

GENDER SENSITIVITY IN ISLAMIC LAW (FIQIH) MATERIAL OF WOMEN IN PESANTREN (Case Study in Pesantren al-Hamidiyyah Lasem and Pesantren al-Ikhlash, Pati, Central Java, Indonesia)

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ABSTRACT

Efforts to realize justice and gender equality in Fiqih study of women in pesantren need long time. This article aims to describe the study of Fiqih about women in pesantren. It used the document study method on Fiqih material about women in two pesantren in Central Java, namely Pesantren al-Hamidiyyah Lasem and Pesantren al-Ikhlash Pati, with gender analysis. This article concludes that pesantren that initially conducts women's fiqih study in neutral and gender bias seemed to experience a shift towards gender sensitivity. It can be seen in the fiqih material about women in the recent period which is equal to issues of equality and justice. This shift is marked by female jurisprudence that accommodates justice and gender equality in issues such as women's theology of creation, reproductive health, enjoyment of sexual intercourse, self-concept and other issues. This shift is caused by increasing the gender perspective of the managers in pesantren sub-system, namely kyai assistant (*badal*) and the teachers (*ustadz-ustadzah*). This increase is expected to have an impact on the improvement of santri life quality with gender justice.

Keywords: Women, islamic law (Fiqih), pesantren, gender sensitivity, shifting paradigm

INTRODUCTION

Pesantren is an indigenous institution that comes from Indonesian tradition. For some people, long history of pesantren is related to the existence of Walisongo in 15th-16th century AD in Java (Mas'ud: 2002: 3). Mas'ud mentions that Maulana Malik Ibrahim (1419 AD) in oral tradition is considered as the master in pesantren tradition in Java. Steenbrink (1994: 20-21) mentions that pesantren system was adopted by the Muslims in Java, from the teaching tradition in Hindu religious rituals of India characterized by the great respect of students (*santri*) to teachers (*kyai*). Regardless of the differences about the origins of pesantren, history showing the last pesantren is from Indonesian culture. Dhofier (1996: 47-49) mentions that the main elements as *anasir* in pesantren are *kyai*, *santri*, mosque, *pondok* or Islamic boarding house and teaching of classical Islamic books.

Pesantren as one of the Islamic educational institutions has a goal to have *santri* that have a deep religious understanding. Some branches of science studied in Islamic boarding schools such as Fiqih, Arabic grammar, Arabic literature, Morals, Islamic Theology (*Tauhid*), Qur'anic Interpretation (*Tafsir*), Prophets' tradition (Hadith), and *Sirah*. Islamic sciences are studied by *santri* through the classical literature known as *kitab kuning*. It is as a distinguishing feature of pesantren with other Islamic educational institutions (Bruinessen, 1999: 34).

Fiqih is one of the teaching materials about Islamic law in pesantren. One study in Fiqih related to women in this article is called as female Fiqih (*fiqih nisa'*). Discussions on Fiqih related to women can be found starting from the discussion in worship (sacred, salat, fasting, pilgrimage or zakat), *muamalah* (various transactions), family (marriage, divorce) to politics (leadership). In the case of fiqih, there are a number of authors in pesantren who have collected special cases related to women such as menstruation, *istihadhah*, *wudhu* procedure, *iddah*, pregnancy and special studies of women in a single book. There are many books written using this model, for example *Risalat al-Mahidh* and *Janat al-Nisa'* books. They are considered as the genre of classical Fiqih book. In addition, pesantren also teaches material about women Fiqih in various studies in a wide field. Many discussions in *tafsir*, hadith, and *tasawuf* which are related to women such as the discussion about how the women create the relationship with her husband in the family, the position of women, the testimony of women and women's spiritualism. This article will specifically discuss the legal material about women taught in pesantren Al-Hamidiyyah and al-Ikhlash Pati until 2017.

