

Banking Interest in the Contemporary Jurist's Perspective: A Yusuf Al-Qaradawi's Economics Thought

Yuli Utami

*The International Program for Islamic Economics and Finance,
Faculty of Economy, Universitas Muhammadiyah Yogyakarta. Jl.
Lingkar Selatan Tamantirto, Kasihan, Yogyakarta, Indonesia.
Email: yulut321@yahoo.com*

ABSTRACT

Al-Qaradawi's contribution to the development of contemporary Islamic economics is very profound. Many Muslim economists subscribe to his opinions, and some banking institutions and insurance companies have even adopted his views as their general policies. It is very unfortunate, however, that such a great contribution has not been well researched. It is the intention of this research to fill up this lacuna by making it accessible to the prospective readers. The objective of this study is mainly to introduce Al-Qaradawi's economic thought and its relevance to contemporary development of Islamic economics discourse. For this purpose, the research attempts to shed some light on selected contributions that he has made to the current discourse of interest in the banking system. In connection to this, his conceptions and approaches to issues and problems in contemporary Islamic economics are also explored. It argues that Al-Qaradawi's works on Islamic economic missed the empirical test to provide evidence of the strength and the reliability of his data theories and concepts, particularly on the topic of zakat, poverty and environment.

Keywords: interest, Islamic economics, Yusuf Al-Qaradawi, Islamic legal thought

ABSTRAK

Kontribusi Al-Qaradawi terhadap perkembangan gagasan ekonomi Islam sangat besar. Banyak ekonom Muslim yang merujuk dan mengkaji opininya, dan beberapa lembaga keuangan (bank) dan perusahaan asuransi mengadopsi pandangan-pandangannya dalam kebijakan mereka. Sayangnya sekali, kontribusi besar Al-Qaradawi ini belum banyak ditelaah dengan baik. Oleh karena itulah tulisan ini mencoba mengisi kekosongan dengan menjadikan gagasan dan karya al-Qaradawi lebih terbaca oleh khalayak umum. Tujuan dari studi ini adalah mengenalkan pemikiran ekonomi Al-Qaradawi dan relevansinya bagi perkembangan wacana pemikiran ekonomi Islam kontemporer. Untuk itu, penelitian ini mencoba mengkaji beberapa kontribusi yang telah diberikannya terhadap wacana tentang bunga dalam sistem perbankan. Terkait dengan itu, konsepsi dan pendekatan terkait dengan masalah-masalah ekonomi Islam kontemporer juga akan didalami. Artikel ini berargumen bahwa karya-karya Al-Qaradawi dalam ekonomi Islam kehilangan uji empirisnya yang dapat memberikan bukti tentang kekuatan dan reliabilitas tentang teori dan konsepnya, terutama tentang zakat, kemiskinan dan lingkungan.

Kata Kunci: bunga, ekonomi Islam, Yusuf Al-Qaradawi, fatwa

INTRODUCTION

Yusuf Al-Qaradawi (born 1926) is considered one of the most outstanding contemporary Muslim jurists, and

stands as one of the major authoritative references in matters pertaining to Islam; his ideas and views are often sought and referred by Muslims for various purposes. He is now commanding substantial followers in the Muslim world and over. His *fatâwâ* exert a considerable influence especially on young and educated section of urban Muslim society. That is why the political establishment in the West cannot just slightly look into his juristic opinions. His verdict on economic boycott of American and Israeli products for instance,¹ though admittedly gives less significant impact on international and U.S. economy, has left considerable effect on political scenario in the Middle East. Mainly due to this fact, the US government has to take the issue into consideration seriously; for it is not sure where it will lead to future domestic and foreign-policies.²

A great number of Muslim scholars have written about Islamic economics,³ investigating various aspects related to it. However, their contribution seems to have been somehow different from the one espoused by Al-Qaradawi. He differs for instance from such Muslim economists as Muhammad Umer Chapra, Nejatullah Siddiqi, Monzer Kahf, and others. And that difference is discernible in the approach they employ in dealing with contemporary problems of economics. This difference perhaps stems from the educational background they had. While Chapra and Siddiqi are trained as economists, Al-Qaradawi is only educated as a jurist and Muslim preacher. Thus, the latter often approaches his subject matter from legal perspective, while the the other two scholars from economic perspective. But this does not mean that his position is inferior to those western-educated Muslim economists. On the

contrary, his, it seems, is more respected than others'. This is in evidence from a trust given to him by several banks and financial institutions to head *shari'ah* board committee in the last couple of years.

This study attempts to analyze the economic context and social background reflected in the selected books such as concept, chronology and terms which contribute to the selected topics. By doing so, it will be easy for the researcher to value and evaluate his real contribution in contemporary Islamic economics discourse for being a jurist, not an economist, and Al-Qaradawi does not use standard economic terms. The concern of this study is also to survey the approach he had devised as he has employed a different set of methodologies in each topic and addressed economic issues from fiqh perspective; hence he uses *usul al-fiqh* methodologies in contemporary real cases in economics and finance.

This study surveys the main contribution of Al-Qaradawi to the current development of Islamic Economics thought as found in his books namely *Fawâ'id al Bunûk Hiya al-Ribâ al-Harâm*. It traces his methodological approaches and discusses the debate that results from his selected writings. In this regard, the views of his opponents shall be explored. This study is a library research, thus it is qualitative. All books, journals, articles, papers, sermons, interviews in printed mass media or in internet, and speeches written and delivered by Al-Qaradawi, including books, articles, interviews and websites where his views and thoughts are discussed will form as the secondary sources.

BIOGRAPHICAL SKETCH

Yusuf bin Abdullah bin Ali bin Yusuf Al-

Qaradawi was born as the only child to Abdullah al-Qaradâwi, on September 9th, 1926 in Safi al-Turâb, an Egyptian village in the Nile delta crisscrossed by irrigated cotton farms in Gharbiyya province (between Tanta and al Mahallah al Kubra). His father passed away when he was two years old, followed by his mother when he was fifteen years old. He was raised by his aunts and uncles; farmers and agriculture grocery family. He grew up in the environment where farmers were struggling to pay land rent; the situation which somehow has given an influence upon his thought. Al-Qaradawi opts the view which says that paying money for empty land for farming is prohibited.⁴

The economic climate at that time preferred a barter system to a trade economy which gave low exchange value impact to the economy. The most used currency was white iron known as *Milim (Qirsy)* or *Ta'rifah* whose value equals to two and half *Qirsy*. Only certain people held gold currency such as *Franc* (two *Qirsy*), *Barizah* (five and ten *Qirsy*), *Riyal* (twenty *Qirsy*) and paper money *Junaih* (hundred *Qirsy*).⁵ The gap between rich and poor was quite apparent. Socio-economic condition at that time classified the rich as the one who had a lot of cattle and lands, while the poor was the one who only owned a piece of land and a cow or rented it from the rich.

Under the supervision of Sheikh Hamid Abu Zuwail, Al-Qaradawi can memorize Qur'an and *kitab Tuhfah al-Asfal*⁶ before he reached ten.⁷ By seven, he already entered elementary school in Saft al-Turâb. He was registered at the Institute of Religious Studies in Al-Azhar at the age of fourteen and by eighteen years old he continued his senior high school *Ma'had Thanawi* and graduated in

1950 after being released from the prison with other Ikhwan al-Muslimin members.⁸ He pursued his tertiary education at Al-Azhar University, majoring in *Usul al-Din*, and completed in 1956. And in 1954, for the second time he was again put in prison for another two and half months.⁹

In 1958, he received his Arabic Linguistic diploma certificate from *Ma'had Dirasat al-Arabiyyah al-Aliyah* and obtained a master degree in al-Quran and al-Sunnah from the faculty of *Usul al-Din* of al-Azhar University in 1960. He secured a doctorate degree in 1970 after defending his dissertation entitled *al-Zakat wa Atharuhia fi Hall al-Mashakil al-Ijtima'iyyah* (Zakat and its effects on solving social problems).¹⁰ He got his first scholarship in 1937 and the second during high school. He won the first place among 500 students of three faculties in Al-Azhar in 1954, and lastly was honored with the highest distinction for his Ph. D dissertation in 1970.

He was once a teacher and *khatib* in *Ali Ūaha* mosque in *Mahallah al-Kubra*.¹¹ In 1954 he was appointed as a supervisor at the Institute of Imam at the Egypt Awqaf Ministry (Ministry of Religious Endowments), and worked as an editor in da'wah publication at the Department of Islamic Culture of al-Azhar University. In 1961, he left Egypt for Qatar in which time he eventually distanced himself from the Ikhwan politic. Here he was trusted to lead high school and managed to establish a new educational system where traditional and modern education was fused together. But after five years, he decided to stay in Doha-Qatar due to political uncertainty.

In 1973 he led the establishment of Islamic Studies and Shariah Faculty in Qatar University and by 1977 he was appointed as

the dean of the faculty until 1989.¹² In 1989, Al-Qaradawi founded the Research Center of Sunnah and Biography of the Prophet at the University of Qatar, where he is in charge of up till now. In 1997, after establishing the European Council on Fatwa and Research which is headquartered in Dublin, he is tasked to lead it until today.¹³ In 1990-1991, The Qatar government sent him to Algeria as a visiting lecturer where he was given a responsibility by the Algerian government to be the chairman of the Academic Council of the University of Al'Amir 'Abd Al-Qadir for Islamic Sciences in Constantine, Algeria. Simultaneously, he was appointed as an advisor on Islamic affairs to the Ministry of Islamic Affairs in Algeria.

