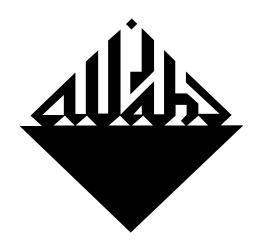


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Financing Muhammadiyah: The Early Economic Endeavours of a Muslim Modernist Mass Organization in Indonesia (1920s-1960s)

Gwenaël Njoto-Feillard

The Ulama, Thought-styles, and the Islamic State Debate in Contemporary Malaysia

Norshahril Saat

Education, Identity, and Recognition: The Shi'i Islamic Education in Indonesia

Zulkifli

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### Document

## Law, Women, and Property in Contemporary Indonesia: A Report

#### Arskal Salim

n 27-28 August, 2013, the School of Graduate Studies of UIN Syarif Hidayatullah Jakarta organised a two day conference on Law, Women and Property in Contemporary Indonesia. The conference was aimed to enhance understanding of recent sociolegal changes that affect Indonesian Muslim women and their access to property in the past few decades. In particular, it sought to investigate changing patterns in marriage and post-divorce payments, property transfers and the implications they are having upon women, children and legal processes in Indonesia.

This conference was supported by the Andromaque Research Project. The Andromaque (*Anthropologie du droit dans les mondes musulmans africains et asiatiques*) was a 3-year (2011-2013) research project grant funded by the Agence Nationale de la Recherche (ANR)/ French National Research Agency and led by Professor Baudouin Dupret (Centre National de la Recherche Scientifique, France). The Andromaque was an international collaborative research project and involved 12 leading scholars from different parts of the world. The project has an anthropological focus on the property rights of women in Muslim communities in four countries: Morocco, Sudan, India and Indonesia. For Indonesian case studies, Professor John Bowen (Washington University at St. Louis) and Dr Arskal Salim (University of Western Sydney and UIN Syarif Hidayatullah Jakarta) are coordinating fieldworks in two regions of Indonesia, Aceh and South Sulawesi. The fieldworks explore and analyse legal processes governing access to property in courtroom settings and village local cultures. The fieldworks were assisted by Nanda Amalia, Abidin Nurdin and Rosmah Tami who also made paper presentations at this conference.

The conference was successful in bringing young and senior scholars of various disciplines: anthropology, culture and literature, gender, history, law and Islamic studies. The speakers of the conference were mostly (senior) lecturers of different universities in Indonesia (UIN Syarif Hidayatullah Jakarta, UIN Sunan Gunung Djati Bandung, UIN Sunan Kalijaga Yogyakarta, UIN Maulana Malik Ibrahim Malang, UIN Alauddin Makasar, IAIN Mataram, and University of Malikussaleh Lhokseumawe) as well as overseas universities (Washington University at St. Louis and University of Western Sydney). These speakers addressed a range of topics that include critical and comparative discussions on: marriage payments, polygamy with(out) the court's permission, post-divorce payments, joint marital property, female heirs access to inheritance, and property rights of children born out of wedlock.

The conference attempted to fill a gap in recent publications on women in Indonesian law. With regard to the enhanced position of women, their rights and access to property, the key arguments of the existing literatures are that the state and its legal institutions play a very influential role. In its efforts at legislating Islamic family law, the New Order regime preferred the unification of law by: (1) selecting only one of many available forms of Islamic jurisprudences and making it the national law, (2) taking legal norms from various existing legal practices (living law) and ratifying them as positive law, and (3) compressing different legal provisions and processes into a single valid legal procedure. The state's role not only has steered the processes and shaped the forms of legislation, but also appeared in a number of judicial practices. As a result, in court practice, judges as well as justice seekers have simplified views that (1) legal reference is official and monolithic, (2) legal hierarchy considers that state laws are above and have more validity than non-state laws, namely religious jurisprudence and social consensus, and (3) standardized legal procedure determines the lawful outcome of legal processes. With all these in place, law in many cases is regarded as legal matters produced by formal judicial institutions.

