

ISLAMIC POLITICAL DISCOURSE ON NON-MUSLIM LEADERSHIP IN THE MUSLIM STATE

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ABSTRACT

This article intends to discuss critical opinions of Muslims political experts, about the possibility of a non-Muslim to be a president in a Muslim State. Until recently, the classical Islamic discourses on this issue tend to be trapped in the normative analysis model that seems intolerant and rigid. These discourses to some extent do not appreciate the social, cultural, historical and political complexities of the Muslim community. Hence, the classical discourses have been viewed by many contemporary scholars failed to respond to the present social-political dynamic especially from multiculturalism and democracy perspective. This article attempts to trace the forgotten and rarely discussed dimensions. This study used the library research and interview approach. The library research was conducted by gathering data from sources of bibliography related to the topic. This article managed to yield the following conclusions. Based on the stipulations in the al-Qur'an and al-Sunnah on non-Muslim leadership, the majority of authoritative ulemas (scholars) are firm with their opinion whereby under normal circumstances, Muslims residing in Muslim state are prohibited to choose a non-Muslim president. However, under certain unforeseen circumstances, for example when Muslims are under political pressure,

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they are allowed to choose a non-Muslim president. Nevertheless, there are still a handful of liberal Muslim intellectuals who do not possess Shariah background; have adverse opinion. Muslims in a Muslim country are allowed to choose a non-Muslim president under any circumstances simply because the stipulations in al-Qur'an and al-Sunnah that forbid Muslims to elect a non-Muslim president is no longer applicable in the present time.

Keywords: *non-Muslim president, Muslim/Islamic state, God's authority, despotism, political ijtihād*

INTRODUCTION

This article aims to discuss the possibility of Muslims in a Muslim state to elect a non-Muslim president. From theological perspective, this discourse is a controversial theme. It is deemed controversial because, despite both al-Qur'an and al-Sunnah dictation that forbids Muslims to choose non-Muslim leaders, there are arguments that allow it. The different interpretation and point of view among Islamic scholars on the argument generate various opinions.

The controversy of having a non-Muslim to be a President in a Muslim country exists until today. Therefore, no wonder that if in this case, a Muslim majority country applies different regulations from another country. This shows that certain Muslim countries practice different Islamic regulations in the country. Majority of Muslim countries in the world, such as Tunisia, Algeria, Syria, Pakistan, and Jordan, ensures that the President or the head of state of the country must be a Muslim.¹ Thus, non-Muslims are not allowed

¹ See *Tunisia Constitution* article 38. This article explained as follow: “*The President of the Republic is the Head of the State. His religion is Islam*”. For further information, see http://www.servat.unibe.ch/icl/ts00000_.html, *Algeria Constitution* Article 73. This article explained as follow : “*To be eligible to the Presidency of the Republic, the candidate should be a Muslim*”. For further information, see http://www.servat.unibe.ch/icl/ag00000_.html, *Syria Constitution* article 3. This article explained as follow: “*The religion of the President of the Republic has to be Islam*”. For further information, see http://www.servat.unibe.ch/icl/sy00000_.html, *Pakistan Constitution* article 41. This article explained as follow: “*A Person shall not be qualified for election as president unless he is a Muslim*”. For further information, see <http://www.pakistan.org/pakistan/constitution/part.3.ch1.html>, and see also *Jordan Constitution* article 28. This article explained as

to be the country leader. At present, only a handful of Muslim dominated countries are led by non-Muslim presidents. The countries are Nigeria, Senegal and Lebanon. Nigeria with 76% of its population being Muslim, is led by a Christian president, namely Olusegun Obasanjo. Despite being a Christian, Obasanjo has been the President of Nigeria for three periods, namely 1976-1979, 1999-2004, and 2004-2007. During the 3rd period election, Olusegun Obasanjo was reelected as Nigerian President after defeating his close rival, Muhammad Buhari. He won in the Nigerian Presidential election in 2004 after winning 62% votes.²

Similar to Nigeria, Senegal with 91% Muslim population, has also been led by a Christian Catholic President, Leopold Sedar Senghor (1980-1988). The most ironic situation is with Lebanon with 75% Muslim population, has been led by Christian Presidents since 1943 until today. This is due to Lebanon agreed to a National Pact (*al-Mithāq al-Waṭani*) that regulates the following: Lebanon President must be Maronite Christian, the Prime Minister must be a Sunni Muslims, the House speaker must be a Shi'ite Muslim, the Defense Minister must be Druze Muslim, and the Foreign Affairs Minister must be Greece Orthodox Christian.³ The National Pact is still applicable at present hence Lebanese President remains a Maronite Christian.

Muslims opinion, regardless in Indonesia or in other Muslim majority countries that opposes non-Muslim Presidents in this new era, is in line and influenced by a classical theology that is coherent with the Islamic theology in a Muslim country and Sunni classic literature known as Caliphate.

follow: "No person shall ascend the throne unless he is a Muslim". For further information, see http://www.kinghussein.gov.jo/constitution_jo.html.