This article is important to supplement the existing research on *Nisa' Fiqih* in pesantren. The study of the traditional Muslim women's Fiqih was done by Abdullah (2001: 1-13) at ARIS pesantren in Kendal by studying *Uqud al-Lujain*. Abdullah found the gender segmentation in that book.

Hamidah study (2009) on the reform of *fiqih al-Nisa'* Pesantren Feminist focus on the representative sources of *feminist* pesantren's work. They are from Masdar Farid Mas'udi, *Islam and Women's Reproductive Rights, Dialogue on Fiqih Empowerment* (1997); KH. Husein Muhammad, *Women Fiqih, Kiai Reflection on Religious Discourse and Gender* (2001); Syafiq Hasyim, *Unpredictable Things in Women Fiqih* (2001); Siti Musdah Mulia, *Islam Criticizes Poligami* (2004); Maria Ulfah Anshor, *Fiqih Abortion, Discourage of Women's Reproductive Rights*, (2006). Hamidah concluded that the methods used in those five books were theoretical and practical based on contextual approaches. Those five books are feminist works from pesantren, but they are not specifically taught in pesantren.

The article of Mahmudah (2015) on sexuality education in pesantren is related to this article, in which she attempts to describe a number of Fiqih materials in *kitab kuning* including material of Islamic law about women (*fiqih nisa'*) taught in pesantren to see

the development of sexuality education. Mahmudah concluded that the material of sexuality education in pesantren recently is more comprehensive.

This article supplements the existing review by looking at legal materials on women in Indonesian pesantren through a gender perspective. Gender is a term that refers to the apparent differences between men and women in terms of values and behavior. The Women's Studies Encyclopedia (153) defines gender in detail as a cultural concept that seeks to make distinctions between men and women in terms of the role, behavior, mentality and emotional characteristics that develop in society. This distinction does not matter as long as there is no imbalance and injustice. Farid inventoried some of the gender-based injustices of subordination, marginalization, stereotype (labeling), discrimination, violence and multiple burdens. This article uses the gender inequality indicator to see if female fiqh in pesantren shows gender-neutral, gender-bias or gender-sensitive impression.

ISLAMIC LAW MATERIAL (FIQH) ABOUT WOMEN IN PESANTREN: SOME PAGES

Islamic Law (Fiqh) studies as well as other studies in pesantren can be held in two good forms of *sorogan* and *bandongan* studies. The study of *sorogan* is a kind of study that provides students with the opportunity to learn individually in the form of reading one by one before the teacher/*kiai*. Some boarding schools, especially those that apply classical modeling learning often use this model. While in other pesantren, *bandongan* is a learning system whereby *ustadz/kiai* read and explain certain knowledge in front of santri while students listen to the explanation.

Some reference books in pesantren can be the books that specifically discuss the science of fiqh and the book that combines fiqh knowledge with other sciences. The book of reference in the field of Fiqih was read at the baseline such as Safinat al-Najah by Salim ibn Abdullah ibn Sa'ad ibn Sumair al-Hadhrami, The Book of Matan Ghayah wa al-Taqrīb by Abu Syuja 'Ahmad Ibn Husain ibn Ahmad al-Asfihani (Bruinessen, 1995: 28) and his sermon, Book of Fath al-Qarib al-Mujib by Muhammad ibn Qasim al-Ghazzi. Both of these books are also used in pesantren al-Ikhlās Pati in exploring the matter of Fiqih. The next view will cover the material of each book used by these two pesantren and link it to a gender perspective.