However, recent social changes in the past ten years have revealed a strong indication that the above process is reversing. A number of legislated rules, judicial decisions and official legal procedures have met resistances from within and without of national legal system. Various dispute resolutions at the village level sharply contradict the stipulated laws and even challenge decisions made by judicial institutions. In addition, a number of legal family practices within certain communities often do not comply with the wording of national laws at all. In most of these cases, women appear to play a major role yet largely in a weak position. All these changes have sparked questions, such as: how do we account for these social changes that affect Islamic legal practice within Muslim communities? Would these changes be seen as positive or negative for women lives, especially to their rights and access to property? This puzzle and other related questions of social legal changes that took place in the past decade of Indonesia were discussed in this two-day conference.

Director of School of Graduate Studies of UIN Jakarta, Professor Azyumardi Azra officially opened the conference and also presented a positioning paper. In his paper entitled 'Social Political Changes in Contemporary Indonesia: Resistance and Accommodation', Professor Azra argued that unlike the powerful New Order regime that consistently steered both social and legal developments in line with political changes, the post-New Order governments tend to let many political and legal changes happen and develop by themselves. As consequence of having a democratic system in place, the post-New Order governments appear to be weak and could not persistently impose unification and consistency of rules at certain social political issues thoroughly.

As a keynote speaker, Azra provided social political contexts of the conference theme and shed light on the conference discussions. His paper in particular sought to look at the position of Islam in Indonesian politics, its manifestations in judicial realms and the extent to which all current changes have affected ways of Muslims live and interact in a pluralistic society of Indonesia. One of major points revealed in his paper is that political changes and shifts in contemporary Indonesia have rendered to the institutionalization of new norms and values, including human rights and civil liberties. All these political changes, institutionally and constitutionally, have in turn ushered in challenges and contestations at different available forums. Azra further disclosed the fact that democratization and decentralization in the post-New Order period have created opportunities for individuals and groups to overtly resist, or even fiercely criticize, laws, policies and decisions made by the central government institutions. In fact, the state policy, ideology and democracy have been challenged through various means. Challenges to individual rights and freedom have emerged as well, which mostly initiated by religious conservatism through judicial review and open public statements. As Azra noted, this contestation between liberty and piety unavoidably affects legal and institutional developments in Indonesia both at local and national levels. Pointing to several case studies of judicial review by the Indonesian Constitutional Court, Azra demonstrated the ongoing struggles of the competing conceptions of liberty and piety in the Pancasila democratic state of Indonesia and contended that despite the state accommodation of Islam, public or group resistance to the state policies or legislation on Islam has been an important part of the general picture of current Indonesia's democracy.

The two-day conference was divided into five sessions: (1) property and women, (2) marriage payments, (3) post-divorce payments, (4) women and inheritance, and (5) marriage and children. Some ambassadors of Muslim countries who are posted in Jakarta, officials from the Supreme Court as well as Islamic judges from the Religious Courts of Jakarta and neighbouring areas were present and active during the questions and answers time. Professor of Islamic Law at UIN Syarif Hidayatullah Jakarta, Atho Mudzhar, was a key discussant and offered a number of positive feedback and constructive suggestions to some paper presentations.

Two presenters (Professor John Bowen of Washington University and Rosmah Tami of Alauddin State Islamic University) kicked off the discussion of the conference's theme. At this first session on property and women, Professor Bowen provided a general assessment on the anthropology of law and property in Indonesian Islamic contexts, while Tami brought a microscopic discussion on women's right to property in Bugis and Makassar communities.

Bowen's presentation focused on the configurations of landed property regimes in Indonesia since colonial times and the shifting judicial contexts for resolving disputes concerning the transmission and division of property. He pointed out that the background to current research on property and law in the Indonesian Islamic context involves several overlapping elements. The long tradition of studying "adat law" developed from the immediate needs of Dutch administrators, and was part of a long debate concerning the appropriate sources of law for ruling the colonies. In the meanwhile, references to Islam have gradually become integrated into a centralized judicial structure and given the force and form of positive law. As Islamic courts were gradually given legal recognition, they took on greater powers to hear disputes over inheritance, although the degree to which such courts have been used continues to differ greatly from one province to another. With the 1989 Court Bill and the 1991 Compilation of Islamic Law, the officially mandated sources of law for resolving property disputes moved from selected books of figh to the new legal code.

