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## MAPPING CONTEMPORARY ISLAMIC JURISPRUDENCE OF MUHAMMAD SA'ID AL-'ASHMĀWĪ AND MUHAMMAD SHAHRŪR

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### ABSTRACT

Muhammad Sa'id Al-'Ashmāwī and Muhammad Shaḥrūr are well known as contemporary Muslim thinkers. This article tries to map their contemporary ideas on Islamic jurisprudence. The main data of this research taken mainly from the works both of Al-'Ashmāwī and Shaḥrūr. In particular, the paper tries to analyze Al-'Ashmāwī's ideas on sharia, politics, hijab, marriage and divorce. On the other hand, the ideas of Shaḥrūr on al-Qur'an, Sunnah and Fiqh, the theory of borders, pluralism, the commandment, inheritance, hijab, marriage, divorce, dowry, politics, and imamate are also criticized. After analyzing their lives and their ideas on Islamic jurisprudence, the paper found that their social, educational and practical backgrounds have affected their intellectual formations and ideas. Ashmawi is encouraged by diligence and enlightenment and is believed to be enlightened. Shaḥrūr, however, takes a new approach in order to create the *ḥudūd* theory as a new way. As well as their intellectual background, Ashmawi has a good queen in Arabic, English and French as well as religion, Sharia, jurisprudence and theology. Shaḥrūr is a good queen in Arabic, English, Russian, philosophy, philology and historical language.

### Keywords

*Al-'Ashmāwī;  
Shaḥrūr;  
Islamic  
jurisprudence;  
ḥudūd theory*

### INTRODUCTION

Wael B. Hallaq classified contemporary Islamic thinker (*al-mufakkir mu'āṣir*) into two categories: religious utilitarianism and liberalism. Religious utilitarianism is Islamic thinker who encourages the design of the new *uṣūl al-fiqh*, but hasn't offered a new theory except the revitalization of principle classical problems. Therefore, the nuances of literalism paradigm can't be separated from its classical *uṣūl al-fiqh*. The "religious utilitarians" (who included Rashīd Riḍā and Ḥasan al-Turābī), pay attention to the concept

of utility as a mechanism of change. Hallaq dismisses most of their work on the basis that they have been unable to articulate a modern theory of law that is both comprehensive and systematic (Hallaq, 1999: 214-231).

On the other hand, religious liberalism are Islamic thinkers who have agenda for the renewal of *uṣūl al-fiqh* which tend to be liberal in its nature. This group has strong tendency to throw away all of the principle which has been built since the classical time of *uṣūl al-fiqh* formulation (Hallaq, 1999: 214). They prefer to translate the meaning from literal text, not only the literal text, and they prefer to understand the relation between text and context (Hallaq, 1999: 231). Therefore, according to Hallaq, liberalists are better in contributing new theories and methodologies in realizing Islamic law of humanistic, not literalistic (Hallaq, 1999: 31-254). According to Hallaq, those are categorized as a liberalist thinkers are Muḥammad Saʿīd al-ʿAshmāwī, Fazlur Rahman, and Muḥammad Shaḥrūr. They tried to offer a new theory which is completely different with the last theory. In other hand this paper will only talk about contemporary *fiqh* thinker of al-ʿAshmāwī and Shaḥrūr. It will also try to map the structure of Islamic law thinker mapping (Hallaq, 1999: 294).

The reason for describing Shaḥrūr's thought because of his work is a comprehensive attempt to reconcile the religion of Islam with modern philosophy as well as the rational worldview of the natural sciences. According to him, jurisprudence in the name of God is a farce benefiting only those wanting to maintain political power. Shaḥrūr's ability to think mathematically and in terms of the natural sciences proved a great support in his plan to read the holy text in a contemporary context. In addition, he has made use of the latest methods in linguistic research of particular value has been the linguistic discovery that synonymous words do not exist at a certain level of language, and that every expression refers to a very particular field of meaning. Prophecy refers to the divine and therefore an objective and absolutely valid law of nature, while the message contains normative regulations, which thus have only subjective validity and can be freely followed or not.

As for al-ʿAshmāwī, he is a former judge in Egypt who comes to offer a few thoughts reconstruction of *sharīʿah* that the effect is very positive for the development of Islamic legal thought appropriate to the context of today. According to him, there is an understanding of the *sharīʿah* that needs to be clarified. The substance is related to the humanitarian and welfare, and it is more important than instilling symbols on the walls of the *sharīʿah* legal-formal state legislation. So that needs to be used as a reference in its application is the *maqāṣid al- sharīʿah* (the purposes of *sharīʿah*). This research on al-ʿAshmāwī thinking could be a reference to be used as an argument or a slightly different view, so when looking at the context that occurred in Indonesia, al-ʿAshmāwī thinking this could be a discourse of new thinking.

The method used is qualitative descriptive analysis because the main data taken from the works of of al-ʿAshmāwī and Shaḥrūr on contemporary Islamic jurisprudence. The data classified by the theme and then analyzed and mapped it into a table to make clear comparasions between the two.