Young Al-Qaradawi was actively involved in da'wah activities. He sat as one of the board members of Ikhwan al-Muslimin, who is responsible for da'wah department, foreign affairs department, usrah department and student affairs department. He was also the president of Representative Council of Ushul al-Din faculty during his student life.¹⁴ Up to present, he is still involved in many Islamic institutions, da'wah activities, social and economy researches. Apart from that, Al-Qaradawi is listed as a founder member of Egypt Islamic Economics Organization, member of International Islamic Aid-Centered in Kuwait, vice president of International Shariah Board for Zakat Affairs in Kuwait; a board member of Qatar Islamic Fund for Zakat and Charity; a trustee member of Awqaf Islam for *al-Muslim al-Mu'asir* magazine, the Shariah Board member of Rajhi Investment Company in Saudi, Chairman of Shariah Board of Bank Islam-Qatar, Chairman of Shariah Board of Bank Islam-Qatar International, and Chairman of

Shariah Board of Bank Taqwa-Swiss.¹⁵

Having grown in poor environment and fought for the right of poor people when he was in Ikhwan al-Muslimun, Al-Qaradawi pays quite serious attention to economic issues. This is evidence from his doctorate dissertation which concentrates on zakat and poverty. In appreciation of his great service to development of Islamic economics, Islamic Development Bank (IDB) has selected him as the winner of IDB Award 1411 H (1990 AC).¹⁶

Qaradawi's Intellectual & Social Legacy

His first master was Sheikh Abdul Muthallib al-Battah, an Al-Azhar University graduate. He taught Al-Qaradawi informally in the mosque before he entered elementary school. Al-Battah was an astonishing personality. He came to Al-Qaradawi's homeland to bring the truth of Islam and wipe out the heresies. He was the one who asked Al-Qaradawi to put Hanafi school of thought in his Al-Azhar application letter. Al-Qaradawi was once trusted to read Battah's sermon which led him later to be his assistant at the age fifteen.

Al-Qaradawi's interest is not in Geography but in *Nahw* and *Sarf* which he learnt from Sheikh Muhammad Sha'at, Sheikh Rajab Zabadi, and Sheikh Mustafa Ghubarah. Al-Qaradawi believes that revealed knowledge as a main purpose (*maqasid*) and Arabic linguistics as a tool to reach the *maqasid* (*wasa'il*).¹⁷ In al-Azhar, the teaching methodology was that students were only taught to memorize what is in books without being provided arguments from Quran, Sunnah, and the purposes of Shari'ah (*Maqasid al-Shari'ah*).¹⁸ This methodology had put Al-Qaradawi in bad position. Because of his nature, he used

to discuss the subject in class. He was once thrown out of class for the question he raised that incited his teacher's anger; he refused to accept any extremist without rationales from the Quran and Sunnah.¹⁹

Al-Qaradawi pays a serious attention to the problem of methodology of Islamic teaching as seen in *Ibn al-Qaryah wa al-Kuttab* wherein he addressed critiques to the ways the subjects were taught in his alma mater.²⁰ Al-Azhar during Al-Qaradawi's era has introduced reformation in teaching system and curricula content (under Sheikh Mussafa Al-Maraghi leadership) but Al-Maraghi received negative response from the conservative jurists, for they considered that the requirement to be a mujtahid cannot be achieved by anybody any longer.²¹ He inspired Al-Qaradawi's thought of *ijtihad* and *tajdid*. Although he never teaches Al-Qaradawi personally, Sheikh's idea of being independent from any *mazhab* has impressed him so much.²²

Al-Qaradawi read *'Ihya' ulum al-Din* of al-Ghazali at the age of thirteen and at the same age he also listened to Hassan al-Banna's speech for the first time. Little Al-Qaradawi, who had an idea to become an Al-Azhar's Sheikh, understood all al-Banna's sermon and even memorized it.²³ He became a member of Ikhwan al-Muslimin on his third year of junior high school (*Ibtida'iy*), wherein his awareness and understanding of the importance of collective *da'wah* started to grow. He took the opportunity to visit Ikhwan al-Muslimin office in Cairo every year on his vacation expected to see Al-Banna and other Ikhwanis to have a talk with them. The chance was widely open when he participated in Banna's road show in several cities in Tanta province and when he was imprisoned with other Ikhwanis such as Sheikh

Muhammad al-Ghazali, Sheikh Sayyid Sabiq and Sheikh Bahi al-Khuli, in 1949.²⁴

One of the speeches of al-Banna in Ikhwan al-Muslimin conference after World War II which impressed Al-Qaradawi was the idea of Muslim unity and that of setting all Muslim countries free from colonialism and feudalism of Western and Jewish by way of negotiation. If it were unsuccessful, Muslim can bring about economy boycott strategy against colonizer's products and asked the Muslim jurist to issue a *fatwa* for this purpose: to forbid Muslims in dealing with them in any kinds of business.²⁵ It is the same way that Al-Qaradawi opted in his attempt to denounce Israeli, American aggression against Palestine and Afghanistan and Danish government which did nothing when one of its national newspapers caricatured the Prophet Muhammad. However, western powers called his action as "indirectly funds terrorism."²⁶ He also propagates to boycotting the banks which cooperated with Jews to refuse the distribution of starving aids from the world to the Palestinian.

Although educated in such prestigious university as al-Azhar, Al-Qaradawi felt more comfortable in Ikhwan al-Muslimin where he learned a comprehensive understanding of applied Islam, moderate thinking,²⁷ *jihād* and defending Islam, developing Islamic civilization, thinking for the progress of the ummah, anti-discrimination and dichotomy in education, and the sincerity of being Muslim.²⁸ One of the Ikhwan agendas is the economic reformation i.e. the improvement of the economic condition of the people as a way to eradicate poverty in Egypt. In this regards, it is required that the state should play its role to totally eliminate *riba* in all its forms, nationalize all national resources and

banks by putting into a halt foreign intervene and creating its own currency. This is in addition to elimination of the stock exchange operation, reformation of the political properties, reformation of the tax law, reformation of the regulation of labor and minimum wage, and contribution of zakat to their social security.²⁹ All such ideas have given valuable inspirations to Al-Qaradawi.

For Al-Qaradawi, Ikhwan is not only a base where he can broaden his intellectual horizon, but also provides him a space to interact with people of high intellectual caliber like Sayyid Qutb. Young Al-Qaradawi, who was interested so much in Arabic linguistic, was unduly impressed with Qutb's literary style. Qutb has written a number of books, but his *al-'Adalah al-Ijtima'iyah* is one of the best. The book discusses the principles of justice in Islam and compares it with western principles. It quite controversial and receives severe critiques when he criticized the attitudes of Sayyidina Uthman and the Authority of Bani Umayyah.³⁰ He learnt the habit of writing from one of the leading ikhwan scholars, Sheikh Muhammad al-Ghazali, a prolific writer and moderate Jurist. According to Al-Qaradawi, Ghazali has given him some excellent ideas concerning zakat and tax, profession and property Zakat³¹ In fact, he is the former *Fiqh Iqtisady* that has unduly given Al-Qaradawi a great inspiration to write *Fiqh al-Zakah*.³²

Ibn Taymiyyah and Ibn Qayyim al-Jauziyyah are the original thinkers that he quotes most in several approaches in his works in economy and finance. This does not mean, however, that he would always be in line with their point of views. However, it is not the nature of Al-Qaradawi to devise a statement whenever he disagrees with any

scholar. For him, truth should take precedence over any thing. Thus, he once expresses that, "Ibn Taymiyyah is a love one to my heart, but the truth is lovelier than Ibn Taymiyyah." He is quoted to have said, "I love Sheikh Thantawi and it is because of this love that I will not leave him falling into trap and pressure. My critiques will not reduce my love to him."³³

Literally Works In Economy And Finance

Al-Qaradawi published his first poem book in his first year senior high school,³⁴ but he only started writing books seriously in the third year of his university level. For retrenchment purpose during his study, Al-Qaradawi moved to Ikhwan al-Muslimin office, and worked as part-time khatib in a new mosque in Cairo.³⁵ One of the Ikhwanis would always accompany him in the sermon and recorded all his sermons. To express his gratitude, Al-Qaradawi published this recorded sermon after being edited.³⁶ Once he was asked by some ikhwanis, who find difficulties in *hadith*, to write a simple book on *hadith*.³⁷ Realizing his talent on writing, Al-Qaradawi decided to devise this method for the purposes of *da'wah*. He wrote more than hundred books in various fields of study, ranging from the Quran, Hadith, Arabic and *Fiqh*. In his writings, Al-Qaradawi always puts a high consideration to the purpose of *shari'ah* (*maqasid shari'ah*) while appreciating the views of preceding 'ulama. In so doing, he actually wants to make a sort of unification between the *salafi* traditions with that of *tajdid* line of thought. He rarely immerses himself in discussing *furu'iyah* problems.

