

# **SHARIA AND JUSTICE FOR WOMEN**

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# **Different Interpretations**

- **No single definition – different meaning to different people**
- **Complex, historical – profane locus & context, but advocates of formal sharia not ready for rational discussion**
- **Islam = ideology, final, non debatable, sharia – formal, positive law**
- **Islam = source of moral ethics, not rigid inflexible set of law**
- **Formal sharia – problematic, disrupt integration of nation state; sharia promoted through education & awareness**

# **Indonesia & Sharia**

- **Unique, largest Muslim concentration but not Islamic state**
- **Neither secular state – religion influences state policies**
- **Compromised – adopt Islamic law on family (al-akhwal al-syakhsyiyah), haj, zakat**
- **Retain universal principle of equality and non-discriminatory in positive law**

# Sharia in Reform Era

- **Democratization = all voices spoken out, battlefield of contestation**
- **Extreme example of sharia – voluntary rajam of Lasykar Jihad member, Abdurahim, March 27, 2001 in Ambon; hundreds Lasykar stoned him to death; award & funds for bereft family for inspiring people to implement sharia**
- **Regional autonomy = reviving ‘local wisdom’, patriarchy – demand formal sharia**
- **Women victimized first – control of women’s body, domestication**

# **Control of women with sharia, Case from NAD**

- **Special autonomy– referndm – sharia (2000)**
- **Anthropological study (2002)**
- **In-depth interviews, FGD, direct observ.**
- **Forced veiling & Islamic nuances through Arabic alphabet, literal quotation of Qur'an**
- **“Verandah of Mecca” – sharia was lived without formalization; jilbab operation**
- **Formal sharia when NAD in turmoil; panacea?**
- **Politicization? Symbolization? Disillusioned**

# **Male-biased Fiqh: another source of injustices**

- **Islam liberates the oppressed, women and slaves most advantaged; why realities different? Gap between ideals and realities**
- **Cause: narrow understanding of sharia, referring only to fiqh , Islamic jurisprudence, one of three elements of sharia**

# **Elements of Sharia**

- 1. Fiqh, legal system, refers to al-Islam**
- 2. Tawhid/ushuluddin, theology, refers to al-Iman**
- 3. Tasawwuf/akhlaq, moral ethics and spiritual system, refers to al-Ihsan**

# **Fiqh & sharia**

- **As part of sharia and directly referred to the Qur'an and hadith, fiqh should reflect goal of sharia (maqashid al-sharia) and Islamic universal values of justice, equality, deliberation, and good association between women and men (al-mu'asyarah bil ma'ruf)**
- **Fiqh, intellectual product of Muslim jurists cannot be disassociated with from socio-cultural context**

- **Fiqh is judicial response to legal problems in the then real life**
- **Culture influential in shaping character and nature of fiqh**
- **Formation of fiqh may have political elements, associating interests of jurists and power holders**

# Examples of Fiqh

- **Interpretation and understanding that a wife should submit to husband, otherwise she is considered as nushuz (rebellious)**
- **Wife should not refuse husband's advances for sex, otherwise she is cursed by angels**
- **Wife should stay at home, and not leave without husband's permission**
- **Women should not lead prayer with man being follower**
- **etc**

# **Fiqh, most dominating branch**

- **Fiqh, legal reference in public & domestic lives of Muslims, almost none have gender perspective**
- **Fiqh is often used to justify resistance against women's empowerment or gender equality and equity**
- **Unfortunately, fiqh is most dominating branch of religious knowledge and most influential in shaping Muslims' religious way of thinking**

# Islam and Gender

- **Gender differences should not result in differences in enjoyment of rights by men and women**
- **Basic rights for both women and men (al-daruriyyat al-khoms): right to life, right to religion, right to freedom of thinking, right for procreation, right for wealth and property**

# **Conventional Fiqh**

- **Codified over 1000 years ago and has remained immutable ever since**
- **Can no longer reflect the spirit of justice for women**
- **Should gender biased fiqh be sustained?**
- **Should we construct a new fiqh with gender perspective? This means confronting deeply rooted convictions that fiqh is final and perfect product of ijtihad of authoritative jurists.**