² *Metro TV*, April 23th, 2004.

³ See *The National Pact of Libanon*. This Pact is an unwritten agreement that laid the foundation of Lebanon as a multi-confessional state, and has shaped the country to this day. Following negotiations between the Shi'ite, Sunni, and Maronite leaderships. The National Pact was born in the summer of 1943 allowing Lebanon to be independent. Among the following key points of the agreement are for: (1) the Maronites not to seek foreign intervention and accept Lebanon as an "Arab" affiliated country, instead of a "Western" one, (2) the Muslims (Shi'a and Sunnis) to abandon their aspirations to unite with Syria (3) the President of the Republic always to be Maronite, (4) the President of the Council of Ministers (Prime Minister) always to be Sunnī, (5) the President of the National Assembly always to be Shi'a, (6) the Deputy Speaker of the Parliament always has to be a Greek Orthodox. For further information, see http://wapedia.mobi/en/National_Pact; see also Leonard Binder (1996), *Politics in Lebanon*, New York: John Wiley and Sons Inc, p. 276.

In Caliphate, a Caliph (Head of State) has 2 main tasks, namely maintaining the religion and managing the world (*hirāsāt al-dīn wa siyāsāt al-dunyā*). Therefore, he is the one who holds the power in religious and global matters. In politics, a Head of State protects the Islamic region from its enemies aggression and various kinds of oppression.⁴ While in religious matters, a Head of State acts as an *Imām* during mass prayers, a leader of pilgrimage (*amīr al-hajj*), and a preacher of sermon at the mosque, either during Friday Prayer, *‘Īd al-Fitr* or *‘Īd al-Adha* prayers. The above mentioned tasks represent the significant role of a Head of State as mentioned in Caliphate. The people depend on the leadership and trust them on religious and global matters. The social political condition now is far different from the social political condition during the classical era. Hence, it is important to consider anticipated possible consequences when a Muslim dominated country is led by a non-Muslim leader as opposed to a Muslim leader.

GROUP REJECTING NON MUSLIM PRESIDENT

Muslim scholars have different opinions on whether or not a non-Muslim becomes a president in a Muslim country. Generally, their opinions are divided into two groups. The first group is those who reject non-Muslim President in a Muslim dominated country. The second group is those who support non-Muslim President in a Muslim dominated country. The opinion of the first group, according to Fahmi Huwaidi, is the most embraced opinion and has influenced many thesis written by Muslims nowadays⁵. Those belong to the first group are among others, al-Ṭabarī, al-Jaṣṣāṣ, al-Alūsī, Ibn Kathīr, al-Māwardī, al-Kayā al-Harāsī, al-Juwaynī, Ibn ‘Arabi, al-Qurṭubī, al-Zamakhsharī, al-Ṭabāṭabāī, al-Syawkānī, ‘Ali al-Sāyis, Ḥasan al-Banna’, Sayyid Quṭb, Ḥasan Ismā’īl Ḥudaibī, al-Maudūdī, al-Ṣābūnī, ‘Abd al-Wahāb Khallaf, Wahbah al-Zuhaylī, Muhammad Dhiya’ al-Dīn al-Rayis and Taqī al-Dīn al-Nabhanī.

They, among others, base their opinions on Surah Ali ‘Imran verse 28 that says:

⁴ Muḥammad Yūsuf Mūsā (1963), *Nizām al-Ḥukm fī al-Islām*, al-Qāhirah: Dār al-Kitāb al- ‘Arabī, p. 169.

⁵ See Fahmi Ḥuwaidi (1998), "Kebangkitan Islam dan Persamaan Hak Antar Warga Negara", in Yusuf Qardhawi, *et. al, Kebangkitan Islam dalam Perbincangan Para Pakar*, translated by Moh. Nurhakim from *Al-Ṣahwah al-Islāmiyyah Ru'yah Nuqadiyah min al-Dākhil*, Jakarta:Gema Insani Press, p. 193.

لَا يَتَّخِذِ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ ^ص وَمَنْ يَفْعَلْ ذَلِكَ
فَلَيْسَ مِنَ اللَّهِ فِي شَيْءٍ إِلَّا أَنْ تَتَّقُوا مِنْهُمْ تُقَنَةً ^ك وَيَحْذَرُكُمْ اللَّهُ نَفْسَهُ ^ق
وَإِلَى اللَّهِ الْمَصِيرُ

“Let not the believers take for friends or helpers unbelievers rather than believers: if any do that, in nothing will there be help from God: except by way of precaution, that ye may Guard yourselves from them. But God cautions you (to remember) Himself: for the final goal is to God.”