Tami's paper paid attention to woman property rights and its relation to a local wisdom, widely known as siri, within Bugis and Makassar ethnic groups in South Sulawesi. Siri literally means shame which refers to an individual's self-esteem, dignity, honor and pride. Tami looked at the extent to which the siri has been a means for women to have access and control over their property rights. The presenter sought to explore the way in which the *siri* has been articulated through wedding ceremonies within both ethnic groups. The articulation of the siri in this case is manifested in the form of gift (sompa/sunrang) presented to a bride. Tami, who is also PhD candidate at the University of Gadjah Mada Yogyakarta, studied a number of cases from the religious judiciary of Makassar and Sungguminasa. She discovered that the siri has inspired and motivated Bugis Makassar women and their big family to access or not to access the property. A woman who maintains the siri would exercise her power to negotiate the size and the amount of property (sompa/sunrang) presented in the wedding ceremony. Yet, a woman who does not really care to maintain her siri would have no bargaining power to have access and control over her rights to property

prior to the marriage solemnization, during her marriage time, or after she has divorced. In other cases, to keep protecting her own *siri* and of her big family, some women were inactive in seeking access to their marital property rights.

On the session of marriage payments, two panellists (Dr Arskal Salim of University of Western Sydney and Atun Wardatun of IAIN Mataram) unveiled their research findings on the practice of marriage payments within Muslim communities at different Indonesian provinces. While Salim provided a comparative discussion on marriage payments in Aceh and South Sulawesi, Wardatun presented a case study of marriage payments among Bimanese Muslim community of West Nusa Tenggara.

Salim's paper gave a particular emphasis in understanding the different meanings of marriage payments in both provinces (Aceh and South Sulawesi) by investigating why and how marriage payments are transformed into disputes. A comparative analysis presented by Salim shows that the conceptual difference of marriage payment has something to do with social structures in both societies. While social status and hierarchy in South Sulawesi remained to be important until now, social strata in Aceh have much changed and equal interaction seems to be more visible. In comparing dispute settlements on marriage payments in both provinces, Salim noted that courtroom disputes over marriage payments take place more frequently in South Sulawesi than in Aceh. This has largely to do with the fact that marriage payments in Bugis and Makassar communities often take the form of land ownership transfer from a groom to a bride. This kind of marriage payments complicates the case especially because the land remains under the possession of parent's bride and it is seldom turned into a certificate of land on wife's name even after years of marriage. A settlement of this particular case thus requires a close scrutiny over intricate evidence presentation before the judges. On the contrary, in Aceh, mahr is mostly paid in the form of gold jewellery. For this reason, disputes over marriage payments are not widely observable at Aceh's courtrooms. The offer of gold jewellery to the bride is very straightforward and relatively trouble free. Given its portability, once a husband gives gold to his wife, it instantly goes to wife's possession.

Wardatun's paper investigated a distinct form of marriage payment practiced among some Bimanese Muslims. This particular marriage payment cannot be easily fitted into the existing popular forms of marriage payments elsewhere in Indonesia. The payment is locally known as Ampa co'i ndai. It literally means elevating one's own price, but technically the term refers to a practice where the bride and/or bride's family intentionally seeks to offer the price for the bride wholly or partially, including wedding party expenses or any other costs related to the marriage processes. Uniquely, it is often publicly stated at the solemnization of marriage that the groom, instead of the bride, pays the price as if he is the actual provider. Wardatun, who is now completing her PhD at the University of Western Sydney's Religion and Society Research Centre, Australia, explained that this practice entails a resistance toward hegemonic patriarchal gender norms embraced by mainstream Bimanese Muslims and Muslim society in general. This practice sought to counter 'traditional and common beliefs' of marriage payments at two levels. At the personal level, this practice explains the bargaining power and of the woman and/or her family by reconsidering the concept of kafa'a (suitability) between bride and groom. At the family level, this practice is a process of creating and perpetuating the social standing of families and highlighting family interests in the future life of the bride by using son-in-law to preserve both the bride's and their own status.

