

THE ROLE OF THE JUDICIARY IN THE ADMINISTRATION OF THE ISLAMIC LAW

SEMINAR ANTARABANGSA
MENGENAI SIYASAH SYAR'IYYAH

Tarikh: 2 - 4 Muharram 1406
17 - 19 September 1985

Hari: Selasa, Rabu dan Khamis

Tempat: Pusat Islam Malaysia
Jalan Perdana, Kuala Lumpur.

THE ROLE OF THE JUDICIARY
IN THE ADMINISTRATION
OF THE ISLAMIC LAW

By:

Y.Bhg. Dato' Prof. Ahmad Ibrahim,
Universiti Islam Antarabangsa,
Malaysia.

THE ROLE OF THE JUDICIARY IN THE ADMINISTRATION
OF THE ISLAMIC LAW

In a celebrated hadith the Prophet (s.a.w) laid down the principles for the development of the Islamic Law. We are told that when the Prophet (s.a.w) intended to send Mu'adh b. Jabal to the Yemen he asked "How will you judge when the occasion of deciding a case arises?" He replied "I shall judge in accordance with Allah's book". He asked "What will you do if you do not find guidance Allah's book". He replied "I will act in accordance with the Sunnah of the Prophet (s.a.w.)". He asked "what will you do if you do not find guidance in the Sunnah of the Prophet (s.a.w) and in Allah's book? He replied "I shall do my best to form an opinion and spare no pains". The Prophet (s.a.w) then patted him on the breast and said: "Praised to be Allah Who helped the messenger of the Messenger of Allah to find a thing which pleases the Messenger of Allah". (1)

The Holy Quran is undoubtedly the basic and unchangeable source of Islamic Law. We find that in legal matters the texts of the Holy Quran were generally meant to deal with actual events. The Holy Quran itself states to the effect - "O you who believe! Ask not questions about things which if made plain to you could cause you trouble but if you ask about things when the Quran is being revealed, they will be made plain to you" (2) (Surah alMaida (5): 104)

The Prophet (s.a.w) also said - "Allah has enjoined certain enjoinders, so do not abandon them. He has imposed certain limits, so do not transgress them. He has prohibited certain things, so do not fall into them. He has remained silent about many things out of mercy and deliberateness, as He never forgets, so do not ask about them". (3)

Leave me as long as I leave you. Too much questioning brought only disaster upon people before you. Only if I forbid your doing anything, then do not do it, and if I order you to do something, then try to do whatever you can of it". (4)

The companions of the Prophet (s.a.w) were also filled with this spirit of realism and refrained from speculating on hypothetical questions. We are told that Ubbay Ibn Ka'b when once asked for his opinion on an issue asked "Has it happened?". As the answer was "no" he said "Then leave us at ease until it happens. When it does happen, we shall pass judgment accordingly". (5)

We read in the hadith of a number of decisions of the Holy Prophet (s.a.w) -

(a) Khansa binte Khidam Al-Ansariya reported that her father gave in marriage when she was a thayyib and she disliked the marriage. So she went to Allah's Messenger (s.a.w) and he declared the marriage invalid. (6)

(b) Ayesha reported: Sa' b. Abu Waqqas and Abd' b. Zaman disputed with each other over a young boy. Sa'd said "O Messenger of Allah, he is the son of my brother Utba b. Abu Waqqas, as he made it explicit that he was his son. Look at this resemblance". Abd' b. Zaman said "O Messenger of Allah, he is my brother as he was born on the bed of my father from his slave girl". Allah's Messenger (s.a.w) looked at this resemblance and found a clear resemblance with Utba. But he said "He is yours O Abd' (b. Zaman) for the child is to be attributed to one on whose bed it is born and stoning is for the fornicator". (7)

(c) Ayesha reported: There came the wife of Rifa'aal Qurazi to the Messenger of Allah and said "I was married to Rifa'a but he divorced me, making my divorce irrevocable. Afterwards I married 'Abd Al-Rahman b. AlZubair, but all he possesses is like the

fringe of a garment". Thereupon Allah's Messenger smiled and said "Do you wish to return to Rifa'a. You cannot do it until you have tasted his sweetness and he 'Abd Al-Rahman has tasted your sweetness". (8)

