Re-establishing juristic authorities

A historic congress of female Islamic scholars

Mirjam Künkler and Eva Nisa

On 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, and the opinions of women jurists 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. Yet, often this is because women are not sufficiently trained for this work. 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 ulama (jurist) or expert legal fatwas or akwil (views of religious scholars), and, interestingly, the Indonesian constitution. They used a methodology called ‘unrestricted reasoning’ (ista‘il), with stated aims to maximise masculinity (maslaha istiya‘) and reduce muddar (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 parens patriae 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 efficiency in diverse contemporary issues.

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

Women ulama have the expertise to formulate fatwas

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