The session on post-divorce payments brought out two speakers: Dr Euis Nurlaelawati of State Islamic University of Yogyakarta and Abidin Nurdin of Malikussaleh University of Lhokseumawe. Both speakers focused on women rights to receive payments after the divorce such as *iddah* (waiting period) maintenance, *mut'ah* (lump sum cash payment), and monthly financial support for children if any. While Nurlaelawati looked at case studies from the religious courts in the province of Banten, Nurdin discussed case studies that emerge from the courtrooms of *Mahkamah Syar'iyah* in the province of Aceh.

Nurlaelawati's paper is mostly devoted to scrutinize judicial discretion of Islamic judges, legal arguments they developed for their rulings on conferring women or wives their rights following their divorce and the practical implementation of a number of post-divorce payments. Nurlaelawati demonstrates in her paper how women in their divorce petition negotiate rights and access to marital property. She presented several case studies from two religious courts of Tangerang and Serang showing some wives who clearly pronounced their demands and fought for justice before the courtrooms. The author pointed out that the success of women in getting access to their rights partly has to do with the fact that many judges fortunately have been sensitive toward gender equality and thus they attempted to make every endeavour to protect rights of wives after their divorce. The increasing gender sensitivity among Islamic judges thanks to legal reform that has taken place in Indonesia since the past decade. This change has created optimism among women about their rights in the aftermath of divorce. For an instance, before allowing a husband on a particular date to utter the words of divorce to his wife at the courtroom, many judges usually require the husband to bring the post-divorce payments and hand them over to the wife. Without this immediate payment, the husband would not be able secure a certificate of divorce from the court. Nevertheless, as Nurlaelawati noted, many husbands cannot afford to make the payment thus full protection of women's rights cannot be optimally carried out. In fact, the arrangement that husbands should provide financial support for children has been difficult to be implemented. This not only because it would financially burden the husbands for many years, but also given the fact that often the relationship between the husbands and their ex-wives badly deteriorates after the divorce.

Nurdin's paper brought in a microscopic analysis on decisions made by Islamic judges in determining the size and the amount of post-divorce payments to ex-wives. If Nurlaelawati generally discussed legal reasoning of Islamic judges in providing women with some postdivorce payments, Nurdin looked closely at the way in which the Islamic judges pondered good or bad conducts of the wives. The judges would allocate either more or less of post-divorce payments to ex-wives depending on their good or bad behaviours during the marriage time. Nurdin disclosed the fact that Islamic judges employed the concept of nusyuz to support the way they judged and allocated the post-divorce payments. Based on four case studies that he discussed, Nurdin, who is also doctoral candidate at Ar-Raniry State Islamic University of Banda Aceh, pointed out that such kind of qualification (consideration of wives' behaviours) has been given more attention than husbands' ability to afford the post-divorce payments. Nurdin's paper also included a discussion on intricate procedures to carry out post-divorce payments to women whose ex-husbands are Indonesian civil servants (Pegawai

*Negeri Sipil*). He revealed a fact that plural practice has been observable with regard to this particular case. Despite a law has been put in place to exclusively regulate marriage and divorce of Indonesian civil servants, Nurdin discovered that some judges showed their opposition to this state regulation saying that the provision which obliges male civil servants to share a third of their monthly incomes to their ex-wives until they get remarried with new husbands is contradictory to Islamic law.

For the session on women and inheritance, two paper presentations were delivered. The first was by Nanda Amalia of Malikussaleh University of Lhokseumawe, while Muchammadun of IAIN Mataram made the second presentation. While Amalia's paper discussed the role of a solicitor in facilitating women litigants to claim their inheritance share in Aceh's state courts, Muchammadun's paper considered social changes as key important factors that create a space for Sasaknese people (native residents of the island of Lombok West Nusatenggara), especially the women, to access their property rights including inheritance.