1. Book of Safinat al-Najah
Book of Salim ibn Abdullah's work collects two areas of science namely the field of Islamic theology (Aqidah) and Islamic law (Fiqh). In the field of Fiqih, as the systematic of Fiqih's book in general, the discussion begins with *thaharah*. The discussion of *thaharah* consists of *istinja'*. It includes signs of *baligh* (maturity of adolescence) for men and women, ablution, intentions, obligatory bath, *hadats*, *tayammum*, *najis* and menstruation. The next materials are related to prayer and fasting. In some of the above discussion, the material of female Fiqih about the changes in puberty are discussed in the Fiqih as a sign of *baligh*; menstruation for women. Other discussion such as bathing is mandatory for couples after sexual intercourse. Discussions that are specifically related to women are seen in menstrual materials. The author used a gender-neutral perspective because it exposes the material without relating the gender roles to men and women.
2. Matn al-Taqrīb
This second book is more complete and extensive than the previous book. Matan al-taqrīb and its syarah study the various provisions of the fiqh ranging from the discussion of religious or religious rituals such as *taharah*, prayer, fasting, *zakat*, pilgrimage, *mu'amalah* discussion and other materials, fiqh *munakahat* such as marriage law, relates to heritage property, *jinayat* fiqh to a discussion of testimony and slavery. As the first book, this book deals with a special discussion for women when explaining the differences between men and women during prayer. The others are about differences in how to stand, how to sit, how to remind forgotten priests or *imam* and others. As a normative subject in fiqh that tends to justify the law, the book of al-Taqrīb presents itself as a gender neutral book, in which the author when discussing differences between men and women does not discuss about gender relations (Abu Syuja ': n.y)
3. The Book of Syarh Uqud al-Lujjāyn fī Bayān Huquq al-Zawjain
The Book of Uqud al-Lujjāyn is the most popular Fiqih book in pesantren in relation to the rights and duties of husband and wife. This book is the main curriculum and is often as teaching material that is specifically recited in the lecture in the month of *Ramadhan* or known as the book of *posonan* (in Javanese) as a routine study. Bisri (2001: ix-xi) mentions although this is not a obligatory book (*muqarrar*), the popularity of the book makes this book widely known and is considered to represent the pesantren and Islamic views when it comes to the rights and responsibilities of wives.

The book of Muhammad ibn Umar al-Banteni al-Jawi (1813-1898 AD) written on 27th of Muharram 1294 H consisting of 22 pages including the *mukaddimah* (khutbat al-kitab) consists of four sub-chapters of discussion four chapters). Because it is quite concise then the author calls it a treatise (Nawawi: n.y). The book of Sharh Uqud al-Lujjāyn consists of four points (*fasl*) of discussion.

- a. Article one is about the husband's obligation to the wife. These obligations include good reproduction (husn al-ashrah), providing livelihood (dying), dowry, and teaching about obligatory or *sunna* worship including menstrual periods as well as women's obligations to obey the husband as long as not in bad or *maksiyat* thing.
- b. Article two contains the obligation of the wife to the husband, namely, torture to the husband during the period not in the affairs of the family, to take good care of him, to surrender his body to the husband, to stay home, to protect himself from infidelity with another man, to take the veil so that the other men who are not *mahram* despite the face and palms, does not demand something beyond the capabilities of a husband, keeping husbands from using unlawful and honest property in menstruation.
- c. The third article contains the virtues of women to pray in their homes.
- d. The fourth article contains about a man's luck looking at a woman who is not *mahram* and vice versa.

The discussion on the four discussions (clause) in the book Uqud al-Lujjain indicates gender bias. For example when declaring the female body as defamatory, Nawawi presents the view of the law to see the body of women as well as the segregation of women from the public space because it can cause libel. The concept of defamation in women shows a negative labeling associated with self-adverse conceptions of women, as the presence of women is seen to cause loss and threats to male roles. In another context, Nawawi cites normative arguments in the form of a hadith about the angelic curse of a woman who refuses to relate to her husband. When a woman is married, according to Nawawi, the body of the wife belongs to the husband and is used based on the interests of the husband. Wives have no control over their own sexual desires so that when a husband invites to have intercourse, she cannot refuse.