(Āli ‘Imrān, 3 : 28)

Besides this verse, there are 11 more verses often proposed to reject non-Muslim president, namely: Sūrah al-Mā’idah verse 51 and verse 57, Sūrah al-Mumtahanah verse 1, Sūrah Āli ‘Imrān verse 100 and verse 118, Sūrah al-Mujādalah verse 22, Sūrah al-Nisā’ verse 141 and verse 144, Sūrah al-Anfāl verse 73, Sūrah al-Taubah verse 8 and verse 71. The last verse mentioned, despite the difference in words used in the verses, rule of thumb is Muslims are not allowed to choose a non-Muslim as their leader. It is very important for Muslim majority country to have a Muslim leader.

Referring to those verses, al-Jaṣṣāṣ gave the following notes:

وفي هذه الآية ونظائرها دلالة على ان لا ولاية للكافر على المسلم في شيء

“In this verse (Sūrah Āli ‘Imrān verse 28) and other verses, which have similar content there is a direction that in what ever condition, a non-Muslim is not allowed to lead Muslims.”⁶

Based on such belief, al-Jaṣṣāṣ does not only forbid Muslims to choose non-Muslim as the Head of State, but also forbids Muslims to involve non-Muslim in any Muslim matters, even though he has blood relation with them. Therefore, a non-Muslim man, according to him, does not have the right to get involved in his own Muslim son’s marriage, due to the difference in religion.

⁶ Abu Bakr Aḥmad Ibn ‘Ali al-Rāzi al-Jaṣṣāṣ (n.d), *Aḥkam al-Qur’an*, al-Qāhirah: Syirkah Maktabah wa Maṭba‘ah ‘Abd al-Rahman Muḥammad, vol. 2, p. 290.

Similar with al-Jaṣṣāṣ, Ibn ‘Arabi said those verses have a general rule that a Muslim believer must not choose an unbeliever as his leader, his ally to fight against the enemy, give him a mandate and or make him a trustful friend⁷.

Similar opinion is derived from Ibn ‘Arabi quote as above, Ibn Kathīr said those verses are prohibitions by Allah on His faithful men to have non-Muslim as his close friend and or to make him/her as their leaders, by leaving behind the believers. Whoever among the Muslims disobeys Allah by showing their love to His enemies and making His beloved men as their enemies, Ibn Kathīr asserted, will receive His torment⁸.

In some countries and under certain circumstances where a Muslim has fear towards evil that is done by the unbelievers, he is given a special consideration to do (*taqiyyah*)⁹ before them. This only applies externally, not internally and intentionally. In line to support this thesis, Ibn Kathir proposed a *ḥadīth* narrated by Imam al-Bukhārī from Abu Darda’, that says:

إنا لنكشر في وجوه أقوام وإن قلوبنا لتلعنهم

“Truly, we (often) smile to some people, while (actually) in our hearts we really put a curse on them”.¹⁰

(al-Bukhārī)

Besides this *ḥadīth*, Ibn Kathīr also supported his opinion with Allah’s saying as follows:

⁷ Ibn ‘Arabi (1988), *Ahkām al-Qur’ān*, Beirut-Lubnān: Dār al-Kutub al-‘Ilmiyyah, volume 2, pp. 138-139.

⁸ Imam Abi al-Fidā al-Hāfiẓ Ibn Kathir al-Dimashqi (1992), *Tafsīr al-Qur’ān al-‘Azīm*, Beirut: Dār al-Fikr, vol. 1, p. 439.

⁹ The word "*al-taqiyyah*" literally means: "Concealing or disguising one's beliefs, convictions, ideas, feelings, opinions, and/or strategies at a time of imminent danger, whether now or later in time, to save oneself from physical and/or mental injury." A one-word translation would be dissimulation, or perhaps better described, religious sanctioned cowardice." See Hāfiẓ Allah ‘Imādi (1998), "The End Of Taqiyya: Reaffirming The Religious Identity Of Ismailis In Shughnan, Badakhshan-Political Implications For Afghanistan", *Middle Eastern Studies*, pp. 103-120.

¹⁰ Al-Bukhārī (n.d), *Ṣahīh al-Bukhārī, Bāb al-Mudārah ma’a al-Nās*, vol. 2, p. 94.

مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ
وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِنَ اللَّهِ وَلَهُمْ عَذَابٌ

عَظِيمٌ ﴿١٦﴾

“Whoever disbelieved in Allah after his belief, except him who is forced thereto and whose heart is at rest with Faith but such as open their breasts to disbelief, on them is wrath from Allah and theirs will be a great torment.”