(d) Ibn Abbas narrated: The wife of Thabit bin Qais came to the Messenger of Allah and said "O Messenger of Allah! I do not blame Thabit for any defects in his character or his religion but I dislike to behave in an unIslamic manner (in another narration, but cannot endure to live with)". On the Allah's Messenger said to her "Will you give back the garden which your husband has given you?" She said "Yes". Then the Prophet said to Thabit "O Thabit! Accept the garden and divorce her". (9)

(e) Narrated Ibn Abbas: Barira's husband was a slave called Mughith. I imagine I can see him now, going behind Barira, and weeping with his tears flowing down his beard. The prophet said to Ibn Abbas "O Abbas! are you not astonished at the love of Mughith?" The Prophet then said to Barira "Why don't you return to him?" She said "O Messenger of Allah! Do you order me to do so?" He said "No, I only intercede for him". She said, "I am not in need of him". (10)

(f) Jaber reported that the wife of Sa'ad b. Rahiy came with her two daughters by Sa'ad to the Messenger of Allah. He said "O Messenger of Allah, they are the two daughters of Sa'ad b. Rabi. Their father was martyred on the day of Uhud, and their uncle has taken their property. He has not left any property for them and they cannot be married unless they have got property". He said, "Allah will decide about that". Then the verse of inheritance was revealed. So the Prophet sent for their uncle and said, "Give the two daughters of sa'ad two thirds and give their mother one-eighth and what remains is for your." (11)

(g) Sa'ad bin. Abu Waqqas narrated: "The Prophet came visiting

me while I was sick in Mecca". I said "O Allah's Messenger. May I will all my property in charity?". He said, "No". I said "Then may I will half of it?" He said "No". I said, "One-third?" He said, "Yes, one-third, though one-third is too much. It is better for you to leave your inheritors wealthy than to leave them poor begging from others". At the time Sa'd had only one daughter. (12)

(h) 'Amr b. Shu'aid said that his grandfather reported - "A woman said: Messenger of Allah, my womb was a vessel to this son of mine, my breasts a waterskin for him and my lap a guard for him, yet this father has divorced me and wants to take him away from me. The Messenger of Allah (s.a.w) said "You have more right to him so long as you do not marry". (13)

(i) Abu Hurairah reported that a woman came to the Prophet (s.a.w) and said "My husband intends to go away with my son while he gave me water to drink and gave me benefit. The Prophet (s.a.w) said "This is your father and this your mother. Take the hand of any of them whom you like. He took the hand of his mother and so she went away with him". (14)

(j) Yazid b. Nu'aim b. Huzzal on his father's authority said "Ma'iz b. Malik was an orphan under the protection of my father. He had sexual intercourse with a slave girl belonging to a clan. My father said to him "Go to the Messenger of Allah (s.a.w) and inform him what you have done for he may perhaps ask Allah for forgiveness for you". His purpose in that was simply a hope that it might be a way of escape for him. So he went to him and said Messenger of Allah! I have committed fornication, so inflict on me the punishment ordained by Allah. He (the Prophet turned away from him, so he came back and said Messenger of Allah! I have committed fornication, so inflict on me the punishment ordained by Allah. He again turned away from him so he came back and said Messenger of Allah! I committed fornication, so inflict on me the punishment ordained by Allah. When he uttered it four times, the Messenger of Allah (s.a.w) said You have said it four times.

With whom did you commit it? He replied with so and so. He asked "Did you lie with her? He replied "Yes". He asked "Had you skin been in contact with hers?" He replied "Yes". He asked "Did you have intercourse with her?" He said "Yes". So he (the Prophet) gave orders that he should be stone to death. He was then taken out to the Harrah and while he was being stoned he felt the effect of the stones and he could not bear it and fled. But "Abd Allah b. Una is encountered him when those who had been stoning him could not catch upon him threw the bone of a camel's foreleg at him, which hit him and killed him. They went to the Prophet (s.a.w) and reported it to him. He said "why did you not leave him. Perhaps he might have repented and been forgiven by Allah".(15)