4. The Book of Qurrat al-Uyun.

Qurrat al-Uyun is second only to the most popular book Indonesian pesantren after Uqud al-Lujjain. The Book of Syarah Qurrat al-Uyun was written by Abu Muhammad al-Tihami Kanun al-Idrisi al-Hasani. This book is a syarah (explanation) of the nadzam (poem) by al-Hammam Abi Muhammad Sidi Qasim ibn Ahmad ibn Musa ibn Yamun al-Talidi al-Akhmasi or popular as Ibn Yamun. Throughout 94 pages, this book discusses the issues of husband and wife relationships and the issues that are related to them, including the ethics of coitus (n.y: 2 - 94).

The Qurrat al-Uyun's book of theology is as follows:

- a. The *Mukaddimah* contains the reasons for Ibn Yamun's alleged description of al-Tihami.
- b. The provisions concerning marriage contain marriage law for men and women, terms and pillars of marriage.
- c. Encouragement of marriage and things is to watch out for in marriage (afat). The drive for marriage is discussed economically, socially and religiously as maintaining a view, providing calm, regenerating functions and continuing offspring as well as other things
- d. Discussion of intercourse (*bina'*) which includes the right time to do it, things that must be done, things to avoid and about the ethics of the implementation of *walimah* and others.
- e. The chapter on the provisions of time in intercourse describes the best time performed intercourse including things done before the intercourse between husband and wife like performing ablution, praying and surrender to Allah by way of asking forgiveness (repentance) as well as prayers that must be read.
- f. The chapter on ethics and how to conduct marital relationships gives a description of the related ethics that includes foreplay (*mula'abah*) and ethics, keeping oral and body hygiene and so on.
- g. The chapter about food that women need to challenge because it causes infertility such as bitter food, and the suggestion of eating sweet foods like pomegranate and sweet apples.
- h. The chapter on ethics which must be done during intercourse such as in a closed and protected place as well as some positions in the coitus that should be avoided. It includes the prohibition of doing anal intercourse (analogy to the anus).
- i. The chapter on the forbidden places of intercourse under a fruitful tree, in the open facing or turning towards the direction of the Qiblah and the prohibition to see the genitals of each partner, including the prohibition to make a relationship when the wife does not want.
- j. The ethics of sleep after having intercourse such as performing ablution including reading before going to bed.
- k. The supplementary article (tatimmah) contains the duties of the wife to the husbands which includes staying at home, not much mobility, and not receiving guests when the husband is not home and so on.
- l. Conclusion (*khatimah*) contains about parenting and teaching for children.

The material written by al-Tihami indicates the advance of women's rights written in *kitab kuning*. Al-Tihami calls the need for a husband to pay attention to the wife's (orgasm) satisfaction during sexual intercourse. This view points to the need to grant the right to enjoy sexual relations for wives equally. This book still shows gender bias in its presentation. For example, al-Tihami mentions the taboo of menstruation Al-Tihami citing information that Eve get her period on Tuesday, where on the same day was also a murder Prophet Nabi Yahya Zakaria and thus forbidden marital relationship. This view is detrimental to women because of menstruation for a woman is natural event and a sign of change in women in the current phase Eve puberty. Effort of linking menstruation to murder Nabi Zakaria and Yahya and ban marital relationship indicates that menstruation negative stereotypes become taboos. The next stereotype of a woman called al-Tihami is that women have many sexual urges. Al-Tihami cites the Hadith that women have nine (9) while the male orgasm is just a lust alone, only God covered with shame dominant in women.

5. Risalat al-Mahidh

Risalat al-Mahidh is characterized by a typical Indonesian archipelago's book because it is written in *Pegon*, Javanese written in Arabic script. This book written by Indonesian writer named Masruhan Ihsan. Unfortunately, the author until now still does not get much data about it.

This book was once taught in the pesantren al-Hamidiyyah Lasem before 1990. This 46-page book describes some of the provisions relating to women such as menstruation, childbirth, ways of praying, newborn care, dealing with wives, bathing and pregnancy. Discussion about menstruation, childbirth and pregnancy becomes one of the materials about female reproduction.

