahardjo on September 12, 1993 in Manchester, England. He was born on April 20, 1942, is Director of the Institute for Religion and Philosophy Studies (Lembaga Studi Agama dan Filsafat, LSAF) (1987 to date), is chief editor of the journal *Ulumul Qur'an* (1989 to date). He pursued his study in economics at the University of Gajahmada. The words "*wa lâkinn akthar al-nâs lâ ya'lamûn*" (most men do not know it) are found, among other things, in the Qur'ân 7:187, 12:21 and 12:40. There are also some verses that resemble these words, such as: "*bal aktharuhum lâ ya'lamûn*" (but most of them do not know it), found, among other things, in the Qur'ân 27:61 and 31:25. Of course, in the original context these words are not in reference to the democratic system.

52. M. Amien Rais, "Pengantar", in *Demokrasi dan proses Politik* (Jakarta, LP3ES, 1986), p. xvi.

53. *Ibid.*, p. xvii-xxv.

54. M. Amien Rais, "Indonesia dan Demokrasi", in Basco Carvallo and Dasrizal (eds.), *op. cit.*, p. 71-72.

55. M. Tahir Azhary, *op. cit.*, p. 82-84.

56. Munawir Sjadzali, *op. cit.*, p. 175.

57. Muhammad Tahir Azhary, *op. cit.*, p. 79-81.

58. Nurcholish Madjid, "Kaum Muslim dan Partisipasi Politik: Masalah Hak-Hak Individual dan Sosial yang tak Teringkari", in his book, *Islam Doktrin, op. cit.*, p. 571.

59. Some Muslim intellectuals and ulama outside Indonesia have formulated Islamic political ideas in greater detail and on a more operational level, although some of these ideas are unworkable, such as those of Abula'la Maududi of Pakistan, Ayatollah Khomeini of Iran, Hasan al-Turabi of Sudan, and others.

60. Abdoerraoef, *op. cit.*, p. 221.

61. *Ibid.*, p. 223. The complete translation of the Qur'ân 4:58-59 is "Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice. Verily how excellent is the teaching which He giveth you ! For Allah is He who heareth and seeth all things. O ye who believe ! Obey Allah, and obey the Apostle, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Apostle, if ye do believe in Allah and the Last Day; that

is the best, and most suitable for final determination". The *ulî al-amr* originally implies not only authority in the context of political life but also the authority in the context of the comprehension and interpretation of Islamic doctrines.

62. *Ibid.*, p. 221-222.
63. *Ibid.*, p. 222-225.
64. Interview with Muhammad Tahir Azhary on November 10, 1992.
65. Interview with Nurcholish Madjid on December 4, 1992.
66. M. Dawam Rahardjo "Islam dan Masyarakat: Pandangan Fazlur Rahman" in his book, *Intelektual, Inteligensia dan Perilaku Politik Bangsa* (Bandung: Mizan, 1993), p. 260.
67. Interview with Nurcholish Madjid on December 4, 1992.
68. Abdurrahman Wahid, "Masa Islam dalam Kehidupan Bernegara dan Berbangsa", in *Prisma*, No. Ekstra, 1984, p. 4, and interview with him on November 18, 1992 in Jakarta. He is Chairman of Central Executive Board of Nahdatul Ulama. He pursued his study in the University of Baghdad, Iraq.
69. Cited in A.J.M. Milne, *op. cit.*, p. 4.
70. Abdurrahman Wahid, "Hukum Pidana Islam dan Hak-Hak Asasi Manusia", in his book, *Muslim di Tengah Pergumulan* (Jakarta: Leppenas, 1983), p. 94.
71. *Ibid.*, p. 95.
72. Ahmad Syafii Maarif, Islam dan Masalah Kenegaraan, *op. cit.*, p. 169; and Muhammad Tahir Azhary, *op. cit.*, 95. Ash-Shiddieqy died in 1975, but his opinion on Islamic human rights quoted by Maarif and Azhary here, was published in 1950s.
73. Muhammad Tahir Azhary, *op. cit.*, p. 97.
74. Abdurrahman Wahid, "Hukum Pidana Islam", in *op. cit.*, p. 96.
75. Abdurrahman Wahid., "Kerangka Pengembangan Doktrin Ahlussunnah wal Jama'ah (Aswaja)", in *op. cit.*, p. 43.
76. A.M. Saefuddin, Perspektif Hak-Hak Asasi Manusia dalam Sorotan Al-Quran, paper in a "Seminar on Human Rights" held by Al-Muslimun magazine, August 1991, p. 1-20. He was born on August 8, 1940 in Cirebon, has been Professor at the Bogor Institute for Agricultural Sciences (IPB), and is a member of Indonesian Parliament (DPR/MPR, 1993 to date) as a representative of the PPP. He received his doctor's degree in agricultural science at the University of Justus Liebig, Germany (1973).
77. See Harun Nasution, "Pengantar", in Harun Nasution and Bahtiar Effendy (eds.), *Hak-Hak Azasi Manusia dalam Islam* (Jakarta: Pustaka Firdaus-Yayasan Obor Indonesia, 1987), p. vi-xi. Nasution was born on September 23, 1919 in North Sumatra, has been Professor at the State Institute of Islamic Studies (IAIN) Jakarta, and was President of this institute (1970-1983). He received his doctor's degree at the Institute of Islamic Studies, McGill University, Montreal, Canada (1968).
78. Ali Yafie, "Hak Individu dan Masyarakat dalam Khazanah Pesantren", *Pesantren*, Vol. IV, No. 1, 1987, p. 6. He was born on September 1, 1923 in Donggala, Central Sulawesi, has been Professor on Islamic law at the Institute for Qur'ânic Studies (IIQ) Jakarta, and was Vice-Chairman of the Consultative Council of Nahdatul Ulama (NU).
79. 'Abd al-Wahhâb Khallâf, *'Ilm Usûl al-Fiqh* (Kuwait: Dâr al-Qalam, 12nd ed., 1978), p. 199.
80. Ali Yafie, *op. cit.*, p. 6-7. According to Khallaf, the human necessities are: religion, life, reason, honor and property. See 'Abd al-Wahhâb Khallâf, *op. cit.*, p.