The companions of the Prophet after him also solved actual cases referred to them. Thus we read that Qabisah b. Dhuwaib reported that the maternal grandmother of deceased person approached Abu Bakar Siddiq for her share of inheritance. Abu Bakar said to her: The Book of Allah allows you no share nor have I heard of any hadith of the Prophet (s.a.w) in this respect. Go back I shall enquire further from the people. He then asked people. Mughirah b. Shu'ubah said "I was present when the Prophet (s.a.w) granted to the grandmother a sixth share". Abu Bakar asked whether there was anyone else who had knowledge of it. Muhammad b. Maslamah Ansari stood up and said the same thing. Then Abu Bakar Siddique gave the woman a sixth share. During Umar b. Al-Khattab's time a paternal grandmother claimed her share of inheritance. He said to her "You have nothing in the Book of Allah and what has been decided earlier is only for other than you. I will not add to the fixed shares, other than that sixth. If there are two of you together it is between you. If either of you is left alone, it is hers".(16)

A similar report is to the effect that Qassim b. Muhammad reported that paternal grandmother and a maternal grandmother

both approached Abu Bakar Siddiq. Abu Bakar wanted to give a one-sixth share to the maternal grandmother when a man of the Ansari spoke out "You do not grant a share to her who, if she had died and the deceased had been alive, the deceased would have obtained his share". On this Abu Bakar divided the one-sixth share between them. (17)

In the time of Umar Al-Khattab, there was a case where a deceased woman was survived by her husband, her mother, two germane brothers and two uterine brothers. At the first hearing of the case, Umar allotted the prescribed Quranic portions of one-half to the husband, one-sixth to the mother and one-third to the uterine brothers, with the result that the germane brothers as residuary heirs, were excluded from succession. The germane brothers appealed and argued that as germane relatives, they had the same mother as the deceased, and thus possessed the very same quality of relationship which was the exclusive basis of the uterine brother's right of inheritance. "O Commander of the faithful" they said "suppose our father were a donkey (himar). Do we have not the same mother as the deceased?" Accepting the validity of this argument, Umar conceded the necessity for an equitable modification of the golden rule of distribution in these circumstances and allowed the germane brothers to inherit as uterines. (18)

Yahya bin Abd Rahman bin Tatib said that the slaves of Hatib bin Abu Balta'ah stole a camel of a person from the tribe of Mazinah and they slaughtered the camel and later they confessed their act. The case was brought up to the Caliph Umar. Umar was told that they were slaves and they had confessed. Umar therefore directed Kathir bin al-Salt to cut off their hands but he changed his decision and called Hatib and said "If I did not suspect that you had left them hungry to the extent that one of them had committed what had been forbidden by Allah, I would have cut off their hands, but by Allah, if you leave them I would fine you on

Emirates for example are not as readily available in Malaysia as those of England. Umar turned to the owner of the camel asking him about the price of the camel, he replied "If somebody offer me for four hundred I would not give" Umar The judges held a high and respected place in Islam and were independent of the executive and of the legislature. Unfortunately in later times they have lost their high position and independence. In Malaysia especially the effect of the Colonial rule and the imposition of the English Common Law and the English judicial system have lowered the position of the judges of the Shariah. Although some of them are highly qualified they appear to have lost their self-confidence and self-respect as the protectors of the rule of law in Islam. They have for long been kept in a subordinate position and have been under the control of the executive. Even now they are in many ways subservient to the civil courts and their judgments can be ignored and set aside. In some states for example it is provided in the Administration of Muslim Law Enactment that -

"Nothing in this Enactment contained shall affect the jurisdiction of any Civil Court and in the event of any difference of conflict between the decision of court of a Kathi Besar or a Kathi and the decision of a Civil Court acting within its jurisdiction, the decision of the Civil Court shall prevail."
(20)

In order to restore the position of the Shariah as the law of the land and to raise and maintain the position of the Shariah judges as the protectors of the rule of the Shariah, we need to improve the status and position of the Shariah judges and restore their confidence and self-respect. Perhaps in this regard we can learn from the example of other Muslim countries where the administration of the Fiqh is better established and organised. Unfortunately we know very little of the way in which the Islamic law is administered in the Arab countries. The reports of cases decided in the courts of Egypt, Saudi Arabia and the United Arab

Universiti Malaya

Emirates for example are not as readily available in Malaysia as those of England, the United States, Australia or New Zealand. There is a need for a system of reports of such cases, so that judges, lawyers and scholars in all Muslim countries can be aware of how the Fiqh is being developed to meet the needs of our modern society. If as suggested in the Conferences on Islamic Education it is recommended that "the study of Fiqh should be linked with and bear on our contemporary life, as it is particular emphasis on Islamic solutions as they must be applied in a integrated form in the Muslim Society"(21) then surely we must need to learn from the experience in each of our countries. It is said that in Malaysia we are able to know the latest developments of the law in England but have no means of knowing how the fiqh is being developed in the Islamic countries.