In contrast to the books of Fiqih in general, this book seeks to show the wisdom behind some special provisions experienced by women such as menstruation. Masruhan mention some wisdom, first for women accustomed in parenting. This statement implies that the responsibility of childcare is charged to the wife. The second wisdom mentioned by the

author that menstruation is related to the readiness of women to receive sperm from husbands after marriage. This readiness is related to the dowries that the husband has paid to the wife. This author's statement suggests that the dowry is like the purchase price of women in marriage. The next lesson is related to the condition of women who have a lot of lust even though the basic character of women is shy. Because it has a lot of lust, so many women travel. Menstrual blood helps women to reduce their public activity and mobility. Some wisdom called Masrukhan (n.y: 9 - 11) gives stereotypes to women's self-concept through menstrual blood that harms women.

Another discussion of gender bias can be found in the discussion of the difference between men and women totaling thirty (30) pieces. Masruhan mentions in addition to differences from biological aspects such as women get menstruation, childbirth and childbirth, declared a woman's voice is aurat. This Masruhan opinion indicates a negative self-concept of women which in turn has implications for limiting the role of women outside the home.

6. 'Anatun Nisa'

This book was written by an Indonesian writer based on pesantren experiences. He is Muhammad ibn Abdul Qadir. The author uses *pegon* characters in revealing the related issues of female *fiqh*. They are about menstruation, *istihadhah* and other important things. The technique of writing this book shows the original expression of the writers of the *Fiqh* books in the Shafi'i madhhab used as a source on footnotes (Muhammad: 2). Some of the books used are Minhajul Qawim, Hashiyah al-Jumal, Fath al-Qarib, Fath al-Wahhab and a number of Shafi'i *Fiqh* books. The book that was written in 28 Ramadhan 1408 H contains the discussion about menstruation, *istihadhah*, bathing, pregnancy, childbirth, *aqiqah* and *iddah*. The author appears to be gender neutral in the discussion by presenting the normative Islamic legal view without relating it to a particular gender. This book is used as the material of *Fiqh Nisa'* in pesantren al-Hamidiyyah since 1993 and in pesantren al-Ikhlash since 2003 until now.

7. Manba 'al-Sa'adah Fi Usus Husn al-Mu'asyarah wa Ahammiyah al-Sihhah al-Injabiyah fi al-Hayat al-Zaujiyyah (2011)

The book is written in Arabic by an Indonesian writer named Faqihuddin Abdul Qadir. Books published in January 2012 around 166 pages have been taught in several pesantren in Yogyakarta, Cirebon and Central Java since 2012 including in pesantren al-Ikhlash Pati. In al-Ikhlash pesantren, this book is taught as an advanced material for the book of 'Anat al-Nisa'.

This book collects three discussions

- a. The first discussion is titled with a piece of hadith, your body has the right. In this chapter, Faqihudin writes three physical needs that are recognized and regulated by Islam: the need for a nutritious diet, the need for rest and the fulfillment of sexual needs. He insists that both women and men have the same needs in these three things and Islam has guaranteed it.
- b. The second discussion accommodates the basics of good relationships between husband and wife. This chapter has a discussion of the details of marriage from pre-marriage and during marriage. Pre-marriage, Faqihuddin states both men and women must choose a good partner for themselves and prospective children. While in the household life, someone must give *sakinah*, *mawaddah*, *rahmah* and *barokah* for all inhabitants i.e. husband, wife and children, uphold the principle of *tabadul* (mutual), redefinition of marriage not as transaction of ownership ('*aqd al-tamlik*) '*Aqd al-ibahah*, the right to enjoy sexual intercourse for the wife, the obligation to treat each other well and the joint responsibility in child care and education. In the whole discussion, he emphasized the aspects of justice, equality for both husbands and wives.
- c. Urgency of reproductive health in marriage. It is related to awareness of maintaining maximum reproductive health, circumcision for women, masturbation, and menstrual theology and how to respect women, pregnancy, childbirth, breastfeeding, family planning and *azl*, abortion and age of menopause. In parallel with the paradigm constructed by the author throughout the book, the author raises arguments and views of justice, equality and the fulfillment of women's rights. The authors chose the opinion of some contemporary scholars who forbid female circumcision if it can give the danger.