Analysing legal processes governing access to inheritance cases in Lhokseumawe state courts (both civil and sharia ones) and Banda Aceh Mahkamah Syar'iyah, Amalia demonstrated the ways in which various actors ---judge, lawyers and the litigant parties--- interpret and make use of legal instruments to claim rights, or allocate share, of inheritance. In particular, she analytically considered how each of actors constructs legal facts and refers to certain legal texts or traditional norms for resolving disputes of inheritance. Amalia, who is a senior lecturer at Faculty of Law of Malikussaleh University, argued that lawyers very often played more decisive roles to obtain proportions of inheritance estate for their female clients. To make this point, the author not only discussed legal references employed by both contending parties in claiming inheritance rights, but also examined what lies behind the mind of lawyers in constructing facts and presenting relevant evidence in order to gain a share as claimed by their female clients. In addition, Amalia analysed the extent to which the judge's decisions on several cases of inheritance described in her paper are influenced by lawyers' legal reasoning.

Muchammadun's paper was trying to answer a current puzzle as to why women, although they are major contributors to economic development, mostly do not share economic benefits adequately and equally. Engaging into this debate, Muchammadun sought to demonstrate how a society such as in a remote island of Lombok has undergone certain social changes thus giving some space for women to empower. By looking into the dynamic movement of Sasaknese women as migrant workers at various overseas countries, he pointed out that these Sasaknese women have transformed themselves from being economic dependants to contributors of family incomes. However, all this does not translate into their position before the traditional practice of land property control within the community. They generally remain in marginal positions when it comes to ownership and access to property rights. With legal reform introduced through the Compilation of Islamic Law, especially on inheritance provisions, Muchammadun discovered that shifts in inheritance law regimes from Customary to Islam and State Laws, in contemporary Indonesia have allowed more spaces for women.

The last session was on marriage and children. Two speakers came up to discuss issues around marriage and children in Indonesia. The first speaker was Dr Nina Nurmila of Sunan Gunung Djati State Islamic University of Bandung. The second speaker was Dr Tutik Hamidah of Maulana Malik Ibrahim State Islamic University of Malang. While Nurmila discussed polygamous marriage that badly affects wives' access to income and maintenance, Hamidah dealt with underhand marriage (*nikah siri*) that negatively impact on children rights to inheritance.

Nurmila's paper presented three case studies to illustrate how polygamous marriages have affected co-wives' access to maintenance (*nafkah*) payment from their husband and other kind of property rights. The polygamous marriages in all these case studies have deteriorated the economic well being of the established wife (usually the first one among others) by preventing her access to full income received by the husband since that income now must be shared among multiple wives for their own maintenance. This is because when a husband was monogamous, all his income was mainly dedicated to fulfil the needs of one household or her only wife. However, when later he practices polygamy, his time and money should be distributed among the other wives, thus reducing the maintenance payment of the established wife. Through these cases studies, Nurmila showed the way in which co-wives through competition among themselves sought to establish their property rights and obtain access to their husband's income. All this proves that justice (the core required element for polygamous marriage) cannot easily be achieved even in legal polygamy.

Hamidah's paper looked at views of women Muslim organisations (Muslimat NU and Aisyiah Muhammadiyah) on the issue of the rights of children born out of wedlock (or born within underhand marriage). This issue becomes increasingly relevant given that the controversial decision issued by the Constitutional Court in 2010. The decision allows children born out of wedlock to have access to inheritance estate left by their biological fathers. Hamidah in particular touched upon a case examined by the Constitutional Court in which a provision of the Marriage Law that stipulates the relationship of a child born out of wedlock exists only with the mother and not with the father. The case under the question here was the right of a child who was born from the underhand marriage between Moerdiono (a former Minister during the Soeharto regime) and Macica Muhtar (a singer). But this is not the main focus of Hamidah's paper. Instead, the author paid attention more to the views of female leaders of Muslim women organisations on the issue in question and their responses to the Constitutional Court's decision. Hamidah discovered that female leaders of both organisations appreciated the decision of the Constitutional Court and considered it as a long overdue resolution to a problem that involves the rights of children born within underhand marriage.

Overall, the conference was very successful thanks to several key people at SPS UIN Jakarta who were actively involved in the preparation of and during the conference. They were Professor Suwito, Dr Fuad Djabali, Dr Yusuf Rahman, Ms Haula Noor and Ms Windy. Some senior lecturers of UIN Jakarta, such as Dr Dadi Darmadi and Dr Asep Jahar, were also very helpful by committing themselves as chairs of the conference sessions.