(al-Naḥl, 16 : 106)

Ibn Kathīr agreed on prohibition of electing non-Muslim as Muslim leaders, besides based on some verses on al-Qur’an, as having been mentioned before, it is also based on Prophet’s *ḥadīth* narrated by Imam al-Nasa’i from Mujahid, which says as follows :

لا تستضيئوا بنار المشركين

“You must not seek light from the fire of unbelievers”.¹¹

(al-Nasā’ī)

The word *nār* (fire) mentioned in the above *ḥadīth* according to ‘Abd al-Raḥman al-Baghdādī, is a symbol of strength¹² (power) that cannot be given by Muslims to non-Muslims. Besides the above *ḥadīth* an obligation to reject non-Muslim president according to Wahbah al-Zuhaylī, is also based on *ḥadīth qudsī* narrated by al-Ṭabrānī, that says:

The Prophet says:

يقول الله تبارك وتعالى : وعزتي لا ينال رحمتي من لم يوال أوليائي ويعاد أعدائي

“Allah the Almighty says: For the sake of My power, someone will not get My blessing unless he loves My beloved ones and hates My enemies.”¹³

(al-Ṭabrānī)

¹¹ Al-Nasā’ī (n.d), *Sunan al-Nasā’ī*, Bab Qawl al-Nabi, vol. 3, hadith no. 5114, p. 464.

¹² Abd al-Rahman al-Baghdadi (1990), *Islam Menolak Bantuan Militer Negara Kafir*, Surabaya: Suara Bersama, p. 58.

¹³ Al-Ṭabrānī (n.d), *al-Mu’jam al-Kabīr li al-Ṭabrānī*, vol. 2, p. 426.

Al-Zamakhsyarī and al-Baiḍawī added another *ḥaḍīth*, namely *ḥaḍīth* narrated by Abū Dāwūd which says as follows.

Prophet Muhammad says:

أنا بريء من كل مسلم يقيم بين أظهر المشركين قالوا يا رسول الله لم قال
لاتراءى ناراهما

*“I will release my relation with every Muslim who is under the leadership of the unbelievers. The prophet was asked: why is it so? The Prophet said: (Because) the fire (the power) of the two are very difficult to identify.”*¹⁴

(Abū Dāwūd)

The prohibition of Muslims to choose non-Muslims as their leaders, according to al-Zamakhsyarī is logical as the unbelievers are construed as Muslims’ enemies, and by principle, al-Zamakhsyarī added, it is impossible for someone to choose his enemy as his leader¹⁵. If Muslims appoint the unbelievers as their leaders, according to ‘Ali al-Sayis, it means that the Muslims will regard the approach taken by the unbelievers is good. This is to be avoided as agreeing to an unbeliever is being an unbeliever¹⁶.

Appointing the unbelievers as the leaders of Muslims, according to al-Ṭabaṭaba’i is more dangerous than the paganism of the unbelievers and the polytheism of the polytheists. The unbelievers, al-Ṭabaṭaba’i further said, is the enemies of Muslims, and if the enemies are regarded as friends, the unbelievers will become the enemies in disguise who is more difficult to trace than the enemies who are clearly living outside Islam. This, al-Ṭabaṭaba’i asserted, must not happen, because if this happens, Muslims will be ruined¹⁷.

Among the Muslims, Sayyid Quṭb is the one who strongly opposed non Muslim leader. Further to that, he is in the opinion that Muslims are not allowed

¹⁴ Abū Dāwūd (n.d), *Sunan Abī Dāwūd*, vol 7, p. 227.

¹⁵ Al-Zamakhsyarī (1392 H./1972 A.D), *al-Kassāf ‘an Ḥaqā’iq al-Tanzīl wa ‘Uyūn al-Aqāwil fī Wujūh al-Ta’wīl*, Miṣr: Syirkah Maktabah wa Maṭba’ah Muṣṭafā al-Bābī al-Halabī wa Awlādūh, vol. 2, p. 422.

¹⁶ Muhammad ‘Ali al-Sayis (1373 H/1953 A.D), *Tafsīr Āyāt al-Aḥkām*, Miṣr: Maṭba’ah Muḥammad ‘Alī Ṣābiḥ wa Awlādūh, vol 3, pp. 5-8.

¹⁷ Al-Ṣayyid Muḥammad Ḥusayn al-Ṭabaṭaba’ī (1391 H./1972 A.D), *al-Mizān fī Tafsīr al-Qur’ān*, Beirut: Muassasat al-A’lām lī al-Maṭbū’āt, vol. 3, pp. 151-157.

to give assistance and or hold a friendship with non-Muslims, with Jews and Christian in particular.

Muslims, Quṭb firmly said, are not prohibited and (even) they should tolerate with *ahl al-kitāb* and other non-Muslims who are good and show peaceful attitude and do not take side by any religion. But, they are forbidden to be loyal to them, as being loyal to them is not the same as being tolerant. Tolerance means having good relationship (*mu'āmalah bi al-ḥusnā*) towards non-Muslims. On the other hand, loyalty has something to do with establishing relationship, helping each other, and showing love and care. Such loyalty, according to Quṭb, should not be done by real believers, who are faithful to Allah, and obey His *manhaj* (method) as well as they will to abide to the law as regulated in His Holy Book (al-Qur'an) with all their heart, as a manifestation of their love and respect to Allah and His Prophet. Islam, Quṭb further said, educate its people to only give their loyalty to Allah, His Prophet, and Muslim group. In this case, Quṭb built a theory as follows:

