

SHARIA AND JUSTICE FOR WOMEN¹

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Different Interpretations of Sharia

There is no clear definition of what is meant by sharia. It means different things to different people, arousing lengthy debates and controversies. As proponent of Islam and human rights, An-Na'im (1990) contends, sharia is a complex discourse because it is related to the nature of Islam as a religion which is supported by historical Islamic law known as Islamic sharia.

Placed in this historical perspective, sharia is to be viewed in a profane locus and context. It has to be positioned within the framework of fairness without any special privileges because of its sacred functions and sources. However, most formal sharia activists are not ready to place Islamic sharia in a rational public discussion. They view Islam as an ideology which is final and not debatable, manifested in the formal implementation of sharia as a positive law.

Those who argue against formal sharia view religion as a source of moral ethics and not a set of rigid, inflexible laws regulating all aspects of human life. A structural approach to sharia by formalizing it can be problematic as it can disrupt the nation state's integration efforts. Sharia should be promoted through education, raising Muslims' awareness to practice religious teachings, values and principles.

Indonesia is unique. A locus of the largest Muslim concentration in the world, one fifth of the whole Muslims, Indonesia is consistent as a nation-state and not an Islamic state. Neither is it a secular state. Indonesia has adopted a 'compromised' approach, by adopting certain Islamic laws such as on family (*al-akhwal al-syakhsyiyah*), haj and zakat, and retaining the universal principle of equality and non-discriminatory in its positive law.

However, shifts toward democracy in the reform era have impacted Indonesia's long-standing image as a moderate Muslim country. Along with the growing freedom of expression and speech, voices of the fundamentalists have been outspoken as well. Claims for formal sharia were raised from various regions, with Nanggroe Aceh Darussalam (NAD) as pioneer and 'laboratory' as specified by the then Vice President Hamzah Haz (Munir 2003). An extreme interpretation of sharia such as the practice of stoning to death (*rajam*) was adopted by *Lasykar Jihad* to its member, Abdurahim, in Ambon on March 27, 2001. He voluntarily offered himself to this punishment, which

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was executed by hundreds of the *Lasykar* members. Media of the radicals granted an award and funds to the bereft family because Abdurahim had 'inspired people to implement Islamic sharia.' (Husaini, 2001:21).

Political and economic decentralization toward regional autonomy, launched in 2000, has triggered the revival of patriarchy as part of uplifting 'local wisdom.' This is an unsurprising phenomenon because most local cultures in Indonesia, like many others in the world, are patriarchal. Excessive democracy has produced euphoria where male elites intensified their control over women in the name of religion. Sharia was and is being interpreted in the perspective of the power holders, mostly male or male-chauvinistic females, normatively and rigidly with no perspective of justice for women.

Case Illustration: Controlling women in the name of sharia

Nanggroe Aceh Darussalam (NAD) is an Indonesian province with a special autonomy status. Upon referendum, sharia was formalized in 2000. Two years later, an anthropological study was conducted to document people's reactions and feelings about sharia and the social dynamics post its implementation. Using the techniques of in-depth interviews, focus group discussion, documentary studies and direct observation, information was gathered. Two most striking phenomena were focus of the study: forced veiling (head scarf wearing) for women, and the creation of Islamic nuances through Islamic 'identities' such as the use of Arabic letters and quotations from the Qur'an.

The nickname 'verandah of Mecca' for NAD speaks by itself about people's deep internalization of Islam. Islamic nuances can be felt everywhere, manifested in various forms: the way they dress, the way they establish social relations, the sound of prayer calls, etc. Their history noted a famous king who ruled with justice according to sharia. They had been yearning to have formal sharia for long, but always refused by central government.

Now, the offer came, when NAD was in a difficult situation. Amidst lengthy conflicts, more than 25 years, when social infra structures were deteriorating, when people were screaming out of poverty and injustices, when they yearned for peace and reconciliation, when claims to separate from the nation became crystallized, formalization of sharia, as a matter of fact, triggered a basic question. What political agenda is hidden behind?

Formalization of sharia, admittedly, is part of an effort to uplift the dignity of the people, which was diminished because of lengthy horizontal and vertical conflicts. This was part of people's desire. But this desire was not well responded by the Central government. The situation full of conflicts made it impossible for a fundamental change like formalization of sharia. Many raised questions why people's demand for formal sharia was not responded to. Why only now, when NAD was in conflict?

Undoubtedly, people raised assumptions of political game behind the process. Most informants mentioned the political dimension of formalization of sharia, i.e. in order to calm down the people. Sharia was expected to serve as a panacea, bringing people to peace and tranquility.