One of his books that received a wide attention is *Fiqh al-Zakat*. The method that he used in completing this is that he would first

collect every single text from the Qur'an and the Hadith, and then assemble all opinions and suggestions put forward by 'ulama concerning the issue under consideration. Only when this is accomplished would he embark on work of analyzing them to free from any sense of fanaticism to any particular legal school of thought and applying his capability of *ijtihad* that is often identified as *ijtihad intiqa'iy* (selective *ijtihad* or inductive approach). But sometimes he also devises *Ijtihad insha'iy* (innovative *ijtihad* deductive approach) whenever necessary, especially in producing concepts and terms.

Another his celebrated book is *Al-Halal wa al-Haram fi al-Islam*, which was written under the supervision of the Department of Islamic Culture, al-Azhar University. Perhaps due to the nature of book which touches upon issues of Muslims daily concern, the book has assumed an outstanding position in contemporary time. It was published dozens of times and translated into a variety of languages. This book was characterized by its moderate (*wasatiyyah*) and easiness (*taysir*) nature, characteristics peculiar to Al-Qaradawi's approach. The late sheikh Nasr Al-Din Al-Bani had written a book entitled *Ghayat al-Maram fi Takhrij Ahadith al-Halal wa al-Haram* to verify the authenticity of the hadiths found in the book, some of which have been answered by Al-Qaradawi again in his *Fatawa Mu'asirah*. Again Al-Bani has taken an initiative to study hadiths used by Al-Qaradawi in his book *Mushkilat Al-Faqr wa Kaifa 'AjalaaÉ fi al-Islam*.

Apart from the above, Al-Qaradawi has written a few number of books dealing with economic issues. This includes *Fawa'id al-Bunuk hiya al-Riba al-Haram*. The book deals with the legal injunction of bank interest,

which has become one of the controversial issues in current Islamic economic system. Nothing can be said innovation in this book, but reinforces the mainstream opinion that emphasizes on illegality of bank interest.

Al-Qaradawi and the Development of Contemporary Islamic Economic

The First International Conference on Islamic Economics in Februari 1976 at Mecca were brought together for the first time both Muslim economists and *Shariah* experts ('*Ulama*) to discuss the need for the discipline of 'Islamic economics'. This conference represented a watershed in developing Muslim thinking on economics and saw the birth of the Islamic economist.³⁸ We now have the second and third generations of Islamic economists, whose works still need to be evaluated against those of the first generation to see if 'progress' has been made.

In order to develop this body of Islamic economics, there are two alternate ways offered, first, by Islamizing the conventional economics, and second, by developing a framework from the Quran and Sunnah. But, it remains a big question as to which alternative is better, if not the best, whether to Islamize the conventional economics or to introduce a new system of Islamic economic. Whilst some are in favor of the second alternative, like Taha Jabir al-Alwani and M. Baqir al-Sadr and most are inclined towards the first by negate the un-Islamic theories and assimilate relevant knowledge and then transmute it into a new frame of thought or construct a distinct discipline based on Islamic worldview and epistemological foundation like Ismail Raji al-Faruqi, Syed Muhammad Naquib Al Attas and their proponents.

As one of the presenters in the first

International Conference on Islamic Economics, Al-Qaradawi received warm response for his paper 'role of *Zakat* in the solution of economic problem.'³⁹ This topic was a representation of his two books *Fiqh al-Zakât* and *Mushkilat al-Faqr*. Since 1976, this topic has been reaching major position in Islamic economics up to now and his book *Fiqh al-Zakât* has been publishing dozen times in multi languages. However, during the eighties Al-Qaradawi was absent from Islamic economics world and comeback in the nineties with contemporary topics such economic morality, trade financing, bank interest and environment in 2001. Al-Qaradawi elaborates the Islamic economics system through methodology from *usul fiqh* and others.⁴⁰

In order to discover principles and theories, he uses both approaches deductive (*istinbath*) which can be done only by jurist on mujtahid level and inductive (*istiqrâ'*) which can be analyzed from fact observation and intellectual reasoning from the muhaddiths, founders school of thought or earlier scholars. Both he called *ijtihâd intiqâ'i* and *ijtihâd insha'i* respectively. In his books *Bay' al-Murâbahah* and *Fawâ'id al Bunûk*, Al-Qaradawi used to construct Islamic economics general principles and rules from Quran and Sunnah to deduce the concepts and policies that are suitable for all time and places base on *maslahah* and jurisprudence approach. This effort sounds in line to the methodology proposed by al-Alwani⁴¹ and Anwar⁴².

In spite of the fact that this issue is still problematic since it keeps depending on the analysis tool⁴³, the progress of the development of Islamic economics insists on the need of review and evaluation to the theory and policy implementation to distinguish true and false knowledge, and framework of conven-

tional economics.⁴⁴ The discussions of the current Islamic economists mainly concern on the integration of conventional economics and Islamic heritage resulting on the need on how to appraise the Islamic economic theories and how to prove the reliability.⁴⁵ Most scholars like Chapra,⁴⁶ and Naqvi⁴⁷ agreed on the use of tools of analysis developed by conventional economists as long as the paradigm does not root from Secularist. Some argue on the danger of justifying theories and principles from the revealed sources, like Ibrahim⁴⁸ and some are firmly prudent in the use of the empirical test by preventing it to use on the permanent reality (definitive Texts), like Al-Attas⁴⁹. Unfortunately, however, Al-Qaradawi's works on Islamic economics missed the empirical test to provide evidence of the strength and the reliability of his data theories and concepts, particularly on the topic of zakat, poverty and environment. Hence, all his works in contemporary Islamic economics will be judged as a merely normative work without having positive assumptions to diagnose the reality.

AL-QARADAWI RATIONALE ON AGAINST AL-AZHAR'S BANKING INTEREST FATWA *Introduction*

Allah has promoted the spirit of justice and anti-despotism as the principles of Islamic economics and explained clearly usurious concept in the end verses of *Al-Baqarah* (275-281).⁵⁰ While some of the mistakes of the banks are being negligence of several aspects of *maslahah* and applying interest in some of their products, the people who understand the authentic Text of the prohibition of *riba*⁵¹ come to reinterpret it by means of new approach in order to legalize their new systems.

There are some sections of scholars who still dispute the validity of such notion as *qat'i* Texts of *riba* which has been settled fourteen centuries ago, and has been agreed in the first Islamic Economic International Conference in Mecca 1977 (that bank interest is unlawful). For them, what is important not the text itself, but the objective that lies behind the text. They permit banking interest as an economic necessity that allows financial intermediaries to mobilize savings of variety of products by paying interest to depositors and charging interest to borrowers. One of them is DR. Sayyid Atiyya Tantawi (Oct 28, 1925 -.....) who issued a *fatwa* stating that interest paid by government bonds and ordinary savings accounts do not violate the spirit of Islam.⁵² He also discussed the *fatwa* issued by the Egyptian House of Fatwas (*Dar al-Ifta al-Masria*) involving investment bonds, transactions of real estate banks (mortgages), and US Dollar bonds. This *fatwa* affirms that all of these transactions and income deriving from them are *halal* (permissible) according to the *Shari'ah*, as they do not involve any kind of *riba*.

This issue raised important controversies among Islamic countries.⁵³ Qaradawi considered this as an effort to weaken the Islamic system, strike the Muslim thought and Islamic resurgence (*al-Sahwah al-Islamiyah*) and dissolve the Islamic Institution by permitting banking interest and legalizing *riba* through 'ordered' *fatwa*. In his book *Fawa'id al-bunuk hiya riba al-haram*, Qaradawi identifies a certain kind of misusing Islamic jurisprudence in interpreting *riba* and bank interest in justifying some banking products, especially in the use of analogy, '*illah*, and *ijma'*'. This happens because the methodology they (Tantawi and *Dar al-Ifta al-Masria*) apply does

not meet the conditions required and there are many more rebuttals of Qaradawi confronting Tantawi's rationale on this *fatwa*. Many scholars and writers are also criticizing this *fatwa* and showing the danger of its existence.