ليس للمسلم ولاء ولا حلف إلا مع المسلم وليس للمسلم ولاء إلا لله ولرسوله
وللجماعة المسلمة

*“A Muslim should not give his loyalty and set up agreement to be loyal except with his peer Muslim. A Muslim must not give his loyalty except to Allah, His Prophet and Muslim groups.”*¹⁸

Quṭb strongly opposed the religious understanding with an aesthetic secular nuance who supports cooperation and provide mutual help with the *ahl al-kitāb*. According to him, a person with this religious understanding does not understand al-Qur'an and does not live in accordance to Islamic teaching. According to him, such person should be reminded that the prohibition set by Allah to *muwālah* with *ahl al-kitāb*, as mentioned in Sūrah al-Mā'idah verse 51 (or other verses with similar content), is not only directed to the believers during the Prophet's era in Medina, but the message (*khiṭāb*) in the verse of the Holy Quran is also applicable for all Muslims, whenever and wherever they are until the end of the world. In this connection, Quṭb said:

هذا النداء موجه إلى الجماعة المسلمة في المدينة ولكنه في الوقت ذاته موجه
لكل جماعة مسلمة تقوم في أي ركن من أركان الأرض إلى يوم القيامة

¹⁸ Sayyid Quṭb (1967), *Fī Zilāl al-Qur'ān*, Beirut – Lubnān: Dār Ihyā' al-Turāth al-'Arabī, volume 2, pp. 198-199.

*“This call (Sūrah al-Mā'idah verse 51) was (previously) directed to Muslims in Medina. But there after, (the call on that verse) is also directed to all Muslims, (whenever) and in all parts of the world until the end of time.”*¹⁹

The quotation mentioned above may be interpreted that Muslims whenever and wherever they may be, until the end of the world, are prohibited to choose non Muslims as their leaders. Besides the above mentioned names, every religious political organization leader who wants to establish an Islamic state, such as Usamah bin Ladin, the leader of *al-Qāidah*, and Abdullah Sungkar, the founder of *Jama'ah Islamiyyah*, can be categorized as the supporters of classical schools who are against non-Muslim president in a Muslim country. According to the Americans and other western countries, *al-Qāidah* led by Usamah bin Ladin will establish an Islamic State in the Middle East. While *Jama'ah Islamiyyah* founded by Abdullah Sungkar will establish an Islamic State in ASEAN which covers Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam²⁰.

In regards to *Jama'ah Islamiyyah*'s plan to set up an Islamic State, Philippine President, Gloria Macapagal Arroyo, sent a letter to US President George W. Bush, to seek help to fight against the establishment of the Islamic State. As compensation, Arroyo offered a proposal on the establishment of a Christian State which also covers Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam²¹.

Besides individual and political parties, a number of countries which have placed Islam as their state official religion and usually they have requirement to have Muslim as their heads of state, can be categorized as the supporters of classical schools that opposed non-Muslim presidents in Muslim countries. There are 13 countries, namely: (1) Tunisia, (2) Algeria, (3) Syria, (4) Pakistan, (5) Jordan, (6) Qatar, (7) Saudi Arabia, (8) Bahrain, (9) Oman, (10) Mauritania, (11) Libya, (12) Iran and (13) Afghanistan.²²

¹⁹ *Ibid.*

²⁰ *Tabloid Republika*, Oktober 3rd, 2003, p. 3.

²¹ *Ibid.*

²² See: (1) *Tunisia Constitution* article 38. This article explains as follow: “The President of the Republic is the Head of the State. His religion is Islam”. (2) *Algeria Constitution* Article 73. This article explains as follow: “To be eligible to the Presidency of the Republic, the candidate should be a Muslim”. (3) *Syria Constitution* article 3. This article explains as follow: “The religion of the President of the Republic has to be Islam”. (4) *Pakistan Constitution* article 41. This article

NEW POLITICAL *IJTIHĀD* ON NON-MUSLIM PRESIDENT

Law is a product of socio-cultural political dynamism. Therefore, Law is contextual. Unlike the context of current socio-cultural politic during the classical era, we are not allowed to suppress the rights of individual and group minority in the wide mainstream area after knowing multiculturalism principles and democracy. In today's world, it is necessary to hold a principle that everybody has equal rights before the Law. Opposing that principle would mean we support injustice, when injustice is the main enemy of Islamic Law. Ibn Qayyim said it is not an Islamic Law if a discourse of the holy text interpretation is discriminative towards a certain social group²³. If the opinion is accepted, the stance which opposes non-Muslim's rights to become a President has the same meaning as encouraging hostility front against Islam which teaches justice and equality. If someone does not want to be regarded