At the end of the second day of the conference, most of the speakers gathered together to discuss the publication plan of all papers into a volume. All agreed to contribute a chapter and they were willing to revise their paper based on feedback received during the conference. The contributors resubmitted their first revision on February 2014 to have more in depth and critical suggestions from Professor John Bowen and Dr Arskal Salim. The contributors finally resubmitted their second revision in June 2014. It is expected that by the end of 2014, the final typescript would be completed and ready for submission to a publisher in Europe. We hope that a remarkable volume out of conference papers on diverse issues on women, law and property in contemporary Indonesia will come out at the end of 2015 or by early 2016.

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#### Guidelines

# Submission of Articles

Southeast Asian Islamic studies in general. The aim is to provide readers with a better understanding of Indonesia and Southeast Asia's Muslim history and present developments through the publication of articles, research reports, and book reviews.

The journal invites scholars and experts working in all disciplines in the humanities and social sciences pertaining to Islam or Muslim societies. Articles should be original, research-based, unpublished and not under review for possible publication in other journals. All submitted papers are subject to review of the editors, editorial board, and blind reviewers. Submissions that violate our guidelines on formatting or length will be rejected without review.

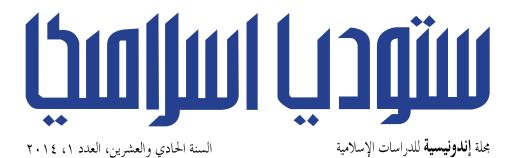
Articles should be written in American English between approximately 10.000-15.000 words including text, all tables and figures, notes, references, and appendices intended for publication. All submission must include 150 words abstract and 5 keywords. Quotations, passages, and words in local or foreign languages should be translated into English. *Studia Islamika* accepts only electronic submissions. All manuscripts should be sent in word to: studia. islamika@uinjkt.ac.id.

All notes must appear in the text as citations. A citation usually requires only the last name of the author(s), year of publication, and (sometimes) page numbers. For example: (Hefner, 2009a: 45; Geertz, 1966: 114). Explanatory footnotes may be included but should not be used for simple citations. All works cited must appear in the reference list at the end of the article. In matter of bibliographical style, *Studia Islamika* follows the American political science association (APSA) manual style, such as below:

- Hefner, Robert, 2009a. "Introduction: The Political Cultures of Islamic Education in Southeast Asia," in *Making Modern Muslims: The Politics of Islamic Education in Southeast Asia*, ed. Robert Hefner, Honolulu: University of Hawai'i Press.
- Booth, Anne. 1988. "Living Standards and the Distribution of Income in Colonial Indonesia: A Review of the Evidence." *Journal of Southeast Asian Studies* 19(2): 310–34.
- 3. Feener, Michael R., and Mark E. Cammack, eds. 2007. Islamic Law in Contemporary Indonesia: Ideas and Institutions. Cambridge: Islamic Legal Studies Program.
- 4. Wahid, Din, 2014. Nurturing Salafi Manhaj: A Study of Salafi Pesantrens in Contemporary Indonesia. PhD dissertation. Utrecht University.
- Utriza, Ayang, 2008. "Mencari Model Kerukunan Antaragama." *Kompas*. March 19: 59.
- 6. Ms. Undhang-Undhang Banten, L.Or.5598, Leiden University.
- Interview with K.H. Sahal Mahfudz, Kajen, Pati, June 11<sup>th</sup>, 2007.

Arabic romanization should be written as follows:

Letters: ', b, t, th, j, h, kh, d, dh, r, z, s, sh, s, d, t, z, ', gh, f, q, l, m, n, h, w, y. Short vowels: a, i, u. long vowels:  $\bar{a}$ ,  $\bar{i}$ ,  $\bar{u}$ . Diphthongs: aw, ay.  $T\bar{a}$  marbūțā: t. Article: al-. For detail information on Arabic Romanization, please refer the transliteration system of the Library of Congress (LC) Guidelines.



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