The Significance of Fatwa in the State of Egypt

A *Fatwa* is a decree or a ruling. The usual sequence is that a Muslim puts an issue before an authority and the latter rules on the matter.⁵⁴ The authorities that can issue a *fatwa* are well organized. They can be individuals or institutions.⁵⁵ The *mufti* issuing a *fatwa* has to have encyclopedic knowledge, for he will be required to pronounce all the matters on this life; and the problems of belief and law which confront the believer are thus answered by the *fatawa*⁵⁶. A *mufti* has to fulfill the criteria of a *mujtahid* and *fiqih*.⁵⁷

The modern *muftis* vary according to the type of overarching legal and political system in which they operate as well as according to their educational formation. Some contemporary *muftis* describe their freedom from the constraint of interpretive school (*mazhab*) doctrine. Such *muftis* refer directly to the source texts of the *Quran* and the *Sunnah* of the prophet, without citing the positions of the old schools.⁵⁸ The issuance of *fatwa* in modern organizational development appears in specialized committees charged with collective *fatwa* giving.⁵⁹ The *fatwa* accumulates from time to time as they are compiled. These compilations become both the high literature of the community, as well as the Islamic version of Supreme Court reports. The conduct and the mind of the community are set by them.⁶⁰

Siyasah (Islamic politic) must be promul-

gated to further social benefit (*maslahah*) and does not contradict the *Shari'ah* (*Quran* and *Sunnah*). *Siyasah*, under colonial models and later with the emergence of the newly independent Muslim nation-states, has gradually encroached on the territory of *fiqh* law. Under Muhammad Ali Pasha, Egypt's modernizing ruler began the process attacking the legitimacy of *ulama's* role in the legal affairs of Egypt,⁶¹ President Gamal Abd al-Nasir replaced religion as the binding ideology of the state. However, under the presidency of Anwar Sadat, Islamic presence increased into public sphere. Al-Azhar University was chosen to be 'the bastion of official Islam,' and Sheikh Al-Azhar soon became the Islamic 'stamp approval' for several Sadat's controversial policies and programs. But in 1980, he introduced an amendment into the constitution elevating *Shariah's* role as the primary source for the legislation which was profoundly impacted the legal system in Egypt.⁶² It also permeates Tantawi's argumentation in the al-Azhar *fatwa*. The issue of the *Shari'ah* role in state legislation is then widening beyond the particulars of *riba* and finance.⁶³

Socio Politic Histories of Tantawi's Fatwa 28 November 2002

The socio politic aspect of the controversial Fatwa on bank interest can historically be described as follows: In 1907, Egyptian Mufti, Sheikh Bakri al-Sadafi endorsed a *fatwa* of prohibition of bank interest, in the year 1930, 1943, 1943, 1944 and 1945 Sheikh Abdel Majeed Saleem respectively issued *fatawa* that investing deposited money for a fixed interest is prohibited, interest of bonds is prohibited, taking interest for money deposited in banks is prohibited, practicing work that involves *riba* in helping to do

something is prohibited, and investing money by depositing it in a bank in return for interest is not permitted. The previous Mufti, Sheikh Jadul Haq Ali Jadul Haq, endorsed *fatawa* respectively: *Fatwa* of February 11, 1979 says that Development Bonds and Treasury Bonds of fixed return are considered forbidden *riba* instruments; *Fatwa* of December 9 1979 says that interest on investment certificates and on saving accounts is a prohibited *riba*, not a reward or a promise of a prize; *Fatwa* of January 12, 1980 says that prizes won by the owners of investment certificates of category C are considered to be a promise for a prize; *Fatwa* October 2, 1980 says that depositing money in banks in return is a prohibited *riba* whether or not the banks belong to the government; *Fatwa* February 2, 1980 says that borrowing for interest from government institutions or from banks is prohibited because it is *riba*; *Fatwa* August 1980 says that benefiting from bank interest is prohibited by *Shari'ah*, it must be given away as charity; and *Fatwa* January 1981 says that Depositing money in return for a fixed interest rate is prohibited by *Shari'ah*; investing money for actual profits arising out its investment operations is acceptable by *Shari'ah*.⁶⁴

On January 15, February 20, and March 12, 1989, the Egypt Mufti at that time, DR. Muhammad Tantawi pronounced a prohibition *Fatwa* of lending money and/or taking an interest from bank saving and deposit account with predetermined interest. However, his *fatwa* on September 8, 1989 announced that government bond certificate (*shahadah al-istithmar*) and saving account with fixed interest rate are permitted by *Shari'ah*. The problem is the *Fatwa* was kept silent as to the bank interest issues.⁶⁵ *Fatwa* Novem-

ber 2002 says that deposit and safe-deposit with fixed interest rate are permitted. Tantawi added the principle of *al-wakalah* (agency) to this Fatwa whereby bank is an agent doing a prospective business on behalf of depositor. For his trustfulness and the chance given to the bank, bank promises the depositor a predetermined return.⁶⁶

Tantawi's *fatwa* on September 8, 1989 was issued at a time when the validity of Western-style banking was being called into question in militant Islamic circles. Antonio (2003) noted that an Islamic Investment Company al-Rayyan in late 1980s has been dominating the investment sectors in Egypt which squandered millions of pounds entrusted to it by Egyptian citizens. Many analysts said if al-Rayyan were still in existence, government and other private investment company would lose their market. On 1989, al-Rayyan was closed with a charge of malpractice and money scandal. Months after that, Tantawi issued a Fatwa of permissibility of bond "fixed interest rate." Simultaneous issuance of this *fatwa* prior to the scandal associated with al-Rayyan indicates a relationship between Tantawi's *fatwa* with Egyptian bond market competition.⁶⁷ Mallat sounded to Antonio that Tantawi 's fatwa took place in a highly charged political atmosphere.⁶⁸

Two months before endorsing his *fatwa* on September 8, 1989, Tantawi visited Al-Qaradawi and had a discussion on bonds certificate with him and other two al-Azhar professors (Prof. Ali Salus and Prof. DR. Abdul Hamid al-Ghazali). Tantawi realized that his opinion toward bond certificate was wrong. He told Al-Qaradawi the draft of *fatwa* a month after and make an appointment to discuss the draft in Sheikh Muhammad al-Ghazali (the late) house which

was finally cancelled for some reasons. Al-Qaradawi and his colleagues were surprised for Tantawi finally issued the *fatwa* which was totally different to their previous dialog.⁶⁹ Moreover, an Egyptian intelligent has warned Al-Qaradawi to stop criticizing the authority which makes Al-Qaradawi believes that the authority had a provocation behind the endorsement of the *fatwa*.⁷⁰

What are Tantawi 's Controversy Fatawa Said

- a) To understand the issue better the *fatwa* on September 8, 1989,⁷¹ the State's financing of the development plan that the certificate is not loan but a deposit and to encourage the population to increase its level of savings, Tantawi explains, as if he himself sent a detailed letter containing four questions to the chairman of the board of the bank Ahli Bank and (provided with answer) from Tantawi as a Mufti.
- b) In supporting his controversial *fatwa* on the legality of predetermined return capitalization certificate (bonds certificate), Tantawi argues by referring to the views of Muslim Jurist committee of fourteen jurists belonging to the four schools of law under the chairmanship of Sheikh Muhammad Faraj al-Sanhuri. Two arguments cited by Tantawi are Yasr Suwaylem (from Maliki School) and Sheikh Abdul Azim Barakat (from Hambali School). According to Suwaylem, a transaction in which individuals provide capital that the State puts to use is nowhere mentioned in classical books. All transactions are allowed in principle unless expressly forbidden. Barakat viewed the first two types of certificates as legal because they are similar

to the *mudarabah* transaction in which the return of money is shared by the provider of capital and the worker. This is economic projections in which results are guaranteed. The assessment of the third type (denomination c) which includes a bonus based on lottery is more straightforward. According to Barakat, this bonus represents a gift from the State to the investor who holds the certificate and therefore is legal.

- c) These views, Tantawi continues, corroborate the *fatwa* previously issued by Sheikh Shaltut (the late) with regard to the Egyptian Saving Fund (Postal Saving Fund) who said the money which is deposited is not a debt of the bank to its owner nor a loan contracted by the bank. Rather, the owner presented it of his own free will to the postal administration, asking the bank to accept it, with the knowledge that the administration puts the deposited money to use in commercial transactions in which it is rare, perhaps even impossible, for these moneys to be wasted or lost.
- d) Tantawi cites Abd al-Wahhab al-Khallaf that determination of the profit in advance is for the sake of the owner of the capital and is done to prevent a dispute between him and the bank. Therefore, if the owner of the capital did not receive a share in the profit, he would be “swallowed” by his partner.
- e) In his summary Tantawi (Dar al-ifta’) suggested to the director of the Ahli Bank to rename the word interest (*fa’idah*) or profits with a capitalization return (*‘a’id istithmari*), due to its connection with *riba*. He also suggests the bank to establish a fourth certificate with a variable or non-fixed return.⁷²
- f) On November 28, 2002 Tantawi (Rector of Al-Azhar) reiterates his 1989 fatwa by carrying the support of the Azhar Islamic Research Institute (IRI) (*Majma’ Buhuth al-Islamiyah*) with a slight difference from its predecessors in term of substance. The essence of the Fatwa is that bank depositors should be viewed as passive investors, and banks should be viewed as their investment agents. It also specifies predetermined return to which depositors are entitled to a percentage of the capital, instead of specification of a percentage of actually realized profits that are mutually agreed upon.
- g) Pre-specified profits vary from one time period to another (for example: initially specified return is 4% then increased more than 15%, now returning to near 10%).
- h) Pre-specification of profits is beneficial for both parties. The investor allowed knowing his right, therefore, he may arrange the affairs of his life and it gives incentive to the bank to work hard to keep all access to the profits. If the bank loses in one transaction, they win on many others but if losses are incurred, the dispute will have to be resolved in court.⁷³

THE CRITICS OF AL-QARADAWI TOWARD TANTAWI’S FATWA AND HIS LEGAL PROOF

Inappropriate Introduction and Question and Answer Session

According to Al-Qaradawi, Tantawi starts the introduction with inappropriate *hadith mashhur*, for the *hadith* will give *shubhat* image to Tantawi himself. Some of the sentences used by Tantawi such as “to banks which describe themselves as Islamic and to those which do not”, etc. give a connotation that all

of Islamic banks and their product are impugned while each bank has its own Shari'ah boards to supervise the bank operation. Tantawi also gives the example of *riba jaly* (truly riba) which gives the connotation that Islam categorizes forbidden riba and permissible riba. According to Al-Qaradawi this argument also tries to perceive that prohibited interest is doubled and multiplied interest. However, Al-Qaradawi argues that Al-Baqarah: 278-279 actually refers to the entire genus of riba, in this regard, all kinds of riba, i.e. riba al-fadl and riba al-nasihah, including any increase, small and large is forbidden in the loans and sales.⁷⁴

Inapt Maslahah Concept

For who still dispute the validity of such notion as *qat'i* Texts, what important is not the text itself, but the objective that lies behind the text. Every text has its own end and objective, which is commonly identified as *maslahah*. Since the very purpose of the Text is to materialize and preserve this *maslahah*, every legal ruling must be measured on this basis. Thus, if bank interest, for instance, can preserve such an objective, it should not be declared forbidden. In this regard, this group of people usually appeals to a maxim which says that *haythu tujad al-maslahah fathumma shuri'a Allâh* (wherever there is *maslahah*, there must be *shariah* law.)⁷⁵

Although such a maxim contains some truth, Al-Qaradawi criticizes the way it is applied. For him, such a maxim is only appropriate for *ijtihad* problems, and not for an issue such as riba which prohibition has been clearly made and transparent, both in the Qur'an and the Sunnah. Al-Qaradawi found that this legal has not been appropriately quoted from Ibn Qayyim.