explains as follow: "A Person shall not be qualified forelection as president unless he is a Muslim". (5) *Jordan Constitution* article 28. This article explains as follow: "No person shall ascend the throne unless he is a Muslim". (6) *Qatar Constitution* article 1. This article explains as follow: "Qatar is an independent Arab state. Islam is the State's religion and the Islamic Shariah is the main source of its legislations", (7) *Saudi Arabia Constitution* article 1. This article explains as follow: "The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution", (8) *Bahrain Constitution*, article 2 . This article explains as follow: "The religion of the State is Islam. The Islamic Shari'a is a principal source for legislation", (9) *Oman Constitution* article 1. This article explains as follow: "The Sultanate of Oman is an independent, Arab, Islamic, fully sovereign state with Muscat as its capital", (10) *Mauritania Constitution* Article 5. This article explains as follow: "Islam shall be the religion of the people and of the State", (11) *Libya Constitution* article 2. This article explains as follow: "Islam is the religion of the State and Arabic is its official Language", (12) *Iran Constitution* article 12. This article explains as follow: "The official religion of Iran is Islam and the Twelver Ja'fari school, and this principle will remain eternally immutable, and (13) *Afghanistan Constitution* article 62. This article explains as follow: "The individual who becomes a presidential candidate shall have the following qualifications: shall be a citizen of Afghanistan, Muslim, born of Afghan parents and shall not be a citizen of another country, shall not be less than forty years old the day of candidacy, shall not have been convicted of crimes against humanity, a criminal act or deprivation of civil rights by court".

²³ Ibn Qayyim al-Jawziyyah (1980), *I'lām al-Muwaqqi'in 'an Rabb al-'Ālamīn*, al-Qāhirah: Maṭba'at al-Islām, vol. 3, p. 3.

as Islam opponent, all kinds of discriminative laws, even though many people regard them as the truth, must be annulled, or at least, must be restudied.

In line with those opinions, some liberal Muslim intellectuals who do not have a background on Islamic Law, try to offer a new political *ijtihad* that supports non-Muslim president. Those in this group are: (1) Mahmoud Mohammad Thaha, a liberal Muslim intellectual from Sudan, who is also an engineer, the founder of The Republican Brothers, an Islamic reformist group in Sudan, who was executed by President Ja'far Numieri for apostate crime on January 18, 1985 because of opinions among opposition figures who opposed the application of Islamic law as Sudan's state law was considered heretic (*bid'a*) by the authority, (2) Abdullah Ahmed al-Na'im, a liberal Muslim intellectual from Sudan, who is a law scholar, the student as well as spokesman who fluently explained about ideas of Mahmoud Mohammad Thaha, (3) Thariq al-Bishri, a liberal Muslim intellectual from Egypt, who is also a historian, (4) Asghar Ali Engineer, a liberal Muslim intellectual from India, who is also a technical scholar, and (5) Muhammad Sa'id al-Ashmawi, a liberal Muslim intellectual from Egypt, who is also a law scholar, and received an international award from Committee of Lawyer for Human Rights which is headquartered in New York City on October 18, 1994.

According to Mahmoud Mohammad Thaha, Islamic Law (*fiqh*) that forbids non-Muslim to become a president in Muslim majority country, fails to provide a proportional democratic representation to non-Muslim minority who is the citizen of a modern Islamic country and or a country led by Muslim majority. Therefore, the classic point of view on Islamic Law that is discriminative towards non-Muslim, Thaha asserted, needs to be immediately reformed²⁴.

Thaha said, the *Madaniyyah* verses that are full of discriminative aura, is not based on *Makiyyah's* verses that emphasize on the inherent dignity regardless gender, belief, race, etc. In line to eliminate discrimination towards non-Muslim, *Madaniyyah's* verses in the classical era used for theological argument to discriminate non-Muslim, must be immediately revoked. It is replaced by *Makiyyah's* verses to be re-used as the basis of modern Islamic Law²⁵.

Like Thaha, al-Na'im said the opinions of earlier Muslims who rejected non-Muslim president could be justified. The argument was; since the establishment period of Islamic law (and at least for the next one thousand

²⁴ Mahmoud Mohammad Thaha (1987), *The Second Message of Islam*, Syracuse: Syracuse University Press, pp. 10-15.

²⁵ *Ibid.*

years) there have not been universal human rights in the world. Since the 7th century up to the 20th century, al-Na'im said, it is a normal thing in the world to determine someone's status and rights based on the religion. In other words, discrimination based on religion was a norm at that time²⁶.

Hence, the view on classic Islamic Law (*fiqh*) that rejected non-Muslim president, can be justified by the historical context. Nevertheless, it does not mean that such an opinion is justifiable now. Since the opinion to reject non-Muslim president was justifiable in the past, the justification is now complete due to historical context that is applicable now is totally different from the one in the past²⁷.