## RESULTS AND DISCUSSION

### Intellectual Background of al-'Ashmāwī

Al-'Ashmāwī was born in Cairo, 1932. Degree of law is what he obtained from Cairo University in 1954. He was also a student of law in Harvard University of USA. He is a former judge of the High Court of Appeals and the State Security High Court. He only received general higher education, so when he got his Professor title in theology and Sharī'ah Islam, a lot of people criticized him. He calls himself as the bearer of *al-ijtihād*, *al-tanwīr*, and *al-'aqlaniyyah*, in the other hand he calls the opposite as *al-talfīq*, *al-madhhabī*, *al-muzayyif li'l-alfāz* and *al-mubtadi' li'l-manāhij*.

He is a liberal Egyptian intellectual who claims to be a *mustanwir* in the *tanwir* movement. His controversial thought often provoked an orthodox conservative hard reaction, including the rector of al-Azhar University. However, he was fortunate to be criticized, not to be killed like Faraj Faudah in 1992 and forced to divorce his wife and expelled from Egypt like Naṣr Ḥāmid Abū Zayd in 1995 (Yoyo, 2017: 148-155). More than 20 books have been written in Arabic, English and French. The theme he wrote about the relationship between religion and the State, the harmony of the faithful, *sharī'ah* and several other important themes. Some of his books are: *Development of Religion*, *The Roots of Islamic Law*, *Islam and The Political Order*, *Militant Doctrine in Islam*, *Political Islam*, *Islam and Religion*, *Religion for the Future*, *L'Islamisme Contre L'Islam*, *Contre L'Intégrisme Islamisme*.

### Al-'Ashmāwī's Thought on Contemporary Islamic Jurisprudence

There has been a transformation of thought in al-'Ashmāwī. Previously, he was a moderate-conservative Muslim, especially viewing *sharī'ah* in the context of state life. Prior to the 1970s, he argued that *sharī'ah* is a comprehensive system of doctrine and regulates all aspects of life. According to him, al-Qur'an functions as a system of perfect teaching for religious and public life. Worship is not only a ritual, but also the suitability and harmony of life behavior of *ḥabl mina'l-nās* and *ḥabl mina'l-lāh* (al-'Ashmāwī, 1992: 43). According to him, al-Qur'an arranges all aspects of human life about *uṣūl al-'aqīdah*, *arkān al-dīn*, *niṣām al-'ibādah*, *ḥudūd al-sharī'ah*, *al-aḥkām al-mu'āmalah* (al-'Ashmāwī, 1970: 29 and 64).

His thought revolution began in 1979 when he wrote *Uṣūl al-Sharī'ah*, originally written in essay form in *Al-Akhbar Journal* from July 1979 to January 1980. The shifts of his thinking are as an opponent and a barricade to the *sharī'ah* political movement (al-'Ashmāwī, 1987: 7). Since then, through his writings, he has insisted that there is no *qanūn* in Islam, and even accused the group of believers of Muhammad's treatise as a treatise on law, as a group that changed Islam, Jews, and replaced Islamic law with the teachings of *isrā'īliyyāt*. Here are some examples of his thoughts:

### Sharī'ah

Al-'Ashmāwī criticizes the definition of *sharī'ah*. During this *sharī'ah* interpreted as legal and *mu'āmalah* law, and away from worship and morals. Whereas *sharī'ah* is the unity of worship, *mu'āmalah* and *akhlāq* (al-'Ashmāwī, 1996: 7). According to him, *sharī'ah* should be understood with the meaning of etymological/*lughawī* only, to straighten the

understanding of Muslims who are considered less able to distinguish between the sharī'ah of the teachings of God and *fiqh* which is results of *ijtihād* ulama. Sharī'ah on etymological level means *murīd al-mā'*, water source, *ṭarīq* and *sabīl*, road and *al-manhaj*, method (al-'Ashmāwī, 1996: 26).

In terminological definition, sharī'ah interpreted as a set of practical-applicative laws which are explored from the al-Qur'an and *Sunnah*, not the desired al-Qur'an, but the history of the construction over time, there is a diversion of the meaning of the verses of the al-Qur'an (al-'Ashmāwī, 1996: 27). According to al-'Ashmāwī, sharī'ah is a principle of value, the norm that animates the law, and not the raw product that closes itself from the transformation of social reality and the internal dynamics of the people. By understanding sharī'ah etymologically, then sharī'ah relevant and flexible follow the dynamics of society, not stutter with modernity. If sharī'ah is understood epistemologically, then sharī'ah will become narrow, there is reduction of meaning, rigid, stagnant, difficult to invite dialogue with social transformation and internal development of society (al-'Ashmāwī, 1996: 28).

The difference of *fiqh* and sharī'ah is that *fiqh* is done by way of deduction, exploration and interpretation of '*ulamā'*' against al-Qur'an and *Sunnah* throughout Islamic history. While sharī'ah is the method and the way that made by Allah include standard values and principles, are flexible, follow the development of society (al-'Ashmāwī, 1996b: 25). Besides Shari'ah is the decree of God in al-Qur'an and *Sunnah*, while *fiqh* is the inference of the Qur'an and *Sunnah*, through *ijtihād*, formed the law. Therefore *fiqh* is not sacral, not *ma'sūm*, not continuous, because it is the result of human opinion on a certain place and time, and can change according to the times (al-'Ashmāwī, 1996b: 25).