Although Al-Qaradawi is of the view that *maslahah* should take precedence while formulating the ruling, he, nonetheless, disapproves the maxim just stated. He rather appeals to a maxim which says "*haythu tujad shara'i' Allâh, fathamma al-maslahah* (where there is *shariah* law, there must be *maslahah*). When applied to the case of riba, we then will arrive at a conclusion that Allah prohibited *riba*, and that prohibition would bring *maslahah* to the people at large. It will create justice and balance in society.⁷⁶

In recent years, there have been a number of Muslim scholars and intellectuals to make it as a measure and a sole basis for Islamic law. However, it has been refuted by many. Khan Nyazee notes that the main objection against the concept of *maslahah* in general is that it is based upon *hikmah* (wisdom),⁷⁷ and the Muslim jurists have been very cautious in the use of it for the determination of laws. This is because wisdom is not definitive, but subjective, and could be manipulated by certain people for certain whimsical purposes. Al-Qaradawi argues that *hikmah* is obvious and transparent. Not every one can grasp it easily; it is concealed and only those who have deep knowledge would be able to comprehend it.

Due to this nature, it is sometimes not verifiable. People may view *hikmah* differently according to his own capacity of intellectualism. Here Khan Nyazee asserts that concealed reason is not qualified to an '*illah* (cause) for the ruling.⁷⁸ That is why Al-Qaradawi encourages using *illat* rather than *hikmah*, for it brings constant characteristic. *Hikmah* can be accepted only when it fulfils a condition of being comprehensive and binding (*jami'ah mani'ah*).⁷⁹ Riba is prohibited to avoid extortion and oppression by the creditors over the

debtors. But it can no longer be conceived as relevant *hikmah*, because the real wisdom behind this prohibition is that to prevent people from producing wealth with the same wealth; but rather obligate them to produce wealth with risks. The reason why wisdom cannot be used as a basis of law is because the legal system must ensure that the professionals observe the proper methodology that meets conditions prescribed above.

Relationship between bank and bank deposit customer is not rich-weak relationship

According to Tantawi the funds given to the bank cannot be considered as form of loan (*qard*), for the bank is not in need. Bank has a main function as intermediary (agent) that channels fund from the surplus party to the deficit party. However, a bank, in order to attract bank-customer has actively advertised its rate of return which shows clearly that the bank needs to get fund from the bank-customer. While according to Al-Qaradawi, deposit lexically is a *wadi'ah* (entrust). The entrust holder (bank) is not responsible for any lost or stealing if they were negligent. The only deposit system according to Islamic system that is similar to the conventional product is safe deposit box (*al-khazānat al-muajjirah*). This relationship whether in current account deposit or long-term deposit is considered as relationship between debtor and creditor. Bank position is as a guarantor not a trust holder (*wadi'ah yad amanah*). It is because customers do not put their money in this account as deposit (entrust goods) but as a loan to the bank. Al-Qaradawi also stresses that the bank depositor status is not the rich party who lends the money to the weak party (bank). But in-

versely, bank is the rich party, while bank depositor is the weak party and this position will not change predetermined return status to be legal.⁸⁰

Mudarabah and Muzara'ah Void Contract

One of Tantawi reason to permit predetermined return is due to this contract which is similar to the mutual partnership that is based on *mudarabah* and *muzara'ah* contract.⁸¹ However, according to Al-Qaradawi it will disqualify the legality of contract, for in *mudarabah* the profit is shared according to the percentage without additional nominal or predetermined return. Moreover, bank cannot be bipartite, who stands as a *mudharib* as well as a guarantor and customer as financier and then in relationship between a bank and a third party, bank stands as financier and the third party stands as *mudharib*.⁸² Al-Qaradawi was against⁸³ the erroneousness analogy of *riba* and the land rental.⁸⁴ This opinion by simplifying that the analogy of money with land and interest with rental are invalid, for the analogy has to have the same reason (*'illah*) wherein the similarity can not be found here, and also an analogy should have strong based (*aslun thabit*) from the Text and *ijma'*. Under the same subtitle, Al-Qaradawi, discuss' the Text basis for forbidding respecification of profits for either party is based on many narrations of Rafi' ibn Khadij regarding pre-Islamic sharecropping arrangements.⁸⁵

Nullification of ijma'

The Institute of Islamic Research AL-Azhar Cairo (Majma' Al-Buhuth Al-Islamiyah), Al-Majma Al-Fiqhi Rabithah Alam Islami Mecca and Majma' Al-Fiqhi Jeddah (OIC) on May 1965 have agreed that the nullification of

Ijma' is only by the equivalence ijma' and all of them conformed that riba is haram. Though minority Muslim jurist said that bank interest is an *ijtihadi* case but it cannot be replaced with a new ijma' of small number of jurists.

The proscribed riba is the doubled and multiplied profit (ad'afan muda'afah)

Some of those who wish to permit conventional banking interest rely on the argument that their interest payments are not doubled and multiplied but constitute a low percentage which is not familiar before Islam and not covered in the verse. In defining riba, Al-Qaradawi has answered by claiming that Al-Baqarah: 278-279 refers to the entire genus of riba, in this regard all riba al-fadl and riba al-nasiah, including any increase, small or large is forbidden in the loans and sales.⁸⁶

The hadith "every loan that results in a benefit is riba" is used to define riba terminology.⁸⁷

Responding to the statement, Al-Qaradawi and also majority of Scholars said it is not a hadith but an opinion used in discussion with intention to resist opposition. In all such cases, the increase was forbidden as long as it is stipulated as a condition or conventionally implied in the loan contract. However, if it was neither stipulated as a condition nor was it conventionally expected, and then such increase was permitted, because it was worthy to note that Prophet (pbuh) said "the better among you is the one who can pay more if he can afford to do so."

The emergency reason

Al-Qaradawi noted two mistakes from the opinion of Sheikh Shaltut who permitted the

use the bank interest in the personal emergency or public emergency. First, he had enlarged the definition of "emergency"; second, he used to say deposit money is a different activity with taking bank interest. Based on *Quran al-Mâidah* verse 3 and *Shariah* maxims *Adh-Dharûrât tubîh al mahzûrât* (Necessity renders prohibited things permissible) and *Mâ ubîha li adh dharûrati yuqaddaru biqadariha* (Necessity is determined by the extent thereof) to complete the first *shariah* maxim, Al-Qaradawi considered the "emergency" reason in this case is the condition of unchangeable faith.⁸⁸

Another Critics to Tantawi's Fatwa

A rebuttal by the Islamic Fiqh Institute of Qatar (IFI), dated January 16, 2003 summarizes the majority of opinion and response among Islamic scholars to Tantawi's ruling.⁸⁹ The IFI council rejects Tantawi's characterization of the depositor/bank relationship as a principle/agent. It states that pre-specification of profit used to guarantee the principle capital is categorically impermissible, because it violates the essence of the *mudarabah* relationship – the sharing of risk in the outcome of the funds invested by the bank. Furthermore, its opinion of Tantawi's 'reach' in invoking *maslahah* in the absence of a clear ruling in the Quranic texts is unequivocal. This consensus is well established, and no dissent has been reported. In this regard, Ibn Qudamah wrote in *Al-Mughni*⁹⁰: "All scholars whose opinions are preserved are in consensus that silent partnership is invalidated if one or both partners stipulate a known amount of profit. *In this regard, consensus of religious scholars is a legal proof on its own.*

El-Gamal stressing on one interesting aspect of the two opinion of Tantawi that is

they deal exclusively with the relationship between bank depositors and the bank, without addressing the nature of bank asset. IRI's fatwa focuses on the liabilities (deposit side)⁹¹ of banks and ignored the fact that the bulk of conventional banks' asset (investment)⁹² take the form of interest bearing loan, which majority of Jurist, including Tantawi, are denounce as the forbidden *riba*.⁹³

The practice of Islamic financial institution should examine both sides of their balance sheet. The return given by bank to the bank-depositors in conventional banks is permissible, since according to Tantawi their relationship is principal and agency relationship (not under loan relationship). However, we should recall that permissibility of return is not solely based on the relationship exist between parties but also affected by way the return itself has been generated. As conventional banks, by definition, put their asset mostly interest bearing asset and engage with any kind of investment including haram investment. Thus the return from this bank's asset is considered unlawful. Though it is permissible to get return under Tantawi's fatwa, however, the source of asset is unlawful; therefore, this conventional return will be voided.