When the concept of universal human rights was recognized, al-Na'im said, discrimination on religion violates the upholding of human rights. The absolutist in the contemporary era, namely al-Maududi, Javid Iqbal and Hasan Turabi, who are still against non-Muslim president, as they considered the law that forbades Muslims to choose non-Muslim president was permanent. If the opinion that rejects non-Muslim president is still maintained now, it will be contra productive. This may ruin the image of Muslims and Islam and trigger conflicts and wars, both local and globally²⁸.

The idea of classic Islamic politic that rejects non-Muslim president, al-Na'im said, even though it is clarified from revelation sources of Islamic fundamental, al-Qur'an and al-Sunnah, it is actually not a revelation, but it is not more to man's interpretation of the sources. The interpretation products, irrefutably, were born in a historical context that are basically different from the one now. Currently, according to al-Na'im, discrimination based on religion is happening commonly as during the classic era, is rejected morally and not accepted from the political aspect.

In current era, according to al-Na'im, the verses that reject Muslims to choose non-Muslim president are no longer relevant. The present Qur'anic verses, that teach universal equality of all mankind, regardless the religion is the substitution. One of the verses is Sūrah al-Ḥujurāt verse 13, that says:

يَتَأَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا
 إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ ۗ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ ﴿١٣﴾

²⁶ Abdullah Ahmad al-Na'im (1990), *Towards an Islamic Reformation: Civil Liberties Human Rights and International Law*, Syracuse: Syracuse University Press, p. 157.

²⁷ *Ibid.*

²⁸ *Ibid.*, p. 220.

“O you men! surely We have created you of a male and a female, and made you tribes and families that you may know each other; surely the most honorable of you with Allah is the one among you most careful (of his duty); surely Allah is Knowing, Aware”.

(al-Ḥujurāt, 49 : 13)

The message stated on Sūrah al-Ḥujurāt verse 13 is very humane and positive. Unfortunately, when the verse was conveyed to the Arabs in Mecca and their allies, they did not want to accept it. On the contrary, they tortured the Prophet and his followers and conspired to kill him. It forced the Prophet and his followers to move to Medina in 622 AD. This has shown the egalitarian message as stated in the verse that was not or had not been suitably applied before, so it had to be postponed until the right time when the message can be applied. In the 20th century and henceforth, according to Thaha is the right time to reapply the postponed verses, as in these centuries, the people no longer have any objections to accept and implement the egalitarian message as taught by Allah on Sūrah al-Ḥujurāt verse 13.

Besides recommending Muslims to leave *Madaniyyah* verses that contain discriminative messages towards non-Muslims, al-Na'im also suggested Muslims now to hold on reciprocal principle, namely a principle of reciprocity which mutually appreciates other people's faith systems. By strongly holding on to this principle, a person will be able to treat another person of different religion in the same way as other people treat him.²⁹ Based on this principle, if Muslim minority in a non-Muslim majority country wants to have the rights to be the president, the non-Muslim in Muslim majority country will also have the same rights to be the president.

The same opinion as mentioned above, in choosing a head of state, Asghar suggested that the focus should not be on religion, but on governing skills and his ability to uphold justice and fight against despotism.

Quoting 'Abd al-Raḥman al-Kawakibi (1854 -1902 M), a reformer from Syria, Asghar said since the oppression and despotism are odd things for Islam, a just non-Muslim ruler is preferred to tyrannical Muslim leader. Due to such reasons, the Prophet was proud to be born during Nushirwan period, a just non-Muslim king³⁰.

²⁹ *Ibid.*, p. 268.

³⁰ *Ibid.*, p. 162.

Al-Kawakibi, to support the above mentioned statement that a just non-Muslim ruler is better than a Muslim tyrannical ruler, quoted an event as told in Ibn al-Taqtaqi's book, *al-Fakhrī fī al-Adāb al-Sulṭāniyyah*:

ولما فتح السلطان هولاكو بغداد في سنة ست وخمسين وستمائة أمر أن يستفتى العلماء أيما أفضل: السلطان الكافر العادل أم السلطان المسلم الجائر؟ ثم جمع العلماء بالمستنصرية لذلك، فلما وقفوا على الفتيا أحجموا عن الجواب، وكان رضي الدين علي بن طاووس حاضراً هذا المجلس، وكان مقدماً محترماً، فلما رأى إحجامهم تناول الفتيا ووضع خطه فيها بتفضيل العادل الكافر على المسلم الجائر، فوضع الناس خطوطهم بعده.

*“When in 656 H (1258 AD) Hulagu, a non-Muslim Mongolian conqueror succeeded in conquering Baghdad, he asked the Mustansaria’s scholars (ulemas): “Who is better, a just non-Muslim ruler or a tyrannical Muslim ruler?” None of them gave satisfying answers. Then Radi al-Din bin Tawus, when it came his turn to answer, raised a piece of paper (in which the question was written) with the answer on it. He wrote that a just non-Muslim leader is preferred to a tyrannical Muslim leader. Then, all of the ulemas (scholars) also put their signatures on that paper as a sign of their agreement on Radi’s answer”.*³¹

The same opinion as quoted earlier, where Muhammad Sa'id al-Asmawi also allowed a non-Muslim to become the president in a Muslim majority country. The argument is due to the al Qur'an verses that forbid Muslims to choose non-Muslim president are temporary. Those verses, according to al-Asmawi, only prevailed during the Prophet era in Medina, where non-Muslims were waging war with non-Muslim. Nowadays, such situation does not exist anymore, hence the prohibition for Muslims to choose non-Muslim president is no longer applicable³².