A partial exception to this for Malaysia may be found in the experiences in Pakistan and Indonesia, in that some reports of the decisions of the courts in those countries are available here. However these decisions have so far been ignored by our Shariah judges. A survey of the recent decisions of the Shariah Court in Malaysia would for example show that the only case referred to is the decision of the court in Jirja, Egypt on the 3rd July 1933 and even then because the case is referred to in Sayid Sabiq's book on Fiqh Sunnah.

In Pakistan the Constitution provides that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah and the Government has declared that all laws in the country that are repugnant to the Holy Quran and Sunnah shall be struck down as null and void by the Superior Courts. In order to implement this declaration, Shariah Benches were set up in 1979 in the High Courts and an appellate Shariah Bench in the Supreme Court at Rawalpindi. These Shariah Benches were empowered to strike down the existing and future laws, with certain exceptions. Later in 1980 the Shariah Benches were replaced by a Federal Shariah Court at

(5) To discover and apply as a last resort any other option Islamabad and this court consist of five judges and three traditional ulema versed in the Islamic law. This Federal Shariah Court has been authorised to take up on its motion the examination of any law over which it has jurisdiction and recommend amendments in the light of the Holy Quran and the Sunnah. Appeals from the Federal Shariah Court may in certain cases be brought to the Supreme court and for the purpose of hearing such appeals there is constituted a Shariah appellate Bench consisting of three Muslims judges of the Supreme Court and not more than two Ulema to be appointed by the President.

In the case of Muhammad Riaz v Federal Government the Federal Shariah Court laid down the principles which can guide it in its task.

Aftab Hussain J said -

"In my view the methodology to remove from our laws any incongruity with the Holy Quran and Sunnah should be as follows -

- (1) To find in the first instance the relevant verse or verses in the Holy Quran regarding the question in issue;
- (2) To find out the relevant Hadith or Tradition of the Holy Prophet (s.a.w.)
- (3) To discover the intent of the Quranic verse from the Traditions of the Holy Prophet (s.a.w.)
- (4) To ascertain the opinions of and views adopted by all jurists of renown on that matter and to examine their reasoning in order to determine their harmony with the present day requirements or if possible to modulate them to the demands of the modern age;

(5) To discover and apply as a last resort any other option which would not doubt be in harmony with the Holy Quran and Sunnah".

In that case the Federal Shariah Court held that certain provisions in the Penal Code including sections 302, 304, 326 and 329 are repugnant to the injunctions of the as they do not provide for qisas or payment of compensation. In coming to this decision the court referred to the Holy Quran, the Hadith and the views of Muslim jurists. Even before the setting up of the Shariah Benches and the Federal Shariat Court, the judges in Pakistan, all of whom had studied the Muslim law, actively participated in the application of the Muslim law. During the British rule in India, the privy Council and the courts in India had taken a negative attitude. In the case of Agha Mahmood Jaffar Bindanin v Koolsom Bee Bee (24) the Privy Council state "It would be wrong for the courts to put their own construction on the Quran in opposition to the express ruling of commentators of great antiquity". This view was challenged in the Pakistan Courts after independence.

In Khurshid Jan v Fazal Dad (25) the Full Bench of the High Court at Lahore held that the dictum of the Privy Council, already referred to, is no longer valid "for if a rule in a textbook of whatever antiquity and high authority is in opposition to a clear injunction in the Quran or an authentic hadith of the Holy Prophet (s.a.w) then undoubtedly the latter shall prevail and it is the bounden duty of the Courts to ascertain the correct rule of law. Anwarul Haq J. said "With grave humility I venture to submit that it would not be correct to lay it down as a positive rule of law that the present day courts have no power or authority to interpret the Quran in a way different from that adopted by the earlier jurists and imams. The adoption of such a view is likely to endanger the dynamic and universal character of the religion and laws of Islam. At the same time it is clear that the views

(c) Balqis Fatima (28) where of the earlier Imams and jurists are entitled to the highest respect and no court or commentator would differ from them except for very compelling and sound reasons. I would also like to make it clear that this difference of interpretation does not and cannot mean a departure from a clear injunction of law as contained in the Quran or Sunnah or even ijma on any grounds of equity, good conscience or public policy -

The Courts must be given the right to interpret the Quran and Sunnah. They may also differ from the view of the earlier jurisconsults of Muslim law on grounds of istihsan (ie equity) or istislah (ie public good) in matters not covered by a Quranic or traditional text or ijma or a binding qiyas. At the same time it must be reiterated that the views of the earlier jurists and Imams are entitled to the utmost respect and cannot be lightly disturbed but the right to differ from them must not be denied to the present day courts functioning in Pakistan as such as denial will not only be a negation of the true spirit of Islam but also of the constitutional and legal obligation resting on all courts to interpret the law they are called upon to administer and apply in cases coming before them".