Tantawi and IRI's opinion deal exclusively with the relationship between bank depositors and the bank as principle and agent relationship in which bank-customer acts as a principle and bank acts as an agent to invest principal fund. Therefore no loan would be created from this relationship. However, Antonio (2003) sees this opinion as a void assumption, for the relationship will consider as *wakalah* (agency) transaction. In *wakalah* the agent should be paid which means he is

not the one who pays the depositor.

CONCLUSION

Al-Qaradawi then tried to perceive Tantawi's true intention by choosing *mudharabah* without full supporting bond-fixed interest rate, when he and Dâr Ifta asked the chairman of al-Ahli bank (government side who asked Fatwa) to change interest word to "the investment yield" (*â'id istihmari*) and suggested them issuing bond with loss-profit sharing system. However, the government thoroughly needs legal support for their products and these facts supported Al-Qaradawi to oppose completely the idea behind it.

Al-Qaradawi's critique toward Tantawi's Fatwa on September 8, 1989 was consist of the following: (i) an inappropriate introduction as well as question and answer session, (ii) an inapt *maslahah* concept, (iii) a weak rationale of relationship between bank and bank deposit customer, (iv) a defective analogical reasoning of *mudharabah* and *muzara'ah* to the pre-specified return contract, (v) a wrong argument that sees proscribed *riba* as only the doubled and redoubled charge/rate profit (*ad'afan mudha'afah*), (vi) a misuse of the hadith "every loan that results in a benefit is *riba*" to redefine the term *riba* and (vii) the unacceptable use of rationale emergency. However, Al-Qaradawi's book missed the latest Fatwa of November 28, 2002 for he had published his book in 1990.

Al-Qaradawi allowed an ease and leniency in the logic of rectifying Muslims transaction. In this relation, Al-Qaradawi has introduced *ijtihad juz'i* for analytical tool to conclude a well organized opinion in some speculative issues. His notion of *ijtihad juz'i* in Islamic jurisprudence, which in nature upholds

consensus of jurists and public interest, and of *ijtihad intiqa'i* (selective *ijtihad*) and *ijtihad insha'i* (innovative *ijtihad*) are very beneficial in solving problem of public law in Islamic economy and are potentially utilized by capable scholars, thinkers or professionals (who has fulfilled the criteria of mujtahid) as an approach to other issues.

The discussions of current Islamic economists mainly concern with the integration of conventional economics and Islamic heritage which resulting on the need of how to appraise the Islamic economic theories and how to prove the reliability as well as the use of tools of analysis developed by conventional economics as long as the paradigm does not root from Secularist. Unfortunately, however, Al-Qaradawi's works on Islamic economic missed the empirical test to provide evidence of the strength and the reliability of his data theories and concepts, particularly on the topic of zakat, poverty and environment. Hence, as an outstanding contemporary Muslim jurist who stands as one the major authoritative references today, Al-Qaradawi is necessarily suggested to have a *trained economist* partner in order to achieve 'reliability'-comprehensive work in the development contemporary Islamic economics.

The contemporary Islamic economics has moved faster in line with the globalization competitiveness. There are so many researches and findings on it. Some are using Al-Qaradawi's books as reference, some are criticizing it. Therefore, there is a need to publish a revised version of his works; especially of the former books such *Fiqh al-Zakat* and *Mushkilat al-Faqr* so that it is accessible to the latest generation reader. There are abundance of contributions for Islamic economics discourses made by traditional and

contemporary Muslim jurists which are still remained in the library collection that need to be studied. Therefore, it is quite interesting to explore them for the future research.

ENDNOTES

- ¹ See data on: www.inminds.co.uk/boycott-news.html#eurboy, and fatwa on "Shiri'i al badi'i' al-israiliyyah wa al amrikiyyah fi al-wakti haza kabirah min al kabair", www.Al-Qaradawi.net, Doha, Qatar, 2002, pp: fatawa wa ahkam. See also Omer Bin Abdullah, *Will the Boycott Pinch the Perpetrators of Injustice?*, www.islam-online.net, Doha, Qatar, 2000, Article 9.
- ² Christopher Dickey, *Newsweek*, <http://www.inminds.co.uk/boycott-news-0154.html> (Beirut, 2002).
- ³ Earlier economic issues, although may not be dominant, have occupied the minds of philosophers, jurists, sufis, etc., each responding in their own way, for the discussion was not systematically independent on economic, but merged in the works of *fiqh*, *tasawwuf* and *falsafah* that was dominated by revealed knowledge. In 1954, Schumpeter disregarded intentionally the Muslim's contribution of more than 500 years (the 'Great Gap') in his book 'History of Economic Analysis.' However, the fact showd that contributions of Avicenna, Averoes and Maimonides appeared almost in all books of the 13th century philosophers. See Umer M. Chapra, *The Future of Economics-An Islamic Perspective* (Leicester: Islamic Foundation, 2000), pp. 253-257. In 1940s Sayyid Abu'l A'la Mawdudi was coined for the first time the term of Islamic economics. Others who talked were Sayyid Qutb and Muhammad Baqir Sadr (see Kuran, Timur, *The Economic System in Contemporary Islamic Thought*, 1993). The wake of Islamic Awakening which commenced to gain its momentum towards the end of 1960s, Islamic economics again began to attract attention with the establishing of Islamic banking (see Saeed, Abdullah, *Islamic Banking and Interest: A Study of the Prohibition of Riba and its Contemporary Interpretation* (Leiden: Brill, 2nd edition, 1999), p. 15; and Hindi, Munir Ibrahim, *Shubhat al-Riba fi Mu'amalat al-Bunuk al-Taqlidiyyah wa al-Islamiyyah: Dirasah Iqtisadiyah wa Shar'iyyah* (Iskandariyyah: Al-Maktab al-'Arabi al-Hadith, 1996), pp. 5-6. Hence, after cited Abdullah Saeed, Islamic Banking), many Muslim scholars have argued for it, though not few also ridiculed its visibility. According to Thomas Phillip (1990), actually the original discourse on Islamic economics can be dated back to 1950s as evidence from the publication of books, articles, or pamphlets by Pakistani or Indian Muslim scholars. Philip estimated that up to 1975 there were already about 680 titles pertaining Islamic economics, 30% were in Arabic, 33% in English, and