More comprehensive material of *fiqh* is found in this book than some of the books previously discussed. In addition to the subject of sexual relations between husband and wife, the author adds sexual behavior, masturbation, abortion, contraception and circumcision for women.

In this book, Faqihuddin (2012) emphasizes the pre-requisite of building the relations of society, including in the life of the household based on humanist theology: monotheism, justice, sincerity in the service, equality (*musawah*), love (*mahabbah*), help, and bear each other. This principle is the basic principle (*al-kulliyat*) which should be placed as a measure when dealing with the particular legal matter (*juz'i*). This view points to the preference and commitment to gender justice for women. This choice can be understood by looking at the background of the book and the academic career of the passage. As a female activist, he presents himself to write female *Fiqh* in favor of women. Earlier versions of Faqihuddin's Indonesian language entitled *Memilih Monogami* (2005) confirmed his perspective as a pesantren feminist.

NEW DIRECTION OF SENSITIVE GENDER WOMEN'S FIQH IN PESANTREN: OPPORTUNITIES AND CHALLENGES

The use of new material in women's feminist studies in favor of women in the experience of these two pesantren is seen approaching gender sensitive directions. This development points to a shifting paradigm of pesantren management from traditional women's jurisprudence material. That is gender biased toward women-friendly *fiqh* material. This shift can be

explained by looking at several reasons. An increasingly intense and harmonious encounter between pesantren and activist of gender justice study are in institutional and personal scope.

In the institutional scope, this shift is reinforced by the Gender Mainstreaming Policy of Pesantren conducted by government agencies, as well as Islamic universities and colleges including The State College of Islamic Studies (STAIN) in Kudus. In 2015, this college cooperated with Pesantren al-Ikhlas Pati Kota in implementing community service program. Pesantren al-Ikhlas was chosen because it has human resources that have perspective gender. Its young teachers with gender sensitivity are expected to become the driving force in strengthening the gender awareness of students of pesantren. This phenomenon is in line with the results of Marhumah's study (2011) which states that attention to the issue of gender inequality in pesantren is shifting with the acceptance of gender issues by the agency of socialization of gender values in Pesantren management. The pesantren manager is *badal/ kyai* assistant and male teacher (*ustadz*) and female teacher (*ustadzah*) as a step forward.

While on a personal level, pesantren managers also get more information on gender equity and justice from various parties. In recent times, managers of pesantren are informed well by several government agencies such as the Ministry of Women Empowerment and Non Government Organization (NGO) who concern with gender issues in Indonesia such as Rahima and Fahmina. This well information is given when they study in university or after their study. This is in line with *ustadz/ustadzah* and *badal kyai* in both pesantren who have graduated from Islamic universities and involved in the struggle of gender discourse since they have been in campus through limited discussion and student organization like Indonesian Student's Movement (Pergerakan Mahasiswa Islam Indonesia). (Nur Aini Fitri Nuriyah, interview, July, 2017).

CONCLUSION

The material of Islamic law on women (female fiqh) in the experience of the two pesantren above shows a shift from neutral and gender bias towards gender equality. This shift is marked by female jurisprudence that accommodates justice and gender equality in issues such as women's theology of creation, reproductive health, enjoyment of sexual intercourse, self-concept and several other issues. This shift is caused by increasing the gender perspective of the managers in the pesantren sub-system namely the assistant of kyai (*badal*) and the teachers (*ustadz-ustadzah*). This increase is expected to have an impact on improving the quality of *santri* life with gender justice.

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