The courts in Pakistan have therefore reexamined and given their views on a number of important issues brought before the courts. As examples we may refer to -

- (a) Muhammad Baksh v Crown⁽²⁶⁾ where it was held that a court's order is not essential to confer validity on the exercise of the option of puberty.
- (b) Musammad Munni v Habib Khan⁽²⁷⁾ where it was held that repudiation of marriage by the exercise of the option of puberty puts an end to the marriage without the aid of any court.

- (c) Balgis Fatima v Najm-ul-Ikram Qureshi(28) where it was held that Khula depends on the order of the judge and not on the will of the husband and the wife can claim such termination of the marriage even if the husband is agreeable.
- (d) Rashida Begum v Shabab Din(29) where it was held that a mother does not necessarily lose her right to custody of her children on her remarriage to a person not related to the children within the prohibited degrees of marriage.
- (e) Khurshid Bibi v Muhammad Amin(30) where the Supreme Court endorsed the view in Balgis Fatima v Najmul Ikram Qureshi that under Muslim Law, the wife is entitled to khula as of right, if she satisfies the conscience of the court that it will otherwise mean forcing her to a hateful union.
- (f) Abdul Rahim v Shahida Khan(31) where the Supreme Court again confirmed that in a case where the wife had developed an aversion towards the husband, whether it is justified or not and the wife cannot love a life of sukoon and harmony in conformity with their obligations, she is entitled to apply to court for khula.
- (g) Abdul Ghani v Taleh Bibi(32) where it was held that the rule of Muslim law as to legitimacy of a child applied and section 112 of the Evidence Act is not applicable.
- (h) Hamida Begum v Murad Begum(33) which approved the decision in Abdul Ghani v Taleh Bibi and held that the Muslim Law applied in cases of legitimacy where the parties are Muslims.

In Indonesia unlike Pakistan there are Islamic courts to deal with cases involving Muslims. There are Islamic courts of First Instance and also Islamic Courts of Appeal. The Supreme Court exercises the powers of a court of cassation or review on

questions of law from the Islamic Courts of Appeal and it also exercise supervision to ensure that like all the branches of the judiciary the Islamic Courts carry out the administration of justice justly and rightly. The supreme Court has a Deputy Chief Justice, who exercises supervision over the Islamic Courts. The jurisdiction of the Islamic Court is mainly confined to matrimonial cases and in particular the hearing of cases under the new Act on Marriage of 1974. In parts of Indonesia, other than the islands of Java and Madura, the Islamic courts have also jurisdiction in cases of inheritance. Islamic Law is a compulsory subject in the law schools in Indonesia and therefore all the lawyers and judges have learnt the Islamic Law. In recent times some of the decisions of the Islamic Courts and of the Supreme Court on Islamic Law have been reported in official publications. Among the decisions reported are the following:-

(1) Selam v Merti (1979) (34)

In this case it was held that a wife who was divorced when she was pregnant is entitled to her maintenance for the period of iddah, the maintenance of the child and the expenses of child birth. The Court of First Instance gave judgment for the plaintiff relying on Surah At-Talaq (65):6 and the Kitab al-Muhawanah. The appeal to the Appeal Court was dismissed, the court relying on the Bughyatul Mustarshiddin. On reference to the Supreme Court, the Supreme Court confirmed the order of the Court of First Instance and the Appeal Court.

(2) Juariah v Yunus (1979) (35)

In this case the plaintiff claimed that she had been forced into a marriage with the defendant and that since the marriage they have not been happy together and have been constantly quarelling. She claimed that they could not live together as husband and wife. The Court of First Instance gave judgement for the plaintiff and decreed one talak. The court relied on the hadith from Ibn Abbas reported in Subulus Salam and a religious book "Nash and Hujjah Syari'iyah". On appeal, the Court of

Appeal allowed the appeal, holding that the court should have applied the process of hakam in the case of Shiqaq as laid down in the Holy Quran, Surah An-Nisaa (4) ayat 35. On reference to the Supreme Court it was held that the process for Shiqaq need not necessarily be followed. In this case the evidence was clear and the plaintiff was entitled to a decree of divorce as decided by the Court of First Instance.