According to al-'Ashmāwī, the essence of the sharī'ah prophet Idrīs is *dīn* (faith in Allah and istiqamah against faith). The essence of the sharī'ah of the prophet Moses is *ḥaq* (the determination of sanctions accompanied by the imposition of obligations and the application of the law to every sin). The essence of the sharī'ah of the prophet Isa is *ḥubb* (love), and the essence of the sharī'ah of the prophet Muhammad is *rahmah*, which unites between truth and compassion, combining between law and forgiveness and identifying behavior (al-'Ashmāwī, 1992: 179-180).

### Politics

The historical constitution of Khulafā' al-Rāshidīn, Umayyad dynasty, and Abbasids are various forms according to the changing political setting, even following the various characters and tendencies of the caliph. According to al-'Ashmāwī, the caliphate that has become a religious government, it is not the application of Islam, but the rejection of it and not the implementation of sharī'ah, but the rejection of the principle. A government is not regarded as an Islamic government simply because of formal recognition. For him the religious government in the history of Islam is a disaster (al-'Ashmāwī, 1997: 32).

Al-'Ashmāwī defines *ummah* as the construction of society related to religion. In other hand, *dawlah* is the construction of different groups of different races and *aqidah* in one container and subject to the law (al-'Ashmāwī, 1997: 32). The three principles of political Islam to be rejected are: 1) politics is an integral part of Islam, therefore Muslims must do it. For al-'Ashmāwī, politics is not a religious obligation that must be adhered to, but politics is ordinary life because it can be wrong or true, whereas Islam is universal,

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whereas politics is particular; 2) political Islam has become the mainstream of Muslim majority, therefore who do not participate is considered to be out of the community. For al-‘Ashmāwī, this is contrary to the essence of Islam as a humanitarian religion that respects differences. Islam is open and unrestricted by the class. Besides saying *shahādah* and run the pillars of Islam, a Muslim free of community and a certain political views; and 3) the call of *jihād fī sabīlillah*. For al-‘Ashmāwī, jihad is against lust. Islam teaches affection, tenderness and brotherhood. Therefore, jihad to the unbelievers means the form of abuse and the attack of the meaning of Islam. According to him, the system of government in Islam is not clearly defined in religious texts, in addition to the necessity to base political practice on universal values such as justice, equality, compassion and humanism. Governments that fight for the realization of political justice, social welfare and rule of law is the true Islamic State (al-‘Ashmāwī, 1987: 120).

### Veil

Al-‘Ashmāwī's thinking of *hijāb* is contained in his book *Haqīqat al-Hijāb wa Hujjiyah al-Hadīth* is an epistemological product that is not separated from social phenomena, because his thinking is a response to socio-religious problems that occurred at the time. The condition of society that confuses religious thought and sharī‘ah text with the traditions of society, myths, information that develops and hegemonies society, consequently religious thought seems like the tradition of society, and conversely, even the text of sharī‘ah can be erased, so that society cannot distinguish the true reality with prejudice. According to him, in *hijāb* there is a mixture of religious thought and tradition. For the first time his thoughts were not well-known, but at last were known by people and even countered by Sayyid Ṭanṭāwī.

In discussing *hijāb*, al-‘Ashmāwī not only uses liberal logic, but also the known method of law *istinbath*, they are: 1) *Asbāb al-nuzūl*. Since *asbāb al-nuzūl* is important to understand and interpret the verse appropriately, so the companions and the *tābi‘īns* are enthusiastic to know. If they do not know, they do not dare to interpret the verse. According to al-‘Ashmāwī, *asbāb al-nuzūl* is a draft constitution formation. If the draft is a necessity to explain the reasons for the laying of the text of the constitution, *asbāb al-nuzūl* is the design of formation. He became one of the necessities in interpreting the verse. In interpreting the verse of *hijāb*, al-‘Ashmāwī put forward *al-‘ibrah bi khuṣūṣ al-sabab lā bi ‘umūm al-lafdhi*; 2) *Uṣūl al-fiqh*. Al-‘Ashmāwī uses the rule of *al-ḥukm yadūru ma‘a ‘illatihi wujūdān wa ‘adaman* in understanding *hijāb* verse. If illat exists, then there is law, and vice versa. Therefore, the law of *hijāb* depends on illat in the verse (al-‘Ashmāwī, 1987: 17); 3) *Hujjah of hadith*. Al-‘Ashmāwī divides hadith into *mutawātir*, *mashhūr* and *āhād*. *Mutawātir* hadith can be the theological basis and give birth to religious obligations/obligations (al-‘Ashmāwī, 1987: 103). Among the three categories, *āhād* hadith most often encountered. *Āhād* hadith does not incur religious obligations, but only advice (al-‘Ashmāwī, 1987: 103); and 4) The principle of freedom in Islam. According to al-‘Ashmāwī, the style of al-Qur'an and Islamic principles in the preservation and application of the law is the absence of coercion even in the field of *ḥudūd*/sanction of the criminal law. Implementation of the law should be with good exemplary, gentle advice and give each other a good message (al-‘Ashmāwī, 1987: 19). Al-‘Ashmāwī continued, if the main

rule there is no compulsion in religion, then there is more no compulsion in the application of law. But it is wrong if concluding doesn't need to apply law (al-'Ashmāwī, 1987: 19). The principle of no compulsion in concerning the sanction of other criminal law is the rule of "There is no *had* for who wants to repent" (al-'Ashmāwī, 1987: 19). Therefore there is no compulsion in the use of *hijāb*. Because basically *hijāb* is a self-control of lust and fortification of the sin, without associated clothes or a particular dress (al-'Ashmāwī, 1987: 19-20).