- 27% in Urdu. Of all this total work, almost 70% were authored by Pakistani or Indian Muslim scholars (see Thomas Philipp, *The Idea of Islamic Economics, Die Welt Des Islams, Band XXX* (Leiden: E.J. Brill, 1990), pp. 117. These data show that subcontinent scholars have really made a great contribution to the development of the discourse on Islamic economics.
- ⁴ Yusuf Al-Qaradawi, *Perjalanan Hidupku* (Jakarta: Pustaka Al-Kautsar, 2003) 52. Translation of *Ibn al-Qaryah wa al-Kitab Mulamah Sirah wa Musirah* (Cairo, Dar el-Syuruq, 1st edition, 2001)
- ⁵ Yusuf Al-Qaradawi, *Perjalanan Hidupku*, p. 51
- ⁶ Yusuf Al-Qaradawi, *Perjalanan Hidupku*, p. 130. Al-Tuhfah is a compilation book of *Alfiyah Ibn Malik* (kitab Nahwu and Saraf or grammar book), *Al-Jauharah Al-Qani* (Kitab Tauhid or monotheism book), *Al-Rahbaiyah* (kitab Faraid or heir book), *Sulam al-Munawaraq* (kitab Mantiq or logic book) and *Al-Shatibiyah* (Kitab Qiraat or Quran recitation book)
- ⁷ Yusuf Al-Qaradawi, *Perjalanan Hidupku*, p. 119.
- ⁸ He was imprisoned from December to February 1948
- ⁹ Yusuf Al-Qaradawi, *Kenanganku Bersama Ikhwanul Muslimin* (Jakarta: Aulia Publisher, 2003) p. 170. Translation of *Muzakkirah Duktur Yusuf Qaradawi, Hayati ma'a al-Ikhwan al-Muslimun*. According to Isam Talimah, Qaradawi was imprisoned again in November 1954 for twenty months as well as in 1963. see *Isam Talimah, Al-Qaradawi Faqihan*.
- ¹⁰ Esam Talimah, *Manhaj Fikih Yusuf Al-Qaradawi* (Jakarta: Pustaka Al-Kautsar, 2001), p. 4. Translation of *Al-Qaradawi Faqihan*.
- ¹¹ Yusuf Qaradawi, *Perjalanan hidupku*, pp. 427-429. This mosque was later famous as Sheikh Yusuf Mosque
- ¹² Talimah, Isam, *Al-Qaradawi faqihan*, pp.4-5
- ¹³ http://www.islamonline.com/cgi-bin/news_service/profile_story.asp?service_id=670 and www.eramuslim.com
- ¹⁴ Yusuf Al-Qaradawi, *Perjalanan hidupku*, pp. 436-347
- ¹⁵ Talimah, Isam, *Al-Qaradawi faqihan*, 19; and www.Qaradawi.net
- ¹⁶ www.Qaradawi.net
- ¹⁷ Yusuf Al-Qaradawi, *Perjalanan Hidupku*, pp. 225
- ¹⁸ In the university level, Qaradawi chose faculty of Ushul al-Din for it provided variety of knowledge he like, such Tafsir, Hadith, Tauhid, Prophethood history, Philosophy, Usul al-Fiqh, Mantiq, Psychology and English. However, he still found the weaknesses in the Al-Azhar teaching methodology for the research analysis to the problem was left behind, yet they put priority to the linguistic analysis.
- ¹⁹ Ibid, pp. 204
- ²⁰ Ibid, pp.186-190, pp.220-242, pp.482-488
- ²¹ Sheikh Mustafa al-Maraghi is the author of modern exegesis "*Tafsir Maraghi*" he is the 26th and 28th Al-Azhar's Grand Sheikh.
- ²² Ibid, pp. 198-200
- ²³ Yusuf Al-Qaradawi, *al-Shahwah al-Islamiyyah baina al-juhûd wa al-tatharruf*. (n.c.: Bank al-Taqwa, 1402H) back cover. Qaradawi said: "Among the most influential person in our thought and spiritual life is Sheikh al-Shahid al-Banna".
- ²⁴ Yusuf Al-Qaradawi, *al-Shahwah al-Islamiyyah*, p.350.
- ²⁵ Yusuf Al-Qaradawi, *Ibn al-Qaryah wa al-Kitab Mulamah Sirah wa Musirah*, 2003, pp. 248
- ²⁶ <http://www.muslimnews.co.uk/news/news.php?article=3320> 30-08-2002
- ²⁷ Yusuf Al-Qaradawi, *Education and Hassan al-Banna*, (Calcutta: Hilal Publications, 1983), pp. 132-139 translation of *al-Tarbiyah al-Islamiyyah wa Madrasah Hasan al-Banna, al-Ittihaad al-islamiy al-aalamiy* (1985).
- ²⁸ Yusuf Qaradawi, *Muzakkirah Duktur Yusuf Qaradawi, Hayati ma'a al-Ikhwan al-Muslimun* (2003).
- ²⁹ Yusuf Qaradawi, *70 tahun al-ikhwan al-muslimun kilas balik dakwah, tarbiyah dan jihad* (Jakarta: Pustaka al-Kautsar, 1999), pp. 273-277. Translation of *Ikhwan al-Muslimun; 70 'aaman fid dakwah wa at tarbiyah wal jihad*.
- ³⁰ Yusuf Qaradawi, *70 tahun al-ikhwan al-muslimun*, pp. 410.
- ³¹ Muhammad al-Ghazali, *Al-Islam wa al-Audha' al-Iqtisadiyyah*, pp. 92-94.
- ³² Yusuf Qaradawi, *Syaikh Yusuf Muhammad al-Ghazali yang Saya Kenal* (Jakarta: Robbani Press, 1999), p. 219. Translation of *Al-Sheikh al-Ghazali Kama 'Araftuhu Rihlah Nisf Qarn*
- ³³ Yusuf Qaradawi, *Fawaid al-Bunuk Hiya Riba al-Haram*, p. 91.
- ³⁴ Ibid, Yusuf Qaradawi, *Perjalanan Hidupku*, 196. under the title *Yusuf al-Sidiq*
- ³⁵ Since he regularly gives serial sermons, the mosque fulfilled up by jamaah which come from Cairo and border cities, people called this mosque as Sheikh Yusuf Al-Qaradawi mosque.
- ³⁶ Ibid, Yusuf Qaradawi, *Ibn al-Qaryah wa al-Kitab Mulamah Sirah wa Musirah*, p. 431. the title is *Nafahat al-Jum'at*
- ³⁷ the title is *Quthuf Daniyah min al-Kitab wa al-Sunnah*.
- ³⁸ Kurshid Ahmad, "introduction" in Muhammad Nejatullah Siddiqi, *Muslim economic thinking a survey of contemporary literature*.
- ³⁹ Kurshid Ahmad (Ed.) *Studies in Islamic Economics*. Papers presented at the International Center for Research in Islamic Economic King AbdulAziz University, Jeddah, Saudi Arabia, ix, 1976.
- ⁴⁰ He also use Usul al-Din, Tasawwuf, Fiqh, Quranic and Sunnah approach.
- ⁴¹ Taha Jabir Al-Alwani, "Islamization of Knowledge: Yesterday and Today," *American Journal of Islamic Studies*, 1 (12), (1995), pp. 81-101

- ⁴² Muhammad Anwar, "Islamic economic methodology," *Journal of Objectives Studies* 2 (1) (1990), pp. 28-46.
- ⁴³ M. Umer Chapra, *The future of economics: an Islamic perspective*, 49.
- ⁴⁴ Ugi Suharto, "Paradigma ekonomi konvensional dalam sosialisasi ekonomi Islam," *Isefid Review*, 3 (3) (2004), 40-61.
- ⁴⁵ Haneef, Mohamed Aslam, "Islam, the Islamic worldview and Islamic economics," *IJUM Journal of Economics and Management* 5(1) (1997), pp. 39-65; and Mohamed Aslam Haneef and Hafas Furqani, "Usul al-iqtisad as a pre-requisite in developing contemporary Islamic economics." Paper presented at the *International Conference on A Universal Paradigm of Socio-Scientific Reasoning*, Dhaka, Bangladesh (2005).
- ⁴⁶ M. Umer Chapra, *What is Islamic economics* (Jeddah: IRTI-IDB, 1996), pp. 38-46.
- ⁴⁷ Syed Nawab Haider Naqvi, *Islam, economics and society* (London:Kegan Paul International, 1994), p. 21.
- ⁴⁸ Anwar Ibrahim, "Towards a contemporary philosophy of Islamic science," *American Journal of Islamic Studies*, 7 (1) (1990), pp. 3-7.
- ⁴⁹ Syed Muhammad Naquib Al-Attas, "Islamic philosophy: an introduction," *Journal of Islamic Philosophy*, 1 (1), (2005), pp. 11-45.
- ⁵⁰ The Islamic prohibition of riba is made on the basis of Qur'anic text that belongs to the Samiyah evidence *qat'i al-thubut wa al-dilalah*, whose interpretation receives no variety. And one of the legal maxims stipulates that "where there is a text there is no room for interpretation" (*La masagha li al-ijtihadi fi mawrid al-nass*). The jurists unanimously agree that any legal rulings that are considered valid in transmission and meaning (*qat'iy wurud wa dalalah*), Muslims are obliged to observe them. Surah Al-Baqarah verse 275-281, which are unalterably fixed (*muhkamat*) and definitive Text (*qat'i*), clearly prohibit *riba* and contain a warning message for those who fail to comply with them. It implies that *ijtihad* cannot be exercised on this matter as it is already prescribed that there is no *ijtihad* on the *Qat'i* Text. See Yusuf Al-Qaradawi, *Fawa'id al-bunuk hiya riba al-haram* (Bahrain: Bank 'Araby al-Islamy, n.y), p. 14
- ⁵¹ The most popular riba committed by people is *riba al-Nasiah* (interest-bearing loan or the real interest or riba jahiliyyah) and *riba al-fadl* (all additional upon counter-value or riba on trading). Qaradawi is of the opinion that sunnah prohibits *riba al-fadl*, not because of its substance, but rather it can act as a mediator that can lead people to perform a real riba. Therefore, the Sunnah prohibition of this sort of riba is based on the notion what is known in Jurisprudence as *Sadd al-Dhari'ah* (blocking the lawful means to an unlawful end). Qaradawi says that Ibn Qayyim believes the sunnah prohibits *riba al-fadl* due to the substance of the prohibition itself. Yusuf Qaradawi, *Fawa'id al-bunuk*, pp. 18-19.
- ⁵² Interest-based banking instruments are not necessarily corrupted, says Tantawi, because they may benefit everyone involved, including the third parties. Generally beneficial and, hence, legitimate instruments including high-yielding government bonds and interest-bearing savings accounts.
- ⁵³ Fatima Akaddaf, "Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?," <http://www.cisg.law.pace.edu/cisg/biblio/akaddaf.html>
- ⁵⁴ Luis Ma'luf, *al-Munjid* (Beirut:1952), p. 598
- ⁵⁵ Arun Shourie, *The world of fatwas or the Shariah in action* (New Delhi: ASA, 1995), pp. 3-5
- ⁵⁶ Muhammad Khalid Masud, Brinkley Messick, David S. Power (eds.), *Islamic legal interpretation Muftis and their fatwa* (London: Harvard University Press, 1996), pp. 8-9.
- ⁵⁷ Othman Haji Ishak, *Fatwa dalam perundangan Islam*, (Kuala Lumpur: Fajar Bakti, 1981), pp. 14-15.
- ⁵⁸ Masud, Messick and Power note that Qaradawi always refer to an equivalent conception of chosen scholars in identifying his own interpretive work as involving "*ijtihad al-juz'i*", an applied *ijtihad* is connected with detailed matters. *Islamic legal interpretation*, pp. 30.
- ⁵⁹ Muhammad Khalid Masud, Brinkley Messick, David S. Power (ed), *Islamic legal interpretation*, p. 27
- ⁶⁰ Arun Shourie, *The world of fatwas*, p. 5
- ⁶¹ By refusing to seek the jurist's council in the state affairs, ceased channeling religious taxes to them and silenced their participation in the political process. Miriam Sophia Netzer, "Riba in Islamic Jurisprudence: The role of interest in discourse on law and state," *Unpublished Thesis*, The Fletcher School, 2004, pp. 34-37
- ⁶² Lastly he was assassinated by a member of a splinter of the Ikhwan al-Muslimun, pp. 38
- ⁶³ Netzer concluded that for this reason Tantawi's *fatwa* led to a great agitation in the Islamic legal community, exacerbating the issue of Islam and legal authority.
- ⁶⁴ Source: Islamic fatwa, The office of the Mufti, Fatawa of Sheikh Jadul Haq Ali Jadul Haq issued in Volume 9, fatwa no. 1248-pp. 3311, fatwa no. 1252-pp. 3335, fatwa no. (n.a)-pp. 3337, fatwa no. (n.a)-pp. 3341, volume 10 fatwa no. 1301-pp.3561, fatwa no. 1303-pp. 3565, Volume 9, fatwa no. 1258-pp.3347, The Supreme Council for Islamic Affairs, Al-Awkaf Ministry, Cairo. See Abdul Hamid Al-Ghazali, *Profit versus bank interest in economic analysis and Islamic law*, Islamic economics translation series no. 2 (Jeddah: IDB-IRTI, 1994), p.37 and see also Yusuf Al-Qaradawi, *Fawa'id al-bunuk hiya riba al-haram*, pp. 87-89.
- ⁶⁵ Yusuf Al-Qaradawi, *Fawa'id al-bunuk hiya riba al-haram*, pp. 89 and 150-168.