Even worse, women became the first object to control. The head-covering policy was followed by an operation when, on a broad daylight, in the center of the capital city. Young girls and women without head covering were stopped. Under staring of hundreds of eyes, they were forced to wear *jilbab*, distributed for free by the wife of the then governor, who is now in prison for corruption. One of the women, when interviewed, expressed her feelings of embarrassed because of that operation. She did not feel guilty as she was dressing as usual and all of a sudden she was given that punishment in the name of sharia. Has sharia brought justice to women?

People were disappointed because formal sharia did not touch the various social illnesses faced by Acehnese: security, poverty, injustices, violence against women, etc. The political dimension was too obvious, dealing more with physical symbols and identities rather than more essential problems. In short people were disillusioned; they were hoping to have justice with sharia, what they gained was more of politicization, symbolization, and control over women (Munir, in Burhanudin 2003, 127-136; Munir 2003)..

Male-Biased *Fiqh*: Another Source of Injustices for Women

The above realities pose a fundamental question: why Islamic teachings, said to be liberating the oppressed groups, women and slaves, and promoting justice and equality, are not manifested in the attitudes and behavior of Muslims to women? Why is there a big gap between Islamic teachings and their realities?

This paper argues that apart from the politicization of religion as described previously, the gap exists because of Muslims' narrow understanding of sharia, referring it only to *fiqh*, compilation of Islamic law. *Fiqh* is just one of three elements of sharia (ZA Noeh, in Munir 1999, 152), dealing with the legal system and refers to *al-islam*. The other two are *tawhid/ushuluddin* (theology), which refers to *al-iman* and *tasawwuf/akhlaq*, which refers to *al-ihsan* and constitutes the ethical and spiritual system

As product of human intelligence directly referred to the Qur'an and hadith, and as part of sharia, *fiqh* should naturally reflect the goal of sharia (*maqashid al-sharia*) and the universal values of Islam such as justice, equality, deliberation, and good association between women and men (*a-mu'asyarah bil ma'ruf*).

In the Islamic intellectual tradition, *fiqh*, an intellectual product of Muslim jurists, cannot be disassociated from their socio-cultural context. Simultaneously, it is a judicial response to the legal problems in the then real life. Culture is, therefore, influential in shaping the character and nature of *fiqh*. In addition, the process of *fiqh* formation may

have some political elements, associated with the interest of its jurists or those in power at that time.

Interpretation and understanding that a wife should submit to her husband, otherwise she is considered as *nushuz* or rebellious; or that she should not refuse her husband's sexual invitation otherwise she will be cursed by the angels; or that she should stay at home and get out only with her husband's permission, etc. are the products of *fiqh*. Almost none of the teachings of *fiqh* which becomes a legal reference in the public and domestic lives of Muslims have a gender perspective. Rather than defending women's interests, the existing *fiqh* products have, instead, been discriminative to women and placed them in a secondary position. *Fiqh* is often used to justify resistance against women's empowerment or gender equality and equity. Unfortunately, of the various established intellectual tradition of Islam, *fiqh* is the most dominating branch of religious knowledge and the most influential in shaping Muslims' religious way of thinking (Madjid 1992, p. 235).

Islam views that sexual/gender differences should not result in differences in the enjoyment of rights by women and men. Both women and men have the same rights, as contained in *ad-Dharurat al-Khomsah* (The five basic rights), i.e. right to religion (*hifz-al-dien*), right to life (*hifz al-nafs*), right to freedom of thinking (*hifz al-'aql*), right for procreation (*hifz al-nasl*), and right for wealth and property (*hifz al-maal*). Some *ulemas* have added with right for self-dignity (*hifz al-'ird*) (Mahfudz, in Hasyim 1999, p 114).

Conventional *fiqh*, codified more than a thousand years ago and has remained immutable ever since, can no longer reflect this spirit of justice for women. As part of sharia, *fiqh* should reflect the goal of sharia, i.e. *maslahat* (well-being, public benefit) and the fundamental values of Islam such as justice and equality between women and men. The question is, therefore, should such gender inequitable construction of *fiqh* be sustained? Would dismissing conservative, male-centered *fiqh* by constructing a new *fiqh* equivalent to deviating from the Qur'an's principles? Or should we transform the *fiqh* by constructing a new *fiqh* that reflects gender justice and is in line with the goal of sharia and the universal values of the Qur'an, even though it may mean confronting deeply rooted convictions that *fiqh* is a final and perfect product of *ijtihad* by authoritative ulamas? The latter should be the answer.

The reform of *fiqh* should be geared toward promoting the humanistic face of Islam especially on women. This could be done only if we could get out of the current *fiqh* on women and move to a *fiqh* that is more humane and incorporates current socio-cultural realities. Formal and rigid interpretations of religious doctrines which perpetuates women's problems should end. The spirit of well-being (*maslahat*) of Islam should be placed at the forefront by promoting three models: *First*, be open-minded in interpreting holy texts. *Second*, place human beings at the center in interpreting holy texts, and *third*, pay attention to various socio-economic and other humanitarian problems faced by Muslim societies especially the women.

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