### **Marriage and Divorce**

In the family law issue that includes marriage and *ṭalāq*, what is considered is a sense of humanity rather than logic of justice. According to al-'Ashmāwī, marriage and *ṭalāq* are *ijtihād* in early Islam. For example 'Umar does *ijtihād*, that if the husband pronounces says *ṭalāq* three times at a time, it is already considered *ṭalāq ba'in*. But in Egypt, since 1929, the law changed because there is a new *ijtihād* that such a thing is considered *ṭalāq* one. According to al-'Ashmāwī, for the present context there may be new *ijtihād* which is different from the previous law (al-'Ashmāwī, 1996b: 39).

### **Intellectual Background of Muḥammad Shaḥrūr**

Muḥammad Shaḥrūr was born in Syria, Damascus on April 11, 1938. *Ibtidā'iyyah*, *i'dādiyyah*, and *thanāwiyyah* school he did in his homeland. The *thanāwiyyah* diploma he obtained from 'Abdul al-Raḥmān al-Kawākib madrasah in 1957. With a scholarship from the government, in March 1958 he went to the Soviet Union to study Civil Engineering in Moscow. In 1964, he completed his diploma, then returned to Syria and starting in 1965, he served in the Faculty of Civil Engineering at the University of Damascus.

In 1967, he did a research at Imperial College London England. Because of the war between Syria and Israel resulting in the breakup of Syrian-British diplomatic relations, Shaḥrūr decided to leave England. Subsequently, Damascus University sent him to the National University of Ireland to continue his Master's Degree Program and his doctorate in Civil Engineering, the concentration of defense mechanics and the earth base. Master degree obtained in 1969 and his doctorate obtained in 1972.

He returned to Damascus as a lecturer at the Faculty of Engineering from 1972. That year, along with his colleagues at the Faculty, he opened an engineering consulting firm. In 1982-1983, he was sent to Saudi Arabia as a researcher in his field at *Al-Sa'ūd Consulat Company*.

Two languages are mastered other than Arabic are English and Russian. In addition, he is very interested in philosophy and *fiqh al-lughah*. His writings which are related to the discipline of science are: *Handasat al-Asāsāt* (3 juz), *Handasat al-Turbah* (1 juz). Shaḥrūr wrote several books that invite many pros and cons from various circles. After his first book *al-Kitāb wa'l-Qur'ān: Qirā'ah Mu'āṣirah* was published in 1990, he was often asked to speak in international forums such as honorary participants in public debates on Islam in Morocco and Lebanon in 1995 and speakers at MESA (Middle East Studies Conference) in 1998. His first book was followed by his three works, they are *Dirāsah Islāmiyyah Mu'āṣirah fī'l-Dawlah wa'l-Mujtama'* (1994), *al-Islām wa'l-Imān: Manẓūmah al-Qiyām* (1996), *Mashrū' Mithāq al-A'māl al-Islāmī* (1999) and *Naḥwa al-Uṣūl al-*

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*Jadīdah li'l-Fiqh al-Mar'ah* (2000). In addition to writing books, Shaḥrūr was also actively writing scientific articles in several journals and magazines.

Shaḥrūr's works give a strong impression that the scientific paradigm of Islamic science is needed to be reviewed. Muslims no longer need to use the old paradigm, because the old paradigm has undergone many anomalies so as not being able to give exact answers to the political, social, cultural and intellectual problems facing contemporary Islam. The effort to build a new paradigm and system of Islamic knowledge is the central theme of Shaḥrūr's work (Muḥammad Shaḥrūr, 1994: 34-35). Islam must be understood by using the most up-to-date knowledge system (Muḥammad Shaḥrūr, 1994: 205). Shaḥrūr's works are impossible to meet with the works of his critics because of the different *manhaj* contemporary *fiqh* (Muḥammad Shaḥrūr, 1994: 33, 35) which has the most revolutionary and innovative concept of reform when compared to other thinkers in this group.

### Shaḥrūr's Thought on Contemporary Islamic Jurisprudence

The background of contemporary Islamic jurisprudence thinking of Shaḥrūr is partly because of his anxiety towards the thought of '*ulamā*', the condition of the Arabs and the Muslims in general, the disciplinary background of knowledge and combined with his linguistic knowledge and his interest in philosophy so as to profoundly affect his thinking base.

According to Shaḥrūr, since the beginning of the twentieth century, the thinking around Islam by many Muslim thinkers did not go into the philosophical aspect, so it only seemed implicit, such as about law, freedom, state theory, economy, democracy, history and so on; so they produce modern Islamic thought that contains contemporary phenomena, but out of the basic Islamic '*aqīdah*' (Muḥammad Shaḥrūr, 1992: 2). One of his motivations for composing his first book was because of his anxiety about the suffering experienced by the Arabs and the Muslims because of his backwardness, so the impression that Arab, Muslim and backwardness are identical. According to him, contemporary Arab thinking and Islamic thought as a whole revolves around the following basic problematic: 1) the absence of scientific and objective methodological principles of discussion in many respects and the absence of a methodological interpretation of al-Qur'an texts; 2) the discrimination of women's position in al-Qur'an; 3) the absence of basic human philosophy; 4) the absence of Islamic theory of modern human knowledge in al-Qur'an with the emergence of Islamization of knowledge; and 5) the necessity of new *fiqh* to replace the *fiqh* of Islamic heritage of the past fuqaha by offering new methods.