(3) Nariman Zed v Abdullah (1980)(36)

In this case the wife claimed that her marriage which had lasted for about 6 years was an unhappy one and she was constantly suffering as she did not love her husband and the marriage was forced on by her parent. She had separated from the husband for a year. The husband said he did not agree to divorce the wife. He had asked the wife to return to him but she had refused. Attempts had been made to conciliate and resolve the differences between the parties but these had failed. The wife applied for divorce. The case was treated as one of shiqaq and hakam were appointed. The Court referred to the Holy Quran Surah An-Nisaa (4) Ayat 35 and the Kitab Khulashatuttiryak and the Kitab Hashiyah Tuhfah. The hakam agreed that the wife should be divorced by one talak. The Court of First Instance confirmed the divorce. On appeal to the court of Appeal, it was alleged that the hakam for the husband had not carried out his duties properly and had not seen or consulted the husband. The Court of Appeal held the decision based on the agreement of the hakam should therefore be annulled. However the Court of appeal considered the facts and held that the marriage between the parties had broken down and it would cause hardship to the parties if the marriage remained in force. The court therefore ordered that the wife be divorced by one talak, following the procedure of Khulo'. The Court relied on the Kitab al-Muhazzah and the Kitab Gohayatul Murom. On a reference to the Supreme Court, the Supreme Court held that the Court of appeal was in error in stating the wife was entitled any compensation. The Supreme Court held that the decision of the Court of First Instance should be restored.

(4) Tien Supartriah v Kuswiradyo and Rustine (1980) (37)

In this case the plaintiff the wife of the first defendant brought an action to declare the marriage of the first defendant with the second defendant to be void. The plaintiff said she was living in peace and harmony with the first defendant but the first defendant married the second defendant without complying with the requirements of the Marriage Law of 1974. The Court of First Instance held the marriage to be void relying on the provisions of the Marriage Law of 1974 and the Kitab Bughatul Murtashidin . The appeal to the Court of Appeal was dismissed and on reference to the Supreme Court, the Supreme Court confirmed the decision.

The decision in Indonesia are not as long and detailed as those in Pakistan but they refer to the relevant provisions of the Holy Quran, the Hadith and the text books.

In Malaysia too the decisions of the Kathi's Courts have recently been reported in the Jernel Hukum. These report the dicisions of the Kathis and also of the Appeal Boards. There is no appeal or reference to the Supreme Court in Malaysia.

In order to ensure that the judges in the Shariah Courts are able to deal with the cases that come before them justly and competently it is necessary to ensure that they are qualified and trained. In Malaysia an effort has been made to improve the competence and the professional status of the Kathis and to make them more confident and not suffer from an inferiority complex. A course has been started in the International Islamic University for this purpose. Malaysia in this respect needs to learn from the experience of other countries and can learn, for example, from similar professional training institutes as exist in Pakistan or the Institute of Judicial Administration in Cairo, Egypt.

If the Islamic Law is to be administered and developed by the judges we need qualified and competent judges to man the courts. Even in Pakistan the criticism has been made that some of the judges do not understand Arabic.⁽³⁸⁾ We look forward to a time when the judges who are appointed in the Shariah Courts will be fully competent in the Islamic law and be able to refer to the original sources of the law in Arabic. We need also to have more exchange of decision between the various Islamic countries so that we can learn from each other and work together for the re-establishment of the supremacy of the Shariah and the Islamic Law.