The militants' opinions that reject non-Muslim president according to al-Asmawi, emerged as they misinterpreted the verses that forbid Muslims to choose non-Muslim president as permanent and based on historical verses. Now, the opinions that reject non-Muslim president according to al-Asmawi, is an anti-democratic opinion and in not line with the modern era³³.

³¹ Ibn Taqtaqī (1967), *al-Fakhrī fī al-Adāb al-Sulṭāniyyah*, vol. 1, p. 1.

³² Muhammad Sa'id al-Asmawi (2002), *Jihad Melawan Islam Ekstrim*, translated by Haryanto Azumi from *Againts Islamic Extremism*, Depok: Desantara, p. 181.

³³ *Ibid.*, p. 13.

RELEVANT OPINION TO BE APPLIED IN THE CONTEMPORARY ERA

The opinion from the first group, that rejects non-Muslim President, is centered and came from the revelation and sacred understanding of the historical process. They regard that the command and prohibition set by Allah in the Holy Book as eternally prevail, overcome the history and free from man's involvement in their creation. They regard this as God's scenario since the eternal time. The followers of this opinion do not really care about the existing reality, and forget about the far distance between themselves and what they have read, and the time when the Holy Book they read and God has revealed, and with the development of ideas which emerge afterward.

Further to this, the followers of this group do not care of their thoughts to have metamorphosed to become the unlimited God. They claim that it is their opinion that the God wants hence, they take over of God's authority, according to Khālīd Abū al-Faḍl, is a despotism act as well as the form of a real corruption in Islamic Law that logically cannot be justified³⁴.

While the people in the second group who support non-Muslim president on the contrary, tries to unveil the sanctity of the view from the first group³⁵. Allah's commands and prohibitions in the Holy Book is not regarded to eternally prevail, it can be contextualized along with historical dynamism, is not sterile from man's construct intervention, and is not God's scenario since eternal time.

The weakness of the first group, that is unable to solve the complexities in emerging and developing the life of Muslims. While the second group has liberal-contextual character, on the contrary, is able to provide an effective solution towards emerging and developing the life of Muslims. The challenge to the second group is having to face the strong rejection from Muslim intellectuals who have Islamic Law background as they will consider the second interpretation product deviates from Islamic tradition.

Apart from the difference of opinions above, the most relevant and the best opinion to be applied in the Muslim state or in the Islamic state now is the opinion of majority of authoritative ulemas (scholars) who insists on

³⁴ Khalid M. Abū al-Faḍl (2003), *Speaking in God's Name: Islamic Law, Authority, and Woman*, Oxford: OneWorld Publications, pp.140-146.

³⁵ Machosin (2003), "Metodologi Pemikiran Islam Kontemporer Sebuah Auto Kritik", in Ulil Absar Abdalla, *et. al.*, *Islam Liberal dan Fundamental sebuah Pertarungan Wacana*, Yogyakarta: Elsaq Press, pp. 12-19.

their opinion. They believe that in a normal condition, Muslims in a Muslim state are prohibited to choose non-Muslim president. It is a rational opinion in Islamic state because the real purpose of the president is to enforce the directives of God conveyed through the Qur'an and Sunnah. This is to bring about a society can accept and adopt these directives in life³⁶. Hence, the leader of an Islamic state should be a Muslim³⁷.

CONCLUSION

Based on the discussion, we conclude that the answer to the main and basic question in the first part of this article as follows:

Referring to stipulations on al-Qur'an and al-Sunnah that discuss about non-Muslim leadership, the majority of authoritative ulemas (scholars) still hold on to their opinion, that in a normal condition Muslims in a Muslim state are prohibited to choose non-Muslim president. However, under certain emergency circumstances, for example when Muslims are under political pressure, they are allowed to choose non-Muslim president. Nevertheless, there are a few liberal Muslim intellectuals who do not have sound Shariah study background have different opinion. They believe that Muslims in a Muslim country are allowed to choose a non-Muslim president because the stipulations in al-Qur'an and al-Sunnah which forbid Muslims to choose non-Muslim president is no longer applicable³⁸.

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³⁶ Sayyid Abū A'lā Maudūdī (1955), *The Islamic Law and Constitution*, Lahore: Islamic Publication Ltd., p. 214.

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³⁸ Interview with Prof. Dr. H. Muhammad Amin Suma, Jakarta, June 7th 2005.

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