However, according to Shaḥrūr, such great work will not be realized without forming a pure view of man who departed from al-Qur'an, because of the philosophical view will be generated *fiqhiyyah* analysis. Because of that problematically Shaḥrūr finally ventured to bring up his new idea about his reading of al-Qur'an in his first book. One of the things that underlies his thinking is his basic assumption and his belief that *al-kitāb* which is the eternal consecration of Prophet Muhammad as the ultimate Apostle, will always be in accordance with all times and places (*sāliḥ li kulli zamān wa makān*) until the day of *qiyāmah*. If Islam is appropriate for all times and places, then it seems as though *al-kitāb* was passed down to the second generation of the twentieth century onwards, and as if the Prophet Muhammad had just passed away and conveyed *al-kitāb* to the present

generation. Therefore, Shaḥrūr invites in understanding *al-kitāb*, adapted to the 20th century and beyond without forgetting the development of previous history and not too glorifying the interpretation of the past ulama, for the holy is only *naṣṣ al-kitāb*. *Al-Kitāb* as a guide for man can be understood by the human mind that has been glorified by Allah to be able to understand His *kalam*. From that understanding, Shaḥrūr argues that there is no dispute between revelation and reason, between revelation, the essence, the truth of the news and *tashrī'* clogs.

Shaḥrūr has the basic theory of thinking that everything in this world naturally has a *ḥudūd* / limit of both maximum and minimal, as well as the verses that are in *al-kitāb*. Shaḥrūr exemplifies the 13 natural characteristics that are zipped, for example the highest peak of the earth is the summit of Everest in the Himalayas and the lowest is the Dead Sea coast in Jordan.

### ***Umm al-Kitāb, Sunnah, and Fiqh***

*Umm al-Kitāb* is a collection of verses that *muḥkam* or called as *al-kitāb al-muḥkam* which containing *ḥudūd*, worship, *akhlāq*, general and special teachings and the law. Sunnah is the system of application of the law of *umm al-kitāb* with ease without leaving *ḥudūd* of Allah. There are two *sunnah* namely *risālah* and *nubuwwah*. In *sunnah risālah*, we need to distinguish *ḥudūd*, worship, akhlaq and *ta'limāt*, because in it there is obedience to the Prophet and Rasul. While *sunnah nubuwwah* is the *ijtihād* of the Prophet in the application of the law of *al-Kitāb* by looking at the objective reality of life where he lives.

According to Shaḥrūr, the basis of *tashrī'* is *al-Kitāb* (distinguished between *ḥudūd*, worship, *waṣāyā* and *ta'limāt*), *sunnah* (*al-nabawīyyah*, is the system of motion between limits), *qiyās* (analogy based on legal content) and *ijmā'* (*ijmā'* the majority of people to accept *tashrī'* chosen according to their conditions). Sunnah of the Prophet according to Shaḥrūr is *ijtihād* of the Prophet in applying the law of *al-kitāb* in the form of *ḥudūd*, worship and morality by considering objective reality living by moving between *ḥudūd*, sometimes stopping on the *ḥudūd*, and creating local-temporal boundaries for issues not yet present in the *al-kitāb*. From that definition, *sunnah* for Shaḥrūr is *ijtihād* to turn absolute Islam into a relative Islam aimed at the 7th century society and not for the people of the whole world.

To arrive at the conclusion, Shaḥrūr has been doing critical reading of the source of Islamic doctrine, *al-Qur'an*, for more than 15 years, which he then published under the title *al-Kitāb wa al-Qur'an: Qira'ah Mu'asirah* (1990). Because using different perspectives and producing a different understanding of the text *al-Qur'an*, this book becomes controversial. The controversy is widespread because Shaḥrūr not only speaks to the area of interpretation of *al-Qur'an*, but also speaks on the area of legal theory (*uṣūl al-fiqh*). This is what makes Wael B. Hallaq, an observer of Islamic legal thought, provides an interesting position against Shaḥrūr in the controversy of contemporary Islamic law theory.

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### ***Hudūd/Limit Theory***

The theory of *hudūd* in sharī'ah according to Shaḥrūr is as follows. *First*, minimal limit, for example: 1) mahram (al-Nisā': 22-23). Allah conveys the minimum limit on the person who is unlawfully married. 2) Everything that is forbidden to eat (al-Mā'idah: 3, al-An'ām: 119, 145), but there is a dispensation note if forced. 3) Accounts payable (al-Baqarah: 283-4) 4) women's clothing (al-Nūr: 31). *Second*, maximum limit, for example: 1) a thief's punishment (al-Mā'idah: 38). The hand-cut penalty is the maximum limit and should not be more, even below it. 2) The punishment of the murderer (al-Isrā': 33, al-Baqarah: 178). The death penalty is the maximum limit and should not be more. *Third*, maximum and minimum limit at the same time, for example: 1) inheritance (al-Nisā': 11-14). The maximum limit for males is 66.6% and the minimum limit for women is 33.3%. If a man is given 75% and for female is 25%, it means violating *hudūd* Allah, but if the man is 60% and woman is 40% then it is still in the limit category. 2) Polygamy (an-Nisa': 3). According to Shaḥrūr, the minimum limit of wife 1 (widow or girl), and the maximum limit of 4 (limited widows who have orphans or no children). The reason, the verse is related to the previous verse about orphans. *Fourth*, maximum and minimum limits at one point, for example in law of adultery (al-Nūr: 2), is maximum and minimum limit in one point 100 lashes. *Fifth*, maximum limit with a line that is almost straight, for example, is found in the relationship between men and women of the type aspect, namely adultery. The last is maximum closed limit-not passable and minimum limit-can be skipped, example in material relationships and property among people, such as usury.

