

Re-establishing juristic expertise

A historic congress of female Islamic scholars¹

Mirjam Künkler and Eva Nisa



The Minister of Religious Affairs and women *ulama* released doves at the closing ceremony of the Congress.

Mirjam Künkler and Eva Nisa, researchers with decades of expertise in Islamic authority and gender, dissect the outcomes of the first congress of female Islamic scholars held in Indonesia in April 2017. They examine the historic significance of the event based on interviews with women scholars and male attendees and the analysis of the congress materials issued.

Can women interpret Islamic law? This question would have been a ‘no-brainer’ to a Muslim from Damascus in the 12th century, when women served as renowned teachers of the Islamic tradition,¹ and the opinions of women jurists² on questions of Islamic law carried weight comparable to that of male jurists. Yet, if one asks a Muslim today: “have you ever asked a woman for an interpretation of Islamic law?”, the answer from Dakar to Dhaka, from Sarajevo to Cape Town, from Jakarta to Ann Arbor will usually be “no”. Women are not asked to interpret Islamic law, and few expect them to do so. Very often, this is because women are not sufficiently trained for this work.³ If they are, they tend to be consulted only on so-called ‘women’s issues’ such as child rearing, a wife’s duties towards her husband and other family members, household organisation, and hygiene.

In recent years, however, Muslims in different parts of the world have started to address gender imbalances in juristic expertise. In India and Turkey, programs have been set up to train women as *muftis* (jurists who can issue *fatwas* or expert legal opinions). Judicial institutions in Malaysia⁴ and the Palestinian Authority⁵ have begun to hire female judges in their Sharia courts. In a similar trend, Indonesian organisations recently joined forces to convene the Muslim world’s first congress of *ulama perempuan*: women Islamic scholars.⁶ This historic event, held in late April 2017 in Cirebon, West Java, was nothing short of a breakthrough in terms of re-establishing the long-lost juristic authority of women to produce Islamic legal recommendations and rulings.

Women’s juristic authority⁷ was squarely on the agenda of the congress. Religious authority in Islam can manifest itself in several ways including by leading prayer, reciting the Qur’an, delivering a sermon, or transmitting a *hadith* (a saying of the prophet). The pinnacle of this authority is the ability to interpret Islamic sources to make recommendations of behaviour in the here and now. In most contemporary Muslim societies, this is exercised in two main ways. The first is by issuing *fatwas*. These are legal recommendations based typically on interpretations of the Qur’an and *hadith*. (Different sects in Islam regard different *hadiths* as authentic, and therefore the specific source material differs from sect to sect.) A person trained to issue a *fatwa* is called a *mufti*, with the feminine form in Arabic *muftiya*. *Fatwas* are only recommendations.

They are not binding, but can carry great weight depending on the moral authority of the issuer. In some countries, policy makers take *fatwas* of leading Islamic authorities into account⁸ when, for example, considering reforms to family law, Islamic finance, or food and medicine regulations.

The second way juristic authority is exercised is by serving as a judge in an Islamic court where non-codified Islamic law is applied (which means judges must interpret original sources, as there is no codified text issued by the state, like a statute or book of law). This requires deep engagement and expertise in interpreting religious sources. The needed erudition and experience to act as a judge of non-codified Islamic law can take decades of study and training to acquire. In Indonesia, for instance, family courts for the Muslim majority apply Islamic law (non-Muslims are subject to civil family law). Since the 1950s, judges of Islamic law have been trained in the country’s Islamic state institutes. Although female judges were unheard of when the institutes first opened – and remain a minority – admission was not restricted to men. Starting in the 1960s, women also completed this advanced training and over time many have been appointed judges in Indonesia’s Islamic courts.⁹ In 1970, Sudan also began to appoint women to its Islamic courts. However, it would take another 35 years before women would be appointed to Islamic courts in other countries. Malaysia did so in 2005, the Palestinian Authority in 2009, and Israel appointed the first woman judge to its Islamic courts in 2017.¹⁰

Three fatwas

Faced with the limited participation of women in the juristic process, the congress in Indonesia aimed to raise awareness about pioneering developments and strengthen local initiatives to promote women’s juristic authority in Islam. Importantly, it showed that it is not only women who support this struggle. Male scholars, while a minority, were also among the speakers and attendees. At the congress’s core was *musyawarah keagamaan* (religious deliberation) to formulate *fatwas*, and the women *ulama* at the congress issued three *fatwas*.¹¹ This in itself was historic,

as *fatwa* issuing has long been monopolised by male clerics. There are, for example, only seven women *ulama* out of 67 members of the *fatwa* commission of *Majelis Ulama Indonesia* (MUI) – a prominent *ulama* organisation, which has become an influential voice in Indonesia’s legislative process.

The first *fatwa* of the women’s congress focused on sexual violence. It emphasised that such violence, including within marriage (marital rape), is forbidden under Islamic law (*haram*). It also distinguished *zina* (adultery and fornication) from rape, and stressed that victims must receive psychological, physical and social support – not punishment. The second *fatwa* concerned child marriage and denounced the practice as harmful (*mudarat*) to society. The *ulama perempuan*’s accompanying commentary called for raising the Indonesian legal marriage age for girls from 16 to 18 years. Importantly, as most

child marriages are not registered with the state in the first place, the *fatwa* also reminded ordinary Muslims and imams that it was obligatory (*wajib*) to prevent them.

The third *fatwa* linked environmental destruction and social inequality. It described environmental degradation for economic gain as *haram* and asserted that it had, in recent decades, exacerbated economic disparities in Indonesia, with women being the most affected. It noted how drought, for example, added to the burdens of rural women typically responsible for preparing food and fetching water. Deliberations on this *fatwa* also touched on issues of land and forest governance, and on the impact of deforestation on women in particular. It was demanded that the Indonesian government impose strict sanctions on perpetrators of environmental destruction. Among other issues, the discussion highlighted the damaging effects of illegal deforestation campaigns to make space for vast palm oil plantations.

Re-establishing authority

The women *ulama* based their religious interpretations on four sources: the verses of the Qur’an, *hadith*, *aqwal al-‘ulama* (views of religious scholars), and, interestingly, the Indonesian constitution. They used

a methodology called ‘unrestricted reasoning’ (*istidlal*), with stated aims to maximise *maslaha* (public interest) and reduce *mudarat* (harm) to arrive at rulings. The issuing of the three *fatwas* is of major significance. It shows that women *ulama* have the ability and the expertise in Islamic sources to formulate these recommendations. The *fatwas* also demonstrate that the *ulama perempuan* do not restrict themselves to the Qur’an, *hadith*, and other classical Islamic texts. Like the best judges in any society, they do not only aim to interpret classical legal texts but also develop legal proficiency in diverse contemporary issues.

Indeed, the participants produced more than *fatwas*, which usually consist of only a few pages of argumentation. The congress considered a large range of sources during its deliberations, including social scientific evidence of conditions and challenges faced by women. It also produced far longer and more in-depth written explanations and legal opinions than is common for *fatwas* in Indonesia. Some Indonesian gender rights activists, and Indonesian *fatwa* committees themselves, use the term *sikap keagamaan* (religious views) for recommendations that come out of this complex deliberation process. But whether one calls these recommendations *fatwas* or *sikap keagamaan*, their significance was clear: the congress was a historic step towards re-establishing the long-lost juristic authority of women to produce Islamic legal recommendations and rulings.

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Notes

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