200-202.
81. Muhammad Tahir Azhary, *op. cit.*, p. 95-96.
82. *Ibid.*, p. 96-97.
83. Ahmad Syafii Maarif, *Islam dan Masalah Kenegaraan*, *op. cit.*, p. 170; and see Harun Nasution, *op. cit.*, p. x-xi.
84. Munawir Sjadzali, "Reaktualisasi Ajaran Islam", in Iqbal Abdurrauf Saimima (ed.), Polemik Reaktualisasi Ajaran Islam, (Jakarta: Pustaka Panjimas, 1988), p. 9. The absolute text (*nass qat'i*) is the Qur'ânic or the very popular Hadith (*Hadîth mutawâtir*) text which indicates uninterpretable meaning, whereas the relative text (*nass zanni*) is the Qur'ânic or the Hadith text which indicates interpretable meaning. Further discussion about them will be advanced in Chapter VI.
85. Ahmad Azhar Basyir, "Reaktualisasi: Pendekatan Sosiologis Tidak Selalu Relevan", in *ibid.*, p. 110-111. He also argues that reinterpretation of the Qur'ânic verse on inheritance, which is an absolute text, anologizing with the Qur'ânic verse on slavery, is not relevant. Basyir was born on November 21, 1928 in Yogyakarta, has been lecturer at the University of Gajah Mada, and has been Chairman of the National Board of Muhammadiyah. He received his master's degree at Cairo University.
86. Muhammad Tahir Azhari, *op. cit.*, p. 100-101.
87. *Ibid.*, p. 102.
88. Ahmad Syafii Maarif, *Islam dan Masalah Kenegaraan*, *op. cit.*, p. 172.
89. Muhammad Tahir Azhary, *op. cit.*, p. 102.
90. M. Amien Rais, "Indonesia dan Demokrasi", *op. cit.*, p. 73.
91. Interview with M. Amien Rais on November 29, 1993.
92. J.A. Simpson and E.S.C. Weiner, *The Oxford English Dictionary*, 2nd ed., Vol. 7, (Oxford: Clarendon Press, 1989), p. 880.
93. *Ibid.*, Vol. III, p. 479.
94. See Adamantia Pollis, "Human Rights", in Mary Hawkesworth and Maurice Kogan (eds.), *Encyclopedia of Government and Politics*, Vol. 2, (London and New York: Routledge, 1992), p. 1332-1335. Some analysts argue that human rights are universal, thereby countering the claim that human rights are culturally relative. Communalism is defined as "a theory of government which advocates the widest extension of local autonomy for each locally definable community". See J. A. Simpson and E.S.C. Weiner, *op. cit.*, p. 576.
95. Abdoerraoef, *op. cit.*, p. 245-246.
96. Harun Nasution, *op. cit.*, p. xii.
97. *Ibid.*, p. xiii.
98. Abdurrahman Wahid, "Kerangka Pengembangan Doktrin Ahlussunnah wal Jama'ah (Aswaja)" *op. cit.*, p. 43.
99. Nurcholish Madjid, "Kaum Muslimin dan Partisipasi Politik: Masalah Hak-Hak Individual dan Sosial yang tak Teringkari", in his book, Islam, *Doktrin, op. cit.*, p. 563.
100. Interview with M. Amien Rais on November 29, 1993.

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