### ***Poligamy***

In Al-Nisā': 3 contains the minimum and maximum limits simultaneously. For Shaḥrūr, this verse is *hudūdiyyah* and present to combine the minimum and maximal limits both in quality and quantity as well. Quantity of wife at least 1, maximum 4, with the condition that the first wife, may be a girl or widow, and second wife until the 4th is a widow who has dependent of orphan or widow only. Polygamy should be understood in terms of maintaining orphans. Otherwise, the link between the beginning of the verse which reads 'If you are afraid not to do justice to the orphan' with the answer to the verse that says 'then marry the woman you love.' cannot be used.

In addition, the word قسط *qasata*, in Arabic contains two opposite meanings. The first, fair and helpful like verse al-Mā'idah: 42, al-Ḥujurāt: 9 and al-Mumtaḥanah: 8. The second meaning, *ẓālim* like the letter al-Jin: 14. Likewise the word عدل *'adala* has two opposite meanings that are straight and tilted. There is a difference between قسط *qistun* and عدل *adlun*, *al-qisṭ* means from one direction, while *al-'adl* means from two directions. Therefore, polygamy verse means *hudūd* determines upper and lower limits in terms of quantity and quality. In quantity, the bottom limit is one and the upper limit is four (Muḥammad Shaḥrūr, 1992: 597-602).

### ***Testament and Inheritance***

Here is Shaḥrūr's thought of testament (Muḥammad Shaḥrūr, 2000: 232). The testament is the first foundation of the transfer of property possession and is preferred to be exercised in the sight of Allah, since the testament strongly considers the objective terms and



conditions associated with the testament. The testament applies specific circumstance on a personal level. God honors the will and pleasure of the testament in sharing his treasures. In the testament there is no definite limitation to be followed. The part and the portion of the testament follow the will of the testator himself. God respects the human desire to share his wealth according to his will. God gives motivation so that the testament does not forget certain people whom God sees to be preferable. The scope of the testament is wider than inheritance. Testament is a special law that is in a common area, whereas inheritance is a general law that is in a special territory. It is possible to link testament and inheritance.

According to him, an inheritance is the process of transferring property from a deceased person to a recipient with the number and size of parts specified in the testament mechanism, or if there is no testament, the determination of the recipient, the number and size of the part is determined by the inheritance distribution mechanism (Syamsuddin, 2004: 334). The verse about inheritance is contained in surah al-Nisā': 11-13. *Hudūd* Allah about inheritance especially in chapter 13 which includes the following three *hudūd*: The first *hudūd* of inheritance law is: للذكر مثل حظ الأنثيين. This is the *hudūd* that limits the inheritance of the child if it consists of one male and two females. The second *hudūd* of inheritance law is: فإن كن نساء فوق اثنتين. This is the *hudūd* that limits the inheritance of the child if it consists of one male and three women or more, then the male portion is 1/3 and female 2/3. The third *hudūd* of inheritance law is: وإن كانت واحدة فلها النصف. This is the *hudūd* that limits the inheritance of the child if the number of boys equals the number of girls.

### ***Dowry, Marriage Covenant and Divorce***

According to Shaḥrūr, the marriage covenant is open to men and women in the same *hudūd*. The marriage covenant is valid if there are *ijāb-qabūl*, witness and dowry. Therefore, if a woman has met her marriage age she has the right to marry her without a guardian if it has fulfilled the legal requirements of the marriage contract (Shaḥrūr. 1992: 626). Similarly, in divorce, spouses have equal rights. *Ṭalāq shafahī* does not exist, because *ṭalāq* is considered to occur when there is a decision from the court (Muḥammad Shaḥrūr, 1992: 626-627).

### ***The Clothes***

The clothes of women and men are contained in the verse of the *hudūd* letter al-Nūr. For men verse 30, and for women verse 31 (Muḥammad Shaḥrūr, 1994: 319). The theme of both verses is that: 1) Men and women must soften their vision, meaning we are not allowed to see someone who makes the person we see feel guilty; and 2) Maintain themselves from adultery. *Hudūd* minimal men's clothing is to close the *farj* only. In al-Nūr: 31, *al-juyūb* means a gap in a hidden body that has two layers of two breasts, under two breasts, under two armpits, a genitals, and two buttocks. While the mouth, nose, eyes and ears including including *al-juyūb*, but the jewelry that looks on the face and is the identity of a person. Believers are obliged to close the hidden *al-juyūb*.