- ⁶⁶ El-Gamal, Mahmoud A. *Interest and the paradox of contemporary Islamic law and finance*, <http://www.ruf.rice.edu/~elgamal/files/interest.pdf>, pp. 9-11
- ⁶⁷ Syafi'i Antonio, "Fatwa kontroversi riba Al-Azhar" (1) May 28, and (2) May 31, 2003, www.tazkia.co.id, Retrieved July 6, 2005
- ⁶⁸ Chibli Mallat, "Tantawi on Banking Operations in Egypt," in Muhammad Khalid Masud, Brinkley Messick, David S. Power (ed), *Islamic legal interpretation*, p. 289
- ⁶⁹ Yusuf Qaradawi, *Fawa'id al-bunuk hiya riba al-haram*, pp. 81-82
- ⁷⁰ Antonio, Syafi'i, May 28, 2003.
- ⁷¹ In the opening passage of first controversy fatwa September 8, 1989, Tantawi discusses the crucial role of *ifta'* and the necessity for Dar al-ifta' to perform its role in current issues such banking transactions. Then he refers to the complexity of banking operations where Tantawi all banking transactions in three categories, 1) transaction that all ulama agree are legal and in which profit are halal, 2) transactions that the ulama agree are not legal and in which profits are haram, 3) transactions and profits about which the ulama are in disagreement. Tantawi also adduces four types transactions i.e., *mudarabah*, *musharakah*, *ijarah* and *murabahah* in banking operation. He also turns to transactions that are illegal categories such as any transaction that is based on fraud, exploitation, deceit or injustice, including transactions that are new and innovative (*mustahdatha*) such capitalization certificates. To better understand the issue of capitalization certificates.
- ⁷² See Cibli Mallat, *Tantawi on Banking Operations in Egypt*, pp. 289-294
- ⁷³ El-Gamal, M.A., The recent Azhar *fatwa* and the potential for *real* Riba-free banks, presented in Dubai & CA 2003, Retrieved August, 1, 2006, <http://www.ruf.rice.edu/%7Eelgamal/files/azharfatwa.pdf>, pp. 2-6
- ⁷⁴ The definite article on the word "*al-riba*" whether it is an adverb of "*lil'ahd*" (common known) or "*lil jinsi*" (kind/sort) or "*lil istighraq*" (common), the meanings undoubtedly point to the prohibition of all kinds of *riba* (usury and interest). See <http://islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=4600>. The definite definition of *riba* according to Qaradawi is Albaqarah: 279: "If ye do not [give up *riba*], take notice of a war from God and His Apostle; but if ye turn back ye shall have your capital sums, without increase or diminution." This verse indicates the predetermined additional which is required before transaction, to get a return that is higher than its capital as "the only purpose" of time compensation. This Quranic term has shown a "time value" as the basis on which the interest rate is based. See Qaradawi, Yusuf, *Fawa'id al-Bunuk*. Pp 58
- ⁷⁵ Yusuf Qaradawi, (1999). *Fawa'id al-Bunuk*, pp.50
- ⁷⁶ Jauziyyah, Ibn Qayyim. *l'lam al-Muwaq'i'in*. Vol 3: Cited from Malaikah, Mustafa (1997). *Fi Usuli al-Da'wah Muktabasit min Kitabi al-Duktur Yusuf al-Qaradawi*. Cairo: Darut Taqwa, Trans. Manhaj Dakwah Yusuf Al-Qaradawi Harmoni antara Kelembutan dan Ketegasan, Jakarta: AL-Kautsar pp: 315
- ⁷⁷ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, pp. 248
- ⁷⁸ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, pp. 222
- ⁷⁹ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, pp. 51.
- ⁸⁰ Qaradawi describes this relationship to the experience of Zubair R.A. when his friends and their family entrusted their money to him, he refused to accept because they consider it as a loan so that the money will be under his quarantine. Determining additional nominal in *mudharabah* and *muzaraah* has no basis in the shariah law. This opinion is based on the consensus of jurist (*ijma'*) such Imam Malik, Al-Auzai, Syafii, AbuTsaur, Ashaburra'yi, Ibn Qudamah, and Ibn Munzir. Yusuf Al-Qaradawi, *Fawa'id al-Bunuk*, pp. 46-48
- ⁸¹ Prophet Muhammad (pbuh) prohibited exemption practice on possessing specific area in *muzara'ah* contract. Yusuf Qaradawi, *Fawa'id al-Bunuk*, pp. 64.
- ⁸² Yusuf Qaradawi, *Fawa'id al-Bunuk*, pp. 48-54
- ⁸³ Qaradawi chooses the opinion of Ibn Hazm who stated *Mu'ajjarah* (land rental) is unlawful rather than the opinion of Ibn Taymiyah who allowed *mu'ajjarah* by considering the loss of the renter.
- ⁸⁴ Some have argued that the bank investor has the same status to the landlord lender who receives the rental either for the land that yields agriculture harvest or not.
- ⁸⁵ "We used to lease land with the produce of one part earmarked for the landlord. Sometimes, one part will produce and the other won't. the Prophet (pbuh) forbade use from doing so. We did not rent land for gold and silver at that time" (narrated by al-Bukhari). Other narrations of Rafi' indicate the prohibition of any geographical, temporal or quantitative pre-specification of the return to either party of sharecropping. Yusuf Qaradawi, *Fawa'id al-Bunuk*, pp. 48-54
- ⁸⁶ Yusuf Qaradawi, *Fawa'id al-Bunuk*, pp. 74-75
- ⁸⁷ Yusuf Qaradawi, *Fawa'id al-Bunuk*, p. 37
- ⁸⁸ The unchangeable faith has to fulfill the criteria of: (1) the emergency intolerable fact is proven by the expertise; (2) no alternative is permitted to save him from emergency condition; and (3) the permission is allowed for a temporary as long as emergency exist. Therefore, in this sense, Qaradawi wants to remind that the emergency terminology can only be exercised under the limitations of power prescribed by a constitution. Thantawi's opinion was taken based on

Sheikh Mahmoud Shaltout's fatwa of the permissibility of Post-Safe Account, i.e. deposit account in the form of share paper. Unfortunately, Sheikh Shaltout never knew the post institution never invested the fund in the any business or project development but invested it to the bank and take the benefit (interest) from it. Sheikh Abu Zahrah told Qaradawi that Sheikh Shaltout was willing to withdraw the fatwa, but Abu Zahrah suggested to revise it only. Very unfortunately, he passed away before he can actualize his intention.

- ⁸⁹ El-Gamal, Mahmoud A, *Interest and the paradox of Islamic law and finance*, p. 13.
- ⁹⁰ See *Al-Mughni* vol. 3, pp. 34 Netzer, Miriam Shopia, (2004), p. 47
- ⁹¹ Liabilities side is the side of funds owed by a bank, including time deposits and demand deposits, borrowing from a Federal Reserve banks and federal funds in the interbank market. Deposit liabilities, representing claims by a banks customer in the assets of the bank are the major source of fund for bank lending. See Thomas Fitch, *Dictionary of Banking Term*, 2nd ed. (New York: Barron's, 1993) p. 351.
- ⁹² Asset side is the side of loans, discounts, investment securities (government, bonds, municipal bonds) and claims against other banks. Loans account for the largest portion of interest earning assets held by bank and thrift institution. Thomas Fitch, *Dictionary of Banking*, p. 35.
- ⁹³ Mahmoud A El-Gamal, *Interest and the paradox of Islamic law and finance*, p. 15.

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