5. Ibid p. 64
It is reported from Amr b. Al-As that the Prophet (s.a.w) said "When a judge gives a decision having tried his best to decide correctly and he is right, he will have a double reward; and when he gives a decision having tried his best to decide correctly and is wrong, he will have a single reward".⁽³⁹⁾

8. Sahih Muslim Kitab An-Nikah (8) Hadith 3345 Vol 2 p. 729
9. Sahih al-Bukhari Kitab At-Talaq (63) Hadith 177 Vol 7 p. 150
10. Sahih Al-Bukhari Kitab At-Talaq (63) Hadith 154 Vol 7 p. 254.
11. Mishkat-ul-Masabih Vol 2 p 334 Hadith 54
12. Sahih Al-Bukhari Kitab-Al-Wasaya (51) Hadith 5 Vol 5 p. 3
13. Sunan Abu Dawud Kitab Al-Talaq Hadith 2269 Vol II p. 616
14. Sunan Abu Dawud Kitab Al-Talaq Hadith 2270 Vol II p. 617
15. Sunan Abu Dawud Kitab Al-Hadod Hadith 4405 Vol III p. 1232
16. Malik Muwatta Kitab Al-Faraid 27.8 Translated by A/Sheikh Abdurrahman Al-Tarjumanah and Yaqub Johnson, London p. 239
17. Ibid p. 239

FOOTNOTES

1. Sunan Abu Dawud Kitab al-Aqdiyah Hadith 1348; Translated by Ahmad Hasan, Lahore, Pakistan, Vol III p. 1010
2. Purport of Holy Quran, Surah Al-Maida (5): 104.
3. Ibn Al-Qayyim I'lam al-Muwaqqi' in I pp 71-72
4. Ibid p. 70
5. Ibid p. 64
6. Sahih al-Bukhari Kitab An-Nikah (52) Hadith 69. Vol 7 p. 52
7. Sahih Muslim Kitab An-Nikah (8) Hadith 3435 Vol 2 p. 744
8. Sahih Muslim Kitab An-Nikah (8) Hadith 3345 Vol 2 p. 729
9. Sahih al-Bukhari Kitab At-Talaq (63) Hadith 177 Vol 7 p. 150
10. Sahih Al-Bukhari Kitab At-Talaq (63) Hadith 154 Vol 7 p. 254
11. Mishkat-ul-Masabih Vol 2 p 334 Hadith 54
12. Sahih Al-Bukhari Kitab-Al-Wasaya (51) Hadith 5 Vol 5 p. 3
13. Sunan Abu Sawed Kitab Al-Talaq Hadith 2269 Vol II p. 616
14. Sunan Abu Dawud Kitab Al-Talaq Hadith 2270 Vol II p. 617
15. Sunan Abu Dawud Kitab Al-Hudud Hadith 4405 Vol III p. 1232
16. Malik Muwatta Kitab Al-Faraid 27.8 Translated by Aishah Abdurrahman Al-Tarjumana and Yaqub Johnson, London p. 238
17. Ibib p. 239

18. Ibm Qudama Al-Mughni VI 180ff; Minhaj-et-Talibin, Book 28,S.6 p. 250-251
19. Al-Baihaqiy Sunan Al-Kubra Vol VIII p. 278
20. Administration of Muslim Law Enactment, Selangor 1952 S. 4
21. Recommendation of the Four World Conference on Islamic Education, Mecca, 1983, p. 18
22. Sayid Sabiq, Fiqh Sunnah Bab Hadhanah Vol. 8 p. 161 quoted in Wan Abdul Aziz v Siti Aishah (1975) 1 Jernel Hukum (1) p. 47
23. PLD 1980 F.S.C.I.
24. ILR 25 Cal 9
25. PLD 1964 Lah 558
26. PLD 1950 Lah 203
27. PLD 1956 Lah 403
28. PLD 1959 Lah 566
29. PLD 1960 Lah 1142
30. PLD 1967 S.C 97
31. PLD 1984 S.C 329; (1985) 1 MLJ cxxvii
32. PLD 1962 Lah 531
33. PLD 1975 S.C 624

SEMINAR ANTARABANGSA

34. Yurisprudensi Badan Peradilan Agama, Djakarta 1981-1982 p. 4-38
35. Ibid p. 95-115
36. Yurisprudensi Badan Peradilan Agama, Djakarta, 1982-1983 p. 141-172
37. Yurisprudensi Badan Peradilan Agama, Djakarta, 1981-1982 p. 181-220; 1982-1983 p. 71-110
38. Tanzil-ur-Rahman A Code of Muslim Personal Law Vol. p. 121.
39. Sunan Abu Dawud, Kitab al-Aqdiyah, Hadith 3567, Vol III p. 1013

SHARIAH IS SUITABLE FOR ALL TIMES AND CLIMES

Oleh:

Prof. Dr. Muhammad Abd. Rauf,
Rektor,
Universiti Islam Antarabangsa.