Al-Aḥzāb: 59 is not a *hudūd* verse, but a verse that contains teachings that are *nubuwwah*/ informative. Humans may participate or not according to their environmental situation. Al-Nūr: 31 contains a message of obligation from God to His servant. Therefore, it is part of halal-haram. The maximum limit of women's '*aurāt*' based on the hadith is the

whole body except the face and the palm of the hand. from the understanding of women's 'aurāt, Shaḥrūr states that the majority of women's clothing in the world still has not violated the *ḥudūd* of God as long as not naked.

### **Leadership & Politics**

Leadership / قوامة according to Shaḥrūr derived from surah al-Nisā': 34 (Muḥammad Shaḥrūr, 1994: 319) which speaks of leadership in general, not just leadership in the household only. According to him, the leadership that occurred after the death of Rasulullah is a political maneuver made by the Companions to achieve the law and administration that can accommodate the Muslims, Christians, Jews and others. The secular state for Shaḥrūr is a State which does not take the legitimacy of religion, but from humans. Rasulullah did not use state power in worship, except zakat, because it is a source of state finance (Syamsuddin, 2004: 129).

Requirements for leaders according to Shaḥrūr are: Having the advantage of the majority of people. The basis is بما فضل الله بعضهم بعضا (Muḥammad Shaḥrūr, 1994: 319-320) and Own property and capital, essentially وبما أنفقوا (Muḥammad Shaḥrūr, 1994: 320).

### **Comparing the Thought al-'Ashmāwī and Shaḥrūr**

As it was written in the introduction, al-'Ashmāwī and Shaḥrūr according to Hallaq are liberal contemporary Islamic thinkers. Therefore, some of the lattice of thought related to Islamic law is categorized as something different from the classical ulama law. The author gives only examples of al-'Ashmāwī's ideas on Shaḥrūr, politics, *ḥijāb* and marriage covenant/divorce. While the thinking of Shaḥrūr, the author gives some examples of his lattice of thought about the books, sunnah, *fiqh*, *ḥudūd* theory, polygamy, testament and inheritance, clothing, dowry, marriage covenant, divorce, leadership and politics.

Basically, al-'Ashmāwī and Shaḥrūr try to offer new thinking about *fiqh*. There are several things to map both of them from the various aspects that ultimately result in the thought of *fiqh mu'aṣir*. First, the background of the thinking of the two is different. There is a transformation of thought in Al-'Ashmāwī's earlier, moderate-conservative Muslim, especially viewing sharī'ah in the context of state life and arguing that sharī'ah is a comprehensive system of doctrine and regulates all aspects of life has shifted his thinking as an opponent and a deterrent to the sharī'ah political movement and insists that there is no *qanūn* in Islam, even accusing the group of believers of Muhammad's treatise as a law treatise, as a group that changed Islam.

Shaḥrūr's ideas motivated by his anxiety towards the thought of the ulama, the condition of the Arabs and the Muslims in general. The background of his scientific discipline and combined with his linguistic knowledge and his interest in philosophy so as to profoundly affect his thinking base. According to Shaḥrūr, many Muslim thinkers do not deepen the philosophical aspect, so it just looks like *taqlīd*, like about law, freedom, state theory, economy, democracy, history and so on; so, they produce modern Islamic thought that contains contemporary phenomena, but out of the basic Islamic '*aqīdah*. Shaḥrūr became anxious to see the suffering experienced by the Arabs and the Muslims because of their backwardness, so the impression that Arab, Muslim and backwardness is something identical. According to him, contemporary Arab thinking and Islamic thought as a whole

revolves around a basic problem: The absence of scientific and objective methodological principles of discussion in many respects and the absence of methodological interpretation of the Qur'anic texts; Discrimination of women's position in the Qur'an; The absence of basic human philosophy; The absence of Islamic theory of modern human knowledge in the Qur'an with the emergence of Islamization of knowledge; and the need for new *fiqh* to replace the *fiqh* of Islam inherited from the past fuqaha by offering new methods.

Second, Al-'Ashmāwī's thought revolution began when he was 47 years old when he poured his thoughts into *uṣūl al-sharī'ah*, while Shaḥrūr dared to pour his controversial thoughts when he was 52 years old in his controversial book *al-Kitāb wa'l-Qur'ān: Qirā'ah Mu'āṣirah*. But his reading of the Qur'anic text has already begun when he was 37 years old. Al-'Ashmāwī offers *ijtihād* and *tanwīr* as enlightenment of Islamic law, while Shaḥrūr offers an answer to the problem of application of Islamic law in society used by Muslims in understanding the quranic text, such as *ḥudūd* theory.

**Table of al-'Ashmāwī and M. Shaḥrūr's Thought on Contemporary Islamic Jurisprudence**

Subject of thought	Al-'Ashmāwī	M. Shaḥrūr
<b><i>Shari'ah/ Umm al-Kitāb, Sunnah and Fiqh</i></b>	Shari'ah should be understood with the meaning of etymology, meaning the disciple of <i>al-mā'</i> , water source, <i>ṭarīq</i> and <i>sabīl</i> , path and <i>al-manhaj</i> , method. In terminology <i>sharī'ah</i> interpreted as a set of practical law-applicable explored from al-Qur'an and <i>Sunnah</i> , not the desired al-Qur'an, but the history of construction over time, there is a misuse of the meaning of the verses of the Qur'an.	The basis of <i>tashrī'</i> is al-Qur'an (in contrast between <i>ḥudūd</i> , worship, <i>waṣāyā</i> and <i>ta'limāt</i> ), <i>sunnah</i> ( <i>al-nabawiyyah</i> , is the system of motion between limits), <i>qiyas</i> (analogy based on law content) and <i>ijmā'</i> ( <i>ijmā'</i> majority human to accept <i>tashrī'</i> chosen according to the condition). The <i>Sunnah</i> of the Prophet is the <i>ijtihād</i> of the Prophet in applying the Quranic law in the form of <i>ḥudūd</i> , worship and morality by considering objective reality. <i>Sunnah</i> is <i>ijtihād</i> to convert absolute Islam into a relative Islam devoted to the 7th century society and not to the people of the whole world.
<b><i>Leadership and Politics</i></b>	The <i>khalifah</i> system is not the application of Islam. A government is not regarded as an Islamic government simply because of formal recognition.	Leadership / <i>قوامة</i> is taken from surah al-Nisā': 34 and describes leadership in general, not just leadership in the household. The secular state is a state that does



	For him the religious government in the history of Islam is a disaster.	not take the legitimacy of religion, but from humans. Prerequisites of leader: having more in quality and quantity than majority of people. It was based on <i>بما فضل الله بعضهم</i> and <i>وبما أنفقوا بعضا</i>
<b>Veil</b>	<p>Al-‘Ashmāwī’s thought of veil is contained in his book <i>Haqīqat al-Ḥijāb wa Hujiyah al-Hadīth</i> is an epistemological product that is not separate from social phenomena, because his thought is a response to socio-religious problems that occurred at that time. The condition of society that confuses religious thought and sharī‘ah text with the traditions of society, myths, information that develops and hegemonizes society, as a result religious thought looks like the tradition of society, and conversely, even the text of syari‘ah can be erased, so that society cannot distinguish reality the real with prejudice.</p> <p>According to al-‘Ashmāwī, in the <i>ḥijāb</i> there is a mixture of religious thought and tradition. Initially his thoughts were not well-known, but eventually known people and even iscountered by Sayyid Ṭanṭāwī</p>	<p><i>Ḥudūd</i> minimal men's clothing is to close the <i>farj</i> only. In al-Nūr: 31, <i>al-juyūb</i> means a gap in a hidden body that has two layers of two breasts, under two breasts, under two armpits, a genitals, and two buttocks. While the mouth, nose, eyes and ears including including <i>al-juyūb</i>, but the jewelry that looks on the face and is the identity of a person. Believers are obliged to close the hidden <i>al-juyūb</i>.</p> <p>Al-Aḥzāb: 59 is not a <i>ḥudūd</i> verse, but a verse that contains teachings that are <i>nubuwwah</i>/informative. Humans may participate or not according to their environmental situation. The maximum limit of women's ‘<i>awrat</i> based on the hadith is the whole body except the face and the palm of the hand.</p>
<b>Marriage covenant and divorce</b>	In the family law issue which includes marriage and divorce, what is considered is a sense of humanity rather than the logic of justice. According to Ashmawi, the law of marriage and divorce is a field of <i>ijtihād</i> in the early days of Islam. For example, ‘Umar did <i>ijtihād</i> , that	■

	if the husband pronounces divorce word three times at a time, it is already considered thalaq ba`in. But in Egypt, since 1929, the law changed because there is a new <i>ijtihād</i> that such a thing is considered as thalaq one. According to Ashmawi, for the present context there may be new <i>ijtihāds</i> different from the previous law.	
<b>Polygamy</b>	■	In al-Nisā': 3 it contains the minimum and maximum limits simultaneously. This verse is <i>ḥudūdiyyah</i> and present to combine the minimum and maximal limits both in quality and quantity at once. Quantity of wife at least 1, maximum 4, with first wife, as girl or widow, and second to fourth wife is a widow who has an orphan or widow only. Polygamy should be understood in terms of maintaining orphans.
<b>Testament and inheritance</b>	■	Testament is the first foundation of the transfer of ownership property. In the testament there is no definite limitation to be followed. The range of testament is wider than inheritance. A testament is a special law that is in a common area, whereas inheritance is a general law that is in a special area.  Inheritance is the process of transferring property from a deceased person to a person receiving the number and size of parts specified in the testament mechanism, or if there is no testament, the determination of the recipient, the number and size

		of his share shall be determined by an inheritance distribution mechanism.
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## CONCLUSION

After analyzing their lives and legitimate ideas, we find that their social, educational and practical backgrounds are divided and this affects them in their contemporary Islamic jurisprudence. The background of their studies both law and technique does not preclude the study of Islamic thought. The result of this mapping is that the theme of al-‘Ashmāwī thought includes the *al-ijtihād* and *at-tanwīr*, so he claims to be a *mustanir*, while Shaḥrūr try to bring the theme of *ijtihād* with a new paradigm so he expressed *hudūd* theory as a law method. The examples of al-‘Ashmāwī’s contemporary Islamic jurisprudence thought are shariah, politic, veil, marriage and divorce, and the examples Shaḥrūr’s thought are *umm al-kitāb*, *sunnah fiqh*, veil, testament, inheritance, politic, and polygamy.

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